REFORM OF THE FEDERAL CRIMINAL LAWS

HEARINGS
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
NINETY-SIXTH CONGRESS
FIRST SESSION
ON
S. 1722 and S. 1723

SEPTEMBER 11, 13, 18, 20, 25, AND OCTOBER 5, 1979

PART XV

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STATEMENT ON THE "WORKING DRAFT" OF THE SUBCOMMITTEE ON CRIMINAL JUSTICE

Bill to Recodify Federal Criminal Laws

United States Senate

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Indiana University School of Law, Indianapolis

As a law professor specializing in Constitutional Law, as a parent of five children, and simply as an American citizen who has a right to a decent environment in which to live, I wish to comment on the "Working Draft of the Subcommittee on Criminal Justice" (August 24, 1979). Further, as the author of articles entitled, A Parent's Case Against Pornography (NATIONAL OBSERVER, May 16, 1977, reprinted in dozens of other newspapers); and Obscene Evils v. Obscure Truths: Some Notes on First Principles, 7 CAPITAL UNIVERSITY LAW REVIEW 647 (1978), I have demonstrated qualifications for dealing especially with the question of legal controls of pornography, an area which the "Working Draft"--in a deliberate omission certain to outrage the American people when they learn of it--chooses largely to drop.

It is true that the "Working Draft" contains Section #2742 entitled "Sexual Exploitation of Children", which touches on one facet of the national scandal of pornography. But it defines "minors" as "under age 16" instead of "age 17 or under," leaving 16 and 17-year-olds unprotected; it does nothing to prevent pornographic materials from reaching children of any age; it adopts an unnecessarily harsh evidentiary standard--proof of the age of the minor acting in the pornographic film--which will preclude successful prosecution in many cases; and it adopts, in another section, penalties which will be so lenient in practice as not to deter or discourage the barbaric crime of destroying--raping and murdering--the innocence and the psychic health of little children.

Worst of all, the "Working Draft" would do nothing to protect the moral environment from the noxious pollution that is the spread of pornography throughout the country, debasing children and adults alike, spawning anti-social and even criminal conduct in hundreds if not thousands of cases each year, making certain whole sections of our major cities unfit for native and visitor alike--Times Square in New York is an international scandal, but it is replicated in almost every other big city--and teaching a whole generation of our citizens that the instant gratification of sexual pleasure, no matter what the cost to oneself or one's consort, is the only purpose in life.

Thus the silence of the "Working Draft" tells us very much about the priorities of the Congressmen, or their staffs, who drafted this bill: we have nothing to stop pornography, but Section #2752 makes it a Class E Felony to distribute adulterated eggs! and Section #2753 makes it also a Class E Felony, under certain conditions, if the defendant sells products "that violate noise emission standards"!

Even more incredibly, in the light of the $10,000 fine proposed for someone convicted of Sexual Exploitation of Children, Section #2753 just alluded to closes with this Draconian punishment:

> (Notwithstanding other provisions), the authorized fine ... is not more than $25,000 per day ... and the authorized fine for a Class E Felony ... is not more than $50,000 per day.

Thus it appears the Congress will tell the American people:

it is five times more evil to sell a power mower that is too noisy than to sell children into sexual bondage to entertain the perverted lusts of pedophiles; and it is at least 2½ times more evil to sell adulterated eggs than it is to show children on videotape, committing adultery.

Such an inversion of values is simply grotesque. To put the most charitable interpretation on it, one must assume different persons did different sections of this "Working Draft," and the incongruity I have just exposed did not come to their attention.

However, there is another explanation: that the drafters simply do not care to deal effectively with pornography. I intend, in the body of these comments, to examine some of the suppositions behind that disinterest; but as a final preliminary remark, I want the Record to show my personal disappointment, shared by other concerned citizens with whom I have spoken, that the original plans for oral Hearings on the "Working Draft" were scrapped on September 7, 1979, after the Hearings had begun, but not proceeded into the substantial amount of time that, as recently as September 5-6, spokesmen for the Subcommittee on Criminal Justice were informing the public, by telephone, had been set aside for public comment on the "Working Draft." I wish also to express my disappointment--and, if I may say it, my anger--that the reason given for this abrupt change of course was "the need to get the bill out quickly," through the full Committee, through the Rules Committee, and out to the House Floor.

The only redeeming feature in this stampede to pass a grotesquely flawed Recodification of Federal Criminal Laws is the assurance, from the Subcommittee, that written comments are permitted, indeed encouraged, and will be dutifully circulated in their entirety to Subcommittee Members, who have the reputation of diligence in reading whatever of this genre is offered. Relying on that assurance, I submit these comments and my Obscene Evils v. Obscure Truths law review article for inclusion in the permanent Record.

(1) LEGISLATORS WHO WOULD "DECRIMINALIZE" PORNOGRAPHY GIVE THE IMPRESSION THEY DO NOT UNDERSTAND WHAT TODAY'S PORNOGRAPHY IS.

Again, one wants to put a charitable cast to all this. One does not want to believe that those who would have no Federal laws against pornography as it exists in America in 1979 really know what sort of monster is loose in the land.

We are not talking about a few bawdy passages from Chaucer or Rebelais. Nor about cartoons from a 1939 issue of ESQUIRE. Nor about parts of the writings of D. H. Lawrence. Nor even about the "centerfold" of the 1969 issues of PLAYBOY.

We are talking about something so hideous and barbaric that people who have not seen it cannot believe it exists, that people who have seen some of it grope for euphemisms to water down is vileness, and that people who indulge their morbid fantasies with it do so furtively, wearing dark glasses as they enter the "adult" bookstores, keeping thier private collection of comic books under lock and key in the basement.

Consider: In the Law Review Symposium that my article, appended, appears, 226 pages are given to eight separate articles, from all points on the philosophical spectrum, to explore the topic, "Obscenity and the First Amendment." As far as I can see, my article was the only one that gave some concrete examples of obscenity, i.e., pornography. I wondered at the time how learned law professors could discuss the legalities of a thing when, to all appearances, they did not--literally--know what they were talking about. One wonders how the Congress can write laws dealing with it.

In a television debate with Larry Flynt in February, 1977, I was appalled that he could succeed with the assertion that the censors wanted to ban "discussions of sex" such as HUSTLER magazine. Such euphemism is like calling the Black Hole of Calcutta "substandard housing." In an article from the CINCINNATI ENQUIRER (February 11, 1979), Reo M. Christenson, the distinguished liberal political scientist, wrote:

> Those appalled by the prospect of censorship usually do not realize what they are protecting. Or what, through postal subsidies, they help distribute with their tax dollars.
>
> It is imperative that the public know what is really in Hustler ... (it) is not a "girlie" magazine or another Playboy. Rather, it is full of pictures and descriptions of such gross sexual perversion, such bizarre forms of bestiality and such nauseating accounts of excretory activities that few if any newspapers feel free to explicitly inform their readers of what is in the magazine. -- The Judgment on Hustler: Sanity, not Censorship.

The protean monster that is modern pornography takes many forms: these include, in livid color, with zoom-lens, close-ups,

--women having intercourse with dogs and horses;

--lesbian masturbation and the devices enabling lesbian copulation;

--techniques of rape;

--heterosexual and homosexual sadomasochism, with instruments;

--methods of seducing and/or molesting children;

--"snuff films," in which the victim is attacked sexually and then actually murdered before the camera;

--gang sex clubs in which, typically, a group of men kidnap a young women, chain her to a post and then simultaneously have sex with her in groups of two or three or even more;

--fetishistic ways to stimulate oneself autoerotically, e.g., demonstrations of how to hang oneself by a woman's stockings or slip, just long enough to become aroused;

--closeups of male and female sex organs in massively turgid arrousal;

> --in all, the protagonist, whose only purpose is sexual activity and instant and continuous gratification, and usually the foil or victim, is shown in ecstasy-like transports of total animal pleasure (never in the films or photo - essays, is shown physical or psychic harm such as VD or neurosis).

The Congress must understand the extent of all this. In every city there are tens and sometimes hundreds of "adult bookstores" which deal in magazines, pictures and films of the material I have just summarized. There are between 260 and 280 monthly magazines catering to pedophiles--people who get their "kicks" by looking at the nude bodies of eight-year-olds in compromising poses. There are private syndicates or clubs of sometimes hundreds of people who, through the mails, order and trade pictures of such children, in poses distinctively appealing to the individual's personal twist.

The porno industry grosses about <u>four-billion dollars</u> annually. That's <u>billion</u>, which means the purveyors of porn do better than the entire legitimate motion picture and record industries.

It is likely that literally millions of young people, in their impression able teens and certainly in their early and mid-adult years, view films of bestiality, lesbian masturbation, rape techniques, gang sex and the other typical forms of pornography I mentioned above.

And now the industry is moving into videotapes, so that it can make another buck in the hotel, motel and home cassette markets. That is, if the Congress does nothing, soon every neighborhood is virtually certain to have a few people who entertain themselves with these kinds of pornography --which means that when my little girl goes babysitting she may chance to view these, and no one will be certain that when his teenage son is invited to a classmate's home for a party, and it happens that the parents are

out--or they are home!--"stag films" of S-M and masturbation will not be shown.

And while all this is happening in every city of the land, the Congress occupies itself passing laws against adultered eggs and noise pollution!

(2) THE MONSTER OF MODERN PORNOGRAPHY CAUSES IMMENSE HARM.

Perhaps the reason the Congress appears more interested in controlling noise pollution of the physical environment than in protecting the moral environment from the spiritual pollution of pornography is that the Congress believes pornography is a "victimless crime," i.e., that it causes no harm.

There is a curious inconsistency here: we feel quite certain that smoking causes cancer. We are quite sure that "racist attitudes" cause specific acts of racial discrimination. We are beginning to recognize the mounting evidence that violence on television and in the movies causes violent conduct. As the liberal columnist, Nicholas von Hoffman, wrote in essay, <u>Assault by Film</u>, THE WASHINGTON POST (April 13, 1979), page D4:

> Why is it liberals, who believe "role models" in third-grade readers are of decisive influence on behavior when it concerns racism or male chauvinist piggery, laugh at the assertion that pornography may also teach rape? Every textbook in every public school system in the nation has been overhauled in the last 20 years because it was thought that the blond, blue-eyed suburban children once depicted therein taught little people a socially dangerous ethnocentrism. If textbooks, those vapid and insipid instruments of such slight influence, can have had such sweeping effect, what are we to surmise about the effects on the impressionably young of an R-or X-rated movie, in wide-screen technicolor, with Dolby sound and every device of cinematic realism?
>
> Later in the same essay, von Hoffman added: Network television executives who deny the likelihood their programs can alter human behavior lie and they know it. All you have to do is listen to what these same gentlement say to their advertisers. They boast, they brag, they bellow about what an effective sales

> medium their networks are ... how good they are at getting people to alter their behavior and part with their money.

The evidence on violence, the clinical, professional-psychologist-developed evidence, continues to mount. But in structure (and often in practice) what happens in the human mind and consciousness--and unconsciousness--when sex is depicted is no different from what happens when violence is depicted.

Two things happen: (1) some overly-impressionable viewers do act out what they have seen; (2) all the viewers are left with lasting impressions which sink into the subconscious and, if frequent enough (and for some persons, even if not frequent), these impressions influence and warp their entire attitude about life and about other persons. As Dr. Fredric Wertham put it in an article titled, Medicine and Mayhem (M.D. Magazine, June 1978, page 11):

> Negative media effects do not generally consist in simple imitation. They are indirect, long-range, and cumulative. Violent images are stored in the brain, and if, when, and how they are retrieved depends on many circumstances. It is a question not so much of acts as of attitudes, not of specific deeds but of personality developments.

One wonders about pornographic sadomasochistic videocassettes when he reads the comment later in Wertham's Essay:

> The saturation of people's minds with brutal and cruel images can have a long-range influence on their emotional life. It is an effect that involves human relations in fantasy and in fact and can become a contributing factor to emotional troubles and adjustment difficulties.

Certainly, before the Congress repeals all Federal Criminal Laws controlling pornography, it could call as a witness a man of Dr. Wertham's credentials (Consulting Psychiatrist at Queens Hospital Center, New York; formerly associate in psychiatry, Johns Hopkins Medical School; author of several

books on the subject) and ask him to elaborate on this statement from the cited essay:

> With regard to sex, the explicit display of sadomasochistic scenes may have lasting effects. They may supply the first suggestions for special forms or reinforce existing tendencies. The whole orientation of young people with regard to the dignity of women is affected. By showing cruelty with erotic overtones, we teach that there can be pleasure in inflicting pain on others.

In this connection, the American Civil Liberties Union magazine, THE CIVIL LIBERTIES REVIEW (January/February 1978), page 51, contained the highly pertinent article, 'Violent Pornography' & the Women's Movement. The essay summarizes the founding and work of a feminist group called Women Against Violence Against Women (WAVAW) "which grew out of organized opposition to the showing in Los Angeles ... of "Snuff"--a film that depicted as entertaining the murder and mutilation of a woman. Taking as a case in point a billboard ad for a Rolling Stones album, which ad depicted a beautiful scantily-clothed women, her wrists, ankles, and torso bound with heavy cords, her bare legs bruised and bleeding, but nonetheless saying, "I'm 'Black and Blue' from the Rolling Stone--and I love it!" the article describes WAVAW as

> 'an activist organization working to stop the gratuitous use of images of physical and sexual violence against women in mass media--and the real-world violence against women it promotes ...'

and quotes a member:

> We think it's harmful in that it contributes to the overall environment that romanticizes, trivializes, and even encourages violence against women.

The author, an ACLU staff attorney, observes:

> WAVAW probably cannot demonstrate that particular media portrayals are directly responsible for antisocial conduct, although it is not irrational to believe that the offending material may well have harmful effects. As WAVAW claims:

> 'When millions of people see women portrayed as victims day in and day out, an impression is created that women are victims, that it's safe, OK and in fact normal to pick on women ... Furthermore, a lot of record advertising uses images of violence to women in a joking ... manner--which ... trivializes and demeans the very real pain that raped and battered women suffer ...'
>
> (Emphasis, by underlining, added.)

It is encouraging to see this serious libertarian journal, on whose Editorial Committee are included such distinguished persons as Congressman Robert F. Drinan, publishing an article which acknowledges that still photos, even, on mere billboards and record-album covers, can promote actual violence in "the real world" and that it is socially important to worry about the "overall environment."

Now when the writer states that "WAVAW probably cannot demonstrate that particular media portrayals are directly responsible for antisocial conduct," she has hedged her bets well. The words particular and directly are key. These, plus the word demonstrate are crucial to the case for the decriminalizers, whose only causality is Newtonian: i.e., one billiard ball causing another to roll into the side pocket. The writer appears to believe that there are no cases where the immediate and palpable impact of pornography is so obvious that any fair-minded observer would have to say: "looking at that stuff made him commit that crime."

However, ten years ago a member of the Presidential Commission on Obscenity and Pornography, Charles H Keating, Jr., Esq., produced powerful documentation of the fact that in some cases, pornography does indeed cause crime. In a lengthy letter dated August 11, 1969, to Chairman William B. Lockhart, entitled "Memorandum Re Statistical Study of Relationship of Ol :enity to Crime and Other Antisocial Behavior" [reprinted as Exhibit C of Keating's Minority Report of the Commission (September 30,

1970)] he cited 26 cases where immersion in pornography immediately preceded serious sex crimes, in many cases crimes that were performed, and even admitted as such, as enactments of the pornography earlier absorbed. Typical of some which Keating cited:

> Rape Case. Seven Oklahoma teenage male youths gang attack a 15-year-old female from Texas, raping her and forcing her to commit unnatural acts with them. Four of the youths, two the sons of attorneys, admit being incited to commit the act by reading obscene magazines and looking at lewd photographs.
>
> Assault. Male youth, age 13, admits attack on a young girl in a downtown office was stimulated by sexual arousal from a stag magazine article he had previously read in a public drugstore, which showed naked women and an article on "How to Strip a Women."
>
> Attempted Rape Juvenile Delinquency. A 15-year old boy grabbed a nine-year old girl, dragged her into the brush and was ripping off her clothes. She screamed and the youth fled. The next day police pick him up. He admitted that he had done the same thing in Houston, in Galveston and now in San Antonio. He said his father kept pornographic pictures in his top dresser drawer and that each time he pored over them the urge would come over him.
>
> Rape Case. The Santa Clara County District Attorney reported that one youth, after seeing a beautiful girl kidnapped and held prisonor in a movie, carted off a girl and held her for 18 hours while he forced her to commit every act you can possibly imagine. In his home police found nothing but this type of magazine.
>
> Juvenile Delinquency - Sex Gang. A juvenile sex gang involving boys seven to fifteen was discovered in Oklahoma. An attorney representing one of the 15-year olds revealed the boy told him they had bought magazines at various grocers and drugstore newsstand and were incited by pictures of men committing unnatural acts and men and women in lewd photos.

These are not just isolated cases. A recent study done by the Michigan State Police, using a computer to classify over 35,000 sex crimes which were committted in that state alone, over a 20-year period, found that 43% were pornography-related. These are the cases where the perpetrator was apprehended. No one knows how many cases of sexual assault,

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lewd conduct, voyeurism, quasi-consensual perversion, bestiality, rape-murder and other crimes were motivated by pornographic immersion, but the authorities never apprehended the actor and thus could never obtain the materials that triggered his sick conduct. Nor do we know how many cases of sexual promiscuity, unwanted pregnancy, and venereal disease are due to experimentation induced by the pornographic trash we euphemistically call "sexually explicit" material. But the iceberg below the surface is always far bigger than the tip we see above.

(3) EVEN IF PORNOGRAPHY DID NOT CAUSE SEX CRIMES IN MANY CASES, THE PSYCHOLOGICAL HARM IT CAUSES MAKES IT A DEADLY THREAT TO THE FUTURE OF OUR SOCIETY AND JUSTIFIES STRONG LAWS AGAINST IT.

In the first numbered section of this Statement, I demonstrated that modern pornography is not innocuous, and that it has nothing to do with the classic "naughty magazines" that featured leggy models in skimpy bathing suits. Rather, it is thousands of magazines, quickie films, and now videotapes with close-ups of nothing more than bestiality, masturbation, rape, sadomasochism, gang sexual assault, fetishes, and even sex-murder actually occurring.

Here I ask the Congress to consider what happens to the mind, the consciousness, the subconsciousness, that way of looking at life and sex, the entire value-orientation of a man who is a devotee of this stuff ... who entertains himself for hours on end, devouring each new issue of the magazines, collecting pornographic films, joining "sex clubs" to watch in someone's bedroom the orgies the films and videotapes and magazines instruct in how to carry out. Let us assume for the sake of argument

that this man--whether from lack of opportunity or lack of boldness--never actually commits a pornography-related crime; that is, he never commits a crime that is sexually-related and that amounts to an acting out of fantasies depicted in his pornography collection.

For all of that, would the members of Congress feel comfortable with such a man as a next-door neighbor?

Consider what he has made himself: He is a person who entertains himself by paying to watch women have intercourse with dogs. He is a person who enjoys watching helpless women being raped on film. He has filled his mind, his memory, and his very subconsciousness with gory scenes of sadomasochistic torture. As he watches, he joins the perverted action and takes part vicariously. He wants to cannibalize, in his imagination, the pleasure he sees--and approves--and wants for himself as he views the protagonist abuse his erotic victim. The more fully he can immerse himself in thise scenes the more pleasure he pirates for himself. He knows that the actor in the films is enjoying himself immensely; he wants that enjoyment for himself: He would like to be the actor in the film, just the way people at a boxing or wrestling match identify with one participant as he batters the other into a bloody pulp. (But they attended such spectacles rarely and, in modern times at least, the barbarities are infrequent; our modern pornophile can pursue his self-debasement for hours on end, and typically he seeks ever new kicks through an endless pursuit of ever more twisted pictures of perversions.)

Unless Congress acts, it is inevitable that almost every neighborhood in the country will have such a person resident.

In the article already cited, the psychiatrist Wertham observed:

> Negative media effects do not generally consist in simple imitation. They are indirect, long-range, and cumulative. Violent images are stored in the brain, and if, when, and how they are retrieved depends on many circumstances. It is a question ... of personality developments.

What is true of violence is also true of scenes of animal sex. As practitioners of hypnosis have demonstrated, the subject, under hypnosis, can be made to "regress" to infancy even; and as he travels back mentally through his personal history, he can recall specific scenes and experiences which had long been dormant in his subconscious. Thus Wertham notes that negative media effects are long-range and cumulative, that images are stored in the brain--if ordinary childhood experiences such as the first day of grammar school or even losing a toy, how much the more scenes of sexual torture or rape? On one level, it is quite true that we never fully forget what we have learned; it is also true that visual experiences constantly repeated and reinforced penetrate the subconsciousness and become part of the very psychic being of the person.

The clinical psychiatrist Dr. Melvin Anchell has written:

> The adverse effects of audiovisual obscenities permitted in today's entertainment media are sexually devastating to children and adults. The belief that pornography is unsuitable mental fare for children but harmless for adults is illogical. It is like saying a human being suddenly becomes immune to poison at age 18. (Newspaper article, A Psychiatrist Looks at Pornography, emphasis added.)

Dr. Anchell goes on to point out that a young person absorbed in pornography frequently "fails to make a mature adjustment. He remains stunted in self-love which is satisfied with immature forepleasures."

> Pornography embellishes the physical sex life of free lovers and perverts who find it difficult to fulfill their complete sexual needs. But complete sexuality is more than a physical relationship. To be life-sustaining, human sexuality must encompass the mind as well as the body. The affectionate component is as important as the physical. Without companionship and affection, the sex act alone produces frustrations that can lead to serious sexual maladjustments. Free lovers and sexual deviants are in a constant

> state of conflict with themselves. They project their conflicts onto others with sadistic vengeance.

Though I could continue in this vein, I believe that the point has been proved beyond cavil: the devotee of pornography is--literally--psychologically sick.

Now, by withdrawing any Federal laws against the already monstrously-large magazine/film/videotape porn industry, the Congress will hasten the expansion of what already is--literally--a psychologically sick generation.

This is no longer a question of how the man down the street entertains himself in private. It is now a question whether my other neighbors and I have a right to quarantine and prevent the spread of sickness in our neighborhood.

It is also a question whether my children will attend schools where some of the teachers have made themselves psychologically sick.

It is also a question whether the TV producers, the magazine editors and writers, and even some of our political leaders might, over the years and because the dam that was the law has burst, make themselves psychologically sick.

Unless one believes in widespread schizophrenia, it makes no sense to say that people can be psychologically sick in one area of their lives--the intimate area of sex and attitudes about it--but will be ordinary, normal, healthy, good people in other areas. As an American citizen, I will be harmed in a thousand subtle and some not-so-subtle ways, if some of my neighbors, and their children, and the local school teachers, and some of those who create our public entertainments, and some of those who run our government--if these people become psychologically sick.

Because some people seem incapable of perceiving psychological or moral contaminants to what, in a broad sense, one might call our spiritual

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Because some people seem incapable of perceiving psychological or moral contaminants to what, in a broad sense, one might call our spiritual

environment, I will conclude this section by returning merely to my pornophile neighbor. Consider his influence: My teenage daughter while babysitting chances to turn on his videotape player and views scenes of strapping women raping men ... my junior-high-school-aged son is invited by the neighbor's two older boys to pore over the father's poorly-concealed basement collection of manuals on autoerotic stimulation ... during a party for the neighbor's college-age children the main entertainment, talked about for months afterwards by everyone in attendance, are sadomasochistic films.

Perhaps our government, which subsidizes both the growing of tobacco and research on cancer, will increase its appropriations for mental health, to address the psychological problems of the porn addicts. Regrettably, after-the-fact palliatives will not cure the moral contamination typified by a case given by Dr. Anchell in the article already quoted:

> Marty, age 17, came to me for treatment of his recurrent headaches. My experience as a father and as a physician practicing psychiatry has given me a certain rapport with teenagers; and it was not long before Marty discussed with me his real problem.
>
> It had begun four years previously when Marty was in junior high. The son of affluent, professional parents, he was not only a bright student but was popular as well. One afternoon another 12-year-old boy invited Marty and a group of schoolmates, boys and girls, to come to his home to view a movie which his parents showed at grownup parties. Since every young person's ambition is to prove that he can act like an adult, he had an eager audience while he played host during his parents' absence.
>
> The movie turned out to be hard-core pornography, graphically depicting sexual intercourse along with every type of perversion. After the initial embarrassment, the majority of the children were completey seduced. They attempted to outdo the adults in the movie then and there.
>
> By the time he entered high school, Marty told me, his earlier promiscuity had ceased because he no longer "got a kick out of it." His problem, he said, was that he was impotent. For sexual stimulation, he now needed drugs. At present, he is a school dropout, finding release in drug-induced sexual fantasies.

> Is there any hope for Marty to return to a normal life? It is most improbable. You cannot stretch the bones of a dwarf. A dwarf's subnormal size is due to premature closure of the bones in childhood. Marty's impotence was due to his sexual growth having been stunted before mature development occurred in adolescence...

I ask the Congress whether it will accept responsibility for tragedies comparable to Marty's which its abdication will indirectly cause:

> Marty's experiences with pornography sated him with sex before the process of idealization was established in his relations with girls. As a result he holds girls in contempt. His unresolved affectionate longings have built up a continuous succession of frustrations. His bitterness and disappointment with carnal sex devoid of spiritualization have created such a reservoir of hate for females that his sadism is almost fiendish. He has gradually reverted to satisfying physical sexual needs entirely through voyeurism and sadism. His greatest delight is in having orgastic responses after beating his female cohorts. Sadistic pleasures have spilled inwardly into himself, and he is gradually destroying his life with drugs.

Marty was a victim of pornography. An unnecessary victim. His case proves beyond the shadow of a doubt that <u>it does matter how people entertain themselves</u>. His case also shows the terrible harm in lax law enforcement in this area; <u>a fortiori</u>, the harm that will befall us if there is <u>no</u> law enforcement against pornography for adults. For the key to his case was: that hard-core porn film depicting sexual intercourse and perversion. It was manufactured by adults for commercial gain. It was probably advertised through the mails. It was almost certainly shipped in Interstate Commerce. Equally certainly the profits it generated went in large part to Organized Crime, to subsidize more evil films to make their twisting way through the semi-underground of the adult bookstores and peep shows and up at last through ad and mail to the neighborhood of "affluent, professional parents."

(4) MODERN PORNOGRAPHY IS A THREAT TO THE FAMILY.

Pornography as it exists in the United States in 1979 is an education system. Or, I should say, it is an anti-education system. As the classical educators used to say in quite a different context, it "educates the whole man." The people who buy through the mails the instruments and pictures advertised in the magazines have enrolled in the correspondence schools of pornography: pay your money and receive a new lesson each month for private study in your own home. The people who subscribe to HUSTLER and the other self-consciously and deliberately-pornographic magazines are building a library of the Great Books of Pornography, chapter by chapter. The people patronizing the peep shows and "adult" bookstores are attending the schools of pornography. The people who buy the new home films and videotapes are students of the visual aid approach to education. The porn sex clubs and interstate rings of child-transportation-for-sex syndicates teach through laboratory experience and vocational learn-by-doing techniques.

This anti-education system is at war with everything our nation's public and private school systems have tried to teach since the beginning of the country.

For as the political scientist, Dr. Reo Christenson, said in the article already quoted: "We should first explain what porno says to its customers."

> Its message is that sex is divorced from love, commitment, morality and responsibility; that it is a purely animal act, no more and no less; that it is unrelated to privacy; that deviant sex is the most adventurous and exciting sex; that women's importance is to be found in their genital organs which are fair game for whoever wishes to exploit them; that irresponsible sex has no consequences--no venereal disease, unwanted pregnancies, abortions, premature marriages, psychic traumas. Some message!

The home and the school are also involved in communicating an educational message to the next generation. It is a message that is far more than the

mere technical; it is an education that is normative, which helps the younger persons understand both how to act within the institution and within the wider society and why they should do and avoid certain acts. The family and the school commonly urge the maturing individual to rise above himself, as it were, to take control of his centripetal energies and unruly inclinations. They attempt to inculcate good character. They seek to transmit the best of our moral and ethical values.

It is universally recognized that the family is the best social unit ever devised to give emotional health and stability to children, to provide a good preschool learning environment, and to transmit moral values. As Christenson says:

> But a healthy family system demands respect for the sexual rights and sensitivities of each spouse. The family cannot endure unless a strong sense of sexual responsibility exists. But porno tells us to enjoy sex when and where we can, with whomever we wish, without regard for anything but the pleasures of the moment. (Emphasis added.)

Even more: those families which themselves are not directly tainted by the sickness that is pornography still do not live isolated, in a vacuum. Perhaps in the Middle Ages or in ancient Rome a man of virtue could take his family to his country villa and avoid the corruptions of that pagan capital; but today not even the small towns lack their share of "adult" bookstores, and the electronic reach of television and video-cassette extends from production point in Copenhagen or Los Angeles to your neighbor's living room, and porn magazines pour off the presses and cascade through the mails and along a complicated delivery network right into the drugstore where your children "hang out." As the late famous law professor, Alexander Bickel noted:

> A man may be entitled to read an obscene book in his room, or expose himself indecently there, or masturbate, or flog himself,

> if that is possible, or what have you...but if he demands a right to obtain the books and pictures he wants in the market, and to foregather in public places--discreet, if you will, but accessible to all--with others who share his tastes, then to grant him his right is to affect the world about the rest of us, and to impinge on other privacies. Even supposing that each of us can, if he wishes, effectively avert the eye and stop the ear (which, in truth, we cannot), what is commonly read and seen and heard and done intrudes upon us all, wanted it or not. As (an earlier writer in this symposium) says, how is a parent who would teach his children the impropriety of certain forms of speech going 'to overcome the power of common usage and the idea of propriety it implies?'
>
> (See: 22 THE PUBLIC INTEREST, Winter 1971, Page 25.)

The genteel professor Bickel has gravely understated his point: the problem we face goes far beyond "certain forms of speech." But his point is nonetheless correct. Decent parents want to raise decent children. But they cannot keep the children locked in the house. To rear decent children requires that public entertainments--magazines, movies, TV, etc.--not be utterly indecent. The pornographer arrogates the "right" to teach my children to be indecent.

At home the parents will present one set of values, the Judeo-Christian tradition of a measure of self-control, of respect for one's sexual opposite, of a hierarchy of values with sex by no means at the top at all costs, of willingness to postpone present gratification for the sake of future gain; moreover, the parents will try not to let promiscuous sex experiences dominate or even intrude at all into the ordinary daily lives of their children...But, if Congress does nothing, screaming at the children will be quite another set of values, the neopaganism of TV, movie, and lurid picture magazine, which teaches that fulfillment in life is imaginative preoccupation with autoerotic fantasies wherein the young person is to imitate the adults he sees in adult porn by violently and/or sexually feeding,

vicariously, on the helplessness or willing vulnerability of the sexual animal--almost always a woman--on whom he preys.

The Congress must take one side or the other: either by abdication and inaction it will support the pornographers' "right" to make a buck by corrupting our children; or by strong laws it will support the parents' right to a decent environment in which to raise decent children.

(5) ONLY THE FEDERAL GOVERNMENT CAN EFFECTIVELY DAM THE FLOOD OF PORNOGRAPHY. ONLY THE DISTRICT ATTORNEY CAN DEAL WITH "SYNDICATE" INVOLVEMENT.

As a practical matter, if the Federal Government retires from the field, very little of lasting effect will be done to stop the pornographers. Local prosecutors lack the time, the staffs, the resources, the skills to trace through a complicated maze of interlocking corporations--some existing in name only, some operating out of a P.O. box across State lines--many using the same Syndicate-controlled channels that dominate nationwide and regional narcotics and prostitution rings. Moreover, the leaders of the pornography industry can afford--and always hire--top-priced defense counsel, who are able technicians and who develop impressive expertise through continual practice moving around the country handling cases, picking juries, cross examining witnesses, writing appellate briefs. As in any other area of the law, expertise comes largely from practice in this field: young prosecutors facing mature defense counsel are like David versus Goliath--except that the law, if I may develop the metaphor a further step, is the slingshot: and if Congress repeals laws controlling obscenity and pornography, David will be unarmed.

The problem is compounded by the presence of Organized Crime. Writing in an article titled The Big Business of Selling Smut (PARADE

Sunday Supplement, August 19, 1979), reporter Michael Satchell stated what is common knowledge in law enforcement circles:

> The porn industry is infested by organized crime, particularly in wholesaling and distribution. Two of the five top leaders, (Mickey) Zaffarano and (Debe) DiBernardo, have been described in federal and state organized crime reports as members of La Cosa Nostra, and mobsters are known to reap vast profits from involvement in the industry or from extortion, pirating films, skimming cash, and payoff agreements under which independent porn merchants pay financial tribute to operate in certain areas.

For reasons that may reflect a current Federal policy decision--but which certainly do not reflect the desires of the American people--in the last two years the Federal Government has done little to shore up the dam. Thus, in an article titled, Adult Film Assn. Touts 1978 As Banner Year for Hardcore Pix (VARIETY, February 13, 1979), page 1, reporter Will Tusher quoted Adult Film Association of American Chairman David Friedman:

> Friedman said sex films, on the receiving end of punishing federal prosecution in 1977, made a dramatic recovery in 1978. He noted that not a single interstate prosecution was launched by the federal government against any of 35 theatrical sex films which moved across the country in 1978.

However, creeping desuetude can be reversed when the will is rekindled--if the statutes are still on the books. Further, as the public comes to understand the harm that pornography causes, citizen pressure will generate some prosecutions in the egregious cases. Moreover, just the fact that the laws are on the books deters some of the more outrageous films from display in areas where the pornographers know the D.A. takes his responsibilities seriously.

It boggles the mind to be confronted with such a paradox: at the very time when the pornographers are emboldened to try to corrupt the remaining enclaves of society which have so far resisted their advance, and at the very time when Mafia involvement has become common knowledge--at this watershed, the House of Representatives will not bother even

to hold public hearings on this year's version of a thorough revision of the entire Federal Criminal Code, which Code, in draft form anyway, proposes to abolish Federal laws against pornography! It is as if, in the winter of 1944 when the Nazis mounted their final offensive, we in the United States, through our Joint Chiefs of Staff, were to send out a general order to our captains in the field to throw down their guns and raise the white flag.

Perhaps the Federal Prosecutors--and this Code's drafters--think that their resources will be better spent elsewhere. This is a respectable, if mistaken, point of view. It is mistaken because (a) pornography causes immense indirect social harm, as I have demonstrated; and so the "cost/benefit" balance to society, in deciding whether to prosecute or not, must take into account the cost to the victims of pornography, many of whom I have summarily described above. And (b) the syndicate creams off such immense profits from its pornography rings--which are apparently to become privileged sanctuaries beyond the reach of the law--that it can spend extra millions of dollars on gambling, prostitution, and narcotics, areas which presumably the Feds still want to deal with aggressively. Thus our deliberate inaction plays into the hands of the very people whom we would contain. And so I categorically reject the notion that modern pornography is a "victimless crime" and necessarily "less important" than "really serious" crimes such as bank robbery and white-collar embezzlement.

The corruption of a generation of young people is "really serious."

The spiritual murder of thousands of children is really serious.

The nationwide Syndicate-controlled extortion rings and quasi-legit porn pushers are very serious. Videotapes of gang rape and lesbian

masturbation in homes where my children visit are, to me, extremely serious. Mail-order sales of sex dolls with all the right parts are serious--as are the sex-related assaults triggered by pornography. More serious than white-collar crime. More serious, even than matters the "Working Draft" takes very seriously, e.g., adultered eggs and noise pollution. (6) THE LAW'S PRIMARY ROLE IS TO MAINTAIN PUBLIC MORALITY, WHICH MEANS PROTECTING THE CIVILIZED COMMUNITY FROM REGRESSING INTO A JUNGLE.

The law carries out this role in two ways: discouraging violent attack by one citizen on another (murder, robbery, arson, rape, and numerous other violent aggressions) through criminal sanction; and discouraging the more egregious acts of non-violent victimization by expressing the community's considered judgment that those actions are wrong in themselves, destroy the moral fiber of the people, and erode that sense of civility and respect for one another essential in members of a human society but notably absent in inhabitants of a jungle.

The movement to "decriminalize" so-called "victimless crimes" attempts to make a radical severance between the two roles. It says in effect that society will be more humane if the law does nothing to maintain a humane tone to society--that is, the citizens will be more moral if the law does nothing to protect public morality. Or, from another perspective, this view says that public morality has nothing to do with private conduct; that the degree to which people are encouraged or discouraged by law, from using or abusing one another non-violently has nothing to do with how they will treat one another violently. In effect, this view says that there is no such thing as public morality. That is, the tone of society ...

citizens' attitudes ... the way they entertain themselves ... the degree to which they permit themselves and their offspring to spill out their psychic and sexual energies in dissipation ... their sense of respect or disrespect for women ... their private values ... the presence or absence of penalty for the transgression of sacred taboos and immemorial customs ... the sacredness and privacy of the sex act and its attendant experiences ... the training of children regarding life's very purpose ... the mystery of life, death, pain, love, sex, and human procreation ... education in all its forms ...psychic health and the integrity of the imagination -- that none of these, in this view, are of any importance to the law. Which is to say that society as a whole cannot express any formal, lasting, public, sanctioned and legal judgment about these things. Which in turn is to say that the most important is least important: the law is reduced to conventional rules on a game board, Monopoly perhaps, or Scrabble. Indeed, the law is not even able to protect itself: it can do nothing to encourage respect for law, that private allegiance of the citizen requisite for obedience in the marginal case (where the policeman is absent and temptation is strong), or in the case where the full purpose and benefit of the law is not entirely clear.

I do not believe the theory that law has no role in promoting public morality was ever carried out in any civilized society. If it were, I am certain such a society would collapse within a few generations. Perhaps within a few years. For the presence of laws against certain conduct educates: it teaches the younger people their elders' considered judgment about what is right and wrong; it helps those of limited acumen solve moral puzzles and avoid moral traps without the pain of misdirected experimentation. And the absence of laws against certain conduct also

educates: it teaches the same people that their elders do not know what is right and wrong, or do not care whether given conduct might be wrong, or that in their judgment no harm will follow from such conduct. As Dr. Lane V. Sunderland wrote in OBSCENITY: THE COURT, THE CONGRESS, AND THE PRESIDENT'S COMMISSION (American Enterprise Institute, Washington D.C., 1974), page 63:

> To declare unconstitutional general laws prohibiting the dissemination of obscene materials would remove an important standard of public morality--the public law. The requirements of public law, including the interpretations given to the Constitution by the Court, influence what individuals regard as moral and immoral, right and wrong. Surely no one would deny that the standards of equality set in Brown v. Board of Education and subsequent civil rights legislation were aimed to influence not only behavior, but also individuals' attitudes and moral judgments. A unanimous Court explicitly recognized this purpose in Brown v. Board when it stated that a segregated school system "generates a feeling of inferiority/among Negro children/as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." The Court cited with approval a lower court decision stating that the impact of segregation "is greater when it has the sanction of law ..." These judicial decisions and laws have changed attitudes, at least insofar as such individuals' attitudes are accurately articulated publicly. Public policy has also influenced the racial content of textbooks and advertising, again in an attempt to influence moral attitudes of individuals toward their fellow man.
>
> The Court has recognized the need for a public legal standard expressing the morality of racial equality. In a similar vein, it has been historically recognized that there should be public pronouncements--in the form of law--expressing the community's view of the moral status of obscenity. Public law cannot be simply neutral. For the law to allow dissemination of obscene materials indicates that this dissemination has public approval--an approval exerting an influence over all but the strongest of individuals. Do not most of us draw our moral values at least in part from what our fellow citizens accept?

The majority of people are neither saint nor sinner, neither angel nor devil. In a relativistic age our young people especially take their values largely from what their peers do. Will it be the public policy of the

United States, expressed through its national legislature, the Congress, that we do not care whether hundreds of thousands of our young people entertain themselves with videocasettes and drive-in movies of group sex, gang rape, and male-female erotic torture? Does anyone seriously believe that those citizens who do spend countless hours absorbing such entertainments will exercise temperance and self-control and always make sure that when they come to act out what they have seen, they choose a "consenting adult" for their partner? Temperance and self-control are not the messages in the films we will allow the pornographers to sell to our children. Does anyone seriously think that the men who entertain themselves by pretending in imagination that they are the "actor" they are watching raping a woman on film will themselves have a healthy, respectful, wholesome attitude toward women in real life? I ask the Congressman who will vote for weaker--or no--sanctions against pornography to go before his constituents and urge this position.

Some years ago, in an article entitled, "Victimless Crimes" and Public Morality (MODERN AGE, Fall, 1974, 369, & 374), I pointed out a vitally important role for the law, a role that the ultra-libertarians forget, if they have ever even considered it: the "separative function."

> Those who live off or entertain themselves through other people's lack of virtue and self-control usually seek converts to their life-style, new customers for their services, new buyers for their supplies.

This is certainly true with the pornographers!

> Under the present dispensation the law exercises a "separative function," by insuring that consensual self-abuse takes place not on the sidewalks or in the restaurants but out of sight, and, for that reason, less frequently, thus protecting the marginal person. The law somewhat limits opportunity for advance, cajolery, trickery, solicitation, fraud, duress, peer-group pressure, and the other forms of harmful influence of one person by another. By motivating the deviant to keep to a minimum his efforts to

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induct others into his practice, it saves those others the burden of having to fend off repetitious advance, even as it lessens the frequency and intensity of that advance. Thus it prevents further victimization of the innocent.

I believe that the appearance, in some cities, of a "combat zone" designed to contain the spread of "adult bookstores" and other instruments of self-demoralization, is a literal expression of this separative-function insight.

> The law can make easier one's decision not to victimize himself. It does not "impose morality" as much as it "discourages immorality" ...The law can expand or contract the reach of the morally contaminated who would induct others into their practices. It can control the direction of initiative, by establishing a social arrangement wherein the casual experimenter will find it too much trouble to seek the narcotic, prostitute, or sadomasochistic liaison.... But if "anything goes,"/the morally deviant/ will be free to practice the arts of persuasion on every adult and not a few adolescents, as long as they consent "in private."

There are other reasons why the law must help maintain public morality, but space does not permit them here; I invite Committee members to refer to Obscene Evils v. Obscure Truths, 7 CAPITAL UNIV. L. REV. 647 (1978) @ 666, in the section titled, "Virtue and the Free Society." (7) THE CONSTITUTION DOES NOT PROTECT OBSCENITY/PORNOGRAPHY. THE REASONS WHY THE CONSTITUTION SHOULD NOT PROTECT OBSCENITY/ PORNOGRAPHY WERE LARGELY FORGOTTEN AT A TIME WHEN PUBLIC DECENCY WAS TAKEN FOR GRANTED AND THE HARM FROM "DIRTY WORDS" WAS UNCLEAR. TODAY THERE IS NO LONGER ANY REASON FOR DOUBT THAT PORNOGRAPHY SHOULD BE CONTROLLED.

The Supreme Court correctly observed that obscene speech is not within the area of protected speech or press. Roth v. United States 354 U.S. 476 (1957).

> Although this is the first time the question has been squarely presented to this Court ... expressions found in numerous opinions indicate that this Court has always assumed that obscenity

> is not protected by the freedoms of speech and press (quoting 10 prior Supreme Court cases)-
> Roth, @ 1 L.Ed. 2d 1505.

Concurring in the companion Alberts case, @ 1 L. Ed. 2d 1516, Justice Harlan Stated:

> ...even assuming that pornography cannot be deemed ever to cause, in an immediate sense, criminal sexual conduct, other interests within the proper cognizance of the States may be protected by the prohibition placed on such materials. The State can reasonably draw the inference that over a long period of time the indiscriminate dissemination of materials, the essential character of which is to degrade sex, will have an eroding effect on moral standards. (Emphasis added.)

Justice Harlan was more of a prophet than he knew. Twenty years of hard--one might say, "hard-core"--evidence has made the epistemological question no longer relevant; the answer is crystal-clear. In fact, today it is unreasonable not to draw the inference; also, it is today unreasonable to hold that "pornography cannot...ever cause...criminal sexual conduct."

In 1957 the Court followed history, tradition, instinct, and respect for the Legislative Branch. As I have demonstrated conclusively in earlier sections of this Statement dealing with criminal and psychological harms that follow from today's pornography, in 1979 the Court and the Congress may also follow the empirical evidence. Indeed, since we are here dealing with a statute-in-draft, I would urge that the Congress must be true to its responsibility to protect the public from clearly perceived and growing social evils.

For a time it was argued, mistakenly, that one of the "tests" of obscenity--i.e., pornography--was whether "the material is utterly without redeeming social value." Memoirs of a Woman of Pleasure v. Massachusetts, 383 U.S. 413, 16 L. Ed. 2d 1 (1966). This so-called "test" was drawn

from the plurality opinion of three Justices, and is a transposition of what Roth had held, viz., that because a film or book is obscene, it follows that it--or at least the obscene passages--lack redeeming social value. What was a consequent was elevated into an essential precondition. Further, since there was no majority opinion, this "test" did not become precedent for subsequent cases. No point of law is established by a Supreme Court decision wherein the majority cannot agree on the reason therefor, and it cannot become precedent under the stare decisis rule. See 29 Am. Jur. Section 196, "Courts"; U.S. v. Pink, 315 U.S. 203 (1941), and cases cited therein.

I mention this because of the confusion it spawned: the rewriting of state statutes to "conform" with what people presumed the Court had enuciated as a "test"; the unseemly spectacle of "expert witnesses" finding "redeeming social value" in scenes of sado-masochism. In my judgment the confusion here was doubly compounded: for the value"--

"It tells us something about what some people like to do,"It is "a comment on the practices of a subgroup finds pleasurable"--still was not a value for the average 15-year-old, but at best was, often, no more than an anthropological curiosity, a value to the researcher, but of no conceivable value to the people the Prosecution was trying to protect.

But the real lesson in this judicially-expressed law, so widely misunderstood, lay in the social consequences: the broad scale weakening of the anti-pornography laws just at a time when the pornographers were emboldened to plumb the depths of debasement in ways so foul and hideous that words cannot describe the average porno film any longer. The lesson is the weak laws--whether because of judicial misinterpretation or legislative

cowardice--cannot achieve their purpose and may even contribute to the problem they purport to meet. One may hope the Working Draft presently before the Congress will, through amendment, reflect a clearer understanding of this lesson than the original Draft displays.

Because the "Sexual Exploitation of Minors" is the occasion of these remarks, I will pretermit the nadir of pornography prosecution, during the period of the Redrup case, 386 U.S. 767 (1967) and its progeny, and turn to Sam Ginsberg v. New York, 390 U.S. 629, 20 L.Ed. 2d 195 (1968) @ 202, dealing with obscenity directed at minors: quoting the New York Court of Appeals:

> "Because of the state's exigent interest in preventing distribution to children of objectionable material, it can exercise its power to protect the health, safety, welfare and morals of its community by barring the distribution to children of books recognized to be suitable for adults."

One might add, a fortiori for material which is not even "suitable for adults" because hard-core pornongraphy. But the real question before us is this: how will the Congress prevent "objectionable material"another euphemismfrom reaching children, if its only serious criminal statute deals merely with using children, a topic of overwhelming importance (as I have urged many times herein) but not relevant to the broader need to prevent children from seeing hard core pornography wherein adults are depicted?

At page 204, the U.S. Supreme Court, quoting one of its earlier decisions, said in Ginsberg:

> "The state has an interest 'to protect the welfare of children' and to see that they are 'safeguarded from abuses' which might prevent their 'growth into free and independent well-developed men and citizens.' ... the law states a legislative finding that the material condemned ... is 'a basic factor in impairing the ethical and moral development of our youth"...

It is important to point out the time period when this case was handed down: during the nadir of permissiveness, when it seemed that the Redrup group of cases permitted pornography unless forced upon people or pandered publically; before the explosion of the new wave of pornography, using every form of perversion in films, and the appearance of magazines like HUSTLER and its imitators. Also, before the evidence began to mount to an overwhelming degree that pornography is harmful to both children and adults.

I submit that the state's interest in protecting the welfare of children... seeing that they are safeguarded from abuses ... controlling material which is a basic factor in impairing their ethical and moral development is far greater today.* If the Court could be very certain of this interest in 1968, without having in its record the facts that are now so strong and easily available to the Congress, why is not the Congress very certain of this interest in 1979?

*It is instructive to note that Justice Brennan's dissent in Miller v. California, 413 U.S. 15 (1973), which reformulated Roth in a way to make it more workable, admits "that at least ... distribution to juveniles or obtrusive exposure to unconsenting adults" are situations where obscenity may be proscribed.

STATEMENT OF IRVING S. SHAPIRO, ON BEHALF OF THE BUSINESS ROUNDTABLE CONCERNING WORKING DRAFT OF AUGUST 24, 1979, OF PROPOSED BILL TO RECODIFY THE FEDERAL CRIMINAL LAWS

I.

Mr. Chairman and members of the subcommittee; I am pleased to appear before you on behalf of the Business Roundtable. My name is Irving S. Shapiro of Wilmington, Delaware. I am Chairman and Chief Executive Officer of E. I. DuPont de Nemours & Co., Inc. of Wilmington, Delaware. I am a member of the Bar of the States of Delaware and Minnesota and several federal courts. From 1943 to 1951 I was an attorney in the Criminal Division of the United States Department of Justice. I served as Chairman of the President's Search Committee for a new Director for the Federal Bureau of Investigation.

I am the past Chairman of The Business Roundtable ("Roundtable") and am a member of its Policy and Executive Committees.

The Roundtable is an association of business executives of 192 companies, practically all of which are publicly held. These executives examine selected public issues that affect the economy, develop positions on them which seek to reflect sound economic, social, and legal principles, and make these positions known to the public and its representatives in government. The Roundtable was founded in 1972 in the belief that business executives should take a role in the continuing debates on public policy. The Roundtable's headquarters are at 200 Park Avenue, New York, New York.

The Roundtable's views on particular issues are developed by Task Forces. The Corporate Organization Policy Task Force, of which Mr. Alden W. Clausen, President of Bank of America, is chairman, has overseen development of the Roundtable's position on the proposed criminal code. I have assisted that Task Force on this matter and testify at Mr. Clausen's request.

At the outset I compliment you, Chairman Drinan, the members of your Subcommittee,[1] your staff and the staff of the members for the work you have done in bringing this important piece of legislation to its present status. You determined to produce a bill. You and your Subcommittee members have devoted literally hundreds of Congressional hours to the task. The Working Draft[2] upon which I comment represents a long step towards sound legislation, and I am pleased to have this opportunity to comment on the work accomplished so far. May I also compliment Mr. Hutcheson, the Subcommittee's Chief Counsel and his colleagues, for their work with you and the Subcommittee members.

During the course of the 95th and 96th Congresses, the Roundtable submitted to the House Criminal Justice Subcommittee and Senate Judiciary Committee a series of Comments on various aspects of the proposed Federal Criminal Code embodied in S. 1437 and House counterpart bills. Those papers are dated respectively April 6, 1978; April 28, 1978; May 22, 1978; February 27, 1979; April 17, 1979; and April 24, 1979. I am submitting copies of these papers for the record in this hearing and will occasionally refer to them as "Roundtable Comments" with the appropriate date and page references.

II.

The Roundtable believes that from the Working Draft, emerge certain important principles which, it appears to us, are wisely governing the Subcommittee's codification effort.

First, the Subcommittee's Working Draft clarifies basic concepts of criminal law, particularly culpability and complicity, and in addition sets forth uniform definitions and certain rules of construction. These objectives were first enunciated in the Model Penal Code. They were fully supported in the Brown Commission Report. We think they are now well-applied in the Working Draft.

Thus, Section 301[3] defines four states of mind ("intentional," "knowing," "reckless," and "negligent") while Section 302 recognizes three elements ("conduct," "circumstances," and "results") to which a mental state must attach in every crime. We commend the Subcommittee for specifying states of mind for each of the three elements in most offenses throughout the Working Draft

[1] Subcommittee on Criminal Justice of the Committee on Judiciary of the House of Representatives ("the Subcommittee").
[2] Working Draft of the Subcommittee on Criminal Justice, dated August 24, 1979 ("Working Draft").
[3] All section references will be the Working Draft unless otherwise specified.

and the Subcommittee's working rule of using a "knowing" instead of a "reckless" state of mind in most instances. The Roundtable believes that the wide use of a "knowing" state of mind is consistent with the existing state of the law and the fundamental proposition that criminality should involve "mens rea."

Chapter 5 of the Working Draft establishes reasonable rules governing complicity. Section 501(a)(1)(B) provides that an accomplice is one who "knowingly" commands, induces, procures or aids another in the commission of an offense "with intent that the offense be committed." The Roundtable accepts the well-established line of cases that "conscious avoidance" or "willful blindness" satisfies the requirements for a "knowing" state of mind. *Turner* v. *United States*, 396 U.S. 398 (1970); *United States* v. *Jewell*, 532 F. 2d 697 (9th Cir. 1976); *United States* v. *Jacobs*, 475 F. 2d 270 (2d Cir. 1973). *Accord* S. Rep. No. 605, 95th Cong., 1st Sess. 59 (1977).[4]

Section 502 clarifies the liability of an organization for the conduct of its agents, rendering them liable for offenses committed within the agent's actual, implied or apparent authority, where the agent intends to benefit the organization. Although this rule will render an organization criminally liable where an agent has acted contrary to company policy or even personal instructions, the Roundtable recognizes this as the existing law, *United States* v. *Cadillac Overall Supply Co.*, 568 F. 2d 1078 (5th Cir. 1978); *United States* v. *Hilton Hotel Corp.*, 467 F. 2d 1000 (9th Cir. 1972), cert. denied, 407 U.S. 1125 (1973), and supports the provision as an effective way to encourage diligent supervision of employee law compliance.

These and the other rules of complicity contained in Chapter 5 make it appropriate for the Subcommittee to have rejected the novel offenses of "reckless failure to supervise" and "omission to perform a duty," proposed in Sections 403 (c) and (b) respectively in S. 1437 of the 95th Congress, because of their vague and sweeping nature and because they might permit liability without consciousness of or participation in the wrong doing. See Jeffries and Stephan, "Defenses, Presumptions and Burden of Proof in the Criminal Law," 88 Yale L.J. 1325, 1371–76 (1979) on criminal liability without fault. The provisions of Chapter 5 governing complicity reach just about every conceivable case where an individual intends to have a significant role in wrongdings which occur within the organizational context.

Second, the Subcommittee has also limited itself to the codification of Title 18, leaving codification of non-Title 18 offenses for a later time. This is sound because many non-Title 18 offenses are in the regulatory area, and these present different problems in a number of ways:

(*a*) Most Title 18 crimes are recognized by society as evil or dangerous; accordingly, there is little likelihood of innocent transgression. Regulatory requirements on the other hand are not malum in se, but involve conduct which is illegal because it has been forbidden.

(*b*) Regulatory offenses are often complex, detailed, not easily understood. They are frequently described in less accessible rules, not statutes, and governed by little precedent, and hence the ambit of illegal conduct is difficult both to know and predict.

(*c*) A comprehensive regulatory system would involve greatly different conditions and requirements. General provisions intended to cover the gamut of different regulatory offenses would be a crude response to a subtle problem and would not reflect the many differences involved.

For these reasons the Roundtable believes that the penal provisions not presently contained in Title 18 should be separately examined after enactment of the proposed criminal code. That separate examination should consider:

(*a*) The appropriate level of culpability for each particular offense, taking into account the character of the offense;

(*b*) Whether for particular offenses a specific intent should be required, especially where present law contains a requirement of willfulness; and

(*c*) Whether in particular cases penal sanctions are appropriate.

The Working Draft will cross-reference all non-Title 18 felonies, but it apparently does not seek to change the substance of those offenses. We believe this approach is a proper way to have the proposed Code refer to major felonies, while recognizing that non-Title 18 offenses need separate treatment, at a later date. It is not clear from the Working Draft what the Subcommittee intends to do as to the grading and sentencing aspects of non-Title 18 felonies.

[4] Hereinafter the "Senate Report."

Third, the Working Draft, except in instances where there is a clear proof of the need for change, codifies existing law. Generally, the Working Draft has not become the vehicle for the creation of novel offenses or, for the most part, novel sanctions. The Subcommittee, wisely in our view, rejected the novel and sweeping offense of "reckless endangerment" proposed in Section 1617 of S. 1437, preferring to deal with this problem by fact-specific offenses. The Subcommittee also rejected the offense of "consumer fraud" proposed in Section 1738 of S. 1437 in light of the fact that the Federal Trade Commission was in 1975 empowered under the Magnuson-Moss amendments to the Federal Trade Commission Act, 15 U.S.C. 57b, to pursue the very matters covered by the proposed offense, and that the offense defined in Section 2534 of "executing a fraudulent scheme" provides adequate criminal sanctions against fraud on purchasers. In the area of sentencing, the Subcommittee has properly rejected the devices of restitution and order of notice proposed in Sections 2005 and 2006 of S. 1437. These latter provisions were rejected not only as novel but because they raise both constitutional questions under the Fifth and Seventh amendments and severe practical problems in the administration of criminal justice.[5]

Further we commend the Subcommittee for its work to date in making needed reforms in sentencing which would (i) reduce disparity in sentencing, (ii) give defendants but not the government a right of appeal, (iii) promote public confidence in the criminal justice system by "truth in sentencing measures"; and (iv) assign to the Committee on Sentencing of the Judicial Conference the promulgation of sentencing guidelines.

III.

The Working Draft of the Subcommittee is, of course, an unfinished document. The Roundtable believes there are significant omissions to be supplied and revisions to be made before the Working Draft is enacted into law. These involve (A) fine levels and sentences, (B) jurisdiction, (C) double jeopardy, (D) corporate records and statements and (E) organized crime offenses. We turn next to a consideration of each of these important matters.

A. FINE LEVELS AND SENTENCES

1. *Fine levels.*—Section 3502(a) tentatively sets a maximum level of $100,000 for felony crimes and $10,000 for misdemeanors. It makes no distinctions between organizations and individuals.

The Roundtable recommends that a distinction be made between organizations and individuals and that the maximum felony fine for organizations be $500,000, except in antitrust cases where it should be $1,000,000, reflecting the additional resources frequently possessed by organizations. For individuals the maximum felony should remain at $100,000. It also recommends that for misdemeanors the maximum fine for organizations be $100,000 and for individuals $10,000.

These recommendations are consistent with the fine levels in S. 1437 at Section 2201(b). The Roundtable believes that these recommended higher levels will deter organizational and individual crime more effectively.

2. *Alternative fine.*—Section 3502(b) provides that in lieu of a fine under Subsection (a), a defendant who is found guilty of an offense through which pecuniary gain is directly derived may be sentenced to pay a fine of not more than the "gross gain so derived." The Roundtable opposes this novel sentence provision because:

(*a*) It raises serious constitutional questions by confronting any individual defendant with the choice between waiving his Fifth Amendment right not to incriminate himself and foregoing his natural desire to present evidence to limit the amount of the alternative fine either at trial or in the sentencing proceeding. *See North Carolina* v. *Pearce*, 395 U.S. 711 (1969); *Spevack* v. *Klein*, 385 U.S. 511, 514 (1967); *Malloy* v. *Hogan*, 378 U.S. 1, 8 (1964).

(*b*) The provision generates a new set of complex damage issues to be determined in the criminal trial, but does not provide satisfactory procedures for determining the amount of the fine. The Presentence Hearing Procedure at Section 3106 is inadequate to satisfy defendant's due process rights, since the defendant's ability to subpoena and call or cross-examine witnesses is not a matter of right. Moreover, the fact question of the "direct gain derived" will always be heard by a judge—a possible violation of defendants' right to a jury trial.

[5] See Roundtable Comment of April 28, 1978 at 3–4, 10–20.

(c) Because determination of the alternative fine would—especially in regulatory cases—prove complex, nothing short of a post-conviction "trial" may be adequate. Yet such a procedure would delay the imposition of sentence and contravene the well-accepted sentencing principle that, to be effective and fair, a sentence should be swift and certain.

(d) The provision fails to address the serious questions presented by the interrelation between this novel criminal fine and civil actions for restitution, SEC disgorgement or antitrust treble damages.

3. *Conditional discharge and probation.*—Current practice includes restitution as a condition of probation where the defendant so agrees or consents. This is a salutary practice which restores victims to their former status, while, because of the consent by the defendant, eliminating the problem of the violation of his due process rights in the determination of the amount of restitution. The Roundtable supports such consensual restitution.

Section 3324(a)(1)(B) "Conditions of probation," however, directs a Court to require that as a condition of a sentence of probation, a defendant make restitution to any victim for any damages or loss caused by the offense for which the defendant is convicted, unless the Court rules restitution is impractical. The provision omits to state that a sentence of probation cannot be entered without the defendant's consent, and we recommend that it do so. Otherwise, Section 3324 would have the effect of establishing the novel criminal sentence of restitution, the very provision which the Subcommittee expressly deleted from the Working Draft.

Section 3304(b)(1) also empowers a Court using the sentence of "conditional discharge" to require the defendant to "make restitution to a victim * * * for actual damages * * * caused by the offense for which the defendant is convicted * * *." The conditional discharge section fails to state that restitution may not be entered without the consent of the defendant. The deliberations of the Subcommittee indicate that "conditional discharge" was intended to be the counterpart for the organization of probation. If so, the provision for making restitution should be consensual for organizations, just as it is in current practice for individuals.

To do otherwise would be to establish, under the name "conditional discharge," mandatory restitution in the face of the Subcommittee's decision to delete restitution as a normal sentence. We note that the Subcommittee rejected the restitution provision found in Section 2006 of S. 1437 for one or more of the following reasons advanced by the members in debate:

> Section 2006 did not establish procedures for courts to determine the victims and the amount of their loss. Neither of these matters is necessarily determined in a criminal trial.
>
> Absent a full evidentiary proceeding (including the right of cross examination), efforts to establish the victims and the amount of their loss may impair defendant's Fifth Amendment rights of due process.
>
> To protect the defendant's rights, and responsibly and fairly determine the victims and the amount of loss probably requires a full-fledged "trial."
>
> Such a "trial," particularly in complex economic and regulatory cases, would delay imposition of sentence, contrary to the well-established rule that sentencing should be swift and certain.
>
> Introducing restitution to the criminal process distorts it. The complaining witness acquires a direct, personal economic stake in the result of the case, threatening the integrity of criminal proceedings. Simultaneously, the prosecutor becomes engaged in private recoveries for individuals, but at taxpayer expense—a questionable application of his resources.

The Roundtable concurs with the views of the members of the Subcommittee concerning nonconsensual Restitution, and would oppose the sections addressing "Conditions of probation" and "Conditions of conditional discharge" if they do not make the restitutional provisions therein consensual.

4. *Prohibition on indemnification for fines.*—Section 3505 introduced the new provision that it a fine is imposed on an agent or shareholder of an organization, "the fine shall not be paid, directly or indirectly, out of the assets of the organization."

It appears that this would prohibit indemnification or insurance covering such fines, regardless of the circumstances, or the good faith conduct of the agent, or the absence of reasonable cause to believe the conduct involved was unlawful.

This is contrary to existing state laws, many of which provide that a corporation shall have the power to indemnify a director, officer, employee or agent against fines:

> if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.[6]

The existing state law provision is quite limited and appears fair and reasonable. Section 3505 should be deleted and this question left to state law.

B. JURISDICTION

1. *Extraterritorial jurisdiction.*—The Roundtable believes that a complete codification of the federal criminal laws should set forth the circumstances under which the United States will asset its jurisdiction over actors and activities primarily located abroad.

The Section 111 of the Working Draft recognizes the issue, but has not yet provided a solution to it.

For conduct abroad to be made criminal, Judge Learned Hand, in *United States* v. *Aluminum Company of America*, 148 F.2d 416, 443 (2d Cir. 1945), stated it is settled law that the conduct outside a state's borders must have "consequences inside its borders which the state reprehends * * *." Section 18(b) of the Restatement (Second) of the Foreign Relations Law of the United States, states that the "consequences" or "effect" in the United States "must be 'substantial' and the direct and foreseeable result of the foreign conduct." There is a presumption against extraterritorial jurisdiction unless a contrary intent is clear. Restatement, supra, Section 38.

The reasons for requiring a substantial interest are well-founded:

(a) Prosecutorial resources are limited, and should be applied to significant national purposes.

(b) Extraterritorial applications of U.S. criminal law create problems of both enforcement and fairness, which may bear more heavily on the defendant than the prosecutor.

(c) The Sixth Amendment right of the accused to compulsory process may be meaningless where foreign witnesses are involved.

The Roundtable believes that the Working Draft should contain a provision which provides for extraterritorial jurisdiction where the offense is committed in whole or in part within the United States, the accused participated outside the United States and there exists a substantial federal interest in pursuing the matter by investigation or proescution. The prosecution should, of course, be consistent with principles of comity. *Timberlane Lumber Co.* v. *Bank of America, N.T. & S.A.*, 549 F.2d 597 (9th Cir. 1976). The provision should further state that a "substantial federal interest" exists where the conduct causes or threatens harm of the type sought to be prevented in any particular offense (i) within the United States, or (ii) to a United States person, or (iii) to the United States.

2. *Restraint in exercise of concurrent jurisdiction.*—Over the last few decades, there has been a dramatic growth of what the Brown Commission called "auxiliary federal jurisdiction," that is jurisdiction over essentially local offenses. This jurisdiction has usually been based on Congressional power over communications facilities, the U.S. mail or interstate and foreign travel. Its exercise has been chiefly a matter of prosecutorial discretion.

This rapid expansion of the federal government's role in local law enforcement has disturbing implications for the preservation of a reasonable balance between the national and state governments. In the 95th Congress, the House Subcommittee on Criminal Justice was particularly concerned about this issue and it appears to have been one of the principal reasons for its failure to accept S. 1437 as a basis for federal criminal law reform:

> [T]he subcommittee's own analysis of S. 1437 led it to conclude that the bill is seriously flawed. [Two] of the most obvious flaws are: overall expansion of Federal criminal jurisdiction, [and] enhancement of the power and discretion of the prosecutor. . . . *Report of The Subcommittee on Crimi-*

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[6] *E.g.*, ABA–ALI Model Bus. Corp. Act § 5(a) (1979); Del. Code Ann. tit. 8, § 145(a); Ill. Rev. Stat. ch. 32, § 42.12(a); Mich. Comp. Laws § 450.1561; Ohio Rev. Code Ann. § 1701.13(E)(1) and 15 Pa. Cons. Stat. Ann. § 1410(A).

nal Justice on Recodification of Federal Criminal Law. 95th Cong. 2d Session (Committee Print No. 29, 1979), 1–2.

We believe the House Subcommittee concerns were reasonable and that this argues for great caution on the part of the Congress in prescribing new federal offenses in any codification legislation. We agree with the Report of the Subcommittee on Criminal Justice that the problem of pre-emption of state and local authority arises not only out of proposals for new offenses, but out of current sweeping applications of the mail and wire fraud statutes.

Section 207 of the Brown Commission Report addressed the problem of concurrent jurisdiction by authorizing federal law enforcement agencies to "decline or discontinue federal enforcement efforts" in cases where "the offense can effectively be prosecuted by nonfederal agencies and it appears that there is no substantial Federal interest in further prosecution or that the offense primarily affects state, local or foreign interests . . . ."

The Working Draft has no comparable provision at present.

The Roundtable recommends a revision of Brown Commission Report Section 207 which would require that the Attorney General promulgate comprehensive guidelines dealing with exercise of concurrent federal enforcement authority. The Roundtable also believes that these guidelines should be given meaningful legal effect.

C. DOUBLE JEOPARDY

It is a fundamental principle of our constitutional system that a person should not twice be put in jeopardy for the same offense. Unfortunately, the Supreme Court has held that this protection does not apply where the prosecution is in two separate jurisdictions, one federal, one state—the so-called "dual sovereignty" theory of *Bartkus* v. *Illinois*, 359 U.S. 121 (1959) and *Abbate* v. *United States*, 359 U.S. 187 (1959). The dual sovereignty theory simply doesn't take into account the enormous growth of federal criminal jurisdiction overlapping state jurisdiction. This is a rule which should be changed by the Code.

Section 706 and 707 of the Brown Commission Report would have provided a statutory double jeopardy rule barring federal prosecutions where there had been a prior state or foreign prosecution, and barring state prosecutions where there had been a prior federal prosecution.

Section 704 of the Working Draft provides against double jeopardy in the case of a prior trial in a state or local court, while preserving in the Attorney General the right to move in federal district court for an exception where "the interests of the United States would be unduly harmed." We fully support these aspects of Section 704. However, Section 704 does not provide against double jeopardy in the case of a prior action in a foreign country. We recommend that it do so.

D. CORPORATE RECORDS AND STATEMENTS

1. *Agency subpenas.*—Section 1733 makes it an offense to fail knowingly, in an official proceeding, to comply with an order to produce a record, document or other object. Section 1737(1)(D) defines "official proceeding" to include a proceeding before an authorized agency. Section 1737(2) denfies "authorized agency" to mean an agency authorized by federal law to issue subpenas supported by the sanctions of Section 1733.

Under current law, one cannot normally be in criminal contempt with respect to an agency subpena until the agency has commenced a judicial proceeding to enforce the subpena, a federal district court has entered an enforcement order and respondent has disobeyed it. See, list of statutes providing for enforcement of agency subpena at Sen. Rep. f.n. 54 at 348. In the enforcement proceeding, a respondent may challenge the validity of the subpena on any available legal ground, including the necessity for the required records or testimony and the reasonableness of the burden imposed by the agency's demand. *Reisman* v. *Caplin*, 375 U.S. 440 (1964); *Atlantic Richfield Co.* v. *FTC*, 546 F. 2d 646 (5th Cir. 1977); *SEC* v. *The Boeing Company*, [1975–1976 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 95,442 (D.D.C. 1976); *In re SEC.* v. *Isbrandtsen*, 245 F. Supp. 518 (S.D.N.Y. 1965); *International Waste Controls, Inc.* v. *SEC*, 362 F. Supp. 117 (S.D.N.Y.), aff'd per curiam, 485 F. 2d 1238 (2d Cir. 1973).

Section 1737(2)'s definition of "authorized agency" does not clearly preserve current law and, as a result, could have the unintended effect of permitting federal agencies to bypass the district court enforcement proceeding. The section should be amended to provide that, unless otherwise stated, the sanction should be

available only after there has been an opportunity to challenge the subpena on any available legal ground in a district court enforcement proceeding.

2. *Private information submitted for a Government purpose.*—The House Working Draft does not contain the offense of revealing private information submitted for a government purpose. We undertsand that the Subcommittee has made no decisions in this regard. Current law contains such an offense at 18 U.S.C. 1905. The Roundtable recommends that the Subcommittee include such an offense in subsequent drafts.

Private information submitted for a government purpose includes proprietary information (trade secrets, processes, operations, styles of work, apparatus, pertinent data), important financial and statistical data (income, profits, losses, sales, expenditures), and other material in the ever-widening scope of government inquiry and regulation. Much of industry's very lifeblood is included in "Private Information Submitted for a Government Purpose."

The business community recognizes the necessity of individuals and organizations submitting much of this information to the government, but believes that this data must have the greatest possible protection and that government personnel need to be on the clearest possible notice about their duty to "handle with care" that information.

The Roundtable urges the adoption of 18 U.S.C. 1905, making illegal any disclosure "not authorized by law.' It believes that the language describing coverage suggested in Section 1525 of the Senate Committee Print of May 21, 1979 *i.e.*, "any information" is preferable to the specific categories mentioned in 18 U.S.C. § 1905, and recommends adoption of that phrase.

E. ORGANIZED CRIME OFFENSES

The Business Roundtable supports in principle Sections 2701–06 of the proposed Code, which are entitled "Racketeering." However, it believes that these provisions should be amended to make clear the legislative intent that they are not directed at offenses by bona fide business organizations.

The problem arises because the Sections 2701–06 applied literally can bring a legitimate organization within their scope if an organization engages in two separate acts of "racketeering activity.' Which is broadly defined in Section 2706 to include mail fraud, wire fraud, transportation of goods or money taken by fraud, bribery or fraud in the sale of securities. Section 2706 provides that one act must be after the effective date of the Code. Yet the sentences for the basic organized crime offenses presently are severe: forfeiture, jail sentences and fines. The Working Draft proposes jail sentences of convicted individual defendants of up to 160 months (Sections 2701 and 3702), fines of up to $100,000 (Sections 2701 and 3502(a)) and "Civil Restraint on Racketeering" of an unspecified nature (Working Draft pp. 258 and 260). Moreover, the stigma of a conviction under these provisions would be devastating to a bona fide organization.

The opportunity for prosecutorial overreaching created by the broadly drafted racketeering and organizational complicity (see p. 5 above) sections is troublesome. The wide range of culpable activity encompassed by the racketeering offenses would permit a prosecutor to bring racketeering charges with evidence only of offenses that would normally warrant less severe sanctions, such as a corporate fine. By refusing to plead guilty, and defending its actions on the merits, the corporation would risk becoming subject to mandatory forfeiture provisions that could put it out of business, destroy its stockholders' investment and its reputation. If the prosecution were successful, the resulting mandatory criminal sanction would be totally disproportionate to the severity of the misconduct charged. Under these circumstances, the barest threat of prosecution under the racketeering sections could be used as a club to extract corporate guilty pleas to lesser charges, regardless of the legal or factual defenses the corporation might otherwise have available.

The Roundtable supports these organized crime offenses in principle, but it believes amendments should make clear that the provisions do not apply to legitimate businesses convicted of offenses, but to individuals and to organizations established primarily for the purpose of engaging in conduct described in Sections 2701–06.

IV. CONCLUSION

The Roundtable commends Chairman Drinan and the members and staff of the Subcommittee on Criminal Justice of the Committee on the Judiciary of the

House on the conscientious and effective work done to date in the codification of the federal criminal laws. If as we hope, the subcommittee makes the changes here suggested and the other provisions of the Working Draft are not materially altered, The Roundtable would expect to support the Criminal Code proposed by the Subcommittee.

Thank you.

STATEMENT OF JACK LANDAU, REPORTERS COMMITTEE ANALYSIS

PROPOSED FEDERAL CRIMINAL CODE REFORM ACT (OLD S–1); ANALYSIS OF TWO SEPARATE BILLS: KENNEDY BILL (S. 1722) AND DRINAN BILL (H.R. — AND S. 1723)

KENNEDY BILL

NATIONAL SECURITY AND GOVERNMENT INFORMATION CRIMES

It would be a crime for a news organization or a newsperson to "communicate, transmit or disclose—with reason to believe such data will be utilized to... secure an advantage to any foreign nation"—any data concerning design, manufacture or utilization of atomic weapons.

The Kennedy Bill achieves this result by incorporating verbatim (Sec. 1122 (a)(2)), an existing criminal statute (42 U.S.C. 2274 (b)). This is the criminal statute which was used as the justification to seek the prior restraint order against The Progressive. There is no requirement for a criminal conviction that the information is a "direct, immediate and irreparable injury" to the national security.

If the government informs a news organization that publication would harm the United States or help a foreign nation, the fact that it would not is no defense because the law only requires that the organization have "reason to believe" that such damage would occur.

Recommendation: No news organization or newsperson should be convicted of possessing, communicating or transmitting nuclear information unless he possesses, communicates, or transmits with knowing or willful intent to cause a "direct, immediate and irreparable injury" to the national security. (Sec. 1122 (a)(2) at page 45 of the Kennedy Bill).

It would be a crime for a news organization or newsperson to "induce" a public official to leak any "private information" submitted to the government and kept confidential by any "regulation, rule or order" of the government.

It would be a crime for the government official to leak "private information" submitted to the government, even if this information showed the commission of a crime or the violation of any other type of federal law.

The Kennedy Bill (Sec. 1525) achieves this result by making it a criminal offense for a government official or a former government official to disclose any "private information" which is supposed to be kept confidential by any "regulation, rule or order" covering his government agency.

The press also falls under this section because the conspiracy section of the Kennedy Bill makes it a crime for anyone to "induce" the government official to break a law, in this case a law imposing a duty to keep the information confidential. Under federal case law, for example, in the Foreign Agents Registration Act, the term "to induce" can merely be oral persuasion and does not have to involve any promise of payment, etc.

Recommendation: No government employee should be criminally prosecuted for making available to the public or the press "private information" submitted to the government unless such information is made available with the knowing or willful intent to cause a "direct, immediate and irreparable injury" to the national security or for the primary purpose of causing a specific commercial or financial benefit to such government employee or third party; nor should any newsperson or news organization be prosecuted for inducing or persuading a government official to "leak" information unless there is a knowing and willful intent to cause a "direct, immediate and irreparable injury" to the national security or to confer a specific economic or financial benefit on a third party.

It is believe that the government's ability to discharge or dock the pay of government officials is a sufficient deterrent. However, The Reporters Committee is not opposed to providing a very narrow exception in order to protect patents, secret formulas and other similar narrow categories of trade secrets. (Sec. 1525 at page 87 and Sec. 401 at page 33 of the Kennedy Bill.)

It may be a crime for a news organization or a newsperson to publish or use letters sent to a government official without the consent of the letter writer or the government official.

The Kennedy Bill (Sec. 1524) appears to achieve this result by making it a crime to intentionally "disclose... the contents of private correspondence" if the reporter knew that some third person had "intercepted" the private correspondence without the consent of the sender or the intended recipient.

It is not clear whether the key to this section—the term "intercept"—makes the section inoperative after the letter has been received or whether it applies to copies of the private communication.

Recommendation: No news organiaztion or newsperson should be convicted and jailed for publishing a letter sent to a government official or other person if the news organization or newsperson did not themselves engage in the interception but were merely passive recipients of the letter supplied by a third party. (Sec. 1524 at page 87 of the Kennedy Bill).

It would be a crime for a news organization or a newsperson to publish a threat to commit violence made by some militant organization, if a judge or jury thinks that the news organization published the threat "with an intent to alarm" the person threatened.

The Kennedy Bill (Sec. 1616) achieves this result by making it a crime for a news organization "with intent to alarm... another person" communicates "a threat to commit or continue to commit a crime of violence."

This means that, for example, a newspaper or broadcaster could be convicted and jailed for publishing a threat from a plane hijacker to destroy the plane.

While it is true that this section requires an "intent to alarm... another person," it might be difficult—given the circumstances of this hijacking example—for the news organization to argue that there was no "intent to alarm" anyone and this, of course, would be a matter for a judge or jury.

Recommendation: No newsperson or news organization should be convicted and jailed for publishing news that a threat of violence has been made. (Sec. 1616 at page 93 of the Kennedy Bill).

It would be a crime for a news organization or news reporter to receive government property, in this case the photocopy paper, if the intent of the news organization was "to appropriate" the government photocopy to "its own use." It is not a crime to receive the stolen information itself.

The Kennedy Bill (Sec. 1733) achieves this result by making it a crime for a news organization to knowingly receive tangible government "property," that has been stolen. Photocopies are tangible property.

The concept of making it a crime to receive government photocopies was first put forth in the prosecution of Daniel Ellsberg and never abandoned by the Justice Department. Recently, two federal courts have interpreted the receiving stolen property section of the current federal law as applying to government photocopies.

It is clear, however, that government information itself, "obtained for the purpose of disseminating it to the public," will not be a basis for prosecution under the Kennedy Bill (Sec. 1740(c)).

Recommendation: No news organization or newsperson should be convicted and jailed for receiving or using any government photocopies of information unless he receives such copies with the knowing and willful intent to cause a "direct, immediate and irreparable injury" to the national security. (Sec. 1733 at page 116 and Sec. 1740(c) at page 121 of the Kennedy Bill).

CONTEMPT

A news organization or news person could be convicted of a crime for declining under the First Amendment to produce confidential notes or testimony if the order is subsequently upheld on appeal; and even if the order is voided on appeal.

The Kennedy Bill (Sec. 1333) achieves this result by making it a crime to refuse to answer a question or comply with a court order—when it was initially issued—to produce any documents, even if the information sought is not "material" to the case. The federal crime in this instance is the initial refusal to comply and therfore the conviction is valid if the newspaper appeals and loses or appeals and wins on the underlying order itself.

It is an affirmative defense that the information was "privileged." But this defense may be insufficient for newspersons. First, in the absence of a federal shield law, federal courts have not agreed that unpublished information obtained

by a reporter is privilged. Second, the newsperson is subject to criminal contempt for refusing, in good faith, to produce confidntial information even if the order to produce is voided on appeal. This is because, under previous Supreme Court cases, a court order is "lawful" if the court had apparent authority to issue the order.

It may be noted that the Kennedy Bill's general criminal contempt section (Sec. 1331) provides two affirmative defenses for the press with respect to judicial orders declared invalid. One defense is that the court order "was constitutionally invalid and constituted a prior restraint on the collection or dissemination of news." This defense clearly applies to unconstitutional gag orders on publication and was intended to also apply to court orders to produce confidential sources. The second defense applies if the court order "was invalid" and the news organization that refused to comply "took reasonable . . . steps to obtain a judicial review . . . and was unsuccessful in obtaining such review . . . within a reasonable period of time."

Recommendation: No news organization or newsperson refusing in good faith under the First Amendment, to produce unpublished information should be subject to a criminal contempt conviction if the news organization happens to lose the litigation in a court of appeals.

A "materiality" requirement like that in Sec. 1333(a) should be added to Sec. 1333(b). (Sec. 1333 at page 65 of the Kennedy Bill).

OTHER OBSTRUCTIONS OF GOVERNMENT PROCESSES

It would be a crime for a news organization or news reporter to destroy notes before such notes were subpoenaed or even before any official proceeding began.

The Kennedy Bill (Sec. 1325) achieves this result by making it a crime for any person to "destroy . . . or conceal" a document "with intent to impair its integrity or availability for use in an official proceeding." It is not a defense that "an official proceeding was not pending or about to be initiated."

Therefore, if a news organization or news reporter knows that any official proceeding is about to be initiated and—to protect his notes—destroyed or concealed them, he would be guilty of a crime. Many news organizations, to protect against subpoenas or searches, are as a matter of course destroying notes containing confidential information.

There is no requirement that the documents be "material" and it is not a defense that the document "would have been legally privileged or would have been inadmissible in evidence."

Recommendation: No news organization or news reporter should be subject to conviction and jail for destroying or concealing notes until actually subpoenaed and under an obligation to preserve them. It should be a defense that the notes were not material. (Sec. 1325 at page 62 of the Kennedy Bill).

It would be a crime for a news organization or news reporter to "hinder" the investigation or prosecution of a criminal suspect by "destroying or concealing" notes.

The Kennedy Bill (Sec. 1311) achieves this result by making it a crime for any person to "hinder" the investigation or prosecution of a criminal suspect by destroying or concealing documents relating to the commission of the crime.

It is not a defense to prosecution that the documents would have been legally privileged or inadmissible in evidence.

This would mean that a news reporter who hinders an investigation can be convicted and jailed. (This is in addition to criminal or civil contempt for refusing to disclose information.)

Recommendation: No news organization or news reporter should be convicted and jailed—as a federal crime—for merely refusing to disclose notes or other information obtained from confidential news sources relating to the commission of a crime. (Sec. 1311 at page 55 of the Kennedy Bill).

DRINAN BILL

NATIONAL SECURITY AND GOVERNMENT INFORMATION CRIMES

It would be a crime for a news organization or a news reporter to publish any previously unpublished, classified information which a jury decides is not newsworthy.

To obtain a conviction against the press, the government does not need to show that publication of the information would pose any clear and present danger to the national security of the United States.

The Drinan Bill achieves this result by making it a crime under Section 1323 "to knowingly publish national defense information properly classified" relating in any way to "intelligence gathering operations", "the design of strategic and secret weapons systems" or to "nuclear armaments."

The news organization may raise as a defense that the information had been previously published, or that the "significance of the information for public debate outweighed any harm to the national security."

This last defense—significance for public debate—leaves it up to the judge or jury to decide whether they think the published article was newsworthy.

Recommendation: No newspaper or journalist should be criminally convicted for publishing government information unless he publishes such information with knowing and willful intent to cause a "direct, immediate and irreparable injury" to the national security of the United States regardless of its classification. Juries and judges should not be given the authority to decide whether an article is newsworthy. (§ 1322 at page 26 of the Drinan Bill).

It would be a crime for a government official to give to the press any unpublished, classified information which a judge or jury decides is not newsworthy.

It would be a crime for a newsman to "aid" or "induce" a government official to leak any classified information which a judge or jury decides is not newsworthy.

In both of these provisions, the government does not have to prove that the information transmitted posed a "direct, immediate and irreparable injury" to the national security.

The Drinan Bill (Section 1322) makes it a crime for any "federal public servant" to communicate to any person "national defense information properly classified." It is a defense that the information was previously published, or that a judge or jury believes that "the significance of the information for public debate outweighed any harm to the national security."

The journalist, to whom the information is given, is also subject to trial and conviction under the conspiracy section of the Bill (Section 501) if he in any way "aids" or "induces" the official to leak the information.

Under federal case law, for example, in the Foreign Agents Registration Act, the term "to induce" can merely be oral persuasion and does not have to involve any promise of payment, etc.

Recommendation: No public employee should be sent to jail for giving the press national defense information unless he releases such information with knowing and willful intent to cause a "direct, immediate and irreparable injury" to the national security.

No newspaper or journalist should be convicted or jailed for encouraging a government official to supply him with government information unless he encourages the official to release such information with knowing and willful intent to cause a "direct, immediate and irreparable injury" to the national security. (§ 1322 at page 26 of Drinan Bill).

It is a crime for a news organization or a newsperson to "communicate, transmit or disclose—with reason to believe such data will be utilized to . . . secure an advantage to any foreign nation"—any data concerning design, manufacture or utilization of atomic weapons.

This is the criminal statute, 42 U.S.C. 2274(b), *et seq.*, which was used as the justification to seek the prior restraint order against The Progressive. There is no requirement for a criminal conviction that the information is a "direct, immediate and irreparable injury" to the national security. It is incorporated verbatim into the Drinan Bill (Sec. 1322(2)) (2nd proposal).

If the government informs a news publication that publication would harm the United States or help a foreign nation, the fact that it would not is no defense because the law only requires that the publication have "reason to believe" that such damage would occur.

Recommendation: No news organization or newsperson should be convicted of possessing, communicating or transmitting nuclear information unless he possesses, communicates, or transmits with knowing or willful intent to cause a "direct, immediate and irreparable injury" to the national security. (§ 1322(2) at page 26 of the Drinan Bill).

It would be a crime for a news organization or newsperson to "induce" a public official to leak any "confidential" information supplied to any government

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agency—even if this information showed the commission of a crime or the violation of any other type of federal law or regulation.

It would also be a crime for the government official to leak "confidential" information supplied to the government.

The Drinan Bill (Section 2125) achieves this result by basically recodifying existing federal law (18 U.S.C. 1905) which is a blanket criminal prohibition against any federal employee from giving to anyone "confidential information" supplied to the government.

The press falls under this section because the conspiracy provision of the Drinan Bill makes it a crime for anyone to "induce" the government official to break the law.

Recommendation: No government employee should be criminally prosecuted for making available to the public or the press "confidential government information" unless such information is made available with the knowing or willful intent to cause a "direct, immediate and irreparable injury to the national security" or for the primary purpose of causing a specific commercial or financial benefit to such government employee or third party; nor should any newsperson or news organization be prosecuted for inducing or persuading a government official to "leak" information unless there is a knowing and willful intent to cause a "direct, immediate and irreparable injury to the national security or to confer a specific economic or financial benefit on a third party."

It is believed that the government's ability to discharge or dock the pay of government officials is a sufficient deterrent. However, the Reporters Committee is not opposed to providing a very narrow exception in order to protect patents, secret formulas and other similar narrow categories of trade secrets. (§ 2125 at page 68 and § 501 at page 10 of the Drinan Bill).

GOVERNMENT INFORMATION COLLECTION CRIMES

It would be a crime for a news organization or a newsperson to tape record an interview—either in person or over the telephone—without receiving the consent of the person interviewed.

The Drinan Bill (Section 2121) achieves this result by reversing the current eavesdropping provision of the 1968 Omnibus Crime Control Act (18 U.S.C. 2511) which permits tape-recording of person-to-person and telephone communications if one party (in this case, the reporter) agrees.

Recommendation: News reporters and news organizations should be permitted to engage in nonconsensual recordings of interviews either in person or over the telephone. (§ 2121 at page 66 of the Drinan Bill).

It may be a crime for a news organization or newsperson to publish or use letters sent to a government official without the consent of the letter writer or the government official.

The Drinan Bill (Section 2124) appears to achieve this result by making it a crime to intentionally "disclose . . . the contents of private correspondence" if the reporter knew that some third person had "intercepted" the private correspondence without the consent of the sender or the intended recipient.

It is not clear whether the key to this section—the term "intercept" makes the section inoperative after the letter has been received or whether it applies to copies of the private communication.

Recommendation: No news organization or newsperson should be convicted and jailed for publishing a letter sent to a government official or other person if the news organization or newspaper did not themselves engage in the intercention but were merely passive recipients of the letter supplies by a third party. (§ 2124 at page 67 of the Drinan Bill).

It would be a crime for a news organization or a newsperson to publish a threat to commit violence made by some militant organization, if a judge or jury thinks that the news organization published the threat "with an intent to alarm" the person threatened.

The Drinan Bill achieves this result (Section 2316) by making it a crime for a news organization "with intent to alarm . . . another person" communicates "a threat to commit or continue to commit a crime of violence."

This means that, for example, a newspaper or broadcaster could be convicted and jailed for publishing a threat from a plane hijacker to destroy the plane.

While it is true that this section requires an "intent to alarm . . . another person," it might be difficult—given the circumstances of this hijacking example—for the news organization to argue that there was no "intent to alarm" anyone and this, of course, would be a matter for a judge or a jury.

Recommendation: No newsperson or news organization should be convicted and jailed for publishing news that a threat of violence has been made. (§ 2316 at page 74 of the Drinan Bill).

It would be a crime for a news organization or news reporter to receive government photocopies of information knowing that the information has been taken without authority from a government agency.

The Drinan Bill (Section 2533) achieves this result by making it a crime for a news organization to receive government "property" knowing that "such property has been stolen."

The key to this section, as in previous code drafts, has been the government's argument that government information itself (or xerox's of government information) is itself government property.

This concept was first put forth in the prosecution of Daniel Ellsberg and never abandoned by the Justice Department. Recently, two federal courts have intercepted the receiving stolen property of the current federal law as applying to government photocopies. The Drinan Bill might go even further by stating that the information itself can be the subject of the prosecution.

Recommendation: No news organization or newsperson should be convicted and jailed for receiving or using any government photocopies of information unless he receives such copies with the knowing and willful intent to cause a "direct, immediate and irreparable injury to the national security." (§ 2533 at page 93 of the Drinan Bill).

CONTEMPT—RESISTING PRIOR RESTRAINT ORDERS AND SUBPOENAS FOR CONFIDENTIAL INFORMATION

It would be a crime for a news organization or newsperson to violate a court order prohibiting publication—or requiring the production of confidential sources—even if the order was later declared to be unconstitutional.

The Drinan Bill (Section 1731) achieves this result under the criminal contempt power by permitting the federal courts to convict a news organization or journalist for any "disobedience . . . to the lawful . . . order . . . of the court."

Under previous Supreme Court cases, the terms "lawful" means that the court had apparent authority to issue the order. It does not, under current law, provide a defense for an order which is ultimately declared, on appeal, unconstitutional.

Recommendation: No news organization or newsperson should be subject to criminal contempt for violating an order restraining publication if such order is ultimately declared unconstitutional; nor should a newsperson or news organization be subject to prosecution for, in good faith, refusing to produce information even if the order is ultimately upheld on appeal.

Criminal contempt is normally used to punish affronts to the dignity of the court. It should not be used as a punitive measure to punish mere silence. (§ 1731 at page 46 of the Drinan Bill).

A news organization or newsperson could be convicted of a crime for refusing to produce confidential notes if the order to produce was subsequently upheld on appeal.

The Drinan Bill (Section 1733) achieves this result by making it a crime for a newsperson to refuse to "comply with an order to produce" a document in "any . . . official proceeding."

It is a defense that the information was "privileged."

Once again, this subjects the newsperson to criminal contempt for refusing, in good faith, to produce confidential materials while appealing that decision.

Recommendation: No news organization or newsperson, refusing in good faith under the First Amendment, to produce unpublished information should be subject to a criminal contempt conviction if the news organization happens to lose the litigation in a court of appeals. (§ 1733 at page 47 of the Drinan Bill).

It would be a crime for a news organization or news reporter to destroy notes containing any material information before such notes were subpoenaed or even before any official proceeding began.

The Drinan Bill (Sec. 1725) achieves this result by making it a crime for any person to "destroy . . . or conceal" any document "with the intent to impair (its) availability for use in official proceeding that is pending or about to be initiated."

This would mean that if a news organization or news reporter knew that a criminal investigation was about to be initiated and—to protect his notes—destroyed or concealed them, then he would be guilty of a crime.

This is a very far reaching section because while it does allow the news organization to raise as a defense that the record was immaterial to the proceeding, it does not permit a defense that the record "was legally privileged".

Recommendation: No news organization or news reporter should be subject to conviction and jailed for destroying or removing notes until they have actually been subpoenaed and he is under an obligation to preserve them.

Many news organizations, in order to protect themselves against subpoenas or searches, are as a matter of course destroying notes containing confidential information. (§ 1725 at page 43 of the Drinan Bill).

It would be a crime for a news organization or a news reporter to conceal notes—and probably to refuse to provide testimony—to a law enforcement officer seeking the information in the investigation of a crime.

The Drinan Bill (Sec. 1712) achieves this result by making it a crime for any person to "knowingly conceal from a judge, magistrate, or law enforcement officer the commission of a felony, or evidence that such felony was committed."

This would mean that a news reporter who refuses to produce his notes or to answer questions which might be considered "evidence" of a crime can be convicted and jailed merely for remaining silent.

(This is in addition to criminal contempt or civil contempt for refusing to disclose information). It is a defense that the refusal to produce the information "was legally privileged."

Recommendation: No news organization or journalist should be convicted and jailed—as a federal crime—for merely refusing to disclose notes or other information obtained from confidential news sources involving "evidence" of a crime. (§ 1712 at page 37 of the Drinan Bill).

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Crime and Crime Control: What Are the Social Costs?

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EXECUTIVE SUMMARY

This paper examines the costs of crime and crime control in light of the methods and empirical results of recent economic research. In Part I we introduce the basic analytical framework for cost analysis and briefly examine some of its implications for public policies within the criminal justice system. In Part II we consider some conceptual issues in the definition and measurement of crime costs in the context of a discussion of the costs of theft and victimless crime. We also report on recent efforts to utilize market data in assessing the overall costs of crime and we review some empirical estimates of cost functions for three aspects of the criminal justice system. Part III presents an illustrative calculation of the costs and benefits of crime reduction and concludes with a "ballpark" estimate of the social costs imposed by an average index felony.

I. THE ECONOMIC FRAMEWORK

Both crime and crime control are costly activities because they divert real resources from valuable alternative uses, and generally entail some sacrifice of such valuable intangibles as personal security and freedom. To measure and compare the various costs of crime and crime control, we require a common denominator of value. The most readily available measure is the monetary standard whose value is implicit in market exchange. While much criminal activity bypasses normal and observable market channels, and while many of the resource decisions about crime control are made in the political arena, market processes may nonetheless provide us with monetary measures of the costs of

crime. If an automobile has been stolen or destroyed by vandals, we can approximate its owner's loss by using the market value of automobiles of the same model and vintage.[1] Similarly, as long as resources used by the state in crime control are purchased rather than conscripted, their purchase price will reflect their value in foregone alternative uses, and provide us with a basic measure of the cost of crime control.

Clearly, however, many of the costs associated with crime and crime control do not involve the explicit use of physical resources. Perhaps the greatest costs of crime result from the compromise of individual freedom and security, and the sense of fear and anxiety, engenedered by its very existence. Though it would be difficult or impossible to directly measure such psychic costs, in many instances predictable and observable market reactions to them may enable us to indirectly assess their monetary costs.

For example, a parcel of property located in a low crime neighborhood will have a higher market value than an otherwise identical parcel in a high crime neighborhood. This differential exists, all other things being equal, because residents have expressed through the market the higher value they place on the incremental freedom from crime in the low crime neighborhood. Thus the value differential is a measure of the cost of crime in the high crime neighborhood relative to the low crime neighborhood.

A. The Costs of Crime: Commission, Victimization and Control

We can divide the costs associated with criminal activity into three categories. First, there are those costs incurred by criminals. These include not only the cost of resources actually used in committing crimes, including the time and effort expended by the criminal, but also the value of the alternatives the criminal must sacrifice as a result of imprisonment or other punishment for his behavior. Though not all criminals are apprehended or punished, the knowledge that there are possible penalties to be incurred imposes an expected and real cost on any potential criminal.

The second category of costs includes those borne directly by the victims of crime. Though these are always private costs to the victim, they may or may not be social costs as well. To illustrate distinction, consider the following simple example. Suppose I have lost possession of my automobile in one of three ways: it may have been sold, stolen, or destroyed by vandals. In all three cases I have incurred a private cost equal to the value I placed on the automobile. But neither in the case of sale nor in the case of theft does my loss of the automobile, per se, constitute a net social cost. From a social perspective the automobile has not been lost; rather, its possession has simply been transferred within society.[2] But the argument that the social cost of the illegal transfer is zero does not in any way imply that the social cost of theft is zero. For the theft or vandalism of the automobile—unlike its sale—imposes an uncompensated, involuntary costs on the victim, as do rape, assault, and other crimes against persons.[3]

It is useful to think of a crime as a "tax" levied on potential victims, for, like a tax, it effectively imposes costs on the ownership of certain types of assets, as well as on other forms of behavior. To illustrate the analogy, suppose that a television set is valued at $500 by its potential owner. However, if

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[1] Strictly speaking, one should distinguish between the personal value of the automobile (or any other asset) to its owner and its value in the market. The owner's decision to hold, rather than sell, implies that the former will generally exceed the latter.

[2] This treatment of illegal transfers is based on two implicit assumptions. First, it assumes that there exists no objective criterior by which one can compare the value of stolen goods to the thief with their value to his victim. Were such a comparison possible, the social cost would be measured by the net change in value resulting from the transfer. Note that this change in value could conceivably be positive—in a Robin Hood world, for example—and the "cost" of theft therefore is really a social benefit. Economists are generally unwilling to make such comparisons unless the relative values are revealed in a process of voluntary exchange. Second, it assumes that the thief does not by his actions forfeit his membership in society. If he does, then his transfer of the asset effectively extinguishes its value to society and thus imposes a social cost. Here again, the economist makes no pretense of being an arbiter of qualifications for membership in the society.

[3] Viewed in this way, most behavior which societies designate as criminal is part of a larger class of activities generating what economists call externalities. An external cost is one which is borne not by the agent whose actions impose the cost (e.g., the thief, vandal, rapist, or other criminal) but by some other party (e.g., the victim). Though it is clear that much social interaction—ranging from smoking in a crowded elevator to murder—results in some degree of external cost, the label of criminal is usually reserved to those situations in which the external costs of the activity are high relative to the social benefits (if any) it generates.

ownership carries with it a tax liability of $25, the television's net worth is only $475. Analogously, if there were no tax, but rather an annual probability of 5 percent that the television would be stolen, its net value will again be $475, since a 5-percent chance of losing $500 via theft is equivalent in an expectational sense to the certain loss of $25 via the tax.[4] The 5-percent chance of theft victimization is therefore similar to a 5-percent tax on television ownership. And, to those for whom the uncertainty surrounding the threat of victimization is itself a cost, the effective "tax" is even higher.

Just as with a tax, market adjustments will distribute the costs of crime among the members of society in ways which are not always immediately obvious. Thus the actual incidence of the cost of crime—that is, its ultimate resting place—will usually differ from its apparent incidence. The crime of shoplifting, for instance, has an effect like that of a tax on retailers who are repeatedly victimized. Though some of the losses will be borne by those retailers, some will be passed on to legitimate customers in the form of higher prices.

Furthermore, the tax imposed by crime is a differential one, affecting some facets of behavior more than others. With respect to theft, for example, different types of assets are subject to different probabilities of loss via theft, and hence the threat of theft reduces the value of ownership of some types of assets proportionately more than the value of others. This in turn alters the allocation of resources in favor of assets which are less likely to be stolen. Relative to the mix of products that would exist in an ideal, crime free world, we presumably have fewer television sets, automobiles, auto stereos and other consumer durable, and more nondurables and services, even though in the absence of crime we would value the former relatively more.

More generally and even more significantly, any kind of behavior which increases a person's exposure to potential crime becomes more costly than it would otherwise be. As a result, people tend to modify their behavior by foregoing more valuable options in favor of some which are less valuable but also less subject to a higher threat of victimization. Thus, there will be fewer strolls in the park for fear of robbery or assault, shorter vacation trips for fear an empty house might be a burglar's target, and a multitude of other costly modifications of behavior intended to reduce the chances of victimization.[5]

Precisely because individuals are willing to pay to avoid victimization, there is a third category of costs: the costs of crime control. In a broad sense, we can characterize crime control activities as those which increase the costs or decrease the payoffs of criminal behavior to potential criminals and thus reduce the payoffs to criminal activity.[6] So defined, crime control includes a variety of activities, some undertaken independently by private individuals and others resulting from collective decisions implemented through governmental agencies. While the latter—police, courts, public prosecutors, correctional agencies, and so forth—constitute the criminal justice system, much crime control effort is also expended outside this system.

The level of crime control is affected by the rate at which criminals are apprehended and punished, the severity of the punishment they receive, and by other public and private efforts to prevent future crimes or to avoid victimization. Placing locks on doors and windows makes burglary more costly; taking a taxi instead of strolling home through the park offers fewer targets to the would-be mugger or rapist; installing alarms on automobiles makes car theft more difficult and more risky; employing more police increases the probability of apprehension of offenders.

All of these measures are costly. The apprehension, conviction and punishment of criminals by the criminal justice system require the use of resources. Private efforts to avoid victimization impose not only resource costs, but also the costs associated with behavior modification. Finally, since the criminal justice system cannot costlessly and without error deal exclusively with actual and potential criminals, crime control inevitably results in some abridgement of legitimate freedoms.

[4] Technically speaking, strict equivalence assumes that the prospective owner of the automobile is "risk neutral." That is, he would not be willing to pay a premium either to avoid or to engage in risky activities.

[5] Clotfelter (1977, 1978) provides evidence of such behavior modification among residents of Washington, D.C. He finds, for example, that differences in burglary and robbery rates lead to statistically significant differences in the probability that members of a household will occasionally stay at home to avoid exposure to crime, and that they will attempt to avoid crime by sometimes taking a taxi in lieu of walking to their destination.

[6] Attempts to control crime by increasing costs to potential criminals assume that the latter are "rational" in the sense that their behavior is affected predictably by the perceived costs of various acts. Research by economists is virtually unanimous in confirming that this is so. See Taylor (1978) for a summary of that research.

B. *Crime Control and the Minimization of the Costs of Crime*

The goal of crime control is, of course, to minimize the sum of all costs associated with crime. As long as the cost of additional crime control is less at the margin than the incremental savings which result, additional crime control reduces the total social costs associated with crime. At some point, however, the marginal costs of any further crime control measure will exceed the resulting reduction in crime costs. Beyond this point, any further reduction in crime would increase total social costs. An additional expenditure of $1,000 for crime control to prevent $500 in crime costs, for example, would clearly be uneconomical. To minimize the total social costs associated with crime, then, the costs of crime must be balanced at the margin against the costs of controlling crime. The total elimination of crime, or even of specific types of crime, is not only an unrealistic goal for public policy but an uneconomical and inefficient one as well.

In fact, there may be some activities—so-called "victimless" crimes—for which little or no crime control is economically justified. Participation in activties such as prostitution, gambling, and much illegal drug usage is voluntary. Though these transactions, like legitimate market exchanges, mutually benefit the involved parties, third parties find them—or perhaps only the knowledge that they exist—intolerable and attempt to eradicate them. But, economic analysis suggest, unless these activities clearly harm third parties, the valuable resources of the justice system expended to inhibit them are the only social costs of these "crimes." Moreover, the enforcement of such prohibition may have the perverse effect of generating other crimes. For example, recent research by Nold (1979) using New York City data to estimate the costs of enforcing drug laws evidences a problem long suspected to exist: by increasing the likelihood of arrests and/or punishments for selling and distributing drugs, the price of heroin is increased, which in turn tends to increase the incidence of four property crimes—robbery, burglary, larceny and motor vehicle theft.

Clearly, there must be a cost-efficient allocation of the resources of the criminal justice system to minimize the social costs of crime. As we have seen, the system relies upon both privately and collectively made decisions. Thus cost minimization requires efficient allocation of crime control resources between the public and private sectors, as well as within each of these sectors.

Resource allocation within the public sector—more specifically, within the criminal justice system—provides the most challenging questions for public policy. How can the system minimize the social costs of crime? How should budgets be allocated among police, courts, and correctional institutions? What are the costs and what are the deterrent effects of various forms of punishment? Which criminal violations impose the greatest social costs? Which are the most costly for the criminal justice system to clear? Answering these complex questions requires detailed empirial knowledge.

II. MEASURING THE COST OF CRIME: CONCEPTUAL ISSUES AND EMPIRICAL ESTIMATES

Only recently have economists and other researchers begun to apply sophisticated analytical tools to assess the costs of crime and crime control. In this section we consider several important conceptual issues in the definition and measurement of crime costs and report some recent empirical findings regarding the magnitude of various components of those costs.

A. *The Social Costs of Theft and Other Illegal, Coercive Transfers*

Burglary, larceny, fraud and other forms of theft are characterized by an uncompensated transfer of assets from victim to thief. While, as we have seen, the transfer per se does not constitute a social cost, the very possibility of illegal transfers and the circumstances surrounding their existence lead to real social costs. Theft leads people to undertake costly measures to reduce its incidence and to avoid victimization. Theft is also costly because real resources—time, effort and materials—are diverted to theft from legitimate alternative uses. Since, again, the allocation of resources to illegal transfers usually bypasses observable market channels, the value of those resources is largely unrecorded.

However, a fundamental insight of economic analysis may enable us to approximate—or at least to place an upper bound—on that value. We know from economic theory that the forces of competition will attract resources into any activity that offers higher than normal return, eventually forcing that return down to a point at which the earnings of the resources just cover their cost. Becker (1968, p. 171) first applied this reasoning to illegal transfers:

> While [theft and fraud] are transfers, their market value is nevertheless a first approximation to the direct social cost. If the theft or fraud industry is "competitive," the sum of the value of the criminals' time input—including the time of "fences" and prospective time in prison—plus the value of capital input, compensation for risk, etc., would approximately equal the market value of the loss to victims. Consequently, aside from the input of intermediate products, losses [to victims] can be taken as a measure of the valve of labor and capital input into these crimes, which are true social costs.

Competition in the industry of crime may not, of course, be free and open. If competition does not prevail, the value of stolen property would exceed the thief's resource cost and that value would place an upper bound on the estimate of those costs. In any case, the amounts stolen given us an approximation of the value of the resources devoted to illegal transfers.

Table 1 shows the number of reported burglaries, robberies and larcenies and the corresponding amounts illegally transferred during the period 1968 to 1977. Recognizing that burglary, robbery and larceny are only three among many forms of theft, and that the table reflects only reported, not actual victim losses due to those crimes, we can see that the amounts involved are considerable.

Finally, there are costs associated with the very uncertainty of victimization. Most people will pay a premium simply to avoid risk, as is most directly evidenced by the existence of an insurance industry. In any standard insurance policy, the amount the average insured party can expect to recover is less than the amount he can expect to pay in premiums. In a competitive insurance market, the differential will reflect the administrative costs of the insurer, and is a measure of the cost of avoiding risk through insurance. Of course, there are some costs associated with the risk and uncertainty of crime—the trauma of victimization, for example—that cannot readily be insured against.

TABLE 1.—ILLEGAL TRANSFERS: 1968–77 [1]

Year	Number of crimes (thousands)			Total amount transferred (millions)			Average amount transferred per crime		
	Burglary	Robbery	Larceny	Burglary	Robbery	Larceny	Burglary	Robbery	Larceny
1968	1,829	262	3,440	$949	$122	$599	$519	$469	$174
1969	1,950	268	3,784	1,025	142	694	526	476	183
1970	2,169	348	4,245	1,049	128	702	484	367	165
1971	2,368	386	4,409	1,106	130	726	467	338	165
1972	2,345	375	4,101	1,046	132	688	446	352	161
1973	2,541	383	4,304	1,167	136	822	460	356	191
1974	3,021	441	5,228	1,451	181	1,003	480	394	192
1975	3,252	465	5,978	1,547	179	1,117	475	373	187
1976	3,089	420	6,271	1,476	151	1,228	478	360	196
1977	3,052	404	5,906	1,450	153	1,134	475	377	192

[1] All amounts in 1977 dollars.

B. Variations in Property Values as a Proxy for the Cost of Crime

As we have seen, there are many market transactions made by individuals which reflect, in whole or in part, attempts to avoid crime. Since the amount a person is willing to pay to avoid victimization is a measure of the cost to him of crime, some market transactions may provide us with information necessary to estimate the monetary magnitude of those costs.

Clearly, there are many cases in which the entire purpose of the market transaction is to reduce the chances of victimization. Here, of course, the monetary expenditure—for example, on locks, watch dogs or security guards—provides us with a simple and straightforward measure of costs.

There are other cases, however, where the market transaction involves the purchase of a bundle of goods, only one of which contributes to crime avoidance.

If we can control for the value of the other components of the bundle, we may be able to estimate the implicit value of the crime avoidance component. Economists have recently developed a method for making such estimates, and it has been applied primarily to assessing the separate effects of various neighborhood amenities and disamenities—including the crime rate—on housing values.[7] Other things equal, variation in the value of housing across neighborhoods with different crime rates will reflect the market's assessment of all the expected costs of neighborhood specific crime—psychic and other implicit costs as well as explicit expenditures to avoid victimization. Thus the resulting estimates provide us with what is potentially a very comprehensive measure of crime costs.[8]

Three recent studies have attempted to estimate the cost of crime in this way. Using data from Chicago, Rizzo (1975) finds that an increase in the total crime rate in a neighborhood, as well as the rates for specific crimes, results in a reduction both in rents and in the value of owner occupied homes. In particular, he finds that, after correcting the other relevant factors, a 10% difference in the total crime rate between neighborhoods is associated with a 2 to 4% difference in property values. Rizzo also supplies dollar estimates of the annual costs of crime. In particular, his results imply that a reduction in the average crime rate for all Chicago to a level equal to the rate in the city's lowest crime neighborhoods would result in a reduction of the annual cost of crime of between $550 million and $1,250 million at today's prices.

As part of a larger study of the effects of municipal services on property values, Boskin (1978) has derived some preliminary estimates of the costs of crime by analyzing variations in property values in San Mateo County, California. He finds that a 10% increase in the crime rate results in a 4% reduction in property values, a result very close to Rizzo's estimates.

Thaler (1978) conducted a similar study using data from Rochester, New York. Since he considered only the effects of property crimes, his numerical results are not directly comparable to those of Rizzo and Boskin. However, he also finds that variations in housing value across neighborhoods are effected by differences in the incidence of property crime at the rate of about $800 per crime in today's prices.

The basic approach used in these studies need not be confined to an analysis of the effects of crime on property values. Goldberg (1979) applies the technique to an analysis of the impact of locational variations in the incidence of various crimes on local wages. This preliminary results indicate that the cost of attracting labor is, as expected, greater in high crime areas than in low crime areas. The wage differential is an indication of the costs of the higher crime rate as seen by the labor force.

C. The Costs of the Criminal Justice System

We conclude this section with some remarks on the costs of the criminal justice system.

The agencies of the system—police, courts, legal services, correctional institutions, and so forth—are all examples of public sector bureaucracies. The economic theory of bureaucracy suggests that this particular type of organizational form will often be characterized by cost efficiency in its internal operations. Empirical studies of various public bureaucracies have tended to confirm this hypothesis.[9] Of particular relevance here are two recent studies of the costs of police services. Darrough and Heineke (1978), in the course of their investigation of cost functions for law enforcement agencies, find that the behavior of such agencies is inconsistent with cost minimization on the part of police decision makers. In his study of four municipal police departments in California, Phillips (1979) concludes that costs in those departments have been between 15 percent and 100 percent above their efficient level. He argues further that the major source of these cost over-runs has been the tendency of police departments to utilize too many police officers relative to civilian labor and capital equipment.

These results imply that the observed expenditures of law enforcement agencies, and possibly of the other agencies of the criminal justice system, overstate

[7] The method is that of "hedonic" prices; literally, the prices one is willing to pay for certain physical and psychic amenities.

[8] Technically, the price differential exactly reflects the cost of crime only to the marginal homeowner; that is, the one for whom the lower cost of housing just barely compensates for the higher crime rate. Additional information (i.e., a "demand curve") is needed to measure the costs to other, nonmarginal homeowners.

[9] For a collection of this research, see Borcherding (1977).

the costs necessary to provide the corresponding levels of crime control services. Alternatively, to the extent that the criminal justice system must produce its services exclusively through bureaucratic agencies in the public sector—rather than contracting out some of that production to private firms—one might regard their expenditures partly as a measure of the cost of crime control services and partly as a measure of costs unique to the organizational form through which such services must be supplied.

It is not only the absolute level of expenditures within the criminal justice system that is important for analyzing the costs of crime control. Knowledge of the system's cost functions—that is, of the relations between its various expenditures and the components of its output—is perhaps of even greater value from a policy standpoint.[10] Of particular importance are the incremental, or marginal, cost functions which would provide information about the costs of changes in the outputs of the various services provided by the criminal justice system.

It is only recently that empirical estimates of such cost functions have become available. Darrough and Heineke (1978), for example, derive estimates of the marginal costs of police clearances (arrests) for a variety of crimes. Their estimated costs, in 1978 dollars, range from a low of $747 for the solution of one additional case of larceny, to $15,973 for the solution of an additional crime against the person. These results are shown in Table 2. They also calculate trade-off rates between the solutions of various crimes. For example, they calculate that with a constant amount of available police resources, it is necessary on average to forego about four burglary solutions for each additional solution of a crime against the person.

TABLE 2. *Marginal costs of police clearances*[1]

Crime:	*Arrest*
Burglary	$1,661
Robbery	1,234
Larceny	747
Motor vehicle theft	6,467
Crimes against the person[2]	15,973
Weighted average	$2,477

[1] All amounts in 1978 dollars. Figures are based on original estimates made by Darrough and Heineke (1978).
[2] Murder, rape, and aggravated assault.

Weller and Block (1979) investigate cost functions for judicial services. Defining judicial output as the final disposition of a case, they estimate the marginal cost of a jury trial to be $2,215, of a nonjury trial to be about half that at $1,055, and of a guilty plea to be $312, all in 1978 dollars. This tends to confirm the commonly held opinion that plea bargaining can have a substantial effect on court costs. However, two of their other discoveries are somewhat surprising. They find that, among cases in which a trial has been commenced, the differences in cost between jury and nonjury trials are largely explained by differences in the likelihood that a case will be terminated prior to a full presentation of evidence. In other words, if evidence is presented in a case, there is not likely to be a substantial difference between the costs of jury and nonjury dispositions. This suggests that efforts to limit the use of juries, or to reduce their size, may not yield very great reductions in court costs.[11]

Weller and Block also find that the marginal cost of cases dismissed before trial or transferred to another district was $1,809. This cost, which one would have expected to be low, is almost as great as that of a jury trial. Though they provide no full explanation of this anomalous result, the authors conjecture that it may reflect the higher incidence of costly pretrial procedures associated with dismissal. If their estimate is correct, greater reliance on pretrial maneuvering may yield significant increases in the cost of running the judicial system.

In another study, Block and Ulen (1979) analyze the costs of correctional institutions in the state of California. Ignoring the costs of rehabilitative services because of difficulties of measurement, and defining the output of these institutions solely in terms of confinement and the hotel-like services and personal goods and services provided jointly with confinement, they estimate cost functions for maximum and medium security prisons and for jails. They find that in maximum security prisons the short run marginal cost of an additional inmate-year of confinement—that is, the incremental cost given fixed capital and other overhead costs—is about $550 in today's prices. Data from medium security prisons allow estimation of long run marginal costs; that is, the cost of confining additional inmates when the capacity of the facility varies with changes in the inmate population. These estimates of marginal cost capture the effect of inmate population on overhead costs and are estimated to be about $3,500 per year at today's prices. The long run cost estimate for jails is about the same when square footage per inmate is held constant.[12]

[10] Strictly speaking, cost functions relate outputs to efficient cost levels. As noted in the text, the assumption of efficiency is likely to be violated here, so that the estimated "cost functions" relate outputs to the corresponding actual, rather than efficient, cost outlays of the system.
[11] This argument applies only to the judicial costs actually incurred by the criminal justice system. In a jury trial, substantial additional costs may be borne by the jurors, since they are rarely paid an amount equal to the value of their time.

III. THE COST OF DETERRENCE: AN ILLUSTRATIVE CALCULATION

The empirical studies discussed above focus on the costs of arrests, adjudication, and imprisonment. These are intermediate outputs in the production of the criminal justice system's ultimate goal: the deterrence of crime. While there have been many studies confirming the deterrent effects of these outputs, previous researchers have given little consideration to either the cost of deterrence or the savings in averted crime it yields.[13] In this concluding section we shall attempt to provide such an integrated approach to the costs of crime control by calculating a rough estimate of the cost of deterrence.

To calculate the costs of reducing the incidence of crime, we have chosen to use the estimates of the deterrent effects of convictions derived by Phillips and Votey (1973). Their estimates imply that a 1-percent reduction in the number of index felonies can be achieved with a 0.67-percent increase in the number of convictions. Given recent U.S. crime and conviction rates, this implies that securing about 4,500 additional felony convictions annually would eliminate approximately 110,000 index crimes. Using information about the cost of those additional convictions, we can then determine the cost per crime eliminated at the margin.

However, we have no direct measure of the incremental cost of a conviction by the criminal justice system. Arrests, convictions and punishment all have deterrent effects, and all can, to some extent, be varied independently of one another. Hence, an accurate measure of the cost of additional convictions would require knowledge of the relative adjustments in these three areas which accompany the increased deterrent efforts. Lacking this knowledge, we must make a number of simplifying assumptions about the criminal justice process. Namely, we assume that, for the small changes we consider, the arrest-conviction ratio, the conviction-imprisonment ratio, and the average length of sentences are fixed at their current values. Under these conditions, the incremental cost of a conviction includes proportional changes in costs associated with arrests and imprisonment, as well as costs more directly attributable to the adjudication of guilt.

Using estimates of the relevant crime control costs from the cost studies cited above, we estimate the incremental costs of a conviction to the criminal justice system to be approximately $15,000. The implication of this is that a 1 percent reduction in crime can be purchased at a total cost to the criminal justice system of about $68.6 million, or about $625 per crime averted.

If resources were optimally allocated to crime control, so that the costs of crime were balanced at the margin against the cost of crime, this latter figure ($625) would approximate the social marginal cost imposed by one felony index crime. That this is unlikely to be the case is suggested by the fact that the $625 figure is somewhat below Thaler's (1978) estimate of about $800 imposed by just an additional property crime. Whether the level of deterrence is optimal or not, the calculation of the cost of deterrence does provide an indication of how much it would cost to decrease the level of crime.

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OFFICE OF THE ATTORNEY GENERAL,
Olympia, Wash., October 17, 1979.

Re: S. 1722.

Hon. EDWARD KENNEDY,
Chairman, Senate Judiciary Committee, U.S. Senate, Washington, D.C.

DEAR SENATOR KENNEDY: The Senate Judiciary Committee has under consideration S. 1722, a comprehensive revision of the federal criminal code. In general, we applaud the approach of that bill.

Section 161, relating to state and federal criminal jurisdiction over Indian reservations, however, contains two provisions which are completely objectionable to the state of Washington. Neither is an appropriate part of a criminal code. Both would drastically change existing law. I here wish to explain what those proposed changes are, and why they are so objectionable.

Subsection (i): Retrocession of State Jurisdiction

I first take up subsection (i). This provision would permit an Indian tribe, without the consent of the affected state, to require the United States to reacquire criminal jurisdiction over Indian reservations from those states which had previously acquired such jurisdiction under such laws as P.L. 83-280 (67 Stat. 588).

Since 1953, when Public Law 83-280 was enacted by the Congress, many tribes have constantly attempted to overturn that law, and thereby roll back the

extension of state jurisdiction to their reservations. With the passage of the Indian Civil Rights Act of 1968, Public Law 90-284 (82 Stat. 78), they succeeded in preventing any new extensions of state jurisdiction without tribal consent. But they have so far failed to eliminate state jurisdiction which had been assumed by such states as Washington prior to 1968. The 1968 Indian Civil Rights Act in effect then froze the status quo. See § 403 of Public Law 90-284. Any retrocession of state jurisdiction, and any extension of state jurisdiction, now require the consent of both the state and the affected tribe. And, in our view, this is exactly as it should be.

Having failed to accomplish in the Congress their goal of overturning state jurisdiction assumed under PL 83-280, the tribes, not surprisingly, took to the courts. Washington's assumption of jurisdiction, for example, has been attackel in six separate lawsuits—in each case unsuccessfully. The last effort reached the U.S. Supreme Court in *Washington* v. *Yakima Indian Nation*, and was decided in favor of the state on January 16 of this year. Subsection (i) would reverse that decision.

Washington's response to Public Law 83-280 is fully described in that decision, a copy of which is attached (Attachment I). I would here simply note the Supreme Court's characterization of that response as one which "* * * leaves substantial play for tribal self-government, under a voluntary system of partial jurisdiction that reflects a responsible attempt to accommodate the needs of both Indians and non-Indians within a reservation * * *" 58 L.Ed. 2d at 767.

This reference by the Court to "the needs of both Indians and non-Indians within a reservation" raises a critical point which is all too easily overlooked.

The debate on the question of state criminal jurisdiction over Indian reservations typically proceeds as if the only issue were state jurisdiction over Indians. This is unfortunate; for it overlooks entirely the question of jurisdiction over non-Indians on the reservation. For example, while there are probably no more than 13,500 Indians residing on Washington reservations, there are more than 55,000 non-Indians residing on these same reservations. These non-Indians will be affected by subsection (i) even more than the Indians. And this is true whether these non-Indians live on land owned by Indians or—as is the case with the vast majority of these non-Indians—they live on land which they own themselves.

I enclose pages 19-27 of our opening brief in *Yakima* (Attachment II) and pages 12-19 of our reply brief (Attachment III), analyzing the effect of a retrocession of state jurisdiction over Indian reservations as applied to both Indians and non-Indians.[1] It is complicated—in large part because the federal statutory scheme which developed in the 19th century is complicated. In simplest terms, subsection (i) would throw non-Indians back into this 19th century federal statutory scheme, and make them largely subject to federal criminal law, rather than state criminal law. For protection they would have to look to a great extent to federal marshals and federal courts, rather than local law enforcement officers and state courts.[2]

Under subsection (i), this change would not be automatic; but subsection (i) would give the tribes the option to make this change for their non-Indian neighbors, without the consent of those neighbors; and it is clear that most of the tribes would exercise this option.

Subsection (c): Reversal of U.S. v. McBratney

The problem here arises, not so much from the actual language of subsection (c), as from its legislative history, as derived from the legislative history of § 144 of S. 1437.

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[1] Page 26 of the State's opening brief in Yakima (Attachment II) should be corrected in one major respect. The analysis assumes that state criminal jurisdiction over Indians pursuant to Public Law 83-280 is exclusive of tribal jurisdiction. See, e.g., note 9. I now believe this assumption to be incorrect, and have so stated to the 9th Circuit in our brief on remand in Yakima. Accordingly, state criminal jurisdiction under Public Law 83-280 displaces no tribal jurisdiction at all, not even for "minor" crimes. It only displaces federal jurisdiction. And in Washington, even that displacement of federal jurisdiction over crimes by Indians is a limited one. See RCW 37.12.010, discussed at 58 L.Ed. 2d 746, 747.

[2] Federal jurisdiction over non-Indian under 18 U.S.C. 1152 is exclusive. *Williams* v. *U.S.*, 327 U.S. 711, 714 (1946). Despite the language of § 206(a)(1), this would apparently continue to be the case with respect to federal jurisdiction under the proposed counterpart of § 1152, i.e., subsection (c), at least as it applies to crimes not within the scope of the *McBratney* case. And this would be so by reason of the language of subsection (b).

In using the qualifying phrase "to a great extent." then, I have in mind that cases falling within the scope of *McBratney*, in which state jurisdiction would, as now, be exclusive, or, as proposed by the committee, be concurrent with federal jurisdiction.

As correctly stated at pages 1181–1182 of the Senate Judiciary Report on S. 1437:

> "Subsection (c) carries forward the first paragraph of 18 U.S.C. 1152, amended to conform the jurisdiction language to the terminology of proposed Title 18."

As also correctly stated at page 42 of that same report:

> "Notwithstanding its apparently plain language the Supreme Court has held that 18 U.S.C. 1152 also does not apply to offenses committed by a non-Indian against a non-Indian victim in Indian country. Such offenses are triable in the States under State law."

The holding referred to, of course, is *U.S.* v. *McBratney*, 104 U.S. 621 (1882). Because it carries forward the first paragraph of § 1152, the language of subsection (c) gives no hint that this Supreme Court holding is to be statutorily reversed. At page 45, however, the report gives much more than a hint that precisely this result is intended.

> "Finally, as stated above, the Supreme Court has ruled that 18 U.S.C. 1152 does not apply to offenses committed by a non-Indian against a non-Indian In Indian country and that such offenses are triable by State courts in accordance with State law. The Committee believes, however, that the Federal power under the Constitution to punish such offenses should be exercised. In redrafting the provisions of current 18 U.S.C. 1152 in section 144 of the bill in conjunction with the definition of the special territorial [sic] jurisdiction in the Code, it is the intention of the Committee that they be considered applicable to offenses by non-Indians against non-Indians as well as to those offenses previously considered as coming within the scope of that section."

The statement would undoubtedly be followed by the federal courts in construing subsection (c).

This is a major change, of serious and adverse consequence to the more than 55,000 non-Indian residents on Washington reservations.

As justification for this change, the report states in footnote 71, page 45:

> "Regardless of the Indian status of the perpetrator or victim, offenses in Indian country frequently constitute a breach of the peace and security of the enclave sufficient to invoke the exercise of federal jurisdiction."

Whoever wrote that sentence knows little, I suggest, about the reservations in the state of Washington, or, for that matter, in most other states. The Puyallup reservation, for example, includes a large portion of the city of Tacoma. Its population consists of fewer than 1,000 Indians and about 25,000 non-Indians. It is not an Indian nor a federal "enclave." As I have already pointed out in discussing subsection (i), on the "enclaves" in Washington, taken as a whole, non-Indian residents outnumber Indian residents by a factor of at least four to one.

The curious reasoning embodied in the Senate report should not go unnoticed. If an offense by a non-Indian against another non-Indian is a "breach of the peace and security" of the community, then, under the same reasoning, an offense by an Indian against another Indian would presumably "constitute a breach of the peace and security" of the surrounding community, which, on most Washington reservations, would be predominantly non-Indian. Yet there is no suggestion anywhere in the report that in such instances non-Indian law—i.e., state law—should apply. Only federal law (in the case of serious crimes) or tribal law (in the case of minor crimes) would apply, just as now. The reasoning is selective in its application, to say the least.

I recognize that under section 206(a), this new federal jurisdiction over non-Indians is concurrent with state jurisdiction. I further recognize that, as stated in the report in footnote 71, page 45:

> "The Committee intends and anticipates, however, that the Federal government's new jurisdiction under section 144 of the bill [now section 161 of S. 1722] over non-Indian versus non-Indian offenses, which is concurrent with that of the States and tribes, will be exercised sparingly to vindicate a distinct Federal interest or to insure against an apparent failure of justice."[3]

[3] By the phrase "which [jurisdiction] is concurrent with that of the States and tribes," this sentence seems to suggest that Indian tribes would have criminal jurisdiction over non-Indians. Such a result, of course, is absolutely contrary to the decision of the Supreme Court in *Oliphant* v. *Suquamish Tribe*, —— U.S. —— (March 6, 1978). And in view of subsection (b) of § 144, and its counterpart in § 161(b) of S. 1722, we take this sentence to be just an incorrect prediction of the result in *Oliphant*, rather than a statement of intent to change that result.

I, too, would anticipate that this new jurisdiction would be used "sparingly," but not for the reasons stated. The reason would be that our already overburdened federal judges and federal prosecutors simply won't invoke it; they invoke the jurisdiction they already have far too infrequently.

In short, this "new" jurisdiction makes no sense whatsoever. So far as our reservations are concerned, any theoretical justification for it is undercut by the facts.

Suggested Action

I know from personal experience the difficulties in passing a comprehensive reform of a criminal code. Washington passed a new criminal code in 1975, after years of study, and now has, I believe, one of the best in the nation. But it was not any easy task.

The suggestions I here make are intended to make your task easier, not more difficult. I would urge that subsection (i), along with subsection (k), be deleted entirely. The proposals contained in the two subsections may then, if the Committee wishes to do so, be considered separately.

S. 1722 is too important to be mired down in a controversy that is essentially outside its true scope and purpose. Moreover, it is a controversy which affects not just Washington, nor even just the Western States; it affects every state in which there exists an Indian reservation. Thus, even the Attorney General of New York last year vigorously opposed subsection (i) as embodied in section 144 of S. 1437.

If your Committee, however, believes that the issue of retrocession should be dealt with in S. 1722, then I urgently request that hearings be scheduled for purposes of presenting testimony on this specific issue. The issue should not be dealt with in the absence of a full consideration of all the facts, and a full exploration of all the problems.

My suggestion with respect to subsection (c) is essentially the same. The committee report should make it clear that the *McBratney* rule is not being overturned or, even preferable, the language of subsection (c) itself should make it clear. If, however, the *McBratney* issue is to be dealt with by the Committee in its consideration of S. 1722, that issue too should be taken up in the hearings, along with subsection (i).

With such hearings, the Committee will understand the full scope of what it is proposing to do in section 161 and its effect on a far broader front than Indians alone; and understanding that, the Committee will, I am confident, abandon the proposal.

Sincerely,

SLADE GORTON, *Attorney General.*

Enclosures.

ATTACHMENT I TO LETTER OF OCTOBER 17, 1979

U.S. SUPREME COURT REPORTS

STATE OF WASHINGTON ET AL., APPELLANTS,

v.

CONFEDERATED BANDS AND TRIBES OF THE YAKIMA INDIAN NATION

— US —, 58 L Ed 2d 740, 99 S Ct —

[No. 77-388]

Argued October 2, 1978. Decided January 16, 1979.

SUMMARY

Following the enactment of the Act of Aug. 15, 1953—§ 6 of which (28 USCS § 1360 note) authorizes states whose constitution or statutes contain organic law disclaimers of jurisdiction over Indian country to assume jurisdiction under the Act, and § 7 of which (67 Stat 590) permits states to assume jurisdiction "in such manner" as the people of the state should, by affirmative legislation, obligate and bind the state to assumption thereof—the state of Washington enacted a statute obligating Washington to assume civil and criminal jurisdiction over Indians and Indian territory within the state, subject only to the condition that in all but eight subject-matter areas jurisdiction would not extend to Indians on trust or

restricted lands unless the affected tribe so requested. An Indian tribe which did not make a request for the extension of full jurisdiction brought an action in the United States District Court for the Eastern District of Washington challenging the statutory and constitutional validity of the state's partial assertion of jurisdiction on its reservation. The tribe contended the Act of Aug. 15, 1953, imposed certain procedural requirements with which Washington had not complied, that in any event the Act did not authorize the state to assert only partial jurisdiction within an Indian reservation, and that the state statute violated the equal protection and due process guarantees of the Fourteenth Amendment. The District Court rejected both the statutory and constitutional claims and entered judgment for the state. On appeal to the United States Court of Appeals for the Ninth Circuit, the court sitting en banc rejected the contention that the state's assumption of only partial jurisdiction was not authorized by Congress (550 F2d 443), and a three-judge panel of the court reversed the District Court decision, finding that the "checkerboard" jurisdictional system produced by the state statute was without any rational foundation and therefore violative of the equal protection clause of the Fourteenth Amendment (552 F2d 1132).

On appeal, the United States Supreme Court reversed. In an opinion by Stewart, J., joined by Burger, Ch. J., and White, Blackmun, Powell, Rehnquist, and Stevens, JJ., it was held that (1) the enactment of the state statute satisfied the procedural requirements of § 6 of the Act, and the state statute was not invalid, where the highest court of the state determined that for purposes of the repeal of the disclaimer provision of the state's constitution, legislative action was sufficient, and where appropriate state legislation was enacted, (2) statutory authorization for the state's assumption of partial subject-matter and geographic jurisdiction over Indian reservations within the state was found in the words of § 7 of the Act, since the phrase "in such manner" meant that any option state could condition the assumption of full jurisdiction on the consent of an affected tribe, and (3) the "checkerboard" jurisdictional system produced by the state statute was not on its face invalid under the equal protection clause of Fourteenth Amendment, since the classifications based on tribal status and land tenure were not "suspect" so as to require justification by a compelling state interest, the statute did not abridge any fundamental tribal right of self-government, and the statute was fairly calculated to further the state's interest in providing protection to non-Indian citizens living within the boundaries of a reservation while at the same time allowing scope for tribal government on trust or restricted land, the land-tenure classification made by the state being neither an irrational nor arbitrary means of classifying those areas within a reservation in which tribal members had the greatest interest in being free of state police power.

Marshall, J., joined by Brennan, J., dissenting, stated that the language and legislative history of the Act of Aug. 15, 1953, did not unequivocally authorize states to assume the type of selective geographic and subject-matter jurisdiction asserted by the state, and that, therefore, the statute should be construed in favor of the Indians.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Courts § 733—jurisdiction over Indian country—assumption by state

1a, 1b. The enactment of a state statute obligating a state to assume civil and criminal jurisdiction over Indians and Indian territory within the state, subject only to the condition that in all but eight subject-matter areas jurisdiction would not extend to Indians on trust or restricted lands unless the affected tribe so requested, satisfies the procedural requirements of § 6 of the Act of Aug. 15, 1953 (28 USCS § 1360 note), allowing states whose constitution or statutes contain organic law disclaimers of jurisdiction over Indian country to assume jurisdiction under the Act, and the state statute is not invalid, where the highest court of the state had determined that for purposes of the repeal of the disclaimer provision of the state's constitution, legislative action was sufficient, and where appropriate state legislation had been enacted.

Courts § 733—jurisdiction over Indian reservations—state's assumption of partial jurisdiction

2a, 2b. Statutory authorization for a state's assumption of partial subject-matter and geographic jurisdiction over Indian reservations within the state is found in the words of § 7 of the Act of Aug. 15, 1953 (67 Stat 590) permitting states having an option under the Act to assume jurisdiction over criminal

offenses and civil causes of action in Indian country without consulting with or securing the consent of the tribes that would be affected, to assume jurisdiction "in such manner" as the people of the state shall "by affirmative legislative action, obligate and bind the State to assumption thereof," since the phrase "in such manner" means that any option state can condition the assumption of full jurisdiction on the consent of an affected tribe. (Marshall and Brennan, JJ., dissented from this holding.)

Constitutional Law § 488—equal protection—jurisdiction over Indian country—land-tenure classification

3a, 3b. A "checkerboard" jurisdictional system produced by a state statute obligating the state to assume civil and criminal jurisdiction over Indians and Indian territory within the state, subject only to the condition that in all but eight subject-matter areas jurisdiction would not extend to Indians on trust or restricted lands unless the affected tribes so requested, is not on its face invalid under the equal protection clause of the Fourteenth Amendment, since the classifications based on tribal status and land tenure are not "suspect" so as to require justification by a compelling state interest, the statute does not abridge any fundamental tribal right of self-government, and the statute is fairly calculated to further the state's interest in providing protection to non-Indian citizens living within the boundaries of a reservation while at the same time allowing scope for tribal self-government on trust or restricted land, the land-tenure classification made by the state being neither an irrational nor arbitrary means of identifying those areas within a reservation in which tribal members have the greatest interest in being free of state police power.

Statutes § 17—validity—vagueness

4a, 4b. A state statute obligating the state to assume civil and criminal jurisdiction over Indians and Indian territory within the state, subject only to the condition that in all but eight subject-matter areas jurisdiction would not extend to Indians on trust or restricted lands unless the affected tribe so requested, is not void for vagueness under the due process clause of the Fourteenth Amendment, since the eight subject-matter areas are themselves defined with reasonable clarity in language no less precise than that commonly accepted in federal jurisdictional statutes in the same field.

Appeal and Error § 1339—question before Supreme Court—appeal from Federal Court of Appeals

5a, 5b. The question whether a state was authorized under § 6 of the Act of Aug. 15, 1953 (28 USCS § 1360 note) to enact a state law assuming jurisdiction over Indian country before the state constitution had been amended so as to eliminate provisions which disclaimed authority over Indian lands is properly before the United States Supreme Court, where the appellee had pressed this issue throughout the litigation, in its motion to dismiss or affirm the appeal from the Federal Court of Appeals, the alleged invalidity of the state's legislative assumption of jurisdiction was presented as a basis upon which the judgment below could be sustained, and the disclaimer issue was implicit in the subjects the parties were requested to address in the Supreme Court's order noting probable jurisdiction of the appeal.

Appeal and Error § 1262—appellee—reliance on ground not considered below

6a, 6b. As the prevailing party, an appellee before the United States Supreme Court is free to defend its judgment on any ground properly raised below whether or not that ground was relied upon, rejected, or even considered by the Federal District Court or the Federal Court of Appeals.

Courts § 771—precedential value—summary dismissals—Supreme Court

7a, 7b. Summary dismissals made by the United States Supreme Court are to be taken as rulings on the merits in the sense that they rejected the specific challenges presented in the statement of jurisdiction and left undisturbed the judgment appealed from, but they do not have the same precedential value before the Supreme Court as does an opinion of the Supreme Court after briefing and oral argument on the merits; a summary dismissal of an appeal represents no more than a view that the judgment appealed from was correct as to those federal questions raised and necessary to the decision and does not necessarily reflect the Supreme Court's agreement with the opinion of the court whose judgment is appealed.

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Courts § 771—question before Supreme Court—effect of prior summary decision

8a, 8b. The United States Supreme Court will find it appropriate to give full consideration to the question whether a state is authorized under § 6 of the Act of Aug. 15, 1953 (28 USCS § 1360 note) to enact a state law assuming jurisdiction over Indian country before the state constitution had been amended so as to eliminate provisions disclaiming state authority over Indian lands, even though the question had been the subject of previous summary action, where the question has never received full plenary attention in the Supreme Court, it has been the subject of extensive briefing and argument by the parties, it has provoked several, somewhat uncertain, opinions from the state courts whose ultimate judgments were the subject of summary dismissals by the Supreme Court, and it is an issue upon which the executive branch of the United States government has recently changed its position diametrically.

Courts § 733—jurisdiction over Indian country—requirements of federal statute

9a, 9b. Section 6 of the Act of Aug. 15, 1953 (28 USCS § 1360 note) does not require states whose constitution or statutes contain organic law disclaimers of jurisdiction over Indian country to amend their constitutions in order to make an effective acceptance of jurisdiction.

Courts § 733—jurisdiction over Indian country—requirements of Enabling Act—effect of federal statute

10a, 10b. The Enabling Act of Feb. 22, 1889 (25 Stat 676)—under which the states of Washington, Montana, North Dakota and South Dakota gained entry into the United States—does not require states whose constitution or statutes contain organic law disclaimers of jurisdiction over Indian country to amend their constitution in order to make an effective acceptance of jurisdiction under the federal statute authorizing states to assume jurisdiction over Indian country (67 Stat 588).

Indians §§ 26, 31—right of self-government—abrogation of treaty rights

11a, 11b. The Act of Aug. 15, 1953 (67 Stat 588) abrogates any right of self-government guaranteed to the Yakima Indian Nation under its 1855 Treaty with the United States (12 Stat 951) that is inconsistent with the 1953 Act, since Congress can pass a jurisdictional law of general applicability to Indian country without itemizing all potentially conflicting treaty rights that it wishes to affect.

Treaties § 8—abrogation by Congress

12a, 12b. The rule of construction that Congress' intention to abrogate or modify a treaty is not to be lightly imputed must be applied sensibly.

Courts § 733—jurisdiction over Indian country—requirements of federal authorization

13. The procedural requirements of the Act of Aug. 15, 1953 (67 Stat 588) for a state's assuming jurisdiction over Indian country must be strictly followed.

Indians § 13—construction of statute

14. Ambiguities in legislation affecting retained tribal sovereignty are to be construed in favor of the Indians.

Courts § 733—jurisdiction over Indian country—rules of federal authorization

15. Once the requirements of § 6 of the Act of Aug. 15, 1953 (28 USCS § 1360 note) with respect to assumption of jurisdiction over Indian country by states whose constitution or statutes contain organic law disclaimers of jurisdiction over Indian country have been satisfied, the terms of § 7 of the Act (67 Stat 590) govern the scope of jurisdiction conferred upon disclaimer states.

Indians § 12—authority of federal government

16. The unique legal status of Indian tribes under federal law permits the federal government to enact legislation singling out tribal Indians, even though the legislation might otherwise be constitutionally offensive.

Indians § 10—power of Congress

17. Congress, in the exercise of its plenary power over Indian affairs, may restrict the retained sovereign powers of the Indian tribes.

Constitutional Law § 319—equal protection—classifications—rational relationship

18. Legislative classifications are valid unless they bear no rational relationship to the state's objectives.

Constitutional Law § 319—equal protection—validity of classifications

19. State legislation does not violate the equal protection clause merely because the classifications it makes are imperfect.

SYLLABUS BY REPORTER OF DECISIONS

Section 6 of Pub L 280 authorizes the people of States whose constitutions or statutes contain organic law disclaimers of jurisdiction over Indian country to amend "where necessary" their constitutions or statutes to remove any legal impediment to assumption of such jurisdiction under the Act, notwithstanding the provision of any Enabling Act for the admission of the State, but provided that the Act shall not become effective with respect to such assumption of jurisdiction until the people of the State have appropriately amended their state constitution or statutes as the case may be. In § 7 of Pub L 280 Congress gave the consent of the United States "to any other State . . . to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to the assumption thereof." The State of Washington's Constitution contains a disclaimer of authority over Indian country, and hence the State is one of those covered by § 6. In 1963, after the Washington Supreme Court in another case had held that the barrier posed by the disclaimer could be lifted by the state legislature, the legislature enacted a statute (Chapter 36) obligating the State to assume civil and criminal jurisdiction over Indians and Indian territory within the State, subject only to the condition that in all but eight subject-matter areas jurisdiction would not extend to Indians on trust or restricted lands unless the affected tribe so requested. Appellee Yakima Nation, which did not make such a request, brought this action in Federal District Court challenging the statutory and constitutional validity of the State's partial assertion of jurisdiction on its Reservation. The Tribe contended that the State had not complied with the procedural requirements of Pub L 280, especially the requirement that the State first amend its constitution; that, in any event, Pub L 280 did not authorize the State to assert only partial jurisdiction with an Indian reservation; and that Chapter 36, even if authorized by Congress, violated the equal protection and due process guarantees of the Fourteenth Amendment. The District Court rejected both the statutory and constitutional claims and entered judgment for the State. The Court of Appeals, while rejecting the contention that Washington's assumption of only partial jurisdiction was not authorized by Congress, reversed, holding that the "checkerboard" jurisdictional system produced by Chapter 36 had no rational foundation and therefore violated the Equal Protection Clause. *Held:*

1. Section 6 of Pub L 280 does not require disclaimer States to amend their constitutions to make an effective acceptance of jurisdiction over an Indian reservation, and any Enabling Act requirement of this nature was effectively repealed by § 6. Here, the Washington Supreme Court, having determined that for purposes of the repeal of the state constitutional disclaimer legislative action is sufficient and the state legislature having enacted legislation obligating the State to assume jurisdiction under Pub L 280, it follows that the State has satisfied the procedural requirements of § 6.

2. Once the requirements of § 6 have been satisfied, the terms of § 7 govern the scope of jurisdiction conferred upon disclaimer States. Statutory authorization for the partial subject matter and geographic jurisdiction asserted by Washington is found in the words of § 7 permitting option States to assume jurisdiction "in such manner" as the people of the State shall "by affirmative legislative action, obligate and bind the State to assumption thereof." The phrase "in such manner" means at least that an option State can condition the assumption of full jurisdiction on an affected tribe's consent. Here, Washington has offered to assume full jurisdiction if a tribe so requests. The partial jurisdiction asserted on the reservations of nonconsenting tribes reflects a responsible attempt to accommodate both state and tribal interests and is consistent with the concern that underlay the adoption of Pub L 280. Accordingly, it does not violate the terms of § 7.

3. The "checkerboard" pattern of jurisdiction ordained by Chapter 36 is not on its face invalid under the Equal Protection Clause.

(a) The classifications based on tribal status and land tenure implicit in Chapter 36 are not "suspect" so as to require that they be justified by a compelling state interest nor does Chapter 36 abridge any fundamental right of self-government.

(b) Chapter 36 is valid as bearing a rational relationship to the State's interest in providing protection to non-Indian citizens living within a reservation while at the same time allowing scope for tribal self-government on trust or restricted lands, the land-tenure classification being neither an irrational nor arbitrary means of identifying those areas within a reservation in which tribal members have the greatest interest in being free of state police power.

552 F2d 1332, reversed.

Stewart, J., delivered the opinion of the Court, in which Burger, C.J., and White, Blackmun, Powell, Rehnquist, and Stevens, JJ., joined. Marshall, J., filed a dissenting opinion, in which Brennan, J., joined.

APPEARANCES OF COUNSEL

Slade Gorton argued the cause for appellants.

Louis F. Claiborne argued the cause for the United States, as amicus curiae, by special leave of court.

James B. Hovis argued the cause for appellees.

OPINION OF THE COURT

Mr. Justice Stewart delivered the opinion of the Court.

[1a, 2a, 3a] In this case we are called upon to resolve a dispute between the State of Washington and the Yakima Indian Nation over the validity of the States exercise of jurisdiction on the Yakima Reservation. In 1963 the Washington Legislature obligated the State to assume civil and criminal jurisdiction over Indians and Indian territory within the State, subject only to the condition that in all but eight subject-matter areas jurisdiction would not extend to Indians on trust or restricted lands without the request of the Indian tribe affected. Ch 36, 1963 Washington Laws.[1] The Yakima Nation did not make such a request.

The Yakima Nation brought this action in a federal district court challenging the statutory and constitutional validity of the States partial assertion of jurisdiction on its Reservation. The Tribe contended that the federal statute upon which the State based its authority to assume jurisdiction over the Reservation, Public 83-280,[2] imposed certain procedural requirements, with which the State had not complied—most notably, a requirement that Washington first amend its own constitution—and that in any event Pub L 280 did not authorize the State to assert only partial jurisdiction within an Indian Reservation. Finally, the Tribe contended that Chapter 36, even if authorized by Congress violated the Equal Protection and Due Process guarantees of the Fourteenth Amendment.

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[1] The statute, codified as RCWS 37.12.010, provides:

"Assumption of criminal and civil jurisdiction by state

"Assumption of criminal and civil jurisdiction by state. The State of Washington hereby obligates and binds itself to assume criminal and civil jurisdiction over Indians and Indian territory, reservations, country, and lands within this state in accordance with the consent of the United States given by the act of August 15, 1953 (Public Law 280, 83rd Congress, 1st Session), but such assumption of jurisdiction shall not apply to Indians when on their tribal lands or allotted lands within an established Indian reservation and held in trust by the United States or subject to a restriction against alienation imposed by he United States, unless the provisions of RCW 37.12.021 (tribal consent) have been involved, except for the following:

"(1) Compulsory school attendance;
"(2) Public assistance;
"(3) Domestic relations;
"(4) Mental illness;
"(5) Juvenile delinquency;
"(6) Adoption proceedings;
"(7) Dependent children; and
"(8) Operation of motor vehicles upon the public streets, alleys, roads and highways:

Provided further, That Indian tribes that petitioned for, were granted and became subject to state jurisdiction pursuant to this chapter on or before March 13, 1963 shall remain subject to state civil and criminal jurisdiction as if chapter 36, Laws of 1963 had not been enacted."

The statute will be referred to in this opinion as Chapter 36.

[2] Act of Aug. 15, 1953, ch 505, 67 Stat 588–590. For the full text of the Act, see n 9, infra.

The District Court rejected both the statutory and constitutional claims and entered judgment for the State.[3] On appeal, the contention that Washington's assumption of only partial jurisdiction was not authorized by Congress was rejected by the Court of Appeals for the Ninth Circuit, sitting en banc. The en banc court then referred the caseto the original panel for consideration of the remaining issues. Confederated Bands and Tribes of the Yakima Indian Nation v. Washington, 550 F2d 443 (Yakima 1).[4] The three-judge panel, connning itself to consideration of the constitutional validity of Chapter 36, concluded that the "checkerboard" jurisdictional system it produced was without any rational foundation and thereby violative of the Equal Protection Clause of the Fourteenth Amendment. Finding no basis upon which to sever the offending portion of the legislation, the appellate court declared Chapter 36 unconstitutional in its entirety, and reversed the judgment of the District Court. Confederated Bands and Tribes of the Yakima Indian Nation v. Washington, 552 F2d 1332 (Yakima II).

[4a] The State then brought an appeal to this Court. In noting probable jurisdiction of the appeal, we requested the parties to address the issue whether the partial geographic and subject-matter jurisdiction ordained by Chapter 36 is authorized by federal law, as well as the Equal Protection Clause issue. 435 US 903, 55 L Ed 2d 493, 98 S Ct 1447.[5]

I

The Confederated Bands and Tribes of the Yakima Indian Nation comprise 14 originally distinct Indian tribes that joined together in the middle of the 19th century for purposes of their relationships with the United States. A treaty was signed with the United States in 1855, under which it was agreed that the

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[3] The complaint also contained other claims that were decided adversely to the plaintiff by the District Court. After extensive discovery and the entry of a pretrial order, the District Court granted partial summary judgment in favor of the State on several of these claims. On the question of compliance with Pub L 280, the District Court held that it was bound by the decision of the Court of Appeals for the Ninth Circuit in *Quinault* v. *Gallagher*, 368 F2d 648, 655–658 (1966), which had determined that the State of Washington could accept jurisdiction under Pub L 280 without first amending its constitution and that Washington's jurisdictional arrangement did not constitute an unauthorized partial assumption of jurisdiction. The District Court also rejected the claim that Chapter 36 was facially invalid under the Equal Protection and Due Process Clauses of the Fourteenth Amendment. The question of the constitutional validity of Chapter 36 as applied to the Yakima Reservation was reserved for a hearing and factual determination. After a one-week trial, the District Court found that the appellee had not proved "that the state or county have discriminated . . . to deprive any Indian or the plainiff Tribe of any service or protection, resource or asset afforded under the same state law to other citizens or similar panel had heard argument. This hearing was limited to the question whether that Court's geographic location." The complaint was then dismissed.

The opinion of the District Court is unreported.

[4] The en banc hearing was ordered by the Court of Appeals sua sponte after the original earlier partial jurisdiction holding in *Quinnalt* v. *Gallagher*, *supra*, n. 3, should be overruled. A majority of the en banc panel agreed with the result in *Quinault*, finding no statutory impediment to the assumption of partial geographic and subject-matter jurisdiction, 550 F2d 443, 448. Four judges dissented. Id., at 449.

[5] The three-judge appellate court's equal protection decision was based upon the disparity created by Chapter 36 in making criminal jurisdiction over Indians depend upon whether the alleged offense occurred on fee or nonfee land. 552 F2d 1332. 1334–1335. The court found this criterion for the exercise of state criminal jurisdiction facially unconstitutional. The appellate court found it unnecessary, therefore, to reach the Tribe's contention that the eight statutory categories of subject-matter jurisdiction are vague or its further contention that the *application* of Chapter 36 deprived it of equal protection of the laws. 550 F2d, at 1334.

[4b] In its Motion to Affirm, filed here in response to the appellants' jurisdictional Statement, the Yakima Nation invoked in support of the judgment "each and every one" of the contentions it had made in the District Court and Court of Appeals, but limited its discussion to the equal protection rationale relied upon by the appellate court. In its brief on the merits the Tribe has addressed—in addition to those subjects implicit in our order noting probable jurisdiction, see n 20, infra, one issue that merits brief discussion. The Tribe contends that Chapter 36 is void for failure to meet the standards of definiteness required by the Due Process Clause of the Fourteenth Amendment, asserting that the eight subject-matter categories over which the State has extended full jurisdiction are too vague to give tribal members adequate notice of what conduct is punishable under state law. This challenge is without merit. As the District Court observed, Chapter 36 creates no new criminal offenses but merely extends jurisdiction over certain classes of offenses defined elsewhere in state law. If those offenses are not sufficiently defined individual tribal members may defend against any prosecutions under them at the time such prosecutions are brought. See *Younger* v. *Harris*, 401 US 37, 27 L Ed 2d 669, 91 S Ct 746. The eight subject-matter areas are themselves defined with reasonable clarity in language no less precise than that commonly accepted in federal jurisdictional statutes in the same field. See *United States* v. *Mazurie*, 419 US 544, 42 L Ed 2d 706, 95 S Ct. 710. The District Court's ruling that Chapter 36 is not void for vagueness under the Due Process Clause of the Fourteenth Amendent was therefore correct.

various tribes would be considered "one nation" and that specified lands located in the Territory of Washington would be set aside for their exclusive use. The treaty was ratified by Congress in 1859. 12 Stat 951. Since that time, the Yakima Nation has without interruption maintained its tribal identity.

The Yakima Reservation is located in the southeastern part of the State of Washington and now consists of approximately 1,387,505 acres of land, of which some 80% is held in trust by the United States for the Yakima Nation or individual members of the Tribe. The remaining parcels of land are held in fee by Indian and non-Indian owners. Much of the trust acreage on the Reservation is forest. The Tribe receives the bulk of its income from timber, and over half of the Reservation is closed to permanent settlement in order to protect the forest area. The remaining lands are primarily agricultural. There are three incorporated towns on the Reservation, the largest being Toppenish, with a population of under 6,000.

The land held in fee is scattered throughout the Reservation, but most of it is concentrated in the northeastern portion close to the Yakima River and within the three towns of Toppenish, Wapato, and Harrah. Of the 25,000 permanent residents of the Reservation, 3,074 are members of the Yakima Nation, and tribal members live in all of the inhabited areas of the Reservation.[6] In the three towns—where over half of the non-Indian population resides—members of the Tribe are substantially outnumbered by non-Indian residents occupying fee land.

Before the enactment of the state law here in issue, the Yakima Nation was subject to the general jurisdictional principles that apply in Indian country in the absence of federal legislation to the contrary. Under those principles, which received their first and fullest expression in Worcester v Georgia, 6 Pet 515, 517, 8 L Ed 483, state law reaches within the exterior boundaries of an Indian reservation only if it would not infringe "on the right of reservation Indians to make their own laws and be ruled by them." Williams v. Lee, 358 US 217, 219–220, 3 L Ed 2d 251, 79 S Ct 269.[7] As a practical matter, this has meant that criminal offenses by or against Indians have been subject only to federal or tribal laws. Moe v. Salish & Kootenai Tribes, 425 US 463, 48 L Ed 2d 96, 96 S Ct 1634 (1976), except where Congress in the exercise of its plenary and exclusive power over Indian affairs has "expressly provided that State laws shall apply." McClanahan v. Arizona State Tax Comm'n, 411 US 164, 170–171, 36 L Ed 2d 129, 93 S Ct 1257.

Pub L 280, upon which the State of Washington relied for its authority to assert jurisdiction over the Yakima Reservation under Chapter 36, was enacted by Congress in 1953 as part to deal with the "problem of lawlessness on certain Indian reservations, and the absence of adequate tribal institutions for law enforcement." Byran v Itasca County, 426 US 373, 379, 48 L Ed 2d 710, 96 S Ct 2102; HR Rep No. 848, 83d Cong. 1st Sess. 5–6 (1923). The basic terms of Pub L 280, which was the first federal jurisdictional statute of general applicability to Indian Reservation lands,[8] are well known.[9] To five States it affected an immediate cession of criminal and civil jurisdiction over Indian country, with an

[6] These are the membership figures given by the District Court. The United States, in its amicus curiae brief, has indicated that more than 5,000 tribal members live permanently on the Reservation and that the number increases during the summer months.

[7] These abstract principles do not and could not adequately describe the complex jurisdictional rules that have developed over the years in cases involving jurisdictional clashes between the States and tribal Indians since Worchester v Georgia was decided. For a full treatment of the subject, see generally M. Price, Law and the American Indian (1973); U.S. Dept. Int., Federal Indian Law (1958).

[8] See M. Price, supra, n. 7, at 210. Before 1953, there had been other surrenders of authority to some States. See, e.g., 62 Stat. 1224, 26 USC § 232 (New York) [26 USCS § 232], 64 Stat 845, 25 USC § 233 (New York 1950) [25 USC § 233]; Act of June 8, 1940, ch. 276, 54 Stat 249 (Kansas); Act of May 31, 1946, ch 279, 60 Stat 229 (North Dakota); and Act of June 30, 1948, ch 759, 62 Stat 1161 (Iowa). Pub L 280, however, was the first federal statute to attempt an omnibus transfer.

[9] The Act provides in full:

"AN ACT To confer jurisdiction on the States of California, Minnesota, Nebraska, Oregon, and Wisconsin, with respect to criminal offenses and civil causes of action committed or arising on Indian reservations within such States, and for other purposes.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That chapter 53 of title 18, United States Code, is hereby amended by inserting at the end of the chapter analysis preceding section 1151 of such title the following new item:

"'1162. State jurisdiction over offenses committed by or against Indians in the Indian country.'

"SEC. 2. Title 18, United States Code, is hereby amended by inserting in chapter 53 thereof immediately after section 1161 a new section, to be designated as section 1162, as follows:

"§ 1162. State jurisdiction over offenses committed by or against Indians in the Indian country

"(a) Each of the States listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over offenses committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country as they have elsewhere within the State:

"State of	*Indian country affected*
California	All Indian country within the State.
Minnesota	All Indian country within the State, except the Red Lake Reservation.
Nebraska	All Indian country within the State.
Oregon	All Indian country within the State, except the Warm Springs Reservation.
Wisconsin	All Indian conutry within the State, except the Menominee Reservation.

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with espect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

"(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section."

"SEC. 3. Chapter 85 of title 23, United States Code, is hereby amended by inserting at the end of the chapter analysis preceding section 1331 of such title the following new item:

1360. State civil jurisdiction in actions to which Indians are parties.'

"SEC. 4. Title 28, United States Code, is hereby amended by inserting in chapter 85 thereof immediately after section 1359 a new section, to be designated as section 1360, as follows:

"§ 1360. State civil jurisdiction in actions to which Indians are parties

"(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

"State of	*Indian country affected*
California	All Indian country within the State.
Minnesota	All Indian country within the State, except the Red Lake Reservation.
Nebraska	All Indian country within the State.
Oregon	All Indian country within the State, except the Warm Springs Reservation.
Wisconsin	All Indian conutry within the State, except the Menominee Reservation.

"'(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possess on of such property or any interest therein.

"'(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.'

"SEC. 5. Section 1 of the Act of October 5, 1949 (63 Stat 705, ch 604), is hereby repealed, but such repeal shall not affect any proceedings heretofore instituted under that section.

"SEC. 6. Notwithstanding the provisions of any Enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil and criminal jurisdiction in accordance with the provisions of this Act: *Provided*, That the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes as the case may be.

"SEC. 7. The consent of the United States is hereby given to any other State not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this Act, to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof."

express exception for the reservations of three tribes. Pub L 280, §§ 2 and 4.[10] To the remaining States it gave an option to assume jurisdiction over criminal offenses and civil causes of action in Indian country without consulting with or securing the consent of the tribes that would be affected. States whose constitutions or statutes contained organic law disclaimers of jurisdiction over Indian country were dealt with in § 6.[11] The people of those States were given permission to amend "where necessary" their state constitutions or existing statutes to remove any legal impediment to the assumption of jurisdiction under the Act. Pub L 280, § 6. All others were covered in § 7.[12]

The Washington Constitution contains a disclaimer of authority over Indian country,[13] and the State is, therefore, one of those covered by § 6 of Pub L 280. The State did not take any action under the purported authority of Pub L 280 until 1957. In that year its legislature enacted a statute which obligated the State to assume criminal and civil jurisdiction over any Indian reservation within the State at the request of the tribe affected.[14] Under this legislation state jurisdiction was requested by and extended to several Indian tribes within the State.[15]

In one of the first prosecutions brought under the 1957 jurisdictional scheme, an Indian defendant whose tribe had consented to the extension of jurisdiction challenged its validity on the ground that the disclaimer clause in the state constitution had not been amended in the manner allegedly required by § 6 of Pub L 280. State v Paul, 53 W2d 789, 337 P2d 35 (1959). The Washington Supreme Court rejected the argument, construing the state constitutional provision to mean that the barrier posed by the disclaimer could be lifted by the state legislature.[16]

In 1963, Washington enacted Chapter 36, the law at issue in this litigation.[17] The most significant feature of the new statute was its provision for the extension of at least some jurisdiction over all Indian lands within the State, whether or not the affected tribe gave its consent. Full criminal and civil jurisdiction to the extent permitted by Pub L 280 was extended to all fee lands in every Indian reservation and to trust and allotted lands therein when non-Indians were involved. Except for eight categories of law, however, state jurisdiction was not extended to Indians on allotted and trust lands unless the affected tribe so requested. The eight jurisdictional categories of state law that were thus extended to all parts of every Indian reservation were in the areas of compulsory school attendance, public assistance, domestic relations, mental illness, juvenile delinquency, adoption proceedings, dependent children, and motor vehicles.[18]

The Yakima Indian Nation did not request the full measure of jurisdiction made possible by Chapter 36, and the Yakima Reservation thus became subject to the system of jurisdiction outlined at the outset of this opinion.[19] This litigation followed.

II

[5a–8a] The Yakima Nation relies on three separate and independent grounds in asserting that Chapter 36 is invalid. First, it argues that under the terms of Pub. L. 280 Washington was not authorized to enact Chapter 36 until the state

[10] See n 9, supra. The five States given immediate jurisdiction were California, Minnesota, Nebraska, Oregon, and Wisconsin. Alaska was added to this group in 1958. Act of Aug. 8, 1958, Pub L No. 85–615, 72 Stat 545 (1958), codified at 18 USC § 1162 (1976) [18 USCS § 1162]. 28 USC § 1360 (1976) [28 USCS § 1360].

[11] See n 9, supra.

[12] See n 9, supra.

[13] Wash Const, Art XXVI, ¶ 2.

[14] RCW ch 37.12.

[15] For a detailed discussion of the Washington history under Pub L 280, see 1 National American Indian Court Judges Ass'n: The Impact of Public Law 280 upon the Administration of Criminal Justice on Indian Reservations (1974) (hereinafter 1 Indian Court Judges).

[16] The Washington Supreme Court relied upon a previous decision in which it had rejected a challenge to Washington legislation permiting taxation of property leased from the Federal Government. Boeing Aircraft v. Reconstruction Finance Corp., 25 W2d 652, 171 P 2d 838 (1932). The Boeing legislation was challenged on the ground that the State had failed to remove by amendment a constitutional disclaimer of authority to tax federal property, and the Washington Court held in Boeing that legislative action was sufficient.

[17] See n 1, supra.

[18] See n 1 and n 5, supra.

[19] Those tribes that had consented to state jurisdiction under the 1957 law remained fully subject to such jurisdiction. RCW 37.12.010 (1976). Since 1963 only one tribe, the Colville, has requested the extension of full state jurisdiction. 1 Indian Court Judges, supra, n 15, at 77–81. The Yakima Nation, ever since 1952 when its representatives objected before a congressional committee to a predecessor of Pub L 280, see n 33, infra, has consistently contested the wisdom and the legality of attempts by the State to exercise jurisdiction over its Reservation lands. See ibid.

constitution had been amended by "the people" so as to eliminate its Art XXVI which disclaimed state authority over Indian lands.[20] Second, it contends that Pub. L. 280 does not authorize a State to extend only partial jurisdiction over an Indian reservation. Finally, it asserts that Chapter 36, even if authorized by Pub. L. 280, violates the Fourteenth Amendment of the Constitution. We turn now to consideration of each of these arguments.

III

[1b, 9a–12a] We first address the contention that Washington was required to amend its constitution before it could validly legislate under the authority of Pub. L. 280. If the Tribe is correct, we need not consider the stautory and constitutional questions raised by the system of partial jurisdiction established in Chapter 36. The Tribe, supported by the United States as amicus curiae,[21] argues that a requirement for popular amendatory action is to be found in the express terms of § 6 of Pub. L. 280 or, if not there, in the terms of the Enabling Act that admitted Washington to the Union.[22] The argument can best be understood in the context of the specific statutory provisions involved.

[20] [5b, 6b] Washington strenuously argues that this question is not properly before the Court. We think that it is. The Yakima Indian Nation has pressed this issue throughout the litigation. In its motion to Dismiss or Affirm, the alleged invalidity of Washington's legislative assumption of jurisdiction was presented as a basis upon which the judgment below should be sustained. See n 5, supra. As the prevailing part, the appellee was of course free to defend its judgment on any ground properly raised below whether or not that ground was relied upon, rejected, or even considered by the District Court or the Court of Appeals. *United States* v. *American Ry. Exp. Co.* 265 US 425, 435–436, 68 L Ed 1087, 44 S Ct 560; *Dandridge* v. *Williams*, 397 US 471, 475 and n 6, 25 L Ed 2d 491, 90 S. Ct 1153. Moreover, the disclaimer issue was implicit in the subjects the parties were requested to address in our order noting probable jurisdiction of this appeal. 435 US 903, 55 L Ed 2d 493, 98 S Ct 1447. Cf. *Gent* v. *Arkansas*, 384 US 937, 16 L Ed 2d 537, 86 S Ct 1454; *Zicarelli* v. *New Jersey State Commission*, 401 US 933, 28 L Ed 2d 213, 91 S Ct 916.

[7b, 8b] Washington also contends that this Court's summary dismissals in Mikah *Indian Tribe* v. *Washington*, 76 Wash 2d 485, 457 P2d 590 (1969), appeal dismissed, 397 US 316, 25 L Ed 2d 335, 90 S Ct 1115; *Tonasket* v. *Washington*, 84 Wash 2d 164, 525 P2d 744 (1974), appeal dismissed, 420 US 915, 43 L Ed 2d 387, 95 S Ct 1108; and *Comenout* v. *Burdman*, 84 Wash 2d 192, 525 P2d 217, appeal dismissed, 420 US 915, 43 L Ed 2d 387, 95 S Ct 1108, should preclude reconsideration of the disclaimer issue here. In those cases, it had been argued that Washington's statutory assumption of jurisdiction was ineffective under Pub L 280 and invalid under the state constitution because of the absence of a constitutional amendment eliminating Chapter XXVI. In each case, the Washington Supreme Court rejected both the state constitutional and the federal arguments. On appeal from each, the appellants questioned the validity of the state court's conclusion that under the federal statute no constitutional amendment was required. Our summary dismissals are, of course, to be taken as rulings on the merits, *Hicks* v. *Miranda*, 422 US 332, 343–345, 45 L Ed 2d 223, 95 S Ct 2281, in the sense that they rejected the "specific challenges presented in the statements of jurisdiction" and left "undisturbed the judgment appealed from." Mandel v. Bradley, 432 US 173, 176, 53 L Ed 2d 199, 97 S Ct 2238. They do not, however, have the same precedential value here as does an opinion of this Court after briefing and oral argument on the merits, Edelman v Jordan, 415 US 651, 670–671, 39 L Ed 2d 662, 94 S Ct 1347; Richardson v Ramirez, 418 US 24, 53, 41 L Ed 2d 551, 94 S Ct 2655, 72 Ohio Ops 2d 232. A summary dismissal of an appeal represents no more than a view that the judgment appealed from was correct as to those federal questions raised and necessary to the decision. It does not, as we have continued to stress, see, e.g., Mandel v Bradley, supra, necessarily reflect our agreement with the opinion of the Court whose judgment is appealed. It is not at all unusual for the Court to find it appropriate to give full consideration to a question that has been the subject of previous summary action. Massachusetts Bd. of Retirement v Murgia, 427 US 307, 309 n 1, 49 L Ed 2d 520, 96 S Ct 2562; Usery v Turner Elkhorn Mining Co 428 US 1, 14, 49 L Ed 2d 752, 96 S Ct 2882. We do so in this case. The question that Washington asks us to avoid or to resolve on the basis of stare decisis has never received full plenary attention here. It has been the subject of extensive briefing and argument by the parties. It has provoked several, somewhat uncertain, opinions from the Washington courts, see n 27, infra, whose ultimate judgments were the subjects of summary dismissals here. Finally, it is an issue upon which the Executive Branch of the United States Government has recently changed its position diametrically, as explained in its amicus brief and oral argument in this case.

[21] The United States has fully briefed the constitutional amendment question and the question whether partial jurisdiction is authorized by Pub L 280. Its position on the equal protection holding of the Court of Appeals is equivocal.

[22] [11b, 12b] The Tribe also contends that under its 1855 Treaty with the United States, 12 Stat 951, it was guaranteed a right of self-government that was not expressly abrogated by Pub L 280. The argument assumes that under our cases, see, e.g., Menominee Tribe v United States, 391 US 404, 20 L Ed 2d 697, 88 S Ct 1705, treaty rights are preserved unless Congress has shown a specific intent to abrogate them. Although we have stated that the intention to abrogate or modify a treaty is not to be lightly imputed, Menominee Tribe v United States, supra, at 413, 20 L Ed 697, 88 S Ct 1705; Pigeon River Co. v Cox Co, 291 US 138, 160, 78 L Ed 695, 54 S Ct 361, this rule of construction must be applied sensibly. In this context, the argument made by the Tribe is tendentious. The treaty right asserted by the Tribe is jurisdictional. So also is the entire subject-matter of Pub L 280. To accept the Tribe's position would be to hold that Congress could not pass a jurisdictional law of general applicability to Indian country unless in so doing it itemized all potentially conflicting treaty rights that it wished to affect. This we decline to do. The intent to abrogate inconsistent treaty right is clear enough from the express terms of Pub L 280.

A

The Enabling Act under which Washington, along with the States of Montana, North Dakota, and South Dakota, gained entry into the Union, was passed in 1889.[23] Section 4 of that Act required the constitutional conventions of the prospective new States to enact provisions by which the people disclaimed title to lands owned by Indians or Indian tribes and acknowledged that those lands were to remain "under the absolute jurisdiction and control of" Congress until the Indian or United States title had been extinguished. Id., ch 180. The disclaimers were to be made "by ordinances irrevocable without the consent of the United States and the people of the States." Ibid. Washington's constitutional convention enacted the disclaimer of authority over Indian lands as part of Art XXVI of the state constitution.[24] That Article, captioned "Compact with the United States," is prefaced with the statement—precisely tracking the language of the admitting statute—that "the following ordinance shall be irrevocable without the consent of the United States and the people of the State of Washington." Its substantive terms mirror the language used in the enabling legislation.

We have already noted that two distinct provisions of Pub L 280 are potentially applicable to States not granted an immediate cession of jurisdiction. The first, § 6, without question applies to Washington and the seven other States admitted into the Union under enabling legislation requiring organic law disclaimers similar to that just described. This much is clear from the legislative

[23] Act of Feb. 22, 1889, ch 180, S 4, 25 Stat 676. The Act provides:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress* assembled That the inhabitants of all that part of the area of the United States now constituting the Territories of Dakota, Montana, and Washington, as at present described, may become the States of North Dakota, South Dakota, Montana, and Washington, respectively, as hereinafter provided.

* * * * * * * * *

"SEC. 4. That the delegates to the conventions elected as provided for in this act shall meet at the seat of governments of each of said Territories . . . after organization, shall declare, on behalf of the people of said proposed States, that they adopt the Constitution of the United States; whereupon the said conventions shall be, and are hereby, authorized to form constitutions and States governments for said proposed States, respectively. The constitutions shall be republican in form, and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence. And said conventions shall provide, by ordinances irrevocable without the consent of the United States and the people of said States:

* * * * * * * * *

"Second. That the people inhibiting said proposed States do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States: . . ."

Other admitting Acts requiring a disclaimer of authority over Indian lands are Act of July 16, 1894, ch 138, 28 Stat 107 (Utah); Act of June 16, 1906, ch 3335, 34 Stat 267 (Oklahoma); Act of June 20, 1910, ch 310, 36 Stat 557 (Arizona and New Mexico). The language of these Acts is virtually the same as that of 25 Stat 676.

[24] Wash Const Art XXVI, n 2. Art XXVI reads as follows:

"COMPACT WITH THE UNITED STATES

"The following ordinance shall be irrevocable without the consent of the United States and the people of this state:—

"Second. That the people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries of this state, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United Staes, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States and that the lands belonging to citizens of the United States residing without the limits of this state shall never be taxed at a higher rate than the land belonging to residents thereof; and that no taxes shall be imposed by the state on lands or property therein, belonging to or which may be hereafter purchased by the United States or reserved for use: Provided, That nothing in this ordinance shall preclude the state from taxing as other lands are taxed any lands owned or held by an Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of congress containing a provision exempting the lands thus granted from taxation, which exception shall continue so long and to such an extent as such act of congress may prescribe."

history of Pub L 280.[25] as well as from the express language of § 6. That section provides

> "Notwithstanding the provisions of any Enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or exising statutes, as the case may be, to remove any legal impediment to the assumption of civil and criminal jurisdiction in accordance with the provisions of this Act: *Provided*, That the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes as the case may be."

All other States were covered by § 7. In that section Congress gave the consent of the United States

> "to any other State . . . to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to the assumption thereof."

These provisions appear to establish different modes of procedure by which an option State, depending on which section applies to it, is to accept the Pub L 280 jurisdictional offer. The procedure specified in § 7 is straightforward: affirmative legislative action by which the State obligates and binds itself to assume jurisdiction. Section 6, in contrast, is delphic. The only procedure mentioned is action by the people "to amend their constitutions or statutes, as the case may be" to remove any legal impediments to the assumption of jurisdiction. The phrase "where necessary" in the main clause suggests that a requirement for popular—as opposed to legislative—action must be found if at all in some source of law independent of Pub L 280. The proviso, however, has a different import.

B

The proper construction to be given to the single inartful sentence in § 6 has provoked chapters of argument from the parties. The Tribe and the United States urge that notwithstanding the phrase, "where necessary," § 6 should be construed to mandate constitutional amendment by disclaimer States. It is their position that § 6 operates not only to grant the consent of the United States to state action inconsistent with the terms of the enabling legislation but also to establish a distinct procedure to be followed by Enabling Act States. To support their position, they rely on the language of the proviso and upon certain legislative history of § 6.[26]

In the alternative, the Tribe and the United States argue that popular amendatory action, if not compelled by the terms of § 6, is mandated by the terms of the Enabling Act of Feb. 22, 1889, ch 180, § 4. Although they acknowledge that Congress in § 6 did grant the "consent of the United States" required under the Enabling Act before the State could remove the disclaimer, they contend that § 6 did not eliminate the need for the "consent of the people" specified in the Enabling Act. In their view, the 1889 Act—if not Pub L 280—dictates that constitutional amendment is the only valid procedure by which that consent can be given.

The State draws an entirely different message from § 6. It contends that the section must be construed in light of the overall congressional purpose to facilitate a transfer of jurisdiction to those option States willing to accept the responsibility. Section 6 was designed, it says, not to establish but to remove legal barriers to state action under the authority of Pub L 280. The phrase "where necessary" in its view is consistent with this purpose. It would construe the word "appropriately" in the proviso to be synonymous with "where necessary" and the entire section to mean that constitutional amendment is required only if "necessary" as a matter of state law. The Washington Supreme Court having found that legislative action is sufficient to grant the "consent of the

[25] See HR Rep No. 848, 83d Cong., 1st Sess (1953). According to this report accompanying HR 1053 (the House version of Pub L 280) "examination of the Federal statutes and State constitutions has revealed that the enabling acts for eight States, and in consequence the constitutions of those States, contain express disclaimers of jurisdiction. Included are Arizona, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Utah, and Washington." Id., at 6.

[26] See n 35, infra, and accompanying text.

people" to removal of the disclaimer in Art XXVI of the state constitution [27] the State argues that the procedural requirements of § 6 have been fully satisfied. It finds the Enabling Act irrelevant since in its view § 6 effectively repealed any federal law impediments in that Act to state assertion of jurisdiction under Pub L 280.[28]

C

[13, 14] From our review of the statutory, legislative, and historical materials cited by the parties, we are persuaded that Washington's assumption of jurisdiction by legislative action fully complies with the requirements of § 6. Although we adhere to the principle that the procedural requirements of Pub L 280 must be strictly followed, Kennerly v District Court, 400 US 423, 427, 27 L Ed 2d 507, 91 S Ct 480; McClanahan v State Tax Comm'n, 411 US 164, 180, 36 L Ed 2d 129, 93 S Ct 1257, and to the general rule that ambiguities in legislation affecting retained tribal sovereignty are to be construed in favor of the Indians, see, e.g., Bryan v Itasca Cty. 426 US 373, 392, 48 L Ed 2d 710, 96 S Ct 2102, those principles will not stretch so far as to permit us to find a federal requirement affecting the manner in which the States are to modify their organic legislation on the basis of materials that are essentially speculative. Cf. Bd. of Cty. Comm'rs v United States, 308 US 343, 350–351, 84 L Ed 313, 60 S Ct 285. The language of § 6, its legislative history, and its role in Pub L 280 all clearly point the other way.

We turn first to the language of § 6. The main clause is framed in permissive, not manadatory terms. Had the drafters intended by that clause to require popular amendatory action, it is unlikely that they would have included the words "where necessary." As written, the clause suggests that the substantive, requirement for constitutional amendment must be found in some source of law independent of § 6. The basic question, then, is whether that requirement can be found in the language of the proviso to § 6 or alternatively in the terms of the Enabling Act.

We are unable to find the procedural mandate missing from the main clause of § 6 in the language of the proviso. That language in the abstract could be read to suggest that constitutional amendment is a condition precedent to a valid assumption of jurisdiction by disclaimer States. When examined in its context, however, it cannot fairly be read to impose such a condition. Two considerations prevent this reading. First, it is doubtful that Congress—in order to compel disclaimer States to amend their constitutions by popular vote—would have done so in a provision the first clause of which consents to that procedure "where necessary" and the proviso to which indicates that the procedure is to be followed if "appropriate." Second, the reference to popular amendatory action in the proviso is not framed as a description of the procedure the States must follow to assume jurisdiction, but instead is written as a condition to the effectiveness of "the provisions of" Pub L 280. When it is recalled that the only substantive provisions of the Act—other than those arguably to be found in § 7—accomplish an immediate transfer of jurisdiction to specifically named States, it seems most likely that the proviso was included to ensure that § 6 would not be construed to effect an immediate transfer to the disclaimer group of option States. The main clause removes a federal law barrier to any new state jurisdiction over Indian country. The proviso suggests that disclaimer States are not automatically to

[27] The validity of Chapter 36 was first challenged in the federal courts in Quinault Tribe of Indians v. Gallagher, 368 F2d 648 (CA9 1966). In Quinault, the Court of Appeals for the Ninth Circuit held that under § 6 and the Enabling Act the consent of the people to removal of the disclaimer need only be made in some manner "valid and binding under state law." Id., at 657. Replying on the Washington Supreme Court's holding in State v. Paul, 53 W2d 789, 337 P 35 (1959), that legislative action would suffice, it concluded that Washington's assumption of jurisdiction was valid. When Chapter 36 was first challenged in the state courts, the Washington Supreme Court reaffirmed its holding in State v. Paul. See Makah Indian Tribe v State, 76 W2d 485, 457 P2d 590 (1969); Tonasket v State, 84 W2d 164, 525 P2d 217 (1974). See also n 16, supra. In Makah, the Court reasoned, as it had in Paul that the makers of the Washington Constitution intended that for purposes of Art XXVI "the people would speak through the mouth of the legislature." 76 W2d, at 490. In addition, it relied on Quinault for the proposition that under § 6 the constitutional disclaimer need be removed only by a method binding under state law. In Tonasket, the Washington court reaffirmed this reasoning. It also relied on the alternate ground that the disclaimer in Art XXVI could be construed not to preclude "criminal and civil regulation" on Indian lands and therefore would not stand as a barrier to state jurisdiction. 84 W2d, at 177.

[28] The State asserts as well that the Washington constitutional disclaimer does not pose any substantive barrier to state assumption of jurisdiction over fee and unrestricted lands within the reservation. In light of our holding that Washington has satisfied the procedural requirements for repealing the disclaimer, we need not consider the scope of this state constitutional provision.

receive jurisdiction by virtue of that removal. Without the proviso, in the event that state constitutional amendment were not found "necessary," [29] § 6 could be construed as effecting an immediate cession. Congress clearly wanted all the option States to "obligate and bind" themselves to assume the jurisdiction offered in Pub L 280.[30] To be sure, constitutional amendment was referred to as the process by which this might be accomplished in disclaimer States. But, given the distinction that Congress clearly drew between those States and automatic transfer States, this reference can hardly be construed to require that process.

Before turning to the legislative history, which, as we shall see, accords with this interpretation of § 6, we address the argument that popular amendatory action, if not a requirement of Pub L 280, is mandated by the legislation admitting Washington to the Union. This argument requires that two assumptions be made. The first is that § 6 eliminated some but preserved other Enabling Act barriers to a State's assertion of jurisdiction over Indian country. The second is that the phrase "where necessary" in the main clause of § 6 was intended to refer to those federal law barriers that had been preserved. Only if each of these premises is accepted does the Enabling Act have any possible application.

Since we find the first premise impossible to accept, we proceed no further. Admitting legislation is, to be sure, the only source of law mentioned in the main clause of § 6 and might therefore be looked to as a referent for the phrase "where necessary" in the clause. This reading, however, is not tenable. It supplies no satisfactory answer to the question why Congress—in order to give the consent of the United States to the removal of state organic law disclaimers—would not also have by necessary implication consented to the removal of any procedural constraints on the States imposed by the Enabling Acts. The phrase "notwithstanding the terms of any Enabling Act" in § 6 is broad—broad enough to suggest that Congress when it referred to a possible necessity for state constitutional amendment did not intend thereby to perpetuate any such requirement in an Enabling Act. Even assuming that the phrase "consent of the people" in the Enabling Act must be construed to preclude consent by legislative action—and the Tribe and the United States have offered no concrete authority to support this restrictive reading of the phrase—[31] we think it obvious that in the "notwithstanding" clause of § 6 Congress meant to remove any federal impediments to state jurisdiction that may have been created by an Enabling Act.

[29] Disclaimer States have responded in diverse ways to the Pub L 280 offer of jurisdiction. See Goldberg, Pub L 280: The Limits of State Jurisdiction over Reservation Indians, 22 UCLA L Rev 535, 546–548, 567–575. Only one—North Dakota—has amended its constitution. Art 16, ND Const, amended by Art 68, June 24, 1958 (SL 1957, ch 403; 1959, ch 430).

[30] In Kennerly v. District Court, 400 US 423, 27 L Ed 2d 507, 91 S Ct 480, we emphasized the need for the responsible jurisdictions to "manifest by political action [their] willingness and ability to discharge their new responsibilities." Id., at 427, 27 L Ed 2d 507, 91 S Ct 480. Kennerly involved an attempt by the state courts of Montana to assert civil jurisdiction over a transaction that occurred within reservation boundaries. The tribe had requested state jurisdiction, but the State had not obligated itself to assume it. The case was litigated on the theory that § 7 was applicable. We held that the State must comply with the § 7 requirement of "affirmative legislative action." Ibid. Two of our other cases involving Pub L 280 also illustrate the need for responsible action under the federal statute. In Williams v Lee, 358 US 217, 3 L Ed 2d 251, 79 S Ct 269, we held that the State of Arizona—one of the disclaimer States—could not validly exercise jurisdiction over a civil action brought by a non-Indian against an Indian for a transaction that occurred on the Navaho Reservation. We relied on the traditional principle that a State may not infringe the right of reservation Indians "to make their own laws and be ruled by them" without an express authorization by Congress. Id., at 220, 3 L Ed 2d 251, 79 S Ct 269. In Williams, the State had not attempted to comply with § 6: the state court had taken jurisdiction without state statutory or constitutional authorization. A similar situation obtained in McClanahan v. State Tax Comm'n, 411 US 164, 36 L Ed 2d 129, 93 S Ct 1257. There we held that Arizona could not by simple legislative enactment tax income earned by a Navaho from reservation sources. The tax statute at issue was not framed as a measure obligating the State to assume responsibility under Pub L 280.

[31] There is, for example, nothing in the legislative history of the Enabling Act to indicate that the "consent of the people" could be given only by a process of constitutional amendment. The scant legislative record of the Enabling Act is devoted to a debate over the wisdom of splitting the Dakota territory into two States and of admitting both immediately to the Union. In none of these debates was there any extended discussion of the Indian land disclaimer or any indication that the "consent of the people" to removal of the disclaimer could not be given by the people's representatives in the legislature. See Adverse Reports of the House Committee on the Territories, May 1886 and Feb. 1888, annexed to HR Rep No. 1025, 50th Cong, 1st Sess, 19–25 (1888). See also, e.g., 19 Cong Rec 2804, 2883, 3001, 3117 (1888), 20 Cong Rec 801, 869 (1889). The only explicit references to the disclaimer of authority over Indian lands are found in HR Rep. No. 1025, supra, at 8–9 (calling attention to fact that by the terms of the bill large Indian Reservations in the Dakota Territory "remain within the exclusive control and jurisdiction of the United States) and in 19 Cong Rec 2832 (1888) (Oklahoma Delegate objecting to the disclaimer).

The legislative history of Pub L 280 supports the conclusion that § 6 did not of its own force establish a state constitutional amendment requirement and did not preserve any such requirement that might be found in an Enabling Act. Pub L 280 was the first jurisdictional bill of general applicability ever to be enacted by Congress. It reflected congressional concern over law and order problems on Indian reservations and the financial burdens of continued federal jurisdictional responsibilities on Indian lands. Byron v Itasca County, 426 US 373, 48 L Ed 2d 710, 96 S Ct 2102. It was also, however, without question reflective of the general assimilationist policy followed by Congress from the early 1950's through the late 1960's.[32] See HR Rep No. 848, 83d Cong, 1st Sess (1953). See also Hearings before the Subcommittee on Indian Affairs of the Interior & Insular Affairs Committee HR 459, HR 3235, and HR 3624, 82d Cong, 2d Sess (1952). The failure of Congress to write a tribal consent provision into the transfer provision applicable to option States as well as its failure to consult with the tribes during the final deliberations on Pub L 280 provide ample evidence of this.[33]

Indeed, the circumstances surrounding the passage of Pub L 280 in themselves fully bear out the State's general thesis that Pub L 280 was intended to facilitate, not to impede, the transfer of jurisdictional responsibility to the States. Pub L 280 originated in a series of individual bills introduced in the 83d Congress to transfer jurisdiction to the five willing States which eventually were covered in § § 1 and 4.[34] HR Rep No. 848, Cong, 1st Sess (1953). Those bills were consolidated into HR 1063, which was refered to the House Committee on Interior and Insular Affairs for consideration. Closed hearings on the bills were held before the Subcommittee on Indian Affairs on June 29 and before the Committee on July 15, 1953.[35] During the opening session on June 29, Committee Members,

[32] That policy was formally announced in HR Con Res. 108, 67 Stat. B132, approved on July 27, 1953, the same day that Pub L 280 was passed by the House. 90 Cong Rec. 9968, 83d Cong, 1st Sess (1953). As stated in HR Con Res 108, the policy of Congress was "as rapidly as possible, to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, to end their status as wards of the United States, and to grant them all of the rights and prerogatives pertaining to American citizenship . . ." This policy reflected a return to the philosophy of the General Allotment Act of 1887, ch 119, S 1, 24 Stat 388, as amended 25 USC § 331 (1970) [25 USCS § 331], popularly known as the Dawes Act, a philosophy which had been rejected with the passage of the Indian Organization Act of 1934, 48 Stat. 984.

In *Bryan* v. *Itasca County*, 426 US 373, 48 L Ed 2d 710, 96 S Ct 2102, the Court emphasized that Pub L 280 was not a termination measure and should not be construed as such. Our discussion here is not to the contrary. The parties agree that Pub L 280 reflected an assimilationist philosophy. That Congress intended to facilitate assimilation when it authorized a transfer of jurisdiction from the Federal Government to the States does not necessarily mean, however, that it intended in Pub L 280 to terminate tribal self-government. Indeed, the tribe has argued that even after the transfer tribal courts retain concurrent jurisdiction in areas in which they formerly shared jurisdiction with the Federal Government. This issue, however, is not within the scope of our order notng probable jurisdiction, see n 20, supra, and we do not decide it here.

[33] These features of Pub L 280 have attracted extensive criticism. See generally Goldberg, supra, n 29. Indeed, the experience of the Yakima Nation is in itself sufficient to demonstrate why the Act has provoked so much criticism. In 1952, in connection with the introduction of bills that proposed a general jurisdictional transfer, see Hearings before the Subcommittee on Indian Affairs of the Interior & Insular Affairs Committee on HR 459, HR 3235, and HR 3624, 82d Cong, 2d Sess (1952) (hereinafter 1952 Hearings), a representative of the Yakimas testified that the Tribe was opposed to the extension of state jurisdiction on the Yakima Reservation. He stated:

"The Yakima Indians . . . feel that in the State Courts they will not be treated as well as they are in the Federal courts, because they believe that many of the citizens of the State are still prejudiced against the Indians.

"They are now under the Federal laws and have their own tribal laws, customs, and regulations. This system is working well and the Yakima Tribe believes that it should be continued and not changed at this time." 1952 Hearings, at 84–85.

In 1953, when the Indian Affairs Subcommittee of the House Committee on Indian Affairs considered the final version of Pub L 280, the Committee was again aware that the Yakima Nation opposed state jurisdiction. The House Report accompanying HR 1063 contains a letter from the Department of the Interior listing the Tribe as among those opposed to "bring subjected to State jurisdiction" and having a "tribal law-and-order organization that functions in a reasonably satisfactory manner." HR 848, 82d Cong, 1st Sess. 7 (1953). Had Washington been included among the mandatory States, it is thus quite possible that the Yakima Reservation would have been excepted.

[34] Similar bills had been introduced in the 82d Congress, and in public hearings held on those the idea of a general transfer was discussed at length. See 1952 Hearings, supra, n 33.

[35] See Unpublished Transcript of Hearings on HR 1063 before the Subcommittee on Indian Affairs of the House Committee on Interior & Insular Affairs, 83d Cong., 1st Sess (June 29, 1953), and Unpublished Transcript of Hearings on HR 1063 before the House Committee on Interior and Insular Affairs 83d Cong., 1st Sess (July 15, 1953) (hereinafter cited as June 29 Hearings, and July 15 Hearings.) The transcripts of these hearings were first made available to this Court by the United States during the briefing of Tonas-

counsel, and representatives of the Department of the Interior discussed various proposals designed to give HR 1063 general applicability. June 29 Hearings 1–16. It rapidly became clear that the Members favored a general bill. Ibid. At this point, Committee counsel noted that several States "have constitutional prohibitions against jurisdiction." Id., at 17. There followed some discussion of the manner in which these States should be treated. On July 16, a version of § 6 was proposed. July 15 Hearings 23. After further discussion of the disclaimer problem, the "notwithstanding" clause was added, id., at 27, and the language eventually enacted as § 6 was approved by the Committee that day. The speed and the context alone suggest that § 6 was designed to remove an obstacle to state jurisdiction, not to create one. And the discussion at the hearings, which in essence were mark-up sessions, makes this clear.[36]

While some Committee members apparently thought that § 6 States, as a matter of state law, would have to amend their constitutions in order to remove the disclaimers found there,[37] there is no indication that the Committee intended to impose any such requirement.[38]

[9b, 10b] We conclude that § 6 of Public Law 280 does not require disclaimer States to amend their constitutions to make an effective acceptance of jurisdiction. We also conclude that any Enabling Act requirement of this nature was effectively repealed by § 6. If as a matter of state law a constitutional amendment is required, that procedure must—as a matter of state law—be followed. And if under state law as constitutional amendment is not required, disclaimer States must still take positive action before Public Law 280 jurisdiction can become effective. The Washington Supreme Court having determined that for purposes of the repeal of Art. XXVI of the Washington Constitution legislative action is sufficient,[39] and appropriate state legislation having been enacted, it

ket v Washington, 411 US 451, 36 L Ed 2d 385, 93 S Ct 1941. They were again supplied in Bryan v. Itasca County, 426 US 373, 48 L Ed 2d 710, 96 S Ct 2102, and for this appeal have been reproduced in full in the Apellee's Appendix. These hearings, along with the House Report on HR 1063 as amended, HR Rep No. 848, 83d Cong. 1st Sess (1953) and the Senate Report, which is virtually identical, S Rep No. 699, 83d Cong, 1st Sess (1953), constitute the primary legislative materials on Pub L 280.

[36] On July 15, Committee counsel presented an amendment which was eventually to become § 6. He explained the effect of the amendment as follows:

"[T]he legislation as acted upon by the committee would apply to only five states. The two additional section amendments would apply first to eight states having constitutional or organic law impediments and would grant the consent of the United States for them to remove such impediments and thus to acquire jurisdiction.

"The other amendment would apply to any other Indian states . . . who would acquire jurisdiction at such time as the legislative body affirmatively indicated their desire to so assume jurisdiction." July 15 Hearings, at 24. Immediately after the proposed § 6 was read to the subcommittee, the Chairman, Congressman D'Ewart, commented:

"I do not think we have to grant permission to a state to amend its own statutes. Id., at 25. Committee counsel replied:

"Mr. D'Ewart, I believe the reason for this is that in some instances it is spelled out both in the constitution and the statutory provisions as a result of the Act and it may be unnecessary, but by some state courts it may be interpreted as being necessary." Id., at 26.

The version of § 6 read to the Committee members by counsel contained no reference to the Enabling Acts but merely granted consent for the States to remove existing impediments to the assertion of jurisdiction over Indians. It was suggested that in order effectively to authorize the States to modify their organic legislation the clause should be more specific. This suggestion resulted in the proposal of the "notwithstanding" clause. The following exchange then took place:

"[Committee counsel]: I believe that the clause 'notwithstanding any provisions of the Enabling Act' for such states might well be included. It would make clear that Congress was repealing the Enabling Act.

"[Congressman Dawson]: To give permission to amend their constitutions.

"[Committee counsel]: I think that would help clarify the intent of the committee at the present time and of Congress if they favorably acted on the legislation." Id., at 27.

The next day, July 16, the Committee filed its report on the substitute bill. HR Rep. 848, 83d Cong, 1st Sess (1953). The report explains that §6 would

"give consent of the United States to those States presently having organic laws expressly disclaiming jurisdiction to acquire jurisdiction subsequent to enactment by amending or repealing such disclaimer laws."

The Committee hearings thus make clear an intention to remove any federal barriers to the assumption of jurisdiction by Enabling Act States. They also make clear that that consent was not to effect an immediate transfer of jurisdiction.

[37] See June 29 Hearings at 17; July 15 Hearings, at 24–28.

[38] The House passed the bill without debate on July 25, 1953. 98 Cong Rec 9962–9963 (1953). In the Senate, the bill was referred to the Committee on Interior and Insular Affairs. 99 Cong Rec 10065 (1953). That Committee held no hearings of its own, and it reported out the bill two days later without amendment. 99 Cong Rec 10217 (1953). The bill received only brief consideration on the Senate floor before it was passed on August 1, 1953. 99 Cong Rec 10783–10784 (1953).

[39] The Tribe has intimated that the Washington Supreme Court's holding is incorrect. However, the procedure by which the disclaimer might be removed or repealed—Congress having given its consent—is as we have held a question of state law.

follows that the State of Washington has satisfied the procedural requirements of § 6.

IV

[2b] We turn to the question whether the State was authorized under Public Law 280 to assume only partial subject-matter and geographic jurisdiction over Indian reservations within the State.[40]

The argument that Public Law 280 does not permit this scheme of partial jurisdiction relies primarily upon the text of the federal law. The main contention of the Tribe and the United States is that partial jurisdiction, because not specifically authorized, must therefore be forbidden. In addition, they assert that the interplay between the provision of Public Law 280 demonstrates that § 6 States are required, if they assume any jurisdiction, to assume as much jurisdiction as was transferred to the mandatory States.[41] Pointing out that 18 USC § 1151 [18 USCS § 1151] defines Indian country for purposes of federal jurisdiction as including an entire reservation notwithstanding "the issuance of any fee patent," they reason that when Congress in § 2 transferred to the mandatory States "criminal jurisdiction" over "offenses committed by or against Indians in Indian country," it meant that all parts of Indian country were to be covered. Similarly, they emphasize that civil jurisdiction of comparable scope was transferred to the mandatory States. They stress that in both §§ 2 and 4, the consequence of state assumption of jurisdiction is that the state "criminal laws" and "civil laws of general application" are henceforth to have the same force and effect within . . . Indian country as they have elsewhere in the State." Finally, the Tribe and the United States contend that the congressional purposes of eliminating the jurisdictional hiatus thought to exist on Indian reservations, of reducing the cost of the federal responsibility for jurisdiction on tribal lands, and of assimilating the Indian tribes into the general state population are disserved by the type of checkerboard arrangement permitted by Chapter 36.

[15] We agree, however, with the State of Washington that statutory authorization for the state jurisdictional arrangement is to be found in the very words of § 7. That provision permits option States to assume jurisdiction "in such manner" as the people of the State shall "by affirmative legislative action, obligate and bind the State to assumption thereof." Once the requirements of § 6 have been satisfied, the terms of § 7 appear to govern the scope of jurisdiction conferred upon disclaimer States. The phrase "in such manner" in § 7 means at least that any option State can condition the assumption of full jurisdiction on the consent of an affected tribe. And here Washington has done no more than refrain from exercising the full measure of allowable jurisdiction without consent of the tribe affected.

Section 6, as we have seen, was placed in the Act to eliminate possible organic law barriers to the assumption of jurisdiction by disclaimer States. The Tribe and the United States acknowledge that it is a procedural not a substantive section. The clause contains only one reference of relevance to the partial jurisdiction question. This is the phrase "assumption of civil or criminal jurisdiction in accordance with the provisions of this Act." As both parties recognize, this phrase necessarily leads to other "provisions" of the Act for clarification of the substantive scope of the jurisdictional grant. The first question then is which other "provisions" of the Act govern. The second is what constraints those "provisions" place on the jurisdictional arrangements made by option States.

[40] Both parties find support for their positions on this issue in the legislative history of the amendments to Pub L 280 in Title IV of the Indian Civil Rights Act of 1968, 82 Stat 73. The 1968 legislation provides that States that have not extended criminal or civil jurisdiction to Indian country can make future extensions only with the consent of the tribes affected. 25 USC §§ 1321(a), 1322(a) [25 USCS §§ 1321(a), 1322(a)]. The amendments also provide explicitly for partial assumption of jurisdiction. Ibid. In addition, they authorize the United States to accept retrocessions of jurisdicton, full or partal, from the mandatory and the § 7 States. 25 USC § 1323(a) [25 USCS § 1323(a)]. Section 7 itself was repealed with the proviso that the repeal was not intended to affect any cession made prior to the repeal. 25 USC § 1323(b) [25 USCS § 1321(b)]. Section 6 was re-enacted without change 25 USC § 1324 [25 USCS § 1324].

We do not rely on the 1968 legislation or its history, finding the latter equivocal, and mindful that the issues in this case are to be determined in accord with legislation enacted by Congress in 1953.

[41] Since entire reservations were exempted from coverage in three of the mandatory States, the Tribe and the United States concede that the option States could probably assume jurisdiction on a reservation-by-reservation basis. The United States also concedes that the word "or" in § 7 might be construed to mean that option States need not extend both civil and criminal jurisdiction.

The Tribe and the United States argue as an initial matter that § 7 is not one of the "provisions" referred to by § 6. They rely in part upon the contrast between the phrase "assumption of civil and criminal jurisdiction" in § 6 and the disjunctive phrase "criminal offenses or civil causes of action" in § 7. From this distinction between the "civil *and* criminal jurisdiction" language of § 6 and the optional language in § 7, we are asked to conclude that § 6 States must assume full jurisdiction in accord with the terms applicable to the mandatory States even though § 7 States are permitted more discretion. We are unable to accept this argument, not only because the statutory language does not fairly support it, but also because the legislative history is wholly to the contrary. It is clear from the Committee hearings that the States covered by § 6 were, except for the possible impediments contained in their organic laws, to be treated on precisely the same terms as option States.[42]

Section 6, as we have seen, was essentially an afterthought designed to accomplish the limited purpose of removing any barrier to jurisdiction posed by state organic law disclaimers of jurisdiction over Indians. All option States were originally treated under the aegis of §.7.[43] The record of the Committee hearings makes clear that the sole purpose of § 6 was to resolve the disclaimer problem.[44] Indeed, to the extent that the Tribe and the United States suggest that disclaimer States stand on a different footing from all other option States, their argument makes no sense. It would ascribe to Congress an intent to require States that by force of organic law barriers may have had only a limited involvement with Indian country to establish the most intrusive presence possible on Indian reservations, if any at all, and at the same time an intent to allow States with different traditions to exercise more restraint in extending the coverage of their law.

The Tribe and the United States urge that even if, as we have concluded, all option States are ultimately governed by § 7, the reference in that section to assumption of jurisdiction "as provided for in the Act" should be construed to mean that the automatic transfer provisions of §§ 2 and 4 must still apply. The argument would require a conclusion that the option States stand on the same footing as the mandatory States. This view is not persuasive. The mandatory States were consulted prior to the introduction of the single-state bills that were eventually to become Pub L 280. All had indicated their willingness to accept whatever jurisdiction Congress was prepared to transfer. This, however, was not the case with the option States. Few of those States had been consulted, and from the June 29 and July 15 hearings it is apparent that the drafters were primarily concerned with establishing a general transfer scheme that would facilitate, not impede, future action by other States willing to accept jurisdiction. It is clear that the all-or-nothing approach suggested by the Tribe would impede even the most responsible and sensitive jurisdictional arrangements designed by the States. To find that under Pub L 280 a State would not exercise partial jurisdiction, even if it were willing to extend full jurisdiction at tribal request, would be quite inconsistent with this basic history.

The language of § 7, which we have found applicable here, provides, we believe, surer guidance to the issue before us.[45] The critical language in § 7 is the phrase permitting the assumption of jurisdiction "at such time and in such manner as the people of the State shall . . . obligate and bind the State to the assumption thereof." Whether or not "in such manner" is fully synonymous with "to such extent," the phrase is at least broad enough to authorize a State to condition the extention of full jurisdiction over an Indian reservation on the consent of the tribe affected.

The United States argues that a construction of Pub L 280 which permits selective extension of state jurisdiction allows a State to "pick and choose" only those subject-matter areas and geographical parts of reservations over which it would like to assume responsibility. Congress, we are told, passed Pub L 280 not as a measure to benefit the States but to reduce the economic burdens associated with federal jurisdiction on reservations, to respond to a perceived hiatus in law enforcement protections available to tribal Indians, and to achieve an orderly

[42] See June 24 and July 15 Hearings, supra, n 35.

[43] See ibid.

[44] See, e.g., July 15 Hearings, at 24.

[45] The 1968 amendments, which re-enacted § 6 without change as 25 USC § 1324 [25 USCS § 1324] but repealed § 7, 25 USC § 1323(b) [25 USCS § 1324(b)], and added substantive jurisdictional provisions covering "any state," see 25 USC §§ 1321, 1322 [25 USCS §§ 1321, 1322], suggest that in the future the scope of jurisdiction for all States is to be the same.

assimilation of Indians into the general population. That these were the major concerns underlying the passage of Pub L 280 cannot be doubted. See Bryan v. Itasca Cty., supra, 426 US, at 379, 48 L Ed 2d 710, 96 S Ct 2102.

But Chapter 36 does not reflect an attempt to reap benefits and to avoid the burdens of the jurisdictional offer made by Congress. To the contrary, the State must assume total jurisdiction whenever a tribal request is made that it do so. Moreover, the partial geographic and subject-matter jurisdiction that exists in the absence of trial consent is responsible to the law enforcement concerns that underlay the adoption of Pub L 280. State jurisdiction is complete as to all non-Indians on reservations and is also complete as to Indians and nontrust lands. The law enforcement hiatus that preoccupied the 83d Congress has to that extent been eliminated. On trust and restricted lands within the reservations whose tribes have not requested the coverage of state law, jurisdiction over crimes by Indians is, as it was when Pub L 280 was enacted, shared by the tribal and federal governments. To the extent that this shared federal and tribal responsibility is inadequate to preserve law and order, the tribes need only request and they will receive the protection of state law.

The State of Washington in 1963 could have unilaterally extended full jurisdiction over crimes and civil causes of action in the entire Yakima Reservation without violating the terms of Pub. L. 280. We are unable to conclude that the State, in asserting a less intrusive presence on the Reservation while at the same time obligating itself to assume full jurisdictional responsibility upon request, somehow flouted the will of Congress. A State that has accepted the jurisdictional offer in Pub. L. 280 in a way that leaves substantial play for tribal self-government, under a voluntary system of partial jurisdiction that reflects a responsible attempt to accommodate the needs of both Indians and non-Indians within a reservation, has plainly taken action within the terms of the offer made by Congress to the States in 1953. For Congress surely did not deny an option State the power to condition its offer of full jurisdiction on tribal consent.

V

[3b] Having concluded that Chapter 36 violates neither the procedural nor the substantive terms of Pub. L. 280, we turn, finally, to the question whether the "checkerboard" pattern of jurisdiction applicable on the reservations of nonconsenting tribes is on its face invalid under the Equal Protection Clause of the Fourteenth Amendment.[46] The Court of Appeals for the Ninth Circuit concluded that it is, reasoning that the land-title classification is too bizarre to meet "any formulation of the rational basis test." 552 F2d, at 1135. The Tribe advances several different lines of argument in defense of this ruling.

First, it argues that the classifications implicit in Chapter 36 are racial classifications, "suspect" under the test enunicated in *McLaughlin* v. *Florida*, 379 U.S. 184, 13 L. Ed. 2d 222, 85 S. Ct. 283, and that they cannot stand unless justified by a compelling state interest. Second, it argues that its interest in self-government is a fundamental right, and that Chapter 36—as a law abridging this right—is presumptively invalid. Finally, the Tribe argues that Chapter 36 is invalid even if reviewed under the more traditional equal protection criteria articulated in such cases as *Massachusetts Bd. of Retirement* v. *Murgia*, 427 U.S. 307, 49 L. Ed. 2d 520, 96 S. Ct. 2562.[47]

[16, 17] We agree with the Court of Appeals to the extent that its opinion rejects the first two of these arguments and reflects a judgment that Chapter 36 must be sustanied against an Equal Protection Clause attack if the classifications it employs "rationally further the purpose identified by the State." Massachusetts Bd. of Retirement v. Murgia, supra, at 314, 49 L Ed 2d 520, 96 S Ct. 2562. It ih settled that "the unique legal status of Indian tribes under

[46] The Court of Appeals did not disturb the finding of the District Court that Chapter 36 had not been applied on the Yakima Reservation to discriminate against the Tribe or any of its members. The District Court found that the governmental legal services available to the Tribe and its members were not significantly different from those offered to other rural and city residents of Yakima County. It also concluded that the distinctions drawn between non-Indians and Indians in the statute were not motivated by a discriminatory purpose. In view of these findings, our inquiry here is limited to the narrow question whether the distinctions drawn in Chapter 36 on their face violate the Equal Protection Clause of the Fourteenth Amendment.

[47] The Court of Appeals limited its holding to the land-tenure classification. The Tribe, in support of the judgment, has argued that the Chapter 36 classifications based on the tribal status of the offender and on whether a juvenile is involved are also facially invalid. In our view these status classifications of Chapter 36, are indistinguishable from the interrelated land-tenure classification so far as the Equal Protection Clause is concerned.

federal law" permits the Federal Government to enact legislation singling out tribal Indians, legislation that might otherwise be constitutionally offensive. Morton v Mancari, 417 US 535, 551–552, 41 L Ed 2d 290, 94 S Ct 2474. States do not enjoy this same unique relationship with Indians, but Chapter 36 is not simply another state law. It was enacted in response to a federal measure explicitly designed to readjust the allocation of jurisdiction over Indians. The jurisdiction permitted under Chapter 36 is, as we have found, within the scope of the authorization of Pub L 280. And many of the classifications made by Chapter 36 are also made by Pub L 280. Indeed, classifications based on tribal status and land tenure inhere in many of the decisions of this Court involving jurisdictional controversies between tribal Indians and the States, see, e.g., McBratney v United States, 104 US 621, 26 L Ed 869. For these reasons, we find the argument that such classifications are "suspect" an untenable one. The contention that Chapter 36 abridges a "fundamental right" is also untenable. It is well-established that Congress, in the exercise of its plenary power over Indian affairs, may restrict the retained sovereign powers of the Indian tribes. See, e.g., United States v Wheeler, 435 US 313, 55 L Ed 2d 303, 98 S Ct 1079. In enacting Chapter 36, Washington was legislating under explicit authority granted by Congress in the exercise of that federal power.[48]

[18, 19] The question that remains, then, is whether the lines drawn by Chapter 36 fail to meet conventional Equal Protection Clause criteria, as the Court of Appeals held. Under those criteria, legislative classifications are valid unless they bear no rational relationship to the State's objectives. Massachusetts Bd. of Retirement v Murgia, supra, at 314, 49 L Ed 2d 520, 96 S Ct 2562. State legislation "does not violate the Equal Protection Clause merely because the classifications [it makes] are imperfect." Dandridge v Williams, 397 US 471, 485, 25 L Ed 2d 491, 90 S Ct 1153. Under these standards we have no difficulty in concluding that Chapter 36 does not offend the Equal Protection Clause.

The lines the State has drawn may well be difficult to administer. But they are no more or less so that many of the classifications that pervade the law of Indian jurisdiction. See Seymour v Superintendent, 368 US 351, 7 L Ed 2d 346, 82 S Ct 424; Moe v Salish & Kootenai Tribes, 425 US 463, 48 L Ed 2d 96, 96 S Ct 1634. Chapter 36 is fairly calculated to further the State's interest in providing protection to non-Indian citizens living within the boundaries of a reservation while at the same time allowing scope for tribal self-government on trust or restricted lands. The land-tenure classification made by the State is neither an irrational nor arbitrary means of identifying those areas within a reservation in which tribal members have the greatest interest in being free of state police power. Indeed, many of the rules developed in this Court's decisions in cases accommodating the sovereign rights of the tribes with those of the States are strikingly similar. See, e.g., United States v McBratney, supra; Draper v United States, 164 US 240, 41 L Ed 419, 17 S Ct 107; Williams v Lee, 358 US 217, 3 L Ed 2d 251, 79 S Ct 269; McClanahan v Arizona, 411 US 164, 36 L Ed 2d 129, 93 S Ct 1257. In short, checkerboard jurisdiction is not novel in Indian law, and does not, as such, violate the Constitution.

For the reasons set out in this opinion, the judgment of the Court of Appeals is reversed.

It is so ordered.

SEPARATE OPINION

Mr. Justice Marshall, with whom Mr. Justice Brennan joins, dissenting.

For over 140 years, the Court has resolved ambiguities in statutes, documents, and treaties that affect retained tribal sovereignty in favor of the Indians.[1]

[48] This is not to hold that Pub L 280 was a termination measure. Whether there is concurrent tribal and state jurisdiction on some areas of the Reservation is an issue we do not decide. See n 32, supra.

[1] E.g., Worcester v Georgia, 6 Pet 515, 580–582, 8 L Ed 483 (1832) (McLean, J., concurring); The Kansas Indians (Wan-zop-e-ah v. Board of Commissioners of the County of Miami), 5 Wall 737, 760, 18 L Ed 667 (1867); Jones v Mechan, 175 US 1, 11–12, 44 L Ed 49, 20 S Ct 1 (1899); Cherokee Intermarriage Cases, 203 US 76, 94, 51 L Ed 96, 27 S Ct. 29 (1906); Choate v Trapp, 224 US 665, 675, 56 L Ed 941, 32 S Ct 565 (1912); Alaska Pacific Fisheries v United States, 248 US 78, 89, 63 L Ed 138, 39 S Ct 40 (1918); Carpenter v Shaw, 280 US 363, 366–367, 74 L Ed 478, 50 S Ct 121 (1930); United States v Santa Fe Pacific R. Co., 314 US 339, 353–354, 86 L Ed 260, 62 S Ct 248 (1941); Squire v Capoeman, 351 US 1, 6–7, 100 L Ed 883, 76 S Ct 611 (1956); Menominee Tribe of Indians v United States, 391 US 404, 406 n 2, 20 L Ed 2d 697, 88 S Ct 1705 (1968); McClanahan v Arizona State Tax Commission, 411 US 164, 173–175, and n 13, 36 L Ed 2d 129, 93 S Ct 1257 (1973); Bryant v Itasca County, 426 US 373, 392–393, 48 L Ed 2d 710, 96 S Ct 2102 (1976).

This interpretive principle is a response to the unique relationship between the Federal Government and the Indian people, "who are the wards of the nation, dependent upon its protection and good faith." Carpenter v Shaw, 280 US 363, 367, 74 L Ed 478, 50 S Ct 121 (1930). More fundamentally, the principle is a doctrinal embodiment of "the right of [Indian Nations] to make their own laws and be ruled by them," Williams v Lee, 358 US 217, 220, 3 L Ed 2d 251, 79 S Ct 269 (1959), a right emphatically reaffirmed last Term in United States v Wheeler, 435 US 313, 322–330, 55 L Ed 2d 303, 98 S Ct 1079 (1978). Although retained tribal sovereignty "exists only at the sufferance of Congress," id., at 323, 55 L Ed 2d 303, 98 S Ct 1079, the States may not encroach upon an Indian Nation's internal self-government until Congress has unequivocally sanctioned their presence within a reservation. See ibid.; McClanahan v Arizona State Tax Commission, 411 US 164, 168–169, 172–173, 36 L Ed 2d 129, 93 S Ct 1257 (1973); Worcester v Georgia, 6 Pet 515, 554, 557, 561, 8 L Ed 483 (1832); see also Oliphant v Suquamish Indian Tribe, 435 US 191, 212, 55 L Ed 2d 209, 98 S Ct 1011 (1978) (Marshall, J., dissenting).

While the Court in its discussion of the disclaimer issue professes to follow this settled principle of statutory interpretation, ante at ——, 58 L Ed 2d 758, it completely ignores the rule when addressing Washington's assertion of partial jurisdiction. In my view, the language and legislative history of Pub L 280 do not unequivocally authorize States to assume the type of selective geographic and subject-matter jurisdiction that Washnigton asserted in 1963.[2] Because our precedents compel us to construe the statute in favor of the Indians, I respectfully dissent.

As is evident from the majority opinion, the text of Pub L 280 does not on its face empower option States to assert partial geographic or subject-matter jurisdiction over Indian Reservations.[3] The statute refers without limitation to "criminal" and "civil" jurisdiction. Nevertheless, because option States could have conditioned their exercise of full jurisdiction on the consent of affected tribes, ante, at ——, ——, 58 L Ed 2d 764, 766, and because Pub L 280 would have permitted Washignton to extend full jurisdiction over the Yakima Indian Resesrvation without consulting the Tribe, ante, at —— – ——, 58 L Ed 766–767, the Court concludes that the States can unilaterally assert less than full jurisdiction.

I agree that Pub L 280 permits option States to refuse jurisdiction absent the consent of the Indians, and that prior to the 1968 amendments of the Act,[4] Washington could have unilaterally extended full jurisdiction over the Reservation. But the majority does not explain how the statutory language governing exercise of *full* jurisdiction allows the States to exercise piecemeal jurisdiction. That Washington has done no more than "refrain from exercising the full measure of allowable jurisdiction," ante, at ——, 58 L Ed 2d 764, raises but does not answer the critical question whether Pub L 280 sanctions this jurisdictional arrangement.

The sparse legislative history of Pub L 280, like the statutory language, says nothing about the propriety of partial jurisdictional schemes. In light of the expressed reluctance of at least one State to assume the financial burden that jurisdiction over Indian territory entails,[5] this silence is particularly instructive. Although selective assertion of jurisdiction within reservations would obviously ameliorate such fiscal concerns, at no point in the congressional deliberations was it advanced as a solution. Rather, Congress permitted the option States to refrain from exercising full jurisdiction until they could meet their financial

[2] Since I would invalidate Washington's jurisdictional arrangement on this ground, I need not address the disclaimer issue. For present purposes I will assume that Washington was not required to amend its constitutional disclaimer of authority over Indian lands before it could exercise power over the Reservation.

[3] It may be that the disjunctive language of § 7 allows option States to exercise either criminal or civil jurisdiction. See ante, at —— – ——, and n 41, 58 L Ed 2d 765. And perhaps extension of jurisdiction reservation by reservation is also permissable. See ante, at n 41. But neither of these questions is posed by this case. The issue presented here is whether the language of Pub L 280 authorizes any patchwork jurisdictional arrangement that suits the States' peculiar interests.

[4] These amendments prohibit States from exercising further jurisdiction over Indian reservations after 1968 without tribal consent. 25 USC §§ 1321(a), 1322(b), 1326 [25 USCS §§ 1321(a), 1322(b), 1326].

[5] See Hearings on HR 1063 before the Subcommittee on Indian Affairs of the House Committee on Interior and Insular Affairs, 83d Cong, 1st Sess, 8–10, 14–15 (1953) (hereinafter 1953 Subcommittee Hearings); Hearings on HR 1063 before the House Committee on Interior and Insular Affairs, 83d Cong., 1st Sess, 3, 7, 13, 17 (1953) (hereinafter 1953 Committee Hearings); HR Rep No. 848, 83d Cong, 1st Sess, 7 (1953) (hereinafter HR Rep No. 848).

obligations.[6] The legislative focus was clearly on full-fledged assumption of jurisdiction.[7]

To disregard this legislative focus and allow assumption of partial jurisdiction undermines an important purpose behind Pub L 280. In enacting the statute, Congress sought to eliminate the serious "hiatus in law-enforcement authority" on Indian reservations, HR Rep No. 848, supra, n 5, at 6, which was attributable in large part to the division of law-enforcement functions among federal, state, and Indian authorities.[8] It intended to accomplish this goal by granting to the States the authority previously exercised by the Federal Government, thereby simplifying the administration of law on Indian reservations. See 1953 Subcommittee Hearings, supra, n 5, at 7. Washington's complex jurisdictional system, dependent on the status of the offender, the location of the crime, and the type of offense involved, by no means simplifies law enforcement on the Yakima Reservation. Cf. Justice and the American Indian: The Impact of Public Law 280 upon the Administration of Criminal Justice on Indian Reservations, 1 National American Indian Court Judges Association 6–13 (1974). To the contrary, it exacerbates the confusion that the statute was designed to redress.

Had Congress intended to condone exercise of limited subject-matter jurisdiction on a random geographic basis, it could have easily expressed this purpose. See Bryan v Itasca County, 426 US 373, 392–393, 48 L Ed 2d 710, 96 S Ct 2102 (1976); Mattz v Arnett, 412 US 481, 504–505, 37 L Ed 2d 92, 93 S Ct 2245 (1973); McClanahan v Arizona State Tax Commission, 411 US, at 173–175, and n 13, 36 L Ed 2d 129, 93 S Ct 1257; Menominee Tribe of Indians v United States, 391 US 404, 412–413, 20 L Ed 2d 697, 88 S Ct 1705 (1968); Creek County v Seber, 318 US 705, 713, 87 L Ed 1094, 63 S Ct 920 (1943). Indeed, it did so in the 1968 amendments to the Act when it authorized partial criminal or civil jurisdiction by subject matter, geography, or both, but only with the Indians' consent. 25 USC §§ 1321(a), 1322(a) [25 USCS §§ 1321(a), 1322(a)].[9] I am unwilling to presume that Congress' failure in 1953 to sanction piecemeal jurisdiction in similar terms was unintentional. In any event, it is indisputable that the statute does not unambiguously authorize assertion of partial jurisdiction. If we adhere more than nominally to the practice of resolving ambiguities in favor of the Indians, then Washington's jurisdictional arrangement cannot stand.

Accordingly, I dissent.

[6] See 1953 Committee Hearings 13; HR Rep No. 848, at 6–7.

[7] See, e.g., 1953 Subcommittee Hearings 3, 4, 5, 7, 17; 1953 Committee Hearings 3, 8; 99 Cong Rec 10782–10783 (1953) (statement of Sen. Thye; letter from Gov. Anderson to Sen. Thye).

[8] See HR Rep No. 848, at 5–6; 1953 Subcommittee Hearings 2–3, 21–22; Hearings on HR 459, HR 3235 and HR 3624 before the Subcommittee on Indian Affairs of the House Committee on Interior and Insular Affairs, 82d Cong, 2d Sess, 14 (1952) (statement of Rep. D'Ewart); Goldberg, Public Law 280: The Limits of State Jurisdiction Over Reservation Indians, 22 UCLA L Rev 535, 541–543 (1975).

[9] The legislative history of the 1968 amendments provides further evidence that Congress in 1953 did not unambiguously sanction assertion of selective jurisdiction. There were numerous conflicting opinions on whether the new provisions authorizing States to assume partial jurisdiction effected a change in the law. In 1965, the Department of the Interior had intimated that partial assumption of criminal jurisdiction was a novel idea when it recommended partial jurisdiction in civil matters, but concluded that "extension of criminal jurisdiction to the States on a piece-meal basis needs to be considered further." Hearings on Constitutional Rights of the American Indian before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 89th Cong, 1st Sess, 321 (1965) (letter from Frank J. Barry, Acting Secy. of the Interior, to Sen. Eastland). This letter also noted that the Department of Justice was opposed to selective extensions of criminal jurisdiction because of the likelihood of unnecessary confusion in the enforcement of criminal laws. Ibid.

However, in 1968, Assistant Secretary of the Interior Harry R. Anderson believed that authority to assume piecemeal jurisdiction was implicit in Pub L 280. Hearings on HR 15419 and Related Bills before the Subcommittee on Indian Affairs of the House Committee on Interior and Insular Affairs, 90th Cong, 2d Sess, 25 (1968) (letter to Rep. Wayne N. Aspinall) (hereinafter 1968 Hearings). By contrast, Congressman Aspinall, who played a fundamental role in drafting Pub L 280, stated that the new partial jurisdiction provisions substantially altered prior law. 114 Cong Rec 9615 (1968). Similarly, Arthur Lazarus, an attorney representing six Tribes, argued that "[o]ne of the major objections to Public Law 280 is its 'all or nothing' approach, requiring States to assume all jurisdiction on Indian reservations if any jurisdiction is desired." 1968 Hearings 116. Deputy Attorney General Warren Christopher was noncommittal on the reading of prior law. Id., at 28 (letter to Rep. Aspinall).

This subsequent legislative consideration of the precise issue before us sheds light on the intent of Congress in 1953. See Mattz v Arnett, 412 US, at 505 n 25, 37 L Ed 2d 92, 93 S Ct 2245; Moe v Salish & Kootenai Tribes, 425 US 463, 472–475, 48 L Ed 2d 96, 96 S Ct 1634 (1976); Bryan v Itasca County, 426 US, at 386, 48 L Ed 2d 710, 96 S Ct 2102. Given the congressional and executive equivocation, the Court's apparent certainty is unfounded.

ATTACHMENT II TO LETTER OF OCTOBER 17, 1979

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-388

STATE OF WASHINGTON; COUNTY OF YAKIMA; DIXY LEE RAY AS GOVERNOR OF THE STATE OF WASHINGTON AND INDIVIDUALLY; SLADE GORTON, AS ATTORNEY GENERAL OF THE STATE OF WASHINGTON AND INDIVIDUALLY; LES CONRAD, GRAHAM TOLLEFSON AND CHARLES RICH AS COUNTY COMMISSIONERS AND INDIVIDUALLY, APPELLANTS,

v.

CONFEDERATED BANDS AND TRIBES OF THE YAKIMA INDIAN NATION, APPELLEE.

On Appeal From The United States Court Of Appeals For The Ninth Circuit

BRIEF OF APPELLANTS

SLADE GORTON,
Attorney General,
MALACHY R. MURPHY,
Deputy Attorney General,
Counsel for State Appellants,
JEFFREY C. SULLIVAN,
Prosecuting Attorney,
Counsel for County Appellants.

ARGUMENT

I. INTRODUCTION: THE FULL SCOPE OF THE CHANGES INVOLVED IN A VALID ASSUMPTION OF STATE JURISDICTION

In striking down Washington's assumption of jurisdiction over the Yakima reservation, the Ninth Circuit panel opinion focused on the effect of that assumption of jurisdiction on Indians, without discussing at all its effect on non-Indians. Since the attack was brought by Indians, this is not surprising. So narrow a focus, however, leaves out a large portion of the total picture.[2]

The scheme of federal jurisdiction over Indian country which is embodied in 18 USC § 1151 (The definition of "Indian County"), § 1152 (the General Crimes Act), and § 1153 (the Major Crimes Act) embraces all persons, both Indians and non-Indians, and all land, both trust and non-trust, within a reservation. Accordingly, the question of whether state jurisdiction has been validly substituted for this federal scheme pursuant to PL 280 will affect Indians and non-Indians alike.[3]

[2] In this introduction, we do follow the panel opinion in focusing on criminal, rather than civil jurisdiction. For criminal jurisdiction was the "central focus" of PL. 280. *Bryan* v. *Itasca County*, 426 US 373, at 380. (1976)

[3] The Yakima reservation is not unlike the Port Madison reservation involved in *Oliphant* v. *Suquamish Tribe*, _____ US _____. (March 6, 1978) Non-Indian residents vastly outnumber the resident tribal members.

This court has recently reviewed this scheme of federal jurisdiction in the context of its application both to a non-Indian (*Oliphant v. Suquamish Tribe*, —— U.S. —— March 6, 1978) and to an Indian (*Wheeler v. U.S.*, —— U.S. —— (March 22, 1978). We here briefly review it once again, though from a somewhat different perspective. Our purpose is to identify the changes which a valid assumption of state jurisdiction under Public Law 280 would make in this scheme, with respect both to non-Indians and Indians.

A. Changes with Respect to Non-Indians.

In *Oliphant*, this Court held that the criminal jurisdiction of an Indian tribe did not extend to non-Indians in the absence of a treaty or statute providing for such jurisdiction. Remaining unanswered after *Oliphant* was the next question: granted that the tribe does not have criminal jurisdiction over a non-Indian, who does? Is it the state? Or is it the federal government?

This question, of course, was not before the Court on *Oliphant*. It is before the Court now.

Our starting point is 18 USC 1152.

> "Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.
> "This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively."

By its terms, § 1152 makes federal enclave law applicable to all crimes by non-Indians in "Indian country". None of the three exceptions contained in § 1152 are applicable to non-Indians.[4]

Geographically, § 1152 covers all land within the exterior boundaries of a reservation. This is by reason of the definition of "Indian country" contained in § 1151, which provides in pertinent part as follows:

> "Except as otherwise provided in sections 1154 and 1156 of this title, the term 'Indian country', as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent * * *"[5]

Further, federal jurisdiction under § 1152 over crimes committed by a non-Indian is exclusive of any state jurisdiction. *Williams v. U.S.*, 327 US 711, 714 (1946).

There is, however, a judicially engrafted exception to the broad scope of § 1152; that statute does not apply to crimes committed by a non-Indian against the person or property of another non-Indian. *U.S. v. McBratney*, 104 U.S. 621 (1882). Such crimes are subject to the exclusive jurisdiction of the state. But if the crime be against an Indian or his property, or perhaps if there is no identifiable victim at all, § 1152 is applicable.[6]

Further, the seriousness of the crime is not a factor under § 1152. If the crime has not been expressly defined and made punishable by Congress, 18 USC 13 (the "Assimilative Crimes Act") becomes operative, and state definitions and punishments are incorporated into federal law. Thus, the whole range of potential criminal conduct is covered by federal law, from the most serious felonies to the most minor misdemeanors.

Residing on the reservation is a total population of approximately 25,000, of which approximately 3,000 are members of the Yakima tribe. See p. 13, *supra*. For these non-Indians, approximately 22,000 in number, the practical conse-

[4] The first two exceptions are applicable by their terms to Indians alone. The third exception, i.e., the treaty exception, is also applicable to Indians alone, if it is applicable at all. See *Oliphant*, slip op. 6. n 8.

[5] *Cf.*, *Seymour* v. *Superintendent*, 368 US 351, 358 (1962).

[6] We say "perhaps" because we can find no decisions of this Court or any lower federal court extending the *McBratney* exception to crimes in which there is no identifiable victim. An example would be the alleged offenses of Mr. Belgarde in *Oliphant*, who was charged with "recklessly endangering another person" by reason of his high speed driving within the Suquamish reservation. The "[an]other person" would be anyone, Indian or non-Indian, who happened to be in the vicinity of Mr. Belgarde's speeding vehicle. Slip op. 3.
For a discussion of the problem of the scope of the *McBratney* exception to § 1152, see the Brief for the United States as Amicus Curiae in *Oliphant*, p. 16, n. 12.

quences which would flow from striking down an invalid Washington's assumption of jurisdiction over the Yakima reservation are now clear:

Washington criminal law would not apply these non-Indians, unless the crime falls under the *McBratney* exception to § 1152. Federal law and federal law enforcement services would be *exclusively* applicable to crimes by these non-Indians, no matter how serious or how minor the crimes and no matter where they were committed within the reservation.[7]

If, on the other hand, Washington's assumption of jurisdiction is valid, these non-Indians are subject to the same law enforcement as their fellow non-Indians living off the reservation. Sec. 1152 would be completely inapplicable.

Such are the consequences for non-Indians on the reservation; for them, the alternatives are complete federal jurisdiction (except as limited by *McBratney*) or complete state jurisdiction. We turn next to the consequences for the Indians themselves.

B. Changes with Respect to Indians.

The changes here are more complex. This is by reason of the federal scheme established by 18 USC 1151, 1152, 1153 and the Civil Rights Act of 1968, and complexities in chapter 37.12 RCW as well. We take up first the federal scheme, apart from PL 280 and chapter 37.12 RCW.

Because they only apply to crimes by Indians, the exceptions in § 1152 become important, as do the exceptions to those exceptions found in § 1153, the Major Crimes Act.

Our starting point is § 1152, the first paragraph of which makes federal enclave law applicable to all crimes on a reservation, whether committed by an Indian or non-Indian. If a crime is committed, however, by an Indian against the person or property of another Indian, the first exception in § 1152 (contained in the second paragraph) is applicable, and tribal jurisdiction is exclusive. (This first exception might be viewed as the Indian counterpart of the *McBratney* exception.) In addition, tribal jurisdiction may be exclusive if the tribal criminal system has first punished the Indian offender, even though no Indian victim is involved. This is by reason of the second or "double jeopardy" exception. (For all practical purposes, we believe that the third or "treaty" exception may be disregarded as practically inoperative.) The applicability of these exceptions, it should be noted, is in no way dependent on the seriousness of the offense.

If, however, the crime by the Indian falls within § 1153, (the Major Crimes Act) the § 1152 exceptions become inapplicable; for § 1153 contains no parallel exceptions, and indeed was enacted precisely to cover part of the gap created by those exceptions.[8]

Whether § 1153 establishes exclusive jurisdiction in the United States, or only jurisdiction concurrent with the Tribe, has not been decided by this court. *Oliphant*, p. 12, n. 14. However,

> "This issue of exclusive jurisdiction over major crimes was mooted for all practical purposes by the passage of the Indian Civil Rights Act of 1968 which limits the punishment that can be imposed by Indian tribal courts to a term of 6 months or a fine of $500." *Oliphant*, p. 12, 14.

Though the distinction between "major" and "minor" crimes may not be entirely tidy, a summary description of the federal scheme may be cast in those terms. "Major" crimes committed by Indians are under exclusive federal jurisdiction; "minor" crimes are under the exclusive jurisdiction of the tribe if they involve an Indian victim; and "minor" crimes involving no Indian victim are also under the exclusive jurisdiction of the tribe if the tribe tries and punishes the Indian offender before the United States does.

From this description, the alternatives with respect to crimes by Indians become clear. If the State's assumption of jurisdiction is valid, state jurisdiction

[7] The federal law, of course, may be "borrowed" from state law, pursuant to the Assimilative Crimes Act. But even in these cases, the law enforcement officers must be federal, and the trial must be in federal district court.

Section 1152 was obviously designed for the situation on Indian reservations before they were opened up for non-Indian settlement by the General Allotment Act of 1887, a situation in which non-Indians were "few and far between." Indeed, § 1152 was last amended in 1854. 10 Stat. 270. The only attempt to conform it to 20th century realities is found in PL 280 itself.

[8] For the history of the Major Crimes Act, see *Keeble* v. *U.S.*, 412 U.S. 205 (1973).

will displace federal jurisdiction with respect to "major" crimes, and will displace tribal jurisdiction with respect to "minor" crimes.[9]

This last point deserves emphasis. The displacement of tribal criminal jurisdiction which will occur if the State's assumption of jurisdiction is valid involves solely minor crimes by Indians. All other displacement affects federal, not tribal jurisdiction.

Further, under Washington's assumption of jurisdiction over the Yakima reservation, even this displacement of tribal criminal jurisdiction is far from total. For it occurs if, and only if, the offense by the Indian takes place on non-trust land. If the offense takes place on trust land, then either federal or tribal law will apply, depending upon whether the offense is "major" or "minor."[10]

To summarize: After passage of the 1968 Indian Civil Rights Act, the only criminal jurisdiction which the Congress has left with the tribe is jurisdiction over minor crimes committed by its own members. The State's assumption of jurisdiction would displace this jurisdiction, but only to a limited extent, *i.e.*, when the crime takes place on non-trust lands.[11] To this same limited extent, it would displace federal jurisdiction over major crimes by Indians. But it would totally displace federal jurisdiction over all crimes by non-Indians.

Lastly, the relationship between the two sets of changes should be noted. If Washington's assumption of jurisdiction over the Yakima reservation is invalidated on equal protection grounds, but only as applied to Indians, we see no reason why the jurisdictional changes for non-Indians could not stand.[12] If, however, this assumption of jurisdiction is invalidated on the grounds that it violates the provisions of PL 280, because PL 280 requires assumption of full jurisdiction or none at all, both sets of jurisdictional changes are invalid. Non-Indians as well as Indians remain under the old jurisdictional scheme.

[9] We are here assuming, we recognize, that state jurisdiction under P.L. 280 is exclusive of both federal and tribal jurisdiction, rather than merely concurrent. The district court so concluded (App. pp. 6–7), reasoning that state jurisdiction was clearly exclusive in mandatory states, and was intended to be exclusive in option states as well. The Ninth Circuit did not reach this issue.

[10] There is an exception to this general statement. If the crime by an Indian falls within one of the eight special areas contained in RCW 37.12.010, state jurisdiction would cover such a crime even if committed on trust land.

[11] See, however, n. 10, *supra*.

[12] The panel opinion would invalidate RCW 37.12.010 in its entirety. "The whole statute must be rewritten, a task manifestly beyond our constitutional competence." Juris. Stat. A, p. 36. That opinion did not, however, consider the severability issue in the context of applying RCW 37.12.010 to non-Indians only. And as that opinion seems to recognize, any severability issue is ultimately one of state law, to be decided by state courts. Juris. Stat. App. A, p. 35, n. 9.

ATTACHMENT III TO LETTER OF OCTOBER 17, 1979

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977
No. 77-388

STATE OF WASHINGTON; COUNTY OF YAKIMA; DIXY LEE RAY AS GOVERNOR OF THE STATE OF WASHINGTON AND INDIVIDUALLY; SLADE GORTON, AS ATTORNEY GENERAL OF THE STATE OF WASHINGTON AND INDIVIDUALLY; LES CONRAD, GRAHAM TOLLEFSON AND CHARLES RICH AS COUNTY COMMISSIONERS AND INDIVIDUALLY, APPELLANTS,

v.

CONFEDERATED BANDS AND TRIBES OF THE YAKIMA INDIAN NATION, APPELLEE,

On Appeal From the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF FOR APPELLANTS

SLADE GORTON,
Attorney General,
MALACHY R. MURPHY,
Deputy Attorney General,
Counsel for State Appellants,
JEFFREY C. SULLIVAN,
Yakima County Prosecuting Attorney,
Counsel of County Appellants.

B. THE SCOPE OF THE PROBLEM—THE IMPACT ON NON-INDIAN

From a reading of the briefs of the United States and the Tribe, one could easily gain the impression that only the interests of Indians are involved in this case. Such an impression would be completely wrong.

First, some facts. The record shows that there are approximately 3,000 members of the Yakima Tribe resident on the Yakima reservation, and approximately 22,000 non-Indians. (See Wash. Br. p. 23.) The Indians thus constitute about one-eighth of the reservation population.[5]

Such a pattern is far from unusual on Washington reservations. As this court is already aware from *Oliphant* v. *Suquamish Tribe*, No. 76-5729, decided March 6, 1978. on the Port Madison Reservation there are about 3,000 non-Indians and about 50 Indians.[6]

On the Puyallup reservation—if there still be one[7]—there are less than 1,000

[5] If we are following correctly the arithmetic of the United States (U.S. Br. 3, 57 and 87). the United States asserts that there are approximately 6,000 tribal members resident on the reservation. We do not know where this figure comes from, and the United States does not tell us. In any event, it is contrary to the record, and to the truth. The United States is correct, however, in its figure of 22,000 for the non-Indian population, which it refers to as simply "other [reservation] residents." (U.S. Br. p. 3) And after this interesting reference, no more is said about these "other residents," save on the charts at App. B.

[6] *Oliphant*, n. 1.

[7] *Cf., Dept. of Game* v. *Puyallup Tribe*, 433 U.S. 165, 173, n. 11.

resident tribal members, and approximately 25,000 non-Indian residents.[8] On the Colville reservation, there is a total population of approximately 7,000, of whom approximately 3,200 are tribal members.[9]

On some of the smaller reservations, on the other hand, the Indian population outnumbers the non-Indian.[10]

Taking all Washington reservations as a whole—including the Yakima and Puyallup—we would estimate a total non-Indian population of approximately 58,000, and a total Indian population of approximately 13,500.[11] Statewide, then, Indians constitute less than a fifth of the total reservation population of approximately 71,500.

What are the legal consequences for these reservation non-Indians if Washington's assumption of jurisdiction is struck down? The Tribe touches on them only in passing (Tr. Br. p. 20) and the United States mentions them in Appendix B, Chart 1 of its brief, though not in the text. We have attempted to spell them out at Wash. Br. pp. 20-24.

We need not repeat that discussion here, other than to recall the general result: Federal law, and only federal law, would be applicable to all of these non-Indians pursuant to 18 U.S.C. 1152, except to the extent that the offense falls under the *McBratney* exception to § 1152,[12] in which case only state law would be applicable.

Whether the federal government will obtain the resources—the police officers, the prosecutors, and the judges—to shoulder this responsibility under such a result is far from clear. One of the principal reasons for the passage of PL 280 in the first place was the breakdown in law and order on Indian reservations, a breakdown for which the federal government was in great part responsible.[13]

Twelve years after the passage of PL 280, in 1965, the federal government was still having difficulty in fulfilling its law and order responsibilities. In opposing a bill which would have given the federal government concurrent jurisdiction over crimes by non-Indians against other non-Indians, the Acting Secretary of Interior stated in a letter to the Chairman of the Senate Judiciary Committee:

> "As a practical matter, the Federal courts are reluctant to add to their crowded dockets offenses of this kind, many of which are in the misdemeanor category. The U.S. attorneys are reluctant to prosecute for the same reason. At the present time, the Department is having difficulty in funding the meager law and order programs carried on jointly by the tribes and the Bureau of Indian Affairs, and it is improbable that additional investigative, detention, trial, and appeal expenses could be justified." (Hearings on Constitutional Rights of the American Indians Before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 89th Cong., 1st Sess. (1965), p. 321.

[8] See 1970 U.S. Dept. of Commerce Census According to that census, tracts for this area in Pierce County, Washington, nine census tracts are completely within the boundaries of the claimed Puyallup Reservation. (Nos. 601, 602, 621, 622, 633, 705, 708, 709 and 710. It reflected at that time a total population of 22,848 with an Indian population of 579. When the proportionate part of the three census tracts which lie partially within and partially without the boundaries of the claimed reservation are taken into consideration, the result is a total population of 26,666 (at the time of the 1970 census) with an Indian population of 636.

[9] See Motion to Dismiss or Affirm in *Confederated Tribes of the Colville Indian Reservation, et al.* v. *State of Washington, et al.*, No. 78-60, p. 5.

[10] This is the case, for example, on the Lummi and Makah Reservations. See reference at n. 9.

[11] In making this estimate, population figures for reservations not specifically mentioned are taken from the Amicus Brief of The National Tribal Chairmen's Assn. Appendix A. in Oliphant. We dispute, of course, the statement of the United States that there are 20,000 reservation Indians. U.S. Br. 57. Again, we do not know where that figure comes from, and the United States does not tell us. Nor does the United States even purport to give a figure for the state-wide non-Indian reservation population.

[12] *U.S.* v. *McBratney*, 104 U.S. 621.

[13] "As one commentator has explained, 'federal law enforcement was typically neither well-financed nor vigorous.'" (U.S. Br. 74) See also, Hearings Before the Subcommittee on Indian Affairs of the House Committee on Interior and Insular Affairs on H.R. 459, H.R. 3235 and H.R. 3624. 82nd Cong., 2nd Sess (1952) p. 16.

CONTINUED

1 OF 10

There is no evidence that the situation is any different in 1978.[14]

It might be argued that federal jurisdiction over non-Indians is not a serious problem, because of the *McBratney* exception to § 1152.[15] But this argument founders on the fact that the scope of this exception is completely uncharted in a huge area of criminal offenses, *i.e.*, the area of "victimless" crimes.

The problem is best illustrated by the facts in *Oliphant*. Mr. Oliphant allegedly got into a fight, and was supposedly disturbing the peace; we do not know whether any Indians were involved until the tribal police tried to break the fight up. Mr. Belgarde was allegedly engaged in reckless driving, endangering the population at large rather than any specific person.

Under Oliphant, Mr. Oliphant and Mr. Belgarde should have been arrested by someone other than tribal police and tried by some court other than a tribal court. But should it have been state or local police? And a state court? Or should it have been federal officers and a federal court?

As we point out in our opening brief (Wash. Br. p. 22, n. 6), we don't know. The United States doesn't know either. See U.S. Br. App. B, Chart 1, discussion of Class 6–10, which covers victimless crimes, and states "But see cases 11–15." Cases 6–10 are, according to the United State's chart, under state law, and Cases 11–15 are under federal law. Where do the cases of Mr. Oliphant and Mr. Belgarde fall? The United States is as uncertain as we, as the "But see * * *" indicates.

Cases such as these are the normal, day-to-day stuff of law enforcement. Yet the United States and the Tribe argue for a result under which no one knows what authority, state or federal, is responsible for handling these cases.

The practical law enforcement problems involved in geographical checkerboarding are, we suggest, miniscule when compared with those involved in determinating whether federal or state law applies in a specific case involving a non-Indian offender, such as Mr. Belgrade or Mr. Oliphant.[16]

The *McBratney* exception, we submit, creates more problems than it might solve.

Finally, if RCW 37.12.010 is invalidated *in toto*, federal law enforcement responsibility must be extended not only to a whole new class of offenses by non-Indians, but also to a whole new class of offenses by Indians. The federal government would have to protect not only Indians from non-Indians, and Indians from Indians, but non-Indians from Indians as well. And this protection would have to be afforded on every portion of every reservation, be it in the cities of

[14] Such evidence as we can find suggests that the situation has not changed. As recently as March 9 of this year, in its testimony on S. 2502, the Tribal-State Compact Act of 1978, the Justice Department asked for an amendment to the bill "* * * to assure that S. 2502 cannot be construed to authorize states and tribes to give additional criminal law enforcement responsibilities to the Justice Department." Statement of Sanford Sagalkin, Hearings Before the United States Senate Select Committee on Indian Affairs, 95th Cong. 2d Sess. (1978), p. 115. The reason for this amendment was stated by Mr. Sagalkin:

"The reasons for this are very simple.

"Changes in Federal jurisdiction require knowledge about the particular U.S. attorneys' offices, particular courts, the backlog that may exist in the courts, marshal services, and so forth. It requires a planning and budgeting process that should be fed into any decisions on changing Federal authority." Hearings, at p. 118.

Similar concerns was voiced in 1975 by Jerry C. Straus, counsel for various Indian tribes, in his testimony on S. 1, Hearing Before the Subcommittee on Criminal Laws and Procedures of the Committee on the Judiciary, United States Senate, 94th Cong., 1st Sess. 1975 p. 241.

"Moreover, the implementation of the proposed extension of federal criminal jurisdiction would aggravate the present inability of federal prosecutors to enforce effectively the laws regarding offenses by non-Indians on Indian lands. We continue to doubt the adequacy of present federal resources to assume successfully any additional criminal enforcement responsibilities on Indian lands. * * *"

If the status quo is to be changed, by an expansion of federal jurisdiction, the change should be made by the Congress, which can take all of these practical problems into account.

[15] While we assume, along with the United States, the continued vitality of the *McBratney* exception. Interior appears to have had its doubts. As stated in this same letter from Interior to the Chairman of the Senate Judiciary Committee:

"Although the language of 18 U.S.C. 1152 and 13 seems to indicate that the Federal courts have jurisdiction over offenses between non-Indians, the judicial decisions leave that conclusion somewhat uncertain. The present Criminal Code was enacted in 1948. The substance of sections 1152 and 13 was contained in earlier law, but it was stated in different language. Under the earlier law, the Supreme Court held that the State has jurisdiction over such offenses (*People ex rel Ray* v. *Martin*, 326 U.S. 496 (1946), and that the Federal Government does not have jurisdiction (*United States* v. *McBratney*, 104 U.S. 621 (1881)) Whether the enactment of the 1948 Criminal Code changes the situation is not clear." (1965 Hearings, p. 320).

[16] Any "checkerboarding" problem involves only Indian offenders. Under RCW 37.12.010, non-Indian offenders are subject to state jurisdiction wherever the offense takes place.

Wapato and Toppenish, located on the Yakima Reservation,[17] or in a portion of the city of Tacoma, located on the Puyallup Reservation, or in the community of Suquamish, located on the Port Madison Reservation.[18]

Perhaps the federal government is up to the task. But history affords little reason for the 58,000 non-Indians on our reservations to be hopeful.

NATIONAL ORGANIZATION FOR THE REFORM OF MARIJUANA LAWS,
Washington, D.C., October 15, 1979.

Re: The Criminal Code Reform Act of 1979, S. 1722.

Senator EDWARD M. KENNEDY,
Chairman, Committee on the Judiciary,
U.S. Senate,
Washington, D.C.

DEAR SENATOR KENNEDY: Along with this letter I am enclosing a copy of the testimony I presented to the Subcommittee on Criminal Justice, House Judiciary Committee, in connection with that portion of the proposed Criminal Code Revision which relates to the possession of marijuana. I am respectfully requesting that this letter and accompanying testimony be included in your deliberation of S. 1722.

Specifically, we urge you to adopt for federal law the unanimous recommendation of the National Commission on Marijuana and Drug Abuse (Sec. 601, Public Law 91,513) that possession of marijuana for personal use no longer be an offense. Further, we urge that any fine be used for only possession in public and that the fine not exceed $100.

In connection with marijuana possession, S. 1722, as presently drafted, calls for:

> "an infraction if the controlled substance in 30 grams or less of marijuana" and the authorized fine is "not more than $500 for an infraction involving more than 10 grams of marijuana, if the defendant had twice been convicted of an offense under federal, state or local law relating to marijuana, and not more than $100 for an infraction in any other case; the Court shall sentence the defendant to pay the maximum authorized fine if the defendant is convicted of an infraction involving more than ten grams of marijuana, or if the defendant is convicted of a Class C misdemeanor or an infraction and had twice been convicted of an offense under federal, state or local law relating to marijuana; and the Court may not sentence the defendant to a term of imprisonment for an infraction." Subchapter B, Sec. 1813(d)(4).

The draft of this section is confusing and the language unclear as to the specific fine to be imposed. While one clause seems to be saying a maximum $100 fine can be imposed for possessing up to ten grams of marijuana, and another clause seems to be saying that possessing from 10 to 30 grams is a maximum $500 fine, still another clause seems to be saying it is a mandatory $500 fine. In any event, we feel a $500 fine is out of line with the severity of the offense and out of accord with the usual $100 fine imposed in the states which have enacted marijuana reform laws. We fear the young and poor may, as is often the case, find themselves subject to the law and unable to pay, and the proposal before you is silent about that possibility. Moreover, we oppose any increase in penalty for repeat offenses.

We are also concerned about the two-step division within the 30 gram "grading" category. First, it is at variance with existing state laws, which allow from 1 ounce up to 3½ ounces to be possessed without criminal penalties. Second, there

[17] In its brief, at p. 14, the Tribe asserts that "there are no non-Indian communities located within the exterior boundaries of the reservations" How it can make such an assertion in light of its own concession in Tr. Br., p. 14, note 20, immediately following the quoted language, of the respective non-Indian and Indian populations of Harrah, Toppenish and Wapato (non-Indian population of each town, 91%, 94%, 91%, respectively), all located entirely within the reservation, is baffling indeed. If the Tribe is relying on the court's discussion of the term "non-Indian community" in *U.S.* v. *Mazurie*, 419 U.S. 544, such reliance is misplaced.

[18] RCW 37.12.010 does not, of course, completely protect the non-Indian from the Indian offender if the Tribe has not consented to "total" jurisdiction. For the non-Indian victim may be on trust, *i.e.*, Indian land, when the offense takes place, in which case he must look to the federal government for protection in major offenses and to the Tribe for minor offenses. But if he is on nontrust land, *e.g.*, in his own home, he is afforded state protection.

would be problems in requiring a law enforcement officer to make these precise weight differentiations in the field.

We urge you to consider the laws of the eleven states which have, after careful deliberation, passed marijuana reform legislation, particularly with respect to the maximum amount possessed and the maximum fine imposed. A summary chart of these laws is attached.

When Congress enacted the first marijuana legislation in 1937, the goal was to stamp out the use of marijuana. Now, after more than four decades, we can see that the criminal law has failed. Enforcement has become what Attorney General Benjamin Civiletti has called, "an impossible job." You now have an opportunity to begin a rational and workable marijuana policy that does not place one out of four American citizens squarely against the criminal justice system. The federal law exists as a symbol for the states as they consider non-criminal approaches to marijuana control. The simple truth is that until Congress acts, many of the remaining states won't. And while Congressional action will not stop most arrests, which occur at the state level, it will provide the important leadership and an important model for the states to follow.

I would welcome the opportunity to discuss this matter with you or with members of your staff. I look forward to hearing from you at your earliest convenience.

Sincerely yours,

LARRY A. SCHOTT, *National Director.*

Enclosures.

MARIJUANA DECRIMINALIZATION LAWS

State	Maximum fine imposed	Maximum amount possessed	Classification of offense	Effective date
Oregon	$100	1 oz	Civil	Oct. 5, 1973.
Alaska[1]	100	Any amount in private for personal use or 1 oz in public.	do	Sept. 2, 1975.
Maine	200	Any amount for personal use[2]	do	Mar. 1, 1976.
Colorado	100	1 oz	Class 2 petty offense—no criminal record.	July 1, 1975.
California	100	1 oz	Misdemeanor—no permanent criminal record.	Jan. 1, 1976.
Ohio	100	100 g (approximately 3½ oz)	Minor misdemeanor—no criminal record.	Nov. 22, 1975.
Minnesota	100	1½ oz	Civil	Apr. 10, 1976.
Mississippi	250	1 oz	do	July 1, 1977.
North Carolina	100	1 oz	Misdemeanor	July 1, 1977.
New York	100	25 g (approximately ⅞ oz)	Violation—no criminal record	July 29, 1977.
Nebraska	100	1 oz	Civil	July 1, 1978.

[1] The Supreme Court of Alaska ruled in 1975 that the constitutional right of privacy protects the possession of marijuana for personal use on the home by adults. This decision invalidates the $100 fine for simple possession in the home.

[2] There is a rebuttable presumption that possession of less than 1½ oz is for personal use and possession of more than 1½ oz is with an intent to distribute.

Note: Distribution of marijuana by gift, or for no remuneration, is treated the same as simple possession in 4 States: California, Colorado, Minnesota, and Ohio (for up to 20 g). Only 1 State, Mississippi, has a mandatory minimum fine—$100 for 1st offense and $250 for 2d offense within a 2-yr period—but State judges can suspend payment of these fines. In 5 States—Minnesota, Mississippi, New York, North Carolina, and Nebraska—subsequent offenses are subject to increased penalties.

TESTIMONY OF LARRY A. SCHOTT, NATIONAL DIRECTOR OF THE NATIONAL ORGANIZATION FOR THE REFORM OF MARIJUANA LAWS (NORML)

My name is Larry Schott and I am National Director of NORML, the National Organization for the Reform of Marijuana Laws. I welcome the opportunity to appear here today and share with you our views on the Criminal Code Revision Act of 1979.

NORML is a non-profit, citizen action organization founded in 1970 to work for better marijuana policy. We do not advocate or encourage the use of marijuana. We fully support a discouragement policy toward the abuse of all drugs including alcohol, tobacco and marijuana. But we oppose the use of the criminal law—our society's most brutal and severe sanction—to implement that policy.

Today, the marijuana laws require massive expenditures of public funds, cause unnecessary and often crippling disruption of individual lives, and erosion in respect for our system of laws. And they don't work.

Our immediate goal is a policy of "decriminalization," which means, simply put, that possessing a small amount of marijuana for personal use is not a crime.

It is not a new idea. In 1971, after 3 years of deliberation, the National Commission on Reform of Federal Criminal Laws, chaired by former California Governor Edmund G. Brown, recommended that jail penalties be removed for marijuana possession. One year later, a blue-ribbon, bipartisan national commission reported on the most sweeping study ever undertaken on marijuana. The National Commission on Marijuana and Drug Abuse, chaired by former Pennsylvania Governor Raymond Shafer, dealt in great detail not only with the medical and health implications of marijuana use but also with the legal, economic and social issues. The Commission's unanimous recommendation: federal criminal penalties should be eliminated for the private possession and use of marijuana.

This policy is consistent with the views of the American people administration policy, and federal strategy. And, I might add, it is certainly consistent with sound constitutional principles and good common sense.

When Gallup last polled the nation on the question of marijuana decriminalization, he found 53 percent of the public supporting it. Moreover, President Jimmy Carter supports it. So does the American Medical Association, the American Bar Association, and the 1.8 million member National Education Association, among many other respected individuals and organizations.

President Carter, in his major message to Congress on drug policy, formally requested that federal law be amended to eliminate all criminal penalties for possessing up to one ounce of marijuana. President Carter said, in part, "Penalties against possession of a drug should not be more damaging to an individual than the use of the drug itself; and where they are, they should be changed. Nowhere is this more clear than in the laws against possession of marijuana in private for personal use."

The Federal Strategy Council on Drug Abuse, first created in 1972 and revitalized by President Carter two years ago, also supports a reduction in penalties. The Council objectives are two-fold: discourage all drug abuse, and reduce the health and social consequences where drug abuse does occur. Strategy 1979 discourages marijuana use but correctly observes that: "(T)he past use of incarceration as a sanction against marijuana use has been erratically applied, often with extremely harsh punishment doing more harm to the individual than the drug itself." The document goes on to support a "reduction in the severity of the federal criminal penalties for possession and use."

The first state to enact a decriminalization law was Oregon in 1973. Since then, ten other states have followed: Alaska, Maine, Colorado, California, Ohio, Minnesota, Mississippi, New York, North Carolina and Nebraska. Although the exact wording of the laws may vary, in practice they are alike. Traffic-ticket like citations and small fines are substituted for arrests and jail sentences. Often the fine is only $25, and generally not more than $100 and always at the discretion of the judge. And, most important, an offender is not burdened by the scar of a life long criminal arrest record.

In three states, there have been followup public opinion and usage surveys to determine if the new laws really work.

For four years the Drug Abuse Council, an independent foundation sponsored principally by the Ford Foundation, monitored the results of the Oregon experience. They discovered that 60 percent of the public continues to approve of the new law and only a slight increase of 1 percent of current usage has been reported since the first survey in 1974. The main reason given for not using marijuana was lack of interest and not the possibility of prosecution.

In California, the state Health and Welfare Agency Office of Narcotics and Drug Abuse studied, at the request of the state legislature, the impact of California's decriminalization law. They found that adult marijuana arrests for the first half of 1976, the first year of the law, decreased 47 percent compared to the same period in 1975. The savings to local criminal justice agencies alone were estimated to be $25 million, with similar savings to other state agencies. A slight increase, estimated at less than 3 percent was reported in the number of adults who have tried marijuana since the new law became effective in January, 1976, but at the same time, frequency of use declined. The study also found the majority of citizens in all age groups under 60 supporting the new

law, and among those who have never tried marijuana, a majority prefer the new law.

The most recent evaluation comes from Maine and was undertaken by the State Office of Alcoholism and Drug Abuse Prevention. The results in Maine are remarkably similar to the experience in Oregon and California. Sixty-eight percent of the adults surveyed said they favor the current civil penalties or a more liberalized approach, including legalized sale. Less than 1 percent of all adults reported that their marijuana use increased as a result of the decriminalization law. Among the reasons reported for not using marijuana, the most frequently cited (82 percent) was lack of interest, while fear or arrest and prosecution scored the lowest (4 percent).

We are fortunate to have these natural laboratories to study decriminalization, for they tell us that where the laws are changed, it is for the better and that citizens approve, and that they work.

For still another look at the decriminalization experience, the National Governors Conference, supported by a federal grant from the Law Enforcement Assistance Administration (LEAA), conducted a comprehensive examination of the laws and issues involved. They reviewed the scientific research and legal literature, they visted the states that had changed their laws or had considered legislation doing so, and conducted interviews with state officials around the country.

Some of the conclusions from the three volume, 375-page report released two years ago:

States that have decriminalized marijuana possession have shown a "substantial" savings of tax dollars;

Reducing criminal penalties for marijuana possession does "not generally lead to an immediate increase in total marijuana use . . .";

The preponderance of medical evidence shows that moderate use of marijuana "probably does not pose an immediate, substantial health hazard"; and,

Harsh penalties do not deter use.

Until 1914, there were no laws against marijuana in the United States. That year, El Paso, Texas, alarmed by the use of marijuana by Mexican laborers, passed the first local marijuana ordinance, banning its sale and possession. A year later, California and Utah became the first states to outlaw marijuana.

By 1930, the year the Federal Bureau of Narcotics was created, nearly every state west of the Mississippi and eight states in the East had laws prohibiting marijuana. The new Bureau eagerly helped draft model legislation for use by the states and when Congress passed the first federal law for marijuana control in 1937, thirty-five states had adopted the Uniform Narcotics Act. Instead of banning marijuana outright, the Marijuana Tax Act of 1937 placed a special tax on all marijuana transactions.

The Boggs Act of 1951 lumped marijuana for the first time with narcotics in federal law and provided that first-time offenders receive a two-year mandatory minimum sentence. Acting again in 1956, Congress passed the Narcotics Control Act, this time raising the mandatory minimum sentence to five years. But then came the 60's and it was soon apparent that the "get tough" approach was not working and had never worked. Arrests in 1965 rose to 18,000 nationwide and in the next five years jumped ten fold. All of a sudden what had been a chicano and black curiosity had become a white, middle class dilemma.

After the Marijuana Tax Act was declared unconstitutional in part by the U.S. Supreme Court in 1969, Congress responded with the Controlled Substances Act in 1970, which reduced the federal penalty for marijuana possession from a felony to a misdemeanor, with a maximum sentence of one year. Most states followed the federal lead and adopted the model Uniform Controlled Substances Act (U.C.S.A.). Today marijuana possession is a misdemeanor or civil offense in all states but two. In Arizona, possession of any amount of marijuana can still be prosecuted as either a felony or a misdemeanor. And marijuana possession is still a felony in Nevada.

Throughout the years, the costs of marijuana prohibition have been exceedingly high. In 1977, the last year for which we have arrest figures, there were 457,600 marijuana related arrests, the highest figure ever recorded. Since 1970, nearly three million marijuana arrests hav eoccurred. The vast majority of those arrested are young people. The Marijuana Commission found that more than 90 percent of all marijuana arrests were for possession offenses, not trafficking. Seven out of every ten drug arrests in this country are for marijuana.

Based on official state cost analyses in California and Illinois, more than $600 million in law enforcement resources is spent annually on marijuana arrests. Given our inflation factor today, I'm sure that the total is now closer to a billion dollars a year. We think that public funds from the American tax payer could be better applied to the control of serious crime.

With respect to the pending legislation we support the concept of an infraction for possessing marijuana whereby a summons is issued, in lieu of an arrest and the attendant booking procedures. In this instance, as I understand, there would be no permanent public record of the violation. We would, however, urge you to carefully consider the law in Alaska, where there is no quantity limitation on private possession, and a one ounce limitation in public situations.

We also urge you to consider the Alaskan law as a model and require by definition no fine for private possession, recognizing the difficulty and tenuous constitutional grounds of enforcement. A fine, is used at all, should be reserved only for violations occurring in public. And, we feel the maximum $500 fine is out of line with the severity of the offense and out of accord with the usual $100 fine imposed in the states which have enacted decriminalization laws. We fear the young and the poor may, as often is the case, find themselves subject to the law and unable to pay, and the proposal before you is silent about that possibility.

Moreover, we recommend, as the Marijuana Commission specifically did, that casual distribution of small amounts of marijuana for no remuneration, or insignificant remuneration not involving profit, be treated the same as personal possession. This shared courtesy is a common occurrence among friends and should be recognized by the law.

We also urge that the records of marijuana possession offenses occurring prior to enactment of this legislation be destroyed and declared as having no legal effect. People should not continue to be stigmatized when bad laws are corrected.

Finally, we believe that the severity of punishment should accurately reflect the seriousness of the offense. We do not believe that marijuana meets the test of seriousness and oppose any increase in penalties for any marijuana-related offense.

When Congress enacted the first marijuana legislation in 1937, the goal was to stamp out the use of marijuana. Now, after more than four decades, we can clearly see that the criminal law has failed utterly and miserably. Today, 43 million people, 25 percent of the adult population, have tried marijuana, and 16 million Americans, 10 percent of the adult population, are regular users. Enforcement has become what Attorney General Benjamin Civiletti has called, "an impossible job."

The marijuana issue has long been characterized by a "reefer madness" kind of hysteria. It's been a nagging social issue that we hope will soon see reason and logic prevail. You now have an opportunity to begin a rational and workable alternative marijuana policy that does not place one out of four American citizens squarely against the criminal justice system. While eleven states have taken the initiative and enacted marijuana law reform legislation, the simple truth is that until Congress acts, many of the remaining states won't. And while Congressional action will not stop most arrests which occur at the state level, it will provide the important leadership and an important model for the states to follow.

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EXHIBITS

SENATOR DOLE'S QUESTIONS FOR PROFESSOR WILLIAM GREENHALGH, ABA SPOKESPERSON FOR S. 1722 (CRIMINAL CODE REFORM ACT)

1. Professor Greenhalgh, on pages 24–25 of your statement, you deplore the preventive detention amendments which I offered to last year's bill, and which the Senate accepted, and which are *not* present in this bill. These amendments would allow preventive detention before trials of defendants charged with serious crimes, whom the judge found pose a continuing danger to the community.

Don't you think that a line should be drawn somewhere so that innocent people can be protected from offenders believed by the judge to pose a danger to the community?

If a defendant said he was determined to shoot someone and would do it immediately on release on bail, would you like the judge to release him?

Where would you draw the line in allowing preventive detention?

2. While deploring the whole concept of preventive detention, you also state on page 15 that you are opposed to "mandatory minimum" sentences, and on page 21 you say that the maximum terms of imprisonment in S. 1722 are too harsh, right across the board.

Given your concern for the rights of the innocent accused *before* conviction, why are you in favor of reducing punishment of the guilty *after* conviction?

Why do you say on page 15 that "in general," mandatory minimum sentences do not work?

If judges do not have to impose mandatory minimum sentences, would they in fact be given a green light to act as parole boards, to award de facto parole in the form of reduced sentences in advance to offenders who may not even deserve it?

Would this defeat the purpose of section 2303 of this bill, which abolishes parole?

3. On pages 16–17 of your statement, you propose that we amend section 2001 of the bill to mandate consideration in every case by the sentencing judge in a "lockstep fashion of alternatives to incarceration."

While this proposal is certainly consistent with your previously voiced concern for the "too harsh" prison sentences imposed on the guilty, are you not concerned that such a lockstep mandate would actually encourage judges to mitigate sentences, and thus act as de facto parole boards in advance?

If your proposals are perceived by potential offenders to offer the guilty parole in advance, are you not concerned that they may be encouraging, or dimnishing deterrence to, crime? Should crime be made into a gamble, a game of chance?

4. What is your opinion of the sentencing structure of the House version of this bill (S. 1723)?

5. The House has eliminated the Federal obscenity statute in its version of the bill. What is your opinion of this?

6. Are you aware of "parole predictability factors" in current law? In reality, is it true that most Federal judges now free some prisoners on the basis of a "presentencing report" by the probation department?

Is this, in fact, the same thing as the parole board's report?

If it is the same, does this not amount to a duplication of effort, and "parole inadvance?" Why do both?

AMERICAN BAR ASSOCIATION,
September 28, 1979.

Senator EDWARD M. KENNEDY,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATOR KENNEDY: This is in response to your letter of September 13 transmitting questions from Senator Dole on the statement of the American Bar Association on federal criminal code legislation.

I first want to thank you again for the opportunity to present the views of the ABA on S. 1722 and S. 1723 on September 13. At that time, my colleague, George Freeman of the ABA Corporation, Banking and Business Law Section, was asked to supply you with additional material in two areas. You will separately be hearing from him on these in the near future.

Here are my responses to Senator Dole's questions:

1. We believe that the *Standards Relating to Pretrial Release* adopted by the American Bar Association in February, 1979 *do* adopt a reasonable and constitutionally acceptable approach to the problem of crimes committed by persons on pretrial release.

Some background concerning our policy may be helpful. The first edition of these Standards, published in 1968, contained no general procedure for determining whether pretrial detention was necessary, and rejected pretrial detention premised solely on a prediction of dangerousness. The updated Standards, however, reflect a rethinking of this troublesome issue. In the intervening 10 years, Congress has enacted, as you know, a procedure for pretrial detention in the District of Columbia. A considerable body of empirical, practical and legal knowledge had been accumulated under that statute. That data shows that the task of formulating statutory criteria for detention that accurately predict dangerousness remains formidable, and perhaps impossible. Additionally, practical difficulties inherent in a procedurally fair system of pretrial detention have resulted in the D.C. statute's being virtually unused.

Consequently, the ABA's position in the updated Pretrial Release Standards takes a different approach. The Standards do not authorize pretrial detention of criminal defendants based on a generalized prediction of dangerousness (or who cannot meet monetary conditions necessary to deter flight). A hearing procedure is authorized for defendants charged with new crimes on release and for defendants charged with violating other conditions of release. The hearing can be triggered by a prosecutor or law enforcement officer alleging that a released defendant constitutes a danger to the community. This scheme provides, in our view, a procedurally fair and constitutionally acceptable means of detaining those defendants who cannot be released because their reappearance cannot be assured or because they have demonstrated that they constitute an unacceptable risk to the community.

I have enclosed a xerox copy of ABA Pretrial Release Standard 10–5.9, which I hope may be useful to the Committee in fashioning these sections of the bill.

2. Senator Dole has asked why the ABA in general opposes mandatory minimum sentences. The ABA Standards Relating to Sentencing Alternatives and Procedures, 18–2.1, (c) provide that the legislature should not specify a mandatory sentence for any sentencing category or for any particular offense. The Standards do, however, provide (18–2.3) that the legislature can authorize sentencing authorities to bar probation in "limited exceptions" for "the most serious offenses." Since 1975, when we addressed S.1 (94th Congress), we have therefore supported the mandatory minimum sentence provision in the code legislation as applied to crimes involving the use of a firearm, believing that to be one of the "most serious" offenses, but have opposed it for trafficking in an opiate.

The ABA's opposition to mandatory minimum sentences is based on a number of factors. First, we believe the legislature does not have the ability to identify those persons actually dangerous to the community. Second, where a mandatory minimum is clearly not warranted, and is circumvented by action of the prosecutor or judge, public confidence in the system is eroded. Mandatory minimums, in our view, impede the legitimate exercise of discretion on the part of law enforcement officers to arrest, of prosecutors to charge, of the judge in ruling on pretrial motions, and at the appellate level, most of all, where judges often make every effort to find error in the record when they believe the application of a mandatory minimum has resulted in too severe a sentence. We believe mandatory minimums do not meet the ends they are intended to achieve.

Our opposition to lengthy prison sentences, which he inquired about, is based on several rationales. First, our country's sentences exceed those of every other Western democracy; in England, sentences rarely exceed five years. Our Sentencing Alternatives and Procedures Standards (18.2–1) state that, "longer [than 10 year] sentences should be reserved for particularly serious offenses committed by particularly dangerous offenders, but such sentences should only be authorized or imposed in accordance with specific criteria established by the legislature and its guideline drafting agency, and should require a specific finding of dangerousness based on repetitive criminality in accordance with standards . . . and reached under . . . special procedures . . ."

Second, shorter sentences also increase the chances of an offender's successful reintegration into the community. We think this is particularly important to note, since almost all offenders do return to the community at some point. Third, we think you must view the maxima in S. 1722 in the context of the bill's abolition of parole and "good time." We believe actual time served will probably increase for most offenders under the legislation. Finally, an awareness of prison capacity must underlie any discussion of maximum terms.

In answer to Senator Dole's question, we do not think elimination of mandatory minimum sentence in the very limited context provided in this bill (two sections—§ 1811 and § 1823) will prompt judges "to act as parole boards." Of the two mandatory minimum sentence provisions in the bill, we are only urging deletion of one. Senator Dole's expressed fears about the judge's acting like a parole board are therefore somewhat baffling to us, and likewise any negative impact on the abolition of parole, as raised in his query, seems somewhat dubious.

3. In answer to Senator Dole's third question, our lockstep proposal for amendment of § 2001 of S. 1722 would not encourage judges to mitigate sentences and act as de facto parole boards. Our proposal would only require the judge in sentencing individuals to consider alternatives to incarceration. He would certainly be free to reject these—and should in sentencing such offenders as armed bank robbers. Our point in proposing the revision of § 2001 is simply to encourage judges to think about effective alternatives to prison in those cases where they believe them to be appropriate. Our intention is not "to offer the guilty parole in advance," as Senator Dole suggests.

4. We find some features of the sentencing structure of the House bill (S. 1723) to be preferable from the standpoint of ABA policy—e.g., more emphasis on alternatives to prison; shorter maximum sentences; advisory sentencing guidelines; and elimination of some of the organizational sanctions (such as notice of conviction) to which we objected. On the other hand, we prefer some sentencing features of S. 1722—for example, the higher fine levels and the retention of "good time."

5. Senator Dole asks the ABA's views on the House bill's elimination of any federal obscenity statute. We generally approve of their action. Since 1975, the ABA has supported a federal obscenity statute only to the limited extent of making it a federal crime to disseminate obscene material to a person who has no effective opportunity to avoid exposure, or to a minor, only within the special jurisdiction of the U.S.

6. In answer to the Senator's sixth question, we are aware of "parole predictability factors." No, it is not true that most federal judges now free some prisoners on the basis of a presentence report prepared by the probation department. Federal judges obviously do free some offenders on probation; but those with trial experience and those familiar with the handling of criminal cases in our federal courts would point out that this is only one factor which the judge considers in addition to his own thinking, recommendations by the attorney for the government and the counsel for the defendant. A parole board report occurs at a later point, when the offender is becoming eligible for parole. These are different documents, prepared for different bodies, and with different purposes.

Sincerely,

WILLIAM W. GREENHALGH,
Chairperson, Committee on Criminal Code Revision.

Standard 10-5.9. Pretrial detention

(a) A judicial officer shall convene a pretrial detention hearing whenever:

(1) a defendant has been detained for five days pursuant to standards 10-5.4, 10-5.7(a)(ii), or 10-5.8; or

(2) the prosecutor, a law enforcement officer, or a representative of the pretrial services agency alleges, in a verified complaint, that a released defendant is likely to flee, threaten or intimidate witnesses or court personnel, or constitute a danger to the community.

(b) At the conclusion of the pretrial detention hearing, the judicial officer should issue an order of detention if the officer finds in writing by clear and convincing evidence that:

(1) the defendant, for the purpose of interfering with or obstructing or attempting to interfere with or obstruct justice, has threatened, injured, or intimidated or attempted to threaten, injure, or intimidate any prospective witness, juror, prosecutor, or court officer or;

(2) the defendant constitutes a danger to the community because:

(i) the defendant has committed a criminal offense since release, or

(ii) the defendant has violated conditions of release designed to protect the community and no additional conditions of release are sufficient to protect the safety of the community; or

(3) the defendant is likely to flee and:

(i) the defendant is presently detained because he or she cannot satisfy monetary conditions imposed pursuant to standard 10-5.4 and no less stringent conditions will reasonably assure defendant's reappearance, or

(ii) the defendant has violated conditions of release designed to assure his or her presence at trial and no additional nonmonetary conditions or monetary conditions which the defendant can meet are reasonably likely to assure the defendant's presence at trial.

(c) The judicial officer shall not issue an order of detention unless the officer first finds that the safety of the community, the integrity of the judicial process, or the defendant's reappearance cannot be reasonably assured by advancing the date of trial or by imposing additional conditions on release. In lieu of an order of detention, the judicial officer may enter an order advancing the date of trial or imposing additional conditions on release.

(d) Notwithstanding the order of detention, any defendant detained pursuant to standard 10-5.9(b)(3)(i) shall be released whenever the defendant meets the original monetary conditions set upon release.

(e) Pretrial detention hearings shall meet the following criteria:

(1) The pretrial hearing should be held within five days of the events outlined in standards 10-5.4, 10-5.7(a)(ii), 10-5.8, or 10-5.9(a)(2). No continuance of the pretrial detention hearing should be permitted except with the consent of the defendant in hearings held pursuant to standards 10-5.4, 10-5.7(a)(ii), and 10-5.8 or the consent of the prosecutor in hearings held pursuant to standard 10-5.9(a)(2).

(2) In order to provide adequate information to both sides in their preparation for a pretrial detention hearing, discovery prior to the hearing should be as full and free as possible, consistent with the standards in the chapter on discovery and procedure before trial.

(3) The burden of going forward at the pretrial detention hearing should be on the prosecution. The defendant should be entitled to be represented by counsel, to present witnesses and evidence on his or her own behalf, and to cross-examine witnesses testifying against him or her.

(4) No testimony of a defendant given during a pretrial detention hearing should be admissible against the defendant in any other judicial proceedings other than prosecutions against the defendant for perjury.

(5) Rules respecting the presentation and admissibility of evidence at the pretrial detention hearing should be the same as those governing other preliminary proceedings, except that when the defendant's detention is premised upon the commission of a new criminal offense, the rules respecting the presentation and admissibility of evidence should be the same as those governing criminal trials.

(f) A pretrial detention order should:

(1) be based solely upon evidence adduced at the pretrial detention hearing;

(2) be in writing;

(3) be entered within twenty-four hours of the conclusion of the hearing;

(4) include the findings of fact and conclusions of law of the judicial officer with respect to the reasons for the order of detention and the reasons why the integrity of the judicial process, the safety of the community, and the presence of the defendant cannot be reasonably assured by advancing the date of trial or imposing additional conditions on release;

(5) include the date by which the detention must terminate pursuant to standard 10-5.10.

(g) Every pretrial detention order should be subject to expedited appellate review.

History of Standard

This standard is new. The thrust of original standard 5.9 has been incorporated into revised standard 10-5.6.

Although the first edition contained provisions authorizing revocation of release when defendants committed new crimes or violated conditions of release, it contained no general procedure for pretrial detention. Nor did it authorize pretrial detention premised solely on a prediction of dangerousness. The commentary explained that while the problem of crime by released defendants is a serious one,[1] the drafters of the standards "finally concluded that, at this time and on the basis of present knowledge, it should not recommend the adoption of preventive detention."[2] This decision was premised on doubts concerning the constitutionality of detention based solely on a prediction of dangerousness, doubts concerning the practicality of such a system and the feasibility of identifying in advance the class of defendants likely to commit pretrial crime, and the major amendments to the laws of most states required to install such a system. The commentary notes, however, that "the decision was taken reluctantly by several members" and that "the question of the need for outright preventive detention ought to be regarded as a continuing one."[3]

In the ten years since publication of the first edition, Congress has enacted a procedure for pretrial detention in the District of Columbia,[4] and a considerable body of empirical, practical, and legal knowledge has been accumulated under that statute. In general, this experience demonstrates that the drafters' doubts ten years ago were well founded. Pretrial detention based solely on a generalized prediction of dangerousness remains as constitutionally dubious as ever. Empirical data accumulated under the District of Columbia act shows that the task of formulating statutory criteria for detention that accurately predict dangerousness remains formidible, and perhaps impossible. In addition, practical difficulties inherent in a procedurally fair system of pretrial detention have meant that the District of Columbia statute has gone almost entirely unused and has not contributed significantly to the reduction of pretrial crime.

Consequently, this edition, like the first edition, does not authorize pretrial detention of criminal defendants based on a generalized prediction of dangerousness. A fair system for detaining individuals who have engaged in specific pretrial conduct demonstrating dangerousness, or who cannot meet monetary conditions necessary to deter flight, stands on quite a different footing, however. This standard has been added to ensure that all defendants detained on this basis are provided hearings designed to ensure that the detention is justified. It combines the procedures authorized in the first edition for defendants unable to meet monetary conditions, defendants charged with new crimes, and defendants charged with violating other conditions of release into one procedure, thus ensuring that they are all treated equally. Moreover, by funneling these defendants through the judge setting the initial release conditions, it provides a means for detaining the defendant until a full-scale detention hearing can be held.

Related Standards

ABA, Criminal Justice Standards 11-2.1, 19-5.3
NAC, Corrections 4.5
NAC, Courts 4.6
NAPSA, Performance Standards and Goals for Pretrial Release and Diversion, VI(C), VII
NCCUSL, Uniform Rules of Criminal Procedure 341(e), 344
NDAA, National Prosecution Standards 10.1(A), 10.5(A), 10.7(C), 10.8(A)

Commentary

These standards anticipate that the great majority of defendants will be released prior to trial, either on personal recognizance or under some form of supervision. Inevitably, however, there will be some defendants who cannot be released, either because there is no way to assure their reappearance or because they have demonstrated that they constitute an unacceptable risk to the community. The purpose of this standard is to provide a procedurally fair, constitutionally acceptable means of detaining these defendants without resort to monetary conditions discriminating along wealth lines.[5]

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1. ABA, Pretrial Release 66 (1968).
2. *Id.* at 69.
3. *Id.* at 71.
4. *See* D.C. Code 23-1327 (1973).

5. The procedures outlined in this standard are drawn from a number of sources. In some respects they resemble the pretrial detention scheme presently functioning in the District of Columbia. *See* D.C. Code § 23-1322 (1973). This standard differs from the D.C. Code provision, however, in that this standard is keyed to specific past conduct of the accused which violated some condition of release rather than simply to the nature of the crime charged. Similarly, NDAA, National Prosecution Standards 10.8, and NAPSA, Performance Standards and Goals for Release and Diversion VII, resemble the D.C. Code provisions by authorizing pretrial detention simply on the basis of the crime charged or a prediction of future dangerousness not supported by a violation of a condition of release. NAC, Corrections 4.5, also differs from this standard in permitting pretrial detention where the judge finds "substantial evidence that confinement . . . [is] necessary to insure

There are four ways in which the procedures in this standard can be triggered: (1) by a judicial determination pursuant to standard 10-5.4 that monetary conditions were deemed necessary to assure reappearance but the defendant failed to satisfy those conditions; (2) by a judicial determination pursuant to standard 10-5.7(a)(ii) that there is probable cause to believe that a defendant has willfully violated a condition of release; (3) by a judicial determination pursuant to standard 10-5.8 that there is probable cause to believe that the defendant has committed a new crime while on pretrial release; or (4) upon a formal complaint executed by the prosecutor, a law enforcement officer, or a representative of the pretrial release agency alleging that the defendant is likely to flee, threaten or intimidate witnesses, or constitute a danger to the community.

In each case, the pretrial detention hearing should be held within five days of the triggering event.[6] In the first three cases, the defendant will already be in custody at the time of the hearing, and, therefore, no continuances ought to be permitted except with the defendant's consent. In the fourth case, the defendant remains at large until the conclusion of the hearing, and, therefore, no continuance ought to be permitted except with the prosecution's consent.

If the pretrial detention hearing ends adversely to the defendant, then the trial judge must issue an order requiring the defendant's detention without bail pending trial. The only situation in which such a defendant can be released pretrial is when the hearing is triggered by the defendant's inability to meet the monetary conditions initially set. In that case, the detention order should authorize release if the defendant meets the initial monetary conditions so long as no other ground for detention is alleged and proved at the detention hearing.

There are three basic findings on which a detention order can be premised: (1) that, for the purpose of obstructing justice, the defendant has threatened, injured, or intimidated participants in the criminal justice system or attempted to do so;[7] (2) that the defendant has demonstrated that he or she constitutes a danger to the community; or (3) that the defendant is likely to flee.

1. The first of these findings is self-explanatory. Every defendant's release is conditioned on the defendant's not interfering with participants in the system, and a finding under this standard would mean that the defendant has violated this condition of release. In one sense, such a finding would be redundant, since this activity would almost certainly constitute a new criminal violation that could serve as a predicate for a detention order pursuant to standard 10-5.9(b)(2)(ii). However, making it a separate ground for detention has procedural consequences under standard 10-5.9(e)(5).

2. When the prosecution requests a detention order based on dangerousness, the judge is not thereby free to make an intuitive, ad hoc judgment as to whether the defendant is dangerous or not.[8] Rather, the judge must base his or her finding on specific conduct, proved by the prosecution, that indicates dangerousness. Specifically, the judge must find either that the defendant has committed a new criminal offense pending trial or that the defendant has violated a condition of release designed to protect the community and no additional condition of release would provide such protection. A defendant who falls into either of these categories has demonstrated in a concrete way that he or she poses an unacceptable risk to the community and ought to be detained.

3. When a defendant is detained because of the likelihood of fleeing, the defendant must fall within one of two categories: either the defendant must be a person already detained because of inability to meet a money bond; or defendant must have violated a condition of release designed to assure appearance at trial and no additional nonmonetary condition or monetary condition the defendant could meet would assure reappearance.

Because the defendant's freedom is at stake, the hearing should be procedurally fair and rigorous. Thus, there should be as full discovery as possible before the hearing. At the proceeding itself, the defendant should be afforded the right to counsel, to present witnesses, and to cross-examine the witnesses presented against him or her.[9] The prosecution should

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the presence of the accused for trial." Like this standard, however, it makes no provision for pretrial detention based on a prediction of dangerousness. The commentary explains that "it may be premature to recommend a system of pretrial detention" since thoroughgoing bail reform may make it unnecessary, its legality is questionable, and the District of Columbia experience has been inconclusive. *See id.* at 104. *Cf.* NAC, COURTS 4.6. The position taken in these standards is, of course, influenced by many of the same considerations.

The pretrial detention scheme most closely resembling the one provided for in this standard is found in NCCUSL, UNIFORM RULES OF CRIMINAL PROCEDURE 344. Like this standard, it provides for a detention hearing triggered solely by the defendant's inability to meet condition of release or by the violation of such a condition.

6. *Cf.* D.C. CODE § 23-1322(c)(3) (1973).

7. *Cf.* D.C. CODE § 23-1322(a)(3) (1973); Blunt v. United States, 322 A.2d 579 (D.C. Ct. App. 1974).

8. In contrast, D.C. CODE § 23-1322(b)(2) (1973) requires the trial judge to make a prediction concerning dangerousness without requiring a finding that the defendant has violated a condition designed to protect the community or, indeed, has committed any illegal act.

9. *See* D.C. CODE § 23-1322(c)(4) (1973). *But cf.* Blunt v. United States, 322 A.2d 579 (D.C. Ct. App. 1974).

have the burden of going forward and, because of the importance of pretrial freedom, should have the burden of proof by a clear and convincing evidence standard.[10] The defendant should not be forced to choose between the constitutional right to remain silent and the constitutionally protected right to pretrial freedom. Therefore, the defendant's testimony at the hearing ought not to be admissible against him or her in other judicial proceedings.[11] The evidentiary rules should be the same as those for any other pretrial hearing, except that when detention is premised on criminal activity, the rules ought to be those used to determine the existence of such activity—that is, trial rules.

Pretrial detention, under the circumstances and with the protections provided for in this standard, is clearly constitutional. Standard 10-1.2 requires that the release of every defendant be conditioned on defendant's refraining from criminal activity and interfering with witnesses, and standard 10-5.2 empowers a judicial officer to impose additional nonmonetary conditions of release to ensure defendant's appearance in court, protect the safety of the community, and prevent intimidation of witnesses. With one exception, every category of defendants detained pursuant to standard 10-5.9 would have violated one of these conditions. For as long as there has been a bail system, it has been clear that the judge has the power to revoke release when the conditions under which it is granted have been violated.[12] All that this standard does is to provide a procedurally fair mechanism for determining when such a violation has occurred.

The only circumstance in which detention is not premised on a violation is when the defendant is unable to meet monetary conditions necessary to ensure reappearance. In these circumstances, this standard merely provides an added layer of procedural protection for a defendant who would, in any event, be detained under traditional bail systems.

Two basic themes run throughout these standards' treatment of monetary conditions. One is that a defendant ought not to be incarcerated while a similarly situated defendant goes free simply because one is poor and the other is rich. The second is that reasonable means permitting the safe release of defendants prior to trial ought to be utilized and that, occasionally, monetary conditions are such a means. Unfortunately, in some instances, these two themes are in unavoidable and irreconcilable conflict. If monetary conditions are to be used at all, it is inevitable that there will be some incarcerated defendants who would be free if they had more money. And while monetary conditions might, theoretically, be totally eliminated, that change would have the effect of incarcerating some defendants who could safely be released if this tool were available.

This standard's treatment of monetary conditions is designed to soften, if not eliminate, this conflict. It does not change the fact that some rich defendants will be released while similarly situated poor defendants will be incarcerated. But it does end the hypocrisy of pretending that defendants too poor to post bail have been "released" on monetary conditions. Such defendants obviously have not been released; they have been detained, and it follows that they should be afforded precisely the procedural protections granted to other detained defendants. Moreover, such detention cannot be justified unless the prosecution can bear the burden of proving that it results from a factor other than the defendant's poverty. This standard therefore requires the prosecution to show that monetary conditions resulting in detention are essential to prevent flight and that this objective cannot be satisfied by advancing the date of trial. By making such a showing, the prosecution demonstrates that there are independent legitimate reasons for detaining the defendant which do not relate to the defendant's wealth. This requirement ensures that monetary conditions serve as a means of release for defendants who could not otherwise be released rather than as a sub rosa means of detention for defendants who, but for their poverty, would not be detained.

This standard does not go as far as some other pretrial detention schemes. In particular, it does not make persons charged with certain serious crimes,[13] addicted to drugs,[14] or already on probation, parole, or pretrial release[15] automatically subject to pretrial detention. These more radical proposals are unwise for three reasons.

1. Such schemes are unnecessary. Insofar as it is desirable to incarcerate defendants alleged to have committed additional crimes while on probation, parole, or pretrial release, this can be accomplished by revoking that form of release. There seems no reason to utilize pretrial detention hearings to serve this collateral objective. Defendants who have been charged with, but not convicted of, serious offenses, are addicted to drugs, or have engaged in a pattern of criminal activity are still not automatically subject to deten-

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10. *Cf.* D.C. CODE § 23-1322(b)(2)(A) (1973).

11. *Cf.* Simmons v. United States, 390 U.S. 377 (1968).

12. *Cf.* Carbo v. United States, 82 S. Ct. 662 (1962) (Douglas, Circuit Justice); United States v. Gilbert, 425 F.2d 490 (D.C. Cir. 1969).

13. *See* D.C. CODE § 23-1322(a)(1), (2) (1973); NDAA, NATIONAL PROSECUTION STANDARDS 10.8(A)(1). *Cf.* 18 U.S.C. § 3146(a) (1973).

14. *See* D.C. CODE § 23-1322 (1973).

15. *See, e.g.*, D.C. CODE § 23-1322(a)(2)(ii) (1973).

tion. But the problems posed by this group are easy to exaggerate. Many studies show that even recidivists are unlikely to commit new crimes during the first three months of their pretrial release. Crime while on release only becomes a problem when the pretrial period extends longer than three months.[16] Thus, rapid trial for dangerous offenders would eliminate much of the need for pretrial detention. Moreover, a large percentage of defendants who are serious and recent recidivists are on parole or probation and can be reached through this mechanism. Finally, in evaluating the adequacy of this standard to deal with these defendants, the standard must be read with standards 10-5.2 and 10-5.3. These standards allow the trial court to impose extremely detailed and rigorous conditions of release on a defendant and to couple those conditions with a system of careful enforcement and supervision designed to detect even the smallest violation. Once there has been a violation, standard 10-5.7 authorizes the defendant's immediate arrest and this standard authorizes the defendant's detention. In the vast majority of cases, a defendant who cannot safely remain in the community will violate one of these conditions and be detained before engaging in serious criminal conduct.[17]

2. A pretrial detention scheme that goes beyond this proposal is likely to be ineffective. The only United States jurisdiction presently using a comprehensive pretrial detention scheme is Washington, D.C.[18] Repeated studies have demonstrated that the system is virtually useless in reducing pretrial abscondence ar recidivism. A careful, empirical examination of the early history of the scheme reached the following conclusions:

> The chief finding of the first ten months of observation has been the virtual non-use of the preventive detention law. The law has been invoked with respect to only 20 of the total of more than 6,000 felony defendants who entered the D.C. Criminal Justice system during the period.
>
> . . .
>
> Not only has experience contradicted those who foresaw the preventive detention statute as an indispensable crime control device and those who claimed it would eliminate *sub rosa* preventive detention through the setting of high bail, it has also disappointed those who anticipated an attempt to reduce detention in lieu of bail of nondangerous defendants. . . .
>
> Perhaps most prophetic were those who felt that the statute would simply create a time-consuming additional layer in the pretrial process without giving a prosecutor a result not otherwise achievable in most cases under the bail system. For the time being, lawmakers who have been advised to consider preventive detention legislation have little reason to hurry.[19]

Nothing in the ensuing years requires modifying that conclusion. The House of Representatives Committee on the District of Columbia recently reported that

> from the date of enactment until [1976], pretrial detention was rarely requested (only about 60 times during the entire 5 year period). Various explanations were given for such non-use, but nearly all agree that the 1970 Act's detention provisions have been a complete failure as a tool for dealing with the hard core group of repeat offenders.[20]

Moreover, even if prosecutors had the resources and desire to utilize pretrial detention more frequently,[21] the available evidence indicates that it would not significantly reduce recidivism. Empirical studies have demonstrated that there is probably no simple, reliable technique for predicting which defendants are likely to be dangerous.[22] Studies done by the National Bureau of Standards and the *Harvard Civil Rights–Civil Liberties Law Review* both show that only five percent of the defendants eligible for detention under the District of Columbia preventive detention statute would, if released, be rearrested for dangerous or violent crimes. In order to prevent one violent or dangerous crime, the statute detains nineteen defendants who are not violent or dangerous.[23] Moreover, a more recent comparative study shows that persons charged with some very serious crimes like homicide, persons arrested while on pretrial release, and persons with prior arrest records all pose no greater release risks than the average defendant.[24]

3. The detention of defendants on the basis of a prediction of dangerousness not demonstrated by violation of a condition of release is, at best, constitutionally dubious. It is a striking fact that there is not a single federal case upholding the constitutionality of a scheme for the pretrial detention of an unconvicted defendant based on a prediction of dangerousness.[25] The only case dealing with the District of Columbia preventive detention statute, *Blunt v. United States*,[26] concerned a defendant who had violated conditions of release by threatening a witness, and the court carefully limited its holding to this situation.[27] While other federal cases support the withholding of bail in capital cases, where it has traditionally been denied,[28] no case authorizes detention prescribed solely on the basis of dangerousness.

There are two separate constitutional hurdles which a pretrial detention statute must surmount: the eighth amendment guarantee against excessive bail and the fourteenth amendment guarantee of equal protection and due process. The Supreme Court has made clear that bail set for the purpose of detaining a dangerous defendant is "excessive" and therefore unconstitutional under the eighth amendment.[29] However, advocates of pretrial detention have argued that, while the eighth amendment prohibits excessive bail when bail is set, it does not prohibit the denial of bail altogether.[30] Supreme Court authority on this proposition is unclear. On the one hand, the *Stack* Court stated in dicta that the "traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. . . . Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning."[31] But on the other hand, *Carlson v. Landon*, decided the same term, stated also in dicta:

> The bail clause was lifted with slight changes from the English Bill of Rights Act. In England that clause has never been thought to accord a right to bail in all cases, but merely to provide that bail shall not be excessive in those cases where it is proper to grant bail. When this clause was carried over into our Bill of Rights, nothing was said that indicated any different concept.[32]

Unsurprisingly, lower courts[33] and commentators[34] are also divided on the question.

Even if pretrial detention of dangerous defendants survived eighth amendment attack, however, it would remain constitutionally vulnerable under the fourteenth amendment. Such detention categorizes those detained in two ways, both of which are arguably impermissible under the equal protection clause. First, such a statute distinguishes between those defendants who are detained and those who are not. To be sure, this distinction is designed to serve a legitimate state purpose—the protection of society from pretrial crime—but it is far from clear that the distinction drawn is closely enough related to that purpose to survive equal protection attack. The courts have repeatedly made clear that the right to pretrial freedom is constitutionally protected and subject to rigorous constitutional review.[35] In light of empirical evidence indicating a failure to identify successfully those defendants who are in fact dangerous, a pretrial detention statute might not pass that review.

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16. *See, e.g.*, NATIONAL BUREAU OF STANDARDS, COMPILATION AND USE OF CRIMINAL COURT DATA IN RELATION TO PRE-TRIAL RELEASE OF DEFENDANTS 160, 162-65 (1970); Note, *Preventive Detention: An Empirical Analysis*, 6 HARV. C.R.-C.L. L. REV. 289, 358-60 (1971); P. WICE, FREEDOM FOR SALE 77 (1974).

17. Empirical studies demonstrate that jurisdictions that provide detailed supervision for defendants on pretrial release have substantially reduced the incidence of pretrial crime. *See* P. WICE, *supra* note 16, at 77-78.

18. *See* D.C. CODE § 23-1322 (1973).

19. VERA INSTITUTE OF JUSTICE, PREVENTIVE DETENTION IN THE DISTRICT OF COLUMBIA 72-73 (1972).

20. HOUSE COMMITTEE ON THE DISTRICT OF COLUMBIA, REP. NO. 94-1419, 94th Cong., 2d Sess. 4 (1976).

21. There is some evidence that preventive detention is not used more frequently because the system lacks the resources to provide the procedural protections that the law mandates. *See* P. WICE, *supra* note 16, at 163-64.

22. Studies have demonstrated that detailed psychiatric profiles of individual defendants—well beyond the capabilities of any realistic preventive detention system—do not reliably predict dangerousness. *See, e.g.*, Diamond, *The Psychiatric Prediction of Dangerousness*, 123 U. PA. L. REV. 439 (1974); Dershowitz, *Psychiatry in the Legal Process: "A Knife That Cuts Both Ways,"* 51 JUDICATURE 370 (1968).

23. NATIONAL BUREAU OF STANDARDS, *supra* note 16, at 2; *Preventive Detention: An Empirical Analysis*, 6 HARV. C.R.-C.L. L. REV. 289 (1971). *See also* NATIONAL CENTER FOR STATE COURTS, AN EVALUATION OF POLICY RELATED RESEARCH ON THE EFFECTIVENESS OF PRETRIAL RELEASE PROGRAMS 277-78 (1975); W. THOMAS, BAIL REFORM IN AMERICA 238-40 (1976).

24. *See* statement of Jeffrey A. Roth before U.S. Senate Government Affairs Subcommittee on Governmental Efficiency and the District of Columbia (Feb. 6, 1978).

25. *Cf.* Williamson v. United States, 184 F.2d 280, 282-83 (2d Cir. 1950) (Jackson, Circuit Justice) ("Imprisonment to protect society from predicted but unconsummated offenses is so unprecedented in this country and so fraught with danger of excesses and injustice that I am loath to resort to it, even as a discretionary judicial technique to supplement conviction of such offenses as those of which defendants stand convicted"). Sellers v. United States, 89 S. Ct. 36 (1968) (Black, Circuit Justice). There are some isolated lower court decisions that appear to approve denial of bail based on dangerousness. *See, e.g.*, Corbett v. Patterson, 272 F. Supp. 602 (D. Colo. 1967); Wansley v. Wilkerson, 263 F. Supp. 54 (W.D. Va. 1967); Nail v. Slayton, 353 F. Supp. 1013 (W.D. Va. 1972). But those cases have generally involved capital offenses where bail has traditionally been denied (*see* Corbett v. Patterson; Wansley v. Wilkerson) or cases where a defendant has made a specific threat to a particular individual (*see* Nail v. Slayton; *cf.* Carbo v. United States, 82 S. Ct. 662 (1962) (Douglas, Circuit Justice)). None of the cases uphold a general system of detention based on a prediction of dangerous propensities.

26. 322 A.2d 579 (D.C. Ct. App. 1974).

27. *See* 322 A.2d at 582-83, 586-87 (Kelly, J., concurring).

28. *See, e.g.*, Carlson v. Landon, 342 U.S. 524, 545-46 (1952). *See generally* Mitchell, *Bail Reform and the Constitutionality of Pretrial Detention*, 55 VA. L. REV. 1223, 1224-31 (1969).

29. *See* Stack v. Boyle, 342 U.S. 1 (1951).

30. *See, e.g.*, Mitchell, *Bail Reform and the Constitutionality of Pretrial Detention*, note 28, *supra*.

31. 342 U.S. at 4.

32. 342 U.S. 524, 545 (1952).

33. *Compare, e.g.*, Trimble v. Stone, 187 F. Supp. 483 (D.D.C. 1960), *with* United States *ex rel.* Covington v. Coparo, 297 F. Supp. 203 (S.D.N.Y. 1969). *See generally* Blunt v. United States, 322 A.2d 579 (D.C. Ct. App. 1974).

34. *Compare* Mitchell, *Bail Reform and the Constitutionality of Pretrial Detention*, 55 VA. L. REV. 1223 (1969), *with* Tribe, *An Ounce of Detention: Preventive Justice in the World of John Mitchell*, 56 VA. L. REV. 371 (1970). *See generally* Foote, *The Coming Constitutional Crisis in Bail*, 113 U. PA. L. REV. 959 (1965); Hickey, *Preventive Detention and the Crime of Being Dangerous*, 58 GEO. L.J. 287 (1969); Borman, *The Selling of Preventive Detention 1970*, 65 NW. U.L. REV. 879 (1971).

35. *See, e.g.*, Stack v. Boyle, 342 U.S. 1 (1951); United States v. Thompson, 452 F.2d 1333 (D.C. Cir. 1971). *But see* McGinnis v. Royster, 410 U.S. 263 (1973).

Moreover, even if we assume that we can accurately identify those criminal defendants who are dangerous, a pretrial detention statute would also discriminate between those putatively dangerous individuals who have been charged with a criminal offense and those who have not. The Supreme Court has squarely held that such discrimination is constitutionally impermissible. In *Jackson v. Indiana*,[36] the Court held that the state could not treat a putatively dangerous criminal defendant more restrictively simply because the defendant had been charged with an unproven criminal offense. Jackson was a deaf-mute charged with a robbery who had been ruled incompetent to stand trial. Instead of utilizing civil commitment procedures to detain him, the trial judge ruled that he should be committed indefinitely until he regained competence.[37] The Supreme Court held that this action violated the due process and equal protection clauses of the fourteenth amendment. The Court reasoned that Jackson had not yet been convicted of a criminal offense and that it was therefore not rational to treat him differently from other putatively dangerous individuals who had not been charged with a violation.[38]

Constitutional predictions are, of course, difficult, and it is possible that a court, squarely faced with a pretrial detention scheme based on a prediction of dangerousness, would uphold it. But in light of the less restrictive means available to achieve the same ends and the less than successful record of such pretrial detention where it has been tried, jurisdictions should not go beyond the clearly constitutional scheme outlined in this standard.

Standard 10-5.10. Accelerated trial for detained defendants

Every jurisdiction should adopt, by statute or court rule, a time limitation within which the defendant in custody pursuant to standard 10-5.9 must be tried which is shorter than the limitation applicable to defendants at liberty pending trial. The failure to try a defendant held in custody within the prescribed period should result in the defendant's immediate release from custody pending trial.

History of Standard

There are minor changes for purposes of style.

Related Standards

ABA, Criminal Justice Standards 11-5.1(c), 12-1.1, 12-4.2
NAC, Corrections 4.10
NAC, Courts 4.1, 4.11
NAPSA, Performance Standards and Goals for Release and Diversion VII(E)
NDAA, National Prosecution Standards 10.7(F), 10.8(B)

Commentary

This standard conforms to standards 12-1.1(b) and 12-4.2. While it sets no specific time limit within which a detained defendant must be brought to trial, it requires that each jurisdiction set such a limit and that the limit be shorter than the limit set for defendants who are not detained. This standard presumes that the statutorily established time limit will be shorter than the limit mandated by the speedy trial clause of the sixth amendment, since, if the constitutional limit is exceeded, the defendant is entitled to dismissal of the prosecution,[1] whereas under this standard the defendant is entitled only to release from custody.

Standard 10-5.11. Trial

The fact that a defendant has been detained pending trial should not be allowed to prejudice the defendant at the time of trial or sentencing. Care should be taken to ensure that the trial jury is unaware of the defendant's detention.

36. 406 U.S. 715 (1972).
37. *See* 406 U.S. at 717-20.
38. *See* 406 U.S. at 723-24, 729-30. *Cf.* Baxstrom v. Herold, 383 U.S. 107 (1966); Bolton v. Harris, 395 F.2d 642 (D.C. Cir. 1968). The *Jackson* court noted that "[w]ere the State's factual premise that Jackson's commitment is only temporary a valid one, this might well be a different case." 406 U.S. at 725. But the supposedly temporary nature of Jackson's commitment was relevant only because of the state's argument that it therefore could not "be judged against commitments under other state statutes that are truly indeterminate." *Id.* The court's basic holding was that "the State cannot withhold from a few the procedural protections or the substantive requirements for commitment that are available to all others," 406 U.S. at 727, and that pending criminal charges provide no justification for different treatment, 406 U.S. at 729-30.

1. *See* Strunk v. United States, 412 U.S. 434 (1973).

ROWLEY & GREEN,
Washington, D.C., September 28, 1979.

Re. Criminal code revision.

Hon. EDWARD M. KENNEDY,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATOR KENNEDY: Here is the written response which you have requested to questions Senator Dole asked you to submit to me.

Question 1. This bill does not have a section providing for pretrial preventive detention of offenders deemed by the judge to be dangerous to the community. Do you favor such an amendment? Where would you draw the line in permitting preventive detention?

I do not favor such an amendment for two reasons, neither of which reaches the merits of pretrial preventive detentiton.

First, pretrial preventative detention is a controversial proposal involving questions of constitutionality. Including it in the code revision will unnecessarily complicate what is obviously a difficult legislative process even without it. It is not so related to substantive criminal law revision that it needs to be dealt with at the same time; and the Brown Commission made no recommendations about it.

Secondly, even as a separate question. I do not believe the question warrants Congressional attention until such time as experience in the states has dissipated a good deal of its controversial aspects. Except for the District of Columbia, which is already subject to Congressional legislation regarding pretrial preventive detention, the problem which such detention is designed to address occurs infrequently in federal law enforcement as contrasted with the states. It is primarily a state law enforcement problem. Accordingly the states have the most experience and could better test proposed solutions. I think it would be a waste of Congressional energy if Congress should attempt to take the lead in resolving the issues posed by a detention proposal.

As to the merits of pretrial preventive detention I favor the American Bar Association standards regarding pretrial release (second edition, 1978). In the release decision they authorize consideration of "the nature of the offense presently charged and the apparent probability of conviction and the likely sentence insofar as these factors are relevant to the risk of nonappearance." They authorize pretrial detention if the defendant cannot make appropriately-fixed money bail or demonstrates dangerousness while on pretrial release.

Question 2. What is your opinion of the relative merits of the House and Senate versions of the bill?

For the reasons stated in my testimony, I believe that the Senate bill is far superior in scope, format and style and should be the vehicle for ultimate agreement of the two bodies on content. I have not as yet had the time to comprehend all the differences in content, but based upon a superficial examination, I believe I would favor the Senate version on most measures.

Sincerely yours,

RICHARD A. GREEN,

QUESTIONS SUBMITTED TO THE ACLU BY SENATOR THAD COCHRAN AND RESPONSES

Question 1. Both the House and Senate versions of the Code depart from the Brown Commission's recommendations. For example, the Commission recommended limiting criminal liability for false oral statements. In another example, the Commission limited the crime of hindering law enforcement to harboring "a person" sought by the police but the Senate bill abandons this limitation and makes it a crime to conceal the "identity" of such person, regardless of any privilege. This expansion of existing law and the Commission's recommendations appears problematic. Do you have any comment on the expansion of areas beyond Commission recommendations?

Answer. By expanding prosecutorial discretion and cutting into constitutional rights, important protections for the safeguard of individual liberties are negated for the sake of limited state interests. Criminal liabilities for false oral statements and for concealing the "identity" of persons are useful examples of this problem.

§ 1343 of S. 1722 rejects the Brown Commission recommendation and makes it a crime to knowingly make a false oral statement to law enforcement officials.

While judicial authority is somewhat in conflict over whether 18 U.S.C. § 1001 covers oral statements made to law enforcement authorities, compare *United States* v. *Adler*, 380 F.2d 917 (2nd Cir. 1967, cert. denied, 389 U.S. 1006 (1967), with *Friedman* v. *United States*, 374 F.2d 363 (8th Cir. 1967), § 1343 resolves this conflict in favor of covering such statements.

Even with the limitation that the defendant must have known he was speaking to a law enforcement agent, § 1343 invites abuse by law enforcement officials. This possibility of abuse is particularly great with regard to allegedly false oral statements. Prosecution for perjury requires close examination of the actual words used by the defendant. Since this offense sets up a "my-word-against-yours" situation when the defendant and law enforcement officer are the only two witnesses, the unfair advantage of the officer's presumed credibility in the eyes of the jury makes the fabrication of charges a potential danger.

While it is true that a person must know that the statement given is false, the protection of the voluntariness requirement is seriously weakened by preceding it with the phrase "in fact". This means that no state of mind need by proved with regard to voluntariness. Thus, the government does not have to prove that the defendant knowingly volunteered the statement.

In accordance with the Brown Commission and the American Bar Association, false oral statements at the very least should not be punishable unless they are made under oath in an official proceeding. (See Final Report, § 1352 (1)).

§ 1311 makes it a crime to conceal the "identity" of persons sought by the police. This provision, which is expressly in contradiction to the Brown Commission's limitation of the crime of harboring "persons", could serve as the basis for prosecuting a reporter who failed to identify a confidential news source. Confidentiality of sources is vitally important to a free and effective press. Moreover, attorney-client, doctor-patient and other statutory privileges require absolute confidentiality (to the limit of the state statute) if they are to exist in any meaningful fashion.

Question 2. I am concerned about the expansion of the federal criminal law in several areas, in particular the areas of CRIMINAL CONTEMPT Section 1331, INCHOATE CRIMES Chapter 10, LIABILITY OF AN ACCOMPLICE Section 401, and CRIMINAL ATTEMPT AND CONSPIRACY Section 1001–2, to name a few. My reading of these sections indicates a broad array of crimes creating an overbroad expansion of existing law. Do you address these particular areas in your written statement? Do you think that the Code expands these areas overbroadly and beyond the current existing law?

Can these sections be interpreted as an enhancement of the power and discretion of the prosecutor? Is there a solution whereby we can still be tough on crime yet insure due process and adherence to existing case law?

Answer. S. 1722 dangerously expands current law in the area of inchoate crimes in four ways:

Creates a general attempt statute,

Adds a new general crime of solicitation which penalizes pure speech requirement that a conspirator must have a specific intent to commit the crime that is the object of the conspiracy, and (2) rejecting the traditional "true agreement" or bilateral approach to the offense,

Adds a new general crime of solicitation which penalizes pure speech whether or not it results in criminal conduct, and

In the liability of accomplice area, eliminates the current law requirement that an accomplice have a specific intent that the criminal act committed by the principal take place.

An in-depth treatment of the inchoate crime problems in the bill appears in the prepared statement of the ACLU.

In the area of attempt, S. 1722 gives the federal government for the first time an across-the-board attempt statute applicable to all other offenses. Do we really want to punish unsuccessful attempts to make a false oral statement, demonstrate to influence a judicial proceeding or disclose government information? Are such prosecutions an intelligent use of limited resources for combatting serious crime? Moreover, punishing attempts to incite unlawful conduct seriously increases the danger of government prosecution for advocacy plainly protected by the First Amendment. The ACLU opposes a comprehensive attempt statute. We urge that current law be maintained.

S. 1722 also establishes a general conspiracy offense. The ACLU strongly urges the Committee to reconsider the need for such a general conspiracy provision in light of the potential it carries for investigatory and prosecutorial abuse, and its tendency to reach activity protected by the First Amendment. The need for a general conspiracy offense law has been questioned by scholars and commentators for many years. The better approach would be to limit the application of the conspiracy provision to only those serious offenses posing the gravest danger to society. If the Committee chooses to retain a general conspiracy offense, then we recommend that the list of offenses to which it is inapplicable be expanded to all of those offenses listed in § 1004(b)(3), e.g., Impairing Military Effectiveness, Obstructing a Government Function by Fraud, Obstructing a Government Function by Physical Interference, etc.

Aside from the issue of a general conspiracy statute, the ACLU has several objections to the conspiracy provisions of S. 1722. It seriously erodes the present specific intent requirement. Under current law, in order to be criminally liable for conspiracy to commit a specific crime, an individual must have at least the same mental state relative to the object offense as would be required to convict him of that offense. In addition, the conspirators must understand that committing the crime is a consequence of their agreement, and they must desire commission of the particular offense as the outcome of their agreement.

In order to properly limit the scope of conspirator liability, and to preserve its central character as an offense "predominantly mental in composition" it is essential that a precise formulation of the specific intent requirement be incorporated into a conspiracy statute. This is the approach taken by the American Law Institute in the Model Penal Code.

In contrast, S. 1722 fails to address the issue of intent as to the object of the crime in either the text of § 1002 or in the Senate Report accompanying S. 1437. S. 1722 provides that one has the mens rea for conspiracy if he "agrees with one or more persons to engage in conduct, the performance of which would constitute a crime or crimes." Under this provision one could be liable for conspiracy to commit an offense without having desired that it be committed.[1]

Under § 1002, a person can be guilty for engaging in conduct that considered by itself is legal. For example, A and B conspire to rob a bank. A asks C to drive A and B to the bank on the pretext of obtaining a loan. C, ignorant of the robbery plans, drives A and B to the bank. Under the literal terms of § 1002, C has now arguably committed a crime by agreeing to engage in conduct, the performance of which would constitute a crime, and engaging in conduct with an intent to effect an objective of the agreement.

Another serious problem area is S. 1722's adoption of the unilateral approach to the offense. At common law, and under the current federal conspiracy statute (18 U.S.C. § 371), the crime of conspiracy is defined as the situation in which "two or more persons conspire...". Thus, an actual agreement is an essential element of the offense and must be established before one is liable for conspiracy. One could not conspire with, for example, an undercover agent. Requiring an actual agreement is consistent with the purposes of conspiracy law, that is, to prevent the formation of dangerous criminal relationships. Separate laws for conspiracy have been justified on the ground that partnership in crime presents a greater danger to society than does an individual acting in isolation. S. 1722 rejects this traditional "true agreement" requirement, and reaches "unilateral" consipracies. This "unilateral" approach represents an unwarranted departure from current federal conspiracy law, which is consistent with the principles historically invoked to justify separate conspiracy statutes.

S. 1722, includes a general solicitation provision in the revised criminal code. We oppose such a provision.

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[1] The Senate Report on S. 1437 has obscured this change in current law discussed above by its treatment of the Supreme Court's decision in *U.S.* v. *Feola*, 420 U.S. 671 (1975). The Senate Report suggests that the Court's decision in that case is dispositive of the matter:

"With respect to scienter, the Supreme Court has recently resolved a conflict among the circuits on the issue whether knowledge of the jurisdictional factor in a conspiracy is an essential element of the charge [*Feola*]. The Court held that, save for unusual circumstances, such knowledge need not be proved under 18 U.S.C. § 371. The proposed Code is consistent with this view..." [Senate Report, p. 162.]

The Senate Report misstates the relationship of the *Feola* decision to the proposed § 1002.

In *Feola*, the Court was faced with the question of whether a person could be convicted under § 371 for conspiring to "commit any offense against the United States," where the person did not know that the offense he concededly conspired to commit happened to be a federal offense. The Court held that there was no specific intent requirement that *Feola* knew the officer he assaulted was a federal agent. Thus, *Feola* is irrelevant to the proposed § 1002, except insofar as it reaffirms the principle that intent to commit a crime is required for a conspiracy conviction under § 371.

§ 1003(a) makes it a crime to "command, entreat, induce or otherwise endeavor to persuade" another person to do something which constitutes a criminal offense under "circumstances strongly corroborative" of an intent that the other person engage in the prohibited conduct. The solicitor need only intend that the conduct occur; he need not know that it is in fact a crime. Thus, under S. 1722 a person could be prosecuted for encouraging someone else to engage in conduct that he thinks is constitutionally protected. By the terms of this all-embracing provision any discussion of political tactics which might involve commission of an offense could be the basis of a criminal prosecution.

Solicitation is an entirely new federal crime. It is unnecessary because other provisions of current law already cover those situations where solicitation actually results in criminal conduct. Thus, at present, if a solicitation is successful, the solicitor could be criminally liable as an accomplice. If the solicitation does not result in the commission of a crime, but the silicitee agrees and thereafter commits an overt act, the solicitor could be charged with conspiracy.

In proposing a solicitation statute, the Brown Commission intended to provide punishment for those who instigate offenses and thereby are truly culpable. (Working Papers, Vol. I at 368). But terms like "endeavor to persuade" cast a much wider net. On their face they ensnare the speaker for nothing more than speech, when no other criminal act has occurred. By deleting the Brown Commission's requirement of an overt act toward the commission of a crime by the person solicited (see Final Report § 1003) § 1003 could be used to punish advocacy which does not result in any lawless action. This broad formulation is squarely in conflict with the First Amendment. See, e.g., *Brandenburg* v. *Ohio*, 395 U.S. 444 (1969).

Although § 1004(b)(2) of the proposed bill renders the offense inapplicable to advocacy crimes (e.g., obstructing military recruitment, inciting mutiny, leading a riot and obstructing a government function by physical interference), this is hardly sufficient to safeguard against overreaching. Solicitation should not be applicable as a general provision. Rather, Congress should make a determination as to which of those few serious offenses the new crime of solicitation should apply.

The ACLU strongly opposes a general solicitation offense because it is dangerously vague and overbroad and presents a serious potential for investigative and prosecutorial abuse. It will have a severe chilling effect on a variety of First Amendment activities as it makes possible prosecution for pure speech whether or not it results in criminal activity.

The accomplice liability section of the bill is flawed also. The key element of current law accomplice liability is a requirement of specific intent that the criminal act take place. See *United States* v. *Peoni*, 100 F.2d U.S. 1 (2nd Cir. 1938). Mere knowledge that a crime is to be committed is not enough. S. 1722 does not contain this intent requirement.

Without such a requirement, this section, coupled with substantive crime, could subject innocent persons engaged in First Amendment activity to criminal prosecution. For example, a person who assists in organizing a demonstration could be charged as an accomplice if the demonstration later "obstructed a government function". S. 1722 abrogates this specific intent requirement. We disagree with S. 1722 and suggest that the traditional criminal law standard for accomplice liability should be preserved.

Question 3. It is stated in Section 112, General Principles of Construction, that "the provisions of this title shall be construed in accordance with the fair import of their terms to effectuate the general purposes of this title". This appears to abandon the rule of constitutional law that criminal statutes be strictly construed. However, further on in the Section, there is an addition of the words, "in accordance with the rule of strict construction as applied by the Federal Courts". Do you view this as being an ambiguity and how does this affect the principle of strict construction resolving statutory ambiguities narrowly and in favor of the defendant?

Answer. The words "the provisions of this title shall be construed in accordance with the fair import of their terms to effectuate the general purposes of this title" reject the time-honored maxim that penal statutes are to be strictly construed. The addition of the words, further on in the bill, "in accordance with the rule of strict construction as applied by the Federal Courts" create ambiguity and do not solve the underlying problem that the rule of strict construction may be seriously eroded by the bill.

It is well-established that in the area of constitutional law, statutes must be strictly construed to avoid any bridgement of the free exercise of constitutional

rights. In the area of general criminal law, the Supreme Court throughout its history has given ambiguous statutes narrow interpretations in accordance with the principle of strict construction.

The rule of strict construction was eloquently summarized by Justice Harlan in *Yates* v. *United States*, 354 U.S. 298 (1957). In limiting the term "to organize" in the Smith Act, he quoted Chief Justice John Marshall speaking more than a century before:

"The rule that penal statutes are to be construed strictly is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals; and on the plain principle that the power of punishment is vested in the legislative, not the judicial department. It is the legislative, not the Court, which is to define a crime, and obtain its punishment."

Justice Harlan explained the proper application of the principle. "The maxim is not to be so applied as to narrow the words of the statute to the exclusion of cases which those words, in their ordinary accetion, or in that sense in which the legislature has obviously used them, would comprehend." Thus, the principle of strict construction is to be used to resolve statutory ambiguities in favor of the defendent—not to defeat the intent of Congress where the language of a statute is clear and unambiguous. See, e.g., *Buckley* v. *Valeo*, 424 U.S. 1 (1976).

Cases cited by the Senate Committee Report accompanying S. 1437 in support of the proposed abandonment of the rule of strict construction in fact support continued adherence to the rule.

In *United States* v. *Bass*, 404 U.S. 336 (1971), the Court narrowly construed the firearms provision of the Omnibus Crime Control and Safe Streets Act. The question presented was whether the government had to prove that the transportation of a firearm had to affect interstate commerce or, as the government argued, whether mere transportation of the firearm across state lines was sufficient. Speaking for the majority, Justice Thurgood Marshall chose the narrow reading, that the government had to prove that transportation was in commerce or affected commerce. In rejecting the government's broad interpretation, Justice Marshall said ". . . where there is ambiguity in a criminal statute, doubts are resolved in favor of the defendant."

The Committee Report correctly states that this is the principle of "lenity." But, the Committee Report misinterprets this principle. The principle of lenity is merely a corollary of the canon of strict construction as explained by Justice Harlan in Yates, that is, that statutes must be construed strictly, but not to the exclusion of clear legislative intent. There is nothing in the *Bass* decision that even suggests that the principle of lenity stands for the language of Se. 112(a) as drafted. Indeed, Justice Marshall stated that he was employing the doctrine of strict construction: "This is not the narrowest possible reading of the statute, but *canons of clear statement and strict construction do* 'not mean that every criminal statute must be given the narrowest possible meaning in complete disregard of the purpose of the legislature'". Id., 404 U.S. at 351 (emphasis added) (citations omitted).

Other cases cited by the Committee Report only support the propositions that the principle of lenity is in reality a corollary of the rule of strict construction. The phrase "principle of lenity" was coined by Justice Frankfurter in *Bell* v. *United States*, 349 U.S. 81 (1954). The decision in that case resulted in a narrow construction of the Mann Act. Justice Frankfurter explained the principle of lenity: "It may fairly be said to be a presupposition of our law to resolve doubts in the enforcement of the penal code against the imposition of a harsher punishment," 439 U.S. at 83.

The principle of lenity then is a canon of construction favoring the defendant. Nevertheless, Sec. 112 of S. 1722 could be construed to require resolution of ambiguous language in favor of the government. The phrase "to effectuate the general purposes of this title" is in fact another way of stating to effectuate the general purposes of law enforcement. If applied to ambiguous statutory language this would result in resolution in favor of the government, in contrast to the result that would follow from the principle of lenity and the doctrine of strict construction.

Because many of the provisions of S. 1722 are new substantive law in areas affecting the free exercise of First Amendment rights, abandonment or revision of the rule of strict construction would have a devastating impact on the rights of federal defendants. Therefore, we urge the adoption of the principle of strict construction without the vague and ambiguous language currently in § 112 of S. 1722.

Question 4. What is your opinion of the proposed sentencing provisions? In your opinion, can the Sentencing Commission work?

Answer. While including several reforms, the provisions of S. 1722 have a number of fundamental problems that must be cured if we are to have a workable and effective new sentencing system. The reforms include new procedural protections for probationers, appellate review of sentences for defendants, the requirement that judges state on the record their reasons for imposing sentences, and the specific inclusion of community service as a permissible condition of probation.

These reforms, however, do not balance the significant flaws in the sentencing provisions.

First, the bill overemphasizes incarceration as a sanction and creates a substantial risk that more people will go to prison and for longer periods of time than under current law. There is little statutory encouragement to sentence other than probation. Indeed, the bill mandates substantial terms of imprisonment in a whole range of cases. Moreover, the bill eliminates parole and cuts back goodtime, thus closing the safety valves of the present system and risking even longer periods of incarceration with no possibility of release prior to the expiration of the sentence. Finally, the authorized terms of imprisonment under the bill are too long in almost all cases and in some cases many times greater than the average time presently served.

Second, the bill lacks coherent and consistent standards for the disposition of federal offenders. The Sentencing Commission and judge will be able to employ various and oftentimes conflicting sentencing philosophies such as incapacitation and deterrence punishment. Moreover, the Commission in promulgating its guidelines may consider a variety of factors that have serious racial and economic biases; for example, education and vocational skills. Although the ACLU endorses the concept of the Sentencing Commission, we believe the preliminary outline in S. 1722 is so riddled with problems that it cannot work. A complete discussion appears in the ACLU prepared statement.

Question 5. Both the Brown Commission and the American Bar Association recommended there should be incorporated into the Code reform of judicial review of sentences. However, neither the Commission nor the ABA recommended a particular form to be followed. Do you think the appeal provisions set out in the Senate bill adequately meet the Commission's recommendations?

Answer. S. 1722 provides for appellate review of sentences. While it is admirable that S. 1722 realizes the need for review of sentences, there are two significant problems with its provisions. First, defendants are allowed to appeal only those sentences which meet the Sentencing Commission Guidelines. Second, the government prosecutors may also appeal sentences.

If protection against excessive punishment is to be fully afforded, defendants must be able to appeal all sentences, and not just sentences that exceed the guidelines of the proposed Sentencing Commission. It is erroneous to think that no abuses could occur with respect to sentences meted out within the guidelines.

Moreover, abuse could still occur even if a sentence were below the guidelines. There is no reason to assume that sentences imposed either within or below guidelines which have yet to be written will never be excessive. Accordingly, we cannot safely assume that appellate review of sentences imposed below or within guidelines will never be necessary. We urge the adoption of appellate review of all sentences upon initiation by the defendant as contained in S. 1723 and the Biden bill.

The need for appellate review of sentences does not cut both ways. There is no parity in the issue of permitting the government to appeal sentences. We have never equated the burden we place on prosecutors with the burden placed on the accused. The burden of proof of guilt beyond a reasonable doubt is unique to the prosecutor. There is no justification for shifting the burden to the defendant to prove that a sentence below the guidelines is appropriate. First, such an option on the part of the government may well operate, or can be used to chill the defendant's right to appeal his conviction on the merits.

Second, this provision is very likely unconstitutional, as violating the double jeopardy clause of the Fifth Amendment by permitting the imposition of a second, increased and heavier punishment for the same offense. The essence of the constitutional argument is that government appeal of sentences would conflict with the fundamental purpose of the double jeopardy clause; to prevent government overreaching by giving the prosecutor only one opportunity for conviction and sentencing. If the government has not succeeded in making its case in this first prosesecution, it cannot repeatedly threaten the accused's interest in finality of decision and freedom from additional punishment. The constitutional infirmity of government appeal of sentences were recently affirmed by the United States Court of Appeals for the Second Circuit. In *United States* v. *DiFrancesco*, the court rules that the provision of Title 18 which permits the government to appeal the sentence of special dangerous offenders (18 U.S.C. § 3576) is unconstitutional.

"We cannot perceive, however, how a defendant who, after being sentenced to several years' imprisonment by a district court, might be subject to imposition of a sentence of death upon a government appeal, would be any less placed twice in jeopardy of life and limb than was [a] defendant . . ., who, after acquittal in the court of first instance, was found guilty and sentenced to imprisonment for slightly less than two years upon appeal by the government. That § 3576 subjects a defendant "merely" to a longer term of imprisonment, not to the actual loss of his life, is a difference of degree, not principle, from the example given, for the double jeopardy clause applies equally to all criminal penalties. Under the statute the government, dissatisfied with final judgment in one court, seeks a more favorable result in another tribunal. *Therefore, the conclusion appears inescapable that to subject a defendant to the risk of substitution of a greater sentence, upon an appeal by the government, is to place him a second time "in jeopardy of life or limb."* [Emphasis added].

The court went on to say that the double jeopardy protections apply against a second prosecution for the same offense after acquittal and against multiple punishments for the same offense. At the root of the second and third of these protections the court said, is the idea that when a defendant has once been convicted and punished for a particular crime, fairness and finality require that he not be subjected to the possibility of further punishment by being again tried or sentenced for the same offense. Moreover, the Supreme Court and other courts have emphatically stated in dictim that it would be impermissible to increase a valid sentence. The Second Circuit concluded:

"We do not deny the existence of legitimate governmental interests that might be served by allowing the government to appeal a sentence, e.g., improved uniformity in sentencing. But such interests must be pursued in alternative ways that do not conflict with the Fifth Amendment's guarantee against double jeopardy. [W]here [, as here,] the Double Jeopardy Clause is applicable its sweep is absolute. There are no equities to be balanced, for the Clause has declared a constitutional policy, based on grounds which are not open to judicial examination. *Burks* v. *U.S.*, at 11 n. 6. To subject Eugene DiFrancesco for a second time to the risk of the entire range of penalties that the law provides for his crimes would violate that constitutional policy."

Question 6. The ACLU has no position on this issue.

Question 7. The ACLU has no position on this issue.

Question 8. I am troubled also by Section 401(b), the liability of a co-conspirator which in effect imposes vicarious criminal liability embodying the rule of Pinkerton v. U.S., 328 U.S. 460. I am concerned by the effect that a person would be criminally responsible for a situation in which he did not personally participate. Under this section, a person would be punishable for a co-conspirator's crime which was "reasonably foreseeable." My concern is shared by the Brown Commissison, the ABA and the House, which eliminated this section from their bill. A conspirator should be liable for the particular conduct of another, only if his state of mind as to that particular conduct is that required for the underlying offense. What is your opinion of this section?

Answer. S. 1722 fails to eliminate the notorious Pinkerton Doctrine. This is contrary to the recommendations of the ACLU, as well as the Brown Commission and the American Bar Association. The Pinkerton rule holds a co-conspirator liable for a crime committed by another member of the conspiracy even though he did not know of or take part in the commission, so long as the resulting crime is a "reasonably foreseeable" result of the conspiracy. The rule has been widely criticized as irrational and unnecessary. See Marcus, "Criminal Conspiracy: The State of Mind Crime—Intent, Proving Invention, and Anti-Federal Intent", Vol. 1976 No. 3, Ill. La., Forum, 627, 633–34: "Developments in the Law: Criminal Conspiracy", 72 Harv. L. Rev. 920, 998–999 (1959). It is a radical departure from the fundamental criminal law principle that guilt is personal, not vicarious, and has been frequently abused at the expense of innocent defendants. It allows the government, through the use of a conspiracy dragnet to convict a conspirator of every substantive offense committed by any other member of the group even though he had no part in or knowledge of it. The abolition of the Pinkerton Doctrine will not deprive law enforcement officials of the ability to prosecute co-conspirators. If the substantive offense is committed with the defendant's assistance, he will be liable as an accomplice. If there has been no assistance, but only an agreement and an overt act towards the commission of the offense, a conspiracy prosecution can still ensue. S. 1722 maintains this abused provision of current law. We recommend its elimination.

SENATOR COCHRAN'S QUESTIONS FOR THE BUSINESS ROUNDTABLE AND RESPONSES

1. Why do you feel Section 403(b), entitled "Omission To Perform a Duty of an Organization," is a problem: Why doesn't the addition of the words "through the exercise of reasonably diligent oversight and exertion" provide sufficient protection to an agent of the organization concerning criminal liability?

The Business Roundtable (the "Roundtable") objects to Section 403(b), even as amended in S. 1722, because it could impose criminal liability based upon organization flow chart responsibility rather than proof of knowledge of or participation in wrongdoing.

Under Section 403(b), an agent of an organization is personally criminally liable for the offense based on the organization's omission if "by virtue of his authority . . . or his relationship to the organization" he had the power to prevent the offense "through the exercise of reasonably diligent oversight and exertion," and he had the state of mind required for the commission of the offense.

The term "his relationship to the organization" is so vague that it conceivably could lead to a charge that anyone in an organization's chain, from the immediate supervision of the employee who actually committed the wrongful act to the chief executive officer, had the requisite "power to prevent" an offense. The "reasonably diligent oversight" language does not require that the agent have the opportunity to act or that his failure to act be consciously intended

to aid the violation by the organization. Whether a person was "reasonably diligent" will be judged by hindsight, after his efforts, no matter how reasonable, have failed and an offense has been committed. Section 403(b) would have a wide reach. It could be applicable whenever an organization omitted to perform a duty imposed by any statute, regulation, rule or order, and would be particularly troublesome when an organization becomes liable for a strict liability offense or one for which the required state of mind is negligence or recklessness. In those cases, it could range up and down the organization chart to make criminally liable persons who were unaware of the wrongful act. Individual liability could result chiefly because of a person's supervisory position and the fact of an offense by the organization.

Persons who aid, abet or conspire in wrongdoing can be indicted under other provisions of S. 1722. These provisions reach quite far since under S. 1722 the requirements for a "knowing" state of mind are satisfied by "conscious avoidance" or "willful blindness". Consequently, a supervisor could not escape liability under Section 401(a) for aiding and abetting by avoiding to learn the truth.

Because other provisions of S. 1722 reach just about every conceivable case where an individual has a significant role in wrongdoings which occur within an organizational context and because of Section 403(b)'s indiscriminate application to a wide range of underlying offenses, it is appropriate that this provision be deleted.

2. The bill contains a section creating a new offense, entitled "Reckless Endangerment," creating a felony where "one places another in danger of imminent death or serious bodily injury." Why do you feel this general provision is unwise?

The Roundtable objects to this vague and sweeping offense because it attempts simplistically to deal with a wide variety of complicated "endangerment" problems inherent in a technological society. Its proposed application to a myriad of complex regulatory situations, including those which may be enacted in the future, makes it likely that it would be used in unforeseen and inappropriate ways.

Section 1617 has been defended as a device to "bootstrap" regulatory misdemeanors into S. 1722 felony fines.

We maintain that the problem of inadequate fines should be met by increasing fine levels, not by creating a new crime of reckless endangerment. Section 2009(b)(2) of S. 1722 would, in most cases, significantly raise the maximum fines for present non-title 18 regulatory misdemeanors.

The Roundtable recommends that the general reckless endangerment provision in Section 1617 be deleted from the bill. If a federal offense along these lines may be appropriate in particular cases, it should be considered in the context of the overall regulatory scheme established by the underlying statute, including other criminal and civil enforcement provisions.

3. I am not clear as to your objections concerning the culpability sections of the Code. I understand that your main recommendation here is that culpability be set out offense by offense. It appears to me that this section supplies us with 4 basic culpable states of mind both well chosen and reasonably defined. I also

note that this section has the support of the ABA, in particular, Section 303(b) which is apparently your main concern. Please explain your objections to these sections.

The Roundtable does not object to the four states of mind set forth at Section 302 of S. 1722. We have, however, serious reservations about S. 1722's failure to apply those states of mind on an offense by offense basis and the presumption in Section 303(b) of "reckless" as to circumstances and results and "knowing" only as to conduct. The approach in S. 1722 creates two problems.

First, S. 1722 appears to change current law culpability requirements for some offenses.[1] An offense by offense application of the four states of mind would insure against unintended changes

Second, since S. 1722 relies on Section 303(b) to supply the state of mind for most elements of most offenses, "reckless" would become the predominant mental state in the federal criminal law. This emphasis on "recklessness" might prove a significant source of confusion for juries leaving them with the impression that they need not find that the defendant had a "guilty" mind. Confusion could also result from the application of different states of mind to conduct and to circumstance, since the distinction between these two elements may not always be clear.

We recommend that the culpability requirements be set forth offense by offense. If a general rule or presumption is adopted, it should be a "knowing" state of mind as to all elements, with appropriate exceptions being made in particular offenses.

4. Do you view the interjection of civil remedies in a criminal trial as problematic?

5. Concerning Section 2006, Order of Restitution, I find that both the Business Roundtable and the ABA object to this provision based on its application to antitrust or securities law cases where the identity of the persons affected or amount of monetary harm cannot be readily determined. This, coupled with the difficulty of applying sanctions in the context of the criminal sentencing process without the procedural protections of a civil trial, apparently is viewed as problematic. The ABA, as you are aware, has already testified concerning this. What do you suggest?

The Roundtable maintains that the procedural problems and distortions of the criminal process which would result from the importation of civil remedies into criminal proceedings outweigh the benefits. The absence of procedures for determining the amount of restitution or identifying the persons entitled to this relief is a problem, as is the failure to integrate the sanction with existing civil remedies. A similar problem exists with respect to Section 2005, Order of Notice to Victims. However, even if appropriate procedures are established, the post-conviction "trials" that would be necessary, particularly in complex cases, would likely delay sentencing and burden the adinistration of the criminal justice system. In addition, Section 2006 may violate the Fifth Amendment rights of individual defendants, turn federal prosecutors into a collection agents and give complaining witnesses a direct economic stake in the outcome of criminal trials.

The Roundtable believes that the increased fine levels of S. 1722 will be an effective deterrent to criminal conduct and prove more workable than the new proposed sanctions of restitution and order of notice to victims. We therefore suggest that Sections 2005 and 2006 be deleted. We do not object to the inclusion of restitution and order of notice as conditions of probation since the problems which they pose in that context are less acute.

6. You have also stated objections to Section 1739 on consumer fraud, whereby misdemeanor liability will attach based on false advertising with the intent to deceive or defraud a purchaser. Wouldn't this section blend with existing law to provide the American public with a stronger consumer rights plan? Why do you feel this is unnecessary?

The Roundtable does not believe any clear need has been shown for this new offense. In view of the availability of civil remedies and other criminal sanctions for consumer fraud, it seems unlikely that Section 1739 would add significantly to consumer protection.

[1] *E.g. Compare* S. 1722 § 1511, Obstructing an Election, with 18 U.S.C. 241 and *U.S.* v. *Ehrlichman*, 546 F. 2d 910, 928 (D.C. Cir. 1976), *cert. denied*, 429 U.S. 1120 (1977) (S. 1722 eliminates current law "intent" requirement) and S 1722 § 1731, Theft, with 18 U.S.C. 641 and *Morrisette* v. *U.S.*, 342 U.S. 246 (1952) (S. 1722 lowers culpability with respect to fact that property belongs to another from "knowing" to "reckless").

The Federal Trade Commission, pursuant to Section 5 of the Federal Trade Commission Act, possesses broad discretion to define and correct unfair or deceptive acts or practices, including those that would be covered by Section 1739. The 1975 Magnuson-Moss amendments added to the FTC's arsenal or remedies and expanded the Commission's FTCA Section 5 jurisdiction to the limits of the Commerce Clause. Some 49 states have unfair trade practices laws, and private rights of action supplement the local enforcement efforts of state officials. In addition, S. 1734, the felony of Executing A Fraudulent Scheme, would reach conduct covered by the proposed offense of Consumer Fraud with the exception of isolated acts which were not part of a scheme or artifice to defraud.

Since a significant amount of legislation already exists that permits criminal and civil sanctions to be brought against consumer fraud, the Roundtable recommends that Section 1739 be delected.

7. You have also stated objections to Section 1751(a)(2) in that it duplicates to a large extent the Foreign Corrupt Practices Act. I share your concern that we have no indication how these Code provisions would change under the Act. Aren't we in effect amending the Foreign Corrupt Practices Act? What do you suggest in reference to this?

Section 1651(a)(2) would make some significant changes in the Foreign Corrupt Practices Act. It would, for example, delete the requirement that the activity be engaged in for the purpose of "obtaining or retaining business" and substitute much broader language, namely, that the activity concern a person's "affairs." It would also delete the requirement that conduct be engaged in "corruptly" before it constituted an offense.

In order to preserve existing law, the Roundtable recommends that Section 1751(a)(2) be amended to incorporate the relevant provisions of the Foreign Corrupt Practices Act into S. 1722 by means of the same cross-referencing technique used for other non-title 18 offenses.

SENATOR DOLE'S QUESTIONS FOR PATRICIA SMITH (WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM) ON S. 1722, THE CRIME CONTROL ACT, TUESDAY, SEPTEMBER 18, 1979

1. In your statement, you deplore the "expansion of Federal criminal jurisdiction," in this bill.

Where do you see such an expansion of Federal jurisdiction, and where do you feel the line should be drawn in codifying Federal criminal jurisdiction?

Why do you feel that the control of criminal conduct should be left to State and local authorities?

What reason is there to believe that State and local authorities would be more protective of civil liberties than Federal authorities?

2. On page two, you fear that demonstrators against nuclear plants might be prosecuted for violation of the riot sections of this act (sections 1831–1834).

Do you believe that the courts can distinguish between a peaceful demonstration and a riot?

If we do not enact this bill, could demonstrators be prosecuted for the same acts under State and local law?

If so, why is Federal legislation more menacing for civil liberties than State or local?

3. On page three, in your objections to the obscenity provision (section 1842) of the bill, you say that abortions or birth control literature may be considered "obscene" and might be prosecuted as such. Is this not really stretching the definition of "obscene" in section 1842(5)?

Do you feel that it would be more protective of civil liberties if State and local law enforcement authorities were left to enforce obscenity laws?

WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM,
Philadelphia, Pa.

ANSWERS TO QUESTIONS SUBMITTED BY SENATOR DOLE TO PATRICIA SMITH ON S. 1722 (THE CRIME CONTROL ACT), SEPTEMBER 18, 1979

1. We see in S. 1722 a number of instances of expansion of federal jurisdiction and will name a few of those of greatest concern to us in our work.

Sec. 1302, Obstructing a Government Function by Physical Interference, is a new crime. The definition of this offense is so broad and vague that we believe it could be used to prosecute participants in any demonstration or other protest in or near federal property, as well as any activity which might be viewed as physical interference with any "public servant."

Sec. 1301, Obstructing a Government Function by Fraud, is also a new and overbroad crime. We can envision this section's being used to prosecute one of our members who used a trick to avoid political surveillance.

Sec. 1001, Criminal Attempt. This section expands federal jurisdiction from prohibition of an attempt to commit certain specified crimes to a general attempt statute. The effect of this is to expand the area in which acts which are not in themselves criminal ("a substantial step toward the commission of the crime") are the basis for prosecution. A person who planned to participate in a demonstration illegal under Sec. 1302, who started for but never reached federal property, would be guilty of this offense. We believe that the only attempts which should be prosecuted are those to commit serious crimes of violence.

Sec. 1002, Criminal Conspiracy. Unlike current law, S. 1722 does not require the intention to commit a crime, only "intent to effect any objective of the agreement." This criminalizes conduct which would ordinarily be legal. WILPF opposes a general conspiracy statute because of the possibility of abuse and believes that S. 1722, instead of improving the current general conspiracy statute, worsens it.

We believe that in codifying the federal criminal code there should be no expansion of federal jurisdiction unless it can be shown that there is a specific danger to federal interests which remains uncovered. This would preclude the addition of new general statutes and of provisions which merely duplicate state statutes. Where a matter is basically of local interest, such as control of demonstrations, there should be no duplication by federal statutes.

We believe that the control of criminal conduct should be left to state and local authorities wherever these authorities can cope with the crimes, because local enforcement can be better tailored to each particular case, from community to community. For example, conditions in urban communities are unlike those in rural ones. Crime control has traditionally been a function of state and local governments, which have developed expertise useful in applying statutes to their own communities.

Furthermore, conviction of state or local, rather than federal crimes would result in confinement nearer to home, with easier visitation. This would promote rehabilitation and reduce cost of imprisonment.

The past record seems to indicate that local law enforcement is more inclined to see recalcitrants as local people with temporary problems. On disorderly conduct, trespass, picketing, etc., the local authorities are fairly tolerant. The federal demand for high standards of civil liberties enforcement can continue to be protected by court review.

2. Yes, courts can distinguish between a peaceful demonstration and a riot. But on demonstration and free-speech cases they often do not, as we have seen in the case of the 1968 Democratic Convention, various Washington, DC, demonstrations and anti-nuclear demonstrations. Furthermore, even if we could rely on the courts for vindication, this does not prevent the harassment of overzealous prosecutions. The recent revelations of misconduct by the FBI (such as the persecution of Jean Seberg), in addition to our own past experience, do not lead us to expect that federal law enforcement will always be conducted in a reasonable fashion.

Yes, demonstrators could be prosecuted under state or local law, but more often for misdemeanors or disorderly conduct, trespass and the like. Further, state and local authorities less often try to harass local persons peacefully demonstrating against federal policies.

We see federal legislation as more menacing for civil liberties than state or local because an examination of U.S. Supreme Court cases shows that civil liberties are more often protected against the states, under the 14th Amendment, than against federal law, under the 5th. In fact, we know of no strong case declaring federal laws violative of civil rights. Further, the record of the CIA, FBI wiretaps and other means used to attempt to break liberal and pacifist causes is much worse than the state or local records.

We know that federal prisons may be better managed and more humane than some state jails, but the process of prosecuting unpopular persons may be worse federally.

3. Sec. 1842(b)(5)(A)(ii) deals with "an explicit, close-up representation of a human genital organ." Such a representation may be necessary for adequate presentation of abortion or birth-control literature.

Probably in some cases it would be more protective of civil liberties for state and local authorities to be left to enforce obscenity laws; in other cases, less protective. This is not the major consideration for our objection to Section 1842. The fact is that we now have state and local regulation of "obscenity," and, we realize, the standard set by 1842 has been applied federally by the Supreme Court. Since we disagree with the concept of federal involvement in the obscenity issue, we would hope for criminal code reform in this area. Our federal courts have more important work to do.

Senator Bob Dole's Questions for Irving Shapiro

1. Mr. Shapiro, in the area of consumer fraud we have already had a good deal of reform lately. For instance, the recent Federal Trade Commission Improvements Act allows the FTC to sue for civil penalties in the amount of $10,000 a day and also to gain restitution on behalf of consumers. Of course, many of the activities that become violations under the Federal Trade Commission Act are more of the malum prohibitum variety than the malum in se variety. In view of these potent remedies that are already available to the Federal Government, don't we already have the ability to deter consumer fraud without the addition of criminal sanctions?

Follow up: You have criticized S. 1722's provisions with respect to restitution. Does that criticism go to restitution programs of victims of violent crimes as well as consumer fraud cases and white collar crime?

2. If business executives are risk averse with respect to the possible imposition of criminal sanctions for the activities of their subordinates, isn't there a possibility that they could actually take too many precautions against corporate misconduct and that the cure would be worse than the disease?

3. Isn't most hard core consumer fraud practiced on the local rather than on the national level? Don't the States already have enough authority to tackle this problem without creating any new Federal crimes?

E. I. du Pont de Nemours & Co.
Wilmington, Del., October 11, 1979.

Hon. Edward M. Kennedy,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, D.C.

Dear Mr. Chairman: I appreciate your forwarding to us the questions raised by Senator Dole for the record following my testimony on behalf of the Business Roundtable at the hearings on the proposed recodified Criminal Code on September 20. We respond to them as follows:

Questions 1 and 3. "In the area of consumer fraud, we have had a good deal of reform lately. For instance, the recent Federal Trade Commission Improvements Act allows the FTC to sue for civil penalties in the amount of $10,000 a day and also to gain restitution on behalf of consumers. Of course, many of the activities that become violations under the Federal Trade Commission Act are more of the malum prohibitum variety than the malum in se variety. In view of these potent remedies that are already available to the Federal Government, don't we already have the ability to deter consumer fraud without the addition of criminal sanctions?"

"Isn't most hard core consumer fraud practiced on the local rather than on the national level? Don't the States already have enough authority to tackle this problem without creating any new federal crimes?"

Response. I agree with you that there is adequate legislation on the federal, state and local levels to deal with consumer fraud. The creation of a new federal criminal offense is unnecessary. The increased concern with protecting consumers from unfair and deceptive practices in recent years has given rise to a much strengthened FTC. The FTC Improvements Act not only gave that agency additional enforcement weapons, it expanded its jurisdictional reach to include

purely in-state businesses and activities which affect commerce. This beefed-up FTC power should be adequate to fill any gap in local law which may have existed. We have also seen the establishment of the Consumer Product Safety Commission and the Department of Transportation, both aimed, in part, at protecting consumers from shoddy merchandise and deceptive business practices. These commissions and agencies, added to such agencies as the FDA, go a long way toward protecting the consumer from deceit and fraud. They have been using their powers vigorously. Moreover, states and some local governments have adopted new consumer fraud legislation—(I am told that 49 of the states now have some form of consumer protection legislation on the books); and many of them have either strengthened their existing regulatory agencies or established new ones to enforce this legislation.

Added to this multi-tiered governmental enforcement, there has been a remarkable increase in nongovernmental protection of consumers by way of expanded product liability remedies and contractual actions in the civil courts. These have gone far to bury the "buyer beware" hurdle for hapless consumers.

The Business Roundtable believes this additional piece of consumer protection legislation should not be included in the bill because it is not necessary, and, further, because it represents the use of a recodification of the Criminal Code as a vehicle for the creation of a new criminal offense without clear proof of a compelling need. No such compelling need has been shown.

Question 2. "If business executives are risk averse with respect to the possible imposition of criminal sanctions for the activities of their subordinates, isn't there a possibility that they could actually take too many precautions against corporate misconduct and that the cure would be worse than the disease?"

Response. I know of no good manager in any organization who can avoid delegating responsibility to others, and there is always the risk that someone to whom responsibility has been delegated will not do something he should have done or do something he should not have done. To create a crime based on guilt by organization chart is wrong. I believe that is what Section 403(b), "Omission to Perform a Duty," and Section 1617, "Reckless Endangerment," may do. We are concerned lest the provisions be read to reach everyone in the chain of supervision who has a significant responsibility for the subject matter even though he knows nothing about it and has no reasonable ability to react to it. As you suggest, they could very well have a serious chilling effect on the conduct of business.

I want to make it clear that we are not arguing that the person who was on the scene and knew what should have been done and didn't do it should be let off the hook. Nor, in taking this position, are we seeking to protect those who consciously turn their heads to keep from knowing what goes on in their organizations. Our concern is that honest businessmen, without a guilty mind, could be held liable because of their position in the organization.

Question 4. "You have criticized S. 1722's provision with respect to restitution. Does that criticism go to restitution programs of victims of violent crimes as well as consumer fraud cases and white collar crime?"

Response. Our criticism of the restitution provisions in S. 1722 do not go to the concept of restitution itself. As I said in my testimony on September 20, we have no quarrel with restitution in appropriate circumstances—whether it be for violent or nonviolent crimes. Courts have ordered restitution in the past as consensual condition of probation, and this should be continued. We think the interest of the victim ought to be recognized.

Our concerns are related to procedural matters. If compensation is tied into a criminal proceeding—except in simple cases in which the amount of damages to a victim is specific and without question, such as ordinary theft of a specific amount of money—the court will be faced with a complex trial to determine the fact of injury and the amount of damage. That is one way to deal with the problem, but it makes the U.S. attorney a claims lawyer, and he will be devoting his attention to collecting money rather than prosecuting criminal cases. Moreover, it would appreciably lengthen the criminal trial. There also is cause for concern with this proposal that an individual defendant may be faced with a serious dilemma of either waiving his Fifth Amendment right not to incriminate himself or foregoing the opportunity with respect to presenting evidence about the amount of harm caused by the victim. I doubt these are the intended consequences of the bill's restitution provision, but it will be the result.

The other way to handle compensation of victims, obviously, is to leave it on the civil side of the courtroom where it is now. That will provide a full due process procedure, including discovery and the whole panoply of pretrial activity that is necessary to give a fair trial on the issue.

If the Business Roundtable or I can be of further assistance as your committee considers this bill, please let me know.

Sincerely,

IRVING S. SHAPIRO.

SENATOR BOB DOLE'S QUESTIONS FOR MARK GREEN, PUBLIC CITIZENS CONGRESS WATCH

1. Mr. Green, on pages 20–21 of your statement, you recommend that the criminal code bill should be amended to allow courts to order convicted employees disqualified from holding similar jobs in the future.

Are you concerned about the Federal court system encroaching on a traditionally private sector activity, namely, a company's power to hire its own employees?

How far are you prepared to go in recommending that the Federal Government or courts dictate private corporate policy?

2. In your statement on page 10–11, you recommend that governments be included in section 402 and they they be made criminally liable for their employees' misconduct. Yet a government, unlike a private company, does not exist primarily for the purpose of making income.

In advocating that governments be made liable for criminal acts of their employees, and presumably subject to criminal fines and restitution orders, are you not really punishing innocent taxpayers who supply the Government with its funds, and who would ultimately have to pay these fines and restitution?

3. You recommend that we amend the code to provide for a "double fine" provision. If a company is hauled into court and fined extensively, are you concerned that it may be forced to pass on this increased cost by raising prices?

With inflation being rampant today, would consumers be ultimately hurt by the added corporate costs which your recommendations would entail?

PUBLIC CITIZEN,
Washington, D.C., October 1979.

1. Disqualifying convicted business felons for a specific period of time from holding the kind of position they have already abused is no greater federal encroachment than the disqualification of union officials due to racketeering under the Landrum-Griffin Act. As for "how far" we would go in having the federal government "dictate private corporate policy"—it of course depends on the circumstances of each case. For example, in earlier eras, child labor laws, the Wagner Act, and Title VIII of the 1964 Civil Rights Act were denounced by the business community as federal interference in the free market. Such criticism has not been historically vindicated.

2. "Innocent taxpayers" is an appealing image, to be sure, but irrelevant. Whenever there is government abuse—payoffs to GSA bureaucrats, a federal agent who drives recklessly and injures someone—someone has to pay. Ideally, there should be individual responsibility, so the offending civil servant would have to pay out of his or her pocket. Otherwise, the owners or members of the responsible organization must pay—whether they are partners in a partnership, shareholders in a corporation, or taxpayers in a government. In a hypothetical of innocents, it is less inequitable that they pay compensation to a victim that that the wholly innocent victim be compelled to absorb the whole loss.

3. This question assumes that corporations are mere pass-through devices—that there is no way a corporate entity can be punished since any penalties are ultimately paid by consumers in higher prices. Of course, price can only be raised to cover the fines if the company has market power, as many leading firms in oligopolies do. But companies in more competitive markets cannot casually raise their prices without threatening sales. For them the fines must be paid by shareholders in the form of lower dividends.

In any event, the logical implication of this question is unacceptable to the Rule of Law—viz., no collective entity should ever be punished because the cost can always be passed on to someone else. This provokes one to ask—should the electrical machinery big-riggers in 1961 not have been fined; should Allied Chemical not have been fined for its kepone poisoning of the James River, which will cost $8 billion to clean up. To ask these non-hypothetical questions is to answer them.

MARK GREEN.

SENATOR DOLE'S QUESTIONS FOR ROBERT BAPTISTE, INTERNATIONAL TEAMSTERS

1. Section 1722 of the bill states that extortion consists of "threatening or placing another person in fear that any person will be subjected to bodily injury or kidnapping or that any property will be damaged."

Why do you feel that any peaceful strike can be construed as "extortion" under this definition?

Has any court, to your knowledge, construed a peaceful demand for higher wages as a threat of "damage to property?"

2. Why do you see the enactment of this Federal criminal statute as being more threatening to civil liberties of strikes than is currently in state and local criminal law?

3. In your statement, you say that this bill may disrupt the delicate balance between labor-management relations. Can you give us some statistics of recent years as to the number of strikes and incidents of violence, relative to previous years and decades? Has this balance between labor and management been changing?

4. On page 5, you say Federal prosecutors would have to "take sides" in labor-management disputes under this bill.

Do you believe it is possible for prosecutors to separate the issue of extortion from the issue of who is right in the disputes over wages?

5. Do you think there should be any Federal criminal statute directed against extortion in labor strikes?

6. What is your opinion of section 1752 of the bill, dealing with labor bribery?

Note: Answers will be available in Committee files.

SENATOR DOLE'S QUESTIONS FOR ATTORNEY GENERAL BENJAMIN CIVILETTI, RE CRIMINAL CODE REFORM BILL, S. 1722

1. Mr. Attorney General, in your prepared statement, you state that you would like to suggest future new provisions to enable the Government to prosecute more effectively acts of monetary fraud and bribery in administering Federal programs. Precisely what provisions do you have in mind? How would you like to see the present bill amended?

2. Do you support this bill's provision to incorporate criminal tax law violations into title 18 of the U.S. Code? If so, don't you think that lumping together tax violations with more serious crimes may prove an excessive burden for this particular offense?

Would it not be better to leave tax violations in title 26 U.S. Code?

3. In your prepared statement, you deplore this bill's deletion or certain white collar crime provisions from last year's bill, including the provision under which a corporate supervisor could be charged with complicity for an offense committed by his subordinates if he "recklessly" failed to exercise supervisory responsibilities.

Where would you draw the line between "negligent" and "reckless?"

Should corporate discipline be a matter for Federal criminal law?

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., October 30, 1979.

Hon. EDWARD M. KENNEDY,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of September 12, 1979, forwarding three questions from Senator Dole concerning my September 11 testimony before the Senate Judiciary Committee on S. 1722.

1. The first question notes that, in my prepared statement, I indicated that the Department of Justice would like to suggest the addition to S. 1722 of new provisions to enable the federal government to prosecute more effectively various kinds of fraud and bribery in administering federal programs. It asks how we would like to see the present bill amended.

Current efforts to prosecute acts of theft, fraud, and bribery involving the administration of federal programs are hampered by the absence of statutes aimed specifically at these activities. In numerous investigations, federal investigators and prosecutors have established that individuals or organizations have

stolen from, or defrauded, a federally-supported program, but, because the federal funds contributed to the program have either been paid over to a public or private agency or commingled with funds from other sources, there was no basis for prosecution under 18 U.S.C. 641 (theft of public funds or property) since the federal government no longer had "title" to, or "possession" of, the property. In many such instances, State prosecutors have declined to pursue such cases—either out of a reluctance to commit scarce resources to cases in which the federal government and not the State government is the injured party, or due to other considerations. While it is impossible to arrive at an estimate of the amount of federal monies that are being unlawfully diverted in circumstances escaping effective prosecution, we believe that the amount and frequency of such occurrences is significant and fully warrants the statutory coverage of federal program crimes.

To meet these problems, the Department of Justice suggests the addition to S. 1722 of these provisions.

The first provision would add a new jurisdictional base to section 1731 (Theft) so as to create federal jurisdiction over acts of theft (including fraud) by any officer, agent, or employee of an entity receiving benefits under a federal program. To restrict federal jurisdiction to cases in which there is a substantial federal interest, a jurisdictional floor of $5,000 would be appropriate, as well as a requirement that the program be one that receives in excess of $10,000 in federal benefits per year. If the total loss from an offense meets the $5,000 limit, federal jurisdiction should attach without regard to the proportion of funds derived from federal sources. This would avoid the necessity of proving the precise origin of the stolen funds, a task that may be impossible particularly if federal funds have been commingled with other monies or if the recipients' records are missing or inadequate.

A second provision to assist in reaching fraud against federal programs is a strengthened recordkeeping requirement applicable to the recipients of federal program funds. Many investigations into suspected frauds involving federal programs have been frustrated either because records and books required, by agreement or by statute, to be kept by recipients have not been maintained or have been concealed to shield wrongdoing. To deter use of this method of avoiding detection, we propose that such omissions and acts be made misdemeanors subject to imprisonment for up to one year. Such a provision would be analogous to the recordkeeping requirements imposed upon corporations in connection with the Foreign Corrupt Practices Act.

The last provision would permit prosecution for bribery in connection with federally sponsored programs. The existing federal bribery statute, 18 U.S.C. 201, is written in such a way as to allow prosecution only in cases of bribes involving federal employees. See, e.g., *United States* v. *Del Toro*, 513 F.2d 656 (2d Cir.), cert. denied, 423 U.S. 826 (1975). We propose that the bill be amended to reach cases in which nonfederal employees engaged in administering federally supported programs are the subject of a bribe involving the program

2. The second question asks whether we support the incorporation into the proposed criminal code of the criminal tax law violations now contained in title 26. It goes on to ask if placing tax violations into title 18 will create an unnecessary burden on these offenses and whether it would be better to leave them in title 26. The question is an important one to raise since it goes to the heart of one of the principles of codification, and since it suggests the need to avoid future problems pertaining to the jurisdiction of Congressional committees in drafting criminal offenses.

We fully support the inclusion of tax offenses, the most serious misdemeanors as well as the felonies, in the new criminal code. These offenses, like other important federal offenses now found in other titles, are significant realities of current federal criminal law coverage. The National Commission on Reform of the Federal Criminal Laws had stressed the importance of exposing the reach of federal coverage and setting it forth in a comprehensive, understandable fashion. In the foreword to the Commission's Final Report, in which it set forth what it considered to be the "basic features" of the proposed code, the first feature emphasized is that "the code is comprehensive. It brings together all federal felonies, many of which are presently found outside title 18". Upon introducing S. 1437, the current bill's predecessor in the 95th Congress, the late Senator McClellan also highlighted the bringing of all federal felonies within a single title instead of leaving them scattered throughout the 50 titles of the United States Code as a major factor in making the bill "a true codification

that is, in short, a modern, workable penal code". Cong. Rec., daily ed., May 2. 1977, p. S 6834.

A basic rationale for the consolidation is, of course, to expose to public view all the more serious offenses covered by the federal penal laws. We live under a system in which all citizens are "presumed" to know the law, yet the law is difficult enough for lawyers to find and considerably more difficult for laymen. Certainly if our society expects its citizens to abide by the provisions of its laws and to be deterred by its sanctions, it has a responsibility to set forth those laws in a form in which they can readily be found and be understood. Serious federal penal statutes should be able to be found in the penal code; to the extent that they are closely interrelated with regulatory provisions of the law, a cross-reference to them should also be made in those regulatory titles. This is the approach adopted in S. 1437 and continued in S. 1722—consolidating serious offenses in title 18 and making cross-reference to them in appropriate places in the regulatory laws.

Placing all serious offenses in title 18 also places them in a context in which their application, and their interrelationships with other provisions, may better be understood. The applicable principles relating to accomplice liability, statutes of limitations (in which the new code adopts a five-year limitation for most offenses, thus reducing the current six-year limit for tax offenses), and penalty consequences, among others, can much more readily be identified. The related offenses that might also be chargeable under the facts of a particular situation are much more apparent. Thus, the tax practitioner or corporate counsel who is used to finding the tax offenses in title 26 will be able to find a cross-reference to those offenses at the familiar location, but he will also be able to gain a better appreciation of their interrelationships with the rest of criminal law and procedure. Those interrelationships today are well known by prosecutors and judges, but those not so familiar with criminal laws are at somewhat of a disadvantage. To keep the tax offenses isolated from the main body of federal offenses would serve neither the interests of fair notice nor the interests of deterrence.

I do not believe that the consolidation into title 18 of these offenses—or of any of the other newly located offenses—will create any collateral problems. From a potential violator's standpoint, the proscriptions, as noted, will carry fairer warning. From a defendant's standpoint, the location of the statutes in itself can in no way add any stigma to such an offense, which is, after all, of a property taking nature that is equally serious no matter in which title it appears. From the standpoint of the effective operation of the criminal justice system, all participants—judges, prosecutors, and defense counsel—should find the new code easier to work with.

The issue of the location of these particular offenses has been carefully considered by the principal sponsors of the Code on the Senate Judiciary Committee in consultation with Chairman Long and the staff of the Senate Finance Committee. It is my understanding that in the last Congress there was no serious objection to the transfer of these offenses from title 26. Chairman Long successfully offered some useful amendments relating largely to tax matters, including one to restore a particular misdemeanor to the law, but did not call up any amendment to move the principal tax offenses out of the new Code. Indeed, in the course of a floor colloquy during the debate on S. 1437, Senator Long commended the floor manager and the members of the Judiciary Committee for succeeding "in the very difficult task of bringing together into one place many of the criminal provisions that are now scattered throughout the United States Code" Cong. Rec. daily ed., January 26, 1978, p. S 552.

As Chairman of the Finance Committee, however, Senator Long did seek and obtain an important clarification. In order to make certain that the movement of title 26 offenses into title 18 would have no unforeseen effect on the jurisdiction of Senate committees, Senator Long offered, and the sponsors of S. 1437 readily accepted, an amendment expressly reserving jurisdiction of any Senate committee to consider and report measures establishing criminal offenses in connection with legislation within its jurisdiction. This amendment satisfies the only real concern I am aware of that has arisen over this core code concept of placing all felonies in the new title 18. That amendment is carried forward in S. 1722 as section 135.

3. The third question relates to that part of my prepared statement in which I criticized the omission in this year's bill of the S. 1437 provision under which a supervisor of an organization could be charged with some degree of criminal liability for an offense committed by a subordinate if the offense resulted from

the supervisor's reckless failure to exercise his supervisory responsibilities. The question asks where the line should be drawn between reckless and negligent behavior, and whether corporate discipline should be a matter for federal criminal law.

Supervisors and employees of organizations are today liable for crimes committed by their subordinates that they command or abet or otherwise intentionally assist. The question is whether, beyond this existing level of liability—which renders the supervisor in such a situation fully as guilty in the eyes of the law as the subordinate who carries out the crime—it is appropriate to establish a lesser degree of liability for a situation in which there is a lesser degree of culpability. The situation in issue is one in which a supervisor is in fact aware of a substantial risk that employees under his supervision are committing an offense, yet he chooses to ignore that risk, fails to discharge adequately his supervisory responsibilities over the employees in gross deviation from the standard of care that his fellow supervisors would employ, and thereby permits or contribute to the employees' commission of a federal crime.

In our view, such a new basis of liability—at a diminished level—is justified, for essentially two reasons. First, we believe that persons of responsibility in organizations—particularly organizations granted a recognized status under state or federal law—occupy positions of consequence in our society that impresses upon them certain obligations in the nature of a public trust not to act in such an unreasonable manner so as, by grossly reckless behavior, to condone or contribute to the performance of federal offenses by employees whom they supervise. Second, the very structure and nature of most modern day organizations poses obstacles that frequently are insuperable to the successful investigation and prosecution, under existing aider and abettor principles, of seriously criminal conduct by upper level organizational supervisors. Because of the economic influence that organizations possess over the careers and financial security of their employees, it is extremely difficult to obtain the testimony of subordinates within an organization in an investigation or prosecution of higher level officials. A middle level manager, whose testimony or cooperation is vital to the successful investigation and prosecution of a superior who has participated in a crime, often is more concerned about the consequences to his career and financial prospects if he does cooperate than he is about the consequences that would flow from his own conviction. In other words, such persons frequently fear the sanctions, including dismissal, that the organization is empowered to levy upon those employees whose actions it disapproves, more than the sanctions available to the government if he remains silent and uncooperative. Even if he is convicted, an employee who has not testified against his organizational superiors may reasonably expect to be "taken care of" in continuing his career. To meet this problem, we believe that it is both necessary and proper to recognize a lesser form of culpable conduct, together with a principle of lesser liability, than that appearing in existing aider and abettor law—a concept that is warranted in its own right and that may also be applied as a fallback when recalcitrant witnesses preclude prosecution for intentional conduct.

The concept we support would recognize that a degree of criminal liability is borne by organizational supervisors who through a grossly reckless discharge, as well as an intentional discharge, of their supervisory responsibilities in fact contribute to the commission of a federal crime. The concept must, as suggested by the third question, draw a clear line between reckless conduct and simply negligent conduct. We believe that the code's adoption of a clear line of demarcation between the concept of recklessness and the concept of negligence—a line derived from that employed in the American Law Institute's Model Penal Code—serves fully as well in this instance as it does for other provisions of the code. As defined in section 302, negligence requires no consciousness of dereliction but rather a failure to appreciate a risk. Recklessness, on the other hand, requires that the actor actually be "aware of a substantial risk that the circumstances [here the criminal activties of subordinates] exists", that the actor disregard the risk, and that the risk be "of such a nature and degree that to disregard it constitutes a gross deviation from the standard of care that a reasonable person [here a reasonable supervisor] would exercise in such a situation." Section 302(c). Thus, the offense would be committed only if it could be proved beyond a reasonable doubt that the defendant had consciously elected to disregard substantial danger signals that his subordinates were engaging in, or were about to engage in, criminal conduct—signals of such a nature that no reasonable supervisor in such a situation would have permitted them to pass

unchecked. This is far from merely negligent behavior. It would impose liability only for conduct that is grossly outside the bounds of reasonable supervisory behavior—conduct that almost reaches the level of intentional assistance in commiting a crime. In recognition of the reduced standard of liability as compared with the existing aider and abettor coverage, such a proposal should cast the potential liability at a lesser level than if the supervisor intentionally had aided the conduct. In S. 1437 of the last Congress the liability was reduced to a Class A misdemeanor level if the employee's offense is a felony. We support the S. 1437 approach but perhaps it would be appropriate to attach a lesser liability for misdemeanors as well so that if, for example, the employee's offense on behalf of the organization constituted a Class A misdemeanor, the supervisor's liability might be graded at the Class B misdemeanor level. Moreover, the Congress might find it appropriate to preclude the availability of imprisonment for convictions under such a provision.

Implicit in the recognition of the need to draw a clear distinction between reckless conduct and negligent conduct, is the recognition that corporate discipline certainly should not be left to the federal criminal law. If a grossly negligent failure to supervise should not entail criminal liability when it falls short of a grossly reckless failure to supervise, certainly lesser derelictions should not be recognized by federal law. But it is not breech of an organization's standards for which the federal law is sought to be employed—it is the breech of the penal laws themselves. When grossly reckless failure to supervise permits the violation of independently created penal statutes, the interest of society in punishing and deterring such conduct is apparent.

I appreciate the opportunity to explain some of the matters touched upon during my testimony on the proposed new Code. Please let me know if I can be of any further assistance.

Sincerely,

BENJAMIN R. CIVILETTI,
Attorney General.

COUNTERFEIT—L.A.'S HOT STATUS CRIME FOR THE 1980'S

(By Townsend Parish and Dianne Grosskopf-Markley)

It's not only the *Saturday Night Fever* or Billy Joel album you bought from a major record chain's local outlet. The Cartier tank watch you picked up at the jeweler's is also bogus. The Cardin shirt is phony. As is the hardcover copy of *War and Remembrance*, the ounce of Chanel No. 5, the Bausch and Lomb Ray-Ban sunglasses, the Levi's blue jeans. Not even the brand-name booze you were served last evening is exempt from suspicion: Hennessey cognac and Beefeater gin have been counterfeited, too.

Counterfeiting of popular consumer products has finally emerged—with a vengeance. The lure of the fast, big buck combined with the sense of virtual freedom from meaningful prosecution that a perfectly faked product gives has emboldened counterfeiters to enthusiastically take on the U.S. market. What we are faced with—here in Los Angeles especially, but also in the rest of the country—is a new age of sophisticated white-collar crime, much of it controlled by organized crime, that makes past efforts seem like playful dabbling. What has emerged is a virulent new strain that has manufacturers of legitimate products scared—so scared, in fact, that they are willing to admit what has only been hinted at until last year: that they are in serious trouble.

For years, big-name, big ticket fashion and perfume labels such as Vuitton, Cartier, Joy, Cardin, Saint Laurent, Chanel and Dior have been unmercifully faked abroad. Some of these fakes were up-front "knock-offs"; others, however, were outright counterfeits, complete with stolen or forged labels, sold falsely as the genuine articles. Now, however, incredible numbers of these counterfeit watches, perfumes, cosmetics and other items are beginning to find their way into U.S. markets—at supposedly reputable stores and, worse, at full retail prices. Last year, at the prodding of Levi Strauss and Company, a coalition of American and European companies was formed to combat the growing problem of counterfeiting. American members of the International Anticounterfeiting Coalition include Levi Strauss, Walt Disney, General Mills, General Electric, Samsonite, Munsingwear and Cross pens; European members include Pierre Cardin, Puma and Moet-Hennessey.

The reasons for this banding together are partially smoke-screened: No one wants to panic the consuming public. But there are estimates that—though clearly unofficial—would make any businessman's hair stand on end. On the worldwide market, for example, supposedly 30 per cent of all products that bear the name "Cardin" are phony; Levi Strauss admits to losing $15 million per year in sales to counterfeiters; and Cartier owns up to the same figure. Officially, the group says its collective counterfeiting problem is worth $100 million or more per year, and that's clearly a low estimate. Ring in all the other legitimate manufacturers who are being ripped off in factories humming in Taiwan, South Korea, Singapore, Hong Kong, Italy, Mexico and Latin America, and it has to be a billion-dollar-a-year sting.

And it appears the counterfeiting of books might not be far behind. For years, travelers to the Orient have told of hardcover copies of best sellers on the open market there for from $2 to $4. These "illegal reprints" (as the book industry calls these counterfeits), which are generally produced in Taiwan, South Korea, Indonesia and other countries, are identical to the genuine copies in just about every way except price. American publishers can do literally nothing since the countries involved, for the most part, aren't signatories to any of the international copyright conventions.

What's more, there is mounting evidence that the stuff is now being made here as well. In Los Angeles, according to reputable sources, there is a thriving counterfeit handbag business in full swing. Stolen designer fabrics are made into handbags that look like the genuine article and are then distributed to small boutiques through a legitimate sales organization.

"The unfortunate thing is that it's the retailers who're the culprits," says one manufacturer. "No one is holding a gun to retailers and saying they have to carry the counterfeit goods. They're 100 per cent guilty for selling illegitimate goods."

Around town, according to another source, there are "tons" of counterfeit Cartier watches which have most likely been assembled locally. James L. Bikoff, the New York-based general counsel for Cartier, says there are "thousands of fakes selling at from $50 to $250" around the country, and he maintains that Los Angeles is the "big growth area" for counterfeiting.

Why Los Angeles? Because here lies the hub of the newest and biggest counterfeiting operation of them all: records and tapes. Just now surfacing is the startling fact that the illicit counterfeit reproduction of Ps. cassettes and eight-track cartridges has exploded virtually overnight into a business that this year will account for close to a billion dollars worldwide. (*See accompanying story.*)

L.A. is also close to another lucrative market for counterfeits: Mexico. And a look at what's happening south of the border is telling at this point because there are indications that what is happening there is also beginning to happen here on—so far—a somewhat less flagrant scale.

Both Gucci and Cartier admit that Mexican counterfeiters have now cut substantially into their multimillion-dollar sales, with the result that the two companies have begun to take unusual action. After years of futile legal maneuvers, they have decided to meet the banditos head on, launching retail operations to outperform the counterfeit counterparts and force them out of business. (Gucci currently has no legitimate outlets in Mexico. Cartier has one small operation located in the duty-free area of the Mexico City Airport.)

As for the Mexican government: "It has taken a very noncommittal attitude. They're obviously dragging their feet on this matter," charges Cartier's Bikoff. "So we've decided to knock it out ourselves." And Gucci, also, has been frustrated at every turn. Legal action taken in Mexico has been unsuccessful. Complains Aldo Gucci, founder-owner of the Gucci empire, "The Mexican government always favors the locals in these cases."

Gucci has plenty to complain about. He claims counterfeit Gucci retail outlets in Mexico account for "millions and millions of dollars" in sales annually. There are currently about 24 counterfeit outlets throughout Mexico, though that number may already be obsolete. "It's spreading so fast there," as one Gucci insider explains, "that we can't keep track of it."

As for Cartier, what started out eight years ago as a two-store counterfeit operation in Mexico City—stores whose full-line inventory of Cartier merchandise is bogus—has grown into a thriving six-store fully counterfeit chain with locations throughout Mexico. The chain's esimated annual volume, however, is genuine: $3 million.

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How do they get away with it? Though Cartier registered its trademark with Mexican authorities back in 1949, in 1971 the government for some reason also granted copyright to the Cartier name to Fernando Pelletier, a Swiss-born naturalized Mexican citizen.

And, actually, American law isn't much better. Violate copyright laws, and you'll probably only get your knuckles rapped. Even the new, upgraded federal copyright law that went into effect in 1972 has little incentive for criminal prosecution. Copyright infringement violations are, in general, only misdemeanors. The FBI has to pump the violation up to a felony to get involved, and the rest of the chain of indictment and prosecution isn't geared to show much interest in misdemeanors.

"Many U.S. attorneys don't want these cases in their courts," says Ted Gunderson, special agent in charge of the FBI's L.A. office. "I know an instance where a guy made more than $1 million in counterfeiting, and the judge gave him one-year probation and a $1,000 fine. Nobody seems to care.

"What judge in this city is going to sentence an individual to severe punishment for a misdemeanor?" Gunderson asks. "In a raid on the East Coast of a record-album counterfeit operation, there were in excess of 23 search warrants issued, and out of that in excess of 100 indictments are projected. There are going to be 100 people convicted because the evidence we have against these people is hard and fast, and they probably will plead guilty to one or two counts of copyright infringement. For that they will get a fine, probation, suspended sentence. All the man hours and time that went into that . . . for what? For these guys to go into business again."

Gunderson says the violation of copyright laws involved in counterfeiting must be bumped up to a felony offense before effective thwarting of ripoffs can occur. And though Congress is receptive to the idea, Gunderson claims some of the hard-hitting groups with "clout in Washington," such as the recording industry, have not been pushing for this change.

And there is one other problem—a very big problem. You may have noticed there are very few quotes attributed directly to individuals in this story, except for the FBI. Everyone is scared. They are scared for their safety because they know, now, that organized crime is involved in record-album counterfeiting—and perhaps in the other areas as well.

"This really sounds paranoid, I know," one music-industry source said. "But I know somebody who got very involved in this actually had a contract taken out on his life. This person was actually taken out of Los Angeles and hidden in another city until the FBI found the would-be killers and the person who hired the men to do it."

The FBI professes no specific knowledge of this case, but Gunderson does confirm that "basically the facts are there" and that "not too long ago we had a problem, and the person went into hiding."

"A great deal of what I know [about counterfeiting and the involvement of organized crime in it], I really don't want to know . . . it's dangerous," says another record-company source. "I'm scared. There are some pretty hefty criminals in this." Cartier attorney Bikoff says there is also mob involvement in at least some of the more sophisticated apparel counterfeit rings. "Even under threat of perjury many of these people will not say where they got their fakes. I'm sure they have had their lives threatened."

Even if you discount many of the whiffs of fear as overreaction, the FBI acknowledges that a few persons are "probably afraid for their lives." And when it hits home how complicated, expensive and sophisticated it is to attempt precise counterfeiting, the inescapable conclusion is that organized crime must be involved in a big way.

"To finance an operation to this extent you need major money," says a disturbed record-label head. "We are no longer talking about taking a box of 50 albums, sticking them in the garbage can and picking them up before the garbage collector comes. We're talking about hundreds of thousands of records being produced. We're talking about entire factories and warehouses. And a tremendous distribution system. It's as complex as a legitimate operation. And I think it's almost impossible for organized crime not to be involved."

The FBI agrees. "You've got to have a lot of money and the right contacts to invest in buying record presses," says Gunderson. "If you go into it at that level, sure, it has to be organized crime."

Gunderson goes on to acknowledge that at least one "major organized-crime figure" in Los Angeles is involved in "audio piracy," and that a "tremendous volume" of record and tape counterfeiting is going on in Southern California. He says what's going on here is probably the equivalent of what was uncovered last December in the FBI raid on the East Coast. "Without revealing any names," he says, "we have several people under investigation here who certainly deserve to be stomped and I'm sure will be shortly."

Naturally, the hardest-hit record labels are those which have managed to crank out those multimillion supersellers that have so quickly become the financial cornerstones of the industry. Currently heavily counterfeited are the new Barbra Streisand, Rod Stewart, Billy Joel and the Who releases, while illicit producers eagerly await the new Bee Gees and Fleetwood Mac albums. Among labels, RSO is probably the hardest hit of all, since most of its volume has been generated by a few monster-selling hits such as *Saturday Night Fever*, *Grease*, and the *Sgt. Pepper* soundtrack. Counterfeiters are so on top of the RSO product that the current Eric Clapton album was actually on sale in retail stores before its release.

And this is also the case in the other industries as well. While once the Cartier tank watch was the counterfeiter's main target, the recently released line of Cartier watches has spurred a whole new wave of counterfeiting, according to Bikoff.

"How can we control it?" asks one manufacturer. "I don't know. Often our own people can't tell what's counterfeit and what isn't. I've had counterfeit products on my desk and I didn't know it. I can sit there and have the stuff in my hands and not know it."

MEANWHILE, THE KNOCKOFFS CONTINUE . . .

Copies are not counterfeits when they are up-front "knockoffs"—in other words, not sold as the genuine articles or gingerly and subtly altered so that close inspection reveals they aren't exact duplicates. For example, there is a longstanding and thriving knockoff business in the luggage and fashion markets; Ohrbach's has for years trumpeted its low-cost copies of the new fashion lines out of Paris.

Clearly, this sort of legitimate duplication doesn't please or flatter the manufacturers of the original item, but there is little they can do to stop it. Perhaps the most blatant example was last year's copy of Louis Vuitton bags by a California manufacturer who has since apparently gone out of business. An ad in *Women's Wear Daily* showed a genuine Vuitton bag side-by-side with the knockoff and the headline, "Even Louis Might Not Spot the Difference." The only apparent difference between the products was in the fabric's logo: On the copy the famous "LV" had been changed to "LY." (The manufacturer's name was "Lorenzo Young.") "The price?" asks the add. "Well, Lorenzo asks about half as much as Louis."

Nelson A. Rockefeller is also going into legitimate reproductions. His new art-reproduction business copies famous works of art—earning him the animosity of the Art Dealers Association of America, which calls it a "shameful venture."

Neither are classic automobiles safe from legitimate ripoffs. You may now purchase for about $10,000, a faithful fiber-glass replica of the 1957 Porsche Speedster. Only the expert can tell at a glance that the car isn't the original—unless you happen to rap the fiber-glass fender or notice that the Porsche name and logo are missing.

ONE INDUSTRY WHOSE EARS THIS ISN'T MUSIC TO

Until the spectacular series of FBI raids on the East Coast last December, during which an estimated $60 million worth of records and tapes were seized at 29 different locations, no one in the record industry really knew how big the counterfeiting problem had become or how good the fake product was. Either that or everyone was carefully keeping his mouth shut waiting for someone else to blow the inevitable whistle. Now everyone knows: It is huge. With a Bullet.

The official estimate of the Recording Industry Association of America (RIAA) puts the U.S. toll of music-industry counterfeiting alone at $350 million, but insiders think the *real* national figure is double that—or more. To put this into perspective, even the $350 million level is a full 10 percent of the industry's total legitimate sales and easily twice the dollar volume of all the other consumer-product counterfeiting that goes on in the United States.

"I don't think anybody was really aware of how enormous this operation was until the recent bust," says a scared record-business insider who doesn't want his name mentioned. "We all knew there was a tremendous degree of damage being done, but no one knew the extent until hundreds and hundreds of thousands of copies of best-selling albums were found."

Up until the raids, conventional wisdom in the record business was that exact illegal duplication of tapes and LPs was only a minor problem. It would take too much money, too much massive equipment, too much organization to record tapes and press albums from masters and then produce a package, complete with four-color art, that would look just like the genuine product. No, the big problem had to be piracy (unauthorized duplications packaged clumsily so that anyone could tell they were bogus) and small-scale thefts of the real product.

Well, the industry was shaken to its Frye boots when the raids revealed counterfeit albums in *enormous* quantities that were identical to the real thing—and sitting side by side with the real thing in the bins of major-chain outlets, with no clue that anything was amiss. All over town, record-label executives sat at desks holding two albums—one genuine and the other counterfeit—and turning them over and over and realizing even *they* couldn't tell the difference.

More recently, according to another story, the counterfeiters' initial quality-control problems have been solved. "There was a record of ours that had not been officially released," a label executive remembers. "I was at a swap meet, and that record was out there. In the new packaging. For $3.98. And it had *not* been issued by the record company. The copy was absolutely perfect. The artwork on that particular album was very expensive. I bought one, and the sound quality was great. It was perfect, and they had beat us out on the street."

The FBI is on the case in Los Angeles and, as you'd expect, the agency's attitude is both laconic and more detached. Ted Gunderson, of the FBI's Los Angeles office, says that in order to effectively combat the insidious advance of record and tape counterfeiting he needs more men, more understanding prosecutors, more involved judges, the threat of a felony conviction (instead of only a misdemeanor) for violation of the copyright law and record-industry commitment to come up with a standardized coding of their products that can't easily be duplicated so his men can nail the bad guys for sure with the goods.

"If the legitimate manufacturer is having difficulty telling the difference between his product and the counterfeit, you can see how much trouble *we're* having," says Gunderson. "Now, we've got it before it hits the streets.

But coding is tough, expensive and probably futile, in the opinion of many record-industry observers. "The problem is that anything the industry comes up with will eventually be found out and copied by the counterfeiters because this is such a lucrative business," moans one record executive.

Comments a spokesman for the RIAA: "Were not far along at all [in the effective coding of the product]. From time to time there are all sorts of different devices that come forward as the alleged answers to counterfeit identification in some nonduplicative device. So far, nothing. Either its readily duplicated or the unit cost is too great to put on every single legitimate recording. That number of legitimate recordings times the cost per unit has to be less than the presumed losses from counterfeiting.

"But we still look, and still have hopes for some cure-all. Especially to reduce the chance that a retailer could say that he didn't know. That's the main thing, in my judgment."

Enthusiastic involvement of legitimate retailers in counterfeiting operations is the great secret of booming record and tape counterfeiting and the worst cut of all for the record industry. It's a matter of common knowledge but a subject of almost no talk that even major retail record chains, as a matter of policy—either on the corporate level or on a store-to-store basis—buy as much as 20 to 30 percent of their total stock of hit albums from established counterfeiting sources. This bogus product is mixed in with the genuine product and sold to unsuspecting buyers at normal prices, and no one is the wiser.

But it doesn't end there. If there are unsold albums and tapes remaining after the life span of a hit, the retailers return the *counterfeit* products to the record companies for refunds. The record labels lose at both ends—loss of sales and out-of-pocket money for bogus returns—and the retailers profit at both ends: They buy the counterfeit products for less and sell them for regular prices, and they get money back for records they never bought from the labels.

In addition to all the fiscal woes that a counterfeit product has brought to the record industry, there is the added onus that an inferior product—at least inferior once the package is opened and the disc or tape played—is harming the overall reputation of the industry. When counterfeit records and tapes are channeled through ordinary outlets, the consumer also suffers.

In the old days of piracy, buyers knew they were purchasing a fake product

because the package and low price were the tipoffs. It was a tradeoff many consumers were eager to make (the RIAA estimates that at one time four out of five albums sold in Los Angeles were counterfeit). Now, they're not so sure. "We don't want our customers coming back unhappy," admits an executive of a major record label. "We don't want a reputation for poor quality. It's going to kill the industry."

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Is Buying an Official Lunch Buying the Official? The Fuzzy World of Illegal Gratuities

(By Robert X. Perry, Jr.)

Washington lawyers sometimes are asked about the lawfulness of entertaining or providing gratuities to public officials. Their responses frequently fail to hit the nail on the head. Goodwill gifts, favors and entertainment—particularly for public officials—cause businessmen and attorneys considerable soul-searching and consternation.

Businessmen assume that gifts and entertainment for public officials (including congressmen) are not all that bad. They recognize bribery as a serious crime, but incorrectly view gifts and entertainment as little more than harmless promotional efforts.

Few areas of the law generate more confusion and misunderstanding than the area that deals with gratuities. Conflicting court opinions cause part of the problem, and congressional reports and other writings on the subject are in regrettable disarray. Moreover, stricter law enforcement policies, which flow from the Watergate experience, make the uncertainty in this area of the law a matter of serious concern for anyone who deals regularly with government officials. Individuals in frequent contact with such officials need clarification of the issues so they can determine which types of gratuities are not permitted by law.

The illegal gratuity statutes, 18 U.S.C. § 201 (f) and (g) prohibit the giving to or receipt by a public official of anything of value for or because of any official act other than as provided by law for the proper discharge of official duty. These provisions are a part of the federal bribery statutes and generally are characterized as lesser forms of bribery.

The bribery laws prohibit the giving of a thing of value with the specific intent of influencing an official action. Unlike the bribery laws, the gratuity statutes do not require specific criminal intent or a corrupt purpose. However, the gratuity statutes do require some provable relationship between the giving of a gratuity and official action.

The dispute arises over exactly what conduct the gratuity statutes prohibit. The Justice Department and several of the circuits take different and conflicting positions over the meaning of the language in these statutes. Four of the circuits prohibit goodwill favors; two others, with the support of a tax decision by the U.S. Court of Claims, view goodwill favors as non-criminal conduct. The intensity of this controversy has grown significantly during the past year.

The Attorney General's office has adopted the more expansive position that goodwill favors to government officials violate these statutes. This position exposes individuals throughout the country, even in the circuits that embrace the restrictive approach, to the threat of prosecution.

Criminal Intent Element. The key language of the gratuity statutes, "for or because of any official act," requires some intentional relationship, short of an intent to influence, between the giving of a gratuity and the official acts of the receiver. [1] That required relationship is not altogether clear and this is the basis of the confusion and conflict in the cases interpreting these statutes.

Two fundamental questions arise in attempting to determine the meaning and practical significance of the "for or because of" criminal intent requirement [2] of the gratuity statutes. First, does the language require that a payment be given because of some specific act of an official in order to constitute an offense, or does the payment only need to be related to an official's actions in general, such as in the case of goodwill entertaining or gifts?

The second question pertains to cases of payments for future actions: Is a middle ground of criminal intent possible between the bribery requirement of intent to influence and the general intention of goodwill cultivation?

NO ONE WOULD WANT TO LABEL THE CASUAL WASHINGTON LUNCH A CRIMINAL ACT, MUCH LESS AUTHORIZE A PROSECUTION FOR ONE, BUT SUCH A LUNCH CLEARLY IS A CRIMINAL ACT UNDER THE EXPANSIVE VIEW OF THE GRATUITY STATUTES

The only type of payment that all authorities agree falls within the prohibition of the illegal gratuity statutes is the reward payment. A $100 appreciation payment given to an Internal Revenue Service agent upon completion of a favorable audit offers an ordinary example of such an illegal payment. The fact that such a payment is made after the performance of the official act in question makes the conclusion so apparent. Having been made after the performance of the official act, such payment cannot constitute bribery. [3] At the same time, a payment that rewards an agent for a specific result is given "for or because of" the official action and plainly violates gratuity statutes.

The analysis becomes more difficult when an effort is made to apply these principles to payments made before the performance of an official action. If such payment is not made for the purpose of influencing a future action, one struggles vainly to envision some kind of prospective relationship other than the cultivation of general goodwill. Although there is little authority on the point, it seems that a payment that is made before the performance of a particular act, and is made "for or because of" that act, necessarily is made for the purpose of influencing that act. [4] Therefore, there should be no middle ground between bribery and goodwill gifts with respect to prospective payments.

If the evidence available to a prosecutor is not persuasive that the giver intended to influence the actions of the receiving official, and we assume for a moment that goodwill gifts are lawful, the failure of proof on the intent to influence should be regarded simply as an evidentiary weakness. The temptation should be resisted to conclude that a compromise presentation may have been accomplished, proving that a payment was made "for or because of" the official's act but not to influence that act. Such reasoning is invalid, but could be attractive to a prosecutor who tries to establish a weak bribery case. Moreover, an instruction fashioned on such a theory could encourage a jury to return a compromise guilty verdict where the evidence proved only goodwill entertaining.[5]

IN THE REAL WORLD OF PRIVATE INDUSTRY-GOVERNMENT RELATIONS THERE IS A GENERAL AWARENESS THAT AN OFFICIAL'S INTEGRITY IS NOT COMPROMISED BY THE PURCHASE OF A LUNCH, BUT THE SAME MAY OR MAY NOT BE TRUE OF AN ALL-EXPENSE-PAID VACATION TO THE CARIBBEAN.

Goodwill Gratuities. The most vigorously disputed question in this area of lesser forms of prospective bribery-like payments concerns whether goodwill gifts and entertaining are payments given "for or because of" any official act and fall within the prohibition of the gratuity statutes. On this question the authorities are in serious conflict.

The most carefully reasoned analysis of the illegal gratuity statutes is Judge Malcolm Wilkey's opinion in *United States* v. *Brewster* [6] In *Brewster*, the court reviewed the correctness of jury instructions in an illegal gratuity conviction of a U.S. senator. The instructions attempted to distinguish between lawful political contributions, outright bribery, and illegal gratuities. The difficulty in drawing distinctions between these offenses so that they are meaningful to a jury is manifest, and in *Brewster* the court concluded that, although the District Court judge had made a "conscientious and valiant" effort in drafting his instructions, the jury could not have understood the distinctions he drew between the three types of payments.

In reversing Senator Brewster's conviction, Judge Wilkey explained that a gratuity given a public official "out of general support based on his past record or out of insubstantial hopes for the future" would not violate the illegal gratuity states. [7] In order to be violative of these statutes, the court held, there must be more "specific knowledge of a definite official act" and the payment must be made because of a "specifically identified act.' [8] The court went on to explain that the prohibition of the illegal gratuity statutes implies that the specific official act wil be done anyway, with the payment made because of the act and with the intent to compensate the official for that specific act, but without any corrupt intent or intent to influence that act. [9]

This case argues that any payment to a public official not made in connection with a specific act, but rather because of the position which the official holds or in connection with his duties generally, does not violate illegal gratuity statutes.

Goodwill gifts or entertaining is the easiest characterization of such payments.

Federal prosecutors, however, generally argue that *Brewster* should not be so interpreted because the court intended merely to distinguish between legitimate political contributions and payments to an elected official that would be unlawful. They argue that this case is inapposite to payments made to a non-elected official who should not be receiving any payments relating to his official duties other than his salary. Although the position of the Justice Department is not an unreasonable evaluation of this case, the *Brewster* opinion itself does not restrict its construction of the gratuity statutes to elected officials and to situations in which political contribtuions must be distinguished from other payments. [10]

In the fall of 1976 the Fourth Circuit had an opportunity to shed some light in his troublesome area. In *United States* v. *Arthur*, [11] the court had under review the conviction of the president of a federally insured bank in West Virginia for misapplication of bank funds in violation of 18 U.S.C. §656. One aspect of the alleged misapplication was the defendant's use of the bank's funds to entertain state officials in order to attract business to the bank. The government contended that this entertainment violated the West Virginia bribery statute, which is virtually identical to the federal illegal gratuity statutes.

The court, citing *Brewster*, held that goodwill entertaining of government officails does not violate the West Virginia statute because the favor extended in such entertaining is not intended as a payment for a specific act by the government official, but rather, is intended only to generally influence the official's actions. The court held that gifts motivated by "some generalized hope or expectation of ultimate benefit on the part of the donor' do not bring the gifts within the prohibition of the statute. [12]

The Fourth Circuit, in deciding *Arthur*, relied on *Brewster* and a tax case decided by the U.S. Court of Claims, *Dukehart-Hughes Tractor & Equipment Co.* v. *United States*. [13] In *Dukehart-Hughes* the court upheld the federal tax deductibility of "goodwill" gifts and favors to Iowa state government officials, which included out-of-state trips on fishing outings and football games. The court held that such favors given to promote sales to local and state governments were deductible as ordinary and necessary business expenses because they did not violate Iowa's bribery and gratuity statutes. In reaching this conclusion, the court held that the language of those statutes (which are similar to the federal statutes) was aimed at prohibiting the receipt of anything of value in exchange for the performance of "a specific official act or acts," and that goodwill gifts and entertainment were not prohibited. The court pointed out that there was no evidence that the favors were used to induce any particular purchase or as a reward for a past purchase. This analysis is consistent with the holdings of *Brewster* and *Arthur*. [14]

The position of the Justice Department that goodwill gifts and entertaining of government officials is unlawful has the support of a number of cases. [15] These cases hold generally that if a gratuity is given to an official because of the position he holds, rather than for social or friendship purposes, the element of criminal intent is satisfied. Three of these cases (*Alessio*, *Niederberge* and *Standefer*) concern expensive entertainment of government officials and all were decided in the past three years, in our so-called post-Watergate era.

United States v. *Niederberger*, *supra*, concerns an IRS agent who had accepted cross-country golfing trips for a large corporation during the period the agent was assigned as manager of the corporation's tax audits. In sustaining the agent's conviction, the court specifically rejected the argument that a gratuity must be given for a specific identifiable official act in order to constitute an offense under the statutes.

The pro-government or expansive opinions as a group are not nearly as lucid and reasoned in their approach to the complex issues involved in these cases as are the opinions in *Brewster* and *Arthur*. Probably the most confusing and misunderstood concept in these cases is that of *quid pro quo* and specifically whether it is a necessary element of an illegal gratuity. Most of the expansive cases hold that a *quid pro quo* is not a necessary element, and then state as a consequence that the payment given to the public official need not be given for some specific official act to violate the statutes. The difficulty here is that the concept of *quid pro quo* is confused with the element of criminal intent. The two are separate although closely related concepts, and the tendency of the expansive decisions to consider them as a single concept may cause confusion. Even *Brewster*, the leading case on the restrictive side of the question, recognizes that the

gratuity statutes do not require proof of a *quid pro quo*. [16] But on the question of criminal intent, *Brewster* clearly holds that any payment or favor must be given "for or because of" a specific official act. [17]

What many of the decisions fail to recognize is that a payment may be given for a specific act without there being any *quid pro quo*, i.e., some responsive action by the receiving official. In such a case, the element of criminal intent, even under the restrictive approach, is satisfied whether or not there is any *quid pro quo*. The real irony here is that the expansive decisions often cite *Brewster* correctly as authority that no *quid pro quo* is required to satisfy the illegal gratuity statutes, and then contrary to *Brewster* conclude that there is no requirement that the payment be made for a specific act. [18] Unfortunately, this flagrant non sequitur often eludes even the most careful opinion readers.

The extent to which some of the courts confuse these issues strains one's imagination. The Fifth Circuit, for example, in recently deciding *United States* v. *Evans*, held that the intent of the donor and donee are irrelevant [19] in determining whether there has been a violation of the statutes. In any event, what is clear is that there is a definite split of judicial thought among the federal circuits on the criminal intent requirements of the illegal gratuity statutes. This split of authority leaves this important and recurring problem unsettled and unresolved.

THE IRS ADVISES ITS EMPLOYEES THAT "IT IS NORMALLY PERMISSIBLE FOR EMPLOYEES TO ACCEPT NOMINAL COURTESIES EXTENDED IN THE SPIRIT OF HOSPITALITY

Legislative History. The legislative history of the comprehensive bribery and illegal gratuity provisions of Title 18 offers persuasive authority that gifts and general goodwill entertaining of government employees were not intended to be included within the prohibition of those provisions. Strangely, no opinions that interpret the illegal gratuity statutes cite or discuss this legislative history.

When the bribery and illegal gratuity statutes were under consideration by the Congress in 1961 and 1962, amendments were offered in both the House and Senate to prohibit certain types of gifts to public officials. The amendment would have made it illegal for public officials to accept a gift, gratuity or favor from any person if, generally, such government employee "has reason to believe the donor would not give the gift, gratuity or favor but for such employee's office or position within the Government." [20] The amendments were designed to prohibit influence peddling and the purchasing of the goodwill of any federal employee by someone who regularly does business with the employee or his agency. [21]

In the Senate the amendment was proposed in the Judiciary Committee by Senator Kenneth Keating (R N.Y.), who pointed out in his testimony that under existing law the acceptance of a gift by a federal employee may not be illegal even though the employee's agency regularly does business with the donor. Senator Keating asked that such "obvious attempts at influence peddling or the purchasing of goodwill" be prohibited. [22]

The Justice Department informed the committee that except for scattered provisions applicable only in limited areas, the United States Code contains no prohibition of gifts to federal employees. The department took the position that gift-giving should be controlled by agency regulation and that it was not necessary to include such a prohibition in the bribery and illegal gratuity legislation. The department added that it would not, however, object to its inclusion in the bill. [23]

The amendment eventually was deleted. Congress' reluctance to incorporate such a provision in the bribery bill originated in a scholarly staff study on conflict of interest laws by the House Antitrust Subcommittee. The report concluded that the subject of gifts and social entertainment should be handled in a code of ethics for government employees, rather than in a criminal statute. The code of ethics, the staff study recommended, should make it improper for a government employee to accept gifts or "to become unduly involved, through frequent or expensive social engagements," with persons doing business with the government. The proposed sanctions included barring violators from agency practice for a time, but did not propose criminal prohibitions or sanctions. [24]

The language of these goodwill amendments was not included in the bill adopted by the House committee [25] or passed by the House. [26] On the Senate side the proposal was not included in the bill reported out of the Senate Judiciary Committee. [27] Senator Keating had intended to offer his amendment again on the Senate floor but when the bill was debated near the close of the session he decided not to offer the amendment for fear it might jeopardize final passage of the entire bill. [28]

It would seem reasonable to conclude that Congress rejected this amendment because it viewed such gratuities as being more appropriately the subject matter of ethical regulations and guidelines than of a criminal statute. Yet by enacting the illegal gratuity provisions into law, Congress seems to have drawn a distinction between gratuities given public officials simply because the donor is doing business with the official who is in a position to affect the donor's interests generally, and, on the other hand, gratuities given public officials "for or because of" definite official acts. Congress apparently wanted to limit the applicability of the gratuity statutes to the latter situations.

THE POSITION OF THE JUSTICE DEPARTMENT THAT GOODWILL GIFTS AND ENTERTAINING OF GOVERNMENT OFFICIALS IS UNLAWFUL HAS THE SUPPORT OF A NUMBER OF CASES

Agency Regulations and Standards of Conduct. After the passage of the 1962 bribery and illegal gratuity statutes by Congress, most of the federal agencies adopted rules and regulations to govern the receipt of gifts and entertainment from individuals who do business with the respective agencies. Such regulations were adopted presumably because the agencies were aware that the Congress had declined to make gifts and goodwill entertaining subject to criminal sanctions, but appreciated the need for some control of those practices.

In adopting regulations governing such conduct, virtually every agency created exceptions, generally to allow the receipt of small gifts and entertainment even when received from a person doing business with the agency. The IRS, for example, advises its employees that, "it is normally permissible for employees to accept nominal courtesies extended in the spirit of hospitality." [29]

Understanding the significance of the creation of these exceptions is an interesting analytical exercise. One normally assumes that when an action is covered by a criminal statute the quantity of the action or the monetary amount involved does not affect its criminality. The value involved may be a factor in the decision to prosecute and in the question of what sentence should be imposed, but it is not an element of the offense itself except occasionally in order to distinguish between degrees of a crime. In larcency, for example, it makes no difference whether $50 was stolen or whether a penny was stolen; it is still larceny. Thus, when small gifts and small goodwill entertaining are considered to be lawful conduct it seems to follow that gift giving and goodwill entertaining, regardless of how much may be involved, are not criminal. Of course, this is only true as long as the intentions of the giver and receiver are goodwill-related, and naturally a gift of great expense raises serious questions about these intentions.

Once gifts were deemed to be beyond the reach of criminal statutes it was permissible for the agencies themselves to determine that small gifts and entertaining should be permitted under agency guidelines, but that large gifts and entertaining should not be. It was only natural that the various agencies should have carved out these small exceptions after Congress relegated the matter to agency discretion. If Congress had included gifts and goodwill entertaining under the bribery and illegal gratuity statutes, there would have been no need for the agencies to adopt regulations governing such conduct.

During 1977 both the Senate and the House adopted codes of ethics that forbid certain types of gifts and entertainment but permit others. Both of these codes permit members to receive modest gifts and entertainment even from persons having a direct interest in legislation, but prohibit the receipt of gifts which are intended to influence the exercise of official duties. [30] In adopting these codes, Congress obviously did not take the position that goodwill gifts and entertaining were in violation of existing criminal statutes. [31]

THE EXTENT TO WHICH SOME OF THE COURTS HAVE CONFUSED THESE ISSUES STRAINS ONE'S IMAGINATION

The Present Status of the Illegal Gratuity Statutes. At the present time the government prosecutes goodwill gratuity cases only in situations that involve costly gifts and entertainment. This policy probably portends that the case that finally may resolve this question will be complicated by the presence of a substantial gratuity. In the real world of private industry-government relations there is a general awareness that an official's integrity is not compromised by the

purchase of a lunch, but the same may or may not hold true of an all-expense-paid vacation to the Caribbean.

No one would want to label the casual Washington lunch a criminal act, much less authorize a prosecution for one, but such a lunch clearly is a criminal act under the expansive view of the gratuity statutes. On the other hand, the Caribbean vacation, provided merely as a goodwill gesture, is not a crime under the restrictive review of these statutes, as disturbing and unpopular as such a decision would be to most laymen. Certainly the value of a gift is relevant circumstantial evidence, admissible at a trial to prove that more than the cultivation of goodwill was sought with the offer of a costly gratuity. However, more evidence of the donor's intent would be required under the restrictive interpretation of the statutes to warrant submission of the case to a jury.

As a practical matter, in most cases that involve a costly gratuity the government can prove its case even under the restrictive view of these statutes. Resolution of the conflict now existing among the circuits in favor of the restrictive view, while requiring proof that a gratuity was given because of a specific act, would lift the cloud of uncertainty from simple goodwill entertaining where no corruption is intended. Control of abuses in the area of non-criminal, simple goodwill entertaining could be accomplished through strict enforcement of ethical regulations.

In the present confused state of the law, businessmen have no way to determine which gratuities are proper and which are not. If an occasional lunch is considered acceptable, an expensive lunch every week for two years may not be, as a series of such meals could soon add up to a surprisingly large amount of money. The answer does not lie solely in an admonition to abide by the individual agency's guidelines. Although a businessman may be concerned about his guest's infringement of agency ethical guidelines, the businessman is constitutionally entitled to know when his own conduct crosses the uneasy line between participation in unethical conduct and outright criminality.

The case that poses the most serious problem in the present uncertain state of the law is that of expensive or recurring goodwill entertainment of a government official submitted to a jury with an expansive or so-called Barash instruction, to the effect that even if the entertainment were provided only out of "a desire to create a better working atmosphere," the "for or because of" intent element of the statute would have been satisfied. The prosecution of such a case almost certainly would result in a conviction, and thus presents a formidable threat to a businessman who may desire only to improve communications with a certain government agency. [32]

The conflict in authorities and resulting uncertainty in this important area of government relations places great power in the hands of federal prosecutors. Where to draw the line with respect to the value of entertainment is within the sole discretion of the prosecutor who, under the expansive view of the gratuity statutes, would be required to give only the slightest consideration to the intentions of the donor or the effect of the gratuity. A prosecutor could decide to undertake a prosecution of modest goodwill entertaining extended over a significant period of time, even though such entertainment by yesterday's pre-Watergate standards was acceptable conduct.

There is reason to believe that a distinction is made by the Justice Department between the receipt of gifts or entertainment by elected and highly placed officials on the one hand, and ordinary government employees on the other. Costly entertainment of an IRS agent more likely becomes the basis of an indictment than the same entertainment of a U.S. senator. Nothing in the gratuity statutes or the cases interpreting them would form the basis for such a distinction except for the narrow exclusion created by the permissibility of campaign contributions, which can be unlawful if given to influence an official act or if given "for or because of" an official act. [33]

Such gratuities as free passage in company planes and overnight lodging in company-owned hunting lodges have been provided very commonly to congressmen and senators, but never have been prosecuted. Such gratuities are clearly provided "for or because of" the officials' duties, at least generally, and are therefore illegal under the expansive and Justice Department view of the gratuity statutes. (This is not to urge the prosecution of congressmen for such conduct, but these aberrations in prosecutional policy do illustrate the folly of having such vague statutes in our criminal code.)

IN THE PRESENT CONFUSED STATE OF THE LAW, BUSINESSMEN HAVE NO WAY TO DETERMINE WHICH GRATUITIES ARE PROPER AND WHICH ARE NOT

Proposed Legislative Solution. An undertaking to revise the federal criminal code began in earnest in 1966 with the creation of the National Commission on Reform of Federal Criminal Laws. In 1970, the commission completed its draft of a code revision, which has since been under consideration by the Congress. In the last Congress, the Senate passed its version of a code revision and forwarded it to the House, which did not complete its work on the legislation prior to the expiration of the session. The Senate version, which Senator Edward M. Kennedy is expected to reintroduce this year, is expected to contain an illegal gratuity statute that varies substantially from the statute recommended by the national commission.

The provision previously adopted by the Senate, which is entitled "Graft," seeks to remedy some of the problems discussed above, particularly the problem of the small gift or free meal. [34] However, the Senate's version, unlike the commission's formulation, largely ignores the goodwill gift or entertainment problem. It would prohibit "anything of pecuniary value" to be given or received "for or because of an official action taken or to be taken." Pecuniary value is defined as (a) money or anything else, the primary significance of which is economic advantage or (b) any other property or service that has a value in excess of $100. [35] This definition is intended to eliminate, the Senate report states, "candy, meals and theater ticket cases but include major gifts." [36]

While the Senate report discusses at some length the criminal intent problems associated with this offense, it fails to focus upon the important question of goodwill intent. The language of the Senate provision itself specifies that the payment must be given for "an" official action but the Senate report imprudently maintains that a payment made as "a wishful deed done in the hope of possibly influencing a future official act" falls within the prohibition of the statute. [37]

Apparently, the Senate intends to limit the scope of this prohibition to payments made for a specific act, but the report does not make this clear, nor does the report make clear that goodwill payments are to be excluded. The "wishful deed" language quoted above could be interpreted as an expression of intention to include goodwill payments, but the limitation of the prohibition to payments for "an" official action argues the other way. The distinction between a goodwill gift and a "wishful deed" is slim, indeed, and if it is the Senate's intention to exclude gifts given "in the hope of possibly influencing" a specific future official act, the Senate should take a second look at what it has created. The line between innocent and criminal conduct should be drawn more distinctly and visibly than the Senate has done here.

The national commission wisely recommended that the graft offense be limited to payments made for past actions and that it be graded a misdemeanor, leaving payments for future actions subject only to the bribery statute. The commission pointed out that there were executive, judicial and congressional regulations covering the payment of gratuities to public officials. [38] The approach of the commission would accomplish what the Congress is on record as already having accomplished in the 1962 legislation, i.e., the elimination of goodwill-motivated gifts as an offense. This approach would also eliminate the problems of vagueness and uncertainty associated with the question of what criminal intent should be required to render criminal a prospective gratuity payment not amounting to bribery. The commission obviously recognized the wisdom of controlling such prospective gratuity payments to public officials through ethical regulation and stern disciplinary action, rather than to subject an elusive and vaguely defined offense to criminal sanction.

One hopes the House, which is still studying the Code revision on a careful section by section basis, will take a closer look at the graft provisions in light of the problems discussed above. In the meantime, some of the pending prosecutions under these statutes may offer the Supreme Court the appropriate occasion to resolve the existing split among the circuits and lend its wisdom to these difficult problems. Until the illegal gratuity statutes are revised legislatively or clarified judicially, the prudent course of action for anyone dealing with public officials is to assume that any substantial gift or even modes, recurring entertainment of public officials may be prosecuted criminally except where the intent of the giver is unquestionably social.

The temper of our post-Watergate times is such that one no longer can rely upon prior assumptions regarding prosecutorial discretion. The recent prosecu-

tions of FBI officials for technically illegal investigative conduct and the prosecution of former CIA director Richard Helms for making a false statement to a congressional committee demonstrate that there is now only one principle by which counsel may be guided. Any technically criminal act, no matter what the prosecutive merits, many become the subject of a serious federal criminal prosecution. This trend in recent federal prosecutorial policy, whether one considers it to be proper or not, makes it all the more incumbent upon the Congress to revise the illegal gratuity statutes and promulgate some meaningful, well defined and realistic standards in this important area of federal law.

REFERENCES

1. *United States* v. *Irwin*, 354 F. 2d 192, 197 (2d Cir. 1965), *cert. denied*, 383 U.S. 967 (1966).
2. The reference here is not to specific criminal intent, but to the general criminal intent required in all criminal offenses.
3. See *United States* v. *Brewster*, 506 F. 2d 62, 68 (D.C. Cir. 1974); *Woelfel* v. *United States* 237 F. 2d 484, 488 (4th Cir. 1956); but compare *United States* v. *Arroyo*, 581 F. 2d 649 (7th Cir. 1978).
4. See *United States* v. *Harary*, 457 F. 2d 471, 476 n. 11 (2nd Cir. 1972).
5. See *United States* v. *Brewster*, *supra* at 83, and *United States* v. *Arthur*, 544 F. 2d 730, 735 n. 9 (4th Cir. 1976).
6. *Supra.*
7. *Id.* at 77–78.
8. *Id.* at 81–82.
9. *Id.* at 82; See also *United States* v. *Passman*, 460 F. Supp 912, 915 (W.D. La. 1978) where the court points out that a campaign contribution from a grateful constitutent is a violation of the gratuity statutes if made expressly because of a particular legislative vote.
10. *Id.* at 72–74, n. 26 and 82.
11. *Supra.*
12. *Id.* at 734.
13. 341 F. 2d 613 (Ct. Cl 1965).
14. The Brewster-Arthur view of the gratuity statutes has some further support in two other cases, *United States* v. *Brewster*, 408 U.S. 501, 527 (1972), and *United States* v. *Irwin supra* at 197.
15. *United States* v. *Evans*, 572 F. 2d 455, 480 (5th Cir. *cert denied* 99 S. Ct. 200 (1978): *United States* v. *Niederberger*, 580 F. 2d 63, 68 (3rd Cir. 1978), *cert. denied*, 99 S. Ct. 567; *United States* v. *Alessio*, 528 F. 2d 1079 (9th Cir. 1976), *cert. denied*, 426 U.S. 948; *United States* v. *Barash*, 412 F. 2d 26 (2d Cir. 1969); *cert. denied*, 396 U.S. 832; *United States* v. *Standefer*, 452 F. Supp. 1178; 1183 (W.D. Pa. 1978).
16. *United States v. Brewster*, *supra* at 72.
17. *Id.* at 81–82.
18. *United States* v. *Niederberger*, *supra*, at 68, and *United States* v. *Standefer*, *supra*, at 1183.
19. *United States* v. *Evans*, *supra*, at 480.
20. *Hearings on H.R. 302, H.R. 3050, H.R. 3411, H.R. 3412 and H.R. 7139 before the Antitrust Subcomm. of the House Comm. on the Judiciary*, 87th Cong., 1st Sess., 9 (1961) ("House Hearings").
21. *Hearings on H.R. 8140 before the Senate Comm. on the Judiciary*, 87th Cong. 2d Sess. 10 (1962).
22. *Id.* at 9–10.
23. Statement of Deputy Attorney General Nicholas Deb Katzenback, *id.*, at 25.
24. *Staff Report to Subcomm. No. 5 of the Comm. on the Judiciary, Federal Conflict of Interest Legislation, Parts III–V*, 85th Cong., 2d Sess. at 68 (1958).
25. *House Hearings*, *supra* at 47.
26. H.R. 8140, passed August 7, 1961.
27. S. Rep. No. 2213, 87th Cong., 2d Sess. 19 (1962).
28. *Cong. Rec.* 87th Cong., 2d Sess., Oct. 3, 1962, at 21987.
29. *Handbook of Employee Responsibilities and Conduct* IRM 0735.1, 227.1 (2)(c).
30. S. Res. 110, 95th Cong. 1st Sess. (1977); H.R. Res. 287, 95th Cong., 1st Sess. (1977).
31. The Senate rule, for example, prohibits gifts having an aggregate value of more than $100 during a calendar year from persons or organizations having a direct interest in legislation before the Congress. In calculating the $100 amount,

gifts under $35, entertainment not including overnight lodging, and gifts of personal hospitality are not included even if received from someone having a direct interest in legislation.
32. *United States* v. *Barash*, *supra*, at 29.
33. *United States* v. *Passman*, *supra*, at 915.
34. S. 1437, 95th Cong., 1st Sess. § 1352 (1977).
35. *Id.* § 111.
36. S. Rep. No. 95–605, Part I, 95th Cong., 1st Sess. 400 (1977).
37. *Id.* at 399.
38. The National Commission on Reform of the Federal Criminal Laws, Study Draft § 1362 (1970), and Working Papers, vol. I at 694 (1970).

THE ELEVEN QUESTIONS

Related to the discussion on illegal gratuities is the recent jump in corporate slush fund prosecutions. The adoption by the Internal Revenue Service of a novel auditing technique known as the "eleven questions" was a significant factor in the increase.

In the aftermath of the slush fund disclosures, the IRS in May 1976 embarked upon the eleven questions program in an effort to solve their sensitive payments' investigatory problems. The purpose of the program was to flush out all illegal corporate political contributions, bribes and other illegal payments by simply asking the executives of the 1,300 largest corporations whether they had ever engaged in this type of activity or if they had knowledge of such activity by other employees of their corporations.

At the outset the questions were asked all large corporate audits regardless of whether there was any reason to believe that the corporation in question had been involved in slush fund activities. Agents were instructed as a part of their audit of these corporations to submit the questions to key officers of each corporation and require that they be answered in writing and under oath.

Understandably, corporate executives reacted with a mixture of surprise and anger. It had not been a part of the American system to present a citizen not under suspicion of criminal activity with a list of questions seeking to determine whether he or she had ever committed any one of a number of criminal acts; nevertheless, few taxpayers were willing to take the public relations risk of challenging the questions in court.

United States v. *Richards*, 431 F. Supp. 429 (E.D. Va. 1977) is one of the few published opinions dealing with the eleven questions. The *Richards* case, which was prepared and argued by the taxpayer himself, presented a limited challenge to the eleven questions, principally, whether the questions had any tax revenue purpose. The basic question not addressed was whether a series of questions seeking incriminating responses from large numbers of unrelated individuals are constitutionally permissible without any factual basis or any reason to believe that the questions may lead to positive responses. The District Court in *Richards* obliquely approached this question, as an issue of relevancy only, rather than as a head-on encounter with the underlying constitutional questions. But the court did agree that the questions needed to be revised in this particular case to assure their relevance to the plaintiff's tax liability, and the questions accordingly were rewritten.

Unquestionably, the eleven questions were a sharp departure from the past IRS auditing practices, and the adoption of this new approach to an audit problem was disturbing to many of the professionals who regularly deal with the Internal Revenue Service. Many complaints were made by such organizations as the American Bar Association, and fundamental questions were raised about acceptable levels of governmental enforcement in our self-assessment tax system.

The magnitude of these objections obviously made some impression, for on January 18, 1978, the IRS announced that it would curtail the program and limit the number of the questions to five. The revised questions basically seek the same information as the eleven questions; however, once the questions have been asked of all the large taxpayers during at least one audit, further utilization of the questions will be discretionary based upon some reason to believe their use is called for.

The unwillingness of the IRS to terminate the eleven or five questions program undoubtedly stems from its success in compelling disclosures of illegal slush funds. Of 1,300 corporate taxpayers answering the questions, 199 reported they had made improper payments and of these, 141 have been prosecuted or are presently under criminal investigation.

Although the IRS may have been well advised to abandon this audit technique, the change to a discretionary use of the questions in most audits eases the questions' greatest vulnerability to a constitutional challenge.

STATUS OF SUBSTANTIVE PENAL LAW REVISION [1]

I. REVISED CODES; EFFECTIVE DATES (36)

*Ala. Code tit. 13A (1978 Special Pamphlet: Criminal Code); May 17, 1978.
*Alas. Stat. tit. 11 (Oct. 1978 Pamphlet); January 1, 1980.
*Ariz. Rev. Stat. Ann. tit. 13 (1978 Special Pamphlet: Criminal Code); October 1, 1978.
*Ark. Stat. tit. 41 (1977 Replacement vol. 4); January 1, 1976.
*Colo. Rev. Stat. Ann. tit. 18 (1973); July 1, 1972.
Conn. Gen. Stat. tit. 53a (1977); October 1, 1971.
*Del. Code Ann. tit. 11 (1974); July 1, 1973.
Fla. Stat. Ann. tit. 44 (1976); July 1, 1975.
*Ga. Code Ann. tit. 26 (1977); July 1, 1969.
*Haw. Rev. Stat. tit. 37 (1976 Replacement Vol. 7A); January 1, 1973.
[2] Ill. Ann. Stat. ch. 38, § 1–1 (Smith-Hurd 1972); January 1, 1962.
Ill. Unified Code of Corrections, Ill. Ann. Stat. ch. 38, § 1001–1–1 (Smith-Hurd 1973); January 1, 1973.
*Ind. Code Ann. tit. 35 (Burns Supp. 1977); October 1, 1977.
Iowa Code Ann. chs. 701–732 (Criminal Code); chs. 901–909 (Corrections Code) (West, 1978 Special Pamphlet); January 1, 1978.
*Kan. Stat. Ann. ch. 21 (1974); July 1, 1970.
*Ky. Rev. Stat. Ann. ch. 500 (1975 Replacement Vol. 16); January 1, 1975.
La. Rev. Stat. Ann. tit. 14 (West 1974); 1942.
*Me. Rev. Stat. Ann. tit. 17–A (West, 1978 Pamphlet): May 1, 1976.
Minn. Stat. Ann. ch. 609 (West 1964); September 1, 1963.
*Mo. Ann. Stat. tit. 38 (Vernon, 1979 Special Pamphlet: Criminal Code); January 1, 1979.
*Mont. Rev. Codes Ann. tit. 94 (Special Pamphlet: Criminal Code of 1973 [1977]); January 1, 1974.
Neb. Rev. Stat. ch. 28 (1978 Cum. Supp.); January 1, 1979.
*N.H. Rev. Stat. Ann. tit. 62 (1974); November 1, 1973.
*N.J. Code of Criminal Justice, ch. 95, 1978 N.J. Sess. L. Serv. 279 (West) (to be codified as N.J. Stat. Ann. tit. 2C); September 1, 1979.
N.M. Stat. Ann. ch. 40A (1972 Second Replacement Vol. 6); July 1, 1963.
*N.Y. Penal Law (McKinney 1975); September 1, 1967.
N.D. Cent. Code tit. 12.1 (1976 Replacement Vol. 2); July 1, 1975.
*Ohio Rev. Code Ann. tit. 29 (Baldwin 1974 Replacement Unit); January 1, 1974.
Ore. Rev. Stat. tit. 16 (1977 Replacement Part); January 1, 1972.
*Pa. Const. Stat. Ann. tit. 18 (Purdon 1973); June 6, 1973.
*P.R. Laws Ann. tit. 33 (1977 Cum. Pocket Supp.); January 22, 1975.
S.D. C.L. Ann. rev. tit. 22 (1978 Supp.); April 1, 1977.
*Tex. Penal Code Ann. (Vernon 1974); January 1, 1974.
Utah Code Ann. tit. 76 (1975 Supp.); July 1, 1973.
Va. Code tit. 18.2 (1975 Replacement Vol. 4); October 1, 1975.
*Wash. Rev. Code Ann. tit. 9A (1977); July 1, 1976.
*Wis. Stat. Ann. tit. 45 (1958); July 1, 1956.

II. CURRENT SUBSTANTIVE PENAL CODE REVISION PROJECTS

A. Revision completed; not yet enacted: (6)

*District of Columbia (Basic Criminal Code being considered by D.C. City Council)
*Maryland (Part of Proposed Code enacted: S.B. 1153 [consolidation & revision of theft and related offenses] enacted April 8, 1978; effective July 1, 1979)

[1] As of April 19, 1979 (53 jurisdictions). This chart was prepared and is maintained by Rhoda Lee Bauch, The American Law Institute, 435 W. 116 St., New York City 10027. Information as to any changes to be noted will be gratefully received.
*Indicates publication of substantial commentary.

(Remainder of Proposed Code being brought up to date for possible submission to Legislature in 1980)
*Massachusetts (Special Legislative Committee preparing new bill)
*Michigan (State Bar Criminal Code Committee submitted revision of 1967 Proposed Code to Legislature March 1979; Legislative Service Bureau to draft bill for introduction in House of Representatives)
*United States (95th Cong.: S. 1437 passed by Senate Jan. 1978: S. 1437, H.R. 6869 & H.R. 2311 died in House Judiciary Subcommittee) (96th Cong.: new bills being prepared in Senate & House)
*West Virginia (Proposed Code, printed in bill form with commentary, to be studied by Subcommittee on Criminal Laws; hearings to be held prior to introduction in 1980 Legislature).

B. Revision well under way: (1)

North Carolina (misc. correctional provisions enacted 1977, effective July 1, 1978: Ch. 15A [Criminal Procedure Act], Arts. 78, 80–85).

C. Revision at varying preliminary stages: (1)

Wyoming.

D. Contemplating revision: (1)

Mississippi.

III. REVISION COMPLETED BUT ABORTIVE (6)

*California (S.B. 27 not reported out of Assembly Committee on Criminal Justice in 1977)
Idaho (Idaho Penal & Correctional Code tit. 18, enacted effective January 1, 1972 but repealed effective April 1, 1972)
Oklahoma (S.B. 46 not reported out of Senate Committee on Criminal Jurisprudence in 1977)
South Carolina (1971 Proposed Criminal Code)
*Tennessee (S.B. 600 reported in 1977 to have failed in Committee)
*Vermont (bill passed by House as amended; reported in 1976 to have failed in Senate Judiciary Committee)

IV. NO OVER-ALL REVISION PLANNED (2)

Nevada (recodification with minor changes enacted 1967), Rhode Island

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UNITED STATES OF AMERICA,

PLAINTIFF-APPELLEE,

v.

ATLANTIC RICHFIELD COMPANY,[1]

DEFENDANT-APPELLANT.

465 F.2d 58 (1972)

UNITED STATES COURT OF APPEALS, SEVENTH CIRCUIT. ARGUED APRIL 26, 1972. DECIDED JULY 12, 1972.

Corporate defendant was convicted in the United States District Court for the Northern District of Illinois, Eastern Division, James B. Parsons, J., of violating statute prohibiting discharge of refuse into navigable waters and was placed on probation and defendant appealed. The Court of Appeals, Laramore, Senior Judge, held that corporations are subject to statutory provisions authorizing court to suspend imposition or execution of sentence and may be placed on probation. The court held, however, that order requiring corporation to set up and complete program within 45 days to handle oil spillage into soil and/or stream

[1] Footnotes omitted.

and authorizing appointment of special probation officer in event the conditions were not complied with was unreasonable and in excess of court's authority.

Reversed and remanded for imposition of sentence.

1. CRIMINAL LAW ⟸982.4(2)

Corporations are subject to statutory provisions authorizing court to suspend imposition or execution of sentence and may be placed on probation. 18 U.S.C.A. § 3651 et seq.

2. CRIMINAL LAW ⟸982.2, 982.4(2)

Probation Act was meant to be means by which offender could be rehabilitated and/or supervised in hope that further illegal acts would not be committed and that general purpose can be applicable to corporations as well as individuals when it is used properly. 18 U.S.C.A. § 3651 et seq.

3. CRIMINAL LAW ⟸982.5(2)

Use of probation as means of imposing unreasonable standards to extent that probationer may not know when they are satisfied is not authorized. 18 U.S.C.A. § 3651 et seq.

4. CRIMINAL LAW ⟸982.5(2)

Although court had authority to place on probation corporation which had pleaded nolo contendere to charge of discharging refuse into navigable waters, order requiring corporation to set up and complete within 45 days a program to handle oil spillage into soil and/or stream and authorizing appointment of special probation officer in event the conditions were not complied with was unreasonable and in excess of court's authority. 18 U.S.C.A. § 3651 et seq.; Rivers and Harbors Appropriation Act of 1899, §§ 13, 16, 33 U.S.C.A. §§ 407, 411.

W. Donald McSweeney, William A. Montgomery, Robert T. Berendt, David W. Schoenberg, Chicago, Ill., for defendant-appellant; Schiff, Hardin, Waite, Dorschel & Britton, Chicago, Ill., of counsel.

Kent Frizzell, Asst. Atty. Gen., Edmund B. Clark, Carl Strass, Atty., Dept. of Justice, Washington, D.C., James R. Thompson, U.S. Atty., Chicago, Ill., for plaintiff-appellee.

Before PELL and STEVENS, Circuit Judges, and LARAMORE,[1] Senior Judge.

LARAMORE, Senior Judge.

This is a criminal appeal which involves purely questions of law. The facts are quite simple and are wholly uncontested. The case comes to this court from the U.S. District Court for the Northern District of Illinois where defendant-appellant, Atlantic Richfield Company, was found guilt of violating sections 407 and 411 of Title 33, United States Code, 1964. (Act of March 3, 1899, chapter 425, section 13; 30 Stat. 1152).

The above-noted section 407 prohibits the discharge of refuse into navigable waters. Thus, when defendant-appellant was observed by the U.S. Coast Guard on March 23, 1971 discharging oil from its Stickney, Illinois, dock facility into the Chicago Sanitary and Ship Canal, the U.S. Attorney filed a criminal information against defendant alleging violation of the first noted statute. Said information was filed on May 18, 1971 and thereafter, on June 17, 1971, defendant's attorney appeared before the District Court and pleaded *nolo contendere* to the charge. Up to this point there was no problem; however, upon sentencing and suspension thereof knotty questions leaped out of the woodwork.

Those questions, to be partially resolved hereafter, began when the District Court suspended the statutory sentence as provided by 33 U.S.C. § 411 (1964) (fine of not less than $500 nor more than $2500) and placed defendant on *probation* for a period of six months. Thus the first question: Is a corporation a proper subject of probation under the Federal Probation Act? [Act of March 4, 1925, chapter 521; 43 Stat. 1259; 18 U.S.C. § 3651 et seq. (1964)].

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[1] Senior Judge Don N. Laramore of the United States Court of Claims is sitting by designation.

As the conditions of probation, the District Court demanded that defendant, (1) set up and complete a program within 45 days to handle oil spillage into the soil and/or stream; (2) in the event condition No. 1 is not complied with, the court will appoint a Special Probation Officer with powers of a Trustee under supervision of the court.

Following the imposition of the terms and conditions of probation the defendant filed a motion to vacate and correct the sentence wherein defendant alleged that the conditions of probation were not authorized by law or by statute and that these conditions were onerous. In so doing, defendant insisted that it should not be put on probation against its desires but instead should be sentenced pursuant to the terms of the act violated. Hence two more legal questions were raised: (1) Does a guilty defendant have the right to refuse probation and demand that sentence be imposed; and (2) does the imposition of the terms and conditions of the probation so imposed by the District Court exceed the authority or go beyond the power granted by the Probation Act? To resolve the three main issues involved we must begin by looking to the authority for probation in the federal judicial system.

I

In Ex Parte United States, 242 U.S. 27, 37 S.Ct. 72, 61 L.Ed. 129 (1916), the Supreme Court held, notwithstanding wide practice to the contrary, that a federal court was not authorized to suspend the imposition of sentence, and that for such a practice to continue, statutory authorization was necessary. Consequently, in 1925 Congress passed a new statute to provide for the establishment of a probation system in the United States Courts. The successor statute with which we are here concerned provides in part as follows:

"Upon entering a judgment of conviction of any offense not punishable by death or life imprisonment, any court having jurisdiction to try offenses against the United States when satisfied that the ends of justice and the best interest of the public as well as the defendant will be served thereby, may suspend the imposition or execution of sentence and place the defendant on probation for such period and upon such terms and conditions as the court deems best.

* * * * * * *

"Probation may be granted whether offense is punishable by fine or imprisonment or both. * * *" 18 U.S.C. § 3651.

Defendant contends that the legislative history of this Act indicates through negative inference that it was not meant to include corporations. Defendant points out that nowhere can be found mention of rehabilitating a corporate offender while the record is replete with discussion of youthful and first-time offenders, in addition to references to "he" or "him" and "defendant." These references, allege defendant, indicate that Congress meant the Act to apply only to persons and not corporations.

As for decided cases on the subject, defendant cites only one reported decision directly in point and that is a state court decision of the Missouri Supreme Court decided in 1911, State ex rel. Howell County v. West Plains Telephone Co., 232 Mo. 579, 135 S.W. 20 (1911), which held that a corporation could not be placed on probation. Needless to say, this court does not consider that case binding on our decision nor do we even find it very helpful due to the fact that it was decided prior to the passage of the Act in question in addition to the age of the case.

The government, on the other hand, argues that the literal terms of Probation Act do not exclude the proposition of placing a corporation on probation when the "defendant," as referred to by the statute, is a corporation. The government asserts that the language of the statute nowhere expressly includes or excludes corporations from its provisions. Therefore, it is argued, since it is settled law that corporations are subject to federal criminal statutes, despite the presence of language that does not fit a corporation (New York Central & H. R. R. v. United States, 212 U.S. 481, 29 S.Ct. 304, 53 L.Ed. 613 (1909)) then, a fortiori, the corporation is subject to the criminally-related Probation Act when the language is adaptable to a corporation. It is not logical, argues the government, to subject corporations to certain criminal statutes and yet exclude them from others for, after all, the Probation Act is but a portion of the United States' codified criminal laws under Title 18 of the United States Code.

The government also presents what could be called a policy argument by asking that this court not ties the hands of the District Judge to the sole penalty of imposing a fine. It is argued that in many instances the imposition of the mone-

tary sanctions merely punish the corporate stockholders or customers of the corporation and do not punish the real guilty party. Therefore, asks the government, since the Probation Act has been held to be entitled to a broad and liberal construction, United States v. Baker, 429 F.2d 1344 (7th Cir. 1970), it is only fitting that the Act be construed applicable to corporations.

[1] After considering carefully the arguments presented on both sides of this question, we have decided that corporations are subject to the statutory provisions authorizing the court to suspend the imposition or execution of sentence. This conclusion is supported by the fact that other provisions of the Criminal Code make it clear that the term "defendant" may include corporate parties and by the fact that by its express language the Probation Act applies to offenses for which only a fine may be imposed. If suspension of the imposition of a fine to enable an individual to make restitution is appropriate in certain cases, a similar suspension may well be suitable for corporate defendants in appropriate cases as well. It is evident, however, that the conditions imposed by a court in connection with the suspension of sentence may not, at least if objected to by the defendant, exceed the maximum penalty authorized by Congress.

II

At the outset it was indicated that there were three problems raised by this case. The first having heretofore been discussed it would be most logical to move on to the second. However, because we feel that resolution of the third question, which does not depend on resolution of the second, adequately disposes of the problem at bar, we find it unnecessary to decide whether or not the guilty party has the right to refuse probation and insist upon imposition of the statutorily proscribed sentence.

1. Following defendant's motion to correct the sentence, the court amended its terms and conditions as follows:

"(1) That period of compliance with condition one (1) is extended from 45 days to 60 days with the added provision, that upon request of Probation Officer it may be further extended by the Court, and

"(2) The second condition is made a condition upon a condition, in that if Probation Officer reports to the Court that in meeting of first condition, the defendant is not complying without undue delay, the Court will set the matter for hearing, and if on such hearing the Court finds that the defendant is not complying without undue delay, then the original condition will come into effect."

However, notwithstanding such amendments we are of the same opinion.

III

Moving on then to the third and final question raised by this case, it is our considered opinion that the terms and conditions of the probation in this instance are unreasonable.

Here the District Court ordered that Atlantic Richfield "set up and complete a program within forty-five (45) days to handle oil spillage into the soil and/or stream" and in the event the first condition is not complied with a Special Probation Officer would be appointed. By imposing such terms the District Court has clearly exceeded its authority.

[2–4] In our opinion the broad requirement imposed upon the defendant as a condition of probation goes beyond what was intended by the drafters of the Probation Act. As was said earlier, the Probation Act was meant to be a means by which an offender would be rehabilitated and/or supervised in the hope that further illegal acts would not be committed and this general purpose can be applicable to corporations as well as individuals when it is used properly. But, when probation is used as a means of imposing unreasonable standards to the extent that the probationer may not know when they are satisfied, we must object to such unauthorized use. It is for that reason we reverse the District Court and remand the case for the imposition of a sentence within the limits specified in the applicable statute.

Hon. Edward M. Kennedy,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: In response to your request of October 2, 1979, I am enclosing a paper, prepared by James Lynch of the Office for Improvements in the

Administration of Justice, that compares incarceration rates in Great Britain, Canada, and the United States. Comparable international statistics are difficult to develop, but the paper undertakes to make a more carefully reasoned review than has previously been attempted.

I hope that the information contained in the paper will be of assistance to your Committee.

Sincerely,

Benjamin R. Civiletti,
Attorney General.

Enclosure.

73020

A Comparison of Prison Use in Great Britain, Canada and the United States*

(James P. Lynch)

Cross-national comparisons of crime and criminal justice system practices have potential for defining limits of change in criminal justice systems. Unfortunately, the requisites for good cross national comparisons are quite stringent. Too often such comparisons explain demonstrated differences in terms of very general concepts such as "national character" or "cultural differences".[1]

A specific case in point are cross-national comparisons of incarceration rates. A number of studies[2] conclude that the United States is the most punitive of industrialized nations, based on its alleged rate of using prison as the sentencing option of choice. In fact, although the United States has the largest per capita prison population, that figure does not necessarily result from a more punitive attitude on the part of its courts. Other factors may more readily explain differences in prison populations. For example, the United States tends to legislate morality to a greater extent than other countries;[3] the United States has a much higher crime rate than most countries;[4] and Americans are more likely to resort to the criminal justice process for dispute resolution than citizens of other countries.[5] Isolating competing explanations for observed differences in prison populations will provide explanations specific enough to serve as guides to policy making. This study is intended to be a model for such specificity. It will reexamine the use of incarceration in several countries, including the United States, and, by introducing a more precise methodology, control for several of the most obvious competing explanations. The first section reviews earlier approaches and describes the methodological modifications introduced; the second section presents our data and the conclusions they support.

REVIEW OF PREVIOUS WORK

Authors of cross-national studies of incarceration too eagerly accept a punitive orientation of courts as the explanation for observed differences in the size of prison populations. Though aware of other reasons for variation in the sizes of those populations, information necessary to test competing theories has not been readily available to them. However, even when the necessary data have been

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*I would like to thank Ron Gainer, and Harry Scarr for the opportunity to undertake this study. Charles Wellford, Charles Shireman, Jolanta Perlstein, Joan Ehrenworth, Bill Yeomans and Penny Reedie were kind enough to read and comment upon earlier drafts of this paper. Carol Kalish of the National Criminal Justice Information and Statistics Service and Thomas Petersik and Joel Gordon of the U.S. Bureau of the Census' National Prisoner Statistics Branch were extremely helpful in providing data on prisoners in the United States.

[1] See G. Vidgerhous, "Methodological Problems Confronting Cross Cultural Criminological Research," 31 Human Relations 229 (1978); M. Banton, The Police and the Community (1964).

[2] E. Doleschal, "Rate and Length of Imprisonment: How Does the U.S. Compare with the Netherlands, Denmark and Sweden?," Crime and Delinquency 81 (1977).
"Fact Sheets on Crime and Criminal Justice in the U.S., The Netherlands, Denmark, Sweden and Great Britain," (NCCD Information Center Newsletter).
I. Waller and J. Chem, "Prison Use: A Canadian and International Comparison," 3 Criminal Law Quarterly 17; United Nations Secretariat, "Fifth United Nations Congress on the Prevention of Crime and Treatment of Offender," (1975).
Netherlands Criminal Justice Investigative Seminar, "How Holland Supports Its Low Incarceration Rate: The Lessons for U.S." (1978).

[3] N. Morris and G. Hawkins, The Honest Politician Guide to Law Enforcement, (1970).

[4] Compare International Criminal Police Organization, International Crime Statistics, 1973–1974, with Federal Bureau of Investigation, Uniform Crime Reports (1973).

[5] See A. Sarat and J. Grossman, "Courts and Conflict Resolution: Problems in Mobilization of Adjudication," 69 APSR 1200 (1975) for a discussion of the factors promoting formal versus informal and public versus private resolution of conflict.

available, problems in the design of these studies have often resulted in inaccurate characterizations of differences among countries, and have failed to be sufficiently rigorous to control for alternative explanations of variations in rates of imprisonment.

Specifically, studies of cross-national incarceration rates have suffered from at least three flaws in their research designs. First, by using 'static' rather than 'flow' designs, length of sentence has been confounded with rates of imprisonment. Second, definitions of criminal behavior across countries has not been adequately controlled for. Third, these studies confound the rate of imprisonment with the rate of criminality in a given country, by the use of the total population rather than the true population at risk in calculating rates.

THE "FLOW" DESIGN

Static studies of incarceration measure imprisonment using the number of prisoners in custody on a given day while flow studies use the number of admissions to prison over a specific unit of time. The static approach is preferred largely because data for prisoners in custody are believed to be more accurate and they are certainly more readily available than admissions or release data in many countries. However, since the probability of an offender being in prison on a given day is a function of the length of his sentence, static statistics tend of overrepresent the more serious offenders with longer sentences. Serious offenders with long sentences also accumulate in prison populations and, therefore, stock studies overestimate the propensity to incarcerate in those countries with higher rates of serious crime. In contrast, flow studies using annual admissions are not affected by the accumulation of more serious offenders. This is not to say that length of sentence is not an important dimension of punitiveness, but that for reasons of clarity it should be treated separately. Flow designs permit this separation and provide a clearer picture of both dimensions of punishment.

VARIATIONS IN DEFINITIONS

Studies in incarceration would provide more specific and more useful explanations of cross-national variation if they controlled for variations in Criminal Codes and criminal population. Each nation has somewhat different definitions of criminal behavior and different traditions of treating offenders according to age. In the Netherlands, for example, the use of marijuana and other similar drugs is not a criminal offense, while it is in the United States. Differences in prison populations reflect these differences in the definition of criminal behavior. Similarly, the definition of juvenile offender and the treatment accorded juveniles differs from nation to nation. In some Canadian provinces persons under 16 years of age are considered juveniles while in other provinces the age is 18 years or under; in the U.S. juveniles are defined as those persons under 18 years of age.[6] Some countries, notably Scandinavian countries, consider criminal acts by juveniles to be matters better dealt with by social service organizations than by the courts. Consequently, the probability of juvenile incarceration in Scandinavia is lower than in England or the United States where the courts play a larger role.[7] It is important to standardize the population at risk in each country to avoid inappropriate comparisons that confound sentencing practices with legal definitions of the eligible population.

THE POPULATION AT RISK

Finally, previous cross-national studies of incarceration often acknowledge but fail to account for the influence of crime rate on the rate of imprisonment. The incarceration rate is computed simply as a ratio of prison inmates to the total population or the adult population of the country. This controls the variation in population size, but it does not account for the relative propensity of the population to engage in criminal behavior and, thereby, become eligible for imprisonment. For example, the incarceration rate of a nation such as Britain with a serious crime rate of 3,724 per 100,000 would be compared to that of the United States which has a much higher crime rate of 5,611 per 100,000 and, therefore, a much greater probability of sentencing citizens to prison.

In reexamining the relative use of imprisonment internationally, we attempted

[6] Waller and Chen, supra at 51. Although it is the age of majority in most states there is some variation among states as well.

[7] J. Sansone, Sentencing, Corrections, and Special Treatment Services in Sweden, Denmark and the Netherlands, (paper written for the Hartford Institute of Criminal and Social Justice) (May, 1976).

to avoid the pitfalls of earlier studies by limiting the range of criminal behavior and criminals to be compared across nations, adjusting incarceration rates for the incidence of crime, and using a flow rather than stock design.

RESTRICTING THE RANGE OF CRIMINAL BEHAVIOR AND CRIMINALS

In the following study, comparisons among countries are made on the basis of imprisonment for a few serious crimes. Specifically, we restricted the study to the Federal Bureau of Investigation's index crimes—murder, manslaughter, rape, robbery, aggravated assault, burglary, larceny, and auto theft. Although each country has a group of offenses similar to the Federal Bureau of Investigation (FBI) index crimes these offense groupings differ considerably from country to country and, therefore, it is better to match specific offenses across countries. (See Appendix A for a listing of the specific offenses included under each category of index crime).

Restricting the range of offenses in this way has several distinct advantages. First, it tends to standardize the input into the respective criminal justice systems, thereby reducing the variation caused by different criminal codes. Second, since these offenses are quite serious, they are most often reported to the police and the differences attributable to variable reporting of offenses are reduced.[8] Third, although these offenses constitute only a small proportion of criminal offenses, they account for a large proportion of the prison population and therefore produce data adequate for the comparison of imprisonment internationally.[9]

In addition to restricting the range of behavior under consideration, we reduced the range of offenders to be studied. Specifically, we excluded juvenile offenders from our study in order to reduce the bias introduced by the varying treatment of juveniles across countries. Although the definition of an adult varied somewhat from country to country, there is only a one-year difference among definitions and using each country's definition of adult status should not affect the resulting incarceration rates.

It is important to note that the U.S. has the most restrictive definition of adult status of all countries studied (18 years). As a result, if the difference in definition of adult status has any import for the comparison of incarceration rates it should make for a more stringent test of U.S. practices. Since very young offenders are not imprisoned as frequently as older offenders, eliminating seventeen-year-olds from consideration should inflate the U.S. incarceration rate relative to those countries in which seventeen-year-olds are included.

ADJUSTING THE INCARCERATION RATE FOR VARIATION IN THE CRIME RATE

Controlling for the affect of the incidence of crime on the imprisonment rate is problematic largely because accurate measures of the incidence of crime are not readily available. Victimization surveys would provide the most complete record of criminal behavior, but such data are not available internationally, and there is the possibility that response patterns may vary from country to country due to the relative novelty of such surveys in certain countries. In addition, victimization surveys measure the number of victimizations (or victims) while imprisonment statistics measure the number of persons in or admitted to prison. One person may be responsible for a number of victimizations thus complicating the interpretation of a rate with victimizations as a base.

Any official statistics are inaccurate because of failures to report crime to officials or mistakes in recordkeeping. Since we are especially interested in the sentencing process, however, errors due to failure to report are not as consequential as they might otherwise be. The court cannot pass sentence on offenders it does not see and so we are more interested in establishing the rate at which offenders are brought for court processing than the true incidence of crime per se. An official statistic such as arrests, the number of persons charged, or the number of persons convicted of criminal acts would be a suitable base for an imprisonment rate standardized for the incidence of criminal behavior or police recorded criminal behavior.

[8] W. Skogan, "Crime and Crime Rates," in Sample Surveys of the Victim of Crime, 108 (W. Skogan ed. 1976).

[9] Persons charged with the index offense constitute approximately 70 percent of admissions to English prisons in a given year. The same is true for the U.S., about 70 percent of new court commitments to prison were charged with index offenses. See Home Office Report on the Work of the Prison Department, 1974 and 1975 and unpublished data from the National Prison Statistics for 1974 and 1976.

A case could be made that the number of persons convicted would be the most appropriate base for an imprisonment rate, if we are interested principally in in the courts' use of prisons. It is virtually impossible, however, to obtain accurate data on the number of people found guilty of specific charges on a national basis for the United States. Until such data are available, international comparisons based on the imprisonment of convicted persons are not practical. Also, since the prosecutor can influence the sentencing process through changes in charge and sentence bargaining, it may be inappropriate to limit our definition of sentencing to judicial action only.

On the basis of completeness and availability, police arrest statistics provide the best indication of criminal behavior or at least formal intervention as a result of criminal behavior. Obviously not all those arrested are, in fact, found guilty and, therefore, eligible for sentencing; others are sentenced for a lesser charge. Consequently, an imprisonment rate computed as a ratio of prison admissions to police arrests cannot be interpreted strictly as the probability of being imprisoned at sentencing. It does, however, provide a good if not an exact measure of the courts' propensity to incarcerate.

DEVELOPMENT OF A FLOW DESIGN

As we mentioned earlier, a flow design describes the sequential processing or flow of persons through the criminal justice system over a given period of time. Usually the flow of persons through the system is characterized as a series of transitional probabilities. For example, if a person is arrested what is the probability he will be charged with that particular offense during a particular unit of time? In this case, we are interested in the flow of persons from arrest to imprisonment. What is the probability that a person arrested for an offense be imprisoned for that offense?

Although flow designs have a number of advantages over stock designs, a few of which we mentioned earlier, they also have several disadvantages. Rather than confounding length of sentence with the rate of incarceration as stock studies do, flow designs confuse delay in court processing with the incarceration rate. One hundred percent of all persons arrested for murder, for instance, may eventually be incarcerated, but in a given year perhaps only 50% may have completed court processing to the point of being sentenced. In this way, countries that process cases more slowly will appear to have an artificially low incarceration rate.

A second source of error in flow designs results from changes in charge during court processing. Offenders who are arrested for aggravated assault but plead guilty to and are sentenced for simple assault drop out of a flow study which is restricted to index crimes. Since the offender is admitted to prison for simple assault he is not recorded in the numerator of the incarceration rate for aggravated assault with the result that the apparent incarceration rate is lower than the actual rate.

The bias introduced by delay can be ignored if we can make one of two assumptions—that the bias is off-setting from year to year, or that delay in processing felony offenses is fairly constant across countries. The data to support the latter assumption simply do not exist on an international basis, although it may in fact be true. There is some evidence, however, which suggests that delay effects are fairly constant and offsetting from year to year. Studies employing a cohort design have obtained results similar to those we obtained using a flow design.[10] Since cohort studies follow a case until it is disposed of, delay does not influence the results with respect to sentencing. The similarity of results using a flow and a cohort design indicates that delay does not seriously bias our characterization of incarceration.

Reduction in charge, however, does present a problem in the use of flow designs when we limit the range of offenses to be considered. Since the incarcera-

[10] Using the Vera Cohort Study of the New York Court System we computed an incarceration rate for each type of index crime and compared it to the incarceration rate obtained using arrest and prison admissions data. If the two rates were radically different we could not assume that the bias introduced by delay and reduction in charge could be safely ignored. As the following table indicates, our rates are quite similar to those obtained using the cohort methodology, at least for homicide and robbery. Our incarceration rates are somewhat low for the less serious index crimes, but that is to be expected since the reduction in charge bias is most serious for these types of crimes. If we cannot make the assumption that reduction in charge is uniform across countries then we can restrict our comparisons to those charges least affected by reduction in charge. See Vera Institute of Justice Felony Arrests: Their Prosecution and Disposition in New York City's Court, (1977); C. E. Pope, Sentencing of California Felony Offenders (1974).

tion rate is the ratio of persons charged with a specific offense who are admitted to prison to persons arrested for that offense, changes in charges can radically affect the rate. In the U.S. approximately one half to two-thirds of all felony charges are reduced to misdemeanors and other charges are reduced from one type of felony to another.[11]

Although reduction of charges is quite extensive it need not result in a gross under estimation of the incarceration rate as it is computed here. The practice of reducing charges is not uniform across all categories of index crimes and those offenses for which reduction in charge is least frequent can be used as the most accurate basis for comparison across countries. Charges are least likely to be reduced in the cases of homicide, rape, and robbery and relatively more likely in burglary, larceny, and aggravated assault.[12]

Incarceration rates for homicide, rape, and robbery would thus provide the most error free basis of comparison. Again, it is quite possible that charge reduction practices are similiar in other countries and therefore not a source of error in the comparison, but to account for the possibility that charge reduction is uniquely American, we propose to compare countries primarily on the basis of those crimes least affected by reductions in charge.

The incarceration rates presented in the following section are the ratio of annual arrests to annual admission to prisons or jails for each type of index crime. A more detailed description of how rates were computed can be found in Appendix B.

TABLE 1.—COMPARISON OF UNITED STATES, GREAT BRITAIN, AND CANADA: INCARCERATION RATES

Offenses	United States	Great Britain	Canada
Homicide	76.3	76.3	56.1
Rape	16.0	47.9	11.9
Robbery	38.9	48.3	25.3
Aggrevated assault	5.0	11.3	(1)
Burglary	16.4	25.6	11.9
Theft	3.6	9.9	5.7

[1] It was not possible to obtain data on comparable charges in Canada.

PRESENTATION OF THE DATA AND DISCUSSION

The incarceration rates presented in Table 1 indicate that when cross-national variation in the incidence of crime is taken into consideration the United States is no more likely to imprison offenders than Great Britain and somewhat more likely to incarcerate than Canada. If we use only those offenses least affected by the reduction in charges during processing, i.e., homicide, rape, and robbery, we see that the U.S. is somewhat less likely to imprison offenders than Great Britain and that Canada uses imprisonment slightly less frequently than the United States. These differences are not entirely uniform, however. While the U.S. is quite similar to Canada with respect to rape, Great Britain is considerably more likely to imprison for rape. In the case of homicide, Britain, and the U.S. are very similar while Canada has a lower incarceration rate. Britain is most likely to imprison for robbery, Canada is least likely to imprison, and the U.S. is about midway between the two. The most striking feature of this com-

Crime type	Vera Cohort study*	OIAJ
Homicide	72.0	76.3
Rape	25.0	16.1
Robbery	37.7	38.9
Assault	12.7	5.0
Burglary	44.6	16.45

*The incarceration rate in the Vera study includes all persons charged with a particular offense at arrest regardless of the charge for which he was convicted and sentenced.

[11] Vera Institute, 1977 id. p. 7; Pope id. p. 20.
[12] Vera Institute, 1977 id. p. 10, pp. 23–80. See also footnote 10 supra.

parison however is that the differences among these countries in the use of imprisonment are not nearly of the magnitude suggested by earlier cross-national comparisons.

If we include in our comparison those offenses that are more susceptible to reductions in charge, the results are largely the same, if not more supportive of the position that the U.S. is not the most punitive of industrialized nations. In the case of burglary, Britain is most likely to use incarceration, while the U.S. and Canada are very similar and less likely to imprison persons arrested for such an offense. Britain imprisons more offenders charged with larceny or auto theft than the U.S. or Canada, but again the differences are not very great. In all three countries the probability of being imprisoned for larceny is very slight.

These findings and those of a few similar studies refute the suggestion that the U.S. makes relatively greater use of prison than any other industrialized nation.[13] This is important in that it calls into question what is fast becoming an assumption—that the U.S. is by far the most punitive of industrialized nations.

In addition, these findings suggest that variation in prison populations can largely be accounted for by the variation in the incidence of crime across countries. Earlier work using an incarceration rate based on population showed large differences among nations in their use of imprisonment. When we standardize imprisonment on the incidence of crime, the large differences among countries disappeared, even among countries with different court systems and sentencing practices. This is not to say that we should not pursue alternatives to incarceration, but that reasonable reforms in court and sentencing practices will not reduce the prison population in the face of high crime rates.

Finally, these findings suggest that industrialized nations are similar in the extent to which they use imprisonment as a sanction and perhaps we should turn our attention to the sentencing process rather than simply its outcome.

Deterrence arguments posit a relationship between the certainty of severity of punishment and the level of crime in the society. The greater the certainty and severity of punishment the lower the level of crime. However, these data indicate that in some respects certainty and severity can be roughly the same while the level of crime can vary dramatically. Perhaps we should examine the organization of the sentencing process to see if it, and not the certainty or severity of punishment influences the deterrent capabilities of sentencing.

This study outlines several methodological changes in the computation of national incarceration rates that provide a more accurate picture of the relative use of imprisonment internationally. A companion paper comparing the length of prison sentences imposed in several countries is in process. If comparative studies of incarceration are to serve as a guide to policy, then we must first accurately establish the position of the United States with respect to other nations. To overstate the use of incarceration in the United States relative to other countries may generate the requisite amount of heat for reform, but it provides very little light.

[13] A. Blumstein and J. Cohen, "A Theory of the Stability of Punishment," 64 The Journal of Criminal LLaw and Criminology 193.
A. Blumstein, J. Cohen, and D. Nagin, "The Dynamics of a Homeostatic Punishment Process," 68 Journal of Criminal Law and Criminology 317 (1976).

APPENDIX A

Specific Charges Included in Cross National Comparisons

United States	Great Britain	Canada
Homicide:		
Murder	Murder	Murder, capital.
Manslaughter	Manslaughter	Murder, noncapital.
	Infanticide	Manslaughter.
	Child destruction	Infanticide.
Rape	Rape	Rape.
Aggravated assault	Wounding or other act endangering life. Other wounding	Wounding. Bodily harm.
Robbery:		
	Robbery	Robbery with firearms.
	Assault with intent to rob	Robbery with other offensive weapon. Other robbery.
Burglary	Burglary in a dwelling	Breaking and entering.
	Aggravated burglary in a dwelling.	
	Burglary in building other than a dwelling.	
	Aggravated burglary in a building other than a dwelling.	
Larceny	Theft from person of another	Theft over $200.
	Theft in a dwelling other than from an automatic machine.	
	Theft by an employee.	
	Theft or unauthorized taking from mail.	
	Shoplifting.	
	Theft from automatic machine or meter.	
	Other theft or authorized taking, theft from a vehicle.	
Auto theft	Theft or unauthorized taking of a motor vehicle.	Theft—motor vehicle.
	Theft of a peddle cycle.[1]	

[1] It was not clear that this charge category was restricted to bicycle theft as opposed to theft of a motorized bicycle and so it was included in the comparisons. Only a very small number of adults were charged with this offense and so, if it does refer only to bicycle theft, it should not bias our results.

APPENDIX B: DATA SOURCES AND METHODS OF COMPUTATION

Since comparability of data sources is crucial to the validity of this study, we think that it is quite important to provide detailed information on how the imprisonment rates were computed. The process followed for each country and the data sources used will be described below.

United States

The imprisonment for the U.S. was computed using data from the FBI—Uniform Crime Reports 1974 and 1976, National Prisoner Statistics—2 (unpublished data on admission in state prisons), Federal Bureau of Prisons—Statistical Report 1974 and 1976, Prisoners in State and Federal Institutions 1974 and 1976, and Survey of Local Jail Inmates, unpublished reports and data 1972.

The number of admissions to prisons was obtained using the Federal Bureau of Prisons—Statistical Report, (Table B–15), NPS–2 data, and Prisoners in State and Federal Institutes, (Table 4 p. 22). Since the NPS–2 data included only 38 states in 1976 and 22 states in 1974, we treated this data as a sample of admissions to state institutions. As a reliability check on these samples, we compared the

sample parameter, percent of admissions that are new court commitments, with the population parameter as reported in Prisoners in State and Federal Institutions. The sample proportions were within 3 percentage points of the population proportion for both years which gives us some confidence in the representativeness of the sample. Using the sample proportion of total admission for each category of index crime, we multiplied these proportions by the population of admissions to state prisons as listed in Prisoners in State and Federal Institutions to obtain the number of admissions to state prisons for each category of index crime. Admissions to Federal prisons for each category of index crime were added to the state figure.

Since there are a number of prisoners who for various reasons, are serving portions of their sentence in local jails, we estimated the jail population based on data from the 1972 survey of jail inmates. Most of the inmates sentenced for index crimes and residing in jails spend only a short period in local jails before being transferred to state prisons. Consequently, most jail inmates sentenced for index crimes are included in the admission statistics for state prisons. However, a relatively small number of offenders sentenced to jail for index crimes do serve a large part of their sentence in local jails. The 1972 survey of inmates in local jails indicates that 10 percent of all inmates are sentenced for index crimes and expect to serve their entire sentence in the local facility. We multiplied this proportion by the total population of jail inmates as indicated in the 1972 and 1978 Census of Local Jails to obtain an estimate of the number of inmates sentenced for index crimes and serving their sentence in local jails.

The base for the imprisonment rate is the number of adults (18 years of age or older) arrested for each type of index crime in a given year as reported in the FBI-Uniform Crime Reports. (Table Note: The proportion of persons over 18 derived from Table 32 was used to estimate total number of persons over 18 arrested from Table 23).

England

The British imprisonment rate was calculated with data from two Home Office reports—Criminal Statistics—England and Wales and Report of the Prison Department for the years 1975-1976. The number of admissions is the sum of adult (17 or older) males and adult females sentenced to prison or imprisoned as a result of failure to pay fines as listed in Tables 2, 3, 4.1 and 5.1 of the Report of the Prison Department. Since the British do not have statistics on arrest *per se* we combined the number of persons brought before the magistrates courts and the number of persons cautioned by police to obtain the number of arrested persons in a given year. This information is available in Table I(d), I(e), XV of the Criminal Statistics—England and Wales.

Although most charge categories were comparable we did adjust homicide admissions to exclude attempted murder which would be considered aggravated assault in the U.S. Using the court data available in Table of the Criminal Statistics, we obtained the proportion of people sentenced to imprisonment for murder who were sentenced on charges other than attempted murder. Assuming that the proportion sentenced for murder other than attempted murder would be about the same as the proportion of admissions to prison for murder other than attempts, we multiplied the total number of admissions by the proportion of persons sentenced for murder other than attempted murder to obtain an estimate of prison admissions for murder, other than attempted murder.

Canada

The Canadian incarceration rate was computed with data from Statistics Canada Publication—Crime and Traffic Enforcment Statistics, Statistics of Criminal and Other Offenses, and Homicide Statistics, as well as a special report on incarceration written by the Solicitor General's office—Imprisonment as a Sentencing Disposition by R. Lorcan Scanlon and R. J. G. Beattie. The number of persons arrested for each category of index crime was taken from Table 2 of the Crime and Traffic Enforcement Statistics—Persons charged. Since there are no nationwide data on admissions to provincial institutions by charge, we used sentences imposed as listed in Table 6B of Statistics of Criminal and Other Offenses to indicate the use of imprisonment as a sentencing option. Information from the special reports was used as a check on the statistics obtained from the other reports. When the two sources were not in agreement, the statistics from the special reports were used. Due to the problems in the reporting of court statistics, arrests and commitments from Quebec and Alberta were omitted from our computations.

TOWARD A NEW SYSTEM OF CRIMINAL SENTENCING: LAW WITH ORDER

EDWARD M. KENNEDY

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TOWARD A NEW SYSTEM OF CRIMINAL SENTENCING: LAW WITH ORDER

EDWARD M. KENNEDY*

I. INTRODUCTION

Criminal sentencing today is in desperate need of reform. Every day federal, state and local judges mete out an unjustifiably wide range of sentences to offenders convicted of similar crimes. One offender may receive a sentence of probation, while another—convicted of the very same crime and possessing a comparable criminal history—may be sentenced to a lengthy term of imprisonment. Even two such offenders who are sentenced to similar terms of imprisonment may become subject to widely differing prison release dates; one may be paroled after serving only a small portion of his sentence while the other may be denied parole indefinitely.[1] These glaring disparities, whether they occur at the time of the initial sentencing or at the parole stage, can be traced directly to the unfettered discretion the law confers on those judges and correctional authorities responsible for imposing and implementing the sentence.[2] This sweeping discretion flows from the lack of

*United States Senator, Massachusetts; Chairman, Senate Committee on the Judiciary; A.B., Harvard College, 1954; LL.B., University of Virginia, 1959; Assistant District Attorney, Suffolk County Massachusetts (1961-1962).

[1] Such disparate release dates are the result of the wide discretion granted to the Federal Parole Commission under current federal law. *See* 18 U.S.C. § 4203 (1976) (powers and duties of the Commission); 18 U.S.C. § 4206 (1976) (parole determination criteria; prisoner may be released by the Commission "upon consideration of the offense and the history and characteristics of the prisoner. . . . [The] Commission may [also] grant or deny release on parole notwithstanding [these] guidelines . . . if it determines there is good cause for so doing. . . ."); 18 U.S.C. § 4207 (1976) (allowing consideration of reports from any and all sources).

[2] For an indication of the breadth of discretion granted to the federal courts, *see, e.g.*, FED. R. CRIM. P. 32(c) (permitting court to rely upon or disregard presentence investigation and report in determining sentence). *See also* 18 U.S.C. § 3575 (1970) (permitting 25-year sentence for special dangerous offenders); 18 U.S.C. § 3568 (1966) (allowing court's discretionary use of concurrent, consecutive, or cumulative sentencing); 18 U.S.C. § 3577 (1970) (permitting use of any and all information for determining sentence).

any meaningful statutory guidelines or review procedures to which courts and parole boards might look for guidance.

At the federal level, where the actual sentence to be served usually is indeterminate, the problems surrounding sentencing are manifestly evident. The uncertainty in the length of prison terms stems, in large part, from the discretionary authority imbued not only in federal judges, but also in the United States Parole Commission. For example, a bank robber may receive a judicially mandated sentence ranging from probation to a twenty-five year prison term, but it is the United States Parole Commission, not the court, that typically decides the point at which the convicted offender should be released.[3]

Historically, the rationale for this broad discretion and the justification for the resulting indeterminate sentences have been derived from a theory of rehabilitation, in which the offender ideally is "cured" or "treated" before being allowed to re-enter the community.[4] Naturally, the pace of rehabilitation varies from individual to individual, and the sentencing judge, who must impose a sentence prior to the commencement of any rehabilitative program, is not equipped to establish a definite prison term. Therefore, this traditional correctional philosophy argues that such a "cure" can best be promoted by tailoring the sentence to fit the personal needs and characteristics of the offender. This goal is then facilitated by placing the power to parole in the hands of those who will later review the criminal's progress during incarceration, and who will determine his optimal date of release.

Current findings suggest that this approach, although noble in design, has failed dramatically.[5] The purpose of this article is to demon-

[3] *See* 18 U.S.C. §§ 4203, 4205, 4206, and 4207 (1976), *supra* note 1. For cases construing § 4205 [formerly § 4208 (1970)], *see* Daniels v. United States Parole Comm'n, 429 F. Supp. 518 (W.D. Pa. 1977) (Commission's deviation from its guidelines categorizing prisoners according to severity of their offense and recommending appropriate prison terms for those who fall in each category are permitted when warranted by the circumstances); Mayo v. Sigler, 428 F. Supp. 1343 (N.D. Ga. 1977) (Commission's decision to go beyond its own guidelines in individual cases meriting such adjustment is within discretion of Commission); Wynn v. United States, 402 F. Supp. 1207 (N.D. Ga. 1975) (ultimate decision to parole or not to parole is entrusted solely to the sound discretion of the paroling authority).

[4] *See, e.g.*, N. MORRIS, THE FUTURE OF IMPRISONMENT, 12-20 (1974) [hereinafter cited as MORRIS].

[5] Several published analyses of correctional treatment programs illustrate their ineffectiveness. *See* Robison & Smith, *The Effectiveness of Correctional Programs*, 17 CRIME & DELINQUENCY 67 (1971); Martinson, *What Works—Questions and Answers about Prison Reform*, 1974 PUB. INT. 22; D. LIPTON, R. MARTINSON & J. WILKS, EFFECTIVENESS OF CORRECTIONAL TREATMENT: A SURVEY OF TREATMENT EVALUATION STUDIES (1975). *See also* D. GREENBERG, MUCH ADO ABOUT LITTLE: THE CORRECTIONAL EFFECTS OF CORRECTIONS (June 1974) (unpublished summary of effectiveness studies prepared for the Committee for the Study of Incarceration); also discussed in A. VON HIRSCH, DOING JUSTICE: THE CHOICE OF PUNISHMENTS 14-15 (1976) [hereinafter cited as VON HIRSCH], which concludes that "the rehabilitative disposition is plainly untenable." *Id.* at 18.

strate why traditional correctional practices have failed and to offer an innovative, alternative approach to sentencing the convicted offender. The title of this article reflects a variation of the title of the now classic treatise by Judge Marvin E. Frankel, who first raised the issue and proposed many of the solutions discussed herein.[6] Indeed, I believe that the type of law, with order, that Judge Frankel concluded was absent in current law would be provided by the sentencing provisions of S. 1437, The Federal Criminal Code Reform Act of 1978, which is the focal point of this article.[7]

For the most part, this piece concentrates on sentencing reforms at the federal level. This is not to underestimate or ignore similar problems arising in the various states,[8] but rather reflects my own experience and understanding as a United States Senator. Although the article may appear to stress sentencing reforms involving the imposition of a term of imprisonment, I do not intentionally slight the importance and need of reforming the manner in which courts consider alternative sentences, such as probation or the payment of fines. Indeed, S. 1437 provides comprehensive reforms in these areas as well.[9] But imprisonment, involving a state imposed deprivation of liberty, most strikingly illustrates how the current system has failed and where reforms are most desperately needed.

[6] M. FRANKEL, CRIMINAL SENTENCES: LAW WITHOUT ORDER (1973) [hereinafter cited as FRANKEL].

[7] For purposes of this article, the bill will be referred to as S. 1437. It will be renumbered, however, before it is reintroduced in the current session of Congress.

S. 1437 is much more than a sentencing reform bill: it constitutes the most comprehensive and innovative effort yet undertaken by the Congress to draft a completely new federal criminal code. The scope of this article, however, does not go beyond the important sentencing provisions found in that legislation. For a more detailed discussion of the criminal code effort in general and my role in particular, *see, e.g., Reform of the Federal Criminal Laws, Hearings on S. 1437 Before the Subcommittee on Criminal Laws and Procedure of the Committee on the Judiciary,* United States Senate, 91st Cong.-95th Cong. (Parts I-XIII) (1971-78) [hereinafter cited as *Hearings on S. 1437*]. *See also* Kennedy, *Reforming the Federal Criminal Code: A Congressional Response,* 8 N.C. CENT. L.J. 1 (1977); Kennedy, *Introduction to a Symposium on Criminal Code Reform,* 47 GEO. WASH. L. REV. __ (1979). S. 1437 is the culmination of 25 years of effort in the area of federal criminal code reform. *See, e.g.,* Wechsler, *The Challenge of a Model Penal Code,* 65 HARV. L. REV. 1097 (1952).

[8] Indeed, various states are light years ahead of the federal government when it comes to the subject of sentencing reform. *See, e.g.,* CAL. PENAL CODE § 1170 (West 1977) (specifying determinate sentences, allowing pre-imposition credit, requiring court's reasons for choice among three permissible sentences per violation); ILL. REV. STAT. ch. 38, §§ 1005-5-1, -5-3, -8-1 (1973) (offenses and permissible range of sentences for each are classified); ME. REV. STAT. tit. 17-A, § 1252 (1964) (abolishing indeterminate sentences where release of prisoner depends upon discretion of corrections officials; § 1253, however, mandates 'good time' deductions in cases where sentence exceeds six months); OR. REV. STAT. §§ 161.535, .555, .605, .615 (1977) (classification of offenses and permissible sentences of both determinate and indeterminate nature, depending on offense).

[9] *See generally Hearings on S. 1437, supra* note 7, at 2101-2204.

II. THE CURRENT DEBATE

During the past decade the debate over sentencing methods and procedures has intensified in Congress, in state legislatures, and among academicians and corrections experts.[10] Generally, the battle lines have been drawn between those who advocate retention of the present sentencing system with its emphasis on judicial discretion and a division of sentencing authority among judges and parole officials and those who would substantially modify the current sentencing scheme by consolidating the sentencing authority and placing limits on sentencing discretion.[11]

Advocates of the traditional approach maintain that sentences based on the individual characteristics and history of the offender—the very heart of our system of criminal justice—will be severely limited, if not eliminated, by current trends toward standardizing sentencing.[12] According to this argument, recent proposals for mandatory, or even presumptive, sentencing fail to take into account the individual needs of the offender and the specific characteristics of the offense.[13] These defenders of the current system consider the criminal sentencing process a very personal, deliberate undertaking and point out that sentencing disparity—when it does exist—is either a reflection of the myriad differences among offenders and offenses or can be traced to the absence of sufficient information in the presentence report concerning the background and history of the offender.[14]

Many of those advocating comprehensive sentencing reform concede that punishment must take into account the individual characteristics of both the offender and the offense. However, they contend that the broad statutory range of possible penalties prevents an equitable imposition of sentences; that without some limitation on sentencing discretion, widely disparate sentences simply cannot be justified; and that in

[10] *See, e.g.,* MORRIS, *supra* note 4; FRANKEL, *supra* note 6; VON HIRSCH, *supra* note 5; E. VAN DEN HAAG, PUNISHING CRIMINALS (1975) [hereinafter cited as VAN DEN HAAG]; REPORT OF THE TWENTIETH CENTURY FUND TASK FORCE ON CRIMINAL SENTENCING, FAIR AND CERTAIN PUNISHMENT (1976) [hereinafter cited as FAIR AND CERTAIN PUNISHMENT]. *See also Hearings on S. 1437, supra* note 7, at 8880 (testimony of Norman A. Carlson), 9018 (testimony of Curtis Crawford), 9042 (testimony of Alan Dershowitz). In recent years, Judge Frankel has secured the support of an articulate ally. *See* Newman, *A Better Way to Sentence Criminals,* 55 A.B.A.L.J. 1562 (1977).

[11] *Compare Hearings on S. 1437, supra* note 7, at 9042 (testimony of Alan Dershowitz) *with* the testimony of Chief Judge David L. Bazelon, Hearings on H.R. 6869 before the Subcommittee on Criminal Justice of the Committee on the Judiciary, United States House of Representatives (95th Cong., 2d Sess.).

[12] The most articulate defender of the traditional system has been Chief Judge Bazelon. *See, e.g., Criminals are the Final Result of "Our Failing Social Justice System,"* CENTER MAGAZINE, July/Aug., 1977 at 28.

[13] *See, e.g., id.*

[14] *Id.*

any event, indeterminate sentences, based on a medical model of "treatment" or "cure," can no longer be justified since judges and parole boards cannot predict with any degree of assurance the future behavior of an offender on the basis of current behavior while incarcerated.[15]

Disparate sentencing has been fostered, reformers allege, by the present lack of any articulated purposes or goals of our penal system, coupled with the total absence of any statutory guidelines to limit the discretion of sentencing judges or parole boards.[16] In addition, they maintain, appellate review of sentences, which represents a potential method of reducing particularly wide-ranging disparities, is almost unknown, at least at the federal level.[17] Consequently, they recommend comprehensive changes in these areas.

III. CURRENT PROBLEM AREAS

A. *Sentencing Disparity*

The major impetus for sentencing reform—at least of the type envisaged in S. 1437—has emanated from recent studies demonstrating inequity in the sentences actually imposed on similarly situated offenders convicted of the same crimes.[18] These studies illustrate that even though differences in sentence length may to some extent reflect the different characteristics and criminal backgrounds of offenders, such variations do not justify the vast disparity which often exists.[19] They conclude, rather, that the problem can be traced to the sentencing attitudes of the particular judge.[20]

For example, in 1974, the average federal sentence for bank robbery was eleven years, but in the Northern District of Georgia the average was seventeen years and in the Northern District of Illinois it was only

[15] *See, e.g.*, MORRIS, *supra* note 4, at 1-27.

[16] P. O'DONNELL, M. CHURGIN & D. CURTIS, TOWARD A JUST AND EFFECTIVE SENTENCING SYSTEM (1977) [hereinafter cited as O'DONNELL, CHURGIN & CURTIS]; FAIR AND CERTAIN PUNISHMENT, *supra* note 10, at 11-14.

[17] *See generally* Labbe, *Appellate Review of Sentences: Penology on the Judicial Doorstep*, 68 J. CRIM. L.C. & P.S. 122 (1977) [hereinafter cited as Labbe].

[18] *See, e.g.*, A. PARTRIDGE & W. ELDRIDGE, THE SECOND CIRCUIT SENTENCING STUDY, A REPORT TO THE JUDGES OF THE SECOND CIRCUIT (1974) [hereinafter cited as PARTRIDGE & ELDRIDGE]; Seymour, Jr., *1972 Sentencing Study for the Southern District of New York*, 45 N.Y.S.B.J. 163 (1973), *reprinted in* 119 CONG. REC. 6060 (1973) [hereinafter cited as Seymour]; Kramer, *Different Judges, Different Justice*, Washington Post, Nov. 14, 1975, § A, at 19, col. 3 [hereinafter cited as Kramer]. *See generally* O'DONNELL, CHURGIN & CURTIS, *supra* note 16.

[19] O'DONNELL, CHURGIN & CURTIS, *supra* note 16, at 4; Kramer, *supra* note 18, at 19.

[20] Seymour, *supra* note 18, at 166, 169; O'DONNELL, CHURGIN & CURTIS, *supra* note 16, at 1-15. *See also* PARTRIDGE & ELDRIDGE, *supra* note 18.

five and one-half years.[21] Similar discrepancies in federal sentences for a number of different offenses were found in a landmark study by the United States Attorney's Office for the Southern District of New York.[22] Further probative evidence may be derived from another 1974 study, in which fifty federal district court judges from the Second Circuit were given twenty identical files drawn from actual cases and were asked what sentence they would impose on each defendant.[23] The variations in the judges' proposed sentences in each case were astounding.[24] In one extortion case, for example, the range of sentence varied

[21] Kramer, *supra* note 18, at 19. This statistic, standing alone, is unenlightening because the study did not reveal the absolute number of bank robberies committed, or whether the characteristics of the crimes in the different federal districts were similar. Nevertheless, it is difficult to conceive of any objective justification for such widespread variations. *See also* note 42, *infra*.

[22] Seymour, *supra* note 18, at 164-69. For example, "[t]he range in average sentences for forgery runs from 30 months in the Third Circuit to 82 months in the District of Columbia. For interstate transportation of stolen motor vehicles, the extremes in average sentences are 22 months in the First Circuit and 42 months in the Tenth Circuit. For selective service cases, the extremes are 28 months in the First Circuit and 46 months in the Tenth Circuit." Seymour, *supra* note 18, at 167.

Of course, the fact that one hundred percent of those offenders convicted of homicides and assault in the Northern District of New York were placed on probation does not tell us how many offenders constitute the sample, and whether the offense was homicide or assault. This is a serious flaw in the data; I would go so far as to assume that it would be a rare case, if ever, that an offender convicted of homicide, as opposed to assault, in the Northern District were placed on probation. I believe that the chart does corroborate my basic point: generally, the obvious disparity evidenced in the statistics cannot rationally be justified or tolerated.

[23] PARTRIDGE & ELDRIDGE, *supra* note 18, at 1-3. Designed as a self-evaluation, the study involved 43 active judges and seven of the senior judges of the six judicial districts constituting the Second Circuit. To avoid the customary complications introduced by differences in cases, and to ensure a focus upon differences in judges' sentencing behavior, the study asked these 50 judges to impose sentence on 20 different defendants charged with those federal offenses most representative of the Circuit's workload. The judges were given the same representative presentence report prepared for each hypothetical offender. The total number of sentences—901—roughly approximated the number of sentences these judges would normally render in a six-month period.

[24] *Id.* at 6, 7. The following chart details the nature of the disparity:

Second Circuit Sentencing Study
(20 cases)

	Most Severe Sentence	6th Most Severe Sentence	12th Most Severe Sentence	Median Sentence	12th Least Severe Sentence	6th Least Severe Sentence	Least Severe Sentence	Number of Sentences Ranked
Case 1 Extortionate credit transactions; income tax violations	20 yrs. pris. $65,000	15 yrs. pris. $50,000	15 yrs. pris.	10 yrs. pris. $50,000	8 yrs pris. $20,000	5 yrs. pris.; 3 yrs. prob.; $10,000	3 yrs. pris.	45
Case 2 Bank robbery	18 yrs. pris. $5,000	15 yrs. pris.	15 yrs. pris. [(a) (2)]	10 yrs. pris.	7.5 yrs. pris. [(a) (2)]	5 yrs. pris.	5 yrs. pris.	48
Case 3 Sale of heroin	10 yrs. pris.; 5 yrs. prob.	6 yrs. pris.; 5 yrs. prob.	5 yrs. pris.; 5 yrs. prob. [(a) (2)]	5 yrs. pris.; 3 yrs. prob.	3 yrs. pris.; 3 yrs. prob.	3 yrs. pris.; 3 yrs. prob.	1 yr. pris.; 5 yrs. prob.	46
Case 4 Theft & possession of stolen goods	7.5 yrs. pris.	5 yrs. pris.	4 yrs. pris.	3 yrs. pris.	3 yrs. pris.	2 yrs. pris.	4 yrs. prob.	45

Second Circuit Sentencing Study (cont'd)

	Most Severe Sentence	6th Most Severe Sentence	12th Most Severe Sentence	Median Sentence	12th Least Severe Sentence	6th Least Severe Sentence	Least Severe Sentence	Number of Sentences Ranked
Case 5 Possession of barbiturates with intent to sell.	5 yrs. pris.; 3 yrs. prob.	3 yrs. pris.; 3 yrs.prob.	3 yrs. pris.; 3 yrs. prob.	2 yrs. pris.; 3 yrs. prob.	1.5 yrs. pris.; 3 yrs. prob.	5 yrs. prob.; $500	2 yrs. prob.	42
Case 6 Filing false income tax returns	3 yrs. pris.; $5,000	3 yrs. pris.; $5,000	2 yrs. pris.; $5,000	1 yr. pris.; $5,000	6 mos. pris.; 2.5 yrs. prob.; $3,000	6 mos. pris.; $5,000	3 mos. pris.; $5,000	48
Case 7 Possession of heroin	2 yrs. pris.	2 yrs. pris.	1.5 yrs. pris.	1 yr. pris.	6 mos. pris.; 18 mos. prob.	3 mos. pris.	1 yr. prob.	39
Case 8 Mail fraud	YCA indet.	YCA indet.	6 mos. pris.; 5 yrs. prob. [§4209]	5 mos. pris.; 5 yrs. prob. [§4209]	2 mos. pris.; 2 yrs. prob. [§4209]	3 yrs. prob.	1 yr. prob.	41
Case 9 Eluding examination & inspection by immigration officers; illegal entry after deportation	3 yrs. pris.	6 mos. pris.; 2 yrs. unsup. prob.	6 mos. pris.	3 mos. pris.; 21 mos. unsup. prob.	1 mo. pris.; 2 yrs. unsup. prob.	2 yrs. unsup. prob.	susp. if leave U.S.	49
Case 10 Postal embezzlement	1 yr. pris.	6 mos. pris.; 1 yr. prob.	3 mos. pris.; 27 mos. prob.	2 mos. pris.; 1 yr. prob.	3 yrs. prob.	2 yrs. prob.	1 yr. prob.	48
Case 11 Bribery	6 mos. pris.; 6 mos. prob.; $5,000	6 mos. pris.; $2,500	2 mos. pris.; 22 mos. prob.; $5,000	1 mo. pris.; 11 mos. prob.; $5,000	2 yrs. prob.; $7,500	$7,500; 2 yrs. unsup. prob.	$2,500	43
Case 12 Possession of unregistered firearm	1 yr. pris.	6 mos. pris.; 3 yrs. prob.	3 mos. pris.; 21 mos. prob.	1 mo. pris.; 11 mos. prob.	2 yrs. prob.	1 yr. prob.	6 mos. prob.	44
Case 13 Possession of counterfeit currency	1.5 yrs. pris.	6 mos. pris.; 2 yrs. prob.	6 mos. pris.; 18 mos. prob.	5 yrs. prob.	2 yrs. prob.	2 yrs. prob.	2 yrs. prob.	48
Case 14 Altering a forged U.S. Treasury check	YCA indet.	YCA indet.	1 yr. pris.	4 yrs. prob.	2 yrs. prob.	2 yrs. prob.	1 yr. prob.	39
Case 15 Operating an illegal gambling business	1 yr. pris.; $3,000	6 mos. pris.; 3 yrs. prob.; $10,000	3 mos. pris.; 2 yrs. prob.; $5,000	3 yrs. prob.; $10,000	2 yrs. prob.; $5,000	2 yrs. prob.; $1,000	1 yr. prob.; $1,000	45
Case 16 Bank embezzlement	YCA indet.	5 yrs. prob.	3 yrs. prob.	3 yrs. prob.	2 yrs. prob.	2 yrs. prob.	2 yrs. unsup. prob.	42
Case 17 Interstate transportation of stolen securities	3 yrs. pris.	6 mos. pris.; 4.5 yrs. prob.	6 mos. pris.	3 yrs. prob.	3 yrs. prob.	2 yrs. prob.	1 yr. prob.	46
Case 18 Mail theft	6 mos. pris.; 18 mos. prob.	5 yrs. prob.	3 yrs. prob.; $100	3 yrs. prob.	2 yrs. prob.	2 yrs. prob.	1 yr. prob.	48
Case 19 Conspiracy to commit securities fraud	2 yrs. pris.; $2,500	6 mos. pris.; 2 yrs. prob.	3 mos. pris.; 33 mos. prob.; $7,500	2 yrs. prob.; $15,000	2 yrs. prob.; $400	1 yr. prob.; $7,500	$2,500	47
Case 20 Perjury	1 yr. pris.; $1,000	3 mos. pris.; $1,000	3 yrs. prob.; $1,000	2 yrs. prob.; $500	1 yr. prob.; $1,500	1 yr. prob.; $500	$1,000	48

Note: References to "(a) (2)" signify a sentence pursuant to former 18 U.S.C. §4208 (a) (2), under which the defendant is given an indeterminate sentence and is eligible for parole at any time determined by the Board of Parole.

References to "§4209" signify a sentence pursuant to former 18 U.S.C. §4209, under which young adult offenders (under age 26) are given specialized treatment.

References to "YCA indet." signify an indeterminate sentence for young offenders under age 22 pursuant to 18 U.S.C. §5010.

See also Seymour, *supra* note 18, at 166-67.

from twenty years imprisonment and a $65,000 fine to three years imprisonment and no fine![25]

B. *The Problem of Parole Release*

As I have already mentioned, the inequities of our current sentencing system are compounded by parole—the conditional release of an offender after he has served a portion of his prison term. In a system of indeterminate sentencing, it is the parole board, not the judge, which decides at what point the offender should be released from prison.[26]

A strong argument can be made, however, that current law, by dividing the sentencing authority between the judge and the parole board, actually promotes disparity. First, the dangers of an unfettered exercise of discretion can occur not only at initial sentencing, but also at the time that an offender is released on parole.[27] For this reason, any comprehensive plan for reform should take into account the division of authority that currently exists between a sentencing judge and the parole board, consolidate that authority and develop a system of sentencing whereby the offender, the victim and society alike know *at the time of the initial sentence by the court* what the prison release date will be (subject, perhaps, to slight variations based on prison behavior).

Second, the existence of the parole board may actually invite judicial fluctuation by encouraging judges to sentence with the availability of parole in mind. Sentencing judges, trying to anticipate what the parole board will do, undoubtedly are tempted to sentence on the basis of when they believe the parole board will release the offender.[28] More-

[25] PARTRIDGE & ELDRIDGE, *supra* note 18, at 5. Recent studies of other jurisdictions confirm the existence of widespread sentencing disparity. *See, e.g.*, L. WILKINS, J. KRESS, D. GOTTFREDSON, J. CALPIN, & A. GELMAN, SENTENCING GUIDELINES: STRUCTURING JUDICIAL DISCRETION (1978) (1976 study of Colorado and Vermont); Austin & Williams, III, *A Survey of Judges' Responses to Simulated Legal Cases: Research Note on Sentencing Disparity*, 68 J. CRIM. L.C.&P.S. 306 (1977) (study of 47 Virginia district court judges); Diamond and Zeisel, *Sentencing Councils: A Study of Sentence Disparity and its Reduction*, 43 U. CHI. L. REV. 109 (1975) (Northern District of Illinois and Eastern District of New York); Comment, *Texas Sentencing Practices: A Statistical Study*, 45 TEX. L. REV. 471 (1967) (Texas).

[26] 18 U.S.C. § 4205(b)(2) (1976).

[27] The more often that sentencing decisions are made, the more the opportunity for disparity. Obviously, 10 parole board members making sentencing decisions will result in less disparity than five hundred judges performing a similar function. But there are other variables that must be considered: *see, e.g., Hearings on S. 1437, supra* note 7, at 9048-49 (testimony of Alan Dershowitz); HOUSE COMM. ON THE JUDICIARY, REPORT ON CRIMINAL CODE REFORM ACT OF 1977, 95th Cong., 1st Sess. 882 (1977).

[28] It is ironic that those who would retain parole on the ground that it is a valuable "safety valve" designed to shorten lengthy sentences imposed by judges who would ignore the guidelines established under S. 1437 could very well be *assuring* that *longer* sentences would be imposed by judges trying to determine actual parole release dates. Apparently, these parole protagonists have failed to recognize this rather obvious likelihood. *See* note 116, *infra*, and accompanying text.

over, the converse may also be true. Since judges need not specify reasons for their sentencing decisions,[29] and usually do not state the length of time they expect an offender to spend in prison,[30] the parole board may inadvertently act in a manner contrary to the judge's intent. The result is that the sentencing judge and the parole board may second-guess one another, and end up working at cross purposes.

A determinate sentencing model would displace the need or justification for parole release. Under this system of judicially-fixed sentences, parole release would be abolished and whether or not a prisoner has been "rehabilitated" or has completed a certain prison curriculum would no longer have any bearing on his prison release date.[31]

C. *Good Behavior*

Current federal law provides a prisoner with time off for good behavior.[32] These "good time" allowances are available for every prisoner whose term of imprisonment is at least six months.[33] A different rate of computation, however, exists for each prisoner depending on the length of the prison term imposed.[34] Moreover, the present law permits forfeiture or withholding of any amount of good time earned at the sole discretion of the prison authorities.[35] Thus, there is little certainty for the prisoners in the application of these provisions.

Good time is premised upon a belief that it promotes prison discipline. The theory is that appropriate prisoner behavior while incarcerated will lead to a reward: a reduction in the length of imprisonment. But there is evidence that the current law, notwithstanding its good time provisions, often fails to have the intended effect of maintaining prison discipline. For example, during the Senate Hearings on S. 1437, the Director of the Bureau of Prisons testified that prison good time is vastly overrated as a disciplining device and that other, more moderate steps could be taken, such as the rescission or suspension of prison privileges.[36] Indeed, given the complexity of current computations and the fact that prison authorities have absolute discretion in determining whether or not to revoke good time earned, the present good behavior

[29] *See* note 60, *infra*.

[30] *Id.*

[31] *See, e.g.*, MORRIS, *supra* note 4, at 14-15. I am unpersuaded by the other reasons asserted for continuation of parole release. *See, e.g., Hearings on S. 1437, supra* note 7, at 9048-49 (testimony of Alan Dershowitz); MORRIS, *supra* note 4, at 37 (control of prison populations, aid in reducing judicial sentencing disparity, especially for lengthy sentence imposed shortly after "the emotional intensity of a criminal trial").

[32] 18 U.S.C. §§ 4161-4165 (1976).

[33] *Id.* at § 4161.

[34] *Id.*

[35] *Id.* at § 4165.

[36] *Hearings on S. 1437, supra* note 7, at 8886 (testimony of Norman Carlson). Carlson also testified that some retention of good time would be beneficial in cases involving lengthy terms of imprisonment. *Id.*

rules may often exacerbate rather than promote prison discipline and morale.

D. *Prison or Probation?*

Although disparity concerning the average length of imprisonment is a major issue, a more troublesome problem is the existence of disparity as to whether an offender receives any term of imprisonment.[37] One may argue about what constitutes a long or short prison sentence, but society's respect for the criminal justice system suffers most when the system cannot account for the phenomenon that some offenders are incarcerated while others who are convicted of the same crime are freed.[38] Current sentencing practices relating to this "in versus out" decision breed uncertainty, thereby frustrating the deterrent effect of prison sentences on would-be criminals.[39] One of the critical problems, therefore, confronting our criminal justice system today is that some convicted offenders, including recidivists, escape jail altogether while others, who are convicted of the very same crime or deemed to be first offenders, are sentenced to excessively long periods of incarceration.[40]

The table below illustrates both the disparate treatment to which offenders convicted of similar crimes are subjected and the overall uncertainty as to whether an offender will receive a prison term or be placed on probation:[41]

For example, during 1972, all those convicted of homicide and assault in the Northern District of New York were placed on probation, while all of those convicted of the same offenses in the Western District of Missouri were sent to prison. Also, of the twenty-one districts studied, six required all those offenders convicted of burglary to be sent to prison, while two districts placed all similarly-convicted offenders on probation; six other districts placed between forty and sixty per cent of all those convicted of burglary on probation. Such a wide disparity in sentencing among the federal district courts is explainable only by judicial inconsistency; individualization of the sentencing process cannot justify such differences.[42] This table strikingly suggests another reason why reform is necessary.[43]

[37] O'DONNELL, CHURGIN & CURTIS, *supra* note 16, at 4.

[38] W. GAYLIN, M.D., PARTIAL JUSTICE, A STUDY OF BIAS IN SENTENCING 5 (1974); FAIR AND CERTAIN PUNISHMENT, *supra* note 10, at 3-4.

[39] FAIR AND CERTAIN PUNISHMENT, *supra* note 10, at 71-73.

[40] O'DONNELL, CHURGIN & CURTIS, *supra* note 16, at 4.

[41] ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, FEDERAL OFFENDERS IN UNITED STATES DISTRICT COURTS, App. Table X-4 (1972). This table is a federal offender datagraph from a report to the Subcomm. on Criminal Laws & Procedures of the Senate Comm. on the Judiciary, 95th Cong., 1st Sess. at 1164 (1977). Figures in parentheses indicate variance from National Average.

[42] O'DONNELL, CHURGIN & CURTIS, *supra* note 18, at 4.

[43] *Id.* at 13.

Percentage of Convicted Offenders Placed on Probation, 1972

	Homicide and Assault	Robbery	Burglary	Larceny	Auto Theft	Forgery and Counterfeiting
National Average	36	13	43	60	36	58
Maine	—	—	—	50 (−10)	0 (−36)	20 (−38)
Massachusetts	14 (−22)	17 (+4)	0 (−43)	77 (+17)	50 (+14)	53 (−5)
New York (Northern)	100 (+64)	50 (+37)	—	54 (−6)	83 (+47)	62 (+4)
New York (Eastern)	60 (+24)	16 (+3)	50 (+7)	52 (−8)	89 (+53)	62 (+4)
New Jersey	80 (+44)	6 (−7)	20 (−23)	64 (+4)	60 (+24)	66 (+8)
Pennsylvania (Eastern)	50 (+14)	18 (+5)	—	79 (+19)	80 (+44)	74 (+16)
Maryland	33 (−3)	7 (−6)	0 (−43)	79 (+19)	57 (+21)	67 (+9)
Virginia (Eastern)	8 (−28)	6 (−7)	60 (+17)	53 (−7)	33 (−3)	52 (−6)
Florida (Middle)	50 (+14)	0 (−13)	40 (−3)	47 (−13)	28 (−8)	45 (−13)
Texas (Northern)	0 (−36)	4 (−9)	25 (−18)	51 (−9)	24 (−12)	41 (−17)
Kentucky (Eastern)	50 (+14)	0 (−13)	0 (−43)	11 (−49)	8 (−28)	17 (−41)
Ohio (Northern)	43 (+7)	10 (−3)	50 (+7)	67 (+7)	45 (+9)	68 (+10)
Illinois (Northern)	43 (+7)	16 (+3)	0 (−43)	64 (+4)	50 (+14)	62 (+4)
Indiana (Southern)*						
Missouri (Eastern)	60 (+24)	7 (−6)	0 (−43)	51 (−9)	14 (−22)	58 (0)
Missouri (Western)	0 (−36)	6 (−7)	100 (+57)	78 (+18)	47 (+11)	74 (+16)
California (Northern)	29 (−7)	12 (−1)	50 (+7)	65 (+5)	25 (−9)	62 (+4)
California (Central)	53 (+17)	21 (+8)	50 (+7)	75 (+15)	64 (+28)	79 (+21)
Kansas	10 (−26)	19 (+6)	100 (+57)	61 (+1)	35 (−1)	64 (+6)
Oklahoma (Western)	18 (−18)	25 (+12)	0 (−43)	49 (−11)	21 (−15)	42 (−16)
District of Columbia	37 (+1)	16 (+3)	35 (−8)	49 (−11)	48 (+12)	54 (−4)

*No information was available for the Southern District of Indiana.

The impact of such statistics on the general population is both real and immediate. The implication to be derived from the inequality in post-conviction treatment of similar offenders, as indicated by the state by state variances from the national average, is that our national criminal justice system is arbitrary and unjust. Indeed, the unexplained nationwide disparity in punishment of similar offenses[44] can only nurture an already growing public cynicism about our penal system. Moreover, the disparity in actual punishment combined with the uncertainty in receiving punishment not only fails to deter criminal behavior—a goal that is basic to any effective crime-fighting program—but may in fact stimulate criminal activity[45] and inhibit corrective action.[46] The potential offender who finds himself in a jurisdiction where the probability of actual incarceration is low may decide that the crime is worth the risk. In practical terms, then, our criminal justice system becomes a game of chance in which potential offenders may gamble on receiving a lenient term of imprisonment or probation.[47]

[44] *See id.* at 4 (despite argument that apparent disparities represent judicial attempts at extreme individualization of sentencing, available evidence indicates that the more likely explanation is simply inconsistency).

[45] *See* Andenaes, *The General Preventive Effects of Punishment*, 114 U. PA. L. REV. 949, 961-65 (1966). Examples of increases in criminality during periods of weak or nonexistent enforcement seem to support a correlation between deterrence and certainty of punishment. Moreover, *certainty* of punishment, when combined with *severity* of punishment, as opposed to tendencies toward lenient sentencing and probationary release, exhibits an even greater correlation with deterrence.

[46] *Id.* at 960-65. The preventive or corrective effect of punishment will be less likely where punishment is uncertain and lenient than where it is consistent and stiffly determinate.

E. *The Absence of an Articulated Philosophy of Incarceration*

The problems that stem from uncontrolled judicial discretion and the division of responsibility for sentencing are subordinate to a fundamental flaw in our current system: the lack of an articulated philosophy of correction that expresses the general purposes and goals underlying the sentencing of federal offenders. Many theories have been advanced as to what are permissible purposes for levying a prison sentence. But no one view has been accorded the Congressional imprimatur. One judge may sentence an offender to a term of imprisonment in order to deter potential criminals; another may view imprisonment as an effective way to punish; a third judge may seek to incapacitate the offender; and a fourth may cling to the notion of imprisonment as a means to rehabilitate the offender. Indeed, there may be other rationales which judges embrace.[48] In spite of the arguments advanced in favor of various correctional philosophies, the current federal statutory scheme does not endorse any of them, and instead abandons this legislative function to the vagaries of the sentencing judge in each case.[49]

In practice, however, it is clear that a variation of the rehabilitative model, with its reliance on the concept of parole release, *sub silentio*

[47] It has been argued that the presence of a *general* deterrent effect of punishment is uncertain at best since it is dependent upon such incalculable factors as the presence of premeditation, the degree of sophistication of the potential offender, his awareness of sentencing practices with respect to the contemplated crime, the degree of risk of detection and the potential offender's calculation of that risk. *See, e.g.*, B. WOOTTON, CRIME AND THE CRIMINAL LAW: REFLECTIONS OF A MAGISTRATE AND SOCIAL SCIENTIST 97-101 (1963). I do not take issue with this argument. The presence of a general deterrent effect should not be completely discounted, however, especially in crimes where premeditation is likely and the risk of detection and certainty of punishment are high.

[48] *See* MORRIS, *supra* note 4, at 59-80; VON HIRSCH, *supra* note 5, at 35-94; FRANKEL, *supra* note 6, at 106, for discussion of other considerations which a judge may weigh when imposing a sentence (*e.g.*, the least restrictive sanction necessary to produce the desired result; the concept of maximum "deserved" punishment, and prison as a sanction only when alternatives would depreciate the seriousness of the crime or when necessary for general deterrence).

[49] FED. R. CRIM. P. 32(a), (c). The closest that existing law comes to establishing a correctional philosophy can be found in several specialized sentencing statutes that apply only to certain categories of offenders: 18 U.S.C. § 4216 (1976) ("treatment" for young adult offenders); 18 U.S.C. § 4251 *et seq.* (1976) ("treatment" and supervision for certain drug addicts); and 18 U.S.C. § 3575 *et seq.* (1976) ("incapacitation" for certain dangerous special offenders).

constitutes the very foundation of the federal indeterminate sentencing system.[50] Realistically, of course, the mere articulation in statutory form of congressionally recognized general goals and purposes of sentencing will do little to eliminate disparity; indeed, general notions of incapacitation, deterrence, retribution, and rehabilitation will continue to enter into sentencing decisions as they do at present. As previously discussed, the immediate causes of disparity do not radiate primarily from disagreement over the general purposes of imprisonment, but rather from the wide range of punishments available to the sentencing courts and from the division of sentencing authority.

Nevertheless, the rehabilitative model apparently is used to justify the continued existence of both the indeterminate sentence and the United States Parole Commission, which has the ultimate responsibility for determining the optimum release dates for federal prisoners.[51] In a very real sense, therefore, correctional philosophy plays a vital role in sanctioning the continuation of the present system. If rehabilitation, and particularly the type of "coercive" rehabilitation which ties prison release dates to the successful completion of certain vocational, educational, and counseling programs, continues as the ideal upon which to base a sentencing system, then both the indeterminate sentence and the concept of parole release will be perpetuated.[52] Judges presumably will continue to sentence in an effort to rehabilitate; rehabilitation requires "treatment," and such treatment varies from offender to offender. Thus, each sentence will remain indeterminate until the Parole Commission is convinced that the offender is "cured."

The concept of rehabilitation is premised upon the theory that criminals can be "cured" of their socially malignant "disease."[53] But, in practice, prison rehabilitation programs have not been very successful, at least in those cases where such programs are compulsory in nature

[50] 18 U.S.C. § 4208 *et seq.* (1976). *See* Cahalan, *Certainty of Punishment*, 51 J. URBAN LAW 163 (1973) (discussing the origins and history of the rehabilitative model as the principal philosophy underlying the American system of criminal justice and enforcement).

[51] 18 U.S.C. § 4206 (1976). The Commission is given discretion to determine release dates on the basis of several primary considerations which include: adherence by the prisoner to institution rules during confinement, the nature and circumstances of the offense, the history and characteristics of the offender, and the public welfare in allowing release. *Id.*

[52] Of course, it can be argued that the elimination of the rehabilitative model and indeterminate sentencing need not result in the phasing out of parole release. Indeed, experts have suggested that parole release was created with a view towards eliminating sentencing disparity regardless of whether or not the idea of rehabilitation survives. This argument has inherent flaws. *See* text accompanying note 116 *infra*. *See also* VON HIRSCH, *supra* note 5, at 11-18.

[53] *See* MORRIS, *supra* note 4, at 12-27; G. MUELLER, SENTENCING: PROCESS AND PURPOSE 55-58 (1977).

and are forced on the prisoner as a precondition of his release.[54] This is not to say, of course, that we should abolish prison rehabilitation programs. Indeed, they should be encouraged and expanded. Yet, experience does indicate that we must abandon the comforting but unrealistic notion that rehabilitation of the convicted criminal can serve as a justification for imposing a prison sentence[55] or determine the length of incarceration.

Quite a different system results if the foundation of a federal sentencing system rests on the concept of imprisonment as *punishment*. Such a change would represent a return to the determinate sentencing model, in which the offender, the victim, and society would all know at the time of sentencing the length of the sentence actually to be served. It would transpose rehabilitation from a justification to a beneficial side effect of imprisonment. Additionally, this view of incarceration as a vehicle to punish rather than to cure the offender would be consistent with the conclusions of some of the most prominent penal experts.[56]

For these reasons, statutory reform of the federal sentencing process should concentrate on the major philosophical justifications for imposing a sentence, especially when that sentence includes a term of imprisonment, and Congress should clearly articulate the sentencing rationale(s) which the judiciary may properly consider.

F. *The Absence of Appellate Review of Sentences*

The United States is one of the few western nations that does not provide some procedure for appellate review of sentences.[57] Our appellate courts have long followed the principle that sentences imposed by

[54] *E.g.*, MORRIS, *supra* note 4, at 13-20, 26-27; VON HIRSCH, *supra* note 5, at 11-18 (the overall result of a wide variety of rehabilitation programs was disappointing); Fishman, *An Evaluation of Criminal Recidivism in Projects Providing Rehabilitation and Diversion Services in New York City*, 68 J. CRIM. L.C.&P.S. 283 (1977) (rehabilitation projects were a failure); Robinson & Smith, *The Effectiveness of Correctional Programs*, 17 CRIME & DELINQUENCY 67 (1971) (California study indicating there are still no treatment techniques which have unequivocally demonstrated themselves capable of reducing recidivism.

[55] Dershowitz, *Background Paper* for FAIR AND CERTAIN PUNISHMENT, *supra* note 10, at 73-75.

[56] *See* B. WOOTTON, CRIME AND THE CRIMINAL LAW: REFLECTIONS OF A MAGISTRATE AND SOCIAL SCIENTIST 94 (1963), suggesting that courts must not overlook the "ultimate" function of a sentence which is "not that it is a deterrent but that it is the emphatic denunciation by the community of a crime." *See generally* MORRIS, *supra* note 4; VON HIRSCH, *supra* note 5.

[57] Undeniably, appellate courts have the statutory authority to "affirm, modify, vacate, set aside or reverse *any* judgment, decree or order . . . and direct the appropriate judgment . . . as may be just under the circumstances." 28 U.S.C. § 2106 (1976) (emphasis added). In practice, however, Section 2106 has been held inapplicable to general review of sentencing decisions, due largely to the reluctance of appellate courts to encroach upon the discretion of the sentencing judge and the difficulties in overruling "sixty years of undeviating federal precedent." United States v. Rosenberg, 195 F.2d 583, 604-07 (2d Cir. 1952) (Frank, J.). *Compare* Mueller & Le Poole, *Appellate Review of Legal but Excessive Sentences; A Comparative Study*, 21 VAND. L. REV. 411, 423 (1968) (most European countries consider the sentence to be a matter of law and therefore reviewable); Smith v. United States, 273 F.2d 462, 468-69 (10th Cir. 1959) (Murrah,

trial judges, when within statutory limits, may not be reviewed or disturbed.[58] Thus, judges, especially at the federal level, possess an almost absolute sentencing discretion that is immune from all attack unless statutory authority has been exceeded, constitutional rights abridged, or discretion grossly abused.[59] It is ironic that although our system of justice has developed appellate procedures for the correction of all types of prejudicial trial error, it has failed to provide a procedure for the correction of unreasonable sentences. Indeed, judges are not even required to state their reasons for a particular sentence and rarely do so.[60] Thus, even if appellate review of sentences were available, federal courts of appeals would have difficulty assessing the reasons underlying the sentencing decision.

Establishment of a limited procedure for appellate review of sentences is necessary. The procedure should preserve the idea that the discretion of a sentencing judge should not be disturbed in the absence of a strict showing of "unreasonableness" or some other similar standard. New appellate procedures should be an integral part of any sentencing reform effort; they would help to provide the type of guidance and control over the exercise of sentencing discretion that is necessary to promote fairness and rationality and to reduce unwarranted disparity.

IV. UNFAIR CRITICISMS AND PROPOSED SOLUTIONS

Perhaps because the problem of crime has become a major concern of the American people,[61] there have been many recommended changes

C.J., dissenting) (state courts have construed statutes similar to section 2106 as allowing review and reduction of punishment). *See also* Labbe, *supra* note 17, at 122.

[58] *See* United States v. Rosenberg, 195 F.2d 583, 604 (2d Cir. 1952), *quoting* Gurera v. United States, 40 F.2d 338, 340 (8th Cir. 1930) ("if there is one rule in the federal criminal practice which is firmly established, it is that the appellate court has no control over a sentence which is within the limits allowed by a statute").

[59] *Compare* Dorszynski v. United States, 418 U.S. 424, 441 (1974) *with* United States v. Tucker, 404 U.S. 443, 447 (1972) *and with* Gore v. United States, 357 U.S. 386, 393 (1958) (as a general rule, a sentence imposed by a federal district judge, if within statutory limits, is not subject to review). *See* Orner v. United States, 578 F.2d 1276, 1279 (8th Cir. 1978); United States v. Sneath, 557 F.2d 149, 151 (8th Cir. 1977); United States v. Robins, 545 F.2d 775, 779 (2d Cir. 1976); United States v. Wiley, 278 F.2d 500, 504 (7th Cir. 1960) (review granted under limited circumstances: *e.g.*, sentence imposed was based on false information about the defendant, discretion clearly abused, plain error). *See also* United States v. Richards, 583 F.2d 491 (10th Cir. 1978) (severity alone insufficient absent extraordinary circumstances); United States v. Wardlaw, 576 F.2d 932 (1st Cir. 1978) (failure to "individualize" sentence insufficient).

[60] *See* S. REP. No. 95-605, part 1, 95th Cong., 1st Sess. (1977), at 892-93. *See also* United States v. Gardner, 579 F.2d 474 (8th Cir. 1978); United States v. Cavender, 578 F.2d 528 (4th Cir. 1978); United States v. French, 575 F.2d 677 (8th Cir. 1978); United States v. O'Neill, 573 F.2d 1186 (10th Cir. 1978).

[61] *See, e.g.*, FBI UNIFORM CRIME REPORTS FOR THE UNITED STATES (1976); *Hearings*, NATIONAL

designed to revamp our current sentencing process. Unfortunately, the proposals most often advanced as alternatives would provide no real remedy to the problem of sentencing unfairness.

For example, the differences in sentences given to offenders convicted of similar crimes demonstrates the fallacy of proposing reforms which would increase the maximum sentences that could be imposed for particular offenses. Raising maximums would be futile, because many judges would seldom, if ever, impose them.[62] For instance, counterfeiting carries a maximum penalty of fifteen years imprisonment under federal law;[63] not only is the average sentence actually imposed less than five years, but almost fifty percent of convicted counterfeiters receive no imprisonment at all![64] To increase maximum penalties in this area, therefore, would be a misdirected effort at real sentencing reform.

COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE (1969); NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE, TO INSURE DOMESTIC TRANQUILITY XIV (1967); ENNIS, CRIMINAL VICTIMIZATION IN THE UNITED STATES: A REPORT OF A NATIONAL SURVEY (National Opinion Research Center, May 1976); Howard, *Police Reports and Victimization Survey Results: An Empirical Study*, 12 CRIMINOLOGY 133 (1975); Lesley, *Building New Support for Enforcing the Law, Public Attitudes on Crime and Law Enforcement*, 42 VITAL SPEECHES 524 (1976); *Public Opinion on Criminal Law and Legal Sanctions: An Examination of Two Conceptual Models*, 67 J. CRIM. L. 110 (1976); Bartel, *Analysis of Firm Demand for Protection Against Crime*, 4 J. LEGAL STUDIES 443 (1975).

[62] The following table is illustrative of this point:

Average Sentence Length for Selected Offenses, in 1972 (months)

	Homicide and Assault	Robbery	Burglary	Larceny	Auto Theft	Forgery and Counterfeiting
National Average	102	120	63	40	38	42
Maine	—	—	—	144(+104)	21 (−17)	24 (−18)
Massachusetts	48 (−54)	115 (−5)	40 (−23)	36 (−4)	20 (−18)	32 (−10)
New York (Northern)	—	39 (−81)	—	11 (−29)	9 (−29)	12 (−30)
New York (Eastern)	18 (−84)	130 (+10)	2 (−61)	48 (+8)	12 (−26)	49 (+7)
New Jersey	11 (−91)	103 (−17)	27 (−36)	50 (+10)	32 (−6)	29 (−13)
Pennsylvania (Eastern)	102 (0)	88 (−32)	—	25 (+15)	49 (+11)	30 (−12)
Maryland	6 (−96)	146 (+26)	61 (−2)	45 (+5)	49 (+11)	40 (−2)
Virginia (Eastern)	66 (−36)	135 (+15)	81 (+18)	50 (+10)	41 (+3)	39 (−3)
Florida (Middle)	—	126 (+6)	34 (−29)	37 (−3)	32 (−6)	41 (−1)
Texas (Northern)	62 (−40)	224(+104)	46 (−17)	42 (+2)	39 (+1)	66 (+24)
Kentucky (Eastern)	24 (−78)	124 (+4)	167(+104)	25 (−15)	32 (−6)	20 (−22)
Ohio (Northern)	28 (−74)	119 (−1)	36 (−27)	29 (−11)	31 (−7)	35 (−7)
Illinois (Northern)	20 (−82)	81 (−39)	30 (−33)	40 (0)	45 (+7)	38 (−4)
Indiana (Southern)	40 (−62)	101 (−19)	24 (−39)	35 (−5)	29 (−9)	34 (−8)
Missouri (Eastern)	27 (−75)	180 (+60)	60 (−3)	54 (+14)	46 (+8)	46 (+4)
Missouri (Western)	36 (−66)	120 (0)	—	57 (+17)	36 (−2)	33 (−9)
California (Northern)	79 (−23)	115 (−5)	120 (+57)	32 (−8)	42 (+4)	37 (−5)
California (Central)	190 (+88)	96 (−24)	24 (−39)	40 (0)	41 (+3)	43 (+1)
Kansas	74 (−28)	115 (−5)	—	46 (+6)	47 (+9)	63 (+21)
Oklahoma (Western)	29 (−73)	85 (−35)	48 (−15)	31 (−9)	36 (−2)	41 (−1)
District of Columbia	161 (+59)	103 (−17)	84 (+21)	42 (+2)	40 (+2)	67 (+25)

Note: The federal district courts for each of the 11 circuits were chosen on the basis of the two districts in each circuit that sentenced the greatest number of offenders for the selected offenses.

[63] 18 U.S.C. § 471 (1976).

[64] *See* notes 23 and 62 *supra*.

Nor can sentencing disparity and uncertainty be traced to "weak" or incompetent judges, who "coddle criminals." Rather, the disparate sentences also reflect an upward deviation, with an inordinate number of lengthy prison terms,[65] demonstrating that the problem cannot be traced to a lack of judicial fortitude. The real problem lies in the fact that federal judges must act without any guidelines or appellate review because Congress has failed to build into the sentencing process sufficient standards or safeguards. In fact, existing federal law invites disparity by conferring unlimited discretion on the sentencing judge to impose a sentence within wide statutory limits, and then by allowing the parole board wide discretion in determining a release date.

Finally, proposals for harsh statutorily mandated sentences are certainly not in the best interests of genuine reform. Not only is the history of mandatory sentencing replete with evidence that judges and juries simply ignore statutory requirements,[66] but, in addition, mandatory sentencing should fail on the merits because it does not take into account the individual characteristics of the offender and the specific circumstances of the offense, which are essential components of any fair, rational, and principled sentencing scheme.[67] The problem, then, with mandatory sentencing is that it tips the scales in favor of standardized sentencing and completely ignores the existence in particular cases of aggravating and mitigating factors.

Sentencing reform is not a simple matter; true reform requires that a careful balance be struck between the historical need for consideration of characteristics of both offender and offense and the desire to promote a more equitable, rational, and certain approach to sentencing. It is this balance between individual and public interests which S. 1437 attempts to strike.

V. S. 1437—TOWARD A NEW SYSTEM OF CRIMINAL SENTENCING

A. *A Brief Summary of S. 1437*

S. 1437, The Federal Criminal Code Reform Act of 1978, would make long overdue reforms in the federal criminal sentencing process.[68] It is the culmination of a reform effort begun over a decade ago by the

[65] *See* note 62 *supra.*

[66] *Hearings on S. 1437, supra* note 7, at 9044 (testimony of Alan Dershowitz).

[67] *Id.*

[68] The key chapters are 20-23 and the amendments made to Title 28. S. 1437 also makes other important changes in the area of sentencing: it provides a new mechanism for the consistent grading of all offenses (§ 2301) and in the course of doing so, generally lowers the maximum terms that can be imposed (§ 2301). In addition, new, innovative provisions provide for restitution (§ 2006), increased use of fines (§ 2201), and notice to victims of widespread fraud (§ 2005).

National Commission on Reform of Federal Criminal Laws,[69] and championed in recent years by such experts as Judge Marvin E. Frankel, Dean Norval Morris, and Norman Carlson, Director of the Federal Bureau of Prisons.[70]

S. 1437 articulates, for the first time, the philosophical purposes to be served by a sentence—deterrence, incapacitation, punishment, and, to a more limited extent, rehabilitation—and sets out the factors that a court should consider in exercising its sentencing discretion.[71] The bill would create a United States Sentencing Commission to develop a system of guidelines and policy statements designed to reduce sentencing disparity and to provide more rational and determinate sentencing practices.[72]

Necessary flexibility would be retained, however, by permitting a sentence to be imposed outside of the guidelines in an appropriate case.[73] S. 1437 would, however, encourage adherence to the guidelines by requiring that all sentences imposed beyond the guidelines be accompanied by judicial statements specifically justifying the deviations.[74] In addition, sentences would be subject to appellate review,[75] providing a further check against unreasonable punishment.

S. 1437 also provides for determinate prison sentences in the great majority of cases.[76] The only exception would be in the rare case in which a judge finds specifically that the sole means of achieving the purpose of rehabilitation is to incarcerate the offender with the actual prison release date to be decided by the Parole Commission.[77] Judges would be instructed to sentence defendants to terms that represent their best estimates, in light of the applicable guidelines, as to how long the offenders *should actually spend in prison.*[78] Thus, the bill would elimi-

[69] *See* note 7 *supra.*

[70] *See* notes 4, 6, & 10 *supra.*

[71] §§ 2003, 2302(a), and Title 28, 994(j).

[72] *See generally,* chapter 58 of Title 28. The father of the Sentencing Commission concept and its most articulate proponent is Judge Marvin Frankel. *See* FRANKEL, *supra* note 6, at 118-24.

[73] § 2003(a)(1)(D); "in appropriate cases" means a "rare" case. S. REP. No. 95-607, part 1, 95th Cong., 1st Sess. 1166 (1977).

[74] A statement of reasons would be required whenever a sentence is imposed, but special detail would be mandated when the sentence falls outside the guidelines. § 2003(b).

[75] § 3725.

[76] This issue has been debated at length. Some would have preferred to see the indeterminate sentence completely struck from S. 1437; others felt that such a step would go too far. S. 1437 strikes the balance by eliminating the concept in all but the "exceptional case." *See* Title 28, § 994(j).

[77] *Id.*

[78] § 2302(a). S. 1437 places the burden on the sentencing court to impose a parole release date; in the absence of any reference to parole in the sentencing decision, a determinate term (with no parole) would be mandated.

nate the common judicial practice of imposing inordinately long sentences designed to ensure that the defendants remain incarcerated for at least one-third of their sentences, as required by current law.[79]

The bill, therefore, preserves flexibility in sentencing while simultaneously proposing a procedure for the reduction of disparity through the development of more standardized procedures. In most cases, the offender, the victim, and society all will know at the time of the initial sentencing decision what the prison release date will be. This increased fairness, and, just as importantly, the appearance of fairness, likely will reduce the widespread cynicism concerning our penal system.

B. *A Philosophy of Sentencing*

S. 1437 lists four general purposes and goals to be considered by the sentencing judge in imposing a sentence:

> The general purpose of this title is to establish justice in the context of a federal system by . . .
>
> (b) prescribing appropriate sanctions for engaging in such conduct that will
>
> (1) deter such conduct;
>
> (2) protect the public from persons who engage in such conduct;
>
> (3) assure just punishment for such conduct;
>
> (4) promote the correction and rehabilitation of persons who engage in such conduct, recognizing that imprisonment is generally not an appropriate means of promoting correction and rehabilitation.[80]

Although it contains this congressional statement of intent, the bill on its face does not favor one purpose of sentencing over another, unless the sentence involves a term of imprisonment. In the latter case, the availability of rehabilitation as a rationale is very much discouraged.[81] Some of those who have commented on the proposed bill would prefer that one purpose or another be afforded favorite status, or that one or another of the listed purposes be deleted from S. 1437 altogether,[82] but I believe that each of the four stated purposes should be considered, to a greater or lesser extent, depending on the circumstances of each case. For example, rehabilitation should play an important role in cases involving a sentence of probation, where one's probationary status may be conditioned on participation in certain educa-

[79] 18 U.S.C. § 4205(a)(19).

[80] §§ 101(b) and 2003(a).

[81] § 2302(a) and Title 28, 994(j). *See* text accompanying note 77, *supra*.

[82] *Hearings on S. 1437, supra* note 7, at 9081-9083 (testimony of Nancy Crisman); 8982-8983 (testimony of Andrew von Hirsh).

tional courses. At the same time, just punishment and incapacitation should be important considerations in sentencing a repeat or violent offender to a relatively long term of imprisonment.

The most important breaks with tradition, however, are the express provisions which would significantly restrict the role of rehabilitation in sentences of imprisonment. According to the bill, rehabilitation plays a role only when the judge concludes that the *sole* method of providing a meaningful rehabilitation program for an offender is through a term of imprisonment.[83] S. 1437, therefore, expressly recognizes what many have suspected in recent years: that a prison environment is not conducive to effective rehabilitation of an offender.[84]

C. *The United States Sentencing Commission*

One of the most important sections of S. 1437 is the provision creating a seven member federal commission to establish sentencing ranges for specific crimes.[85] True to its conceptual formulation by Judge Frankel,[86] the Commission would be an independent arm of the judicial branch, although its membership would not be limited to the federal judiciary. Indeed, section 994 is designed to assure a broadly representative composition.[87] The bill would provide that all of the Commission members be appointed by the President with the advice and consent of the Senate.[88] Three members, however, would be designated by the President from a list of nominees submitted by the Judicial Conference of the United States.[89]

The bill would require the Commission to promulgate sentencing guidelines and to issue policy statements to be used by federal judges in determining the appropriate sentence in a particular case.[90] These

[83] Title 28, 994(j), was cited in S. REP. No. 95-605, part 1, 95th Cong., 1st Sess. 1968 (1977).

[84] *See, e.g.*, FRANKEL, *supra* note 6, at 86-102. *But see* Kaufman, *The Sentencing Views of Yet Another Judge*, 66 GEO. L. J. 1252-53 (1978) (rehabilitation, per se, is not an invalid objective of sentencing; if appropriate physical facilities, staff and programs are provided, offenders in confinement can be helped); MORRIS, *supra* note 4, at xi (rehabilitative programs can be successful if related neither to the time the prisoner serves, nor to the conditions of his incarceration).

[85] Title 28, 991.

[86] FRANKEL, *supra* note 6, at 118-24. (Judge Frankel referred to his recommendation to create a permanent commission on sentencing as "the single most important suggestion" in his book).

[87] *Id.* The bill mandates that the Commission shall have both judicial and non-judicial members and shall, to the extent practicable, have a membership representing a variety of backgrounds and reflecting participation and interest in the criminal justice process.

[88] *See* S. REP. No. 95-605, part 1, 95th Cong., 1st Sess. 1166 (1977); FRANKEL, *supra* note 6, at 118 *et seq.*

[89] *Id.*

[90] Title 28, 994(a) and 2003(a)(1)(E). *See* O'DONNELL, CHURGIN & CURTIS, *supra* note 16, at 73-75. It is particularly helpful to consult this study since "an earlier draft . . . significantly influenced the sentencing provisions of the proposed federal criminal code now under consideration in Congress." Krattenmaker, Book Review, 66 GEO. L. J. 1317, 1317 (1978).

guidelines would be the heart of the entire sentencing scheme. In determining sentencing ranges, the Commission could consider such factors as the general criteria spelled out in the statute, available sentencing statistics and recidivism rates and, especially, various aggravating and mitigating circumstances surrounding the crime itself.[91] The factors involved in a consideration of aggravating and mitigating circumstances might include: leadership in the criminal enterprise; particularly cruel treatment of the victim; use of a weapon in the course of the crime; youth and first offense; or other previous criminal record of the offender. Whatever variables the Commission enumerated for consideration, each guideline in cases involving a term of imprisonment could not vary in range by more than twenty-five percent.[92] This would assure a narrow range of permissible sentences, since a judge would be required to impose a penalty within the established range *unless it could be demonstrated in writing that a justification existed for sentencing the offender to a different term.*[93]

Obviously, the proposed Commission would face a formidable task. Its guidelines would have to address all of the sentencing alternatives, and not just the length of permissible prison terms.[94] Thus, a crucial question confronting the Commission would be who should be imprisoned and for what type of crime. Given the tremendous social impact which such decisions could have, it will be essential, if S. 1437, as presently constituted, is enacted, that the seven Commission members be eminently qualified, that they represent a diversity of views and that a consensus be developed despite obvious differences of perspective. The extraordinary powers and responsibilities which would be vested in the Commission, coupled with the enormous potential for improving the fairness and effectiveness of federal criminal justice, demand the

[91] *See generally* Title 28, 994(c) *et seq.* An interesting question raised during the debate on S. 1437 concerned whether or not the factors listed in § 994 were at all relevant to certain sentences. It is important to point out that the factors listed may not be relevant to every possible sentence but may take on importance when determining a sentence of probation or imprisonment. Certain of the factors, including education, previous employment record and family ties and responsibilities, should have little or no bearing on a decision to imprison an offender. These factors, however, are not irrelevant to considerations of probationary conditions.

For additional discussions of factors which should be considered in the sentencing process, *see* R. POSNER, ECONOMIC ANALYSIS OF LAW 163-72, 176-77 (1977); Coffee, *The Repressed Issues of Sentencing*, 66 GEO. L. J. 975 (1978).

[92] Title 28, 994(b). Within the 25 percent limitation, the breadth of the sentencing range would be at the discretion of the Commission. *Id.* I question the wisdom of the 25 percent limitation, for it is ultimately self-defeating. The impact of imposing an arbitrary maximum and minimum on a particular guideline will, I fear, simply result in a proliferation of guidelines to encompass circumstances which would normally compel a range in excess of 25 percent.

[93] § 2003(b); *see* note 74 *supra.*

[94] Title 28, 991(b)(1)(A) and 2003(a).

highest quality of membership. Without this superior membership, it would be unable to achieve the legislative goals embodied in S. 1437, and the reform effort would be dealt a mortal blow.

D. *Sentencing Under the Guidelines*

The extent to which an independent federal judiciary should be required to adhere to sentencing guidelines constitutes one of the key areas of dispute. As with so many other sentencing issues, a careful balance has been struck in S. 1437. The bill's various sections reflect a cautious compromise: first, a judge would have to consult the guidelines in imposing a sentence;[95] next, the Commission would be authorized to monitor judicial performance under the guidelines and to report any wide variations in sentences imposed;[96] finally, appellate review would be available as a check on sentences that fall outside the guidelines.[97]

S. 1437 would require that the sentencing judge pay deference to the guidelines concerning both the decision governing the appropriate type of sentence (*e.g.*, fine, probation, imprisonment, or some combination thereof) *and* the decision on the length or amount of the sentence.[98] But deference is not a duty; the court would not be bound by the guidelines. Section 2003 would require only that the sentencing judge "consider" the sentencing range applicable to the case under the guidelines and any applicable policy statements issued by the Commission.[99]

In addition, the bill contains a requirement that the court, at the time of sentencing, state reasons for the imposition of the sentence.[100] It also would require, in cases where the sentence imposed falls outside the guidelines, that the court state the specific reason for issuing a nonconforming sentence.[101] For the first time, the trial courts would be obliged to articulate their justifications for sentences, by explaining why the guidelines do not adequately take into account all of the pertinent circumstances of particular cases. By mandating that each sentence falling outside the guidelines be accompanied by an explanation, S. 1437 would greatly enhance the fairness and accountability of our federal criminal sentencing process.

[95] § 2003.

[96] Title 28, 994(n). *See also* S. REP. No. 1169, 95th Cong., 1st Sess. (1977).

[97] Title 28, § 3725. For a judge who ardently agrees with this position, *see* Kaufman, *The Sentencing Views of Yet Another Judge*, 66 GEO. L.J. 1250 (1978).

[98] *Compare* § 2001(b) *with* § 2003.

[99] §§ 2003(a)(1)(D) and (E).

[100] § 2003(b).

[101] *Id.* It is hoped that by requiring a specific statement of reasons for sentences which do not conform to the guidelines, S. 1437 will provide a further incentive to sentence within the guidelines in the great majority of cases.

E. *Appellate Review of Sentences*

Sentencing guidelines alone are not the answer. Each offender stands before the court as an individual, different in some way from other offenders. For example, the offense itself may have been committed under highly unusual circumstances. Thus, sentencing variations are not only inevitable, but desirable.[102]

Appellate review of sentences, which would be provided on a limited basis under Section 3725 of the Act, could assure both that the individual approach to justice is preserved and that the sentencing guidelines are properly applied.[103] Moreover, in the long run, such review could facilitate the development of a truly national law of sentencing.

The bill would allow both defendants and the government to appeal sentences in felony and class A misdemeanor cases only.[104] A defendant could appeal as of right if the sentence imposed exceeded the maximum provided in the sentencing guidelines,[105] and the government could appeal as of right, with the approval of the Attorney General or his designee, if the sentence were less than the minimum established by the guidelines.[106]

Herein lies one of the major controversies surrounding the appellate review procedure in S. 1437.[107] Both the defendant and the government would face limitations as to when they could appeal the sentence imposed.[108]

[102] The current sentencing system has been criticized, however, for its discriminatory impact on minorities and the poor. *See Hearings on S. 1437, supra* note 7, at 9043 (statement of Alan Dershowitz). Several theorists have maintained that the goal of doing justice in an individual case and the goal of eliminating sentencing practices which discriminate against disadvantaged groups require contradictory solutions. The argument states that the former would be served by the broadest sentencing discretion, and the latter by fixed, mandatory sentences. The system under S. 1437, with its sentencing guidelines, explanations, and appellate review, is designed to curb disparate sentencing without removing the offender's right to individual consideration.

[103] Indeed, with the phasing out of parole release, appellate review is all the more important as a check on arbitrary sentencing practices. This review, and the power of the Commission to monitor sentences imposed under the guidelines, remain the two most significant checks on the imposition of excessively long sentences.

[104] §§ 3725(a) and (b). The compromise of restricting sentencing appeals to felony and class A misdemeanor cases was made in an effort to forego a feared flooding of the courts of appeals. *See Hearings on S. 1437, supra* note 7, at 1568-74 (Hruska testimony). It should also be noted that in cases involving government appeal, the Attorney General or his designee must personally approve the taking of an appeal. § 3725.

[105] § 3725(a).

[106] § 3725(b).

[107] *See, e.g., Hearings on S. 1437, supra* note 7, at 8873 (testimony of Marvin Frankel); 9046 (testimony of Alan Dershowitz); and 9086 (testimony of Nancy Crisman).

[108] Such an appeal would have to follow a motion to correct the sentence made within 120 days of the imposition date. FED. R. CRIM. P. 35(b)(2). Although appeals would normally be limited to sentences that fall outside the range established in the guidelines, it would be possible to petition for appellate review of a sentence imposed within the guidelines. (§ 3723(b)). In such a case, the

By striking a balance between no appellate review of sentences and an unlimited right to appeal, S. 1437 compromises between those who fear that the courts of appeals will be inundated with a flood of new cases and those who view appeals of any sentence as a matter of right. The guidelines themselves would provide a practical basis for distinguishing the cases where review is most needed from those where an appeal is likely to be frivolous.

Review in the court of appeals would be based on a standard of reasonableness.[109] If the appellate court determined that the sentence imposed was *not* unreasonable, it would be obliged to affirm the sentence.[110] If the appeal was filed by the defendant and the appellate court determined that the sentence was unreasonably high, it could set aside the sentence and either impose a lesser sentence, remand for imposition of a lesser sentence, or remand for further consideration.[111] If the appeal was filed by the government, the appellate court determined that the sentence was unreasonably low, it could set aside the sentence and either impose a greater sentence,[112] remand for imposition of a greater sentence, or, again, remand for further consideration.[113] Additionally, when a defendant appeals the conviction itself, rather than the sentence imposed, the sentence cannot be increased by the court of appeals.[114]

F. *The Vesting of "Good Time"*

Provisions of S. 1437 would make the computation of "good time" readily understandable to the prisoner and correctional authorities alike. No good time allowance would be available for that rare prisoner who is subject to parole release; parole itself in such cases would be seen as the necessary incentive for acceptable prisoner behavior. In addition, the bill would eliminate the current practice of differentially computing good time on the basis of the length of a prison term. Section 3824(b) would provide a uniform maximum rate of three days a

propriety of the sentence could not be challenged. Instead, the appellant would have to assert error in the *application* of the guidelines. This exception is a major salutary supplement to the provisions of § 3725. By allowing a party to assert the "incorrect application" of a guideline, S. 1437 substantially increases the likelihood of the right to an appeal of any inappropriate sentence.

[109] § 3725(d). S. 1437 originally provided a standard of "clearly unreasonable." This was changed to reflect concerns that the standard was too strict and would foreclose legitimate appeals.

[110] § 3725(e)(2).

[111] § 3725(e)(1)(A).

[112] This assumes that there are no due process violations inherent in a reviewing court increasing a trial court's sentence of imprisonment.

[113] § 3725(e)(1)(B).

[114] § 3725(e)(1)(A).

month for all time in prison beyond the first year. This time would automatically vest at the end of each month of satisfactory behavior, and only that single month's credit toward early release could be affected by a violation of prison rules. This rate would be sufficiently rapid to provide an incentive for good behavior, yet not so high that it would perpetuate the uncertainties inherent in our present system.

G. *Phasing out Parole Release*

As Norval Morris has illustrated, parole boards are not able to predict with any degree of certainty which prisoners are likely to be "good" release risks and which are not.[115] Indeed, such determination seems especially suspect when made on the basis of how a prisoner responds to prison rehabilitative programs.

It has been suggested that parole be retained in a modified form until the new sentencing system is functioning, in order to correct any sentencing disparity which might be caused by the judiciary's incorrect application of the guidelines.[116] But, as already indicated, this proposal has inherent flaws. First, parole is by definition limited to those cases where a prisoner is sentenced to imprisonment, whereas the guidelines would apply also to non-detention sanctions. Thus, disparity of the "in-out" variety[117] would lay beyond the jurisdictional mandate of a parole board. Also, there is an unwarranted assumption underlying this theory that the responsibility for sentencing, even when the indeterminate sentence no longer exists, should be shared between the judiciary and another agency. The wiser view, however, is that sentencing should lie solely within the province of the judiciary, since vesting the power to review judicially imposed sentences in a parole board would seriously undermine the operation of the new sentencing guidelines, improperly intrude into the judiciary's realm, and perpetuate the pre-eminence of the discredited rehabilitative model.

S. 1437 would not abandon parole release, but would limit it to those rare cases in which a sentence is wholly or partially indeterminate.[118] Of course, parole would be retained as presently administered for all prisoners serving sentence under existing law.[119]

[115] *See, e.g.*, MORRIS, *supra* note 4.

[116] Perhaps the most persuasive arguments in this regard have been made by Andrew von Hirsch. *Hearings on S. 1437, supra* note 7, at 8983-84 (von Hirsch statement).

[117] *See* note 39 *supra*, and accompanying text.

[118] Title 28, 994(j) and § 2003(a)(2). *See also* Title 28, 991(b)(1)(C) which reflects the fact that sentencing policies and practices would be sufficiently flexible to allow continuing efforts in the area of rehabilitation.

[119] Perhaps the most concrete evidence can be found in the Senate Report. S. REP. No. 95-605, part 1, 95th Cong., 1st Sess. 1176 (1977). *Cf.* Title IV, 134 (the bill itself does not make a specific reference to this fact, but merely cites a prospective date of application).

VI. ANSWERING THE CRITICS

In an undertaking of this magnitude one expects criticism. During the Senate's consideration of S. 1437, various amendments were adopted in an effort to deal with many of the criticisms raised over certain provisions of the new sentencing procedure.[120]

Perhaps the most prevalent criticism concerns the fear that any move toward determinate sentencing would result in substantially longer terms of imprisonment than are imposed today.[121] Complementing this argument is the view that available prison capacity will be unable to meet the flood of new prisoners likely to enter our prison system.[122]

A comprehensive sentencing study, recently completed by the Library of Congress, indicates that such fears are not well founded in the context of the S. 1437 approach.[123] The study concludes that the maximum sentences which could be imposed under S. 1437 would be reduced by over thirty percent.[124] In addition, the bill requires that the Commission, in promulgating its guidelines, take into account not only the *average sentence currently being imposed but the average length of time currently being served in prisons where imprisonment terms are imposed.*[125] This reflects a recognition that, with the phasing out of parole release, there is a danger that the sentencing judges would nevertheless continue to impose sentences as they do now. As the Committee report expressly points out:

> With the almost total elimination of early parole release it is absolutely essential that the Commission not be unduly influenced by the lengths of sentences of imprisonment imposed today. A federal judge who today believes that an offender should serve four years in prison may impose a sentence in the vicinity of ten years, knowing that the offender is eligible for parole release after one third of the sentence. The vital distinction today—which the Commission must recognize—is be-

[120] *See, e.g.*, 124 CONG. REC. 5404-06 (daily ed. Jan. 24. 1978) (decreasing maximum sentences); 124 CONG. REC. 5202 (daily ed. Jan. 20, 1978) (guidelines range alteration); 124 CONG. REC. 5285-89 (daily ed. Jan. 23, 1978) (determinate prison terms); and 124 CONG. REC. 5543 (daily ed. Jan. 28, 1978) (increased sentences for certain offenses).

[121] *Hearings on S. 1437, supra* note 7, at 9084 (testimony of Nancy Crisman).

[122] *Id.* at 9080-81.

[123] LIBRARY OF CONGRESS CONGRESSIONAL RESEARCH SERVICE, SENTENCING PROVISIONS OF MAJOR CRIMINAL CODE REFORM LEGISLATION OF THE 95TH CONGRESS; POSSIBLE IMPACT ON SENTENCE LENGTH AND TIME SERVED IN PRISON (November 17, 1978) [hereinafter LIBRARY OF CONGRESS].

[124] *Id.* at 6. The implication, of course, is that lower maximum penalties would lead to lower *actual* penalties. *But cf.* notes 62-64 *supra*, and accompanying text (judges do not often impose maximum penalties).

[125] Title 28, 994(1).

> tween time sentenced and actual time served. This latter category must guide the Commission in its deliberations.[126]

The bill also directs the Commission, in promulgating its guidelines, to take into account:

> the nature and capacity of the penal, correctional, and other facilities and services available in order not only to assure that the most appropriate facilities and services are utilized to fulfill the applicable purposes *but also to assure that the available capacities of such facilities and services will not be exceeded.*[127]

Assuming that the Sentencing Commission would adhere to the statutory mandate to promulgate sentencing guidelines closely approximating the current amount of time served in prison, the Library of Congress study estimates that the range of average imposed sentences under S. 1437 would be from 31 to 39 percent of average imposed sentences under current law resulting in a 6.3 to 27.7 percent decrease in prison man years under the bill.[128]

[126] S. REP. No. 95-605, part 1, 95th Cong., 1st Sess. 1169 (1977). The actual time being served today in the federal prison system is, however, only the starting point for the Commission's consideration. Certain sentences currently imposed are, indeed, too low, especially in the white-collar criminal area and in cases involving government corruption. S. 1437 would have the Commission "consider" these terms without being required to follow them.

[127] Title 28, 994(g). (emphasis added). Among other features of the bill that statutorily encourage or mandate ameliorative sentencing practices are the new Title 28, 994(i) (directing the Sentencing Commission to insure that the guidelines reflect the appropriateness of a sentence other than imprisonment for a first offender who has not been convicted of a crime of violence or otherwise serious offense); Title 28, 994(j) (general inappropriateness of imprisonment for rehabilitative purposes); proposed Title 28, 994(p) and proposed Title 18, 2304 (limits on consecutive sentences). Also, the drafting technique used in the bill of separating the criminal conduct from the jurisdictional elements of the offense in many cases drastically will reduce exposure to multiple count indictments as compared to current law. For example, every mailing in a mail fraud scheme under current law is a separate indictable offense whereas a mail fraud indictment under S. 1437 would involve only one offense (scheme to defraud). A similar reduction occurs where the same conduct under current law is covered by several federal interests, *e.g.*, theft of government property from a post office located on an army base.

[128] LIBRARY OF CONGRESS, *supra* note 123, at 3-5, 7-8, 21-26, 38. The comparison is based upon a 20 percent representative sample of all cases involving a sentence of imprisonment in 1974. *Id.* at 4-5, 7-10. The study also includes other comparisons based on the *totally unwarranted assumption* that the Sentencing Commission and the trial and appellate judges will *completely ignore* the statutory mandates and continue current indeterminate sentencing practices. *Id.* at 13-20, 30-31.

Whatever the reduction in prison years may be under S. 1437, however, it must be balanced against the fact that, at long last, certainty of punishment will become a reality. The sentence imposed will be the sentence served. This trend towards certainty is likely to be a more effective deterrent than general statistical considerations of "prison man years." *See, e.g.*, E. Kennedy, *Introduction to a Symposium on Criminal Code Reform*, 47 GEO. WASH. L. REV. ____ (1979).

It is, of course, possible that the Commission would ignore its statutory mandate. But whatever guidelines the Commission promulgated, Congress would have an opportunity to reject them.[129] Congress has delegated authority to the Commission to promulgate the guidelines but has reserved to itself the ultimate power either to accept or to reject the finished project.

Some have questioned the idea of a Commision promulgating the guidelines rather than Congress.[130] These critics view the Commission idea as an abdication of Congressional responsibility. I view the Commission as a major asset of the bill, however. Congress historically has delegated authority to a host of administrative agencies;[131] it lacks both the expertise and manageable size necessary to establish the numerous sentencing ranges required. Nor is it likely that Congress could avoid politicizing the entire sentencing issue; with vocal debate centering around harsher versus more lenient punishment, the ultimate issue of reform might very well become lost. If previous discussions of subjects such as capital punishment and gun control offer any indication of how Congress would deal with the sensitive issue of sentencing reform, the Commission approach is much to be preferred.

Other critics lament the fact that the bill lacks a general presumption in favor of alternatives to imprisonment.[132] They point out that our correctional system has largely failed and that our archaic and decrepit prisons hardly hold out much hope for turning the criminal away from the life of crime.

I disagree not with the merits of this argument, but with the proposed solution. Congress has engaged in a decade of debate over whether there should be a general presumption for or against imprisonment.[133] S. 1437 facilitates an end-run around this ultimately fruitless debate by establishing a completely new sentencing system in which general presumptions are absent. Instead, specific guidelines guarantee more indi-

[129] Title 28, 994(o). This point is often overlooked in any discussion of the guidelines. It is true that Congress would delegate the authority to promulgate the guidelines to a Commission; but, as with the Federal Rules of Criminal Procedure and the Federal Rules of Evidence, Congress would have an opportunity to reject the guidelines by passing legislation within "180 days after the Commission reports them." Title 28, 994(n).

[130] *Hearings on S. 1437, supra* note 7, at 9087 (testimony of Nancy Crisman).

[131] *See, e.g.*, 15 U.S.C. § 41 (1976) (establishing the Federal Trade Commission); 15 U.S.C. § 78(d) (1976) (creating the Securities and Exchange Commission); 47 U.S.C. § 151 (1976) (establishing the Federal Communications Commission).

[132] *Hearings on S. 1437, supra* note 7, at 8968 (testimony of Morris Lasker); 9080-81 (testimony of Nancy Crisman).

[133] *Reform of the Federal Criminal Laws, Hearings Before the Subcomm. on Criminal Laws and Procedures and the Comm. on the Judiciary*, 91st Cong., 1st Sess. 1 (1969).

vidual consideration in each case. There are two exceptions to this rule: the bill requires the Commission to promulgate guidelines which provide a substantial term of imprisonment for an offender who is, in effect, a professional or career criminal;[134] and it mandates that the Commission's guidelines reflect alternatives to imprisonment for a first offender who has not committed a violent or otherwise serious offense.[135]

Another frequent criticism leveled at S. 1437 is that it should not provide the government with the power to appeal a sentence.[136] I disagree with the critics. If these reforms are to be effective in reducing unwarranted sentencing disparity, the government must be able to appeal those sentences which fall below the applicable guideline. If the defendant alone could appeal, there would be no effective opportunity for the reviewing courts to correct injustice arising from a sentence that is patently too lenient. Appellate review for the defendant only would not be an effective weapon to fight disparity, since the appellate court could reduce excessive sentences but not raise inadequate ones. The effort to achieve greater uniformity, therefore, might unintentionally result in a gradual scaling down of sentences to the level of the more lenient ones.[137]

Finally, the most frequent criticism of the entire reform package is that by failing to deal with plea bargaining and the power of the prosecutor to decide unilaterally what the criminal charge will be, the discretion of the prosecutor is unchallenged which shifts authority away from the court and parole board.[138] I do not question the need to establish some form of guideline system for prosecutors as well. The best initial focus of reform, however, is where the role of the state is most visible: at the judicial sentencing stage. In addition, criticism of S. 1437 because it fails to confront unfettered discretion at every level of the criminal justice system, is, in effect, an excuse for deferring specific action in areas which can be reformed now. A sentencing guidelines system, in place and functioning properly, would become a foundation upon which to build similar reforms in the area of prosecutorial decision-making.

[134] Title 28, 994(h).

[135] Title 28, 994(i).

[136] *Hearings on S. 1437, supra* note 7, at 9086 (testimony of Nancy Crisman).

[137] It is the white collar offender and those convicted of corruption or violating the public trust who often receive an unduly lenient sentence which should be made subject to appellate review. *See, e.g.*, United States v. Denson, No. 78-2508 (5th Cir. Feb. 5, 1978).

[138] *Hearings on S. 1437, supra* note 7, at 9432 (statement submitted by Albert W. Alschuler).

VII. CONCLUSION

The shameful disparity in criminal sentences is a major flaw in the existing criminal justice system that is ripe for reform. Correcting our arbitrary and capricious method of sentencing will not become a panacea for all of the problems which confront the administration of criminal justice at federal, state, and local levels, however. The system strains under the weight of overloaded courts,[139] archaic prisons, and outdated and confusing criminal codes.

S. 1437 meets the critical challenge of sentencing reform. The bill's sweeping provisions are designed to curb judicial sentencing discretion, eliminate indeterminate sentences, phase out parole release, and make criminal sentencing fairer and more certain. The current effort constitutes the most important attempt in two hundred years to reform and streamline the manner in which we sentence convicted offenders. I believe the bill represents a major breakthrough in this area. Of course, it can still be improved and I look forward with anticipation to the debate in the ninety-sixth Congress because I am convinced that even more significant improvements can be made.

Our agenda is a large one in the area of sentencing reform. An enormous challenge confronts us and a new dialogue is in order. We must no longer think in terms of simplistic solutions and harsh reactions. We must replace our past biases with more practical and workable alternatives. S. 1437 will elevate the quality of debate surrounding the central issue of sentencing in our society, and set new standards by which to judge future efforts. It must be studied and debated by all those interested in a fair system of criminal justice.

[139] The volume of cases handled by the New York City criminal justice system alone is staggering: 230,000 arrests, 16,000 indictments and 1600 trials in a year. Along the way are multiple appearances, adjournments, delays and heavy costs. SPEC. CONG. COMM. ON CRIMINAL JUSTICE, BAR ASSOCIATION OF THE CITY OF NEW YORK, DISCUSSION PAPER NO. 5, p.1 (January 1979).

[From the New York Times, Friday, Sept. 21, 1979]

TO RID U.S. COURTS OF THE "SLOVIK SYNDROME"

To the Editor: A Times editorial of Sept. 11 concludes that the World War II execution of Private Eddie Slovik was not "unjust." Many have thought it was unjust to carry out the death sentence of the military court-martial, even for the serious crime of desertion, since during the war some 40,000 others also deserted (not just AWOL), yet Slovik was the only American serviceman executed, in fact the only American executed for desertion since 1864.

But there is a lesser-known aspect of the case that also gives serious cause for concern and continues to have relevance to all current sentencing. As the presiding officer of the nine-member general court-martial later told William Bradford Huie, no member of the court that imposed the death penalty believed that Slovik should be shot. They expected the sentence to be reduced at one of the many stages of appeal. Thus the fearful risk remains that some of the sentencers voted for death only because of a misplaced confidence in subsequent mitigation.

This "Slovik syndrome"—the imposition of a sentence with the expectation that it will not be fully carried out—contributes to the unfairness of many sentences in American civilian courts and helps explain why American sentences are longer than those of most countries. Judges impose harsh sentences, expecting parole authorities to release the prisoners after serving only a portion of their sentences. In the Federal system a prisoner is usually eligible for parole after serving one-third of his sentence, prompting some judges to impose a sentence three times longer than they intend the prisoner to be confined. When, as often happens, parole is not granted at the one-third point, the prisoner serves more time than the sentencing judge intended.

The criminal-code revision now pending in Congress would end the authority of the U.S. Parole Commission to cut short the time a prisoner serves in custody and thereby give Federal judges the authority, under appropriate guidelines, to determine the amount of time the prisoner will actually serve. Placing real sentencing authority in the courts should produce more realistic sentences and avoid the risks of incorrect predictions about parole. This will eliminate the "Slovik syndrome" from Federal sentencing and avoid many unjust sentences.

Of course, the injustice of Private Slovik's fate remains for all to ponder.

(Judge) JON O. NEWMAN,
U.S. Court of Appeals, Second Circuit,
Hartford, Sept. 13, 1979.

No.

In the Supreme Court of the United States

OCTOBER TERM, 1979

UNITED STATES OF AMERICA, PETITIONER

v.

EUGENE DIFRANCESCO

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1979

No.

UNITED STATES OF AMERICA, PETITIONER

v.

EUGENE DIFRANCESCO

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of the United States, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINION BELOW

The opinion of the court of appeals (App. A, *infra*, 1a-45a) is not yet reported.

JURISDICTION

The judgment of the court of appeals (App. B, *infra*, 46a-47a) was entered on August 6, 1979. On

August 28, 1979, Mr. Justice Marshall extended the time for filing a petition for a writ of certiorari to and including October 5, 1979 (App. C, *infra*, 48a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the provision of 18 U.S.C. 3576 that permits the United States to seek appellate review of a sentence imposed by a district court under 18 U.S.C. 3575 violates the Double Jeopardy Clause.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fifth Amendment to the United States Constitution provides in pertinent part:

> * * * nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb * * *.

2. 18 U.S.C. 3575(b) provides in pertinent part:

> Upon any plea of guilty or nolo contendere or verdict or finding of guilty of the defendant of such felony, a hearing shall be held before sentence is imposed, by the court sitting without a jury. * * * If it appears by a preponderance of the information, including information submitted during the trial of such felony and the sentencing hearing and so much of the presentence report as the court relies upon, that the defendant is a dangerous special offender, the court

> shall sentence the defendant to imprisonment for an appropriate term not to exceed twenty-five years and not disproportionate in severity to the maximum term otherwise authorized by law for such felony. Otherwise it shall sentence the defendant in accordance with the law prescribing penalties for such felony. The court shall place in the record its findings, including an identification of the information relied upon in making such findings, and its reasons for the sentence imposed.

3. 18 U.S.C. 3576 provides:

> With respect to the imposition, correction, or reduction of a sentence after proceedings under section 3575 of this chapter, a review of the sentence on the record of the sentencing court may be taken by the defendant or the United States to a court of appeals. Any review of the sentence taken by the United States shall be taken at least five days before expiration of the time for taking a review of the sentence or appeal of the conviction by the defendant and shall be diligently prosecuted. The sentencing court may, with or without motion and notice, extend the time for taking a review of the sentence for a period not to exceed thirty days from the expiration of the time otherwise prescribed by law. The court shall not extend the time for taking a review of the sentence by the United States after the time has expired. A court extending the time for taking a review of the sentence by the United States shall extend the time for taking a review of the sentence or appeal of the conviction by the

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defendant for the same period. The taking of a review of the sentence by the United States shall be deemed the taking of a review of the sentence and an appeal of the conviction by the defendant. Review of the sentence shall include review of whether the procedure employed was lawful, the findings made were clearly erroneous, or the sentencing court's discretion was abused. The court of appeals on review of the sentence may, after considering the record, including the entire presentence report, information submitted during the trial of such felony and the sentencing hearing, and the findings and reasons of the sentencing court, affirm the sentence, impose or direct the imposition of any sentence which the sentencing court could originally have imposed, or remand for further sentencing proceedings and imposition of sentence, except that a sentence may be made more severe only on review of the sentence taken by the United States and after hearing. Failure of the United States to take a review of the imposition of the sentence shall, upon review taken by the United States of the correction or reduction of the sentence, foreclose imposition of a sentence more severe than that previously imposed. Any withdrawal or dismissal of review of the sentence taken by the United States shall foreclose imposition of a sentence more severe than that reviewed but shall not otherwise foreclose the review of the sentence or the appeal of the conviction. The court of appeals shall state in writing the reasons for its disposition of the review of the sentence. Any review of the sentence taken by the

United States may be dismissed on a showing of abuse of the right of the United States to take such review.

STATEMENT

Following a jury trial in the United States District Court for the Western District of New York, respondent was convicted of conducting the affairs of an enterprise through a pattern of racketeering activities and of conspiring to commit that offense, in violation of 18 U.S.C. 1962(c) and (d). Following a second jury trial in the same district, respondent was convicted of damaging federal property, in violation of 18 U.S.C. 1361, unlawfully storing explosive materials, in violation of 18 U.S.C. 842(j), and conspiring to commit these offenses, in violation of 18 U.S.C. 371. He was first sentenced to a total of nine years' imprisonment on the convictions arising from the second trial and was then sentenced to two ten-year terms of imprisonment on the racketeering counts, to be served concurrently with each other and with the sentence imposed after the second trial.[1] Respondent appealed from both convictions, and the government appealed under 18 U.S.C. 3576 from the sentence at the racketeering trial. The court of ap-

[1] The court sentenced respondent to concurrent terms of eight years' imprisonment on the bombing charge and five years' imprisonment on the conspiracy charge, to be followed by a one-year term of imprisonment on the charge of unlawful storage of dynamite (C.A. Resp. App. 9). ("C.A. Resp. App." refers to the appendix filed by the respondent in the court of appeals.)

peals affirmed the convictions and dismissed the government's appeal (App. A, *infra*, 1a-45a).

Prior to respondent's first trial, the government filed a notice with the district court, pursuant to 18 U.S.C. 3575(a), alleging that respondent was a "dangerous special offender," as defined in 18 U.S.C. 3575(e)(3) and (f). The notice indicated the government's intention to seek imposition of an enhanced sentence under 18 U.S.C. 3575(b) in the event respondent was convicted (App. A, *infra*, 20a). On October 31, 1977, respondent was found guilty on the racketeering charges. The proof at trial showed that he had operated an "arson for hire" ring, the activities of which included multiple acts of arson and the use of the mails to defraud insurance companies of approximately $480,000 (*id.* at 3a).

Between the time of respondent's trial on the racketeering charges and the commencement of the special sentencing hearing required by 18 U.S.C. 3575(b), respondent was tried and convicted in the second proceeding against him. In that case, the evidence showed that he had bombed the Federal Building in Rochester, New York, with dynamite that he had unlawfully stored (App. A, *infra*, 2a, 16a n.9).

Subsequently, on March 17, 1978, the special sentencing hearing was held, and on April 21, 1978, the district court ruled that respondent was a dangerous special offender.[2] Nevertheless, on April 28, 1978,

[2] Among its findings of fact, the court found that respondent's "criminal history, based upon proven facts, reveals a pattern of habitual and knowing criminal conduct of the most violent and dangerous nature against the lives and property of the citizens of this community. It further shows the [respondent's] complete and utter disregard for the public safety. The [respondent], by virtue of his own criminal record, has shown himself to be a hardened habitual criminal from whom the public must be protected for as long a period as possible. Only in that way can the public be protected from further violent and dangerous criminal conduct by the [respondent]" (C.A. Pet. App. A. 59). ("C.A. Pet. App." refers to the appendix filed by petitioner in the court of appeals.)

the court sentenced respondent to concurrent terms of 10 years' imprisonment on the racketeering charges, to be served concurrently with the nine-year sentence that had already been imposed on March 17, 1978, in connection with his second trial (App. A, *infra*, 21a).

Under the authority granted by 18 U.S.C. 3576, the government appealed from the dangerous special offender sentence, claiming that the district court abused its discretion in imposing a sentence that would lead, in effect, to additional imprisonment for only one year despite the court's findings after the dangerous special offender hearing (App. A, *infra*, 21a-22a; see note 2, *supra*). The court of appeals dismissed this appeal on the ground that 18 U.S.C. 3576 violates the Double Jeopardy Clause. The court held that the constitutionality of the statute was a threshold jurisdictional issue that had to be faced before the merits of the government's appeal could be reached (App. A, *infra*, 23a).[3] Finding that it

[3] The concurring opinion of Judge Haight suggests that the government's appeal should have been dismissed because 18 U.S.C. 3575 and 3576 were inapplicable to respondent (App. A, *infra*, 44a-45a). The majority of the court disagreed,

was "obliged to construe strictly the procedure that Congress has authorized" (App. A, *infra*, 28a), the court noted that the sentence imposed by the district court was final rather than "tentative." [4] Relying primarily on *Kepner* v. *United States*, 195 U.S. 100 (1904) (App. A, *infra*, 29a-30a) and a number of statements in dicta by this Court and the courts of appeals (*id.* at 33a-36a), the court concluded that "the double jeopardy clause bars an increase in the sentence imposed by the district court" (*id.* at 36a) and accordingly that the government could not challenge a final sentence on appeal.

REASONS FOR GRANTING THE PETITION

1. In dismissing the government's appeal, the court of appeals has declared unconstitutional on its

finding that Section 3575 could properly have been applied to respondent (App. A, *infra*, 23a-24a n.13). In any event, that issue is not presented here. The court of appeals held that it lacked jurisdiction to entertain the government's appeal because of the unconstitutionality of Section 3576. Until jurisdiction is established, a court cannot consider the merits of the issues presented to it for resolution. See *Alabama Public Service Comm'n* v. *Southern Ry.*, 341 U.S. 341, 347 (1951).

[4] The legislative history indicates that Congress clearly intended that the sentence would not be final until the appeal had been exhausted. The original bill introduced in the Senate explicitly provided that the district court sentence was "not final." S.30, 91st Cong., 1st Sess., § 3577 (1969). *Measures Relating to Organized Crime: Hearings Before the Subcomm. on Criminal Laws and Procedures of the S. Comm. on the Judiciary*, 91st Cong., 1st Sess. 28-29 (1969). It was felt, however, that such a label was superfluous and it was omitted from the statute. S. Rep. No. 91-617, 91st Cong., 1st Sess. 98 (1969).

face an Act of Congress that was carefully drafted with constitutional considerations in mind. See S. Rep. No. 91-617, 91st Cong., 1st Sess. 93-98 (1969). The appellate review of sentence provision in 18 U.S.C. 3576 is part of the Dangerous Special Offender Sentencing Statutes, 18 U.S.C. 3575-3578, which were enacted as Title X of the Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 948. Section 3576 was, in part, a response to the recommendation of the President's Commission on Law Enforcement and Administration of Justice that "[t]here must be some kind of supervision over those trial judges who * * * tend to mete out light sentences in cases involving organized crime management personnel." Report of the President's Commission on Law Enforcement and the Administration of Justice: *The Challenge of Crime in a Free Society* 203 (1967). The court of appeals' decision has nullified a carefully considered legislative effort at such supervision.

Moreover, the court's decision has implications that reach far beyond the specific context of Section 3576. First, the ruling almost certainly invalidates the quite similar statute permitting the government to seek appellate review of sentences of special drug offenders, 21 U.S.C. 849(h). Perhaps more important, it also would appear to cast substantial doubt on the validity of a key section of the revised criminal code that is now pending in Congress. This section permits appellate review, at the government's behest,

of sentences that are not within specified guidelines.[5] The purpose of the provision is to reduce unwarranted disparities in sentencing and to promote equal treatment of similarly situated offenders. See the National Commission on Reform of Federal Criminal Laws, *Final Report* 317 (1971). If disparities in sentencing cannot be eliminated by other means, legislatures may be induced to limit the sentencing flexibility of trial judges, contrary to the "prevalent modern philosophy of penology that the punishment should fit the offender and not merely the crime." *Williams* v. *New York*, 337 U.E. 241, 247 (1949). See *United States* v. *Grayson*, 438 U.S. 41, 45-49 (1978). The

[5] S. 1722, 96th Cong., 1st Sess. § 3725(b) (1979) provides:

(b) APPEAL BY THE GOVERNMENT.—The government may, with the approval of the Attorney General or his designee, file a notice of appeal in the district court for review of an otherwise final sentence imposed for a felony or a Class A misdemeanor if the sentence includes a lesser fine or term of imprisonment or term of supervised release than the minimum established in the guidelines, or includes a less limiting condition of probation or supervised release under section 2103(b)(6) or (b)(11) than the minimum established in the guidelines, that are issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1), and that are found by the sentencing court to be applicable to the case, unless—

(1) the sentence is equal to or greater than the sentence recommended or not opposed by the attorney for the government pursuant to a plea agreement under Rule 11(e)(1)(B) of the Federal Rules of Criminal Procedures; or

(2) the sentence is that provided in an accepted plea agreement pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure.

Double Jeopardy Clause need not be read to discourage these sentencing reforms.

2. The statutory scheme of 18 U.S.C. 3575 and 3576 does not offend any of the policies and protections that have historically been embodied in the Double Jeopardy Clause. The Court has noted that the Fifth Amendment guarantee against double jeopardy consists of three separate protections—against (1) a second prosecution for the same offense after acquittal, (2) a second prosecution for the same offense after conviction, and (3) multiple punishments for the same offense. *United States* v. *Wilson*, 420 U.S. 332, 343 (1975), quoting *North Carolina* v. *Pearce*, 395 U.S. 711, 717 (1969). None of these protections is threatened by the government appeal of a sentence.

It is well-established that "the primary purpose of the Double Jeopardy Clause was to prevent successive trials, and not Government appeals *per se*." *Sanabria* v. *United States*, 437 U.S. 54, 63 (1978). See also *United States* v. *Wilson*, *supra*. This is because enduring "the hazards of trial and possible conviction more than once for an alleged offense" subjects a defendant to "embarrassment, expense and ordeal" and increases the risk that an innocent person will be found guilty. *Green* v. *United States*, 355 U.S. 184, 187 (1957). More generally, as the court of appeals noted (App. A, *infra*, 31a-32a), the purpose of the prohibition is to prevent "[g]overnment oppression" of criminal defendants. *United States* v. *Scott*, 437 U.S. 82, 99 (1978). It "serves principally as a restraint on

courts and prosecutors" once the legislature has enacted a scheme of punishment. *Brown* v. *Ohio*, 432 U.S. 161, 165 (1977). 18 U.S.C. 3576, a legislative attempt to supervise sentencing, subjects a defendant to no further proceedings other than an appellate hearing [6] and cannot be characterized as "government oppression."

Nor is the bar against multiple punishment implicated in this case. If on review under Section 3576 a defendant is sentenced by the court of appeals to a term of imprisonment greater than that originally imposed by the district court, he is receiving a single punishment for his offense pursuant to a legislatively prescribed procedure. The prohibition against multiple punishment can be defined only by reference to the punishment authorized by the legislature. Thus, in *Ex parte Lange*, 85 U.S. (18 Wall.) 163 (1873), the Court held that the Double Jeopardy Clause was violated because, after the defendant had already paid a fine, he was sentenced to imprisonment for a crime whose statutory penalty was a fine *or* imprisonment. See also *In re Bradley*, 318 U.S. 50, 52 (1943). The Double Jeopardy Clause assures only "that the court does not exceed its legislative authorization by imposing multiple punishments for the same offense." *Brown* v. *Ohio*, *supra*, 432 U.S. at 165.

Indeed, this Court has recently ruled that a legislatively authorized two-stage trial and sentencing

[6] The hearing is "on the record of the sentencing court" and thus does not permit the prosecution a "second crack" at supplying evidence. See *Swisher* v. *Brady*, 438 U.S. 204, 215-216 (1978); *Burks* v. *United States*, 437 U.S. 1, 11 (1978).

scheme analogous to Section 3576 does not violate the Double Jeopardy Clause. In *Swisher* v. *Brady*, 438 U.S. 204 (1978), the Court upheld a Maryland procedure under which a master may hear juvenile cases. The master submits findings, a recommended sentence and a proposed order to the judge, who may adopt them without further proceedings. Either the juvenile or the state may file exceptions to the master's findings, however, in which case the judge holds a hearing on the record on the exceptions and may reach a finding on guilt or impose a sentence different than that recommended by the master. The Court rejected the contention that this potential for conviction or sentence increase following a government appeal violates the Double Jeopardy Clause.[7] Rather, the Court held that the legislature has established a system "in which an accused juvenile is subjected to a single proceeding which begins with a master's hearing and culminates with an adjudication by a judge." 438 U.S. at 215. Similarly, the dangerous special offender statutes set up a system whereby the sentence imposed by the district court is not final until the appellate procedures provided in Section 3576 are either exhausted or not invoked within the restrictive time limits provided.[8]

[7] See also *Ludwig* v. *Massachusetts*, 427 U.S. 618 (1976), and *Colten* v. *Kentucky*, 407 U.S. 104 (1972) (imposition of a higher sentence at the second trial in a two-tier court system does not violate the Double Jeopardy Clause).

[8] Because, under 18 U.S.C. 3575 and 3576, the defendant is on notice from the outset that his sentence is subject to appellate review at the insistence of the government, the re-

3. In concluding that 18 U.S.C. 3576 is unconstitutional, the court of appeals relied primarily on *Kepner* v. *United States*, 195 U.S. 100 (1904).[9] In *Kepner*, the Court held that the Double Jeopardy Clause prohibited the government from appealing a judgment of acquittal. The court of appeals reasoned that a convicted defendant whose sentence is appealed by the government is no less placed in double jeopardy than one whose acquittal is appealed, because in either case the government "seeks a more favorable result in another tribunal" (App. A, *infra*, 30a). This simple equation of the finality of a sentence with that of an acquittal is at odds with the decisions of this Court.

In *Bozza* v. *United States*, 330 U.S. 160 (1947), for example, the district court imposed a sentence below the mandatory minimum required by statute.

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view procedure causes none of the emotional distress often associated with a second trial following a mistrial granted over the defendant's objection. See, *e.g.*, *Crist* v. *Bretz*, 437 U.S. 28, 38 (1978).

[9] The court of appeals also cited several statements by this Court in support of its position, although it acknowledged that they were dicta (App. A, *infra*, 33a-35a). In *United States* v. *Benz*, 282 U.S. 304 (1931), the Court held that a district court had the power to *reduce* a defendant's sentence. The Court's comments concerning an increase in sentence explicitly relied on *Ex parte Lange*, *supra*, and referred to the imposition of a second punishment for the same offense. 282 U.S. at 307-308. In *Murphy* v. *Massachusetts*, 177 U.S. 155 (1900), the court *upheld* the imposition of a longer sentence where the first sentence was vacated. The court of appeals also cited to a footnote in the plurality opinion in *Reid* v. *Covert*, 354 U.S. 1, 37 n.68 (1957), a case where the Double Jeopardy Clause was not in issue.

Thereafter, the court recalled the defendant, explained its mistake, and imposed a more severe sentence as required by the mandatory statutory provision. This Court held that this increase in sentence "did not twice put [defendant] in jeopardy for the same offense," because it had no authority to impose the first sentence. 330 U.S. at 167. By contrast, in *Fong Foo* v. *United States*, 369 U.S. 141 (1962), the Court held that the Double Jeopardy Clause barred appellate review of the district court's acquittal of the defendants in the middle of the prosecution's case—an action that the district court similarly lacked authority to take. In addition, the Court has held that when a defendant is retried after having his conviction set aside, he may be sentenced to a longer term of imprisonment than he receives at his first trial. *North Carolina* v. *Pearce*, *supra*, 395 U.S. at 721. However, if at his first trial a defendant is charged with first degree murder but is convicted only of second degree murder, he cannot be charged again with first degree murder at a retrial following a reversal of his conviction on appeal. *Green* v. *United States*, *supra*. Thus, in two different contexts, the Court has indicated that there is a material difference for double jeopardy purposes between the fact-finding and sentencing processes and that, for the purpose of the finality required by the Double Jeopardy Clause, a retrial following acquittal is regarded differently from the imposition of a higher sentence at a second proceeding.

By the same token, there is no merit to the court of appeals' suggestion (App. A, *infra*, 38a n.25) that the government may not appeal a sentence because a defendant is entitled to protect the integrity of a final judgment in the trial court unless he takes some action to challenge it. In *United States* v. *Wilson*, 420 U.S. 332 (1975), the district court dismissed the indictment after the defendant had been found guilty by a jury. Although the defendant's trial had been completed, the Court held that he had no vested right to the resolution in his favor because a reversal on appeal would not have required a second trial, and hence the government was permitted to appeal the dismissal. *Id.* at 344.

In fact, as noted above, this Court has squarely held that the imposition of a greater sentence at a second proceeding, in the context of a retrial following the reversal of a conviction, does not violate the Double Jeopardy Clause. *North Carolina* v. *Pearce*, *supra*. The only difference between that case and the situation involved here is whether the second proceeding comes about because the defendant appeals his conviction or because the government appeals the sentence. There is no reason why this difference should affect the applicability of the Double Jeopardy Clause.

The court of appeals' attempts to distinguish *Pearce* are unconvincing. The court suggested initially that *Pearce* rests partly on the theory that society cannot permit a defendant to be granted immunity simply because a reversible error occurred at his first

trial (App. A, *infra*, 36a-38a). As the court itself conceded (*id.* at 37a), however, this reason cannot explain the result in *Pearce* because restriction of the sentence imposed on retrial to that imposed at the first trial would not confer any immunity on the defendant. The court therefore concluded that the critical factor in *Pearce* was that the second proceeding was a consequence of the defendant's "voluntary choice" (*id.* at 37a-38a).

The court of appeals' conclusion that the Double Jeopardy Clause protects a defendant against the later imposition of a greater sentence than that imposed at trial, but that that protection is lost if the defendant makes a "voluntary choice" and appeals his conviction, is untenable. A defendant's challenge to the validity of his indictment or the fairness of his trial certainly does not signal a willingness to place the length of his sentence in issue. Moreover, the reasoning of the court below has been expressly repudiated by this Court. In *Green* v. *United States*, *supra*, the Court rejected the notion that the defendant's appeal of his conviction waived his constitutional protection against retrial on a count on which the jury had refused to find him guilty. The Court stated that "[w]hen a man has been convicted * * * it is wholly fictional to say that he 'chooses' to forego his constitutional defense of former jeopardy * * * in order to secure a reversal of an erroneous conviction * * *. In short, he has no meaningful choice." 355 U.S. at 191-192. As in *Green*, the defendant in *Pearce* had no meaningful choice other

than to appeal his conviction.[10] Thus, *Pearce* cannot be explained by invoking the defendant's decision to appeal; rather, that case simply holds that the Double Jeopardy Clause does not preclude an increase of sentence at a second proceeding that is contemplated by the legislature. Cf. *Burks* v. *United States*, 437 U.S. 1, 17-18 (1978).[11]

In sum, an Act of Congress that attempts to establish some supervision over sentencing in a manner that is neither oppressive nor vindictive has been invalidated based upon an erroneous interpretation of the Double Jeopardy Clause. This decision, which may have serious adverse effects on ongoing sentencing reform efforts, merits this Court's review.

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[10] *United States* v. *Scott*, *supra*, where the defendant made a strategic decision to terminate the trial before its completion, deals with a completely different situation than *Pearce*. In *Scott*, the defendant could have chosen to make his motion after the completion of the trial, thus avoiding the necessity for a retrial. 437 U.S. at 98-101.

[11] Of course, as *Pearce* explains (395 U.S. at 723-725), other constitutional provisions, such as the Due Process Clause, may protect a defendant against arbitrary or irrational sentence increases. In addition, 18 U.S.C. 3576 itself provides that a government appeal of sentence "may be dismissed on a showing of abuse of the right of the United States to take such review."

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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OCTOBER 1979

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Nos. 231, 908, 1094—August Term, 1978

(Argued April 20, 1979 Decided August 6, 1979)

Docket Nos. 78-1250, 78-1369, 78-1371

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

—*v.*—

EUGENE DI FRANCESCO, DEFENDANT-APPELLANT

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

—*v.*—

EUGENE DI FRANCESCO, DEFENDANT-APPELLANT

Before:

SMITH and MESKILL, *Circuit Judges*, and
HAIGHT,* *District Judge*

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* Honorable Charles S. Haight, Jr., United States District Judge for the Southern District of New York, sitting by designation.

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SMITH, *Circuit Judge*:

These are appeals by a defendant from judgments of conviction entered after two separate jury trials in the United States District Court for the Western District of New York, and by the government from a sentence imposed under the "dangerous special offender" provisions of 18 U.S.C. § 3575. In the first trial, Harold P. Burke, *Judge*, presiding, the appellant, Eugene DiFrancesco, was convicted of conspiring to participate in and conduct the affairs of an enterprise through a pattern of racketeering activity, which included multiple acts of arson and use of the mails to defraud insurance companies, in violation of 18 U.S.C. § 1962(c) and (d). In the second trial, George C. Pratt, *Judge*, presiding by designation, DiFrancesco was convicted on three counts which alleged that he willfully caused damage in excess of $100 to federal property, 18 U.S.C. § 1361, unlawfully stored explosive materials, 18 U.S.C. § 842(j), and conspired to commit these acts, 18 U.S.C. § 371. We affirm the convictions and dismiss the government's appeal.

On July 24, 1975, DiFrancesco, together with seven co-defendants, was indicted on charges arising out of a series of bombings that occurred in the Rochester area on Columbus Day in 1970. A second indictment, filed on April 7, 1976, named DiFrancesco and seven others, two of whom were also defendants in the bombing indictment, as defendants in two counts of racketeering involving an "arson-for-hire" ring operating in the Rochester area. Since this second indict-

ment was the first to come to trial, we shall begin by discussing DiFrancesco's appeal from the resulting conviction on the racketeering charges.

RACKETEERING

DiFrancesco and five of the seven co-defendants in the racketeering indictment were tried jointly, in September and October of 1977. Of the two remaining defendants, Joseph LaNovara pleaded guilty before trial and testified as a witness for the government, while Frank Valenti, the alleged leader of the conspiracy, was severed upon the government's motion because he was ill.

The government presented evidence by which it sought to prove that an arson-for-hire team, which operated as part of a larger organization engaged in illicit activities in the Rochester area, had been responsible for at least eight fires that occurred there between 1970 and 1973. The arson ring allegedly agreed with the property owners to destroy their buildings in return for a share of the insurance proceeds. The government charged that insurance companies had been defrauded of about $480,000 as a result of the eight fires. The jury acquitted four of the six defendants, but convicted DiFrancesco and Vincent Rallo on both counts. DiFrancesco's appeal alleges several errors in the district court.

The most substantial issue raised by DiFrancesco is whether certain statements made by government witnesses to the FBI should have been turned over to

the defendants under the rule of *Brady* v. *Maryland*, 373 U.S. 83 (1963). Shortly before this trial began, it was disclosed that allegations of wrongdoing had been lodged against some members of the Monroe County Sheriff's Office. These allegations arose in connection with the Sheriff's Office's investigation of a number of crimes in which the defendants in this case allegedly had been involved, including a murder for which DiFrancesco had been convicted in state court. The FBI, as part of a federal civil rights investigation of the Sheriff's Office's activities, conducted a number of interviews and compiled interview reports.[1] The subject matter of some of these interviews included alleged instances of perjury by witnesses in state court proceedings. Some of these witnesses were expected to be called by the United States to testify in the case against DiFrancesco and his co-defendants.

When this matter arose, Judge Burke granted a continuance for one week during which the government represented that it would seek to learn more about the allegations and would then "turn over all materials that is [sic] favorable to the defense that result from the investigation." The government reviewed approximately thirty to thirty-five FBI reports and determined that only one was *Brady* material. The government then submitted the reports

[1] This investigation resulted in the filing of an indictment in the Western District on April 12, 1979 against five members of the Monroe County Sheriff's Office. *United States* v. *Kennerson*, Cr. 79-65.

to the trial judge to allow him to decide whether he thought any of the remaining material fell within *Brady*. The judge picked out about fifteen other reports which he ruled were *Brady* material, but the government refused to turn over these additional reports to the defendants. It argued that exposure of the reports could endanger the ongoing civil rights investigation. Thus, the government stated that it was "willing to stand or fall on that decision [that the reports were not *Brady* material] made by itself." The court denied a motion that it order the government to turn over the reports. Instead, those reports which the court believed were *Brady* material were sealed as Court Exhibit A, and those which the court and government agreed were not within *Brady* were sealed as Court Exhibit B. At some later time, the government gave defense counsel the reports of interviews of LaNovara and of Angelo Monachino, an unindicted co-conspirator, who was to testify for the government. Both of these reports were part of Court Exhibit A, as was a third report which the government eventually turned over as Jencks Act material.

Our examination of the court exhibits convinces us that the reports included no *Brady* material. None of the reports exculpated DiFrancesco, nor did any demonstrate that the government's case included perjured testimony. Furthermore, nothing in the reports that the government refused to turn over constitued "material evidence that would impeach a Government witness whose 'reliability . . . may well [have been]

determinative of guilt or innocence.'" *Ostrer* v. *United States*, 577 F.2d 782, 785 (2d Cir. 1978), *cert. denied*, 99 S.Ct. 1018, 47 U.S.L.W. 3482 (January 15, 1979), *quoting Giglio* v. *United States*, 405 U.S. 150, 154 (1972), *quoting Napue* v. *Illinois*, 360 U.S. 264, 269 (1959). One report (Part A of Court Exhibit A) contains two comments attributed to Monachino. Neither of these comments, however, could have been used to impeach Monachino in any way that might have affected the outcome of the trial, which is the standard by which we measure the materiality of undisclosed information for which the defendant makes a specific request. *United States* v. *Agurs*, 427 U.S. 97, 104-06 (1976). *Ostrer*, *supra*, 577 F.2d at 786. In short, the FBI reports would have added nothing to the vigorous attacks which DiFrancesco and his co-defendants made upon the credibility of a number of the government's witnesses through use of the substantial public information relating to the investigation.

DiFrancesco also raised several arguments involving evidentiary questions and portions of the court's instructions to the jury. The first concerns the introduction into evidence of a state court indictment that charged DiFrancesco and others with an act of arson, a fire at Select Tire Company, that also constituted part of a specific act of racketeering alleged in the federal indictment. The government offered the indictment and had a portion of it read to the jury as part of its rebuttal case, for the stated purpose of making the jury aware of the final disposi-

tion of the state court case against one of the persons named in the state indictment.

It is difficult to perceive how the indictment was relevant for the purpose stated by the government. In fact, its relevance and materiality to any issue in the case was, at best, minimal. Counsel for the various defendants, including DiFrancesco, opened up the subject of the state court proceedings in their cross-examination of government witnesses. Introduction of the indictment, however, was not, as the government now contends, necessary to clarify the "meaning" of the outcome of the state trial.[2] But admission of the indictment, even if erroneous, did not prejudice DiFrancesco. The jury already knew, from the defendants' cross-examination of government witnesses, that the state grand jury had received testimony implicating DiFrancesco in the Select Tire fire, that some persons had been tried in state court in connection withthat fire, that testimony alleging DiFrancesco's participation had been offered at the state court trial, and that DiFrancesco had been named as a co-conspirator in yet another federal indictment alleging mail fraud arising from a separate act of arson. Under these circumstances, admission of the indictment, even if erroneous, was harmless.

[2] Only two of the defendants named in the state court indictment had been tried. The jury acquitted Joseph Nalore, one of DiFrancesco's co-defendants in this case, but was unable to agree on a verdict as to Lawrence Uchie. Uchie then entered an "*Alford* plea" of guilty, see *North Carolina* v. *Alford*, 400 U.S. 25 (1970), to the state charges, while at the same time maintaining his innocence.

DiFrancesco also disputes the admissibility of certain testimony by LaNovara and Monachino, who described the initiation ritual[3] followed by the organization of which the arson-for-hire ring was a part. Admission of this testimony was not erroneous. The evidence was probative of the existence of an "enterprise," the affairs of which were conducted through a pattern of racketeering activity, which was a matter on which the court correctly charged that the government had the burden of proof. The evidence was sufficiently probative to outweigh any possible prejudice.

DiFrancesco next contends that the testimony that LaNovara and Monachino were participants in the Federal Witness Protection Program, as authorized by the Organized Crime Control Act of 1970, P.L. No. 91-452, Title V, 84 Stat. 933, should not have been allowed. Since a defendant often will seek to impeach a participating witness by showing that he has received significant benefits while in the program, the government may desire to bring out the witness' participation during direct examination in order to avoid an inference that the government was attempting to hide the witness' possible bias. Although disclosure of such participation "must be handled delicately," *United States* v. *Partin*, 552 F.2d 621, 644-45 (5th Cir.), *cert. denied*, 434 U.S. 903 (1977), so

[3] The ritual, which included the recitation of an oath of loyalty to the organization, consisted of pricking one's trigger finger, absorbing the blood in a tissue and holding the tissue in one's hand while it burned.

as to minimize the possibility that the jury will infer that the defendant was the source of danger to the witness, such testimony is permissible so long as the prosecutor does not attempt to exploit it. No exploitation occurred here, and the defendants cross-examined the witnesses at length to develop the full extent of the benefits received by them. Thus there was no error in allowing the testimony. Nor was the court's instruction to the jury on this subject erroneous or insufficient.[4] The instruction did not suggest, as DiFrancesco argues, that the Attorney General was vouching for the credibility of the witnesses. Instead, it simply explained the purpose of the program and dispelled any implication that the benefits received

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[4] The court instructed the jury:

> You have heard numerous references during the course of this trial to the Federal Witness Protection Program. Federal law provides that the Attorney General of the United States is authorized to provide for the security of government witnesses, potential government witnesses and potential witnesses in legal proceedings against any person alleged to have participated in any organized crime activity.
>
> Federal law also provides that the Attorney General of the United States is authorized to provide for the health, safety and welfare of witnesses and persons intended to be called as government witnesses and the families of witnesses and persons intended to be called as government witnesses in legal proceedings instituted against any person alleged to have participated in an organized crime activity whenever in his judgment testimony from, or a willingness to testify by such a witness would place his life or person or the life or person of a member of his family or household in jeopardy.

by LaNovara and Monachino were bestowed improperly. No additional instruction was necessary. *Id.*

Lastly, DiFrancesco argues that the court removed an element of the crime from the jury's consideration by instructing that, if the jury believed the evidence that about $480,000 in claims was paid by insurance companies in New York and other states as a result of the arsons and mail fraud, then the enterprise did affect interstate commerce as required by 18 U.S.C. § 1962(c). This instruction was proper. The court left to the jury the question of fact, whether the claims had been paid as a result of arson engaged in by the defendants. The trial judge correctly determined, however, that if the defendants' alleged actions were proven, the effect of those actions on interstate commerce was a question of law. *Cf. United States* v. *Ricciardi*, 357 F.2d 91, 94 (2d Cir.), *cert. denied*, 384 U.S. 942 (1966) (whether activities constitute an "industry affecting commerce" under 29 U.S.C. § 186 is a question of law); *United States* v. *Varlack*, 225 F.2d 665, 670-72 (2d Cir. 1955) (judge instructed that, if jury believed testimony of government witnesses, defendant's acts affected commerce as defined in Hobbs Act, 18 U.S.C. § 1951).

The Columbus Day Bombings

DiFrancesco's attack on his conviction arising from the bombing and explosives charges focuses on the delay between his indictment and the commencement of trial. He contends that the indictment should have been dismissed because this delay violated the Speedy

Trial Act, 18 U.S.C. §§ 3161-74 ("the Act"), the Western District's Transitional Plan for Achieving the Prompt Disposition of Criminal Cases ("the Plan"), and the sixth amendment's guarantee of a speedy trial.

DiFrancesco was indicted on July 24, 1975 and arraigned on September 8, 1975. The relevant provisions of the Act, 18 U.S.C. §§ 3161(g) and 3163(b)(2), and of the Plan, § 5(a)(1), did not take effect until July 1, 1976. They require that trial of a defendant arraigned before the effective date shall commence within 180 days of that date. Both the Act and the Plan (§ 10(a)) provide, however, for the exclusion of certain periods of delay set forth in 18 U.S.C. § 3161(h) in computing the 180-day period. DiFrancesco contends that the non-excludable delay in this case amounted to 309 days. The government, which conceded in the district court that the 180-day period had expired, now argues that the non-excludable delay totaled either 283, 273, 177 or 145 days, or perhaps no time at all. We need not choose, however, from among these various calculations, because 18 U.S.C. § 3163(c) delays the effective date of the sanctions provided in § 3162 for violations of the Act until July 1, 1979, *United States* v. *New Buffalo Amusement Corp.*, No. 78-1317, slip op. 2745 at 2757-58 (2d Cir. May 22, 1979); *United States* v. *Carini*, 562 F.2d 144, 148 (2d Cir. 1977), and § 11(e) of the Plan provides that failure to comply with its provisions shall not require dismissal. *New Buffalo Amusement Corp.*, *supra*, slip op. at 2757 n. 13.

Although the district court retains discretionary power under Rule 48(b) of the Federal Rules of Criminal Procedure to dismiss an indictment because of excessive delay, *United States* v. *Lane*, 561 F.2d 1075, 1078 (2d Cir. 1977), DiFrancesco did not invoke that discretion and thus cannot complain of the court's failure to exercise it. *New Buffalo Amusement Corp.*, *supra*, slip op. at 2757 n. 13.

We turn therefore to DiFrancesco's claim that the pretrial delay violated his sixth amendment right to a speedy trial. We shall assume for this purpose that the delay exceeded that allowed under the Act and the Plan, since such a violation may be considered in assessing the merit of a constitutional speedy trial claim. *Id.* at 2758; *Carini*, *supra*, 562 F.2d at 148, 151-52. Nonetheless, we agree with the district judge's thorough and well-reasoned opinion in which he concluded that DiFrancesco's claim lacks merit. *United States* v. *DiFrancesco*, Cr. 75-165 (W.D.N.Y. April 3, 1978).

The controlling authority is of course *Barker* v. *Wingo*, 407 U.S. 514 (1972), in which the Court enunciated four factors to be considered in evaluating a claim of a denial of the right to a speedy trial. These factors are (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) the existence of prejudice to the defendant from the delay. *Id.* at 530. Other relevant circumstances also may be considered in conducting a "difficult and sensitive balancing process,"

id. at 533, "in which the conduct of both the prosecution and the defendant are weighed." *Id.* at 530.

The delay between indictment and trial in this case was about 30 months. The government concedes that this is sufficient to "trigger" a further investigation of the other factors. *See id.* at 530-31; *Carini, supra,* 562 F.2d at 148-49. The reasons for the delay were numerous, including trials of DiFrancesco on state charges and the federal racketeering charges, illness of his attorney and of Judge Burke, to whom the case originally was assigned, the participation of DiFrancesco's attorney in a trial on behalf of another client (during which time Judge Burke denied the government's request to remove the attorney from this case), and the pendency of motions by the defendants and the government. Although the government bears the responsibility for some of the delay, including that caused by "institutional factors" such as overcrowding of the district court's docket, *Barker* v. *Wingo, supra,* 407 U.S. at 531, there is no suggestion in the record of any deliberate attempt [by the government] to delay the trial in order to hamper the defense," *id.*, and it is apparent that DiFrancesco was responsible for a substantial portion of the delay. Moreover, the government repeatedly moved to set a trial date, a fact which distinguishes this case from *United States* v. *Vispi,* 545 F.2d 328, 334 (2d Cir. 1976). DiFrancesco, on the other hand, did not assert his speedy trial claim until the eve of trial.[5]

[5] Two of DiFrancesco's co-defendants, but not DiFrancesco himself, moved for dismissal of the indictment in March 1977, alleging a violation of the Speedy Trial Act. These motions of course do not evidence any assertion by DiFrancesco of *his* right to a speedy trial.

The final factor, prejudice to the defendant, also fails to support DiFrancesco's claim. He argues that the death of a potential witness, Samuel DiGaetano, caused substantial prejudice which can be attributed to the delay. DiGaetano, attorney for severed co-defendant Frank Valenti, allegedly would have testified, in direct contradiction of a government witness, that Valenti was in Pittsburgh on the day of and the day immediately preceding the bombings.[6]

We find no error in the district court's conclusion that the evidence presented to it failed to support the contention that DiGaetano would have given such testimony. Moreover, although DiGaetano's death apparently was caused by a heart condition from which he had suffered for a substantial period of time, DiFrancesco made no effort to preserve by deposition the testimony that purportedly would have been given. In addition, as the district court noted, DiFrancesco's motion and supporting materials contained no affidavit from Valenti concerning his whereabouts on October 11 and 12. Although Valenti was too ill to undergo trial at the same time as his co-defendants, there is no indication that his illness prevented him from asserting, by affidavit or any other

[6] The government contended at trial that Valenti arranged and conducted a meeting in Rochester on October 11, 1979, at which the bombings were planned, and that he also took part in the bombings.

means, his presence in Pittsburgh on the days in question.[7]

Even if we assume then that the Plan and Act were violated and weigh such violation in our analysis of DiFrancesco's claim, the balance tips strongly against his contention that his right to a speedy trial was violated.

DiFrancesco next argues that the court should have severed or declared a mistrial as to Count II of the indictment because of an error that was not discovered until the conclusion of the presentation of the government's case. At that time it was learned that the language contained in Count II of the copies of the indictment possessed by counsel for both the government and the defendants differed from that in the copy filed with the court. The prosecutor mistakenly had distributed copies of an earlier draft of the indictment, rather than the final, filed version. The earlier draft, which all counsel had assumed to be the actual indictment, named Valenti as the person who caused the damage to the old Federal Building and named the other defendants, including Di-

[7] The absence of evidence to support the claim of prejudice perhaps is explained by Valenti's subsequent plea of guilty, entered on February 15, 1979 before Judge Curtin, to one count of the indictment in this case. Valenti entered his plea after the attorney for the Department of Justice had recited a summary of the testimony which the government would have offered if the case against Valenti had gone to trial. This included testimony placing Valenti in Rochester on October 11 and 12. Valenti offered no objection or comment in response to this summary.

Francesco, as aiders and abettors.[8] The actual indictment named all the defendants as principals and, in addition, merely cited 18 U.S.C. § 2, the aiding and abetting statute.[9]

[8] Count II of the draft of the indictment charged:

> THAT, on or about October 11 and 12, 1970, in the Western District of New York, the Defendant herein, FRANK J. VALENTI, unlawfully did wilfully cause the wilful injury to and commission of depredations against the property of the United States of America and the departments and agencies thereof—namely the premises known as the (old) Federal Building located at Church and Fitzhugh Streets in the City of Rochester, New York —the damages to the said premises having exceeded the sum of $100:
>
> AND, at the time and place aforesaid, RENE J. PICCARRETO, SALVATORE GINGELLO, THOMAS DIDIO, DOMINIC CELESTINO, EUGENE DI FRANCESCO, ANGELO VACCARA and ANTHONY GINGELLO, the Defendants herein, unlawfully did aid, abet, counsel, command, induce and procure the commission of the aforesaid offense, all of which was in violation of the provisions of Section 1361 and 2 of Title 18 of the United States Code.

[9] Count II of the filed indictment charged:

> THAT, on or about October 11 and 12, 1970, in the Western District of New York, the Defendants herein, FRANK J. VALENTI, RENE J. PICCARRETO, SALVATORE GINGELLO, THOMAS DIDIO, DOMINIC CELESTINO, EUGENE DI FRANCESCO, ANGELO VACCARO and ANTHONY GINGELLO unlawfully and wilfully did injure and cause injury to and the commission of depredations against the property of the United States of America and the departments and agencies thereof—namely, the premises known as the (old) Federal Building located at Church and Fitzhugh Streets in the City of Rochester, New York—the damages to the

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DiFrancesco complains that as a result of this confusion, for which he bore no fault, he was convicted under a theory at substantial variance from that which he had a right to believe was the basis of the case. He argues that the assumed indictment was more narrowly drawn than the actual, and that therefore, the substitution of the actual version was forbidden by *Stirone* v. *United States*, 361 U.S. 212 (1960), which holds that a broadening of the charges may only be accomplished by the grand jury itself.

The decision in *Stirone*, however, is not relevant to the circumstances presented here. The Court relied in *Stirone* on the violation of "the defendant's substantial right to be tried only on charges presented in an indictment returned by a grand jury." *Id.* at 217. There is no question that the count on which DiFrancesco ultimately was tried and convicted actually was returned by the grand jury, thus protecting his right to have his jeopardy limited to "offenses charged by a group of his fellow citizens acting independently of either prosecuting attorney or judge." *Id.* at 218. DiFrancesco's real claim is that he was not afforded notice of the charge on which he was convicted. As the Supreme Court explained in *Berger* v. *United States*, 295 U.S. 78, 82 (1935), one of the reasons "that allegations and proof must correspond is . . . the obvious [requirement] that the accused shall be definitely informed as to the charges against

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said premises having exceeded the sum of $100, all of which was in violation of the provisions of Sections 1361 and 2 of Title 18 of the United States Code.

him, so that he may be enabled to present his defense and not be taken by surprise by the evidence offered at the trial. . . ." The protection of this right to notice of the charges requires a determination "whether there has been such a variance as to 'affect the substantial rights' of the accused." *Id.*; *United States* v. *Knuckles*, 581 F.2d F.2d 305, 311 (2d Cir.), *cert. denied*, 99 S.Ct. 581, 47 U.S.L.W. 3369 (November 27, 1978); *see United States* v. *Garguilo*, 554 F.2d 59, 63 (2d Cir. 1977).

No such prejudicial variance occurred here. Although the assumed indictment was drawn somewhat more narrowly than was the actual indictment, the evidence introduced and the theory of culpability advanced by the government were not affected by the difference. The government offered no evidence as to who actually delivered the bomb to the Federal Building. Its evidence supported the narrower charge that Valenti "caused" the damage to the building because he directed the conspiracy. Finally, the government withdrew the aiding and abetting theory and proceeded on the "*Pinkerton*" [10] theory that each defendant was responsible for the substantive acts of his co-conspirators carried out in furtherance of the conspiracy. This theory would have been permissible under either version of Count II.

DiFrancesco's claim of prejudice is unsubstantiated. He contends that, had he known the actual wording of the indictment, he would have conducted additional cross-examination of Monachino and would not

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[10] *Pinkerton* v. *United States*, 328 U.S. 640, 646-47 (1946).

have entered into certain stipulations. This contention is undermined, however, by counsel's failure to ask the trial court to recall Monachino for further cross-examination and his failure to withdraw any of the stipulations, which had not yet been given to the jury. Since the difference in the two versions of the indictment caused no prejudice to any substantial rights of the accused, the district court did not err in denying severance or a mistrial.

DiFrancesco's final argument involves Count VI, which accused him of unlawfully storing explosives. He contends that this count should have been dismissed because there was no proof presented that the storage continued after Febraury 12, 1971, the effective date of 18 U.S.C. § 842(j), which he was charged with violating. We disagree.

The government offered evidence that, during the summer of 1970, DiFrancesco brought two boxes that contained dynamite, guns and various other items to a house in which Joseph Turri lived. DiFrancesco received permission from Turri to store the boxes in the basement. On the night of October 11, DiFrancesco removed a burlap bag from the box and brought it upstairs to Turri's apartment, where a meeting of the conspirators was held. There they used some of the material in the bag—dynamite, fuses and blasting caps—to construct the explosive devices which were used in the bombings. After the bombs had been made, the remaining material was put back into the bag. DiFrancesco then left the room with the bag and returned without it a short time later. No one actually saw DiFrancesco return

the bag containing the remaining explosives to the basement. Turri testified that he moved the boxes from the basement to the attic of his new residence during the summer of 1971. Turri's wife testified that DiFrancesco called her at some time in 1973 and asked her to move the boxes from the attic to another location, which she did.

Although none of the witnesses actually examined the contents of the boxes after the effective date of the statute, the jury properly could have inferred that some of the explosives remained in the boxes after that time. The evidence supported a logical inference that, when DiFrancesco left the October 11, 1970 meeting for several minutes and returned without the burlap bag, he had returned the bag containing the remaining explosive materials to the boxes in the basement, and that the explosives remained in the boxes while Turri moved them to his new residence and until DiFrancesco asked that they be moved again in 1973.

Government Appeal of the Sentence

Prior to the start of DiFrancesco's trial on the racketeering counts, the government, in compliance with 18 U.S.C. § 3575(a), filed a notice with the district court alleging that DiFrancesco was a "dangerous special offender," as defined in 18 U.S.C. § 3575(e)(3) and (f). The filing of such a notice indicates the government's intention to seek, if the defendant is convicted, imposition of an enhanced sentence as authorized by 18 U.S.C. § 3575(b).

On March 17, 1978, after DiFrancesco had been convicted in both the racketeering and bombing trials, Judge Burke held a sentencing hearing, required by § 3575(b), to obtain information which, with that submitted during trial, would form the basis for his determination whether DiFrancesco was a dangerous special offender. On April 21, the court issued findings of fact and its conclusion that DiFrancesco was a dangerous special offender. *United States* v. *DeFrancesco,* [sic] Cr. 76-45 (W.D.N.Y. April 21, 1978). One week later, the court sentenced DiFrancesco to concurrent ten year terms of imprisonment on the two racketeering counts, to be served concurrently with sentences totaling nine years which had been imposed by Judge Pratt on the bombing counts.

The government, under the authority granted by 18 U.S.C. § 3576,[11] filed a notice of appeal from the

[11] 18 U.S.C. § 3576 provides:

> With respect to the imposition, correction, or reduction of a sentence after proceedings under section 3575 of this chapter, a review of the sentence on the record of the sentencing court may be taken by the defendant or the United States to a court of appeals. Any review of the sentence taken by the United States shall be taken at least five days before expiration of the time for taking a review of the sentence or appeal of the conviction by the defendant and shall be diligently prosecuted. The sentencing court may, with or without motion and notice, extend the time for taking a review of the sentence for a period not to exceed thirty days from the expiration of the time otherwise prescribed by law. The court shall not extend the time for taking a review of the sentence by the United States after the time has expired. A court

sentence imposed by Judge Burke. DiFrancesco argues that the trial judge did not abuse his discretion in setting the sentence and, moreover, that such portion of § 3576 as authorizes the government to appeal a sentence where the defendant has not done so

> extending the time for taking a review of the sentence by the United States shall extend the time for taking a review of the sentence or appeal of the conviction by the defendant for the same period. The taking of a review of the sentence by the United States shall be deemed the taking of a review of the sentence and an appeal of the conviction by the defendant. Review of the sentence shall include review of whether the procedure employed was lawful, the findings made were clearly erroneous, or the sentencing court's discretion was abused. The court of appeals on review of the sentence may, after considering the record, including the entire presentence report, information submitted during the trial of such felony and the sentencing hearing, and the findings and reasons of the sentencing court, affirm the sentence, impose or direct the imposition of any sentence which the sentencing court could originally have imposed, or remand for further sentencing proceedings and imposition of sentence, except that a sentence may be made more severe only on review of the sentence taken by the United States and after hearing. Failure of the United States to take a review of the imposition of the sentence shall, upon review or reduction of the sentence, foreclose imposition of a sentence more severe than that previously imposed. Any withdrawal or dismissal of review of the sentence taken by the United States shall foreclose imposition of a sentence more severe than that reviewed but shall not otherwise foreclose the review of the sentence or the appeal of the conviction. The court of appeals shall state in writing the reasons for its disposition of the review of the sentence. Any review of the sentence taken by the United States may be dismissed on a showing of abuse of the right of the United States to take such review.

violates the double jeopardy clause of the fifth amendment.[12] Since the government's right to appeal and thus our jurisdiction to consider the merits of the sentence are dependent upon the constitutionality of the statutory provision, *see United States* v. *Wilson*, 420 U.S. 332, 339 (1975), we must immediately confront the constitutional issue.[13]

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[12] Although DiFrancesco asserts that § 3576 also runs afoul of the due process and equal protection clauses of the fifth amendment, he frames his argument solely in terms of double jeopardy. In light of our disposition of the double jeopardy claim, we need not consider whether other constitutional provisions might also prohibit the government's appeal.

[13] Judge Haight argues in his opinion concurring in the result that § 3575 was inapplicable to DiFrancesco and that therefore it is unnecessary to reach the constitutional issue because (1) § 3575(f) provides that a defendant is "dangerous" if a period of confinement longer than that provided for such felony is required . . ."; (2) § 3575(b) provides for a maximum term of twenty-five years; and (3) DiFrancesco already was subject, without use of the dangerous special offender sentencing provision, to a total sentence of forty years, consisting of consecutive twenty-year terms for each of the two counts of which he was convicted.

However, a defendant who has been convicted on more than one count comes before the district court for sentencing on each of the counts for which he has been convicted. The determination whether a defendant is a "special offender" for the purpose of sentencing on each count depends upon whether the particular felony in question satisfies the requirements of § 3575(e). Moreover, the language of § 3575(f) refers to a need for confinement longer than that provided for the underlying "felony," not "felonies."

Therefore, the application of § 3575 depends on a particularized determination with regard to each of the felonies for which dangerous special offender sentencing is sought. Indeed, the district court did consider each of DiFrancesco's

The concept of a government appeal to obtain an increase in a valid, enforceable sentence[14] was unknown to the American legal system throughout most of this nation's two hundred year history. Few states have given their appellate courts any power to increase a sentence, and in each instance where the power exists, it may be exercised only if the defendant has initiated the appellate proceeding by seeking review of the sentence.[15] The United States, prior to 1970, did not have statutory authority to seek an

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two convictions separately and imposed separate, albeit concurrent, sentences for them. Since the maximum sentence of twenty years for each of DiFrancesco's two felony convictions was less than the twenty-five year term available under § 3575, the district court properly could find that the statute was applicable.

We express no opinion as to whether § 3575 authorizes the imposition of consecutive sentences totaling more than twenty-five years.

[14] Where the original sentence imposed by the trial court is invalid because of, *e.g.*, failure to impose a mandatory minimum penalty, the sentence may be corrected, even if doing so increases the punishment, because otherwise "no valid and enforceable sentence can be imposed at all." *Bozza* v. *United States*, 330 U.S. 160, 166 (1947). Here, however, the sentence imposed by Judge Burke was within that legally authorized and thus is enforceable.

[15] As of 1978, Alaska, Colorado, Connecticut, Maine, Maryland, Massachusetts, Montana and New Hampshire allowed appellate courts to increase a sentence, but only if the defendant sought review. Citations to these states' statutory provisions are collected in Dunsky, *The Constitutionality of Increasing Sentences on Appellate Review*, 69 J. Crim. L. & Criminology 19, 20 nn.7-8 (1978). This court knows of no state which subsequently has authorized an increased sentence upon prosecutorial appeal.

increase in a sentence. In that year, however, Congress enacted 18 U.S.C. § 3576, which provides that, in a case involving a dangerous special offender, "a review of the sentence on the record of the sentencing court may be taken by the defendant *or the United States* to a court of appeals." (Emphasis added.) The court of appeals is authorized to review "whether the procedure employed was lawful, the findings made were clearly erroneous, or the sentencing court's discretion was abused," and then to affirm the sentence, impose any sentence that the trial court could have imposed, or remand for further sentencing proceedings.

The government has not rushed to make use of its new power to seek review of sentences.[16] Whether this has resulted from doubts about the constitutionality of the procedure, an extraordinary degree of satisfaction with the sentences imposed under the dangerous special offender provision, a decision to allocate prosecutorial resources to other tasks, or other factors is of course only a matter of speculation, but

[16] Such power also exists under 21 U.S.C. § 849, a similar provision which deals with "dangerous special drug offenders." This provision also was enacted in 1970. Since that time, legislation has been introduced in Congress, as part of the proposed comprehensive revision of the federal criminal code, to extend the government's power to seek sentence review beyond the dangerous offender context to encompass all cases in which the sentence imposed by the district court varies by some preestablished degree from proposed sentencing guidelines. See, *e.g.*, § 3725 of the Criminal Code Reform Act of 1977, S. 1437, 95th Cong., 1st Sess. (1977). Such legislation has not been enacted.

this case is apparently the government's first attempt to obtain review of a sentence on appeal.[17] Moreover, the government's primary response to DiFrancesco's attack on the constitutionality of § 3576 is not that government-instigated review of a final sentence is constitutional, but rather that the sentence imposed by the district court is merely "tentative" and that thus the defendant is not placed twice in jeopardy.

The language of the statute does not support the construction urged by the government. Section 3575 (b) requires that, if the district court finds the defendant to be a dangerous special offender, it "*shall sentence* the defendant to an appropriate term not to exceed twenty-five years. . . ." (Emphasis added.)

[17] The government has directed our attention to several other appellate decisions dealing with aspects of the dangerous special offender provisions. In none of these cases, however, did the government seek review of a sentence imposed under § 3575. Rather, the government has appealed a district court's refusal to sentence a defendant under the special provisions because, *e.g.*, the district court ruled that the government had failed to comply with § 3575's notice provision, *United States* v. *Ilacqua*, 562 F.2d 399 (6th Cir. 1977), *cert. denied*, 435 U.S. 917 (1978), or it held the statute to be unconstitutionally vague. *United States* v. *Stewart*, 531 F.2d 326 (6th Cir.), *cert. denied*, 426 U.S. 922 (1976). In these cases, the court of appeals vacated the nonenhanced sentences imposed under the ordinary sentencing provisions and remanded for resentencing under § 3575. Although the defendants thereby were exposed to the possibility of an increased penalty upon resentencing, this danger resulted from their voluntary decisions to contest the use of § 3575 in the original proceedings. Thus, these previous cases did not involve the double jeopardy considerations raised by the government's attempt to appeal a sentence actually imposed under § 3575. See text, *infra*, at 24.

This command is not tentative; the sentence imposed is effective immediately.[18] This procedure contrasts with that provided in, *e.g.*, 28 U.S.C. § 636(b)(1), whereby a trial judge may designate a magistrate to conduct a hearing in certain matters and to submit "proposed" findings and recommendations, which have no force until they have been reviewed by the judge, who may accept, reject or modify them. Nor is the procedure here similar to that provision in 18 U.S.C. § 4205(c) (formerly 18 U.S.C. § 4208(b)), to which it is compared by the government. Section 4205(c) allows a court that desires more information before imposing sentence to commit the defendant to the custody of the Attorney General for a period which will "be deemed to be for the maximum sentence of imprisonment prescribed by law." After the court obtains the desired information, it then may affirm the original commitment or impose a different sentence which of course cannot exceed the aforementioned maximum prescribed term. "It is plain that as far as the sentence is concerned the original order entered under [§ 4205(c)] is wholly tentative," because "[t]he whole point of using [§ 4205(c)] is, in its own language, to get 'more detailed information as a basis for determining the sentence *to be imposed*. . . .' (Emphasis supplied.)" *United States* v. *Behrens*, 375 U.S. 162, 164-65 (1963). In contrast,

[18] DiFrancesco is presently incarcerated in federal prison at Atlanta, Georgia, serving the sentences imposed by Judge Pratt and Judge Burke.

the commitment ordered by the district court pursuant to § 3575 is neither tentative nor merely a predicate to a sentence "to be imposed" by the court of appeals.

That Congress, as the government argues, could have written this statute in a manner analogous to § 4205(c) or in some other form which might not raise problems of double jeopardy is an inadequate response to the contention that the statute which Congress did write is constitutionally infirm. " '[A]ppeals by the Government in criminal cases are something unusual, exceptional, not favored,' at least in part because they always threaten to offend the policies behind the double jeopardy prohibition." *Will* v. *United States*, 389 U.S. 90, 96 (1967) (citations omitted). Therefore, we are obliged to construe strictly the procedure that Congress has authorized and to determine whether it, not some other, hypothetical procedure, offends the double jeopardy clause.[19]

[19] We note that at least some of the alternative procedures suggested by the government would raise issues that Congress did not have to consider in enacting § 3576. For example, a system whereby the district court tentatively imposed the maximum permissible sentence with provision for review and possible reduction by the court of appeals would likely result in an appeal of the sentence being taken by the defendant in every dangerous special offender case. This would increase the appellate caseload and in effect would reverse the usual presumption of finality which is accorded district court orders and judgments. Since we cannot know how Congress would weigh these additional considerations, we must reject the government's suggestion that a failure to read § 3576 in the

The plain command of the fifth amendment is that no "person [shall] be subject for the same offense to be twice put in jeopardy of life or limb." Although the phrase "life or limb" suggests only the most serious of penalties, it has long been established that it encompasses all penalties which may be imposed in criminal proceedings. *Breed* v. *Jones*, 421 U.S. 519, 528 (1975); *Ex parte Lange*, 85 U.S. (18 Wall.) 163, 170-73 (1873). A defendant who has stood trial and been convicted and sentenced by the district court has been placed once in jeopardy. Had the position advocated by Mr. Justice Holmes, dissenting in *Kepner* v. *United States*, 195 U.S. 100, 134 (1904), prevailed, the double jeopardy clause might present no barrier to an increased sentence on appeal. Justice Holmes argued that "logically and rationally a man cannot be said to be more than once in jeopardy in the same cause, however often he may be tried." But the Supreme Court has never adopted this concept of "continuing jeopardy," which, although it might have simplified the matter of government appeals, *United States* v. *Scott*, 437 U.S. 82, 90 n. 6 (1978), would have greatly decreased the fifth amendment's protection against government oppression. The legislative history of § 3576 demonstrates that Congress was cognizant of possible constitutional objections to the provision, but that it concluded that

light of possible alternatives will result in frustration of the Congressional intent.

We of course express no opinion as to the constitutionality of any alternative methods by which sentencing review might be accomplished.

Kepner's rejection of the continuing jeopardy concept should not apply to government appeal of a sentence rather than of an acquittal. S. Rep. No. 617, 91st Cong., 1st Sess. 95 (1969). We cannot perceive, however, how a defendant who, after being sentenced to several years' imprisonment by a district court, might be subject to imposition of a sentence of death upon a governmental appeal, would be any less placed twice in jeopardy of life or limb than was the defendant in *Kepner*, who, after acquittal in the court of first instance, was found guilty and sentenced to imprisonment for slightly less than two years upon appeal by the government. That § 3576 subjects a defendant "merely" to a longer term of imprisonment, not to the actual loss of his life, is a difference of degree, not principle, from the example given, for the double jeopardy clause applies equally to all criminal penalties. See *supra* at 18. Under the statute the government, dissatisfied with final judgment in one court, seeks a more favorable result in another tribunal. Therefore, the conclusion appears inescapable that to subject a defendant to the risk of substitution of a greater sentence, upon an appeal by the government, is to place him a second time "in jeopardy of life or limb."

Since this is the first attempt to use a statute allowing such an appeal, there are no precedents directly on point.[20] But the substantial body of

[20] The existing and proposed provisions for government appeal of sentences have generated a substantial amount of comment in the legal literature. Some commentators have argued that such provisions violate the guarantee against

double jeopardy case law, although hardly charting a straight-line path, *see, e.g., United States* v. *Scott, supra,* 437 U.S. 82, overruling *United States* v. *Jenkins,* 420 U.S. 358 (1975), supports the conclusion that we reach.

The guarantee against double jeopardy has been said to consist of three separate constitutional protections: (1) against a second prosecution for the same offense after acquittal; (2) against a second prosecution for the same offense after conviction; and (3) against multiple punishments for the same offense. *North Carolina* v. *Pearce,* 395 U.S. 711, 717 (1969).[21] The interests underlying these protections are similar. *United States* v. *Wilson, supra,* 420 U.S. at 343. They promote the goal of preserving the integrity of final judgments, *Scott, supra,* 437 U.S. at 92, and protect the individual against oppression by the gov-

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double jeopardy, *e.g.,* Spence, *The Federal Criminal Code Reform Act of 1977 and Prosecutorial Appeal of Sentences: Justice or Double Jeopardy?,* 37 Maryland L. Rev. 739 (1978); Note, *Twice in Jeopardy: Prosecutorial Appeals of Sentences,* 63 Virginia L. Rev. 325 (1977), while others have contended that the provisions would be constitutional, *e.g.,* Dunsky, *The Constitutionality of Increasing Sentences on Appellate Review,* 69 J. Crim. L. & Criminology 19 (1978), and at least one commentator has surveyed the competing arguments and concluded that "the answer is simply unclear." Low, *Special Offender Sentencing,* 8 Am. Crim.L.Q. 70, 91 (1970).

[21] In addition, it is now clear that a defendant's "valued right to have his trial completed by a particular tribunal," *Wade* v. *Hunter,* 336 U.S. 684, 689 (1949), is also encompassed by the double jeopardy clause. *Crist* v. *Bretz,* 437 U.S. 28, 36 (1978).

ernment. *Id.* at 99. More particularly, the protection against reprosecution after acquittal safeguards the individual against the embarrassment, expense and ordeal of repeated attempts by the government to use its resources and power to convict him and reduces the danger that an innocent defendant may be found guilty. *Serfass* v. *United States,* 420 U.S. 377, 387-88 (1975); *Green* v. *United States,* 355 U.S. 184, 187-88 (1957). And, at the root of the second and third of these protections is the idea, especially relevant here, expressed in *Wilson, supra,* 420 U.S. at 343:

> When a defendant has been once convicted and punished for a particular crime, principles of fairness and finality require that he not be subjected to the possibility of further punishment by being again tried or sentenced for the same offense.

This concern was perhaps most clearly expressed in *Ex parte Lange, supra,* 85 U.S. (18 Wall.) at 183:

> For of what avail is the constitutional protection against more than one trial if there can be any number of sentences pronounced on the same verdict? Why is it that, having once been tried and found guilty, he can never be tried again for that offence? Manifestly it is not the danger or jeopardy of being a second time found guilty. It is the punishment that would legally follow the second conviction which is the real danger guarded against by the Constiution. But if, after judgment has been rendered on the conviction, and the sentence of that judgment exe-

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cuted on the criminal, he can be again sentenced on that conviction to another and different punishment a second time, is the constitutional restriction of any value? Is not its intent and its spirit in such a case as much violated as if a new trial had been had, and on a second conviction a second punishment inflicted?

The argument seems to us irresistible, and we do not doubt that the Constitution was designed as much to prevent the criminal from being twice punished for the same offence as from being twice tried for it.

The prohibition against multiple punishment [22] has been so strongly felt, that, although the question of increasing a valid sentence has never been squarely presented, numerous courts, including the Supreme Court, have emphatically stated in dictum that such a procedure would be impermissible. In *United States* v. *Benz*, 282 U.S. 304 (1931), the Court was con-

[22] The principle that the double jeopardy clause bars multiple punishment has not been undermined by the Supreme Court's statements that the prohibition of the double jeopardy clause "is not against being twice punished, but against being twice put in jeopardy." *United States* v. *Ball*, 163 U.S. 662, 669 (1896), and "is written in terms of potential or risk of *trial* and conviction, not punishment." *Breed* v. *Jones*, 421 U.S. 519, 532 (1975) (emphasis in original), *quoting Price* v. *Georgia*, 398 U.S. 323, 329 (1970). In each of those cases, the Court was not limiting the scope of double jeopardy protection, but instead was rejecting arguments that the clause prohibited *only* multiple punishment. The Court held that the double jeopardy clause prohibits retrial where the defendant has been the subject of an express, *Ball*, or implied, *Price*, acquittal, or of a juvenile proceeding in which he was found guilty but where no disposition was entered. *Breed*.

fronted with the question whether a district court has the power, upon petition by a defendant, to reduce the sentence previously imposed on him. The Court noted the then-prevailing general rule that judgments, decrees and orders could be amended, modified or vacated by the court that made them, during the term at which they were made. It stated that this rule applied to criminal cases, "provided the punishment be not augmented," *id.* at 307, and held that because the district court had decreased, not increased, the punishment, it had acted within its power.[23] The unanimous Court then stated that the distinction between decreasing and increasing a sentence was based "upon the ground that to increase the penalty is to subject the defendant to double punishment for the same offense in violation of the Fifth Amendment to the Constitution. . . ." *Id.*

In *Murphy* v. *Massachusetts*, 177 U.S. 155 (1900), the Supreme Court rejected the argument that the double jeopardy clause was offended when a defendant, whose original sentence had been vacated at his behest because the statute under which it was imposed was unlawfully applied, was resentenced under the appropriate statute to a term longer than the original one. The Court, however, distinguished the case before it from one in which "the [trial] court undertook to impose *in invitum* a second or

[23] Rule 35 of the Federal Rules of Criminal Procedure now permits a district court to reduce a sentence within 120 days after the sentence is imposed or the conviction is affirmed on appeal.

additional sentence for the same offense, *or to substitute one sentence for another.*" *Id.* at 160 (emphasis added). And again in *Reid* v. *Covert*, 354 U.S. 1, 37 n. 68 (1957), Mr. Justice Black's plurality opinion, discussing the application of the Bill of Rights to military trials, stated:

> In *Swaim* v. *United States*, 165 U.S. 553, this Court held that the President or commanding officer had power to return a case to a court-martial for an increase in sentence. If the double jeopardy provisions of the Fifth Amendment were applicable such a practice would be unconstitutional.

In *Walsh* v. *Picard*, 446 F.2d 1209 (1st Cir. 1971), *cert. denied*, 407 U.S. 921 (1972), the court upheld the Massachusetts statute which allows a reviewing court to increase as well as decrease the sentence of a defendant who seeks sentence review. But the court explicitly noted that "the Massachusetts procedure does not permit the state to reopen the question of sentence on its own initiative. Were it to do so, it would of course violate the proscription against double jeopardy." *Id.* at 1211. Several other courts of appeal, including this one, have stated that a sentence may not be increased, at least where, as here, the punishment already has been partly suffered, *United States* v. *Chiarella*, 214 F.2d 838, 841 (2d Cir.), *cert. denied*, 348 U.S. 902 (1954); *Oxman* v. *United States*, 148 F.2d 750, 753 (8th Cir.), *cert. denied*, 325 U.S. 887 (1945); *Frankel* v. *United States*, 131 F.2d 756, 758 (6th Cir. 1942); *Rowley* v. *Welch*, 114

F.2d 499, 501 n. 3 (D.C. Cir. 1940), and the defendant has not challenged the sentence. *United States* v. *Coke*, 404 F.2d 836, 845 (2d Cir. 1968) (en banc).

Although such dicta of course are not legally binding, their number and the high authority of their sources offer impressive evidence of the strength and prevalence of the view that the double jeopardy clause bars an increase in the sentence imposed by the district court.

The conclusion reached here does not conflict with the Supreme Court's decision in *North Carolina* v. *Pearce*, *supra*, 395 U.S. 711. There the Court held that the double jeopardy clause did not prohibit imposition of a greater sentence *on retrial* than had been imposed at the original trial of a defendant, *where the defendant succeeded in getting his first conviction set aside.* The Court relied in *Pearce* on *United States* v. *Ball*, 163 U.S. 662 (1896), which had established that "this constitutional guarantee imposes no limitations whatever upon the power to *retry* a defendant who has succeeded in getting his first conviction set aside," *Pearce*, *supra*, 395 U.S. at 720 (emphasis in original), and on *Stroud* v. *United States*, 251 U.S. 15 (1919), which held that a corollary of that power to retry was the power to impose any legally authorized sentence.

Although various rationales have been advanced and rejected for the rule that a defendant may be retried after reversal of an original conviction, *see Burks* v. *United States*, 437 U.S. 1, 15 n. 9 (1978), the Court most recently adopted, in its unanimous

opinion in *Burks*, *id.* at 15, the justification offered in *United States* v. *Tateo*, 377 U.S. 463, 466 (1964):

> It would be a high price indeed for society to pay were every accused granted immunity from punishment because of any defect sufficient to constitute reversible error in the proceedings leading to conviction.

This rationale,[24] however, does not fully explain the result in *Pearce* since a defendant would not be granted immunity from punishment if the sentence on retrial were limited to that imposed at the first trial. Rather, *Pearce* depends too on a second line of reasoning, that the double jeopardy protection simply has no relevance where "the orginal conviction has, at the defendant's behest, been wholly nullified and the slate wiped clean." *Pearce*, *supra*, 395 U.S. at 721. This outcome does not result from any "waiver" of double jeopardy protections, as was suggested in *Trono* v. *United States*, 199 U.S. 521, 533 (1905), and rejected in *Green* v. *United States*, *supra*, 355 U.S. at 191-92, but instead is compelled by the fact that "the Double Jeopardy Clause, which guards against Government oppression, does not relieve a

[24] *Cf. Arizona* v. *Washington*, 434 U.S. 497, 509 (1978) (failure to allow retrial after mistrial declared because of "manifest necessity" would deprive society of its "one complete opportunity to convict those who have violated its laws"); *Bozza* v. *United States*, 330 U.S. 160, 166 (1947) (invalid sentence may be corrected even if doing so necessitates increase in punishment because otherwise "no valid and enforceable sentence can be imposed at all" and a convicted criminal will go free).

defendant from the consequences of his voluntary choice." *Scott*, *supra*, 437 U.S. at 99.

Here, however, neither factor that militated against the application of the double jeopardy clause to resentencing in *Pearce* is present. There is not the slightest danger than DiFrancesco will go unpunished if the government's appeal is dismissed. The ten-year terms imposed on him by Judge Burke are valid and enforceable, and in fact are already being served. Moreover, DeFrancesco has made no "voluntary choice" that has subjected him to jeopardy for a second time. He faces the risk of an increased sentence solely because the government desires a second chance to obtain a sentence satisfactory to it.[25]

We do not deny the existence of legitimate governmental interests that might be served by allowing the government to appeal a sentence, *e.g.*, improved

[25] The government correctly does not contend that DiFrancesco has exposed himself to an increased sentence by appealing his conviction. Section 3576 distinguishes between an appeal of a conviction, which brings before us only the propriety of the process by which the defendant was convicted, and a review of a sentence. The statute allows the government to seek review of a sentence without regard to whether the defendant has chosen to appeal.

That it might be constitutionally permissible to impose consent to sentence review as a condition to exercise of a defendant's right to appeal, *cf. Walsh* v. *Picard*, 446 F.2d 1209 (1st Cir. 1971) (constitutional to allow increase as well as decrease in sentence when defendant petitions for sentence review), a question which we need not decide, is irrelevant here, where § 3576 imposes no such condition. Considerations of due process would require that a defendant be informed of such a consequence of his decision to appeal.

uniformity in sentencing. But such interests must be pursued in alternative ways that do not conflict with the fifth amendment's guarantee against double jeopardy. "[W]here [, as here,] the Double Jeopardy Clause is applicable, its sweep is absolute. There are no equities to be balanced, for the Clause has declared a constitutional policy, based on grounds which are not open to judicial examination." *Burks* v. *United States*, *supra*, 437 U.S. at 11 n. 6. To subject Eugene DeFrancesco [sic] for a second time to the risk of the entire range of penalties that the law provides for his crimes would violate that constitutional policy. The appeal by the government therefore must be dismissed.

The judgments of conviction are affirmed, and the appeal by the government is dismissed.

HAIGHT, *District Judge* (concurring in the result on the government's appeal).

I concur in Judge Smith's opinion affirming DiFrancesco's convictions, and agree that the government's appeal must be dismissed. However, I would base that dismissal upon the non-constitutional ground of the inapplicability of 18 U.S.C. § 3576 in the circumstances of this case.

In *United States* v. *Batchelder*, —— U.S. ——, 47 U.S.L.W. 4611, 4613 (No. 78-776, decided June 4, 1979), the Supreme Court reiterated the maxim "that statutes should be construed to avoid constitutional questions," going on to state:

> "This 'cardinal principle' of statutory construction . . . is appropriate only when an alternative interpretation is 'fairly possible' from the language of the statute. Swain v. Pressley, 430 U.S. 372, 378 n.11 (1977); see Crowell v. Benson, 285 U.S. 22, 62 (1932); United States v. Sullivan, 332 U.S. 689, 693 (1948); Shapiro v. United States, 335 U.S. 1, 31 (1948)."

While neither DiFrancesco nor the government raised the issue below, this "cardinal principle" of statutory construction permits a court to consider *sua sponte* whether the sentencing procedures in §§ 3575 and 3576 can be interpreted so as to avoid the constitutional question. Clearly such an interpretation is "fairly possible" from the language of the statute.

Governmental appeal of a sentence under § 3576 is available only in respect of an individual properly proceeded against in the district court as a "dangerous special offender" under § 3575(a). To come within the statute, the offender must be both "special" as defined by § 3575(e), and "dangerous" as defined by § 3575(f). DiFrancesco qualifies as "special" under § 3575(e)(3).[1] He is "dangerous" under § 3575(f)

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[1] Section 3575 provides:

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

"(3) such felony was, or the defendant committed such felony in furtherance of, a conspiracy with three or more other persons to engage in a pattern of conduct criminal under applicable laws of any jurisdiction, and the defendant did, or agreed that he would, initiate, organize,

if, and only if, "a period of confinement *longer than that provided for such felony* is required for the protection of the public from further criminal conduct by the defendant." (emphasis added).

Section 3575(b) provides in pertinent part:

> "If it appears by a preponderance of the information, including information submitted during the trial of such felony and the sentencing hearing and so much of the presentence report as the court relies upon, that the defendant is a dangerous special offender, the court shall sentence the defendant to imprisonment for an appropriate term not to exceed twenty-five years and not disproportionate in severity to the maximum term otherwise authorized by law for such felony. Otherwise it shall sentence the defendant in accordance with the law prescribing penalties for such felony."

I construe the statute to provide the district judge with an additional capacity to impose a sentence of up to twenty-five years in cases where the underlying statute, standing alone, would not permit a term of such duration. Stated conversely, if the period of confinement provided for the felony by the underlying statute equals or exceeds twenty-five years, the dan-

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plan, finance, direct, manage, or supervise all or part of such conspiracy or conduct or give or receive a bribe or use force as all or part of such conduct."

The district court found that the conspiratorial elements of the crimes for which DiFrancesco was convicted satisfied the requirements of the statute. A.51-56.

gerous special offender statute has no office to perform.[2]

If that is the proper interpretation of the dangerous special offender statute, it could not apply to Di-

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[2] The legislative history is not voluminous on the point, but such indications as there are favor this interpretation. The Assistant Attorney General, Criminal Division, writing to the House Judiciary Committee on the wording of § 3575(b), and particularly on the point of whether the statute should read "shall" sentence or "may" sentence, said in part:

> "We think that the term 'shall' as used here is appropriate. It conforms with the language generally used in the sentencing provisions of title 18, which has not previously been misconstrued as providing for a mandatory minimum sentence. Furthermore, inasmuch as an offender in any of the three defined categories is to be considered 'dangerous' *only when the court finds that a longer prison term than that may be imposed for the felony of which he has been convicted* is required to protect the public from further criminal conduct on his part, it would be incongruous for the court to fail to sentence a 'dangerous' offender to any prison term at all. Therefore, a provision that some such term of imprisonment 'shall' be imposed is appropriate for the purposes of the title. *If a court finds that the usual maximum term for the felony, or any lesser term, is all that should be imposed, by definition the court could not find the defendant to be a dangerous special offender.* The proposed change from 'shall' to 'may' therefore, would serve no purpose." 2 U.S. Code Cong. & Admin. News 4065-6 (1970) (emphasis added).

The House Report says of § 3575(f):

> "Subsection (f) provides that a defendant is 'dangerous' if confinement longer than that ordinarily provided is required to protect the public from further crime by him." *Id.* at 4039.

I construe the phrase "ordinarily provided" to mean the penalties provided by the underlying felony statute.

Francesco. DiFrancesco was prosecuted under the racketeering statute, 18 U.S.C. §§ 1961 *et seq.* He was convicted of a substantive offense under § 1961 (c),[3] and conspiracy under § 1961(d).[4] The district court had the unquestioned power under the underlying statute, entirely without regard to the dangerous special offender statute, to sentence DiFrancesco to two consecutive 20 year terms, for a total of 40 years,[5] or 15 years longer than the maximum term permitted by § 3576. The district court's discretionary power to impose consecutive, rather than

[3] That section provides:

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

[4] That section provides:

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

[5] 18 U.S.C. § 1963 provides in pertinent part:

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

concurrent, sentences upon a defendant convicted on more than one count has been recognized for so long [6] that it may fairly be regarded as inherent in the "period of confinement . . . provided for such felony" by the underlying statute. In urging sentencing judges to impose consecutive sentences where the circumstances permit, prosecutors can and frequently do make the same arguments (the defendant is dangerous, the public must be protected) that the dangerous special offender statute contemplates.

Such arguments could have been made in the case at bar, and a sentence passed in excess of the maximum permitted by § 3576, entirely on the basis of the underlying felony statute, and the district court's well-established discretionary power to impose separate sentences on separate counts and make them run consecutively. I interpret §§ 3575 and 3576 to be inapplicable in those circumstances and would dismiss the government's appeal on that ground, leaving the

[6] See *United States* v. *Dougherty*, 269 U.S. 360, 363 (1926), adopting the reasoning of *Neely* v. *United States*, 2 F.2d 849, 852-3 (2d Cir. 1924), which in turn relied upon the statement in *Ex Parte DeBara*, 179 U.S. 316, 322 (1900) that a court, by exercising such sentencing options, "may express its views of the criminality of a defendant . . ."

I do not find in the legislative history of the special dangerous offender act specific reference to the trial judge's ability to impose consecutive sentences in multiple count indictments, but the Congress must surely have been aware of so established a power.

constitutional question for a case in which it cannot be avoided.[7]

[7] If my interpretation of the statute is wrong, and the constitutional question is unavoidably presented by this case, then I am in complete agreement with Judge Smith's scholarly demonstration that the statute violates the double jeopardy clause of the fifth amendment.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the sixth day of August one thousand nine hundred and seventy-nine.

Present: HON. J. JOSEPH SMITH
Circuit Judge
HON. THOMAS J. MESKILL
Circuit Judge
HON. CHARLES S. HAIGHT
District Judge

78-1250
78-1369
78-1371

UNITED STATES OF AMERICA,
PLAINTIFF-APPELLEE-APPELLANT

v.

EUGENE DIFRANCESCO,
DEFENDANT-APPELLANT-APPELLEE

Appeal from the United States District Court for the Western District of New York

This cause came on to be heard on the transcript of record from the United States District Court for

the Western District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgments of said District Court be and they hereby are affirmed and the appeal by the United States dismissed in accordance with the opinion of this court.

A. Daniel Fusaro
Clerk

/s/ Arthur Heller

By: ARTHUR HELLER
Deputy Clerk

APPENDIX C

SUPREME COURT OF THE UNITED STATES

No. A-183

UNITED STATES, PETITIONER

v.

EUGENE DIFRANCESCO

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including October 5, 1979.

/s/ Thurgood Marshall
Associate Justice of the
Supreme Court of the
United States

Dated this 28 day of August, 1979

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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1978

No. 78-959

VINCENT R. PERRIN, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 580 F.2d 730.

* * * * * * *

E. INTERPRETING THE TRAVEL ACT TO ENCOMPASS COMMERCIAL BRIBERY WOULD NOT CONFLICT WITH THE PURPOSES SOUGHT TO BE ACHIEVED BY CONGRESS

Relying on the Second Circuit's opinion in *United States* v. *Brecht*, *supra*, 540 F.2d at 50, petitioner contends that application of the Travel Act to commercial bribery would be inconsistent with the purposes sought to be achieved by Congress (Br. 6, 8–14). As noted in *Brecht*, the Travel Act was aimed primarily at illegal activities of "organized crime." Adopting that premise, the *Brecht* court reasoned that commercial bribery does not fall within the ambit of the Act because it "typically is not a feature of organized crime," but rather "'is typically an establishment transgression'" (540 F.2d at 50, quoting *United States* v. *Niedelman*, 356 F.Supp. 979, 982 (S.D.N.Y. 1973)). Judge Rubin, dissenting in the court below, also expressed doubt regarding the extent to which organized criminals engage in commercial bribery (Pet. App. A–20).

Although it is correct to assert that the Travel Act was aimed primarily at organized crime, it is incorrect to conclude that "commercial bribery" is not a "feature of organized crime." To the contrary, organized crime is and historically has been involved in commercial bribery on an extensive basis, using it as a key weapon to infiltrate legitimate businesses and to derive substantial revenues. The important purposes Congress sought to achieve through the Travel Act would therefore be severely undermined if such bribery were immunized from its sanctions.

As the Court observed in *United States* v. *Nardello*, *supra*, 393 U.S. at 291–292, 295, the Travel Act was "primarily designed to stem the 'clandestine flow of profits'" to criminals, by depriving them of the use of the facilities of interstate commerce in carrying on a broad spectrum of illegal activities. See also H.R. Rep. No. 966, 87th Cong., 1st Sess. 2–3 (1961); S. Rep. No. 644, 87th Cong., 1st Sess. 3–4 (1961). The victims of illegal activities of organized crime, as *Nardello* also noted, are often business firms. 393 U.S. at 291 n.8, 295 n.13.[21] In 1965, Congress amended the Travel Act to include "arson," in addition to "extortion" and "bribery," within the coverage of the Act. See *id.* at 291 n.8. The committee

[21] By separately enumerating certain offenses (such as "bribery") in Section 1952(b)(2) of the Act, Congress made it clear that such offenses—whether or not a part of a "business enterprise" within the meaning of Section 1952(b)(1)—are forbidden. Congress was concerned that such acts, even when not a part of a criminal business enterprise, could provide "sources of income for organized crime." *United States* v. *Nardello*, *supra*, 393 U.S. at 291–292.

reports that accompanied that amendment emphasized once again the need to fight organized criminals by "exhausting their sources of illegal funds" and reducing their "spheres of influence." S. Rep. No. 351, 89th Cong., 1st Sess. 3 (1965). The Senate Report also noted, quoting from the views of the Attorney General, that [t]he success of the Government's war against crime syndicates depends in part on the termination of their primary sources of illegal revenue." *Id.* at 4. See also H.R. Rep. No. 264, 89th Cong., 1st Sess. 1–4 (1965).

Permitting criminals to engage in schemes of commercial bribery through use of the facilities of interstate commerce would be wholly inconsistent with the congressional purpose to dry up the sources of revenue that are available to them. The infiltration of organized crime into legitimate business is now well documented, as is the fact that organized crime uses dishonest methods to obtain influence over its business victims and to compete with other business firms. See, *e.g.*, S. Rep. No. 141, 82d Cong., 1st Sess. 34 (1951) (Kefauver Report); S. Rep. No. 307, 82d Cong., 1st Sess. 170 *et seq.* (1951); S. Rep. No. 1139 (Part 3), 86th Cong., 2d Sess. 508–509 (1960) (McClellan Report); S. Rep. No. 1139 (Part 4), 86th Cong., 2d Sess. 856 (1960); President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Organized Crime* 4–5 (1967); H.R. Rep. No. 1574, 90th Cong., 2d Sess. 74 (1968). The use by organized crime of commercial and other forms of non-official bribery to conduct profitable criminal ventures is equally well documented. See *e.g.*, S. Rep. No. 307, *supra*, at 160–161 (bribery of athletes in connection with gambling activities); S. Rep. No. 1139 (Part 4), *supra*, at 772 (bribery of bank officers). Hearings focusing on the techniques used by organized crime to infiltrate business firms have clearly established that commercial bribery is a highly effective and frequently used strategy. See *Organized Crime, Stolen Securities: Hearings Before the Subcomm. on Investigations of the Senate Comm. on Government Operations*, 92d Cong., 1st Sess. 675–683 (1971) (describing the widespread use of commercial bribery to steal securities from brokerage houses and pledge them with banking institutions); *Organized Crime, Techniques for Converting Worthless Securities into Cash: Hearings Before the House Select Comm. on Crime*, 92d Cong., 1st Sess. 3, 242, 292–293, 297, 361 (1971) (describing the use by racketeers of commercial bribery to corrupt the president of an insurance company and sell worthless securities to the company); *Organized Crime, Securities: Thefts and Frauds: Hearings before the Permanent Subcomm. on Investigations of the Senate Comm. on Government Operations*, 93d Cong., 1st Sess. 183, 239, 240, 467, 475–476 (1973) (describing commercial bribery used by organized criminals to corrupt certified public accountants and employees in financial institutions).[22]

The extent of commercial bribery has been described by the United States Chamber of Commerce as "pervasive." See *White Collar Crime* 15 (1974). The Chamber of Commerce estimates that commercial bribery, payoffs and kickbacks cost American business $3 billion annually. *Id.* at 6.

In short, commercial bribery is one of the most effective strategies available to organized crime to infiltrate legitimate business and to earn illicit profits. The financial rewards attainable from corrupt activities in the commercial context are obvious and well documented. Indeed, there is no reason to infer that the involvement of organized crime in commercial bribery is any less extensive than its involvement in official bribery. Due to the financial incentives involved, the inference to be drawn is quite the opposite. We submit that it would be anomalous to interpret the Travel Act, which was intended to deprive organized crime of the means of producing illegal revenues, to prohibit arson and extortionate practices injurious to business firms, while permitting organized crime

[22] Recent studies have also focused on the extent to which organized crime uses commercial and other forms of non-official bribery. See R. Kennedy, *The Enemy Within* 97–100, 216–217 (1960) (bribery of labor officials; Johnson, *Organized Crime: Challenge to the American Legal System*, 53 J. Crim. L. C. & P. S. 399, 411–412 (1962) (bribery of athletes); McKeon, *The Incursion by Organized Crime Into Legitimate Business*, 20 J. Pub. L. 117, 139–140 (1971) (bribery of cargo handlers to assist in theft of valuable cargo); T. Clark and J. Tigue, *Dirty Money* 92, 133, 171, 180–181, 196 (1975) (bribery of employees in banks and brokerage firms); A. Bequai, *Computer Crime*, 1, 4, 9, 19 (1978) (bribery of computer programmers). The most extensive study of the use of organized crime of commercial bribery is J. Kwitny, *Vicious Circles: The Mafia in the Marketplace* 5–46, 94–99, 202–205, 210, 241–246 (1979) (describing organized crime's use of commercial bribery in a broad spectrum of industries).

to use the facilities of interstate commerce to commit commercial bribery. Such an interpretation would frustrate the intent of Congress in enacting the statute.[23]

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An Analysis of Some Aspects of Jurisdiction Under S. 1437, the Proposed Federal Criminal Code[+]

(Roger A. Pauley*)

A principal reason for the failure of the House Judiciary Committee to act favorably on S. 1437, the Criminal Code Reform Act of 1978,[1] was the perception of its Subcommittee on Criminal Justice that the bill would effect a major and unwarranted expansion of federal concurrent criminal jurisdiction.[2] This article explores the basic jurisdictional scheme proposed in S. 1437, including allegations that it would unnecessarily expand federal jurisdiction. It contends that objections to S. 1437 predicated on its expansion of jurisdiction and on its impact on the criminal justice system fail to recognize the need for some expansion to permit federal prosecution in significant areas of white-collar and other crime that the states alone do not control effectively. In addition, the current extensiveness of federal concurrent criminal jurisdiction undermines the argument that the present scope of federal jurisdiction created the existing federal-state "balance" in law enforcement responsibility. The article contends instead that the source of the balance is Executive Branch restraint in exercising federal jurisdiction. The article concludes that the fundamental change proposed by S. 1437, separation of jurisdiction from the substantive elements of an offense, would be a meritorious change. It also concludes that objections predicated on the bill's expansion of federal criminal jurisdiction are exaggerated and mispremised. Finally, the article concludes that steps can be taken to assure that the federal government would continue to use its broad concurrent criminal jurisdiction in a restrained and responsible manner.

SEPARATION OF JURISDICTION FROM THE ELEMENTS OF AN OFFENSE

A fundamental feature of the proposed criminal code would be its separation of jurisdiction from the substantive elements of the offense.[3] Section 201(c) of S. 1437 would state that "[t]he existence of federal jurisdiction is not an element of the offense."[4] Critics of the proposed Code have focused primarily on aspects of the S. 1437 jurisdictional scheme, such as proof of jurisdiction to the court rather than the jury and creation of ancillary jurisdiction, that are more controversial,[5] though far less significant, than section 201(c). They have,

[23] If petitioner's proposed construction of the statute were correct, organized criminals, based in New York, could operate a scheme to bribe employees of a stock brokerage firm in Chicago, or a bank in Miami Beach, causing extensive financial injury to those businesses and enriching the syndicate. Due to the interstate nature of the scheme, local authorities would not be empowered to investigate or prosecute the offenders effectively. The very evils that Congress intended to eliminate in 1961 would go without remedy. Such a construction would be inappropriate for, as noted in *United States* v. *Nardello*, *supra*, 393 U.S. at 292, "[t]he legislative response was to be commensurate with the scope of the problem."

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[1] *See* S. 1437, 95th Cong., 2d Sess. (1978) [hereinafter cited as S. 1437].

[2] *See* 124 Cong. Rec. H8901–02 (daily ed. Aug. 17, 1978) (statement by Subcommittee Chairman Mann).

[3] The National Commission on Reform of Federal Criminal Laws in its Final Report recommended a draft Federal Criminal Code which included an identical provision to S. 1437's provision which separates existence of federal jurisdiction from eleemnts of the offense. *See* National Commission on Reform of Federal Criminal Laws, Final Report, § 103(1) (1971) [hereinafter cited as Final Report].

[4] S. 1437, *supra* note 1, § 201(c).

[5] *See, e.g., Legislation to Revise and Recodify Federal Criminal Laws: Hearing on H.R. 6869 Before the Subcomm. on Criminal Justice of the Comm. on the Judiciary*, 95th Cong., 1st & 2d Sess. 779–80 (1978) (statement of Evelle Younger, Attorney General of California) [hereinafter cited as *Hearings*]; *id.* at 1191 (statement of John Shattuck & David Landau, American Civil Liberties Union). H.R. 6869 was the House version of S. 1437.

however, also attacked section 201(c), claiming that it would further expand federal jurisdiction.[6]

The drafting technique currently utilized in nearly all federal criminal statutes commingles the circumstances giving rise to federal jurisdiction[7] with the elements of the crime. For example, the principal federal statute that defines robbery does not define the crime solely in terms of the act of robbery, as a typical State law does, but instead defines robbery as "obstruct[ing], delay[ing], or affect[ing] commerce . . by robbery."[8] Similarly, the federal statute defining fraud does not focus solely on the conduct constituting that offense, but rather incorporates the jurisdictional element, defining fraud as using the mails or an interstate wire for the purpose of executing a fraudulent scheme.[9]

Although this traditional method of defining offenses has some advantages, it also has serious disadvantages.[10] It tends to depreciate the seriousness of offenses. Defining fraud as the use of a federal instrumentality in furtherance of a scheme to defraud subtly diverts attention from the true nature of the crime, by focusing on the jurisdictional factor rather than on the culpable aspects of the conduct.

Intermingling jurisdictional and substantive elements has also contributed to inconsistent definitions among different federal statutes, each of which attempts to proscribe the same misconduct through use of different jurisdictional elements. Different draftsmen must completely rewrite a new statute each time Congress decides to expand the jurisdictional basis of an offense. This continual redrafting has led to the proliferation of statutes containing unnecessarily disparate penalties and elements. For example, more than two hundred false statement, theft, and counterfeiting statutes coexist as a result of Congressional attempts to protect discrete federal interests.[11] Separation of the jurisdiction from the offense would significantly reduce inconsistency and multiplication of criminal offenses because the draftsmen would not need to rewrite the offense and penalty every time Congress added a new jurisdictional element to the offense.

The commingling of federal jurisdiction with the elements of the crime also encourages prosecutors to allege numerous criminal charges in cases in which only a single criminal transaction has occurred but in which numerous jurisdictional elements have been implicated during the crime. For example, a unitary scheme to defraud may be charged and prosecuted as fifty separate crimes, each alleged as a discrete act of using the mails in furtherance of the fraudulent scheme. Although pyramiding of charges should not affect the eventual sentence imposed or the willingness of the parties, particularly the defendant, to engage in plea bargaining, multiplying counts by jurisdictional events probably has a substantial undesirable impact in both areas.

In addition, including jurisdiction in the definition of offenses prevents the government from appealing a "not guilty" verdict predicated on a finding of lack of federal jurisdiction. The trier of fact must incorporate a finding of no federal jurisdiction into a general verdict of acquittal, but the prosecutor may not appeal a general acquittal even if the acquittal is based on an egregiously

[6] *See* Quigley, *The Federal Criminal Code Revision Plan*, 47 Geo. Wash. L. Rev. 000, 1000 (1979).

[7] *See* Final Report, *supra* note 3, § 103(1), Comment.

[8] 18 U.S.C. § 1951 (1976).

[9] *Id.* §§ 1341, 1342.

[10] *See* S. Rep. No. 605, 95th Cong., 1st Sess. 29 (1977) [hereinafter cited as Senate Report]. The need for a jurisdictional basis in most federal statutes arises from the Constitution, which grants only limited power to the federal government. That need, however, fails to explain the nearly universal acceptance for over two hundred years of the drafting techniques currently in use, which commingles jurisdiction into the offense itself. *See* note 7 *supra* and accompanying text. How this method of intertwining jurisdictional features into the elements of offenses originated is apparently unknown. Perhaps the legislators of the first Congress drafted criminal statutes in this manner and since then habit and custom have prevailed. *See* Act of April 30, 1790, ch. 10, *reprinted in* 1 Stat. 112 (1856) (defining a number of crimes against the United States in a format that has survived to the present). Apart from a proposal for a complete revision of federal criminal laws, variation from this previously established pattern of defining offenses in any established drafting pattern plus the failure of Congress to enact a comprehensive Fedsingle statute would be burdensome and senseless. This reluctance to deviate from the eral Criminal Code, may explain the two hundred year reign of the drafting pattern, despite its rather significant deficiencies.

[11] *See, e.g.*, 18 U.S.C. § 665 (1976) (theft of CETA funds); 42 U.S.C. § 1383 (1976) (false statements in applications for supplemental security income for the aged, blind, or disabled). *See generally* Senate Report, *supra* note 10, at 370, 640–53.

erroneous foundation.[12] This procedure may disguise the true nature of the factfinder's verdict of acquittal. Although the factfinder may have found that the defendant committed the culpable acts charged, it may have determined that the jurisdictional element necessary for federal prosecution of those acts was absent or was insufficiently proved. No sound policy exists for denying the Government the opportunity to seek appellate court review of the jurisdictional finding. The factfinder's verdict on jurisdiction will frequently depend on the trial court's construction of the underlying statute,[13] and the Government should have the same opportunity available to a convicted defendant to obtain appellate review of the legal theory on which the factfinder decided the jurisdictional issue.[14] The Supreme Court has relied on policies implicit in the double jeopardy clause to deny appellate review of even grossly erroneous acquittals.[15] But no sound reason exists to continue a system that places society under a constitutionally unnecessary handicap and extends a windfall to defendants by foreclosing the possibility of Government appeal from an erroneous but determinative jurisdictional ruling.[16]

Finally, the intermingling of jurisdictional and genuine criminal elements in federal penal statutes periodically precludes the United States from obtaining extradition of a fugitive. Extradition treaties often enumerate the extraditable crimes and permit extradition only if both countries have prohibited the same conduct.[17] Some foreign countries refuse to extradite persons charged under statutes that combine jurisdictiona land substantive elements, such as the statutes proscribing fraud or kidnapping, because these offenses have no counterpart in their laws.[18]

Thus, the current, customary mode of defining federal offenses to incorporate jurisdictional elements imposes greater costs on society than the alternative proposed in S. 1437 of separating jurisdiction from the elements of offenses themselves. Adoption of this important proposal, first conceived by Professor Louis Schwartz,[19] the Staff Director of the Brown Commission,[20] would be a substantial step toward meaningful reform of federal criminal laws. In addition, it would not in itself enlarge federal criminal jurisdiction. Existing criminal statutes with jurisdictional elements could be redrafted within the proposed scheme of secton 201 without enlarging their jurisdictional scope. The potential long term consequence of separating jurisdictional elements would apparently be a reduction of federal jurisdiction, because this drafting technique would permit consolidation of similar offenses that currently have different jurisdictional components. For example, under S. 1437 a single provision could prohibit robbery from the mails, robbery obstructing commerce, and robbery on a federal enclave,[21] crimes that are currently prohibited in separate statutes.[22] The proposed theft offense in S. 1437 would consist of a few lines defining the offense followed by approximately thirty paragraphs, each of which would state a separate basis for federal jurisdiction.[23] This consolidation of all existing bases for federal jurisdiction would enhance a legislator's ability to identify and comprehend the full extent of prevailing federal jurisdiction over a particular offense, and to determine whether the jurisdictional provisions are outmoded

[12] *See* Sanabria v. United States, 437 U.S. 54, 69 (1978).
[13] *See id.* at 59.
[14] For example, if the trier of fact concluded that a murder involving American citizens committed on an unclaimed ice island in the Arctic was not within the special territorial jurisdiction of the United States, it might enter a judgment of acquittal, thereby precluding further review. *Cf.* United States v. Escamilla, 467 F. 2d 341, 343 (4th Cir. 1972) (holding that the special maritime and territorial jurisdiction of the United States extended to an island in the Arctic Ocean).
[15] *See* United States v. Martin Linen Supply Co., 430 U.S. 564, 571 (1977); Fong Foo v. United States, 369 U.S. 141, 143 (1962).
[16] Some states have laws barring state prosecution following a federal adjudication of guilt or innocence with regard to the same transaction. *See* Comment, *Successive Prosecutions by State and Federal Governments for Offenses Arising Out of Same Act,* 44 Minn. L. Rev. 534, 539 n.31 (1960). Thus, not allowing the United States to appeal an erroneous determination that federal jurisdiction is absent, frequently allows the defendant to avoid punishment altogether.
[17] *See* Senate Report, *supra* note 10, at 30.
[18] *See id.*
[19] *See* Schwartz, *Federal Criminal Jurisdiction and Prosecutors' Discretion,* 13 Law & Contemp. Prob. 64, 80 (1948).
[20] *See* Final Report, *supra* note 3, at vii.
[21] *See* S. 1437, *supra* note 1, § 1721.
[22] *See* 18 U.S.C. § 1951 (1976) (obstructing commerce); *id.* § 2111 (federal enclave); *id.* § 2114 (mail).
[23] *See* S. 1437, *supra* note 1, § 1731.

or unnecessary. In addition, this drafting technique would facilitate politically whatever reductions in federal jurisdiction the legislators desire by requiring a change of only the jurisdictional base in the statute, a change that would be much easier to pass than repeal of an entire offense.

PROOF OF JURISDICTION; ROLE OF THE JURY UNDER S. 1437

Before examining issues that directly relate to the scope of of federal jurisdiction proposed in S. 1437, this article examines claims by some writers that the Code would destroy the traditional role of the jury in criminal cases.[24] This criticism results mainly from S. 1437's proposal to add Rule 25.1(b) to the Federal Rules of Criminal Procedure, which would vest determination of the question of jurisdiction beyond a reasonable doubt in the trial judge.[25]

Despite intimations to the contrary in statments of some critics, the controversy centers around a choice of policy rather than a constitutional mandate.[26] According to Supreme Court decisions explicating the right to jury trial under the sixth amendment, the fundamental purpose of the jury trial guarantee in criminal cases is to provide an independent body of citizens to shield the defendant from governmental oppression, whether by prosecutor or judge.[27] That purposes, however, does not require the jury to determine all factual issues in a criminal case. For example, judges routinely decide difficult issues of fact such as those relating to searches and seizures,[28] and the admissibility of evidence.[29] Moreover, the jury is not deemed necessarily superior to a court of administrative agency as a finder of fact.[30] The jury instead plays an indispensable role, for constitutional purposes, only in the determination of guilt.[31]

Participation in the determination of guilt, however, does not require participation in the determination of federal jurisdiction. Several federal courts have distinguished these determinations.[32] For example, in rejecting a contention that proof of scienter should be required for conviction under the wire fraud statute,[33] the United States Court of Appeals for the Second Circuit observed that use of interstate communication is not an integral part of the crime.[34] Similarly, the United States Court of Appeals for the Fourth Circuit rejected a contention that proof of scienter is required to establish the jurisdictional element in a conspiracy prosecution.[35] It relied on the Model Penal Code and Brown Commission Report and concluded that the jurisdictional element in a conspiracy prosecution should be treated the same as in a prosecution for substantive offenses—solely as a basis for federal jurisdiction.[36] Similarly, numerous state and federal decisions have held that the Constitution does not mandate proof beyond a reason-

[24] *See* Quigley, supra note 6, at 000.
[25] S. 1437, *supra* note 1, proposed Rule 25.1(b); *see* Senate Report, *supra* note 10, at 40.
[26] Much of the ensuing discussion is derived from a Department of Justice Memorandum on chapters 1–18 of S. 1437, substantially written by the author, submitted to the House Subcommittee on Criminal Justice. *See Hearings, supra* note 5, at 35–254.
[27] *See* Ballew v. Georgia, 435 U.S. 223, 229 (1978); Williams v. Florida, 399 U.S. 78, 86–87 (1970); Duncan v. Louisiana, 391 U.S. 145, 155–56 (1968).
[28] *See* Brett v. Wainwright, 439 F. 2d 1042, 1047 (5th Cir.), *cert. denied,* 404 U.S. 943 (1977).
[29] *See* United States v. Mitchell, 556 F. 2d 371, 377 (6th Cir.), *cert. denied* 434 U.S. 925 (1977).
[30] *See* McKeiver v. Pennsylvania, 403 U.S. 528, 543–45 (1971).
[31] The Supreme Court stated in Duncan v. Louisiana, 391 U.S. 145, 156 (1968), that the concern of the framers with unchecked governmental power "found expression in the criminal law in this insistence [in the sixth amendment] upon community participation in the determination of guilt or innocence." *See also* Ballew v. Georgia, 435 U.S. 223, 229 (1978); Williams v. Florida, 399 U.S. 78, 87 (1970).
[32] *See, e.g.,* United States v. Craig, 573 F. 2d 455, 486 (7th Cir. 1977); United States v. Howey, 427 F. 2d 1017, (9th Cir. 1970); United States v. Blassingame, 427 F. 2d 329, 330 (2d Cir. 1979), *cert. denied,* 402 U.S. 945 (1971).
[33] *See* 18 U.S.C. § 1343 (1976).
[34] United States v. Blassingame, 427 F. 2d 329, 330 (2d Cir. 1970), *cert. denied,* 402 U.S. 945 (1971). In the Comment to § 103 of its Final Report, the Brown Commission said:

> Elements of an offense are those factors which the definition of the offense denominates as relevant to criminality. Jurisdiction is not an element of an offense . . . , because jurisdiction goes only to the power of a government to prosecute. Whether or not it is proper for the *federal* government to prosecute is a separate question from whether or not the defendant has done something criminal.

Final Report, *supra* note 3, § 103, Comment (emphasis in original).
[35] United States v. LeFaivre, 507 F. 2d 1288, 1299 (4th Cir. 1974), *cert. denied,* 420 U.S. 1004 (1975). *See generally* United States v. Feola, 420 U.S. 671 (1975).
[36] 507 F. 2d at 1299.

able doubt of jurisdictional elements in criminal prosecutions.[37] But because "every fact necessary to constitute the crime . . . charged" must be established beyond a reasonable doubt to satisfy the due process clause,[38] these decisions imply that jurisdiction should not be considered a necessary element of the crime for the purposes of the due process clause. These decisions are also persuasive on the jury trial question because a court would be unlikely to hold that an issue that does not require proof beyond a reasonable doubt is nevertheless subject to the sixth amendment right to jury trial.[39]

Although the proposal in S. 1437 for judicial determination of the jurisdictional issue would be constitutionally valid, the question of its wisdom nevertheless remains. The principal reason advanced by the Senate Judiciary Committee for having the court rather than the jury determine jurisdiction is that the government will be able to appeal from an adverse ruling on the jurisdictional issue.[40] This goal could be accomplished equally well with the jury as the arbiter of jurisdiction, however, by requiring the jury to return a special or separate verdict on jurisdiction.[41] In current federal practice, however, courts strongly discourage the use of special verdicts or interrogatories in criminal cases because they may cause the jury to "catechize . . . its reasons" and thereby interfere with the constitutionally rooted "principle that the jury as the conscience of the community, must be permitted to look at more than logic." [42] The basic reason for disapproving the practice is its possible adverse effect on the jury's primary function of determining guilt.[43] This rationale is inapplicable to the proposal for a separate verdict on the issue of jurisdiction because the jurisdictional issue as previously discussed is distinct from the issue of guilt.[44] A special or separate verdict on jurisdiction under the S. 1437 format in which jurisdiction would be severed from the elements of the offense could better enable the jury to perform its constitutional mission of resolving guilt or innocence by clarifying the distinction between guilt and jurisdiction. It could also help avoid the confusion or distortion occasionally engendered by intermingling these issues.[45]

Thus, S. 1437 would reap little advantage by removing the issue of jurisdiction from the jury and transfering it to the court. Resolution of the jurisdictional issue by the court would occasionally be cumbersome for the criminal justice system because the jury would sometimes need to be excused to permit the parties to present evidence to the court on the jurisdictional issue. Thus, in my view, the

[37] *See, e.g.*, State v. Baldwin, 305 A. 2d 553, 558 (Me. 1973) (adopting, for policy reasons, the majority rule that proof beyond a reasonable doubt for jurisdiction is required in a criminal prosecution, but expressly rejecting the argument that this result is constitutionally required by principles of due process). *See generally* Annot., 67 A.L.R. 3d 988 (1975).

[38] *See* Patterson v. New York, 432 U.S. 197, 210 (1977); *In re* Winship, 397 U.S. 358, 364 (1970).

[39] Moreover, courts do not require that the existence of federal jurisdiction be made an element of the prosecution in every federal offense. For example, in Perez v. United States, 402 U.S. 146, 147, 154 (1971), the Court sustained a federal statute proscribing loansharking even though Congress had removed the issue of jurisdiction from the trial by finding that loansharking activities affected interstate commerce. Similarly, some courts have stated that jurisdictional facts in a criminal case can be the subject of judicial notice. *See* United States v. Miller, 499 F. 2d 736, 739–40 (10th Cir. 1974). *But see* Fed. R. Evid. 201(g).

[40] *See* Senate Report, *supra* note 10, at 1142–43.

[41] The jury's verdict on jurisdiction, if coupled with a finding of "guilty" as to the commission of the offense, would then seemingly be appealable as a "final decision" within the meaning of 28 U.S.C. § 1291 (1976). If not, Congress could certainly amend the Criminal Appeals Act, 18 U.S.C. § 3731 (1976), to authorize such government appeals.

[42] *See United States v. Sneck*, 416 F. 2d 165, 181–82 (1st Cir. 1969) (quoting Morgan, *A Brief History of Special Verdicts and Special Interrogatories*, 32 Yale L.J. 575, 592 (1923)).

[43] *See* United States v. Spock, 416 F. 2d at 182.

[44] *See* notes 31–34 *supra* and accompanying text.

[45] Even if a special verdict on jurisdiction is undesirable, severing jurisdiction from the elements of an offense would still produce all the advantages, except appealability of an adverse verdict by the government, enumerated at pages 000–00, *infra*. Without the use of the special verdict, severing jurisdiction from the criminal elements of the offense would affect the jury's role mainly by separating the question of guilt from the question of jurisdiction in the court's instructions and the parties' presentation of the case. If the jury found a lack of federal jurisdiction, they would be required to return a "not guilty" verdict. Under this system, an interesting issue would be whether an appellate court determination of lack of federal jurisdiction would result in an "acquittal" for purposes of the double jeopardy clause. *Cf.* Burks v. United States, 437 U.S. 1, 15–16 (1978) (acquittal of defendant as a result of trial error is to be distinguished from acquittal of defendant based on insufficient evidence for purposes of the double jeopardy clause).

arguments that support removing the jurisdictional issue from the jury in criminal prosecutions are insufficient to support such a change.[46]

ALLEGED UNWARRANTED EXPANSION OF JURISDICTION UNDER S. 1437

Of all the critical claims raised against S. 1437 in the Ninety-fifth Congress, none was asserted more zealously or enjoyed a greater following than the allegation that S. 1437 would cause an unwarranted expansion of federal jurisdiction and encroachment into areas of heretofore exclusive state domain. Professor John Quigley, in perhaps the most extreme indictment of the Code's jurisdictional scope, testified before the House Subcommittee on Criminal Justice that the Code would raise the specter of a "national police force" and would create approximately 180,000 new cases [47] cognizable in federal court.[48] Professor Quigley also alleged that the Senate Judiciary Committee's Report covered up expansive aspects of the bill.[49] Some other commentators have subsequently decried the expansive effect of S. 1437.[50] The various claims about S. 1437's jurisdictional reach implicate numerous provisions of the bill, but focus primarily on the Code's proposed use of three jurisdictional bases: affecting commerce,[51] use of a facility of commerce,[52] and the new concept of ancillary jurisdiction.[53]

Before answering these allegations of an unwarranted expansion of jurisdiction, some general observations are necessary. The initial observation is that, within reasonable limits, an increase in federal criminal jurisdiction should not be regarded as an evil in itself, nor should a decrease be regarded as a benefit. The propriety of an extension or contraction of federal criminal jurisdiction over an offense should depend on the need for greater or lesser federal involvement especially when the states have concurrent jurisdiction over the offense. Critics of the proposed Federal Criminal Code such as Professor Quigley apparently reject this perspective. Implicit in their analysis is the premise that federal criminal jurisdiction is currently at the outermost limit of tolerability, and that in no event should Congress expand it. The critics view jurisdictional enlargements as harmful in themselves, apparently without considering the underlying problem at which the legislation is directed. For example, Professor Quigley fails to acknowledge the need for even one additional federal offense to assist the states in deterring and punishing any form of criminal conduct. Given the prevalence of new white collar offenses, such as computer and federal program

[46] Some critics of S. 1437 such as Professor Quigley also allege that the bill would transfer the "grading" issue, which requires resolution of factual questions relevant to the degree or classification of the crime, from the jury to the court, and cite this proposal as an "assault upon the jury and an impairment of the rights of the accused." *Hearings*, *supra* note 5, at 314 (statement of Professor John Quigley). The bill, however, contains no such proposal. Professor Quigley evidently assumes that the jury cannot determine the grading issue because S. 1437 would place grading factors in a separate subsection from that defining the substantive elements of the offense. *See id.* But S. 1437 would contain no provision requiring this result. Subsection (a) of Rule 25. I would treat proof of offenses, defenses, affimative defenses, and grading in its first four paragraphs. *See* S. 1437, *supra* note 1, tit. II, § 111(o). These provisions would be silent altogether on whether the proof would be submitted to judge or jury. They specify only that the prosecution would be required to prove the offense beyond a reasonable doubt. By contrast, Rule 25.1(b), which addresses proof of jurisdiction, *see* note 25 *supra* and accompanying text, would contain a separate sentence requiring the court to determine jurisdiction. Thus, it would expressly modify the jury's traditional role. The plain inference, absent a similar provision in subsection (a) of Rule 25.1, is that no alteration of the present practice, under which the elements of offenses, defenses, affirmative defenses, and grading factors are proved to the jury, is intended. The Senate Judiciary Report buttresses this conclusion by its failure to mention any proposed modification of the current procedure. Such a fundamental change would have received comment had it been intended by the draftsmen, because the Report throughout meticulously identified and attempted to justify all proposed changes of significance from existing law or practice. *See, e.g.*, Senate Report, *supra* note 10, at 55–57. Its silence on this subject thus indicates that the bill would effect no such change in the jury's function. Nevertheless, to resolve any doubt, when the bill is reintroduced in the 96th Congress, the drafters should insert specific language making clear that the jury would continue to determine the grade of an offense.

[47] *See* notes 68–69 *infra* and accompanying text.

[48] *Hearings*, *supra* note 5, at 298, 317 (statement of Professor John Quigley).

[49] *Id.* at 298 (statement of Professor John Quigley).

[50] *See id.* at 773, 779 (statement of Evelle Younger, Attorney General of California); *id.* at 1187, 1190 (statement of John Shattuck & David Landau, American Civil Liberties Union).

[51] *See* notes 68–83 *supra* and accompanying text.

[52] *See* notes 84–101 *supra* and accompanying text.

[53] *See* notes 108–30 *supra* and accompanying text.

fraud, and the irrational gaps in present laws,[54] such a parochial viewpoint is untenable. The theory that jurisdictional enlargements are in themselves harmful would logically condemn proposals in S. 1437 that would address new areas of crime. One such proposal would amend the civil rights laws to prohibit sex discrimination and an act by an individual that deprives another person of his civil rights.[55] Other proposals in S. 1437 would specifically prohibit such white collar crimes as pyramid sales schemes [56] and such corruption crimes as bribery involving union membership and work placement and embezzlement of union funds.[57] Proponents of S. 1437 make no attempt to conceal or minimize the effect of these proposals. Rather, these provisions are among the most heralded aspects of the bill. Anti-federal jurisdiction spokesmen, however have ignored these areas of intentionally enlarged federal jurisdiction in S. 1437. Although the political astuteness of these critics in ignoring these meritorious proposals is admirable, their ploy has undermined their criticisms of other aspects of S. 1437 because their criticisms assume that enlargements of Federal jurisdiction are evil per se.

Moreover, virtually all criticism of the scope of federal criminal jurisdiction proposed in S. 1437 uses existing laws as a guidepost. Preserving the present federal-state law enforcement "balance," however, is inconsistent with the critics' goal of limiting federal jurisdiction because this "balance" is not the product of narrow federal laws. Present federal criminal jurisdiction is frequently plenary in scope, giving the federal government sweeping power to prosecute many offenses over which states and localities have concurrent jurisdiciton. The practical limitations on the exercise of this jurisdiction are the government's limited resources and lack of inclination to engage in such an expensive prosecutorial effort. For example, federal jurisdiction over robberies,[58] extortion,[59] loansharking,[60] automobile thefts,[61] and drug offenses [62] is so broad that the Department of Justice could probably expend its entire law enforcement budget investigating and prosecuting cases within these statutes. Congress has shown no inclination to alter this situation. On the contrary, almost every Congress passes more criminal statutes extending federal concurrent jurisdiction into areas of exclusive state jurisdiction. In 1976, for example, Congress created concurrent federal jurisdiction over various common law offenses, such as murder, kidnapping, and assault when a foreign official is the victim,[63] and in 1978 Congress extended federal concurrent jurisdiction over hijackings of cigarettes on which taxes are due.[64]

Thus, the extent of present federal jurisdiction over offenses, the standard against which critics like Professor Quigley measure the impact of S. 1437 on the current federal-state relationships in the fight against crime, is an inapposite gauge of the relationship. Congress has chosen fiscal rather than jurisdictional limitations to preserve the federal-state balance in criminal law enforcement responsibility. If Congress decides that the federal government, rather than the states, should investigate and prosecute most liquor store and grocery store robberies, low-level drug transactions, small scale loan-sharking activities, and other local crimes, it need pass no new laws, but need only increase, albeit by

[54] For example, while an elaborate statutory scheme applies to robbery of federally insured banks and other financial institutions, no similar statute specifically addresses extortion from these institutions, and the applicability of the Hobbs Act, 18 U.S.C. § 1951 (1976), to these disputed. *See* Senate Report, *supra* note 10, at 631. *Compare* United States v. Golay, 560 F. 2d 866, 868–69 (8th Cir. 1977) *with* United States v. Beck, 511 F. 2d 997, 1000 (6th Cir.), *cert. denied*, 423 U.S. 836 (1975). S. 1437 would close this gap.

[55] S. 1437, *supra* note 1, §§ 1501–1505. Under current law, only conspiracies to deprive persons of their civil rights are illegal. *See* U.S.C. § 241 (1976).

[56] S. 1437, *supra* note 1, § 1437.

[57] *Id.* § 1752.

[58] *See* 18 U.S.C. §§ 1951, 2113 (1976).

[59] *See id.* §§ 875–877, 1951, 1952.

[60] *See id.* §§ 892–894.

[61] *See id.* § 2312.

[62] *See* 21 U.S.C. §§ 801–966 (1976).

[63] *See* Act for the Prevention and Punishment of Crimes Against Internationally Protected Persons, Pub. L. No. 94–467, § 8, 90 Stat. 1997 (1976) (codified at 18 U.S.C. § 878(d) (1976)).

[64] *See* Act of Nov. 2, 1978, Pub. L. No. 95–575, 92 Stat. 2463 (to be codified at 18 U.S.C. §§ 2341–2346). Moreover, nearly every year members of Congress demand the enactment of additional statutes, often over the opposition of the Department of Justice. Congress continually pressures the Department of Justice to intensify its enforcement efforts in other areas of existing concurrent jurisdiction, such as arson. *See generally Arson-for-Profit: Its Impact on State and Localities: Hearings Before the Subcomm. on Intergovernmental Relations of the Senate Governmental Affairs Comm.* 95th Cong., 2d sess. (1977).

geometric proportions, the budgets and personnel of federal law enforcement agencies. Congress, of course, will not and should not take this action. In assessing the claims that certain S. 1437 proposals for enlarged federal criminal jurisdiction would "radically alter" the fabric of federalism, "sharply" increase the "caseload of the federal courts," and overpopulate federal prisons,[65] legislators should recognize that fiscal controls by Congress, and Executive Branch policies of restraint in the exercise of federal jurisdiction necessitated by such controls, rather than explicit statutory restrictions on jurisdiction, have maintained the current balance in federal-state law enforcement efforts.[66]

An examination of the most far-reaching claims concerning the bill's expansionist nature will reveal further defects of logic and methodology.[67] Because Professor Quigley, a leading spokesman for the proposition that S. 1437 would unduly expand federal criminal jurisdiction, is a participant in this symposium, this article examines his allegations as representative of those made by persons who have criticized S. 1437 on this ground.

"Affecting Commerce" Jurisdiction: Robbery

Professor Quigley contended, in his Statement submitted to the House Subcommittee on Criminal Justice, that the proposal in S. 1437 to apply an "affecting commerce" jurisdictional base to robbery [68] would probably increase federal prosecutions by approximately 150,000 per year.[69] This increase represented more than eighty percent of the total alleged increase in the federal criminal docket [70] that Professor Quigley attributed to various facets of the bill. Noting that the current annual number of federal criminal prosecutions is approximately only 40,000, Professor Quigley concluded his statement with the alarmist message that enactment of S. 1437 would increase prosecutions by a factor of between four and five, "raising the annual caseload well above 200,000."[71]

Although Professor Quigley recognized that the present Hobbs Act,[72] which makes robbery a federal crime, contains an "affecting commerce" jurisdictional base, he argued that the Act had been limited to "racketeering" activities, defined as robberies "carried out as part of an ongoing interstate crime ring."[73] He cited two United States Court of Appeals decisions, *United States* v. *Yokley* [74] and *United States* v. *Culbert*.[75] to support his construction of the jurisdictional requirement.

Even if Professor Quigleys' specious premise, which equates an increase in jurisdiction with a rise in actual prosecutions, is accepted, his interpretation of the Hobbs Act is erroneous because the Supreme Court, shortly after the submission of his statement, unanimously reversed *Culbert*, holding that the Hobbs Act includes no "racketeering" limitation.[76] But Professor Quigley is guilty of

[65] *See Hearings, supra* note 5, at 298 (statement of Professor John Quigley).

[66] The failure of critics such as Professor Quigley to argue for a general cutback in federal jurisdiction as a means of consolidating or strengthening the role of the states in criminal law enforcement indicates their recognition of the true basis for the balance. This failure undermines their argument that increased federal jurisdiction would be harmful per se, because, as Professor Louis Schwartz of the University of Pennsylvania Law School, the former staff director of the Brown Commission, has noted: "If Prof[essor] Quigley were serious about the dangers of broad federal jurisdiction he should have called for a 'roll-back' of the jurisdiction adopted in laws relating to drugs, gambling, usury, and racketeering. . . ." *See Hearings, supra* note 5, at 794 (statement of Professor Louis Schwartz, Americans for Democratic Action) (emphasis in original).

[67] For example, Professor Quigley erroneously attributes jurisdictional significance to the bills provision, in § 303(d)(2), that, except as expressly provided, scienter would not be required in establishing federal jurisdiction. *See id.* at 314 (statement of Professor John Quigley). This provision would essentially codify current case law. *See* United States v. Blassingame, 427 F. 2d 329, 330 (1970), *cert denied*, 402 U.S. 945 (1971). He also fails to recognize the various areas in which S. 1437 would narrow federal criminal statutes. *See, e.g.*, S. 1437, *supra* note 1, § 1831 (riots); *id.* § 1841 (gambling); *id.* § 1842 (obscenity); *id.* § 1843 (prostitution). *See also Hearings, supra* note 5, at 793 (statement of Professor Louis Schwartz, Americans for Democratic Action).

[68] *See* S. 1437, supra note 1, § 1721(c).

[69] *Hearings, supra* note 5, at 300 (statement of Professor John Quigley).

[70] Professor Quigley estimated that S. 1437 would cause an increase of 183, 150 criminal cases in the federal courts. *Id.* at 317 (statement of Professor John Quigley).

[71] *Id.*

[72] 18 U.S.C. § 1951(a) (1976).

[73] *Hearings, supra* note 5, at 299–300 (statement of Professor John Quigley).

[74] 542 F. 2d 300, 304 (6th Cir. 1976).

[75] 548 F. 2d 1355, 1357 (9th Cir. 1977), *rev'd*, 435 U.S. 371 (1978).

[76] United States v. Culbert, 435 U.S. 371, 380 (1978).

more than mere unreliability as a Supreme Court prognosticator.[77] His preposterous claim would have been inaccurate even if the Supreme Court had affirmed the lower court's holding in *Culbert*. Professor Quigley failed to mention that the *Yokley* and *Culbert* decisions are the only two appellate court decisions to construe the Hobbs Act in such a limited manner in its more than forty-year history. *Yokley* was the first appellate court decision to require proof of a "racketeering" nexus as an element of the offense. Thus, Professor Quigley's view that S. 1437's use of the "affecting commerce" jurisdictional base in robbery would create 150,000 "new" robbery prosecutions is illusory, because the government, until 1976, was prosecuting robbery cases under an interpretation of the Hobbs Act identical to that in S. 1437. Passage of the bill would probably produce no greater federal robbery caseload than existed in 1976, or than exists today. In the wake of the Supreme Court's holding in *Culbert*, an appreciable increase in the number of Hobbs Act robbery prosecutions will probably never develop. An increase in robbery prosecutions is unlikely because the operative factor limiting federal prosecutive involvement in this area is not a lack of jurisdiction, but a policy of restraint in the exercise of jurisdiction. This restraint is motivated by a desire to leave the primary responsibility for enforcement of criminal laws with the states. The United States Attorney's Manual, issued by the Department of Justice and binding on United States Attorneys, sets forth the position, long adhered to by the Department, that the robbery provisions of the Hobbs Act should be applied only in cases which involve organized criminal activity or which are part of some wide-ranging scheme," and mandates that a prosecutor consult the appropriate section of the Criminal Division before initiating a Hobbs Act robbery prosecution.[78] Statistics compiled by the Administrative Office of the United States Courts demonstrate the effect of this policy. The data indicate that the total number of federal non-bank, non-postal robbery offenses, a category including more than just Hobbs Act robbery cases,[79] for the years 1975, 1976, and 1977, is 71, 67, and 42, respectively,[80] compared to Professor Quigley's estimate of 150,000 potential federal Hobbs Act robbery prosecutions under S. 1437.[81] This comparison emphasizes that the policy of the Department of Justice, rather than statutory limits on jurisdiction produces the low volume of federal robbery prosecutions.

The question may arise whether, in light of this policy, Congress should limit the Hobbs Act to robberies involving "racketeering." Such a change would be inadvisable because if a statutory limitation rather than prosecutive discretion is used to effectuate the desired limitation, the government would need to prove the presence of "racketeering" activity as an element of the offense. As the Supreme Court noted in *Culbert*, this element might pose constitutional difficulties because of the vagueness of the concept of racketeering.[82]

Even if Congress could devise a meaningful and constitutional definition of racketeering, the addition of this element of proof would significantly impede successful prosecution, possibly causing some defendants to be acquitted who are currently convicited. Although Congress confronts this type of choice fre-

[77] Although Professor Quigley has erroneously condemned the Senate Judiciary Committee's Report on S. 1437 for consistently covering up expansive aspects of the bill through failure to cite leading court decisions that conflict with its interpretation of current law, *Hearings*, *supra* note 5, at 297–98 (statements of Professor John Quigley), he inexcusably failed to note that ample precedent existed in other federal circuits, specifically rejecting the narrow construction of the Hobbs Act in *Yokley* and *Culbert*. *See, e.g.*, United States v. Frazier, 560 F. 2d 884, 886 (8th Cir. 1977), *cert. denied*, 435 U.S. 968 (1978); United States v. Wariedo, 557 F. 2d 721, 729–30 (10th Cir. 1977); United States v. Brecht, 540 F. 2d 45, 51 (2d Cir. 1976); *cert. denied*, 429 U.S. 1123 (1977). Professor Quigley might also have acknowledged the Supreme Court's previous observation in Stirone v. United States, 361 U.S. 212, 215 (1960), that the "broad language" of the Hobbs Act manifests "a purpose to use all the constitutional power Congress has to punish interference with interstate commerce by extortion, robbery or physical violence."

[78] Dept. of Justice, United States Attorneys' Manual tit. 9, § 131.110. This policy contradicts Professor Quigley's assertion that federal prosecutors have traditionally pushed jurisdictional bases to the limit. *See Hearings*, *supra* note 5 at 317 (statement of Professor John Quigley).

[79] *See* 18 U.S.C. § 153 (1976) (prohibiting robbery on an Indian reservation); *id* § 2111 (prohibiting robbery on a federal enclave); *id.* § 2112 (prohibiting robbery of United States property).

[80] *See* [1977] Ad. Off. United States Cts. Ann. Rep. 253 [hereinafter cited as Annual Report]. The 1977 Report also noted that the more than 40% decline in federal automobile theft prosecutions under the Dyer Act. 18 U.S.C. § 2312 (1976), since 1973 represents the Department of Justice policy of prosecuting defendants involved in organized crime rings. Annual Report, *supra* at 252.

[81] The figure is derived from data indicating the total number of robbery arrests in the United States.

[82] 435 U.S. 371, 374 (1978).

quently in defining the boundaries of federal offenses, the generally satisfactory experience with the Hobbs Act suggests that Congress has acted wisely in drafting the statute broadly and leaving to the Executive Branch broad flexibility and discretition in deciding which violations to prosecute. The Hobbs Act is one of the many areas in which Congress has created broad jurisdiction for offenses relying on the discretition of the Executive Branch and Congressional control on this discretition, such as oversight hearings and the power of the purse. Congress recognizes that the Executive Branch will utilize little of the jurisdiction the legislature grants but apparently wishes to make the jurisdiction available for use in an unusual or extraordinary case.

Professor Quigley, basing his analysis on the faulty premise that S. 1437 would increase federal jurisdiction,[83] regularly leaps to the conclusion that a vast increase in actual prosecutions would result. Quigley's illogical leap stems from his failure or refusal to recognize the residual character of federal concurrent criminal jurisdiction; Congress has conferred jurisdiction based on the understanding, whether explicit or implicit, that the Department of Justice will defer to state and local law enforcement authorities in routine cases and exercise federal jurisdiction only in situations implicating a perceived substantial or compelling federal interest.

Thus, Professor Quigley's charge that S. 1437's treatment of robbery jurisdiction would produce 150,000 new federal prosecutions is meritless. Rather, the bill would merely retain the current language in the Hobbs Act, which, despite its unrestrained construction by the Supreme Court, has rarely been utilized by the federal Executive Branch to prosecute purely local, minor robbery offenses, which Professor Quigley, as well as the Department of Justice, believe should remain the exclusive responsibility of state and local authorities. Professor Quigley attributes more than eight percent of his predicted increase in the federal criminal caseload to the proposed change in the Hobbs Act robbery offense. His assertions about the bill's overall effect on federal criminal jurisdiction is therefore grossly exaggerated. Professor Quigley's claims concerning the remaining twenty percent expansion of jurisdiction are also fraught with analytical errors and inaccurate conclusions.

Extortion and the Travel Act, 18 U.S.C. § 1952.

Professor Quigley contends that S. 1437 would produce 8500 new federal criminal cases per year by expanding federal jurisdiction over extortion.[84] According to Professor Quigley, S. 1437 would cause this expansion by failing to incorporate a "rackeeting" limitation assertedly present in the current Travel Act,[85] and by modifying the jurisdictional base in the Travel Act to include use of "any facility of interstate or foreign commerce" rather than use of "any facility *in* interstate or foreign commerce."[86]

Neither contention has merit. Opponents of S. 1437 have erroneously assumed that the Travel Act currently contains a "racketeering" limitation. Although the legislative history of the Travel Act reveals that it was "aimed primarily at organized crime,"[87] the means chosen by Congress to accomplish this purpose do not require the government to prove as an element of the offense that a defendant was involved in organized crime, or was a "racketeer." Rather, the Travel Act proscribes specified illicit business activities that are generally associated with organized crime and provide it with its profits. The United States Court of Appeals for the Ninth Circuit, in sustaining a conviction under the Travel Act for playing gin rummy for money, explained that Congress had not limited section 1952 to persons who were members of an organized criminal group or to offenses usually committed by racketeers.[88] It reasoned that Congress rejected such limitations to avoid the difficulty of proving an individual's association with a clandestine criminal organization and the possibility that racketeers would evade liability through adoption of new forms and techniques of illicit trafficking.[89] The court relied on the legislative history in concluding that Congress intended

[83] *See* notes 68–77 *supra* and accompanying text.

[84] *Hearings*, *supra* note 5, at 303 (statement of Professor John Quigley).

[85] 18 U.S.C. § 1952 (1976).

[86] *Hearings*, *supra* note 5, at 301–02; *see, e.g.*, S. 1437, *supra* note 1, §§ 1722(d)(2), 1843(e)(2).

[87] *See* Rewis v. United States, 401 U.S. 808, 811 (1971).

[88] United States v. Roselli, 432 F. 2d 879, 885 (9th Cir. 1970), *cert. denied*, 401 U.S. 924 (1971). *See also* United States v. Walsh, 544 F. 2d 156, 159 (4th Cir. 1976), *cert. denied*, 429 U.S. 1903 (1977); United States v. Peskin, 527 F. 2d 71, 76–77 (7th Cir. 1975), *cert. denied*, 429 U.S. 818 (1976).

[89] 432 F. 2d at 885.

the statute to apply to any person engaged in illicit business activities within one of the four categories specified in the statute.[90]

Opponents of S. 1437 are also incorrect in asserting that the prepositional variation in S. 1437 from "facility in interstate or foreign commerce" to "facility of interstate or foreign commerce" would expand federal jurisdiction. If this change would expand the Travel Act to instances involving the intrastate use of a facility in commerce, such as a telephone, the change would enlarge federal jurisdiction substantially because courts have consistently construed the Travel Act to apply only when the defendant has used an interstate facility in interstate commerce.[91] Although a modicum of authority lends plausibility to claim that the word "of" instead of "in" supports a broader construction,[92] the Senate Judiciary Committee intended no such expansion.[93] Professor Quigley charges that the Senate Judiciary Committee's Report ignored the "very substantial expansion" in jurisdiction caused by the prepositional change.[94] This misleading allegation, however, attains literal truthfulness only because the Report explicitly asserted the opposite: that no such expansion was intended. For example, in referring to this jurisdictional base as applied to the prostitution offense[95] in S. 1437, the Report stated that the jurisdictional base would "perpetuate the existing jurisdictional purview of 18 U.S.C. 1952 . . ." [96] The Report made similar statements about provisions proscribing bribery,[97] gambling,[98] and arson,[99] all offenses to which the Travel Act applies. Moreover, S. 1437 would utilize the identical jurisdictional phrase "facility of interstate or foreign commerce" in the obscenity provision, which the Report indicated "is intended to include, as in other contexts, the interstate use of a telephone and an interstate broadcast over the radio . . . ." [100] The Report probably would not have laboriously clarified an intent to reach the interstate use of a telephone "as in other contexts," if the Committee intended to extend jurisdiction to the wholly intrastate use of such an instrument.

Morover, Professor Quigley overemphasizes the importance of the change from the preposition "in" in the Travel Act [101] to "of" in S. 1437.[102] Although some lower court decisions have attached significance to this difference,[103] the Supreme Court in construing the Travel Act [104] twice employed "of" in describing the offense,[105] attaching no significance to this choice of preposition. Because of the Supreme Court's treatment of this phrase and the strong evidence in S. 1437's legislative history indicating no intent to expand the Travel Act to the intrastate use of a commerce facility, federal courts would be unlikely to interpret the bill as embodying the massive jurisdictional enlargement alleged by Professor Quigley.[106]

Thus, Professor Quigley's assertion of a large increase in federal jurisdiction attributable to S. 1437's treatment of the extortion offense is unfounded. Moreover, this erroneous interpretation of the phrase "facility of interstate commerce" also invalidates other arguments in Professor Quigley's analysis, because he makes partial use of this same allegation as the predicate for his conclusions that

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[90] *Id.*
[91] *See* United States v. Villano, 529 F. 2d 1046, 1052 n.6 (10th Cir), *cert. denied*, 426 U.S. 953 (1976); United States v. Cafero, 473 F. 2d 489, 502 (3d Cir. 1973; United States v. De Sapio, 299 F. supp. 436, 448–49 (S.D.N.Y. 1969), *aff'd*, 435 F. 2d 272 (2d Cir. 1970), *cert. denied*, 402 U.S. 999 (1971).
[92] *See* United States v. De Sapio, 299 F. Supp. 436, 448–49 (S.D.N.Y. 1979), *aff'd*, 435 F. 2d 272 (2d Cir. 1970), *cert. denied*, 402 U.S. 999 (1971).
[93] *See* notes 96–100 *infra* and accompanying text.
[94] *Hearings*, *supra* note 5, at 302 (statement of Professor John Quigley).
[95] Prostitution is currently within the Travel Act. *See* 18 U.S.C. § 1952(b)(1) (1976).
[96] Senate Report, *supra* note 10, at 859.
[97] *See id.* at 319.
[98] *See id.* at 847.
[99] *See id.* at 593–94.
[100] *See id.* at 855 n.100.
[101] *See* 18 U.S.C. § 1952 (1976).
[102] *See* S. 1437, *supra* note 5, § 1722.
[103] *See* cases cited note 91 *supra*.
[104] *See* Erlenbaugh v. United States, 409 U.S. 239, 239 (1972).
[105] The Court in its unanimous opinion described the offense of which the petitioners were convinced as having been "under the Travel Act, 18 U.S.C. § 1952 [(1970)], which makes it unlawful to use a facility of interstate commerce in furtherance of certain criminal activity." 409 U.S. at 239 (emphasis supplied); *see id*, at 240. The drafters of S. 1437 evidently used the same form of words, without believing that they were effecting a major expansion in federal jurisdiction through use of this language.
[106] Although the federal courts would probably not read into S. 1437 a dramatic expansion of Travel Act jurisdiction involving interstate use of commerce facilities, *see* United States v. Bass, 404 U.S. 336, 349–50 (1971), returning to the current formulation "facility in interstate or foreign commerce" would be preferable when the bill is reintroduced in 1979.

the bill would enlarge federal jurisdiction over other offenses such as bribery and blackmail.[107]

Ancillary Jurisdiction

Ancillary, or "piggyback," jurisdiction is used to obtain federal jurisdiction over the whole criminal transaction when federal statutes provide jurisdiction over only part of it.[108] The National Commission on Reform of Federal Criminal Laws formulated the general concept and recommended a provision permitting federal prosecution if "the offense is committed in the course of committing or in immediate flight from the commission of any other offense defined in this Code over which Federal jurisdiction exists." [109] The Commission's proposed Code would incorporate this provision as a jurisdictional base for most offenses against person or property, and would cause a "considerable expansion" of federal jurisdiction, permitting federal prosecution in "over 7,500 combinations of offenses." [110] Although the criticism of the National Commission's broad proposal was not universal,[111] the National Association of Attorneys General and other commentators criticized it as an unwarranted intrusion of federal authority into the exclusive province of the states.[112]

The drafters of S. 1437 rejected such a broad proposal, proposing instead an ancillary jurisdiction concept of more modest dimensions. Rather than providing ancillary jurisdiction as a general basis for federal prosecution, S. 1437 would include it as a basis only for the most serious common law offenses against person or property, and each offense would allow ancillary jurisdiction over only those underlying offenses most likely to be associated with the commission of the ancillary crime. This limited application of ancillary jurisdiction would produce about 350 combinations of offenses as compared to more than 7,500 under the approach recommended by the National Commission.[113] As proposed in S. 1437, the ancillary jurisdiction concept has won the acceptance of the National Association of District Attorneys General.[114] California Attorney General Evelle Younger, while endorsing the appropriateness of ancillary jurisdiction in limited applications,[115] recently noted his continued opposition to the extent to which it would be authorized under S. 1437. Professor Quigley has contended that it would add about 5,000 new cases to the federal criminal docket.[116] This latter claim is unsubstantiated and, as with other allegations made by Professor Quigley, is grossly exaggerated.

Although ancillary jurisdiction may appear to be an extension of federal jurisdiction, in fact it has strong antecedents in existing federal statutes, several of which classify personal injury occurring in the course of a federal office as an aggravating factor for the purpose of grading. The present bank robbery statute,[117] for example, allows higher penalties when the defendant has assaulted, kidnapped, or killed another person "in committing" the underlying offense. Similarly, major civil rights offenses, and numerous prop-

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[107] *See* Quigley, *supra* note 6, at 000.
[108] For example, the murder provision, S. 1437, *supra* note 1, § 1601, would list 27 other crimes that would supply the basis for federal jurisdiction over a murder if the murder "occurs during the commission" of one or more of the enumerated offenses. *See generally* note 122 *infra* and accompanying text.
[109] *See* Senate Report, *supra* note 3, § 201(b).
[110] *See* Senate Report, *supra* note 10, at 34.
[111] *See generally* Note, *Piggyback Jurisdiction in the Proposed Federal Criminal Code*, 81 Yale L. J. 1209 (1972).
[112] *See* Senate Report, *supra* note 10, at 34.
[113] *See id.* at 35.
[115] *See Hearings*, *supra* note 5, at 773, 779–80 (statement of Evelle Younger, Attorney General of California). Mr. Younger acknowledged the propriety of federal ancillary jurisdiction in situations, such as in the civil rights area, in which local authorities are "unable or unwilling" to prosecute, but argued that the jurisdictional bases in the Federal Criminal Code bill should be written to embody this limited application. *Id.* at 780 (statement of Evelle Younger, Attorney General of California). A limitation of this kind, as a statutory restriction on jurisdiction, would seem undesirable, however, because courts are unequipped to determine whether state and local authorities are "unable or unwilling" to prosecute or investigate an offense. In addition, litigating these questions would engender tension between federal and state law enforcement authorities. Thus, although the concerns mentioned by Attorney General Younger are relevant in determining the extent to which federal ancillary jurisdiction should be exercised, they should not be embodied in the bill as limitations on the power of the federal government to prosecute an offense.
[114] *See Reform of the Federal Criminal Laws, Hearings on S. 1 & S. 1400 Before the Subcomm. on Criminal Laws and Procedure of the Comm. on the Judiciary* (pt. 7), 93d Cong., 1st Sess. 6011 (1973) (statement of Richard J. Israel, National Association of District Attorneys General).
[116] *Hearings*, *supra* note 5, at 308 (statement of Professor John Quigley).
[117] *See* 18 U.S.C § 2113(d)-(e) (1976).

erty destruction crimes provide increased penalties if death or bodily injury results.[118]

Permitting federal prosecution for the ancillary assault or murder would be no greater intrusion on state law enforcement than considering assault or death during the federal crime as grading factors. Neither the Constitution nor federal statute prohibits the state in either situation from also prosecuting the assault or murder,[119] and neither requires that the state prosecution be subordinated in time to the federal prosecution.[120] Conversely, if a state prohibits subsequent prosecution for the same incident after a federal adjudication of guilt, a distinction between a case in which the federal prosecution was for the offense and a case in which an injury resulting from the offense was used as a grading factor to enhance the defendant's federal sentence is difficult to justify. Thus, to the substantial extent federal statutes currently utilize injury or death as a predicate for an increased sentence, provisions in S. 1437 that would assert concurrent federal jurisdiction over the crimes of assault and murder themselves would not significantly augment federal power.

S. 1437 would also create ancillary jurisdiction in areas in which no comparable grading provision currently exists. For example, the bill would provide federal jurisdiction over a murder or serious assault occurring in the course of specified offenses that are designed to protect federal law enforcement officers, witnesses and informants.[121] The appropriateness of such an extension of federal jurisdiction depends on the importance of the federal interest implicated. The Committee Report provides little rationale for this extension. The primary purpose of the extension is to provide federal agents, witnesses, and informants with the additional protection of the threat of federal prosecution for murder or assault during the commission of one of the underlying offenses. Federal law enforcement officials, informants, and witnesses frequently must perform duties that are unpopular with local citizens or authorities, and in several instances during our nation's history a state has declined to prosecute persons responsible for killing or assaulting them while they were performing their duties. A legitimate need thus exists for federal jurisdiction to vindicate such offenses.[122]

The mere existence of the jurisdiction would not produce the rash of federal prosecutions that Professor Quigley evidently envisions, Rather, as is true

[118] More than three dozen such statutes exist. *See, e.g., id.* §§ 34, 241, 242, 245(b), 351, 832–834 844(d), 844(i), 1751, 1992; 42 U.S.C. § 3631 (1976); 49 U.S.C. § 1472(i)-(n) (1976). Congress recently moved toward the ancillary jurisdiction approach by creating separate offenses, not merely increased penalties, for use of a firearm or an explosive to commit any federal felony. *See* 18 U.S.C. §§ 844(h), 924(c) (1976).

[119] *See* Bartkus 1. Illinois, 359 U.S. 121, 128–29, 136–39 (1959). S. 1437 would also include a provision codifying the judicially established principle that, unless otherwise expressly indicated, "the existence of federal jurisdiction over an offense does not . . . preclude . . . a state or local government from exercising its concurrent jurisdiction to enforce its laws applicable to the conduct involved." S. 1437, *supra* note 1, § 205(a)(1).

[120] See Abbate v. United States, 359 U.S. 187, 195–96 (1959) (holding that federal prosecutor was not barred under the double jeopardy clause of the fifth amendment by earlier conviction in state court).

[121] *See* S. 1437, *supra* note 1, §§ 1302, 1324, 1357, 1358.

[122] *See* Note, *supra* note 111, at 1215 n.39 In theory, inclusion of grading factors could also meet the federal interest in protecting officials, informants, and witnesses, by increasing the penalty for a violation of the underlying offenses if death or serious bodily injury results as do the civil rights and other statutes currently on the books.

Many reasons, however, support ancillary jurisdiction as a preferable alternative to an enhanced grading device. The enhanced grading provisions in present law are clumsy and imprecise. For example, they fail to distinguish between accidental and premediated "death resulting." Requiring the government to prove murder or manslaughter allows a greater opportunity to tailor punishment, whole also affording increased protection to defendants, who may contest the government on its proof of all the elements of those offenses rather than merely on the fact of a death resulting. Revision of the grading factors in terms of the commission of actual offenses such as murder and manslaughter would be possible. But to include the total range of conduct from assault to murder as a grading device in each offense would be cumbersome in comparison to the ancillary jurisdiction technique. It would also afford no less encroachment on the state domain.

In addition, the use of ancillary jurisdiction would permit "separate judgments of conviction and separate sentences, a material advantage if the conviction for one of the offenses is later overturned." *See* Senate Report, *supra* note 10, at 34.

Finally, assuming that in many cases in which federal ancillary jurisdiction would be invoked the State would not exercise its prerogative to prosecute for the same offense, the concept has the advantage of allowing a "unitary adjudication and punishment of a defendant's entire course of criminal behavior," *see id.* and would avoid the time and expense of multiple trials. This consolidation would also benefit witnesses, who would otherwise need to testify at both the federal and state trials, and would obviate problems of adverse publicity generated by the first trial.

generally with concurrent jurisdiction situations, the federal government would be extremely circumspect in its exercise of jurisdiction and, consistent with the dictates of comity and federalism, would probably invoke jurisdiction only if it perceived a state default or miscarriage of justice in which a substantial federal interest in prosecution and punishment was unsatisfied.

Although serious crimes against the person, such as murder, manslaughter, maiming, aggravated assault, terrorizing, kidnapping, and rape qualify as offenses in which ancillary jurisdiction would be necessary to vindicate a substantial federal interest in the fact of state of local indifference, less justification exists for employing ancillary jurisdiction beyond these parameters to offenses against property.[123] Property is itself less important than human life. More importantly, cases are less likely to arise in which state or local authorities would be unwilling or unable to prosecute an offender for a serious property destruction crime that was outside federal jurisdiction but was committed during a federal offense with a penalty insufficient to vindicate a substantial federal interest. Although situations of this type are conceivable in cases involving deprivations of civil rights and obstructing government functions, offenses which would be misdemeanors under S. 1437,[124] the failure of Congress for over one hundred years to provide for enhanced grading based on property destruction in these fields indicates that such situations are unlikely to arise frequently. This absence of legislative action thus reflects the absence of a substantial federal interesst in extending ancillary jurisdiction to this area.[125] Accordingly, the ancillary jurisdiction provisions in S. 1437 applicable to property destruction offenses should be deleted.

Legislators should decrease ancillary jurisdiction under S. 1437 by eliminating trespass as a predicate for the invocation of ancillary jurisdiction.[126] They should also more narrowly define the special ancillary jurisdiction base applicable to the proposed offense of reckless endangerment, over which the bill [127] would assert jurisdiction whenever "the offense occurs during the commission of any other offense over which federal jurisdiction exists." [128] Aside from these exceptions, however, S. 1437 should retain the ancillary jurisdiction innovation. This approach would be superior in promoting justice to the enhanced penalty approach

[123] *See* S. 1437, supra *note* 1, § 1701 (arson); *id.* § 1702 (property destruction).

[124] *See id.* §§ 1302, 1501–1505.

[125] Moreover, Congress, in setting the maximum penalty for a non-property destruction offense, has apparently never provided an increased sentence if property was destroyed during commission of a federal offense. Neither the Senate Report, *see* note 10 supra, nor the Final Report, *see* note 3 *supra*, offer rationalization for the application of the ancillary jurisdiction approach to pure property offenses.

[126] A serious offense against the person such as murder or aggravated assault would probably not arise in the course of a simple trespass, absent a provable intent by the defendant to commit the asault or some other crime. Because more serious trespassory offenses, such as burglary and criminal entry, would be included as predicate offenses for ancillary jurisdiction over murder, aggravated assault, and other serious crimes against the person, no need exists for the reference to simple trespass. Moreover, if such a crime did occur when the only provable federal offense was a trespass, the federal nexus, given the petty nature of the trespassory infraction, should be regarded as insufficient to justify extension of federal jurisdiction over the personal crime. Nevertheless, even if allowed to remain in the bill, the Department of Justice would rarely invoke such jurisdiction and thus, its inclusion in the bill, while unjustified, would not noticeably increase the number of federal prosecutions.

[127] S. 1437 would enact the recommendation of the National Commission regarding reckless endangerment. *See* FINAL REPORT, *supra* note 3, § 1613(2).

[128] *See* S. 1437, *sup a* note 1. § 1617(c)(2). Reckless endangerment, contrary to Professor Quigley's assertion, would not be "a vague, possibly unconstitutional, provision." *Hearings, supra* note 5, at 308 (statement of Professor John Quigley). The drafters of S. 1437 derived it from two New York statutes, enacted in 1965, *see* N.Y. PENAL LAW §§ 120.20–25 (McKinney 1975), that have withstood constitutional scrutiny, *see* People v. Nixon, 33 App. Div. 2d 403, 309 N.Y.S.2d 236, 239 (1970). The drafters intended it primarily to upgrade or create penalties whenever human life is endangered through grossly reckless behavior involving crimes against property such as arson, violations of regulatory statutes such as safety, health, and food and drug laws, and miscellaneous conduct not clearly within any other prohibition, such as shooting a gun wildly into a crowd. *See* SENATE REPORT, supra note 10, at 545. Nevertheless, extending the scope of federal cognizance over this new offense to any instance in which human life is recklessly endangered "during the commission of any other offense over which federal jurisdiction exists" would be to broad an expansion of ancillary jurisdiction. The National Commission, the Senate Judiciary Commitee, and other commentators justify this proposal as one affording federal jurisdiction over life endangering violations of federal safety and other regulatory statutes. *See id.* at 547–48; FINAL REPORT, *supra* note 3, § 1613; Note, *supra* note 111, at 1228. The jurisdiction apparently could be more aptly tailored to this interest by specifying the regulatory statutes that would serve as a predicate for ancillary jurisdiction.

found, irregularly and in varying degrees, in current statutes.[129] Further, the ancillary jurisdiction approach, judiciously enforced under the vigilant eye of Congress,[130] would pose little risk of impairing traditional state primacy over common law offenses.

Prosecutive Discretion

A principal tenet of this article is that prosecutorial discretion in the exercise of federal jurisdiction, and not jurisdictional constraints themselves, has been and continues to be the primary means relied on by Congress to preserve the balance between federal and state criminal law enforcement. S. 1437, by consolidating all the existing jurisdictional bases applicable to federal offenses in one statute, would emphasize this point; an observer otherwise unfamiliar with our criminal justice system could not possibly detect the strong current of federalism that pervades most federal prosecutive enforcement policy in the area of concurrent state jurisdiction by looking just at the federal narcotics, loansharking and bank robbery laws.

To many people, this reliance on Executive Branch restraint in the exercise of jurisdiction is an unwelcome truth. Some critics simply do not trust the Executive to enforce the laws fairly. Other more responsible critics acknowledge the generally high degree of competence and responsibility of government prosecutors, but object because the extensive prosecutive discretion vested in the Executive Branch is inconsistent with our check-and-balance government system. After reviewing the jurisdictional provisions of S. 1437, some members of this group have argued that the legislation should either establish, or should require the Executive Branch to establish, guidelines limiting the exercise of federal concurrent jurisdiction to instances in which a substantial federal interest is implicated, and should allow judicial review of the determination to exercise concurrent jurisdiction.[131]

Although the proposal's general purpose of assuring restrained and consistent exercise of federal concurrent jurisdiction may be commendable, a legal analysis reveals that the aspect of the recommendation that would provide judicial review of prosecutorial determinations would conflict with the constitutional separation of powers. The Supreme Court and other federal courts have long recognized that "the Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case."[132] Courts have consistently applied this principle in various contexts. They have declined to review such prosecutorial determinations as the refusal to sign an indictment,[133] the decision not to plea bargain with a defendant notwithstanding consummation of an agreement with a codefendant,[134] and the decision to proceed against a juvenile as an adult.[135] Moreover, despite a general rule that federal courts will review and penalize a federal agency for its failure to comply with its own regulations and announced policies,[136] no federal court has allowed review of a claim against the Department of Justice for noncompliance with one of its published policies relating to the

[129] *See* note 122 *supra*.

[130] A little-noticed provision of S. 1437 would amend 28 U.S.C. § 522 (1976) to require the Attorney General to submit an annual report to Congress enumerating the times each jurisdictional base had been used as the predicate for a federal prosecution. *See* S. 1437, *supra* note 1, § 462. This provision would enable Congress to monitor the extent to which the Department of Justice utilizes ancillary jurisdiction and, if it deemed the use excessive, would enable Congress to reduce or eliminate it. This reporting requirement would thus insure that federal prosecution of common law offenses through ancillary jurisdiction would occur infrequently.

[131] *See Hearings, supra* note 5, at 780 (statement of Evelle Younger, Attorney General of California).

[132] United States v. Nixon, 418 U.S. 683, 693 (1974). The only exception is that, if selective enforcement occurs on a constitutionally forbidden ground such as a race or a desire to chill expression protected under the first amendment, the judiciary can intervene to dismiss the prosecution. *See, e.g.*, Oyler v. Boles, 368 U.S. 448, 456 (1962).

[133] *See, e.g.*, United States v. Cox, 342 F.2d 167, 172 (5th Cir.), *cert. denied*, 381 U.S. 935 (1965).

[134] *See* Newman v. United States, 382 F.2d 479, 481–82 (D.C. Cir. 1967).

[135] *See, e.g.*, United States v. Bland, 472 F.2d 1329, 1335–36 (D.C. Cir. 1972), *cert. denied*, 412 U.S 909 (1973); cf. United States v. Alessio, 528 F.2d 1079, 1801–82 (9th Cir.) (federal government, as corollary of its constitutionally-rooted power to determine which cases shall be prosecuted, has sole power to confer immunity), *cert. denied*, 426 U.S. 948 (1976).

[136] *See, e.g.*, Vitarelli v. Seaton, 359 U.S. 535, 545 (1959); Service v. Dulles, 354 U.S. 363, 388 (1957); Accardi v. Shaughnessy, 347 U. 260, 268 (1954). An exception of uncertain dimension is an agency policy in the nature of a mere "housekeeping provision." *See* Sullivan v. United States, 348 U.S. 170, 173 (1955); *see also* United States v. Caceres, 99 S. Ct. 1465 (1979).

exercise of prosecutorial discretion.[137] Although not all these decisions are couched in constitutional terms, the uniform pattern according special deference to federal prosecutive decisions despite an alleged contrary. Department policy apparently arises from the separation of powers principle, which places prosecutive decisions in the Executive Branch. Thus, an attempt to subject Department prosecutive decisions to judicial review based on guidelines governing the exercise of concurrent jurisdiction would probably founder on this constitutional doctrine and be ruled invalid.[138]

How, then, can the drafters revise the criminal code to strengthen the assurance of restraint by the federal government in the exercise of concurrent jurisdiction? Congress could amend the bill to require the Department to promulgate guidelines that, although made explicitly unreviewable, would state that federal prosecutors may pursue offenses over which states have concurrent jurisdiction only when a substantial federal interest is present, and must base the finding of a substantial federal interest on factors specified in the guidelines. The National Commission proposed such a provision,[139] and other organizations, such as the Business Roundtable, have urged incorporation of a similar provision.[140] Although initially opposing this requirement, the Department of Justice, in its presentation of views to the House Subcommittee on Criminal Justice, changed its position.[141] The Department endorsed the proposal explaining that the guidelines would remind prosecutors that legislators had provided broad federal concurrent jurisdiction for the unusual violation and that routine violations should be left to state or local law enforcement authorities.[142]

In addition to requiring the Department to develop guidelines limiting the exercise of federal concurrent jurisdiction, Congress should consider requiring a responsible supervisory official of the Department, such as a United States Attorney, to certify to the district court at the time an indictment is returned or an information filed, that in his judgment the prosecution of a defendant for the concurrent jurisdiction offense will serve a substantial federal interest.[143] This technique exists in present law in the comparable area of federal juvenile delinquency proceedings[144] and in the filing of certain appeals in criminal cases by the United States.[145] Although the assertions within the certification would be unreviewable,[146] the refusal or failure to file a certification, unless timely cured,

[137] Most cases have involved the Department's so-called "Petite" policy limiting the circumstances under which the federal government will prosecute, although constitutionally permitted to do so, an offense that has been the subject of a prior state prosecution or that arises out of the same transaction as a prior federal prosecution. *See* Rinaldi v. United States, 434 U.S. 22, 28–29, 31 (1977) (noting that the Department promulgated the policy in an effort to centralize authority in the Department over a particularly sensitive class of prosecutions, and that a defendant should therefore receive the benefit of the policy "whenever its application is urged *by the Government*" (emphasis added)). *Rinaldi* implies that the Department policy would not be enforced over the government's objection and this implication is consistent with the unanimous decisions of the courts of appeals. *See, e.g.*, United States v. Thompson, 579 F.2d 1184, 1189 (10th Cir. 1978) (en banc); United States v. Wallace, 578 F.2d 735, 739–40 (8th Cir. 1978); United States v. Neilligan, 573 F.2d 251, 255 (5th Cir. 1978).

[138] In addition to protesting the infringement of the Executive domain, the federal court would probably also balk at exercising a review function for which they are institutionally ill-equipped. An adversary proceeding on the issue whether a "substantial federal interest" would be served by the defendant's prosecution is difficult to conceptualize. Even if the determination by the court was *ex parte*, the judiciary might conclude that, given the plethora of intangible factors and subjective judgments involved, the issue was not susceptible to judicial review. Apparently for similar reasons Congress has disallowed judicial review of determinations by federal prosecutors that a grant of immunity is in the "public interest." *See In re* Kilgo, 484 F.2d 1215, 1218–19 (4th Cir. 1973); 18 U.S.C. § 6003 (1976).

[139] *See* Final Report, *supra* note 3, § 207.

[140] *See Hearings, supra* note 5, at 2609 (comments of the Business Rountable).

[141] The Department originally had agreed with the Senate's depletion of a section similar to § 207 of the Final Report because even with a sentence disallowing review of determinations of the existence of a substantial federal interest, such a provision could easily become a source of continual litigation. *See* Senate Report, *supra* note 20, at 36–37.

[142] *Id.*

[143] Because the certification requirement may be burdensome and involves financial costs, an effort could be made to confine its use to those offenses or jurisdictional bases in S. 1437 that, if used excessively, have the greatest potential for impinging on states' traditional prerogatives. Or, after due consideration, Congress could determine that the benefits of the certification requirement are sufficient to warrant its use in all concurrent jurisdiction situations.

[144] *See* 18 U.S.C. § 5032 (1976). S. 1437 would incorporate this section in § 3601. *See* S. 1437, *supra* note 1, § 3601.

[145] *See* 18 U.S.C. § 3731 (1976.)

[146] *See* United States v. Vancier, 515 F. 2d 1378, 1380–81 (2d Cir. 1975) (construing 18 U.S.C. § 5032 (1976)).

would bar the federal prosecution.[147] Because certification would represent a solemn averral of the stated facts and conclusions to a district court by its own officer, this device would further insure that federal prosecutors invoke federal concurrent jurisdiction in a restrained and responsible manner.

Finally, Congress, and in particular the Judiciary Committees, should be encouraged to exercise their oversight function to scrutinize carefully the Department's use of its concurrent criminal jurisdiction powers. The bill would facilitate Congressional oversight by requiring an annual report identifying the number of prosecutions in which the government utilized each jurisdictional base in the Code. Pursuant to their oversight authority, the Judiciary Committees could, and should, require more detailed information about the circumstances in which the Department of Justice invoked those jurisdictional bases affecting or potentially affecting federal-state relationships, and should take corrective action if they find excessive commitment of Department of Justice investigative and prosecutive resources to this area.[148]

These suggestions are no guarantee against occasional abuse of federal concurrent jurisdiction. Nonetheless, they would provide more protection against encroachments into the states' proper domain than existing federal statutes, which include no recognition of a philosophy of restraint in the exercise of criminal jurisdiction.[149] With these additional protections, the relatively modest and meritorious proposals in S. 1437, which would permit residual application of federal concurrent jurisdiction to situations in which a clear federal interest exists, should not cause opposition to the bill as a whole.

Given the various mechanisms for controlling the federal exercise of jurisdiction, the claims of a few alarmist critics that the proposed Federal Criminal Code would be the harbinger of a "national police force"[150] and that it would sound a death knell for the principles of federalism and reliance on the primary role of the states in the enforcement of criminal laws[151] can be dismissed. These claims are grossly distorted conclusions of persons with no comprehension of the real forces at work in the criminal justice system, conclusions akin to those of Chicken Little who, when struck on the head by an apple, sought earnestly to warn his local community that the sky was falling. The principles of federalism, and vigorous reliance on state law enforcement efforts, which S. 1437 allegedly jeopardizes, survive today despite federal statutes conferring criminal jurisdiction so broad in many areas that they permit virtual duplication by the federal government of state enforcement activities. Nothing in S. 1437 is intended to, or would in fact, create a change in the basic, operative factors that now restrain the federal role in concurrent jurisdiction offenses. Although I believe Congress can improve S. 1437 to strengthen the assurances that it would not undermine sensitive federal-state relationships, the bill's approach to federal jurisdiction

[147] *Cf.* United States v. Cuomo, 525 F. 2d 1285, 1289–90 (5th Cir. 1976) (holding that certification pursuant to 18 U.S.C. § 5032 (1976) was not untimely when made prior to arraignment in district court).

[148] An excessive federal "presence" in the area of concurrent jurisdiction offenses is unlikely because the Department for the past several years has hewed to a publicly announced policy in criminal law enforcement of giving priority to four major categories of offenses: public corruption, fraud and other white collar crimes, drug trafficking, and organized crime. *See, e.g.*, Address by Attorney General Griffin B. Bell before the International Association of Chiefs of Police (Oct. 8, 1978). Nothing indicates that these basic priorities will change in the foreseeable future, and thus the Department will probably not devote excessive efforts in the prosecution of concurrent jurisdiction offenses over which the states should have primary responsibility. In pursuance of these priorities, the Department has reduced the resources it formerly committed to such offenses as bank robberies, minor thefts, and non-trafficking drug offenses, and these reductions have elicited expressions of concern from business groups, state law enforcement authorities, and Congressmen. *See, e.g., Hearings, supra* note 5, at 779 (statement of Evelle Younger Attorney General of California) (complaining about the decision of the Department to cease routine prosecution of certain offenses like bank robbery that "local law enforcement agencies have come to assume [will be handled by] the Federal Government." The critics of alleged unwarranted expansion of federal jurisdiction in S. 1437 are ironically the first to object when the Department of Justice adopts a policy of increased deference to and reliance on state law enforcement capabilities with regard to concurrent jurisdiction crimes.

[149] *See, e.g.*, 28 U.S.C. § 547(1) (1976) (orders United States Attorneys to "prosecute for all offenses against the United States"). But *see id.* § 547(4) (duty of United States Attorneys to prosecute in the collection of fines, penalties, and forfeitures includes proviso "unless satisfied on investigation that justice does not require the proceedings").

[150] *See Hearings, supra* note 5, at 298 (statement of Professor John Quigley).

[151] *See id.* at 780 (statement of Evelle Younger, Attorney General of California).

is calculated to preserve the state's role in enforcing the criminal law. The summary in the Senate Judiciary Committee Report of the jurisdictional philosophy pervading S. 1437, which Professor Quigley has referred to disparingly as a "pious statement [that] could not have been honestly written,"[152] remains an accurate fair and honest description of the bill's approach to issues involving the scope of federal jurisdiction.

[152] *Id.* at 318 (statement of Professor John Quigley).

II

96TH CONGRESS
1ST SESSION

S. 1722

To codify, revise, and reform title 18 of the United States Code; and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 7 (legislative day, JUNE 21), 1979

Mr. KENNEDY (for himself, Mr. THURMOND, Mr. DECONCINI, Mr. HATCH, and Mr. SIMPSON) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To codify, revise, and reform title 18 of the United States Code; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Criminal Code Reform Act of 1979".

TITLE I—CODIFICATION, REVISION, AND REFORM OF TITLE 18

SEC. 101. Title 18 of the United States Code, which may be cited as "18 U.S.C. —" or as "Federal Criminal Code —", is amended to read as follows:

"TITLE 18—CRIMINAL CODE

"TABLE OF CONTENTS

CONTINUED

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"Subchapter B—Fines

"Subchapter C—Imprisonment

"PART V—ANCILLARY CIVIL PROCEEDINGS

"CHAPTER 40—ANCILLARY PUBLIC CIVIL PROCEEDINGS

"Subchapter A—Civil Forfeiture

"Subchapter B—Civil Restraint of Racketeering

"Subchapter C—Injunctions

"Subchapter D—Restriction on Imposition of Civil Disabilities

"CHAPTER 41—ANCILLARY PRIVATE CIVIL REMEDIES

"Subchapter A—Private Actions for Damages

"Subchapter B—Actions for Compensation of Victims of Crime

"PART I—GENERAL PROVISIONS AND PRINCIPLES

"CHAPTER 1—GENERAL PROVISIONS

"Subchapter A—Matters Relating to Purpose and Application

"§ 101. General Purpose

"The general purpose of this title is to establish justice in the context of a federal system by—

"(a) defining and providing notice of conduct that indefensibly causes or threatens harm to those individual or public interests for which federal protection, through the criminal justice system, is appropriate;

"(b) prescribing appropriate sanctions for engaging in such conduct that will—

"(1) deter such conduct;

"(2) protect the public from persons who engage in such conduct;

"(3) assure just punishment for such conduct;

"(4) promote the correction and rehabilitation of persons who engage in such conduct; and

"(c) establishing a system of fair and expeditious procedures for—

"(1) investigating such conduct by means that will lead to the identification of persons who have engaged in such conduct and that will safeguard persons who have not engaged in such conduct;

"(2) determining the guilt or innocence of persons charged with engaging in such conduct; and

"(3) imposing merited sanctions upon persons found guilty of such conduct.

"§ 102. General Principle of Criminal Liability

"A person commits an offense under this title only if—

"(a) he directly or indirectly engages in conduct, or under a provision of chapter 4 is responsible for conduct, described as an offense in a section set forth in part II of this title;

"(b) the circumstances, if any, described in the section exist at the time of the conduct;

"(c) the results, if any, described in the section are caused by the conduct;

"(d) the states of mind described in the section, or required by the provisions of chapter 3, exist with respect to the described conduct, circumstances, and results; and

"(e) a defense or an affirmative defense that is properly raised and that is described in the section, described in a general-provisions section made applicable to the section, or otherwise recognized by law, did not exist at the time of the conduct.

"§ 103. Application

"Except as otherwise provided, the provisions of this title apply to prosecutions under any Act of Congress other than—

"(a) an Act of Congress applicable exclusively in the District of Columbia;

"(b) the Canal Zone Code; or

"(c) the Uniform Code of Military Justice (10 U.S.C. 801 et seq.).

This title does not apply to an Act of Congress described in subsection (a), (b), or (c) except in an instance in which specific reference is made to such an Act.

"§ 104. Civil Remedies and Powers Unimpaired

"Except as otherwise provided, nothing in this title affects—

"(a) the availability or terms of any civil or administrative remedy or penalty;

"(b) the power of a court, through civil proceedings, to compel compliance with its order, decree, process, writ, or rule; or

"(c) the authority of a court to direct the compensation of a complainant for loss.

"Subchapter B—Matters Relating to Construction

"§ 111. General Definitions

"As used in this title, in the Federal Rules of Criminal Procedure, and in the Rules of Procedure for the Trial of Minor Offenses before United States Magistrates, unless the meaning is modified or replaced by a definition set forth in another section for application to a limited portion of this title, or unless a different meaning is otherwise plainly required—

"'abet' includes induce, procure, and command;

"'act' means a bodily movement or activity, but does not include a reflex, convulsion, or movement or activity during a state of unconsciousness or sleep;

"'actor' means the person, or one of the persons, who engaged in the conduct charged, whether or not such person is the defendant or a defendant in the case;

"'affirmative defense' means a defense specifically designated as an affirmative defense that the defendant has the burden of proving by a preponderance of the evidence as prescribed by Rule 25.1 of the Federal Rules of Criminal Procedure;

"'agent' means a person authorized to act on behalf of another person or a government, and, in the case of an organization or a government, includes (a) a partner, director, officer, manager, and representative; and (b), except for the purpose of receipt of service of process, a servant and employee;

"'aid' includes facilitate;

"'aircraft' includes any craft used or designed for flight or navigation in air or in space;

"'ammunition' includes an ammunition or cartridge case, a primer, a bullet, and a propellant substance designed for use in a firearm;

"'anything of pecuniary value' means (a) anything of value in the form of money, a negotiable instrument, a commercial interest, or anything else the primary significance of which is economic advantage; or (b) any other property or service that has a value in excess of $100;

"'anything of value' means any direct or indirect gain or advantage, or anything that might reasonably be regarded by the beneficiary as a direct or indirect gain or advantage, including a direct or indirect gain or advantage to any other person;

"'associate nation' means a nation at war with a foreign power with which the United States is at war;

"'attorney for the government' means a United States attorney, an assistant United States attorney, a special assistant United States attorney, a special assistant to the Attorney General, or any other attorney of the Department of Justice authorized by statute, or by a rule, regulation, or order issued pursuant thereto, to act as an attorney for the government;

"'Attorney General' means the Attorney General of the United States, and, unless used in conjunction with a reference to another specified officer or employee of the Department of Justice, includes any officer or employee of the Department of Justice authorized to act for or on behalf of the Attorney General;

"'bar to prosecution' means a ground for terminating a prosecution in favor of a defendant on a ground unrelated to guilt or innocence;

"'bodily injury' includes (a) a cut, abrasion, bruise, burn, or disfigurement; (b) physical pain; (c) illness; (d) impairment of the function of a

bodily member, organ, or mental faculty; and (e) any other injury to the body no matter how temporary;

"'building' means an immovable or movable structure that is at least partially enclosed, or a separate part of such a structure, and that is designed for use, or used, in whole or in part, as (a) an individual's permanent or temporary home or place of lodging; (b) a place for persons to engage in matters pertaining to government, an occupation or a business or a profession, education, religion, or entertainment; or (c) a place for the storage of property within which, because of its size or other characteristics, it is apparent that an individual could be present;

"'Canal Zone' includes (a) the area designated as the Canal Zone by sections 1 and 2 of title 2 of the Canal Zone Code; and (b) the corridor over which the United States exercises jurisdiction pursuant to the provisions of Article IX of the General Treaty of Friendship and Cooperation between the United States of America and the Republic of Panama, signed March 2, 1936, to the extent that the application to the corridor of the provisions of this title is consistent with the nature of the rights of the United States in the corridor as provided by treaty;

"'chapter' means a chapter of this title;

"'class', when used to refer by letter designation to a particular category of felony or misdemeanor, means a felony or misdemeanor carrying the incidents assigned to such designation by the provisions of part III of this title;

"'commission of an offense', or a variant thereof, includes the attempted commission of an offense, the consummation of an offense, and any immediate flight after the commission of an offense;

"'communicate' means to impart or transfer information, or otherwise to make information available by any means, to a person or to the general public;

"'conduct' includes any act, any omission, and any possession;

"'conduct constituting an offense', or a variant thereof using the term 'crime' or 'felony' instead of 'offense', means conduct with the state of mind, under the circumstances, and with the results, required for the commission of the offense;

"'consent' includes willing assent, but does not include assent given by a person (a) who is legally incompetent to authorize the conduct assented to; (b) who is a member of a category of persons whose improvident consent is sought to be prevented by the law describing the offense; (c) who is, by reason of age, mental disease or defect, or intoxication, manifestly unable, or known by the actor to be unable, to make a reasonable judgment as to the nature or harmfulness of the conduct assented to; or (d) whose assent is induced by force, threat, intimidation, or deception;

"'court' includes a presiding judge;

"'court of the United States' means the Supreme Court of the United States, a United States Court of Appeals, a United States District Court established pursuant to 28 U.S.C. 132, the United States District Court for the District of the Canal Zone, the District Court of Guam, the District Court of the Virgin Islands, the District Court for the Northern Mariana Islands, the United States Court of Claims, the Tax Court of the United States, the United States Customs Court, or the United States Court of Customs and Patent Appeals;

"'crime' means a felony or a misdemeanor, but not an infraction;

"'crime of violence' means (a) an offense that has as an element of the offense the use, attempted use, or threatened use of physical force against the person or property of another; or (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense;

"'dangerous weapon' means (a) a firearm; (b) a destructive device; or (c) any other weapon, device, instrument, material, or substance, whether animate or inanimate, that as used or as intended to be used is capable of producing death or serious bodily injury;

"'defense' includes (a) anything specifically designated as a defense by a statute, or by a regulation, rule, or order issued pursuant thereto; or (b) a specific exception, exclusion, or exemption from criminal liability described in a statute outside this title, or in a regulation, rule, or order issued pursuant thereto;

"'destructive device' means an explosive, an incendiary material, a poisonous or infectious material in a form that can readily be used to cause serious bodily injury, or a material that can be used to cause a nuclear incident as defined in section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014(q)); and includes a bomb, grenade, mine, rocket, missile, or similar device containing an explosive, an incendiary material, or a material that can be used as a chemical, biological, or radiological weapon;

"'dwelling' means an immovable or movable structure that is at least partially enclosed, or a separate part of such a structure, and that is designed for use, or used, in whole or in part, as an individual's permanent or temporary home or place of lodging;

"'element of the offense' means any (a) conduct; (b) state of mind; (c) existing circumstance; or (d) result; that is specified by the section describing the offense or that, with respect to a state of mind, is required by section 303 for the commission of the offense;

"'enterprise' includes any business or other undertaking by an individual, a group, an organization, or a government;

"'explosive' means a chemical compound, a mechanical mixture, or any other combination of materials, in proportions, quantities, or packaging that may be exploded by operation of fire, friction, concussion, percussion, nuclear fission, nuclear fusion, or any other means;

"'felony' means an offense for which a term of imprisonment of more than one year is authorized by a federal statute, or would be authorized if a circumstance giving rise to federal jurisdiction existed, or, if qualified by the word 'State', 'local', or 'foreign', an offense for which such a term is authorized by the applicable State, local, or foreign law;

"'finance' includes providing indirect financing;

"'firearm' means a weapon that can expel, or that can readily be converted to expel, a projectile by the action of an explosive or a flammable rocket propellant, and includes such a weapon, loaded or unloaded, commonly referred to as a gun, pistol, revolver, rifle, shotgun, machine gun, bazooka, mortar, or cannon;

"'foreign commerce' means commerce between the United States and a foreign country, or from the United States to a foreign country, or from a foreign country to the United States, or between places in the United States through a foreign country;

"'foreign dignitary' means (a) the chief of State or head of government, or the political equivalent, of a foreign power; (b) an officer of cabinet rank, or equivalent or higher rank, of a foreign power; (c) an ambassador of a foreign power; (d) the chief executive officer of an international organization; or (e) a person who has previously served in any such capacity;

"'foreign official' means (a) a foreign dignitary; or (b) a person of foreign nationality who is duly notified to the United States as an officer or employee of a foreign power;

"'foreign power' includes (a) a foreign government, faction, party, or military force, or persons purporting to act as such, whether or not recognized by the United States; and (b) an international organization;

"'found guilty' includes acceptance by a court of a plea of guilty or nolo contendere;

"'government' means (a) the government of a nation, a State, or a political subdivision thereof; (b) a branch of the foregoing, including the executive, legislative, and judicial branches; or (c) a government agency;

"'government agency' means (a) a subdivision of the executive, legislative, judicial, or other branch of a government, including a department, independent establishment, commission, administration, authority, board, and bureau; or (b) a corporation or other legal entity established by, and subject to control by, a government or governments for the execution of a governmental or inter-governmental program;

"'group' includes (a) an assemblage of persons; and (b) an association of persons, whether or not a legal entity;

"'high seas' means, in accordance with international law, those parts of the sea that are not included in the territorial sea or in the internal waters of a nation or State;

"'immediate family' of a designated individual means (a) his spouse, parent, brother, sister, or child, or a person to whom he stands in loco parentis; or (b) any other person living in his household and related to him by blood or marriage;

"'incite', or a variant thereof, means to urge other persons to engage imminently in conduct in circumstances under which there is a substantial likelihood of imminently causing such conduct;

"'includes' is to be read as if the phrase 'but is not limited to' were also set forth;

"'in fact' means, in accordance with the provisions of section 303(a)(1), that the matter to which the phrase applies is not a matter as to which a state of mind must be proved;

"'infraction' means a criminal offense for which a term of imprisonment of five days or less, or a criminal fine with no term of imprisonment, is authorized by a federal statute, or would be authorized if a circumstance giving rise to federal jurisdiction existed, or, if qualified by the word 'State' or 'local', an offense for which such a term or fine is authorized by the applicable State or local law;

"'intentional', or a variant thereof, has the meaning prescribed in section 302(a);

"'international organization' means a public international organization designated as such pursuant to section 1 of the International Organizations Immunities Act (22 U.S.C. 288);

"'internationally protected person' has the meaning prescribed in section 2 of the Act for the Prevention and Punishment of Crimes Against Internationally Protected Persons, as amended by section 143 of the Criminal Code Reform Act of 1979;

"'interstate commerce' means commerce between one State and another State, or from one State to another State, or between places in the same State through another State;

"'judge' means any judicial officer, and includes a justice of the Supreme Court and a magistrate;

"'juror' means a grand juror or a petit juror, and includes a person who has been selected or summoned as a prospective juror;

"'knowing', or a variant thereof, has the meaning prescribed in section 302(b);

"'law enforcement officer' means a public servant authorized by law or by a government agency to engage in or supervise the prevention, detection, investigation, or prosecution of an offense;

"'local' means of or pertaining to a political subdivision within a State;

"'locality' means a political subdivision within a State;

"'mail' includes a post card, postal card, letter, envelope, parcel, package, newspaper, magazine, circular, advertising matter, and mailbag or mail container, and anything contained therein (a) that has been left for collection in or adjacent to an authorized depository for mail matter; (b) that is under the care, custody, or control of the United States Postal Service or a United States government agency authorized by the United States Postal Service to handle mail matter; or (c) that, having been under the care, custody, or control of the United States Postal Service or such a government agency, has not been delivered to the intended recipient;

"'military' means relating to the armed forces or their supporting agencies, whether land, sea, or air forces, in either an offensive or a defensive capacity;

"'misdemeanor' means an offense for which a term of imprisonment of one year or less, but more than five days, is authorized by a federal statute, or would be authorized if a circumstance giving rise to federal jurisdiction existed, or, if qualified by the word 'State', 'local', or 'foreign', an offense for which such a term is authorized by such State, local, or foreign law;

"'motor vehicle' means a self-propelled vehicle used or designed to run on land but not on rails;

"'national credit institution' means (a) a bank with deposits insured by the Federal Deposit Insurance Corporation; (b) an institution with accounts insured by the Federal Savings and Loan Insurance Corporation; (c) a credit union with accounts insured by the Administrator of the National Credit Union Administration; (d) a Federal home loan bank or a member, as defined in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422), of the Federal home loan bank system; or (e) a bank, banking association, land bank, intermediate credit bank, bank for cooperatives, production credit association, land bank association, mortgage association, trust company, savings bank, or other banking or financial institution organized or operating under the laws of the United States;

"'national defense emergency' means a national emergency that is proclaimed in accordance with title II of the National Emergencies Act (50 U.S.C. 1621 et seq.) and that involves military combat operations undertaken in connection with an actual or imminent war or armed attack by a foreign power against the United States or its armed forces;

"'negligent' or a variant thereof, has the meaning prescribed in section 302(d);

"'objective', as used with reference to a criminal conspiracy, includes the commission of a crime, escape from the scene of a crime, distribution of the fruits of a crime, and any measure for concealing, or obstructing justice in relation to, any aspect of the conspiracy;

"'offense' means conduct for which a term of imprisonment or a criminal fine is authorized by a federal statute, or, as used in parts I, II, and V of this title, would be authorized if a circumstance giving rise to federal jurisdiction existed, or, if qualified by the word 'State', 'local', or 'foreign', conduct for which a term of imprisonment or a criminal fine is authorized by such State, local, or foreign law;

"'official action' means a decision, opinion, recommendation, judgment, vote, or other conduct involving an exercise of discretion by a public servant in the course of his employment;

"'official detention' means (a) detention by a public servant, or under the direction of a public servant, following arrest for an offense; following surrender in lieu of arrest for an offense; following a charge or conviction of an offense, or an allegation or finding of juvenile delinquency; following commitment as a material witness; following civil commitment in lieu of criminal proceedings or pending resumption of criminal proceedings that are being held in abeyance; or pending extradition, deportation, or exclusion; or (b) custody by a public servant, or under direction of a public servant for purposes incident to the foregoing, including transportation, medical diagnosis or treatment, court appearance, work, and recreation; 'official detention' does not include supervision or other control (other than custody during specified hours or days) after release pending trial or appeal, pursuant to the provisions of subchapter A of chapter 35; after release on probation, pursuant to the provisions of chapter 21; or after release following a finding of juvenile delinquency, pursuant to the provisions of subchapter A of chapter 36;

"'official guest of the United States' means a person of foreign nationality who has been designated by the Secretary of State as an official guest of the United States and who is in the United States pursuant to such designation;

"'official proceeding' means a proceeding convened pursuant to lawful authority, or a portion of such a proceeding, that is or may be heard before (a) a government branch or agency; or (b) a public servant who is authorized to take oaths, including a judge, a chairman or a Member of Congress authorized by a legislative committee or subcommittee, a bankruptcy judge, an administrative law judge, a hearing examiner, and a notary;

"'omission' means a failure by a person to perform an act that he has a legal duty to perform;

"'organization' means a legal entity, other than a government, established or organized for any purpose, and includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, and any other association of persons;

"'paragraph' means a paragraph of the subsection or subdivision in which the term is used;

"'person' means (a) an individual; or (b), except when used to refer to the victim of an offense involving death or bodily injury, an organization;

"'President' means (a) the President of the United States; or (b) a person who is acting as President under the Constitution and laws of the United States;

"'President-elect' means the person who appears to be the successful candidate for the office of President, as ascertained from the results of the general election held to determine the electors of President and Vice President pursuant to 3 U.S.C and 2;

"'property' means anything of value, and includes (a) real property, including things growing on, affixed to, and found in land; (b) tangible or intangible personal property, including rights, privileges, interests, and claims; and (c) services; except that, if used to refer to the object or possible object of damage, does not include intangible property or services;

"'property of another' means property in which a person or government has an interest upon which the actor is not privileged to infringe without consent, whether or not the actor also has an interest in the property;

"'public facility' includes (a) a facility of public or government communication, transportation, energy supply, water supply, or sanitation; (b) a facility of a police, fire, or public health agency; (c) a facility designed for use, or used, as a means of national defense; and (d) a part of any such facility or any property, structure, or apparatus used in connection with or in support of any such facility;

"'public servant' means an officer, employee, adviser, consultant, juror, or other person authorized to act for or on behalf of a government or serving a government in a civil or military capacity, and includes a person who has been elected, nominated, or appointed to be a public servant; a federal 'public servant' does not include a District of Columbia public servant;

"'public structure' means a structure, whether or not enclosed, where persons assemble for purposes of government, an occupation or a business or a profession, education, religion, or entertainment;

"'railroad vehicle' means a locomotive or car used or designed to run on rails;

"'reckless', or a variant thereof, has the meaning prescribed in section 302(c);

"'section' means a section within a chapter of this title;

"'self-induced intoxication' means intoxication caused by a substance that the actor knowingly introduces into his body with knowledge that it has, or with reckless disregard of the risk that it may have, a tendency to cause intoxication;

"'serious bodily injury' means bodily injury which involves (a) a substantial risk of death; (b) unconsciousness; (c) extreme physical pain; (d) protracted and obvious disfigurement; or (e) protracted loss or impairment of the function of a bodily member, organ, or mental faculty;

"'services' means anything of value resulting from a person's physical or mental labor or skill, or from the use, possession, or presence of property, and includes (a) repairs or improvements to property; (b) professional services; (c) private or public or government communication, transportation, energy, water, or sanitation services; (d) lodging accommodations; and (e) admissions to places of exhibition or entertainment;

"'solicit', when used in the description of an offense, includes importune, approach with a request or plea, and try to obtain by asking for; and is not limited to the conduct constituting an offense under section 1003 (Criminal Solicitation);

"'State' means a State of the United States, the District of Columbia, Puerto Rico, the Canal Zone, the Virgin Islands, American Samoa, Johnston Island, Midway Island, Wake Island, Guam, Kingman's Reef, the Commonwealth of the Northern Mariana Islands, or any other territory or possession of the United States;

"'state of mind' has the meaning set forth in section 301(a);

"'stolen', when used in reference to property, means property that has been the subject of any criminal taking, including theft, executing a fraudulent scheme, robbery, extortion, and blackmail, as those offenses are described in this title;

"'subchapter' means a subchapter of the chapter in which the term is used;

"'subdivision' means a subdivision of the rule in which the term is used;

"'subparagraph' means a subparagraph of the paragraph in which the term is used;

"'subsection' means a subsection of the section in which the term is used;

"'this title' means title 18 of the United States Code;

"'traffic' means (a) to sell, pledge, transfer, distribute, dispense, or otherwise dispose of to another person as consideration for anything of value;

or (b) to buy, receive, possess, or obtain control of with intent to do any of the foregoing;

"'United States', when used in a geographic sense, includes (a) all States; (b) all places subject to the special territorial jurisdiction of the United States that are described in section 203 (a)(4) and (a)(5); (c) all waters subject to the admiralty and maritime jurisdiction of the United States; and (d) the airspace overlying such States, places, and waters;

"'United States', when used in other than a geographic sense, means the government of the United States;

"'United States official' means a federal public servant who is the President, the President-elect, the Vice President, the Vice President-elect, a member of Congress, a member-elect of Congress, a delegate or a commissioner of Congress, a delegate-elect or a commissioner-elect of Congress, a Justice of the Supreme Court, or a member of the executive branch of government who is the head of a department listed in 5 U.S.C. 101;

"'value', when stated in monetary terms, means the aggregate value in terms of (a) face, par, or market value; (b) original or replacement cost; or (c) wholesale or retail price; whichever of the foregoing is greatest;

"'vehicle' means a motor vehicle, a railroad vehicle, a vessel, or an aircraft;

"'vessel' means a self-propelled or wind-propelled craft used or designed for transportation or navigation on, under, or immediately above water;

"'Vice President-elect' means (a) the person who appears to be the successful candidate for the office of Vice President, as ascertained from the results of the general election held to determine the electors of the President and Vice President pursuant to 3 U.S.C. 1 and 2; or (b) the person who is nominated by the President for the office of Vice President pursuant to the provisions of the Twenty-fifth Amendment to the Constitution of the United States; and

"'violate' means, in fact, to engage in conduct that is described as an offense, proscribed, prohibited, declared unlawful, or made subject to a criminal penalty.

"§ 112. General Principles of Construction

"(a) CONSTRUCTION IN GENERAL.—The provisions of this title shall be construed in accordance with the fair import of their terms to effectuate the general purposes of this title particularly to assure definition and notice of the conduct prohibited in accordance with the rule of strict construction as applied by the federal courts.

"(b) TITLES, HEADINGS, AND PARENTHETICAL EXPLANATIONS.—A title, heading, or parenthetical explanation shall not be construed as limiting or otherwise affecting the scope or application of the language of the chapter, subchapter, section, subsection, rule, or subdivision in which it appears or to which it refers.

"(c) NAMES OF OFFENSES.—A term that commonly is employed generically to refer to a kind of offense or to a group of offenses, but that also is employed as a title of a section describing an offense, shall be construed in its generic sense when it is used outside such section without reference to the number of such section.

"(d) NUMBER, GENDER, AND TENSE.—A term—

"(1) that is used in the singular includes and applies to the plural of the term;

"(2) that is used in the plural includes and applies to the singular of the term;

"(3) that signifies the masculine gender includes and applies to the feminine gender and the neuter gender; and

"(4) that is used in the present tense includes the future tense and, unless a different construction is plainly required, the past tense.

"CHAPTER 2—JURISDICTION

"§ 201. Federal Jurisdiction

"(a) JURISDICTION IN GENERAL.—Federal jurisdiction over an offense described in this title includes—

"(1) the general jurisdiction of the United States, as set forth in section 202;

"(2) the special jurisdiction of the United States, as set forth in section 203; and

"(3) the extraterritorial jurisdiction of the United States, as set forth in section 204.

"(b) JURISDICTION APPLICABLE TO SPECIFIC OFFENSES.—

"(1) If, in a section describing an offense, there is a separate subsection in which one or more circumstances are specified as giving rise to federal jurisdiction over the offense, there is federal jurisdiction over the offense—

"(A) if such a circumstance exists or has occurred and the offense is committed within—

"(i) the general jurisdiction of the United States; or

"(ii) the special jurisdiction of the United States to the extent that such jurisdiction is specified as such a circumstance in the separate subsection; or

"(B) whether or not such a circumstance exists or has occurred if the offense is committed within the extraterritorial jurisdiction of the United States to the extent applicable under section 204;

unless the offense is described as a violation of, or involves conduct required by, a statute outside this title, or a regulation, rule, or order issued pursuant thereto, in which case there is federal jurisdiction over the offense to the extent applicable under that statute. Federal jurisdiction may be alleged as resting on more than one of such circumstances, but proof of any such circumstance is sufficient to establish the existence of federal jurisdiction over the offense. Proof of more than one of such circumstances does not increase the number of offenses that may be found to have been committed. If federal jurisdiction over an offense exists by virtue of its commission during another offense, jurisdiction also exists over any lesser included offense.

"(2) If, in a section describing an offense there is no separate subsection in which one or more circumstances are specified as giving rise to federal jurisdiction over the offense, there is federal jurisdiction over the offense if it is committed within—

"(A) the general jurisdiction of the United States;

"(B) the special jurisdiction of the United States; or

"(C) the extraterritorial jurisdiction of the United States to the extent applicable under section 204;

unless the offense is described as a violation of, or involves conduct required by, a statute outside this title, or a regulation, rule, or order issued pursuant thereto, in which case there is federal jurisdiction over the offense to the extent applicable under that statute.

"(c) JURISDICTION NOT AN ELEMENT OF OFFENSE.—The existence of federal jurisdiction is not an element of the offense.

"§ 202. General Jurisdiction of the United States

"An offense is committed within the general jurisdiction of the United States if it is committed within the United States.

"§ 203. Special Jurisdiction of the United States

"An offense is committed within the special jurisdiction of the United States if it is committed within the special territorial jurisdiction, the special maritime jurisdiction, or the special aircraft jurisdiction of the United States, as set forth in subsection (a), (b), or (c).

"(a) SPECIAL TERRITORIAL JURISDICTION.—The special territorial jurisdiction of the United States includes—

"(1) real property that is reserved or acquired for the use of the United States and that is under the exclusive or concurrent jurisdiction of the United States, and a place purchased or otherwise acquired by the United

States with the consent of the legislature of the State in which such place is located for the construction of a building or other facility or structure;

"(2) an unorganized territory or unorganized possession of the United States;

"(3) the Indian country, as defined in section 161 of the Criminal Code Reform Act of 1979 (25 U.S.C. —);

"(4) an island, a rock, or a key that may, at the discretion of the President, be considered as appertaining to the United States; and

"(5) a facility for exploration or exploitation of natural resources constructed or operated on or above the outer continental shelf as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331 (a)).

"(b) SPECIAL MARITIME JURISDICTION.—The special maritime jurisdiction of the United States includes—

"(1) the high seas;

"(2) any other waters within the admiralty and maritime jurisdiction of the United States and outside the jurisdiction of any State;

"(3) a vessel within the admiralty and maritime jurisdiction of the United States, and outside the jurisdiction of any State, that belongs in whole or in part to—

"(A) the United States;

"(B) a State or locality;

"(C) a citizen of the United States; or

"(D) an organization created by or under the laws of the United States or of a State; and

"(4) a vessel registered, licensed, or enrolled under the laws of the United States, that is upon the waters of any of the Great Lakes or the waters connecting them or upon the Saint Lawrence River where it constitutes the international boundary line.

"(c) SPECIAL AIRCRAFT JURISDICTION.—The special aircraft jurisdiction of the United States includes—

"(1) an aircraft that belongs in whole or in part to—

"(A) the United States;

"(B) a State or locality; or

"(C) an organization created by or under the laws of the United States or of a State;

"(2) a civil aircraft of the United States, as defined in section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301);

"(3) any other aircraft within the United States;

"(4) any other aircraft outside the United States—

"(A) that has its next scheduled destination or last point of departure in the United States, and that next lands in the United States; or

"(B) that has an 'offense', as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft, committed aboard, and that lands in the United States with the alleged offender still aboard; and

"(5) any other aircraft leased without crew to a lessee who has his principal place of business in the United States, or, if the lessee has no principal place of business, who has his permanent residence in the United States;

during the period that such aircraft is in flight, which is, for the purpose of this subsection, from the moment when all the external doors of such aircraft are closed following embarkation until the moment when any such door is opened for disembarkation, or, in the case of a forced landing, until a competent authority takes over the responsibility for the aircraft and for the persons and property aboard.

"§ 204. Extraterritorial Jurisdiction of the United States

"Except as otherwise expressly provided by statute, or by treaty or other international agreement, an offense is committed within the extraterritorial jurisdiction of the United States if it is committed outside the general or special jurisdiction of the United States and—

"(a) the offense is a crime of violence and the victim or intended victim is—

"(1) a United States official; or

"(2) a federal public servant outside the United States for the purpose of performing his official duties;

"(b) the offense is treason or sabotage against the United States;

"(c) the offense consists of—

"(1) counterfeiting or forgery of, or uttering of a counterfeited or forged copy of, or issuing without authority, a seal, currency, security, instrument of credit, stamp, passport, or public document that is or that purports to be issued by the United States;

"(2) perjury or false swearing in a federal official proceeding;

"(3) making a false statement in a federal government matter or a federal government record;

"(4) bribery or graft involving a federal public servant;

"(5) fraud against the United States or theft of property in which the United States has an interest;

"(6) impersonation of a federal public servant; or

"(7) any obstruction or impairment of a federal government function, if committed by a national or resident of the United States;

"(d) the offense consists of the manufacture or distribution, as defined in 21 U.S.C. 802, of narcotics or other drugs for import into, or eventual sale or distribution within, the United States;

"(e) the offense consists of entry of persons or property into the United States;

"(f) the offense consists of possessing an explosive in a United States Government building;

"(g) the offense is committed in whole or in part within the United States, the accused participates outside the United States, and there exists a substantial interest in federal investigation or prosecution; the provisions of section 205(e) apply also to this subsection;

"(h) the offense constitutes an attempt, a conspiracy, or a solicitation to commit a crime within the United States;

"(i) the offense is committed by a federal public servant, other than a member of the armed forces who is subject to court-martial jurisdiction for the offense at the time he is charged with the offense, who is outside the United States because of his official duties; or by a member of a federal public servant's household who is residing abroad because of such public servant's official duties; or by a person accompanying the military forces of the United States;

"(j) the offense is committed by or against a national of the United States at a place outside the jurisdiction of any nation; or

"(k) the offense is comprehended by the generic terms of, and is committed under circumstances specified by, a treaty or other international agreement, to which the United States is a party, that provides for, or requires the United States to provide for, federal jurisdiction over such offense.

"§ 205. Exercise of Concurrent Federal Jurisdiction

"(a) IN GENERAL.—In a case in which federal jurisdiction over an offense exists concurrently with State or local jurisdiction, the existence of federal jurisdiction does not, in itself, require the exercise of federal jurisdiction, nor does the initial exercise of federal jurisdiction preclude its discontinuation.

"(b) FACTORS TO BE CONSIDERED IN EXERCISING CONCURRENT FEDERAL JURISDICTION.—In a case in which federal jurisdiction over an offense exists or may exist concurrently with State or local jurisdiction, federal law enforcement officers, in determining whether to exercise jurisdiction, should consider—

"(1) the relative gravity of the federal offense and the State or local offense;

"(2) the relative interest in federal investigation or prosecution;

"(3) the resources available to the federal authorities and the State or local authorities;

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"(4) the traditional role of the federal authorities and the State and local authorities with respect to the offense;

"(5) the interests of federalism; and

"(6) any other relevant factor.

"(c) ATTORNEY GENERAL CONSULTATION, DIRECTION, AND REPORTS.—The Attorney General shall—

"(1) consult periodically with representatives of State and local governments concerning the exercise of jurisdiction in cases in which federal jurisdiction exists or may exist concurrently with State or local jurisdiction;

"(2) provide general direction to federal law enforcement officers concerning the appropriate exercise of such federal jurisdiction; and

"(3) report annually to Congress, in the course of the report required by 28 U.S.C. 522, concerning the extent of the exercise of such federal jurisdiction during the preceding fiscal year.

"(d) SHARING OF MATERIAL OBTAINED IN EXERCISE OF FEDERAL JURISDICTION.—Except as otherwise prohibited by law, information or material obtained pursuant to the exercise of federal jurisdiction may be made available to State or local law enforcement officers having concurrent jurisdiction, and to State or local authorities otherwise assigned responsibility with regard to the conduct constituting the offense.

"(e) NONLITIGABILITY OF EXERCISE OF FEDERAL JURISDICTION.—An issue relating to the propriety of the exercise of, or of the failure to exercise, federal jurisdiction over an offense, or otherwise relating to the compliance, or to the failure to comply, with this section, may not be litigated, and a court may not entertain or resolve such an issue except as may be necessary in the course of granting leave to file a dismissal of an indictment, an information, or a complaint.

"§ 206. Concurrent Federal Jurisdiction Generally Not Preemptive

"(a) IN GENERAL.—Except as otherwise expressly provided, the existence or exercise of federal jurisdiction over an offense does not, in itself, preclude—

"(1) a State or local government from exercising its concurrent jurisdiction to enforce its laws applicable to the conduct involved;

"(2) an Indian tribe, band, community, group, or pueblo from exercising its concurrent jurisdiction in Indian country, as defined by applicable treaties and statutes, to enforce its laws applicable to the conduct and persons involved; or

"(3) a court-martial, military commission, court of inquiry, provost court, or other military court from exercising its concurrent jurisdiction to enforce the law applicable to the conduct involved pursuant to the Uniform Code of Military Justice (10 U.S.C. 801 et seq.), any other federal statute, or the law of war.

"(b) PREEMPTIVE JURISDICTION OVER CERTAIN OFFENSES.—Upon order of the Attorney General, the assertion of federal jurisdiction—

"(1) over an offense—

"(A) that has as a victim or intended victim a United States official, a foreign official or a member of his immediate family, or an official guest of the United States; and

"(B) that is described in—

"(i) section 1601 (Murder), 1602 (Manslaughter), 1603 (Negligent Homicide), 1611 (Maiming), 1612 (Aggravated Battery), 1613 (Battery), 1614 (Menacing), 1621 (Kidnapping), 1622 (Aggravated Criminal Restraint), or 1623 (Criminal Restraint); or

"(ii) Section 1001 (Criminal Attempt), 1002 (Criminal Conspiracy), or 1003 (Criminal Solicitation) if a crime that was an objective of the attempt, conspiracy, or solicitation is an offense set forth in subparagraph (i); or

"(2) over an offense that is described in—

"(A) subchapter B of chapter 15;

"(B) section 1355 (Trading in Public Office); or

"(C) section 1503 (Interfering With a Federal Benefit), 1504 (Unlawful Discrimination), or 1616 (Communicating a Threat), to the extent that it involves conduct proscribed by the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.);

shall suspend, to the extent indicated in the order, the exercise of jurisdiction by a State or local government, under any State or local law applicable to the conduct involved, until the order is rescinded by the Attorney General.

"CHAPTER 3—CULPABLE STATES OF MIND

"§ 301. State of Mind Generally

"(a) STATE OF MIND DEFINED.—As used in this title, 'state of mind' means the mental state required to be proved with respect to conduct, an existing circumstance, or a result set forth in a section describing an offense.

"(b) TERMS USED TO DESCRIBE STATES OF MIND.—The terms used to describe the different states of mind are 'intentional', 'knowing', 'reckless', and 'negligent', and variants thereof.

"(c) STATES OF MIND APPLICABLE TO CONDUCT, AN EXISTING CIRCUMSTANCE, AND A RESULT.—The states of mind that may be specified as applicable to—

"(1) conduct are either 'intentional' or 'knowing';

"(2) an existing circumstance are either 'knowing', 'reckless', or 'negligent'; and

"(3) a result are either 'intentional', 'knowing', 'reckless', or 'negligent'.

"§ 302. 'Intentional', 'Knowing', 'Reckless', and 'Negligent' States of Mind

"The following definitions apply with respect to an offense set forth in this title:

"(a) 'INTENTIONAL'.—A person's state of mind is intentional with respect to—

"(1) his conduct if it is his conscious objective or desire to engage in the conduct; or

"(2) a result of his conduct if it is his conscious objective or desire to cause the result.

"(b) 'KNOWING'.—A person's state of mind is knowing with respect to—

"(1) his conduct if he is aware of the nature of his conduct;

"(2) an existing circumstance if he is aware or believes that the circumstance exists; or

"(3) a result of his conduct if he is aware or believes that his conduct is substantially certain to cause the result.

"(c) 'RECKLESS'.—A person's state of mind is reckless with respect to—

"(1) an existing circumstance if he is aware of a substantial risk that the circumstance exists but disregards the risk; or

"(2) a result of his conduct if he is aware of a substantial risk that the result will occur but disregards the risk;

except that awareness of the risk is not required if its absence is due to self-induced intoxication. A substantial risk means a risk that is of such a nature and degree that to disregard it constitutes a gross deviation from the standard of care that a reasonable person would exercise in such a situation.

"(d) 'NEGLIGENT'.—A person's state of mind is negligent with respect to—

"(1) an existing circumstance if he ought to be aware of a substantial risk that the circumstance exists; or

"(2) a result of his conduct if he ought to be aware of a substantial risk that the result will occur.

A substantial risk means a risk that is of such a nature and degree that to fail to perceive it constitutes a gross deviation from the standard of care that a reasonable person would exercise in such a situation.

"§ 303. Proof of State of Mind

"Except as otherwise expressly provided, the following provisions apply to an offense under any federal statute:

"(a) REQUIRED PROOF OF STATE OF MIND.—A state of mind must be proved with respect to each element of an offense, except that—

"(1) no state of mind must be proved with respect to a particular element of an offense if that element is specified in the description of the offense as existing or occurring 'in fact'; and

"(2) the state of mind, if any, to be proved with respect to any element of an offense described in a statute outside this title, or described in this title as a violation of a statute outside this title, or described in a regulation or rule issued pursuant to such a statute, shall be determined by the provisions of that statute.

"(b) REQUIRED STATE OF MIND FOR AN ELEMENT OF AN OFFENSE IF NOT SPECIFIED.—Except as provided in subsection (a), if an element of an offense is described without specifying the required state of mind, the particular state of mind that must be proved with respect to—

"(1) conduct is 'knowing';

"(2) an existing circumstance is 'reckless'; and

"(3) a result is 'reckless'.

"(c) SATISFACTION OF STATE OF MIND REQUIREMENT BY PROOF OF OTHER STATE OF MIND.—If the state of mind required to be proved with respect to an element of an offense is—

"(1) 'knowing', this requirement can be satisfied alternatively by proof of an 'intentional' state of mind;

"(2) 'reckless', this requirement can be satisfied alternatively by proof of an 'intentional' or 'knowing' state of mind; or

"(3) 'negligent', this requirement can be satisfied alternatively by proof of an 'intentional', 'knowing', or 'reckless' state of mind.

"(d) MATTERS OF LAW REQUIRING NO PROOF OF STATE OF MIND.—

"(1) EXISTENCE OF OFFENSE.—Proof of knowledge or other state of mind is not required with respect to—

"(A) the fact that particular conduct constitutes an offense, or that conduct or another element of an offense is pursuant to, or required by, or violates, a statute or a regulation, rule, or order issued pursuant thereto;

"(B) the fact that particular conduct is described in a section of this title; or

"(C) the existence, meaning, or application of the law determining the elements of an offense.

"(2) JURISDICTION, VENUE, AND GRADING MATTERS.—Proof of state of mind is not required with respect to any matter that is solely a basis for federal jurisdiction, for venue, or for grading.

"(3) MATTERS DESIGNATED A QUESTION OF LAW.—Proof of state of mind is not required with respect to any matter that is designated as a question of law.

"(e) MATTERS PERTAINING TO BARS OR DEFENSES REQUIRING NO PROOF OF STATE OF MIND.—Proof of state of mind is not required with respect to an element of a bar to prosecution, defense, or affirmative defense.

"CHAPTER 4—COMPLICITY

"§ 401. Liability of an Accomplice

"(a) LIABILITY IN GENERAL.—A person is criminally liable for an offense based upon the conduct of another person if—

"(1) he knowingly aids or abets the commission of the offense by the other person; or

"(2) acting with the state of mind required for the commission of the offense, he causes the other person to engage in conduct that would constitute an offense if engaged in personally by the defendant or any other person.

"(b) LIABILITY AS COCONSPIRATOR.—A person is criminally liable for an offense based upon the conduct of another person if—

"(1) he and the other person engage in an offense under section 1002 (Criminal Conspiracy);

"(2) the other person engages in the conduct in furtherance of the conspiracy; and

"(3) the conduct is authorized by the agreement or it is reasonably foreseeable that the conduct would be performed in furtherance of the conspiracy.

"§ 402. Liability of an Organization for Conduct of an Agent

"Except as otherwise expressly provided, an organization is criminally liable for an offense if the conduct constituting the offense—

"(a) is conduct of its agent, and such conduct—

"(1) occurs in the performance of matters within the scope of the agent's employment, or within the scope of the agent's actual, implied, or apparent authority, and is intended by the agent to benefit the organization; or

"(2) is thereafter ratified or adopted by the organization; or

"(b) involves a failure by the organization or its agent to discharge a specific duty of conduct imposed on the organization by law.

"§ 403. Liability of an Agent for Conduct of an Organization

"(a) CONDUCT ON BEHALF OF AN ORGANIZATION.—Except as otherwise expressly provided, a person is criminally liable for an offense based upon conduct that he engages in or causes in the name of an organization or on behalf of an organization to the same extent as if he engaged in or caused the conduct in his own name or on his own behalf.

"(b) OMISSION TO PERFORM A DUTY OF AN ORGANIZATION.—Except as otherwise expressly provided, if a duty to act is imposed upon an organization by

a statute, or by a regulation, rule, or order issued pursuant thereto, an agent of the organization having significant responsibility for the subject matter to which the duty relates is criminally liable for an offense based upon an omission to perform the duty to the same extent as if the duty were imposed upon him directly if he—

"(1) has, by virtue of his authority within or his relationship to the organization, the power to prevent the offense from occurring through the exercise of reasonably diligent oversight and exertion; and

"(2) has the state of mind required for the commission of the offense.

"§ 404. General Provisions for Chapter 4

"(a) TREATMENT AS PRINCIPAL.—A person whose criminal liability is based upon section 401 may be charged, tried, and punished as a principal.

"(b) BAR TO PROSECUTION.—It is a bar to a prosecution in which the criminal liability of the defendant is based upon section 401, 402, or 403 that all of the persons for whose conduct the defendant is alleged to be criminally liable have been acquitted in a separate trial or trials because of insufficient evidence determined by the court not to have been occasioned by a suppression order.

"(c) DEFENSES PRECLUDED.—Except as provided in subsection (b), it is not a defense to a prosecution in which the criminal liability of the defendant is based upon section 401, 402, or 403 that—

"(1) the defendant does not belong to the category of persons who by definition are the only persons capable of committing the offense directly; or

"(2) the person for whose conduct the defendant is criminally liable has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, was incompetent or irresponsible, or is immune from or otherwise not subject to prosecution.

"CHAPTER 5—BARS AND DEFENSES

"Subchapter A—General Provisions

"§ 501. General Principle Governing Existence of Bars and Defenses

"Except as otherwise required by the Constitution or by a federal statute, the existence of a bar to a prosecution under any federal statute, or the existence of a defense or affirmative defense to a prosecution under any federal statute, including a defense or an affirmative defense of mistake of fact or law, insanity, intoxication, duress, exercise of public authority, protection of persons, protection of property, unlawful entrapment, and official misstatement of law, shall be deter-

mined by the courts of the United States according to the principles of the common law as they may be interpreted in the light of reason and experience.

"§ 502. Application and Scope of Bars and Defenses

"The bars to prosecution, defenses, and affirmative defenses set forth in this title are not exclusive, but the general subject matters covered constitute bars or defenses only to the extent described.

"Subchapter B—Bars to Prosecution

"§ 511. Time Limitations

"(a) BAR TO PROSECUTION.—It is a bar to a prosecution under any federal statute that the prosecution was commenced after the applicable period of limitation.

"(b) APPLICABLE PERIOD GENERALLY.—Except for a prosecution for a Class A felony or for an offense described in section 1121(a)(1) (Espionage), which may be commenced at any time, and except as otherwise provided in this section, a prosecution for an offense must be commenced, if the offense is—

"(1) a felony or a misdemeanor, within five years after the commission of the offense; or

"(2) an infraction, within one year after the commission of the offense.

"(c) EXTENDED PERIOD FOR CONCEALABLE OFFENSES.—If the period prescribed in subsection (b) has expired, and if not more than three years have passed since the date of such expiration, a prosecution may nevertheless be commenced—

"(1) for an offense in which a material element is either fraud or a breach of a fiduciary obligation, at any time within one year after the facts relating to the offense became known to, or reasonably should have become known by, a federal public servant who is charged with responsibility for acting with respect to such circumstances and who is not himself an accomplice in the offense;

"(2) for an offense based on official conduct in office by a public servant, at any time during which the defendant is a public servant or within two years after he ceases to be a public servant; or

"(3) for an offense based on concealment of assets of other debtor in a case under title 11 of the United States Code, at any time until the debtor has received a discharge or until a discharge has been denied.

"(d) TIME WHEN OFFENSE COMMITTED.—Except as otherwise provided by statute, for purposes of this section the commission of an offense occurs—

"(1) if the offense is other than a continuing offense, on the occurrence of the last remaining element of the offense; or

"(2) if the offense is a continuing offense involving—

"(A) criminal conspiracy, on the day of the occurrence of the most recent conduct to effect any objective of the conspiracy for which the defendant is responsible, or on the day of the frustration of the last remaining objective of the conspiracy, or on the day the conspiracy is terminated or finally abandoned;

"(B) a failure, neglect, or refusal to register, on the day the defendant registers as required, or on the day the duty to register ceases; or

"(C) a prolonged course of conduct which the statute plainly appears to treat as a continuing offense, on the day the course of conduct terminates.

"(e) COMMENCEMENT OF PROSECUTION.—For purposes of this section, the filing of an indictment or information or, if it is impracticable to obtain an indictment before the period of limitation is due to expire, the filing of a complaint establishing probable cause before a judicial officer empowered to issue a warrant, commences a prosecution for the offense charged and for any necessarily included offense. A prosecution for an offense necessarily included in the offense charged shall be considered to have been timely commenced, even though the period of limitation for such included offense has expired, if the period of limitation has not expired for the offense charged and if there was, after the close of the evidence at the trial, sufficient evidence as a matter of law to sustain a conviction of the offense charged.

"(f) EXTENDED PERIOD FOR COMMENCEMENT OF NEW PROSECUTION.—If a timely complaint, indictment, or information is dismissed for any error, defect, insufficiency, or irregularity, a new prosecution may be commenced within six months after the dismissal becomes final even though the period of limitation has expired at the time of the dismissal or will expire within six months thereafter.

"(g) SUSPENSION OF PERIOD OF LIMITATION.—The period of limitation does not run while the person who committed or who is criminally liable for an offense is absent from the United States or is a fugitive.

"§ 512. Immaturity

"It is a bar to a prosecution under any federal statute, other than a prosecution described in section 1601 (a)(1) or (a)(2) (Murder), 1611 (Maiming), 1612 (Aggravated Battery), 1621 (Kidnapping), 1631 (Aircraft Hijacking), or 1641 (Rape), that at the time of the commission of the offense charged the defendant was less than sixteen years old. This section does not bar a proceeding against such person as a juvenile delinquent pursuant to the provisions of subchapter A of chapter 36.

"PART II OFFENSES

"CHAPTER 10—OFFENSES OF GENERAL APPLICABILITY

"§ 1001. Criminal Attempt

"(a) OFFENSE.—A person is guilty of an offense if, acting with the state of mind otherwise required for the commission of a crime, he intentionally engages in conduct that, in fact, constitutes a substantial step toward the commission of the crime.

"(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution under this section that, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant avoided the commission of the crime attempted by abandoning his criminal effort and, if mere abandonment was insufficient to accomplish such avoidance, by taking affirmative steps that prevented the commission of the crime.

"(c) DEFENSE PRECLUDED.—It is not a defense to a prosecution under this section—

"(1) that it was factually or legally impossible for the actor to commit the crime, if the crime could have been committed had the circumstances been as the actor believed them to be; or

"(2) that the crime attempted was completed.

"(d) PROOF.—In a prosecution under this section, any special proof provision that is specified in this title as applicable to the crime attempted is applicable also to an offense described in this section, unless a different application is plainly required.

"(e) GRADING.—An offense described in this section is an offense of the same class as the crime attempted, except that, if the crime attempted is a Class A felony, an offense described in this section is a Class B felony.

"(f) JURISDICTION.—There is federal jurisdiction over an offense described in this section if the crime attempted is a federal crime with regard to which federal jurisdiction—

"(1) is not limited to certain specified circumstances; or

"(2) is limited to certain specified circumstances and any such circumstance exists or has occurred, or would exist or occur if the course of conduct involving the crime were completed.

"§ 1002. Criminal Conspiracy

"(a) OFFENSE.—A person is guilty of an offense if he agrees with one or more persons to engage in conduct, the performance of which would constitute a crime or crimes, and he, or one of such persons in fact, engages in any conduct with intent to effect any objective of the agreement.

"(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution under this section that, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant prevented the commission of every crime that was an objective of the conspiracy.

"(c) BAR TO PROSECUTION.—It is a bar to a prosecution under this section that all of the persons with whom the defendant is alleged to have conspired have been acquitted in a separate trial or trials because of insufficient evidence, not occasioned by a suppression order, that a conspiracy existed.

"(d) DEFENSE PRECLUDED.—Except as provided in subsection (c), it is not a defense to a prosecution under this section that one or more of the persons with whom the defendant is alleged to have conspired has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, was incompetent or irresponsible, or is immune from or otherwise not subject to prosecution.

"(e) GRADING.—An offense described in this section is an offense of the same class as the most serious crime that was an objective of the conspiracy, except that if the most serious crime that was an objective of the conspiracy is a Class A felony, a offense described in this section is a Class B felony.

"(f) JURISDICTION.—There is federal jurisdiction over an offense described in this section if any objective of the conspiracy is a federal crime with regard to which federal jurisdiction—

"(1) is not limited to certain specified circumstances; or

"(2) is limited to certain specified circumstances and any such circumstance exists or has occurred, or would exist or occur if the course of conduct involving any crime that is an objective of the conspiracy were completed.

"§ 1003. Criminal Solicitation

"(a) OFFENSE.—A person is guilty of an offense if, with intent that another person engage in conduct constituting a crime, and, in fact, under circumstances strongly corroborative of that intent, he commands, entreats, induces, or otherwise endeavors to persuade such other person to engage in such conduct.

"(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution under this section that, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant prevented the commission of the crime solicited.

"(c) DEFENSE PRECLUDED.—It is not a defense to a prosecution under this section that the person solicited could not be convicted of the crime because he lacked the state of mind required for the commission of the crime, because he was

incompetent or irresponsible, or because he is immune from prosecution or otherwise not subject to prosecution.

"(d) GRADING.—An offense described in this section is an offense of the class next below that of the crime solicited.

"(e) JURISDICTION.—There is federal jurisdiction over an offense described in this section if the crime solicited is a federal crime with regard to which federal jurisdiction—

"(1) is not limited to certain specified circumstances; or

"(2) is limited to certain specified circumstances and any such circumstance exists or has occurred, or would exist or occur if the course of conduct involving the crime were completed.

"§ 1004. General Provisions for Chapter 10

"(a) DEFINITION.—As used in this chapter, a renunciation is not 'voluntary and complete' if it is motivated in whole or in part by a decision to postpone the commission of the crime until another time or to substitute another victim or another but similar objective.

"(b) INAPPLICABILITY TO CERTAIN OFFENSES.—It is not an offense under this chapter—

"(1) to attempt to commit, to conspire to commit, or to solicit the commission of—

"(A) an offense described in section 1001 (Criminal Attempt), 1002 (Criminal Conspiracy), 1003 (Criminal Solicitation), or 1202 (Conspiracy Against a Foreign Power); or

"(B) an offense described in a statute outside this title, whether or not incorporated by cross-reference in this title—

"(i) that consists of an attempt, a conspiracy, or a solicitation; or

"(ii) to the extent that the offense is subject to another attempt, conspiracy, or solicitation statute that itself is described outside this title;

"(2) to attempt to commit, or to conspire to commit unless it was in fact completed, an offense described in section 1115(a)(3) (Obstructing Military Recruitment or Induction), 1116(a)(1) (Inciting or Aiding Mutiny, Insubordination, or Desertion), or 1831(a)(1) (Leading a Riot); or

"(3) to solicit the commission of an offense described in section 1112 (Impairing Military Effectiveness), 1114 (Evading Military or Alternative Civilian Service), 1115 (Obstructing Military Recruitment or Induction), 1116 (Inciting or Aiding Mutiny, Insubordination, or Desertion), 1122 (Disseminating National Defense Information), 1123 (Disseminating Classified Information), 1124 (Receiving Classified Information), 1301 (Obstructing a Government Function by Fraud), 1302 (Obstructing a Government Function by Physical Interference), 1328 (Demonstrating to Influence a Judicial Proceeding), 1334 (Obstructing a Proceeding by Disorderly Conduct), 1343(a)(1)(A) (Making a False Statement), 1831 (Leading a Riot), or 1833 (Engaging in a Riot).

"CHAPTER 11—OFFENSES INVOLVING NATIONAL DEFENSE

"Subchapter A—Treason and Related Offenses

"§ 1101. Treason

"(a) OFFENSE.—A person is guilty of an offense if, while owing allegiance to the United States, he—

"(1) adheres to the enemies of the United States and intentionally gives them aid and comfort; or

"(2) levies war against the United States.

"(b) PROOF.—In a prosecution under this section, a person may not be convicted unless the evidence against him includes the testimony of two witnesses to the same overt act, or unless he makes a confession in open court.

"(c) GRADING.—An offense described in this section is a Class A felony.

"§ 1102. Armed Rebellion or Insurrection

"(a) OFFENSE.—A person is guilty of an offense if he engages in armed rebellion or armed insurrection—

"(1) against the authority of the United States or a State with intent to—

"(A) overthrow, destroy, supplant, or change the form of, the government of the United States; or

"(B) sever a State's relationship with the United States; or

"(2) against the United States with intent to oppose the execution of any law of the United States.

"(b) GRADING.—An offense described in this section is—

"(1) a Class B felony in the circumstances set forth in subsection (a)(1); and

"(2) a Class C felony in the circumstances set forth in subsection (a)(2).

"§ 1103. Engaging in Para-Military Activity

"(a) OFFENSE.—A person is guilty of an offense if he engages in the acquisition, caching, or use of dangerous weapons, or in the training of other persons in the use of such weapons, by or on behalf of an organization or group, of ten or more persons, that has as a purpose the taking over or control of, or the unau-

thorized assumption of the function of, a federal or State government agency, by force or threat of force.

"(b) GRADING.—An offense described in this section is a Class D felony.

"Subchapter B—Sabotage and Related Offenses

"§ 1111. Sabotage

"(a) OFFENSE.—A person is guilty of an offense if, with intent to impair, interfere with, or obstruct the ability of the United States or an associate nation to prepare for or to engage in war or defense activities, he—

"(1) damages, tampers with, contaminates, defectively makes, or defectively repairs—

"(A) any property used in, or particularly suited for use in, the national defense that, in fact, is owned by, or is under the care, custody, or control of, the United States or an associate nation, or that is being produced, manufactured, constructed, repaired, transported, or stored for the United States or an associate nation;

"(B) any facility that is engaged in whole or in part, for the United States or an associate nation, in—

"(i) furnishing defense materials or services; or

"(ii) producing raw material necessary to the support of a national defense production or mobilization program; or

"(C) any public facility used in, or designated and particularly suited for use in, the national defense; or

"(2) delivers any property described in paragraph (1)(A) that has been damaged, tampered with, contaminated, defectively made, or defectively repaired.

"(b) GRADING.—An offense described in this section is—

"(1) a Class A felony if the offense—

"(A) is committed in time of war; and

"(B) causes damage to or impairment of a major weapons system or a means of defense, warning, or retaliation against large scale attack;

"(2) a Class B felony if the offense—

"(A) is committed in time of war in any case other than that described in paragraph (1)(B); or

"(B) is committed during a national defense emergency; and

"(3) a Class C felony in any other case.

"§ 1112. Impairing Military Effectiveness

"(a) OFFENSE.—A person is guilty of an offense if, in reckless disregard of the risk that his conduct would impair, interfere with, or obstruct the ability of the United States or an associate nation to prepare for or to engage in war or defense activities, he engages in conduct described in paragraph (1) or (2) of section 1111(a)—

"(1) in time of war or during a national defense emergency; or

"(2) at any other time and by which he causes damage to or impairment of a major weapons system or a means of defense, warning, or retaliation against large scale enemy attack.

"(b) GRADING.—An offense described in this section is—

"(1) a Class C felony if the offense—

"(A) is committed in time of war; and

"(B) causes damage to or impairment of a major weapons system or a means of defense, warning, or retaliation against large scale enemy attack;

"(2) a Class D felony if the offense—

"(A) is committed in time of war in any case other than that described in paragraph (1)(B); or

"(B) is committed during a national defense emergency; and

"(3) a Class E felony in any other case.

"§ 1113. Violating an Emergency Regulation

"(a) OFFENSE.—A person is guilty of an offense if he violates section 2 of title II of the Act of June 15, 1917 (50 U.S.C. 192) (relating to promulgation of regulations concerning the anchorage and movement of vessels during a national emergency).

"(b) GRADING.—An offense described in this section is a Class D felony.

"§ 1114. Evading Military or Alternative Civilian Service

"(a) OFFENSE.—A person is guilty of an offense if—

"(1) knowing that he is under a duty imposed by a federal statute governing military service, or by a regulation, rule, order, or presidential proclamation issued pursuant thereto—

"(A) to register for military service;

"(B) to report for and submit to examination to determine his availability for military or alternative civilian service;

"(C) to report for and submit to induction into military service; or

"(D) to report for and perform alternative civilian service;

he fails, neglects, or refuses to do so; or

"(2) with intent—

"(A) to avoid or delay the performance of the military or alternative civilian service obligation of himself or another person imposed

by a federal statute governing military service, or by a regulation, rule, order, or presidential proclamation issued pursuant thereto; or

"(B) to obstruct the proper determination of the existence or nature of such an obligation;

he engages in conduct constituting an offense under section 1343(a)(1) (Making a False Statement).

"(b) PROOF.—To the extent that conduct described in section 1343 (a)(1) is an element of an offense described in this section, the provisions of section 1345 (b)(2) and (c)(2) that apply to section 1343 (Making a False Statement) apply also to this section.

"(c) GRADING.—An offense described in this section is—

"(1) a Class D felony if the offense is committed in time of war;

"(2) a Class E felony in any other case, except as provided in paragraph (3); and

"(3) a Class A misdemeanor under the circumstances set forth in subsection (a)(1)(A) if it occurs exclusively during a period in which only previously deferred registrants are subject to induction.

"§ 1115. Obstructing Military Recruitment or Induction

"(a) OFFENSE.—A person is guilty of an offense if, in time of war and with intent to hinder, interfere with, or obstruct the recruitment, conscription, or induction of a person into the armed forces of the United States, he—

"(1) creates a physical interference or obstacle to the recruitment, conscription, or induction;

"(2) uses force, threat, intimidation, or deception against a public servant of a government agency engaged in the recruitment, conscription, or induction; or

"(3) incites others to engage in conduct constituting an offense under section 1114 (Evading Military or Alternative Civilian Service).

"(b) GRADING.—An offense described in this section is a Class D felony.

"§ 1116. Inciting or Aiding Mutiny, Insubordination, or Desertion

"(a) OFFENSE.—A person is guilty of an offense if—

"(1) with intent to bring about mutiny, insubordination, refusal of duty, or desertion by members of the armed forces of the United States, he incites such members to engage in mutiny, insubordination, refusal of duty, or desertion;

"(2) he aids or abets the commission or attempted commission of mutiny or desertion by a member of the armed forces of the United States; or

"(3) he interferes with, hinders, delays, or prevents the discovery, apprehension, prosecution, conviction, or punishment of a member of the armed forces of the United States, knowing that such member has deserted, or is charged with or being sought for desertion, by engaging in any

conduct described in subparagraphs (A) through (D) of section 1311(a)(1) (Hindering Law Enforcement).

"(b) GRADING.—An offense described in this section is—

"(1) a Class C felony in the circumstances set forth in subsection (a)(1) if—

"(A) the offense is committed in time of war; or

"(B) the persons incited are engaged, or about to be engaged, in combat;

"(2) a Class D felony—

"(A) in the circumstances set forth in subsection (a)(1) in any case other than that described in paragraph (1); or

"(B) in the circumstances set forth in subsection (a)(2); and

"(3) a Class E felony in the circumstances set forth in subsection (a)(3).

"§ 1117. Aiding Escape of a Prisoner of War or an Enemy Alien

"(a) OFFENSE.—A person is guilty of an offense if he—

"(1) aids or abets the escape or attempted escape of a person being held in the custody of the United States or an associate nation as a prisoner of war or as an enemy alien; or

"(2) interferes with, hinders, delays, or prevents the discovery or apprehension of—

"(A) a prisoner of war or an enemy alien, knowing that such prisoner or alien has escaped from the custody of the United States or an associate nation; or

"(B) an enemy alien, knowing that such alien is being sought for detention by the United States or an associate nation;

by engaging in any conduct described in subparagraphs (A) through (D) of section 1311(a)(1) (Hindering Law Enforcement).

"(b) GRADING.—An offense described in this section is a Class D felony.

"Subchapter C—Espionage and Related Offenses

"§ 1121. Espionage

"(a) OFFENSE.—A person is guilty of an offense if he violates—

"(1) section 201 of the Espionage and Sabotage Act of 1954 (relating to gathering or delivering defense information to aid a foreign government), as amended by section 182 of the Criminal Code Reform Act of 1979 (50 U.S.C. —); or

"(2) section 224(a) or 225 of the Atomic Energy Act of 1954 (42 U.S.C. 2274(a) or 2275) (relating to communication and receipt of restrict-

ed data with intent to injure the United States or to secure an advantage to a foreign nation).

"(b) GRADING.—Notwithstanding the provisions of sections 2201(b), 2201(c), and 2301(b), the authorized sentence for a defendant found guilty of violating—

"(1) subsection (a)(1) is the sentence set forth in section 201 of the Espionage and Sabotage Act of 1954 (relating to gathering or delivering defense information to aid a foreign government), as amended by section 182 of the Criminal Code Reform Act of 1979 (50 U.S.C. —); and

"(2) subsection (a)(2) is the sentence set forth in section 224(a) or 225 of the Atomic Energy Act of 1954 (42 U.S.C. 2274(a) or 2275).

"§ 1122. Disseminating National Defense Information

"(a) OFFENSE.—A person is guilty of an offense if he violates—

"(1) section 18 of the Subversive Activities Control Act of 1950 (relating to gathering, transmitting, or losing national defense information), as amended by section 181 of the Criminal Code Reform Act of 1979 (50 U.S.C. —); or

"(2) section 224(b) of the Atomic Energy Act of 1954 (42 U.S.C. 2274(b)) (relating to communication of restricted data with reason to believe the data will be used to injure the United States or to secure an advantage to a foreign nation).

"(b) GRADING.—Notwithstanding the provisions of sections 2201(b), 2201(c), and 2301(b), the authorized sentence for a defendant found guilty of violating—

"(1) subsection (a)(1) is the sentence set forth in section 18 of the Subversive Activities Control Act of 1950 (relating to gathering, transmitting, or losing national defense information), as amended by section 181 of the Criminal Code Reform Act of 1979 (50 U.S.C. —); and

"(2) subsection (a)(2) is the sentence set forth in section 224(b) of the Atomic Energy Act of 1954 (42 U.S.C. 2274(b)).

"§ 1123. Disseminating Classified Information

"(a) OFFENSE.—A person is guilty of an offense if he violates—

"(1) section 24 of the Act of October 31, 1951 (65 Stat. 719) (relating to disclosure of classified information), as amended by section 183 of the Criminal Code Reform Act of 1979 (50 U.S.C. —); or

"(2) section (4)(b) of the Subversive Activities Control Act of 1950 (50 U.S.C. 783(b)) (relating to communication of classified information by a federal public servant).

"(b) GRADING.—Notwithstanding the provisions of sections 2201(b), 2201(c), and 2301(b), the authorized sentence for a defendant found guilty of violating—

"(1) subsection (a)(1) is the sentence set forth in section 24 of the Act of October 31, 1951 (65 Stat. 719) (relating to disclosure of classified information), as amended by section 183 of the Criminal Code Reform Act of 1979 (50 U.S.C. —); and

"(2) subsection (a)(2) is the sentence set forth in section 4 of the Subversive Activities Control Act of 1950 (50 U.S.C. 783).

"§ 1124. Receiving Classified Information

"(a) OFFENSE.—A person is guilty of an offense if he violates—

"(1) section 4(c) of the Subversive Activities Control Act of 1950 (50 U.S.C. 783(c)) (relating to the receipt of classified information by a foreign agent or a member of a communist organization); or

"(2) section 227 of the Atomic Energy Act of 1954 (42 U.S.C. 2277) (relating to disclosure of restricted data).

"(b) GRADING.—Notwithstanding the provisions of sections 2201(b), 2201(c), and 2301(b), the authorized sentence for a person convicted of violating—

"(1) subsection (a)(1) is the sentence set forth in section 4 of the Subversive Activities Control Act of 1950 (50 U.S.C. 783); and

"(2) subsection (a)(2) is the sentence set forth in section 227 of the Atomic Energy Act of 1954 (42 U.S.C. 2277).

"§ 1125. Failing to Register as a Person Trained in a Foreign Espionage System

"(a) OFFENSE.—A person is guilty of an offense if he—

"(1) fails to register with the Attorney General as required by section 2 of the Act of August 1, 1956 (50 U.S.C. 851) (relating to registration of persons trained in foreign espionage systems); or

"(2) violates a regulation or rule issued pursuant to the authority conferred in section 5 of the Act of August 1, 1956 (50 U.S.C. 854) (relating to promulgation of regulations and rules for registration of persons trained in foreign espionage systems).

"(b) GRADING.—An offense described in this section is a Class D felony.

"§ 1126. Failing to Register as, or Acting as, a Foreign Agent

"(a) OFFENSE.—A person is guilty of an offense if—

"(1) being an agent of a foreign principal, he fails to register with the Attorney General as required by section 2 of the Foreign Agents Registration Act of 1938 (22 U.S.C. 612);

"(2) he violates a provision of section 4(a) or 5, or a provision of section 7 relating to a violation of section 4(a) or 5, of the Foreign Agents Registration Act of 1938 (22 U.S.C. 614(a), 615, or 617), or a regulation, rule, or order issued pursuant thereto;

"(3) he violates section 152 of the Criminal Code Reform Act of 1979 (22 U.S.C. —); or

"(4) being a federal public servant, he is or acts as an agent of a foreign principal required to register under the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.), in violation of 18 U.S.C. App. 219.

"(b) DEFINITIONS.—As used in this section, 'agent of a foreign principal' and 'foreign principal' have the meanings set forth in section 1 of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611).

"(c) GRADING.—An offense described in this section is—

"(1) a Class D felony in the circumstances set forth in subsection (a)(1), (a)(2), or (a)(3); and

"(2) a Class E felony in the circumstances set forth in subsection (a)(4).

"Subchapter D—Miscellaneous National Defense Offenses

"§ 1131. Atomic Energy Offenses

"(a) OFFENSE.—A person is guilty of an offense if he violates any of the following provisions of the Atomic Energy Act of 1954:

"(1) Section 57 (42 U.S.C. 2077) (relating to unauthorized dealing in special nuclear material).

"(2) Section 92 (42 U.S.C. 2122) (relating to the manufacture, transfer, or possession of an atomic weapon).

"(3) Section 101 (42 U.S.C. 2131) (relating to the unlicensed manufacture, transfer, or possession of a utilization or production facility for special nuclear material).

"(4) Section 108 (42 U.S.C. 2138) (relating to suspension of licenses and recapture of special nuclear material) by interfering with a recapture or entry order.

"(5) Section 223 (42 U.S.C. 2273) (relating to a violation of the Atomic Energy Act of 1954) or a rule, regulation, or order pertaining to special nuclear material, source material, or byproduct material.

"(6) Section 226 (42 U.S.C. 2276) (relating to tampering with restricted data).

"(b) GRADING.—Notwithstanding the provisions of sections 2201(b), 2201(c), and 2301(b), the authorized sentence for a defendant found guilty of violating—

"(1) subsection (a)(1), (a)(2), (a)(3), or (a)(4) is the sentence set forth in section 222 of the Atomic Energy Act of 1954 (42 U.S.C., 2272);

"(2) subsection (a)(5) is the sentence set forth in section 223 of the Atomic Energy Act of 1954 (42 U.S.C. 2273); and

"(3) subsection (a)(6) is the sentence set forth in section 226 of the Atomic Energy Act of 1954 (42 U.S.C. 2276).

"CHAPTER 12—OFFENSES INVOLVING INTERNATIONAL AFFAIRS

"Subchapter A—Offenses Involving Foreign Relations

"§ 1201. Attacking a Foreign Power

"(a) OFFENSE.—A person is guilty of an offense if he launches or carries on, from the United States, a military attack or expedition against a foreign power with which the United States is not at war.

"(b) DEFINITION.—As used in this section, 'military attack or expedition' against a foreign power means—

"(1) any manned or unmanned warlike assault upon—

"(A) the territory of such foreign power;

"(B) the inhabitants or property in the territory of such foreign power; or

"(C) a vessel or aircraft of such foreign power; or

"(2) any organized warlike invasion of the territory of such foreign power whether launched from or carried on by land, sea, or air.

"(c) GRADING.—An offense described in this section is a Class D felony.

"§ 1202. Conspiracy Against a Foreign Power

"(a) OFFENSE.—A person is guilty of an offense if, within the United States, he agrees with one or more persons to engage in conduct outside the United States, the performance of which would constitute—

"(1) an offense under section 1601 (Murder), 1602 (Manslaughter), 1611 (Maiming), or 1621 (Kidnapping) involving a victim who is a foreign official of a foreign power with which the United States is not at war; or

"(2) an offense under subchapter A (Arson and Other Property Destruction Offenses) of chapter 17 involving property owned by, or under the care, custody, or control of, a foreign power with which the United States is not at war, or a public facility located within the jurisdiction of such foreign power;

and he, or one of such persons, in fact, engages in conduct with intent to effect any objective of the agreement.

"(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution under this section that, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant prevented the commission of every crime that was an objective of the conspiracy.

"(c) BAR TO PROSECUTION.—It is a bar to a prosecution under this section that all of the persons with whom the defendant is alleged to have conspired have been acquitted in a separate trial or trials because of insufficient evidence, not occasioned by a suppression order, that a conspiracy existed.

"(d) DEFENSE PRECLUDED.—Except as provided in subsection (c), it is not a defense to a prosecution under this section that one or more of the persons with

whom the defendant is alleged to have conspired has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, was incompetent or irresponsible, or is immune from or otherwise not subject to prosecution.

"(e) DEFINITION.—As used in this section, a renunciation is not 'voluntary and complete' if it is motivated in whole or in part by a decision to postpone the commission of the crime until another time or to substitute another victim or another but similar objective.

"(f) GRADING.—An offense described in this section is a Class D felony.

"§ 1203. Entering or Recruiting for a Foreign Armed Force

"(a) OFFENSE.—A person is guilty of an offense if, within the United States, he—

"(1) contracts to enter the armed forces of a foreign power; or

"(2) induces another person to contract to enter the armed forces of a foreign power.

"(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution under this section that—

"(1) the foreign power was an associate nation and the person who contracted to enter its armed forces was not a citizen of the United States; or

"(2) the foreign power was not then at war with the United States and the person who contracted to enter its armed forces was a citizen of the foreign power, and, in the case of a prosecution under subsection (a)(2), the person who induced the other person to contract to enter its armed forces was also a citizen of the foreign power.

"(c) GRADING.—An offense described in this section is a Class E felony.

"§ 1204. Violating Neutrality by Causing Departure of a Vessel or Aircraft

"(a) OFFENSE.—A person is guilty of an offense if, during a war in regard to which the United States is a neutral nation, he engages in conduct that causes the departure from the United States of a vessel or an aircraft—

"(1) that is equipped as, or that is capable of service as, a warship or warplane, with knowledge that it may be used in the service of a belligerent foreign power;

"(2) that is the subject of a detention order issued pursuant to a federal statute designed to restrict or control the delivery of vessels, aircraft, goods, or services to belligerent foreign powers, or a regulation or rule issued pursuant thereto; or

"(3) that, in fact, has not been issued the clearance required by a federal statute designed to restrict or control the delivery of vessels, aircraft, goods, or services to belligerent foreign powers, or a regulation, rule, or order issued pursuant thereto.

"(b) PROOF.—In a prosecution under this section, whether a detention order was issued pursuant to, or whether a clearance was required by, a federal statute

designed to restrict or control the delivery of vessels, aircraft, goods, or services to belligerent foreign powers, or a regulation, rule, or order issued pursuant thereto, is a question of law.

"(c) GRADING.—An offense described in this section is a Class D felony.

"§ 1205. Disclosing a Foreign Diplomatic Code or Correspondence

"(a) OFFENSE.—A person is guilty of an offense if he communicates matter that he knows is—

"(1) a diplomatic code of a foreign government, or any information or matter prepared in such a code; or

"(2) any information or matter intercepted while in the process of transmission between a foreign government and its diplomatic mission in the United States;

to which he obtained access as a federal public servant.

"(b) DEFINITIONS.—As used in this section—

"(1) 'information' includes any property from which information may be obtained; and

"(2) 'intercept' has the meaning set forth in section 1526(d).

"(c) GRADING.—An offense described in this section is a Class E felony.

"§ 1206. Engaging in an Unlawful International Transaction

"(a) OFFENSE.—A person is guilty of an offense if he violates—

"(1) section 5 of the United Nations Participation Act of 1945 (22 U.S.C. 287c) (relating to economic and communication sanctions called for by the United Nations Security Council and ordered by the President);

"(2) section 7 of the Neutrality Act of 1939 (22 U.S.C. 447) (relating to transactions involving securities or obligations of belligerent foreign powers);

"(3) section 38 of the Arms Export Control Act (22 U.S.C. 2778) (relating to regulation of the export and import of defense articles and defense services);

"(4) section 206(b) of the International Emergency Economic Powers Act (50 U.S.C. 1705(b)) (relating to transactions involving foreign exchange, transfers of credit or payments involving foreign interests, and importing and exporting currency and securities);

"(5) section 3(a) or 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 3(a) or 5(b)) (relating to trade with an enemy or an ally of an enemy of the United States); or

"(6) section 6(b) of the Export Administration Act of 1969 (50 U.S.C. App. 2405(b) (relating to the export of prohibited goods and technological information to certain nations).

"(b) GRADING.—An offense described in this section is a Class D felony.

"Subchapter B—Offenses Involving Immigration, Naturalization, and Passports

"§ 1211. Unlawfully Entering the United States as an Alien

"(a) OFFENSE.—A person is guilty of an offense if, being an alien, he—

"(1) enters the United States at a time or place other than a time or place designated for such entry under a federal statute, or a regulation, rule, or order issued pursuant thereto;

"(2) eludes examination or inspection by an immigration officer;

"(3) obtains entry into the United States by fraud; or

"(4) enters, or is present in, the United States after having been deported from the United States under an order of exclusion or deportation.

"(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution under subsection (a)(4) that—

"(1) the Attorney General had expressly consented to the alien's reapplying for admission to the United States, prior to his reembarkation at a place outside the United States or prior to his application for admission from foreign contiguous territory; or

"(2) the alien had previously been deported under an order of exclusion and he was not required by a federal statute, or a regulation, rule, or order issued pursuant thereto, to obtain the advance consent described in paragraph (1).

"(c) GRADING.—An offense described in this section is—

"(1) a Class D felony if the actor uses a passport, certificate of naturalization or citizenship, immigrant or nonimmigrant visa, border crossing identification card, alien registration receipt card, or other document prescribed by statute or regulation for entry into, or as evidence of an authorized stay in the United States, that is counterfeited or forged or that pertains to another person;

"(2) a Class E felony if the offense is committed in the circumstances set forth in subsection (a)(4) and the alien previously has been convicted of that offense or of any federal, State, or foreign felony; and

"(3) a Class B misdemeanor in any other case.

"§ 1212. Smuggling an Alien into the United States

"(a) OFFENSE.—A person is guilty of an offense if he brings into the United States an alien who he knows is—

"(1) not admitted for entry into the United States by an immigration officer; or

"(2) not lawfully entitled to enter or reside within the United States.

"(b) GRADING.—An offense described in this section is—

"(1) a Class D felony if the actor engages in the described conduct—

"(A) as consideration for the receipt, or in expectation of the receipt, of anything of pecuniary value; or

"(B) with knowledge that the alien intends to engage, in the United States, in conduct constituting a federal or State felony;

"(2) a Class E felony if the actor engages in the described conduct knowing that the alien is a member of the class of aliens that, in fact, is excludable from the United States under section 212(a) (27), (28), or (29) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(a) (27), (28), or (29)); and

"(3) a Class A misdemeanor in any other case.

"§ 1213. Hindering Discovery of an Alien Unlawfully in the United States

"(a) OFFENSE.—A person is guilty of an offense if he interferes with, hinders, delays, or prevents the discovery or apprehension of an alien, knowing that such alien is unlawfully within the United States, by engaging in any conduct described in subparagraphs (A) through (D) of section 1311(a)(1) (Hindering Law Enforcement).

"(b) GRADING.—An offense described in this section is—

"(1) a Class E felony if the actor engages in the conduct—

"(A) as consideration for the receipt, or in expectation of the receipt, of anything of pecuniary value;

"(B) with knowledge that the alien intends to engage, in the United States, in conduct constituting a federal or State felony;

"(C) with intent to obtain anything of value for placing the alien in the employ of another; or

"(D) with intent that the alien be employed or continued in the employ of an enterprise operated for profit; and

"(2) a Class A misdemeanor in any other case.

"§ 1214. Unlawfully Employing an Alien

"(a) OFFENSE.—A person is guilty of an offense if, being a farm labor contractor who has failed to obtain a certificate of registration, or whose certificate has been suspended or revoked, pursuant to the Fair Labor Contractor Registration Act of 1963 (7 U.S.C. 2041 et seq.), he violates section 6(f) of the Act (7 U.S.C. 2045(f)) (relating to employing the services of an alien not entitled to accept employment), or a regulation, rule, or order issued pursuant thereto.

"(b) GRADING.—An offense described in this section is a Class E felony.

"§ 1215. Fraudulently Acquiring or Improperly Using Evidence of Citizenship

"(a) OFFENSE.—A person is guilty of an offense if he—

"(1) obtains for any person, by fraud, United States naturalization, the creation of a record of permanent residence in the United States, or the issuance of a certificate or other documentary evidence of United States naturalization or citizenship;

"(2) uses a certificate or other documentary evidence of United States naturalization or citizenship, or a copy or duplicate thereof, that was unlawfully obtained; or

"(3) uses a certificate or other documentary evidence of United States naturalization or citizenship that was issued to another person, or a copy or duplicate thereof, as showing naturalization or citizenship of any person other than the person for whom it was lawfully issued.

"(b) GRADING.—An offense described in this section is a Class E felony.

"§ 1216. Fraudulently Acquiring or Improperly Using a Passport

"(a) OFFENSE.—A person is guilty of an offense if he—

"(1) obtains the issuance or verification of a United States passport by fraud;

"(2) uses a United States passport, the issuance or verification of which was unlawfully obtained; or

"(3) uses a United States passport that was issued for the use of another person.

"(b) GRADING.—An offense described in this section is a Class E felony.

"§ 1217. General Provisions for Subchapter B

"(a) DEFINITION.—As used in this subchapter—

"(1) 'alien', 'application for admission', 'border crossing identification card', 'entry', 'immigration officer', 'passport', 'United States', 'immigrant visa', and 'nonimmigrant visa' have the meanings prescribed in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101), and 'alien' includes an alien 'crewman' as defined in that Act; and

"(2) 'fraud' includes conduct described in sections 1301(a) and 1343(a)(1) (A) through (F).

"(b) PROOF.—To the extent that conduct described in section 1343(a)(1) (A) through (F) is an element of an offense described in this subchapter, the provisions of section 1345 (b)(2) and (c)(2) that apply to section 1343 (Making a False Statement) apply also to this subchapter.

"(c) EXCEPTIONS.—The provisions of—

"(1) section 289 of the Act of June 27, 1952 (8 U.S.C. 1359); and

"(2) sections 503(a) and 506 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (48 U.S.C. 1681 note);

apply to this subchapter.

"CHAPTER 13—OFFENSES INVOLVING GOVERNMENT PROCESSES

"Subchapter A—General Obstructions of Government Functions

"§ 1301. Obstructing a Government Function by Fraud

"(a) OFFENSE.—A person is guilty of an offense if he intentionally obstructs or impairs a government function by defrauding the government through misrepresentation, chicanery, trickery, deceit, craft, overreaching, or other dishonest means.

"(b) BAR TO PROSECUTION.—It is a bar to a prosecution under this section that the offense was committed solely for the purpose of disseminating information to the public.

"(c) GRADING.—An offense described in this section is a Class D felony.

"(d) JURISDICTION.—There is federal jurisdiction over an offense described in this section if the government function is a federal government function.

"§ 1302. Obstructing a Government Function by Physical Interference

"(a) OFFENSE.—A person is guilty of an offense if, by means of physical interference or obstacle, he intentionally obstructs or impairs a government function in fact involving—

"(1) the performance by a public servant of an official duty;

"(2) the performance by an inspector of a specific duty imposed by a statute, or by a regulation, rule, or order issued pursuant thereto;

"(3) the delivery of mail; or

"(4) the exercise of a right, or the performance of a duty, under a court order, judgment, or decree.

"(b) DEFENSE.—It is a defense to a prosecution under this section that the government function was—

"(1) unlawful; and

"(2) conducted by a public servant who was not acting in good faith.

"(c) PROOF.—The use by a public servant of clearly excessive force in the performance of a government function constitutes prima facie evidence that the public servant was not acting in good faith.

"(d) GRADING.—An offense described in this section is—

"(1) a Class A misdemeanor except as provided in paragraph (2); and

"(2) an infraction if the physical interference or obstacle—

"(A) is created in the course of picketing, or a parade, display, or other demonstration, otherwise protected by rights of free speech or assembly;

"(B) is nonviolent; and

"(C) does not significantly obstruct or impair a government function.

"(e) JURISDICTION.—There is federal jurisdiction over an offense described in this section if the government function is a federal government function.

"§ 1303. Impersonating an Official

"(a) OFFENSE.—A person is guilty of an offense if he pretends to be a public servant or a foreign official and purports to exercise the authority of such public servant or foreign official.

"(b) DEFENSE PRECLUDED.—It is not a defense to a prosecution under this section that the pretended capacity did not exist or that the pretended authority could not legally or otherwise have been exercised or conferred.

"(c) GRADING.—An offense described in this section is a Class E felony.

"(d) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the pretended capacity or authority is that of a federal public servant; or

"(2) the pretended capacity or authority is that of a foreign official and the offense is committed within the general jurisdiction of the United States or within the special jurisdiction of the United States.

"Subchapter B—Obstructions of Law Enforcement

"§ 1311. Hindering Law Enforcement

"(a) OFFENSE.—A person is guilty of an offense if he—

"(1) interferes with, hinders, delays, or prevents the discovery, apprehension, prosecution, conviction, or punishment of another person, knowing that such other person has committed a crime, or is charged with or being sought for a crime, by—

"(A) harboring the other person or engaging in conduct by which he knowingly conceals the other person or his identity;

"(B) providing the other person with a weapon, money, transportation, disguise, or other means of avoiding or minimizing the risk of discovery or apprehension;

"(C) warning the other person of impending discovery or apprehension; or

"(D) altering, destroying, mutilating, concealing, or removing a record, document, or other object; or

"(2) aids another person to secrete, disguise, or convert the proceeds of a crime or otherwise to profit from a crime.

"(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution under subsection (a)(1)(C), and to a prosecution under any section incorporating by reference the provisions of subparagraph (C) of subsection (a)(1), that warning was made solely in an effort to bring the other person into compliance with the law.

"(c) DEFENSE PRECLUDED.—It is not a defense to a prosecution under this section that the record, document, or other object would have been legally privileged or would have been inadmissible in evidence.

"(d) GRADING.—An offense described in this section is—

"(1) a Class D felony if the other person's crime is a Class A, B, or C felony, and the actor knows the general nature of the crime or is reckless with regard to the general nature of the crime;

"(2) a Class E felony if—

"(A) the other person's crime is a Class D felony, and the actor knows the general nature of the conduct constituting such crime or is reckless with regard to the general nature of such conduct; or

"(B) the defendant committed the offense as consideration for the receipt, or in expectation of the receipt, of anything of pecuniary value; and

"(3) a Class A misdemeanor in any other case.

"(e) JURISDICTION.—There is federal jurisdiction over an offense described in this section if the crime that the other person has committed, is charged with, is being sought for, or is seeking to profit from, is a crime over which federal jurisdiction exists.

"§ 1312. Bail Jumping

"(a) OFFENSE.—A person is guilty of an offense if, after having been released pursuant to the provisions of subchapter A of chapter 35 or of subchapter A of chapter 36—

"(1) he fails to appear before a court as required by the conditions of his release; or

"(2) he fails to surrender for service of sentence pursuant to a court order.

"(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution under this section that uncontrollable circumstances prevented the defendant from appearing or surrendering and that the defendant did not contribute to the

creation of such circumstances in reckless disregard of the requirement that he appear or surrender.

"(c) GRADING.—An offense described in this section is—

"(1) a Class D felony if the person was released—

"(A) in connection with a charge of a Class A, B, C, or D felony; or

"(B) while awaiting sentence, pending surrender for service of sentence, or pending review of sentence, appeal, or certiorari after conviction of any crime;

"(2) a Class E felony if the person was released in connection with a charge of a Class E felony; and

"(3) a Class A misdemeanor in any other case.

"§ 1313. Escape

"(a) OFFENSE.—A person is guilty of an offense if he—

"(1) escapes from official detention; or

"(2) fails to return to official detention following temporary leave, granted for a specified purpose or a limited period, pursuant to the terms under which such leave was granted.

"(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution under this section that the bringing about or maintaining of the official detention was illegal, or that the committing or detaining authority lacked jurisdiction, if—

"(1) the offense did not involve escape from a prison or other facility used for official detention;

"(2) the offense did not involve a substantial risk of harm to the person or property of another; and

"(3) the official detention was not in good faith.

"(c) GRADING.—An offense described in this section is—

"(1) a Class D felony if the actor was in official detention—

"(A) on a charge of, or as a result of an arrest for, a felony; or

"(B) pursuant to his conviction of an offense other than an adjudication of juvenile delinquency; and

"(2) a Class A misdemeanor in any other case.

"(d) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the official detention resulted from an arrest made, or an order or process issued, under the laws of the United States;

"(2) the escape is from official detention by a federal public servant; or

"(3) the escape is from official detention in a federal facility.

"§ 1314. Providing or Possessing Contraband in a Prison

"(a) OFFENSE.—A person is guilty of an offense if, in violation of a statute, or a regulation, rule, or order issued pursuant thereto—

"(1) he provides to an inmate of an official detention facility, or introduces into an official detention facility—

"(A) a firearm or destructive device;

"(B) any other weapon or object that may be used as a weapon or as a means of facilitating escape;

"(C) a narcotic drug as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802);

"(D) a controlled substance, other than a narcotic drug, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), or an alcoholic beverage; or

"(E) United States currency; or

"(2) being an inmate of an official detention facility, he makes, possesses, procures, or otherwise provides himself with—

"(A) anything described in paragraph (1); or

"(B) any other object.

"(b) GRADING.—An offense described in this section is—

"(1) a Class C felony if the object is anything set forth in paragraph (1)(A);

"(2) a Class D felony if the object is anything set forth in paragraph (1)(B) or (1)(C);

"(3) a Class A misdemeanor if the object is anything set forth in paragraph (1)(D) or (1)(E); and

"(4) a Class B misdemeanor if the object is any other object.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if the official detention facility is a federal facility.

"§ 1315. Flight to Avoid Prosecution or Appearance as a Witness

"(a) OFFENSE.—A person is guilty of an offense if he leaves a State or local jurisdiction with intent to avoid—

"(1) criminal prosecution, or official detention after conviction, for an attempt to commit, a conspiracy to commit, or the commission of a State or local felony in such jurisdiction;

"(2) appearing as a witness, giving testimony, or producing a record, document, or other object in an official proceeding in which a State or local felony in such jurisdiction is charged or being investigated; or

"(3) contempt proceedings, criminal prosecution, or official detention after conviction, for failure to appear as a witness, to give testimony, or to produce a record, document, or other object in an official proceeding in which a State or local felony in such jurisdiction is charged or being investigated.

"(b) DEFENSE PRECLUDED.—It is not a defense to a prosecution under this section that the testimony, or the record, document, or other object, would have been legally privileged or would have been inadmissible in evidence.

"(c) GRADING.—An offense described in this section is a Class E felony.

"(d) JURISDICTION.—There is federal jurisdiction over an offense described in this section if movement of the actor across a State or United States boundary occurs in the commission of the offense.

"Subchapter C—Obstructions of Justice

"§ 1321. Witness Bribery

"(a) OFFENSE.—A person is guilty of an offense if he—

"(1) offers, gives, or agrees to give to another person; or

"(2) solicits, demands, accepts, or agrees to accept from another person;

anything of value in return for an agreement or understanding that the testimony of the recipient will be influenced in an official proceeding.

"(b) DEFENSES PRECLUDED.—It is not a defense to a prosecution under this section that—

"(1) an official proceeding was not pending or about to be instituted; or

"(2) the defendant, or other recipient or proposed recipient of the thing of value, by the same conduct also committed an offense described in section 1722 (Extortion), 1723 (Blackmail), or 1731 (Theft).

"(c) GRADING.—An offense described in this section is a Class C felony.

"(d) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the official proceeding is or would be a federal official proceeding;

"(2) the United States mail or a facility in interstate or foreign commerce is used in the planning, promotion, management, execution, consummation, or concealment of the offense, or in the distribution of the proceeds of the offense; or

"(3) movement of a person across a State or United States boundary occurs in the planning, promotion, management, execution, consummation, or concealment of the offense, or in the distribution of the proceeds of the offense.

"§ 1322. Corrupting a Witness or an Informant

"(a) OFFENSE.—A person is guilty of an offense if he—

"(1) offers, gives, or agrees to give to another person, or solicits, demands, accepts, or agrees to accept from another person, anything of value for or because of any person's—

"(A) testimony in an official proceeding;

"(B) withholding testimony, or withholding a record, document, or other object, from an official proceeding;

"(C) engaging in conduct constituting an offense under section 1325 (Tampering With Physical Evidence);

"(D) evading legal process summoning him to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

"(E) absenting himself from an official proceeding to which he has been summoned by legal process; or

"(2) offers, gives, or agrees to give anything of value to another person for or because of any person's hindering, delaying, or preventing the communication to a law enforcement officer of information relating to an offense or a possible offense.

"(b) DEFENSE PRECLUDED.—It is not a defense to a prosecution under this section that—

"(1) an official proceeding was not pending or about to be instituted;

"(2) the testimony, or the record, document, or other object, would have been legally privileged or would have been inadmissible in evidence; or

"(3) the defendant, or other recipient or proposed recipient of the thing of value, by the same conduct also committed an offense described in section 1722 (Extortion), 1723 (Blackmail), or 1731 (Theft).

"(c) GRADING.—An offense described in this section is a Class E felony.

"(d) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the official proceeding is or would be a federal official proceeding;

"(2) the law enforcement officer is a federal public servant and the information relates to a federal offense or a possible federal offense;

"(3) the United States mail or a facility in interstate or foreign commerce is used in the planning, promotion, management, execution, consummation, or concealment of the offense, or in the distribution of the proceeds of the offense; or

"(4) movement of a person across a State or United States boundary occurs in the planning, promotion, management, execution, consummation, or concealment of the offense, or in the distribution of the proceeds of the offense.

"§ 1323. Tampering With a Witness or an Informant

"(a) OFFENSE.—A person is guilty of an offense if he—

"(1) uses force, threat, intimidation, or deception with intent to—

"(A) influence the testimony of another person in an official proceeding; or

"(B) cause or induce another person to—

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"(i) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

"(ii) engage in conduct constituting an offense under section 1325 (Tampering With Physical Evidence);

"(iii) evade legal process summoning him to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

"(iv) absent himself from an official proceeding to which he has been summoned by legal process; or

"(C) hinder, delay, or prevent the communication to a law enforcement officer of information relating to an offense or a possible offense; or

"(2) does any other act with intent to influence improperly, or to obstruct or impair, the—

"(A) administration of justice;

"(B) administration of a law under which an official proceeding is being or may be conducted; or

"(C) exercise of a legislative power of inquiry.

"(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution under subsection (a)(1)(A) that the conduct engaged in to threaten or to intimidate consisted solely of lawful conduct and that the defendant's sole intention was to compel or induce the other person to testify truthfully.

"(c) DEFENSE PRECLUDED.—It is not a defense to a prosecution under this section that—

"(1) an official proceeding was not pending or about to be instituted; or

"(2) the testimony, or the record, document, or other object, would have been legally privileged or would have been inadmissible in evidence.

"(d) GRADING.—An offense described in this section is—

"(1) a Class D felony in the circumstances set forth in subsection (a)(1); and

"(2) a Class E felony in the circumstances set forth in subsection (a)(2).

"(e) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the official proceeding is or would be a federal official proceeding;

"(2) the law enforcement officer is a federal public servant and the information relates to a federal offense or a possible federal offense;

"(3) the administration of justice, administration of a law, or exercise of a legislative power of inquiry relates to a federal government function;

"(4) the United States mail or a facility in interstate or foreign commerce is used in the planning, promotion, management, execution, consummation, or concealment of the offense, or in the distribution of the proceeds of the offense; or

"(5) movement of a person across a State or United States boundary occurs in the planning, promotion, management, execution, consummation, or concealment of the offense or in the distribution of the proceeds of the offense.

"§ 1324. Retaliating Against a Witness or an Informant

"(a) OFFENSE.—A person is guilty of an offense if he—

"(1) engages in conduct by which he causes bodily injury to another person or damages the property of another person because of—

"(A) the attendance of a witness or party of an official proceeding, or any testimony given, or any record, document, or other object produced, by a witness in an official proceeding; or

"(B) any information relating to an offense or a possible offense given by a person to a law enforcement officer; or

"(2) improperly subjects another person to economic loss or injury to his business or profession because of any matter described in subparagraph (A) or (B) of paragraph (1).

"(b) GRADING.—An offense described in this section is—

"(1) a Class E felony in the circumstances set forth in subsection (a)(1); and

"(2) a Class A misdemeanor in any other case.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the official proceeding is a federal official proceeding;

"(2) the law enforcement officer is a federal public servant and the information relates to a federal offense or a possible federal offense;

"(3) the United States mail or a facility in interstate or foreign commerce is used in the planning, promotion, management, execution, consummation, or concealment of the offense, or in the distribution of the proceeds of the offense; or

"(4) movement of a person across a State or United States boundary occurs in the planning, promotion, management, execution, consummation, or concealment of the offense, or in the distribution of the proceeds of the offense.

"§ 1325. Tampering With Physical Evidence

"(a) OFFENSE.—A person is guilty of an offense if he alters, destroys, mutilates, conceals, or removes a record, document, or other object, with intent to impair its integrity or its availability for use in an official proceeding.

"(b) DEFENSE PRECLUDED.—It is not a defense to a prosecution under this section that—

"(1) an official proceeding was not pending or about to be instituted; or

"(2) the record, document, or other object would have been legally privileged or would have been inadmissible in evidence.

"(c) GRADING.—An offense described in this section is a Class E felony.

"(d) JURISDICTION.—There is federal jurisdiction over an offense described in this section if the official proceeding is or would be a federal official proceeding.

"§ 1326. Improperly Influencing a Juror

"(a) OFFENSE.—A person is guilty of an offense if he communicates in any way with a juror, or a member of a juror's immediate family, with intent to influence improperly the official action of the juror.

"(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution under this section that the communication was to a grand juror and consisted solely of a request to appear before the grand jury.

"(c) GRADING.—An offense described in this section is a Class A misdemeanor.

"(d) JURISDICTION.—There is federal jurisdiction over an offense described in this section if the juror is a federal juror.

"§ 1327. Monitoring Jury Deliberations

"(a) OFFENSE.—A person is guilty of an offense if he intentionally—

"(1) records the proceedings of a grand or petit jury while the jury is deliberating or voting; or

"(2) listens to or observes the proceedings of a grand or petit jury, of which he is not a member, while the jury is deliberating or voting.

"(b) DEFENSE.—It is a defense to a prosecution under subsection (a)(1) that the actor was a juror of the jury that was deliberating or voting and that he was taking notes in connection with, and solely for the purpose of facilitating his performance of, his official duties.

"(c) GRADING.—An offense described in this section is a Class B misdemeanor.

"(d) JURISDICTION.—There is federal jurisdiction over an offense described in this section if the grand or petit jury is a federal jury.

"§ 1328. Demonstrating to Influence a Judicial Proceeding

"(a) OFFENSE.—A person is guilty of an offense if, with intent to influence another person in the discharge of his duties in a judicial proceeding, he pickets, parades, displays a sign, uses a sound amplifying device, or otherwise engages in a demonstration—

"(1) in a building housing a court of the United States;

"(2) on the grounds of, or within 100 feet of, a building housing a court of the United States, after being advised that such conduct is an offense; or

"(3) in, or on the grounds of, or after being advised that such conduct is an offense, within 100 feet of, a building occupied or used by such other person.

"(b) DEFENSE.—It is a defense to a prosecution under subsection (a)(2) that the defendant's conduct—

"(1) did not occur while any judicial proceeding was in progress or within one-half hour before or after such proceedings; and

"(2) did not constitute—

"(A) making unreasonable noise;

"(B) obstructing the entry to or exit from a building housing a court of the United States; or

"(C) threatening or placing another person in fear that any person would be subjected to bodily injury or kidnapping, or that any property would be damaged.

"(c) GRADING.—An offense described in this section is a Class B misdemeanor.

"(d) JURISDICTION.—There is federal jurisdiction over an offense described in this section if the judicial proceeding is a federal judicial proceeding.

"Subchapter D—Contempt Offenses

"§ 1331. Criminal Contempt

"(a) OFFENSE.—A person is guilty of an offense if he—

"(1) misbehaves in the presence of a court or so near to it as to obstruct the administration of justice;

"(2) disobeys or resists a writ, process, order, rule, decree, or command of a court; or

"(3) as an officer of a court, misbehaves in an official transaction.

"(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution under subsection (a)(2) that the writ, process, order, rule, decree, or command—

"(1) was invalid and that the defendant took reasonable and expeditious steps to obtain a judicial review of its validity, or a judicial decision with respect to a stay thereof, prior to the disobedience or resistance charged, and was unsuccessful in obtaining such review or decision within a reasonable period of time; or

"(2) was constitutionally invalid and constituted a prior restraint on the collection or dissemination of news.

"(c) POWER TO PROSECUTE.—A prosecution for an offense described in this section may be commenced by the court, the authority of which was the subject of the contempt, or by the Attorney General with the concurrence of the court.

"(d) SUCCESSIVE PROSECUTIONS.—A prosecution for an offense under this section is not a bar to a subsequent prosecution for an offense under another federal statute if the conduct charged as criminal contempt under this section also constitutes an offense under such other statute, or a regulation, rule, or order

issued pursuant thereto. In a subsequent prosecution the defendant shall receive credit for any time spent in custody and any fine paid by him as a result of the prior criminal contempt proceeding.

"(e) GRADING.—An offense described in this section is a Class B misdemeanor. Notwithstanding the provisions of section 2201, the defendant may be sentenced to pay a fine in any amount deemed just by the court if the offense involves disobedience of or resistance to the court's temporary restraining order, preliminary injunction, or final order other than an order for the payment of money.

"(f) JURISDICTION.—There is federal jurisdiction over an offense described in this section if the court is a court of the United States.

"§ 1332. Failing to Appear as a Witness

"(a) OFFENSE.—A person is guilty of an offense if he fails to comply with an order—

"(1) to appear at a specified time and place as a witness in an official proceeding;

"(2) to remain at a specified place where he is to appear as a witness in an official proceeding; or

"(3) to be sworn or to make an equivalent affirmation as a witness in an official proceeding.

"(b) BAR TO PROSECUTION.—It is a bar to a prosecution under this section that the official proceeding was conducted under the authority of Congress or of either House of Congress and that a certification pursuant to the provisions of section 104 of the Revised Statutes (2 U.S.C. 194) had not been issued.

"(c) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution under subsection (a)(1) or (a)(2) that uncontrollable circumstances prevented the defendant from appearing at the specified time and place or from remaining at the specified place, and that the defendant did not contribute to the creation of such circumstances in reckless disregard of the requirement to appear or remain.

"(d) GRADING.—An offense described in this section is—

"(1) a Class E felony except as provided in paragraph (2); and

"(2) a Class A misdemeanor if the official proceeding was conducted under the authority of Congress or of either House of Congress.

"(e) JURISDICTION.—There is federal jurisdiction over an offense described in this section if the official proceeding is a federal official proceeding.

"§ 1333. Refusing to Testify or to Produce Information

"(a) OFFENSE.—A person is guilty of an offense if—

"(1) in an official proceeding that is conducted under the authority of Congress or of either House of Congress, he—

"(A) refuses to answer a question, after the presiding officer has directed him to answer and advised him that his refusal to do so might subject him to criminal prosecution; or

"(B) fails to comply with an order to produce a record, document, or other object, after notice that his failure to do so might subject him to criminal prosecution;

and the question or object is pertinent to the subject under inquiry; or

"(2) in any other official proceeding, except as otherwise provided by statute, he—

"(A) refuses to answer a question; or

"(B) fails to comply with an order to produce a record, document, or other object;

after a federal court, or, in a proceeding that is conducted before a United States magistrate or a United States bankruptcy judge, the presiding officer, has directed him to answer or to produce and has advised him that his refusal to do so might subject him to criminal prosecution.

"(b) DEFINITIONS.—As used in this section, 'court' includes a court martial, military commission, court of inquiry, provost court, and other military court, and a military judge as defined in 10 U.S.C. 801(10).

"(c) BAR TO PROSECUTION.—It is a bar to a prosecution under subsection (a)(1) that a certification pursuant to the provisions of section 104 of the Revised Statutes (2 U.S.C. 194) had not been issued.

"(d) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution—

"(1) under this section that the defendant was legally privileged to refuse to answer the question or to produce the record, document, or other object; or

"(2) under subsection (a)(1)(B) or (a)(2)(B) that uncontrollable circumstances prevented the defendant from producing the record, document, or other object, and that the defendant did not contribute to the creation of such circumstances in reckless disregard of the requirement to produce the record, document, or other object.

"(e) PROOF.—In a prosecution under subsection (a)(1), whether a question or object is pertinent, and whether an official proceeding is conducted under the authority of Congress or of either House thereof, are questions of law.

"(f) GRADING.—An offense described in this section is—

"(1) a Class E felony in the circumstances set forth in subsection (a)(2); and

"(2) a Class A misdemeanor in the circumstances set forth in subsection (a)(1).

"(g) JURISDICTION.—There is federal jurisdiction over an offense described in this section if the official proceeding is a federal official proceeding.

"§ 1334. Obstructing a Proceeding by Disorderly Conduct

"(a) OFFENSE.—A person is guilty of an offense if he obstructs or impairs an official proceeding by means of noise that is unreasonable, by means of violent or tumultuous behavior or disturbance, or by similar means.

"(b) GRADING.—An offense described in this section is a Class B misdemeanor.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if the official proceeding is a federal official proceeding.

"§ 1335. Disobeying a Judicial Order

"(a) OFFENSE.—A person is guilty of an offense if he disobeys or resists a court's temporary restraining order, preliminary injunction, or final order other than an order for the payment of money.

"(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution under this section that the temporary restraining order, preliminary injunction, or final order—

"(1) was invalid and that the defendant took reasonable and expeditious steps to obtain a judicial review of its validity, or a judicial decision with respect to a stay thereof, prior to the disobedience or resistance charged, and was unsuccessful in obtaining such review or decision within a reasonable period of time; or

"(2) was constitutionally invalid and constituted a prior restraint on the collection or dissemination of news.

"(c) GRADING.—An offense described in this section is a Class E felony. Notwithstanding the provisions of section 2201, the defendant may be sentenced to pay a fine in any amount deemed just by the court.

"(d) JURISDICTION.—There is federal jurisdiction over an offense described in this section if the court is a court of the United States.

"Subchapter E—Perjury, False Statements, and Related Offenses

"§ 1341. Perjury

"(a) OFFENSE.—A person is guilty of an offense if, under oath or equivalent affirmation in an official proceeding, he—

"(1) makes a material statement that he knows is false; or

"(2) affirms the truth of a previously made material statement that he knows is false.

"(b) GRADING.—An offense described in this section is a Class D felony.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if the official proceeding is a federal official proceeding.

"§ 1342. False Swearing

"(a) OFFENSE.—A person is guilty of an offense if, under oath or equivalent affirmation in an official proceeding, he—

"(1) makes a statement that he knows is false; or

"(2) affirms the truth of a previously made statement that he knows is false.

"(b) GRADING.—An offense described in this section is a Class A misdemeanor.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if the official proceeding is a federal official proceeding.

"§ 1343. Making a False Statement

"(a) OFFENSE.—A person is guilty of an offense if—

"(1) in a government matter, he—

"(A) makes a material oral statement that he knows is false to a person who he knows is—

"(i) a law enforcement officer; or

"(ii) a person assigned noncriminal investigative responsibility by statute, or by a regulation, rule, or order issued pursuant thereto, or by the head of a government agency;

and in fact such statement is volunteered or is made after the person has been advised that making such a statement is an offense;

"(B) makes a material written statement that he knows is false;

"(C) omits a material fact that he knows is necessary to make a written statement not misleading, or conceals a material fact—

"(i) in a written application for a benefit; or

"(ii) in a registration statement or other document filed or required to be filed by a statute, or by a regulation, rule, or order issued pursuant thereto;

"(D) submits or invites reliance on a material writing or recording that he knows is false or he knows is forged, altered, or otherwise lacking in authenticity;

"(E) submits or invites reliance on a sample, specimen, map, photograph, boundary-mark, or other object that he knows is misleading in a material respect; or

"(F) fraudulently uses a trick, scheme, or device that he knows is misleading in a material respect;

"(2) in a credit institution record, with intent to deceive or harm the government or a person, he, as an agent of such credit institution, engages in any conduct described in subparagraphs (B) through (F) of paragraph (1); or

"(3) with intent to influence the action of a credit institution, he engages in any conduct described in subparagraphs (B) through (F) of paragraph (1).

"(b) GRADING.—An offense described in this section is—

"(1) a Class E felony, except as provided in paragraph (2); and

"(2) a Class A misdemeanor if the statement was given to a law enforcement officer during the course of an investigation of an offense or a possible offense and the statement consisted of a denial, unaccompanied by any other false statement, that the declarant committed or participated in the commission of such offense.

"(c) JURISDICTION.—There is a federal jurisdiction over an offense described in this section if—

"(1) the government is the government of the United States;

"(2) the government is a State, local, or foreign government and the falsity constituting the offense is that the declarant is a citizen of the United States; or

"(3) the credit institution is a national credit institution or a small business investment company as defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662).

"§ 1344. Tampering With a Government Record

"(a) OFFENSE.—A person is guilty of an offense if he alters, destroys, mutilates, conceals, removes, or otherwise impairs the physical integrity or availability of a government record.

"(b) GRADING.—An offense described in this section is—

"(1) a Class E felony, except as provided in paragraph (2); and

"(2) a Class A misdemeanor if the government record is of the kind described in section 1345(a)(4)(B).

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if the government record is a federal government record.

"§ 1345. General Provisions for Subchapter E

"(a) DEFINITIONS.—As used in this subchapter—

"(1) 'credit institution record' means a record, book, or statement of a credit institution that is kept in the usual course of business by an agent of such institution;

"(2) 'oath or equivalent affirmation' includes a written unsworn declaration, certificate, verification, or statement described in section 1746 of title 28, United States Code;

"(3) 'government matter' means a matter within the jurisdiction, including investigative jurisdiction, of a government agency, and includes a government record;

"(4) 'government record' means a record, document, or other object: (A) belonging to, or received or kept by, a government for information or record purposes; or (B) required to be kept by a person pursuant to a statute, or a regulation, rule, or order issued pursuant thereto;

"(5) 'official proceeding' means a proceeding in which a federal law authorizes an oath to be administered; and

"(6) 'statement' means an oral or written declaration or representation, including a declaration or representation of opinion, belief, or other state of mind; for purposes of sections 1341 and 1342, a written statement made 'under oath or equivalent affirmation' includes a written statement that, with the declarant's knowledge, purports to have been made under oath or equivalent affirmation.

"(b) PROOF.—

"(1) In a prosecution under section 1341 or 1342, proof of the falsity of a statement need not be made by any particular number of witnesses or by documentary, direct, or any other particular kind of evidence.

"(2) In a prosecution under section 1341 or 1343, a falsification, omission, concealment, forgery, alteration, or other misleading matter is material, regardless of the admissibility of the statement or object under the rules of evidence, if it could have impaired, affected, impeded, or otherwise influenced the course, outcome, or disposition of the matter in which it is made, or, in the case of a record, if it could have impaired the integrity of the record in question. Whether a matter is material under the circumstances is a question of law.

"(3) In a prosecution under—

"(A) section 1341 or 1342, if, in one or more official proceedings, a person under oath or equivalent affirmation makes or affirms; or

"(B) section 1343(a)(1)(B), if, in one or more government matters, a person makes;

statements which are inconsistent to the degree that one of them is necessarily false, both having been made within the applicable period of time limitations, the indictment, information, or other charge may set forth the statements in a single count alleging that the defendant knew that one or the other of the statements was false. Proof that the defendant made such statements constitutes prima facie evidence that he knew that one or the other of the statements was false. Under section 1341 or 1343, both such statements must be material.

"(c) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution under—

"(1) section 1341 or 1342 that the actor clearly and expressly retracted the falsification in the course of the same official proceeding in which it was made if he did so before it became manifest that the falsification had been or would be exposed and before the falsification substantially impaired, affected, impeded, or otherwise influenced the course, outcome, or disposition of the official proceeding or of a related government matter; and

"(2) section 1343 that the actor clearly and expressly retracted the falsification and communicated the retraction to the same individual, agency,

or institution to which the falsification had been communicated, if he did so within seven calendar days after the falsification had been received by the individual, agency, or institution, and if he did so before it became manifest that the falsification had been or would be exposed and before the falsification substantially impaired, affected, impeded, or otherwise influenced the course, outcome, or disposition of the government matter or credit institution action, or of a related government matter or official proceeding.

"(d) DEFENSE PRECLUDED.—It is not a defense to a prosecution under section 1341 or 1342 that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not authorized to make the statement.

"Subchapter F—Official Corruption and Intimidation

"§ 1351. Bribery

"(a) OFFENSE.—A person is guilty of an offense if—

"(1) he offers, gives, or agrees to give to a public servant; or

"(2) as a public servant, he solicits, demands, accepts, or agrees to accept from another person;

anything of value in return for an agreement or understanding that the recipient's official action as a public servant will be influenced thereby, or that the recipient will violate a legal duty as a public servant.

"(b) GRADING.—An offense described in this section is a Class C felony.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the offense is committed within the special jurisdiction of the United States;

"(2) the official action or legal duty involved is that of a federal public servant;

"(3) the United States mail or a facility in interstate or foreign commerce is used in the planning, promotion, management, execution, consummation, or concealment of the offense, or in the distribution of the proceeds of the offense;

"(4) movement of a person across a State or United States boundary occurs in the planning, promotion, management, execution, consummation, or concealment of the offense, or in the distribution of the proceeds of the offense; or

"(5) the offense occurs during the commission of an offense, over which federal jurisdiction exists, that is described in section 1403 (Alcohol and Tobacco Tax Offenses), 1722 (Extortion), 1804 (Loansharking), 1811 (Trafficking in an Opiate), 1812 (Trafficking in Drugs), 1841 (Engaging in a Gambling Business), or 1843 (Conducting a Prostitution Business).

"§ 1352. Graft

"(a) OFFENSE.—A person is guilty of an offense if—

"(1) he offers, gives, or agrees to give to a public servant or former public servant; or

"(2) as a public servant, or former public servant, he solicits, demands, accepts, or agrees to accept from another person;

anything of pecuniary value for or because of an official action taken or to be taken, a legal duty performed or to be performed, or a legal duty violated or to be violated by the public servant or former public servant.

"(b) GRADING.—An offense described in this section is a Class E felony.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if a circumstance specified in section 1351(c) exists or has occurred.

"§ 1353. Trading in Government Assistance

"(a) OFFENSE.—A person is guilty of an offense if—

"(1) he offers, gives, or agrees to give to a public servant; or

"(2) as a public servant he solicits, demands, accepts, or agrees to accept from another person;

anything of pecuniary value intended as consideration for advice or other assistance in preparing or promoting a bill, contract, claim, or other matter that is or may become subject to official action by such public servant.

"(b) GRADING.—An offense described in this section is a Class E felony.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if the public servant is a federal public servant.

"§ 1354. Trading in Special Influence

"(a) OFFENSE.—A person is guilty of an offense if he—

"(1) offers, gives, or agrees to give to another person; or

"(2) solicits, demands, accepts, or agrees to accept from another person;

anything of pecuniary value intended as consideration for exerting, or causing another person to exert, special influence upon a public servant with respect to his taking an official action or his performing a legal duty as a public servant.

"(b) DEFINITION.—As used in this section, the term 'special influence' means influence by reason of a relationship to the public servant by common ancestry or by marriage, or by reason of position as a public servant or as a political party official.

"(c) GRADING.—An offense described in this section is a Class E felony.

"(d) JURISDICTION.—There is federal jurisdiction over an offense described in this section if the official action or legal duty involved is that of a federal public servant.

"§ 1355. Trading in Public Office

"(a) OFFENSE.—A person is guilty of an offense if he—

"(1) offers, gives, or agrees to give to another person; or

"(2) solicits, demands, accepts, or agrees to accept from another person; anything of pecuniary value intended as consideration for approval, disapproval, or assistance by a public servant or political party official in the appointment, employment, advancement, or retention of any person as a public servant.

"(b) GRADING.—An offense described in this section is a Class E felony.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if the appointment, employment, advancement, or retention involved is that of a federal public servant.

"§ 1356. Speculating on Official Action or Information

"(a) OFFENSE.—A person is guilty of an offense if as a public servant, or within one year after his service as a public servant terminates, and in contemplation of the taking of an official action by himself as a public servant or by an agency with which he is or has been serving as a public servant, or in reliance on information to which he has or had access only in his capacity as a public servant, he—

"(1) acquires or disposes of a pecuniary interest in any property, transaction, or enterprise that may be affected by such official action or information; or

"(2) provides information with intent to aid another person in acquiring or disposing of such an interest.

"(b) GRADING.—An offense described in this section is a Class A misdemeanor.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the public servant is or was a federal public servant; or

"(2) the agency is a federal government agency.

"§ 1357. Tampering With a Public Servant

"(a) OFFENSE.—A person is guilty of an offense if he—

"(1) uses force, threat, intimidation, or deception with intent to influence a public servant with respect to his taking an official action or performing a legal duty as a public servant; or

"(2) communicates—

"(A) a threat to commit a crime of violence upon the person of the President or a potential successor to the Presidency; or

"(B) information, that he knows is false, that a crime described in subparagraph (A) is imminent or in progress;

under circumstances in which the threat or information may reasonably be understood as an expression or reflection of serious purpose.

"(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution under subsection (a)(1) that the conduct used to threaten or to intimidate consisted solely of lawful conduct and that the defendant's sole intention was to compel or induce the public servant to take official action properly or to perform his legal duty properly.

"(c) GRADING.—An offense described in this section is a Class E felony.

"(d) JURISDICTION.—There is federal jurisdiction over an offense described in—

"(1) subsection (a)(1) if the public servant is a federal public servant; or

"(2) subsection (a)(2) if the offense is committed within—

"(A) the general jurisdiction of the United States; or

"(B) the special jurisdiction of the United States.

"§ 1358. Retaliating Against a Public Servant

"(a) OFFENSE.—A person is guilty of an offense if he engages in conduct by which he causes bodily injury to another person or damages the property of another person because of an official action taken or a legal duty performed by a public servant, or because of the status of a person as a public servant.

"(b) GRADING.—An offense described in this section is a Class E felony.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if the public servant is a federal public servant.

"§ 1359. General Provisions for Subchapter F

"(a) DEFINITIONS.—As used in this subchapter—

"(1) 'anything of value' and 'anything of pecuniary value' do not include (i) concurrence in official action in the course of legitimate compromise between public servants; (ii) support, including a vote, in any primary, general, or special election campaign solicited by a candidate solely by means of representation of his position on a public issue;

"(2) 'political party official' means a person who holds a position or office in a political party, whether by election, appointment, or otherwise;

"(3) 'potential successor to the Presidency' means (i) the President-elect; (ii) the Vice President; (iii) if there is no Vice President, the person next in order of succession to the office of President; or (iv) the Vice President-elect; and

"(4) 'public servant' includes a person who has been officially informed that he will be nominated or appointed to be a public servant.

"(b) DEFENSES PRECLUDED.—It is not a defense to a prosecution under—

"(1) section 1351, 1352, 1354, or 1356 that the recipient was not qualified to act, whether because he had not yet assumed office, because he lacked authority or jurisdiction, or because of any other reason; or

"(2) sections 1351 through 1355 that the defendant, or other recipient or proposed recipient of the thing of value, by the same conduct also committed an offense described in section 1722 (Extortion), 1723 (Blackmail), or 1731 (Theft).

"CHAPTER 14—OFFENSES INVOLVING TAXATION

"Subchapter A—Internal Revenue Offenses

"§ 1401. Tax Evasion

"(a) OFFENSE.—A person is guilty of an offense if, with intent to evade a tax or the payment of a tax, he—

"(1) files a tax return that understates the tax;

"(2) removes or conceals an asset, knowing that the tax is due or may become due;

"(3) fails to account for, or to pay over when due, a tax previously collected or withheld, or a payment received from or on behalf of another person with the understanding that it would be turned over to the United States for tax purposes;

"(4) alters, destroys, mutilates, conceals, or removes any property under the care, custody, or control of the United States; or

"(5) otherwise acts in any manner to evade the tax or the payment thereof.

"(b) GRADING.—An offense described in this section is—

"(1) a Class C felony if the tax or tax payment involved is in excess of $100,000;

"(2) a Class D felony if the tax or tax payment involved is $100,000 or less; and

"(3) a Class E felony if no tax or tax payment is involved.

"§ 1402. Disregarding a Tax Obligation

"(a) OFFENSE.—A person is guilty of an offense if he—

"(1) fails to file when due a tax return or an information return that he is required to file under the Internal Revenue Code of 1954;

"(2) fails to withhold or collect a tax that he is required to withhold or collect under the Internal Revenue Code of 1954;

"(3) fails to furnish to an employee a true statement regarding a tax withheld from the employee's remuneration, as required under section 6051 of the Internal Revenue Code of 1954 (26 U.S.C. 6051);

"(4) claims a personal exemption, to which he knows he is not entitled, in an income tax return; or

"(5) fails to deposit collected taxes in a special bank account as required, after notice, under section 7512 of the Internal Revenue Code of 1954 (26 U.S.C. 7512), or, after having deposited funds in such an account, pays any of them to any person other than an authorized agent of the United States.

"(b) GRADING.—An offense described in this section is—

"(1) a Class A misdemeanor in the circumstances set forth in subsections (a)(1) through (a)(3); and

"(2) a Class B misdemeanor in the circumstances set forth in subsection (a)(4) or (a)(5).

"§ 1403. Alcohol and Tobacco Tax Offenses

"(a) OFFENSE.—A person is guilty of an offense if he violates any of the following provisions of the Internal Revenue Code of 1954:

"(1) section 5601(a) (26 U.S.C. 5601(a)) (relating to unregistered stills, the application and bonding of distillers, and unlawful conduct in the production or use of distilled spirits);

"(2) section 5602 (26 U.S.C. 5602) (relating to evasion of tax imposed on distilled spirits);

"(3) section 5603(a) (26 U.S.C. 5603(a)) (relating to maintenance of required documents or alteration or destruction of such documents);

"(4) section 5607 (26 U.S.C. 5607) (relating to unlawful conduct concerning any denatured distilled spirits withdrawn free of tax);

"(5) section 5661(a) (26 U.S.C. 5661(a)) (relating to failure to pay tax imposed on wine and failure to comply with other statutes and regulations concerning bonding and gallonage taxes on wine);

"(6) section 5671 (26 U.S.C. 5671) (relating to evasion of tax imposed on beer and failure to keep and file required brewers' records);

"(7) section 5604(a) (26 U.S.C. 5604(a)) (relating to unstamped containers of distilled spirits and unlawful conduct involving stamps, stamped containers, or distilled spirits);

"(8) section 5605 (26 U.S.C. 5605) (relating to return of materials used in the manufacture of distilled spirits or from which distilled spirits may be recovered);

"(9) section 5608 (26 U.S.C. 5608) (relating to fraudulent claims for an allowance of drawback on distilled spirits and relanding of distilled spirits shipped for exportation);

"(10) section 5682 (26 U.S.C. 5682) (relating to breaking of locks or gaining of access to any place under the lock or seal of an internal revenue agent);

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"(11) section 5691(a) (26 U.S.C. 5691(a)) (relating to nonpayment of special taxes concerning liquor, beer, or manufacture of stills); or

"(12) section 5762(a) (26 U.S.C. 5762(a)) (relating to refusal to pay or evasion of a tax imposed on tobacco-related products, maintenance of true and accurate records, and unlawful conduct concerning tobacco-related products, stamps, or packages).

"(b) GRADING.—An offense described in this section is—

"(1) a Class D felony in the circumstances set forth in subsections (a)(1) through (a)(6); and

"(2) a Class E felony in the circumstances set forth in subsections (a)(7) through (a)(12).

"§ 1404. Definitions for Subchapter A

"As used in this subchapter—

"(a) 'payment' includes collection;

"(b) 'tax' means all or any part of a tax imposed by a federal statute, of an exaction denominated a 'tax' by a federal statute, and of any penalty, addition to tax, additional amount, or interest thereon; but does not include a tariff or customs duty, or a toll, levy, or charge that is not denominated a 'tax' by a federal statute; and

"(c) 'tax return' means a written report of a taxpayer's tax obligation that is required to be filed by a federal statute, or a regulation, rule, or order issued pursuant thereto; and includes a report of taxes withheld or collected, an income tax return, an estate or gift tax return, an excise tax return, and any other tax return of an individual or organization required to file a return or to pay a tax in conjunction with a tax return; but does not include an interim report, an information return, or a return of estimated tax.

"Subchapter B—Customs Offenses

"§ 1411. Smuggling

"(a) OFFENSE.—A person is guilty of an offense if he—

"(1) introduces into the United States an object, the introduction of which a federal statute, or a regulation, rule, or order issued pursuant thereto—

"(A) prohibits absolutely; or

"(B) prohibits conditionally and all conditions for its introduction into the United States have not been complied with;

"(2) evades assessment or payment when due of the customs duty upon an object being introduced into the United States; or

"(3) evades an examination by the government of an object being introduced into the United States.

"(b) GRADING.—An offense described in this section is—

"(1) a Class D felony if the value of the object, or the duty that was due or that would have been due on the object, exceeds $500;

"(2) a Class E felony if, regardless of its monetary value or duty being $500 or less, introduction of the object is prohibited, either absolutely or conditionally, because it may cause, or may be used to cause, bodily injury or property damage;

"(3) a Class A misdemeanor if the value of the object, or the duty that was due or that would have been due on the object, exceeds $100 but is not more than $500;

"(4) a Class B misdemeanor in any other case in which duty was due or would have been due on the object; and

"(5) a Class C misdemeanor in any other case.

"§ 1412. Trafficking in Smuggled Property

"(a) OFFENSE.—A person is guilty of an offense if he traffics in an object that has been unlawfully introduced into the United States, such introduction having been in violation of section 1411.

"(b) GRADING.—An offense described in this section is an offense of the same class as that specified in section 1411(b) for the smuggling of the same object.

"§ 1413. Receiving Smuggled Property

"(a) OFFENSE.—A person is guilty of an offense if he buys, receives, possesses, or obtains control of an object that has been unlawfully introduced into the United States, such introduction having been in violation of section 1411.

"(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution under this section that the defendant bought, received, possessed, or obtained control of the object with intent to report the matter to an appropriate law enforcement officer.

"(c) GRADING.—An offense described in this section is an offense of the class next below that specified in section 1411(b) for the smuggling of the same object.

"§ 1414. General Provisions for Subchapter B

"(a) DEFINITIONS.—As used in this subchapter—

"(1) 'customs territory of the United States' has the meaning set forth in general headnote 2 to the Tariff Schedules of the United States;

"(2) 'introduce' means import, transport, or bring into the United States, from any place outside the United States, or into the customs territory of the United States from any place outside the customs territory of the United States but within the United States; and

"(3) 'object' includes any article, good, ware, and merchandise, whether animate or inanimate.

"(b) PROOF.—In a prosecution under section 1412 or 1413—

"(1) possession of an object recently smuggled into the United States, unless satisfactorily explained, constitutes prima facie evidence that the person in possession was aware of the risk that it had been smuggled or in some way participated in its smuggling; and

"(2) the purchase or sale of an object recently smuggled into the United States at a price substantially below its fair market value, unless satisfactorily explained, constitutes prima facie evidence that the person buying or selling the property was aware of the risk that it had been smuggled.

"(c) DETERMINING DUTY.—More than one smuggling, trafficking, or receiving committed pursuant to one scheme or course of conduct may be charged as one offense, and the value of, or the duty owing on, the objects introduced may be aggregated in determining the grade of the offense.

"CHAPTER 15—OFFENSES INVOLVING INDIVIDUAL RIGHTS

"Subchapter A—Offenses Involving Civil Rights

"§ 1501. Interfering With Civil Rights

"(a) OFFENSE.—A person is guilty of an offense if he intentionally—

"(1) deprives another person of; or

"(2) injures, oppresses, threatens, or intimidates another person—

"(A) in the free exercise or enjoyment of; or

"(B) because of his having exercised;

a right, privilege, or immunity secured to such other person by the Constitution or laws of the United States.

"(b) PROOF.—In a prosecution under this section, whether the deprivation, injury, oppression, threat, or intimidation concerns a right, privilege, or immunity secured by the Constitution or laws of the United States is a question of law.

"(c) GRADING.—An offense described in this section is a Class A misdemeanor.

"§ 1502. Interfering With Civil Rights Under Color of Law

"(a) OFFENSE.—A person is guilty of an offense if, acting under color of law, he engages in any conduct constituting an offense described in a section in chapter 16 or 17, and thereby deprives another person of a right, privilege, or immunity secured to such other person by the Constitution or laws of the United States.

"(b) PROOF.—In a prosecution under this section, whether the deprivation concerns a right, privilege, or immunity secured by the Constitution or laws of the United States is a question of law.

"(c) GRADING.—An offense described in this section is a Class A misdemeanor.

"§ 1503. Interfering With a Federal Benefit

"(a) OFFENSE.—A person is guilty of an offense if, by force or threat of force, he intentionally injures, intimidates, or interferes with another person because such other person is or has been, or in order to intimidate any person from—

"(1) applying for, participating in, or enjoying a benefit, privilege, service, program, facility, or activity provided by, administered by, or wholly or partly financed by, the United States;

"(2) applying for or enjoying employment, or a perquisite thereof, by a federal government agency;

"(3) serving as a grand or petit juror in a court of the United States or attending court in connection with possible service as such a grand or petit juror;

"(4) voting or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as a poll watcher or other election official, in a primary, general, or special election;

"(5) affording another person or class of persons opportunity to participate, or protection in order to participate, in any benefit or activity described in this section; or

"(6) aiding or encouraging another person or class of persons to participate in any benefit or activity described in this section.

"(b) GRADING.—An offense described in this section is a Class A misdemeanor.

"§ 1504. Unlawful Discrimination

"(a) OFFENSE.—A person is guilty of an offense if, by force or threat of force, he intentionally injures, intimidates, or interferes with another person—

"(1) because of such other person's race, color, sex, religion, or national origin and because such other person is or has been, or in order to intimidate any person from—

"(A) applying for, participating in, or enjoying, a benefit, privilege, service, program, facility, or activity provided or administered by a State or locality;

"(B) applying for or enjoying employment, or a perquisite thereof, by a State or local government agency;

"(C) serving as a grand or petit juror in a State or locality or attending court in connection with possible service as such a grand or petit juror;

"(D) enrolling in or attending a public school or public college;

"(E) applying for or enjoying the goods, services, privileges, facilities, or accommodations of—

"(i) an inn, hotel, motel, or other establishment that provides lodging to transient guest;

"(ii) a restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility that serves the public and that is principally engaged in selling food or beverages for consumption on the premises;

"(iii) a gasoline station;

"(iv) a motion picture house, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment that serves the public; or

"(v) any other establishment that serves the public, that is located within the premises of an establishment described in this subparagraph or that has located within its premises such an establishment, and that holds itself out as serving patrons of such an establishment;

"(F) applying for or enjoying the services, privileges, facilities, or accommodations of a common carrier utilizing any kind of vehicle;

"(G) traveling in or using a facility of interstate commerce;

"(H) applying for or enjoying employment, or a perquisite thereof, by a private employer or joining or using the services or advantages of a labor organization, hiring hall, or employment agency; or

"(I) selling, purchasing, renting, financing, or occupying a dwelling; contracting or negotiating for the sale, purchase, rental, financing or occupation of a dwelling; or applying for or participating in a service, organization, or facility relating to the business of selling or renting dwellings; or

"(2) because such other person is or has been, or in order to intimidate any person from—

"(A) affording another person or class of persons opportunity to participate, or protection in order to participate, without discrimination on account of race, color, sex, religion, or national origin, in any benefit or activity described in this section; or

"(B) aiding or encouraging another person or class of persons to participate, without discrimination on account of race, color, sex, religion, or national origin, in any benefit or activity described in this section.

"(b) DEFENSE.—It is a defense to a prosecution under subsection (a)(1)(E)(i) that—

"(1) the defendant was the proprietor of the establishment involved or an agent acting on behalf of the proprietor;

"(2) the establishment was located within a building containing not more than five rooms for rent or hire; and

"(3) the building was occupied by the proprietor as his residence.

"(c) GRADING.—An offense described in this section is a Class A misdemeanor.

"§ 1505. Interfering With Speech or Assembly Related to Civil Rights Activities

"(a) OFFENSE.—A person is guilty of an offense if, by force or threat of force, he intentionally injures, intimidates, or interferes with another person because he is or has been, or in order to intimidate him or any other person from, participating in speech or assembly opposing a denial of opportunity to participate—

"(1) in a benefit or activity described in section 1503; or

"(2) in a benefit or activity described in section 1504, without discrimination on account of race, color, sex, religion, or national origin.

"(b) GRADING.—An offense described in this section is a Class A misdemeanor.

"§ 1506. Strikebreaking

"(a) OFFENSE.—A person is guilty of an offense if, by force or threat of force, he intentionally obstructs or interferes with—

"(1) peaceful picketing by employees in the course of a bona fide labor dispute affecting wages, hours, or conditions of labor; or

"(2) the exercise by employees of rights of self-organization or collective bargaining.

"(b) GRADING.—An offense described in this section is a Class A misdemeanor.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if movement of any person across a State or United States boundary occurs in the commission of the offense.

"Subchapter B—Offenses Involving Political Rights

"§ 1511. Obstructing an Election

"(a) OFFENSE.—A person is guilty of an offense if, in connection with a primary, general, or special election to nominate or elect a candidate for a federal office, he—

"(1) obstructs or impairs the lawful conduct of such election;

"(2) offers, gives, or agrees to give anything of value to another person for or because of any person's voting, refraining from voting, or voting for or against such candidate; or

"(3) solicits, demands, accepts, or agrees to accept anything of value for or because of any person's voting, refraining from voting, or voting for or against such candidate.

"(b) GRADING.—An offense described in this section is a Class E felony.

"§ 1512. Obstructing Registration

"(a) OFFENSE.—A person is guilty of an offense if, in connection with registration to vote at a primary, general, or special election to nominate or elect a candidate for a federal office, he—

"(1) obstructs or impairs the lawful conduct of such registration;

"(2) offers, gives, or agrees to give anything of value to another person for or because of any person's registering to vote;

"(3) solicits, demands, accepts, or agrees to accept anything of value for or because of any person's registering to vote; or

"(4) gives information, that he knows is false, to establish his eligibility to vote.

"(b) GRADING.—An offense described in this section is a Class E felony.

"§ 1513. Obstructing a Political Campaign

"(a) OFFENSE.—A person is guilty of an offense if, during a campaign preceding a primary, general, or special election to nominate or elect a candidate for a federal office, and with intent to influence the outcome of such election, he—

"(1) engages in conduct constituting a crime under any section of this title; or

"(2) engages in conduct constituting a felony under a law of the State in which the conduct occurs.

"(b) GRADING.—An offense described in this section is a Class E felony.

"§ 1514. Interfering With a Federal Benefit for a Political Purpose

"(a) OFFENSE.—A person is guilty of an offense if, with intent to interfere with, restrain, or coerce another person in the exercise of his right to vote at a primary, general, or special election to nominate or elect a candidate for a federal, State, or local office, he—

"(1) grants or threatens to grant to any other person;

"(2) withholds or threatens to withhold from any other person; or

"(3) deprives or threatens to deprive any other person of;

the benefit of a federal program or a federally supported program or a federal government contract.

"(b) GRADING.—An offense described in this section is a Class E felony.

"§ 1515. Misusing Authority Over Personnel for a Political Purpose

"(a) OFFENSE.—A person is guilty of an offense if, as a federal public servant, he—

"(1) promotes, fails to promote, demotes, or discharges;

"(2) recommends the promotion, non-promotion, demotion, or discharge of; or

"(3) changes in any manner, or promises or threatens to change, the official position or compensation of;

another federal public servant, for or because of any person's giving, withholding, or neglecting to make a political contribution.

"(b) GRADING.—An offense described in this section is a Class E felony.

"§ 1516. Soliciting a Political Contribution as a Federal Public Servant or in a Federal Building

"(a) OFFENSE.—A person is guilty of an offense if—

"(1) as a federal public servant, he—

"(A) solicits a political contribution from another person who he knows is a federal public servant; or

"(B) makes a political contribution to another person who he knows is a federal public servant, in response to a solicitation; or

"(2) he solicits or receives a political contribution in a federal building or facility.

"(b) AFFIRMATIVE DEFENSE.—It is an affirmative defence to a prosecution under this section that both the public servant soliciting the political contribution or making the political contribution in response to a solicitation and the public servant solicited for or receiving such contribution are members of, members-elect of, or candidates for, Congress.

"(c) GRADING.—An offense described in this section is a Class E felony.

"§ 1517. Making an Excess Campaign Expenditure

"(a) OFFENSE.—A person is guilty of an offense if—

"(1) he violates section 9035 of the Presidential Primary Matching Payment Account Act (26 U.S.C. 9035) (relating to campaign expense limitations); or

"(2) as an officer or member of a 'political committee', as defined in the Presidential Primary Matching Payment Account Act (26 U.S.C. 9032(8)), he consents to an expenditure in violation of section 9035 (relating to campaign expense limitations) of that Act.

"(b) GRADING.—An offense described in this section is a Class E felony.

"§ 1518. Definitions for Subchapter B

"As used in this subchapter—

"(a) 'anything of value' does not include nonpartisan physical activities or services to facilitate registration or voting;

"(b) 'federal office' means the office of President or Vice President of the United States, or Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States;

"(c) 'political contribution' means—

"(1) as used in section 1515, anything of value used or to be used for the nomination or election of any person to federal, State, or local office; and

"(2) as used in section 1516, a 'contribution' as defined in the Federal Election Campaign Act (2 U.S.C. 431(e)); and

"(d) 'receives a political contribution' does not include contributions received by mail which are promptly transferred to any account in a campaign depository designated pursuant to section 308 of the Federal Election Campaign Act of 1971 or, in the case of a State or local campaign, which are promptly deposited in an account pursuant to State or local law. It also does not include other contributions which are received by any person designated in accordance with Senate rule XLIX to receive contributions.

"Subchapter C—Offenses Involving Privacy

"§ 1521. Eavesdropping

"(a) OFFENSE.—A person is guilty of an offense if he intentionally—

"(1) intercepts a private oral communication by means of an eavesdropping device without the prior consent of a party to the communication; or

"(2) discloses to another person, or uses, the contents of a private oral communication knowing that such contents were obtained by conduct described in paragraph (1).

"(b) DEFENSE.—It is a defense to a prosecution under this section that the private oral communication was being transmitted over the facilities of a communications common carrier, and that the defendant was—

"(1) an agent of the carrier, acting in the usual course of his employment, who was engaged in—

"(A) service observing for mechanical or service quality control checks; or

"(B) any other activity necessarily incident to the rendition of service by the carrier or relating to the discovery of theft of the carrier's service; or

"(2) acting in the usual course of his employment and was engaged in supervisory service observing.

"(c) GRADING.—An offense described in this section is a Class D felony.

"§ 1522. Trafficking in an Eavesdropping Device

"(a) OFFENSE.—A person is guilty of an offense if he intentionally—

"(1) produces, manufactures, imports, or traffics in an eavesdropping device, knowing that its design renders it primarily useful for surreptitious interception of private oral communications; or

"(2) advertises an eavesdropping device, knowing that—

"(A) its design renders it primarily useful for surreptitious interception of private oral communications; or

"(B) such advertising promotes the use of such device for surreptitious interception of private oral communications.

"(b) DEFENSES.—It is a defense to a prosecution under this section that the defendant was—

"(1) a communications common carrier, an agent of such a carrier, or a person under contract with such a carrier, and was acting for a purpose set forth in section 1521(b); or

"(2) a person acting within the scope of a federal, State, or local government contract.

"(c) GRADING.—An offense under this section is a Class D felony.

"(d) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the offense is committed within the special jurisdiction of the United States;

"(2) the device is sent through the United States mail, or is moved across a State or United States boundary, in the commission of the offense; or

"(3) the advertisement is sent through the United States mail, or is moved across a State or United States boundary, or is transmitted by a communications facility that operates in interstate or foreign commerce, in the commission of the offense.

"§ 1523. Possessing an Eavesdropping Device

"(a) OFFENSE.—A person is guilty of an offense if, with intent that it be used in the course of conduct constituting an offense under section 1521 or 1522, he possesses an eavesdropping device.

"(b) DEFENSES.—It is a defense to a prosecution under this section that the defendant was—

"(1) a communications common carrier, an agent of such a carrier, or a person under contract with such a carrier, and was in possession of the eavesdropping device for a purpose set forth in section 1521(b); or

"(2) a person in possession of the eavesdropping device within the scope of a federal, State, or local government contract.

"(c) GRADING.—An offense described in this section is a Class A misdemeanor.

"(d) JURISDICTION.—There is federal jurisdiction over an offense described in this section if a circumstance specified in section 1522 (d)(1) or (d)(2) exists or has occurred.

"§ 1524. Intercepting Correspondence

"(a) OFFENSE.—A person is guilty of an offense if he intentionally—

"(1) intercepts private correspondence without the prior consent of the sender or the intended recipient; or

"(2) discloses to another person, or uses, the contents of private correspondence, knowing that such contents were obtained by conduct described in paragraph (1).

"(b) DEFENSE.—It is a defense to a prosecution under this section that the private correspondence was being transmitted over the facilities of a communications common carrier, and the defendant was—

"(1) an agent of the carrier, acting in the usual course of his employment, who was engaged in—

"(A) service observing for mechanical or service quality control checks; or

"(B) any other activity necessarily incident to the rendition of service by the carrier or relating to the discovery of theft of the carrier's service; or

"(2) acting in the usual course of his employment and was engaged in supervisory service observing.

"(c) GRADING.—An offense described in this section in a Class E felony.

"(d) JURISDICTION.—There is federal jurisdiction over an offense described in this section if the private correspondence is mail.

"§ 1525. Revealing Private Information Submitted for a Government Purpose

"(a) OFFENSE.—A person is guilty of an offense if, in violation of a specific duty imposed upon him as a public servant or former public servant by a statute, or by a regulation, rule, or order issued pursuant thereto, he discloses information, to which he has or had access only in his capacity as a public servant, that had been provided to the government by another person, other than a public servant acting in his official capacity, solely in order to comply with—

"(1) a requirement of an application for a patent, copyright, license, employment, or benefit; or

"(2) a specific duty imposed by law upon such other person.

"(b) DEFENSE.—It is a defense to a prosecution under this section that the disclosure was a report of a violation or potential violation of law and was made to a law enforcement officer charged with investigating or prosecuting such a violation.

"(c) GRADING.—An offense described in this section is a Class A misdemeanor.

"(d) JURISDICTION.—There is federal jurisdiction over an offense described in this section if the public servant or former public servant acquired the information as a federal public servant.

"§ 1526. Definitions for Subchapter C

"As used in this subchapter—

"(a) 'communications common carrier' has the meaning set forth for the term 'common carrier' in section 3(h) of the Act of June 19, 1934 (47 U.S.C. 153(h));

"(b) 'contents', when used with respect to a communication, means information in the communication itself, and includes information that concerns the existence, substance, purports, or meaning of the communication, or the identity of a party to the communication;

"(c) 'eavesdropping device' means an electronic, mechanical, or other device or apparatus that can be used to intercept a private oral communication, other than a telephone or telegraph instrument or facility or any associated component or equipment, furnished to a subscriber or user by a communications common carrier in the usual course of its business and being used in a manner for which it was designed;

"(d) 'intercept' means to acquire the contents of a communication in the course of its transmission to a party to the communication or before its receipt by the intended recipient, and includes the acquisition of such contents by simultaneous transmission or by recording;

"(e) 'private correspondence' means a communication, other than speech, sent by a person exhibiting an expectation, under circumstances reasonably justifying the expectation, that such communication is not subject to being intercepted, opened, or read until received by the intended recipient, and includes mail other than a post card, postal card, newspaper, magazine, circular, or advertising matter;

"(f) 'private oral communication' means a communication, other than speech uttered by a person exhibiting an expectation, under circumstances reasonably justifying the expectation, that such speech is not subject to overhearing; and

"(g) 'record' means to register sound by an electronic, mechanical, or other device in a manner that will permit its reproduction.

"CHAPTER 16—OFFENSES INVOLVING THE PERSON

"Subchapter A—Homicide Offenses

"§ 1601. Murder

"(a) OFFENSE.—A person is guilty of an offense if—

"(1) he engages in conduct by which he knowingly causes the death of another person;

"(2) he engages in conduct by which he causes the death of another person under circumstances in fact manifesting extreme indifference to human life; or

"(3) in fact during the commission of an offense described in section 1101 (Treason), 1102 (Armed Rebellion or Insurrection), 1111 (Sabotage), 1121 (Espionage), 1313 (Escape), 1601 (a)(1) or (a)(2) (Murder), 1611 (Maiming), 1621 (Kidnapping), 1622 (Aggravated Criminal Restraint), 1631 (Aircraft Hijacking), 1641 (Rape), 1701 (Arson), 1711 (Burglary), or 1721 (Robbery) that he commits either alone or with one or more other participants, he or another person engages in conduct that in fact causes the death of a person other than one of the participants in such underlying offense.

"(b) DEFENSE.—It is a defense to a prosecution under subsection (a)(1) that the death was caused under circumstances, for which the defendant was not responsible, that—

"(1) caused the defendant to lose his self-control; and

"(2) would be likely to cause an ordinary person to lose his self-control to at least the same extent.

"(c) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution under subsection (a)(3) that the death was not a reasonably foreseeable consequence of either—

"(1) the underlying offense; or

"(2) the particular circumstances under which the underlying offense was committed.

"(d) GRADING.—An offense described in this section is a Class A felony.

"(e) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the offense is committed within the special jurisdiction of the United States;

"(2) the offense is committed against—

"(A) a United States official;

"(B) a federal public servant who is engaged in the performance of his official duties and who is a judge, a juror, a law enforcement officer, an employee of an official detention facility, an employee of the

United States Probation System, or a person designated for coverage under this section in regulations issued by the Attorney General;

"(C) a foreign dignitary, or a member of his immediate family, who is in the United States;

"(D) a foreign official who is in the United States on official business, or a member of his immediate family who is in the United States in connection with the visit of such official;

"(E) an official guest of the United States; or

"(F) an internationally protected person;

"(3) the offense is committed by transmitting a dangerous weapon through the United States mail; or

"(4) the offense occurs during the commission of an offense, over which federal jurisdiction exists, that is described in section 1101 (Treason), 1102 (Armed Rebellion or Insurrection), 1111 (Sabotage), 1112 (Impairing Military Effectiveness), 1121 (Espionage), 1302 (Obstructing a Government Function by Physical Interference), 1313 (Escape), 1323 (Tampering With a Witness or an Informant), 1324 (Retaliating Against a Witness or an Informant), 1357 (Tampering With a Public Servant), 1358 (Retaliating Against a Public Servant), 1501 (Interfering With Civil Rights), 1502 (Interfering With Civil Rights Under Color of Law), 1503 (Interfering With a Federal Benefit), 1504 (Unlawful Discrimination), 1505 (Interfering With Speech or Assembly Related to Civil Rights Activities), 1621 (Kidnapping), 1622 (Aggravated Criminal Restraint), 1631 (Aircraft Hijacking), 1701 (Arson), 1702 (Aggravated Property Destruction), 1711 (Burglary), 1712 (Criminal Entry), 1721 (Robbery), 1722 (Extortion), or 1804 (Loansharking).

"§ 1602. Manslaughter

"(a) OFFENSE.—A person is guilty of an offense if—

"(1) he engages in conduct by which he causes the death of another person; or

"(2) he engages in conduct by which he knowingly causes the death of another person under circumstances that would constitute an offense under section 1601(a)(1) except for the existence of circumstances in fact constituting a defense under section 1601(b).

"(b) GRADING.—An offense described in this section is a Class C felony.

"(c) JURISDICTION.—There is a federal jurisdiction over an offense described in this section if a circumstance specified in section 1601(e) exists or has occurred.

"§ 1603. Negligent Homicide

"(a) OFFENSE.—A person is guilty of an offense if he engages in conduct by which he negligently causes the death of another person.

"(b) GRADING.—An offense described in this section is a Class D felony.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if a circumstance specified in section 1001(e) exists or has occurred.

"Subchapter B—Assaultive Offenses

"§ 1611. Maiming

"(a) OFFENSE.—A person is guilty of an offense if, by physical force, he intentionally causes serious bodily injury, that is permanent or likely to be permanent, to another person.

"(b) GRADING.—An offense described in this section is a Class C felony.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the offense is committed within the special jurisdiction of the United States;

"(2) the offense is committed against—

"(A) a United States official;

"(B) a federal public servant who is engaged in the performance of his official duties and who is a judge, a juror, a law enforcement officer, an employee of an official detention facility, an employee of the United States Probation System, or a person designated for coverage under this section in regulations issued by the Attorney General;

"(C) a foreign dignitary, or a member of his immediate family, who is in the United States;

"(D) a foreign official who is in the United States on official business, or a member of his immediate family who is in the United States in connection with the visit of such official;

"(E) an official guest of the United States; or

"(F) an internationally protected person;

"(3) the offense is committed by transmitting through the United States mail a dangerous weapon; or

"(4) the offense occurs during the commission of an offense, over which federal jurisdiction exists, that is described in section 1101 (Treason), 1102 (Armed Rebellion or Insurrection), 1111 (Sabotage), 1112 (Impairing Military Effectiveness), 1121 (Espionage), 1302 (Obstructing a Government Function by Physical Interference), 1313 (Escape), 1323 (Tampering With a Witness or an Informant), 1324 (Retaliating Against a Witness or an Informant), 1357 (Tampering With a Public Servant), 1358 (Retaliating Against a Public Servant), 1501 (Interfering With Civil Rights), 1502 (Interfering With Civil Rights Under Color of Law), 1503 (Interfering With a Federal Benefit), 1504 (Unlawful Discrimination), 1505 (Interfering With Speech or Assembly Related to Civil Rights Activities), 1621 (Kidnapping), 1622 (Aggravated Criminal Restraint), 1631 (Aircraft Hijacking), 1701 (Arson), 1702 (Aggravated Property Destruction), 1711 (Burglary), 1712 (Criminal Entry), 1721 (Robbery), 1722 (Extortion), or 1804 (Loansharking).

"§ 1612. Aggravated Battery

"(a) OFFENSE.—A person is guilty of an offense if, by physical force, he causes serious bodily injury to another person.

"(b) GRADING.—An offense described in this section is a Class D felony.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if a circumstance specified in section 1611(c) exists or has occurred.

"§ 1613. Battery

"(a) OFFENSE.—A person is guilty of an offense if, by physical force, he causes bodily injury to another person.

"(b) GRADING.—An offense described in this section is—

"(1) a Class A misdemeanor, except in the circumstances set forth in paragraph (2); and

"(2) a Class C misdemeanor if it is committed in the course of an unarmed fight or affray that was entered into mutually.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if a circumstance specified in section 1611 (c)(1), (c)(2), or (c)(3) exists or has occurred.

"§ 1614. Menacing

"(a) OFFENSE.—A person is guilty of an offense if he engages in physical conduct by which he intentionally places another person in fear of imminent bodily injury.

"(b) GRADING.—An offense described in this section is a Class A misdemeanor.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if a circumstance specified in section 1611 (c)(1) or (c)(2) exists or has occurred.

"§ 1615. Terrorizing

"(a) OFFENSE.—A person is guilty of an offense if he communicates—

"(1) a threat to commit, or to continue to commit, a federal, State, or local crime of violence or unlawful conduct dangerous to human life; or

"(2) information, that he knows is false, that the commission of a federal, State, or local crime of violence is imminent or in progress or that a circumstance dangerous to human life exists or is about to exist;

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and thereby causes any person to be in sustained fear for his or another person's safety; causes evacuation of a building, a public structure, or a facility of transportation; or causes other serious disruption to the public.

"(b) GRADING.—An offense described in this section is—

"(1) a Class D felony in the circumstances set forth in subsection (a)(1) if it causes any person to be in sustained fear that he or another will be killed, maimed, kidnapped, or raped; and

"(2) a Class E felony in any other case.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) a circumstance specified in section 1611(c) exists or has occurred;

"(2) the United States mail is used in the commission of the offense;

"(3) the threat or information is transmitted in interstate or foreign commerce;

"(4) the threat or information concerns property that is owned by, or is under the care, custody, or control of, a public facility that operates in interstate or foreign commerce; or

"(5) the threat or information concerns property that is owned by, or is under the care, custody, or control of, the United States.

"§ 1616. Communicating a Threat

"(a) OFFENSE.—A person is guilty of an offense if, with intent to alarm or harass another person, he communicates—

"(1) a threat to commit or to continue to commit a federal, State, or local crime of violence, or unlawful conduct dangerous to human life; or

"(2) information, that he knows is false, that the commission of a federal, State, or local crime of violence is imminent or in progress or that a circumstance dangerous to human life exists or is about to exist.

"(b) GRADING.—An offense described in this section is—

"(1) a Class A misdemeanor if the threat or information concerns a crime, conduct, or circumstance dangerous to human life; and

"(2) a Class B misdemeanor in any other case.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) a circumstance specified in section 1611(c)(2)(F) or section 1615 (c)(2), (c)(3), (c)(4), or (c)(5) exists or has occurred; or

"(2) the offense is committed within the special jurisdiction of the United States.

"§ 1617. Reckless Endangerment

"(a) OFFENSE.—A person is guilty of an offense if he engages in conduct by which he places another person in danger of imminent death or serious bodily injury.

"(b) GRADING.—An offense described in this section is—

"(1) a Class D felony if the circumstances manifest extreme indifference to human life; and

"(2) a Class E felony in any other case.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the offense is committed within the special jurisdiction of the United States; or

"(2) the offense occurs during the commission of any other offense, over which federal jurisdiction exists, that is described—

"(A) in this title; or

"(B) in a statute outside this title that is designed to protect public health or safety.

"§ 1618. General Provisions for Subchapter B

"AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution under—

"(a) section 1613 or 1614 that the conduct charged was consented to by the person injured or placed in fear; and

"(b) section 1611, 1612, or 1617 that the conduct charged was consented to by the person injured or endangered and that the injury and conduct charged were—

"(1) reasonably foreseeable hazards of joint participation by the actor and such other person in a lawful athletic contest or competitive sport; or

"(2) reasonably foreseeable hazards of—

"(A) an occupation, a business, or a profession; or

"(B) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

"Subchapter C—Kidnapping and Related Offenses

"§ 1621. Kidnapping

"(a) OFFENSE.—A person is guilty of an offense if he restrains another person with intent to—

"(1) hold him for ransom or reward;

"(2) use him as a shield or hostage;

"(3) commit a felony; or

"(4) interfere with the performance of a government function.

"(b) GRADING.—An offense described in this section is—

"(1) a Class A felony if the actor does not voluntarily release the victim alive and in a safe place prior to trial; and

"(2) a Class B felony in any other case.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the offense is committed within the special jurisdiction of the United States;

"(2) the offense is committed against—

"(A) a United States official;

"(B) a federal public servant who is engaged in the performance of his official duties and who is a judge, a juror, a law enforcement officer, an employee of an official detention facility, an employee of the United States Probation System, or a person designated for coverage under this section in regulations issued by the Attorney General;

"(C) a foreign dignitary, or a member of his immediate family, who is in the United States;

"(D) a foreign official who is in the United States on official business, or a member of his immediate family who is in the United States in connection with the visit of such official;

"(E) an official guest of the United States; or

"(F) an internationally protected person;

"(3) movement of the victim across a State or United States boundary occurs in the commission of the offense; or

"(4) the offense occurs during the commission of an offense, over which federal jurisdiction exists, that is described in section 1101 (Treason), 1102 (Armed Rebellion or Insurrection), 1111 (Sabotage), 1121 (Espionage), 1203 (Entering or Recruiting for a Foreign Armed Force), 1213 (Hindering Discovery of an Alien Unlawfully in the United States), 1302 (Obstructing a Government Function by Physical Interference), 1313 (Escape), 1323 (Tampering With a Witness or an Informant), 1324 (Retaliating Against a Witness or an Informant), 1357 (Tampering With a Public Servant), 1358 (Retaliating Against a Public Servant), 1501 (Interfering With Civil Rights), 1502 (Interfering With Civil Rights Under Color of Law), 1503 (Interfering With a Federal Benefit), 1504 (Unlawful Discrimination), 1505 (Interfering With Speech or Assembly Related to Civil Rights Activities), 1701 (Arson), 1702 (Aggravated Property Destruction), 1711 (Burglary), 1712 (Criminal Entry), 1721 (Robbery), 1722 (Extortion), or 1804 (Loansharking).

"§ 1622. Aggravated Criminal Restraint

"(a) OFFENSE.—A person is guilty of an offense if he restrains another person—

"(1) under circumstances that in fact expose him to a risk of serious bodily injury;

"(2) by secreting and holding him in a place where he is not likely to be found;

"(3) by endangering or threatening to endanger the safety of any person; or

"(4) by holding him in a condition of involuntary servitude, slavery, or peonage.

"(b) GRADING.—An offense described in this section is a Class D felony.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in—

"(1) subsection (a)(1), (a)(2), or (a)(3) if a circumstance specified in section 1621(c) exists or has occurred; and

"(2) subsection (a)(4) if the offense is committed within the general jurisdiction of the United States or within the special jurisdiction of the United States.

"§ 1623. Criminal Restraint

"(a) OFFENSE.—A person is guilty of an offense if he restrains another person.

"(b) GRADING.—An offense described in this section is a Class A misdemeanor.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if a circumstance specified in section 1621 (c)(1), (c)(2), or (c)(3) exists or has occurred.

"§ 1624. Restraint of a Minor Child by a Parent

"(a) OFFENSE.—A person is guilty of an offense if—

"(1) he is a parent or guardian of a child;

"(2) he intentionally restrains the child in violation of any person's right of custody or visitation arising from a child custody determination entitled to enforcement pursuant to the provisions of 28 U.S.C. 1738A;

"(3) the child is not more than fourteen years of age; and

"(4) the actor—

"(A) secretes the child without good cause, and holds him in a place where he is not likely to be found, for a period exceeding seven days; or

"(B) restrains the child without good cause and for a period exceeding thirty days.

"(b) BAR TO PROSECUTION.—It is a bar to a prosecution under this section that—

"(1) no person claiming entitlement to a right violated by the offense reported the offense to local law enforcement authorities within ninety days after the beginning of the restraint; or

"(2) the child was returned unharmed by the defendant within thirty days after the issuance of a warrant for his arrest for this offense.

"(c) INITIATION OF INVESTIGATION.—The Federal Bureau of Investigation may not commence an investigation of an offense under this section unless at least :ty days have elapsed after the filing of a report with local law enforcement authorities and of a request for the assistance of the Parent Locator Service, as established by section 453 of the Social Security Act.

"(d) GRADING.—An offense described in this section is—

"(1) a Class B misdemeanor in the circumstances set forth in subsection (a)(4)(A); and

"(2) a Class C misdemeanor in any other case.

"(e) JURISDICTION.—There is federal jurisdiction over an offense described in this section if a circumstance specified in section 1621 (c)(1), (c)(2), or (c)(3) exists or has occurred, or the exercise or enjoyment of the right of custody or visitation violated by the offense requires the crossing of a State or United States boundary by the child or the person entitled to the right violated by the offense.

"§ 1625. General Provisions for Subchapter C

"(a) DEFINITIONS.—As used in this subchapter—

"(1) 'consent' does not include assent given by the victim if in fact he is less than fourteen years old or is incompetent and if his parent, guardian, or other person responsible for his welfare has not acquiesced in the movement or confinement; and

"(2) 'restrain' means to restrict the movement of a person without consent, so as to interfere with his liberty, by—

"(A) removing him from his place of residence or business; or

"(B) confining him in any place or moving him from one place to another, unless such confinement or movement is trivial.

"(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution under section 1622(a)(2) or 1623 that the actor is a parent or guardian of the person restrained and that the person restrained is less than eighteen years old.

"(c) INITIATION OF INVESTIGATION.—In the absence of facts indicating a lack of federal jurisdiction, the failure to release the victim of an offense under section 1621, 1623, or 1624 within twenty-four hours of the offense is a sufficient indication of the possibility that federal jurisdiction exists, by virtue of the movement of the victim across a State or United States boundary, to justify the commencement of a federal investigation of the offense.

"Subchapter D—Hijacking Offenses

"§ 1631. Aircraft Hijacking

"(a) OFFENSE.—A person is guilty of an offense if he seizes or exercises control over an aircraft by force, threat, intimidation, or deception.

"(b) GRADING.—An offense described in this section is a Class B felony.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the offense is committed within the special aircraft jurisdiction of the United States; or

"(2) the offense is committed, by means other than deception, outside the special aircraft jurisdiction of the United States and—

"(A) the offense is committed aboard an aircraft 'in flight', as defined in section 203(c);

"(B) the place of takeoff or the place of landing of the aircraft is situated outside the territory of the nation in which the aircraft is registered; and

"(C) the actor is afterward found in the United States.

§ 1632. Commandeering a Vessel

"(a) OFFENSE.—A person is guilty of an offense if he seizes or exercises control over a vessel by force, threat, intimidation, or deception.

"(b) GRADING.—An offense described in this section is—

"(1) a Class D felony if the defendant is a member of the crew of the vessel or the offense is committed on the high seas; and

"(2) a Class E felony in any other case.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if the offense is committed within the special maritime jurisdiction of the United States.

"Subchapter E—Sex Offenses

"§ 1641. Rape

"(a) OFFENSE.—A person is guilty of an offense if he engages in a sexual act with another person and—

"(1) compels the other person to participate in such act—

"(A) by force; or

"(B) by threatening or placing the other person in fear that any person will imminently be subjected to death, serious bodily injury, or kidnapping;

"(2) has, with intent to engage in a sexual act, substantially impaired the ability of the other person to appraise or control conduct by adminis-

tering or employing a substance that he knows is a drug or intoxicant, or by other means, without the knowledge or against the will of the other person; or

"(3) the person is, in fact, less than twelve years old.

"(b) GRADING.—An offense described in this section is a Class C felony.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the offense is committed within the special jurisdiction of the United States; or

"(2) the offense occurs during the commission of an offense, over which federal jurisdiction exists, that is described in section 1323 (Tampering With a Witness or an Informant), 1324 (Retaliating Against a Witness or an Informant), 1357 (Tampering With a Public Servant), 1358 (Retaliating Against a Public Servant), 1501 (Interfering With Civil Rights), 1502 (Interfering With Civil Rights Under Color of Law), 1601 (Murder), 1602 (Manslaughter), 1611 (Maiming), 1612 (Aggravated Battery), 1613 (Battery), 1621 (Kidnapping), 1622 (Aggravated Criminal Restraint), 1623 (Criminal Restraint), 1631 (Aircraft Hijacking), 1644 (Sexual Abuse of a Ward), 1711 (Burglary), 1712 (Criminal Entry), 1721 (Robbery), 1722 (Extortion), 1843 (Conducting a Prostitution Business), or 1844 (Sexually Exploiting a Minor).

"§ 1642. Sexual Assault

"(a) OFFENSE.—A person is guilty of an offense if he engages in a sexual act with another person who is not his spouse, and—

"(1) knows that the other person is incapable of understanding the nature of the conduct;

"(2) knows that the other person is physically incapable of resisting, or of declining consent to, the sexual act;

"(3) knows that the other person is unaware that a sexual act is being committed;

"(4) knows that the other person participates because of a mistaken belief that the actor is married to the other person; or

"(5) compels the other person to participate by a threat or by placing the other person in fear.

"(b) GRADING.—An offense described in this section is a Class D felony.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if the offense is committed—

"(1) within the special jurisdiction of the United States;

"(2) in the circumstances set forth in subsection (a)(1), (a)(2), or (a)(3), and occurs during the commission of an offense, over which federal jurisdiction exists, that is described in section 1621 (Kidnapping), 1622 (Aggravated Criminal Restraint), 1623 (Criminal Restraint), 1644 (Sexual

Abuse of a Ward), 1711 (Burglary), 1712 (Criminal Entry), 1843 (Conducting a Prostitution Business), or 1844 (Sexually Exploiting a Minor); or

"(3) in the circumstances set forth in subsection (a)(5), a circumstance specified in section 1641(c)(2) exists or has occurred.

"§ 1643. Sexual Abuse of a Minor

"(a) OFFENSE.—A person is guilty of an offense if he engages in a sexual act with another person who is not his spouse, who in fact is less than sixteen years old, and who in fact is at least five years younger than the actor.

"(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution under this section that the actor reasonably believed the other person to be sixteen years old or older.

"(c) GRADING.—An offense described in this section is—

"(1) a Class D felony if the actor is twenty-one years old or older; and

"(2) a Class A misdemeanor in any other case.

"(d) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the offense is committed within the special jurisdiction of the United States; or

"(2) the offense occurs during the commission of an offense over which federal jurisdiction exists, that is described in section 1621 (Kidnapping), 1622 (Aggravated Criminal Restraint), 1623 (Criminal Restraint), 1644 (Sexual Abuse of a Ward), 1711 (Burglary), 1712 (Criminal Entry), 1843 (Conducting a Prostitution Business), or 1844 (Sexually Exploiting a Minor); or

"(3) in the circumstances set forth in subsection (a)(5), a circumstance specified in section 1641(c)(2) exists or has occurred.

"§ 1644. Sexual Abuse of a Ward

"(a) OFFENSE.—A person is guilty of an offense if he engages in a sexual act with another person who is not his spouse, who is in official detention, and who is under the custodial, supervisory, or disciplinary authority of the actor.

"(b) GRADING.—An offense described in this section is a Class A misdemeanor.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the offense is committed within the special jurisdiction of the United States;

"(2) the official detention is under the laws of the United States;

"(3) the official detention is in a federal facility; or

"(4) the actor is a federal public servant.

"§ 1645. Unlawful Sexual Contact

"(a) OFFENSE.—A person is guilty of an offense if he engages in sexual contact with another person who is not his spouse under circumstances that would constitute an offense under section 1641, 1642, 1643, or 1644 if such contact involved a sexual act.

"(b) GRADING.—An offense described in this section is of a class two grades below that of the corresponding offense in section 1641, 1642, 1643, or 1644.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if there would be federal jurisdiction over the corresponding offense described in section 1641, 1642, 1643, or 1644.

"§ 1646. General Provisions for Subchapter E

"(a) DEFINITIONS.—As used in this subchapter—

"(1) 'sexual act' means conduct between human beings consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, or the mouth and vulva; for purposes of this paragraph, contact involving the penis occurs upon penetration, however slight;

"(2) 'sexual contact' means a touching of the sexual or other intimate parts of a person to arouse or gratify the sexual desire of any person; and

"(3) 'spouse' means a person to whom the actor is legally married, and a person sixteen years old or older with whom the actor is living as husband and wife.

"(b) PROOF.—In a prosecution under sections 1641 through 1645 corroboration of the victim's testimony is not required.

"CHAPTER 17—OFFENSES INVOLVING PROPERTY

"Subchapter A—Arson and Other Property Destruction Offenses

"§ 1701. Arson.

"(a) OFFENSE.—A person is guilty of an offense if, by fire or explosion, he—

"(1) damages a public facility; or

"(2) damages substantially a building or a public structure.

"(b) GRADING.—An offense described in this section is a Class C felony.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the offense is committed within the special jurisdiction of the United States;

"(2) the property that is the subject of the offense is owned by, or is under the care, custody, or control of, the United States; is being produced, manufactured, constructed, or stored for the United States; or is subject to a security interest held by the United States;

"(3) the property that is the subject of the offense is located within the United States and is owned by, or is under the care, custody, or control of—

"(A) a foreign power;

"(B) a foreign dignitary, or a member of his immediate family, who is in the United States;

"(C) a foreign official who is in the United States on official business, or a member of his immediate family who is in the United States in connection with the visit of such official;

"(D) an official guest of the United States; or

"(E) an internationally protected person;

"(4) the property that is the subject of the offense is moving in interstate or foreign commerce, or constitutes or is a part of an interstate or foreign shipment;

"(5) the property that is the subject of the offense is used in an activity affecting interstate or foreign commerce, and is damaged by a destructive device;

"(6) the property that is the subject of the offense is owned by, or is under the care, custody, or control of, an organization receiving financial assistance from the United States, and is damaged by a destructive device;

"(7) the property that is the subject of the offense is owned by, or is under the care, custody, or control of, a public facility that operates in interstate or foreign commerce;

"(8) the United States mail or a facility in interstate or foreign commerce is used in the planning, promotion, management, execution, consummation, or concealment of the offense, or in the distribution of the proceeds of the offense;

"(9) movement of a person across a State or United States boundary occurs in the planning, promotion, management, execution, consummation, or concealment of the offense, or in the distribution of the proceeds of the offense; or

"(10) the offense occurs during the commission of an offense, over which federal jurisdiction exists, that is described in section 1323 (Tampering With a Witness or an Informant), 1324 (Retaliating Against a Witness or an Informant), 1357 (Tampering With a Public Servant), 1358 (Retaliating Against a Public Servant), 1501 (Interfering With Civil Rights), 1502 (Interfering With Civil Rights Under Color of Law), 1503 (Interfering With a Federal Benefit), 1504 (Unlawful Discrimination), or 1505 (Interfering With Speech or Assembly Related to Civil Rights Activities).

"§ 1702. Aggravated Property Destruction

"(a) OFFENSE.—A person is guilty of an offense if he—

"(1) damages a public facility;

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"(2) damages property and thereby causes a significant interruption or impairment of a function of a public facility; or

"(3) damages property in an amount that in fact exceeds $500.

"(b) GRADING.—An offense described in this section is—

"(1) a Class D felony—

"(A) in the circumstances set forth in subsection (a)(1) or (a)(2); or

"(B) in the circumstances set forth in subsection (a)(3) if the damage exceeds $100,000; and

"(2) a Class E felony in any other case.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) a circumstance specified in section 1701(c) exists or has occurred; or

"(2) the property is mail.

"§ 1703. Property Destruction

"(a) OFFENSE.—A person is guilty of an offense if he damages property.

"(b) GRADING.—An offense described in this section is—

"(1) a Class A misdemeanor if—

"(A) the damage exceeds $100; or

"(B) the property is mail other than a newspaper, magazine, advertising matter, or circular; and

"(2) a Class B misdemeanor in any other case.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) a circumstance specified in section 1701(c)(1) through (c)(9) exists or has occurred; or

"(2) the property is mail.

"§ 1704. General Provisions for Subchapter A

"(a) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution under section 1701, 1702, or 1703 that the actor's conduct was consented to by all holders of a legal interest in all property damaged, or that the actor believed his conduct was so consented to and was not reckless in such belief.

"(b) PROOF.—In a prosecution under section 1701, 1702, or 1703, in establishing that property constitutes or is part of an interstate or foreign shipment within the meaning of section 1701(c)(4), proof of the designation in a way bill or other shipping document of the places from which and to which a shipment was made creates a presumption that the property was shipped or was being shipped as indicated by such document.

"Subchapter B—Burglary and Other Criminal Intrusion Offenses

"Sec.
"1711. Burglary.
"1712. Criminal Entry.
"1713. Criminal Trespass.

"1714. Stowing Away.
"1715. Possessing Burglar's Tools.
"1716. Definitions for Subchapter B.

"§ 1711. Burglary

"(a) OFFENSE.—A person is guilty of an offense if at night, with intent to engage in conduct constituting a federal, State, or local crime other than a crime set forth in this subchapter, and without privilege, he enters, or remains surreptitiously within, a dwelling that is the property of another.

"(b) GRADING.—An offense described in this section is a Class C felony.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the offense is committed within the special jurisdiction of the United States;

"(2) the dwelling is owned by, or is under the care, custody, or control of, the United States and is occupied by a United States official; or

"(3) the dwelling is located within the United States and is owned by, or is under the care, custody, or control of—

"(A) a foreign power;

"(B) a foreign dignitary who is in the United States; or

"(C) an official guest of the United States.

"§ 1712. Criminal Entry

"(a) OFFENSE.—A person is guilty of an offense if, with intent to engage in conduct constituting a federal, State, or local crime other than a crime set forth in this subchapter, and without privilege, he enters or remains surreptitiously within a building or vehicle that is the property of another.

"(b) GRADING.—An offense described in this section is a Class D felony.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the offense is committed within the special jurisdiction of the United States;

"(2) the building or vehicle is owned by, or is under the care, custody, or control of, the United States and is occupied by a United States official;

"(3) the building contains a facility of a Federal government agency, and, if the actor's entering or remaining was in a part of the building other than that in which the facility was located, the conduct intended would have affected the facility itself or something therein;

"(4) the building contains a national credit institution, and, if the actor's entering or remaining was in a part of the building other than that in which the credit institution was located, the conduct intended would have affected the credit institution itself or something therein;

"(5) the vehicle contains mail, or property that is moving in interstate or foreign commerce, or property that constitutes or is a part of an interstate or foreign shipment; or

"(6) the building or vehicle is located within the United States and is owned by, or is under the care, custody, or control of—

"(A) a foreign power;

"(B) a foreign dignitary who is in the United States; or

"(C) an official guest of the United States.

"§ 1713. Criminal Trespass

"(a) OFFENSE.—A person is guilty of an offense if, knowing that he is without privilege to do so, he enters, or remains within or on, premises that are the property of another.

"(b) GRADING.—An offense described in this section is—

"(1) a Class A misdemeanor if the premises are highly secured government premises, or consist of a dwelling;

"(2) a Class B misdemeanor if the premises are so enclosed or secured as manifestly to exclude intruders, or consist of a building other than a dwelling;

"(3) a Class C misdemeanor if the premises consist of a place as to which notice prohibiting trespass is—

"(A) communicated to the actor by a person in charge of the premises or by another authorized person; or

"(B) posted in a manner reasonably likely to come to the attention of intruders; and

"(4) an infraction in any other case.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the offense is committed within the special jurisdiction of the United States;

"(2) the premises are owned by, or are under the care, custody, or control of, the United States and are occupied by a United States official;

"(3) the premises are located within the United States and are owned by, or are under the care, custody, or control of—

"(A) a foreign power;

"(B) a foreign dignitary who is in the United States; or

"(C) an official guest of the United States;

"(4) the premises consist of a vehicle that contains mail, or property that is moving in interstate or foreign commerce, or property that constitutes or is a part of an interstate or foreign shipment; or

"(5) the premises consist of public domain land, National Park System land, or National Wildlife Refuge System land, that has been closed to the public pursuant to a regulation issued by the Secretary of the Interior, or

consist of national forest land that has been closed to the public pursuant to a regulation issued by the Secretary of Agriculture.

"§ 1714. Stowing Away

"(a) OFFENSE.—A person is guilty of an offense if, with intent to obtain transportation, he secretes himself aboard a vessel or aircraft that is the property of another and he is aboard the vessel or aircraft when it leaves the point of embarkation.

"(b) GRADING.—An offense described in this section is a Class A misdemeanor.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the offense is committed within the special jurisdiction of the United States; or

"(2) movement of the actor across a State or United States boundary occurs in the commission of the offense.

"§ 1715. Possessing Burglar's Tools

"(a) OFFENSE.—A person is guilty of an offense if, with intent that it be used in the course of conduct constituting an offense under section 1711, 1712, 1713, or 1714, he possesses an object that is designed for, or commonly used for, the facilitation of a forcible entry in the course of such an offense.

"(b) GRADING.—An offense described in this section is a Class A misdemeanor.

"(c) JURISDICTION.—There is a federal jurisdiction over an offense described in this section if the offense is committed within the special jurisdiction of the United States.

"§ 1716. Definitions for Subchapter B

"As used in this subchapter—

"(a) 'highly secured' premises means continuously guarded premises where display of visible identification is required of persons while they are on the premises;

"(b) 'night' means the period between thirty minutes after sunset and thirty minutes before sunrise; and

"(c) 'premises' includes a building, a structure, other real property, and a vehicle.

"Subchapter C—Robbery, Extortion, and Blackmail

"§ 1721. Robbery

"(a) OFFENSE.—A person is guilty of an offense if he takes property of another from the person or presence of another by force and violence, or by

threatening or placing another person in fear that any person will imminently be subjected to bodily injury.

"(b) GRADING.—An offense described in this section is a Class C felony.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the offense is committed within the special jurisdiction of the United States;

"(2) the property is owned by, or is under the care, custody, or control of, the United States; is being produced, manufactured, constructed, or stored for the United States; or is subject to a security interest held by the United States;

"(3) the property is owned by, or is under the care, custody, or control of, a national credit institution;

"(4) the property is mail;

"(5) the offense in any way or degree affects, delays, or obstructs interstate or foreign commerce or the movement of an article or commodity in interstate or foreign commerce;

"(6) the property is moving in interstate or foreign commerce, constitutes or is a part of an interstate or foreign shipment, or is in a pipeline system that extends across a State or United States boundary or in a storage facility of such a system;

"(7) the offense is committed against—

"(A) a foreign dignitary, or a member of his immediate family, who is in the United States;

"(B) a foreign official who is in the United States on official business, or a member of his immediate family who is in the United States in connection with the visit of such official;

"(C) an official guest of the United States; or

"(D) an internationally protected person; or

"(8) the property is a controlled substance, consisting of a narcotic, amphetamine, or barbiturate, that is listed in Schedules I through IV established by section 202 of the Controlled Substances Act (21 U.S.C. 812) and that has a value in excess of $500; the offense consists of robbery of a pharmacy; and the offense is part of a pattern of such robberies in the locality.

"§1722. Extortion

"(a) OFFENSE.—A person is guilty of an offense if he obtains property of another—

"(1) by threatening or placing another person in fear that any person will be subjected to bodily injury or kidnapping or that any property will be damaged; or

"(2) under color of official right

"(b) PROOF.—In a prosecution under subsection (a)(1) in which the threat or fear is based upon conduct by an agent or member of a labor organization consisting of an act of bodily injury to a person or damage to property, the pendency, at the time of such conduct, of a labor dispute, as defined in 29 U.S.C. 152(9), the outcome of which could result in the obtaining of employment benefits by the actor, does not constitute prima facie evidence that property was obtained 'by' such conduct.

"(c) GRADING.—An offense described in this section is—

"(1) a Class C felony in the circumstances set forth in subsection (a)(1); and

"(2) a Class D felony in the circumstances set forth in subsection (a)(2).

"(d) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) a circumstance specified in section 1721(c)(1) through (c)(7) exists or has occurred;

"(2) the United States mail or a facility in interstate or foreign commerce is used in the planning, promotion, management, execution, consummation, or concealment of the offense, or in the distribution of the proceeds of the offense;

"(3) the offense is committed by a federal public servant acting under color of office;

"(4) movement of a person across a State or United States boundary occurs in the planning, promotion, management, execution, consummation, or concealment of the offense, or in the distribution of the proceeds of the offense;

"(5) the offense is committed by a person pretending to be a federal public servant, a former federal public servant, or a foreign official;

"(6) the offense is committed to collect an extension of credit, as defined in section 1806(c);

"(7) the property obtained consists of any part of the compensation of a person employed in the construction, completion, repair, or refurbishment of a federal public building, federal public work, or building financed in whole or in part by a loan or grant from the United States, and is obtained by threatening or placing any person in fear in relation to that person's employment; or

"(8) the property is obtained by threatening or placing a person in fear in relation to any person's employment under a grant or contract of assistance pursuant to the Economic Opportunity Act of 1964 (42 U.S.C. 2701 et seq.).

"§1723. Blackmail

"(a) OFFENSE.—A person is guilty of an offense if he obtains property of another by threatening or placing another person in fear that any person will—

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"(1) engage in conduct constituting a federal, State, or local crime other than a crime described in section 1722;

"(2) accuse any person of a federal, State, or local crime;

"(3) procure the dismissal of any person from employment, or refuse to employ or renew a contract of employment of any person;

"(4) improperly subject any person to economic loss or injury to his business or profession;

"(5) expose a secret or publicize an asserted fact, whether true or false, with intent to subject any person, living or dead, to hatred, contempt, or ridicule, or to impair his personal, financial, professional, or business reputation; or

"(6) take or withhold official action as a public servant, or cause a public servant to take or withhold official action.

"(b) DEFENSE.—It is a defense to a prosecution under this section, other than a prosecution under subsection (a)(1), that the defendant—

"(1) reasonably believed his conduct to be justified;

"(2) intended solely to compel or induce the other person to take lawful and reasonable action to prevent or remedy the asserted wrong that prompted the defendant's conduct; and

"(3) with respect to an offense under subsection (a)(2), reasonably believed that the threatened accusation was true.

"(c) GRADING.—An offense described in this section is—

"(1) a Class C felony if the property has a value in excess of $100,000;

"(2) a Class D felony if—

"(A) the property has a value in excess of $500 but not more than $100,000; or

"(B) regardless of its monetary value being $500 or less, the property consists of—

"(i) a firearm, ammunition, or a destructive device;

"(ii) a vehicle;

"(iii) a record or other document owned by, or under the care, custody, or control of, the United States;

"(iv) a counterfeiting or forging implement designed for the making of a written instrument of the United States;

"(v) a key or other implement designed to provide access to mail or to property owned by, or under the care, custody, or control of, the United States; or

"(vi) mail other than a newspaper, magazine, circular, or advertising matter;

"(3) a Class A misdemeanor if the property has a value in excess of $100 but not more than $500; and

"(4) a Class B misdemeanor in any other case.

"(d) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) a circumstance specified in section 1721(c)(1) through (c)(7) or section 1722 (d)(2) through (d)(7) exists or has occurred;

"(2) the fear in subsection (a)(1) or (a)(2) involves a federal crime; or

"(3) the fear in subsection (a)(6) involves federal official action.

"§ 1724. General Provisions for Subchapter C

"(a) DEFINITIONS.—As used in this subchapter—

"(1) 'counterfeiting implement' has the meaning set forth in section 1746(b);

"(2) 'forging implement' has the meaning set forth in section 1746(d); and

"(3) 'written instrument' has the meaning set forth in section 1746(i).

"(b) PROOF.—In a prosecution under section 1722 or 1723 (a)(1), (a)(3), or (a)(4), for the purpose of showing that words or other methods of communication employed as a means of obtaining the property carried a threat, the court may permit the introduction of evidence concerning the reputation of the defendant in any community of which the victim was a member at the time of the offense charged.

"(c) DEFENSE PRECLUDED.—It is not a defense to a prosecution under section 1722 and 1723 that the defendant, by the same conduct, also committed an offense described in section 1321 (Witness Bribery), 1322 (Corrupting a Witness or an Informant), 1351 (Bribery), 1352 (Graft), 1353 (Trading in Government Assistance), 1354 (Trading in Special Influence), 1355 (Trading in Public Office), or 1731 (Theft).

"Subchapter D—Theft and Related Offenses

"§ 1731. Theft

"(a) OFFENSE.—A person is guilty of an offense if he obtains or uses the property of another with intent—

"(1) to deprive the other of a right to the property or a benefit of the property; or

"(2) to appropriate the property to his own use or to the use of another person.

"(b) GRADING.—An offense described in this section is—

"(1) a Class C felony if the property has a value in excess of $100,000;

"(2) a Class D felony if—

"(A) the property has a value in excess of $500 but not more than $100,000; or

"(B) regardless of its monetary value being $500 or less, the property consists of—

"(i) a firearm, ammunition, or a destructive device;

"(ii) a vehicle, except as provided in paragraph (4);

"(iii) a record or other document owned by, or under the care, custody, or control of, the United States;

"(iv) a counterfeiting or forging implement designed for the making of a written instrument of the United States;

"(v) a key or other implement designed to provide access to mail or to property owned by, or under the care, custody, or control of, the United States; or

"(vi) mail other than a newspaper, magazine, circular, or advertising matter;

"(3) a Class A misdemeanor if the property has a value in excess of $100 but not more than $500; and

"(4) a Class B misdemeanor if—

"(A) the property has a value of $100 or less; or

"(B) notwithstanding the provisions of paragraphs (1), (2), and (3), the property is a motor vehicle or a vessel, the defendant is less than eighteen years old, and the defendant's intent involved deprivation or appropriation of a temporary rather than a permanent nature.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the offense is committed within the special jurisdiction of the United States;

"(2) the property is owned by, or is under the care, custody, or control of, the United States; or is being produced, manufactured, constructed, or stored for the United States;

"(3) the offense is committed by a federal public servant acting under color of office;

"(4) the offense is committed by a person pretending to be a federal public servant, a former federal public servant, or a foreign official;

"(5) the property is obtained upon a representation that it will be used to cause a federal public servant to take or withhold official action;

"(6) the property has a value of $2,500 or more and is obtained through the use of one or more counterfeited, fictitious, altered, forged, lost, or stolen credit cards in a transaction or series of transactions affecting interstate or foreign commerce;

"(7) the property is mail;

"(8) the property is moving in interstate or foreign commerce, constitutes or is a part of an interstate or foreign shipment, or is in a pipeline system that extends across a State or United States boundary or in a storage facility of such a system;

"(9) the property has a value of $5,000 or more, or is ammunition, a firearm or a vehicle, and is moved across a State or United States boundary in the commission of the offense;

"(10) the property is owned by, or is under the care, custody, or control of, a national credit institution;

"(11) the offense is committed by a misrepresentation of United States ownership, guarantee, insurance, or other interest of the United States with respect to the property involved;

"(12) the offense is committed by impersonation of a creditor of the United States;

"(13) the property: (A) is owned by, or is under the care, custody, or control of, an Indian tribe, band, community, group, or pueblo that is subject to a federal statute relating to Indian affairs, or a corporation, association, or group organized under any such statute; or (B) is the subject of a grant, subgrant, contract, or subcontract pursuant to the Indian Self-Determination and Education Assistance Act (88 Stat. 2203) or the Act of April 16, 1934 (25 U.S.C. 452 et seq.) and the offense is committed by an agent of a recipient of such a grant, subgrant, contract, or subcontract;

"(14) the property is owned by, or is under the care, custody, or control of, an employee benefit plan subject to a provision of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.);

"(15) the property is owned by, or is under the care, custody, or control of, a trust fund established by an employer or by an employee organization as defined in section 3(4) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(4)), or by both, to provide a benefit to the members of an employee organization or to their families;

"(16) the property is owned by, or is under the care, custody, or control of, and the offense is committed by an agent or member of, or a person connected in any capacity with—

"(A) a labor organization as defined in section 3 (i) and (j) of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 402 (i) and (j)); or

"(B) a labor organization in which employees participate and that exists for the purpose, in whole or in part, of dealing with any United States government agency regarding grievances, personnel policies and practices, or other matters affecting the working conditions of its employees;

"(17) the offense is committed by an agent or received of, or a person connected in any capacity with, a small business investment company, as defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662) and the property is owned by, or is under the care, custody, or control of, such small business investment company;

"(18) the property is owned by, or is under the care, custody, or control of, a registered investment company, as defined in section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(a));

"(19) the offense is committed by a futures commission merchant as defined in section 2(a) of the Commodity Exchange Act (7 U.S.C. 2), or by an agent thereof, and (A) the property is that of a customer and is received by such futures commission merchant to margin, guarantee, or secure trades or contracts of any customer; or (B) the property has accrued to a customer as the result of trades or contracts;

"(20) the property is owned by, or is under the care, custody, or control of, an organization engaged in interstate commerce as a common carrier, and the offense is committed (A) by a president, director, officer, or manager of such common carrier; or (B) by an agent of such common carrier

riding in a vehicle of such common carrier that is moving in interstate commerce;

"(21) the offense is committed by an agent of, or a person connected in any capacity with, an agency receiving financial assistance under the Economic Opportunity Act of 1964 (42 U.S.C. 2701 et seq.) and the property is the subject of a grant or contract of assistance pursuant to such Act;

"(22) the property consists of any part of the compensation of a person employed in the construction, completion, repair, or refurbishing of a federal public building, federal public work, or building financed in whole or in part by a loan or grant from the United States, and is obtained or retained by fraud in relation to that person's employment;

"(23) the offense is committed by a trustee, receiver, custodian, marshal, or other court officer and the property consists of a part of the estate of a debtor concerning whom a petition has been filed pursuant to title 11 of the United States Code;

"(24) the property consists of a part of a grant, contract, or other form of assistance received, directly or indirectly, from the Law Enforcement Assistance Administration, pursuant to title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3701 et seq.);

"(25) the property (A) consists of a coupon, or of an authorization card, defined in section 3 (c) and (d) of the Food Stamp Act of 1964 (7 U.S.C. 2012 (c) and (d)); or (B) is obtained by the use of such a coupon or authorization card that has been obtained in violation of this section, that has been counterfeited in violation of section 1741, or that has been forged in violation of section 1742;

"(26) the property consists of agricultural products stored or to be stored in a licensed warehouse pursuant to the United States Warehouse Act (7 U.S.C. 241 et seq.), and licensed receipts have been or are to be issued for such products;

"(27) the property consists of money paid under a law administered by the Veterans' Administration for the benefit of a minor, an incompetent, or another beneficiary, and the offense is committed by a fiduciary of such beneficiary;

"(28) the property consists of money, a security, or another asset of the Securities Investor Protection poration;

"(29) the property consists of a note, stock certificate, treasury stock certificate, bond, treasury bond, debenture, certificate of deposit, interest

coupon, or any form of debt instrument bearing interest, or a blank certificate of any of the foregoing, and is in the care, custody, or control of—

"(A) a member of, or an organization insured by, the Securities Investor Protection Corporation;

"(B) a broker-dealer registered with the Securities and Exchange Commission pursuant to section 15(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 780(a)(1)); or

"(C) an insurance company registered under the law of a State, or a foreign insurance company doing business within the United States;

"(30) the property is a payment made pursuant to section 801 of the Presidential Election Campaign Fund Act (26 U.S.C. 9001 et seq.) or pursuant to section 9037 of the Presidential Primary Matching Payment Account Act (26 U.S.C. 9037), and the offense is committed by a person to whom such payment is made or to whom a portion of such payment is transferred;

"(31) the property is provided or insured under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.);

"(32) the offense is committed in connection with a payment for furnishing an item or service pursuant to title XVII or XIX of the Social Security Act (42 U.S.C. 1393 et seq. or 42 U.S.C. 1396 et seq.);

"(33) the offender uses the property in a transaction affecting interstate or foreign commerce, or transports the property in interstate or foreign commerce, or uses an instrumentality of interstate or foreign commerce to sell or transport the property, and the property—

"(A) consists of a debit instrument as defined in section 916(c) of the Electronic Fund Transfer Act (15 U.S.C. 1693n(c)); or

"(B) is obtained by the use of such a debit instrument that has been obtained in violation of section 1741, or that has been forged in violation of section 1742; or

"(34) the property is the subject of a grant or other form of assistance under the National School Lunch Act (42 U.S.C. 1751 et seq.) or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

"§ 1732. Trafficking in Stolen Property

"(a) OFFENSE.—A person is guilty of an offense if he traffics in property of another that has been stolen.

"(b) GRADING.—An offense described in this section is an offense of the same class as that specified in section 1731(b) for the theft of the same property.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) a circumstance specified in section 1731(c) exists or has occurred;

"(2) the property is an interest bearing obligation of the United States; or

"(3) the property has a value of $5,000 or more, or is ammunition, a firearm, or a vehicle, and, after having been stolen, is moved across a State or United States boundary.

"§ 1733. Receiving Stolen Property

"(a) OFFENSE.—A person is guilty of an offense if he buys, receives, possesses, or obtains control of property of another that has been stolen.

"(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution under this section that the defendant bought, received, possessed, or obtained control of the property with intent to report the matter to an appropriate law enforcement officer or to the owner of the property.

"(c) GRADING.—An offense described in this section is an offense of the class next below that specified in section 1731(b) for the theft of the same property.

"(d) JURISDICTION.—There is federal jurisdiction over an offense described in this section if a circumstance specified in section 1731(c) or 1732(c)(3) exists or has occurred.

"§ 1734. Executing a Fraudulent Scheme

"(a) OFFENSE.—A person is guilty of an offense if—

"(1) having devised a scheme or artifice—

"(A) to defraud; or

"(B) to obtain property of another by means of a false or fraudulent pretense, representation, or promise;

he engages in conduct with intent to execute such scheme or artifice; or

"(2) he transfers, or receives anything of value for, a right to participate in a pyramid sales scheme, or receives compensation from a pyramid sales scheme.

"(b) DEFINITIONS.—As used in this section—

"(1) 'anything of value' does not include—

"(A) payment made for sales demonstration equipment;

"(B) material furnished on a non-profit basis for use in making sales and not for resale;

"(C) time or effort spent in pursuit of sales or recruiting activities; or

"(D) payment having an aggregate value of $100 or less when calculated on an annual basis;

"(2) 'compensation' includes payment based on a sale or distribution made to a person who is a participant in a pyramid sales scheme or who, upon such payment, obtains the right to become a participant, but does not include payment based on a retail sale to an ultimate consumer;

"(3) 'conduct' includes a failure to state a fact necessary to avoid making a statement misleading;

"(4) 'pyramid sales scheme' means a plan or operation, whether or not involving the sale or distribution of property, that includes a means of in-

creasing participation in the plan or operation under which a participant, upon payment of anything of value, obtains a right to receive compensation—

"(A) for his introduction of another person into participation in such plan or operation; or

"(B) for such other person's introduction of another person into participation in such plan or operation; and

"(5) 'sale or distribution' includes a lease, rental, or consignment.

"(c) DEFENSE PRECLUDED.—It is not a defense to a prosecution under subsection (a)(2) that—

"(1) the plan or operation limits the number of persons who may participate, or imposes conditions with respect to the eligibility of participants; or

"(2) upon payment of anything of value a participant obtains, in addition to the right to receive compensation as described in subsection (b)(2), any other property.

"(d) GRADING.—An offense described in this section is—

"(1) a Class D felony in the circumstances set forth in subsection (a)(1); and

"(2) a Class E felony in the circumstances set forth in subsection (a)(2).

"(e) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) in the commission of the offense, the actor—

"(A) uses or causes the use of the United States mail;

"(B) uses or causes the use of an interstate or foreign communication facility, including a facility of wire, radio, or television communication; or

"(C) travels in, or causes or induces any other person to travel in, or to be transported in, interstate or foreign commerce; or

"(2) the offense is committed in connection with or in contemplation of a liquidation proceeding or direct payment procedure under the Securities Investor Protection Act (15 U.S.C. 78aaa et seq.).

"§ 1735. Bankruptcy Fraud

"(a) OFFENSE.—A person is guilty of an offense if, with intent to deceive a court or an officer thereof or to deceive or harm a creditor, he—

"(1) transfers or conceals property belonging to the estate of a debtor;

"(2) receives a material amount of property from a debtor after the filing of a case under title 11 of the United States Code, or after the filing of a liquidation proceeding or direct payment procedure under the Securities Investor Protection Act (15 U.S.C. 78aaa et seq.);

"(3) transfers or conceals, in contemplation of a case under title 11 of the United States Code or of a liquidation proceeding or direct payment

procedure under the Securities Investor Protection Act (15 U.S.C. 78aaa et seq.), his own property or the property of another;

"(4) transfers or conceals, in contemplation of a State insolvency proceeding, his own property or the property of another;

"(5) alters, destroys, mutilates, conceals, or makes a false entry in a record or document affecting or relating to the property or financial affairs of a debtor in contemplation of, or after the filing of, a case under title 11 of the United States Code, or a liquidation proceeding or direct payment procedure under the Securities Investor Protection Act (15 U.S.C. 78aaa et seq.), or withholds such record or document from the trustee or other officer of the court entitled to its possession; or

"(6) offers, gives, or agrees to give, or solicits, demands, accepts, or agrees to accept, anything of value for or because of acting or forbearing to act, or having acted or forborne to act, in a case under title 11 of the United States Code, or a liquidation proceeding or direct payment procedure under the Securities Investor Protection Act (15 U.S.C. 78aaa et seq.).

"(b) DEFINITIONS.—As used in this section—

"(1) 'debtor' means a person—

"(A) concerning whom a case has been filed under title 11 of the United States Code;

"(B) concerning whom a liquidation proceeding or direct payment procedure has been instituted under the Securities Investor Protection Act (15 U.S.C. 78aaa et seq.); or

"(C) for purposes of subsection (a)(4), a person who is the subject of a State insolvency proceeding;

"(2) 'harm' means to cause loss, deprivation, or reduction in value, with respect to an economic benefit;

"(3) 'insolvency proceeding' includes an assignment for the benefit of creditors, and a proceeding intended to liquidate or rehabilitate the estate involved; and

"(4) 'person' includes a municipality as defined in 11 U.S.C. 101.

"(c) GRADING.—An offense described in this section is—

"(1) a Class D felony if the property has a value in excess of $500; and

"(2) a Class E felony in any other case.

"(d) JURISDICTION.—There is federal jurisdiction over an offense described in—

"(1) subsection (a)(4) if the offense in any way or degree affects, delays, or obstructs interstate or foreign commerce or the movement of an article or commodity in interstate or foreign commerce, and if the person who is the subject of the State insolvency proceeding may not, under title 11 of the United States Code, be treated as a debtor; or

"(2) subsection (a)(1), (a)(2), (a)(3), (a)(5), or (a)(6), if the offense is committed within—

"(A) the general jurisdiction of the United States; or

"(B) the special jurisdiction of the United States.

"§ 1736. Interfering With a Security Interest

"(a) OFFENSE.—A person is guilty of an offense if, holding a legal interest in property subject to a security interest, he deprives the holder of the security interest of a right to the property or a benefit of the property by removing, concealing, encumbering, transferring, or converting such property.

"(b) GRADING.—An offense described in this section is—

"(1) a Class D felony if the value of the deprivation of the right or benefit exceeds $100,000;

"(2) a Class E felony if the value of the deprivation of the right or benefit exceeds $500 but is not more than $100,000; and

"(3) a Class A misdemeanor in any other case.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if the property is subject to a security interest held by the United States.

"§ 1737. Fraud in a Regulated Industry

"(a) OFFENSE.—A person is guilty of an offense if, with intent to defraud, he—

"(1) uses or reveals information relative to a formula of a product in fact acquired under the authority of section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act of 1972 (7 U.S.C. 136(a));

"(2) violates section 912 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1709–2) or section 239(b) of the National Housing Act, as added by section 302 of the Act of August 1, 1968 (12 U.S.C. 1715z–4(b)) (relating to equity skimming in federally insured mortgages of single or multiple family dwellings); or

"(3) violates the provisions of section 1404 of the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1703) (relating to the sale or lease of lots in real estate subdivisions), or a regulation, rule, or order issued pursuant thereto.

"(b) GRADING.—An offense described in this section is a Class E felony.

"§ 1738. Criminal Infringement of a Copyright

"(a) OFFENSE.—A person is guilty of an offense if, for purposes of commercial advantage or private financial gain, he engages in conduct by which he knowingly infringes a copyright.

"(b) GRADING.—An offense described in this section is—

"(1) a class D felony if the copyright infringed is in a sound recording, a motion picture, an audiovisual work, or a label therefor; and

"(2) a Class A misdemeanor in any other case.

"§ 1739. Consumer Fraud

"(a) OFFENSE.—A person is guilty of an offense if, with intent to deceive or defraud a purchaser, he—

"(1) offers or advertises property for sale to a purchaser, knowing that such property will not be sold as so offered or advertised; or

"(2) makes a material statement that is false, concerning property that he offers or advertises for sale, sells, or has sold to a purchaser, with respect to—

"(A) the purchaser's need for the property;

"(B) the nature of the property, including its origin; its age; its grade, quality, style, or model; its ingredients or components; its quantity; its performance or safety characteristics; or its uses or benefits;

"(C) the sponsorship or approval of the property;

"(D) the comparison between the price or quality of the property and that of similar property offered or advertised for sale by the same or another person;

"(E) the prior ownership of the property;

"(F) the purchaser's need for the repair or replacement of the property;

"(G) the person's completion of the repair or replacement of the property; or

"(H) the purchaser's rights, privileges, or remedies with regard to the property.

"(b) DEFINITIONS.—As used in this section—

"(1) 'purchaser' includes a potential purchaser and an actual or potential lessee, assignee, or other transferee of property in exchange for anything of value; and

"(2) 'sale', or a variant thereof, includes a lease, assignment, or other transfer of property in exchange for anything of value.

"(c) PROOF OF MATERIALITY.—To the extent that materiality is an element of an offense described in this section, the provisions of section 1345(b)(2) that apply to section 1343 (Making a False Statement) apply also to this section.

"(d) GRADING.—An offense described in this section is a Class A misdemeanor.

"(e) JURISDICTION.—There is federal jurisdiction over an offense described in this section if the conduct constituting the offense is committed within, or is designed to have primary impact upon persons within, the special jurisdiction of the United States.

"§ 1740. General Provisions for Subchapter D

"(a) DEFINITIONS.—As used in this subchapter—

"(1) 'audiovisual work', 'motion picture', and 'sound recording' have the meaning prescribed in 17 U.S.C. 101;

"(2) 'counterfeiting implement' and 'forging implement' have the meanings set forth in section 1746 (b) and (d);

"(3) 'obtains or uses' means any manner of—

"(A) taking or exercising control over property;

"(B) making an unauthorized use, disposition, or transfer of property; or

"(C) obtaining property by fraud;

and includes conduct heretofore known as theft, stealing, larceny, purloining, abstracting, embezzlement, misapplication, misappropriation, conversion, obtaining money or property by false pretenses, fraud, deception, and all other conduct similar in nature; and

"(4) 'written instrument' has the meaning set forth in section 1746(i).

"(b) PROOF.—In a prosecution under section 1731, 1732, or 1733—

"(1) possession of property recently stolen, unless satisfactorily explained, constitutes prima facie evidence that the person in possession of the property was aware of the risk that it had been stolen or that he in some way participated in its theft;

"(2) the purchase or sale of stolen property at a price substantially below its fair market value, unless satisfactorily explained, constitutes prima facie evidence that the person buying or selling the property was aware of the risk that it had been stolen;

"(3) the purchase or sale of stolen property by a person who traffics in property as a business, out of the regular course of business, or without the usual indicia of ownership other than mere possession, unless satisfactorily explained, constitutes prima facie evidence that the person buying or selling the property was aware of the risk that it had been stolen; and

"(4) in establishing that property constitutes or is part of an interstate or foreign shipment within the meaning of section 1731(c)(8), proof of the designation in a way bill or other shipping document of the places from which and to which a shipment was made creates a presumption that the property was shipped or was being shipped as indicated by such document.

"(c) BAR TO PROSECUTION.—It is a bar to prosecution under sections 1731, 1732, and 1733 that—

"(1) the subject of the offense was intangible property owned by, or under the care, custody, or control of, the United States;

"(2) the defendant obtained or used the property primarily for the purpose of disseminating it to the public; and

"(3) the property was not obtained by means of conduct constituting an offense under section 1521 (Eavesdropping), 1524 (Intercepting Correspondence), 1711 (Burglary), 1712 (Criminal Entry), or 1713 (Criminal Trespass), or constituting a trespass under civil law.

"Subchapter E—Counterfeiting, Forgery, and Related Offenses

"§ 1741. Counterfeiting

"(a) OFFENSE.—A person is guilty of an offense if, with intent to deceive or harm another person or a government, he makes, utters, or possesses a counterfeited written instrument.

"(b) GRADING.—An offense described in this section is—

"(1) a Class C felony if he makes or utters the written instrument and it is or purports to be—

"(A) a written instrument of the United States; or

"(B) a security; and

"(2) a Class D felony in any other case.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the offense is committed within the special jurisdiction of the United States;

"(2) the written instrument is or purports to be—

"(A) made or issued by or under the authority of, or guaranteed by, the United States;

"(B) a security made or issued by or under the authority of a foreign government;

"(C) a security or a tax stamp, and (i) is moving in interstate or foreign commerce or constitutes or is part of interstate or foreign commerce, or (ii) is moved across a State or United States boundary in or after the commission of the offense;

"(D) a security issued by a national credit institution, and the offense is committed by an agent of such institution; or

"(E) a security that is a note, stock certificate, treasury stock certificate, bond, treasury bond, debenture, certificate of deposit, interest coupon, or any form of debt instrument bearing interest, made or issued by an organization or by a State or local government; or

"(3) the government intended to be deceived or harmed is the government of the United States.

"§ 1742. Forgery

"(a) OFFENSE.—A person is guilty of an offense if, with intent to deceive or harm another person or a government, he makes, utters, or possesses a forged written instrument.

"(b) GRADING.—An offense described in this section is—

"(1) a Class C felony if he makes or utters the written instrument and it is or purports to be—

"(A) an obligation of the United States; or

"(B) an instrument that has a value in excess of $100,000;

"(2) a Class D felony if he makes or utters the written instrument and it is or purports to be—

"(A) made or issued by or under the authority of, or guaranteed by, the United States, a State or local government, or a foreign government; or

"(B) an instrument that has a value in excess of $500 but not more than $100,000; and

"(3) a Class E felony in any other case.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if a circumstance specified in section 1741(c) exists or has occurred.

"§ 1743. Criminal Endorsement of a Written Instrument

"(a) OFFENSE.—A person is guilty of an offense if, with intent to deceive or harm another person or a government, he—

"(1) signs or endorses a written instrument purportedly on behalf of another person or a government without authority to do so; or

"(2) utters or possesses a written instrument that has been so signed or endorsed.

"(b) GRADING.—An offense described in this section is—

"(1) a Class C felony if he signs, endorses, or utters the written instrument and it is or purports to be—

"(A) an obligation of the United States; or

"(B) an instrument that has a value in excess of $100,000;

"(2) a Class D felony if he signs, endorses, or utters the written instrument and it is or purports to be—

"(A) made or issued by or under the authority of, or guaranteed by, the United States, a State or local government, or a foreign government; or

"(B) an instrument that has a value in excess of $500 but not more than $100,000; and

"(3) a Class E felony in any other case.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if a circumstance specified in section 1741(c) exists or has occurred.

"§ 1744. Criminal Issuance of a Written Instrument

"(a) OFFENSE.—A person is guilty of an offense if, with intent to deceive or harm another person or a government, he—

"(1) issues a written instrument without authority; or

"(2) utters or possesses a written instrument that has been so issued.

"(b) GRADING.—An offense described in this section is—

"(1) a Class D felony if he issues or utters the written instrument; and

"(2) a Class E felony in any other case.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the offense is committed within the special jurisdiction of the United States;

"(2) the written instrument is or purports to be—

"(A) made or issued by or under the authority of, or guaranteed by, the United States;

"(B) a security made or issued by or under the authority of a foreign government;

"(C) a security issued by a national credit institution, and the offense is committed by an agent of such institution; or

"(3) the government intended to be deceived or harmed is the government of the United States.

"§ 1745. Trafficking in a Counterfeiting Implement

"(a) OFFENSE.—A person is guilty of an offense if he makes, traffics in, or possesses a counterfeiting or forging implement with intent that it be used in making a counterfeited or forged written instrument.

"(b) GRADING.—An offense described in this section is—

"(1) a Class C felony if the implement is designed for or suited for the making of a counterfeited or forged obligation of the United States; and

"(2) a Class D felony in any other case.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the offense is committed within the special jurisdiction of the United States;

"(2) the implement is designed for or suited for the making of—

"(A) a written instrument purporting to be made or issued by or under the authority of, or guaranteed by, the United States;

"(B) a security purporting to be made or issued by or under the authority of a foreign government; or

"(C) a security that is a note, stock certificate, treasury stock certificate, bond, treasury bond, debenture, certificate of deposit, interest coupon, or any form of debt instrument bearing interest, made or issued by an organization or by a State or local government; or

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"(3) the implement which is the subject of the offense—

"(A) is moving in interstate or foreign commerce or constitutes or is part of interstate or foreign commerce; or

"(B) is moved across a State or United States boundary in or after the commission of the offense.

"§ 1746. Definitions for Subchapter E

"As used in this subchapter—

"(a) 'counterfeited written instrument' means a written instrument that purports to be genuine but is not, because it has been falsely made or manufactured, in its entirety;

"(b) 'counterfeiting implement' means an engraving, plate, hub, stone, paper, tool, die, mold, ink, photograph, negative, or other implement or impression designed for or suited for the making of a counterfeited written instrument;

"(c) 'forged written instrument' means a written instrument that purports to be genuine but is not because it: (1) has been falsely altered, completed, signed, or endorsed; (2) contains a false addition thereto or insertion therein; or (3) is a combination of parts of two or more genuine written instruments;

"(d) 'forging implement' means an engraving, plate, hub, stone, paper, tool, die, mold, ink, photograph, negative, or other implement or impression designed for or suited for the making of a forged written instrument;

"(e) 'obligation of the United States' means a bond, certificate of indebtedness, national bank currency, Federal Reserve note, Federal Reserve banknote, coupon, United States note, Treasury note, gold certificate, silver certificate, fractional note, certificate of deposit, stamp, canceled stamp, postage meter stamp, coin, gold or silver bar coined or stamped at a mint or assay office of the United States, or other representation of value of any denomination, issued pursuant to a federal statute, except a bill, money order, check, or draft for money, drawn by or upon an authorized officer of the United States;

"(f) 'security' means (1) an obligation of the United States; (2) a note, stock certificate, treasury stock certificate, bond, treasury bond, debenture, certificate of deposit, interest coupon, bill, check, draft, warrant, money order, money order blank, traveler's check, letter of credit, warehouse receipt, negotiable bill of lading, evidence of indebtedness, certificate of interest in or participation in any profit-sharing agreement collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, or certificate of interest in tangible or intangible property; (3) an instrument evidencing ownership of goods, wares, or merchandise; (4) a certificate for, receipt for, or warrant or right to subscribe to or purchase any of the foregoing; (5) an obligation,

banknote, bill, coin, or bar issued by a foreign government and intended by the law or usage of such government to circulate as money; (6) a security of a foreign government; (7) a postage stamp, revenue stamp, or uncancelled stamp, whether or not demonetized, issued by a foreign government; or (8) any other written instrument commonly known as a security;

"(g) 'tax stamp' includes a tax, tax token, tax meter imprint, or any similar evidence of an obligation running to a government or of the discharge of such an obligation;

"(h) 'utter' means to issue, authenticate, transfer, publish, sell, deliver, transmit, present, display, use, certify, or otherwise give currency to;

"(i) 'written instrument' means (1) a security; (2) a commercial paper or document, or other commercial instrument containing written or printed matter or its equivalent; or (3) a symbol or evidence of value, right, privilege, interest, claim, or identification that is capable of being used to the advantage or disadvantage of any person; but, except as used in section 1745, does not include a written instrument that is the subject of a counterfeiting, forgery, criminal endorsement, or criminal issuance offense described outside this title; and

"(j) 'written instrument issued under the authority of the United States' includes a warehouse receipt issued pursuant to the United States Warehouse Act (7 U.S.C. 241 et seq.) and an 'authorization to purchase card' as defined in section 3(m) of the Food Stamp Act of 1964 (7 U.S.C. 2012(m)).

"Subchapter F—Commercial Bribery and Related Offenses

"§ 1751. Commercial Bribery

"(a) OFFENSE.—A person is guilty of an offense if—

"(1) he—

"(A) offers, gives, or agrees to give to an agent or fiduciary of another person; or

"(B) as an agent or fiduciary, solicits, demands, accepts, or agrees to accept from another person who is not his employer, principal, or beneficiary;

anything of value for or because of the recipient's conduct in any transaction or matter concerning the affairs of the employer, principal, or beneficiary; or

"(2) the person is a domestic concern, an agent of a domestic concern, or a stockholder of a domestic concern acting on its behalf, and the person offers, gives, or agrees to give—

"(A) to a foreign entity; or

"(B) to any other person, knowing it will be offered, given, or agreed to be given to a foreign entity;

anything of value for or because of the conduct of the foreign entity concerning the affairs of the domestic concern.

"(b) DEFINITION.—As used in this section—

"(1) 'anything of value' does not include bona fide salary, wages, fees, or other compensation paid in the usual course of business;

"(2) 'domestic concern' means—

"(A) an individual who is a citizen, national, or resident of the United States; or

"(B) an organization that has its principal place of business in the United States, or that is organized under the laws of a State; and

"(3) 'foreign entity' means an agent of a foreign government who is performing a duty other than an essentially ministerial or clerical duty, a foreign political party, a foreign political party official, or a candidate for foreign political office.

"(c) GRADING.—An offense described in this section is—

"(1) a Class E felony if what is offered, given, or agreed to be given, or solicited, demanded, accepted, or agreed to be accepted, has a value in excess of $100; and

"(2) a Class A misdemeanor in any other case.

"(d) JURISDICTION.—There is federal jurisdiction over an offense described in—

"(1) subsection (a)(1) if the agent or fiduciary is an agent or fiduciary of—

"(A) a national credit institution;

"(B) a small business investment company, as defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662);

"(C) a bank holding company, a savings and loan holding company, or a person controlling a financial institution in such a manner as to be a bank holding company or a savings and loan holding company under the Bank Holding Company Act Amendments of 1956 (12 U.S.C. 1841) or the Savings and Loan Holding Company Amendments of 1967 (12 U.S.C. 1730a);

"(D) a prime contractor holding a negotiated contract entered into by the United States government for the furnishing of supplies, materials, equipment, or services of any kind, or a subcontractor, as defined in section 2 of the Act of March 8, 1946 (41 U.S.C. 52) holding a subcontract under such a prime contract;

"(E) an authorized committee or an eligible candidate, as defined in the Presidential Election Campaign Fund Act (26 U.S.C. 9002 (1)

and (4)), and the conduct relates to a qualified campaign expense, as defined in such Act (26 U.S.C. 9002(11));

"(F) an authorized committee or candidate, as defined in the Presidential Primary Matching Payment Account Act (26 U.S.C. 9032 (1) and (2)), and the conduct relates to a qualified campaign expense, as defined in such Act (26 U.S.C. 9032(9));

"(G) a person who furnishes items or services for which payment may be made pursuant to title XVIII or XIX of the Social Security Act (42 U.S.C. 1395 et seq. or 42 U.S.C. 1396 et seq.); or

"(H) a common carrier or rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of title 49 of the United States Code; or

"(2) subsection (a)(1) or (a)(2) if the offense involves anything of pecuniary value and—

"(A) movement of a person across a State or United States boundary occurs in the planning, promotion, management, execution, consummation, or concealment of the offense, or in the distribution of the proceeds of the offense; or

"(B) the United States mail or a facility in interstate or foreign commerce is used in the planning, promotion, management, execution, consummation, or concealment of the offense, or in the distribution of the proceeds of the offense.

"§ 1752. Labor Bribery

"(a) OFFENSE.—A person is guilty of an offense if—

"(1) being an employer, he offers, gives, or agrees to give anything of value to a labor organization, or to an officer, agent, or counsel of a labor organization, for or because of the recipient's conduct in any transaction or matter concerning such organization;

"(2) he offers, gives, or agrees to give anything of value to—

"(A) an administrator, agent, trustee, or counsel of an employee benefit plan;

"(B) an employer, agent, or counsel of an employer, any of whose employees are covered by such a plan;

"(C) an agent or counsel of an employee organization, any of whose members are covered by such a plan; or

"(D) a person who, or an agent or counsel of an organization that, provides benefit plan services;

for or because of the recipient's conduct relating to any transaction or matter concerning such plan;

"(3) he offers, gives, or agrees to give anything of value to an officer, agent, trustee, or counsel of a labor organization for or because of the recipient's conduct relating to—

"(A) the admission of any person to membership or to a class of membership, or the issuance to any person of the indicia of membership or of a class of membership, in the labor organization;

"(B) the work placement of any person by the labor organization; or

"(C) any transaction or matter concerning the expenditure, transfer, investment, or other use of the funds, money, securities, property, or other assets of the labor organization; or

"(4) he solicits, demands, accepts, or agrees to accept anything of value, the offering of which constitutes an offense described in subsection (a)(1), (a)(2), or (a)(3).

"(b) DEFINITIONS.—As used in this section—

"(1) 'administrator' has the meaning set forth in section (3)(16)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(16)(A));

"(2) 'anything of value' does not include bona fide salary, wages, fees, or other compensation paid in the usual course of business;

"(3) 'employee organization' has the meaning set forth in section 3(4) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(4));

"(4) 'employee benefit plan' includes (A) the meaning set forth in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(3)); and (B) any trust fund established by an employer or by an employee organization, or by both, to provide any benefit to the members of the organization or to their families;

"(5) 'employer' includes a group or association of employers, and a person acting directly or indirectly as an employer or as an agent of or in the interest of an employer;

"(6) 'labor organization' means (A) a labor organization as defined in section 3 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 402(i)); or (B) a labor organization in which employees participate and that exists for the purpose, in whole or in part, of dealing with any United States government agency regarding grievances, personnel policies and practices, or other matters affecting the working conditions of its employees;

"(7) 'officer', when used with respect to a labor organization, has the meaning set forth in section 3(n) of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 402(n)); and

"(8) 'work placement' means a scheme, system, or method whereby members of a labor organization or other persons gain employment or are referred for employment, and includes any such scheme, system, or method that establishes a priority or preference upon the basis of (A) seniority

within the labor organization; (B) experience or competency in a particular trade or field of employment; (C) length of employment in a particular trade or field of employment or with specified employers or within a particular geographical area; (D) performance on an examination relating to an individual's ability to perform work in a particular trade or field of employment; or (E) the date of registration on a list of persons available for work.

"(c) GRADING.—An offense described in this section is a Class E felony.

"(d) JURISDICTION.—There is federal jurisdiction over an offense described in this section if the employer or labor organization is engaged in, or the employee benefit plan covers employees engaged in, an industry that affects interstate or foreign commerce.

"§ 1753. Sports Bribery

"(a) OFFENSE.—A person is guilty of an offense if, with intent to affect the outcome, result, or margin of victory of a publicly exhibited sporting contest—

"(1) he offers, gives, or agrees to give anything of value to a participant, official, or other person associated with the contest; or

"(2) as a participant, official, or other person associated with the contest, he solicits, demands, accepts, or agrees to accept anything of value.

"(b) DEFINITIONS.—As used in this section—

"(1) 'anything of value' does not include bona fide salary, wages, fees, or other compensation paid in the usual course of business; and

"(2) 'publicly exhibited sporting contest' means a contest open to the public in any sport involving human beings or animals, whether as individual participants or teams of participants, the occurrence of which is publicly announced in advance of the event.

"(c) GRADING.—An offense described in this section is a Class E felony.

"(d) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the United States mail or a facility in interstate or foreign commerce is used in the planning, promotion, management, execution, consummation, or concealment of the offense, or in the distribution of the proceeds of the offense; or

"(2) movement across a State or United States boundary by the actor, or by a participant, official, or other person associated with the sporting contest, occurs in the planning, promotion, management, execution, consummation, or concealment of the offense, or in the distribution of the proceeds of the offense.

"Subchapter G—Investment, Monetary, and Antitrust Offenses

"§ 1761. Securities Offenses

"(a) OFFENSE.—A person is guilty of an offense if he violates—

"(1) section 24 of the Securities Act of 1933 (15 U.S.C. 77x) (relating to the registration of securities);

"(2) section 325 of the Trust Indenture Act of 1939, as added by the Act of August 3, 1939, and amended (15 U.S.C. 77yyy) (relating to the public offering of notes, bonds, debentures, evidences of indebtedness, and certificates of interest or participation therein);

"(3) section 32(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78ff(a)) (relating to regulation of transactions in securities exchanges and over-the-counter markets);

"(4) section 29 of the Public Utility Holding Company Act (15 U.S.C. 79z–3) (relating to regulation of public utility holding companies and their subsidiary companies);

"(5) section 49 of the Investment Company Act of 1940 (15 U.S.C. 80a–48) (relating to regulation of investment companies and securities issued by them);

"(6) section 217 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–17) (relating to registration of investment advisers); or

"(7) section 11911 of subtitle IV of title 49, United States Code (relating to securities of carriers subject to the jurisdiction of the Interstate Commerce Commission).

"(b) PROOF.—To the extent that conduct described in section 1343(a)(1) is an element of an offense described in this section, the provisions of section 1345(c)(2) that apply to section 1343 (Making a False Statement) apply also to this section.

"(c) GRADING.—An offense described in this section is a Class D felony.

"§ 1762. Monetary Offenses

"(a) OFFENSE.—A person is guilty of an offense if he fails to file a report, or to make or maintain a record, as required under—

"(1) section 411 of the National Housing Act, as added by section 102 of the Act of October 26, 1970 (12 U.S.C. 1730d) (relating to records and reports by institutions insured by the Federal Savings and Loan Insurance Corporation);

"(2) section 21 of the Federal Deposit Insurance Act, as added by section 101 of the Act of October 26, 1970 (12 U.S.C. 1829b) (relating to records and reports by banks insured by the Federal Deposit Insurance Corporation);

"(3) chapter 2 of title I of the Act of October 26, 1970 (12 U.S.C. 1951 et seq.) (relating to records and reports by uninsured banks and institutions); or

"(4) the Currency and Foreign Transactions Reporting Act (31 U.S.C. 1051 et seq.) (relating to records and reports concerning domestic currency transactions, exports and imports of monetary instruments, and foreign monetary transactions).

"(b) GRADING.—An offense described in this section is—

"(1) a Class D felony if the offense is committed—

"(A) in furtherance of any other violation of federal law; or

"(B) as part of a pattern of illegal activity involving transactions exceeding $100,000 in any twelve-month period; and

"(2) a Class A misdemeanor in any other case.

"§ 1763. Commodities Exchange Offenses

"(a) OFFENSE.—A person is guilty of an offense if he violates—

"(1) section 9(b) of the Commodity Exchange Act (7 U.S.C. 13(b)) (relating to price manipulation and other illegal practices involving transactions in commodities in interstate commerce), or section 9 (d) or (e) of that Act (7 U.S.C. 13 (d) or (e)) (relating to transactions in commodity futures by commissioners, employees, or agents of the Commodity Futures Trading Commission); or

"(2) the eleventh paragraph of section 25(a) of the Act of December 23, 1913, as added by the Act of December 24, 1919 (12 U.S.C. 617) (relating to the prohibition on the use of corporate funds to manipulate the price of a commodity by an agent of a corporation organized to do foreign banking).

"(b) GRADING.—An offense described in this section is a Class D felony.

"§ 1764. Antitrust Offenses

"(a) OFFENSE.—A person is guilty of an offense if he violates section 1, 2, or 3 of the Sherman Anti-Trust Act of July 2, 1890 (15 U.S.C. 1, 2, or 3) (relating to agreements in restraint of trade and monopolizing trade).

"(b) GRADING.—An offense described in this section is a Class E felony.

"CHAPTER 18—OFFENSES INVOLVING PUBLIC ORDER, SAFETY, HEALTH, AND WELFARE

"Subchapter A—Organized Crime Offenses

"§ 1801. Operating A Racketeering Syndicate

"(a) OFFENSE.—A person is guilty of an offense if he organizes, owns, controls, manages, directs, finances, or otherwise participates in a supervisory capacity in a racketeering syndicate.

"(b) PROOF.—In a prosecution under this section, proof that a person has shared in the proceeds from a racketeering syndicate to the extent of $5,000 or more in any thirty day period constitutes prima facie evidence that the person has organized, owned, controlled, managed, directed, financed, or otherwise participated in a supervisory capacity in such syndicate.

"(c) GRADING.—An offense described in this section is a Class B felony.

"§ 1802. Racketeering

"(a) OFFENSE.—A person is guilty of an offense if, through a pattern of racketeering activity, he acquires or maintains an interest in, or controls or conducts an enterprise.

"(b) GRADING.—An offense described in this section is a Class B felony.

"§ 1803. Washing Racketeering Proceeds

"(a) OFFENSE.—A person is guilty of an offense if, by using or investing proceeds from a pattern of racketeering activity, he acquires or maintains an interest in, or establishes or conducts, an enterprise.

"(b) DEFENSE.—It is a defense to a prosecution under this section that the proceeds were used to purchase securities of the enterprise on the open market without intent to control or participate in the control of the enterprise, or to assist another person to do so, if the securities of the enterprise held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern of racketeering activity after such purchase do not amount in the aggregate to one percent or more of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the enterprise.

"(c) GRADING.—An offense described in this section is a Class C felony.

"§ 1804. Loansharking

"(a) OFFENSE.—A person is guilty of an offense if he—

"(1) makes or finances an extortionate extension of credit;

"(2) makes or finances an extension of credit—

"(A) having, in fact, an aggregate value in excess of $100, including unpaid interest or similar charges and any other outstanding extensions of credit to the same debtor;

"(B) carrying a rate of interest that exceeds an annual rate of 45 percent, calculated according to the actuarial method of allocating payments between principal and interest under which a payment is

applied first to the accumulated interest and the balance is applied to the unpaid principal; and

"(C) concerning which the repayment, or the performance of any promise given in return, would not in fact be enforceable through civil judicial process against the debtor—

"(i) in the jurisdiction within which the debtor, if an individual, resided at the time the extension of credit was made; or

"(ii) in every jurisdiction within which the debtor, if an organization, was incorporated or qualified to do business at the time the extension of credit was made;

"(3) collects a repayment of an extension of credit that was made or financed unlawfully, such making or financing having been in violation of subsection (a)(1) or (a)(2); or

"(4) retaliates against any person for failing to repay an extension of credit made or financed in violation of subsection (a)(1) or (a)(2) by subjecting any person to bodily injury, kidnapping, or injury to reputation, or by damaging property.

"(b) PROOF.—In a prosecution under subsection (a)(1), if evidence is introduced tending to show the existence of the circumstances described in subsection (a)(2)(B) or (a)(2)(C), and direct evidence is not available to show the understanding of the creditor and the debtor concerning the possible consequences of a delay in making repayment or a failure to make repayment, for the purpose of showing that understanding the court may permit the introduction of evidence concerning the reputation as to collection practices of the creditor in any community of which the debtor was a member at the time of the extension of credit.

"(c) GRADING.—An offense described in this section is—

"(1) a Class C felony in the circumstances set forth in subsection (a)(1);

"(2) a Class D felony in the circumstances set forth in subsection (a)(2); and

"(3) a Class E felony in the circumstances set forth in subsection (a)(3) or (a)(4).

"§ 1805. Facilitating a Racketeering Activity by Violence

"(a) OFFENSE.—A person is guilty of an offense if, with intent to facilitate a racketeering activity, he engages in any conduct constituting an offense under a section in subchapter A or B of chapter 16.

"(b) DEFINITION.—As used in this section, 'racketeering activity' does not include conduct constituting a felony under section 1601 (Murder), 1602 (Manslaughter), 1611 (Maiming), 1612 (Aggravated Battery), or 1615 (Terrorizing), or under a State statute relating to murder.

"(c) GRADING.—An offense described in this section is a Class D felony.

"(d) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the United States mail or a facility in interstate or foreign commerce is used in the planning, promotion, management, execution, consummation, or concealment of the offense, or in the distribution of the proceeds of the offense; or

"(2) movement of a person across a State or United States boundary occurs in the planning, promotion, management, execution, consummation, or concealment of the offense or in the distribution of the proceeds of the offense.

"§1806. Trafficking in Contraband Cigarettes

"(a) OFFENSE.—A person is guilty of an offense if he violates 18 U.S.C. App. 2342 (relating to contraband cigarettes).

"(b) GRADING.—An offense described in this section is a Class D felony.

"§1807. Definitions for Subchapter A

"As used in this subchapter—

"(a) 'creditor' means a person who makes an extension of credit, or who claims by, under, or through a person making an extension of credit;

"(b) 'debtor' means a person to whom an extension of credit is made, or a person who guarantees the repayment of an extension of credit or who undertakes to indemnify the creditor against loss from a failure to repay the extension of credit;

"(c) 'extension of credit' means a loan, a renewal of a loan, or a tacit or express agreement concerning the deferment of the repayment or satisfaction of a debt or claim, however the loan or renewal or agreement arose, whether it is acknowledged or disputed, and whether it is valid or invalid;

"(d) 'extortionate extension of credit' means an extension of credit with respect to which it is the understanding of the creditor and the debtor, at the time it is made, that delay in making repayment or failure to make repayment could result in the use of force, or in threatening or placing any person in fear that any person will be subjected to bodily injury, kidnapping, or injury to reputation, or that any property will be damaged;

"(e) 'pattern of racketeering activity' means two or more separate acts of racketeering activity, at least one of which occurred after the effective date of this subchapter, that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events;

"(f) 'racketeering activity' means—

"(1) conduct constituting a felony under section 1321 (Witness Bribery), 1322 (Corrupting a Witness or an Informant), 1323 (Tampering With a Witness or an Informant), 1324 (Retaliating Against a Witness or an Informant), 1325 (Tampering With Physical Evidence), 1351 (Bribery), 1352 (Graft), 1403 (Alcohol and Tobacco Tax Offenses), 1411 (Smuggling), 1412 (Trafficking in Smuggled Property),

1601 (Murder), 1602 (Manslaughter), 1611 (Maiming), 1612 (Aggravated Battery), 1615 (Terrorizing), 1621 (Kidnapping), 1701 (Arson), 1711 (Burglary), 1712 (Criminal Entry), 1721 (Robbery), 1722 (Extortion), 1723 (Blackmail), 1731 (Theft), 1732 (Trafficking in Stolen Property), 1734 (Executing a Fraudulent Scheme), 1735 (Bankruptcy Fraud), 1738 (Criminal Infringement of a Copyright), 1741 (Counterfeiting), 1742 (Forgery), 1745 (Trafficking in a Counterfeiting Implement), 1751 (Commercial Bribery), 1752 (Labor Bribery), 1753 (Sports Bribery), 1761 (Securities Offenses) that involves fraud, 1762 (Monetary Offenses), 1804 (Loansharking), 1806 (Trafficking in Contraband Cigarettes), 1811 (Trafficking in an Opiate), 1812 (Trafficking in Drugs), 1821 (Explosives Offenses), 1822 (Firearms Offenses), 1841 (Engaging in a Gambling Business), 1842(a)(2) (Disseminating Obscene Material), 1843 (Conducting a Prostitution Business), or 1844 (Sexually Exploiting a Minor);

"(2) conduct constituting a felony under a State statute relating to murder, kidnapping, arson, robbery, bribery, extortion, theft, trafficking in stolen property, trafficking in narcotics or other dangerous drugs, or engaging in a gambling business; or

"(3) conduct defined as 'racketeering activity' in former 18 U.S.C. 1961(1)(B), (C), or (D) (part of section 901(a) of the Organized Crime Control Act of 1970);

"(g) 'racketeering syndicate' means a group of five or more persons who, individually or collectively, engage on a continuing basis in conduct constituting racketeering activity, other than racketeering activity consisting solely of conduct constituting a felony under section 1841 (Engaging in a Gambling Business) or 1843 (Conducting a Prostitution Business) or under the law of a State relating to engaging in a gambling business; and

"(h) 'repayment' includes (1) a return, in whole or in part, of an extension of credit, and (2) a payment of interest on, or of a charge for, an extension of credit.

"Subchapter B—Drug Offenses

"§1811. Trafficking in an Opiate

"(a) OFFENSE.—A person is guilty of an offense if he—

"(1) manufactures or traffics in an opiate;

"(2) creates or traffics in a counterfeit substance containing an opiate;

"(3) imports or exports an opiate, or possesses an opiate aboard a vehicle arriving in or departing from the United States or the customs territory of the United States; or

"(4) manufactures or traffics in an opiate for import into the United States.

"(b) GRADING.—An offense described in this section is—

"(1) a Class B felony if—

"(A) the opiate weighs 100 grams or more;

"(B) the offense consists of distributing the opiate to a person who is less than eighteen years old and who is at least five years younger than the defendant; or

"(C) the offense is committed after the defendant had been convicted of a felony under federal, State, or foreign law relating to an opiate, or while he was on release pending trial for an offense described in subsection (a); and

"(2) a Class C felony in any other case.

Notwithstanding the provisions of part III of this title, the court may not sentence the defendant to probation but shall sentence him, after consideration of the factors set forth in section 2003(a), to a term of imprisonment of not less than two years, with the sentence to run consecutivel, to any other term of imprisonment imposed upon the defendant, unless the court finds that, at the time of the offense, the defendant was less than eighteen years old; the defendant's mental capacity was significantly impaired, although the impairment was not such as to constitute a defense to prosecution; the defendant was under unusual and substantial duress, although not such duress as would constitute a defense to prosecution; or the defendant was an accomplice whose participation in the offense was relatively minor.

"§ 1812. Trafficking in Drugs

"(a) OFFENSE.—A person is guilty of an offense if he—

"(1) manufactures or traffics in a controlled substance other than an opiate;

"(2) creates or traffics in a counterfeit substance other than a counterfeit substance containing an opiate;

"(3) imports or exports a controlled substance other than an opiate, or possesses a controlled substance other than an opiate aboard a vehicle arriving in or departing from the United States or the customs territory of the United States; or

"(4) manufactures or traffics in a controlled substance other than an opiate, and other than a substance listed in Schedule III, IV, or V, for import into the United States.

"(b) GRADING.—An offense described in this section is—

"(1) a Class C felony if the controlled substance is listed in Schedule I or II and is—

"(A) a narcotic drug other than an opiate; or

"(B) phencyclidine (PCP);

"(2) a Class D felony if the controlled substance is—

"(A) a substance listed in Schedule I or II other than—

"(i) a narcotic drug; or

"(ii) 300 grams or less of marihuana; or

"(B) a substance listed in Schedule III;

"(3) a Class E felony if the controlled substance is a substance listed in Schedule IV;

"(4) a Class A misdemeanor if the controlled substance is—

"(A) a substance listed in Schedule V; or

"(B) 100 to 300 grams of marihuana; and

"(5) a Class B misdemeanor if the controlled substance is less than 100 grams of marihuana;

unless the offense consists of distributing the controlled substance to a person who is less than eighteen years old and who is at least five years younger than the defendant, in which case the offense is of the class next above that otherwise specified.

"§ 1813. Possessing Drugs

"(a) OFFENSE.—A person is guilty of an offense if he possesses a controlled substance.

"(b) DEFENSE.—It is a defense to a prosecution under this section that the controlled substance was obtained by the defendant from, or pursuant to a valid prescription or order issued by, a practitioner acting in the course of his professional practice.

"(c) ARREST PRECLUDED.—Notwithstanding any other provision of law, a person who commits an offense consisting solely of an infraction under this section may not be arrested for the offense, but instead shall be issued a summons.

"(d) GRADING.—An offense described in this section is—

"(1) a Class D felony if the controlled substance is 100 grams or more of an opiate;

"(2) a Class A misdemeanor if the controlled substance is—

"(A) less than 100 grams of an opiate;

"(B) 150 grams or more of marihuana; or

"(C) a substance other than an opiate or marihuana;

"(3) a Class C misdemeanor if the controlled substance is more than 30 grams but less than 150 grams of marihuana; and

"(4) an infraction if the controlled substance is 30 grams or less of marihuana.

Notwithstanding the provisions of part III of this title, the authorized fine is not more than $500 for a Class C misdemeanor, not more than $500 for an infraction involving more than 10 grams of marihuana, if the defendant had twice been convicted of an offense under federal, State, or local law relating to marihuana, and not more than $100 for an infraction in any other case; the court shall sentence the defendant to pay the maximum authorized fine if the defendant is convicted of an infraction involving more than 10 grams of marihuana, or if the defendant is convicted of a Class C misdemeanor or an infraction and had twice been convicted of an offense under federal, State, or local law relating to marihuana; and the court may not sentence the defendant to a term of imprisonment for an infraction.

"§ 1814. Violating a Drug Regulation

"(a) OFFENSE.—A person is guilty of an offense if he violates—

"(1) section 401(d) of the Controlled Substances Act (21 U.S.C. 841(d)) (relating to the possession of piperidine);

"(2) section 402(a) or (b) of the Controlled Substances Act (21 U.S.C. 842(a) or (b)) (relating to the dispensing and manufacturing of controlled substances by registered manufacturers, distributors, and dispensers of controlled substances);

"(3) section 403(a) (1), (2), (3), (4)(B), or (5) of the Controlled Substances Act (21 U.S.C. 843(a) (1), (2), (3), or (5)) (relating to the distribution of controlled substances by registrants, the use of labeling implements to render a drug a counterfeit substance, and the presentation of false identification to obtain a controlled substance); or

"(4) section 1004 of the Controlled Substances Import and Export Act (21 U.S.C. 954) (relating to the importation for transshipment to another country of controlled substances).

"(b) GRADING.—An offense described in this section is—

"(1) a Class E felony in the circumstances set forth in subsection (a)(1) or (a)(3); and

"(2) a Class A misdemeanor in the circumstances set forth in subsection (a)(2) or (a)(4).

"§ 1815. General Provisions for Subchapter B

"(a) DEFINITIONS.—As used in this chapter—

"(1) 'controlled substance', 'counterfeit substance', 'distribute' (incorporated through the definition of the term 'traffic' in section 111), 'manufacture', 'marihuana', 'narcotic drug', and 'practitioner' have the meanings set forth in section 102 of the Controlled Substances Act (21 U.S.C. 802), and 'phencyclidine' has the meaning set forth in section 310 of the Controlled Substances Act (21 U.S.C. 830);

"(2) 'customs territory of the United States' has the meaning set forth in section 1001 of the Controlled Substances Import and Export Act (21 U.S.C. 951);

"(3) 'dispense' (incorporated through the definition of the term 'traffic' in section 111) means to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the order of, a practitioner, and includes the prescribing or administering of a controlled substance and the packaging, labeling, or compounding necessary to prepare the substance for such delivery;

"(4) 'import' means to import into the United States from any place outside the United States, or into the customs territory of the United States from any place outside the customs territory of the United States but within the United States;

"(5) 'opiate' means a mixture or substance containing a detectable amount of any narcotic drug that is a controlled substance listed in Schedule I or II, other than a narcotic drug consisting of (A) coca leaves; (B) a compound, manufacture, salt, derivative, or preparation of coca leaves; or (C) a substance chemically identical thereto; and

"(6) 'Schedule I', 'Schedule II', 'Schedule III', 'Schedule IV', and 'Schedule V' refer to the schedules of controlled substances established by section 202 of the Controlled Substances Act (21 U.S.C. 812).

"(b) DEFENSE.—It is a defense to a prosecution under section 1811, 1812, or 1813 that the actor's conduct was authorized by the provisions of the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.).

"Subchapter C—Explosives and Firearms Offenses

"§ 1821. Explosives Offenses

"(a) OFFENSE.—A person is guilty of an offense if he—

"(1) transports or possesses an explosive with intent that it be used, or with knowledge that it will be used, to commit a federal, State, or local felony;

"(2) violates a provision included in subsection (a) through (k) of section 1103 of the Organized Crime Control Act of 1970, as amended by section 141 of the Criminal Code Reform Act of 1979 (15 U.S.C. —) (relating to the regulation and licensing of the business of importing, manufacturing, or dealing in explosive materials);

"(3) violates—

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"(A) section 4472(14) of the Revised Statutes of the United States (46 U.S.C. 170(14)) (relating to the regulation of carriage of explosive materials on vessels);

"(B) section 902(h)(2) of the Federal Aviation Act of 1958 (49 U.S.C. 1472(h)(2)) (relating to the transportation of hazardous materials in air commerce); or

"(C) section 110(b) of the Hazardous Materials Transportation Act (49 U.S.C. 1809(b)) (relating to the transportation of hazardous materials in commerce);

"(4) possesses an explosive in a government building; or

"(5) possesses an explosive in or on an airport facility or premises in fact subject to the regulatory authority of the Federal Aviation Administration.

"(b) DEFINITION.—As used in this section, 'explosive' includes a destructive device; gunpowder, smokeless powder, or powder used for blasting material; and a fuze, detonator, or other detonating agent.

"(c) DEFENSE.—It is a defense to a prosecution—

"(1) under subsection (a)(4), that the possession was in conformity with the written consent of the government agency or person responsible for the management of such building; and

"(2) under subsection (a)(5), that the actor's conduct was authorized under a regulation issued by the Administrator of the Federal Aviation Administration.

"(d) GRADING.—An offense described in this section is—

"(1) a Class C felony in the circumstances set forth in subsection (a)(1);

"(2) a Class D felony in the circumstances set forth in—

"(A) subsection (a)(2), if the violation is of a provision set forth in subsections (a) through (i) of section 1103 of the Organized Crime Control Act of 1970 (15 U.S.C. —); or

"(B) subsection (a)(5);

"(3) a Class E felony in the circumstances set forth in subsection (a)(3); and

"(4) a Class A misdemeanor in the circumstances set forth in—

"(A) subsection (a)(2), if the violation is of a provision set forth in subsection (j) or (k) of section 1103 of the Organized Crime Control Act of 1970 (15 U.S.C. —); or

"(B) subsection (a)(4).

"(e) JURISDICTION.—There is federal jurisdiction over an offense described in—

"(1) subsection (a)(1) if the explosive is being transported, shipped, or received in interstate or foreign commerce; or

"(2) subsection (a)(4) if the building is owned by, or is under the care, custody, or control of the United States.

"§ 1822. Firearms Offenses

"(a) OFFENSE.—A person is guilty of an offense if he—

"(1) transports or possesses a firearm or ammunition with intent that it be used, or with reasonable cause to believe that it is to be used, to commit a federal, State, or local felony;

"(2) violates section 103 or 104 of the Gun Control Act of 1968 as amended by section 142 of the Criminal Code Reform Act of 1979 (15 U.S.C. —) (relating to the regulation and licensing of the business of importing, manufacturing, or dealing in firearms or ammunition);

"(3) violates section 5861 of the Internal Revenue Code of 1954 (26 U.S.C. 5861) (relating to the registration of importers, manufacturers, and dealers in firearms and the payment of a special occupational tax); or

"(4) violates section 1202 of the Omnibus Crime Control and Safe Streets Act of 1968 (15 U.S.C. —) (relating to the receipt, possession, or transportation of firearms by persons prohibited from engaging in such conduct).

"(b) DEFINITION.—As used in this section, 'firearm' includes a frame or receiver of a firearm and a firearm silencer or muffler.

"(c) GRADING.—An offense described in this section is—

"(1) a Class C felony in the circumstances set forth in subsection (a)(1);

"(2) a Class D felony in the circumstances set forth in subsection (a)(2) or (a)(3); and

"(3) a Class E felony in the circumstances set forth in subsection (a)(4).

"(d) JURISDICTION.—There is federal jurisdiction over an offense described in subsection (a)(1) if the firearm or ammunition is being transported, shipped, or received in interstate or foreign commerce.

"§ 1823. Using a Weapon in the Course of a Crime

"(a) OFFENSE.—A person is guilty of an offense if, during and in relation to the commission of a crime of violence, other than a misdemeanor that consists solely of damage to property and that does not place another person in danger of death or serious bodily injury, he—

"(1) displays or otherwise uses a firearm or a destructive device;

"(2) possesses a firearm or a destructive device; or

"(3) displays or otherwise uses—

"(A) a dangerous weapon other than a firearm or a destructive device; or

"(B) an imitation of a firearm or a destructive device.

"(b) GRADING.—An offense described in this section is—

"(1) a Class D felony in the circumstances set forth in subsection (a)(1); and

"(2) a Class E felony in the circumstances set forth in subsection (a)(2) or (a)(3).

Notwithstanding the provisions of part III of this title, if the offense is committed in the circumstance set forth in subsection (a)(1) or (a)(2), the court may not sentence the defendant to probation but shall sentence him, after consideration of the factors set forth in section 2003(a), to a term of imprisonment of not less than two years for an offense described in subsection (a)(1) or one year for an offense described in subsection (a)(2), with the sentence to run consecutively to any other term of imprisonment imposed upon the defendant, unless the court finds that, at the time of the offense, the defendant was less than eighteen years old; the defendant's mental capacity was significantly impaired, although the impairment was not such as to constitute a defense to prosecution; the defendant was under unusual and substantial duress, although not such duress as would constitute a defense to prosecution; the defendant was an accomplice whose participation in the offense was relatively minor; or the defendant establishes by a preponderance of the evidence that he committed the offense based upon a good faith belief that he was acting to protect a person or property from conduct constituting a felony, although not under such circumstances as would constitute a defense to prosecution.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if the offense occurs during the commission of any other offense described in this title over which federal jurisdiction exists.

"§ 1824. Possessing a Weapon Aboard an Aircraft

"(a) OFFENSE.—A person is guilty of an offense if he possesses or secretes aboard an aircraft—

"(1) a dangerous weapon, other than a destructive device, that in fact is concealed and that is, or that would be, accessible to such person in flight; or

"(2) a destructive device that in fact is concealed.

"(b) DEFENSE.—It is a defense to a prosecution under this section that the actor's conduct was authorized under a regulation issued by the Administrator of the Federal Aviation Administration.

"(c) GRADING.—An offense described in this section is—

"(1) a Class D felony in the circumstances set forth in subsection (a)(2); and

"(2) a Class E felony in the circumstances set forth in subsection (a)(1).

"(d) JURISDICTION.—There is federal jurisdiction over an offense described in this section if the offense is committed on an aircraft in, or intended for operation in, air transportation or intrastate air transportation as defined in section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301).

"Subchapter D—Riot Offenses

"Sec.

"§ 1831. Leading a Riot

"(a) OFFENSE.—A person is guilty of an offense if—

"(1) he causes a riot by incitement, or during a riot he incites participation in the riot; or

"(2) during a riot he leads, or gives commands, instructions, or directions in furtherance of, the riot.

"(b) GRADING.—An offense described in this section is—

"(1) a Class D felony if the riot involves persons in a facility used for official detention; and

"(2) a Class E felony in any other case.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the offense is committed within the special jurisdiction of the United States;

"(2) the riot involves persons in a federal facility used for official detention; or

"(3) movement of a person across a State or United States boundary occurs in the execution or consummation of the offense.

"§ 1832. Providing Arms for a Riot

"(a) OFFENSE.—A person is guilty of an offense, if, with intent to promote a riot, he supplies, or teaches the preparation or use of, a firearm, a destructive device, or another dangerous weapon.

"(b) GRADING.—An offense described in this section is—

"(1) a Class D felony if it involves the supplying of a firearm or a destructive device; and

"(2) a Class E felony in any other case.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) a circumstance specified in section 1831(c) exists or has occurred; or

"(2) the firearm, destructive device, or other dangerous weapon supplied is moved across a State or United States boundary in the commission of the offense.

"§ 1833. Engaging in a Riot

"(a) OFFENSE.—A person is guilty of an offense if he engages in a riot.

"(b) GRADING.—An offense described in this section is—

"(1) a Class E felony if the riot involves persons in a facility used for official detention; and

"(2) a Class B misdemeanor in any other case.

"(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the offense is committed within the special jurisdiction of the United States; or

"(2) the offense is committed in a federal facility used for official detention.

"§ 1834. Definition for Subchapter D

"As used in this subchapter, 'riot' means a public disturbance (a) that involves ten or more persons as participants; (b) that involves violent and tumultuous conduct on the part of the participants; and (c) that causes, or creates a grave danger of imminently causing, bodily injury to a person or damage to property.

"Subchapter E—Gambling, Obscenity, and Prostitution Offenses

"§ 1841. Engaging in a Gambling Business

"(a) OFFENSE.—A person is guilty of an offense if he—

"(1) owns, controls, manages, supervises, directs, conducts, finances, or otherwise engages in a gambling business;

"(2) receives lay-off wagers or otherwise provides reinsurance in relation to persons engaged in gambling;

"(3) carries or sends—

"(A) a gambling device;

"(B) gambling information; or

"(C) gambling proceeds;

to any place within a State from any place outside the State; or

"(4) otherwise establishes, promotes, manages, or carries on an enterprise involving gambling.

"(b) DEFINITIONS.—As used in this section—

"(1) 'gambling business' means a business involving gambling of any kind that, in fact—

"(A) has five or more persons engaged in the business; and

"(B) has been in substantially continuous operation for a period of thirty days or more, or has taken in $2,000 or more in any single day;

"(2) 'gambling device' means—

"(A) any device covered by section 1 of the Act of January 2, 1951 (15 U.S.C. 1171) and not excluded by section 9 (2) or (3) of the Act of January 2, 1951, as added by section 6 of the Gambling Devices Act of 1962 (15 U.S.C. 1178 (2) or (3)); or

"(B) any record, paraphernalia, ticket, certificate, bill, slip, token, writing, scratch sheet, or other means of carrying on bookmaking, wagering pools, bingo or keno games, lotteries, policy, bolita, numbers, or similar games, or any equipment for carrying on card or dice games other than cards or dice used in such games; and

"(3) 'gambling information' means information consisting of, or assisting in, the placing of a bet or wager, or the purchase of a ticket in a lottery or similar game of chance.

"(c) DEFENSE.—It is a defense to a prosecution—

"(1) under subsection (a)(1), (a)(2), or (a)(4), that the kind of gambling business or enterprise, the manner in which the business or enterprise was operated, and the defendant's participation therein, were legal in all States and localities in which it was carried on, including any State and locality from which a customer placed a wager with, or otherwise patronized, the gambling business or enterprise, and any State and locality in which the wager was received or to which it was transmitted; and

"(2) under subsection (a)(3) that—

"(A) the gambling device was carried or sent into, or was en route to, solely a State and locality in which the use of such a device was legal;

"(B) the defendant was a common or public contract carrier, or an employee thereof, and was carrying the gambling device in the usual course of business;

"(C) the defendant was a player or bettor and the gambling device he was carrying or sending was solely a ticket or other embodiment of his claim;

"(D) the transmission of the gambling information was made solely in connection with news reporting;

"(E) the transmission of the gambling information was solely from a State and locality in which such gambling was legal into a State and locality in which such gambling was legal; or

"(F) the gambling proceeds were obtained by the defendant as a result of his lawful participation in gambling which was legal in all States and localities in which it was carried on, including any State and locality from which the defendant placed a wager or otherwise participated in gambling activity, and any State and locality in which his wager was received or to which it was transmitted.

"(d) ESTABLISHING PROBABLE CAUSE.—If five or more persons are engaged in a gambling business, and such business operates for two or more successive days, then, solely for the purpose of obtaining warrants for arrests, interceptions of communications, and other searches and seizures, probable cause that the busi-

ness has taken in $2,000 or more in any single day shall be considered to be established.

"(e) GRADING.—An offense described in this section is—

"(1) a Class D felony in the circumstances set forth in subsection (a)(1) or (a)(2); and

"(2) a Class E felony in the circumstances set forth in subsection (a)(3) or (a)(4).

"(f) JURISDICTION.—There is federal jurisdiction over an offense described in—

"(1) subsection (a)(1) or (a)(2) if the offense is committed—

"(A) within the general jurisdiction of the United States;

"(B) within the special jurisdiction of the United States; or

"(2) subsection (a)(3) or (a)(4) if—

"(A) the United States mail or a facility in interstate or foreign commerce is used in the planning, promotion, management, execution, consummation, or concealment of the offense, or in the distribution of the proceeds of the offense; or

"(B) movement of any person across a State or United States boundary occurs in the planning, promotion, management, execution, consummation, or concealment of the offense, or in the distribution of the proceeds of the offense.

"§ 1842. Disseminating Obscene Material

"(a) OFFENSE.—A person is guilty of an offense if he—

"(1) disseminates obscene material—

"(A) to a minor; or

"(B) to any person in a manner affording no immediately effective opportunity to avoid exposure to such material; or

"(2) commercially disseminates obscene material to any person.

"(b) DEFINITIONS.—As used in this section—

"(1) 'commercially disseminate' means to disseminate for profit or to disseminate other than for profit by means of mass communication;

"(2) 'community' means the State or local community in which the obscene material is disseminated;

"(3) 'disseminate' means—

"(A) to transfer, distribute, dispense, lend, display, exhibit, send, or broadcast, whether for profit or otherwise; or

"(B) to produce, transport, or possess with intent to do any of the foregoing;

"(4) 'minor' means an unmarried person less than seventeen years old;

"(5) 'obscene material' means material that—

"(A) sets forth in a patently offensive way—

"(i) an explicit representation, or a detailed written or verbal description, of an act of sexual intercourse, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between a human being and an animal; of masturbation; or of flagellation, torture, or other violence indicating a sado-masochistic sexual relationship; or

"(ii) an explicit, close-up representation of a human genital organ;

"(B) taken as a whole, appeals predominantly to the prurient interest of—

"(i) the average person, applying contemporary community standards; or

"(ii) the average person within a sexually deviant class of persons, if such material is designed for dissemination to such class of persons; and

"(C) taken as a whole, lacks serious artistic, scientific, literary, or political value; and

"(6) 'sexually explicit conduct' has the meaning set forth in section 1844(b)(2).

"(c) DEFENSE.—It is a defense to a prosecution under subsection (a)(1)(B) or (a)(2) that dissemination of the material was legal in the political subdivision or locality in which it was disseminated.

"(d) AFFIRMATIVE DEFENSES.—It is an affirmative defense to a prosecution under this section that dissemination of the material was restricted to—

"(1) a person associated with an institution of higher learning, either as a member of the faculty or as an enrolled student, teaching or pursuing a bona fide course of study, or conducting or engaging in a bona fide research program, to which such material is pertinent; or

"(2) a person whose receipt of such material was authorized in writing by a licensed or certified psychiatrist, psychologist, or medical practitioner.

"(e) GRADING.—An offense described in this section is—

"(1) a Class D felony if the offense involves the commercial dissemination of material that sets forth sexually explicit conduct by a minor; and

"(2) a Class E felony in any other case.

"(f) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the offense is committed within the special jurisdiction of the United States;

"(2) the United States mail or a facility in interstate or foreign commerce is used in the commission of the offense; or

"(3) the material is moved across a State or United States boundary.

"§ 1843. Conducting a Prostitution Business

"(a) OFFENSE.—A person is guilty of an offense if he owns, controls, manages, supervises, directs, finances, procures patrons for, or recruits participants in, a prostitution business.

"(b) DEFINITIONS.—As used in this section—

"(1) 'prostitution' means engaging in sexually explicit conduct, as defined in section 1844(b)(2), as consideration for anything of pecuniary value or for commercial exploitation; and

"(2) 'prostitution business' means a business in which a person controls, manages, supervises, or directs the prostitution of another person.

"(c) DEFENSE.—It is a defense to a prosecution under this section that the prostitution business and the prostitution involved was legal in all States and localities in which it was carried on.

"(d) GRADING.—An offense described in this section is—

"(1) a Class D felony if the business involves prostitution, or recruiting for prostitution, of a person less than eighteen years old; and

"(2) a Class E felony in any other case.

"(e) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the offense is committed within the special jurisdiction of the United States;

"(2) the United States mail or a facility in interstate or foreign commerce is used in the planning, promotion, management, execution, consummation, or concealment of the offense, or in the distribution of the proceeds of the offense; or

"(3) movement of any person across a State or United States boundary occurs in the planning, promotion, management, execution, consummation, or concealment of the offense, or in the distribution of the proceeds of the offense.

"§ 1844. Sexually Exploiting a Minor

"(a) OFFENSE.—A person is guilty of an offense if he—

"(1) employs, uses, persuades, induces, entices, or coerces a minor; or

"(2) being a parent, legal guardian, or person having custody or control of a minor, permits such minor;

to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose of producing any visual or printed medium depicting such conduct.

"(b) DEFINITIONS.—As used in this section—

"(1) 'minor' means a person less than sixteen years old; and

"(2) 'sexually explicit conduct' means an act of sexual intercourse, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between a human being and an animal; of oral-

anal contact; of masturbation; of flagellation, torture, or other violence indicating a sado-masochistic sexual relationship; or of lewd exhibition of a human genital organ.

"(c) GRADING.—An offense described in this section is—

"(1) a Class C felony if the offense is committed after the defendant has been previously convicted under this section; and

"(2) a Class D felony in any other case.

"(d) JURISDICTION.—There is federal jurisdiction over an offense described in this section if—

"(1) the offense is committed within the special jurisdiction of the United States; or

"(2) the material is moved across a State or United States boundary, or is placed in the United States mail.

"Subchapter F—Public Health Offenses

"§ 1851. Fraud in a Health Related Industry

"(a) OFFENSE.—A person is guilty of an offense if, with intent to defraud, he violates—

"(1) section 9, 10, 11, 14, or 17 of the Poultry Products Inspection Act (21 U.S.C. 458, 459, 460, 463, or 466) (relating to the marking, labeling, and packaging of poultry and poultry products);

"(2) section 10, 11, 19, 20, 24, 201, 202, 203, or 204 of the Federal Meat Inspection Act (21 U.S.C. 610, 611, 619, 620, 624, 641, 642, 643, or 644) (relating to the marking, labeling, and packaging of meat and meat products);

"(3) section 8 of the Egg Products Inspection Act (21 U.S.C. 1037) (relating to the marking, labeling, and packaging of eggs and egg products); or

"(4) section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331) (relating to the adulteration and misbranding of a food, drug, device, or cosmetic).

"(b) GRADING.—An offense described in this section is a Class E felony.

"§ 1852. Distributing Adulterated Food

"(a) OFFENSE.—A person is guilty of an offense if in the distribution of an adulterated article he violates—

"(1) section 9, 10, 11, 14, or 17 of the Poultry Products Inspection Act (21 U.S.C. 458, 459, 460, 463, or 466) (relating to the distribution of adulterated poultry and poultry products);

"(2) section 10, 11, 19, 20, 24, 201, 202, 203, or 204 of the Federal Meat Inspection Act (21 U.S.C. 610, 611, 619, 620, 624, 641, 642, 643,

or 644) (relating to the distribution of adulterated meat and meat products); or

"(3) section 8 of the Egg Products Inspection Act (21 U.S.C. 1037) (relating to the distribution of adulterated eggs and egg products).

"(b) DEFINITION.—The term 'adulterated', as used—

"(1) in subsection (a)(1) has the meaning set forth in section 4(g) of the Poultry Products Inspection Act (21 U.S.C. 453(g)), except for paragraph 8 thereof;

"(2) in subsection (a)(2) has the meaning set forth in section 2(m) of the Federal Meat Inspection Act (21 U.S.C. 601(m)), except for paragraph 8 thereof; and

"(3) in subsection (a)(3) has the meaning set forth in section 4(a) of the Egg Products Inspection Act (21 U.S.C. 1033(a)), except for paragraph 8 thereof.

"(c) GRADING.—An offense described in this section is a Class E felony.

"§ 1853. Environmental Pollution

"(a) OFFENSE.—A person is guilty of an offense if he violates—

"(1) section 309(c)(1) of the Federal Water Pollution Control Act, as added by section 2 of the Act of October 18, 1972, and amended (33 U.S.C. 1319(c)(1)) (relating to the control of water pollution and to water quality permits);

"(2) section 404(s)(4)(A) of the Federal Water Pollution Control Act, as added by section 2 of the Act of October 18, 1972, and amended (33 U.S.C. 1344(s)(4)(A)) (relating to discharge of dredged or fill material into navigable waters);

"(3) section 113(c)(1) of the Clean Air Act, as added by section 4(a) of the Clean Air Act Amendments of 1970 (42 U.S.C. 7413(c)(1)) (relating to clean air standards and implementation plans and orders of the Administrator under the Clean Air Act);

"(4) section 11(a)(1) of the Noise Control Act of 1972 (42 U.S.C. 4910(a)(1)) (relating to the manufacture, sale, and importation of products that violate noise emission standards);

"(5) section 3008(d) of the Solid Waste Disposal Act (42 U.S.C. 6928(d)) (relating to the transportation and disposal of hazardous waste); or

"(6) section 24(c)(1) or (c)(3) of the Outer Continental Shelf Lands Act, as added by section 208 of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1350(c)(1) or (c)(3)) (relating to control of pollution and conservation of natural resources in operations under oil and gas leases on the outer continental shelf).

"(b) GRADING.—An offense described in this section is—

"(1) a Class E felony in the circumstances set forth in subsection (a)(6); and

"(2) a Class A misdemeanor in the circumstances set forth in subsection (a)(1), (a)(2), (a)(3), (a)(4), or (a)(5), except that if the defendant has been previously convicted of an offense described in the same paragraph of subsection (a), the offense is a Class E felony.

Notwithstanding the provisions of section 2201(b), the authorized fine for an offense described in subsection (a)(6) is $100,000 per day of violation or the authorized fine provided in section 2201(b), whichever is higher, the authorized fine for a Class E felony punishable under paragraph (2) is not more than $50,000 per day of violation or the authorized fine otherwise available under section 2201(b), whichever is higher, and the authorized fine for a Class A misdemeanor punishable under this section is not more than $25,000 per day of violation or the authorized fine otherwise available under section 2201(b), whichever is higher.

"Subchapter G—Miscellaneous Offenses

"§ 1861. Violating State or Local Law in an Enclave

"(a) OFFENSE.—A person is guilty of an offense if in fact, in a place within the special territorial jurisdiction of the United States as described in section 203 (a)(1), (a)(2), or (a)(3), he engages in conduct—

"(1) that constitutes an offense under the law then in force in the State or locality in which such place is located;

"(2) that does not otherwise constitute an offense under a federal statute applicable in such place; and

"(3) that, in light of other federal statutes relating to similar conduct, was not intended to be excluded from the application of this section.

"(b) GRADING.—An offense described in this section is—

"(1) a Class A misdemeanor if the maximum term of imprisonment authorized by the State or local law is one year or more;

"(2) a misdemeanor or infraction of the lowest class for which there is authorized under chapter 23 a term of imprisonment equal to or exceeding the maximum term authorized by the State or local law if the maximum term of imprisonment authorized by the State or local law is less than one year; and

"(3) an infraction if the only penalty authorized by the State or local law is a criminal fine.

Notwithstanding the classification provided in this section, the term of imprisonment and the fine that may be imposed may not exceed the maximum authorized by the State or local law.

"(c) PROOF.—In a prosecution under this section whether a law is 'then in force' under subsection (a)(1), or an issue under subsection (a)(2) or (a)(3), is a question of law.

"PART III--SENTENCES

"CHAPTER 20—GENERAL PROVISIONS

"§ 2001. Authorized Sentences

"(a) IN GENERAL.—Except as otherwise specifically provided, a defendant who has been found guilty of an offense described in any federal statute shall be sentenced in accordance with the provisions of this chapter so as to achieve the purposes set forth in paragraphs (1) through (4) of section 101(b) to the extent that they are applicable in light of all the circumstances of the case.

"(b) INDIVIDUALS.—An individual found guilty of an offense shall be sentenced, in accordance with the provisions of section 2003, to—

"(1) a term of probation as authorized by chapter 21;

"(2) a fine as authorized by chapter 22; or

"(3) a term of imprisonment as authorized by chapter 23.

A sentence to pay a fine may be imposed in addition to any other sentence. A sanction authorized by section 2004, 2005, or 2006 may be imposed in addition to the sentence required by this subsection.

"(c) ORGANIZATIONS.—An organization found guilty of an offense shall be sentenced, in accordance with the provisions of section 2003, to—

"(1) a term of probation as authorized by chapter 21; or

"(2) a fine as authorized by chapter 22.

A sentence to pay a fine may be imposed in addition to a sentence to probation. A sanction authorized by section 2004, 2005, or 2006 may be imposed in addition to the sentence required by this subsection.

"§ 2002. Presentence Reports

"(a) PRESENTENCE INVESTIGATION AND REPORT BY PROBATION OFFICER.—A probation officer appointed by the court shall make a presentence investigation of a defendant and shall report the results of the investigation to the

court before the imposition of sentence, pursuant to the provisions of Rule 32(c) of the Federal Rules of Criminal Procedure.

"(b) PRESENTENCE STUDY AND REPORT BY BUREAU OF PRISONS.—If the court, before or after its receipt of a report specified in subsection (a) or (c), desires more information than is otherwise available to it as a basis for determining the sentence to be imposed on a defendant found guilty of a felony, it may order that the defendant, for the purpose of a study, be committed to the custody of the Bureau of Prisons for a period of not more than sixty days. The order shall specify the additional information that the court needs before determining the sentence to be imposed. Such an order shall be treated for administrative purposes as a provisional sentence of imprisonment for the maximum term authorized by section 2301(b) for the offense committed. The Bureau shall conduct a complete study of the defendant during such period, inquiring into such matters as are specified by the court and any other matters that it believes are pertinent to the factors set forth in section 2003(a). The period of commitment may, in the discretion of the court, be extended for an additional period of not more than sixty days. By the expiration of the period of commitment, or by the expiration of any extension granted by the court, the Bureau shall return the defendant to the court for final sentencing, shall provide the court with a written report of the pertinent results of the study, and shall make to the court whatever recommendations the Bureau believes will be helpful to a proper resolution of the case. The report shall include recommendations of the Bureau concerning the guidelines and policy statements, promulgated by the Sentencing Commission pursuant to 28 U.S.C. 994(a), that it believes are applicable to the defendant's case. After receiving the report and the recommendations, the court shall proceed finally to sentence the defendant in accordance with the sentencing alternatives and procedures available under this chapter.

"(c) PRESENTENCE EXAMINATION AND REPORT BY PSYCHIATRIC EXAMINERS.—If the court, before or after its receipt of a report specified in subsection (a) or (b), desires more information than is otherwise available to it as a basis for determining the mental condition of the defendant, it may order that the defendant undergo a psychiatric examination, and that the court be provided with a written report of the results of the examination, pursuant to the provisions of section 3617.

"§ 2003. Imposition of a Sentence

"(a) FACTORS TO BE CONSIDERED IN IMPOSING A SENTENCE.—The court, in determining the particular sentence to be imposed, shall consider—

"(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

"(2) the need for the sentence imposed—

"(A) to afford adequate deterrence to criminal conduct;

"(B) to protect the public from further crimes of the defendant;

"(C) to reflect the seriousness of the offense, to promote respect for law, and to provide just punishment for the offense; and

"(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

"(3) the kinds of sentences available;

"(4) the kinds of sentence and the sentencing range established for the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines that are issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1) and that are in effect on the date the defendant is sentenced;

"(5) any pertinent policy statement issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2) that is in effect on the date the defendant is sentenced; and

"(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.

"(b) APPLICATION OF GUIDELINES IN IMPOSING A SENTENCE.—The court shall impose a sentence of the kind, and within the range, described in paragraph (4) unless the court finds that an aggravating or mitigating circumstance exists that was not adequately taken into consideration by the Sentencing Commission in formulating the guidelines and that should result in a sentence different from that described.

"(c) STATEMENT OF REASONS FOR IMPOSING A SENTENCE.—The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence, and, if the sentence is not of the kind, or is outside the range described in subsection (a)(4), the specific reason for the imposition of a sentence different from that described. The clerk of the court shall provide a transcription of the court's statement of reasons to the Probation Service, and, if the sentence includes a term of imprisonment, to the Bureau of Prisons.

"§ 2004. Order of Criminal Forfeiture

"(a) FORFEITURE.—The court, in imposing a sentence on a defendant who has been found guilty of an offense described in section 1801 (Operating a Racketeering Syndicate), 1802 (Racketeering), or 1803 (Washing Racketeering Proceeds), shall order, in addition to the sentence that is imposed pursuant to the provisions of section 2001, that the defendant forfeit to the United States any property constituting his interest in the racketeering syndicate or enterprise involved.

"(b) PROTECTIVE ORDERS.—At any time after the arrest of the defendant for, or after the filing of an indictment or information charging, an offense for which a criminal forfeiture may be ordered under subsection (a), the court may enter a restraining order or injunction, may require a performance bond, and may take

such action as is in the interest of justice, with respect to any property that may be subject to criminal forfeiture.

"(c) EXECUTION.—The Attorney General, upon such terms and conditions as are in the interest of justice, shall seize property that a defendant has been ordered to forfeit to the United States, and shall dispose of such property as soon as commercially feasible, making due provision for the rights of any innocent person. If any property cannot be disposed of, the rights to such property shall not revert to the defendant.

"(d) APPLICABILITY OF CIVIL FORFEITURE PROVISIONS.—Except to the extent that they are inconsistent with the provisions of this section, all provisions of law relating to the remission or mitigation of civil forfeitures of property for violation of the customs laws, the compromise of claims with respect to such property, the disposition of such property, the proceeds from the sale of such property, and the award of compensation to informants with respect to such property, shall apply to a criminal forfeiture ordered under this section. The duties imposed upon a customs officer or any other person with respect to the civil seizure, forfeiture, and disposition of property under the customs laws shall, with respect to property that has been ordered forfeited to the United States under this section, be performed by the Attorney General.

"§ 2005. Order of Notice to Victims

"The court, in imposing a sentence on a defendant who has been found guilty of an offense involving fraud or other deceptive practices, may order, in addition to the sentence that is imposed pursuant to the provisions of section 2001, that the defendant give reasonable notice and explanation of the conviction, in such form as the court may approve, to the class of persons or to the sector of the public affected by the conviction or financially interested in the subject matter of the offense. The notice may be ordered to be given by mail, by advertising in designated areas or through designated media, or by other appropriate means. In determining whether to require the defendant to give such notice, the court shall consider the factors set forth in section 2003(a) to the extent that they are applicable and shall consider the cost involved in giving the notice as it relates to the loss caused by the offense.

"§ 2006. Order of Restitution

"The court, in imposing a sentence on a defendant who has been found guilty of an offense causing bodily injury or property damage or other loss, may order, in addition to the sentence that is imposed pursuant to the provisions of section 2001, that the defendant make restitution to a victim of the offense in an amount that does not exceed such portion of the loss as the court determines can be ascertained without unduly complicating or prolonging the sentencing process. The provisions of sections 2202, 2203, 3812, and 3813 apply to an order to make restitution as they apply to a sentence to pay a fine.

"§2007. Review of a Sentence

"The review of a sentence imposed pursuant to section 2001 is governed by the provisions of sections 3723, 3724, and 3725 of this title, by Rule 35 of the Federal Rules of Criminal Procedure, by section 1291 of title 28, United States Code, and by the Federal Rules of Appellate Procedure. An otherwise final sentence that is subject to such review is—

"(a) final, at the time of imposition, with respect to that portion or degree of the sentence that is not subject to modification through such review; and

"(b) provisional, at the time of imposition, with respect to that portion or degree of the sentence that is subject to modification through such review.

"§2008. Implementation of a Sentence

"The implementation of a sentence imposed pursuant to section 2001 is governed by the provisions of chapter 38.

"§2009. Sentencing Classification of Offenses Outside This Title

"(a) CLASSIFICATION.—Except as otherwise expressly provided in this title, an offense described outside this title, that is not specifically classified by a letter grade in the section defining it, is classified—

"(1) if the maximum term of imprisonment authorized is—

"(A) more than six months, as a Class A misdemeanor;

"(B) six months or less but more than thirty days, as a Class B misdemeanor;

"(C) thirty days or less but more than five days, as a Class C misdemeanor; or

"(D) five days or less, or if no imprisonment is authorized, as an infraction; and

"(2) if the maximum term of imprisonment authorized is two years or more because the offense is a second or subsequent offense, as a Class E felony.

"(b) EFFECT OF CLASSIFICATION.—An offense classified under subsection (a) carries all the incidents assigned to the applicable letter designation except that—

"(1) the maximum term of imprisonment that may be imposed may not exceed the term authorized by the statute describing the offense; and

"(2) the maximum fine that may be imposed is the fine authorized by the statute describing the offense, or by this title, whichever is the greater.

"CHAPTER 21—PROBATION

"Sec.
"2101. Sentence of Probation.
"2102. Imposition of a Sentence of Probation.
"2103. Conditions of Probation.
"2104. Running of a Term of Probation.

"2105. Revocation of Probation.
"2106. Implementation of a Sentence of Probation.

"§2101. Sentence of Probation

"(a) IN GENERAL.—A defendant who has been found guilty of an offense may be sentenced to a term of probation unless—

"(1) the offense is a Class A felony;

"(2) the offense is an offense for which probation has been expressly precluded; or

"(3) the defendant is sentenced at the same time to a term of imprisonment for the same or a different offense.

"(b) AUTHORIZED TERMS.—The authorized terms of probation are—

"(1) for a felony, not less than one nor more than five years;

"(2) for a misdemeanor, not more than two years; and

"(3) for an infraction, not more than one year.

"§2102. Imposition of a Sentence of Probation

"(a) FACTORS TO BE CONSIDERED IN IMPOSING A TERM OF PROBATION.—The court, in determining whether to impose a term of probation, and, if a term of probation is to be imposed, in determining the length of the term and the conditions of probation, shall consider the factors set forth in section 2003(a) to the extent that they are applicable.

"(b) EFFECT OF FINALITY OF JUDGMENT.—Notwithstanding the fact that a sentence of probation can subsequently be—

"(1) modified or revoked pursuant to the provisions of section 2104 or 2105;

"(2) corrected pursuant to the provisions of rule 35.1 and section 3723 or 3734; or

"(3) appealed and modified, if outside the guideline range, pursuant to the provisions of section 3725;

a judgment of conviction that includes such a sentence constitutes a final judgment for all other purposes.

"§2103. Conditions of Probation

"(a) MANDATORY CONDITION.—The court shall provide, as an explicit condition of a sentence of probation, that the defendant not commit another federal, State, or local crime during the term of probation.

"(b) DISCRETIONARY CONDITIONS.—The court may provide, as further conditions of a sentence of probation, to the extent that such conditions are reasonably related to the factors set forth in section 2003 (a) and (b) and to the extent that such conditions involve only such deprivations of liberty or property as are reasonably necessary for the purposes indicated in section 2003 (b), that the defendant—

"(1) support his dependents and meet other family responsibilities;

"(2) pay a fine imposed pursuant to the provisions of chapter 22;

"(3) make restitution to a victim of the offense pursuant to the provisions of section 2006;

"(4) give to the victims of the offense the notice ordered pursuant to the provisions of section 2005;

"(5) work conscientiously at suitable employment or pursue conscientiously a course of study or vocational training that will equip him for suitable employment;

"(6) refrain, in the case of an individual, from engaging in a specified occupation, business, or profession bearing a reasonably direct relationship to the conduct constituting the offense, or engage in such a specified occupation, business, or profession only to a stated degree or under stated circumstances;

"(7) refrain from frequenting specified kinds of places or from associating unnecessarily with specified persons;

"(8) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), without a prescription by a licensed medical practitioner;

"(9) refrain from possessing a firearm, destructive device, or other dangerous weapon;

"(10) undergo available medical or psychiatric treatment, including treatment for drug or alcohol dependency, as specified by the court, and remain in a specified institution if required for that purpose;

"(11) remain in the custody of the Bureau of Prisons for any time or intervals of time, totaling no more than the lesser of one year or the term of imprisonment authorized for the offense in section 2301(b), during the first year of the term of probation;

"(12) reside at, or participate in the program of, a community correction facility for all or part of the term of probation;

"(13) work in community service as directed by the court;

"(14) reside in a specified place or area, or refrain from residing in a specified place or area;

"(15) remain within the jurisdiction of the court, unless granted permission to leave by the court or a probation officer;

"(16) report to a probation officer as directed by the court or the probation officer;

"(17) permit a probation officer to visit him at his home or elsewhere as specified by the court;

"(18) answer inquiries by a probation officer and notify the probation officer promptly of any change in address or employment;

"(19) notify the probation officer promptly if arrested or questioned by a law enforcement officer; or

"(20) satisfy such other conditions as the court may impose.

"(c) MODIFICATION OF CONDITIONS.—The court may, after a hearing, modify, reduce, or enlarge the conditions of a sentence of probation at any time prior to the expiration or termination of the term of probation, pursuant to the provisions applicable to the initial setting of the conditions of probation.

"(d) WRITTEN STATEMENT OF CONDITIONS.—The court shall direct that the probation officer provide the defendant with a written statement that sets forth all the conditions to which the sentence is subject, and that is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required.

"§ 2104. Running of a Term of Probation

"(a) COMMENCEMENT.—A term of probation commences on the day that the sentence of probation is imposed, unless otherwise ordered by the court.

"(b) CONCURRENCE WITH OTHER SENTENCES.—Multiple terms of probation, whether imposed at the same time or at different times, run concurrently with each other. A term of probation runs concurrently with any federal, State, or local term of probation, or supervised release, or parole for another offense to which the defendant is subject or becomes subject during the term of probation, except that it does not run during any period in which the defendant is imprisoned, other than during limited intervals as a condition of probation or supervised release, in connection with a conviction for a federal, State, or local crime.

"(c) EARLY TERMINATION.—The court, after considering the factors set forth in section 2003(a) to the extent that they are applicable, may terminate a term of probation previously ordered and discharge the defendant at any time in the case of a misdemeanor or an infraction or at any time after the expiration of one year of probation in the case of a felony, if it is satisfied that such action is warranted by the conduct of the defendant and the interest of justice.

"(d) EXTENSION.—The court may, after a hearing, extend a term of probation, if less than the maximum authorized term was previously imposed, at any time prior to the expiration or termination of the term of probation, pursuant to the provisions applicable to the initial setting of the term of probation.

"(e) SUBJECT TO REVOCATION.—A sentence of probation remains conditional and subject to revocation until its expiration or termination.

"§ 2105. Revocation of Probation

"(a) CONTINUATION OR REVOCATION.—If the defendant violates a condition of probation at any time prior to the expiration or termination of the term of probation, the court may, after a hearing pursuant to Rule 32(e) of the Federal Rules of Criminal Procedure, and after considering the factors set forth in section 2003(a) to the extent that they are applicable—

"(1) continue him on probation, with or without extending the term or modifying or enlarging the conditions; or

"(2) revoke the sentence of probation and impose any other sentence that was available under chapter 20 at the time of the initial sentencing.

"(b) DELAYED REVOCATION.—The power of the court to revoke a sentence of probation for violation of a condition of probation, and to impose another sentence, extends beyond the expiration of the term of probation for any period reasonably necessary for the adjudication of matters arising before its expiration if, prior to its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.

"§ 2106. Implementation of a Sentence of Probation

"The implementation of a sentence of probation is governed by the provisions of subchapter A of chapter 38.

"CHAPTER 22—FINES

"§ 2201. Sentence of Fine.

"(a) IN GENERAL.—A defendant who has been found guilty of an offense may be sentenced to pay a fine.

"(b) AUTHORIZED FINES.—Except as otherwise provided, the authorized fines are—

"(1) if the defendant is an individual—

"(A) for a felony, or for a misdemeanor resulting in the loss of human life, not more than $250,000;

"(B) for any other misdemeanor, not more than $25,000; and

"(C) for an infraction, not more than $1,000; and

"(2) if the defendant is an organization—

"(A) for a felony, or for a misdemeanor resulting in the loss of human life, not more than $1,000,000;

"(B) for any other misdemeanor, not more than $100,000; and

"(C) for an infraction, not more than $10,000.

"§ 2202. Imposition of a Sentence of Fine

"(a) FACTORS TO BE CONSIDEEED IN IMPOSING FINE.—The court, in determining whether to impose a fine, and, if a fine is to be imposed, in determining the amount of the fine, the time for payment, and the method of payment, shall consider—

"(1) the factors set forth in section 2003(a), to the extent they are applicable, including, with regard to the characteristics of the defendant under section 2003(a), the ability of the defendant to pay the fine in view of the defendant's income, earning capacity, and financial resources;

"(2) the nature of the burden that payment of the fine will impose on the defendant, and on any person who is financially dependent upon the defendant;

"(3) any restitution or reparation made by the defendant to the victim of the offense, and any obligation imposed upon the defendant to make such restitution or reparation to the victim of the offense;

"(4) if the defendant is an organization, any measure taken by the organization to discipline its employees or agents responsible for the offense or to insure against a recurrence of such an offense; and

"(5) any other pertinent equitable consideration.

"(b) EFFECT OF FINALITY OF JUDGMENT.—Notwithstanding the fact that a sentence to pay a fine can subsequently be—

"(1) modified or remitted pursuant to the provisions of section 2203;

"(2) corrected pursuant to the provisions of rule 35.1 and section 3723 or 3724; or

"(3) appealed and modified, if outside the guideline range, pursuant to the provisions of section 3725;

a judgment of conviction that includes such a sentence constitutes a final judgment for all other purposes.

"(c) TIME AND METHOD OF PAYMENT.—At the time a defendant is sentenced to pay a fine, the court may provide for the payment to be made within a specified period of time or in specified installments. If no such provision is made a part of the sentence, payment is due immediately.

"(d) ALTERNATIVE SENTENCE PRECLUDED.—At the time a defendant is sentenced to pay a fine, the court may not impose an alternative sentence to be served in the event that the fine is not paid.

"(e) INDIVIDUAL RESPONSIBILITY FOR PAYMENT.—If a fine is imposed on an organization, it is the duty of each individual authorized to make disbursement of the assets of the organization to pay the fine from assets of the organization. If a fine is imposed on an agent or shareholder of an organization, the fine shall not be paid, directly or indirectly, out of the assets of the organization.

"§ 2203. Modification or Remission of Fine

"(a) PETITION FOR MODIFICATION OR REMISSION.—A defendant who has been sentenced to pay a fine, and who—

"(1) has paid part but not all thereof, and concerning whom the circumstances no longer exist that warranted the imposition of the fine in the amount imposed or payment by the time or method specified, may petition the court for—

"(A) an extension of the time for payment;

"(B) a modification in the method of payment; or

"(C) a remission of all or part of the unpaid portion; or

"(2) has thereafter voluntarily made restitution or reparation to the victim of the offense, may petition the court for a remission of the unpaid portion of the fine in an amount not exceeding the amount of such restitution or reparation.

"(b) ORDER OF MODIFICATION OR REMISSION.—If, after the filing of a petition as provided in subsection (a), the court finds that the circumstances warrant relief, the court may enter an appropriate order.

"§ 2204. Implementation of a Sentence of Fine

"The implementation of a sentence to pay a fine is governed by the provisions of subchapter B of chapter 38.

"CHAPTER 23—IMPRISONMENT

"§ 2301. Sentence of Imprisonment

"(a) IN GENERAL.—A defendant who has been found guilty of an offense may be sentenced to a term of imprisonment.

"(b) AUTHORIZED TERMS.—The authorized terms of imprisonment are—

"(1) for a Class A felony, the duration of the defendant's life or any period of time;

"(2) for a Class B felony, not more than twenty years;

"(3) for a Class C felony, not more than ten years;

"(4) for a Class D felony, not more than five years;

"(5) for a Class E felony, not more than two years;

"(6) for a Class A misdemeanor, not more than one year;

"(7) for a Class B misdemeanor, not more than six months;

"(8) for a Class C misdemeanor, not more than thirty days; and

"(9) for an infraction, not more than five days.

"§ 2302. Imposition of a Sentence of Imprisonment

"(a) FACTORS TO BE CONSIDERED IN IMPOSING A TERM OF IMPRISONMENT.—The court, in determining whether to impose a term of imprisonment, and, if a term of imprisonment is to be imposed, in determining the length of the term, shall consider the factors set forth in section 2003(a) to the extent that they are applicable, recognizing that imprisonment is generally not an appropriate means of promoting correction and rehabilitation. In determining whether to make a recommendation concerning the type of prison facility appropriate for the defendant, the court shall consider any pertinent policy statements issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28.

"(b) EFFECT OF FINALITY OF JUDGMENT.—Notwithstanding the fact that a sentence to imprisonment can subsequently be—

"(1) modified pursuant to the provisions of subsection (c);

"(2) corrected pursuant to the provisions of rule 35.1 and section 3723 or 3724; or

"(3) appealed and modified, if outside the guideline range, pursuant to the provisions of section 3725;

a judgment of conviction that includes such a sentence constitutes a final judgment for all other purposes.

"(c) MODIFICATION OF AN IMPOSED TERM OF IMPRISONMENT.—The court may not modify a term of imprisonment once it has been imposed except that—

"(1) in any case—

"(A) the court, upon motion of the Director of the Bureau of Prisons, may reduce the term of imprisonment, after considering the factors set forth in section 2003(a) to the extent that they are applicable, if it finds that extraordinary and compelling reasons warrant such a reduction and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission; and

"(B) the court may modify an imposed term of imprisonment to the extent otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure; and

"(2) in the case of a defendant who has been sentenced to a term of imprisonment in excess of ten years, the court, upon motion of the defendant or the Director of the Bureau of Prisons after the defendant has served ten years of his sentence, may reduce the term of imprisonment, after considering the factors set forth in section 2003(a) to the extent that they are applicable, if it finds that changed circumstances warrant such a reduction and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

"§ 2303. Inclusion of a Sentence of Supervised Release After Imprisonment

"(a) IN GENERAL.—The court, in imposing a sentence to a term of imprisonment in excess of one year, may include as a part of the sentence a requirement that the defendant be placed on a term of supervised release after imprisonment.

"(b) AUTHORIZED TERMS OF SUPERVISED RELEASE.—The authorized terms of supervised release are—

"(1) for a Class A or Class B felony, not more than three years;

"(2) for a Class C or Class D felony, not more than two years; and

"(3) for a Class E felony, or for two or more misdemeanors, not more than one year.

"(c) FACTORS TO BE CONSIDERED IN INCLUDING A TERM OF SUPERVISED RELEASE.—The court, in determining whether to include a term of supervised release, and, if a term of supervised release is to be included, in determining the

length of the term and the conditions of supervised release, shall consider the factors set forth in section 2003(a)(1), (a)(2)(B), (a)(2)(D), (a)(4), (a)(5), and (a)(6).

"(d) CONDITIONS OF SUPERVISED RELEASE.—The court shall order, as an explicit condition of supervised release, that the defendant not commit another federal, State, or local crime during the term of supervision. The court may order, as a further condition of supervised release, to the extent that such condition—

"(1) is reasonably related to the factors set forth in section 2003(a)(1), (a)(2)(B), and (a)(2)(D);

"(2) involves no greater deprivation of liberty than is reasonably necessary for the purposes set forth in section 2003(a)(2)(B) and (a)(2)(D); and

"(3) is consistent with any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a);

any condition set forth as a discretionary condition of probation in section 2103(b)(1) through (b)(10) and (b)(12) through (b)(19), and any other condition it considers to be appropriate. If an alien defendant is subject to deportation, the court may provide, as a condition of supervised release, that he be deported and remain outside the United States, and may order that he be delivered to a duly authorized immigration official for such deportation.

"(e) MODIFICATION OF TERM OR CONDITIONS.—The court may, after considering the factors set forth in section 2003(a)(1), (a)(2)(B), (a)(2)(D), (a)(4), (a)(5), and (a)(6)—

"(1) terminate a term of supervised release previously ordered and discharge the person released at any time after the expiration of one year of supervised release, if it is satisfied that such action is warranted by the conduct of the person released and the interest of justice; or

"(2) after a hearing, extend a term of supervised release if less than the maximum authorized term was previously imposed, and may modify, reduce, or enlarge the conditions of supervised release, at any time prior to the expiration or termination of the term of supervised release, pursuant to the provisions applicable to the initial setting of the term and conditions of post-release supervision.

"(f) WRITTEN STATEMENT OF CONDITIONS.—The court shall direct that the probation officer provide the defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, and that is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required.

"§ 2304. Multiple Sentences of Imprisonment

"(a) IMPOSITION OF CONCURRENT OR CONSECUTIVE TERMS.—If multiple terms of imprisonment are imposed on a defendant at the same time, or if a term of imprisonment is imposed on a defendant who is already subject to an undischarged term of imprisonment, the terms may run concurrently or consecutively,

except that the terms may not run consecutively for an offense described in section 1001 (Criminal Attempt), 1002 (Criminal Conspiracy), or 1003 (Criminal Solicitation), and for another offense that was the sole objective of the attempt, conspiracy, or solicitation. Multiple terms of imprisonment imposed at the same time run concurrently unless the court orders or the statute mandates that the terms are to run consecutively. Multiple terms of imprisonment imposed at different times run consecutively unless the court orders that the terms are to run concurrently.

"(b) FACTORS TO BE CONSIDERED IN IMPOSING CONCURRENT OR CONSECUTIVE TERMS.—The court, in determining whether the terms imposed are to be ordered to run concurrently or consecutively, shall consider, as to each offense for which a term of imprisonment is being imposed, the factors set forth in section 2003(a).

"(c) LIMIT ON AGGREGATE OF CONSECUTIVE TERMS.—The aggregate of consecutive terms of imprisonment to which a defendant may be sentenced at the same time may not exceed such term as is authorized by section 2301 for an offense one grade higher than the most serious offense of which he was found guilty.

"(d) TREATMENT OF MULTIPLE SENTENCES AS AN AGGREGATE.—Multiple terms of imprisonment ordered to run consecutively shall be treated for administrative purposes as a single, aggregate term of imprisonment.

"§ 2305. Calculation of a Term of Imprisonment

"(a) COMMENCEMENT OF SENTENCE.—A sentence to a term of imprisonment commences on the date the defendant is received in custody awaiting transportation to, or is received at, the official detention facility at which the sentence is to be served.

"(b) CREDIT FOR PRIOR CUSTODY.—A defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences—

"(1) as a result of the offense for which the sentence was imposed; or

"(2) as a result of any other charge for which the defendant was arrested after the commission of the offense for which the sentence was imposed;

that has not been credited against another sentence.

"§ 2306. Implementation of a Sentence of Imprisonment

"The implementation of a sentence of imprisonment is governed by the provisions of subchapter C of chapter 38.

"PART IV—ADMINISTRATION AND PROCEDURE

"CHAPTER 30—INVESTIGATIVE AND LAW ENFORCEMENT AUTHORITY

"Subchapter A—Investigative Authority

"§ 3001. Investigative Authority Over Offenses Within This Title

"(a) SPECIFIC DESIGNATIONS.—Primary responsibility for detecting and investigating the commission of offenses described in this title is vested as follows:

"(1) Offenses described in sections 1211, 1212, 1213, and 1214, and offenses arising from the administration or enforcement of the laws relating to immigration and nationality, are within the primary responsibility of the Immigration and Naturalization Service.

"(2) Offenses described in subchapter A of chapter 14; offenses described in sections 1731, 1732, and 1733, if there is or may be federal jurisdiction over the offense as set forth in section 1731 (c)(8) or (c)(9) or 1732(c)(3) and the property consists of ammunition, a firearm, or a destructive device; offenses described in sections 1821(a)(2) and 1822; and offenses arising from the administration or enforcement of the laws relating to internal revenue or other offenses for which investigative responsibility is provided for in this paragraph; are within the primary responsibility of officers and employees of the Department of the Treasury assigned such responsibility by the Secretary of the Treasury.

"(3) Offenses described in sections 1701, 1702, and 1703, if there is or may be federal jurisdiction over the offense as set forth in section 1701 (c)(5) or (c)(6); and offenses described in sections 1821(a)(1), 1821(a)(4), and 1823; are within the primary responsibility of officers and employees of the Department of the Treasury assigned such responsibility by the Secretary of the Treasury, and, concurrently, are within the primary responsibility of the Federal Bureau of Investigation.

"(4) Offenses described in subchapter B of chapter 14; and offenses arising from the administration or enforcement of the laws relating to customs; are within the primary responsibility of officers of the customs, as defined in section 401(i) of the Tariff Act of 1930 (19 U.S.C. 1401(i)).

"(5) Offenses described in sections 1731, 1732, and 1733, if there is or may be federal jurisdiction over the offense as set forth in section 1731

(c)(25) or (c)(26); offenses described in sections 1851 (a)(1), (a)(2), and (a)(3), and 1852; and offenses arising from the administration or enforcement of the laws relating to agriculture; are within the primary responsibility of officers and employees of the Department of Agriculture assigned such responsibility by the Secretary of Agriculture.

"(6) Offenses described in section 1357(a)(2); offenses described in section 1732, if there is or may be federal jurisdiction over the offense as set forth in section 1732(c)(2); offenses described in subchapter E of chapter 17 if there is or may be federal jurisdiction over the offenses based upon the written instrument being a security—

"(A) made or issued by or under the authority of, or guaranteed by, the United States other than a money order issued by or under the authority of, or guaranteed by, the United States Postal Service; or

"(B) made or issued by or under the authority of a foreign government;

and offenses arising from the administration or enforcement of the laws relating to counterfeiting, forgery, or other offenses for which investigative responsibility is provided in this paragraph; are within the primary responsibility of the United States Secret Service.

"(7) Offenses described in subchapter B of chapter 18; and offenses arising from the administration or enforcement of the laws relating to controlled substances; are within the primary responsibility of the Drug Enforcement Administration.

"(8) Offenses in which the subject of the offense is mail or property owned by, or under the care, custody, or control of, the United States Postal Service; offenses described in section 1734(a) if there is or may be federal jurisdiction over the offense as set forth in subsection 1734(c)(1); offenses described in subchapter E of chapter 17 if there is or may be federal jurisdiction over the offense based upon the written instrument being a security made or issued by or under the authority of, or guaranteed by, the United States Postal Service or its predecessor; and offenses arising from the administration or enforcement of the laws relating to mail; are within the primary responsibility of officers and employees of the United States Postal Service assigned such responsibility by the Board of Governors of the United States Postal Service.

"(9) Offenses committed within the national park system that are not within the designated primary responsibility of another federal agency are within the primary responsibility of the Department of the Interior.

"(10) Offenses described in section 1731, if there is or may be federal jurisdiction over the offense as set forth in section 1731(c)(19), and offenses described in section 1763, are within the primary responsibility of

officers and employees of the Commodity Futures Trading Commission assigned such responsibility by the Commission.

"(11) Offenses described in section 1737(a)(1) are within the primary responsibility of officers and employees of the Environmental Protection Agency assigned such responsibility by the Administrator of the Environmental Protection Agency.

"(12) Offenses described in section 1762 are within the primary responsibility of officers and employees of the Department of the Treasury and of the Securities and Exchange Commission assigned such responsibility by the Secretary of the Treasury.

"(13) Offenses described in section 1851(a)(4) are within the primary responsibility of the officers and employees of the Department of Health, Education, and Welfare assigned such responsibility by the Secretary of Health, Education, and Welfare.

"(14) Offenses described in section 1731, if there is or may be federal jurisdiction over the offense as set forth in section 1731(c)(16), are within the primary responsibility of officers or employees of the Department of Labor assigned such responsibility by the Secretary of Labor.

"(15) Offenses described in section 1751(a)(2), if the offender is a domestic concern that is an issuer of a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934 or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934, are within the primary responsibility of the Securities and Exchange Commission.

"(16) Offenses described in section 1131; offenses described in sections 1601, 1602, 1603, 1611, 1612, 1613, 1614, 1621, 1622, and 1623, if the victim of the offense is a United States official; offenses decribed in section 1631; and offenses described in sections 1601, 1602, 1603, 1611, 1612, 1613, 1614, 1615, 1616, 1641, 1642, 1643, 1644, 1645, 1721, 1731, 1732, 1733, and 1824, if the offense is committed within the special aircraft jurisdiction of the United States; are within the primary responsibility of the Federal Bureau of Investigation.

"(17) All other offenses are within the primary responsibility of the law enforcement agency designated by regulation, rule, or order issued by the Attorney General, except an offense that incorporates by reference a statute outside this title concerning which another agency is specifically assigned such responsibility by law.

"(b) REDESIGNATION.—A responsibility set forth in subsection (a) may be transferred to another law enforcement agency upon the written consent of the head of both agencies involved and of the Attorney General.

"§ 3002. Investigative Authority Over Offenses Outside This Title

"(a) SPECIFIC DESIGNATIONS.—Primary responsibility for detecting and investigating the commission of offenses described outside this title is vested in—

"(1) the law enforcement agency specifically assigned such responsibility by law; or

"(2) the law enforcement agency designated by regulation, rule, or order issued by the Attorney General if no other agency is specifically assigned such responsibility by law.

"(b) REDESIGNATION.—A responsibility set forth in subsection (a) may be transferred to another law enforcement agency upon the written consent of the head of both agencies involved and of the Attorney General.

"§ 3003. Investigation of Offenses Subject to Extraterritorial Jurisdiction

"The armed forces of the United States may be used outside the United States to assist a law enforcement agency in the detection, investigation, and preparation for trial of, and in the apprehension of offenders for, offenses subject to the extraterritorial jurisdiction of the United States.

"Subchapter B—Law Enforcement Authority of the Department of Justice

"Sec.
"3011. Federal Bureau of Investigation.
"3012. Drug Enforcement Administration.
"3013. United States Marshals Service.
"3014. Bureau of Prisons.
"3015. Immigration and Naturalization Service.

"§ 3011. Federal Bureau of Investigation

"(a) AUTHORITY.—Subject to the direction of the Attorney General, an agent of the Federal Bureau of Investigation of the Department of Justice may—

"(1) carry a firearm;

"(2) execute an order, warrant, subpoena, or other process issued under the authority of the United States for arrest, search or seizure, or production of evidence;

"(3) make an arrest without a warrant for an offense committed in his presence, or for a felony committed outside his presence if he has reasonable grounds to believe that the person to be arrested has committed or is committing a felony;

"(4) offer and pay a reward for services or information assisting in the detection or investigation of the commission of an offense or in the apprehension of an offender; and

"(5) perform any other law enforcement duty that the Attorney General may designate.

"(b) DEFINITION.—As used in this section the term 'agent of the Federal Bureau of Investigation' includes the Director, Associate Director, Assistant to

the Director, an assistant director, and an inspector of the Federal Bureau of Investigation.

"§ 3012. Drug Enforcement Administration

"Subject to the direction of the Attorney General, an officer or employee of the Drug Enforcement Administration may—

"(a) carry a firearm;

"(b) execute an order, warrant, administrative inspection warrant, subpoena, or other process issued under the authority of the United States for arrest, search or seizure, inspection, or production of evidence;

"(c) make an arrest without a warrant for an offense committed in his presence, or for a felony committed outside his presence, if he has reasonable grounds to believe that the person to be arrested has committed or is committing a felony;

"(d) offer and pay a reward for services or information assisting in the detection or investigation of the commission of an offense or in the apprehension of an offender;

"(e) make a seizure of property pursuant to the provisions of the Controlled Substances Act (21 U.S.C. 801 et seq.); and

"(f) perform any other law enforcement duty that the Attorney General may designate.

"§ 3013. United States Marshals Service

"(a) AUTHORITY.—Subject to the direction of the Attorney General, a United States marshal may—

"(1) carry a firearm;

"(2) execute an order, warrant, subpoena, or other process issued under the authority of the United States for arrest, search or seizure, or production of evidence;

"(3) make an arrest without a warrant for an offense committed in his presence, or for a felony committed outside his presence if he has reasonable grounds to believe that the person to be arrested has committed or is committing a felony;

"(4) offer and pay a reward for services or information assisting in the detection or investigation of the commission of an offense or in the apprehension of an offender; and

"(5) perform any other law enforcement duty that the Attorney General may designate.

"(b) TEMPORARY CUSTODY OF PERSONS.—United States marshals shall provide for the safekeeping of a person—

"(1) arrested;

"(2) held pending commitment to an official detention facility;

"(3) removed from a federal official detention facility to comply with an order or writ issuing from a court of competent jurisdiction; or

"(4) held under an order of transfer to a community treatment facility.

"§ 3014. Bureau of Prisons

"Subject to the direction of the Attorney General—

"(a) an officer or employee of the Bureau of Prisons may carry a firearm;

"(b) an officer or employee of the Bureau of Prisons may—

"(1) execute a warrant for the arrest of a parolee; and

"(2) make an arrest without a warrant for an offense described in section 1513 (Escape), 1314 (Providing or Possessing Contraband in a Prison), 1831 (Leading a Riot), 1832 (Providing Arms for a Riot), or 1833 (Engaging in a Riot), or any offense described in this title if committed on the premises or reservation of a penal or correctional facility of the Bureau of Prisons, if he has reasonable grounds to believe that the person to be arrested has committed or is committing the offense; and

"(c) the chief executive officer of a federal penal or correctional facility and those members of his staff whom he designates may, without fee, administer an oath to and take an acknowledgment of an officer, employee, or inmate of such facility.

"§ 3015. Immigration and Naturalization Service

"Subject to the direction of the Attorney General, an officer or employee of the Immigration and Naturalization Service may—

"(a) carry a firearm;

"(b) execute an order, warrant, subpoena, or other process issued under the authority of the United States for arrest, search or seizure, or production of evidence;

"(c) make an arrest without a warrant for an offense committed in his presence, or for a felony committed outside his presence if he has reasonable grounds to believe that the person to be arrested has committed or is committing a felony;

"(d) offer and pay a reward for services or information assisting in the detection or investigation of the commission of an offense or in the apprehension of an offender; and

"(e) perform any other law enforcement duty that the Attorney General may designate.

"Subchapter C—Law Enforcement Authority of Other Federal Agencies

"§ 3021. Department of the Treasury

"(a) AUTHORITY.—Subject to the direction of the Secretary of the Treasury—

"(1) an agent of the United States Secret Service;

"(2) an officer of the customs as defined in section 401(i) of the Tariff Act of 1930 (19 U.S.C. 1401(i));

"(3) an agent of the Bureau of Alcohol, Tobacco, and Firearms whom the Secretary of the Treasury has charged with the duty of enforcing any criminal, seizure, or forfeiture provision of the laws relating to internal revenue; or

"(4) a criminal investigator of the Intelligence Division or of the Internal Security Division of the Internal Revenue Service whom the Secretary has charged with the duty of enforcing a criminal provision of the internal revenue laws or another criminal provision of the laws relating to the internal revenue;

may perform any of the functions and duties enumerated in subsection (b).

"(b) FUNCTIONS AND DUTIES.—Except as otherwise provided, an agent, officer, or investigator described in subsection (a) may—

"(1) carry a firearm;

"(2) execute an order, warrant, subpoena, or other process issued under the authority of the United States for arrest, search or seizure, or production of evidence;

"(3) make an arrest without a warrant for an offense committed in his presence, or for a felony committed outside his presence if he has reasonable grounds to believe that the person to be arrested has committed or is committing a felony;

"(4) offer and pay a reward for services or information assisting in the detection or investigation of the commission of an offense or in the apprehension of an offender; and

"(5) perform any other law enforcement duty that the Secretary of the Treasury may designate.

"(c) SPECIAL PROTECTION FUNCTION.—Subject to the direction of the Secretary of the Treasury, the United States Secret Service shall protect the person of—

"(1) the President and the members of his immediate family;

"(2) the President-elect and, unless such protection is declined, the members of his immediate family;

"(3) the Vice President, or other person next in the order of succession to the office of President, and, unless such protection is declined, the members of his immediate family;

"(4) the Vice President-elect and, unless such protection is declined, the members of his immediate family;

"(5) a person who is determined by the Secretary of the Treasury, after consultation with the advisory committee set forth in Public Law 90–331 (82 Stat. 170), to be a major candidate for President or Vice President, unless such protection is declined by such person;

"(6) the spouse of a Presidential or Vice Presidential nominee of a major political party within sixty days prior to the general Presidential election as set forth in Public Law 94–408 (90 Stat. 1239) if such protection is requested by the Presidential or Vice Presidential nominee;

"(7) a former President and his spouse, unless such protection is declined by such former President;

"(8) the spouse of a deceased former President until remarriage, unless such protection is declined by such spouse;

"(9) a minor child of a former President, until he reaches 16 years of age, unless such protection is declined by a parent or guardian of such minor child;

"(10) the chief of State or head of government, or the political equivalent, of a foreign power, who is in the United States;

"(11) an official guest of the United States, or other distinguished foreign visitor, who is ordered protected at the direction of the President; and

"(12) a federal public servant or other official representative of the United States who is performing a special mission outside the United States and who is ordered protected at the direction of the President.

"(d) DEFINITIONS.—As used in section (a)(1), the term 'agent of the United States Secret Service' includes the Director, Deputy Director, Assistant Director, Assistant to the Director, and an inspector of the United States Secret Service.

"§ 3022. Department of the Interior

"Subject to the direction of the Secretary of the Interior, an officer or employee of the Department of the Interior, charged with law enforcement responsibilities by the Secretary of the Interior may—

"(a) carry a firearm;

"(b) execute an order, warrant, subpoena, or other process issued under the authority of the United States for arrest, search or seizure, or production of evidence;

"(c) make an arrest without a warrant for an offense committed in his presence, or for a felony committed outside his presence, if he has reasonable grounds to believe that the person to be arrested has committed or is committing a felony;

"(d) offer and pay a reward for services or information assisting in the detection or investigation of the commission of an offense or in the apprehension of an offender; and

"(e) perform any other law enforcement duty that the Board of Governors may designate.

"§ 3023. Department of Agriculture

"Subject to the direction of the Secretary of Agriculture, an officer or employee of the Department of Agriculture who is charged with law enforcement responsibilities may—

"(a) carry a firearm;

"(b) execute an order, warrant, subpoena, or other process issued under the authority of the United States for arrest, search or seizure, or production of evidence;

"(c) make an arrest without a warrant for an offense committed in his presence, or for a felony committed outside his presence if he has reasonable grounds to believe that the person to be arrested has committed or is committing a felony;

"(d) offer and pay a reward for services or information assisting in the detection or investigation of the commission of an offense or in the apprehension of an offender; and

"(e) perform any other law enforcement duty that the Secretary of Agriculture may designate.

"§ 3024. Postal Service

"Subject to the direction of the Board of Governors of the United States Postal Service, an officer or employee of the Postal Service who is performing a duty related to the inspection of a postal matter, related to the enforcement of a law regarding property of the Postal Service or property in the care, custody, or control of the Postal Service, related to the use of the mails, or related to an offense arising from the administration or enforcement of the laws relating to the mails, may—

"(a) carry a firearm;

"(b) execute an order, warrant, subpoena, or other process issued under the authority of the United States for arrest, search or seizure, or production of evidence;

"(c) make an arrest without a warrant for an offense committed in his presence, or for a felony committed outside his presence, if he has reasonable grounds to believe that the person to be arrested has committed or is committing a felony;

"(d) offer and pay a reward for services or information assisting in the detection or investigation of the commission of an offense or in the apprehension of an offender; and

"(e) perform any other law enforcement duty that the Board of Governors may designate.

"§ 3025. United States Probation System

"An officer of the United States Probation System may—

"(a) carry a firearm pursuant to standards issued by the Judicial Conference of the United States;

"(b) execute a warrant for the arrest of a probationer or a person subject to supervised release pursuant to section 2303—

"(1) in the judicial district in which the officer was appointed; or

"(2) in any judicial district if the warrant was issued in the judicial district in which the officer was appointed; and

"(c) make an arrest without a warrant of a probationer or a person subject to supervised release pursuant to section 2303 in the judicial district in which the officer was appointed if the officer has cause to believe that the person to be arrested has violated a condition of his probation or supervised released.

"Subchapter D—General Law Enforcement Authority on Federal Lands

"§ 3031. General Arrest Authority on Federal Lands

"Subject to the direction of the head of the government agency by which he is employed, a federal law enforcement officer who is authorized by federal law to make an arrest for the commission of a federal offense may make an arrest without a warrant for a State or local offense committed on land owned by, or under the care, custody, or control of, the United States, if the offense—

"(1) is committed in a State or locality that has authorized the making of arrests by such an officer; and

"(2) is committed in the officer's presence, or is a felony committed outside his presence and he has reasonable grounds to believe that the person to be arrested has committed or is committing a felony.

Upon making such an arrest, the officer shall take the arrested person without unnecessary delay before the nearest State or local judge.

"CHAPTER 31—ANCILLARY INVESTIGATIVE AUTHORITY

"Subchapter A—Interception of Communications

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"§ 3101. Authorization for Interception

"(a) FEDERAL.—The interception of a private oral communication may be authorized or approved by order of a federal court of competent jurisdiction, pursuant to the provisions of section 3103, if—

"(1) the filing of an application for such an order is authorized by—

"(A) the Attorney General; or

"(B) an Assistant Attorney General specifically designated by the Attorney General;

"(2) the application is filed, pursuant to the provisions of section 3102, by a law enforcement officer of a government agency having responsibility for the investigation of the offense concerning which the application is made; and

"(3) the interception may provide or has provided evidence of the commission of an offense described in—

"(A) section 1101 (Treason), 1102 (Armed Rebellion or Insurrection), 1111 (Sabotage), 1112 (Impairing Military Effectiveness), 1117 (Aiding Escape of a Prisoner of War or an Enemy Alien), 1121 (Espionage), 1122 (Disseminating National Defense Information), 1123 (Disseminating Classified Information), 1124 (Receiving Classified Information), 1131 (Atomic Energy Offenses), 1321 (Witness Bribery), 1322 (Corrupting a Witness or an Informant), 1323 (Tampering With a Witness or an Informant), 1324 (Retaliating Against a Witness or an Informant), 1351 (Bribery), 1352 (Graft), 1601 (Murder), 1602 (Manslaughter), 1611 (Maiming), 1612 (Aggravated Battery), 1615 (Terrorizing), 1621 (Kidnapping), 1622 (Aggravated Criminal Restraint), 1631 (Aircraft Hijacking), 1701 (Arson), 1702 (Aggravated Property Destruction), 1721 (Robbery), 1722 (Extortion), 1723 (Blackmail), 1731 (Theft), 1732 (Trafficking in Stolen Property), 1735 (Bankruptcy Fraud), 1741 (Counterfeiting), 1742 (Forgery), 1752 (Labor Bribery), 1801 (Operating a Racketeering Syndicate), 1802 (Racketeering), 1803 (Washing Racketeering Proceeds), 1804 (Loansharking), 1805 (Facilitating a Racketeering Activity by Violence), 1811 (Trafficking in an Opiate), 1812 (Trafficking in Drugs), 1821 (Explosives Offenses), 1831 (Leading a Riot), 1832 (Providing Arms for a Riot), or 1841 (Engaging in a Gambling Business); or

"(B) section 1002 (Criminal Conspiracy) or 1003 (Criminal Solicitation), if an objective of the conspiracy or the crime solicited is an offense set forth in subparagraph (A).

"(b) STATE.—To the extent permitted by a State statute, the interception of a private oral communication may be authorized or approved by order of a State court of competent jurisdiction, pursuant to the provisions of applicable State law and in substantial conformity with the provisions of section 3102, if—

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"(1) an application for such an order is filed, pursuant to the provisions of applicable State law and in substantial compliance with the provisions of section 3102, by the principal prosecuting attorney of the State or locality acting on behalf of a government agency having responsibility for the investigation of the offense concerning which the application is made; and

"(2) the interception may provide or has provided evidence of the commission of an offense involving—

"(A) bribery, murder, kidnapping, robbery, extortion, trafficking in a drug that is a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802) or in contraband liquor or cigarettes, or gambling;

"(B) theft, trafficking in stolen property, fraud, or a crime of violence that is a felony, that is designated in an applicable State statute as an offense for which interception may be ordered; or

"(C) a conspiracy or solicitation if an objective of the conspiracy or the crime solicited is an offense set forth in subparagraph (A) or (B).

§ 3102. Application for an Order for Interception

"(a) APPLICATION.—An application for an order, or an extension of an order, authorizing or approving the interception of a private oral communication pursuant to this subchapter shall be made in writing under oath or equivalent affirmation to a court of competent jurisdiction and shall include the following information:

"(1) The identity of the law enforcement officer making the application and of the officer authorizing the application.

"(2) The authority of the applicant to make the application.

"(3) A complete statement of the facts relied upon by the applicant to justify his belief that an order should be issued, including—

"(A) details as to the particular offense that has been, is being, or is about to be committed;

"(B) the identity, if known, of the person involved in the commission of the offense whose communication is to be intercepted;

"(C) a particular description of the character and location of the facilities from which, or the place at which, the communication is to be intercepted; and

"(D) a particular description of the kind of communication sought to be intercepted.

"(4) A complete statement of other investigative procedures that have been tried in the investigation and that have failed, or that have not been tried in the investigation because they reasonably appear to be unlikely to succeed or to be too dangerous.

"(5) A statement of the period of time for which the interception is required to be maintained, and, if the character of the investigation is such

that the authorization for interception should not automatically terminate when the described kind of communication has been first obtained, a particular description of facts establishing probable cause to believe that an additional communication of the same kind will occur thereafter.

"(6) A complete statement of the facts concerning all previous applications known to the applicant that have been made to any court for issuance of an order authorizing or approving the interception of a private oral communication involving any of the same persons, facilities, or places specified in the application, and the action taken by the court on each such application.

"(7) If the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

"(b) ADDITIONAL EVIDENCE.—The court may require the applicant to furnish additional testimony or documentary evidence in support of the application.

"§ 3103. Issuance of an Order for Interception

"(a) FINDINGS.—Upon an application made pursuant to section 3102, the court may issue an ex parte order, as requested in the application or as found warranted by the court, authorizing or approving interception of a private oral communication within the geographic jurisdiction of such court if the court determines on the basis of the facts submitted by the applicant that—

"(1) there is probable cause to believe that a person is committing, has committed, or is about to commit a particular offense set forth in section 3101;

"(2) there is probable cause to believe that a particular communication concerning the offense will be obtained through such interception;

"(3) other investigative procedures have been tried in the investigation and have failed, or have not been tried in the investigation because they reasonably appear to be unlikely to succeed or to be too dangerous; and

"(4) there is probable cause to believe that a facility from which, or the place at which, the communication is to be intercepted—

"(A) is being used, or is about to be used, in connection with the commission of the offense; or

"(B) is leased to, listed in the name of, or commonly used by a person who is committing, has committed, or is about to commit the offense.

"(b) ORDER.—An order issued under this section—

"(1) shall specify—

"(A) the identity, if known, of the person whose communication is to be intercepted;

"(B) the character and location of the facilities from which, or the place at which, the communication is to be intercepted;

"(C) a particular description of the kind of communication sought to be intercepted, and a statement of the particular offense to which it relates;

"(D) the identity of the government agency authorized to intercept the communication and of the person authorizing the application; and

"(E) the period of time during which the interception is authorized, and whether the interception must automatically terminate when the described communication has been first obtained; and

"(2) shall direct, upon the request of the applicant, that a communications common carrier, landlord, custodian, or other specified person furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier, landlord, custodian, or other person is according the person whose communication is to be intercepted.

"(c) PERIOD AND MANNER OF INTERCEPTION.—An order issued under this section may authorize or approve the interception of a private oral communication for the period necessary to achieve the objectives of the authorization, or for thirty days, whichever is less. Extensions of an order may be granted after an application for an extension made in accordance with the provisions of section 3102(a) and after findings concerning an extension in accordance with the provisions of subsection (a). The period of extension may be for the period necessary to achieve the objectives for which it was granted, or for thirty days, whichever is less. An order and extension of an order shall direct that the interception be executed as soon as practicable, be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this subchapter, and be terminated upon attainment of the authorized objective, or in thirty days, whichever is less.

"(d) PERIODIC REPORTS.—An order issued under this section may require that periodic reports be made to the court that issued the order stating the progress made toward achievement of the authorized objective and the need for continued interception.

"§ 3104. Assistance in Interception

"(a) REQUEST FOR ASSISTANCE.—A law enforcement officer, in order to intercept a private oral communication, may request that a communications common carrier, landlord, custodian, or other person provide information, facilities, and technical assistance necessary to accomplish the interception unobtrusively if the law enforcement officer—

"(1) is authorized by law to intercept a private oral communication, or to conduct electronic surveillance as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.); and

"(2) provides the person to whom the request is made with—

"(A) an order directing such assistance as provided in section 3103(b)(2); or

"(B) a written certificate, signed by the Attorney General, an Assistant Attorney General specifically designated by the Attorney General, or the principal prosecuting attorney of the State or locality in which the interception is to take place, stating that—

"(i) no warrant or court order is required by law;

"(ii) all statutory requirements have been met; and

"(iii) the specified assistance is required.

The order or certificate shall specify the information, facilities, or technical assistance required, and shall set forth the period of time during which the assistance is to be provided.

"(b) PROVISION OF ASSISTANCE.—Notwithstanding any other provision of law, a communications common carrier, landlord, custodian, or other person, upon being provided with a copy of a court order or certificate pursuant to subsection (a), may provide a law enforcement officer with the assistance specified. No cause of action shall lie in any court against any such carrier, landlord, custodian, or other person for providing assistance in accordance with the terms of such an order or certificate.

"(c) COMPENSATION FOR ASSISTANCE.—A communications common carrier, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to this section shall be compensated for such assistance at the prevailing rates.

"(d) NONDISCLOSURE OF ASSISTANCE.—A communications common carrier, landlord, custodian, or other person who has been provided with an order or a certificate pursuant to subsection (a) shall not disclose the existence of the interception or surveillance, or of a device used to accomplish the interception or surveillance, unless—

"(1) he is required to do so by legal process; and

"(2) he has given prior notification to the Attorney General, or to the principal prosecuting attorney of the State or locality, who had authorized the application for the order or issued the written certificate.

"§ 3105. Interception Without Prior Authorization

"(a) UNRELATED INTERCEPTION IN THE COURSE OF AN AUTHORIZED INTERCEPTION.—If a law enforcement officer, while engaged in intercepting a private oral communication in accordance with the provisions of this subchapter, intercepts a private oral communication that relates to an offense other than an offense specified in the order of authorization or approval, and does not also relate to an offense specified in the order of authorization or approval, the attorney for the government may, in order to permit the disclosure or use of its contents or evidence derived from its contents during testimony in an official proceeding, make a motion for an order approving such interception. The court

shall enter such an order if it finds that the communication was otherwise intercepted in accordance with the provisions of this subchapter.

"(b) EMERGENCY INTERCEPTION.—Notwithstanding any other provision of this subchapter, a law enforcement officer may intercept a private oral communication without a court order if—

"(1) he is specially authorized to do so by the Attorney General, or by the principal prosecuting attorney of a State or locality acting pursuant to a statute of that State;

"(2) he reasonably determines that—

"(A) an emergency situation exists with respect to an offense described in section 1101 (Treason), 1111 (Sabotage), or 1121 (Espionage), or an offense that involves a risk of death;

"(B) the emergency situation requires a private oral communication to be intercepted before an order authorizing such interception can, with due diligence, be obtained; and

"(C) there are grounds upon which an order could be entered under this subchapter to authorize such interception; and

"(3) an application for an order approving the interception is made in accordance with section 3102 as soon as practicable, but not more than forty-eight hours, after the interception has occurred or commenced.

In the absence of an order approving the interception, the interception shall terminate immediately when the communication sought is obtained or when the application for the order is denied, whichever is earlier. If the application for approval is denied, the contents of any private oral communication intercepted shall be treated as having been obtained in violation of this subchapter, and a notice shall be served as provided in section 3105(b).

"§ 3106. Records and Notice of Interception

"(a) MAINTENANCE OF RECORDS.—

"(1) The contents of a private oral communication intercepted by any means authorized by law shall, unless impracticable, be recorded on a sound recording device, and be recorded in a manner that will protect the recording from editing or other alteration. As soon as practicable after the expiration of the period set forth in the order, or in an extension of an order, the recording shall be made available to the court issuing the order, shall be sealed under its direction, and shall be placed under such custody as the court may order. The recording may not be destroyed for a period of ten years, and may not be destroyed after that period except upon an order of the court. A duplicate recording may be made for use or disclosure to the extent that such use or disclosure is appropriate to the proper performance of official duties.

"(2) An application made and an order issued under this subchapter shall be sealed by the court issuing the order, and shall be placed under

such custody as the court may direct, and shall be disclosed only upon a showing of good cause. The application and order may not be destroyed for a period of ten years, and may not be destroyed after that period except upon an order of the court.

"(b) SERVICE OF NOTICE TO PARTIES.—

"(1) Within a reasonable time, but not more than ninety days, after the termination of the period for which an interception is authorized by an order or an extension of an order, or after the filing of an application, that is subsequently denied, for an order of approval under section 3104(b), the court shall order notice to be served on the person named in the order or in the application, and on such other person who is a party to an intercepted private oral communication as the court may determine to be in the interest of justice. The notice shall include—

"(A) the fact and date of the issuance of the order or of the filing and denial of the application;

"(B) the period of the authorized, approved, or disapproved interception; and

"(C) the fact that during the period a private oral communication was or was not intercepted.

"(2) The court, upon the filing of a motion by a person upon whom the notice is served, may make available for inspection by such person or his counsel any portion of the contents of an intercepted private oral communication, the evidence derived from such contents, the application, or the order, that the court determines to be in the interest of justice.

"(3) On an ex parte showing of good cause to the court, the serving of the notice may be postponed.

"§ 3107. Use of Information Obtained From an Interception

"(a) DISCLOSURE AND USE.—

"(1) A law enforcement officer who, in accordance with the provisions of this subchapter, has obtained knowledge of the contents of a private oral communication, including the contents of an unrelated interception as set forth in section 3105(a), or evidence derived from such contents, may disclose or use such contents to the extent that disclosure is appropriate to the proper performance of his official duties.

"(2) A person who, in accordance with the provisions of this subchapter, has received information concerning the contents of a private oral communication, including the contents of an unrelated interception for which an order has been issued as set forth in section 3105(a), or evidence derived from such contents, may disclose or use such contents while giving testimony under oath or affirmation in an official proceeding.

"(3) A privileged private oral communication that is intercepted in accordance with, or in violation of, the provisions of this subchapter does not lose its privileged character because of its being intercepted.

"(b) SEAL.—The presence of the seal provided for by section 3106(a), or a satisfactory explanation for the absence of such seal, is a prerequisite to the use or disclosure of the contents of an intercepted private oral communication, or evidence derived from such contents, in an official proceeding.

"(c) PRE-TRIAL NOTICE.—The contents of a private oral communication intercepted pursuant to this subchapter, or evidence derived from such contents, may not be received in evidence or otherwise disclosed in an official proceeding in a court unless each aggrieved person who is a party in the official proceeding has, not less than ten days before the official proceeding, been furnished with a copy of the court order, and the accompanying application, under which the interception was authorized or approved. The ten day period may be waived by the court if it finds that it was not possible to furnish such person with the information ten days before the official proceeding, and that the person will not be prejudiced by delay in receiving the information.

"(d) SUPPRESSION OF EVIDENCE.—

"(1) An aggrieved person in an official proceeding before a government agency of the United States, a State, or a locality, may make a motion to suppress the contents of a private oral communication intercepted pursuant to this subchapter, or evidence derived from such contents, on the ground that—

"(A) the communication was unlawfully intercepted;

"(B) the order of authorization or approval under which it was intercepted is insufficient on its face; or

"(C) the interception was not made in conformity with the order of authorization or approval.

If the motion alleges that the evidence sought to be suppressed has been derived from the contents of an unlawfully intercepted private oral communication, and if the aggrieved person has not been served with notice of such an interception as provided by section 3106(b), the opponent of the allegation shall affirm or deny the occurrence of the alleged unlawful interception, but no such motion shall be considered if the alleged unlawful interception took place more than five years before the event to which the evidence relates.

"(2) The motion shall be made prior to the official proceeding unless there was no opportunity to make the motion or unless the aggrieved person was not aware of the grounds for the motion.

"(3) A court of competent jurisdiction, upon the filing of a motion by an aggrieved person, may make available for inspection by the aggrieved person or his counsel any portion of the contents of an intercepted private

oral communication, or the evidence derived from such contents, the court determines to be in the interest of justice.

"(4) If the motion is granted, the contents of the intercepted private oral communication, and evidence derived from such contents, may not be received in evidence in an official proceeding before a government agency of the United States, a State, or a locality.

"§ 3108. Report of Interception

"(a) JUDICIAL REPORT.—Within thirty days after the expiration of the period of interception authorized in an order, or extension of an order, entered under section 3103, or after the denial of an application for an order approving an interception, the court shall report to the Administrative Office of the United States Courts—

"(1) the fact that an order or extension was applied for;

"(2) the identity of the law enforcement officer and the government agency making the application and the person authorizing the application;

"(3) the kind of order or extension applied for;

"(4) the offense specified in the application for the order or extension;

"(5) the fact that the application for the order or extension was granted as applied for, was granted in a modified form, or was denied;

"(6) the period of interception authorized by the order or extension;

"(7) the nature of the facilities from which, or the place at which, the private oral communication was to be intercepted; and

"(8) any related information that the Administrative Office of the United States Courts may by regulation require.

"(b) PROSECUTIVE REPORT.—In January of each year, the Attorney General, or the principal prosecuting attorney of a State or locality, shall report to the Administrative Office of the United States Courts—

"(1) the information required by subsection (a) with respect to each application for an order, or extension of an order, made during the preceding calendar year;

"(2) a general description of the interceptions made under such orders or extensions, including—

"(A) the approximate nature and frequency of incriminating communications intercepted;

"(B) the approximate nature and frequency of other communications intercepted;

"(C) the approximate number of persons whose communications were intercepted; and

"(D) the approximate nature, amount, and cost of the manpower and other resources used in the interceptions;

"(3) the number of arrests and summonses in lieu of arrests resulting from the interceptions, and the offenses which were the subjects of such arrests and summonses;

"(4) the number of trials resulting from the interceptions;

"(5) the number of motions to suppress made with respect to the interceptions, and the number granted or denied;

"(6) the number of convictions resulting from the interceptions, the offenses for which the convictions were obtained, and a general assessment of the importance of the interceptions in obtaining the convictions; and

"(7) any related information that the Administrative Office of the United States Courts may by regulation require.

"(c) ADMINISTRATIVE OFFICE REPORT.—In April of each year, the Director of the Administrative Office of the United States Courts shall transmit to the Congress a complete report concerning the number of applications made for orders and extensions of orders authorizing or approving the interception of private oral communications pursuant to this subchapter and the number of such orders and extensions granted or denied during the preceding calendar year. The report shall include a summary and analysis of the data required to be filed with the Administrative Office under subsections (a) and (b).

"(d) REGULATIONS CONCERNING REPORTS.—The Director of the Administrative Office of the United States Courts is authorized to issue regulations dealing with the content and form of the reports required to be filed pursuant to subsections (a) and (b).

"§ 3109. Definitions for Subchapter A

"As used in this subchapter—

"(a) 'aggrieved person' means a person who was a party to an intercepted private oral communication or a person against whom an interception was directed;

"(b) 'communications common carrier' has the meaning set forth for the term 'common carrier' in section 3(h) of the Act of June 19, 1934 (47 U.S.C. 153(h));

"(c) 'contents', when used with respect to a private oral communication, has the meaning set forth in section 1526(b);

"(d) 'court of competent jurisdiction' means—

"(1) a district court of the United States or a United States Court of Appeals; or

"(2) a State court of general criminal jurisdiction authorized by a statute of that State to enter an order authorizing interception of a private oral communication;

"(e) 'eavesdropping device' has the meaning set forth in section 1526(c);

"(f) 'intercept' means to acquire, through the use of an eavesdropping device, the contents of a communication in the course of its transmission to

a party to the communication, and includes the acquisition of such contents by simultaneous transmission or by recording; and

"(g) 'private oral communication' has the meaning set forth in section 1526(f).

"Subchapter B—Compulsion of Testimony After a Claim of Self-Incrimination

"§ 3111. Compulsion of Testimony After Refusal on Basis of Privilege Against Self-Incrimination

"(a) SELF-INCRIMINATION CLAIM PRECLUDED.—If a person refuses, on the basis of his privilege against self-incrimination, to testify or to produce a record, document, or other object in an official proceeding conducted under the authority of—

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

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

"(3) Congress or either House of Congress;

and the presiding officer informs the person of an order issued under this subchapter, the person may not refuse to comply with the order on the basis of his privilege against self-incrimination.

"(b) USE OF TESTIMONY AGAINST WITNESS PRECLUDED.—The testimony or production that is compelled under the order, and any information directly or indirectly derived from the testimony or production, may not be used against the person in any manner in a criminal case, except in a prosecution for—

"(1) an offense described in section 1341 (Prejury), 1342 (False Swearing), or 1343 (Making a False Statement) that is committed in the course of the testimony or production; or

"(2) an offense involving a failure to comply with the order.

"§ 3112. Court or Grand Jury Proceedings

"(a) ISSUANCE OF ORDER.—If a person has been or may be subpoenaed to testify or to produce a record, document, or other object in an official proceeding conducted under the authority of a court or grand jury of the United States, the district court for the judicial district in which the official proceeding is or may be held shall, upon the application of the United States attorney for the district pursuant to subsection (b), issue an order requiring the person to testify or to produce the record, document, or other object notwithstanding his refusal to do so on the basis of his privilege against self-incrimination. The order shall become effective as provided in section 3111.

"(b) CRITERIA FOR ORDER.—A United States attorney may, with the approval of the Attorney General, the Deputy Attorney General, or any designated Assistant Attorney General, apply for an order under subsection (a) if in his judgment—

"(1) the testimony or the record, document, or other object may be necessary to the public interest; and

"(2) the person has refused or is likely to refuse to testify or to produce the record, document, or other object on the basis of his privilege against self-incrimination.

"§ 3113. Administrative Proceedings

"(a) ISSUANCE OF ORDER.—If a person has been or may be subpoenaed to testify or to produce a record, document, or other object in an official proceeding conducted under the authority of an agency of the United States, the agency may, pursuant to subsection (b), issue an order requiring the person to testify or to produce the record, document, or other object notwithstanding his refusal to do so on the basis of his privilege against self-incrimination. The order shall become effective as provided in section 3111.

"(b) CRITERIA FOR ORDER.—An agency of the United States may, with the approval of the Attorney General, the Deputy Attorney General, or any designated Assistant Attorney General, issue an order under subsection (a) if in its judgment—

"(1) the testimony or the record, document, or other object may be necessary to the public interest; and

"(2) the person has refused or is likely to refuse to testify or to produce the record, document, or other object on the basis of his privilege against self-incrimination.

"§ 3114. Congressional Proceedings

"(a) ISSUANCE OF ORDER.—If a person has been or may be subpoenaed to testify or to produce a record, document, or other object in an official proceeding conducted under the authority of Congress or of either House of Congress, the district court of the United States for the judicial district in which the official proceeding is or may be held shall, upon the application of a duly authorized representative of the House of Congress or the concerned subcommittee, committee, or joint committee of Congress pursuant to subsection (b), issue an order requiring the person to testify or to produce the record, document, or other object notwithstanding his refusal to do so on the basis of his privilege against self-incrimination. The order shall become effective as provided in section 3111.

"(b) CRITERIA FOR ORDER.—A request for an order under subsection (a) may be made if—

"(1) the application for the order has been approved—

"(A) in the case of an official proceeding before a House of Congress by an affirmative vote of a majority of the members present in that House; or

"(B) in the case of an official proceeding before a committee, subcommittee, or joint committee of Congress by an affirmative vote of two-thirds of the members of the full committee; and

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

"(c) POSTPONEMENT OF ORDER.—Upon application of the Attorney General, the court shall defer the issuance of an order under subsection (a) for a period of twenty days from the date of the application for the order, or for such lesser period as the Attorney General may specify.

"§3115. Definitions for Subchapter B

"As used in this subchapter—

"(a) 'agency of the United States' means an executive department, as defined in 5 U.S.C. 101; a military department, as defined in 5 U.S.C. 102; the Atomic Energy Commission; the China Trade Act registrar appointed under section 3 of that Act (15 U.S.C. 143); the Civil Aeronautics Board; the Commodity Futures Trading Commission; the Federal Communications Commission; the Federal Deposit Insurance Corporation; the Federal Maritime Commission; the Federal Power Commission; the Federal Trade Commission; the Interstate Commerce Commission; the National Credit Union Administration; the National Labor Relations Board; the National Transportation Safety Board; the Railroad Retirement Board; the Securities and Exchange Commission; the United States Victim Compensation Board; an arbitration board established under section 7 of the Railway Labor Act (45 U.S.C. 157); or a board established under section 5 of the Act of February 22, 1935 (15 U.S.C. 715d);

"(b) 'court of the United States' includes the Superior Court, and the Court of Appeals, of the District of Columbia, and the United States Court of Military Appeals; and

"(c) 'official proceeding' means a proceeding in which a federal law authorizes an oath to be administered.

"Subchapter C—Protection of Witnesses

"Sec.
"3121. Witness Relocation and Protection.
"3122. Reimbursement of Expenses.
"3123. Definitions for Subchapter C.

"§3121. Witness Relocation and Protection

"(a) RELOCATION.—The Attorney General may provide for the relocation of a government witness or a potential government witness in an official proceeding involving racketeering activity, an offense similar in nature, or an offense the

investigation or prosecution of which appears likely under the circumstances to cause the commission of an offense described in section 1323 (Tampering With a Witness or an Informant) or 1324 (Retaliating Against a Witness or an Informant). The Attorney General may also provide for the relocation of the immediate family of, or a person otherwise closely associated with, such witness or potential witness if the family or person may also be endangered.

"(b) RELATED PROTECTIVE MEASURES.—In connection with the relocation of a witness, a potential witness, or an immediate family member or close associate of a witness or potential witness, the Attorney General may take any action he determines to be necessary to protect such person from bodily injury, and otherwise to assure his health, safety, and welfare, for as long as, in the judgment of the Attorney General, such danger exists. The Attorney General may—

"(1) provide suitable official documents to enable the person relocated to establish a new identity;

"(2) provide housing for the person relocated;

"(3) provide for the transportation of household furniture and other personal property to the new residence of the person relocated;

"(4) provide a tax free subsistence payment, in a sum established in regulations issued by the Attorney General, for such times as the Attorney General determines to be warranted;

"(5) assist the person relocated in obtaining employment; and

"(6) refuse to disclose the identity or location of the person relocated, or any other matter concerning the person or the relocation program, after weighing the danger such a disclosure would pose to the person relocated, the detriment it would cause to the general effectiveness of the relocation program, and the benefit it would afford to the public or to the person seeking the disclosure.

"(c) CIVIL ACTION AGAINST A RELOCATED PERSON.—Notwithstanding the provisions of subsection (b)(6), if a person relocated under this section is named as a defendant in a civil cause of action, arising prior to the person's relocation, for damages resulting from bodily injury, property damage, or injury to business, process in the civil proceeding may be served upon the Attorney General. The Attorney General shall make reasonable efforts to serve a copy of the process upon the person relocated at his last known address. If a judgment in such an action is entered against the person relocated, the Attorney General shall determine whether the person has made reasonable efforts to comply with the provisions of that judgment. The Attorney General shall take affirmative steps to urge the person located to comply with any judgment rendered. If the Attorney General determines that the person has not made reasonable efforts to comply with the provisions of the judgment, he may, in his discretion, after weighing the danger to the person relocated, disclose the identity and location of that person to the plaintiff entitled to recovery pursuant to the judgment. Any such disclosure

shall be made upon the express condition that further disclosure by the plaintiff of such identity or location may be made only if essential to the plaintiff's efforts to recover under the judgment, and only to such additional persons as is necessary to effect the recovery. Any such disclosure or nondisclosure by the Attorney General shall not subject the government to liability in any action based upon the consequences thereof.

"§ 3122. Reimbursement of Expenses

"The provision of transportation, housing, subsistence, or other assistance to a person under section 3121 may be conditioned by the Attorney General upon reimbursement of expenses in whole or in part to the United States by a State or local government.

"§ 3123. Definitions for Subchapter C

"As used in this subchapter—

"(a) 'government' includes the federal government and a State or local government; and

"(b) 'racketeering activity' has the meaning set forth in section 1806(f).

"Subchapter D—Payment of Rewards

"§ 3131. Rewards for Apprehending Offenders

"The Attorney General may offer and pay an amount not to exceed $100,000 as a reward for the capture of, or for information leading to the arrest or conviction of, a person charged with the commission of a federal or State offense. Except as otherwise provided, no more than $100,000 may be expended as a reward for the capture of, or for information leading to the arrest or conviction of, any one person. If the person charged is killed while resisting arrest, the Attorney General may pay all or part of the reward to the person who assisted in the capture or provided the information. A reward may not be paid to a public servant who has rendered services or furnished information while performing his official duties.

"CHAPTER 32—RENDITION AND EXTRADITION

"Subchapter A—Rendition

"§ 3201. Interstate Agreement on Detainers

"(a) ADOPTION OF AGREEMENT BY THE UNITED STATES.—The United States, as a 'sending State' for purposes of Articles III and IV, but as a 'receiving State' for purposes of Article III only, and the District of Columbia are parties to the Interstate Agreement on Detainers, as set forth in subsection (b),

together with all jurisdictions joining the agreement in substantially the same form. All government agencies and public servants of the United States and of the District of Columbia shall cooperate with the party States in enforcing the agreement and in effectuating its purpose.

"(b) TEXT OF AGREEMENT.

" 'The contracting States solemnly agree that—

" 'ARTICLE I

" 'The party States find that charges outstanding against a prisoner, detainers based on untried indictments, informations, or complaints and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party States and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints. The party States also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

" 'ARTICLE II

" 'As used in this agreement—

" '(a) "State" shall mean a State of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

" '(b) "Sending State" shall mean a State in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to article III hereof or at the time that a request for custody or availability is initiated pursuant to article IV hereof.

" '(c) "Receiving State" shall mean the State in which trial is to be had on an indictment, information, or complaint pursuant to article III or article IV hereof.

" 'ARTICLE III

" '(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party State, and whenever during the continuance of the term of imprisonment there is pending in any other party State any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred and eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint: *Provided*, That, for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate

official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decision of the State parole agency relating to the prisoner.

"'(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

"'(c) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.

"'(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, information, or complaints on the basis of which detainers have been lodged against the prisoner from the State to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections, or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the State to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

"'(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving State to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending State. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

"'(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

"'ARTICLE IV

"'(a) The appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party State made available in accordance with article V(a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the State in which the prisoner is incarcerated: *Provided*, That the court having jurisdiction of such indictment, information, or complaint shall have duly approved, recorded, and transmitted the request: *And provided further*, That there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the Governor of the sending State may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

"'(b) Upon request of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the State parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving State who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

"'(c) In respect of any proceeding made possible by this article, trial shall be commenced within one hundred and twenty days of the arrival of the prisoner in the receiving State, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

"'(d) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending State has not affirmatively consented to or ordered such delivery.

"'(e) If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V(e) hereof, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

"'ARTICLE V

"'(a) In response to a request made under article III or article IV hereof, the appropriate authority in a sending State shall offer to deliver temporary custody of such prisoner to the appropriate authority in the State where such indictment, information, or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving State shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place of trial, whichever custodial arrangement may be approved by the custodian.

"'(b) The officer or other representative of a State accepting an offer of temporary custody shall present the following upon demand:

"'(1) Proper identification and evidence of his authority to act for the State into whose temporary custody this prisoner is to be given.

"'(2) A duly certified copy of the indictment, information, or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

"'(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in article III or article IV hereof, the appropriate court of the jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

"'(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

"'(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending State.

"'(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

"'(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending State and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

"'(h) From the time that a party State receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending State, the State in which the one or more untried indictments, informations, or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping, and returning the prisoner. The provisions of this paragraph shall govern unless the States concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party State, or between a party State and its subdivisions, as to the payment of costs, or responsibilities therefor.

"'ARTICLE VI

"'(a) In determining the duration and expiration dates of the time periods provided in articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

"'(b) No provision of this agreement, and no remedy made available by this agreement shall apply to any person who is adjudged to be mentally ill.

"'ARTICLE VII

"'Each State party to this agreement shall designate an officer who, acting jointly with like officers of other party States, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the State, information necessary to the effective operation of this agreement.

"'ARTICLE VIII

"'This agreement shall enter into full force and effect as to a party State when such State has enacted the same into law. A State party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any State shall not affect the status of any proceedings already initiated by inmates or by State officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

"'ARTICLE IX

"'This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any party State or of the United States or the applicability thereof to

any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any State party hereto, the agreement shall remain in full force and effect as to the remaining States and in full force and effect as to the State affected as to all severable matters.'.

"§ 3202. Rendition of a Fugitive

"If the executive authority of a State demands the return of a person, as a fugitive from justice, from the executive authority of a State to which the person has fled, the demand must be accompanied by a copy of an indictment returned before a judge of the demanding State, or of an affidavit made before such a judge, charging such person with the commission of a State or local crime. The copy must be certified as authentic by the Governor or chief magistrate of the State from which the person charged has fled. Upon receipt of the demand and accompanying documents, the executive authority of the State to which the person has fled shall—

"(a) cause the person to be arrested and held in official detention;

"(b) notify the executive authority of the demanding State, or his agent if one has been appointed to receive the fugitive; and

"(c) deliver the fugitive to the agent when the agent appears.

If no agent of the demanding State appears within thirty days of the date of arrest to take the fugitive into his custody, the person may be discharged. An agent who receives a fugitive into his custody may transport him to the State from which he has fled.

"§ 3203. General Provisions for Subchapter A

"(a) DEFINITIONS.—As used in section 3201—

"(1) 'Governor' means, with respect to the United States, the Attorney General, and with respect to the District of Columbia, the Mayor of the District of Columbia; and

"(2) 'appropriate court' means, with respect to the United States, a court of the United States, a court martial, military commission, court of inquiry, Provost court, and any other military court, and, with respect to the District of Columbia, the Superior Court of the District of Columbia, in which there is pending an indictment, information, or complaint, for which disposition is sought.

"(b) REGULATIONS, FORMS, AND INSTRUCTIONS.—The Attorney General, acting for the United States, and the Mayor of the District of Columbia, acting for the District of Columbia, shall issue regulations, forms, and instructions, and shall perform any other act necessary for carrying out the provisions of this subchapter.

"(c) RESERVATION OF RIGHT TO ALTER, AMEND, OR REPEAL.—The United States reserves the right to alter, amend, or repeal the Agreement set forth in section 3201(b).

"Subchapter B—Extradition

"§ 3211. Scope and Limitation of Extradition Provisions

"(a) APPLICATION.—Extradition may be granted only pursuant to the provisions of an applicable treaty or other international agreement and of this subchapter.

"(b) LIMITATION.—The provisions of this subchapter relating to the surrender of a person who has been convicted of or charged with an offense by a foreign nation shall continue in force only during the existence in force of a treaty or other international agreement, bilateral or multilateral, concerning extradition between the United States and the foreign nation.

"(c) CONVICTIONS IN ABSENTIA.—Extradition may not be granted for a person convicted in absentia, unless—

"(1) the demanding government assures the Secretary of State that the proceeding will be reopened upon the request of the person to be surrendered; or

"(2) the person fled after having been present when his trial commenced.

"(d) AUTHORIZING EXTRADITION.—If an extradition treaty or other international agreement provides that the United States may extradite its own citizens or nationals, but does not require such extradition, the Secretary of State has authority to authorize the extradition of a United States citizen or national who has been found extraditable pursuant to the provisions of this subchapter.

"§ 3212. Extradition Procedure

"(a) ARRESTS WITH DOCUMENTATION.—

"(1) Upon the filing of a complaint under oath or affirmation charging that a person believed to be within the jurisdiction of the court has committed, within the jurisdiction of a demanding foreign government, an offense made extraditable in an applicable extradition treaty or other international agreement with the United States—

"(A) a court of the United States; or

"(B) a magistrate specifically authorized by a court of the United States;

may issue a warrant for the arrest of the person charged.

"(2) The complaint may be filed only by—

"(A) the Attorney General—

"(i) pursuant to the provisions of an applicable treaty or other international agreement; or

"(ii) at the request of the demanding government; or

"(B) a person authorized by an appropriate authority of the demanding government to act on behalf of that government.

A complaint shall be accompanied by the documents required by the provisions of the applicable treaty or other international agreement, a copy of the diplomatic note to the Secretary of State requesting extradition, an acknowledgement from the Department of State of the diplomatic note requesting extradition, and a copy of the applicable treaty or other international agreement.

"(3) Upon arrest, the person shall be brought either to the court issuing the warrant of arrest or to the nearest federal district court. The extradition hearing shall be conducted by the court to which the person arrested is brought. If the person arrested is brought before a court other than the one that issued the warrant of arrest, the complaint and other documents filed with that court shall be forwarded by the issuing court to the court in which the hearing is to be conducted.

"(b) ARREST WITHOUT DOCUMENTATION.—

"(1) Upon the filing of a complaint under oath or affirmation by a person authorized to do so under subsection (a)(2)—

"(A) a court of the United States; or

"(B) a magistrate specifically authorized by a court of the United States;

may issue a warrant for the provisional apprehension of the person sought.

"(2) The complaint shall state that a warrant of arrest or order of detention exists for the person in the foreign nation, shall specify the offense for which extradition is being sought, shall describe the circumstances that necessitate such arrest, and shall state, if the complaint is not filed by the Attorney General, that reasonable notice of the intention to make the complaint has been given to the Secretary of State.

"(3) The limitation period established by the applicable treaty or other international agreement, or by this subchapter, for the presentation of the documents required by the applicable treaty or other international agreement, shall be tolled by presentation of the documents to the Secretary of State. The failure to present the documents within the period prescribed by the applicable treaty or other international agreement, or by this subchapter, shall authorize the court to release the person from official detention, but such release does not terminate the proceeding.

"(c) OFFICIAL DETENTION.—

"(1) A person arrested under the provisions of subsection (a) shall be held in official detention until the completion of extradition proceedings unless good cause for his release is presented to the court. Release shall be granted only upon—

"(A) the posting of appropriate security;

"(B) the surrender of any travel documents, including a passport or a visa, in the possession of the person; and

"(C) the imposition of appropriate restrictions on his movements.

"(2) Unless unusual cause is presented to the court, a person arrested pursuant to the provisions of subsection (b) shall be held in official detention for the period, if any, specified in the applicable treaty or other international agreement, or for ninety days, whichever is less. If release is approved by the court, it may be granted only under the restrictions set forth in paragraph (1). Upon receipt by the Secretary of State of the documents specified in subsection (a), the person arrested shall be subject to the provisions of paragraph (1).

"(d) EXTRADITION HEARING.—

"(1) A person may not be extradited unless—

"(A) a hearing is held in which his extraditability is established; or

"(B) a hearing is waived pursuant to section 3214.

"(2) Unless otherwise specified by the applicable treaty or other international agreement, or by this subchapter, extraditability shall be found upon proof that—

"(A) the applicable treaty or other international agreement of extradition is in full force and effect;

"(B) the offense for which extradition is requested is made extraditable in the applicable treaty or other international agreement;

"(C) a criminal charge is pending against the person sought, or the person sought has been convicted of an offense in a court of the foreign nation but has not completed service of the sentence imposed;

"(D) the pending criminal charge, or the prosecution for the offense for which the person sought was convicted, was commenced within the period required by any applicable statute of limitations;

"(E) a warrant of arrest or order of detention is outstanding in the foreign nation against the person sought;

"(F) evidence exists that establishes probable cause to believe that the person sought and the person arrested are identical; and

"(G) evidence exists that establishes probable cause to believe that the person sought has committed, or has been convicted of, the alleged offense.

"(3) Defenses against extradition are limited to those provided by the applicable treaty or other international agreement, or by international law, or by this title.

"(e) PROOF AND ADMISSIBILITY OF EVIDENCE.—

"(1) Testimony of witnesses is not required in order to establish that the person is extraditable; extraditability may be established by properly certified documents alone.

"(2) A deposition, warrant, or other document, or a copy thereof, offered in evidence on behalf of the foreign nation upon the hearing of an extradition case, is admissible as evidence at the hearing for all the purposes of the hearing if—

"(A) it has been properly authenticated so as to entitle it to be received for similar purposes by the courts of the foreign nation from which the person is declared to be a fugitive;

"(B) a certificate to this effect has been executed by an appropriate official of the foreign nation;

"(C) the certificate of the foreign official has been certified by a diplomat or consular officer of the United States assigned to such foreign nation; and

"(D) the signature of such diplomatic or consular officer has been certified by the Secretary of State.

"(3) A certification or affidavit by the Secretary of State concerning the existence of a treaty or other international agreement, and concerning its status and effect, is admissible as evidence at the hearing and is conclusive proof of such matters. A certification or affidavit by the Secretary of State concerning the interpretation of a treaty or other international agreement is admissible as evidence at the hearing.

"(4) Hearsay evidence is admissible to establish the probable cause required by subsection (d)(2)(G), and probable cause may be established by hearsay evidence alone.

"(f) APPLICABLE LAWS.—The proof required by subsection (d)(2)(B), may be found sufficient only if the court determines that the basic elements of the offense in question substantially compare to the basic elements of an offense that is a federal offense or that is generally considered to be a crime under the criminal laws of the States. If the applicable treaty or international agreement requires that the statute of limitations in the United States be considered, the time limitations set forth in section 511 are applicable to such offenses for purposes of this subchapter. The Federal Rules of Criminal Procedure are not applicable to this subchapter.

"(g) RESULTS OF HEARING.—

"(1) If, at the conclusion of the extradition hearing, the court conducting the hearing finds the evidence presented to be sufficient to meet the

requirements of subsection (d)(2) and to sustain the charge under the provisions of the applicable treaty or other international agreement, it shall certify the record of the proceeding, including the finding as to extraditability on each charge for which extradition was requested as required by subsection (c)(2), to the Secretary of State. The certification shall be forwarded to the Secretary of State by the clerk of the court within ten days from the date of the finding and the order of committal.

"(2) If, at the conclusion of the extradition hearing, the court conducting the hearing finds the evidence presented to be insufficient to sustain any charge under the provisions of the applicable treaty or other international agreement, it shall state the reasons for the findings as to each such charge and certify the findings to the Secretary of State.

"(3) A person found extraditable shall be committed to the custody of the Attorney General until he is surrendered to a duly appointed agent of the demanding government or until the Secretary of State declines to issue a warrant of surrender.

"(h) NEW PROCEEDING FOR SAME FUGITIVE.—If the requisition of the foreign nation is denied, in whole or in part, by a court of the United States, that nation may, after notification to the Secretary of State, request the Attorney General to commence a new action in conformity with the court's decision required by section 3212(g)(2).

"§ 3213. Warrant of Surrender

"(a) ISSUANCE OF WARRANT.—Upon receipt of the record of the proceeding pursuant to the provisions of section 3212(g)(1), the Secretary of State may issue, pursuant to the request of the proper authorities of the demanding government, a warrant authorizing the surrender of a person committed under section 3212 to an authorized agent of the demanding government. The Secretary of State shall issue the warrant to surrender and forward it to the embassy of the foreign nation within thirty days of his receipt of the record of the proceeding unless an appeal is taken by the person sought and a stay is granted by a court having jurisdiction. The Secretary of State's decision shall be based upon the provisions of the applicable treaty and this subchapter. The foreign embassy shall be advised of the limitations in section 3213(c) by the Secretary of State. If a request for extradition is denied, in whole or in part, the decision shall be forwarded expeditiously by the Secretary of State to the court of the district where the fugitive is detained and to the foreign nation's ambassador.

"(b) WARRANT AS AUTHORITY.—Possession of a warrant of surrender by an agent of the foreign nation, duly appointed and designated to receive custody from the United States of a person ordered surrendered, constitutes authority for the agent to hold the surrendered person in his custody and safekeeping in any State through which it may be necessary for him to pass with the surrendered person en route to the nation to which extradition has been ordered.

"(c) TIME LIMITATION.—A person committed pursuant to section 3212(g)(3)—

"(1) who is not surrendered to, and conveyed out of the United States by, a duly authorized agent of the demanding nation within—

"(A) sixty days after the commitment; plus

"(B) the time actually required expeditiously to convey the person out of the United States from the facility in which he was held in official detention; plus

"(C) the time, if any, during which the execution of the warrant had been stayed pursuant to the provisions of subsection (d); and

"(2) who gives reasonable notice to the Secretary of State, of his intention to apply for release;

may be ordered by a court of the United States to be released from official detention unless good cause is shown why such release should not be ordered.

"(d) STAY OF EXECUTION OF WARRANT.—The execution of the warrant of surrender may not be stayed by an appellate court of the United States unless good cause is shown.

"§ 3214. Waiver

"A person who is arrested for extradition to a foreign nation may waive the requirements of formal extradition proceedings, including the necessity of the issuance of a warrant of surrender by the Secretary of State, if, orally and in writing, he so advises the court before which an extradition hearing would be held that he knows of and waives all rights guaranteed by the applicable treaty or other international agreement, and by this subchapter, in order that he might be returned as soon as practicable to such foreign nation. Such a waiver is irrevocable. If the demanding government and the court accept the waiver, the person shall be removed from the United States within fifteen days by an agent appointed by the demanding government. Possession of a certified copy of the waiver by the agent constitutes the same authority for the agent as that granted in section 3213(b). Except as otherwise provided by the applicable treaty or other international agreement, or by this subchapter, all rights available to a person extradited pursuant to such treaty or other international agreement are available to a person waiving extradition pursuant to this subsection. A person not removed from the United States within the fifteen day period prescribed in this section shall be released from official detention, but such release does not terminate the proceeding.

"§ 3215. Appeal

"The person sought, or the demanding government, may appeal to the appropriate United States Court of Appeals from a judgment on a request for extradition. A notice of appeal may be filed within seven days after the district court's decision regarding extraditability. The brief on behalf of the appellant shall be filed within ten days of the notice of appeal. The brief on behalf of the appellee

shall be filed within ten days of the receipt of appellant's brief. An appeal under this section shall be decided expeditiously. No stay of the requirements of section 3212 (g)(1) or (g)(2) may be granted except by the court of appeals before which the appeal is pending. No stay of the requirements of section 3212(g)(3) shall be granted.

"§ 3216. Return to the United States

"If a person is delivered, pursuant to an extradition request, by a foreign nation to a person who has been designated as an agent of the United States by the Secretary of State, the President has the power to take all necessary measures for the transportation and safekeeping of the surrendered person until he is returned to the jurisdiction that sought his return.

"§ 3217. General Provisions for Subchapter B

"(a) TRANSIT OF EXTRADITED PERSONS.—Except as otherwise provided, a person being escorted from the jurisdiction of one foreign nation to the jurisdiction of another as a result of his surrender for extradition shall be denied entry into the United States by the Immigration and Naturalization Service. If the person is required to transit the United States, he may be permitted by the Immigration and Naturalization Service to enter the United States for the sole purpose of continuous transit, if prior notice of the required transit is given to the Secretary of State by a competent diplomatic official of the foreign nation seeking the transit.

"(b) PAYMENT OF FEES AND COSTS.—All costs and expenses incurred in connection with the extradition or return of a person at the request of—

"(1) a foreign nation, shall be borne by—

"(A) such nation, upon request made by the Secretary of State, if the demanding government is not represented by the Attorney General;

"(B) the United States, if the demanding government is represented by the Attorney General, except for costs and expenses for translations of extradition documents and for transportation of the person sought to the foreign nation;

"(2) a State, shall be borne by such State; and

"(3) the United States, shall be borne by the United States.

"CHAPTER 33—JURISDICTION AND VENUE

"Subchapter A—Jurisdiction

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"§ 3301. Jurisdiction of District Courts Over Offenses

"(a) UNITED STATES DISTRICT COURTS.—The United States District Courts have original jurisdiction, exclusive of the courts of the States, over all offenses committed within the general, special, or extraterritorial jurisdiction of the United States.

"(b) DISTRICT COURTS OF THE CANAL ZONE, GUAM, AND THE VIRGIN ISLANDS.—The United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands have original jurisdiction over all offenses committed within the geographic jurisdiction of such courts or within the special or extraterritorial jurisdiction of the United States.

"§ 3302. Jurisdiction of United States Magistrates Over Offenses

"(a) JURISDICTION.—A United States magistrate has jurisdiction to try persons accused of, and to sentence persons found guilty of, misdemeanors and infractions committed within the judicial district or districts in which he serves if he is specifically designated by the district court or courts to exercise such jurisdiction and if he proceeds under such conditions as are imposed by the terms of the special designation. Subject to the terms of the special designation, the magistrate may exercise all authority of a district court with regard to trial, sentencing, and modification of sentences.

"(b) ELECTION OF DISTRICT COURT TRIAL AND TRIAL BY JURY.—If a person is charged with a Class A misdemeanor, either he or the attorney for the government may elect to have the case tried before a judge of the district court for the district in which the offense was committed. If the attorney for the government does not elect to have the case tried before a judge, the magistrate shall explain to the person that he has a right to a trial before a judge of the district court and that he has a right to a trial by a jury whether he is tried before the magistrate or elects to be tried before a judge. The magistrate shall not proceed to try the case unless the person, after such explanation and after advice by his counsel, signs a written statement consenting to be tried before the magistrate and waiving both a jury trial and nonjury trial before a judge of the district court. If such a statement is signed, the magistrate shall try the case with a jury, unless, with the approval of the magistrate and the consent of the attorney for the government, the person, after advice by his counsel, also signs a written statement waiving a jury trial. If a person is charged with a Class B or C misdemeanor or an infraction, he may not elect to have the case tried before a judge of a district court and may not elect to have the case tried by a jury except as may be required by the United States Constitution.

"(c) REMOVAL TO DISTRICT COURT.—The attorney for the government may, pursuant to regulations issued by the Attorney General, file a petition to the district court for removal of a case pending before a magistrate on the grounds that the importance, complexity, novelty, or other characteristics of the case

warrant its being tried before a judge. The district court, upon a showing of good cause, shall grant the petition and remove the case.

"(d) APPEAL TO DISTRICT COURT.—A person convicted by a magistrate may appeal from the conviction to a judge of the district court of the district in which the offense was committed.

"§ 3303. Jurisdiction to Order Arrests for Offenses

"(a) ARREST WITHIN THE UNITED STATES.—A person accused of an offense may be arrested anywhere within the United States by order of a federal judge, or of a judicial officer of the State in which the person is found.

"(b) ARREST OUTSIDE THE UNITED STATES.—A person accused of an offense may be arrested if he is outside the United States and outside the jurisdiction of any nation, and may be returned to the United States, by order of a federal judge, if the person—

"(1) is a fugitive from justice who has been charged with or convicted of any offense; or

"(2) is charged with an offense over which there is extraterritorial jurisdiction as set forth in section 204.

An officer executing a warrant ordered pursuant to this subsection may exercise all the powers of a United States marshal to the extent that such powers are needed for the execution of the warrant and for the safekeeping of the person arrested.

"(c) AUTHORITY OF A STATE JUDICIAL OFFICER.—A judicial officer of a State acting under subsection (a) may proceed according to the usual method of procedure in such State to the extent that such procedure is not inconsistent with the Federal Rules of Criminal Procedure, but his authority after the arrest is effected does not extend beyond determining whether to hold the person arrested, at the expense of the United States, for trial or to release him from official detention as provided by section 3502.

"Subchapter B—Venue

"§ 3311. Venue for an Offense Committed in More Than One District

"(a) IN GENERAL.—Except as otherwise provided, an offense begun in one judicial district and completed in another, or committed in more than one district, may be prosecuted in any district in which the offense was begun, continued, or completed.

"(b) CONSPIRACY OFFENSES.—A conspiracy offense, for purposes of subsection (a), is a continuing offense, and may be prosecuted in any district in which the conspiracy was entered into or in which any person engaged in any conduct to effect an objective of the conspiracy. A conspiracy to commit an offense under

section 1842 (Disseminating Obscene Material) may be prosecuted only in a district in which the conspiracy was entered into or in which a substantial portion of the conspiracy occurred. A substantive offense that is committed pursuant to a conspiracy may be prosecuted with the conspiracy offense in any district in which the conspiracy offense may be prosecuted.

"(c) MAILS OR COMMERCE OFFENSES.—If federal jurisdiction to prosecute an offense is based upon the use of the mails, the movement of persons or property in interstate or foreign commerce or by mail, or the importation of an object into the United States, the offense, for purposes of subsection (a), is a continuing offense, and may be prosecuted in any district described in subsection (a) or in any district from, through, or into which the mail, commerce, or imported object moves.

"(d) TAXES OFFENSES.—An offense—

"(1) described in section 1402(a)(1) (Disregarding a Tax Obligation); or

"(2) involving the use of the mail and described in section—

"(A) 1343 (Making a False Statement), if the offense involves a tax return as defined in section 1404(d); or

"(B) section 1401 (a)(1) or (a)(5) (Tax Evasion);

may be prosecuted in any district in which the offense was begun, continued, or completed, unless the defendant, by motion filed within twenty days after arraignment in the district in which the prosecution is begun, requests to be tried in the district in which he was residing at the time the offense was committed.

"(e) HOMICIDE OFFENSES.—An offense described in section 1601 (Murder), 1602 (Manslaughter), or 1603 (Negligent Homicide) may be prosecuted only in the district in which the injury was inflicted, or in which the means were employed that caused the death, without regard to the place where the death occurred.

"(f) FLIGHT OFFENSES.—An offense described in section 1315 (Flight to Avoid Prosecution or Appearance as a Witness) may be prosecuted only in the district in which—

"(1) the original offense was alleged to have been committed; or

"(2) the person was to appear as a witness, give testimony, or produce a record, document, or other object.

"(g) OBSCENITY OFFENSES.—An offense described in section 1842 (Disseminating Obscene Material) may be prosecuted only in a district—

"(1) from which the obscene material was disseminated; or

"(2) in which the offense was completed.

"§ 3312. Venue for an Offense Committed Outside any District

"(a) VENUE.—An offense begun or committed within—

"(1) any part of—

"(A) the special territorial jurisdiction of the United States as set forth in section 203(a);

"(B) the special maritime jurisdiction of the United States as set forth in section 203(b); or

"(C) the special aircraft jurisdiction of the United States as set forth in section 203(c);

that is outside of the jurisdiction of any judicial district; or

"(2) the extraterritorial jurisdiction of the United States as set forth in section 204;

shall be prosecuted in the district in which the defendant, or any one of two or more joint defendants, is arrested or is first brought after arrest. If the defendant or defendants are not arrested or brought into any district, an indictment or information may be filed in the district of the last known residence of the defendant, or of any one of two or more such defendants, or, if no such residence is known, the indictment or information may be filed in the District of Columbia.

"(b) CHANGE OF VENUE.—If the defendant arrives in the judicial district in which he is arrested, or to which he is first brought after arrest, due to emergency, illness, or other exigent circumstances resulting in an unscheduled arrival in that judicial district, the court may, on motion of a party, and in the interest of justice, transfer the proceeding to another judicial district.

"§ 3313. Venue if a New District or Division is Established

"(a) IN GENERAL.—If a new judicial district or division is established, or if a county or territory is transferred from one district or division to another district or division, a prosecution for an offense committed within such district, division, county, or territory prior to the establishment or transfer shall proceed in the same manner as if the new district or division had not been created, or as if the county or territory had not been transferred.

"(b) REMOVAL UPON MOTION OF DEFENDANT.—A case proceeding as prescribed in subsection (a) may be ordered by the court to be removed to the new district or division for trial if, within twenty days after arraignment of the defendant in the district or division in which the indictment was returned or the information was filed, the defendant files a motion for such removal.

"CHAPTER 34—APPOINTMENT OF COUNSEL

"§ 3401. District Plans for Appointment of Counsel

"(a) ESTABLISHMENT OF PLAN.—Each district court of the United States, with the approval of the judicial council of the circuit, shall place in operation throughout the district a plan for furnishing representation for any person financially unable to obtain adequate representation—

"(1) who is charged—

"(A) with a felony or a Class A misdemeanor;

"(B) with an act of juvenile delinquency as defined in section 3606(b) including representation at a hearing pursuant to section 3603(a)(2)(C) or section 3603(a)(3)(C); or

"(C) with a violation of probation;

"(2) who is under arrest, when such representation is required by law;

"(3) who is in custody as a material witness, or seeking collateral relief, as provided in section 3403(d); or

"(4) for whom the Sixth Amendment to the Constitution requires the appointment of counsel, or for whom, in a case in which he faces loss of liberty, any federal law requires the appointment of counsel.

"(b) CHOICE OF PLAN.—Representation under the plan shall include counsel and investigative, expert, and other services necessary for an adequate defense. The plan shall include a provision for private attorneys. The plan may include, in addition to a provision for private attorneys in a substantial proportion of the cases, a provision for—

"(1) attorneys furnished by a bar association or a legal aid agency; and

"(2) attorneys furnished by a defender organization established in accordance with the provisions of section 3404.

Prior to approving the plan for a district, the judicial council of the circuit shall supplement the plan with provisions for representation on appeal. The district court may modify the plan at any time with the approval of the judicial council of the circuit, and shall modify the plan when directed to do so by the judicial council. The district court shall notify the Administrative Office of the United States Courts of its plan and of any modification.

"§ 3402. Appointment of Counsel

"(a) COURT APPOINTMENT.—Counsel furnishing representation under a plan established pursuant to this subchapter shall be selected from a panel of attorneys designated or approved by the court, or from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the plan. In a case in which the defendant may be entitled to representation pursuant to a plan and appears without counsel, the court or magistrate shall advise the defendant that he has the right to be represented by counsel and that counsel will be appointed to represent him if he is financially unable to obtain counsel. Unless the defendant waives representation by counsel, the court or magistrate, if satisfied after appropriate inquiry that the defendant is financially unable to obtain counsel, shall appoint counsel to represent him. The appointment may be made retroactive to include any representation furnished pursuant to the plan prior to appointment. The court or magistrate shall appoint separate counsel for defendants having interests that cannot properly be represented by the same counsel, or for other good cause shown.

"(b) DURATION AND SUBSTITUTION OF APPOINTMENT.—A person for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance before a court or a magistrate through appeal, including ancillary matters appropriate to the proceedings and a proceeding under section 3603(a). If at any time after the appointment of counsel the court or magistrate finds that the person is financially able to obtain counsel or to make partial payment for the representation, the court or magistrate may, in the interest of justice, terminate the appointment of counsel or direct payment as provided in section 3403(c). If at any stage of the proceedings, including an appeal, the court or magistrate finds that a person is financially unable to pay counsel whom he had retained, the court or magistrate may, in the interest of justice, appoint counsel as provided in subsection (a) and authorize payment as provided in section 3403. The court or magistrate may, in the interest of justice, substitute one appointed counsel for another at any stage of the proceedings.

"§ 3403. Compensation of Counsel

"(a) PAYMENT FOR REPRESENTATION.—

"(1) HOURLY RATE.—An attorney appointed pursuant to section 3402, or a bar association, legal aid agency, or community defender organization that has provided the appointed attorney, shall, at the conclusion of the representation or any segment thereof, be compensated at a rate not exceeding $45 per hour for time expended before a court or a magistrate and $30 per hour for time reasonably expended out of court, or shall be compensated at such other hourly rate, fixed by the judicial council of the circuit, not to exceed the usual minimum hourly rate in the district for similar services. The attorney shall be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the magistrate or court.

"(2) MAXIMUM AMOUNT.—For representation of a defendant before a district court or a magistrate, or both, the compensation to be paid to an attorney, or to a bar association, legal aid agency, or community defender organization, may not exceed $1,500 for each attorney in a case in which one or more felonies are charged, and $600 for each attorney in a case in which only misdemeanors or infractions are charged. For representation of a defendant in an appellate court, the compensation to be paid to an attorney, or to a bar association, legal aid agency, or community defender organization, may not exceed $1,500 for each attorney in each court. For representation in connection with a post-trial motion made after the entry of judgment or in a probation revocation proceeding, or for representation provided under section 3403(d) or 3616(d), the compensation may not exceed $375 for each attorney in each proceeding.

"(3) WAIVING MAXIMUM AMOUNT.—Payment in excess of any maximum amount provided in paragraph (2) may be made for extended or complex representation if—

"(A) the court in which the representation was rendered, or the magistrate if the representation was furnished exclusively before him, certifies that the amount of the excess payment is necessary to provide fair compensation; and

"(B) the payment is approved by the chief judge of the circuit.

"(4) FILING CLAIM.—A separate claim for compensation and reimbursement shall be made to the district court for representation before the court or a magistrate, and to each appellate court for representation before that court. Each claim shall be supported by a sworn written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the court or magistrate, and the compensation and reimbursement applied for or received from any other source in the same case. The court shall fix the compensation and reimbursement to be paid to the attorney, or to the bar association, legal aid agency, or community defender organization. In a case in which representation is furnished exclusively before a United States magistrate, the claim shall be submitted to the magistrate and he shall fix the compensation and reimbursement to be paid. In a case in which representation is furnished other than before a United States magistrate, a district court, or an appellate court, the claim shall be submitted to the district court, and the district court shall fix the compensation and reimbursement to be paid.

"(b) SERVICES OTHER THAN COUNSEL.—

"(1) WITH PRIOR REQUEST.—Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request them in an ex parte application. Upon a finding, after appropriate inquiry in ex parte proceeding by the court or magistrate having jurisdiction over a matter, that the services are required in connection with the matter and that the person is financially unable to obtain them, the court or the magistrate shall authorize counsel to obtain them.

"(2) WITHOUT PRIOR REQUEST.—Counsel appointed under this chapter may obtain, subject to later review, investigative, expert, or other services without prior authorization if necessary for an adequate defense. The total cost of services obtained without prior authorization may not exceed $225 and expenses reasonably incurred.

"(3) MAXIMUM AMOUNT.—Compensation to be paid to a person for services rendered by him under this subsection or to be paid to an organization for services rendered by an employee thereof, shall not exceed

$450, exclusive of reimbursement for expenses reasonably incurred, unless—

"(A) payment in excess of that limit is certified by the court or the magistrate, if the services were rendered in connection with a case disposed of entirely before him, as necessary to provide fair compensation for services of an unusual character or duration; and

"(B) the amount of the excess payment is approved by the chief judge of the circuit.

"(c) RECEIPT OF OTHER PAYMENT.—If the court or magistrate finds that funds are available for payment by or on behalf of a person furnished representation, the court or magistrate may authorize or direct that such funds be paid to—

"(1) the appointed attorney;

"(2) the bar association, legal aid agency, or community defender organization that provided the appointed attorney;

"(3) any person or organization authorized pursuant to subsection (b) to render investigative, expert, or other services; or

"(4) the court for deposit in the Treasury as a reimbursement to the appropriation, current at the time of payment, to carry out the provisions of this section.

Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for representing a defendant.

"(d) DISCRETIONARY APPOINTMENT.—A person who is in custody as a material witness, or who is seeking relief under 28 U.S.C. 2241, 2254, or 2255, may be furnished representation pursuant to the plan whenever the court or magistrate determines that the interest of justice so requires and that the person is financially unable to obtain representation. Payment for such representation may be as provided in subsections (a) and (b).

"§ 3404. Defender Organizations

"(a) QUALIFICATIONS.—A district or a part of a district in which at least two hundred persons annually require the appointment of counsel may establish a defender organization as provided under subsection (b)(1) or (b)(2). Two adjacent districts or parts of districts may aggregate the number of persons required to be represented to establish eligibility for a defender organization to serve both areas. If the adjacent districts or parts of districts are located in different circuits, the plan for furnishing representation shall be approved by the judicial council of each circuit.

"(b) TYPES OF DEFENDER ORGANIZATIONS.—

"(1) FEDERAL PUBLIC DEFENDER ORGANIZATION.—A Federal Public Defender Organization shall consist of one or more full-time, salaried attorneys. An organization for a district or part of a district or two adjacent districts or parts of districts shall be supervised by a Federal Public Defender appointed by the judicial council of the circuit, without regard to

the provisions of title 5 governing appointments in the competitive service, after considering recommendations from the district court or courts to be served. Only one Federal Public Defender may be appointed within a single judicial district. The Federal Public Defender shall be appointed for a term of four years, subject to earlier removal by the judicial council of the circuit for incompetency, misconduct in office, or neglect of duty. The compensation of the Federal Public Defender shall be fixed by the judicial council of the circuit at a rate not to exceed the compensation received by the United States attorney for the district in which representation is furnished, or, if two districts or parts of districts are involved, the compensation of the United States attorney receiving the higher compensation. The Federal Public Defender may appoint, without regard to the provisions of title 5 governing appointments in the competitive service, full-time attorneys in such number as are approved by the judicial council of the circuit, and other personnel in such number as are approved by the Director of the Administrative Office of the United States Courts. Compensation paid to such attorneys and other personnel of the organization shall be fixed by the Federal Public Defender at a rate not to exceed that paid to attorneys and other personnel of similar qualifications and experience in the office of the United States attorney in the district in which representation is furnished, or, if two districts or parts of districts are involved, the higher compensation paid to persons of similar qualifications and experience in the districts. Neither the Federal Public Defender nor an attorney appointed by him may engage in the private practice of law. Each organization shall submit to the Director of the Administrative Office of the United States Courts, at the time and in the form prescribed by him, reports of its activities, financial position, and proposed budget. The Director of the Administrative Office of the United States Courts shall submit, in a manner similar to and subject to the conditions of 28 U.S.C. 605, a budget for each organization for each fiscal year, and shall, out of the appropriations therefor, make payments to and on behalf of each organization. Payments under this paragraph to an organization shall be in lieu of payments under section 3403 (a) or (b).

"(2) COMMUNITY DEFENDER ORGANIZATION.—A Community Defender Organization shall be a nonprofit defense counsel service established and administered by any group authorized by the plan to provide representation. The organization shall be eligible to furnish attorneys and receive payments under section 3403 if its bylaws are set forth in the plan of the district or districts in which it will serve. Each organization shall submit to the Judicial Conference of the United States an annual report setting forth its activities and financial position and its anticipated caseload and

expenses for the coming year. Upon application an organization may, to the extent approved by the Judicial Conference of the United States—

"(A) receive an initial grant for expenses necessary to establish the organization; and

"(B) in lieu of payments under section 3403(a) or 3403(b), receive periodic sustaining grants to provide representation and other expenses pursuant to this chapter.

"§ 3405. General Provisions for Chapter 34

"(a) RULES AND REPORTS.—Each district court and judicial council of a circuit shall submit a report to the Administrative Office of the United States Courts on the appointment of counsel within its jurisdiction in such form and at such times as the Judicial Conference of the United States may specify. The Judicial Conference of the United States may issue rules and regulations governing the operation of plans for the appointment of counsel.

"(b) ADMINISTRATION.—The Director of the Administrative Office of the United States Courts shall supervise the making of payments under this chapter.

"(c) APPLICATION TO THE DISTRICT OF COLUMBIA.—The provisions of this chapter apply in the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit. The provisions of this chapter do not apply to the Superior Court of the District of Columbia or the District of Columbia Court of Appeals.

"(d) NEW TRIAL CONSIDERED NEW CASE.—For purposes of compensation and other payments authorized by this chapter, an order by a court granting a new trial shall be considered to initiate a new case.

"(e) FEES AND COSTS ON APPEAL WAIVED.—If a person for whom counsel is appointed under this chapter appeals to an appellate court or petitions for a writ of certiorari, he may do so without payment of fees and costs, or security therefor, and without filing the affidavit required by 28 U.S.C. 1915(a).

"CHAPTER 35—RELEASE AND CONFINEMENT PENDING JUDICIAL PROCEEDINGS

"Subchapter A—Release Pending Judicial Proceedings

"§ 3501. Release Authority Generally

"A person charged with an offense may be ordered released pursuant to the provisions of this chapter by a judge authorized to order the arrest and commitment of offenders, but a person charged with an offense for which a sentence of death is authorized may be ordered released only by a judge of a court of the United States that has original jurisdiction in criminal cases.

"§ 3502. Release Pending Trial in a Non-Capital Case

"(a) RELEASE CONDITIONS.—A person charged with an offense, other than an offense for which a sentence of death is authorized, shall, at his appearance before a judge, be ordered released pending trial on his personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judge, unless the judge determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required. If such a determination is made, the judge shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release that will reasonably assure the appearance of the person for trial or, if no single condition will give that assurance, any combination of the following conditions:

"(1) a condition placing the person in the custody of a designated person agreeing to supervise him;

"(2) a condition placing restrictions on the person's travel, associations, or place of abode, during the period of release;

"(3) a condition requiring the execution of an appearance bond in a specified amount, and the deposit in the registry of the court, in cash or other security as directed, of a sum not to exceed ten percent of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;

"(4) a condition requiring the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or

"(5) any other condition reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.

"(b) FACTORS IN DETERMINING RELEASE.—In determining which conditions of release will reasonably assure the appearance of the person as required, the judge shall, on the basis of available information, take into account—

"(1) the nature and circumstances of the offense charged;

"(2) the weight of the evidence against the person; and

"(3) the history and characteristics of the person, including his character, mental condition, family ties, employment, length of residence in the community, financial resources, record of convictions, and record of appearance or nonappearance at court proceedings.

"(c) ORDER.—A judge authorizing the release of a person pursuant to this section or section 3602 shall issue an order containing a statement of the conditions of release imposed, shall advise him of the penalties applicable to a violation of a condition of his release, and shall advise him that a warrant for his arrest will be issued immediately upon such a violation. A failure to advise the person of the penalties applicable for failure to appear as required is not a bar or defense to a prosecution under section 1312 (Bail Jumping).

"(d) RECONSIDERATION.—A person concerning whom conditions of release are imposed, and who after twenty-four hours from the time of the release hearing continues to be detained as a result of his inability to meet the conditions of release, may, upon application, have the conditions reviewed by the judge who imposed them. A person who is ordered released on a condition that requires him to return to custody after specified hours may, upon application, have the condition reviewed by the judge who imposed it. Unless the conditions of release are amended and the person is thereupon released on another condition, the judge shall set forth in writing the reasons for continuing the conditions imposed. If the judge who imposed conditions of release is not available, any other judge in the district may review such conditions.

"(e) MODIFICATION.—A judge ordering the release of a person on a condition specified in this section may at any time amend his order to impose additional or different conditions of release. If the imposition of such additional or different conditions results in the detention of the person as a result of his inability to meet such conditions, the provisions of subsection (d) are applicable.

"(f) EVIDENCE.—Any information may be presented and considered in connection with an order entered pursuant to this section regardless of its admissibility under the rules governing admission of evidence in criminal trials.

"§ 3503. Release Pending Trial in a Capital Case

"A person who is charged with an offense for which a sentence of death is authorized shall be treated in accordance with the provisions of section 3502, unless the judge has reason to believe that no conditions of release will reasonably assure that the person will not flee or will not pose a danger to any other person or to the community. If such a risk of flight or danger is believed to exist, the person shall be ordered detained. Such an order is not appealable under section 3506, but may be reviewed under other provisions for review of conditions of release or orders of detention.

"§ 3504. Release Pending Sentence or Appeal

"(a) PENDING SENTENCE OR APPEAL BY THE DEFENDANT.—A person who has been found guilty of an offense and is awaiting sentence, or who has filed an appeal or a petition for a writ of certiorari, shall be treated in accordance with the provisions of section 3502, unless the judge has reason to believe that no conditions of release will reasonably assure that the person will not flee or will not pose a danger to any other person or to the community. If such a risk of

flight or danger is believed to exist, or if it appears that an appeal is frivolous or taken for purposes of delay, the person shall be ordered detained. Such an order is not appealable under section 3506, but may be reviewed under other provisions for review of conditions of release or orders of detention.

"(b) PENDING APPEAL BY THE GOVERNMENT.—A person who is a defendant in a case in which an appeal has been taken by the United States pursuant to the provisions of section 3724 (a) or (b) or section 3725 shall be treated in accordance with the provisions of section 3502.

"§ 3505. Release of a Material Witness

"If it appears from an affidavit filed by a party that the testimony of a person is material in a criminal proceeding, and if it is shown that it may become impracticable to secure his presence by subpoena, a judge may order the arrest of such witness and shall impose conditions of release pursuant to section 3502. No material witness may be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and if further detention is not necessary to prevent a failure of justice. Release may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Federal Rules of Criminal Procedure.

"§ 3506. Appeal From Denial of Release

"(a) REVIEW.—A person—

"(1) who is detained, or whose release on a condition requiring him to return to custody after specified hours is continued; and

"(2) whose application pursuant to section 3502 (d) or (e) has been reviewed by a judge other than—

"(A) a judge of the court having original jurisdiction over the offense with which he is charged;

"(B) a judge of a United States court of appeals; or

"(C) a Justice of the Supreme Court of the United States;

may file a motion for an amendment of the order with the court having original jurisdiction over the offense with which he is charged. Such a motion shall be determined promptly.

"(b) APPEAL.—In a case in which a person is detained after—

"(1) a court denies a motion under subsection (a) to amend an order imposing conditions of release; or

"(2) conditions of release have been imposed or amended by a judge of the court having original jurisdiction over the offense charged;

an appeal may be taken to the court having appellate jurisdiction over such court. An order so appealed shall be affirmed if it is supported by the proceedings below. If the order is not so supported, the court may remand the case for a further hearing, or may, with or without additional evidence, order the person released pursuant to section 3502. Such an appeal shall be determined promptly.

"§ 3507. Release in a Case Removed From a State Court

"If the judgment of a State court in a criminal proceeding is before the Supreme Court of the United States for review, the defendant may not be released from custody pending such review other than pursuant to the laws of such State.

"§ 3508. Surrender of an Offender by a Surety

"A person charged with an offense, who is released upon the execution of an appearance bond with a surety, may be arrested by the surety, delivered to a United States marshal, and brought before a judge. At the request of the surety, the judge shall order the person held in official detention, and shall endorse on the recognizance, or on the certified copy of the recognizance, the discharge and exoneretur of the surety. The person so committed shall be held in official detention until released pursuant to this chapter or to another provision of law.

"§ 3509. Security for Peace and Good Behavior

"A judge who may order an arrest pursuant to section 3303 may require a person to give security for peace and good behavior in a case arising under the Constitution and laws of the United States, to the same extent that a judge of the State in which the case arises would be authorized by State law if the case were a State case.

"Subchapter B—Confinement Pending Judicial Proceedings

"§ 3511. Commitment of an Arrested Person

"(a) ORDER OF COMMITMENT.—A person who is arrested and charged with an offense or held as a material witness and who is not ordered released pursuant to the provisions of subchapter A, shall be ordered committed to the custody of the Attorney General for confinement in a facility for official detention. A copy of the order shall be delivered to the person in charge of the facility as evidence of his authority to hold the arrested person, and the original order, with the return endorsed thereon, shall be returned to the court that issued it.

"(b) DELIVERY OF ARRESTED PERSON FOR COURT APPEARANCE.—The person in charge of an official detention facility to whom an arrested person is delivered pursuant to the provisions of subsection (a) shall deliver the person to a United States marshal for the purpose of a court appearance on order of a court of the United States or on request of an attorney for the government.

"§ 3512. Discharge of an Arrested but Unconvicted Person

"A court of the United States may direct the United States marshal for the judicial district to furnish subsistence and transportation to the place of arrest or to the place of bona fide residence, under regulations promulgated by the Attorney General, to—

"(a) a person arrested for an offense but not charged with an offense in an indictment or information;

"(b) a person charged with an offense in an indictment or information but not convicted; or

"(c) a person held as a material witness;

upon the release of such person from official detention.

"CHAPTER 36—DISPOSITION OF JUVENILE OR INCOMPETENT OFFENDERS

"Subchapter A.—Juvenile Delinquency

"§ 3601. Surrender of a Juvenile Delinquent to State Authorities

"(a) SURRENDER OF A JUVENILE.—If a juvenile is arrested and charged with an offense, other than a Class B or Class C misdemeanor or an infraction that is committed within the special territorial jurisdiction of the United States, the Attorney General shall forego prosecution and surrender the person to State jurisdiction unless, after investigation, he certifies that—

"(1) the State will not assume jurisdiction over the person, take him into custody, and proceed in accordance with its laws;

"(2) the State does not have available programs and services adequate for the needs of the juvenile; or

"(3) the offense charged is a Class A, B, or C felony and that there is a special interest warranting federal prosecution.

"(b) SURRENDER OF A PERSON BETWEEN EIGHTEEN AND TWENTY-ONE.—If a person who is between the ages of eighteen and twenty-one years old, is arrested and charged with an offense committed when he was between eighteen and twenty-one years old, the Attorney General may forego prosecution and surrender the person to State jurisdiction if, after investigation, he determines that—

"(1) the person has committed an offense or is a juvenile delinquent under the laws of a State that will assume jurisdiction over the person, take him into custody, and proceed against him in accordance with its laws; and

"(2) such disposition will be in the interests of justice.

"(c) TRANSPORTATION.—The United States marshal of the district in which the person was arrested shall, upon written order of the Attorney General, transfer the person to such State or, if he is already in such State, to any other part of the State, and shall deliver him into the custody of the proper State authority.

"(d) CONSENT OR DEMAND REQUIRED.—Before a person is transferred from one State to another under this section—

"(1) the person must consent to the transfer; or

"(2) a demand must be presented to the Attorney General from the executive authority of the State to which the person is to be returned, supported by an indictment or affidavit as prescribed by section 3202.

"§ 3602. Arrest and Detention of a Juvenile Delinquent

"(a) ARREST.—If a juvenile is taken into custody for an act of juvenile delinquency, the arresting officer shall immediately advise the juvenile of his legal rights in clear and non-technical language, shall immediately notify the Attorney General of such custody, and shall, unless not possible, notify the juvenile's parents, guardian, or custodian of such custody. The arresting officer shall also advise the parents, guardian, or custodian of the rights of the juvenile and of the nature of the alleged offense.

"(b) DETENTION.—If the juvenile is not taken forthwith before a judge, he may be detained in a juvenile home or other suitable place of detention that the Attorney General may designate for such purpose, but, after it is determined that he is a juvenile, he shall not be detained in a facility for official detention in which he has a regular contact with an adjudicated juvenile delinquent or an adult convicted of an offense or awaiting trial on a charge of an offense. If possible, the detention shall be in a facility located in or near the juvenile's home community. The juvenile while in custody shall be provided with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, education, and medical care, including any necessary psychiatric, psychological, or other care or treatment. The juvenile shall not be detained under this subsection for a period longer than is necessary to produce the juvenile before a judge.

"(c) RELEASE.—The judge shall release the juvenile pending trial pursuant to the provisions of section 3502, and may impose any condition set forth in such section, other than subsection (a)(4), that will reasonably assure—

"(1) the presence of the juvenile before the appropriate court as required; or

"(2) that the juvenile will not inflict serious bodily injury on another person.

If the judge determines, after a hearing, that official detention pending trial of such juvenile is required to insure that the juvenile will not inflict serious bodily injury on another person pending disposition, the judge may order such detention upon setting forth in writing the reasons for that determination. If a juvenile is held in official detention pending trial pursuant to this subsection and is not brought to trial within the later of thirty days from the date upon which the detention was begun, or from the date upon which the intake screening report was due pursuant to subsection (f), the information shall be dismissed on motion of the juvenile or at the direction of the court, unless the Attorney General shows

that additional delay was caused by the juvenile or his counsel, was consented to by the juvenile and his counsel, or would be in the interest of justice in the particular case. Delays attributable solely to court calendar congestion may not be considered to be in the interest of justice. Except in extraordinary circumstances, an information dismissed under this section may not be reinstituted.

"(d) GUARDIAN AD LITEM.—The judge may appoint a guardian ad litem at any stage of the proceedings against a juvenile if he has reason to believe that the parent or guardian of the juvenile—

"(1) is not or will not be present;

"(2) will not cooperate with the juvenile in preparing for trial; or

"(3) has interests that are adverse to those of the juvenile.

"(e) RIGHT TO ASSISTANCE OF COUNSEL.—A juvenile has the right to be represented by counsel at every judicial stage of the proceedings under this subchapter and this right may not be waived by a juvenile under the age of eighteen for any offense set forth in section 3601(a).

"(f) INTAKE SCREENING.—After the issuance of a warrant or summons for a juvenile for, or the initial appearance in court of a juvenile charged with, an offense set forth in section 3601(a), and prior to any other proceeding or action other than an appearance required pursuant to Rule 5 of the Federal Rules of Criminal Procedure, the court shall refer the case to a probation officer to conduct an intake screening review of the facts and evidence in the case and of all information available as to the background and characteristics of the juvenile. The review may include an interview with the juvenile, his parents, the complainant, a witness to the offense, and any other person whose information would appear to be useful. At the conclusion of the review, the probation officer shall promptly make a recommendation, based upon his determination of the best interests of the juvenile and the interests of justice, to the attorney for the government concerning the disposition of the case. The recommendation may include—

"(1) dismissal of the case on any appropriate ground, including lack of evidence;

"(2) referral of the juvenile to any available State or local program or agency;

"(3) referral of the juvenile to any available federal pretrial diversion program;

"(4) proceeding against the juvenile as a juvenile delinquent; or

"(5) proceeding against the juvenile as an adult pursuant to section 3603 (a)(2) or (a)(3).

If no recommendation is made within thirty days of the referral to the probation officer, the attorney for the government may proceed pursuant to the provisions of this subchapter. If the attorney for the government accepts a recommendation set forth in paragraph (2) or (3), the probation officer shall prepare a written statement, to be signed by the juvenile, the attorney for the government, the

probation officer, and an official of the program or agency, setting forth all of the conditions of the agreement. The acceptance of the agreement by the juvenile must be voluntary and made upon the advice of counsel, or, in the absence of counsel, made with the consent of his parent or guardian. The agreement may not extend beyond a period of six months. At the end of such period, the attorney for the government shall request a prompt report from the appropriate officials of the agency or program as to the juvenile's compliance with the conditions of the agreement. If the report indicates that the juvenile has fully complied with the conditions of the agreement, the attorney for the government shall file a motion for the dismissal of the case. If the report indicates that the juvenile has not fully complied with the conditions of the agreement, or if no report has been filed, the attorney for the government may, within thirty days after the receipt of the report, or, if no report has been filed, within thirty days after the end of the period of the agreement, proceed against the juvenile pursuant to the provisions of this subchapter. A failure to proceed within thirty days of receipt of the report is grounds for dismissal of the case upon motion of the juvenile.

"§ 3603. Juvenile Delinquency Proceedings

"(a) IN GENERAL.—A juvenile who is charged with committing an offense and who is not surrendered to State authorities shall be proceeded against as a juvenile delinquent—

"(1) unless, upon advice of counsel, he elects in a writing filed with the court to be treated as an adult and waives the bar to prosecution, if applicable, in section 512; or

"(2) unless—

"(A) he was less than sixteen years old at the time of the offense;

"(B) the offense charged is an offense described in section 1601 (Murder), 1611 (Maiming), 1612 (Aggravated Battery), 1621 (Kidnapping), 1631 (Aircraft Hijacking), or 1641 (Rape); and

"(C) the court having jurisdiction over the offense charged, upon a motion filed by the Attorney General and after reasonable notice to—

"(i) the juvenile;

"(ii) his parents, guardian, or custodian; and

"(iii) counsel for the juvenile;

holds a hearing and determines that in the interest of justice the juvenile should be treated as an adult; or

"(3) unless—

"(A) he was sixteen years old or more at the time of the offense;

"(B) the offense charged is a Class A, B, or C felony; and

"(C) the court having jurisdiction over the offense charged, upon a motion filed by the Attorney General and after reasonable notice to—

"(i) the juvenile;

"(ii) his parents, guardian, or custodian; and

"(iii) counsel for the juvenile;

holds a hearing and determines that in the interest of justice the juvenile should be treated as an adult.

"(b) CRITERIA.—In making the determination required by subsections (a)(2)(C) and (a)(3)(C) the court shall consider and shall make findings of fact on the record with regard to—

"(1) the nature and circumstances of the offense;

"(2) the age and social background of the juvenile;

"(3) the extent and nature of the juvenile's prior delinquency and criminal record;

"(4) the likelihood of reform of the juvenile prior to his majority, including the nature of past treatment efforts;

"(5) the availability of programs designed to treat the juvenile's behavioral problems; and

"(6) whether juvenile disposition will reflect the seriousness of the juvenile's conduct, promote respect for the law, and provide a just response to the conduct of the juvenile.

"(c) PROCEDURE.—Jurisdiction over juvenile delinquency proceedings shall be exercised by the district courts of the United States, or alternatively, in the case of a misdemeanor or an infraction, by a United States magistrate pursuant to section 3302. A juvenile may be proceeded against for an act of juvenile delinquency only by information, and no criminal prosecution may be instituted for the offense charged. For purposes of a juvenile delinquency hearing, the court may be convened at any time and place within the judicial district, in chambers or otherwise. Prior to a juvenile delinquency hearing, a juvenile may be committed for an inpatient study pursuant to subsection (d) with the consent of the juvenile and his attorney.

"(d) COMMITMENT PENDING DISPOSITION.—If the court desires more information than is otherwise available to it as a basis for determining the appropriate disposition, the court may order that the juvenile be committed to the custody of the Bureau of Prisons for a period of not more than thirty days for the purpose of observation and study at an appropriate classification center or agency. The order shall specify the additional information that the court needs before determining the appropriate disposition. Such observation and study shall be conducted on an outpatient basis, unless the court determines that inpatient study and observation are necessary to obtain the necessary information. The Bureau of Prisons, under such regulations as the Attorney General may issue, shall conduct a complete study of the juvenile delinquent during such period, inquiring into such matters as are specified by the court and any other matters that it believes are pertinent to the factors set forth in subsection (b). By the expiration of the period of commitment the Bureau shall return the juvenile delinquent to the court for final disposition, shall provide the court and the attorney for the juvenile with

a written report of the results of the study, and shall make to the court whatever recommendations the Bureau believes will be helpful to a proper resolution of the case. The court may grant additional time for the preparation of the report or recommendation.

"(e) DISPOSITION.—If the court finds a juvenile to be a juvenile delinquent, the court shall hold a disposition hearing concerning the appropriate disposition no later than twenty court days after the juvenile delinquency hearing unless the court has ordered further study pursuant to subsection (d). After the disposition hearing the court may suspend the findings of juvenile delinquency, enter an order of restitution pursuant to section 2006, place him on probation, or commit him to official detention. With respect to release pending disposition, or pending an appeal or a petition for a writ of certiorari after disposition, the court shall proceed pursuant to the provisions of section 3504.

"(f) PROBATION.—The term for which probation may be ordered for a juvenile found to be a juvenile delinquent may not extend—

"(1) in the case of a juvenile who is less than nineteen years old, beyond the lesser of—

"(A) the date when the juvenile becomes twenty-one years old; or

"(B) the maximum term that would be authorized by section 2101(b) if the juvenile had been tried and convicted as an adult; or

"(2) in the case of a juvenile who is between nineteen and twenty-one years old, beyond the lesser of—

"(A) two years; or

"(B) the maximum term that would be authorized by section 2101(b) if the juvenile had been tried and convicted as an adult.

The provisions dealing with probation set forth in sections 2103, 2104, and 2105 are applicable to an order placing a juvenile on probation.

"(g) OFFICIAL DETENTION.—The term for which official detention may be ordered for a juvenile found to be a juvenile delinquent may not extend—

"(1) in the case of a juvenile who is less than nineteen years old, beyond the lesser of—

"(A) the date when the juvenile becomes twenty-one years old; or

"(B) the maximum term of imprisonment that would be authorized by section 2301(b) if the juvenile had been tried and convicted as an adult; or

"(2) in the case of a juvenile who is between nineteen and twenty-one years old, beyond the lesser of—

"(A) two years; or

"(B) the maximum term of imprisonment that would be authorized by section 2301(b) if the juvenile had been tried and convicted as an adult.

"(h) PLACE OF OFFICIAL DETENTION.—The Bureau of Prisons may designate as the place of official detention during the period of commitment a suitable public or private agency or foster home. No juvenile found to be a juvenile delinquent shall be held, except as necessary for purposes of transportation or medical care, in an official detention facility in which he shall have regular contact with an adult convicted of an offense, awaiting trial on a charge of an offense, or held in official detention. A juvenile who has been committed shall be provided with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, counseling, education, training, and medical care, including any necessary psychiatric, psychological, or other care and treatment. If possible, the Bureau of Prisons shall commit a juvenile to a public or private agency or foster home located in or near his home community.

"(i) CONTRACTING FOR NON-FEDERAL FACILITIES.—The Director of the Bureau of Prisons may contract with a public or private agency or foster home for the custody, care, subsistence, education, and training of juvenile delinquents.

"(j) STATEMENT BY JUVENILE.—A statement made by a juvenile during or in connection with a proceeding held pursuant to section 3602(f) or 3603(a) is not admissible against him in a subsequent criminal proceeding.

"(k) BAR TO SUBSEQUENT PROSECUTION.—Once a juvenile has entered a plea of guilty or the proceeding has reached the stage that evidence has begun to be taken with respect to an offense or an alleged act of juvenile delinquency, a subsequent criminal prosecution or juvenile proceeding based upon such alleged act of juvenile delinquency is barred.

"(l) APPLICATION OF FEDERAL RULES OF CRIMINAL PROCEDURE.—In any proceeding conducted under this subchapter the Federal Rules of Criminal Procedure are applicable to the extent set forth in Rule 54(b)(5) of such rules.

"(m) INDEPENDENT FACT FINDER.—Insofar as possible, a judge who conducts a hearing pursuant to this subchapter, upon motion of the juvenile charged with the offense, shall not participate in a subsequent fact finding proceeding related to the offense.

"§ 3604. Use of Juvenile Delinquency Records

"(a) SEALING OF RECORDS.—Throughout the juvenile delinquency proceeding, the court shall safeguard the record against disclosure to a person not authorized to receive it. Upon the completion of a juvenile delinquency proceeding, whether or not there is a finding of juvenile delinquency, the court shall order the entire record of the proceeding sealed. The court may release information concerning the sealed record to the extent necessary to comply with an inquiry in writing from—

"(1) another court;

"(2) an agency preparing a presentence report for another court;

"(3) the Director of a treatment agency or facility to which the juvenile has been committed by the court;

"(4) a law enforcement agency if the request for information is related to the investigation of an offense or a position within the agency;

"(5) an agency considering the person for a position immediately and directly affecting the national security; or

"(6) the victim, or, if the victim is deceased, the immediate family of the victim, if the request for information is related to the final disposition of the case.

The court may not release information concerning the sealed record to comply with any other inquiry, and responses to such inquiries shall be the same as responses made about persons who have never been the subject of a juvenile delinquency proceeding.

"(b) NOTICE.—The court exercising jurisdiction over a juvenile shall, in a written statement using clear and nontechnical language, inform the juvenile, and his parents, guardian, or other person responsible for his welfare, of his rights relating to the sealing of his juvenile record.

"(c) DUTY OF COURT OFFICERS.—An employee of the court or an employee of any other governmental agency, who, during the course of a juvenile delinquency proceeding, obtains or preserves information or a record relating to the proceeding in the discharge of an official duty, shall not disclose such information or record directly or indirectly to a person other than the judge, the counsel for the juvenile, the attorney for the government, or another person entitled under this section to receive sealed records.

"(d) FINGERPRINTS AND PHOTOGRAPHS.—Unless a juvenile who is taken into custody is prosecuted as an adult—

"(1) the fingerprints or photograph of the juvenile shall not be taken without the written consent of the judge; and

"(2) the name or photograph of the juvenile shall not be made public in connection with a juvenile delinquency proceeding.

"§ 3605. Definitions for Subchapter A

"As used in this subchapter—

"(a) 'juvenile' means a person who is less than—

"(1) eighteen years old; or

"(2) twenty-one years old if he is charged with an act of juvenile delinquency committed when he was less than eighteen years old; and

"(b) 'juvenile delinquency' means conduct constituting an offense engaged in by a juvenile.

"Subchapter B—Offenders With Mental Disease or Defect

"Sec.
"3611. Determination of Mental Competency to Stand Trial.
"3612. Determination of the Existence of Insanity at the Time of the Offense.
"3613. Hospitalization of a Person Acquitted by Reason of Insanity.
"3614. Hospitalization of a Convicted Person Suffering From Mental Disease or Defect.
"3615. Hospitalization of an Imprisoned Person Suffering From Mental Disease or Defect.
"3616. Hospitalization of a Person Due for Release but Suffering From Mental Disease or Defect.
"3617. General Provisions for Subchapter B.

"§ 3611. Determination of Mental Competency to Stand Trial

"(a) MOTION TO DETERMINE COMPETENCY OF DEFENDANT.—At any time after the commencement of a prosecution for an offense and prior to the sentencing of the defendant, the defendant or the attorney for the government may file a motion for a hearing to determine the mental competency of the defendant. The court shall grant the motion, or shall order such a hearing on its own motion, if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist in his defense.

"(b) PSYCHIATRIC EXAMINATION AND REPORT.—Prior to the date of the hearing, the court may order that a psychiatric examination of the defendant be conducted, and that a psychiatric report be filed with the court, pursuant to the provisions of section 3617 (b) and (c).

"(c) HEARING.—The hearing shall be conducted pursuant to the provisions of section 3617(d).

"(d) DETERMINATION AND DISPOSITION.—If, after the hearing, the court finds by a preponderance of the evidence that the defendant is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense, the court shall commit the defendant to the custody of the Attorney General. The Attorney General shall hospitalize the defendant for treatment in a suitable facility—

"(1) for such a reasonable period of time, not to exceed four months, as is necessary to determine whether there is a substantial probability that in the foreseeable future he will attain the capacity to permit the trial to proceed; and

"(2) for an additional reasonable period of time, not to exceed two months, until—

"(A) his mental condition is so improved that trial may proceed, if the court finds that there is a substantial probability that within such additional period of time he will attain the capacity to permit the trial to proceed; or

"(B) the pending charges against him are disposed of according to law;

whichever is earlier.

If, at the end of the time period specified, it is determined that the defendant's mental condition has not so improved as to permit the trial to proceed, the defendant is subject to the provisions of section 3616.

"(e) DISCHARGE FROM SUITABLE FACILITY.—When the director of the facility in which a defendant is hospitalized pursuant to subsection (d) determines

that the defendant has recovered to such an extent that he is able to understand the nature and consequences of the proceedings against him and to assist properly in his defense, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the defendant's counsel and to the attorney for the government. The court shall hold a hearing, conducted pursuant to the provisions of section 3617(d), to determine the competency of the defendant. If, after the hearing, the court finds by a preponderance of the evidence that the defendant has recovered to such an extent that he is able to understand the nature and consequences of the proceedings against him and to assist properly in his defense, the court shall order his immediate discharge from the facility in which he is hospitalized and shall set the date for trial. Upon discharge, the defendant is subject to the provisions of chapter 35.

"(f) ADMISSIBILITY OF FINDING OF COMPETENCY.—A finding by the court that the defendant is mentally competent to stand trial shall not prejudice the defendant in raising the issue of his insanity as a defense to the offense charged, and shall not be admissible as evidence in a trial for the offense charged.

"§ 3612. Determination of the Existence of Insanity at the Time of the Offense

"(a) MOTION FOR PRETRIAL PSYCHIATRIC EXAMINATION.—Upon the filing of a notice, as provided in Rule 12.2 of the Federal Rules of Criminal Procedure, the court, upon motion of the attorney for the government, may order that a psychiatric examination of the defendant be conducted, and that a psychiatric report be filed with the court, pursuant to the provisions of section 3617 (b) and (c).

"(b) SPECIAL VERDICT.—If the issue of insanity is raised by notice as provided in Rule 12.2 of the Federal Rules of Criminal Procedure on motion of the defendant or of the attorney for the government, or on the court's own motion, the jury shall be instructed to find, or, in the event of a non-jury trial, the court shall find, the defendant—

"(1) guilty;

"(2) not guilty; or

"(3) not guilty by reason of insanity.

"§ 3613. Hospitalization of a Person Acquitted by Reason of Insanity

"(a) DETERMINATION OF PRESENT MENTAL CONDITION OF ACQUITTED PERSON.—If a person is found not guilty by reason of insanity at the time of the offense charged, the court shall order a hearing to determine whether the person is presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of serious bodily injury to another person or serious damage to property of another. The court may make any order reasonably necessary to secure the appearance of the person at the hearing.

"(b) PSYCHIATRIC EXAMINATION AND REPORT.—Prior to the date of the hearing, the court may order that a psychiatric examination of the defendant be conducted, and that a psychiatric report be filed with the court, pursuant to the provisions of section 3617 (b) and (c).

"(c) HEARING.—The hearing shall be conducted pursuant to the provisions of section 3617(d).

"(d) DETERMINATION AND DISPOSITION.—If, after the hearing, the court finds by clear and convincing evidence that the acquitted person is presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of serious bodily injury to another person or serious damage to property of another, the court shall commit the person to the custody of the Attorney General. The Attorney General shall release the person to the appropriate official of the State in which the person is domiciled or was tried if such State will assume responsibility for his custody, care, and treatment. The Attorney General shall make all reasonable efforts to cause such a State to assume such responsibility. If, notwithstanding such efforts, neither such State will assume such responsibility, the Attorney General shall hospitalize the person for treatment in a suitable facility until—

"(1) such a State will assume such responsibility; or

"(2) the person's mental condition is such that his release would not create a substantial risk of serious bodily injury to another person or serious damage to property of another;

whichever is earlier. The Attorney General shall continue periodically to exert all reasonable efforts to cause such a State to assume such responsibility for the person's custody, care, and treatment.

"(e) DISCHARGE FROM SUITABLE FACILITY.—When the director of the facility in which an acquitted person is hospitalized pursuant to subsection (d) determines that the person has recovered from his mental disease or defect to such an extent that his release would no longer create a substantial risk of serious bodily injury to another person or serious damage to property of another, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the person's counsel and to the attorney for the government. The court shall order the discharge of the acquitted person or, on the motion of the attorney for the government or on its own motion, shall hold a hearing, conducted pursuant to the provisions of section 3617(d), to determine whether he should be released. If, after the hearing, the court finds by a preponderance of the evidence that the person has recovered from his mental disease or defect to such an extent that his release would no longer create a substantial risk of serious bodily injury to another person or serious damage to property of another, the court shall order his immediate discharge.

"§ 3614. Hospitalization of a Convicted Person Suffering From Mental Disease or Defect

"(a) MOTION TO DETERMINE PRESENT MENTAL CONDITION OF CONVICTED DEFENDANT.—A defendant found guilty of an offense, or the attorney for the government, may, within ten days after the defendant is found guilty, and prior to the time the defendant is sentenced, file a motion for a hearing on the present mental condition of the defendant if the motion is supported by substantial information indicating that the defendant may presently be suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility. The court shall grant the motion, or at any time prior to the sentencing of the defendant shall order such a hearing on its own motion, if it is of the opinion that there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility.

"(b) PSYCHIATRIC EXAMINATION AND REPORT.—Prior to the date of the hearing, the court may order that a psychiatric examination of the defendant be conducted, and that a psychiatric report be filed with the court, pursuant to the provisions of section 3617 (b) and (c). In addition to the information required to be included in the psychiatric report pursuant to the provisions of section 3617(c), if the report includes an opinion by the examiners that the defendant is presently suffering from a mental disease or defect but that it is not such as to require his custody for care or treatment in a suitable facility, the report shall also include an opinion by the examiner concerning the sentencing alternatives available under part III of this title that could best accord the defendant the kind of treatment he does need.

"(c) HEARING.—The hearing shall be conducted pursuant to the provisions of section 3617(d).

"(d) DETERMINATION AND DISPOSITION.—If, after the hearing, the court is of the opinion that the defendant is presently suffering from a mental disease or defect and that he should, in lieu of being sentenced to probation or imprisonment, be committed to a suitable facility for care or treatment, the court shall commit the defendant to the custody of the Attorney General. The Attorney General shall hospitalize the defendant for care or treatment in a suitable facility. Such a commitment constitutes a provisional sentence to the maximum term authorized by section 2301(b) and 2304 for the offense of which the defendant was found guilty.

"(e) DISCHARGE FROM SUITABLE FACILITY.—When the director of the facility in which the defendant is hospitalized pursuant to subsection (d) determines that the defendant has recovered from his mental disease or defect to such an extent that he is no longer in need of custody for care or treatment in such a facility, he shall promptly file a certificate to that effect with the clerk of the

court that ordered the commitment. The clerk shall send a copy of the certificate to the defendant's counsel and to the attorney for the government. If, at the time of the filing of the certificate, the provisional sentence imposed pursuant to subsection (d) has not expired, the court shall hold a hearing, conducted pursuant to the provisions of section 3617(d), to determine whether the provisional sentence should be reduced. After the hearing, the court may order that the defendant be released, be placed on probation pursuant to chapter 21, or be imprisoned for the remainder of the provisional sentence or for any lesser term, or may impose any other sentence available under part III of this title.

"§ 3615. Hospitalization of an Imprisoned Person Suffering From Mental Disease or Defect

"(a) MOTION TO DETERMINE PRESENT MENTAL CONDITION OF IMPRISONED DEFENDANT.—If a defendant serving a sentence of imprisonment objects either in writing or through his attorney to being transferred to a suitable facility for care or treatment, an attorney for the government, at the request of the director of the facility in which the defendant is imprisoned, may file a motion with the court for the district in which the facility is located for a hearing on the present mental condition of the defendant. The court shall grant the motion if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility. A motion filed under this subsection shall stay the release of the defendant pending completion of procedures contained in this section.

"(b) PSYCHIATRIC EXAMINATION AND REPORT.—Prior to the date of the hearing, the court may order that a psychiatric examination of the defendant be conducted, and that a psychiatric report be filed with the court, pursuant to the provisions of section 3617 (b) and (c).

"(c) HEARING.—The hearing shall be conducted pursuant to the provisions of section 3617(d).

"(d) DETERMINATION AND DISPOSITION.—If, after the hearing, the court is of the opinion that the defendant is presently suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility, the court shall commit the defendant to the custody of the Attorney General. The Attorney General shall hospitalize the defendant for treatment in a suitable facility, until he is no longer in need of such custody for care or treatment or until the expiration of his sentence of imprisonment, whichever occurs earlier.

"(e) DISCHARGE FROM SUITABLE FACILITY.—When the director of the facility in which the defendant is hospitalized pursuant to subsection (d) determines that the defendant has recovered from his mental disease or defect to such an extent that he is no longer in need of custody for care or treatment in such a facility, he shall promptly file a certificate to that effect with the clerk of the

court that ordered the commitment. The clerk shall send a copy of the certificate to the defendant's counsel and to the attorney for the government. If, at the time of the filing of the certificate, the term of imprisonment imposed upon the defendant has not expired, the court shall order that the defendant be reimprisoned until the date of his release pursuant to section 3824.

"§ 3616. Hospitalization of a Person Due for Release but Suffering From Mental Disease or Defect

"(a) INSTITUTION OF PROCEEDING.—If the director of a facility in which a person is hospitalized certifies that a person whose sentence is about to expire, or who has been committed to the custody of the Attorney General pursuant to section 3611(d), or against whom all criminal charges have been dismissed solely for reasons related to the mental condition of the person, is presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of serious bodily injury to another person or serious damage to property of another, and that suitable arrangements for State custody and care of the person are not available, he shall transmit the certificate to the clerk of the court for the district in which the person is confined. The clerk shall send a copy of the certificate to the person, and to the attorney for the government, and, if the person was committed pursuant to section 3611(d), to the clerk of the court that ordered the commitment. The court shall order a hearing to determine whether the person is presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of serious bodily injury to another person or serious damage to property of another. A certificate filed under this subsection shall stay the release of the person pending completion of procedures contained in this section.

"(b) PSYCHIATRIC EXAMINATION AND REPORT.—Prior to the date of the hearing, the court may order that a psychiatric examination of the defendant be conducted, and that a psychiatric report be filed with the court, pursuant to the provisions of section 3617 (b) and (c).

"(c) HEARING.—The hearing shall be conducted pursuant to the provisions of section 3617(d).

"(d) DETERMINATION AND DISPOSITION.—If, after the hearing, the court finds by clear and convincing evidence that the person is presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of serious bodily injury to another person or serious damage to property of another, the court shall commit the person to the custody of the Attorney General. The Attorney General shall release the person to the appropriate official of the State in which the person is domiciled or was tried if such State will assume responsibility for his custody, care, and treatment. The Attorney General shall make all reasonable efforts to cause such a State to assume such responsibility. If, notwithstanding such efforts, neither such State will assume such re-

sponsibility, the Attorney General shall hospitalize the person for treatment in a suitable facility, until—

"(1) such a State will assume such responsibility; or

"(2) the person's mental condition is such that his release would not create a substantial risk of serious bodily injury to another person or serious damage to property of another;

whichever is earlier. The Attorney General shall continue periodically to exert all reasonable efforts to cause such a State to assume such responsibility for the person's custody, care, and treatment.

"(e) DISCHARGE FROM SUITABLE FACILITY.—When the director of the facility in which a person is hospitalized pursuant to subsection (d) determines that the person has recovered from his mental disease or defect to such an extent that his release would no longer create a substantial risk of serious bodily injury to another person or serious damage to property of another, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the person's counsel and to the attorney for the government. The court shall order the discharge of the person or, on the motion of the attorney for the government or on its own motion, shall hold a hearing, conducted pursuant to the provisions of section 3617(d), to determine whether he should be released. If, after the hearing, the court finds by a preponderance of the evidence that the person has recovered from his mental disease or defect to such an extent that his release would no longer create a substantial risk of serious injury to another person or serious damage to property of another, the court shall order his immediate discharge.

"(f) RELEASE TO STATE OF CERTAIN OTHER PERSONS.—If the director of a facility in which a person is hospitalized pursuant to this subchapter certifies to the Attorney General that a person, against whom all charges have been dismissed for reasons not related to the mental condition of the person, is presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of serious bodily injury to another person or serious damage to property of another, the Attorney General shall release the person to the appropriate official of the State in which the person is domiciled or was tried for the purpose of institution of State proceedings for civil commitment. If neither such State will assume such responsibility, the Attorney General shall release the person upon receipt of notice from the State that it will not assume such responsibility, but not later than 10 days after certification by the director of the facility.

"§ 3617. General Provisions for Subchapter B

"(a) DEFINITIONS.—As used in this subchapter—

"(1) 'insanity' means a mental disease or defect of a nature constituting a defense to a federal criminal prosecution;

"(2) 'rehabilitation program' includes—

"(A) basic educational training that will assist the individual in understanding the society to which he will return and that will assist him in understanding the magnitude of his offense and its impact on society;

"(B) vocational training that will assist the individual in contributing to, and in participating in, the society to which he will return;

"(C) drug, alcohol, and other treatment programs that will assist the individual in overcoming his psychological or physical dependence; and

"(D) organized physical sports and recreation programs; and

"(3) 'suitable facility' means a facility that is suitable to provide care or treatment given the nature of the offense and the characteristics of the defendant.

"(b) PSYCHIATRIC EXAMINATION.—A psychiatric examination ordered pursuant to this subchapter or section 2002(c) shall be conducted by a licensed or certified psychiatrist, or clinical psychologist and medical doctor, or, if the court finds it appropriate, by additional examiners. Each examiner shall be—

"(1) designated by the court if the examination is ordered under section 2002(c), 3611, 3612, 3613, or 3614; or

"(2) designated by the court, and, upon the request of the defendant, an additional examiner may be selected by the defendant, if the examination is ordered under section 3615 or 3616.

For the purposes of an examination pursuant to an order under section 3611, 3614, or 3615, the court may commit the person to be examined for a reasonable period, but not to exceed thirty days, and under section 3612, 3613, or 3616, for a reasonable period, but not to exceed forty-five days, to the custody of the Attorney General for placement in a suitable facility. Unless impracticable, the psychiatric examination shall be conducted in the suitable facility closest to the court. The Director of the facility may apply for a reasonable extension, but not to exceed fifteen days under section 3611, 3614, or 3615, and not to exceed thirty days under section 3612, 3613, or 3616, upon a showing of good cause that additional time is necessary to observe and evaluate the defendant.

"(c) PSYCHIATRIC REPORTS.—A psychiatric report ordered pursuant to this subchapter shall be prepared by the examiner designated to conduct the psychiatric examination, shall be filed with the court with copies provided to the counsel for the person examined and to the attorney for the government, and shall include—

"(1) the person's history and present symptoms;

"(2) a description of the psychological and medical tests employed and their results;

"(3) the examiner's findings; and

"(4) the examiner's opinions as to diagnosis, prognosis, and—

"(A) if the examination is ordered under section 3611, whether the person is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense;

"(B) if the examination is ordered under section 3612, whether the person was insane at the time of the offense charged;

"(C) if the examination is ordered under section 3613 or 3616, whether the person is presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of serious bodily injury to another person or serious damage to property of another;

"(D) if the examination is ordered under section 3614 or 3615, whether the person is presently suffering from a mental disease or defect as a result of which he is in need of custody for care or treatment in a suitable facility; or

"(E) if the examination is ordered under section 2002(c), any recommendation the examiner may have as to application to the defendant of sentencing guidelines and policy statements relating to the mental condition of the defendant and as to how that mental condition should affect the sentence.

"(d) HEARING.—At a hearing ordered pursuant to this subchapter the person whose mental condition is the subject of the hearing shall be represented by counsel and, if he is financially unable to obtain adequate representation, counsel shall be appointed for him pursuant to section 3402. The person shall be afforded an opportunity to testify, to present evidence, to subpoena witnesses on his behalf, and to confront and cross-examine witnesses who appear at the hearing.

"(e) PERIODIC REPORT AND INFORMATION REQUIREMENTS FOR SUITABLE FACILITIES.—(1) The director of the facility in which a person is hospitalized pursuant to—

"(A) section 3611 shall prepare semiannual reports; or

"(B) section 3613, 3614, 3615, or 3616 shall prepare annual reports; concerning the mental condition of the person and containing recommendations concerning the need for his continued hospitalization. The reports shall be submitted to the court that ordered the person's commitment to the facility and copies of the reports shall be submitted to such other persons as the court may direct.

"(2) The director of the facility in which a person is hospitalized pursuant to section 3611, 3613, 3614, 3615, or 3616, shall inform such person of any rehabilitation programs that are available for persons hospitalized in that facility.

"(f) VIDEOTAPE RECORD.—Upon written request of defense counsel, the court may order a videotape record made of the defendant's testimony or interview upon which the periodic report is based pursuant to subsection (e). Such videotape record shall be submitted to the court along with the periodic report.

"(g) ADMISSIBILITY OF A DEFENDANT'S STATEMENT AT TRIAL.—A statement made by the defendant during the course of a psychiatric examination pursuant to section 3611 or 3612 is not admissible as evidence against the accused on the issue of guilt in any criminal proceeding.

"(h) HABEAS CORPUS UNIMPAIRED.—Nothing contained in section 3613 or 3616 precludes a person who is committed under either of such sections from establishing by writ of habeas corpus the illegality of his detention.

"(i) DISCHARGE FROM SUITABLE FACILITY.—Regardless of whether the director of the facility in which a person is hospitalized has filed a certificate pursuant to the provisions of subsection (e) of section 3611, 3613, 3614, 3615, or 3616, counsel for the person or his legal guardian may, at any time during such person's hospitalization, file with the court that ordered the commitment a motion for a hearing to determine whether the person should be discharged from such facility, but no such motion may be filed within one hundred and eighty days of a court determination that the person should continue to be hospitalized. A copy of the motion shall be sent to the director of the facility in which the person is hospitalized and to the attorney for the government.

"(j) AUTHORITY AND RESPONSIBILITY OF THE ATTORNEY GENERAL.—(1) Before a person is placed in a suitable facility pursuant to section 3611, 3613, 3614, 3615, or 3616, the Attorney General shall request from the director of each facility under consideration information describing any rehabilitation program that would be available to such person, and, in making a decision as to the placement of such person, shall carefully consider the extent to which the available programs would meet the needs of such person.

"(2) The Attorney General—

"(A) may contract with a State, a locality, or a private agency for the confinement, hospitalization, care, or treatment of, or the provision of services to, a person committed to his custody pursuant to this subchapter;

"(B) may apply for the civil commitment, pursuant to State law, of a person committed to his custody pursuant to section 3613 or 3616; and

"(C) shall consult with the Secretary of the Department of Health, Education, and Welfare in the general implementation of the provisions of this subchapter and in the establishment of standards for facilities used in the implementation of this subchapter.

"CHAPTER 37—PRETRIAL AND TRIAL PROCEDURE, EVIDENCE, AND APPELLATE REVIEW

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"Subchapter A—Pretrial and Trial Procedure

"§ 3701. Pretrial and Trial Procedure in General

"Pretrial and trial procedure in criminal cases in the district courts of the United States and before United States magistrates is governed by the provisions of this title, by the Federal Rules of Criminal Procedure, and by such other rules as the Supreme Court may prescribe.

"§ 3702. Rulemaking Authority of the Supreme Court for Rules of Criminal Procedure

"(a) PRESCRIPTION OF RULES.—The Supreme Court of the United States may prescribe amendments to the Federal Rules of Criminal Procedure and may otherwise prescribe rules of pleading, practice, and procedure with respect to proceedings prior to, including, and relating to the entry of judgment of conviction in criminal cases in the district courts of the United States or in proceedings before United States magistrates. Any provision of law in conflict with a rule prescribed pursuant to this section shall be of no further force or effect after such rule has taken effect.

"(b) EFFECTIVE DATE OF RULES.—Rules prescribed pursuant to this section shall be reported to Congress by the Chief Justice at or after the beginning of a regular session of Congress but not later than the first day of May, and shall take effect one hundred and eighty days after they have been reported, except to the extent the effective date is enlarged or the rules are disapproved or modified by Act of Congress. The Supreme Court may fix a later date upon which rules shall take effect, and may fix the extent to which they shall apply to proceedings then pending.

"Subchapter B—Evidence

"§ 3711. Evidence in General

"The introduction, admission, and use of evidence in criminal cases in the district courts of the United States and before United States magistrates is governed by the provisions of this title and by the Federal Rules of Evidence.

"§ 3712. Rulemaking Authority of the Supreme Court for Rules of Evidence

"(a) PRESCRIPTION OF AMENDMENTS TO RULES.—The Supreme Court of the United States may prescribe amendments to the Federal Rules of Evidence. Any provision of law in conflict with an amendment prescribed pursuant to this section shall be of no further force or effect after such amendment has taken effect.

"(b) EFFECTIVE DATE OF AMENDMENTS TO RULES.—Amendments prescribed pursuant to this section shall be reported to Congress by the Chief Justice at or after the beginning of a regular session of Congress but not later than the first day of May, and shall take effect one hundred and eighty days after they have been reported, except that—

"(1) either House of Congress within that time may defer the effective date of any amendment so reported to a later date or until approved by Act of Congress;

"(2) either House of Congress within that time by resolution may disapprove any amendment so reported, in which event such amendment shall not take effect; and

"(3) any amendment so reported that creates, abolishes, or modifies a privilege shall not take effect until it is approved by Act of Congress.

The Supreme Court may set a later date upon which such amendments shall take effect, and may prescribe the extent to which they shall apply to proceedings then pending.

"§ 3713. Admissibility of Confessions

"(a) ADMISSIBILITY IN GENERAL.—Unless otherwise required by the Constitution, a confession that is made voluntarily is admissible in evidence in a criminal case brought by the United States or the District of Columbia.

"(b) DETERMINATION OF VOLUNTARINESS.—Before a confession is received in evidence, the judge shall, out of the presence of the jury, determine any issue concerning the voluntariness of the confession. If the judge determines that the confession was made voluntarily, he shall admit the confession in evidence, shall permit the jury to hear relevant evidence on the issue of voluntariness, and shall instruct the jury to give such weight to the confession as the jury feels it deserves under all the circumstances.

"(c) FACTORS IN DETERMINING VOLUNTARINESS.—In determining any issue concerning the voluntariness of a confession, the judge shall consider all the circumstances under which the confession was made, including—

"(1) the amount of time that elapsed between the arrest of the person who made the confession and his initial appearance before a judicial officer as required by Rule 5 of the Federal Rules of Criminal Procedure if the confession was made after arrest and before such appearance;

"(2) whether the person knew the nature of the offense with which he was charged or of which he was suspected at the time of the confession;

"(3) whether the person was advised or knew that he was not required to make a statement and that the statement could be used against him;

"(4) whether the person had been advised prior to questioning of his right to assistance of counsel; and

"(5) whether the person was without assistance of counsel when questioned or when making the confession.

The presence or absence of any of such factors need not be conclusive as to the voluntariness of the confession.

"(d) EFFECT OF DELAY DURING DETENTION.—A confession made by a person between the time of his arrest or other official detention and his initial appearance before a judicial officer as required by Rule 5 of the Federal Rules of Criminal Procedure shall not be considered inadmissible solely because of delay in bringing the person before such judicial officer if—

"(1) the confession is found by the judge to have been made voluntarily;

"(2) the weight to be given the confession is left to the jury; and

"(3) the confession was made within six hours immediately following the person's arrest or other official detention, or within such additional time as is found by the judge to be reasonable in view of the distance that was required to be traveled to the nearest available judicial officer and in view of the means of transportation that was available.

"(e) SPONTANEOUS AND NONCUSTODIAL CONFESSIONS UNAFFECTED.—Nothing contained in this section precludes the admission in evidence of a confession made voluntarily by a person without interrogation by anyone, or by a person who was not under arrest or held in official detention.

"(f) DEFINITION.—As used in this section, 'confession' means any self-incriminating oral or written statement.

"§ 3714. Admissibility of Evidence in Sentencing Proceedings

"Any relevant information concerning the history, characteristics, and conduct of a person found guilty of an offense may be received and considered by a court of the United States for the purpose of ascertaining an appropriate sentence to be imposed, regardless of the admissibility of the information under the Federal Rules of Evidence, except to the extent that receipt and consideration of such information for purposes of sentencing is expressly limited by a section of this title relating to sentencing or by any other federal statute.

"Subchapter C—Appellate Review

"§ 3721. Appellate Review in General

"Review by the courts of appeals of the United States and by the United States Supreme Court of decisions, judgments, and orders entered in criminal cases by district courts of the United States is governed by the provisions of this title and by the Federal Rules of Appellate Procedure.

"§ 3722. Rulemaking Authority of the Supreme Court for Rules of Appellate Procedure

"(a) PRESCRIPTION OF RULES.—The Supreme Court of the United States may prescribe amendments to the Federal Rules of Appellate Procedure and may otherwise prescribe rules of pleading, practice, and procedure with respect to appeals from decisions, judgments, and orders entered in criminal cases in the district courts of the United States. Any provision of law in conflict with a rule prescribed pursuant to this section shall be of no further force or effect after such rule has taken effect.

"(b) EFFECTIVE DATE OF RULES.—Rules prescribed pursuant to this section shall be reported to Congress by the Chief Justice at or after the beginning of a regular session of Congress but not later than the first day of May, and shall take effect one hundred and eighty days after they have been reported. The Supreme Court may fix a later date upon which such rules shall take effect, and may fix the extent to which they shall apply to proceedings then pending.

"§ 3723. Appeal by a Defendant

"(a) APPEAL IN GENERAL.—Except as provided in subsection (b), a defendant may appeal to a United States court of appeals from a final decision, judgment, or order entered by a district court of the United States in a criminal case.

"(b) REVIEW OF AN ORDER UNDER RULE 35(b)(2).—A defendant may file with a United States court of appeals a petition for leave to appeal an order of a district court granting or denying a motion to correct a sentence pursuant to Rule 35(b)(2) of the Federal Rules of Criminal Procedure.

"§ 3724. Appeal by the Government

"(a) APPEAL FROM DISMISSAL.—The government may appeal to a United States court of appeals from a decision, judgment, or order entered by a district court of the United States in a criminal case, dismissing an indictment or information, terminating a prosecution in favor of a defendant, permitting withdrawal of a plea of guilty or nolo contendere, or granting a new trial after verdict or judgment, as to one or more counts, unless the double jeopardy clause of the United States Constitution prohibits further prosecution of the case.

"(b) APPEAL FROM ORDER SUPPRESSING EVIDENCE.—The government may appeal to a United States court of appeals from a decision or order, entered by a district court of the United States, suppressing or excluding evidence or requiring the return of seized property in a criminal proceeding, if—

"(1) the decision or order was not made during the interval between the time the defendant was put in jeopardy and the return of the verdict or finding on an indictment or information; and

"(2) the attorney for the government certifies to the district court or magistrate that the appeal is not taken for purposes of delay and that the evidence is a substantial proof of a fact material to the case.

"(c) APPEAL FROM ORDER DENYING AUTHORIZATION FOR INTERCEPTION.—The government may appeal to a United States court of appeals from a decision or order, entered by a district court of the United States, denying an application for an order authorizing or approving the interception of a private oral communication, if the attorney for the government certifies to the district court that the appeal is not taken for purposes of delay.

"(d) REVIEW OF AN ORDER UNDER RULE 35(b)(2).—The government may file with a United States court of appeals a petition for leave to appeal an order of a district court granting or denying a motion to correct a sentence pursuant to Rule 35(b)(2) of the Federal Rules of Criminal Procedure.

"(e) DILIGENT PROSECUTION REQUIRED.—An appeal by the government shall be diligently prosecuted.

"(f) CONSTRUCTION.—The provisions of this section shall be liberally construed to effectuate their purposes.

"§ 3725. Review of a Sentence

"(a) APPEAL BY A DEFENDANT.—A defendant may file a notice of appeal in the district court for review of an otherwise final sentence imposed for a felony or a Class A misdemeanor if the sentence includes a greater fine or term of imprisonment or term of supervised release than the maximum established in the guidelines, or includes a more limiting condition of probation or supervised release under section 2103 (b)(6) or (b)(11) than the maximum established in the guidelines, that are issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1), and that are found by the sentencing court to be applicable to the case, unless—

"(1) the sentence is equal to or less than the sentence recommended or not opposed by the attorney for the government pursuant to a plea agreement under Rule 11(e)(1)(B) of the Federal Rules of Criminal Procedure; or

"(2) the sentence is that provided in an accepted plea agreement pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure.

"(b) APPEAL BY THE GOVERNMENT.—The government may, with the approval of the Attorney General or his designee, file a notice of appeal in the district court for review of an otherwise final sentence imposed for a felony or a Class A misdemeanor if the sentence includes a lesser fine or term of imprisonment or term of supervised release than the minimum established in the guidelines, or includes a less limiting condition of probation or supervised release under section 2103(b)(6) or (b)(11) than the minimum established in the guidelines, that are issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1), and that are found by the sentencing court to be applicable to the case, unless—

"(1) the sentence is equal to or greater than the sentence recommended or not opposed by the attorney for the government pursuant to a plea

agreement under Rule 11(e)(1)(B) of the Federal Rules of Criminal Procedures; or

"(2) the sentence is that provided in an accepted plea agreement pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure.

"(c) REVIEW.—If a notice of appeal is filed in the district court pursuant to subsection (a) or (b), the clerk shall certify to the court of appeals—

"(1) that portion of the record in the case that is designated as pertinent by either of the parties;

"(2) the presentence report; and

"(3) the information submitted during the sentencing proceeding.

"(d) CONSIDERATION.—Upon review of the record, the court of appeals shall determine whether the sentence imposed is unreasonable, having regard for—

"(1) the factors to be considered in imposing a sentence, as set forth in part III of this title; and

"(2) the reasons for the imposition of the particular sentence, as stated by the district court pursuant to the provisions of section 2003(c).

"(e) DECISION AND DISPOSITION.—If the court of appeals determines that the sentence is—

"(1) unreasonable, it shall state specific reasons for its conclusions and—

"(A) if it determines that the sentence is too high and the appeal has been filed under subsection (a), shall set aside the sentence and—

"(i) remand the case for imposition of a lesser sentence;

"(ii) remand the case for further sentencing proceedings; or

"(iii) impose a lesser sentence;

"(B) if it determines that the sentence is too low and the appeal has been filed under subsection (b), shall set aside the sentence and—

"(i) remand the case for imposition of a greater sentence;

"(ii) remand the case for further sentencing proceedings; or

"(iii) impose a greater sentence; or

"(2) not unreasonable, it shall affirm the sentence.

"CHAPTER 38—POST-SENTENCE ADMINISTRATION

"Subchapter A—Probation

"§ 3801. Supervision of Probation

"A person who has been sentenced to probation pursuant to the provisions of chapter 21, or placed on probation pursuant to the provisions of subchapter A of chapter 36, or placed on supervised release pursuant to the provisions of section 2303, shall, during the term imposed, be supervised by a probation officer to the degree warranted by the conditions specified by the sentencing court.

"§ 3802. Appointment of Probation Officers

"(a) APPOINTMENT.—A district court of the United States shall appoint qualified persons to serve, with or without compensation, as probation officers within the jurisdiction and under the direction of the court making the appointment. The court may, for cause, remove a probation officer appointed to serve with compensation, and may, in its discretion, remove a probation officer appointed to serve without compensation.

"(b) RECORD OF APPOINTMENT.—The order of appointment shall be entered on the records of the court, a copy of the order shall be delivered to the officer appointed, and a copy shall be sent to the Director of the Administrative Office of the United States Courts.

"(c) CHIEF PROBATION OFFICER.—If the court appoints more than one probation officer, one may be designated by the court as chief probation officer and shall direct the work of all probation officers serving in the judicial district.

"§ 3803. Duties of Probation Officers

"A probation officer shall—

"(a) instruct a probationer or a person on supervised release, who is under his supervision as to the conditions specified by the sentencing court, and provide him with a written statement clearly setting forth all such conditions;

"(b) keep informed, to the degree required by the conditions specified by the sentencing court, as to the conduct and condition of a probationer or a person on supervised release, who is under his supervision, and report his conduct and condition to the sentencing court;

"(c) use all suitable methods, not inconsistent with the conditions specified by the court, to aid a probationer or a person on supervised release who is under his supervision, and to bring about improvements in his conduct and condition;

"(d) be responsible for the supervision of any probationer or a person on supervised release who is known to be within the judicial district;

"(e) keep a record of his work, and make such reports to the Director of the Administrative Office of the United States Courts as the Director may require;

"(f) upon request of the Attorney General or his designee, supervise and furnish information about a person within the custody of the Attorney General while on work release, furlough, or other authorized release from

his regular place of confinement, or while in prerelease custody pursuant to the provisions of section 3824(c); and

"(g) perform any other duty that the court may designate.

"§ 3804. Transportation of a Probationer

"A court, after imposing a sentence of probation, may direct a United States marshal to furnish the probationer with—

"(a) transportation to the place to which he is required to proceed as a condition of his probation; and

"(b) money, not to exceed such amount as the Attorney General may prescribe, for subsistence expenses while traveling to his destination.

"§ 3805. Transfer of Jurisdiction Over a Probationer

"A court, after imposing a sentence, may transfer jurisdiction over a probationer or person on supervised release to the district court for any other district to which the person is required to proceed as a condition of his probation or release, or is permitted to proceed, with the concurrence of such court. A later transfer of jurisdiction may be made in the same manner. A court to which jurisdiction is transferred under this section is authorized to exercise all powers over the probationer that are permitted by this subchapter or chapter 21.

"§ 3806. Arrest and Return of a Probationer

"If there is probable cause to believe that a probationer has violated a condition of his probation, he may be arrested, and, upon arrest, shall be taken without unnecessary delay before the court having jurisdiction over him.

"§ 3807. Special Probation and Expungement Procedures for Drug Possessors

"(a) PRE-JUDGMENT PROBATION.—If a person found guilty of an offense described in section 1813 (Possessing Drugs)—

"(1) has not, prior to the commission of such offense, been convicted of violating a federal or State law relating to controlled substances; and

"(2) has not previously been the subject of a disposition under this subsection;

the court may, with the consent of such person, place him on probation for a term of not more than one year without entering a judgment of conviction. At any time before the expiration of the term of probation, if the person has not violated a condition of his probation, the court may, without entering a judgment of conviction, dismiss the proceedings against the person and discharge him from probation. At the expiration of the term of probation, if the person has not violated a condition of his probation the court shall, without entering a judgment of conviction, dismiss the proceedings against the person and discharge him from probation. If the person violates a condition of his probation, the court shall proceed in accordance with the provisions of section 2105.

"(b) RECORD OF DISPOSITION.—A non-public record of a disposition under subsection (a), or a conviction that is the subject of an expungement order under

subsection (c), shall be retained by the Department of Justice solely for the purpose of use by the courts in determining in any subsequent proceeding whether a person qualifies for the disposition provided in subsection (a) or the expungement provided in subsection (c). A disposition under subsection (a), or a conviction that is the subject of an expungement order under subsection (c), shall not be considered a conviction for the purpose of a disqualification or a disability imposed by law upon conviction of a crime, or for any other purpose.

"(c) EXPUNGEMENT OF RECORD OF DISPOSITION.—If the case against a person found guilty of an offense under section 1813 (Possessing Drugs)—

"(1) is the subject of a disposition under subsection (a), and the person was less than twenty-one years old at the time of the offense, the court shall enter an expungement order upon the application of such person; or

"(2) consists solely of an offense involving—

"(A) 30 grams or less of marihuana, the court shall enter an expungement order after such person's payment of any fine imposed by the court, and, for a third offense, after the passage of one year since the date of the conviction; or

"(B) more than 30 grams of marihuana, the court may enter an expungement order after such person's payment of any fine imposed by the court and after the passage of one year since the date of the conviction.

The expungement order shall direct that there be expunged from all official records, except the nonpublic records referred to in subsection (b), all references to his arrest for the offense, the institution of criminal proceedings against him, and the results thereof. The effect of the order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or institution of criminal proceedings. A person concerning whom such an order has been entered shall not be held thereafter under any provision of law to be guilty of perjury, false swearing, or making a false statement by reason of his failure to recite or acknowledge such arrests or institution of criminal proceedings, or the results thereof, in response to an inquiry made of him for any purpose.

"Subchapter B—Fines

"§ 3811. Payment of a Fine

"A person who has been sentenced to pay a fine pursuant to the provisions of chapter 22 shall pay the fine immediately, or by the time and method specified by the sentencing court, to the clerk of the court. The clerk shall forward the payment to the United States Treasury for credit to the Victim Compensation Fund.

"§ 3812. Collection of an Unpaid Fine

"(a) CERTIFICATION OF IMPOSITION.—If a fine is imposed, the sentencing court shall promptly certify to the Attorney General—

"(1) the name of the person fined;

"(2) his last known address;

"(3) the docket number of the case;

"(4) the amount of the fine imposed;

"(5) the time and method of payment specified by the court;

"(6) the nature of any modification or remission of the fine; and

"(7) the amount of the fine that is due and unpaid.

The court shall thereafter promptly certify to the Attorney General the amount of any subsequent payment that the court may receive with respect to, and the nature of any subsequent remission or modification of, a fine concerning which certification has previously been issued.

"(b) RESPONSIBILITY FOR COLLECTION.—The Attorney General shall be responsible for collection of an unpaid fine concerning which a certification has been issued as provided in subsection (a). An order of restitution, pursuant to section 2006, does not create any right of action against the United States by the person to whom restitution is ordered to be paid.

"§ 3813. Lien Provisions for Satisfaction of an Unpaid Fine

"(a) LIEN.—A fine imposed pursuant to the provisions of chapter 22 is a lien in favor of the United States upon all property belonging to the person fined. The lien arises at the time of the entry of the judgment and continues until the liability is satisfied, remitted, or set aside, or until it becomes unenforceable pursuant to the provisions of subsection (b).

"(b) EXPIRATION OF LIEN.—A lien becomes unenforceable and liability to pay a fine expires—

"(1) twenty years after the entry of the judgment; or

"(2) upon the death of the individual fined.

The period set forth in paragraph (1) may be extended, prior to its expiration, by a written agreement between the person fined and the Attorney General. The running of the period set forth in paragraph (1) is suspended during any interval for which the running of the period of limitations for collection of a tax would be suspended pursuant to section 6503(b), 6503(c), 6503(f), or 7508(a)(1)(I) of the Internal Revenue Code of 1954 (26 U.S.C. 6503(b), 6503(c), 6503(g), or 7508(a)(1)(I)), or section 513 of the Act of October 17, 1940, 54 Stat. 1190.

"(c) APPLICATION OF OTHER LIEN PROVISIONS.—The provisions of sections 6323, other than 6323(f)(4), 6331 through 6343, 6901, 7402, 7403, 7405, 7423 through 7426, 7505(a), 7506, 7508, 7602 through 7605, 7622, 7701, 7805, and 7810 of the Internal Revenue Code of 1954 (26 U.S.C. 6323, 6331 through 6343, 6901, 7402, 7403, 7405, 7423 through 7426, 7505(a), 7506, 7508, 7602 through 7605, 7609, 7610, 7622, 7701, 7805, and 7810), and of section 513 of

the Act of October 17, 1940, 54 Stat. 1190, apply to a fine and to the lien imposed by subsection (a) as if the liability of the person fined were for an internal revenue tax assessment, except to the extent that the application of such statutes is modified by regulations issued by the Attorney General to accord with differences in the nature of the liabilities. For the purposes of this subsection, references in the preceding sections of the Internal Revenue Code of 1954 to 'the Secretary' shall be construed to mean 'the Attorney General,' and references in those sections to 'tax' shall be construed to mean 'fine.'

"(d) EFFECT OF NOTICE OF LIEN.—A notice of the lien imposed by subsection (a) shall be considered a notice of lien for taxes payable to the United States for the purposes of any State or local law providing for the filing of a notice of a tax lien. The registration, recording, docketing, or indexing, in accordance with 28 U.S.C. 1962, of the judgment under which a fine is imposed shall be considered for all purposes as the filing prescribed by section 6323(f)(1)(A) of the Internal Revenue Code of 1954 (26 U.S.C. 6323(f)(1)(A)) and by subsection (c).

"Subchapter C—Imprisonment

"§ 3821. Imprisonment of a Convicted Person

"(a) COMMITMENT TO CUSTODY OF BUREAU OF PRISONS.—A person who has been sentenced to a term of imprisonment pursuant to the provisions of chapter 23 shall be committed to the custody of the Bureau of Prisons until the expiration of the term imposed, or until earlier released for satisfactory behavior pursuant to the provisions of section 3824.

"(b) PLACE OF IMPRISONMENT.—The Bureau of Prisons shall designate the place of the prisoner's imprisonment. The Bureau may designate any available penal or correctional facility that meets minimum standards of health and habitability established by the Bureau, whether maintained by the federal government or otherwise and whether within or without the judicial district in which the person was convicted, that the Bureau determines to be appropriate and suitable, considering—

"(1) the resources of the facility contemplated;

"(2) the nature and circumstances of the offense;

"(3) the history and characteristics of the prisoner;

"(4) any statement by the court that imposed the sentence—

"(A) concerning the purposes for which the sentence to imprisonment was determined to be warranted; or

"(B) recommending a type of penal or correctional facility as appropriate; and

"(5) any pertinent policy statement issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28.

The Bureau may at any time, having regard for the same matters, direct the transfer of a prisoner from one penal or correctional facility to another.

"(c) DELIVERY OF ORDER OF COMMITMENT.—When a prisoner, pursuant to a court order, is placed in the custody of a person in charge of a penal or correctional facility, a copy of the order shall be delivered to such person as evidence of this authority to hold the prisoner, and the original order, with the return endorsed thereon, shall be returned to the court that issued it.

"(d) DELIVERY OF PRISONER FOR COURT APPEARANCES.—The Bureau of Prisons shall, without charge, bring a prisoner into court or return him to a prison facility on order of a court of the United States or on written request of an attorney for the government.

"§ 3822. Temporary Release of a Prisoner

"The Bureau of Prisons may release a prisoner from the place of his imprisonment for a limited period, if such release appears to be consistent with the purposes for which the sentence was imposed and any pertinent policy statement issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2), if such release otherwise appears to be consistent with the public interest and if there is reasonable cause to believe that the prisoner will honor the trust to be imposed in him, by authorizing him, under prescribed conditions, to—

"(a) visit a designated place for a period not to exceed thirty days, and then return to the same or another facility, for the purpose of—

"(1) visiting a relative who is dying;

"(2) attending a funeral of a relative;

"(3) obtaining medical treatment not otherwise available;

"(4) contacting a prospective employer;

"(5) establishing or reestablishing family or community ties; or

"(6) engaging in any other significant activity consistent with the public interest;

"(b) participate in a training or educational program in the community while continuing in official detention at the prison facility; or

"(c) work at paid employment in the community while continuing in official detention at the penal or correctional facility if—

"(1) the rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the community; and

"(2) the prisoner agrees to pay to the Bureau such costs incident to his official detention as the Bureau finds appropriate and reasonable under all the circumstances, such costs to be collected by the Bureau and deposited in the Treasury to the credit of the appropriation available for such costs at the time such collections are made.

"§ 3823. Transfer of a Prisoner to State Authority

"The Director of the Bureau of Prisons shall order that a prisoner who has been charged in an indictment or information with, or convicted of, a State felony, be transferred to an official detention facility within such State prior to his release from a federal prison facility if—

"(1) the transfer has been requested by the Governor or other executive authority of the State;

"(2) the State has presented to the Director a certified copy of the indictment, information, or judgment of conviction; and

"(3) the Director finds that the transfer would be in the public interest.

If more than one request is presented with respect to a prisoner, the Director shall determine which request should receive preference. The expenses of such transfer shall be borne by the State requesting the transfer.

"§ 3824. Release of a Prisoner

"(a) DATE OF RELEASE.—A prisoner shall be released by the Bureau of Prisons on the date of the expiration of his term of imprisonment, less any time credited toward the service of his sentence as provided in subsection (b). If the date for a prisoner's release falls on a Saturday, a Sunday, or a legal holiday at the place of confinement, the prisoner may be released by the Bureau on the last preceding weekday.

"(b) CREDIT TOWARD SERVICE OF SENTENCE FOR SATISFACTORY BEHAVIOR.—A prisoner who is serving a term of imprisonment of more than one year, other than a term of imprisonment for the duration of his life, shall receive credit toward the service of his sentence, beyond the time served, of thirty-six days at the end of each year of his term of imprisonment, beginning after the first year of the term, unless the Bureau of Prisons determines that, during that year, he has not satisfactorily complied with such institutional disciplinary regulations as have been approved by the Attorney General and issued to the prisoner. If the Bureau determines that, during that year, the prisoner has not satisfactorily complied with such institutional regulations, he shall receive no such credit toward service of his sentence or shall receive such lesser credit as the Bureau determines to be appropriate. The Bureau's determination shall be made within fifteen days after the end of each year of the sentence. Such credit toward service of sentence vests at the time that it is received. Credit that has vested may not later be withdrawn, and credit that has not been earned may not later be granted.

"(c) PRE-RELEASE CUSTODY.—The Bureau of Prisons shall, to the extent practicable, assure that a prisoner serving a term of imprisonment spends a reasonable part, not to exceed six months, of the last ten percent of the term to be served under conditions that will afford the prisoner a reasonable opportunity to adjust to and prepare for his re-entry into the community. The United States Probation System shall, to the extent practicable, offer assistance to a prisoner during such pre-release custody.

"(d) ALLOTMENT OF CLOTHING, FUNDS, AND TRANSPORTATION.—Upon the release of a prisoner on the expiration of his term of imprisonment, the Bureau of Prisons shall furnish him with—

"(1) suitable clothing;

"(2) an amount of money, not more than $500, determined by the Director to be consistent with the needs of the offender and the public interest, unless the Director determines that the financial position of the offender is such that no sum should be furnished; and

"(3) transportation to the place of his conviction, to his bona fide residence within the United States, or to such other place within the United States as may be authorized by the Director.

"(e) SUPERVISION AFTER RELEASE.—A prisoner whose sentence includes a term of supervised release after imprisonment shall be released by the Bureau of Prisons to the supervision of a probation officer who shall, during the term imposed, supervise the person released to the degree warranted by the conditions specified by the sentencing court. The term of supervised release commences on the day the person is released from imprisonment. The term runs concurrently with any federal, State, or local term of probation or supervised release or parole for another offense to which the person is subject or becomes subject during the term of supervised release, except that it does not run during any period in which the person is imprisoned, other than during limited intervals as a condition of probation or supervised release, in connection with a conviction for a federal, State, or local crime.

"§ 3825. Inapplicability of the Administrative Procedure Act

"The provisions of sections 554 through 557, and 701 through 706, of title 5, do not apply to the making of any determination, decision, or order under this subchapter.

"PART V—ANCILLARY CIVIL PROCEEDINGS

"CHAPTER 40—ANCILLARY PUBLIC CIVIL PROCEEDINGS

"Subchapter A—Civil Forfeiture

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"§ 4001. Civil Forfeiture of Property

"(a) PROPERTY SUBJECT TO FORFEITURE.—In addition to a proceeding under any other act of Congress, the Attorney General may initiate in a district court of the United States an in rem civil proceeding to have seized and forfeited to the United States any property, or the value thereof where specified, used, intended for use, or possessed in the course of an offense described in section—

"(1) 1204 (Violating Neutrality by Causing Departure of a Vessel or Aircraft), if the property consists of a vessel or aircraft or its contents;

"(2) 1206 (a)(2) or (a)(3) (Engaging in an Unlawful International Transaction) if the property consists of property being introduced into or exported from the United States in violation of such section, or the value thereof;

"(3) 1321 (Witness Bribery), 1322 (Corrupting a Witness or an Informant), or 1323 (Tampering With a Witness or an Informant), if the property consists of anything of value given or accepted in violation of such section;

"(4) 1351 (Bribery) or 1352 (Graft) if the property consists of anything of value given or accepted in violation of such section;

"(5) 1411 (Smuggling) if the property consists of an object introduced, or being introduced, into the United States, or the value thereof;

"(6) 1412 (Trafficking in Smuggled Property) if the property consists of an object introduced, or being introduced, into the United States, or the value thereof;

"(7) 1413 (Receiving Smuggled Property) if the property consists of an object introduced, or being introduced, into the United States or the value thereof;

"(8) 1511 (Obstructing an Election), 1512 (Obstructing Registration), 1516 (Soliciting a Political Contribution as a Federal Public Servant or in a Federal Building), if the property consists of anything of value given or received in violation of such section;

"(9) 1521 (Eavesdropping), 1522 (Trafficking in an Eavesdropping Device), or 1523 (Possessing an Eavesdropping Device), if the property consists of an eavesdropping device;

"(10) 1715 (Possessing Burglar's Tools) if the property consists of an object that is designed for, or commonly used for, the facilitation of a forcible entry in the course of an offense described in section 1711, 1712, 1713, or 1714;

"(11) 1734 (Executing a Fraudulent Scheme) if the property consists of the property offered as part of the scheme or artifice, the instrumentalities used in the execution of the scheme or artifice, or the proceeds of the scheme or artifice;

"(12) 1738 (Criminal Infringement of a Copyright) if the property consists of infringed copies or phonorecords, or implements, devices, or equipment used in the manufacture of such infringed copies or phonorecords;

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"(13) 1739 (Consumer Fraud) if the property consists of the property offered, advertised for sale, or sold, or the proceeds of such sale;

"(14) 1741 (Counterfeiting) if the property consists of a counterfeited written instrument;

"(15) 1742 (Forgery) if the property consists of a forged written instrument;

"(16) 1745 (Trafficking in a Counterfeiting Implement) if the property consists of a counterfeiting or forging implement;

"(17) 1751 (Commercial Bribery), 1752 (Labor Bribery), or 1753 (Sports Bribery), if the property consists of anything of value given or accepted in violation of such section;

"(18) 1806 (Trafficking in Contraband Cigarettes) if the property consists of contraband cigarettes;

"(19) 1821 (Explosives Offenses) if the property consists of an explosive;

"(20) 1822 (Firearms Offenses) if the property consists of a firearm or ammunition;

"(21) 1823 (Using a Weapon in the Course of a Crime) if the property consists of a firearm or a destructive device;

"(22) 1841 (Engaging in a Gambling Business) if the property consists of other than real property; or

"(23) 1842 (Disseminating Obscene Material) if the property consists of obscene material.

"(b) ORDER OF FORFEITURE.—If the court finds, by a preponderance of the evidence, that the property that is the subject of the proceeding had been used, intended for use, or possessed in the course of an offense set forth in subsection (a), and that the property consists of an object set forth in subsection (a), the court shall order such property to be forfeited to the United States.

"§ 4002. Protective Order

"At any time after the initiation of a proceeding under section 4001, the court may enter a restraining order or injunction, may require a performance bond, and may take such other action as is in the interest of justice, with respect to any property subject to civil forfeiture.

"§ 4003. Execution of Civil Forfeiture

"The Attorney General, upon such terms and conditions as are in the interest of justice, shall seize property that a defendant has been ordered to forfeit to the United States, pursuant to section 4001, and shall, pursuant to regulations issued by the Attorney General, sell, retain, destroy, or make other appropriate disposition of such property, making due provision for the rights of any innocent person. The Attorney General shall establish procedures to turn over to the victim, insofar as practicable, proceeds forfeited pursuant to section 4001(a)(11) or (a)(13), to

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the extent of the loss by such victim. If any property is not disposed of for value the rights to such property shall not revert to the defendant.

"§ 4004. Applicability of Other Civil Forfeiture Provisions

"Except to the extent that they are inconsistent with the provisions of this subchapter, all provisions of law relating to the remission or mitigation of civil forfeitures of property for violation of the customs laws, the compromise of claims with respect to such property, the disposition of such property, the proceeds from the sale of such property, and the award of compensation to informants with respect to such property, shall apply to civil forfeitures incurred, or alleged to have been incurred, under this section. The duties imposed upon a customs officer or any other person with respect to the civil seizure, forfeiture, and disposition of property under the customs laws shall, with respect to property used, intended for use, or possessed in violation of subsection 4001(a), be performed by the Attorney General.

"§ 4005. Definitions for Subchapter A

"As used in this subchapter—

"(a) 'counterfeited written instrument' has the meaning set forth in section 1746(a);

"(b) 'counterfeiting implement' has the meaning set forth in section 1746(b);

"(c) 'eavesdropping device' has the meaning set forth in section 1526(c);

"(d) 'forged written instrument' has the meaning set forth in section 1746(c);

"(e) 'forging implement' has the meaning set forth in section 1746(d);

"(f) 'introduce' has the meaning set forth in section 1414(a)(2);

"(g) 'object' has the meaning set forth in section 1414(a)(3); and

"(h) 'obscene material' has the meaning set forth in section 1842(b)(5).

"Subchapter B—Civil Restraint of Racketeering

"Sec.
"4011. Civil Action to Restrain Racketeering.
"4012. Civil Restraint Procedure.
"4013. Civil Investigative Demand.

"§ 4011. Civil Action to Restrain Racketeering

"(a) INITIATION OF ACTION.—The Attorney General may initiate a civil proceeding to prevent and restrain offenses under section 1801 (Operating a Racketeering Syndicate), 1802 (Racketeering), or 1803 (Washing Racketeering Proceeds).

"(b) JURISDICTION.—The district courts of the United States have jurisdiction to hear and determine proceedings initiated under this section, and to prevent and restrain the offenses set forth in subsection (a). In a proceeding initiated under this section, the court shall proceed as soon as practicable to the hearing and determination thereof.

"(c) PROTECTIVE ORDERS.—At any time after the initiation of a proceeding under this section, the court may enter a restraining order or injunction, may require a performance or other bond, and may take such other action as is in the interest of justice.

"(d) ESTOPPEL.—A conviction of a defendant for an offense under section 1801 (Operating a Racketeering Syndicate), 1802 (Racketeering), or 1803 (Washing Racketeering Proceeds) shall, as a final judgment or decree rendered in favor of the United States, estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States under this section or by a person under section 4101.

"(e) FINAL ORDERS.—Upon the determination of a proceeding under this section in favor of the United States, the court may issue appropriate orders, including an order—

"(1) directing a person to divest himself of an interest, direct or indirect, in an enterprise;

"(2) imposing reasonable restrictions on the future activities or investments of a person, including a prohibition against a person's engaging in an endeavor of the same kind as the enterprise engaged in; and

"(3) directing dissolution or reorganization of an enterprise, making due provision for the rights of an innocent person.

"§ 4012. Civil Restraint Procedure

"(a) VENUE.—A proceeding under section 4011 or 4101 may be initiated in a United States District Court for any district in which the defendant in the proceeding resides, is found, has an agent, or transacts affairs.

"(b) ISSUANCE OF PROCESS.—In a proceeding under section 4011 or 4101, if it is shown that the interest of justice requires that any other party residing in another district be brought before the court, the court may cause such party to be summoned, and process for that purpose may be served in any judicial district of the United States by the United States marshal in such district.

"(c) SERVICE OF PROCESS.—In a proceeding under section 4011 or 4101, a subpoena issued by the court to compel the attendance of a witness may be served in any other judicial district, but no such subpoena shall be issued for service upon an individual who resides in another district at a place more than one hundred miles from the place at which the court is held without approval by a judge of such court upon a showing of good cause. All other processes may be served on a person in any judicial district in which the person resides, is found, has an agent, or transacts affairs.

"(d) EXPEDITED ACTION.—In a proceeding under section 4011 or 4101, the Attorney General may file with the clerk of the court a certificate stating that in his opinion the case is of general public importance. A copy of the certificate shall be furnished immediately by the clerk to the chief judge, or in his absence to the presiding district judge, of the district in which the proceeding is pending. Upon

receipt of the copy, the judge shall designate immediately a judge of that district to hear and determine the proceeding. The judge so designated shall assign the proceeding for hearing as soon as practicable, shall participate in the hearing and determination, and shall otherwise cause the proceeding to be expedited.

"(e) OPEN OR CLOSED PROCEEDINGS.—A proceeding under section 4011 may be open or closed to the public, at the discretion of the court, after consideration of the rights of the persons affected.

"§ 4013. Civil Investigative Demand

"(a) ISSUANCE OF DEMAND.—If the Attorney General has reason to believe that a person may be in possession, custody, or control of any documentary material that may be relevant to a civil proceeding under section 4011, he may, prior to the initiation of such proceeding, issue in writing and cause to be served on the person a civil investigative demand requiring the person to produce such material for examination. The civil investigative demand shall—

"(1) state the character of the conduct under investigation and the provision of law applicable;

"(2) describe the class of documentary material to be produced with sufficient definiteness to enable the material to be fairly identified;

"(3) state that the demand is returnable forthwith or prescribe a return date that provides a reasonably sufficient period of time within which the material can be assembled and made available for inspection and copying or reproduction; and

"(4) identify the document custodian to whom the material is to be made available.

"(b) LIMITATIONS.—No civil investigative demand may contain a requirement that would be held to be unreasonable if contained in a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation.

"(c) SERVICE.—Service of a civil investigative demand or a petition filed under this section may be made upon a person by—

"(1) delivering an executed copy to the person;

"(2) delivering an executed copy to the person's agent or to another person authorized by appointment or by law to receive service of process on behalf of the person;

"(3) delivering an executed copy to the principal office or place of business of the person; or

"(4) sending an executed copy by registered or certified mail addressed to the person at his principal office or place of business.

A verified return by the person serving the demand or petition, setting forth the manner of service, is prima facie evidence of service. A return reflecting service by registered or certified mail shall be accompanied by the return post office receipt of delivery of the demand.

"(d) CUSTODY.—

"(1) The Attorney General shall designate a person to serve as document custodian, and such additional persons as are necessary to serve as deputies to the document custodian.

"(2) A person upon whom a civil investigative demand has been served shall, at his principal place of business and on the return date specified in the demand, make the material available for inspection and copying or reproduction by the custodian designated. Upon written agreement between the person and the custodian, or upon order of the court, the material may be made available at such other place and at such later date as is agreed upon or ordered, and the person may substitute a copy for an original of all or any part of the material.

"(3) The custodian to whom the material is delivered shall take physical possession and shall be responsible for the use made of it and for its return. The custodian may prepare as many copies of such documentary material as may be required for official use, under regulations issued by the Attorney General. While in the possession of the custodian, no material so produced shall be available for examination by any person, other than the Attorney General, without the consent of the person who produced the material. The material in the possession of the custodian shall be made available for examination by the person who produced the material, or his representative, under such reasonable terms and conditions as the Attorney General shall prescribe.

"(4) The custodian shall, upon request, deliver the material in his possession to an attorney for the government who has determined that the material is needed for his presentation in a proceeding before a court or grand jury. Upon the conclusion of the proceeding, the attorney shall return to the custodian any material that has not passed into the control of the court or grand jury through its introduction into the record of the proceeding.

"(5) Upon the completion of—

"(A) the investigation for which material was produced under this section; and

"(B) any proceeding arising from the investigation;

the custodian shall return, to the person who produced the material, all the material that has not passed into the control of a court or grand jury through its introduction into the record of the proceeding. A copy made under this subsection need not be returned.

"(6) If no proceeding has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of the investigation, the person who produced the material shall be entitled, upon written demand made upon the Attorney General, to the

return of all the material produced by him. A copy made under this subsection need not be returned.

"(e) ENFORCEMENT.—

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

"(2) Within twenty days after the service of a civil investigative demand upon a person, or at any time before the return date specified in the demand, whichever period is less, the person may file and serve upon the Attorney General a petition for an order modifying or setting aside the demand. The time allowed for compliance with the demand shall not run while the petition is pending in the court. The petition shall specify each ground upon which the petitioner relies in seeking relief. The petition may be based upon a failure of the demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of the person.

"(3) At any time during which the document custodian has custody or control of material delivered by a person in compliance with a civil investigative demand, the person may file and serve upon the custodian a petition for an order requiring the performance by the custodian of a duty imposed upon him by this section.

"(f) JURISDICTION.—A district court of the United States in which a petition is filed under this section has jurisdiction to hear and determine the matter so presented, and to enter such order as may be required to effectuate the provisions of this section.

"Subchapter C—Injunctions

"Sec.
"4021. Injunctions Against Fraud.

"§ 4021. Injunctions Against Fraud

"The Attorney General may initiate a civil proceeding in a district court of the United States to enjoin a violation of section 1734 (Executing a Fraudulent Scheme). The court shall proceed as soon as practicable to the hearing and determination of such an action, and may, at any time before final determination, enter such a restraining order or prohibition, or take such other action, as is warranted

to prevent a continuing and substantial injury to the United States or to any person or class of persons for whose protection the action is brought. A proceeding under this section is governed by the Federal Rules of Civil Procedure, except that, if an indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.

"Subchapter D—Restriction on Imposition of Civil Disabilities

"Sec.
"4031. General Restriction on Imposition of Civil Disabilities.
"4032. Restriction on Employment Disabilities.
"4033. Attorney General Regulations.

"§ 4031. General Restriction on Imposition of Civil Disabilities

"A person acting under color of federal law may not impose on another person any civil disability by reason of the other person's conviction of, or sentence for, any offense described in this title unless—

"(a) the offense occurred in connection with the particular right, privilege, or opportunity withheld by reason of that disability; or

"(b) there is a substantial probability, in light of the offense and other relevant circumstances, that the person so convicted will abuse the right, privilege, or opportunity withheld by reason of that disability.

"§ 4032. Restriction on Employment Disabilities

"(a) EMPLOYMENT OF OFFENDERS.—Notwithstanding the provisions of any other federal statute, a federal government agency may not deny a person employment or access to employment solely on the basis that the person has been convicted of a federal, State, or local offense, unless—

"(1) there is a reasonable relationship between the conduct constituting the offense and the employment, and the appropriateness of considering the relationship has not been mitigated by the passage of time; or

"(2) there are other circumstances that, in combination with the conduct constituting the offense, suggest convincingly that the person is unsuitable to engage in the employment, or that others may be more suitable.

"(b) STATEMENT OF REASONS FOR NONEMPLOYMENT.—If a federal government agency denies employment or access to employment to an applicant in whole or in substantial part because of his conviction for a federal offense, the government agency shall provide the person with a statement of the reasons for the denial.

"(c) INAPPLICABILITY TO CERTAIN APPLICANTS.—This section does not apply to—

"(1) an applicant for admission to the bar of a federal court, or for employment as a law enforcement officer with a federal government agency;

"(2) a candidate for appointment by the President to a federal office; or

"(3) an applicant for any federal position which requires a security clearance.

"§ 4033. Attorney General Regulations

"The Attorney General shall issue regulations to carry out the purposes of this subchapter.

"CHAPTER 41—ANCILLARY PRIVATE CIVIL REMEDIES

"Subchapter A—Private Actions for Damages

"§ 4101. Civil Action Against a Racketeering Offender

"A person injured in his person, business, or property by reason of a violation of section 1801 (Operating a Racketeering Syndicate), 1802 (Racketeering), or 1803 (Washing Racketeering Proceeds) shall have a civil cause of action against an offender in an appropriate district court of the United States and shall be entitled to recover—

"(a) three times the damages sustained; and

"(b) a reasonable attorney's fee and other investigation and litigation costs reasonably incurred.

"§ 4102. Civil Action Against an Eavesdropping Offender

"(a) CIVIL ACTION.—A person whose private oral communication is intercepted, disclosed, or used in violation of section 1521 (Eavesdropping) shall have a civil cause of action against an offender in an appropriate district court of the United States and shall be entitled to recover—

"(1) actual damages, but not less than liquidated damages of $1,000 or of $100 per day for each day of violation, whichever is the greater;

"(2) punitive damages; and

"(3) a reasonable attorney's fee and other investigation and litigation costs reasonably incurred.

"(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a civil proceeding brought under this section or any other provision of law that the defendant acted in reasonable reliance on a court order or legislative authorization and believed in good faith that his conduct did not constitute an offense.

"Subchapter B—Actions for Compensation of Victims of Crime

"§ 4111. Establishment of a Victim Compensation Fund

"There is established in the Treasury of the United States a revolving fund, to be known as the Victim Compensation Fund, that shall be the depository of—

"(a) all criminal fines paid in the courts of the United States;

"(b) all funds reimbursed pursuant to section 4112(e) or 4113(e)(2);

"(c) all funds collected as a result of actions instituted pursuant to section 4114; and

"(d) all contributions to such Fund from public or private sources.

No payment of compensation provided for by this subchapter shall be made except from the Fund established by this section.

"§ 4112. Claim for Compensation

"(a) CLAIM.—The victim of an offense described in chapter 16 over which federal jurisdiction exists, or of an attempt to commit such an offense, or a surviving dependent of such a victim, may file a claim with the United States Victim Compensation Board for compensation in accordance with this subchapter.

"(b) HEARING ON CLAIM.—A hearing on a claim filed under this subchapter shall be open to the public unless the Board determines that, in the interest of justice, the hearing, or a portion of the hearing, should not be open to the public.

"(c) SCOPE OF COMPENSATION.—The Board, subject to the provisions of section 4113, shall order the payment of compensation to—

"(1) a victim who has suffered personal injury as a result of the offense;

"(2) the estate of a victim who has suffered personal injury as a result of the offense; or

"(3) a surviving dependent of a victim who has suffered death as a result of the offense.

"(d) AMOUNT AND PAYMENT OF COMPENSATION.—The Board shall determine the amount of, and shall order payment of, compensation for pecuniary loss to be awarded to a claimant. If the pecuniary loss occasioned by loss of anticipated earnings or support continues for a period of ninety days or more, payment for the loss may be in the form of periodic payments during the period for which the loss continues or during a period of ten years, whichever is less.

"(e) EMERGENCY COMPENSATION.—If, prior to taking final action upon a claim, the Board determines that such claim is one with respect to which compensation will probably be ordered to be paid, the Board may order emergency compensation to be paid, not to exceed $1,500, pending final action on the claim. The amount of any emergency compensation ordered and paid shall be deducted from the amount of any final order for compensation. If the amount of any emergency compensation ordered and paid exceeds the amount of the final order for compensation, or if no final order for compensation is made, the claimant may be ordered to make reimbursement to the Fund of the difference between such amounts.

"(f) RECONSIDERATION OF CLAIM.—The Board at any time may reconsider a claim and modify or rescind an order for the payment of compensation based upon a change in circumstances of the claimant.

"(g) BAR TO CLAIM.—No claim may be brought under this subchapter if the injury or the death was caused by the operation of a vehicle, unless the injury or

death was intentionally inflicted through the use of the vehicle, or unless the vehicle was an implement used in the commission of an offense to which this subchapter applies.

"(h) BAR TO CLAIM PRECLUDED.—It is not a bar to a claim brought under this subchapter that, by reason of immaturity, incompetency, or otherwise, the person engaging in the conduct that caused the injury or death could not be convicted for the offense.

"(i) OTHER RIGHTS UNAFFECTED.—Except as otherwise provided, the availability or payment of compensation under this subchapter does not affect the right of any person to recover damages from any other person by a civil action for the injury or death.

"(j) EXECUTION OR ATTACHMENT BARRED.—An order for the payment of compensation under this subchapter is not subject to execution or attachment.

"§ 4113. Limitation on Compensation

"(a) PREREQUISITES TO RECOVERY OF COMPENSATION.—An order for the payment of compensation under this subchapter shall not be made unless—

"(1) the offense giving rise to the claim was reported to a law enforcement officer within seventy-two hours after its occurrence, unless the Board finds that the failure to report within such time was justified by good cause;

"(2) the claim is filed within one year after the date of the offense giving rise to the claim, unless the Board finds that the failure to file the claim within such time was justified by good cause; and

"(3) the claimant has suffered a pecuniary loss exceeding $100 or an amount equal to a week's earnings or support, whichever is less, as a proximate cause of the offense giving rise to the claim.

"(b) MAXIMUM AMOUNT OF COMPENSATION.—An order for the payment of compensation for pecuniary loss under this subchapter may not exceed a total of $50,000, including lump-sum payments and periodic payments, for each incident involving an offense against a victim.

"(c) RESPONSIBILITY OF VICTIM OR CLAIMANT FOR THE OFFENSE.—The Board, in determining whether to order payment of compensation and the amount of compensation to be ordered, shall consider the behavior of the victim or claimant with regard to the circumstances of the offense giving rise to the claim, shall determine whether the victim or claimant bears any share of responsibility for the offense because of provocation or otherwise, and shall—

"(1) reduce the amount of compensation to the claimant in accordance with its assessment of the degree of such responsibility attributable to the victim or claimant; or

"(2) deny compensation if the behavior of the victim or claimant was a substantial contributing factor to the offense giving rise to the claim.

"(d) CONTINUING DUTY OF VICTIM OR CLAIMANT TO COOPERATE.—The Board, upon finding that a victim or claimant has not substantially cooperated with all government agencies involved in the investigation or prosecution of the offense that gave rise to the claim, may deny, rescind, or reduce the amount of any order for the payment of compensation under this subchapter.

"(e) EFFECT OF COMPENSATION FROM OTHER SOURCES.—In the event that a claimant—

"(1) recovers damages from any other source or receives restitution pursuant to section 2006, based upon an offense giving rise to a claim under this section and subsequently receives compensation under this section based upon such offense, in determining the amount of compensation to be awarded under this section such damages shall be assumed to compensate for losses other than pecuniary losses compensable under this subchapter unless the damages clearly compensate for pecuniary losses; or

"(2) receives compensation under this section and subsequently recovers damages from any other source or receives restitution pursuant to section 2006, based upon the offense that gave rise to compensation under this section, the claimant shall be ordered to make reimbursement to the Fund for the compensation previously paid to the same extent that compensation would have been reduced under paragraph (1) had recovery preceded compensation.

"§ 4114. Subrogation

"The Attorney General, to the extent practicable, shall institute against an offender convicted by a federal, State, or local court of an offense giving rise to a claim under this subchapter, an action for the recovery of all or part of such compensation in the United States District Court for any judicial district in which such person resides or is present. Such action must be instituted within three years after the entry of an order for the payment of compensation under this subchapter. A conviction of a defendant by a federal court of an offense involving the act giving rise to a claim under this subsection shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States under this section. Such court shall have jurisdiction to hear, determine, and render judgment in any such action. Recovery of any amount by the Attorney General pursuant to this section does not affect the obligation of the defendant to pay a fine for the offense giving rise to the claim for compensation. Any amounts recovered under this subsection shall be forwarded to the Treasury of the United States for credit to the Victim Compensation Fund.

"§ 4115. Definitions for Subchapter B

"As used in this subchapter—

"(a) 'dependent' means—

"(1) a spouse;

"(2) an individual who is a dependent within the meaning of section 152 of the Internal Revenue Code of 1954 (26 U.S.C. 152); or

"(3) a posthumous child;

"(b) 'pecuniary loss' means—

"(1) in the case of personal injury—

"(A) all appropriate and reasonable expenses necessarily incurred for ambulance, hospital, surgical, nursing, dental, prosthetic, and other medical and related professional services relating to physical or psychiatric care, including non-medical care and treatment rendered in accordance with a recognized method of healing;

"(B) all appropriate and reasonable expenses necessarily incurred for physical and occupational therapy and rehabilitation; and

"(C) actual loss of past earnings and anticipated loss of future earnings because of a disability resulting from the personal injury, at a rate not to exceed $150 per week, if the loss continues for a period of ninety days or more; and

"(2) in the case of death—

"(A) all appropriate and reasonable expenses necessarily incurred for funeral and burial expenses; and

"(B) loss of support to a dependent of a victim, not otherwise compensated for as a pecuniary loss for personal injury, for such period of time as the dependency would have existed but for the death of the victim, at a rate not to exceed a total of $150 per week for all dependents;

"(c) 'personal injury' includes bodily injury, pregnancy, mental distress, and nervous shock; and

"(d) 'offense described in chapter 16' does not include an offense over which there is federal jurisdiction only because the offense affects, delays, or obstructs interstate or foreign commerce or the movement of an article or commodity in interstate or foreign commerce, or because the offense occurred during the commission of an offense over which there is federal jurisdiction only for that reason, unless an indictment or information charging such an offense is filed in a court of the United States.".

TITLE II—AMENDMENTS TO THE FEDERAL RULES OF CRIMINAL PROCEDURE AND THE FEDERAL RULES OF EVIDENCE

SEC. 111. The Federal Rules of Criminal Procedure are amended as follows:

(a)(1) Rule 1 is amended by deleting "of the United States, as defined in Rule 54(c)" and inserting in lieu thereof "enumerated in Rule 54(a)";

(2) Rule 4 is amended by deleting "If it appears" in the first sentence of subdivision (a) and inserting in lieu thereof "Except as provided in 18 U.S.C. 1813(c), if it appears".

(b) Rule 5 is amended—

(1) by deleting "authorized by 18 U.S.C. 3041" in the first sentence of subdivision (a);

(2) by deleting "3401" in subdivision (b) and inserting in lieu thereof "3302"; and

(3) by adding at the end of subdivision (c) the following new sentence: "If a defendant is entitled to a preliminary examination and is not accorded a preliminary examination within the time limits specified in this subdivision or within any authorized extension of such time limits, he shall be discharged from custody, or from the requirement of bail or any other condition of release, without prejudice to the institution of further criminal proceedings against him upon the charge for which he was arrested.".

(c) Rule 6(g) is amended by adding after the words "18 months" in the first sentence the words "unless the court extends the service of the grand jury for a period of six months or less upon a finding that such extension is in the public interest.".

(d) A new Rule 6.1 is added after Rule 6 to read as follows:

"Rule 6.1.—The Special Grand Jury

"(a) SUMMONING SPECIAL GRAND JURIES.—The court in a district—

"(1) in which there are located more than four million inhabitants; or

"(2) concerning which the Attorney General, the Deputy Attorney General, or any designated Assistant Attorney General, certifies in writing to the chief judge that in his judgment a special grand jury is necessary because of criminal activity in the district;

shall order a special grand jury to be summoned at least once every eighteen months unless another special grand jury is then serving. If the court at any time determines that the volume of business of the special grand jury exceeds its capacity to discharge its obligations, the court may order an additional special grand jury to be impaneled in that district.

"(b) TERM.—A special grand jury shall serve for a term of eighteen months unless, after a determination of the special grand jury by majority vote that its business has been completed, an order for its discharge is entered earlier by the court. If, at the end of the term or any extension of the term, the court determines that the business of the special grand jury has not been completed, the court may enter an order extending the term for an additional period of six months. If a court fails to extend the term of a special grand jury or enters an order for its discharge before the special grand jury determines that it has completed its business, the special grand jury, upon the affirmative vote of a majority of its members, may apply to the chief judge of the judicial circuit within which

the court is located for an order continuing the term. Upon the making of such an application, the term shall continue until the entry of an appropriate order by the chief judge of the circuit. No term of a special grand jury, however extended, shall exceed a total of thirty-six months, except as provided in subdivision (f)(1).

"(c) INVESTIGATION.—A special grand jury shall inquire into offenses alleged to have been committed within the district. Such alleged offense may be brought to the attention of the special grand jury by the court or by an attorney for the government. An attorney for the government, upon receipt of information concerning an alleged offense from a person requesting that the information be transmitted to the special grand jury, shall inform the grand jury of the alleged offense and of the identity of such person, and shall make a recommendation on the matter to the special grand jury.

"(d) SUBMISSION OF REPORT.—A special grand jury, with the concurrence of a majority of its members, may, upon completion of its term or any extension of its term, submit to the court a report—

"(1) concerning noncriminal misconduct, malfeasance, or misfeasance in office by a federal, State, or local public servant, and recommending removal of, or disciplinary action against, such public servant;

"(2) stating that after investigation of a federal, State, or local public servant it finds no misconduct, malfeasance, or misfeasance in office by him, and that such public servant has requested the submission of the report;

"(3) concerning organized crime conditions in the judicial district; or

"(4) proposing, upon the basis of stated findings, recommendations for legislative, executive, or administrative action in the public interest.

"(e) ACCEPTANCE OF REPORT.—Upon receipt of a report submitted under subdivision (d), the court shall examine the report and the minutes of the special grand jury and, except as otherwise provided in subdivisions (f) and (g), shall make an order accepting and filing the report as a public record if it is satisfied that—

"(1) the report complies with the provisions of subdivision (d);

"(2) the report is based upon facts revealed in the course of an investigation authorized by subdivision (c) and is supported by a preponderance of the evidence;

"(3) to the extent that the report is submitted under subdivision (d)(1), each person named in the report, and a reasonable number of witnesses in his behalf who were designated by him to the foreman of the special grand jury, were afforded an opportunity to testify prior to the filing of the report; and

"(4) to the extent that the report is submitted under subdivision (d)(3) or (d)(4), the report is not critical of an identified person.

"(f) PROCEDURES FOR REPORT CRITICAL OF A PUBLIC SERVANT.—

"(1) RETURN OF REPORT TO SPECIAL GRAND JURY.—If the court to which a report is submitted under subdivision (d)(1) is not satisfied that the report complies with the provisions of subdivision (e), the court may return the report to the special grand jury and direct that additional testimony be taken. The term of a special grand jury may be extended by the court beyond thirty-six months in order that such additional testimony may be taken and the provisions of subdivision (e) met. Upon the taking of additional testimony, the special grand jury may resubmit the report, or a modified version of the report, to the court.

"(2) TEMPORARY SEALING OF ACCEPTED REPORT.—A report submitted under subdivision (d)(1), and the order accepting the report, shall be sealed by the court and shall not be filed as a public record, produced under subpoena, or otherwise made public—

"(A) until at least thirty-one days after a copy of the order and report are served upon each public servant named in the report, and until an answer has been filed or the time for filing an answer has expired; or

"(B) if an appeal is taken, until all rights of review of the public servant named in the report have expired or terminated in an order accepting the report.

No order accepting a report submitted under subdivision (d)(1) shall be entered until thirty days after the delivery of the report to the public servant or government agency under paragraph (4). The court may issue such orders as it deems appropriate to prevent unauthorized publication of the report.

"(3) ANSWER TO REPORT BY PUBLIC SERVANT.—A public servant named in a report may file with the clerk of the court a verified answer to the report not later than twenty days after service of the order and report upon him. Upon a showing of good cause, the court may grant such public servant an extension of time within which to file a verified answer and may authorize such limited publication of the report as may be necessary for him to prepare an answer. The answer shall plainly and concisely state the facts and law constituting the public servant's defense to the charges in the report. Except for those parts that the court determines to have been inserted scandalously, prejudiciously, or unnecessarily, the answer shall become an appendix to the report.

"(4) DELIVERY OF REPORT TO PUBLIC SERVANT'S SUPERIORS.—Upon the expiration of the times set forth in paragraphs (2)(A) and (2)(B), the attorney for the government shall deliver a copy of the report, and the appendix, if any, to the public servant or government agency having jurisdiction, responsibility, or authority over each public servant named in the report.

"(g) SEALING OF REPORT PENDING CRIMINAL PROCEEDINGS.—If the court finds that the filing as a public record of a report submitted under subdivision (d) may prejudice fair consideration of a pending criminal matter, the report shall be sealed by the court and shall not be filed as a public record, produced under subpoena, or otherwise made public during the pendency of such criminal matter, except upon order of the court.

"(h) APPLICABILITY OF OTHER RULES.—The provisions of these rules applicable to regular grand juries also apply to special grand juries to the extent that they are not inconsistent with this rule.".

(e) Rule 7(c) is amended—

(1) by deleting the period at the end of paragraph (1) and inserting in lieu thereof the following: ", the grade of the offense, and, if federal jurisdiction over the offense exists only under specified circumstances, the citation of the jurisdictional provisions alleged to be applicable. The indictment or information need not allege the nonexistence of a defense.";

(2) by deleting in paragraph (2) the word "criminal" and inserting after "forfeiture" the phrase "as a part of the sentence".

(f) Rule 8(a) is amended by deleting "or both" and inserting in lieu thereof "or infractions or a combination thereof".

(g) Rule 9 is amended—

(1) by deleting "Upon the request" in the first sentence of subdivision (a) and inserting in lieu thereof "Except as provided in 18 U.S.C. 1813(c), upon the request";

(2) by deleting the second sentence of subdivision (c)(1) and inserting in lieu thereof: "A summons to an organization shall be served by delivering a copy to an agent of the organization or to any other person authorized by appointment or by law to receive service of process and, if delivered to a person authorized by statute to receive service and the statute so requires, by also mailing a copy to the organization's last known address within the district or at its principal place of business elsewhere in the United States.".

(h) Rule 11 is amended—

(1) by deleting "corporation" in subdivision (a) and inserting in lieu thereof "organization";

(2) by deleting the word "crime" each time it appears in subdivision (e)(6) and inserting in lieu thereof the word "offense".

(i) Rule 12.2 is amended—

(1) by deleting "crime" in subdivision (a) and inserting in lieu thereof "offense";

(2) by deleting "mental state" in subdivision (b) and inserting in lieu thereof "state of mind";

(3) by deleting "by a psychiatrist designated for this purpose in the order of the court" in subdivision (c) and inserting in lieu thereof "pursuant to 18 U.S.C. 3612"; and

(4) by deleting "mental state" in subdivision (d) and inserting in lieu thereof "state of mind".

(j) Rule 15(e) is amended by deleting "rules of evidence" in the first sentence and inserting in lieu thereof "Federal Rules of Evidence".

(k) Rule 16 is amended—

(1) by deleting "a corporation, partnership, association or labor union" in subdivision (a)(1)(A) and inserting in lieu thereof "an organization";

(2) by deleting the words "officer or employee" whenever they appear in subdivision (a)(1)(A) and inserting in lieu thereof "agent";

(3) by deleting "case, or of statements made by government witnesses or prospective government witnesses except as provided in 18 U.S.C. 3500" in subdivision (a)(2) and inserting in lieu thereof "case. Statements made by government witnesses or prospective government witnesses in the possession of the United States may not be the subject of discovery or inspection under this rule, but shall be the subject of discovery or inspection only in accordance with the provisions of Rule 26.1."; and

(4) by adding a new subdivision (f) as follows:

"(f) INDICTMENT AND LIST OF JURORS AND WITNESSES FOR PRISONER IN CAPITAL CASES.—A person charged with a capital offense shall at least three entire days before commencement of trial be furnished with a copy of the indictment and a list of the veniremen, and of the witnesses to be produced at the trial for proving the indictment, stating the place of abode of each venireman and witness.".

(l) Rule 17 is amended—

(1) by redesignating subdivisions (d) through (g) as subdivisions (e) through (h), respectively; and

(2) by adding a new subdivision (d) to read as follows:

"(d) INFORMATION NOT SUBJECT TO SUBPOENA.—Statements made by government witnesses or prospective government witnesses may not be the subject of a subpoena under this rule, but shall be subject to production only in accordance with the provisions of Rule 26.1.".

(m) Rule 20 is amended—

(1) by deleting "5031" in subdivision (d) and inserting in lieu thereof "3606"; and

(2) by deleting "act in violation of a law of the United States not punishable by death or life imprisonment" in subdivision (d) and inserting in lieu thereof "offense other than a Class A felony";

(3) by adding a new subdivision (e) as follows:

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"(e) OFFENSES APPLICABLE EXCLUSIVELY IN THE DISTRICT OF COLUMBIA.—This Rule applies to indictments, informations, and complaints charging violations of an Act of Congress applicable exclusively in the District of Columbia.".

(n) Rule 24(b) is amended—

(1) by deleting "punishable by imprisonment for more than one year" in the second sentence and inserting in lieu thereof "another felony"; and

(2) by deleting "punishable by imprisonment for not more than one year or by fine or both" in the third sentence and inserting in lieu thereof "a misdemeanor or an infraction".

(o) A new Rule 25.1 is added after Rule 25 to read as follows:

"Rule 25.1.—Burdens of Proof

"(a) PROOF OF GUILT.—

"(1) PROOF OF OFFENSES.—The government has the burden of proving each element of the offense beyond a reasonable doubt.

"(2) PROOF OF DEFENSES.—If a defendant raises a defense at trial and there is sufficient evidence of the defense to support a reasonable belief as to its existence, the government has the burden of proving the nonexistence of the defense beyond a reasonable doubt.

"(3) PROOF OF AFFIRMATIVE DEFENSES.—If a defendant raises an affirmative defense at trial, the defendant has the burden of proving the defense by a preponderance of the evidence.

"(4) PROOF OF GRADING.—If an offense carries more than one grade—

"(A) the lowest grade is applicable unless the government proves the elements of a higher grade beyond a reasonable doubt; and

"(B) in a case tried before a jury, the jury shall determine the grade of an offense.

"(5) PRESUMPTIONS.—If a statute provides that a given fact gives rise to a presumption, the statute has the following consequences:

"(A) TRIAL BY JURY.—In a case tried before a jury—

"(i) if there is sufficient evidence of the fact that gives rise to the presumption to support a reasonable belief as to the fact's existence beyond a reasonable doubt, the court shall submit the issue to the jury unless the evidence as a whole clearly precludes a reasonable juror from finding the presumed fact beyond a reasonable doubt; and

"(ii) in submitting to the jury the issue of the existence of the presumed fact, the court shall, upon request of the government, charge that, although the evidence as a whole must establish the presumed fact beyond a reasonable doubt, the jury may arrive at that judgment on the basis of the presumption alone, since the

law regards the fact giving rise to the presumption as strong evidence of the fact presumed.

"(B) TRIAL BY COURT.—In a case tried before the court sitting without a jury, although the evidence as a whole must establish the presumed fact beyond a reasonable doubt, the court may arrive at that judgment on the basis of the presumption alone.

"(6) PRIMA FACIE EVIDENCE.—If a statute provides that a given fact constitutes prima facie evidence, the statute has the following consequences:

"(A) TRIAL BY JURY.—In a case tried before a jury—

"(i) if there is sufficient evidence of the fact that constitutes prima facie evidence to support a reasonable belief as to the fact's existence beyond a reasonable doubt, the court shall submit the issue to the jury unless the evidence as a whole clearly precludes a reasonable juror from finding the inferred fact beyond a reasonable doubt; and

"(ii) in submitting to the jury the issue of the inferred fact concerning which the given fact is prima facie evidence, the court, upon the request of the government or the defendant, shall charge that, although the evidence as a whole must establish the inferred fact beyond a reasonable doubt, the jury may consider that the given fact is ordinarily a circumstance from which the existence of the inferred fact may be drawn.

"(B) TRIAL BY COURT.—In a case tried before the court sitting without a jury, although the evidence as a whole must establish the inferred fact beyond a reasonable doubt, the court may consider that the given fact is ordinarily a circumstance from which the existence of the inferred fact may be drawn.

"(b) PROOF OF JURISDICTION.—

"(1) PROOF.—The government has the burden of proving the existence of Federal jurisdiction over the offense, as set forth in 18 U.S.C. 201, beyond a reasonable doubt.

"(2) ISSUE FOR COURT OR JURY.—The existence of Federal jurisdiction over the offense is an issue to be decided by the court, unless, in a case before a jury, the defendant elects before trial to have the issue decided by the jury.

"(3) PRESENTATION TO JURY.—In a case in which the existence of Federal jurisdiction is to be decided by the jury, the jury shall return a special verdict on the issue prior to any return of its general verdict. The court shall instruct the jury to consider, in the course of its deliberations, the issue of jurisdiction first, and to consider the issue of the defendant's guilt only if it first finds that Federal jurisdiction exists. If the jury finds

that Federal jurisdiction does not exist, it shall terminate its deliberations and return its verdict on the issue of jurisdiction. If the jury finds that Federal jurisdiction does exist, it shall continue and conclude its deliberations on the issue of the defendant's guilt, return its special verdict on the issue of jurisdiction, and then return its general verdict on the issue of guilt.

"(4) PRESENTATION TO COURT DURING TRIAL.—In a case in which the existence of Federal jurisdiction is to be decided by the court, the evidence relating to jurisdiction may be presented by the government in open court in the course of its presentation of the evidence relating to guilt. Any evidence relating to jurisdiction that is not so presented in open court may be presented to the court, out of the presence of the jury, during the course of the presentation of the government's evidence relating to guilt or after the close thereof. At the close of the presentation of the government's evidence relating to guilt and of any subsequent presentation of evidence relating to jurisdiction, the issue shall be determined by the court.

"(5) PRESENTATION TO COURT BEFORE TRIAL.—In a case in which the existence of Federal jurisdiction is to be decided by the court, upon timely pretrial motion by the attorney for the government the issue shall be heard by the court before trial and, notwithstanding the provisions of Rule 12(e), shall be determined before trial and may not be deferred for determination at a later time.".

(p) Rule 27 is repealed.

(q) Rule 26.1 is redesignated Rule 27.

(r) A new Rule 26.1 is added after Rule 26 to read as follows:

"Rule 26.1.—Production of Statements of Witnesses

"(a) MOTION FOR PRODUCTION.—After a witness called by the government has testified on direct examination, the court, on motion of the defendant, shall order the attorney for the government to produce, for the examination and use of the defendant, any statement of the witness that is in the possession of the United States and that relates to the subject matter concerning which the witness has testified.

"(b) PRODUCTION OF ENTIRE STATEMENT.—If the entire contents of the statement relate to the subject matter concerning which the witness has testified, the court shall order that the statement be delivered directly to the defendant.

"(c) PRODUCTION OF EXCISED STATEMENT.—If the attorney for the government claims that the statement contains matter that does not relate to the subject matter of the testimony concerning which the witness has testified, the court shall order that it be delivered to the court in camera. Upon inspection, the court shall excise the portions of the statement that do not relate to the subject matter concerning which the witness has testified, and shall order that the statement, with such material excised, be delivered to the defendant. Any portion of the

statement that is withheld from the defendant over his objection shall be preserved by the attorney for the government, and, in the event of a conviction and an appeal by the defendant, shall be made available to the appellate court for the purpose of determining the correctness of the decision to excise the portion of the statement.

"(d) RECESS FOR EXAMINATION OF STATEMENT.—Upon delivery of the statement to the defendant, the court, upon application of the defendant, may recess proceedings in the trial for such time as is reasonably required for the examination of the statement by the defendant and for his preparation for its use in the trial.

"(e) SANCTION FOR FAILURE TO PRODUCE STATEMENT.—If the attorney for the government elects not to comply with an order to deliver a statement to the defendant, the court shall order that the testimony of the witness be stricken from the record and that the trial proceed, or shall declare a mistrial if required by the interest of justice.

"(f) DEFINITION.—As used in this rule, a 'statement' of a government witness means—

"(1) a written statement made by the witness that is signed or otherwise adopted or approved by him;

"(2) a substantially verbatim recital of an oral statement made by the witness that is recorded contemporaneously with the making of the oral statement and that is contained in a stenographic, mechanical, electrical, or other recording or a transcription thereof; or

"(3) a statement, however taken or recorded, or a transcription thereof, made by the witness to a grand jury.".

(s) Rule 32 is amended—

(1) by deleting the first two sentences of subdivision (a)(1) and inserting in lieu thereof the following:

"Sentence shall be imposed without unnecessary delay, but the court may, upon a motion that is jointly filed by the defendant and by the counsel for the government and that asserts a factor important to the sentencing determination is not capable of being resolved at that time, postpone the imposition of sentence for a reasonable time until the factor is capable of being resolved. Before imposing sentence the court shall state in open court the classification of the offense and of the defendant, under the categories established by the Sentencing Commission pursuant to section 994(a)(1) of title 28, that it believes to be applicable to the defendant's case. The court shall afford the counsel for the defendant and the attorney for the government an opportunity to comment upon the classification determined by the court to be applicable. Before imposing sentence, the court shall also afford counsel for the defendant an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask

him if he wishes to make a statement in his own behalf and to present any information in mitigation of the sentence.";

(2) by adding after the words "right to appeal" in the first sentence of subdivision (a)(2) the words "from the conviction, of his right, if any, to obtain review of the sentence,";

(3) by deleting "right of appeal" in the second sentence of subdivision (a)(2) and inserting in lieu thereof "right to appeal or right to obtain review";

(4) by amending the first sentence of subdivision (c)(1) to read as follows:

"A probation officer shall make a presentence investigation and report to the court before the imposition of sentence unless the court finds that there is in the record information sufficient to enable the meaningful exercise of sentencing authority pursuant to 18 U.S.C. 2003, and the court explains this finding on the record.";

(5) by amending subdivision (c)(2) to read as follows:

"(2) REPORT.—The report of the presentence investigation shall contain—

"(A) information about the history and characteristics of the defendant, including his prior criminal record, if any, his financial condition, and any circumstances affecting his behavior that may be helpful in imposing sentence or in the correctional treatment of the defendant;

"(B) the classification of the offense and of the defendant under the categories established by the Sentencing Commission pursuant to section 994(a) of title 28, that the probation officer believes to be applicable to the defendant's case; the kinds of sentence and the sentencing range suggested for such a category of offense committed by such a category of defendant as set forth in the guidelines issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1); and an explanation by the probation officer of any factors that may indicate that a sentence of a different kind or of a different length than one within the applicable guideline would be more appropriate under all the circumstances;

"(C) any pertinent policy statement issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2); and

"(D) such other information as may be required by the court.";

(6) by deleting "exclusive of any recommendations as to sentence" in subparagraph (c)(3)(A).

(7) by deleting "or the Youth Correction Division of the Board of Parole pursuant to 18 U.S.C. 4208(b), 4252, 5010(e), or 5034" in subdivision (c)(3)(E) and inserting in lieu thereof "pursuant to 18 U.S.C. 2002(b) or 3603(d)";

(8) by deleting "or imposition of sentence is suspended;" in subdivision (d) and inserting in lieu thereof a comma;

(9) by deleting subdivision (e); and

(10) by redesignating subdivision (f) as subdivision (e), amended to read as follows:

"(e) REVOCATION OF PROBATION.—

"(1) SUMMONS OR ARREST OF PROBATIONER.—If there is probable cause to believe that a defendant has violated a condition of his probation at any time prior to the expiration or termination of the term of his probation, the court that imposed the sentence of probation, or, if jurisdiction over the defendant has been transferred to the court for another district, the court for such other district, may issue a summons to the defendant or a warrant for the arrest of the defendant.

"(2) PRELIMINARY HEARING.—Whenever a probationer is summoned or taken into custody on the ground that there is probable cause to believe that he has violated a condition of his probation, he shall be afforded a prompt hearing before any judge, or a United States magistrate who has been given authority pursuant to 28 U.S.C. 636(b) to conduct such hearings, in order to determine whether there is probable cause to hold the probationer for a revocation hearing. The probationer shall be given—

"(A) notice of the hearing and its purpose and of the alleged violation of probation;

"(B) an opportunity to appear at the hearing and present evidence in his own behalf;

"(C) upon request, the opportunity to question witnesses against him unless, for good cause, the judge or United States magistrate decides that justice does not require the appearance of the witness; and

"(D) notice of his right to request counsel. Upon the request of the probationer, counsel shall be appointed if it appears that there is an issue of fact whether a violation of probation has occurred. If counsel is not appointed upon request, the judge or United States magistrate shall make his reasons for such refusal a matter of record.

The judge or United States magistrate shall maintain a record of what occurs at the hearing. If he finds probable cause to exist, he shall indicate the evidence that supports such finding and hold the probationer for a revocation hearing before the appropriate judge or United States magistrate. The probationer may be released pursuant to rule 46(c) pending the revocation hearing. If the judge or United States magistrate does not find probable cause to exist, the proceeding shall be dismissed and the judge or United States magistrate who issued the warrant shall be immediately notified of such discharge. A copy of the written report of the hearing shall be transmitted to the district of probation jurisdiction.

"(3) REVOCATION HEARING.—The revocation hearing, unless waived by the probationer, shall be held within a reasonable time before the judge

or United States magistrate of the district of probation jurisdiction. The probationer shall be given—

"(A) written notice of the alleged violation of probation;

"(B) disclosure of the evidence against him;

"(C) an opportunity to appear and to present evidence in his own behalf;

"(D) the opportunity to question witnesses against him unless, for good cause, the judge or United States magistrate decides that justice does not require the appearance of the witness; and

"(E) notice of his right to request counsel. Upon the request of the probationer, counsel shall be appointed if it appears that there is an issue of fact whether a violation of probation has occurred or if there is a question whether, assuming a violation, it is in the interest of justice to revoke probation. If counsel is not appointed upon request, the judge or United States magistrate shall make his reasons for such refusal a matter of record.

"(4) REVIEW OF REVOCATION.—A decision of a United States magistrate to revoke probation shall be subject to review upon appeal to a judge of the district court. A decision to revoke by a judge of the district court shall be subject to review upon appeal to the court of appeals.".

(t) Rule 35 is amended to read as follows:

"Rule 35.—Correction of Sentence

"(a) CORRECTION OF AN ILLEGAL SENTENCE.—The court may correct an illegal sentence at any time.

"(b) CORRECTION OF AN ILLEGALLY OR ERRONEOUSLY IMPOSED SENTENCE.—The court, on motion of either party or on its own motion, may correct—

"(1) a sentence imposed in an illegal manner;

"(2) a sentence imposed as a result of incorrect application of the sentencing guidelines issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a); or

"(3) a sentence imposed under 18 U.S.C. 2006 as a result of the use of an inappropriate procedure to determine the amount of restitution;

within 120 days after the sentence is imposed.

"(c) SENTENCE ON REMAND.—The court shall correct a sentence that is determined on appeal or certiorari to be unreasonable under 18 U.S.C. 3725, or that is determined on review of an order, pursuant to 18 U.S.C. 3723(b) or 3724(d), granting or denying a motion to correct a sentence under Rule 35(b)(2) to be the result of incorrect application of the guidelines, upon remand of the case to the court—

"(1) for imposition of a different kind of sentence or of a greater or lesser sentence; or

"(2) for further sentencing proceedings if, after such proceedings, the court determines that the original sentence was incorrect.".

(u) Rule 38 is amended—

(1) by amending the caption to read: "Stay of Execution";

(2) by deleting subdivisions (b) and (c);

(3) by redesignating subdivisions (a)(1) through (a)(4) as subdivisions (a) through (d), respectively;

(4) by deleting the words "is taken" in subdivision (a) and inserting in lieu thereof "from the conviction is taken or a petition for review of sentence is filed";

(5) by deleting the words "is taken" in the first sentence of subdivision (b) and inserting in lieu thereof "from the conviction is taken or a petition for review of sentence is filed";

(6) by deleting the words "or a fine and costs" in the first sentence of subdivision (c);

(7) by deleting the words "and costs" in the second sentence of subdivision (c); and

(8) by amending subdivision (d) to read as follows:

"(d) PROBATION.—A sentence of probation may be stayed if an appeal from the conviction is taken or a petition for review of sentence is filed. If stayed, the court shall fix the terms of the stay.".

(v) Rule 40 is amended—

(1) by deleting "3146 and 3148" in subdivision (b)(2) and inserting in lieu thereof "3502";

(2) by deleting "3146 and 3148" in subdivision (b)(4) and inserting in lieu thereof "3502 and 3503"; and

(3) by adding at the end thereof the following new subdivision;

"(c) WARRANT FOR REMOVAL.—Only one warrant of removal is necessary to remove a person from one district to another. One copy of the warrant may be delivered to the officer from whose custody the person is taken, and another to the officer to whose custody he is committed, and the original warrant, with the executed return, shall be returned to the clerk of the district court in the district to which he is removed.".

(w) Rule 41 is amended—

(1) by amending the fifth sentence of subdivision (c)(1) to read as follows:

"The warrant shall be directed to a Federal law enforcement officer or to a person authorized by the President of the United States to enforce or assist in enforcing any law of the United States.";

(2) by redesignating subdivisions (e) through (h) as subdivisions (f) through (i), respectively;

(3) by redesignating the last three sentences of subdivision (d) as subdivision (e) and amending the caption to read—

"Return with Inventory.";

and

(4) by adding a new subdivision (d) to read as follows:

"(d) EXECUTION.—

"(1) PERSONS AUTHORIZED TO EXECUTE.—The warrant may be executed by the officer to whom it is directed or by any other officer authorized by law to execute such a warrant, and such officer may be assisted in the execution by other persons acting at his request and in his presence.

"(2) USE OF FORCE.—The officer may break open any outer or inner door or window of a building, or any part of a building, or anything in a building, to execute the warrant if, after notice of his authority and purpose, he is not granted admittance, or if necessary to liberate himself or a person assisting him in execution of the warrant.

"(3) RECEIPT FOR PROPERTY TAKEN.—The Officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken.".

(x) Rule 43 is amended—

(1) by deleting "A corporation" in subdivision (c)(1) and inserting in lieu thereof "An organization";

(2) by deleting "offenses punishable by fine or by imprisonment for not more than one year or both" in subdivision (c)(2) and inserting in lieu thereof "misdemeanors or infractions"; and

(3) by deleting "reduction" in subdivision (c)(4) and inserting in lieu thereof "correction".

(y) Rule 46 is amended—

(1) by deleting "3146, 3148, or 3149" in subdivision (a) and inserting in lieu thereof: "3502, 3503, and 3505"; and

(2) by deleting "3148" in subdivision (c) and inserting in lieu thereof "3504".

(z) Rule 50(b) is amended by deleting "chapter 208 of title 18" and inserting in lieu thereof "chapter 114 of title 28".

(aa) Rule 53 is amended by adding after the word "radio" the words "or television".

(bb) Rule 54 is amended—

(1) by deleting "3238" in subdivision (b)(2) and inserting in lieu thereof "3312";

(2) by deleting "3043" in subdivision (b)(3) and inserting in lieu thereof "3509";

(3) by deleting "Chapter 403" in subdivision (b)(5) and inserting in lieu thereof "chapter 36, subchapter A";

(4) by deleting the words ", authorized by 18 U.S.C. § 3041 to perform the functions prescribed in Rules 3, 4, and 5" in the definition of the word "Magistrate" in subdivision (c); and

(5) by amending the definition of "Petty offense" in subdivision (c) to read as follows: " 'Petty offense' means a class B or C misdemeanor or an infraction.".

(cc) The Table of Rules that precedes Rule 1 is amended as follows:

(1) The following new items are added after the item relating to Rule 6(g):

"6.1 The Special Grand Jury.
"(a) Summoning Special Grand Juries.
"(b) Term.
"(c) Investigation.
"(d) Submission of Report.
"(e) Acceptance of Report.
"(f) Procedures for Report Critical of a Public Servant.
"(1) Return of Report to Special Grand Jury.
"(2) Temporary Sealing of Accepted Report.
"(3) Answer to Report by Public Servant.
"(4) Delivery of Report to Public Servant's Superiors.
"(g) Sealing of Report Pending Criminal Proceedings.
"(h) Applicability of Other Rules.".

(2) The items relating to subdivisions (d) through (g) of Rule 17 are deleted and the following items are inserted in lieu thereof:

"(d) Information Not Subject to Subpoena.
"(e) Service.
"(f) Place of Service.
"(1) In United States.
"(2) Abroad.
"(g) For Taking Deposition; Place of Examination.
"(h) Contempt.".

(3) The following new items are added after the item relating to Rule 25(b):

"25.1 Burdens of Proof.
"(a) Proof of Guilt.
"(1) Proof of Offenses.
"(2) Proof of Defenses.
"(3) Proof of Affirmative Defenses.
"(4) Presumptions.
"(A) Trial by Jury.
"(B) Trial by Court.
"(5) Prima Facie Evidence.
"(A) Trial by Jury.
"(B) Trial by Court.
"(b) Proof of Jurisdiction.
"(1) Proof.
"(2) Presentation to Court during Trial.
"(3) Presentation to Court before Trial.".

(4) The item relating to Rule 27 is deleted.

(5) The item relating to Rule 26.1 is amended by deleting "26.1" and inserting in lieu thereof "27".

(6) The following new items are added after the item relating to Rule 26:

"26.1 Production of Statements of Witnesses.
"(a) Motion for Production.

"(b) Production of Entire Statement.
"(c) Production of Excised Statement.
"(d) Recess for Examination of Statement.
"(e) Sanction for Failure to Produce Statement.
"(f) Definition.".

(7) The items relating to Rules 32(e) and 32(f) are deleted and the following is inserted in lieu thereof:

"(e) Revocation of Probation.
"(1) Arrest of Probationer.
"(2) Hearing.".

(8) The item relating to Rule 35 is amended by deleting the words "or Reduction".

(9) The item relating to Rule 38 is amended to read as follows:

"38. Stay of Execution.
"(a) Death.
"(b) Imprisonment.
"(c) Fine.
"(d) Probation.".

(10) The item relating to Rule 40 is amended by adding after the item relating to Rule 40(b)(5) the following new item:

"(c) Warrant for Removal.".

(11) The items relating to Rules 41(d) through 41(h) are deleted and the following items inserted in lieu thereof:

"(d) Execution.
"(1) Persons Authorized to Execute.
"(2) Use of Force.
"(3) Receipt for Property Taken.
"(e) Return with Inventory.
"(f) Motion for Return of Property.".

SEC. 112. The Rules of Procedure for the Trial of Minor Offenses Before United States Magistrates are amended as follows:

(a) Rule 1 is amended—

(1) by deleting the words "(including petty offenses)"; and

(2) by deleting "3401" and inserting in lieu thereof "3302".

(b) Rule 9 is amended by deleting the words "as defined in title 18, U.S.C., § 1(3)".

(c) A new Rule 12 is added at the end thereof to read as follows:

"Rule 12.—Definitions

"As used in these rules—

"(1) 'minor offense' means a misdemeanor or an infraction;

"(2) 'petty offense' means a Class B or C misdemeanor or an infraction.".

(d) The Table of Rules that precedes Rule 1 is amended by adding at the end thereof the following new item:

"12. Definitions".

SEC. 113. Rule 412 of the Federal Rules of Evidence is amended—

(a) by deleting, in every place in which they appear, the words "rape or of assault with intent to commit rape" or the words "rape or assault with intent to commit rape" and inserting in lieu thereof the words "an offense under section 1641 (Rape) or 1642 (Sexual Assault) of title 18, United States Code, or an attempt to commit such an offense";

(b) by deleting, in subdivision (b)(2)(B), the words "rape or assault" and inserting in lieu thereof "the offense".

TITLE III—AMENDMENTS TO TITLE 28, UNITED STATES CODE

SEC. 121. Chapter 37 of title 28, United States Code, is amended as follows:

(a) The chapter is redesignated chapter 36.

(b) Sections 561 to 575 are redesignated as sections 551 to 565, respectively.

(c) The analysis at the beginning of the chapter is amended by renumbering the items relating to sections 561 to 575 to refer to sections 551 to 565, respectively.

SEC. 122. The following new chapters 37 and 38 are added after redesignated chapter 36 of title 28, United States Code:

"CHAPTER 37—BUREAU OF PRISONS

"Sec.
"571. Organization, Director, and Responsibilities.
"572. Character of a Prison Facility.
"573. Contracting for a State or Local Facility.
"574. Federal Institutions in a State Without an Appropriate Facility.
"575. Appropriations and Acquisitions.
"576. National Institute of Corrections.
"577. Inapplicability of the Administrative Procedure Act.
"578. Advisory Corrections Council.

"§ 571. Organization, Director, and Responsibilities

"(a) The Bureau of Prisons shall be established within the Department of Justice in the charge of a Director serving under the direction of the Attorney General.

"(b) The Attorney General shall appoint as the Director of the Bureau of Prisons a person qualified for such position by his educational background, professional experience in correctional administration or planning, or comparable experience in a related field, and by his demonstrated interest and knowledge of criminal justice administration.

"(c) In order to achieve the purposes set forth in section 101(b) of title 18—

"(1) the Director shall promulgate rules and applicable regulations for the governance of federal penal and correctional facilities and related services and shall appoint all necessary officers and employees, in accordance with chapters 51 and 53 of title 5, and, notwithstanding any other provisions of law, may accept voluntary and uncompensated services from any person;

"(2) the Bureau of Prisons shall have charge of the management and regulation of all federal penal and correctional facilities, except military or naval facilities, and shall provide facilities for the safekeeping, care, and

subsistence of all persons charged with or convicted of offenses or held as witnesses or otherwise remanded to its custody pursuant to law;

"(3) the Bureau of Prisons may establish and conduct industries, farms, and other activities; classify offenders according to the criteria set forth in section 572(a); provide for the proper governance, discipline, training, and employment of offenders while incarcerated, and employment placement of offenders; and, as part of the expense of operating any correctional facility or activity, pay offenders or their dependents pecuniary earnings, under such rules and regulations as the Director may prescribe;

"(4) the Bureau of Prisons shall, insofar as practical, make available to each offender an opportunity to participate in correctional programs designed to rehabilitate the offender;

"(5) the Bureau of Prisons may make available to a federal government agency or to a State or locality the services of offenders in a federal penal or correctional facility upon mutually agreed upon rates, terms, and conditions for constructing or repairing a road or other public facility; clearing, maintaining, and reforesting public lands; building a levee; constructing or repairing a public work project financed in whole or in part by federal funds; or working on any other project in the public interest; and any payment received by the Bureau of Prisons for services rendered pursuant to this paragraph shall be deposited in the Treasury to the credit of the appropriation available for providing such services;

"(6) the Bureau of Prisons may assist and serve in a consulting capacity to a Federal, State, or local government agency in the development, maintenance, and coordination of custody, counseling, training, and correctional programs with respect to persons charged with or convicted of criminal offenses under the laws of the United States or any State, and, in providing such services, is authorized to—

"(A) devise and conduct seminars, workshops, and training programs for law enforcement officers, judges, and judicial personnel, probation and parole personnel, correctional personnel, welfare workers, and other persons, including lay and para-professional personnel, connected with the custody of, and provision of correctional programs for, persons charged with or convicted of offenses;

"(B) provide technical assistance to aid in the development of seminars, workshops, and training programs with the State and local agencies which work with prisoners, parolees, probationers, and other offenders; and

"(C) provide, where appropriate, for tuition, travel expenses, and other necessary expenses of individuals participating in such seminars, workshops, or training programs;

"(7) the Bureau of Prisons shall collect, develop, and maintain statistical information concerning offenders, sentencing practices, and correctional programs which may be useful in practical penological research, planning, and evaluation or in the development of treatment programs;

"(8) the Bureau of Prisons may provide review of applications for grants-in-aid, technical assistance or other services provided by federal agencies to State and local governments;

"(9) the Bureau of Prisons shall provide training for all officers, officials, and employees of the Bureau;

"(10) the Attorney General shall pay from such appropriation to the Department of Justice as the Attorney General shall direct all expenses attendant upon the official detention and transportation of persons committed to the custody of the Bureau of Prisons as a result of arrest, conviction, or other commitment; upon the maintenance and subsidy of correctional facilities and programs involving such persons; and upon the execution of any sentence of a court of the United States respecting such persons, including an order to surrender to the chief executive officer of a federal penal or correctional facility; and

"(11) the Bureau of Prisons shall, through the Director, exercise all powers and perform all duties necessary and proper in carrying out the responsibilities of the Bureau.

"(d) An officer or employee of the Bureau of Prisons may, pursuant to rules and regulations of the Director, summarily seize any object introduced into a federal penal or correctional facility or possessed by an inmate of such a facility in violation of a rule, regulation, or order promulgated by the Director, and such object shall be forfeited to the United States.

"(e) A chief executive officer of a federal penal or correctional facility may, pursuant to rules and regulations of the Director, order an autopsy and related scientific or medical tests to be performed on the body of a deceased inmate of the facility in the event of homicide, suicide, fatal illness or accident, or unexplained death when it is determined that such autopsy or test is necessary to detect a crime, maintain discipline, protect the health or safety of other inmates, remedy official misconduct, or defend the United States or its employees from civil liability arising from the administration of the facility. To the extent consistent with the needs of the autopsy or of specific scientific or medical tests, provisions of local law protecting religious beliefs with respect to such autopsies shall be observed. Such officer may also order an autopsy or other post-mortem operation, including removal of tissue for transplanting, to be performed on the body of a deceased inmate of the facility, with the written consent of a person authorized to permit such an autopsy or post-mortem operation under the law of the State in which the facility is located.

"§ 572. Character of a Prison Facility

"(a) A federal prison facility shall be so planned and limited in size as to facilitate the development of an integrated system which will assure the proper classification of a federal offender according to the nature and circumstances of the offense committed, the history and characteristics of the offender, and such other factors as should be considered in providing an individualized system of discipline and care of, and correctional programs for, a person committed to such facility.

"(b) The Director of the Bureau of Prisons may provide within a prison facility, or within a separate institution or agency, specialized programs for classes of offenders, such as narcotic addicts, drug abusers, alcoholics, youthful offenders, or other similar classes of offenders. The programs may include individual confinement, medical treatment, education, farming, or residence at a camp, community program, or at any other agency that will provide the needed program with adequate supervision. In providing for such specialized programs the Director may conduct research and provide services, facilities, or any other needed program resources through any means appropriate, and the director shall periodically report to the Attorney General, the Administrative Office of the United States Courts, and the Congress, on the nature and effectiveness of such research and programs.

"(c) The Secretary of Health, Education, and Welfare, upon the request of the Director, shall provide regular and reserve commissioned officers of the Public Health Service and other employees of the Public Health Service to the Bureau of Prisons for the purpose of supervising and furnishing medical, dental, psychiatric, and other technical and scientific services to a federal penal or correctional facility. The compensation, allowances and expenses of such personnel may be paid from—

"(1) applicable appropriations of the Public Health Service subject to reimbursement from applicable appropriations of the Department of Justice; or

"(2) allotments of funds and transfers of credit from the Attorney General to the Public Health Service;

pursuant to the laws and regulations governing the personnel of the Public Health Service. The Director may directly appoint health personnel or contract with a public or private agency or organization or a person to provide medical services to a federal penal or correctional facility or to a federal offender.

"§ 573. Contracting for a State or Local Facility

"(a) The Director of the Bureau of Prisons may contract for a period not exceeding three years with the proper authorities of a State, territory, or locality for the official detention of a federal offender, including safekeeping, care, subsistence, correctional programs, and employment, or with a private organization for a service to be provided or a program to be offered to a federal offender. Factors

to be taken into account in determining the rates to be paid under such contracts include not only the character of the physical facilities and the quality of the services but also the need for improved correctional programs and practices such as educational and vocational training, specialized treatment, and work release.

"(b) The Director may contract with the proper authorities of a State, territory, or locality, or, at the request of the tribal leaders, with an Indian tribe, for the official detention, including safekeeping, care, subsistence, correctional programs, and employment, in a federal penal or correctional facility, of a person convicted of an offense in a court of such State or territory or Indian tribe, if the Director finds that proper and adequate penal or correctional facilities and personnel are available. Each such contract may provide for reimbursement to the United States for any service rendered or incurred. Funds received under such contracts shall be deposited in the Treasury to the credit of the appropriation available for providing such services. Each such contract which does not provide for the cash reimbursement for a service rendered on a cost incurred shall include a provision for the exchange of services of offenders on a man-day basis. Except as otherwise provided in the contract, a person committed to the official detention of the United States under this subsection shall be subject to all the provisions of law applicable to a federal offender that are not inconsistent with his sentence or with the laws of the State in which the sentence was imposed.

"(c) The Director may contract with the proper authorities of a State, territory, or locality or an appropriate private organization or person for supervisory aftercare of a released offender for the purpose of providing or obtaining a facility, service, or program not otherwise available.

"§ 574. Federal Institutions in a State Without an Appropriate Facility

"If there is not a valid contract with a State or locality for the official detention of a federal offender, and if there is no suitable and sufficient facility available at reasonable cost, the Director of the Bureau of Prisons may select a site within or convenient to such State or locality and erect a penal or correctional facility. Such facility may be used for the official detention of persons held under the authority of title 18 or of any other Act of Congress and of any other person who, in the opinion of the Director, is a proper subject for official detention in such facility.

"§ 575. Appropriations and Acquisitions

"(a) The Director of the Bureau of Prisons, in order to provide the facilities set forth in section 571(c)(2), may authorize the expenditure of a sum not to exceed $100,000 in each instance to prepare plans for, to purchase or lease a site, or build such facilities. If such monetary limitation is insufficient to secure a proper site or to construct the necessary facilities, the Director may authorize the expenditure of a sum not to exceed $10,000 in each instance to secure options and to make preliminary surveys or plans for such facilities. Upon selection of an

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appropriate site, the Director shall submit to the Congress an estimate of the cost of purchasing such site and of remodeling, constructing, and equipping the necessary buildings for such facilities. A sum authorized under this subsection shall be payable from any unexpended balance of the appropriation 'Support of United States prisoners.'

"(b) The Director may acquire land adjacent to or in the vicinity of a federal penal or correctional facility if he considers the additional land essential to the protection of the health or safety of the offenders in the facility.

"(c) A collection in cash for meals, laundry, uniforms, equipment, and other property and services for which payment is made originally from an appropriation for the maintenance and operation of a federal penal or correctional facility shall be deposited in the Treasury to the credit of the appropriation available for such property and services at the time the collection is made.

"§ 576. National Institute of Corrections

"(a) There is established within the Bureau of Prisons a National Institute of Corrections.

"(b) The overall policy and operations of the National Institute of Corrections shall be under the supervision of an Advisory Board. The Board shall consist of seventeen members. The following seven individuals shall serve as ex officio members of the Institute: the Chairman of the United States Sentencing Commission or his designee, the Director of the Bureau of Prisons or his designee, the Director of the Federal Judicial Center or his designee, the Chief of the Division of Probation of the Administrative Office of the United States Courts or his designee, the Administrator of the Law Enforcement Assistance Administration or his designee, the Associate Administrator for the Office of Juvenile Justice and Delinquency Prevention or his designee, and the Assistant Secretary for Human Development of the Department of Health, Education, and Welfare or his designee.

"(c) The remaining ten members of the Board shall be selected as follows:

"(1) Five shall be appointed initially by the Attorney General of the United States for staggered terms; one member shall serve for one year, one member for two years, and three members for three years. Upon the expiration of each member's term, the Attorney General shall appoint successors who will each serve for a term of three years. Each member selected shall be qualified as a practitioner (federal, State, or local) in the field of corrections, probation, or parole.

"(2) Five shall be appointed initially by the Attorney General of the United States for staggered terms, one member shall serve for one year, three members for two years, and one member for three years. Upon the expiration of each member's term the Attorney General shall appoint successors who will each serve for a term of three years. Each member selected shall be from the private sector, such as business, labor, and education, having demonstrated an active interest in corrections, probation, or parole.

"(d) The members of the Board shall not, by reason of such membership, be deemed officers or employees of the United States. Members of the Institute who are full-time officers or employees of the United States shall serve without additional compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of the duties vested in the Board. Other members of the Board shall, while attending meetings of the Board or while engaged in duties related to such meetings or in other activities of the Institute pursuant to this title, be entitled to receive compensation at the rate not to exceed the daily equivalent of the highest rate now or hereafter prescribed for grade 18 of the General Schedule (5 U.S.C. 5332), including traveltime, and while away from their homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence equal to that authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(e) The Board shall elect, from among its members, a chairman who shall serve for a term of one year. The members of the Board shall also elect one or more members as a vice-chairman.

"(f) The Board is authorized to appoint, without regard to the civil service laws, technical, or other advisory committees to advise the Institute with respect to the administration of this title as it deems appropriate. Members of these committees not otherwise employed by the United States, while engaged in advising the Institute or attending meetings of the committees, shall be entitled to receive compensation at the rate fixed by the Board but not to exceed the daily equivalent of the highest rate now or hereafter prescribed for grade 18 of the General Schedule (5 U.S.C. 5332), and while away from their homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence equal to that authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(g) The Board is authorized to delegate its powers under this title to such persons as it deems appropriate.

"(h) The Institute shall be under the supervision of an officer to be known as the Director, who shall be appointed by the Attorney General after consultation with the Board. The Director shall have authority to supervise the organization, employees, enrollees, financial affairs, and all other operations of the Institute and may employ such staff, faculty, and administrative personnel, subject to the civil service and classification laws, as are necessary to the functioning of the Institute. The Director shall have the power to acquire and hold real and personal property for the Institute and may receive gifts, donations, and trusts on behalf of the Institute. The Director shall also have the power to appoint such technical or other advisory councils comprised of consultants to guide and advise the

Board. The Director is authorized to delegate his powers under this title to such persons as he deems appropriate.

"(i) In addition to the other powers, express and implied, the National Institute of Corrections shall have authority—

"(1) to receive from or make grants to and enter into contracts with federal, State, and general units of local government, public and private agencies, educational institutions, organizations, and individuals to carry out the purposes of this chapter;

"(2) to serve as a clearinghouse and information center for the collection, preparation, and dissemination of information on corrections, including, but not limited to, programs for prevention of crime and recidivism, training of corrections personnel, and rehabilitation and treatment of criminal and juvenile offenders;

"(3) to assist and serve in a consulting capacity to federal, State, and local courts, departments, and agencies in the development, maintenance, and coordination of programs, facilities, services, training, treatment, and rehabilitation with respect to criminal and juvenile offenders;

"(4) to encourage and assist federal, State, and local government programs and services, and programs and services of other public and private agencies, institutions, and organizations in their efforts to develop and implement improved corrections programs;

"(5) to devise and conduct, in various geographical locations, seminars, workshops, and training programs for law enforcement officers, judges, and judicial personnel, probation and parole personnel, correctional personnel, welfare workers, and other persons including law ex-offenders, and paraprofessional personnel, connected with the treatment and rehabilitation of criminal and juvenile offenders;

"(6) to develop technical training teams to aid in the development of seminars, workshops, and training programs within the several States and with the State and local agencies which work with prisoners, parolees, probationers, and other offenders;

"(7) to conduct, encourage, and coordinate research relating to corrections, including the causes, prevention, diagnosis, and treatment of criminal offenders;

"(8) to formulate and disseminate correctional policy, goals, standards, and recommendations for federal, State, and local correctional agencies, organizations, institutions, and personnel;

"(9) to conduct evaluation programs which study the effectiveness of new approaches, techniques, systems, programs, and devices employed to improve the corrections system;

"(10) to receive from any federal department or agency such statistics, data, program reports, and other material as the Institute deems necessary

to carry out its functions. Each such department or agency is authorized to cooperate with the Institute and shall, to the maximum extent practicable, consult with and furnish information to the Institute;

"(11) to arrange with and reimburse the heads of federal departments and agencies for the use of personnel, facilities, or equipment of such departments and agencies;

"(12) to confer with and avail itself of the assistance, services, records, and facilities of State and local governments or other public or private agencies, organizations, or individuals;

"(13) to enter into contracts with public or private agencies, organizations, or individuals, for the performance of any of the functions of the Institute; and

"(14) to procure the services of experts and consultants in accordance with section 3109 of title 5 of the United States Code, at rates of compensation not to exceed the daily equivalent of the highest rate now or hereafter prescribed for grade 18 of the General Schedule (5 U.S.C. 5332).

"(j) The Institute shall on or before the 31st day of December of each year submit an annual report for the preceding fiscal year to the President and to the Congress. The report shall include a comprehensive and detailed report of the Institute's operations, activities, financial condition, and accomplishments under this title and may include such recommendations related to corrections as the Institute deems appropriate.

"(k) Each recipient of assistance under this section shall keep such records as the Institute shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

"(l) The Institute, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for purposes of audit and examinations to any books, documents, papers, and records of the recipients that are pertinent to the grants received under this section.

"(m) The provisions of this section shall apply to all recipients of assistance under this chapter, whether by direct grant or contract from the Institute or by subgrant or subcontract from primary grantees or contractors of the Institute.

"§ 577. Inapplicability of the Administrative Procedure Act

"The provisions of 5 U.S.C. 554 through 557, and 701 through 706, do not apply to the making of any determination, decision, or order under this chapter.

"§ 578. Advisory Corrections Council

"There is hereby created an Advisory Corrections Council, composed of a chairman, to be designated by the Attorney General; one United States circuit

judge and two United States district judges, to be designated from time to time by the Chief Justice of the United States; ex officio, the chairman of the United States Sentencing Commission, the Director of the Bureau of Prisons, the Chief of Probation of the Administrative Office of the United States Courts, and the Director of the Federal Judicial Center; an attorney of the Department of Justice who is assigned prosecutorial responsibilities, to be designated by the Attorney General; an attorney of the Department of Justice who is assigned law reform responsibilities, to be designated by the Attorney General; a representative from a law enforcement agency of the Department of Justice, to be designated by the Attorney General; and a representative from a law enforcement agency of the Department of Treasury, to be designated by the Secretary of the Treasury. The Council shall hold regular meetings to consider problems of disposition, treatment, and correction of offenders against the United States, and shall make such recommendations to the Congress, the President, the Judicial Conference of the United States, the United States Sentencing Commission, and other appropriate officials and agencies as may improve the administration of criminal justice and assure the coördination and integration of policies respecting the disposition, treatment, and correction of persons convicted of offenses against the United States. It shall also consider measures to promote the prevention of crime and delinquency, and suggest appropriate studies in this connection to be undertaken by agencies both public and private. The members of the Council shall serve without compensation, but necessary travel and subsistence expenses as authorized by law shall be paid from available appropriations of the Department of Justice.

"CHAPTER 38—FEDERAL PRISON INDUSTRIES

"§ 581. Organization

"(a) The Federal Prison Industries, a government corporation established in the District of Columbia, shall be administered by a board of directors.

"(b) The board of directors of the corporation shall consist of six persons appointed by the President to serve at the will of the President. The directors shall include a representative of (1) industry; (2) labor; (3) agriculture; (4) retailers and consumers; (5) the Secretary of Defense; and (6) the Attorney General.

"(c) The board of directors shall make an annual report to Congress on the conduct of the business of the corporation and on the condition of its funds.

"(d) In the event of a failure of the board of directors to act, the Attorney General shall not be limited in carrying out any duty conferred upon him by law.

"§ 582. Administration

"(a) The Federal Prison Industries shall determine the manner and extent to which industrial operations shall be carried on in each federal prison facility for the production of goods and services for consumption in such facility or for sale. The industries may be located either within an existing federal prison facility or in a convenient locality where property may be obtained by purchase, lease, or other arrangement. Goods and services produced by such industries may be sold to the public in competition with private enterprise, unless the Secretary of Commerce certifies to the Attorney General that the sale of such particular types of goods or services would harm private enterprise.

"(b) The board of directors of the corporation is authorized, where appropriate, to provide employment for offenders in federal prison facilities, to diversify prison operations as far as practicable, to operate in such a manner that no single private industry bears an undue burden of competition from the product of its industries, and to reduce to a minimum undue competition with private industry or free labor.

"(c) The board of directors may make such contracts, loans, grants, leases, or other agreements as are necessary to effectuate the purposes of this chapter.

"(d) The board of directors may provide for the vocational training of a qualified offender without regard to his industrial or other assignment. To the extent practicable, a form of employment shall be provided as will give an offender a maximum opportunity to acquire a knowledge and skill in a trade or occupation that will provide him with a means of earning a livelihood upon release.

"(e)(1) The provisions of this chapter shall apply to the employment and training of an offender convicted by a general court martial and confined in a facility under the jurisdiction of the Department of Defense, to the extent and under terms and conditions agreed upon by the Secretary of Defense, the Attorney General, and the board of directors.

"(2) Any department or agency of the Department of Defense may, without exchange of funds, transfer to the corporation any property or equipment suitable for use in performing a function or duty covered by an agreement entered into under paragraph (1).

"§ 583. Federal Purchase of Goods and Services of Prison Industries

"The goods and services of the industries authorized by this chapter shall be purchased by a federal government agency if they meet the requirements of such agency and are available at prices that do not exceed current market prices. A dispute as to the price, quality, character, or suitability of such goods and services shall be arbitrated by a board consisting of the Comptroller General of the United States, the Administrator of General Services, and the Director of the Office of Management and Budget, or their representatives. The decision of such board shall be final and binding on the parties.

"§ 584. Prison Industries Fund

"(a) All money under the control of the Federal Prison Industries, or received from the sale of the goods, services, or by-products of an industry under the corporation, or received for the services of federal offenders, shall be deposited in the Treas y to the credit of the Prison Industries Fund and withdrawn from the fund only under accountable warrants or certificates of settlement issued by the General Accounting Office. A valid claim or obligation payable out of the fund shall be assumed by the corporation.

"(b) The corporation, in accordance with the laws generally applicable to expenditures by a federal government agency, is authorized to employ the fund, and any earnings that may accrue to the corporation—

"(1) as operating capital in performing a duty imposed by this chapter;

"(2) in the repair, alteration, erection, and maintenance of an industrial building and equipment;

"(3) in providing an educational or vocational training program for offenders without regard to their industrial or other assignments; and

"(4) in paying compensation, under rules and regulations promulgated by the Director of the Bureau of Prisons, to—

"(A) offenders employed in any such industry;

"(B) offenders performing meritorious or outstanding services in penal or correctional facility operations; and

"(C) offenders or their dependents for injuries suffered in any industry or in any work activity in connection with the maintenance or operation of the penal or correctional facility where confined, except that compensation shall not be paid in an amount greater than that provided for a federal employee under chapter 81 of title 5.

"(c) Accounts of all receipts and disbursements by the corporation shall be rendered to the General Accounting Office for settlement and adjustment, as required by the Comptroller General. The accounting shall include all fiscal transactions of the corporation, whether involving appropriated moneys, capital, or receipts from other sources.

"(d) The Director of the Bureau of Prisons may review an award for or against payment of compensation under subsection (b)(4)(C) in the same manner as the Secretary of Labor may review an award for or against payment of compensation under section 8128 of title 5.".

SEC. 123. A new chapter 40 of title 28, United States Code, is added as follows:

"CHAPTER 40—UNITED STATES VICTIM COMPENSATION BOARD

"§ 595. Organization and Membership

"The United States Victim Compensation Board is hereby established within the Department of Justice to administer the victim compensation program set forth in subchapter B of chapter 41 of title 18. The Board shall be composed of not more than three members to be appointed by the Attorney General. The Attorney General shall designate one of the members of the Board to serve as Chairman.

"§ 596. Powers of the Board

"Under regulations promulgated by the Attorney General, the Board is authorized in carrying out its functions to—

"(1) appoint and fix the compensation of such personnel as the Board deems necessary in accordance with the provisions of title 5;

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

"(3) designate representatives to serve or assist on such advisory committees as the Board may determine to be necessary to maintain effective liaison with federal agencies and with State and local agencies developing or carrying out policies or programs related to the provisions of subchapter B of chapter 41 of title 18;

"(4) request and use the services, personnel, facilities, and information (including suggestions, estimates, and statistics) of federal agencies and those of State and local public agencies and private institutions, with or without reimbursement therefor;

"(5) enter into and perform, without regard to section 529 of title 31, such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of its functions, with any public agency, or with any person, firm, association, corporation, or educational institution, and make grants to any public agency or private nonprofit organization;

"(6) request and use such information, data, and reports from any federal agency as the Board may from time to time require and as may be produced consistent with other law;

"(7) arrange with the heads of other federal agencies for the performance of any of its functions under this part with or without reimbursement and, with the approval of the Attorney General, delegate and authorize the redelegation of any of its powers under this section;

"(8) request each federal agency to make its services, equipment, personnel, facilities, and information (including suggestions, estimates, and statistics) available to the greatest practicable extent to the Board in the performance of its functions;

"(9) pay all expenses of the Board, including all necessary travel and subsistence expenses of the Board outside the District of Columbia incurred by the members or employees of the Board under its orders on the presentation of itemized vouchers therefor approved by the Chairman or his designate; and

"(10) establish a program to assure extensive and continuing publicity for the provisions relating to compensation under subchapter B of chapter 41 of title 18, including information on the right to file a claim, the scope of coverage, and procedures to be utilized incident thereto.

"§ 597. Procedures

"(a) The Board—

"(1) may subpoena and require production of documents in the manner of the Securities and Exchange Commission as provided in subsection (c) of section (18) of the Act of August 26, 1935 (15 U.S.C. 79r(c)), except that such subpoena shall only be issued under the signature of the Chairman, and application to any court for aid in enforcing such subpoena shall be made only by the Chairman, but a subpoena may be served by any person designated by the Chairman;

"(2) may administer oaths or affirmations to witnesses appearing before the Board, receive in evidence any statement, document, information, or matter that may, in the opinion of the Board, contribute to its functions under this chapter, whether or not such statement, document, information, or matter would be admissible in a court of law, provided it is relevant; and

"(3) may, at the discretion of the Chairman, appoint an impartial licensed physician to examine any claimant under this chapter and order the payment of reasonable fees for such examination.

"(b) The provisions of chapter 5 of title 5 shall not apply to adjudicatory procedures to be utilized before the Board.

"(c) A claim for compensation under subchapter B of chapter 41 of title 18 of the United States Code may be acted upon by a member designated by the Chairman to act on behalf of the Board. In the event the disposition by a member as authorized in the preceding sentence is unsatisfactory to the claimant, the claimant shall be entitled to a de novo hearing of record on his claim by the full Board.

"(d) Decisions of the full Board shall be in accord with the will of a majority of the members and shall be based upon a preponderance of the evidence.

"(e) A claimant at such times as the full Board shall sit shall have the right to produce evidence and to cross-examine such witnesses as may appear.

"(f) The Attorney General shall publish regulations providing that an attorney may, at the conclusion of proceedings under this chapter, file with the Board an appropriate statement for a fee in connection with services rendered in such

proceedings. After such a fee statement is filed by an attorney, the Board shall award a fee to such attorney on substantially similar terms and conditions as are provided for the payment of representation under section 3403 of title 18 of the United States Code.

"§ 598. Review

"The United States Court of Appeals for the District of Columbia shall have jurisdiction to review all final orders of the Board. No finding of fact supported by substantial evidence shall be set aside.".

SEC. 124. Subsection (a) of section 604 of title 28, United States Code, is amended by inserting the following new paragraph after paragraph (9) and renumbering the subsequent paragraphs accordingly:

"(10) Contract, with or without regard to section 3709 of the Revised Statutes (41 U.S.C. 5) at the discretion of the Director, with any appropriate public or private agency or any person for supervisory aftercare of an offender;".

SEC. 125. A new chapter 58 of title 28, United States Code, is added after chapter 57, to read as follows:

"CHAPTER 58—UNITED STATES SENTENCING COMMISSION

"§ 991. United States Sentencing Commission; Establishment and Purpose

"(a) There is established as an independent commission in the judicial branch a United States Sentencing Commission which shall consist of seven members. The President, after consultation with the Judicial Conference of the United States, shall appoint, by and with the advice and consent of the Senate, three members of the United States Sentencing Commission, one of whom shall be appointed, by and with the advice and consent of the Senate, as the chairman. Not more than two of the members of the United States Sentencing Commission appointed by the President shall be members of the same political party. The Judicial Conference shall submit to the President, to the Committee on the Judiciary of the Senate, and to the Committee of the Judiciary of the House of Representatives, a list of at least seven judges of the United States whom the Conference considers best qualified to serve on the Commission. The President shall designate four of the judges from the list of recommended judges submitted by the Conference to serve on the Commission. Prior to consulting with or submitting a list to the President, the Judicial Conference shall obtain and give consideration to the recommendations of the district judge members of the Judicial Councils of the

federal judicial circuits. The Chairman and members of the Commission shall be subject to removal from the Commission by the President only for neglect of duty or malfeasance in office or for other good cause shown. The Commission shall have both judicial and non-judicial members and shall, to the extent practicable, have a membership representing a variety of backgrounds and reflecting participation and interest in the criminal justice process.

"(b) The purposes of the United States Sentencing Commission are to—

"(1) establish sentencing policies and practices for the federal criminal justice system that—

"(A) assure the meeting of the purposes of sentencing as set forth in section 101(b) of title 18, United States Code;

"(B) provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices;

"(C) reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process; and

"(2) develop means of measuring the degree to which the sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing as set forth in section 101(b) of title 18, United States Code.

"§ 992. Terms of Office; Compensation

"(a) The members of the United States Sentencing Commission shall be designated or appointed for six-year terms, except that the initial terms of the first members of the Commission shall be staggered so that—

"(1) two members designated by the President from the list of recommended judges submitted by the Judicial Conference and the chairman serve terms of six years;

"(2) one member designated by the President from the list of recommended judges submitted by the Judicial Conference and one member appointed by the President serve terms of four years; and

"(3) one member designated by the President from the list of recommended judges submitted by the Judicial Conference and one member appointed by the President serve terms of two years.

"(b) No member may serve more than two full terms. A member designated or appointed to fill a vacancy that occurs before the expiration of the term for which his predecessor was designated or appointed shall be designated or appointed only for the remainder of such term.

"(c) Each member of the Commission shall be compensated during the term of office as a member of the Commission at the rate at which judges of the United

States courts of appeals are compensated. A federal judge may serve as a member of the Commission without resigning his appointment as a federal judge.

"§ 993. Powers and Duties of Chairman

"The Chairman shall—

"(a) call and preside at meetings of the Commission; and

"(b) direct—

"(1) the preparation of requests for appropriations for the Commission; and

"(2) the use of funds made available to the Commission.

"§ 994. Duties of the Commission

"(a) The Commission, by affirmative vote of at least four members of the Commission, and pursuant to its rules and regulations and consistent with all pertinent provisions of this title and title 18, United States Code, shall promulgate and distribute to all courts of the United States and to the United States Probation System—

"(1) guidelines, as described in subsections (b) through (d) and (f) through (m), for use of a sentencing court in determining the sentence to be imposed in a criminal case, including—

"(A) a determination whether to impose a sentence to probation, a fine, or a term of imprisonment;

"(B) a determination as to the appropriate amount of a fine or the appropriate length of a term of probation or a term of imprisonment; and

"(C) a determination whether a sentence to a term of imprisonment should include a requirement that the defendant be placed on a term of supervised release after imprisonment, and, if so, the appropriate length of such a term; and

"(2) general policy statements regarding application of the guidelines or any other aspect of sentencing that in the view of the Commission would further the purposes set forth in section 101(b) of title 18, United States Code, including the appropriate use of—

"(A) the sanctions set forth in sections 2004, 2005, and 2006 of title 18;

"(B) the conditions of probation and supervised release set forth in sections 2103(b) and 2303(b) of title 18; and

"(C) the sentence modification provisions set forth in sections 2103(c), 2203, and 2302(b) of title 18.

"(b) The Commission, in the guidelines promulgated pursuant to subsection (a)(1), shall, for each category of offense involving each category of defendant, establish a sentencing range that is consistent with all pertinent provisions of title 18, United States Code. If a sentence specified by the guidelines includes a term

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of imprisonment, the maximum of the range established for such a term shall not exceed the minimum of that range by more than 25 percent.

"(c) The Commission, in establishing categories of offenses for use in the guidelines governing imposition of sentences of probation, a fine, or imprisonment, and governing imposition of other authorized sanctions, shall consider, but shall not limit its consideration to the relevancy of—

"(1) the grade of the offense;

"(2) the circumstances under which the offense was committed which mitigate or aggravate the seriousness of the offense;

"(3) the nature and degree of the harm caused by the offense, including whether it involved property, irreplaceable property, a person, a number of persons, or a breach of public trust;

"(4) the community view of the gravity of the offense;

"(5) the public concern generated by the offense;

"(6) the deterrent effect a particular sentence may have on the Commission of the offense by others; and

"(7) the current incidence of the offense in the community and in the nation as a whole.

"(d) The Commission in establishing categories of defendants for use in the guidelines governing imposition of sentences of probation, a fine, or imprisonment, and governing imposition of other authorized sanctions, shall consider, but shall not limit its consideration to, the relevancy of a defendant's—

"(1) age;

"(2) education;

"(3) vocational skills;

"(4) mental and emotional condition to the extent that such condition mitigates the defendant's culpability or to the extent that such condition is otherwise plainly relevant;

"(5) physical conditions, including drug dependence;

"(6) previous employment record;

"(7) family ties and responsibilities;

"(8) community ties;

"(9) role in the offense;

"(10) criminal history; and

"(11) degree of dependence upon criminal activity for a livelihood.

"(e) The Commission, in promulgating guidelines pursuant to subsection (a)(1), shall promote the purposes set forth in section 991(b)(1), with particular attention to the requirements of subsection 991(b)(1)(B) for providing certainty and fairness in sentencing and reducing unwarranted sentence disparities.

"(f) The Commission, in promulgating guidelines pursuant to subsection (a)(1), shall seek to satisfy the purposes of sentencing as set out in section 101(b) of title 18, United States Code, taking into account the nature and capacity of the penal,

correctional, and other facilities and services available in order not only to assure that the most appropriate facilities and services are utilized to fulfill the applicable purposes but also to assure that the available capacities of such facilities and services will not be exceeded.

"(g) The Commission shall assure that the guidelines will specify a sentence to a substantial term of imprisonment for categories of defendants in which the defendant—

"(1) has a history of two or more prior federal, State, or local felony convictions for offenses committed on different occasions;

"(2) committed the offense as part of a pattern of criminal conduct from which he derived a substantial portion of his income;

"(3) committed the offense in furtherance of a conspiracy with three or more persons engaging in a pattern of racketeering activity in which the defendant participated in a managerial or supervisory capacity; or

"(4) committed a crime of violence which constitutes a felony while on release pending trial, sentence, or appeal from a federal, State, or local felony for which he was ultimately convicted.

"(h) The Commission shall insure that the guidelines reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense.

"(i) The Commission shall insure that the guidelines reflect the inappropriateness of imposing a sentence to a term of imprisonment for the purpose of rehabilitating the defendant or providing the defendant with needed educational or vocational training, medical care, or other correctional treatment, other than in an exceptional case in which imprisonment appears to be the sole means of achieving such purpose and in which the court makes specific findings as to that fact.

"(j) The Commission shall insure that the guidelines promulgated pursuant to subsection (a)(1) reflect the appropriateness of imposing an incremental penalty for each offense in a case in which a defendant is convicted of multiple offenses committed at different times.

"(k) The Commission in initially promulgating guidelines for particular categories of cases, shall be guided by the average sentences imposed in such categories of cases prior to the creation of the Commission, and in cases involving sentences to terms of imprisonment, the length of such terms actually served, unless the Commission determines that such a length of term of imprisonment does not adequately reflect a basis for a sentencing range that is consistent with the purposes of sentencing described in subsection 101(b) of title 18, United States Code.

"(l) The Commission, in promulgating guidelines pursuant to subsection (a) for an offense described in section 1624 of title 18, United States Code, shall consider the effect that the return of the minor child, other than a return that is a bar to

prosecution under section 1624(b)(2) of title 18, United States Code, should have on the sentence.

"(m) The Commission periodically shall review and revise, in consideration of comments and data coming to its attention, the guidelines promulgated pursuant to the provisions of this section. In fulfilling its duties and in exercising its powers, the Commission shall consult with authorities on, and individual and institutional representatives of, various aspects of the federal criminal justice system. The United States Probation System, the Bureau of Prisons, the Judicial Conference of the United States, the Criminal Division of the United States Department of Justice, and a representative of the Federal Public Defenders shall submit to the Commission any observations, comments, or questions pertinent to the work of the Commission whenever it believes such communication would be useful, and shall, at least annually, submit to the Commission a written report commenting on the operation of the Commission's guidelines, suggesting changes in the guidelines that appear to be warranted, and otherwise assessing the Commission's work.

"(n) The Commission, at or after the beginning of a regular session of Congress but not later than the first day of May, shall report to the Congress the guidelines promulgated pursuant to subsection (a)(1), and the guidelines shall take effect one hundred and eighty days after the Commission reports them, except to the extent the effective date is enlarged or the guidelines are disapproved or modified by Act of Congress.

"(o) The Commission shall ensure that the general policy statements promulgated pursuant to subsection (a)(2) include a policy limiting consecutive terms of imprisonment for an offense involving a violation of a general prohibition and for an offense involving a violation of a specific prohibition encompassed within the general prohibition.

"(p) The appropriate judge or officer shall submit to the Commission in connection with each sentence imposed a written report of the sentence, the offense for which it is imposed, the age, race, and sex of the offender, information regarding factors made relevant by the guidelines, and such other information as the Commission finds appropriate. The Commission shall submit to Congress at least annually an analysis of these reports and any recommendation for legislation that the Commission concludes is warranted by that analysis.

"(q) The provisions of section 553 of title 5, relating to publication in the Federal Register and public hearing procedure, shall apply to the promulgation of guidelines pursuant to subsections (a) though (l).

"§ 995. Powers of the Commission

"(a) The Commission, by vote of a majority of the members present and voting, shall have the power to—

"(1) establish general policies and promulgate such rules and regulations for the Commission as are necessary to carry out the purposes of this chapter;

"(2) appoint and fix the salary and duties of the Staff Director of the Sentencing Commission, who shall serve at the discretion of the Commission and who shall be compensated at a rate not to exceed the highest rate now or hereafter prescribed for grade 18 of the General Schedule pay rates (5 U.S.C. 5332);

"(3) deny, revise, or ratify any request for regular, supplemental, or deficiency appropriations prior to any submission of such request to the Office of Management and Budget by the Chairman;

"(4) procure for the Commission temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code;

"(5) utilize, with their consent, the services, equipment, personnel, information, and facilities of other federal, State, local, and private agencies and instrumentalities with or without reimbursement therefor;

"(6) without regard to section 3648 of the Revised Statutes of the United States (31 U.S.C. 529), enter into and perform such contracts, leases, cooperative agreements, and other transactions as may be necessary in the conduct of the functions of the Commission, with any public agency, or with any person, firm, association, corporation, educational institution, or nonprofit organization;

"(7) accept voluntary and uncompensated services, notwithstanding the provisions of section 3679 of the Revised Statutes of the United States (31 U.S.C. 655(b));

"(8) request such information, data, and reports from any federal agency or judicial officer as the Commission may from time to time require and as may be produced consistent with other law;

"(9) monitor the performance of probation officers with regard to sentencing recommendations, including application of the Sentencing Commission guidelines and policy statements;

"(10) issue instructions to probation officers concerning the application of Commission guidelines and policy statements;

"(11) arrange with the head of any other federal agency for the performance by such agency of any function of the Commission, with or without reimbursement;

"(12) establish a research and development program within the Commission for the purpose of—

"(A) serving as a clearinghouse and information center for the collection, preparation, and dissemination of information on federal sentencing practices;

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"(B) assisting and serving in a consulting capacity to federal courts, departments, and agencies in the development, maintenance, and coordination of sound sentencing practices;

"(13) collect systematically the data obtained from studies, research, and the empirical experience of public and private agencies concerning the sentencing process;

"(14) publish data concerning the sentencing process;

"(15) collect systematically and disseminate information concerning sentences actually imposed, and the relationship of such sentences to the factors set forth in section 2003(a) of title 18, United States Code;

"(16) collect systematically and disseminate information regarding effectiveness of sentences imposed;

"(17) devise and conduct, in various geographical locations, seminars and workshops providing continuing studies for persons engaged in the sentencing field;

"(18) devise and conduct periodic training programs of instruction in sentencing techniques for judicial and probation personnel and other persons connected with the sentencing process;

"(19) study the feasibility of developing guidelines for the disposition of juvenile delinquents;

"(20) make recommendations to Congress concerning modification or enactment of statutes relating to sentencing, penal, and correctional matters that the Commission finds to be necessary and advisable to carry out an effective, humane, and rational sentencing policy;

"(21) hold hearings and call witnesses that might assist the Commission in the exercise of its powers or duties; and

"(22) perform such other functions as are required to permit federal courts to meet their responsibilities under section 2003(a) of title 18, United States Code, and to permit others involved in the federal criminal justice system to meet their related responsibilities.

"(b) The Commission shall have such other powers and duties and shall perform such other functions as may be necessary to carry out the purposes of this chapter, and may delegate to any member or designated person such powers as may be appropriate other than the power to establish general policy statements and guidelines pursuant to section 994(a) (1) and (2), the issuance of general policies and promulgation of rules and regulations pursuant to subsection (a)(1) of this section; and the decisions as to the factors to be considered in establishment of categories of offenses and offenders pursuant to section 994(b).

"(c) Upon the request of the Commission, each federal agency is authorized and directed to make its services, equipment, personnel, facilities, and information available to the greatest practicable extent to the Commission in the execution of its functions.

"(d) A simple majority of the membership then serving shall constitute a quorum for the conduct of business. Other than for the promulgation of guidelines and policy statements pursuant to sections 994 (a) through (l), the Commission may exercise its powers and fulfill its duties by the vote of a simple majority of the members present.

"(e) Except as otherwise provided by law, the Commission shall maintain and make available for public inspection a record of the final vote of each member of any action taken by it.

"§ 996. Director and Staff

"(a) The Staff Director shall supervise the activities of persons employed by the Commission and perform other duties assigned to him by the Commission.

"(b) The Staff Director shall, subject to the approval of the Commission, appoint such officers and employees as are necessary in the execution of the functions of the Commission. The officers and employees of the Commission shall be exempt from the provisions of part III of title 5, United States Code, except the following chapters: 81 (Compensation for Work Injuries), 83 (Retirement), 85 (Unemployment Compensation), 87 (Life Insurance), 89 (Health Insurance), and 91 (Conflicts of Interest).

"§ 997. Annual Report

"The Commission shall report annually to the Judicial Conference of the United States, the Congress, and the President of the United States on the activities of the Commission.

"§ 998. Definitions

"As used in this chapter—

"(a) 'Commission' means the United States Sentencing Commission;

"(b) 'Commissioner' means a member of the United States Sentencing Commission;

"(c) 'guidelines' means the guidelines promulgated by the Commission pursuant to section 994(a) of this title; and

"(d) 'rules and regulations' means rules and regulations promulgated by the Commission pursuant to section 995 of this title.".

SEC. 126. Chapter 115 of title 28, United States Code, is amended as follows:

(a) A new section 1738A is added after section 1738:

"§ 1738A. Full Faith and Credit Given to Child Custody Determinations

"(a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsection (f) of this section, any child custody determination made by a court of another State consistently with the provisions of this section.

"(b) As used in this section—

"(1) 'child' means a person under the age of eighteen;

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

"(3) 'custody determination' means a judgment, decree, or other order of a court providing for the custody or visitation of a child, and includes permanent, temporary, and initial orders and modifications thereto;

"(4) 'contestant' means a person, including a parent, who claims a right to custody or visitation of a child;

"(5) 'physical custody' means actual possession and control of a child;

"(6) 'modification' and 'modify' refer to a custody determination which modifies, replaces, supersedes, or otherwise is made subsequent to, a prior custody determination concerning the same child, whether or not made by the same court;

"(7) 'home State' means the State in which the child immediately preceding the time involved lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period; and

"(8) 'person acting as a parent' means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.

"(c) A child custody determination made by a court of a State is consistent with the provisions of this section, whether or not the child is physically present in such State, only if—

"(1) such court has jurisdiction to make the child custody determination under the law of such State; and

"(2) one of the following conditions is met:

"(A) such State (i) is the home State of the child at the time of commencement of the proceeding, or (ii) had been the child's home State within six months before commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a parent or guardian continues to live in such State;

"(B) it is in the best interest of the child that a court of such State assume jurisdiction because (i) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (ii) there is available in such State substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

"(C) the child is physically present in such State and (i) the child has been abandoned or (ii) it is necessary in an emergency to protect

the child because he has been subjected to or threatened with mistreatment or abuse;

"(D)(i) it appears that no other State would have jurisdiction under paragraphs (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or

"(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

"(d) The jurisidiction of a court of a State which has made a child custody determination consistently with the provisions of subsections (b) through (g) of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.

"(e) Reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child, before a child custody determination is made.

"(f) A court of a State may, if it has jurisdiction to make a child custody determination, modify a determination of the custody of the same child made by a court of another State if the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction, to modify such determination.

"(g) A court of a State shall not exercise jurisdiction to make a child custody determination in any proceeding commenced during the pendency of a proceeding in a court of another State exercising jurisdiction to make a determination of the custody of the child consistently with the provisions of this section.".

(b) The section-by-section analysis at the beginning of the chapter is amended by adding after the item relating to section 1738 the following new item:

"1738A. Full faith and credit given to child custody determinations.".

SEC. 127. The analysis at the beginning of title 28, United States Code, is amended by adding after the item relating to chapter 57 the following new item:

"58. United States Sentencing Commission.....991".

SEC. 128. The analysis at the beginning of part III of title 28, United States Code, is amended by adding after the item relating to chapter 57 the following new item:

"58. United States Sentencing Commission.....991".

SEC. 129. Section 1291 of title 28, United States Code, is amended by deleting "Supreme Court." and inserting in lieu thereof "Supreme Court, and may review decisions made pursuant to Rule 35(b)(2) of the Federal Rules of Criminal Procedure on petition for leave to appeal granted at the request of the United States or the defendant.".

TITLE IV—GENERAL PROVISIONS

SEVERABILITY

SEC. 131. If a provision of this Act is held invalid, the validity of the other provisions of the Act shall not be affected. If an affirmative defense set forth in this Act is held invalid then the offense shall be read as if the affirmative defense had not been set forth. If an application of a provision of this Act to a person or circumstance is held invalid, the validity of the application of the provisions to another person or circumstance shall not be affected.

TRANSITION

SEC. 132. (a) The Bureau of Prisons created under chapter 303 of title 18, United States Code, as that chapter existed before the effective date of this Act, is continued as the Bureau of Prisons established under section 571 of title 28, United States Code. The Director of the Bureau of Prisons in office on the effective date of this Act shall continue to hold office under section 571(b) of title 28, United States Code.

(b) The Federal Prison Industries created under section 4121 of title 18, United States Code, as that section existed prior to the effective date of this Act, is continued as the Federal Prison Industries created under section 581 of title 28, United States Code. A member of the board of directors shall continue to hold office under the provisions of section 581 of title 28, United States Code.

AUTHORIZATION

SEC. 133. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions and purposes of this Act.

EFFECTIVE DATE

SEC. 134. (a) This Act shall take effect on the first day of the first calendar month beginning twenty-four months after the date of enactment of this Act, except that chapter 58 of title 28, United States Code, shall take effect on the date of enactment of this Act or October 1, 1979, whichever occurs later. For the purposes of section 992(a) of title 28, United States Code, the terms of the first members of the United States Sentencing Commission shall not begin to run until the effective date of the Criminal Code Reform Act of 1979.

(b)(1) The following provisions of law in effect on the day before the effective date of this Act shall remain in effect for five years after the effective date as to an individual convicted of an offense or adjudicated to be a juvenile delinquent before the effective date:

(A) Chapter 311 of title 18, United States Code.

(B) Chapter 309 of title 18, United States Code.

(C) Sections 4254 through 4255 of title 18, United States Code.

(D) Sections 5041 and 5042 of title 18, United Stetes Code.

(E) Sections 5017 through 5020 of title 18, United States Code.

(F) Any other law relating to a violation of a condition of release or to arrest authority with regard to a person who violates a condition of release.

(2) Notwithstanding the provisions of section 4202 of title 18, United States Code, as in effect on the day before the effective date of this Act, the term of office of a Commissioner who is in office on the effective date is extended to the end of the five-year period after the effective date of this Act.

(3) The United States Parole Commission shall set a release date, for an individual who will be in its jurisdiction the day before the expiration of five years after the effective date of this Act, that is the earliest date that applies to the prisoner under the applicable parole guidelines. A release date set pursuant to this paragraph shall be set early enough to permit consideration of an appeal of the release date, in accordance with Parole Commission procedures, before the expiration of five years following the effective date of this Act.

(4) Notwithstanding the other provisions of this subsection, all laws in effect on the day before the effective date of this Act pertaining to an individual who is—

(A) released pursuant to a provision listed in paragraph (1); and

(B)(i) subject to supervision on the day before the expiration of the five-year period following the effective date of this Act; or

(ii) released on a date set pursuant to paragraph (3);

including laws pertaining to terms and conditions of release, revocation of release, provision of counsel, and payment of transportation costs, shall remain in effect as to that individual until the expiration of his sentence, except that the district court shall determine, in accord with the Federal Rules of Criminal Procedure, whether release should be revoked or the conditions of release amended for violation of a condition of release.

(5) Notwithstanding the provisions of sections 576 and 578 of title 28, United States Code, as enacted by section 122 of this Act, the Chairman of the United States Parole Commission or his designee shall be a member of the National Institute of Corrections, and the Chairman of the United States Parole Commission shall be a member of the Advisory Corrections Council, ex officio, until the expiration of the five-year period following the effective date of this Act. Notwithstanding the provisions of section 576 of title 28, during that five-year period the National Institute of Corrections shall have eighteen members, including eight ex officio members.

RESERVATION OF JURISDICTION

SEC. 135. The enactment of this Act does not modify or impair the jurisdiction of any committee of the United States Senate to consider and report measures establishing criminal offenses in connection with legislation within its jurisdiction under the Standing Rules of the Senate or prescribing or altering penalties for committing such offenses.

TITLE V—TECHNICAL AND CONFORMING AMENDMENTS CROSS-REFERENCED IN TITLE 18

PART A—AMENDMENTS RELATING TO COMMERCE AND TRADE, TITLE 15, UNITED STATES CODE

AMENDMENTS RELATING TO IMPORTATION, MANUFACTURE, DISTRIBUTION, AND STORAGE OF EXPLOSIVE MATERIALS

SEC. 141. (a) Title XI of the Organized Crime Control Act of 1970 (84 Stat. 952) is amended—

(1) by redesignating sections 1103 to 1107 as sections 1110 to 1114, respectively; and

(2) by deleting section 1102.

(b) Sections 841 through 848 of title 18, United States Code, as they existed on the day before the effective date of this Act, are hereby reenacted as sections 1102 through 1109 of title XI of the Organized Crime Control Act of 1970 (84 Stat. 952) and amended as follows:

(1) Section 1102 (formerly 18 U.S.C. 841) is amended—

(A) by deleting "Except for the purposes of subsection (d), (e), (f), (g), (h), (i), and (j) of section 844 of this title, 'explosives'" in subsection (d) and inserting in lieu thereof "'Explosives'";

(B) by inserting a comma after the word "compound" in the first sentence of subsection (d);

(C) by deleting the word "chapter" wherever it appears in subsections (d), (j), and (m) and inserting in lieu thereof "title"; and

(D) by deleting the last sentence in subsection (d).

(2) Section 1103 (formerly 18 U.S.C. 842) is amended—

(A) by deleting the word "chapter" wherever it appears in subsection (a) and inserting in lieu thereof the word "title";

(B) by deleting "ship, transport, or cause to be transported" in subsection (a)(3)(A) and inserting in lieu thereof "ship or transport";

(C) by deleting the words "marihuana (as defined in section 4761 of the Internal Revenue Code of 1954) or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4721(a) of the Internal Revenue Code of 1954)" in subsection (d)(5) and inserting in lieu thereof "or addicted to marihuana or any depressant or stimulant substance or narcotic drug as those terms are defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)";

(D) by deleting "wilfully" in subsection (f) and inserting in lieu thereof "knowingly";

(E) by deleting "847" in subsection (g) and inserting in lieu thereof "1108"; and

(F) by deleting "(as defined in section 4761 of the Internal Revenue Code of 1954) or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954)" in subsection (i)(3) and inserting in lieu thereof "or any depressant or stimulant substance or narcotic drug as those terms are defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)".

(3) Section 1104 (formerly 18 U.S.C. 843) is amended—

(A) by deleting "provisions of this chapter" in subsection (b) and inserting in lieu thereof "provisions of this title";

(B) by deleting "842(d) of this chapter" in subsection (b)(1) and inserting in lieu thereof "1103(d) of this title";

(C) by deleting "wilfully" in subsection (b)(2) and inserting in lieu thereof "knowingly";

(D) by deleting "chapter" in subsection (b)(2) and inserting in lieu thereof "title";

(E) by deleting the word "chapter" wherever it appears in subsection (d) and inserting in lieu thereof "title";

(F) by inserting after the word "title" the second time it appears in subsection (d) the words "or, if the offense involved an explosive as defined in section 1821(b) of title 18, United States Code, any provision of section 1601 (Murder), 1602 (Manslaughter), 1611 (Maiming), 1612 (Aggravated Battery), 1613 (Battery), 1701 (Arson), 1702 (Aggravated Property Destruction), 1821 (Explosives Offenses), 1823 (Using a Weapon in the Course of a Crime), or 1001 (Criminal Attempt) of title 18, United States Code,";

(G) by deleting "842(d)" in subsection (d) and inserting in lieu thereof "1103(d) of this title"; and

(H) by deleting the word "chapter" wherever it appears in subsection (f) and inserting in lieu thereof the word "title".

(4) Section 1105 (formerly 18 U.S.C. 844) is amended to read as follows:

"SEC. 1105. (a) Any person who violates section 1103 of this title commits an unlawful act that is an offense described in section 1821 of title 18, United States Code.

"(b) Except as provided in section 4001 of title 18, United States Code, any explosive materials involved or used or intended to be used in any violation of the provisions of this title or any rule or regulation promulgated thereunder or any violation of any criminal law of the United States shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of

that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this title.".

(5) Section 1106 (formerly 18 U.S.C. 845) is amended—

(A) by deleting "Except in the case of subsections (d), (e), (f), (g), (h), and (i) of section 844 of this title, this" in subsection (a) and inserting in lieu thereof "This";

(B) by deleting "921(a)(16) of title 18 of the United States Code," in subsection (a)(5) and inserting in lieu thereof "102(a)(16) of the Gun Control Act of 1968";

(C) by deleting "921(a)(4) of title 18 of the United States Code" in subsection (a)(5) and inserting in lieu thereof "102(a)(4) of the Gun Control Act of 1968";

(D) by deleting "by this chapter" in subsection (b) and inserting in lieu thereof "by section 1103 of this title"; and

(E) by deleting "under this chapter" in subsection (b) and inserting in lieu thereof "under this title".

(6) Section 1107 (formerly 18 U.S.C. 846) is amended—

(A) by deleting the word "title" in the third sentence and inserting in lieu thereof "chapter"; and

(B) by deleting the last sentence.

(7) Section 1108 (formerly 18 U.S.C. 847) is amended by—

(A) deleting the word "chapter" each time it appears and inserting in lieu thereof "title"; and

(B) adding after the last sentence: "Except that the Secretary may not prescribe regulations that require purchasers of black powder under the exemption provided under section 1106(a)(5) to complete affidavits or forms attesting to that exemption.".

(8) Section 1109 (formerly 18 U.S.C. 848) is amended by deleting "chapter" and inserting in lieu thereof "title or section 1821 of title 18, United States Code,".

(c) Section 1111 of the Organized Crime Control Act of 1970 (as redesignated by subsection (a)(1)) is amended—

(1) by deleting "Section 1716 of title 18" in subsection (c) and inserting in lieu thereof "Section 6018 of title 39";

(2) by deleting "831 through 838 of title 18, United States Code" in subsection (d) and inserting in lieu thereof "1101 through 1106 of the Criminal Code Reform Act of 1979"; and

(3) by deleting "Chapter 44 of title 18, United States Code" in subsection (e) and inserting in lieu thereof "Sections 102 through 109 of title I of the Gun Control Act of 1968 (82 Stat. 1213) or section 1822 or 1823 of title 18, United States Code".

AMENDMENTS RELATING TO FIREARMS

SEC. 142. (a) Title I of the Gun Control Act of 1968 (82 Stat. 1213) is amended—

(1) by redesignating sections 103 to 105 as sections 110 to 112, respectively; and

(2) by deleting section 102.

(b) Sections 921 through 928 of title 18, United States Code, as they existed on the day before the effective date of this Act, are hereby reenacted as sections 102 through 109 of title I of the Gun Control Act of 1968 (82 Stat. 1213) and amended as follows:

(1) Section 102 (formerly 18 U.S.C. 921) is amended by deleting the word "chapter" wherever it appears and inserting in lieu thereof the word "title".

(2) Section 103 (formerly 18 U.S.C. 922) is amended—

(A) by deleting "chapter" in subsection (a)(2) and inserting in lieu thereof "title";

(B) by deleting "1715 of this title" in subsection (a)(3) and inserting in lieu thereof "6017 of title 39, United States Code,";

(C) by deleting "the effective date of this chapter" in subsection (a)(3)(C) and inserting in lieu thereof "December 16, 1968";

(D) by deleting "chapter" in subsection (a)(6) and inserting in lieu thereof "title";

(E) by deleting "922(c)" in subsection (b)(3)(A) and inserting in lieu thereof "103(c)";

(F) by adding after the words "registered mail" in subsection (b)(3)(C)(ii) the words "or certified mail (return receipt requested)";

(G) by deleting "923 of this chapter" in subsection (b)(5) and inserting in lieu thereof "104 of this title";

(H) by deleting the word "chapter" the first time it appears in subsection (c) and inserting in lieu thereof "title";

(I) by inserting after the words "eighteen years or more of age;" in subsection (c)(1) the words "that I am not under indictment for, nor is an information pending against me for, nor have I been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year; that I am not a fugitive from justice; that I am not an unlawful user of or addicted to marijuana or any depressant or stimulant substance or narcotic drug; that I have not been adjudicated as a mental defective nor have I been committed to any mental institution;";

(J) by deleting "chapter 44 of title 18, United States Code" in subsection (c)(1) and inserting in lieu thereof "title I of the Gun Control Act of 1968";

(K) by deleting "923(g)" in the last sentence of subsection (c) and inserting in lieu thereof "104(g)";

(L) by deleting the words "drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954)" each time they appear in subsections (d), (g), and (h) and inserting in lieu thereof "substance or narcotic drug as those terms are defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)";

(M) by deleting the words "925 of this chapter" wherever they appear in the last sentence of subsection (d) and inserting in lieu thereof the words "106 of this title";

(N) by deleting "chapter" in subsection (e) and inserting in lieu thereof "title";

(O) by deleting "chapter" in subsection (f) and inserting in lieu thereof "title";

(P) by deleting subsections (i) and (j) and redesignating sections (k), (l), and (m) as subsections (i), (j), and (k) respectively;

(Q) by deleting "9[illegible]d) of this chapter" in subsection (j) (formerly subsection (l)) and inserting in lieu thereof "106(d) of this title";

(R) by deleting "provisions of this chapter" in subsection (j) (formerly subsection (l)) and inserting in lieu thereof "provisions of this title"; and

(S) by deleting "923 of this chapter" in subsection (k) (formerly subsection (m)) and inserting in lieu thereof "104 of this title".

(3) Section 104 (formerly 18 U.S.C. 923) is amended—

(A) by deleting "chapter" in subsection (c) and inserting in lieu thereof "title";

(B) by deleting "922 (g) and (h) of this chapter" in subsection (d)(1)(B) and inserting in lieu thereof "103 (g) or (h) of this title";

(C) by deleting "willfully" wherever it appears in subsections (d)(1)(C) and (d)(1)(D) and inserting in lieu thereof "knowingly";

(D) by deleting "chapter" in subsection (d)(1)(C) and inserting in lieu thereof "title";

(E) by deleting the word "chapter" wherever it appears in subsection (d)(1)(E) and inserting in lieu thereof "title";

(F) by deleting the word "chapter" wherever it appears in subsection (e) and inserting in lieu thereof "title"; and

(G) by deleting the word "chapter" wherever it appears in subsection (g) and inserting in lieu thereof "title".

(4) Section 105 (formerly 18 U.S.C. 924) is amended to read as follows:

"SEC. 105. (a) A person who violates this title commits an unlawful act that is an offense described in section 1822 of title 18, United States Code.

"(b) Except as provided in section 4001 of title 18, United States Code, any firearm or ammunition involved in or used or intended to be used in, any violation of the provisions of this title or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States Code, shall be subject to seizure and forfeiture and all provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this title.".

(5) Section 106 (formerly 18 U.S.C. 925) is amended—

(A) by deleting the word "chapter" wherever it appears and inserting in lieu thereof "title"; and

(B) by inserting after the word "title" in the first sentence of subsection (c) the words "or of section 1822 of title 18, United States Code,".

(6) Section 107 (formerly 18 U.S.C. 926) is amended by deleting the word "chapter" wherever it appears and inserting in lieu thereof "title".

(7) Section 108 (formerly 18 U.S.C. 927) is amended by deleting "chapter" and inserting in lieu thereof "title".

(8) Section 109 (formerly 18 U.S.C. 928) is amended by deleting the word "chapter" wherever it appears and inserting in lieu thereof "title".

(c) Section 110 (formerly section 103) is amended by deleting the words "the amendment made by this".

(d) Section 111 (formerly section 104) is amended by deleting "section 1715 of title 18" in subsection (c) and inserting in lieu thereof "section 6017 of title 39".

PART B—AMENDMENTS RELATING TO FOREIGN RELATIONS AND INTERCOURSE, TITLE 22, UNITED STATES CODE

SEC. 151. Section 1116(b)(4) of title 18, United States Code, as it existed on the day before the effective date of this Act, is reenacted and redesignated as section 2 of the Act for the Prevention and Punishment of Crimes Against Internationally Protected Persons.

SEC. 152. A person, other than a diplomatic or consular officer or attache, who acts in the United States as an agent of a foreign government without prior notification to the Attorney General, commits an unlawful act that is an offense described in section 1126 of title 18, United States Code.

PART C—AMENDMENT RELATING TO INDIANS, TITLE 25, UNITED STATES CODE

JURISDICTION OVER OFFENSES COMMITTED IN THE INDIAN COUNTRY

SEC. 161. (a) As used in this section, the term "Indian country" includes—

(1) all land within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, and including any right-of-way running through a reservation;

(2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without a State; and

(3) all Indian allotments, the Indian titles to which have not been extinguished, including any right-of-way running through such an allotment.

(b) Except to the extent specifically set forth in this Act, nothing in this Act is intended to diminish, expand, or otherwise alter in any manner or to any extent State or tribal jurisdiction over offenses within Indian country, as such jurisdiction existed on the date immediately preceding the effective date of this Act.

(c) Except as otherwise specifically provided, the general laws of the United States as to the punishment of offenses committed within the special jurisdiction of the United States shall extend to the Indian country.

(d)(1) Except as provided in paragraph (2) of this subsection, the general laws of the United States as to the punishment of offenses within the special jurisdiction of the United States shall not extend to offenses committed by one Indian against the person or property of another Indian or to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively.

(2) Any Indian who commits against the person or property of an Indian or other person any of the following felony offenses as defined in title 18, United States Code, namely, Murder (section 1601), Manslaughter (section 1602), Negligent Homicide (section 1603), Maiming (section 1611), Aggravated Battery (section 1612), Terrorizing (section 1615), Kidnapping (section 1621), Aggravated Criminal Restraint (section 1622), Rape (section 1641), Sexual Assault (section 1642), Sexual Abuse of a Minor (section 1643), Arson (section 1701), Aggravated Property Destruction (section 1702), Burglary (section 1711), Criminal Entry (section 1712), Robbery (section 1721), Extortion (section 1722), Theft (section 1731), Trafficking in Stolen Property (section 1732), Receiving Stolen Property (section 1733), or incest shall be subject to the same law and penalties as all other persons committing any of the above offenses within the special jurisdiction of the United States. As used in this section, the offense of incest shall be defined and punished in accordance with such laws of the State in which the offense was committed as are in force at the time of such offense. In the event of a criminal prosecution of an Indian for one or more of the foregoing offenses, this subsection shall not be construed to preclude a finding of guilty of a lesser included offense of such offense or offenses.

(e) The provisions of subsection (c) and (d) of this section shall not be applicable within the areas of Indian country, subject to State jurisdiction pursuant to the Act of August 15, 1953 (67 Stat. 588), or any other federal statute authorizing a State to assume jurisdiction over Indians or Indian country within its boundaries.

(f) Any State which comes within either of the following classifications may exercise jurisdiction over any offense committed by or against Indians in those specific areas of Indian country within its borders to the same extent that such State has jurisdiction over offenses committed elsewhere within the State and the criminal laws of such State shall have the same force and effect within such Indian country as they have elsewhere within the State:

(1) States which have been granted or have assumed criminal jurisdiction over any portion of Indian country within their respective borders pursuant to sections 2, 6, and 7 of the Act of August 15, 1953 (67 Stat. 588), as amended by the Act of August 8, 1958 (72 Stat. 545), and the Act of November 25, 1970 (84 Stat. 1358), and which jurisdiction has not been retroceded to the United States pursuant to section 403 of the Act of April 11, 1968 (82 Stat. 79).

(2) States which have assumed or in the future do assume criminal jurisdiction over any portions of Indian country within their respective borders pursuant to section 401 of the Act of April 11, 1968 (82 Stat. 78), and which jurisdiction has not been retroceded to the United States pursuant to section 403 of the Act of April 11, 1968 (82 Stat. 79), or the provisions of this Act.

Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or within any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

(g) Jurisdiction is conferred on the States of Iowa and Kansas over offenses committed by or against Indians on Indian reservations, including trust or restricted allotments, within the respective States of Iowa and Kansas, to the same extent as its courts have jurisdiction over offenses committed elsewhere within the respective States in accordance with the laws thereof. This subsection shall not deprive the courts of the United States of jurisdiction over offenses defined by the laws of the United States committed by or against Indians on Indian reservations.

(h) The State of New York shall have jurisdiction over offenses committed by or against Indians on Indian reservations within the State of New York to the same extent as the courts of the State have jurisdiction over offenses committed elsewhere within the State as defined by the laws of the State, except that nothing contained in this paragraph shall be construed to deprive any Indian

tribe, band, or community, or members thereof, of hunting and fishing rights as guaranteed them by agreement, treaty, or custom, nor require them to obtain State fish and game licenses for the exercise of such rights.

(i) Ninety days following the adoption of a resolution to that effect by the Indian tribe occupying the particular Indian country or part thereof affected by such grant or assumption, the United States shall, upon the consent of the Secretary of the Interior acting on behalf of the United States, reacquire such measure of the criminal jurisdiction granted to or assumed by a State pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), section 145(f), (g), or (h) of the Criminal Code Reform Act of 1979, or the Act of April 11, 1968 (82 Stat. 73), as shall have been determined in the resolution of such tribe. The resolution authorized by this subsection shall be considered adopted only where the enrolled Indians within the affected area of such Indian country accept the resolution by a majority vote of the adult Indians voting at a special election held for that purpose. The Secretary of the Interior shall call such special election under such rules and regulations as he may prescribe when requested to do so by the tribal council or other governing body or by 20 per centum of such enrolled adults.

(j) No retrocession of jurisdiction pursuant to subsection (i) of this section shall deprive any court of a State of jurisdiction to hear, determine, render judgment, or impose sentence in any criminal action instituted against any person for any offense committed before the effective date of such retrocession, if the offense charged in such action was cognizable under any law of such State at the time of commission of such offense. For the purpose of any such criminal action, such retrocession shall take effect on the day following the date of final determination of such action.

(k) Notwithstanding section 3601 (a) and (b) of title 18, if an Indian juvenile or Indian person between the ages of eighteen and twenty-one is arrested and charged with a misdemeanor and an Indian tribe has concurrent jurisdiction of the conduct, the Attorney General may forego prosecution and surrender the person to the jurisdiction of the tribe governing such area of Indian country.

PART D—AMENDMENTS RELATING TO THE PUBLIC HEALTH AND WELFARE, TITLE 42, UNITED STATES CODE

SEC. 171. (a) The Congress finds that—

(1) There is a large and growing number of cases annually involving disputes between persons claiming rights of custody and visitation of children under the laws, and in the courts, of different States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(2) The laws and practices by which the courts of those jurisdictions determine their jurisdiction to decide such disputes, and the effect to be given the decisions of such disputes by the courts of other jurisdictions, are ill-defined, conflicting, and in many instances unsound.

(3) These characteristics of the law and practice in such cases, along with the limits imposed by a federal system on the authority of each such jurisdiction to conduct investigations and take other actions outside its own boundaries, contribute to a tendency of parties involved in such disputes to resort frequently to the seizing, restraint, concealment, and interstate transportation of children; disregard of court orders; excessive re-litigation of cases; obtaining of conflicting orders by the courts of various jurisdictions; and interstate travel and communication that is so expensive and time-consuming as to disrupt their occupations and commercial activities.

(4) Among the results of those conditions and activities are the failure of the courts of such jurisdictions to give full faith and credit to the judicial proceedings of the other jurisdictions; the deprivation of rights of liberty and property without due process of law; burdens on commerce among such jurisdictions and with foreign nations; and harm to the welfare of children and their parents and other custodians.

(5) For those reasons it is necessary to establish a national system for locating parents and children who travel from one such jurisdiction to another and are concealed in connection with such disputes, and to establish national standards under which the courts of such jurisdictions will determine their jurisdiction to decide such disputes and the effect to be given by each such jurisdiction to such decisions by the courts of other such jurisdictions.

(b) Section 453 of the Social Security Act as added by section 101(a) of the Act of January 4, 1975 (42 U.S.C. 653) is amended as follows:

(1) At the end of subsection (a), change the period to a comma and add "and information as to the whereabouts of any absent parent or child when such information is to be used to locate such parent or child for the purpose of making or enforcing a child custody determination, as defined in section 1738A of title 28, United States Code, entitled under that section to be enforced by the appropriate authorities of other States.".

(2) The first time the word "parent" appears in subsection (b), insert after that word the words "or child".

(3) At the end of subsection (b) delete "of this section." and insert in lieu thereof ", (c)(4), (c)(5), or (c)(6) of this section.".

(4) At the end of subsection (c)(2) delete "and".

(5) At the end of subsection (c), delete the period and substitute a semicolon.

(6) Add the following new paragraphs after subsection (c)(3):

"(4) any agent or attorney of any State having in effect a plan approved under this part, who has the duty or authority under the law of such State to enforce a child custody determination, as defined in section 1738A of

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title 28, United States Code, entitled under that section to be enforced by the appropriate authorities of other States;

"(5) any court having jurisdiction to make or enforce such a child custody determination, or any agent of such a court; and

"(6) any parent, legal guardian, attorney, or agent of a child sought to be located pursuant to subsection (a) of this section.".

(7) In subsection (f), after "(c)(3)" add ", (c)(4), (c)(5), or (c)(6).".

PART E—AMENDMENTS RELATING TO WAR AND NATIONAL DEFENSE, TITLE 50, UNITED STATES CODE

SEC. 181. Section 793 of title 18, United States Code, as it existed on the day before the effective date of this Act, is reenacted and redesignated as section 18 of the Subversive Activities Control Act of 1950.

SEC. 182. (a) Sections 794(a), 794(b), and 794(c) of title 18, United States Code, as they existed on the day before the effective date of this Act, are reenacted and redesignated as subsections (a), (b), and (c), respectively, of section 201 of the Espionage and Sabotage Act of 1954.

(b) Section 798 of title 18, United States Code, as enacted by section 4 of the Act of June 30, 1953 (67 Stat. 133), and as it existed on the day before the effective date of this Act, is reenacted and redesignated as subsection (d) of section 201 of the Espionage and Sabotage Act of 1954.

SEC. 183. Section 798 of title 18, United States Code, as enacted by section 24(a) of the Act of October 31, 1951 (65 Stat. 719), and as it existed on the day before the effective date of this Act, is reenacted and redesignated as section 24 of the Act of October 31, 1951.

SEC. 184. The provisions of chapter 3 of title 18, United States Code (Culpable States of Mind), are not applicable to the amendments to title 50 set forth in sections 181, 182, and 183 of this Act.

TITLE VI—CODIFICATION AND REVISION OF TITLE 18 APPENDIX

REENACTMENT AND REDESIGNATION OF FORMER SECTIONS OF TITLE 18

SEC. 201. (a)(1) The following sections of title 18, United States Code, in effect on the day before the effective date of this Act, are reenacted as title 18 Appendix of the United States Code, entitled "Criminal Code Appendix", and may be cited as "18 U.S.C. App. —" or as "Federal Criminal Code Appendix §—": 41–44, 46–47, 112, 154 (as amended effective October 1, 1979), 155 (as amended effective October 1, 1979), 202–09, 211–13, 218–19, 243–44, 290–92, 333, 336–37, 431–33, 435–43, 474–75, 486, 489, 491–92, 504, 543, 546, 548–49, 593, 600–01, 650, 700–11, 711a, 712–15, 756, 795–97, 799, 831–36, 911, 916–17, 955, 961–63, 965–67, 970, 1009, 1012, 1081, 1083–84, 1154, 1158–59, 1161, 1164–65, 1261–65, 1301–07, 1385, 1427–28, 1464, 1543–45, 1692–1700, 1703–05, 1711–13, 1715–16, 1716A, 1717, 1723–25, 1729–32, 1734–37, 1752, 1761–62, 1821, 1856, 1858, 1860–61, 1905–07, 1909–11,

1913, 1915–18, 1922, 2074–76, 2152, 2195, 2274, 2277–79, 2318, 2341–46, 3054, 3056, 3057 (as amended effective October 1, 1979), 3058, 3112, 3615, and 3620.

(2) Each section reenacted by paragraph (1) has the same section number and heading, and is set forth in a chapter with the same number and heading, as the section and chapter had in title 18, United States Code, on the day before the effective date of this Act. The section analysis for each chapter consists of a listing of the number of each section in the chapter reenacted by paragraph (1), followed by the heading of the section. The chapter analysis for title 18 Appendix consists of a listing of the number of each chapter that contains a section reenacted by paragraph (1), followed by the heading of the chapter.

(b)(1) Sections 1201 through 1203 of title VII of the Omnibus Crime Control and Safe Streets Act of 1968 are reenacted and redesignated as sections 1201 through 1203, respectively, of chapter 56 of title 18 Appendix of the United States Code.

(2) Chapter 56 of title 18 Appendix of the United States Code, is amended as follows:

(A) The following heading and section analysis are added at the beginning:

"CHAPTER 56—UNLAWFUL POSSESSION OR RECEIPT OF FIREARMS

"Sec.
"1201. Congressional findings and declaration.
"1202. Receipt, possession, or transportation of firearms.
"1203. Exemptions.".

(B) Section 1201 is amended by adding "Congressional findings and declaration" after "1201.".

(C) Section 1202 is amended by adding "Receipt, possession, or transportation of firearms" after "1202.".

(D) Section 1203 is amended by adding "Exemptions" after "1203.".

(3) The chapter analysis for title 18 Appendix of the United States Code is amended by adding the following after the item relating to chapter 45:

"56. Unlawful possession or receipt of firearms.".

AMENDMENTS RELATING TO CULPABILITY

SEC. 202. Title 18 Appendix of the United States Code is amended as follows:

(a) Sections 41, 112(b), 443, 549, 708, 799, 911, 970(b), 1012, 1159, 1164, 1385, 1735(a)(1), 1858, 1861, 1922, 2076, 2274, and 3058 are amended by deleting "willfully" each place it appears and substituting "knowingly".

(b) Section 43(c)(1) is amended by deleting "knowingly violates, or who, in the exercise of due care, should know that he is violating," and substituting "engages in conduct in reckless disregard of the fact that the conduct is in violation of".

(c) Section 43(c)(2) is amended by deleting "nonwillful" and substituting "reckless".

(d) Sections 43(d), 43(e), 1009, 1165, 1543, 1544, 1725, 1752(a)(1), 1752(a)(3), 1752(a)(4), 3054, and 3112 are amended by deleting "willfully and", "and willfully", and "and willful" each place they appear.

(e) Sections 211, 336, 337, and 1154(a) are amended by adding "knowingly" after "Whoever".

(f) Section 492 is amended by deleting "willful negligence" and substituting "recklessness".

(g) Section 702 is amended by adding "knowingly" before "wears".

(h) Sections 1158 and 1917 are amended by deleting ", willfully, and corruptly" and "willfully and corruptly" each place they appear.

(i) Section 1427 is amended by adding "knowingly and" before "unlawfully".

(j) Section 1700 is amended by deleting "voluntarily" and substituting "intentionally".

(k) Section 1705 is amended by deleting "willfully or maliciously" the first place it appears and substituting "knowingly".

(l) Section 1732 is amended—

(1) by deleting "knowingly, or without the exercise of due diligence,"; and

(2) by adding "in reckless disregard of the fact that the bond has insufficient sureties" after "bidder" the third place it appears.

(m) Section 1911 is amended—

(1) by deleting "willfully"; and

(2) by deleting "according to" and substituting "in reckless disregard of".

(n) Section 2152 is amended by deleting ", willfully, or wantonly".

AMENDMENTS RELATING TO SENTENCING

SEC. 203. Title 18 Appendix of the United States Code is amended as follows:

(a) Sections 1735(a) and 1737(a) are amended by deleting "shall be fined not more than $5,000 or imprisoned not more than five years, or both, for the first offense, and shall be fined not more than $10,000 or imprisoned not more than ten years, or both, for any second or subsequent offense" and substituting "is guilty of a Class A misdemeanor, except that a second or subsequent offense committed after a first conviction is a Class E felony".

(b) Section 1302 is amended by deleting "fined not more than $1,000 or imprisoned not more than two years, or both; and for any subsequent offense shall be imprisoned not more than five years" and substituting "guilty of a Class A misdemeanor, except that a second or subsequent offense committed after a first conviction is a Class E felony".

(c) Section 1717(b) is amended by deleting "shall be fined not more than $5,000 or imprisoned not more than ten years, or both" and substituting "is guilty of a Class A misdemeanor".

(d) Section 1704 is amended by deleting "Shall be fined not more than $500 or imprisoned not more than ten years, or both" and substituting "Is guilty of a Class A misdemeanor".

(e) Section 650 is amended by deleting "shall be fined in a sum equal to the amount of money so embezzled or imprisoned not more than ten years, or both; but if the amount embezzled does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both" and substituting "a Class A misdemeanor".

(f) Sections 443, 486, 955, 1427, and 1428 are amended by deleting "shall, if a corporation, be fined not more than $50,000, and, if a natural person, be fined not more than $10,000 or imprisoned not more than five years, or both", "shall be fined not more than $10,000 or imprisoned not more than five years, or both", "shall be fined not more than $5,000 or imprisoned not more than five years, or both", and "shall be fined not more than $3,000 or imprisoned not more than five years, or both" each place they appear and substituting "is guilty of a Class A misdemeanor".

(g) Sections 593, 1543, 1544, 1910, and 2152 are amended by deleting "Shall be fined not more than $10,000 or imprisoned not more than five years, or both", "Shall be fined not more than $5,000 or imprisoned not more than five years, or both", and "Shall be fined not more than $2,000 or imprisoned not more than five years, or both" each place they appear and substituting "Is guilty of a Class A misdemeanor".

(h) Sections 436, 911, 1545, 1705, and 2344(b) are amended by deleting "shall be fined not more than $5,000 or imprisoned not more than three years, or both", "shall be fined not more than $2,000 or imprisoned not more than three years, or both", "shall be fined not more than $1,000 or imprisoned not more than three years, or both", and "shall be fined not more than $1,000 or imprisoned not more than three years" each place they appear and substituting "is guilty of a Class A misdemeanor".

(i) Section 962 is amended by deleting "Shall be fined not more than $10,000 or imprisoned not more than three years, or both" and substituting "Is guilty of a Class A misdemeanor".

(j) Sections 204, 207(c), 543, 546, 1301, 1385, 1464, 1715, and 1915 are amended by deleting "shall be fined not more than $10,000 or imprisoned for not more than two years, or both", "shall be fined not more than $10,000 or imprisoned not more than two years, or both", "shall be fined not more than $5,000 or imprisoned not more than two years, or both", and "shall be fined not more than $1,000 or imprisoned not more than two years, or both" each place they appear and substituting "is guilty of a Class A misdemeanor".

(k) Sections 203(b), 205, 208(a), 549, and 1712 are amended by deleting "Shall be fined not more than $10,000 or imprisoned for not more than two years, or both", "Shall be fined not more than $10,000, or imprisoned not more

than two years, or both", "Shall be fined not more than $5,000 or imprisoned not more than two years, or both", and "Shall be fined not more than $500 or imprisoned not more than two years, or both" each place they appear and substituting "Is guilty of a Class A misdemeanor".

(l) Section 1918 is amended by deleting "shall be fined not more than $1,000 or imprisoned not more than one year and a day, or both" and substituting "is guilty of a Class A misdemeanor".

(m) Section 2318(a) is amended by deleting "shall be fined not more than $10,000 or imprisoned for not more than one year, or both, for the first such offense and shall be fined not more than $25,000 or imprisoned for not more than two years, or both, for any subsequent offense" and substitute "is guilty of a Class A misdemeanor, except that an offense committed after conviction of a first offense is a Class E felony".

(n) Sections 43(d), 155, 207(g), 211, 212, 213, 244, 337, 435, 440, 441, 442, 491(a), 491(b), 492, 600, 601(a), 700(a), 712, 756, 795, 796, 797, 832(a), 832(b), 833, 834(f), 836, 917, 961, 1009, 1262, 1263, 1264, 1265, 1303, 1304, 1306, 1700, 1703, 1716(h), 1716A, 1732, 1761(a), 1861, 1905, 1906, 1907, 1909, 1911, 1913, 1916, 1917, 1922, 2076, 2277(a), and 2278 are amended by deleting "shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than one year, or both", "shall be fined not more than $10,000, or imprisoned not more than one year, or both", "shall be fined not more than $10,000 or imprisoned not more than one year, or both", "shall be fined not more than $5,000 or imprisoned not more than one year, or both; and may be fined a further sum equal to the money so loaned or gratuity given", "shall be fined not more than $5,000 or imprisoned not more than one year, or both", "shall be fined not more than $5,000, or imprisoned not more than one year, or both", "shall be fined not more than $5,000 or imprisoned not more than one year or both", "shall be fined not more than $3,000 or imprisoned not more than one year, or both", "shall be fined not more than $1,000 or imprisoned not more than one year, or both", "shall be fined not more than $1,000, or imprisoned not more than one year, or both", "shall be fined not more than $1,000 or imprisoned for not more than one year, or both", "be fined not more than $1,000 or imprisoned not more than one year, or both", "shall be fined not more than $1,000 or imprisoned not more than one year", "shall, for each offense, be fined not less than $100 nor more than $1,000 or imprisoned not less than ten days nor more than one year, or both", "shall be fined not more than $500 or imprisoned not more than one year, or both", "shall be fined not more than $300 or imprisoned not more than one year, or both", and "shall be fined not more than $100 or imprisoned not more than one year, or both" each place they appear and substituting "is guilty of a Class A misdemeanor".

(o) Sections 209(a), 292, 709, 1012, 1821, and 1860 are amended by deleting "Shall be fined not more than $5,000 or imprisoned not more than one year, or

both", "Shall, for each offense, be fined not more than $1,000 or imprisoned not more than one year, or both", and "Shall be punished as follows: a corporation, partnership, business trust, association, or other business entity, by a fine of not more than $1,000; an officer or member thereof participating or knowingly acquiescing in such violation or any individual violating this section, by a fine of not more than $1,000 or imprisonment for not more than one year, or both" each place they appear and substituting "Is guilty of a Class A misdemeanor".

(p) Section 799 is amended by deleting "fined not more than $5,000, or imprisoned not more than one year, or both" and substituting "guilty of a Class A misdemeanor".

(q) Section 474 is amended by deleting "Shall be fined not more than $5,000 or imprisoned not more than fifteen years, or both" and substituting "Is guilty of a Class B misdemeanor".

(r) Section 1154(a) is amended by deleting "shall, for the first offense, be fined not more than $500 or imprisoned not more than one year, or both; and, for each subsequent offense, be fined not more than $2,000 or imprisoned not more than five years, or both" and substituting "is guilty of a Class B misdemeanor".

(s) Sections 41, 42(b), 46, 47(a), 47(b), 112(b), 290, 333, 336, 437, 438, 439, 701, 702, 703, 704, 705, 708, 711, 711a, 713(a), 713(b), 714, 715, 916, 970(b), 1159, 1696(a), 1730, 1731, 1856, 1858, 2195, and 2279 are amended by deleting "shall be fined not more than $5,000 or imprisoned not more than six months, or both", "shall be fined not more than $1,000 or imprisoned not more than six months, or both", "shall be fined not more than $500 or imprisoned not more than six months, or both", "shall be fined not more than $500, or imprisoned not more than six months, or both", "shall be fined not more than $300 or imprisoned not more than six months, or both", "shall be fined not more than $250 or imprisoned not more than six months, or both", "shall be fined not more than $200 or imprisoned not more than six months, or both", and "shall be fined not more than $100 or imprisoned not more than six months, or both each place they appear and substituting "is guilty of a Class B misdemeanor".

(t) Sections 44, 706, 707, and 1158 are amended by deleting "Shall be fined not more than $500 or imprisoned not more than six months, or both" and "Shall be fined not more than $250 or imprisoned not more than six months, or both" each place they appear and substituting "Is guilty of a Class B misdemeanor".

(u) Section 1752(b) is amended by deleting "shall be punishable by a fine not exceeding $500 or imprisonment not exceeding six months, or both" and substituting "is a Class B misdemeanor".

(v) Section 1165 is amended by deleting "shall be fined not more than $200 or imprisoned not more than ninety days, or both" and substituting "is guilty of a Class B misdemeanor".

(w) Section 2074 is amended by deleting "shall be fined not more than $500 or imprisoned not more than ninety days, or both" and substituting "is guilty of a Class C misdemeanor".

(x) Sections 1693 and 1695 are amended by deleting "shall be fined not more than $50 or imprisoned not more than thirty days, or both" and substituting "is guilty of a Class C misdemeanor".

(y) Sections 243, 291, 475, 489, 1697, 1698, 1699, 1713, 1723, 1729, 1734, and 2075 are amended by deleting "shall be fined not more than $5,000", "shall be fined not more than $1,000", "shall be fined not more than $500", "shall be fined not more than $150", and "shall be fined not more than $100" each place they appear and substituting "is guilty of an infraction, except that an individual convicted of violating this section may not be sentenced to a term of imprisonment".

(z) Section 1762(b) is amended by deleting "shall be fined not more than $1,000," and substituting "is guilty of an infraction, except that an individual convicted of violating this section may not be sentenced to a term of imprisonment;".

(aa) Section 1696(b) is amended by deleting "shall be fined not more than $50" and substituting "is guilty of an infraction, except that an individual convicted of violating this subsection may not be sentenced to a term of imprisonment".

(bb) Section 154 is amended by deleting "Shall be fined not more than $500" and substituting "Is guilty of an infraction, except that an individual convicted of violating this section may not be sentenced to a term of imprisonment".

(cc) Section 1725 is amended by deleting "for each such offense be fined not more than $300" and substituting "be guilty of an infraction, except that an individual convicted of violating this section may not be sentenced to a term of imprisonment".

(dd) Section 1694 is amended by deleting "fined not more than $50" and substituting "guilty of an infraction, except that an individual convicted of violating this section may not be sentenced to a term of imprisonment".

(ee) Sections 431 and 432 are amended by deleting "shall be fined not more than $3,000" and substituting "is guilty of an infraction, except that an individual convicted of violating this section may not be sentenced to a term of imprisonment or to pay a fine that exceeds $3,000".

(ff) Section 244 is amended by deleting "shall be fined not more than $500" and substituting "is guilty of a Class A misdemeanor".

(gg) Section 710 is amended by deleting "shall be fined not more than $250 or imprisoned for not more than six months, or both" and substituting "shall be subject to a civil penalty, recoverable in a civil suit brought in the name of the United States, of no more than $1,000 or twice the amount of personal injury or property damage caused by the violation, whichever is higher".

AMENDMENTS RELATING TO OFFENSES PUNISHABLE UNDER TITLE 18, UNITED STATES CODE

SEC. 204. Title 18 Appendix of the United States Code is amended as follows:

(a) Section 219 is amended by deleting "shall be fined not more than $10,000 or imprisoned not more than two years, or both" and substituting "commits an unlawful act that is an offense punishable under section 1126 of title 18".

(b) Section 1164 is amended by deleting "shall be fined not more than $250 or imprisoned not more than six months, or both" and substituting "commits an unlawful act that is an offense described in section 1703 of title 18".

(c) Sections 1202 (a) and (b) are amended by deleting "shall be fined not more than $10,000 or imprisoned for not more than two years, or both" and substituting "commits an unlawful act that is an offense punishable under section 1822 of title 18".

(d) Section 2342 is amended to read as follows:

"**§ 2342. Unlawful acts**

"Whoever knowingly ships, transports, receives, possesses, sells, distributes, or purchases contraband cigarettes commits an unlawful act that is an offense punishable under section 1806 of title 18.".

REPEAL OF PROVISIONS OF TITLE 18 APPENDIX

SEC. 205. The following provisions of title 18 Appendix of the United States Code are repealed: sections 112(a) and 112(b)(1); the first paragraph of section 211; the second paragraph of section 491(b); the first paragraph of section 548; the third and fourth paragraphs of section 549; the second paragraph of section 593; section 700(c); the seventh and eleventh paragraphs of section 709; the second paragraph of section 711; section 963(b); the first and second paragraphs of section 965(b); sections 966(b), 967(b), and 970(a); the first and second paragraphs of section 1012; the last paragraph of section 1081; sections 1084(a), 1084(b), 1084(c), and 1154(b); the second paragraph of section 1158; the first paragraph of section 1543; the first and third paragraphs of section 1544; the last sentence of section 1698; section 1703(a); the first paragraph of section 1704; the first paragraph of section 1711; the first paragraph of section 1712; the last two paragraphs of section 1716; paragraph (2) of section 1916; and the first two paragraphs of section 2152.

AMENDMENTS TO PROVISIONS OF TITLE 18 APPENDIX RELATING TO ANIMALS, BIRDS, FISH, AND PLANTS

SEC. 206. Chapter 3 of title 18 Appendix of the United States Code is amended as follows:

(a) Section 41 is amended by deleting "or knowingly injures, molests, or destroys any property of the United States on any such lands or waters".

(b) Section 42 is amended—

(1) by adding "or Secretary of Commerce, as appropriate for the species involved," after "Secretary of the Interior" in subsection (a)(1) and in subsection (a)(5) the first place it appears;

(2) by adding "or Secretary of Commerce, as appropriate for the species involved" after "Secretary of the Interior" in subsection (a)(3), and in subsection (a)(5) the second place it appears; and

(3) in subsection (a)(3), by deleting "this Act, and this Act" and substituting "this section and section 43 of this title, and these sections".

(c) Section 43 is amended—

(1) in subsections (a)(1) and (a)(2), by deleting "or causes to be delivered, carried, transported, or shipped";

(2) in subsections (a)(1), (a)(2), (b)(1), and (b)(2), by deleting "or causes to be sold";

(3) in subsection (a)(3), by deleting "or causes to be made";

(4) in subsection (c)(2), by adding ", in addition to any other authority provided by law relating to search and seizure," after "authority";

(5) in subsection (c)(1), by deleting "offense" and substituting "violation";

(6) in subsection (d), by deleting "Any" and substituting "Except as provided in section 1411 of title 18, any";

(7) in subsection (e), by deleting "penalty" and substituting "sentence"; and

(8) in subsection (f)(1), by adding "or the Secretary of Commerce, as appropriate for the species involved" after "Interior".

AMENDMENTS TO TITLE 18 APPENDIX RELATING TO ASSAULT

SEC. 207. Section 112 of title 18 Appendix of the United States Code is amended—

(a) in subsection (b)(1), by adding "or" at the end;

(b) in subsection (b), by deleting "any other provision of this section" and substituting "section 1611, 1612, 1613, 1614, or 1615 of title 18 if there is jurisdiction of the offense under section 1611(c)(2)(D), (c)(2)(E), or (c)(2)(F) of title 18; or to violate section 1701, 1702, or 1703 of title 18 if there is jurisdiction of the offense under section 1701(c)(3)(C), (c)(3)(D), or (c)(3)(E) of title 18 and if the offense is likely to endanger the person or liberty of a foreign official, official guest, or internationally protected person;";

(c) in subsection (c)—

(1) by adding "(1)" after "(c)";

(2) by deleting "'foreign government',";

(3) by deleting "1116(b) of this title" and substituting "111 of title 18";

(4) by adding after paragraph (1) the following new paragraph:

"(2) For the purpose of this section, 'foreign government' means the government of a foreign country, irrespective of recognition by the United States.";

(5) by deleting "subsection (a)" in subsection (e) and the first place it appears in subsection (f) and substituting "title 18 that is described in subsection (b)";

(6) in subsection (e), by deleting "provisions of sections 5 and 7 of this title and" and substituting "definition of 'United States' set forth in section 111 of title 18 and any place described in"; and

(7) in subsection (f), by deleting "subsection (a)" the second place it appears and substituting "such a provision of title 18".

AMENDMENTS TO TITLE 18 APPENDIX RELATING TO BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

SEC. 208. Chapter 11 of title 18 Appendix of the United States Code is amended as follows:

(a) Section 202(a) is amended—

(1) by adding ", judicial," after "executive";

(2) by deleting "a part-time United States commissioner,"; and

(3) by deleting "section 29 (c) and (d) of the Act of August 10, 1956 (70A Stat. 632; 5 U.S.C. 30r (c) and (d))" and substituting "sections 502, 2105, and 5534 of title 5".

(b) Section 205 is amended by adding "of this title or in section 1353 or 1354 of title 18" after "203" each place it appears.

(c)(1) Section 206 is amended to read as follows:

"§ 206. Exemptions

"Sections 203 and 205 of this title shall not apply to—

"(a) any person specifically excepted by Act of Congress; or

"(b) a retired officer of the uniformed services of the United States while not on active duty and not otherwise an officer or employee of the United States, except that—

"(1) section 203 shall apply to any retired officer representing any person in the sale of anything to the Government through the department in whose service he holds a retired status; and

"(2) section 205 shall apply to any retired officer acting as agent or attorney for prosecuting or assisting in the prosecution of any claim against the United States—

"(A) that involves the department in whose service he holds retired status, within two years next after his retirement; or

"(B) that involves any subject matter with which he was directly connected while he was in an active-duty status.".

(2) The item relating to section 206 in the section analysis of chapter 11 is amended to read as follows:

"206. Exemptions.".

(d) Section 209(d) is amended by deleting "the Government Employees Training Act (Public Law 85–507, 72 Stat. 327; 5 U.S.C. 2301–2319, July 7, 1958)" and substituting "chapter 41 of title 5".

(e) Section 212 is amended by deleting "or of any National Agricultural Credit Corporation," and "or National Agricultural Credit Corporations,".

(f) Section 213 is amended by deleting "or examiner of National Agricultural Credit Corporations".

(g) Section 218 is amended by adding "or, if the offense involved a federal public servant who is an examiner described in section 212 or 213 of this chapter, for a violation of section 1351, 1352, 1353, 1354, or 1355 of title 18" after "this chapter".

AMENDMENT TO TITLE 18 APPENDIX RELATING TO DISCRIMINATION AND ARMED FORCES

SEC. 209. Section 244 of title 18 Appendix of the United States Code is amended by deleting "causes" and substituting "knowingly discriminates against", and by deleting "to be discriminated against".

AMENDMENTS TO TITLE 18 APPENDIX RELATING TO CONTRACTS

SEC. 210. Chapter 23 of title 18 Appendix of the United States Code is amended as follows:

(a) Section 433 is amended—

(1) by deleting "the Federal Farm Loan Act, the Emergency Farm Mortgage Act of 1933, the Farm Credit Act of 1933" and substituting "the Farm Credit Act of 1971"; and

(2) by deleting "the Farmers' Home Administration Act of 1933" and substituting "the Consolidated Farm and Rural Development Act".

(b) Section 436 is amended by deleting "Whoever" and substituting "Except as provided in section 3822 of title 18 and chapters 37 and 38 of title 28, whoever".

AMENDMENTS TO TITLE 18 APPENDIX RELATING TO COUNTERFEITING AND FORGERY

SEC. 211. Chapter 25 of title 18 Appendix of the United States Code is amended as follows:

(a) Section 474 is amended to read as follows:

"§ 474. Illustrations or likenesses of obligations and securities

"(a) Whoever, except as authorized under section 504 of this title or under rules and regulations issued by the Secretary of the Treasury, knowingly makes, sells, or imports an illustration or likeness of—

"(1) a revenue stamp of the United States;

"(2) any other obligation or security, except a postage stamp, of the United States; or

"(3) a postage stamp, revenue stamp, note, bond, or any other obligation or other security of a foreign government, bank, or corporation;

or a part thereof, is guilty of a Class B misdemeanor.

"(b) Whoever, except as authorized under section 504 of this title or under rules and regulations issued by the Postal Service, knowingly makes, sells, or imports an illustration or likeness of a postage stamp of the United States, or a part thereof, is guilty of a Class B misdemeanor.".

(b) Section 486 is amended—

(1) by deleting ", or attempts to utter or pass,";

(2) by adding "of original design" after "coins" the first place it appears; and

(3) by deleting "whether in the resemblance of coins of the United States or of foreign countries, or of original design,".

(c) Section 492 is amended by deleting "331–333, 335, 336, 642 or 1720, of this title" and substituting "333, 336, 475, 486, 489, or 491 of this title, or of subchapter E of chapter 17 of title 18".

(d) Section 504 is amended by adding "or section 336 of this title" after "this chapter".

(e) A new section 510 is added at the end thereof to read as follows:

"§ 510. Photocopying certain securities

"(a) Whoever knowingly photostats, reproduces, duplicates, or in any manner executes a copy, or any part thereof, of—

"(1) any note, stock certificate, treasury stock certificate, bond, interest coupon, treasury bond, debenture, certificate of deposit, any other form of debt instrument bearing interest, or any blank certificate of any of the above, other than currency, which is issued by any corporation, business, or foreign government; or

"(2) any bond, interest coupon, note, or other obligation issued or guaranteed by any State, possession, Commonwealth, or territory of the United States or by any political subdivision of a State, possession, Commonwealth, or territory by any public instrumentality of one or more States, possessions, Commonwealths, or territories;

without the written approval of an authorized official of the issuing corporation, business, or government, is guilty of a Class A misdemeanor.

"(b) Nothing contained in subsection (a) prohibits the true owner, or his authorized agent, legal custodian, or an authorized official of—

"(1) a national credit institution, as defined in section 111 of title 18;

"(2) a member of, or business insured by, the Securities Investor Protection Corporation;

"(3) a broker-dealer registered with the Securities and Exchange Commission pursuant to section 15(a)(1) of the Securities Exchange Act of 1934;

"(4) any employee benefit plan subject to any provision of title I of the Employee Retirement Income Security Act of 1974;

"(5) a clearing agency as defined in section 3(a)(23) of the Securities Exchange Act of 1934; or

"(6) a transfer agent as defined in section 3(a)(25) of the Securities Exchange Act of 1934;

from making a photostatic noncolor copy of any document enumerated in subsection (a)(1) or (a)(2) for the purposes of recordkeeping or validation.".

(f) The section analysis is amended—

(1) by amending the item relating to section 474 to read: "474. Illustrations or likenesses of obligations and securities."; and

(2) by adding a new item at the end thereof to read:

"510. Photocopying certain securities.".

AMENDMENTS TO TITLE 18 APPENDIX RELATING TO CUSTOMS

SEC. 212. Chapter 27 of title 18 Appendix of the United States Code is amended as follows:

(a) Section 548 is amended to read as follows:

"§ 548. Forfeiture of concealed, removed, or repacked goods

"Merchandise that has been concealed in, removed from, or repacked in a bonded warehouse, and packages in bonded warehouses that have been altered, defaced, or obliterated, in violation of section 1411 or 1731 of title 18, or in an attempt or conspiracy to violate one of those sections, shall be forfeited to the United States.".

(b) The item relating to section 548 in the section analysis is amended to read: "548. Forfeiture of concealed, removed, or repacked goods.".

AMENDMENTS TO TITLE 18 APPENDIX RELATING TO ELECTIONS AND POLITICAL ACTIVITIES

SEC. 213. Chapter 29 of title 18 Appendix of the United States Code is amended as follows:

(a) Section 593 is amended—

(1) in the first paragraph, by deleting "or attempts to prescribe or fix";

(2) in the third paragraph, by deleting "or attempts to compel"; and

(3) in the fourth paragraph, by deleting "or attempts to impose".

(b) Section 601(a) is amended by deleting "or attempts to cause".

AMENDMENT TO TITLE 18 APPENDIX RELATING TO EMBEZZLEMENT

SEC. 214. Section 650 of title 18 Appendix of the United States Code is amended by deleting "embezzlement, and".

AMENDMENTS TO TITLE 18 APPENDIX RELATING TO EMBLEMS, INSIGNIA, AND NAMES

SEC. 215. Chapter 33 of title 18 Appendix of the United States Code is amended as follows:

(a) Section 700 is amended by deleting "; penalties" in the caption.

(b) Section 706 is amended by deleting "whether a corporation, association or person,".

(c) Sections 706, 707, and 709 are amended by deleting "the date of enactment of this title" and substituting "June 25, 1948".

(d) Section 708 is amended by deleting "Whoever, whether a corporation, partnership, unincorporated company, association, or person" and substituting "A person who,".

(e) Section 709 is amended—

(1) in the third paragraph, by adding "falsely" before "advertise" the second place it appears;

(2) in the fifth paragraph—

(A) by deleting "organized under chapter 7 of Title 12" and substituting "an institution subject to the supervision of the Farm Credit Administration";

(B) by deleting "not issued under chapter 7 of Title 12" and substituting "not issued under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.)"; and

(C) by deleting "said chapter 7" and substituting "such Act";

(3) by deleting "date of enactment of this paragraph" and substituting "June 25, 1948".

(f) Section 712 is amended—

(1) by deleting "in the course" and substituting "being engaged in collecting his own debts or obligations, or being engaged in the business"; and

(2) by deleting "communication is from" and substituting "person or business is".

(g) Section 714 is amended—

(1) by deleting "Act" the first place it appears and substituting "section"; and

(2) by deleting "date of enactment of this Act" and substituting "September 25, 1970".

(h) Section 715 is amended by deleting "the date of enactment of this Act" and substituting "July 11, 1972".

(i) The section analysis is amended by deleting "; penalties" in the item relating to section 700.

AMENDMENTS TO TITLE 18 APPENDIX RELATING TO ESCAPE AND RESCUE

SEC. 216. Chapter 35 of title 18 Appendix of the United States Code is amended as follows:

(a) Section 756 is amended by deleting "nation" each place it appears in the caption and text and substituting "power".

(b) The section analysis is amended by deleting "nation" in the item relating to section 756 and substituting "power".

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AMENDMENTS TO TITLE 18 APPENDIX RELATING TO NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

SEC. 217. Section 799 of title 18 Appendix of the United States Code is amended by deleting ", attempt to violate, or conspire to violate".

AMENDMENTS TO TITLE 18 APPENDIX RELATING TO EXPLOSIVE AND OTHER DANGEROUS ARTICLES

SEC. 218. Chapter 39 of title 18 Appendix of the United States Code is amended as follows:

(a) Sections 831, 832(a), 832(b), 833, 834, and 835(a) are amended by deleting "Interstate Commerce Commission" each place it appears in the caption and text and substituting "Secretary of Transportation".

(b) Section 832 is amended—

(1) in subsections (a) and (b), by deleting "; and, if the death or bodily injury of any person results from a violation of this section, shall be fined not more than $10,000 or imprisoned not more than ten years, or both";

(2) in subsections (a) and (b), by deleting "Commission" each place it appears and substituting "Secretary"; and

(3) in subsection (c), by deleting "Atomic Energy" each place it appears and substituting "Nuclear Regulatory".

(c) Section 833 is amended by deleting "; and, if the death or bodily injury of any person results from the violation of this section, shall be fined not more than $10,000 or imprisoned not more than ten years, or both".

(d) Section 834 is amended—

(1) by deleting "Commission" the first place it appears in subsection (b), each place it appears in subsection (d), and the first place it appears in subsection (e), and substituting "Secretary";

(2) in subsection (b)—

(A) by deleting "Atomic Energy" and substituting "Nuclear Regulatory"; and

(B) by deleting "its" and substituting "his";

(3) in subsection (e), by deleting "itself" and substituting "himself"; and

(4) in subsection (f), by deleting ", and, if the death or bodily injury of any person results from such violation, shall be fined not more than $10,000 or imprisoned not more than ten years, or both".

(e) Section 835 is amended—

(1) in subsections (b) and (c), by deleting "Commission" each place it appears and substituting "Secretary";

(2) in subsection (b), by deleting "it" each place it appears and substituting "he" in the first place and "him" in the second place; and

(3) in subsection (c), by deleting "it" and substituting "the Interstate Commerce Commission".

(f) Section 836 is amended by deleting "or attempts so to do,".

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AMENDMENTS TO TITLE 18 APPENDIX RELATING TO FOREIGN RELATIONS

SEC. 219. Chapter 45 of title 18 Appendix of the United States Code is amended as follows:

(a) Sections 961, 962, 963, and 967 are amended by adding "or aircraft" after "vessel" each place it appears in the captions and text.

(b) Sections 961, 962, and 963 are amended by deleting "foreign prince or state, or of any colony, district, or people" each place it appears and substituting "foreign power".

(c) Section 961 is amended—

(1) by deleting "or belonging to the subjects or citizens of any such prince or state, colony, district, or people" and substituting "power"; and

(2) by deleting "whom" and substituting "which".

(d) Section 962 is amended—

(1) by deleting "arms, or attempts to furnish, fit out or arm" and substituting "or arms";

(2) by deleting "foreign prince, or state, or of any colony, district, or people" and substituting "foreign power"; and

(3) by deleting "whom" and substituting "which".

(e) Section 963 is amended by deleting "nation" each place it appears and substituting "power".

(f) Section 965(a) is amended by deleting "92,".

(g) Sections 965(a) and 966(a) are amended by deleting "collector of customs" and substituting "appropriate customs officer".

(h) Section 967 is amended by deleting "foreign belligerent nation" and substituting "belligerent foreign power".

(i) Section 970(c) is amended—

(1) by adding "(1)" after "(c)";

(2) by deleting "'foreign government',";

(3) by deleting "1116(b) of this title" and substituting "111 of title 18"; and

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

"(2) For the purpose of this section, 'foreign government' means the government of a foreign country, irrespective of recognition by the United States.".

(j) The items relating to sections 961, 962, 963, and 967 in the section analysis are amended by adding "or aircraft" after "vessel".

AMENDMENTS TO TITLE 18 APPENDIX RELATING TO DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SEC. 220. Section 1012 of title 18 Appendix is amended by deleting "such Department" and substituting "the Department of Housing and Urban Development".

AMENDMENTS TO TITLE 18 APPENDIX RELATING TO INDIANS

SEC. 221. Chapter 53 of title 18 Appendix of the United States Code is amended as follows:

(a) Section 1154 is amended—

(1) by amending subsection (a) to read as follows:

"(a) Whoever knowingly introduces any spirits, wine, or beer into the Indian country other than in conformity with an ordinance adopted pursuant to section 1161 or described in subsection (c) of this section is guilty of a Class B misdemeanor.", and

(2) in subsection (c), by deleting ", and this section does not apply to such lands or rights-of-way in the absence of a treaty or statute extending the Indian liquor laws thereto".

(b) Section 1161 is amended to read as follows:

"§ 1161. Indian liquor ordinances

"An Indian tribe having jurisdiction over Indian country, as defined in section 144 of the Criminal Code Reform Act of 1979, may adopt ordinances concerning dispensing, possession, and use of liquor in Indian country over which it has jurisdiction, consistent with the laws of the State in which the Indian country is located. Such ordinances shall be certified by the Secretary of the Interior and published in the Federal Register. All distribution of liquor in Indian country for which an Indian tribe has adopted such ordinances shall be distributed in accord with those ordinances.".

(c) Section 1164 is amended by deleting "1151 of this title" and substituting "144 of the Criminal Code Reform Act of 1979".

(d) Section 1165 is amended by deleting "Whoever" and substituting "Notwithstanding the provisions of section 1713 of title 18, whoever".

(e) The item relating to section 1161 in the section analysis is amended to read:

"1161. Indian liquor ordinances.".

AMENDMENTS TO TITLE 18 APPENDIX RELATING TO RANSOM MONEY

SEC. 222. Section 1202 of title 18 Appendix of the United States Code is amended—

(a) in subsections (a)(5) and (b)(5), by adding "or" at the end;

(b) in subsections (a) and (b) by adding the following new paragraph after paragraph (5):

"(6) is an unlawful user of or addicted to marihuana or any depressant or stimulant or narcotic drug as those terms are defined in section 102 of the Controlled Substances Act (21 U.S.C. 802),"; and

(c) in subsections (a) and (b), by deleting "in commerce or affecting commerce".

AMENDMENTS TO TITLE 18 APPENDIX RELATING TO LIQUOR TRAFFIC

SEC. 223. Chapter 59 of title 18 Appendix of the United States Code is amended as follows:

(a) Section 1261 is amended—

(1) in subsection (a), by deleting "Commissioner of Internal Revenue" and substituting "Director, Bureau of Alcohol, Tobacco and Firearms,"; and

(2) by amending subsection (b) to read as follows:

"(b) There is Federal jurisdiction over an offense described in this chapter if the offense is committed in the general jurisdiction of the United States as described in section 202 of title 18, except that there is no jurisdiction of an offense committed in the Canal Zone.".

(b) Section 1262 is amended by deleting "or attempts so to do, or assists in so doing, Shall".

(c) Sections 1263, 1264, and 1265 are amended by deleting "spirituous, vinous, malted, or other fermented liquor" each place it appears and substituting "spirits, wine, or beer".

(d) Section 1265 is amended by deleting "railroad or express company, or other common carrier which, or any".

AMENDMENTS TO TITLE 18 APPENDIX RELATING TO LOTTERIES

SEC. 224. Chapter 61 of title 18 Appendix of the United States Code is amended as follows:

(a) Section 1302 is amended by deleting "Any article described in section 1953 of this title—".

(b) Section 1307 is amended—

(1) by redesignating subsections (c) and (d) as subsections (e) and (f), respectively; and

(2) by adding the following new subsections after subsection (b):

"(c) The provisions of sections 1301, 1302, 1303, and 1304 shall not apply to an advertisement, list of prizes, or information concerning a lottery, gift enterprise, or similar scheme conducted by a nonprofit or charitable organization in accordance with State and local law—

"(1) published in a newspaper in that State or in which such lottery, gift enterprise or similar scheme is legal; or

"(2) broadcast by a radio or television station licensed to a location in that State or in a State in which such lottery, gift enterprise or similar scheme is legal.

"(d) The provisions of sections 1301, 1302, and 1303 shall not apply to the transportation or mailing to addresses within a State of tickets and other materials concerning a lottery, gift enterprise or similar scheme conducted by a charitable or nonprofit organization in accordance with State and local law in that State from a State in which such lottery, gift enterprise or similar scheme is legal.".

AMENDMENTS TO TITLE 18 APPENDIX RELATING TO USE OF ARMY AND AIR FORCE AS POSSE COMITATUS

SEC. 225. Section 1385 of title 18 Appendix of the United States Code is amended—

(a) by deleting "Army or the" and substituting "Army, Navy, or "; and

(b) by adding at the end thereof the following: "Nothing in this section shall be construed to affect the law enforcement functions of the Coast Guard.".

AMENDMENTS TO TITLE 18 APPENDIX RELATING TO PASSPORTS AND VISAS

SEC. 226. Chapter 75 of title 18 Appendix of the United States Code is amended as follows:

(a) Section 1543 is amended by deleting ", or attempts to use," and "any such false, forged, counterfeited, mutilated or altered passport or instrument purporting to be a passport, or".

(b) Section 1544 is amended by deleting "or attempts to use".

AMENDMENTS TO TITLE 18 APPENDIX RELATING TO POSTAL SERVICE

SEC. 227. Chapter 83 of title 18 Appendix of the United States Code is amended as follows:

(a) Section 1703(b) is amended—

(1) by adding "or mail contractor or employee of such contractor," after "employee,";

(2) by deleting ", delays, or destroys" and substituting "or delays";

(3) by adding "or mail" after "newspaper";

(4) by deleting ", delay, or destroy" and substituting "or delay"; and

(5) by deleting "opens, or destroys" and substituting "opens".

(b) Section 1704 is amended—

(1) by deleting "stolen or" in the caption; and

(2) by amending the first paragraph (formerly the second paragraph) to read as follows:

"Whoever knowingly and unlawfully makes, forges, or counterfeits a key suited to a lock adopted by the Post Office Department or the Postal Service and in use on any of the mails or bags thereof, or a key to a lock box, lock drawer, or other authorized receptacle for the deposit or delivery of mail matter, or knowingly and unlawfully possesses such a mail lock or key, with the intent unlawfully to use, sell, or otherwise dispose of the same, or to cause the same to be unlawfully or improperly used, sold, or otherwise disposed of; or".

(c) Section 1705 is amended by deleting "or breaks open the same or willfully or maliciously injures, defaces, or destroys any mail therein,".

(d) Section 1711 is amended by deleting "This section" and substituting "Section 1731 of title 18".

(e) Section 1712 is amended—

(1) in the caption, by deleting "Falsification of postal returns" and substituting "Inducements";

(2) by deleting "station" and substituting "postal facility";

(3) by deleting ", or attempts to induce,"; and

(4) by adding "or postal facility" after "post office" the second place it appears in the first paragraph (formerly the second paragraph).

(f) Section 1713 is amended by adding "or other person authorized by the Postal Service to issue money orders" after "Service".

(g) Section 1716(f) is amended by deleting "spirituous, vinous, malted, fermented, or other intoxicating liquors of any kind" and substituting "spirits, wine, or beer".

(h) Section 1717 is amended—

(1) in subsection (a), by deleting "in violation of section 499, 506, 793, 915, 954, 956, 957, 960, 964, 1017, 1542, 1543, 1544 or 2388 of this title" and substituting "the mailing of which is an offense under, or the mailing of which results in federal jurisdiction of an offense under, or the mailing of which is involved in an offense under, section 1101, 1102, 1114, 1116, 1117, 1121, 1122, 1123, 1124, 1125, 1131, 1201, 1202, 1204, 1211, 1212, 1215, or 1301 if the offense involves the fraudulent use of the seal of a department or agency of the United States, 1303, 1343 if there is jurisdiction under section 1343(c)(2), 1741, or 1742 of title 18,"; and

(2) in subsection (b), by deleting "or attempts to use".

(i) Section 1723 is amended by deleting "by stamps affixed" in the first paragraph.

(j) Section 1725 is amended by deleting "no postage has been paid" and substituting "the lawful postage has not been paid".

(k) Section 1729 is amended by adding "postal service, mail service, or similar words which imply that the office or business is conducted by authority of the Postal Service".

(l) Section 1730 is amended—

(1) by deleting "connected with the letter-carrier branch" and substituting "an employee or agent";

(2) by deleting "letter carriers" and substituting "an employee or agent of the Postal Service authorized to wear that uniform or badge";

(3) in the second paragraph, by deleting "the letter-carrier branch" and substituting "an employee or agent"; and

(4) by deleting ", if the portrayal does not tend to discredit that service".

(m) Section 1731 is amended—

(1) by deleting "steamboat or other vessel, or any car, stagecoach, vehicle, or other" each place it appears;

(2) by adding "operating by land, air, or water" after "conveyance" the first place it appears;

(3) by adding "such" before "conveyance" the second place it appears; and

(4) by deleting ", and every owner, receiver, lessee, or managing operator who suffers, or permits the violation of,".

(n) Section 1732 is amended by deleting "postmaster" and substituting "contracting officer or other authorized representative of the Postal Service".

(o) Section 1734 is amended by deleting "entered as second class mail" and substituting "entitled to a periodical publication rate".

(p) The section analysis is amended—

(1) in the item relating to section 1704, by deleting "stolen or"; and

(2) in the item relating to section 1712, by deleting "Falsification of postal returns" and substituting "Inducements".

AMENDMENTS TO TITLE 18 APPENDIX RELATING TO TEMPORARY RESIDENCE OF THE PRESIDENT

SEC. 228. Section 1752 of title 18 Appendix of the United States Code is amended—

(a) in subsection (a), by deleting "or group of persons";

(b) in subsection (a)(1)(i)—

(1) by deleting "temporary residences" and substituting "a temporary residence";

(2) by deleting "temporary offices" and substituting "a temporary office"; and

(3) by adding "and in which the President is or will be temporarily living or staying;" after "staff,";

(c) in subsection (a)(1)(ii), by adding "if the restrictions are necessary to protect the President's safety and to permit his ingress to or egress from the building or grounds;" after "visiting,";

(d) in subsection (b), by deleting ", and attempts or conspiracies to commit such violations,"; and

(e) in subsection (d) (2)—

(1) by adding "to" after "ingress"; and

(2) by deleting "egress to" and substituting "egress from".

AMENDMENTS TO TITLE 18 APPENDIX RELATING TO PRISON-MADE GOODS

SEC. 229. Chapter 85 of title 18 Appendix of the United States Code is amended as follows:

(a) Sections 1761(a) and 1762(a) are amended—

(1) by adding "Except as permitted under section 3822 of title 18, chapters 37 and 38 of title 28, and any statute of any State or political subdivision thereof authorizing release of inmates for purposes of employment;" after "(a)";

(2) by adding "or serving a term of supervised release" after "probation"; and

(3) by deleting "reformatory institution" each place it appears and substituting "correctional facility".

(b) Section 1761(a) is amended by deleting "Whoever" and substituting "whoever".

(c) Section 1762(a) is amended by deleting "All" and substituting "all".

AMENDMENTS TO TITLE 18 APPENDIX RELATING TO BIDS AT LAND SALES

SEC. 230. Section 1860 of title 18 Appendix of the United States Code is amended by deleting ", or attempts to bargain, contract, or agree" and ", or attempts to hinder or prevent,".

AMENDMENTS TO TITLE 18 APPENDIX RELATING TO PUBLIC OFFICERS AND EMPLOYEES

SEC. 231. Chapter 93 of title 18 Appendix of the United States Code is amended as follows:

(a) Section 1907 is amended—

(1) by deleting the comma after "association" and substituting "or";

(2) by deleting "or joint-stock land bank,";

(3) by deleting "law relating to Federal intermediate credit banks" and substituting "the Farm Credit Act of 1971"; and

(4) by deleting "Land Bank Commissioner" and substituting "Governor of the Farm Credit Administration or his designee".

(b) Section 1909 is amended by deleting "of National Agricultural Credit Corporations" and substituting "for the Federal Reserve System".

(c) Section 1913 is amended in the second paragraph by deleting "or attempts to violate".

(d) Section 1915 is amended by deleting "or attempts to compromise or abate" and "or attempts to relieve".

(e) Section 1916(1) is amended by deleting "; or" and "—(1)".

(f) Section 1917(1) is amended by adding ", or according to regulations by the Postal Service" after "section 1302(a) of title 5".

(g) Section 1922 is amended—

(1) in the caption, by deleting "False or withheld" and substituting "Withheld"; and

(2) by deleting "or knowingly files a false report,".

(h) The item relating to section 1922 in the section analysis is amended by deleting "False or withheld" and substituting "Withheld".

AMENDMENTS TO TITLE 18 APPENDIX RELATING TO FALSE WEATHER REPORTS

SEC. 232. Section 2074 of title 18 Appendix of the United States Code is amended by deleting "Weather Bureau" and substituting "National Weather Service".

AMENDMENTS TO TITLE 18 APPENDIX RELATING TO SHIPPING

SEC. 233. Chapter 111 of title 18 Appendix of the United States Code is amended as follows:

(a) Section 2274 is amended—

(1) by deleting "Whoever, being" and substituting "If, with the knowledge of the owner or master or other person in charge or command thereof,"; and

(2) by deleting "shall be fined not more than $10,000 or imprisoned not more than ten years, or both. In case such vessels are so used, with the knowledge of the owner or master or other person in charge or command thereof,".

(b) Section 2278 is amended by deleting "Whoever" and substituting "Except as provided in section 1617 of title 18, whoever".

AMENDMENTS TO TITLE 18 APPENDIX RELATING TO TRAFFICKING IN CONTRABAND CIGARETTES

SEC. 234. Chapter 114 of title 18 Appendix of the United States Code is amended as follows:

(a) Section 2344 is amended to read as follows:

"§ 2344. Penalties

"Whoever knowingly violates a rule or regulation promulgated under section 2343(a) or 2346 is guilty of a Class A misdemeanor.".

(b) Section 2345 is amended by adding "section 1806 or 4001 of title 18" after "chapter".

AMENDMENTS TO TITLE 18 APPENDIX RELATING TO ARREST AND COMMITMENT

SEC. 235. Chapter 203 of title 18 Appendix of the United States Code is amend - l as follows:

(a) Section 3054 is amended—

(1) by adding "or the Secretary of Commerce" after "Interior";

(2) by adding "41," before "42" each place it appears; and

(3) by adding "in addition to any other authority provided by law," after "customs,".

(b) Section 3056 is amended to read as follows—

"§ 3056. Secret Service powers

"(a) Subject to the direction of the Secretary of the Treasury, the United States Secret Service, Department of the Treasury, is authorized to pay expenses for unforeseen emergencies of a confidential nature under the direction of the Secretary of the Treasury and accounted for solely on his certificate.

"(b) Moneys expended from Secret Service appropriations for the purchase of counterfeits and subsequently recovered shall be reimbursed to the appropriation current at the time of deposit.".

(c) Section 3058 is amended—

(1) by deleting "nation or belligerent faction" and substituting "foreign power";

(2) by deleting "marshal or deputy marshal of the United States, or by the military or naval authorities thereof" and substituting "federal law enforcement officer authorized to arrest for violations of the federal criminal laws"; and

(3) by deleting "returned to the" and substituting "taken to an appropriate".

AMENDMENTS TO TITLE 18 APPENDIX RELATING TO SEARCH WARRANTS FOR SEIZURES OF ANIMALS, BIRDS, OR EGGS

SEC. 236. Section 3112 of title 18 Appendix of the United States Code is amended—

(a) by adding "or the Secretary of Commerce" after "Interior";

(b) by adding "41," before "42" each place it appears; and

(c) by adding "in addition to any other authority provided by law," after "customs,".

AMENDMENTS TO TITLE 18 APPENDIX RELATING TO VESSELS CARRYING EXPLOSIVE AND STEERAGE PASSENGERS

SEC. 237. Section 3620 of title 18 Appendix of the United States Code is amended by adding ", or for violating section 1617 of title 18 by taking, carrying, or having on board anything described in section 2278 of this title," after "2278".

TITLE VII—TECHNICAL AND CONFORMING AMENDMENTS TO PROVISIONS OUTSIDE TITLE 18 AND TITLE 18 APPENDIX

PART A—REPEALERS

SEC. 301. The following provisions of law and their predecessors, are repealed: section 102 of the Revised Statutes (2 U.S.C. 192); section 11 of the Federal Contested Elections Act (2 U.S.C. 390); section 9(a) and the last sentence of section 9(b) of the Commodity Exchange Act (7 U.S.C. 13 (a) and (b)); section 1952(d)(3) of the United States Cotton Futures Act (7 U.S.C. 15b(d)(3)); ion 13 (a)(3), (a)(7), (a)(8), (a)(9), (a)(10), (a)(12), (b)(3) and (b)(4), and section 17(e) of the United States Grain Standards Act (7 U.S.C. 87b (a)(3), (a)(7), (a)(8), (a)(9), (a)(10), (a)(12), (b)(3), and (b)(4) and 87i(e)); the last sentence of section 314 of the Packers and Stockyards Act (7 U.S.C. 215); section 3c–1 (a), (b), and (d) of the Cotton Statistics and Estimates Act (7 U.S.C. 473c–1 (a), (b), and (d)); section 10 (e) and (f) of the Tobacco Inspection Act (7 U.S.C. 511i (e) and (f)); section 15 (b–3)(1), (b–3)(2), and (b–3)(3) and section 20 of the Agricultural Adjustment Act (7 U.S.C. 615 (b–3)(1), (b–3)(2), and (b–3)(3) and 7 U.S.C. 620); section 379i(d) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1379i(d)); section 15 (b), (c), (d), and (e) of the Food Stamp Act of 1964 (7 U.S.C. 2024 (b), (c), (d) and (e)); section 9(c) of the Farm Labor Contract Registration Act of 1963; section 16(b) of the Animal Welfare Act (7 U.S.C. 2131(b)); section 313(b)

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of the Potato Research and Promotion Act (7 U.S.C. 2622(b)); sections 215 (a)(3) and (a)(6), 241(a)(6)(E), 274 (a) and (c), 275, 276, 277, and 278 of the Immigration and Nationality Act (8 U.S.C. 1185 (a)(3) and (a)(6), 1251(a)(6)(E), 1324 (a) and (c), 1325, 1326, 1327, and 1328); section 847 of title 10, United States Code; section 816(d)(7) of the Act of October 7, 1975 (10 U.S.C. 2304 note); section 2683 of title 10, United States Code; the twenty-fourth paragraph of section 25(a) of the Federal Reserve Act (12 U.S.C. 630); section 15(b) of the Agricultural Marketing Act (12 U.S.C. 1141j(b)); section 308 (b), (c), and (d) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1457(b), (c), and (d)); section 408(j)(3) of the National Housing Act (12 U.S.C. 1730a(j)(3)); the last sentence of section 204(c) of the Act of October 19, 1970 (12 U.S.C. 1784(c)); the last sentence of section 8(n) of the Federal Deposit Insurance Act (12 U.S.C. 1818(n)); the last sentence of section 8(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1847(a)); sections 126 and 127 of the Act of October 26, 1970 (12 U.S.C. 1956 and 1957); sections 211(1) and 213 of title 13, United States Code; the first paragraph of section 10 of the Federal Trade Commission Act (15 U.S.C. 50); the last sentence of the first paragraph of section 5 of the Webb-Pomerene Act (15 U.S.C. 65); the last sentence of section 20(b) of the Securities Act of 1933 (15 U.S.C. 77t(b)); the last sentence of section 21(c), the second sentence of section 27, section 30A, and section 32 (c)(1), (c)(2), and (c)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(c), 78aa, 78dd–1, and 78ff (c)(1), (c)(2), and (c)(3)); section 104 of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd–2); section 14(c) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78jjj(c)); the last sentence of section 18(d) and the second sentence of section 25 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79r(d) and 79y); section 37, the last sentence of section 42(c), and the second and third sentences of section 44 of the Investment Company Act of 1940 (15 U.S.C. 80a–36, 80a–41(c), and 80a–43); the last sentence of section 209(c) and the second sentence of section 214 of the Investment Advisors Act of 1940 (15 U.S.C. 80b–9(c) and 80b–14); the last sentence of section 5(a) of the Act of June 13, 1960 (15 U.S.C. 298(a)); section 16 (a), (b)(1), (b)(2), (b)(3), and (c) of the Small Business Act (15 U.S.C. 645 (a), (b)(1), (b)(2), (b)(3), and (c)); section 15 (a), (b), (c), and (d) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714m (a), (b), (c), and (d)); the second sentence of section 10(c) of the Act of February 22, 1935 (15 U.S.C. 715i(c)); the last sentence of section 14(d) and the second sentence of section 22 of the Natural Gas Act (15 U.S.C. 717m(d) and 717u); the first paragraph of section 2 of the Act of January 2, 1951 (15 U.S.C. 1172); sections 1 and 2 of the Act of September 13, 1961 (15 U.S.C. 1281 and 1282); section 916(b) of the Electronic Fund Transfer Act (15 U.S.C. 1693n(b)); section 6(a)(2)(C) of the Horse Protection Act of 1970 (15 U.S.C. 1825(a)(2)(C)); sections 6 and 10(b) of the Act of August 18, 1970 (16 U.S.C. 1a–3 and 1a–6(b)); section 1 of the Act of March 3, 1897 (16 U.S.C.

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413); section 5(b) of the Act of March 16, 1934 (16 U.S.C. 718e(b)); the last sentence of section 307(c) and the second sentence of section 317 of the Federal Power Act (16 U.S.C. 825f(c) and 825p); section 21 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831t); the last sentence of section 8(a) of the Act of December 17, 1971 (16 U.S.C. 1338(a)); sections 506(e) and 507(a) of title 17, United States Code; section 341, the second paragraph of section 436, the last sentence of section 455, the last sentence of section 465, and section 581(c) of the Tariff Act of 1930 (19 U.S.C. 1341, 1436, 1455, 1465, and 1581(c)); section 8(b) of the Anti-Smuggling Act (19 U.S.C. 1708(b)); section 319 of the Trade Expansion Act of 1962 (19 U.S.C. 1919); sections 244 and 259 of the Trade Act of 1974 (19 U.S.C. 2316 and 2349); section 1001(f)(3) of the National Defense Education Act of 1958 (20 U.S.C. 581); section 440 (a), (b), (c), and (e) of the Higher Education Act of 1965 (20 U.S.C. 1087–4 (a), (b), (c), and (e)); the second sentence of section 2 of the Act of July 1, 1902 (21 U.S.C. 17); the Act of March 3, 1915 (38 Stat. 817, 21 U.S.C. 201 to 215); section 12(c) of the Poultry Products Inspection Act (21 U.S.C. 461(c)); sections 22 and 406 of the Federal Meat Inspection Act (21 U.S.C. 622 and 675); sections 401(a), 401(b), 401(c), 402(c)(2)(B), 403(b), 404, 405, 406, 407, 408, 409, 410, 411, 508, and 514 of the Controlled Substances Act (21 U.S.C. 841(a), 841(b), 841(c), 842(c)(2)(B), 843(b), 844, 845, 846, 847, 848, 849, 850, 851, 878, and 884); sections 1005, 1009, 1010(b), 1010(c), and 1012 of the Controlled Substances Import and Export Act (21 U.S.C. 955, 959, 960(b), 960(c), and 962); section 12(c) of the Egg Products Inspection Act (21 U.S.C. 1041(c)); sections 1693, 4083 through 4091, 4097 through 4122, and 4125 through 4130 of the Revised Statutes (21 U.S.C. 141 to 181, and 183); section 1 of the Act of March 23, 1874, ch. 62 (22 U.S.C. 182); the last sentence of section 5 of the Foreign Agents Registration Act of 1938 (22 U.S.C. 615); section 8(e) of the Foreign Agents Registration Act of 1938 (22 U.S.C. 618(e)); sections 1734 and 1737 of the Revised Statutes (22 U.S.C. 1198 and 1200); the Act of July 2, 1948 (25 U.S.C. 232); section 6 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450d); the last sentence of section 5557(a), sections 5603(a)(4), 5603(b)(4), 5685, 6533(3), 7201, 7202, 7204, 7206, 7208, 7209, 7214(a)(4), 7214(a)(5), 7214(a)(6), 7214(a)(7), 7214(a)(9), and 7214(a) of the Internal Revenue Code of 1954 (26 U.S.C. 5557(a), 5603(a)(4) 5603(b)(4), 5685, 6533(3), 7201, 7202, 7204, 7206, 7208, 7209, 7214(a)(4), 7214(a)(5), 7214(a)(6), 7214(a)(7), 7214(a)(9) and 7215(a)); section 9012 (c), (d)(1)(A), (e)(1), and (e)(2) of the Presidential Election Campaign Fund Act (26 U.S.C. 9012 (c), (d)(1)(A), (e)(1), and (e)(2)); section 9042 (a), (b), (c), (d)(1), and (d)(2) of the Presidential Primary Matching Payment Account Act (26 U.S.C. 9042 (a), (b), (c), (d)(1), and (d)(2)); section 502(4), the last sentence of section 1864(b) and sections 2902(e), 3106(c)(3) 4106(b), and 4106(c) of title 28 United States Code; section 302(a)(14) of the Labor Management Relations Act (29 U.S.C. 186(a)(4));

sections 209(b), 209(c), 301(d), 501(c), 522, and 528 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 439(b), 439(c), 461(d), 501(c), 602, and 608); section 10 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 629); section 17(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 666(g)); section 9(a) of the Act of October 3, 1961 (30 U.S.C. 689(a)); sections 110(f) and 431 of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 820(f) and 941); sections 402(d), 518(g), and 704 of the Surface Mining and Reclamation Act of 1977 (30 U.S.C. 1232(d), 1268(g), and 1294); the second sentence of section 3492 of the Revised Statutes (31 U.S.C. 233); sections 209, 210, and 211 of the Currency and Foreign Transactions Reporting Act (31 U.S.C. 1058, 1059, and 1060); the last sentence of section 13 of the Act of June 20, 1874 (33 U.S.C. 364); sections 4300 to 4305 of the Revised Statutes (33 U.S.C. 391 to 396); the fifth paragraph of section 3 of the Act of June 29, 1888 (33 U.S.C. 447); the last sentence of section 4 of the Act of August 21, 1935 (33 U.S.C. 506); the first sentence of section 22 of the Act of March 1, 1893 (33 U.S.C. 682); sections 31 and 38(b) of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 931 and 938(b)); section 9 of the Act of May 13, 1954 (33 U.S.C. 990); section 13(b)(2) of the Ports and Waterways Safety Act (33 U.S.C. 1232(b)(2)); the last sentence of section 309(c)(1), and the last sentence of section 404(s)(4)(A), of the Federal Water Pollution Control Act (33 U.S.C. 1320(c)(1) and 1344(s)(4)(A)); sections 787, 3501, 3502, and 5007 of title 38, United States Code; section 1008(b) of title 39, United States Code; the proviso in section 8 of the Act of August 18, 1949 (40 U.S.C. 13m); the second sentence of section 15 of the Act of July 29, 1892 (40 U.S.C. 101); the proviso in section 6 of the Act of October 24, 1951 (40 U.S.C. 193(s)); section 14 of the Pennsylvania Avenue Development Corporation Act of 1972 (40 U.S.C. 883); section 4 of the Act of March 8, 1946 (41 U.S.C. 54); sections 346(b), 346(c), and 1318(h) of the Public Health Service Act (42 U.S.C. 261(b), 261(c), and 300e–17(h)); sections 208 (a) through (g), 1114(h), 1632, 1877(a), 1877(b)(1), 1877(b)(2), 1877(c), the first sentence of section 1909(a), and sections 1909(b)(1), 1909(b)(2), and 1909(c) of the Social Security Act (42 U.S.C. 408 (a) through (g), 1314(h), 1383a, 1395nn(a), 1395nn(b)(1), 1395nn(b)(2), 1395nn(c), 1396h(a), 1396h(b)(1), 1396h(b)(2), and 1396h(c)); section 203 of the War Hazards Compensation Act (42 U.S.C. 1713); sections 12(g) and 13(*o*) of the National School Lunch Act (42 U.S.C. 1760(g) and 1761(*o*)); sections 11, 12(a), 12(c), 202(i), and 301(b) of the Voting Rights Act of 1965 (42 U.S.C. 1973i, 1973j(a), 1973j(c), 1973aa–1(i) and 1873bb(b)); section 7(c) of the Overseas Citizens Voting Rights Act of 1975 (42 U.S.C. 1973dd–3(c)); section 105(d) of the Civil Rights Act of 1957 (42 U.S.C. 1975d(d)); sections 1982, 1983, 1984, and 1988 of the Revised Statutes (42 U.S.C. 1987, 1989, and 1992); section 151 of the Act of September 9, 1957 (42 U.S.C. 1995); sections 714, 1101, and 1102 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–13,

2000h, and 2000h–1); the third sentence of section 157a. of the Atomic Energy Act of 1954 (42 U.S.C. 2187(a)); section 626 of the Economic Opportunity Act of 1964 (42 U.S.C. 2971f); section 710 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3220); sections 315 and 316 of the Narcotic Addict Rehabilitation Act of 1966 (42 U.S.C. 3425 and 3426); the first sentence of section 811(f), and section 901, of the Act of April 11, 1968 (42 U.S.C. 3611(f) and 3631); Part H of Title I of the Omnibus Crime Control and Safe Streets Act (42 U.S.C. 3791 to 3793); the second sentence of section 11(a)(1) of the Noise Control Act of 1972 (42 U.S.C. 4910(a)(1)); section 317(a) of the Disaster Relief Act of 1974 (42 U.S.C. 5157(a)); paragraph (3), and the last sentence of, section 3008(d) of the Solid Waste Disposal Act (42 U.S.C. 6928(d)); section 3 of the Act of January 31, 1903 (43 U.S.C. 104); paragraph (2) and the last sentence of section 24(c) of the Outer Continental Shelf Lands Act (43 U.S.C. 1350(c)); the last sentence of section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)); sections 4187 and 4191 of the Revised Statutes (46 U.S.C. 58 and 62); section 13 of the Act of September 29, 1965 (46 U.S.C. 83i); section 4472(15) of the Revised Statutes (46 U.S.C. 170(15); the third paragraph of section 5 of the Act of May 12, 1948 (46 U.S.C. 229e); the third sentence of section 4445 of the Revised Statutes (46 U.S.C. 231); sections 4450(i), 4376, 4417a(14)(B)(ii), 4425, and 4605 of the Revised Statutes; (46 U.S.C. 239(i), 324, 391a(14)(B)(ii), 403, and 707); the second paragraph of section 40, and the second paragraph of section 41, of the Shipping Act, 1916 (46 U.S.C. 838 and 839); the last sentence of section 601(b), section 806(b), and section 1106 of the Merchant Marine Act, 1936 (46 U.S.C. 1171(b), 1228, and 1276); sections 1, 2, and 11 of the Submarine Cable Act (47 U.S.C. 21, 22, and 31); sections 409(m) and 505 of the Communications Act of 1934 (47 U.S.C. 409(m) and 505); section 5576 of the Revised Statutes (48 U.S.C. 1417); section 8 of the Act of March 22, 1882 (48 U.S.C. 1461); the last sentence of section 1(1) of the Act of February 10, 1903 (49 U.S.C. 41(1)); section 902(g), the last sentence of section 902(h)(2), the last sentence of section 902(j), section 902 (k)(1), (*l*)(1), (*l*)(2), (m), (n), and (p), and section 903(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1472 (g), (h)(2), (j), (k)(1), (*l*)(1), (*l*)(2), (m), (n), and (p), and 1473(a)); section 25 of the Airport and Airway Development Act of 1970 (49 U.S.C. 1725); the second sentence of section 110(b) of the Hazardous Materials Transportation Act (49 U.S.C. 1809(b)); sections 11903(d), 11904 (a)(3) and (c)(3) and 11907, section 11909 (a)(1), (a)(2), (a)(5) (through "Commission,"), and (b)(4), (b)(5), (b)(6), (c)(4), (c)(5), (c)(7) (through "Commission,"), (d)(4), (d)(5), and (d)(6), the last sentence of section 11909(c), section 11913, and the last sentence of section 11914(c) of title 49, United States Code; sections 4(a) and 13(d)(3) of the Subversive Activities Control Act of 1950 (50 U.S.C. 783(a) and 792(d)(3)); section 109 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1809); sections 6 and 7 of the Act of August 1,

1956 (50 U.S.C. 855 and 856); section 12 (b)(3) and (b)(5) of the Military Selective Service Act (50 U.S.C. App. 462 (b)(3) and (b)(5)); section 200(2) of the Soldiers' and Sailors' Relief Act of 1940 (50 US.C. App. 520(2)); the last sentence of section 1303 of the Act of March 27, 1942 (50 U.S.C. App. 643b); the second sentence of section 2(a)(6) of the Act of June 29, 1940 (50 U.S.C. App. 1152(a)(6)); section 4 of the Housing and Rent Act of 1947 (50 U.S.C. App. 1884); the second sentence of section 706(b) of the Defense Production Act of 1950 (50 U.S.C. App. 2156(b)); section 710(f) of the Defense Production Act of 1950 (50 U.S.C. App. 2160(f)); the last sentence of section 403(b) of the Federal Civil Defense Act of 1950 (50 U.S.C. App. 2255(b)); and section 7(b) of the Export Administration Act of 1969 (50 U.S.C. App. 2406(b)).

PART B—AMENDMENTS RELATING TO THE CONGRESS, TITLE 2, UNITED STATES CODE

SEC. 311. Section 3 of the Act of August 4, 1950 (2 U.S.C. 167g) is amended by deleting ": *Provided*, That in any case where, in the commission of any such offense, public property is damaged in an amount exceeding $100, the period of imprisonment for the offense may be not more than five years".

SEC. 312. Section 104 of the Revised Statutes (2 U.S.C. 194) is amended by deleting "witness summoned as mentioned in section 102" and inserting in lieu thereof "person summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or a joint committee established by a joint or concurrent resolution of the two Houses of Congress, or a committee of either House of Congress,".

SEC. 313. The Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) is amended as follows:

(a) Section 329, as added by section 112 of the Federal Election Campaign Act Amendments of 1976 (2 U.S.C. 441j) is amended by deleting "Any" and substituting "Except as provided in section 1517 of title 18, United States Code, and section 601 of title 18 Appendix, United States Code, any".

(b) Section 406, as added by section 302 of the Federal Election Campaign Act of 1974 (2 U.S.C. 455) is amended to read as follows:

"BAR TO PROSECUTION

"SEC. 406. Notwithstanding any other provision of law, no criminal proceeding shall be instituted against any person for any act or omission which was a violation of title III of this Act, as it was in effect on December 31, 1974, if such act or omission does not constitute a violation of any such provision, as amended by the Federal Election Campaign Act Amendments of 1974. Nothing in this section shall affect any proceeding pending in any court of the United States on January 1, 1975.".

PART C—AMENDMENTS RELATING TO GOVERNMENT ORGANIZATION AND EMPLOYEES, TITLE 5, UNITED STATES CODE

SEC. 321. Chapter 3 of title 5, United States Code, is amended—

(a) by adding the following new section at the end thereof:

"§ 306. Relinquishment of jurisdiction

"Notwithstanding any provision of law to the contrary, and in addition to any authority otherwise provided by law, the head of a federal department or agency, the head of the United States Postal Service, and the Board of Directors of the Tennessee Valley Authority, shall consider the appropriateness of relinquishing to a State all or part of the legislative jurisdiction of the United States over all or part of lands or interests therein under its control in that State, except those in Indian country, and may, with the concurrence of the Attorney General, relinquish such jurisdiction as is found to be appropriate. Relinquishment of such jurisdiction shall be initiated by filing a notice of relinquishment with the Governor of the State concerned, or in such other manner as may be prescribed by the laws of such State, and shall take effect upon acceptance by such State. The Attorney General shall be promptly notified of the initiation of relinquishment procedures and of the acceptance of jurisdiction by the State concerned."; and

(b) by adding at the end of the section analysis the following new item:

"306. Relinquishment of jurisdiction.".

SEC. 322. Section 701(b)(1)(B) of title 5, United States Code, is amended by adding "and the United States Sentencing Commission" after "United States".

SEC. 323. Section 3374(c)(2) is amended—

(a) by deleting "602, 603, 607, 643, 654,";

(b) by adding "Appendix" after "title 18"; and

(c) by adding ", and is a Federal public servant for purposes of title 18" after "statute".

SEC. 324. Section 7313(a) is amended—

(a) in paragraph (1), by adding "or leading" after "inciting"; and

(b) in paragraph (2), by deleting "participating" and substituting "engaging".

SEC. 325. Chapter 83 of title 5, United States Code, is amended as follows:

(a) Section 8312(b)(1) is amended to read as follows:

"(1) An offense within the purview of—

"(A) section 1121 (Espionage), 1122 (Disseminating National Defense Information), 1123 (Disseminating Classified Information), 1124 (Receiving Classified Information), or 1311 (Hindering Law Enforcement) (if the offense involves a person the offender knows or has reasonable grounds to suspect has committed an offense under section 1121, 1122, 1123, or 1124 of title 18) of title 18;

"(B) section 1111 (Sabotage), 1112 (Impairing Military Effectiveness), 1302 (Obstructing a Government Function by Physical Inter-

ference), subchapter A of chapter 17 (Arson and Other Property Destruction Offenses, if the offense involves the national defense), or section 1712 or 1713 (Criminal Entry or Criminal Trespass) (if the offense involves the national defense) of title 18;

"(C) section 1101 (Treason), 1102 (Armed Rebellion or Insurrection), 1115 (Obstructing Military Recruitment or Induction), 1116 (Inciting or Aiding Mutiny, Insubordination, or Desertion), 1203 (Entering or Recruiting for a Foreign Armed Force), or 1311 (Hindering Law Enforcement) (if the offense involves a person the offender knows or has reasonable grounds to suspect has committed or is about to commit an offense described in section 1101 or 1102 of title 18) of title 18;

"(D) section 1002 (Criminal Conspiracy) of title 18, if the conspiracy relates to an offense listed in paragraph (1)(A), (1)(B) or (1)(C) of this subsection;

"(E) section 1131 (Atomic Energy Offices) of title 18, insofar as the conduct is engaged in with intent that it operate to the prejudice of the safety or interest of the United States or to the advantage of a foreign power; or

"(F) an earlier statute on which a statute named by subparagraph (A), (B), (C), or (D) of this paragraph (1) is based.".

(b) Section 8312(c)(1) is amended to read as follows:

"(1) An offense within the purview of—

"(A) section 1131 (Atomic Energy Offenses) of title 18, insofar as the conduct is engaged in with intent that it operate to the prejudice of the safety or interest of the United States or to the advantage of a foreign power;

"(B) section 1121 (Espionage), 1122 (Disseminating National Defense Information), 1123 (Disseminating Classified Information), or 1124 (Receiving Classified Information) of title 18;

"(C) section 1101 (Treason), 1102 (Armed Rebellion or Insurrection), or 1103 (Engaging in Paramilitary Activity) of title 18.".

(c) The amendments made by subsections (a) and (b) of this section are not applicable, for the purposes of subsections (b) and (c) of section 8312, section 8313, and section 8315 of title 5, United States Code, to a convicted individual referred to in such subsection (b) or (c) of section 8312, 8313, or 8315 if the commission of the offense occurred prior to the effective date of this subsection. The provisions of subsections (b) and (c) of sections 8312, 8313, and 8315 as they existed on the date immediately preceding the effective date of this subsection shall continue to apply to such individual in the same manner and to the same extent as if the amendments made by this section were never enacted.

PART D—AMENDMENTS RELATING TO AGRICULTURE, TITLE 7, UNITED STATES CODE

SEC. 331. The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended as follows:

(a) Sections 6(a) and 6(b) (7 U.S.C. 8 and 9) are amended—

(1) by adding "or of section 1763(a)(1) of title 18, United States Code, or of section 1731 of title 18, if there is jurisdiction under section 1731(c)(19) of title 18," after "provisions of this Act" in subsection (a) and the second place they appear in subsection (b); and

(2) by deleting "thereunder" and substituting "issued under those provisions".

(b) Section 9 (7 U.S.C. 13) is amended—

(1) in subsection (b), by deleting "It shall be a felony punishable by a fine of not more than $500,000 or imprisonment for not more than five years, or both, together with the costs of prosecution" and substituting "It is an unlawful act that is an offense punishable under section 1763 of title 18, United States Code";

(2) in subsection (c), by deleting "(a),", and by adding "and in section 1731 of title 18, United States Code, if jurisdiction is based on section 1731(c)(19)," after "this section,";

(3) in subsections (d) and (e), by deleting "It shall be a felony punishable by a fine of not more than $100,000 or imprisonment for not more than five years, or both, together with the costs of prosecution" and substituting "It is an unlawful act that is an offense punishable under section 1763 of title 18, United States Code".

(c) Section 6c, as added by section 211 of the Commodity Futures Trading Commission Act of 1974 (7 U.S.C. 13a–1), section 6(c), as added by section 17 of the Act of February 19, 1968, and amended (7 U.S.C. 13b), and section 13(a), as added by section 26 of the Act of February 19, 1968, and amended (7 U.S.C. 13c(a)), are amended by adding ", or of section 1763 of title 18, United States Code, or of section 1731 of title 18, if there is jurisdiction under 1731(c)(19) of title 18," after "this Act" each place it appears in sections 6c and 13(a), and the first place it appears in section 6(c).

(d) Section 6(c) is further amended by deleting "(a) or (b) of section 9 of this Act, such person shall be guilty of a felony and, upon conviction thereof, shall be subject to the penalties of said paragraph (a) or (b)" and substituting "(b) of section 9 of this Act, or an offense within section 1731 of title 18, United States Code, if jurisdiction of the offense is based on section 1731(c)(19) of title 18, the person shall be subject to the applicable sentence prescribed for violation of those provisions".

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SEC. 332. Section 1952(k) of the United States Cotton Futures Act (7 U.S.C. 15b(k)) is amended by deleting "subsection (d)(3)" and substituting "section 1333 or 1343 of title 18, United States Code".

SEC. 333. Section 9 of the United States Cotton Standards Act (7 U.S.C. 60) is amended by deleting "or shall accept money or other consideration, either directly or indirectly, for any neglect or improper performance of duty as such licensee, or (c) any person who shall knowingly influence improperly or attempt to influence improperly any person licensed under this Act in the performance of his duties as such licensee relating to any transaction or shipment in commerce, or (d) any person who shall forcibly assault, resist, impede, or interfere with or influence improperly or attempt to influence improperly any person employed under this Act in the performance of his duties,".

SEC. 334. The United States Grain Standards Act (7 U.S.C. 71 et seq.) is amended as follows:

(a) The proviso of section 8 (7 U.S.C. 84(d)) is amended to read as follows: "*Provided:* That such person shall be considered in the performance of only official inspection, official weighing, or supervision of weighing function as prescribed by this Act or by the rules and regulations of the Administrator, as a federal public servant for the purpose of determining the application of sections 1351 and 1352 of title 18, United States Code, and as a federal public servant who is a law enforcement officer for purposes of subchapters A and B of chapter 16 of title 18, United States Code.".

(b) Section 14(c), as added by section 1 of the Act of August 15, 1968 (7 U.S.C. 87c(c)), is amended by deleting "an employee of the Department of Agriculture assigned to perform inspection functions for the purposes of sections 1114 and 111" and substituting "a federal public servant who is a law enforcement officer for purposes of subchapters A, B, and C of chapter 16.

SEC. 335. Section 14(b)(3) of the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136*l*(b)(3)) is amended by deleting "shall be fined not more than $10,000, or imprisoned for not more than three years, or both" and substituting "commits an unlawful act that is an offense described in section 1737 of title 18, United States Code".

SEC. 336. Section 30 of the United States Warehouse Act (7 U.S.C. 270) is amended—

(a) by deleting "forge, alter, counterfeit, simulate, or falsely represent, or";

(b) by deleting "or who shall issue or utter a false or fraudulent receipt or certificate, or change in any manner an original receipt or certificate subsequently to issuance by a licensee,";

(c) by deleting "convert to his own use, or";

(d) by deleting "court, and the" and substituting "court. The";

(e) by deleting "so" before "converted";

(f) by adding "in violation of this section, or of section 1731 of title 18, United States Code, in connection with agricultural products stored in a licensed warehouse, or of subchapter E of chapter 17 of title 18 in connection with a license issued by the Secretary under this Act," after "removed"; and

(g) in the last sentence—

(1) by deleting "or falsely represent"; and

(2) by deleting "or who shall classify, grade, or weigh fraudulently," and substituting "of".

SEC. 337. The last sentence of section 3 of the Cotton Statistics and Estimates Act (7 U.S.C. 473) is amended by deleting "or shall willfully give answers that are false".

SEC. 338. The last sentence of section 3 of the Act of January 14, 1929 (7 U.S.C. 503) is amended by deleting "or shall willfully give answers that are false or misleading,".

SEC. 339. Section 10 of the Tobacco Inspection Act (7 U.S.C. 511i) is amended—

(a) in subsection (d), by deleting ", or to issue any false certificate under this Act, or to accept money or other consideration, directly or indirectly, for any neglect or improper performance of duty as an inspector, sampler, or weigher"; and

(b) in subsection (h), by deleting "; or for any person knowing that tobacco has been so loaded, packed, or arranged, to offer it for inspection or sampling without disclosing such knowledge to the inspector or sampler before inspection or sampling".

SEC. 340. The last sentence of section 3 of the Act of June 24, 1936 (7 U.S.C. 953) is amended by deleting "or shall willfully give answers that are false and misleading".

SEC. 341. The last sentence of section 406 of the Sugar Act of 1948 (7 U.S.C. 1156) is amended by deleting "or furnishing willfully any false information".

SEC. 342. The Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) is amended as follows:

(a) The last sentence of section 373(a) (7 U.S.C. 1373(a)) is amended—

(1) by deleting "or making any false report or record"; and

(2) by adding ", or a violation of section 1343 of title 18, United States Code, that involves such report or record," after "such violation" the first place it appears.

(b) Section 380*c*(a), as added by section 501(3) of the Act of May 28, 1956 (7 U.S.C. 1380*c*(a)), is amended by deleting "or making any false report or record".

SEC. 343. Section 312(b) of the Potato Research and Promotion Act (7 U.S.C. 2619(c)) is amended by deleting "criminal prosecution and shall be fined" and substituting "a civil penalty of".

PART E—AMENDMENTS RELATING TO ALIENS AND NATIONALITY, TITLE 8, UNITED STATES CODE

SEC. 351. The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended as follows:

(a) Section 106, as added by section 5(a) of the Act of September 26, 1961 (8 U.S.C. 1105a), is amended—

(1) in subsection (a)(6), by adding ", or of section 1331, 1332, 1333, or 1334 of title 18, United States Code, if the offense relates to proceedings under section 242 of this Act," after "section 242 of this Act" each place it appears; and

(2) in subsection (a)(7), by adding "and with sections 1331, 1332, 1333, and 1334 of title 18, United States Code, if the offense relates to proceedings under section 242 of this Act" after "subsections (d) and (e) of section 242 of this Act".

(b) Section 212 (8 U.S.C. 1182) is amended—

(1) in subsection (a)(9), by amending the second sentence to read: "An alien who would be excludable because of the conviction of an offense for which the sentence actually imposed did not exceed a period of six months, or who would be excludable as one who admits the commission of an offense for which a sentence not to exceed one year imprisonment or both, might have been imposed upon him, may be granted a visa and admitted to the United States if otherwise admissible: *Provided*, That the alien has committed only one such offense, or admits the commission of acts which constitute the essential elements of only one such offense";

(2) in subsection (a)(19), by deleting "willfully misrepresenting a material fact" and substituting "making a material statement that he knows is false"; and

(3) in subsection (i), by adding "or false statement" after "perjury".

(c) Section 215(a)(7) (8 U.S.C. 1185(a)(7)) is amended by deleting "false, forged, counterfeited, mutilated, or altered permit, or evidence of permission, or any".

(d) Section 241 (8 U.S.C. 1251) is amended—

(1) in subsection (a)(5), by deleting "section 1546 of title 18 of the United States Code" and substituting "any of the following provisions of title 18, United States Code:

"(A) section 1301, 1341, or 1343 with regard to an application for registration as required under section 262 of this title and the provisions cited therein or with regard to an immigrant or nonimmigrant visa, permit, or other document for entry into the United States;

"(B) section 1126, 1211, or 1215;

"(C) section 1741, 1742, 1743, or 1744 if the offense involved a written instrument that is or purports to be an immigrant or nonimmigrant visa, permit, or other document for entry into the United States; or

"(D) section 1745 if the offense involved a counterfeiting implement designed for or suited for making a counterfeited immigrant or nonimmigrant visa, permit, or other document for entry into the United States";

(2) in subsection (a)(7), by deleting "(and did not thereafter and prior to the date upon which such organization was registered or required to be registered under section 7 the Subversive Activities Control Act of 1950 have such knowledge or reason to believe)";

(3) by amending subsection (a)(17) to read as follows:

"(17) the Attorney General finds to be an undesirable resident of the United States because he has been convicted of a violation or conspiracy to violate a provision of any of the following or an amendment or predecessor thereto, the judgment on the conviction having become final: section 1101, 1102, 1111, 1112, 1114, 1117, 1121, 1122, 1123, 1124, or 1201 of title 18, United States Code; section 1311(a)(1)(A) of title 18, United States Code, if the person who is harbored or concealed or whose identity is concealed has committed, or is charged with or being sought for, an offense under section 1111, 1112, 1121, 1122, 1123, or 1124 of title 18; or section 1614, 1615, or 1616 of title 18, if the victim of the offense is the President or a successor to the Presidency, as defined in section 111 of this title 18; an Act entitled 'An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes', approved June 15, 1917, or the amendment thereof approved May 16, 1918; section 215 of this Act; an Act entitled 'An Act to authorize the President to increase temporarily the Military Establishment of the United States', approved May 18, 1917, or any amendment thereof or supplement thereto; the Selective Training and Service Act of 1940; the Selective Service Act of 1948; the Universal Military Training and Service Act; the Trading with the Enemy Act; or".

(e) Section 242 (8 U.S.C. 1252) is amended—

(1) in the last sentence of subsection (d), by deleting "appear or to give information or" and "or knowingly give false information in relation to the requirements of such regulations,"; and

(2) in the first sentence of subsection (e), by deleting "upon conviction be guilty of a felony, and shall be imprisoned not more than ten years" and substituting "commit an unlawful act that is an offense described in section 1211(a)(4) of title 18, United States Code".

(f) Section 266 (8 U.S.C. 1306) is amended—

(1) in subsection (c)—

(A) by deleting "files" and substituting "is convicted of filing"; and

(B) by deleting "shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not to exceed $1,000 or imprisoned not more than six months, or both; and any alien so convicted"; and

(2) by amending subsection (d) to read as follows:

"(d) The Attorney General may prescribe rules and regulations concerning when a person may photograph, print, or in any manner make or execute an engraving, print, or impression in the likeness of a certificate of alien registration or an alien registration receipt card or a colorable imitation thereof.".

(g) Section 287(b) (8 U.S.C. 1357(b)) is amended by deleting "; and any person to whom such oath has been administered (or who has executed an unsworn declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) under the provisions of this Act, who shall knowingly or willfully give false evidence or swear (or subscribe under penalty of perjury as permitted under section 1746 of title 28, United Stated Code) to any false statement concerning any matter referred to in this subsection shall be guilty of perjury and shall be punished as provided by section 1341, title 18, United States Code".

(h) Section 340(g) (8 U.S.C. 1451(g)) is amended—

(1) by deleting "section 1425" and substituting "section 1215"; and

(2) by adding "or under section 1301, 1341, 1343, 1741, 1742, or 1743 of title 18 if the offense involves procuring naturalization," after "violation of law,".

(i) Section 349(a)(7) (8 U.S.C. 1481(a)(7) is amended by deleting "section 2383 of title 18, United States Code, or willfully performing any act in violation of section 2385 of title 18, United States Code, or violating section 2384 of said title by engaging in a conspiracy to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them" and substituting "section 1101 or 1102 of title 18".

Part F—Amendments Relating to Armed Forces, Title 10, United States Code

Sec. 361. Section 772(f) of title 10, United States Code, is amended by deleting "if the portrayal does not tend to discredit that armed force".

Sec. 362. Section 2671(c) of title 10, United States Code, is amended by deleting "a like offense and is subject to a like punishment" and inserting in lieu thereof "an offense under section 1861 of title 18".

Part G—Amendments Relating to Banks and Banking, Title 12, United States Code

Sec. 371. The second sentence of section 1(h) of the Act of September 28, 1962 (12 U.S.C. 92a(h)), is amended by deleting "may be fined not more than $5,000, or imprisoned not more than five years, or may be both fined and imprisoned, in the discretion of the court" and substituting "commits an unlawful act that is an offense described in section 1731 of title 18, United States Code".

Sec. 372. Section 5239(a) of the Revised Statutes (12 U.S.C. 93(a)) is amended by adding in the first sentence "or, of section 333 of the Criminal Code Reform Act of 1979, or, with respect to a national banking association, of section 1731 or 1743 of title 18, United States Code" after "of this Title", and by deleting "Such violation" in the second sentence and substituting "Grounds for forfeiture under this section".

Sec. 373. Section 5(b)(3) of the Trading With the Enemy Act (12 U.S.C. 95a(3)) is amended by deleting "shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both" and substituting "commits an unlawful act that is an offense punishable under section 1206 of title 18, United States Code".

Sec. 374. Section 209 of the Bank Conservation Act (12 U.S.C. 209) is amended by deleting "shall be subject to the provisions of and to the penalties prescribed by sections 334, 656, and 1005 of Title 18, United States Code; and sections 202, 216, 281, 431, 432 and 433 of such Title 18" and substituting "shall be deemed to be agents or employees of the bank for purposes of the provisions of sections 1343, 1741, 1742, 1743, 1744, and 1751 of title 18; and sections 202, 431, 432, and 433 of title 18 Appendix".

Sec. 375. The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended as follows:

(a) Paragraph 7 of section 9 (12 U.S.C. 327) is amended by adding "or of section 1343, 1731, 1741, 1742, 1743, or 1744 of title 18, United States Code," after "made pursuant thereto,".

(b) Section 22(f), as added by section 5 of the Act of September 26, 1918, and amended (12 U.S.C. 503), is amended by deleting "sections 217, 218, 219, 220, 655, 1005, 1014, 1906, or 1909 of title 18, United States Code" and substituting "section 1343(a)(2), 1343(a)(3), 1351, 1352, 1353, 1731 (where there is jurisdiction under section 1731(c)(10)), 1741, 1742, 1743, or 1744 of title 18, United States Code, or section 218, 219, 1906, or 1909 of title 18 Appendix".

(c) Section 25, as added by the Act of December 24, 1919 (12 U.S.C. 617), is amended by deleting "shall be liable to a fine of not less than $1,000 and not exceeding $5,000 or imprisonment not less than one year and not exceeding five years, or both, in the discretion of the court" and substituting "commits an unlawful act that is an offense punishable under section 1763 of title 18, United States Code".

(d) The sixteenth paragraph of section 25(a), as added by the Act of December 24, 1919, and amended (12 U.S.C. 622), is amended by adding "or with any provision of section 1343(a)(2), 1731, 1743, or 1744 of title 18, United States Code" after "the provisions of this section".

SEC. 376. Section 308(e) and (f) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1457 (e) and (f)) are amended to read as follows:

"(e) The terms 'agency' and 'agencies' shall be deemed to include the Corporation wherever used with reference to an agency or agencies of the United States in sections 202, 203, 205, 207, 208, 209, and 701 of title 18 Appendix, United States Code. Any officer or employer of the Corporation shall be deemed to be a federal public servant within the meaning of section 1905 of title 18 Appendix and of sections 1351, 1352, 1354, 1722, 1723, 1731, and 1732 of title 18.

"(f) The terms 'obligation of the United States' and 'obligation or other security of the United States' in section 1746 of title 18, United States Code, are extended to include any obligation or other security of or issued by the Corporation.".

SEC. 377. Section 912 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1709–2) is amended by deleting "shall be fined not more than $5,000 or imprisoned not more than three years, or both" and substituting "commits an unlawful act that is an offense punishable under section 1737 of title 18, United States Code".

SEC. 378. Section 239(b) of the National Housing Act, as added by section 302 of the Act of August 1, 1968 (12 U.S.C. 1715z–4(b)), is amended by deleting "shall be fined not more than $5,000 or imprisoned not more than three years, or both" and substituting "commits an unlawful act that is an offense punishable under section 1737 of title 18, United States Code".

PART G—AMENDMENTS RELATING TO THE CENSUS, TITLE 13, UNITED STATES CODE

SEC. 381. Section 211(2) of title 13, United States Code, is amended by deleting "so appointed" and substituting "appointed as supervisor, enumerator, clerk, or other officer or employee of the Department of Commerce or bureau or agency thereof, referred to in subchapter II of chapter I of this title".

SEC. 382. Section 225 of title 13, United States Code, is amended—

(a) in subsections (a), (b), and (c), by adding "and of section 1343 of title 18" after "of this title"; and

(b) in subsection (d), by adding "or section 1343 of title 18" after "under this chapter".

PART H—AMENDMENTS RELATING TO COMMERCE AND TRADE, TITLE 15, UNITED STATES CODE

SEC. 391. Sections 1, 2, and 3 of the Sherman Act (15 U.S.C. 1, 2, and 3) are amended by deleting "shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court" and substituting "commits an unlawful act that is an offense punishable under section 1764 of title 18, United States Code".

SEC. 392. Section 13 of the Clayton Act (15 U.S.C. 23) is amended by deleting "case, civil or criminal," and substituting "civil case".

SEC. 393. Section 10 of the Federal Trade Commission Act (15 U.S.C. 50) is amended by deleting "Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Act, or" and substituting "Except as provided in sections 1333, 1343, and 1344 of title 18, United States Code, any person".

SEC. 394. The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended as follows:

(a) Section 22(a) (15 U.S.C. 77v(a)) is amended by deleting "offenses and" in the first sentence.

(b) Section 24 (15 U.S.C. 77x) is amended by deleting "shall upon conviction be fined not more than $10,000 or imprisoned not more than five years, or both" and substituting "commits an unlawful act that is an offense punishable under section 1761 of title 18, United States Code".

SEC. 395. The Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is amended as follows:

(a) Section 322(b), as added by the Act of August 3, 1959 (15 U.S.C. 77 vvv(b)), is amended by deleting "offenses and".

(b) Section 325, as added by the Act of August 3, 1939, and amended (15 U.S.C. 77yyy), is amended by deleting "shall upon conviction be fined not more than $10,000 or imprisoned not more than five years, or both" and substituting "commits an unlawful act that is an offense punishable under section 1761 of title 18, United States Code".

SEC. 396. The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended as follows:

(a) Section 15(b)(4)(B)(iv) (15 U.S.C. 78o(b)(4)(B)(iv)) is amended to read as follows:

"(iv) involves the violation of section 1351, 1734, or 1735 of title 18, United States Code, or of subchapter E of chapter 13 or subchapter E of chapter 17 of title 18, United States Code.".

(b) Section 27 (15 U.S.C. 78aa) is amended by deleting "any such district" and substituting "any district wherein an action or transaction constituting the violation occurred".

(c) Section 32 (15 U.S.C. 78ff) is amended—

(1) in subsection (a)—

(A) by deleting "(other than section 30A)"; and

(B) by deleting "shall upon conviction be fined not more than $10,000, or imprisoned not more than five years, or both, except that when such person is an exchange, a fine not exceeding $500,000 may be imposed" and substituting "commits an unlawful act that is an of-

fense punishable under section 1761 of title 18, United States Code"; and

(2) in subsection (c)(3), by deleting "paragraph (2) or (3) of this subsection" and substituting "section 1751(a)(2) of title 18, United States Code,".

SEC. 397. The Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) is amended as follows:

(a) Section 25 (15 U.S.C. 79y) is amended by deleting "any such district" and substituting "any district wherein any act or transaction constituting the violation occurred".

(b) Section 29 (15 U.S.C. 79z–3) is amended by deleting "shall upon conviction be fined not more than $10,000 or imprisoned not more than five years, or both, except that in the case of a violation of a provision of subsection (a) or (b) of section 4 by a holding company which is not an individual, the fine imposed upon such holding company shall be a fine not exceeding $200,000" and substituting "commits an unlawful act that is an offense punishable under section 1761 of title 18, United States Code".

SEC. 398. The Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is amended as follows:

(a) Section 44 (15 U.S.C. 80a–43) is amended by deleting "any such district" and substituting "the district wherein the defendant maintains his principal office or place of business".

(b) Section 49 (15 U.S.C. 80a–48) is amended by deleting "shall upon conviction be fined not more than $10,000 or imprisoned not more than five years, or both" and substituting "commits an unlawful act that is an offense punishable under section 1761 of title 18, United States Code".

SEC. 399. The Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) is amended as follows:

(a) Section 203(e)(2)(D) (15 U.S.C. 80b–3(e)(2)(D)) is amended by deleting "section 152, 1341, 1342, or 1343 or chapter 25 or 47" and substituting "section 1351, 1734, or 1735, or of subchapter E of chapter 13 or subchapter E of chapter 17,".

(b) Section 214 (15 U.S.C. 80b–14) is amended by deleting "any such district" and substituting "any district in which an act or transaction constituting the violation occurred".

(c) Section 217 (15 U.S.C. 80b–17) is amended by deleting "shall, upon conviction, be fined not more than $10,000, imprisoned for not more than five years, or both" and substituting "commits an unlawful act that is an offense punishable under section 1761 of title 18, United States Code".

SEC. 400. Section 16(b)(4) of the Small Business Act (15 U.S.C. 645(b)(4)) is amended by deleting "(4)" and "or, having such knowledge, invests or speculates, directly or indirectly, in the securities or property of any company or corporation receiving loans or other assistance from the Administration,".

SEC. 401. Section 15(e) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714m(e)) is amended by deleting "*Provided*, That such general penal statutes shall not apply to the extent that they relate to crimes and offenses punishable under subsections (a), (b), (c), and (d) of this section:".

SEC. 402. Section 10(c) of the Act of February 22, 1935 (15 U.S.C. 715i(c)) is amended by deleting "any such district" and substituting "any district wherein any act or transaction constituting the violation occurred".

SEC. 403. Section 22 of the Natural Gas Act (15 U.S.C. 717u) is amended by deleting "any such district" and substituting "any district wherein any act or transaction constituting the violation occurred".

SEC. 404. Section 6 of the Act of January 2, 1951 (15 U.S.C. 1176) is amended by deleting "Whoever" and substituting "Except as provided in section 1343 of title 18, United States Code, whoever".

SEC. 405. The Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended as follows:

(a) Section 112(1) (15 U.S.C. 1611(1)) is amended by deleting "gives false or inaccurate information or".

(b) Section 134, as added by section 502(a) of the Act of October 26, 1970, and amended (15 U.S.C. 1644), is amended—

(1) in subsections (a) and (d), by deleting "Whoever" and substituting "Except as provided in section 1731 of title 18, United States Code, whoever";

(2) in subsections (a) and (f), by adding "or series of transactions" after "transaction"; and

(3) in subsections (a), (b), (c), (d), and (f), by adding "or cards" after "credit card".

SEC. 406. Section 916(a)(1) of the Electronic Fund Transfer Act (15 U.S.C. 1693n(a)(1)) is amended by deleting "gives false or inaccurate information or".

SEC. 407. Section 1418 of the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1717) is amended by deleting "or any person who willfully, in a statement of record filed under, or in a property report issued pursuant to, this title, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein,".

SEC. 408. Section 6(a)(2)(B) of the Horse Protection Act of 1970 (15 U.S.C. 1825(a)(2)(B)) is amended—

(1) by deleting "who knowingly makes, or causes to be made, a false entry or statement in any report required by this Act; who knowingly makes, or causes to be made, any false entry in any account, record, or memorandum required to be established and maintained by any person or

in any notification or other information required to be submitted to the Secretary under section 4 of this Act;";

(2) by deleting "such" after "entries in";

(3) by adding "required to be established or maintained by any person or required to be submitted to the Secretary under section 4 of this Act" after "materials"; and

(4) by deleting "; who knowingly removes any such documentary evidence out of the jurisdiction of the United States; who knowingly mutilates, alters, or by any other means falsifies any such documentary evidence; or who knowingly refuses to submit any such documentary evidence to the Secretary for inspection and copying".

SEC. 409. Section 16(b) of the Toxic Substances Control Act (15 U.S.C. 2615(b)) is amended by adding "paragraph (1), (2), or (3) of" after "provision of".

PART I—AMENDMENTS RELATING TO CONSERVATION, TITLE 16, UNITED STATES CODE

SEC. 411. Section 10(c)(1) of the Act of August 18, 1970, as added by section 2 of the Act of October 7, 1976 (16 U.S.C. 1a–6(b)(1)), is amended by deleting "paragraphs (1), (2), and (3) of subsection (b) of this section" and substituting "sections 3001(a)(9) and 3022 of title 18, United States Code".

SEC. 412. The first section of each of the following acts is amended by deleting "crimes" and substituting "offenses": the Act of June 2, 1920 (16 U.S.C. 57); the Act of June 30, 1916 (16 U.S.C. 95); the Act of April 25, 1928 (16 U.S.C. 117); the Act of August 21, 1916 (16 U.S.C. 124); the Act of August 22, 1914 (16 U.S.C. 163); the Act of March 2, 1929 (16 U.S.C. 198); the Act of April 16, 1928 (16 U.S.C. 204); the Act of April 19, 1930 (16 U.S.C. 395); the Act of August 19, 1937 (16 U.S.C. 403c–1) (both places it appears); the Act of April 29, 1942 (16 U.S.C. 403h–1); and the Act of March 6, 1942 (16 U.S.C. 408i).

SEC. 413. Section 4 of the Act of June 29, 1906 (16 U.S.C. 114), is amended by deleting "remove, disturb, destroy," and substituting "disturb".

SEC. 414. The proviso of section 4 of the Act of April 25, 1928 (16 U.S.C. 117c), is amended—

(1) by deleting "remove, disturb, destroy," and substituting "disturb"; and

(2) by deleting "judge, and" and substituting "judge. A person convicted of an offense described in subchapter A of chapter 17 of title 18, United States Code, with respect to such property in the park, or of an offense described in this section".

SEC. 415. Section 6 of the Act of January 9, 1903 (16 U.S.C. 146), is amended by deleting "who shall unlawfully intrude upon said park, or who shall without permission appropriate any object therein or commit unauthorized injury or waste in any form whatever upon the lands or other public property therein, or".

SEC. 416. Section 8 of the Act of February 26, 1917 (16 U.S.C. 354), is amended by adding ", except as provided in subchapter A of chapter 17 of title 18, United States Code," after "That".

SEC. 417. Section 4 of the Act of March 3, 1891 (16 U.S.C. 364) is amended by deleting "and any such person making a false oath or affidavit in the premises shall be guilty of perjury, and, upon conviction, subject to all the pains and penalties of perjury under the statutes of the United States;".

SEC. 418. The Act of March 2, 1911 (16 U.S.C. 371) is amended by deleting ", and any person desiring to bathe at the free bathhouse on the Hot Springs National Park making a false oath as to his financial condition shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than $25 nor more than $300 and be imprisoned for not more than sixty days".

SEC. 419. The Act of April 20, 1904 (16 U.S.C. 372 et seq.) is amended as follows:

(a) Section 3 (16 U.S.C. 373) is amended by deleting "shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be subject to a fine of not more than one hundred dollars and be adjudged to pay all costs of the proceedings" and inserting in lieu thereof "commits an unlawful act that is an offense described in subchapter A of chapter 17 of title 18, United States Code".

(b) Section 4 (16 U.S.C. 374) is amended by deleting "shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be subject to a fine of not more than one hundred dollars, and be adjudged to pay all costs of the proceedings" and substituting "commits an unlawful act that is an offense described in section 1713 of title 18, United States Code".

SEC. 420. Section 2 of the Act of March 3, 1897 (16 U.S.C. 414), is amended by deleting "who shall trespass upon any national military parks for the purpose of hunting or shooting, or".

SEC. 421. Section 5 of the Act of June 2, 1926 (16 U.S.C. 422d), section 7 of the Act of June 3, 1926 (16 U.S.C. 423f), section 8 of the Act of February 14, 1927 (16 U.S.C. 425g), section 10 of the Act of March 3, 1927 (16 U.S.C. 426i), section 10 of the Act of March 26, 1928 (16 U.S.C. 428i), the last sentence of section 7 of the Act of March 2, 1917 (16 U.S.C. 430i), and section 8 of the Act of June 21, 1934 (16 U.S.C. 430g) are amended by deleting "If" and "That if" and substituting "Except as provided in section 1731 and subchapter A of chapter 17 of title 18, United States Code, if".

SEC. 422. Section 4 of the Act of September 28, 1962 (16 U.S.C. 460k–3) is amended by deleting "petty offense (18 U.S.C. 1)" and substituting "misdemeanor".

SEC. 423. Section 9 of the Act of October 8, 1964 (16 U.S.C. 460n–8) is amended—

(a) in the first paragraph, by deleting "commissioner" each place it appears and substituting "magistrate"; and

(b) by amending the second paragraph to read as follows:

"The functions of the magistrate shall include the trial and sentencing of persons charged with the commission of misdemeanors and infractions as defined in section 111 of title 18, United States Code. The magistrate shall act in accordance with the provisions of section 3302 of title 18 and the rules prescribed by the Supreme Court for the performance of duties by magistrates.".

SEC. 424. Section 4 of the Act of May 28, 1940 (16 U.S.C. 552d), is amended by deleting "shall be punished as is provided in section 50 of the Act entitled 'An Act to codify, revise, and amend the penal laws of the United States', approved March 4, 1909 (35 Stat. L. 1098)" and substituting "is guilty of a Class A misdemeanor".

SEC. 425. The first sentence of section 3(a) of the Act of June 8, 1940 (16 U.S.C. 668b(a)), the first sentence of section 4(f) of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd) the first sentence of section 6 of the Act of April 23, 1928 (16 U.S.C. 690e(a)), the first sentence of section 5 of the Migratory Bird Treaty Act (16 U.S.C. 706), the first sentence of section 8(a) of the Upper Mississippi River Wildlife and Fish Refuge Act (16 U.S.C. 727(a)), and the second sentence of section 13(d) of the Fish and Wildlife Act of 1956, as added by section 1 of the Act of November 18, 1971, and amended (16 U.S.C. 742j–1(d)), are amended to read: "The provisions of this Act and any regulations made pursuant thereto shall be enforced by any officer or employee of the Department of the Interior designated by the Secretary of the Interior.".

SEC. 426. Section 9 of the Act of April 23, 1928 (16 U.S.C. 690g), is amended by adding ", except as provided in chapter 17 of title 18, United States Code," after "That".

SEC. 427. Section 6 of the Act of March 16, 1934 (16 U.S.C. 718f) is amended by deleting the first sentence and substituting: "The provisions of this Act shall be enforced by any officer or employee of the Department of the Interior designated by the Secretary of the Interior. Any judge of any court established under the laws of the United States, and any United States magistrate within his respective jurisdiction, may, upon proper oath or affirmation showing probable cause, issue warrants in all such cases.".

SEC. 428. Section 4 of the Sockeye Salmon or Pink Salmon Fishing Act of 1947 (16 U.S.C. 776b) is amended by deleting ", or any person who furnishes a false return, record, or report,".

SEC. 429. Section 317 of the Federal Power Act, as added by section 213 of the Act of August 26, 1935, and amended (16 U.S.C. 825p), is amended by deleting "such district" and substituting "district wherein any act or transaction constituting the violation occurred".

SEC. 430. Section 7 of the Whaling Convention Act of 1949 (16 U.S.C. 916e) is amended—

(a) by deleting "or any person who furnishes a false return, record, or report,";

(b) by deleting ", and shall in addition" and substituting ". In addition to conviction under this section or section 1343 of title 18, United States Code, if the offense involves a return, record, or report described in this section, the person shall".

SEC. 431. Section 11 of the North Pacific Fisheries Act of 1954 (16 U.S.C. 1030) is amended—

(a) in subsection (b)(1), by deleting ", (3), (4),"; and

(b) in subsection (b)(2), by deleting "; except that if in the commission of any offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any officer authorized to enforce the provisions of this Act, or places any such officer in fear of imminent bodily injury, the offense is punishable by a fine of not more than $100,000, or imprisonment for not more than ten years, or both".

SEC. 432. The first sentence of section 309(b) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1859(b)) is amended to read: "An offense described in subsection (a)(1) of this section is punishable as prescribed by title 18 of the United States Code.".

PART J—AMENDMENTS RELATING TO COPYRIGHTS, TITLE 17, UNITED STATES CODE

SEC. 441. Section 116(d) of title 17, United States Code, is amended by deleting "who knowingly makes a false representation of a material fact in an application filed under clause (1)(A) of subsection (b), or".

SEC. 442. Section 506(a) of title 17, United States Code, is amended to read as follows:

"(a) Any person who engages in conduct by which he knowingly infringes a copyright for purposes of commercial advantage or private financial gain commits an unlawful act that is an offense described in section 1738 of title 18.".

PART K—AMENDMENTS RELATING TO CUSTOMS DUTIES, TITLE 19, UNITED STATES CODE

SEC. 451. Section 3113 of the Revised Statutes (19 U.S.C. 283) is amended by deleting ", and shall be punishable by imprisonment for not less than three months and not more than two years".

PART L—AMENDMENTS RELATING TO FOOD AND DRUGS, TITLE 21, UNITED STATES CODE

SEC. 461. The last sentence of section 6 of the Act of August 30, 1890 (21 U.S.C. 604) is amended by adding "or in violation of section 1411 of title 18, United States Code, with regard to such diseased animals" after "unlawful importation".

SEC. 462. Section 6(a) of the Act of July 2, 1962 (21 U.S.C. 134e(a)), is amended by deleting "Whoever" and substituting "Except as provided in section 1411 of title 18, United States Code, whoever".

SEC. 463. Section 5 of the Act of February 15, 1927 (21 U.S.C. 145), is amended by deleting "Any" and substituting "Except as provided in section 1411 of title 18, United States Code, any".

SEC. 464. Section 303 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333) is amended—

(a) in subsection (a), by deleting "Any" and substituting "Except as provided in title 18; United States Code, any"; and

(b) in subsection (b), by deleting "Notwithstanding" and substituting "Except as provided in title 18, United States Code, and notwithstanding".

SEC. 465. The Poultry Products Inspection Act (21 U.S.C. 451 et seq.) is amended as follows:

(a) Section 5(c) (21 U.S.C. 454(c)) is amended—

(1) in paragraph (1), by adding "and sections 1851(a)(1) and 1852(a)(1) of title 18, United States Code" after "22 of this Act"; and

(2) in paragraphs (1) and (3), by adding "and title 18" after "said sections of this Act" each place it appears.

(b) Section 12 (21 U.S.C. 461) is amended—

(1) in subsection (a)—

(A) by deleting "Any" and substituting "Except as provided in title 18, United States Code, any"; and

(B) by deleting "; but if such violation involves intent to defraud, or any distribution of an article that is adulterated (except as defined in section 4(g)(8) of this Act), such person shall be fined not more than $10,000 or imprisoned not more than three years, or both."; and

(2) in subsection (b), by adding "or section 1851(a)(1) or 1852(a)(1) of title 18, United States Code" after "this Act".

SEC. 466. The Federal Meat Inspection Act (21 U.S.C. 601 et seq.) is amended as follows:

(a) Section 301(c), as added by section 15 of the Act of December 15, 1967 (21 U.S.C. 661(c)), is amended—

(1) in paragraph (1), by adding "and sections 1851(a)(2) and 1852(a)(2) of title 18, United States Code" after "title I and IV of this Act", "titles I and IV of this Act", "titles I and IV", and "title I and title IV of this Act" each place they appear; and

(2) in paragraph (3), by adding "of this Act and sections 1851(a)(2) and 1852(a)(2) of title 18, United States Code" after "titles I and IV" each place they appear.

(b) Section 406(a), as added by section 16 of the Act of December 15, 1967 (21 U.S.C. 676(a)), is amended—

(1) by adding "or by title 18, United States Code (except subsection E of chapter 17)" after "by this Act"; and

(2) by adding "or section 1851 or 1852 of title 18, United States Code," after "this section" and after "of this Act" the third place it appears.

SEC. 467. The Controlled Substances Act (21 U.S.C. 801 et seq.) is amended as follows:

(a) Section 102 (21 U.S.C. 802) is amended—

(1) in paragraph (10), by deleting "lawful" in the first sentence;

(2) in paragraph (15), by deleting "The term 'marihuana' means all parts of the plant Cannabis sativa L., whether growing or not" and inserting in lieu thereof "The term 'marihuana' means all parts of the plant botanically classified as genus Cannabis. The term 'Cannabis' includes all species of the genus Cannabis. 'Marihuana' means all parts of the Cannabis plant, whether growing or not"; and

(3) in paragraph (25), by deleting "lawfully".

(b) Section 202 (21 U.S.C. 812) is amended—

(1) by deleting "(7) Phencyclidine." in Schedule III(b); and

(2) by adding at the end of Schedule I(c) "(18) Phencyclidine.".

(c) Section 401(d) (21 U.S.C. 841(d)) is amended by deleting "shall be sentenced to a term of imprisonment of not more than 5 years, a fine of not more than $15,000, or both" and substituting "commits an unlawful act that is an offense punishable under section 1814 of title 18, United States Code".

(d) Section 402(c)(2)(A) (21 U.S.C. 842(c)(2)(A)) is amended by deleting ", except as otherwise provided in subparagraph (B) of this paragraph, be sentenced to imprisonment of not more than one year or a fine of not more than $25,000, or both" and substituting "be punishable under section 1814 of title 18, United States Code".

(e) Section 403(c) (21 U.S.C. 843(c)) is amended to read as follows:

"(c)(1) A person who violates a provision of subsection (a) (1), (2), (3), (4)(B), or (5) of this section commits an unlawful act that is an offense punishable under section 1814 of title 18, United States Code.

"(2) A person who violates a provision of subsection (a)(4)(A) of this section commits an unlawful act that is an offense described in section 1343 of title 18, United States Code.".

(f) Section 501(b) (21 U.S.C. 871(b)) is amended by adding "and subchapter B of chapter 18 of title 18, United States Code" after "this title".

(g) Section 511 (21 U.S.C. 881) is amended—

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(1) in subsections (a)(1), (a)(2), (a)(5), (a)(6), (b)(4), (f), and (g)(1), by adding "or of subchapter B of chapter 18 of title 18, United States Code" after "of this title" each place it appears;

(2) in subsection (a)(4)(A), by adding "or subchapter B of chapter 18 of title 18, United States Code" after "or title III".

(h) Section 512(a) (21 U.S.C. 882(a)) is amended by adding "and of subchapter B of chapter 18 of title 18, United States Code" after "of this title".

(i) Section 513 (21 U.S.C. 888) is amended by adding "or of subchapter B of chapter 18 of title 18, United States Code" after "of this title".

(j) Section 515 (21 U.S.C. 885) is amended—

(1) in subsection (a)(1), by adding "or subchapter B of chapter 18 of title 18, United States Code," after "under this title";

(2) in subsection (c), by adding "and of subchapter B of chapter 18 of title 18, United States Code," after "of this title"; and

(3) in subsection (d), by adding "or subchapter B of chapter 18 of title 18, United States Code" after "enforcement of this title".

(k) Section 516 (a) and (c) (21 U.S.C. 886 (a) and (c)) are amended by adding "or of subchapter B of chapter 18 of title 18, United States Code" after "of this title".

SEC. 468. The Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.) is amended as follows:

(a) Section 1010 (21 U.S.C. 960) is amended to read as follows:

"PROHIBITED ACTS

"SEC. 1010. A person who, contrary to section 1002, 1003, or 1007 of this Act, knowingly imports or exports a controlled substance—

"(a) that is an opiate as defined in section 1815 of title 18, United States Code, commits an unlawful act that is an offense punishable under section 1811 of title 18; or

"(b) that is a controlled substance other than an opiate as defined in section 1815 of title 18, United States Code, commits an unlawful act that is an offense punishable under section 1812 of title 18.".

(b) Section 1011(2) (21 U.S.C. 961(2)) is amended to read as follows:

"(2) A person who knowingly violates section 1004 commits an unlawful act that is an offense punishable under section 1814 of title 18, United States Code.".

(c) Section 1015 (21 U.S.C. 965) is amended by adding "and subchapter B of chapter 18 of title 18, United States Code" after "violations of this title".

SEC. 469. Section 12 of the Egg Products Inspection Act (21 U.S.C. 1041) is amended—

(a) in subsection (a), by deleting "Any" and substituting "Except as provided in title 18 of the United States Code, any"; and

(b) in subsection (b), by adding "or section 1851(a)(3) or 1852(a)(3) of title 18, United States Code" after "of this Act" the first place it appears.

PART M—AMENDMENTS RELATING TO FOREIGN RELATIONS AND INTERCOURSE, TITLE 22, UNITED STATES CODE

SEC. 471. Section 5(b) of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c(b)), is amended to read as follows:

"(b) A person who, being aware of a legal duty under an order, rule, or regulation issued by the President pursuant to paragraph (a) of this section, intentionally violates such order, rule, or regulation commits an unlawful act that is an offense punishable under section 1206 of title 18, United States Code. Any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, or vehicle, or aircraft, concerned in such violation shall be forfeited to the United States.".

SEC. 472. The Act of November 4, 1939 (22 U.S.C. 441 et seq.), is amended as follows:

(a) Section 7(c) (22 U.S.C. 447(c)) is amended to read as follows:

"(c) Whoever knowingly violates a provision of this section or a regulation issued thereunder commits an unlawful act that is an offense punishable under section 1206 of title 18, United States Code.".

(b) Section 10(a) (22 U.S.C. 450(a)) is amended by deleting "section 1, title V, chapter 30, of the Act approved June 15, 1917 (40 Stat. 217, 221; U.S.C., 1934 edition, title 18, sec. 31)" and substituting "section 1204 of title 18, United States Code".

(c) Section 15 (22 U.S.C. 455) is amended by adding "or in section 1204 of title 18, United States Code" after "resolution".

SEC. 473. The Act of March 4, 1909 (22 U.S.C. 461 et seq.), is amended as follows:

(a) Section 14 (22 U.S.C. 461) is amended—

(1) by adding "or aircraft" after "vessel" wherever it appears;

(2) by deleting "foreign prince or state, or of any colony, district, or people" wherever it appears and substituting "foreign power"; and

(3) by deleting "with whom the United States are at peace" in the last sentence and substituting "with which the United States is at peace".

(b) Section 15 (22 U.S.C. 462) is amended—

(1) by deleting "land or naval forces of the United States, or of the militia thereof," and substituting "armed forces of the United States"; and

(2) by adding "or aircraft" after "vessel" each place it appears.

(c) Sections 16 and 17 (22 U.S.C. 463 and 464) are amended by deleting "foreign prince or state, or of any colony, district, or people, with whom the United States are at peace" and substituting "foreign power with which the United States is at peace".

SEC. 474. Section 8(a) of the Foreign Agents Registration Act of 1938, as added by section 1 of the Act of April 29, 1942, and amended (22 U.S.C. 618(a)), is amended—

(a) by deleting "Any" and substituting "Except as provided in sections 1126 and 1343 of title 18, United States Code, any";

(b) in paragraph (1), by deleting "—(1)" and "or";

(c) in paragraph (2), by deleting "(2) in any registration statement or supplement thereto or in any statement under section 4(a) hereof concerning the distribution of political propaganda or in any other document filed with or furnished to the Attorney General under the provisions of this Act willfully makes a false statement of a material fact or willfully omits any material fact required to be stated therein or willfully omits a material part or a copy of a material document necessary to make the statements therein and the copies of documents furnished therewith not misleading,".

SEC. 475. Section 2 of the Act of June 30, 1902 (22 U.S.C. 1179), is amended by deleting "or who shall willfully fail or neglect to account for, pay over, and deliver any money, property, or effects so received to any person lawfully entitled thereto, after having been requested by the latter, his representative or agent so to do,".

SEC. 476. The third sentence of section 1750 of the Revised Statutes (22 U.S.C. 1203) is amended to read: "Any document purporting to have affixed, impressed, or subscribed thereto or thereon the seal and signature of the officer administering or taking the testimony contained in such document shall be admitted in evidence without proof of any such seal or signature being genuine or the official character of any such person.".

SEC. 477. Section 2 of the Act of June 29, 1955, as added by section 4 of the Act of August 27, 1964 (22 U.S.C. 2667), is amended by deleting "section 111 or 112 of title 18, United States Code, in their presence" and substituting "in their presence section 1302, 1357, or 1358 of title 18, United States Code, section 1611, 1612, 1613, 1614, or 1616 of title 18 if there is jurisdiction under section 1611(c)(2), or section 1621, 1622, or 1623 of title 18 if there is jurisdiction under section 1621(c)(2), or section 1823 of title 18 if the offense is committed during the commission of any of these offenses,".

SEC. 478. Section 38(c) of the Foreign Military Sales Act, as added by section 212(a)(1) of the International Security Assistance and Arms Control Act of 1976, and amended (22 U.S.C. 2778(c)), is amended—

(a) by designating the existing text as paragraph (2);

(b) by adding the following new paragraph after "(c)":

"(1) A person who, with intent to conceal any matter from a governmental agency authorized to administer this section, or being aware of a legal duty under this section, section 39, or a rule or regulation issued under this section, intentionally violates a provision of this section or section 39, or a rule or regulation

issued under this section commits an unlawful act that is an offense punishable under section 1206 of this title 18, United States Code."; and

(c) in paragraph (2)—

(1) by deleting "any provision of this section or";

(2) by deleting "either" and substituting "that"; and

(3) by deleting "or who willfully, in a registration or license application or required report, makes any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading,".

PART N—AMENDMENTS RELATING TO HOSPITALS AND ASYLUMS, TITLE 24, UNITED STATES CODE

SEC. 481. Section 4 of the Act of March 22, 1906 (24 U.S.C. 154), is amended by deleting: "who shall unlawfully intrude upon said reserve, or who shall without permission appropriate any object therein or commit unauthorized injury or waste in any form whatever upon the lands or other public property therein, or".

SEC. 482. Sections 4851 and 4855 of the Revised Statutes (24 U.S.C. 211 and 211b) are amended by deleting "crime" each place it appears and substituting "an offense".

SEC. 483. The ninth paragraph of section 26 of the Act of June 30, 1919 (25 U.S.C. 399) is amended by deleting "; and any person making any false statement, representation, or report under oath or in any declarstion, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, shall be subject to punishment as for perjury".

SEC. 484. Section 202(7) of the Act of April 11, 1968 (25 U.S.C. 1302(7)), is amended by deleting "$500" and substituting "$25,000".

PART O—AMENDMENTS RELATING TO THE INTERNAL REVENUE CODE, TITLE 26, UNITED STATES CODE

SEC. 491. Chapter 51 of the Internal Revenue Code of 1954 (26 U.S.C. 5001 et seq.) is amended as follows:

(a) Section 5054(c), as added by section 201 of the Excise Tax Technical Changes Act of 1958 (26 U.S.C. 5054(c)), is amended by adding "and the provisions of subchapter A of chapter 14 of title 18, United States Code, subchapter E of chapter 17 of title 18, and section 1343 of title 18" after "applicable".

(b) Section 5114(c)(2), as added by section 201 of the Excise Tax Technical Changes Act of 1958 (26 U.S.C. 5114(c)(2)), is amended by adding "of this title and sections 1301, 1302, 1343, 1344, and 1403 of title 18, United States Code" after "section 5603".

(c) Section 5148(1), as added by section 201 of the Excise Tax Technical Changes Act of 1958 (26 U.S.C. 5148(1)), is amended to read as follows:

"(1) For offense of nonpayment of special taxes, see section 5691 of this Act and section 1402 of title 18, United States Code.".

(d) Section 5205(i)(5), as added by section 1 of the Excise Tax Technical Changes Act of 1958 (26 U.S.C. 5205(i)(5)), is amended by adding "of this title and subchapter A of chapter 14 of title 18, United States Code, subchapter E of chapter 17 of title 18, and sections 1301 and 1343 of title 18, United States Code" after "and 7209".

(e) Section 5207(e), as added by section 201 of the Excise Tax Technical Changes Act of 1958 (26 U.S.C. 5207(e)), is amended by adding "of this title and sections 1301, 1343, 1344, and 1403 of title 18, United States Code" after "and 5615(5)".

(f) Section 5271(e)(5), as added by section 201 of the Excise Tax Technical Changes Act of 1958 (26 U.S.C. 5271(e)(5)), is amended by adding "or of any felony under subchapter A of chapter 14 of title 18, United States Code, or of any felony under subchapter E of chapter 17 of title 18 relating to Federal tax stamps, or of a conspiracy to violate such provisions of title 18" after "such offense".

(g) Section 5505(i), as added by section 201 of the Excise Tax Technical Changes Act of 1958, and amended (26 U.S.C. 5505(i)), is amended—

(1) by deleting "provided in" and substituting "provided for violation of"; and

(2) by adding "of this title and sections 1301, 1302, 1343, 1401, 1402, and 1403 of title 18, United States Code," after "and 5687".

(h) Section 5558, as added by section 201 of the Excise Tax Technical Changes Act of 1958 (26 U.S.C. 5558), is amended to add after the words "section 7608" the words "of this title and chapter 30 of title 18, United States Code".

(i) Sections 5601(a), 5603(a), 5603(b), 5604(a), and 5607, as added by section 201 of the Excise Tax Technical Changes Act of 1958 (26 U.S.C. 5601(a), 5603(a), 5603(b), 5604(a), and 5607) are amended by deleting "shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, for each such offense" and substituting "commits an unlawful act that is of an offense punishable under section 1403 of title 18, United States Code.".

(j) Section 5602, as added by section 201 of the Excise Tax Technical Changes Act of 1958 (26 U.S.C. 5602), is amended by deleting "fined not more than $10,000, or imprisoned for not more than 5 years, or both" and substituting "commits an unlawful act that is an offense punishable under section 1403 of title 18, United States Code".

(k) Section 5605, as added by section 201 of the Excise Tax Technical Changes Act of 1958 (26 U.S.C. 5606), is amended by deleting "shall be fined not more than $1,000, or imprisoned not more than 2 years, or both" and substituting "commits an unlawful act that is an offense punishable under section 1403 of title 18, United States Code".

(l) Section 5608(a), as added by section 201 of the Excise Tax Technical Changes Act of 1958, and amended (26 U.S.C. 5608(a)), is amended by deleting "shall be imprisoned not more than 5 years" and substituting "commits an unlawful act that is an offense punishable under section 1403 of title 18, United States Code".

(m) Sections 5608(a), 5608(b), and 5682, as added by section 201 of the Excise Tax Technical Changes Act of 1958, and amended (26 U.S.C. 5608(a), 5608(b), and 5682), are amended by deleting "shall be fined not more than $5,000, or imprisoned not more than 3 years, or both" and substituting "commits an unlawful act that is punishable under section 1403 of title 18, United States Code".

(n) Sections 5661(a) and 5671, as added by section 201 of the Excise Tax Technical Changes Act of 1958 (26 U.S.C. 5661(a) and 5671), are amended by deleting "shall be fined not more than $5,000, or imprisoned not more than 5 years, or both, for each offense" and substituting "commits an unlawful act that is an offense punishable under section 1403 of title 18, United States Code".

(o) Section 5691(a), as added by section 201 of the Excise Tax Technical Changes Act of 1958, and amended (26 U.S.C. 5691(a)), is amended by deleting "shall be fined not more than $5,000, or imprisoned not more than 2 years, or both, for each such offense" and substituting "commits an unlawful act that is an offense punishable under section 1403 of title 18, United States Code".

SEC. 492. Section 5762(a) of the Internal Revenue Code of 1954 (26 U.S.C. 5762(a)) is amended by deleting "shall, for each such offense, be fined not more than $10,000, or imprisoned not more than 5 years, or both" and substituting "commits an unlawful act that is an offense punishable under section 1403 of title 18, United States Code".

SEC. 493. Section 5871 of the Internal Revenue Code of 1954, as added by section 201 of the Act of October 22, 1968 (26 U.S.C. 5871), is amended by deleting "shall, upon conviction, be fined not more than $10,000, or be imprisoned not more than ten years, or both, and shall become eligible for parole as the Board of Parole shall determine" and substituting "commits an unlawful act that is an offense punishable under section 1822 of title 18, United States Code".

SEC. 494. Section 6103 of the Internal Revenue Code of 1954 (26 U.S.C. 6103) is amended—

(a) in subsection (b)(2)(A), by adding "or related provisions of title 18, United States Code," after "under this title"; and

(b) in subsection (h)(4)(D), by deleting "section 3500 of title 18, United States Code, or rule 16" and substituting "rule 16 or rule 26.1".

SEC. 495. Section 6531 of the Internal Revenue Code of 1954 (26 U.S.C. 6531) is amended to read as follows:

"SEC. 6531. PERIODS OF LIMITATIONS ON CRIMINAL PROSECUTIONS

"For the purpose of determining the periods of limitation under section 511 of title 18, United States Code, for criminal prosecutions for violations relating to the internal revenue laws, the rules of section 6513 of this title shall be applicable.".

SEC. 496. Chapter 68 of the Internal Revenue Code of 1954 (26 U.S.C. 6651 et seq.) is amended as follows:

(a) Section 6674 (26 U.S.C. 6674) is amended by deleting "penalty provided by section 7204" and substituting "offense under section 1402(a)(4) of title 18, United States Code".

(b) Section 6685, as added by section 101(e)(4) of the Act of December 30, 1969 (26 U.S.C. 6685), is amended by deleting "the penalty imposed by section 7307 (relating to fraudulent returns, statements, or other documents)" and substituting "other penalties provided by law".

(c) Section 6686, as added by section 504(d) of the Act of December 10, 1971 (26 U.S.C. 6686), is amended by deleting "the penalty imposed by section 7203 (relating to willful failure to file return, supply information, or pay tax)" and substituting "other penalties provided by law".

SEC. 497. Section 7123(a) of the Internal Revenue Code of 1954 (26 U.S.C. 7123(a)) is amended by deleting "section 7206" and substituting "title 18, United States Code".

SEC. 498. Chapter 75 of the Internal Revenue Code of 1954 (26 U.S.C. 7201 et seq.) is amended as follows:

(a) Section 7203 (26 U.S.C. 7203) is amended by deleting "make a return (other than a return required under authority of section 6015)," and "make such return,".

(b) Section 7213(a)(4) (26 U.S.C. 7213(a)(4)) is amended by deleting "It" and substituting "Except as provided in subchapter F of chapter 13 of title 18, United States Code, it".

(c) Section 7214 (26 U.S.C. 7214) is amended—

(1) in subsection (a)(1), by deleting "extortion or";

(2) in subsection (a)(8), by deleting "or" the last place it appears;

(3) in subsection (a), by deleting "the fine so imposed" and substituting "a fine imposed for violation of this section or for violation of subchapter F of chapter 13 of title 18, United States Code, by a federal public servant acting in connection with any revenue law of the United States,"; and

(4) in subsection (b), by deleting "internal revenue" in the caption and text and substituting "Bureau of Alcohol, Tobacco, and Firearms".

(d) Section 7232 (26 U.S.C. 7232) is amended by deleting "or who willfully makes any false statement in an application for registration under section 4101,".

(e) Section 7240 (26 U.S.C. 7240) is amended by deleting "or Speculating" in the caption, and by deleting "or speculates" in the text.

(f) Section 7303(2) (26 U.S.C. 7303(3)) is amended by deleting "7207 relates" and substituting "1343 of title 18, United States Code, relates if the offense involves a false statement to the Secretary or his delegate in connection with a list, return, account, statement, or other document in an internal revenue matter".

SEC. 499. Section 7407(b)(1)(A) of the Internal Revenue Code of 1954, as added by section 1203(g) of the Tax Reform Act of 1976 (26 U.S.C. 7407(b)(1)(A)), is amended by adding "or by subchapter A of chapter 14 of title 18, United States Code" after "this title".

SEC. 500. Chapter 78 of the Internal Revenue Code of 1954 (26 U.S.C. 7601 et seq.) is amended as follows:

(a) Section 7608, as added by section 204(14) of the Act of September 2, 1958, and amended (26 U.S.C. 7608), is amended to read as follows:

"SEC. 7608. Any criminal investigator of the Intelligence Division or of the Internal Security Division of the Internal Revenue Service, any agent of the Bureau of Alcohol, Tobacco and Firearms, or any investigating agent, or other internal revenue officer by whatever term designated, whom the Secretary charges with the duty of enforcing any of the criminal, seizure, or forfeiture provisions of the internal revenue laws, or of any other law for the enforcement of which the Secretary is responsible relating to internal revenue or to commodities subject to tax, may make seizures of property subject to forfeiture under such laws.".

(b) Section 7609(e), as added by section 1205(a) of the Tax Reform Act of 1976 (26 U.S.C. 7609(e)), is amended by deleting "section 6531" and substituting "section 511 of title 18, United States Code".

SEC. 501. Section 9012(e)(3) of the Presidential Election Campaign Fund Act, as added by section 801 of the Act of December 10, 1971, and amended, and section 9042 of the Presidential Primary Matching Payment Account Act (26 U.S.C. 9012(e)(3) and 9042), are amended by deleting "by paragraph (2)" and substituting "for violation of section 1751 of title 18, United States Code".

SEC. 502. REVENUE OFFENSES.—Violations of title 18, United States Code, pertaining or relating to the internal revenue of the United States shall be considered, for all relevant purposes, offenses or matters arising under the revenue laws of the United States.

SEC. 503. EXPENDITURES BY INTERNAL REVENUE SERVICE.—Moneys expended from Internal Revenue Service appropriations to place wagers in connection with investigations of wagering tax violations and subsequently recovered shall be reimbursed to the appropriation current at the time of the deposits.

PART P—AMENDMENTS RELATING TO JUDICIARY AND JUDICIAL PROCEDURE, TITLE 28, UNITED STATES CODE

SEC. 511. Section 509 of title 28, United States Code, is amended—

(a) in paragraphs (2) and (3), by deleting ", Inc.";

(b) in paragraph (2), by adding "and" at the end; and

(c) in paragraph (3), by deleting "; and" and substituting a period.

SEC. 512. Chapter 31 of title 28, United States Code, is amended as follows:

(a) Section 522(2) is amended by adding ", including statistics of the total number of prosecutions commenced during the preceding fiscal year under each section of title 18, identifying the number of such prosecutions commenced under each federal jurisdictional base applicable to each such section" after "United States".

(b) Section 3578 of title 18, United States Code, as in effect on the day before the effective date of this Act, is reenacted and redesignated as section 527 of title 28, United States Code.

(c) The following new section is added after section 527:

"§ 528. Law enforcement assistance from other federal, State, and local agencies

"The Attorney General may request assistance, notwithstanding any statute, rule, or regulation to the contrary, from any federal, State, or local agency, including the Army, Navy, and Air Force, in the course of enforcement of any of the following provisions of law:

"(a) section 1601 (Murder), 1602 (Manslaughter), or 1603 (Negligent Homicide) of title 18, United States Code, if there is federal jurisdiction over the offense under section 1601(e)(2)(A), (e)(2)(C), (e)(2)(D), (e)(2)(E), or (e)(2)(F) of title 18;

"(b) section 1611 (Maiming), 1612 (Aggravated Battery), 1613 (Battery), 1614 (Menacing), or 1615 (Terrorizing) of title 18, United States Code, if there is federal jurisdiction over the offense under section 1611(c)(2)(A), (c)(2)(C), (c)(2)(D), (c)(2)(E), or (c)(2)(F) of title 18;

"(c) section 1621 (Kidnapping), 1622 (Aggravated Criminal Restraint), or 1623 (Criminal Restraint) of title 18, United States Code, if there is federal jurisdiction over the offense under section 1621 (c)(2)(A), (c)(2)(C), (c)(2)(D), (c)(2)(E), or (c)(2)(F) of title 18;

"(d) section 1701 (Arson), 1702 (Aggravated Property Destruction), or 1703 (Property Destruction) of title 18, United States Code, if there is federal jurisdiction over the offense under section 1701(c)(3);

"(e) section 112(b) of title 18 Appendix of the United States Code; or

"(f) section 1001 (Criminal Attempt) or 1002 (Criminal Conspiracy) of title 18, United States Code, if the offense is an attempt or conspiracy to commit an offense described in subsection (a), (b), (c), (d), or (e) .".

(d) The analysis at the beginning of the chapter is amended by adding at the end thereof the following new items:

"527. Conviction records.
"528. Law enforcement assistance from other federal, State, and local agencies.".

SEC. 513. Chapter 33 of title 18, United States Code, is amended as follows:

(a) Sections 533 and 535 are amended by deleting "crimes" each place it appears in the caption and text and substituting "offenses".

(b) Section 535 is amended by deleting "of title 18" each place it appears and substituting "of the federal criminal laws".

(c) The item relating to section 535 in the section analysis is amended by deleting "crimes" and substituting "offenses".

SEC. 514. Section 557 of title 28, United States Code, as redesignated by section 121(b) of this Act, is amended—

(a) by adding the designation "(a)" before "Under"; and

(b) by reenacting and redesignating section 4285 of title 18, United States Code, as in effect on the day before the effective date of this Act, as subsection (b); and

(c) in subsection (b), by deleting "chapter 207" and substituting "subchapter A of chapter 35 of title 18".

SEC. 515. Section 604 of title 28, United States Code, is amended by redesignating subsection (e) as subsection (g), and by adding new subsections (e) and (f) as follows:

"(e) The Director of the Administrative Office of the United States Courts, or his delegate, shall—

"(1) fix, under the supervision and direction of the Judicial Conference of the United States, the salaries of probation officers, and provide for their necessary expenses including clerical service and travel expenses;

"(2) prescribe forms for records and statistics to be kept by probation officers and formulate general rules for the proper conduct of probation work;

"(3) have access to the records of probation officers;

"(4) investigate the work of probation officers and make recommendations concerning such officers to the respective courts by which they were appointed;

"(5) collect and publish statistical and other information concerning the work of probation officers and the conduct and adjustment of probationers as a class under the supervision of such officers;

"(6) endeavor by all suitable means to promote the efficient administration of the probation system and the enforcement of the probation laws;

"(7) incorporate in his annual report a statement concerning the operation of the probation system; and

"(8) make recommendations concerning the probation system to the Judicial Conference of the United States.

"(f) The Director of the Administrative Office of the United States Courts may contract with any appropriate public or private agency or any person for supervisory aftercare of an offender. The Director may negotiate and award such contracts without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).".

SEC. 516. Sections 3152 through 3156 of title 18, United States Code, as in effect on the day before the effective date of this Act, are reenacted and redesignated as sections 651 through 655 of title 28, United States Code, respectively, and amended as follows:

(a) Section 651 (formerly 18 U.S.C. 3152) is amended by deleting "this chapter" each place it appears and substituting "chapter 35 of title 18".

(b) Section 653 (formerly 18 U.S.C. 3154) is amended—

(1) in subsection (2), by deleting "3146(e) or section 3147" and substituting "3502(e) or 3506 of title 18"; and

(2) in subsections (3), (4), (6) and (7), by deleting "this chapter" each place it appears and substituting "chapter 35 of title 18".

(c) Section 654(a) (formerly 18 U.S.C. 3155(a)) is amended—

(1) in paragraph (1), by deleting "this chapter" and substituting "chapter 35 of title 18"; and

(2) in paragraph (3), by deleting "this chapter" and substituting "subchapter A of chapter 35 of title 18".

(d) Section 655 (formerly 18 U.S.C. 3156) is amended to read as follows:

"§ 655. Definitions

"As used in this chapter—

"(a) The term 'judicial officer' means, unless otherwise indicated, any person or court authorized pursuant to section 3501 of title 18, or the Federal Rules of Criminal Procedure, to bail or otherwise release a person before trial or sentencing or pending appeal in a court of the United States, and

"(b) The term 'offense' means any federal criminal offense which is in violation of any Act of Congress and is triable by any court established by Act of Congress (other than an infraction, a Class B or C misdemeanor, or an offense triable by court-martial, military commission, provost court, or other military tribunal).".

(e) The following caption and analysis are added before section 651:

"CHAPTER 44—PRETRIAL SERVICES AGENCIES

"Sec.
"651. Establishment of pretrial services agencies.
"652. Organization of pretrial services agencies.
"653. Functions and powers of pretrial services agencies.
"655. Definitions.".

SEC. 517. (a) Chapter 208 of title 18, United States Code, as in effect on the day before the effective date of this Act, is reenacted and redesignated as chapter 114 of title 28, United States Code, with former sections 3161 through 3174 of

title 18 redesignated as sections 1701 through 1714 of title 28, respectively, and cross-references in the chapter amended accordingly.

(b) Section 1712(2) is amended by deleting "a petty offense as defined in section 1(3) of this title" and substituting "an infraction or a Class B or Class C misdemeanor".

SEC. 518. Section 1864(b) of title 28, United States Code, is amended by deleting "who fails to appear pursuant to such order or".

SEC. 519. Section 1867(e) of title 28, United States Code, is amended by deleting "crime" and substituting "offense".

SEC. 520. Section 1921 of title 28, United States Code, is amended by adding "or infraction" after "misdemeanor".

SEC. 521. Chapter 131 of title 28, United States Code, is amended—

(1) by adding at the end thereof the following new section:

"§ 2077. Rules of procedure for courts of appeals

"(a) The Supreme Court of the United States may prescribe amendments to the Federal Rules of Appellate Procedure and may otherwise prescribe rules of pleading, practice, and procedure with respect to appeals from decisions, orders, and judgments entered in suits of a civil nature in the district courts of the United States. A provision of law in conflict with a rule prescribed pursuant to this section shall be of no further force or effect after such rule has taken effect.

"(b) Rules prescribed pursuant to this section shall be reported to Congress by the Chief Justice at or before the beginning of a regular session of Congress but not later than the first day of May, and shall take effect one hundred and eighty days after they have been reported. The Supreme Court may fix a later date upon which such rules shall take effect, and may fix the extent to which they shall apply to proceedings then pending."; and

(2) by adding the following new item at the end of the section analysis:

"2077. Rules of procedure for courts of appeals.".

SEC. 522. Section 2901 of title 28, United States Code, is amended—

(a) by amending subsection (c) to read as follows:

"(c) 'Crime of violence' includes murder, manslaughter, maiming, kidnapping, rape, arson, burglary, robbery, extortion by threatening or placing another person in fear that any person will be subjected to bodily injury or kidnapping, using a weapon in the course of an assault, or an attempt or conspiracy to commit any of the foregoing offenses."; and

(b) in subsection (c), by deleting "section 1 of".

SEC. 523. Chapter 306 of title 18, United States Code, as in effect on the day before the effective date of this Act, is reenacted and redesignated as chapter 177 of title 28, United States Code, with former sections 4100 through 4115 of title 18 redesignated as sections 3101 through 3116, respectively, and cross-references in the chapter amended accordingly. Chapter 177 of title 28 is amended as follows:

(a) Section 3102 is amended—

(1) in subsection (d)(1), by deleting "crime" and substituting "offense";

(2) in subsection (f), by adding ", including a term of supervised release pursuant to section 2303 of title 18" after "supervision"; and

(3) in subsection (g) by deleting "to a penalty of imprisonment the execution of which is suspended and" and substituting "under which", and by deleting "the suspended" and substituting "a".

(b) Section 3106(c) is amended—

(1) in paragraph (1), by deleting "for good time" the second place it appears and substituting "toward service of sentence for satisfactory behavior";

(2) in paragraphs (1) and (2), by deleting "section 4161 of this title" and substituting "section 3824(b) of title 18";

(3) in paragraph (1), by deleting "section 4164 of this title" and substituting "section 3824(a) of title 18"; and

(4) by amending paragraph (4) to read as follows:

"(4) Credit toward service of sentence may be withheld as provided in section 3824(b) of title 18.".

(c) Section 3107 is amended—

(1) in subsection (a), by deleting "Parole Commission" and substituting "Probation System"; and

(2) by adding a new subsection (b) as follows:

"(b) An offender transferred to the United States to serve a sentence of imprisonment shall be released pursuant to section 3824(a) of title 18 after serving the period of time specified in the applicable sentencing guideline promulgated pursuant to 28 U.S.C. 994(a)(1). He shall be released to serve a term of supervised release for any term specified in the applicable guideline. The provisions of Rule 35(b)(2) of the Federal Rules of Criminal Procedure and of section 3723(b) of title 18 apply to a sentence under this subsection, and the United States district court for the district in which the offender is imprisoned or under supervision after transfer to the United States has jurisdiction to consider a motion under Rule 35(b)(2) as though it had imposed the sentence.".

(d) Section 3109(a) is amended by adding ", including any term of imprisonment or term of supervised release specified in the applicable sentencing guideline promulgated pursuant to 28 U.S.C. 994(a)(1)," after "consequences thereof".

SEC. 524. The Federal Rules of Evidence are amended as follows:

(a) Rules 404, 410, and 609, and the Table of Contents, are amended by deleting "Crimes", "crime", "crimes", "Crime", and "a crime" each place they appear in the caption, text, or analysis, and substituting "Offenses", "offense", "offenses", "Offense", and "an offense", respectively.

(b) Rule 410 is amended by deleting "perjury, false swearing, or making a".

(c) Rule 612 is amended by deleting "section 3500 of title 18, United States Code" and substituting "the Federal Rules of Criminal P-ocedure".

(d) Rule 1101(e) is amended by deleting "minor and petty offenses" and substituting "misdemeanors and infractions".

PART Q—AMENDMENTS RELATING TO LABOR, TITLE 29, UNITED STATES CODE

SEC. 531. Section 302 of the Labor Management Relations Act (29 U.S.C. 186) is amended—

(a) in subsection (c), by adding "and section 1752 (a)(1), (a)(3), and (a)(4) of title 18, United States Code," after "this section"; and

(b) in subsection (e), by adding "or section 1752 (a)(1), (a)(3), or (a)(4) of title 18" after "this section".

SEC. 532. Section 15(a)(5) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(5)) is amended by deleting ", or to make any statement, report, or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder, knowing such statement, report, or record to be false in a material respect".

SEC. 533. Section 504(a) of the Labor Management Reporting and Disclosure Act of 1959 (29 U.S.C. 504(a)) and section 411(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1111(a)) are amended—

(a) by deleting "the Board of Parole of the United States Department of Justice" and substituting "if the offense is a federal offense, the sentencing judge or, if the offense is a State or local offense, on motion of the United States Department of Justice, the district court of the United States for the district in which the offense was committed";

(b) by adding ", pursuant to sentencing guidelines and policy statements issued pursuant to 28 U.S.C. 994(a),";

(c) by deleting "Board" and "Board's" and substituting "court" and "court's", respectively; and

(d) by deleting "an administrative" and substituting "a".

SEC. 534. Section 454(b) of the Comprehensive Employment and Training Act of 1973, as added by section 2 of the Act of October 27, 1978 (29 U.S.C. 927(b)), is amended by deleting "or parole" the first place it appears and substituting ", parole, or supervised release".

SEC. 535. Section 411(a) of the Employee Retirement Income Security Act of 1934 (29 U.S.C. 1111(a)) is amended by deleting "chapter 63 of title 18, United States Code, a violation of section 874, 1027, 1503, 1505, 1506, 1510, 1951 or 1954" and substituting "section 1302, 1321, 1322, 1323, 1324, 1325, 1326, 1343, 1344, 1352, 1357, 1358, 1401, 1403, 1723, 1731, 1734, 1742, 1752, 1811, 1812, 1813, or 1814".

PART R—AMENDMENTS RELATING TO MINERAL LANDS AND LEASING, TITLE 30, UNITED STATES CODE

SEC. 541. Section 9(b) of the Act of October 3, 1961 (30 U.S.C. 689(b)) is amended—

(a) by deleting "The acceptance or retention of any payment as aforesaid shall also constitute an offense against the United States punishable by a fine of not more than $5,000 or imprisonment for not more than two years, or both, and any" and substituting "Any"; and

(b) by deleting "such offense" and substituting "an offense described in section 1001, 1343, or 1731 of title 18, United States Code, in connection with the acceptance or retention of a payment made under this Act".

SEC. 542. The Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 801 et seq.) is amended as follows:

(a) Section 110(h) (30 U.S.C. 820(h)) is amended by deleting "under subsection (f) of this section" and substituting "for violating section 1343 of title 18, United States Code".

(b) Section 115(c), as added by section 201 of the Federal Mine Safety and Health Amendments Act of 1977 (30 U.S.C. 825(c)), is amended by deleting "shall be punishable under section 110 (a) and (f)" and substituting "is an offense described in section 1343 of title 18, United States Code".

SEC. 543. Sections 518(i) and 521(d) of the Surface Mining and Reclamation Act of 1977 (30 U.S.C. 1268(i) and 1271(d)) are amended by adding "and for violating section 1343 of title 18, United States Code," after "this section".

PART S—AMENDMENTS RELATING TO MONEY AND FINANCE, TITLE 31, UNITED STATES CODE

SEC. 551. Section 602 of the Act of October 10, 1978 (31 U.S.C. 699(b)), is amended by deleting "shall be guilty of a felony, and, upon conviction, shall be fined not more than $4,000 or imprisoned for not more than one year, or both" and substituting "commits an unlawful act that is an offense described in section 1341 of title 18, United States Code".

SEC. 552. Section 244 of the Revised Statutes (31 U.S.C. 1018) is amending by deleting "or who takes or applies to his own use any emolument or gain for negotiating or transacting any business in the Department,".

SEC. 553. Section 1 of the Act of August 11, 1955 (31 U.S.C. 1034) is amended by deleting "section 545" and substituting "section 1411, 1811(a)(3), 1812(a)(3), or 1814(a)(4)".

SEC. 554. Section 203(k) of the Currency and Foreign Transactions Reporting Act (31 U.S.C. 1052(k)) is amended to read as follows:

"(k) For the purposes of section 1343 of title 18, United States Code, the contents of reports required under any provision of this Act are statements and representations in a government matter.".

PART T—AMENDMENTS RELATING TO NAVIGATION AND NAVIGABLE WATERS, TITLE 33, UNITED STATES CODE

SEC. 561. The second sentence of section 4 of the Act of August 8, 1894 (33 U.S.C. 1) is amended by deleting "in any district court of the United States within whose territorial jurisdiction such offense may have been committed".

SEC. 562. Section 510 of the Act of August 2, 1946 (33 U.S.C. 533), is amended by deleting ", or who refuses to produce books, papers, or documents in obedience to a subpena or other lawful requirement under this title,".

SEC. 563. Section 2 of the Act of February 21, 1891, and the second paragraph of section 11 of the Rivers and Harbors Appropriation Act of 1922 (33 U.S.C. 554 and 555), are amended by deleting ", to be enforced in any district court in the United States within whose territorial jurisdiction such offense may have been committed".

SEC. 564. That part of the first section of the Act entitled "An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes", approved August 11, 1888 (25 Stat. 400), comprising the third sentence of the last paragraph beginning on page 419 of volume 25 of the United States Statutes at Large (33 U.S.C. 601), is amended by deleting ", the same to be enforced by prosecution in any district court of the United States within whose territorial jurisdiction such offense may have been committed".

SEC. 565. Section 9(a) of the Oil Pollution Act, 1961 (33 U.S.C. 1007(a)) is amended by deleting ": *And provided further*, That whenever any arrest is made under the provisions of said sections the person so arrested shall be brought forthwith before a commissioner, judge, or court of the United States for examination of the offenses against him; and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in cases of crimes against the United States".

SEC. 566. Section 13(b)(1) of the Ports and Waterways Safety Act, as added by section 2 of the Port and Tanker Safety Act of 1978 (33 U.S.C. 1232(b)(1)), is amended to read as follows:

"(1) Except as provided in sections 1702 and 1703 of title 18, United States Code, any person who willfully and knowingly violates this chapter or any regulation issued hereunder commits an unlawful act that is an offense punishable under section 1853 of title 18, United States Code.".

SEC. 567. The Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) is amended as follows:

(a) Section 309(c), as added by section 2 of the Act of October 18, 1972, and amended (33 U.S.C. 1320(c)(1)), is amended—

(1) in paragraph (1), by deleting "shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both" and substituting "commits

an unlawful act that is an offense punishable under section 1853 of title 18, United States Code"; and

(2) in paragraph (2), by deleting "who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or".

(b) Section 404(s)(4)(A), as added by section 2 [illegible] Act of October 18, 1972, and amended (33 U.S.C. 1344(s)(4)(A)), is amended by deleting "shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both" and substituting "commits an unlawful act that is an offense punishable under section 1853 of title 18, United States Code".

(c) Section 508(a), as added by section 2 of the Act of October 18, 1972 (33 U.S.C. 1368(a)), is amended by adding ", or under section 1853 of title 18, United States Code, or, if the offense involved an application, record, report, plan, or other document filed or required to be maintained under this Act, an offense under section 1343 or 1344 of title 18,".

SEC. 568. The Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.) is amended as follows:

(a) Section 16(b)(1)(B) (33 U.S.C. 1515(b)(1)(B)) is amended by adding "civil" before "action" the second place it appears.

(b) Section 18(b) (33 U.S.C. 1517(b)) is amended by deleting "or for giving a false statement" and substituting ", false swearing, or making a false statement".

PART U—AMENDMENTS RELATING TO PATENTS, TITLE 35, UNITED STATES CODE

SEC. 571. Section 25(b) of title 35, United States Code, is amended to read as follows:

"(b) Whenever such written declaration is used, the document must warn the declarant that making a false statement that the declarant knows is false, or omitting a material fact that he knows is necessary to make the declaration not misleading, is an offense described in section 1343 of title 18 that is punishable by imprisonment or fine or both.".

PART V—AMENDMENTS RELATING TO VETERANS' BENEFITS, TITLE 38, UNITED STATES CODE

SEC. 581. Section 3405 of title 38, United States Code, is amended by deleting "(1)" and ", or (2) wrongfully withholds from any claimant or beneficiary any part of a benefit or claim allowed and due him".

SEC. 582. Section 3506(b) of title 38, United States Code, is amended to read as follows:

"(b) The offenses referred to in subsection (a) of this section are those offenses described (1) in the following provisions of title 18, United States Code: sections 1101, 1102, 1111, 1112, 1114, 1117, 1121, 1122, 1123, 1124, 1131, 1203, and

1311 (if the offense committed or alleged to have been committed by the person harbored or whose identity is concealed is an offense described in section 1113, 1117, 1121, 1122, or 1123 of title 18), or a conspiracy to commit one of those offenses; (2) in the Uniform Code of Military Justice, articles 94, 104, and 106; and (3) in sections 222 and 223 of the Atomic Energy Act of 1954.".

PART W—AMENDMENTS RELATING TO POSTAL SERVICE, TITLE 39, UNITED STATES CODE

SEC. 591. Section 410(b)(2) of title 39, United States Code, is amended to read as follows:

"(2) all provisions of title 18 and title 18 Appendix dealing with the mails, property, federal public servants, or former federal public servants;".

SEC. 592. Section 3001(a) of title 39, United States Code, is amended to read as follows:

"(a) Matter is nonmailable if sending or disseminating the matter is an offense described in section 1841 or 1842 of title 18, or if the use of the mails for the matter would result in federal jurisdiction of an offense described in section 1601, 1602, 1603, 1611, 1612, 1613, or 1734 of title 18, or if deposit or transmittal of the matter in the mails is punishable under section 1302, 1715, 1716, or 1717 of title 18 Appendix or under section 26 of the Animal Welfare Act.".

PART X—AMENDMENTS RELATING TO PUBLIC BUILDINGS, PROPERTY, AND WORKS, TITLE 40, UNITED STATES CODE

SEC. 601. Section 8 of the Act of August 18, 1949 (40 U.S.C. 13m) is amended by deleting "Whoever" and substituting "Except as provided in title 18, United States Code, whoever".

SEC. 602. Section 8(b) of the Act of July 31, 1946 (40 U.S.C. 193h(b)) is amended by deleting "Any" and substituting "Except as provided in title 18, United States Code, any".

PART Y—AMENDMENTS RELATING TO PUBLIC HEALTH AND WELFARE, TITLE 42, UNITED STATES CODE

SEC. 611. The Public Health Service Act (42 U.S.C. 201 et seq.) is amended as follows:

(a) Section 303 (42 U.S.C. 242a) is amended by adding the following new subsection at the end thereof:

"(d) The Secretary shall promulgate regulations to take effect on or before the effective date of the Criminal Code Reform Act of 1979 pertaining to the use of psychosurgery, electric shock treatment, and the protracted use of psychotropic drugs applicable to a person under subchapter B of chapter 36 of title 18, United States Code. Such regulations shall insure at a minimum that no such procedures shall be permitted without the informed consent of the person or, if such person is incompetent or otherwise incapable of rendering informed consent, the informed consent of a guardian or other person appointed to represent the interests of the

person committed. To constitute voluntary informed consent, the following information shall be provided to the person both in a written consent form, to be promulgated by the Secretary, and by a supplementary oral explanation at least twenty-four hours before the consent form is signed by the person or his appointed representative:

"(1) the reason for treatment, including the nature and seriousness of the person's illness, disorder, or defect;

"(2) the nature of the procedures to be used in the proposed treatment, including their possible frequency and duration;

"(3) the possible degree and duration of improvement or remissions expected with or without such treatment;

"(4) the nature, degree, duration and possible side effects and significant risks, of such treatment, including the likelihood of memory loss and its irreversibility;

"(5) the reasonable alternative treatments, including why the physician is recommending this particular treatment; and

"(6) the right of the person to accept or refuse the proposed treatment, and, if the person consents, the right to revoke the consent, for any reason, at any time prior to or between treatments.

Both the oral explanation and execution of the consent form shall be in the presence of at least one independent witness. The provisions of this subsection shall not apply to the emergency administration of medication.".

(b) The first sentence of section 341(a) (42 U.S.C. 257(a)) is amended to read: "The Secretary of Health, Education, and Welfare is authorized to provide for the confinement, care, protection, treatment, and discipline of persons addicted to the use of habit-forming narcotic drugs who are civilly committed to treatment under the Narcotic Addict Rehabilitation Act of 1966, addicts and other persons with drug abuse and drug dependence problems who voluntarily submit themselves for treatment, and addicts convicted of offenses against the United States, including persons convicted by courts-martial and consular courts.".

(c) Section 346(a) (42 U.S.C. 261(a)) is amended by deleting "shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not more than ten years" and substituting "commits an unlawful act that is an offense that is punishable under section 1314 of title 18, United States Code, as though the hospital were an official detention facility".

(d) Section 351(f) (42 U.S.C. 262(f)) is amended by deleting "Any" and substituting "Except as provided in title 18, United States Code, any".

(e) Section 353(h), as added by section 5(a) of the Act of December 5, 1967 (42 U.S.C. 263a(h)), is amended by deleting "Any" and substituting "Except as provided in sections 1301 and 1343 of title 18, United States Code, any".

SEC. 612. The Social Security Act (42 U.S.C. 301 et seq.) is amended as follows:

(a) Section 202(u)(1) (A) and (B) (42 U.S.C. 402(u)(1) (A) and (B)) is amended to read as follows:

"(A) section 1101 (Treason), 1102 (Armed Rebellion or Insurrection), 1111 (Sabotage). 1112 (Impairing Military Effectiveness), 1117 (Inciting or Aiding Mutiny, Insubordination, or Desertion), 1121 (Espionage), 1122 (Disseminating National Defense Information), 1123 (Disseminating Classified Information), 1124 (Receiving Classified Information), 1125 (Failing to Register as a Person Trained in a Foreign Espionage System), or 1203 (Entering or Recruiting for a Foreign Armed Force) of title 18, United States Code, or conspiracy to commit any of these offenses, or

"(B) section 1131 (Atomic Energy Offenses) of title 18, United States Code,".

(b) The last sentence of section 206(a) (42 U.S.C. 406(a)) is amended by deleting "Any" and substituting "Except as provided in section 1734 of title 18, any".

(c) The last sentence of section 1631(d)(2), as added by section 301 of the Act of October 30, 1972, and amended (42 U.S.C. 1383(d)(2)), is amended by deleting "Any" and substituting "Except as provided in section 1734 of title 18, United States Code, any".

(d) Section 1877(b)(3), as added by section 242(b) of the Act of October 30, 1972, and amended (42 U.S.C. 1395nn(b)(3)), is amended by deleting "Paragraphs (1) and (2)" and substituting "Section 1751 of title 18, United States Code,".

(e) Section 1909 (42 U.S.C. 1396h) is amended—

(1) in subsection (a), by deleting "the preceding provisions of this subsection" and substituting "section 1343 or 1731 of title 18, United States Code, in connection with a benefit or payment under this title"; and

(2) in subsection (b)(3), by deleting "Paragraphs (1) and (2)" and substituting "Section 1751 of title 18, United States Code,".

SEC. 613. The Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.) is amended as follows:

(a) Section 12 (42 U.S.C. 1973j) is amended—

(1) in subsection (b), by deleting "fined not more than $5,000, or imprisoned not more than five years, or both" and substituting "commits an unlawful act that is an offense described in section 1344 of title 18, United States Code"; and

(2) in subsection (d)—

(A) by deleting "11,"; and

(B) by adding ", or by subchapter A or B of chapter 15 of title 18, United States Code, if the offense relates to voting in a federal, State or local general, special, or primary election," after "subsection (b) of this section".

(b) Section 205, as added by section 6 of the Act of June 22, 1970, and redesignated and amended (42 U.S.C. 1973aa–3), is amended to read as follows:

"PENALTY

"SEC. 205. Whoever deprives a person of a right secured by section 201, 202, or 203 of this title commits an unlawful act that is an offense described in section 1501 of title 18, United States Code.".

SEC. 614. Section 7(b) of the Overseas Citizens Voting Rights Act of 1975, as redesignated (42 U.S.C. 1973dd–3(b)), is amended to read as follows:

"(b) Whoever knowingly deprives a person of a right secured by this Act commits an unlawful act that is an offense described in section 1501 of title 18, United States Code.".

SEC. 615. Section 302 of the Civil Rights Act of 1960 (42 U.S.C. 1974a) is amended to read as follows:

"SEC. 302. A record or paper required by section 301 to be retained and preserved is a federal government record for purposes of sections 1345, 1701, 1702, 1703, and 1731 of title 18, United States Code.".

SEC. 616. The Civil Rights Act of 1964 (42 U.S.C. 2000a et seq.) is amended as follows:

(a) Section 304 (42 U.S.C. 2000b–3) is amended to read as follows:

"SEC. 304. A complaint as used in this title is a statement in a government matter within the meaning of section 1343 of title 18, United States Code.".

(b) The second sentence of section 407(c) (42 U.S.C. 2000c–6(c)) is amended to read: "A 'complaint' as used in this section is a statement in a government matter within the meaning of section 1343 of title 18, United States Code.".

(c) Section 702 (42 U.S.C. 2000e–1) is amended by adding "and section 1504 of title 18, United States Code" after "this title".

SEC. 617. Section 229b. of the Atomic Energy Act of 1954, as added by section 6 of the Act of August 6, 1956 (42 U.S.C. 2278a(b)), is amended by deleting "Whoever" and substituting "Except as provided in title 18, United States Code, whoever".

SEC. 618. Section 811(f) of the Act of April 11, 1968 (42 U.S.C. 3611(f)), is amended by deleting "shall make or cause to be made any false entry or statement of fact in any report, account, record, or other document submitted to the Secretary pursuant to his subpena or other order, or" and "or shall willfully mutilate, alter, or by any other means falsify any documentary evidence,".

SEC. 619. The Noise Control Act of 1972 (42 U.S.C. 4901 et seq.) is amended as follows:

(a) Section 11(a)(1) (42 U.S.C. 4910(a)(1)) is amended by deleting "shall be punished by a fine of not more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both" and substituting "commits an unlawful act that is an offense punishable under section 1853 of title 18, United States Code".

(b) Section 13(c) (42 U.S.C. 4912(c)) is amended by deleting "knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or".

SEC. 620. Section 3008(d) of the Solid Waste Disposal Act (42 U.S.C. 6928(d)) is amended by deleting "shall, upon conviction, be subject to a fine of not more than $25,000 for each day of violation, or to imprisonment not to exceed one year, or both" and substituting "commits an unlawful act that is an offense punishable under section 1853 of title 18, United States Code".

SEC. 621. Section 113(c) of the Clean Air Act, as added by section 4(a) of the Clean Air Act Amendments of 1970, and amended (42 U.S.C. 7413(c)), is amended—

(a) in paragraph (1), by deleting "shall be punished by a fine of not more than $25,000 per day of violation, or by imprisonment for not more than one year, or both" and substituting "commits an unlawful act that is an offense punishable under section 1853 of title 18, United States Code"; and

(b) in paragraph (2), by deleting "knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who".

PART Z—AMENDMENTS RELATING TO PUBLIC LANDS, TITLE 43, UNITED STATES CODE

SEC. 631. Section 3 of the Act of August 21, 1916 (43 U.S.C. 362), is amended by deleting "injure, destroy, deface, or".

SEC. 632. Section 24(c) of the Outer Continental Shelf Lands Act, as added by section 208 of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1350(c)), is amended—

(a) in paragraph (3), by adding "or" after "resources"; and

(b) by deleting "or (4)" and substituting "commits an unlawful act that is an offense punishable under section 1853 of title 18, United States Code. (4) Any person who".

PART AA—AMENDMENTS RELATING TO RAILROADS, TITLE 45, UNITED STATES CODE

SEC. 641. The Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.) is amended as follows:

(a) Section 4(a–2)(i)(B) (45 U.S.C. 354(a-2)(i)(B)) is amended by adding "and section 1343 of title 18, United States Code" after "of this Act".

(b) Section 9(a) (45 U.S.C. 359(a)) is amended by deleting "or who shall knowingly make or aid in making or cause to be made any false or fraudulent statement or report when a statement or report is required to be made for purposes of this Act, or who shall knowingly make or aid in making or cause to be made any

false or fraudulent statement or claim for the purpose of causing benefits or other payment to be made or not to be made under this Act,".

PART BB—AMENDMENTS RELATING TO SHIPPING, TITLE 46, UNITED STATES CODE

SEC. 651. Section 4144 of the Revised Statutes (46 U.S.C. 22) is amended by deleting ", but the master shall be liable to a penalty of one thousand dollars".

SEC. 652. Section 4188 of the Revised Statutes (46 U.S.C. 59) is amended by deleting "penalty and disqualification prescribed in section 4187 of this title" and substituting "section 1301 or subchapter E or F of chapter 13 of title 18, United States Code".

SEC. 653. Section 4472 of the Revised Statutes (46 U.S.C. 170) is amended—

(a) in subsection (7)(e), by deleting "Interstate Commerce Commission" and substituting "Secretary of Transportation"; and

(b) in the first sentence of subsection (14), by deleting "shall be subject to a criminal penalty of not more than $2,000 or imprisoned not more than 5 years, or both for each violation" and substituting "commits an unlawful act that is an offense punishable under section 1821 of title 18, United States Code".

SEC. 654. Section 4373 of the Revised Statutes (46 U.S.C. 321) is amended by adding ", except as provided in title 18, United States Code," after "shall be liable".

SEC. 655. Section 4374 of the Revised Statutes (46 U.S.C. 322) is amended by adding "or in title 18, United States Code" after "in the preceding section".

SEC. 656. Section 4375 of the Revised Statutes (46 U.S.C. 323) is amended by deleting "shall be liable to a penalty of five hundred dollars" and substituting "commits an unlawful act that is an offense described in section 1741 or 1742 of title 18, United States Code".

SEC. 657. Section 5(e) of the Act of May 27, 1936 (46 U.S.C. 369(e)) is amended by deleting "be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be punished by a fine of not to exceed $5,000 or by imprisonment for not to exceed five years, or by both such fine and imprisonment, in the discretion of the court" and substituting "commit an unlawful act that is an offense described in section 1344 of title 18, United States Code".

SEC. 658. Section 4417a.(14)(B)(i) of the Revised Statutes, as added by the Act of June 23, 1936, and amended (46 U.S.C. 391a(14)(B)(i)), is amended to read as follows:

"(i) Except as provided in sections 1702 and 1703 of title 18, United States Code, any person who willfully and knowingly violates this chapter or any regulation issued hereunder commits an unlawful act that is an offense punishable under section 1853 of title 18, United States Code.".

SEC. 659. Section 4430 of the Revised Statutes (46 U.S.C. 408) is amended by deleting ": *Provided*, That any person, firm, or corporation who affixes any false, forged, fraudulent, spurious, or counterfeit of the stamp herein authorized to be put on by a Coast Guard official shall be deemed guilty of a felony and shall be fined not less than $1,000 nor more than $5,000 and imprisoned not less than two years nor more than five years".

SEC. 660. The second sentence of section 10 of the Act of June 26, 1884, (46 U.S.C. 599(d)) is amended by deleting "Any" and substituting "Except as provided in section 1731 of title 18, United States Code, any".

SEC. 661. The second paragraph of section 4551(g) of the Revised Statutes (46 U.S.C. 643) is amended by deleting "be deemed guilty of a misdemeanor and, on conviction thereof before any district court of the United States, shall be fined not more than $1,000 or imprisoned for not more than one year, in the discretion of the court" and substituting "commit an unlawful act that is an offense described in section 1343 of title 18, United States Code".

SEC. 662. The third sentence of section 4561 of the Revised Statutes (46 U.S.C. 658) is amended by deleting "If" and substituting "Except as provided in section 1617 of title 18, United States Code, if".

SEC. 663. Section 13(d) of the Act of March 4, 1915 (46 U.S.C. 672(d)) is amended by deleting "deemed guilty of perjury and upon conviction thereof shall be punished by a fine not exceeding $500 or by imprisonment not exceeding one year, or by both such fine and imprisonment, within the discretion of the court" and substituting "guilty of perjury under section 1341 of title 18, United States Code".

SEC. 664. Section 4596 of the Revised Statutes (46 U.S.C. 701) is amended—

(a) in the introductory paragraph, by adding "as provided in title 18, United States Code, and" before "as follows";

(b) in paragraph four, by deleting "placed in irons" and substituting "detained";

(c) in paragraph five, by deleting "placed in irons, on bread and water with full rations every fifth day," and substituting "detained";

(d) in paragraph seven, by deleting ", and also imprisonment for not more than twelve months"; and

(e) in paragraph eight, by deleting ", and he shall be liable to imprisonment for a period of not more than twelve months".

SEC. 665. Section 4610 of the Revised Statutes (46 U.S.C. 711) is amended by deleting "and if a conviction is had, and the sum imposed as a penalty by the court is not paid either immediately after the conviction, or without such period as the court at the time of conviction appoints, it shall be lawful for the court to commit the offender to prison, there to be imprisoned for the term provided in case of such offense, the commitment to be terminable upon payment of the amount and costs;".

SEC. 666. Section 4611 of the Revised Statutes (46 U.S.C. 712) is amended by deleting "section 2191" and substituting "section 1611, 1612, 1613, 1622, or 1623".

SEC. 667. The last sentence of section 259 of the Act of March 4, 1909 (46 U.S.C. 1356), is amended to read: "Whoever shall violate the prohibition of this section shall also forfeit and pay a sum of money equal to double the value of his right or property in such vessel.".

PART CC—AMENDMENTS RELATING TO TELEGRAMS, TELEPHONES, AND RADIO TELEPHONES, TITLE 47, UNITED STATES CODE

SEC. 671. The Submarine Cable Act (47 U.S.C. 21 et seq.) is amended as follows:

(a) Section 7 (47 U.S.C. 27) is amended by adding ", except as provided in title 18, United States Code," after "That".

(b) Section 13 (47 U.S.C. 33) is amended by deleting "Criminal actions and proceedings for a violation of the provisions of this Act shall be commenced and prosecuted in the district court for the district in which the offense was committed, and when not committed in any judicial district, then in the district court for the district in which the offender may be found; and suits" and substituting "Suits".

SEC. 672. The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended as follows:

(a) Section 220(e) is amended by deleting "who shall willfully make any false entry in the accounts of any book of accounts or in any record or memorandum kept by any such carrier, or who shall willfully destroy, mutilate, alter, or by any means or device falsify any such account, record, or memorandum, or".

(b) A new section 606a is added after section 606 to read as follows:

"DISCLOSURE OF INTERCEPTION OR SURVEILLANCE

"SEC. 606a. No communication common carrier, officer, employee, or agent thereof, or landlord, custodian or other person shall disclose the existence of any interception or surveillance or the device used to accomplish the interception or surveillance with respect to which the person has been furnished an order or certification under section 3104 of title 18, United States Code, except as may otherwise be required by legal process and then only after prior notification to the Attorney General or to the principal prosecuting attorney of a State or any political subdivision of a State, as may be appropriate. Any violation of this provision by a communication common carrier or an officer, employee, or agent thereof, shall render the carrier liable to the United States, the State, or the political subdivision for civil damages as follows:

"(a) Actual damages but not less than liquidated damages computed at the rate of $100 a day for each day of violation or $1,000, whichever is higher.

"(b) Punitive damages.

"(c) A reasonable attorney's fee and other litigation costs reasonably incurred.".

PART DD—AMENDMENTS RELATING TO TERRITORIES AND INSULAR POSSESSIONS, TITLE 48, UNITED STATES CODE

SEC. 681. Section 32 of the Organic Act of the Virgin Islands of the United States (48 U.S.C. 1406d) is amended by deleting "$100 or" and substituting "$25,000 and".

SEC. 682. Section 31 (d)(1) and (f) of the Organic Act of Guam (48 U.S.C. 1421i (d)(1) and (f)) are amended by adding "and subchapter A of chapter 14 of title 18, United States Code" after "1954".

SEC. 683. Section 23 of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1613) is amended by deleting "$100" and substituting "$25,000".

PART EE—AMENDMENTS RELATING TO TRANSPORTATION, TITLE 49, UNITED STATES CODE

SEC. 691. Section 20(7)(b) of part I of the Interstate Commerce Act (49 U.S.C. 20(7)(b)) to the extent that it remains in effect pursuant to section 4(c) of Public Law 95-473, is amended—

(a) by deleting "who shall knowingly and willfully make, cause to be made, or participate in the making of, any false entry in any annual or other report required under this section to be filed, or in the accounts of any book of accounts or in any records or memoranda kept by a carrier, or required under this section to be kept by a lessor or other person, or who shall knowingly and willfully destroy, mutilate, alter, or by any other means or device falsify the record of any such accounts, records, or memoranda, or"; and

(b) by deleting "such accounts, records, or memoranda" and substituting "accounts, records, or memoranda kept by a carrier, or required under this section to be kept by a lessor or other person".

SEC. 692. The Federal Aviation Act of 1958 (49 U.S.C. 1301 et seq.) is amended as follows:

(a) Section 902 (49 U.S.C. 1472) is amended—

(1) in subsection (e), by deleting "or shall, knowingly and willfully, falsify, mutilate, or alter any such report, account, record, or memorandum, or shall knowingly and willfully file any false report, account, record, or memorandum,";

(2) in subsection (h)(2), by deleting "is guilty of an offense" and substituting "commits an unlawful act that is an offense punishable under section 1821 of title 18, United States Code,";

(3) by amending subsection (i) to read as follows:

"(i) Notwithstanding the provisions of part III of title 18, United States Code, whoever commits an offense described in section 1601 (Murder) of title 18, United States Code, that is committed during the commission or attempted com-

mission of an offense described in section 1631 (Aircraft Hijacking) of title 18, United States Code, shall be subject to the penalty of death as provided in section 903(c) of this Act."; and

(4) in subsection (c), by deleting "subsections (i) through (n), inclusive" and substituting "subsection (l) of this section, and of chapter 16 of title 18, United States Code, and of sections 1731 and 1732 of title 18, United States Code, if the title 18 offense is committed in the special aircraft jurisdiction".

(b) Section 1473(c) (49 U.S.C. 1473(c)) is amended by adding the following new paragraphs at the end thereof:

"(8) A person who has been sentenced pursuant to the provisions of paragraph (7) shall be delivered to the custody of the Bureau of Prisons until the sentence is to be implemented. The Bureau shall release the person to the custody of a United States marshal, who shall supervise the implementation of the sentence in the manner prescribed by the law of the State in which the sentence is imposed. If the law of such State does not provide for the implementation of such a sentence, the court shall designate another State, the law of which does so provide, and the sentence shall be implemented in the latter State in the manner prescribed by such law. A sentence imposed under paragraph (7) may not be implemented while the defendant is pregnant.

"(9) A United States marshal charged with the supervision of the implementation of a sentence under paragraph (7) may use appropriate State or local facilities for the purpose, may use the services of an appropriate State or local official or of a person he employs for the purpose, and may pay the costs thereof in an amount approved by the Attorney General.

"(10)(A) PETITION.—In a case in which a sentence is imposed pursuant to the first sentence of paragraph (5), a petition to a United States court of appeals for review of the sentence may be filed by the defendant within the time specified for the filing of a notice of appeal. If such a petition is filed by the defendant, it shall be granted by the court of appeals and shall have priority over all other cases.

"(B) REVIEW.—The court of appeals shall review the entire record in the case, including—

"(i) the evidence submitted during the trial;

"(ii) the presentence report, if any;

"(iii) the information submitted during the sentencing hearing;

"(iv) the procedures employed in the sentencing hearing; and

"(v) the findings under paragraph (4).

"(C) CONSIDERATIONS.—Upon review of the entire record, the court of appeals shall determine whether—

"(i) the procedures employed in the sentencing hearing were contrary to law; and

"(ii) the findings under paragraph (4) were clearly erroneous, having regard for the opportunity of the jury, or if there was no jury, the district court, to observe the defendant.

"(D) DECISION AND DISPOSITION.—If the court of appeals—

"(i) determines that—

"(I) the procedures employed in the sentencing hearing were not contrary to law, or were contrary to law only in a manner constituting harmless error; and

"(II) the findings under paragraph (4) were not clearly erroneous, or were clearly erroneous but the sentence was not affected;

it shall affirm the sentence;

"(ii) determines that the procedures employed in the sentencing hearing were contrary to law in a manner not constituting harmless error, it shall set aside the sentence and remand the case for redetermination of sentence in accordance with the provisions of paragraph (5); or

"(iii) determines that a finding under paragraph (4) was clearly erroneous and that the sentence was affected by such finding, it shall set aside the sentence and remand the case for imposition of a sentence other than a sentence imposed pursuant to the first sentence of paragraph (5).".

SEC. 693. Section 110(b) of the Hazardous Materials Transportation Act (49 U.S.C. 1809(b)) is amended by deleting "is guilty of an offense" and substituting "commits an unlawful act that is punishable under section 1821 of title 18, United States Code,".

SEC. 694. Subtitle IV of title 49, United States Code, is amended as follows:

(a) Section 11909 (b)(1), (c)(2), and (d)(2) are amended by deleting "completely, and truthfully" and substituting "and completely".

(b) Section 11911 (a) and (b) are amended by deleting "shall be fined at least $1,000 but not more than $10,000, imprisoned for at least one year but not more than 3 years, or both" and substituting "commits an unlawful act that is an offense punishable under section 1761 of title 18, United States Code".

(c) Section 11914 (a), (b), (c), and (d) are amended by adding "or title 18" after "this chapter".

PART FF—AMENDMENTS RELATING TO WAR AND NATIONAL DEFENSE, TITLE 50, UNITED STATES CODE

SEC. 701. Section 13 of the Helium Act, as added by section 2 of the Act of September 13, 1960 (50 U.S.C. 167(k)), is amended by deleting ", except that whoever commits such an offense with intent to injure the United States or with intent to secure an advantage to any foreign nation, shall upon conviction thereof, be punished by a fine of not more than $20,000 or by imprisonment for not more than twenty years, or both".

SEC. 702. The first paragraph of section 2 and section 2(a) of the Act of June 15, 1917 (50 U.S.C. 192), are amended by deleting "punished by imprisonment

CONTINUED

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S. 1723

A BILL

SUBTITLE A—PROVISIONS OF GENERAL APPLICABILITY

[illegible]

[illegible]

* * * * * * *

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

§ [illegible] Dissemination of classified information

[illegible]

[illegible]

§ [illegible] Protection of defense information

[illegible]

§ [illegible] Espionage

[illegible]

§ [illegible] Disseminating national defense information

[illegible]

[illegible]

[illegible]

§ [illegible] Dissemination of classified information

[illegible]

§ [illegible] Retaining classified information

[illegible]

§ [illegible] Failure to register as a person trained in a foreign espionage system

[illegible]

§ [illegible] Failure to register as, or acting as, a foreign agent

[illegible]

[illegible]

[illegible]

[illegible]

Subchapter H—Offenses Involving Immigration, Naturalization, and Passports

[illegible]

§ [illegible]. Unlawfully entering the United States as an alien

[illegible]

§ [illegible]. Smuggling an alien into the United States

[illegible]

[illegible]

§ [illegible]. Unlawfully employing an alien

[illegible]

§ [illegible]. Fraudulently acquiring or improperly using evidence of citizenship

[illegible]

or duplicate thereof, so allowing naturalization or citizenship of any person other than the person for whom it was lawfully issued;

or attempts to do so, commits a class D felony.

§ 1546. Fraudulently acquiring or improperly using a passport

Whoever knowingly—

(a) uses fraud and thereby obtains the issuance or verification of a United States passport;

(b) uses a United States passport, the issuance or verification of which was unlawfully obtained; or

(c) uses a United States passport that was issued for the use of another person;

or attempts to do so, commits a class D felony.

§ 1547. Definitions for subchapter

As used in this subchapter, the term—

(a) "United States" when used in a geographical sense, means the whole continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands of the United States;

(b) "passport" means any travel document issued by competent authority showing the bearer's origin, identity, and nationality, if any, which is valid for the entry of the bearer into a foreign country;

(c) "nonimmigrant visa" means a visa properly issued to an alien as an eligible nonimmigrant by a competent officer as provided in the Immigration and Nationality Act (8 U.S.C. 1101 et seq.);

(d) "immigration officer" means any employee or class of employees of the Service or of the United States designated by the Attorney General, individually or by regulation, to perform the functions of an immigration officer specified by the Immigration and Nationality Act (8 U.S.C. 1101 et seq.);

(e) "immigrant visa" means an immigrant visa required by the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) and properly issued by a consular officer at such officer's office outside of the United States to an eligible immigrant under such Act;

(f) "entry" means any coming of an alien into the United States, from a foreign port or place or from an outlying possession, whether voluntarily or otherwise, except that an alien having a lawful permanent residence in the United States shall not be regarded as making an entry into the United States for the purposes of this subchapter if the alien proves to the satisfaction of the Attorney General that the alien's departure to a foreign port or place or to an outlying possession was not intended or reasonably to be expected by the alien or the alien's presence in a foreign port or place or in an outlying possession was not voluntary, but no person whose departure from the United States was occasioned by deportation proceed-

ings, extradition, or other legal process shall be held to be entitled to this exception;

(g) "border crossing identification card" means a document of identity bearing that designation issued to an alien who is lawfully admitted for permanent residence, or to an alien who is a resident in foreign contiguous territory, by a consular officer or an immigration officer for the purpose of crossing over the border between the United States and foreign contiguous territory in accordance with such conditions for such document's issuance and use as may be prescribed by regulations under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.);

(h) "application for admission" means the application for admission into the United States and not the application for the issuance of an immigrant or nonimmigrant visa;

(i) "alien" means any person not a citizen or national of the United States; and

(j) "citizen" and "national", respectively, have the meanings given those terms in the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

* * * * * * *

CHAPTER 17—OFFENSES INVOLVING GOVERNMENT PROCESSES

Subchapter A—Obstruction of Government

§ 1701. Obstructing a government function by force

(a) Whoever knowingly uses physical force and thereby intentionally obstructs or impairs—

(1) the service, attempted service, or execution of any legal or judicial writ or process of any court or magistrate by a Federal public servant or other person duly authorized;

(2) the performance of duties by an extradition agent of the United States;

(3) the exercise of rights or the performance of duties under any order, judgment, or decree of a court; or

(4) the passage of the United States mail, or of any carrier or conveyance carrying the United States mail;

commits a class A misdemeanor.

(c) in connection with a charge of a class A, B, C, or D felony, or

(d) in connection with a charge of a class A, B, C, or D felony, if

(1) a class B felony is the gravest offense charged, or

(2) the defendant knowingly gave false information to a law enforcement officer with intent to implicate another person in the commission of a crime, under circumstances in which it is reasonably foreseeable that the law enforcement officer would attempt to make a written statement, commit a class A misdemeanor.

(b) The prosecution for an offense under this section, the grade of which is increased with respect to the base class by the information was given, under circumstances in which it was reasonably foreseeable that the law enforcement officer would attempt to make a written statement

(c) As used in this section, the term "conviction" means simultaneously entering a plea of guilty to and receiving a judgment of conviction for

(1) a felony offense, or

(2) three or more misdemeanor offenses.

§ 2121. Failure to appear as a defendant

(a) Whoever, after having been released pursuant to subsection (b) of this section knowingly—

(1) fails to appear before a court with reckless disregard for the fact that such court was required to do so by the conditions of the court's release, or

(2) fails to surrender for service of sentence with reckless disregard for the fact that the court was required to do so by a court order,

shall be punished as provided in subsection (b) of this section.

(b) An offense under this section is—

(1) a class B felony if the person was released—

(A) in connection with a charge of a class A, B, C, or D felony, or

(B) while awaiting sentencing, pursuant to the rules of criminal procedure, or pending appeal or certiorari after conviction of

(i) a class A felony, or

(ii) a class B felony if the person has a previous conviction for a class A or B felony, or

(C) while on escape status after having been sentenced to a term of imprisonment for a class A or B felony, or

(2) a class C felony if the person was released while awaiting sentencing, pursuant to the rules of criminal procedure, or pending appeal or certiorari after conviction of a class C or D felony, or

(3) a class A misdemeanor if the person was released while awaiting sentencing, pursuant to the rules of criminal procedure, or pending appeal or certiorari after conviction of a misdemeanor.

(c) It is a defense to a prosecution for an offense under this section that the person reported to custody as required, as soon as such report was practicable, but not later than 48 hours after the time the person was required to report to custody, and that the person's failure to report to custody as required was due to circumstances beyond the person's control.

(d) Whoever, after having been released pursuant to this section, knowingly fails to appear before a court as required by the conditions of release, or to surrender for service of sentence pursuant to a court order, if the person knew that the person was under an obligation to appear before a court or to surrender for service of sentence, and was informed that if the person failed to do so the person would be subject to a criminal penalty, shall be punished as provided in subsection (b) of this section.

§ 2122. Bail jumping with failure to appear for service of sentence

(a) Whoever, after having been released pursuant to this section knowingly fails to surrender for service of sentence pursuant to a court order, if the person knew that the person was under an obligation to surrender for service of sentence, and was informed that if the person failed to do so the person would be subject to a criminal penalty, shall be punished as provided in subsection (b) of this section.

(b) An offense under this section is—

(1) a class B felony if the person was released in connection with a charge of, or while awaiting sentencing, pursuant to the rules of criminal procedure, or pending appeal or certiorari after conviction of, or as a result of the same course of conduct or the same criminal episode as, a class A felony, or

(2) a class C felony if the person was released in connection with a charge of, or while awaiting sentencing, pursuant to the rules of criminal procedure, or pending appeal or certiorari after conviction of, or as a result of the same course of conduct or the same criminal episode as, a class B felony, or

(3) a class A misdemeanor if the person was released in connection with a charge of, or while awaiting sentencing, pursuant to the rules of criminal procedure, or pending appeal or certiorari after conviction of, or as a result of the same course of conduct or the same criminal episode as, a class C or D felony, or

(4) a class B misdemeanor if the person was released in connection with a charge of, or while awaiting sentencing, pursuant to the rules of criminal procedure, or pending appeal or certiorari after conviction of, or as a result of the same course of conduct or the same criminal episode as, a misdemeanor.

§ 2123. Failure or refusal to appear before a grand jury

(a) Whoever, in violation of law, or a valid court order, knowingly—

(1) refuses to subpoena of an official proceeding before a grand jury, or

(2) refuses to testify before a grand jury,

shall be punished as provided in subsection (b) of this section.

§ 2124. Failure to appear for service of sentence

(a) Whoever, after having been sentenced pursuant to the rules of criminal procedure to a term of imprisonment, knowingly fails to report for service of sentence at the time required by the court, shall be punished as provided in subsection (b) of this section.

(b) An offense under this section is—

(1) a class B felony if the person was sentenced for a class A felony, or

(2) a class C felony if the person was sentenced for a class B felony, or

(3) a class A misdemeanor if the person was sentenced for a class C or D felony, or

(4) a class B misdemeanor if the person was sentenced for a misdemeanor.

(c) It is a defense to a prosecution for an offense under this section that the person reported to custody as required, as soon as such report was practicable, but not later than 48 hours after the time the person was required to report to custody, and that the person's failure to report to custody as required was due to circumstances beyond the person's control.

(d) Whoever, after having been released pursuant to this section, knowingly fails to appear before a court as required by the conditions of release, or to surrender for service of sentence pursuant to a court order, if the person knew that the person was under an obligation to appear before a court or to surrender for service of sentence, and was informed that if the person failed to do so the person would be subject to a criminal penalty, shall be punished as provided in subsection (b) of this section.

§ 2125. Bail jumping with failure to appear for service of sentence

(a) Whoever, after having been released pursuant to this section knowingly fails to surrender for service of sentence pursuant to a court order, if the person knew that the person was under an obligation to surrender for service of sentence, and was informed that if the person failed to do so the person would be subject to a criminal penalty, shall be punished as provided in subsection (b) of this section.

(b) An offense under this section is—

(1) a class B felony if the person was released in connection with a charge of, or while awaiting sentencing, pursuant to the rules of criminal procedure, or pending appeal or certiorari after conviction of, or as a result of the same course of conduct or the same criminal episode as, a class A felony, or

(2) a class C felony if the person was released in connection with a charge of, or while awaiting sentencing, pursuant to the rules of criminal procedure, or pending appeal or certiorari after conviction of, or as a result of the same course of conduct or the same criminal episode as, a class B felony, or

(3) a class A misdemeanor if the person was released in connection with a charge of, or while awaiting sentencing, pursuant to the rules of criminal procedure, or pending appeal or certiorari after conviction of, or as a result of the same course of conduct or the same criminal episode as, a class C or D felony, or

(4) a class B misdemeanor if the person was released in connection with a charge of, or while awaiting sentencing, pursuant to the rules of criminal procedure, or pending appeal or certiorari after conviction of, or as a result of the same course of conduct or the same criminal episode as, a misdemeanor.

§ 2126. Failure or refusal to appear before a grand jury

(a) Whoever, in violation of law, or a valid court order, knowingly—

(1) refuses to subpoena of an official proceeding before a grand jury, or

(2) refuses to testify before a grand jury,

shall be punished as provided in subsection (b) of this section.

§ 2127. Failure to appear for service of sentence

(a) Whoever, after having been sentenced pursuant to the rules of criminal procedure to a term of imprisonment, knowingly fails to report for service of sentence at the time required by the court, shall be punished as provided in subsection (b) of this section.

(b) An offense under this section is—

(1) a class B felony if the person was sentenced for a class A felony, or

(2) a class C felony if the person was sentenced for a class B felony, or

(3) a class A misdemeanor if the person was sentenced for a class C or D felony, or

(4) a class B misdemeanor if the person was sentenced for a misdemeanor.

(c) It is a defense to a prosecution for an offense under this section that the person reported to custody as required, as soon as such report was practicable, but not later than 48 hours after the time the person was required to report to custody, and that the person's failure to report to custody as required was due to circumstances beyond the person's control.

(B) any other weapon or object that may be used as a weapon or as a means of facilitating escape;

(C) a narcotic drug, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802);

(D) a controlled substance, other than a narcotic drug, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), or an alcoholic beverage; or

(E) United States currency; or

(2) being an inmate of an official detention facility, makes, possesses, procures, or otherwise provides himself with—

(A) anything described in paragraph (1); or

(B) any other object;

or attempts to do so, shall be punished as provided in subsection (b) of this section.

(b) The offense under this section is—

(1) a class C felony if the object is anything set forth in paragraph [illegible];

(2) a class D felony if the object is anything set forth in paragraph [illegible] or [illegible];

(3) a class A misdemeanor if the object is anything set forth in paragraph [illegible] or [illegible]; and

(4) a class B misdemeanor if the object is any other object.

(c) There is Federal jurisdiction over an offense under this section if the official detention facility is a Federal facility.

§1724. Flight to avoid prosecution or appearance as a witness

(a) Whoever knowingly leaves a State or local jurisdiction with intent to avoid—

(1) pending prosecution or official detention after conviction, for [illegible] a State or local felony in such jurisdiction;

(2) appearing as a witness, giving testimony, or producing a record, document, or other object in an official proceeding in which a State or local felony in such jurisdiction is charged or being investigated; or

(3) contempt proceedings, criminal prosecution, or official detention after conviction, for failure to appear as a witness, give testimony, or to produce a record, document, or other object in an official proceeding in which a State or local felony in such jurisdiction is charged or being investigated;

shall be punished as provided in subsection (b) of this section.

(b) The offense under this section is—

(1) a class D felony if the person was released—

(A) in connection with a charge of a class A, B, C, or D felony, or

(B) while awaiting sentence, pending appeal or certiorari for review or sentence, or pending review of sentence, appeal, or certiorari after conviction of any offense;

(2) a class E felony if the person was released in connection with a charge of a felony; and

(3) a class A misdemeanor in any other case.

(c) It is not a defense to a prosecution under this section that the [illegible] the record, document, or other object, would have been legally privileged or would have been inadmissible in evidence.

(d) There is Federal jurisdiction over an offense under this section if movement of the person across a State or United States boundary occurred in the commission of the offense.

Subchapter III—Obstruction of Justice

Sec.
1721. Witness bribery and graft.
1722. Informant bribery and graft.
1723. Tampering with a witness or an informant.
1724. Retaliating against a witness or an informant.
1725. Tampering with physical evidence.
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

§1721. Witness bribery and graft

(a) Whoever knowingly—

(1) offers, gives, or agrees to give anything of value to another person, with intent to influence, reward or [illegible] such other person with respect to such person's—

(A) testimony in an official proceeding;

(B) withholding testimony, or withholding a record, document, or other object, from an official proceeding;

(C) engaging in conduct constituting an offense under section [illegible] of this title;

(D) evading legal process summoning him to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(2) solicits, accepts, or agrees to accept from another person anything of value—

(A) because of the actor's engaging in conduct specified in subsection [illegible] of this section; or

(B) that is given with the specific intent described in subsection [illegible] of this section;

commits a class D felony.

(b) It is not a defense to a prosecution under this section that—

(a) Whoever, with intent to defraud or mislead a public servant or other official, knowingly makes a false statement or gives false information to a public servant or other official shall be guilty of a misdemeanor.

(b) Whoever, with intent to defraud or mislead a public servant or other official, knowingly makes a false statement or gives false information to a public servant or other official in connection with an application for a license, permit, or other benefit shall be guilty of a misdemeanor.

(c) Whoever, with intent to defraud or mislead a public servant or other official, knowingly makes a false statement or gives false information to a public servant or other official in connection with an application for a license, permit, or other benefit, which is subsequently granted, shall be guilty of a misdemeanor.

(d) Whoever, with intent to defraud or mislead a public servant or other official, knowingly makes a false statement or gives false information to a public servant or other official in connection with an application for a license, permit, or other benefit, which is subsequently granted, and which is used to obtain property, shall be guilty of a misdemeanor.

(e) Whoever, with intent to defraud or mislead a public servant or other official, knowingly makes a false statement or gives false information to a public servant or other official in connection with an application for a license, permit, or other benefit, which is subsequently granted, and which is used to obtain property, and which is used to commit another crime, shall be guilty of a felony.

(a) Whoever, with intent to defraud or mislead a public servant or other official, knowingly makes a false statement or gives false information to a public servant or other official shall be guilty of a misdemeanor.

(b) Whoever, with intent to defraud or mislead a public servant or other official, knowingly makes a false statement or gives false information to a public servant or other official in connection with an application for a license, permit, or other benefit shall be guilty of a misdemeanor.

(c) Whoever, with intent to defraud or mislead a public servant or other official, knowingly makes a false statement or gives false information to a public servant or other official in connection with an application for a license, permit, or other benefit, which is subsequently granted, shall be guilty of a misdemeanor.

(d) Whoever, with intent to defraud or mislead a public servant or other official, knowingly makes a false statement or gives false information to a public servant or other official in connection with an application for a license, permit, or other benefit, which is subsequently granted, and which is used to obtain property, shall be guilty of a misdemeanor.

(e) Whoever, with intent to defraud or mislead a public servant or other official, knowingly makes a false statement or gives false information to a public servant or other official in connection with an application for a license, permit, or other benefit, which is subsequently granted, and which is used to obtain property, and which is used to commit another crime, shall be guilty of a felony.

SECTION 14. Termination for Convenience.

(a) Either party may terminate this Agreement at any time upon thirty (30) days' prior written notice to the other party.

(b) Upon termination, Client shall pay Contractor for all Services performed and Expenses incurred through the effective date of termination.

(c) Contractor shall return all Client property and Confidential Information within ten (10) days of the termination date.

SECTION 15. Termination for Cause.

(a) Either party may terminate this Agreement immediately upon written notice if the other party commits a material breach of this Agreement and fails to cure such breach within fifteen (15) days after receiving written notice thereof.

(b) Upon termination for cause, the breaching party shall not be entitled to any further payments hereunder.

SECTION 16. Governing Law and Jurisdiction.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to its conflict of laws principles.

(b) Any dispute arising out of or relating to this Agreement shall be resolved exclusively in the state or federal courts located in Wilmington, Delaware.

SECTION 17. Dispute Resolution.

(a) The parties shall attempt to resolve any dispute arising under this Agreement through good faith negotiations between senior executives of each party for a period of thirty (30) days before initiating any formal proceeding.

(b) If the dispute is not resolved through negotiation, either party may submit the matter to binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules.

(c) The arbitration shall be conducted by a single arbitrator mutually agreed upon by the parties, or failing agreement, appointed by the Association.

(d) The arbitrator's decision shall be final and binding, and judgment may be entered thereon in any court of competent jurisdiction.

(e) Each party shall bear its own costs and attorneys' fees, and the parties shall share equally the fees and expenses of the arbitrator.

SECTION 18. Limitation of Liability.

(a) Neither party shall be liable to the other for any indirect, incidental, special, consequential, or punitive damages, including lost profits, lost revenue, lost data, or business interruption, arising out of or relating to this Agreement, regardless of the cause of action or the theory of liability.

(b) The total aggregate liability of either party under this Agreement shall not exceed the total amount paid or payable by Client to Contractor under this Agreement during the twelve (12) months preceding the event giving rise to the claim.

(c) The limitations set forth in this Section shall not apply to breaches of confidentiality obligations, indemnification obligations, or willful misconduct.

SECTION 19. Indemnification.

(a) Contractor shall indemnify, defend, and hold harmless Client, its officers, directors, employees, and agents from and against any and all third-party claims, losses, damages, liabilities, costs, and expenses, including reasonable attorneys' fees, arising out of or resulting from Contractor's gross negligence, willful misconduct, or breach of this Agreement.

(b) Client shall indemnify, defend, and hold harmless Contractor, its officers, directors, employees, and agents from and against any and all third-party claims, losses, damages, liabilities, costs, and expenses, including reasonable attorneys' fees, arising out of or resulting from Client's gross negligence, willful misconduct, or breach of this Agreement.

(c) The indemnified party shall promptly notify the indemnifying party in writing of any claim for which indemnification is sought, provided that failure to give such notice shall not relieve the indemnifying party of its obligations except to the extent it has been materially prejudiced thereby.

(d) The indemnifying party shall have the right to control the defense and settlement of any such claim, provided that it shall not settle any claim in a manner that admits fault or imposes any obligation on the indemnified party without its prior written consent.

SECTION 20. Insurance.

(a) Contractor shall maintain, at its own expense, commercial general liability insurance with limits of not less than one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) in the aggregate, professional liability insurance with limits of not less than one million dollars ($1,000,000) per claim, and workers' compensation insurance as required by applicable law.

(b) Upon request, Contractor shall provide Client with certificates of insurance evidencing the coverages required hereunder, which shall name Client as an additional insured on the general liability policy.

(c) Contractor's insurance shall be primary and non-contributory with respect to any insurance maintained by Client, and shall provide that the insurer will give Client at least thirty (30) days' prior written notice of any cancellation or material modification of the policy.

SECTION 21. Force Majeure.

(a) Neither party shall be liable for any failure or delay in performing its obligations under this Agreement to the extent such failure or delay is caused by events beyond the reasonable control of the affected party, including but not limited to acts of God, war, terrorism, riots, embargoes, acts of civil or military authorities, fire, floods, earthquakes, epidemics, pandemics, quarantine restrictions, strikes, lockouts, or shortages of transportation, facilities, fuel, energy, labor, or materials.

(b) The affected party shall promptly notify the other party in writing of the occurrence of a force majeure event and shall use commercially reasonable efforts to mitigate the effects of such event and resume performance as soon as practicable.

(c) If a force majeure event continues for more than sixty (60) consecutive days, either party may terminate this Agreement upon written notice to the other party without liability, except for obligations accrued prior to the termination date.

SECTION 22. Assignment.

(a) Neither party may assign, transfer, or delegate any of its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned, or delayed.

(b) Notwithstanding the foregoing, either party may assign this Agreement in its entirety, without the consent of the other party, to a successor in connection with a merger, consolidation, reorganization, or sale of all or substantially all of its assets or equity.

(c) Any purported assignment in violation of this Section shall be void and of no force or effect.

(d) This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.

SECTION 23. Notices.

(a) All notices, requests, consents, and other communications under this Agreement shall be in writing and shall be delivered by personal delivery, nationally recognized overnight courier, certified or registered mail, return receipt requested, or electronic mail, to the addresses set forth in the preamble or to such other address as a party may designate by notice pursuant to this Section.

(b) Notices delivered by personal delivery shall be effective upon delivery. Notices delivered by overnight courier shall be effective one (1) business day after deposit with the courier. Notices delivered by certified or registered mail shall be effective three (3) business days after deposit in the mail. Notices delivered by electronic mail shall be effective upon confirmation of receipt by the recipient, provided that a copy is also sent by another method.

(c) A party may change its notice address by giving notice of the new address in accordance with this Section.

SECTION 24. Entire Agreement.

(a) This Agreement, together with all Exhibits, Schedules, and Statements of Work attached hereto or incorporated by reference, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions, whether oral or written, between the parties relating to such subject matter.

(b) No amendment, modification, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both parties. No waiver by either party of any breach of this Agreement shall constitute a waiver of any subsequent breach.

(c) The parties acknowledge that they have not relied on any representation, warranty, or promise not expressly set forth in this Agreement.

(c) Every person who, in any affidavit, solemn declaration or affirmation made under this section, makes any statement that is false or misleading is guilty of an offence and liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding two years, or to both.

Evidence by affidavit

(2) Subject to any rules of court, evidence may be given by affidavit, solemn declaration or affirmation under this section.

Cross-examination

(3) Any person who gives evidence by affidavit, solemn declaration or affirmation under this section may be cross-examined on the affidavit, solemn declaration or affirmation.

Witness refusing to answer or to produce information

(4) Where a person refuses to answer a question or to produce information required of the person under this section, the Chief Electoral Officer may apply to a judge of the Federal Court, or, if no judge of that court is available in the province in which the person resides, to a judge of the superior court of that province, for an order directing the person to answer the question or produce the information.

Order

(5) A judge to whom an application is made under subsection (4) may order the person to answer the question or produce the information, if the judge is satisfied that

(a) the person is able to answer the question or produce the information; and

(b) the question is relevant to the subject-matter of the investigation in relation to which the person was required to answer the question or produce the information.

Appeal

(6) An order made under subsection (5) may be appealed to the Federal Court of Appeal.

Compliance with order

(7) A person who is required to answer a question or produce information under this section shall comply with the order made under subsection (5).

Witness knowingly failing to comply with order

(8) Every person who knowingly fails to comply with an order made under subsection (5) is guilty of an offence and liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding two years, or to both.

Witness knowingly making false statement

(9) Every person who knowingly makes a false statement in response to a question or a request for information made under this section is guilty of an offence and liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding two years, or to both.

Witness not excused from answering

(10) No person is excused from answering a question or producing information under this section on the ground that the answer or information may tend to incriminate the person or subject the person to any proceeding or penalty, but no answer given or information produced by an individual under this section is admissible in evidence against the individual in a criminal proceeding, other than a prosecution for an offence under section 132, 136 or 137 of the Criminal Code or section 5 of the Corrupt Practices Inquiries Act, in respect of a false statement by the individual.

Witness fees

(11) A person who is required to answer a question or produce information under this section is entitled to the fees and allowances for witnesses that are specified in the tariff established under section 51 of the Federal Courts Act.

Witness refusing to answer or to produce information

(12) Where a person refuses to answer a question or to produce information required of the person under this section, the Chief Electoral Officer may apply to a judge of the Federal Court, or, if no judge of that court is available in the province in which the person resides, to a judge of the superior court of that province, for an order directing the person to answer the question or produce the information.

Order

(13) A judge to whom an application is made under subsection (12) may order the person to answer the question or produce the information, if the judge is satisfied that

(a) the person is able to answer the question or produce the information; and

(b) the question is relevant to the subject-matter of the investigation in relation to which the person was required to answer the question or produce the information.

Appeal

(14) An order made under subsection (13) may be appealed to the Federal Court of Appeal.

Compliance with order

(15) A person who is required to answer a question or produce information under this section shall comply with the order made under subsection (13).

Witness knowingly failing to comply with order

(16) Every person who knowingly fails to comply with an order made under subsection (13) is guilty of an offence and liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding two years, or to both.

Witness knowingly making false statement

(17) Every person who knowingly makes a false statement in response to a question or a request for information made under this section is guilty of an offence and liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding two years, or to both.

Witness not excused from answering

(18) No person is excused from answering a question or producing information under this section on the ground that the answer or information may tend to incriminate the person or subject the person to any proceeding or penalty, but no answer given or information produced by an individual under this section is admissible in evidence against the individual in a criminal proceeding, other than a prosecution for an offence under section 132, 136 or 137 of the Criminal Code or section 5 of the Corrupt Practices Inquiries Act, in respect of a false statement by the individual.

Witness fees

(19) A person who is required to answer a question or produce information under this section is entitled to the fees and allowances for witnesses that are specified in the tariff established under section 51 of the Federal Courts Act.

(b) An offense under this section is—

(1) a Class E felony if the testimony is under a lawful grant of immunity;

(2) a Class A misdemeanor in any other case.

(c)(1) It is an affirmative defense to a prosecution under this section that the actor was legally privileged to refuse to answer the question.

(2) It is a defense to a prosecution for an offense under this section that the defendant complied with the order before the defendant's failure to do so substantially affected the proceeding.

(d) In a prosecution for an offense under subsection (a)(4) of this section, whether a question or object is pertinent, and whether an official proceeding is conducted under the authority of Congress or of either House thereof, and whether a grant of immunity is lawful are questions of law. No state of mind need be proved with regard to any of those circumstances.

(e) There is Federal jurisdiction over an offense under this section if the official proceeding is a Federal official proceeding.

§1735. Disobeying a judicial order

(a) Whoever knowingly disobeys or resists a court's temporary restraining order, preliminary injunction, or final order other than an order for the payment of money commits a Class B misdemeanor. Notwithstanding section 3302 of this title, the defendant may be sentenced to pay a fine in any amount deemed just by the court.

(b) It is a defense to a prosecution for an offense under this section that the temporary restraining order, preliminary injunction, or final order—

(1) was invalid and that the defendant took reasonable and expeditious steps to obtain a judicial review of its validity, or a judicial decision with respect to a stay thereof, prior to the disobedience or resistance thereof, and was unsuccessful in obtaining such review or decision within a reasonable period of time; or

(2) was constitutionally invalid.

(c) There is Federal jurisdiction over an offense under this section if the court is a court of the United States.

§1736. Certification for prosecution of offenses under sections 1732 through 1735

(a)(1) No person shall be prosecuted under section 1732, 1733, 1734, or 1735 of this title if the official proceeding involved is before a court of the United States unless the judge or a majority of the judges sitting certifies the case to the appropriate United States attorney to be considered for possible prosecution, except that this provision does not apply to a prosecution under section 1735 of this title if the United States or an agency thereof is a party to the matter in which the order issues.

(2) If the certification includes a recommendation that a prosecution be instituted, the United States attorney shall have the duty to institute prosecution or to bring the matter before the grand jury for the grand jury's action.

(b)(1) If the official proceeding involved is a grand jury proceeding, no person shall be prosecuted—

(A) under section 1732 or 1733 of this title unless a judge certifies the case to the appropriate United States attorney to be considered for possible prosecution; and

(B) under section 1734 of this title unless the judge whose direction was allegedly thus disobeyed, or any other judge of that court if the original judge is no longer serving, certifies the case to the appropriate United States attorney to be considered for possible prosecution.

(2) If the certification includes a recommendation that a prosecution be instituted, the United States attorney shall have the duty to institute prosecution or to bring the matter before the grand jury for its action.

(c)(1) No person shall be prosecuted under section 1732, 1733, or 1734 of this title if the official proceeding involved is before a United States magistrate, or bankruptcy judge unless a district court judge certifies the case to the appropriate United States attorney to be considered for possible prosecution.

(2) If the certification includes a recommendation that a prosecution be instituted, the United States attorney shall have the duty to institute prosecution or to bring the matter before the grand jury for its action.

(d) No person shall be prosecuted under section 1732, 1733, or 1734 of this title if the official proceeding involved is before Congress, unless the facts of such violation are reported to either House of Congress while Congress is in session, or, when Congress is not in session, a statement of the facts constituting such violation is reported to and filed with the President of the Senate or the Speaker of the House. If the report is made while Congress is in session and the appropriate House has so ordered, the President of the Senate or the Speaker of the House, as the case may be, shall certify, or if the report is made when Congress is not in session, such officer may certify, the statement of facts under the seal of the appropriate House to the appropriate United States attorney, whose duty it shall be to bring the matter before the grand jury for the grand jury's action.

(e) Failure to comply with the certification requirements of this section is an affirmative defense to a prosecution for an offense under this subchapter. The defendant shall be entitled to have the issue determined by the court out of the presence of the jury, if any, and to exclusion of any reference to the need or lack of certification from the attention of the jury.

§1737. Definitions for subchapter

As used in this subchapter, the term—

(1) "official proceeding" means—

(A) a proceeding before a judge or court of the United States, a United States magistrate, a bankruptcy judge, or a Federal grand jury;

(B) a proceeding before Congress;

(C) a Federal proceeding in which a court is authorized by law to order attendance or the production of information and does so order;

(D) a proceeding before an authorized agency; and

(E) a proceeding which otherwise is made expressly subject to this section;

(3) "authorized agency" means an agency authorized by Federal law to issue subpoenas supported by the sanctions of this section; and

(4) "official proceeding before Congress" means an inquiry authorized before either House or any joint committee of the two Houses of Congress or any committee or subcommittee of either House of Congress.

Subchapter V—Perjury, False Statements, and Related Offenses

§1741. Perjury

(a) Whoever, under oath or equivalent affirmation in an official proceeding knowingly—

(1) makes a false statement, or

(2) affirms the truth of a previously made false statement,

with reckless disregard for the fact that the statement is material commits a class D felony.

(b) There is Federal jurisdiction over an offense under this section if the official proceeding is a Federal official proceeding.

§1742. False swearing

(a) Whoever, under oath or equivalent affirmation in an official proceeding, knowingly—

(1) makes a false statement, or

(2) affirms the truth of a previously made false statement,

commits a class A misdemeanor.

(b) There is Federal jurisdiction over an offense under this section if the official proceeding is a Federal official proceeding.

§1743. Making a false statement

(a) Whoever knowingly—

(1) in a government matter—

(A) makes a false material written (or recorded) statement;

(B) omits from a written (or recorded) statement information necessary to prevent a material portion of that statement from being misleading or conceals a material fact in a written (or recorded) statement, and thereby intentionally creates a false impression in such written (or recorded) statement;

(C) submits or invites reliance on a material writing (or recording) that is false, forged, altered, or otherwise lacking in authenticity;

(D) submits or invites reliance on a sample, specimen, map, photograph, boundary mark, or other object that is misleading as to a material respect; or

(E) uses a trick, scheme, or device (with intent to mislead another) in a respect material to the government matter;

(2) with intent to deceive or harm the government or a person, or an agent of such credit institution, engages in any conduct described in subparagraphs (A) through (E) of paragraph (1) of this subsection with respect to a credit institution record; or

(3) engages in any conduct described in subparagraphs (A) through (E) of paragraph (1) of this subsection with respect to a statement intended to influence the action of a credit institution;

commits a class A misdemeanor.

(b) In a prosecution under this section, no state of mind need be proved with respect to the element of materiality.

(c) In a prosecution under this section, the state of mind required as to materiality is recklessness.

(d) As used in this section, the term "recording" means simultaneous recording by electronic device with the knowledge of the recordee.

(e) There is Federal jurisdiction over an offense under this section if—

(1) the government is the Government of the United States;

(2) the government is a State, local, or foreign government and the falsity concerning the offense is that the defendant is a citizen of the United States; or

(3) the credit institution is a national credit institution or a small business investment company as defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662).

§1744. Tampering with a Government record

(a) Whoever knowingly alters, destroys, mutilates, conceals, or removes a Government record, or engages in conduct (similar conduct), and thereby intentionally impairs the availability of such Government record to the Government, or attempts to do so, commits a class D felony.

(b) It is a defense to a prosecution for an offense under this section that, despite such conduct, the Government retained equivalent access to the information contained in the record.

(c) There is Federal jurisdiction over an offense under this section if the government conducting a Federal Government agency.

§ 1745. False statements about expenditures

(a) Whoever knowingly makes a false statement and thereby causes a false claim of five or more government agencies within any 12-month period, whether official or otherwise) by dealing with undisclosed dealings to the government agency's office A misdemeanor.

(b) There is Federal jurisdiction over an offense under this section if—

(1) the offense is committed in the special jurisdiction of the United States; or

(2) the organization is a Federal organization.

§ 1746. General provisions for subchapter

(a) In this subchapter, the term—

(1) "public investigation agency" means a court, body, or department of a public investigation that is kept in the usual course of business by an agent of such investigation;

(2) "government money" means a money within the jurisdiction of a government agency, and includes a government agency;

(3) "government agency" means a agency, department, or other office of person kept by a government to investigation of agency functions, and includes a government agency;

(4) "misconduct" means an act or omission (deliberate or unintentional, including legally culpable deliberation or misrepresentation) of opinion. Rules, or other state of mind, for purposes of sections 1741 and 1742 of this title, a written statement made "under oath or equivalent affirmation" includes a written statement that, with the declarant's knowledge, purports to have been made under oath or equivalent affirmation.

(5) any court definition of "government", "government agency", and "public misconduct".

(b)(1) No person shall be prosecuted under section 1741 or 1742 of this title unless proof of falsity rests solely upon contradiction by the testimony of one person.

(2) Under section 1741 or 1742 of this title, a falsification, omission, concealment, forgery, alteration, or other misleading process is material if the truthfulness of the statement or omission under the rules of evidence, if—

(A) in a grand jury proceeding, it has a natural tendency to influence, impede, or diminish the grand jury from pursuing its investigations; or

(B) in any other proceeding, it is capable of influencing the person to whom it is presented or the issue before such person.

(3) Whether a matter is material under the circumstances is a question of law.

(c) It is a defense to a prosecution under section 1741 or 1742 of this title that the same official proceeding in which it was made if the actor did so before it became false, misleading, or incomplete because the falsification was corrected in the course of the same official proceeding in which it was made if the actor did so before it became

manifest to the agency that the falsification had been or would be exposed and before the falsification substantially impaired, affected, impeded, or otherwise impaired the course, outcome, or disposition of the official proceeding or of a government money agency's the official proceeding.

(d) It is not a defense to a prosecution under section 1741 or 1742 of this title that the falsification was submitted or acted on in an irregular manner or that the defendant was not authorized to make the statement.

Subchapter VI—Official Corruption and Intimidation

§ 1751. Bribery and graft

(a) Whoever knowingly—

(1) offers, gives, or agrees to give to a public servant, with intent to influence or reward such person regarding any matter within such person's official action by, or the violation of any possible legal duty of that person as a public servant, or

(2) solicits, accepts, or agrees to accept anything of pecuniary value from another—

(A) because of any particular official action by or the violation of any possible legal duty of such person as a public servant, or

(B) who is given with the specific intent described in paragraph (1) of this subsection;

commits a class C felony.

(b) There is Federal jurisdiction over an offense under this section if—

(1) the offense is committed within the special jurisdiction of the United States; or

(2) the official action or legal duty involved is that of a Federal public servant, or of a State for locally elected public servant, judge, or law enforcement officer.

(c) Definitions

§ 1752. Trading in Government assistance

(a) Whoever knowingly—

(1) offers, gives, or agrees to give to a public servant, or

(2) being a public servant solicits, accepts, or agrees to accept from another,

anything of pecuniary value because of or with intent to obtain advice or other assistance in preparing or processing a bill, contract, claim, or other matter that

(c) Where a person is a public servant, all other persons who are members of the same family as that person are also public servants.

§ 1112. Trading in special influence

(a) Whoever, being—

(1) a public servant, or

(2) entrusted with any function of a public character, or

(3) employed by—

(i) the Union,

(ii) a State,

(iii) a local authority,

(iv) a corporation established by or under a Central, Provincial or State Act, or

(v) an undertaking owned, controlled or managed by the Union or a State,

(4) a Member of Parliament or of the Legislature of a State or of a Union territory,

(5) a Member of a Panchayat or Municipality or other local authority,

(6) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(7) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(8) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(9) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(10) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(11) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(12) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(13) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(14) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(15) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(16) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(17) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(18) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(19) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(20) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(21) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(22) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(23) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(24) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(25) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(26) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(27) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(28) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(29) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(30) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(31) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(32) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(33) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(34) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(35) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(36) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(37) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(38) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(39) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(40) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(41) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(42) a Director, Manager or other employee of any corporation, association or body of persons, by whatever name called, which receives any aid, grant, loan, guarantee or benefit from the Union or a State or a Union territory or a local authority or a corporation or body of persons which is owned or controlled by the Union or a State or a Union territory or a local authority,

(C) section 5606 of the Internal Revenue Code of 1954 (26 U.S.C. 5606) (relating to penalty and forfeiture for fraudulent claims for export drawback or unlawful relanding);

(D) section 5682 of the Internal Revenue Code of 1954 (26 U.S.C. 5682) (relating to penalty for breaking locks or gaining of access);

(E) section 5691(a) of the Internal Revenue Code of 1954 (26 U.S.C. 5691(a)) (relating to penalties for nonpayment of special taxes relating to liquors); or

(F) section 5762(a) of the Internal Revenue Code of 1954 (26 U.S.C. 5762(a)) (relating to criminal penalties with respect to cigars, cigarettes, and cigarette papers and tubes);

commits a class E felony.

Subchapter H—Customs and Related Offenses

Sec.
1911. Smuggling.
1912. Trafficking in smuggled property.
1913. Receiving smuggled property.
1914. General provisions for subchapter.

§ 1911. Smuggling

(a) Whoever knowingly—

(1) introduces into the United States an object, the introduction of which Federal law—

(A) prohibits absolutely; or

(B) prohibits conditionally and all conditions for its introduction into the United States have not been complied with;

(2) evades assessment or payment when due of the customs duty upon an object being introduced into the United States; or

(3) evades an examination by the Government of an object being introduced into the United States;

or attempts to do so, shall be punished as provided in subsection (b) of this section.

(b) An offense under this section is—

(1) a class D felony if the value of the object, or the duty that was due or that would have been due on the object, exceeds $500;

(2) a class D felony, irrespective of the monetary value or duty being $500 or less, introduction of the object is prohibited, either absolutely or conditionally, because it may cause, or may be used to cause, bodily injury or property damage;

(3) a class A misdemeanor if the value of the object, or the duty that was due or that would have been due on the object, exceeds $100 but is not more than $500;

(4) a class B misdemeanor in any other case in which duty was due or would have been due on the object; and

(5) a class C misdemeanor in any other case.

§ 1912. Trafficking in smuggled property

Whoever knowingly traffics in an object that has been unlawfully introduced into the United States, in violation of section 1911 of this title, or attempts to do so, shall be punished as provided in section 1911 of this title for the smuggling of the object.

§ 1913. Receiving smuggled property

Whoever knowingly buys, receives, possesses, or obtains control of an object that has been unlawfully introduced into the United States in violation of section 1911 of this title, or attempts to do so, commits an offense that shall be punished as provided in section 1911 of this title for the offense of smuggling the object.

§ 1914. General provisions for subchapter

(a) As used in this subchapter, the term—

(1) "customs territory of the United States" means the States of the United States, the District of Columbia, and Puerto Rico;

(2) "introduces" means imports, transports, or brings into the United States from any place outside the United States, or into the customs territory of the United States from any place outside the customs territory of the United States but within the United States;

(3) "object" includes any article, good, ware, and merchandise, whether dutiable or nondutiable.

(b) In a prosecution under section 1912 or 1913 of this title—

(1) possession of an object recently smuggled into the United States, unless satisfactorily explained, constitutes prima facie evidence that the person in possession was aware of the fact that it had been smuggled or in some way participated in its smuggling;

(2) the purchase or sale of an object recently smuggled into the United States at a price substantially below its fair market value, unless satisfactorily explained, constitutes prima facie evidence that the person buying or selling the property was aware of the fact that it had been smuggled.

(c) More than one smuggling, trafficking, or receiving committed pursuant to one scheme or course of conduct may be charged as one offense, and the value of, or the duty owing on, the objects involved may be aggregated in determining the grade of the offense.

CHAPTER 21—OFFENSES INVOLVING INDIVIDUAL RIGHTS

Subchapter
A. Offenses involving civil rights.
B. Offenses involving political rights.
C. Offenses involving privacy.

Subchapter A—Offenses Involving Civil Rights

Sec.
2101. Interfering with civil rights.
2102. Interfering with civil rights under color of law.
2103. Interfering with a Federal benefit.

§ 241. Conspiracy against rights

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§ 244. Discrimination against person wearing uniform of armed forces

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§ 246. Deprivation of relief benefits

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§ 277. Destruction of property to prevent seizure

§ 278. Importation of aliens for immoral purposes

§ 279. Guam or Northern Mariana Islands as separate district

§ 280. Importation of alien for prostitution or other immoral purpose

§ 281. Offering false information to procure United States citizenship

§ 282. Misuse of passport

§ 283. Use of firearm in relation to counterfeiting

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§ 285. Taking or using papers relating to claims

§ 286. Conspiracy to defraud the Government with respect to claims

§ 287. False, fictitious or fraudulent claims

§ 288. False claims for postal service

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§ 291. Delivery of receipts for pay or bounty claims

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§ 293. Counterfeiting letters patent

§ 294. Counterfeiting letters, contracts, or reports of Congress

§ 295. Counterfeiting seals of courts; knowingly using counterfeit seal

§ 296. Counterfeiting seals of Department or agency

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§ 299. Counterfeiting and forging transportation requests

§ 300. Counterfeiting and forging deeds, powers of attorney, orders, receipts, contracts, and other writings

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§ 302. Redemption of relinquishment of public lands fraudulently obtained

§ 303. Counterfeiting dies for coining implements

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§ 305. Forgery of certificates of discharge from the armed forces

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§ 309. Fraud in connection with computers

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§ 311. Definitions for chapter

(iv) a motion picture house, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment that serves the public; or

(v) any other establishment that serves the public, that is located within the premises of an establishment described in this subparagraph or that has located within its premises such an establishment, and that holds itself out as serving patrons of such an establishment;

(C) applying for or enjoying the services, privileges, facilities, or accommodations of a common carrier utilizing any kind of vehicle;

(D) traveling in or using a facility of interstate commerce;

(E) applying for or enjoying employment, or a perquisite thereof, by a private employer or joining or using the services or advantages of a labor organization, hiring hall, or employment agency; or

(F) selling, purchasing, renting, financing, or occupying a dwelling; contracting or negotiating for the sale, purchase, rental, financing or occupation of a dwelling, or applying for or participating in a service, organization, or facility relating to the business of selling or renting dwellings; or

(2) because such other person is or has been, or with intent to intimidate any person from—

(A) affording another person or class of persons opportunity to participate, or protection in order to participate, without discrimination on account of race, color, sex, religion, or national origin, in any benefit or activity described in this section; or

(B) aiding or encouraging another person or class of persons to participate, without discrimination on account of race, color, sex, religion, or national origin, in any benefit or activity described in this section;

or attempts to do so, shall be punished as provided in subsection (b) of this section.

[(b) An offense under this section is—

[(1) a class B felony if the actor intends to produce bodily injury and the death [of any person] results;

[(2) a class C felony if the actor intends to produce bodily injury and such injury ensues; and

[(3) a class A misdemeanor in any other case.]

(c) It is a defense to a prosecution for an offense under subsection (a)(1)(B)(i) of this section that—

(1) the defendant was the proprietor of the establishment involved or an agent acting on behalf of the proprietor;

(2) the establishment was located within a building containing not more than five rooms for rent or hire; and

(3) the building was occupied by the proprietor as that proprietor's residence.

§ 2105. Interfering with speech or assembly related to civil rights activities

(a) Whoever knowingly uses force or threat of force and thereby intentionally injures, intimidates, or interferes with another person, because such person is or has been, or with intent to intimidate such other person or any other person from participating in speech or assembly opposing a denial of opportunity to participate—

(1) in a benefit or activity described in section 2103 of this title; or

(2) in a benefit or activity described in section 2104 of this title, without discrimination on account of race, color, sex, religion, or national origin;

or attempts to do so, shall be punished as provided in subsection (b) of this section.

[(b) An offense under this section is—

[(1) a class B felony if the actor intends to produce bodily injury and the death [of any person] results;

[(2) a class C felony if the actor intends to produce bodily injury and such injury ensues; and

[(3) a class A misdemeanor in any other case.]

Subchapter II—Offenses Involving Political Rights

§ 2111. Obstructing an election

Whoever knowingly—

(a) engages in any conduct and thereby [intentionally] obstructs or impairs the lawful conduct of a Federal election;

(b) offers, makes, or agrees to make [a significant expenditure] to or on behalf of another person with intent to influence that person's voting, refraining from voting, or voting for or against a candidate in a Federal election; or

(c) solicits, accepts, or agrees to accept [a significant expenditure] because of the actor's voting, refraining from voting, or voting for or against a candidate in an [election];

commits a class E felony.

§2112. Overwriting registration

Whoever knowingly—

(1) engages in any conduct and thereby knowingly changes or impairs the lawful conduct of registration to vote in a Federal election,

(2) offers, solicits, or agrees to make a significant expenditure as or on behalf of another person with intent to influence that person's registering to vote in a Federal election,

(3) solicits, accepts, or agrees to accept a significant expenditure because of the person's registering to vote in a Federal election, or

(4) gives false information with intent to establish the person's eligibility to vote in a Federal election,

commits a class C felony.

§2113. Manipulating a Federal benefit for a political purpose

Whoever, with intent to interfere with, reward, or induce another person in the exercise of the right to vote in an election, knowingly—

(1) grants or threatens to grant to any other person,

(2) withholds or threatens to withhold from any other person, or

(3) deprives or threatens to deprive any other person of,

the benefit of a Federal program, federally supported program, or Federal employment contract commits a class C felony. Subject to the unanimously

§2114. Manipulating employment or other benefit for political contribution

(a) Whoever knowingly—

(1) grants or threatens to grant to any other person,

(2) withholds or threatens to withhold from any other person, or

(3) deprives or threatens to deprive any other person of,

any Federal or federally supported government work, payment, or benefit and thereby causes any person to make a political contribution commits a class A misdemeanor.

(b) As used in this section, the term "government work, payment, or benefit" means any employment, position, or work in or for any agency or other entity of the government of the United States, a State, or a political subdivision of a State, or any corporation or benefit of such employment, position, or work, or any payment or benefit of a program of the United States, a State, or a political subdivision of a State if such employment, position, work, compensation, payment, or benefit is provided for or made possible in whole or in part by an Act of Congress.

§2115. Misusing authority over personnel for a political purpose

Whoever, as a Federal public servant, knowingly—

(1) promotes, fails to promote, demotes, or discharges,

(2) recommends the promotion, nonpromotion, demotion, or discharge of, or

(3) changes in any manner, or promises or threatens to change, the official position or compensation of,

another Federal public servant, with intent to punish, reward, or influence any person with respect to going, withholding, or neglecting to make a political contribution commits a class A misdemeanor.

§2116. Soliciting a political contribution as a Federal public servant or in a Federal building

(a) Whoever—

(1) as a Federal public servant, knowingly—

(A) solicits a significant political contribution from another person who the actor knows is a Federal public servant, or

(B) makes a significant political contribution to another person who the actor knows is a Federal public servant, in exchange for a solicitation, or

(2) knowingly solicits or accepts a significant political contribution in a room of a Federal building or facility during a normal time used by the agencies of the Federal Government,

commits a class A misdemeanor.

(b) This section does not apply if both the public servant soliciting the political contribution or making the political contribution in response to a solicitation and the public servant solicited do so pursuant to a solicitation and the Federal Government of, or candidates for, Congress.

§2117. Excess campaign expenditures and contributions

Whoever willfully—

(1) violates section 5322 of the Internal Revenue Code of 1954 (26 U.S.C. 5322) relating to excess campaign expenditures, or

(2) violates section 5323 of the Internal Revenue Code of 1954 (26 U.S.C. 5323) relating to political contributions,

commits a class D felony.

§2118. Definitions for subchapter

As used in this subchapter the term—

(1) "election" means any primary, general, or special election for public office.

(2) "Federal election" means any election held in whole or in part to nominate or elect a candidate for President or Vice President of the United States, or Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States;

(3) "candidate" means an individual who seeks nomination for election, or election, to public office;

(m) "political committee" means anything of value given or solicited with knowledge that it is to be used directly for ordinary to assist a candidate in seeking nomination or election.

(n) "significant political expenditure" means any contribution defined in section 304(c) of the Federal Election Campaign Act of 1971.

(o) "significant expenditure" means an expenditure defined in section 304(d) of the Federal Election Campaign Act of 1971, and

(p) "significant expenditure" means any expenditure that can reasonably be expected to influence a person' vote, and

(q) "Federal public servant" means an officer or employee of the United States or a person authorized to act for or on behalf of the United States, or serving the United States as an adviser or consultant and such term includes the President and Vice-President of the United States, Senator or Representative in, and Delegate and Resident Commissioner to the Congress of the United States, and Justice and Judge of the United States.

Subchapter III—Offences Involving Privacy

Sec.
2121. Eavesdropping.
2122. Trafficking in an eavesdropping device.
2123. Possessing an eavesdropping device.
2124. Intercepting correspondence.
2125. Revealing private information contained in a Government private.
2126. Definitions for subchapter.

§2121. Eavesdropping

(a) Whoever intentionally—

(1) intercepts a private communication by means of an eavesdropping device without the prior consent of all parties to the communication, or

(2) discloses to another person, or uses, the contents of a private communication, knowing that such contents were obtained by conduct described in paragraph (1) of this subsection,

commits a class [D] felony.

(b) It is a defence to a prosecution under this section that the private communication was being transmitted over the facilities of a communications common carrier, and—

(1) the actor was an agent of the carrier, acting in the usual course of the defendant's employment, who was engaged in—

(A) routine checking for mechanical or service quality control checks; or

(B) any other activity reasonably incidental to the rendition of service by the carrier or relating to the discovery of theft of the carrier's service; or

(2) the actor was acting in the usual course of the user's employment and was engaged in unavoidably routine observing.

§2122. Trafficking in an eavesdropping device

(a) Whoever intentionally—

(1) produces, manufactures, imports, or trades in an eavesdropping device, knowing that its design renders such device primarily useful for surreptitious interception of private communications; or

(2) advertises an eavesdropping device, knowing that—

(A) its design renders such device primarily useful for surreptitious interception of private communications; or

(B) such advertising promotes the use of such device for surreptitious interception of private communications,

commits a class [D] felony.

(b) It is a defence to a prosecution under this section that the defendant was—

(1) a communications common carrier, an agent of such a carrier, or a person under contract with such a carrier, and was acting for a purpose set forth in section 2121(b) of this title; or

(2) a person acting within the scope of a Federal, State, or local government contract.

§2123. Possessing an eavesdropping device

(a) Whoever, with knowledge that an eavesdropping device is used in the course of conduct constituting an offence under section 2121 or 2122 of this title, knowingly in possession such device commits a class [D] felony.

(b) It is a defence to a prosecution under this section that the defendant was—

(1) a communications common carrier, an agent of such a carrier, or a person under contract with such a carrier, and was in possession of the eavesdropping device for a purpose set forth in section 2121(b) of this title; or

(2) a person in possession of the eavesdropping device within the scope of a Federal, State, or local government contract.

§2124. Intercepting correspondence

(a) Whoever intentionally—

(1) intercepts private correspondence without the prior consent of the sender or the intended recipient, or

(2) discloses to another person, or uses, the contents of private correspondence, knowing that such contents were obtained by conduct described in paragraph (1) of this subsection;

commits a class [D] felony.

(b) It is a defence to a prosecution under this section that the private correspondence was being transmitted over the facilities of a communications common carrier, and—

(1) the defendant was an agent of the carrier, acting in the usual course of the defendant's employment, who was engaged in—

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events, or

(B) any other secrecy commercially unclear to the condition of secure by the cavies of secrecy or the discovery of lack of the cavies's secrets, or

(C) the defendant was acting in the usual course of the defendant's employment and was engaged in ordinarily secure activities.

(b) It is not a defense to a prosecution under this section that the unauthorized private correspondence also secures 3061 of the Revised Statutes of the United States (43 U.S.C. 492) unless the information was provided to a court solely based on probable cause to believe that the unauthorized private correspondence contains material that are subject to a duty of loyalty imposed into the United States.

§2125. Revealing private information submitted for a Government purpose

Whoever violates section 9 of the Federal Immunity, Fugitive, and Felony Act of 1972 (7 U.S.C. 1369) (7 U.S.C. 6109) (12 U.S.C. 1441) (12 U.S.C. 1441b) (13 U.S.C. 8333) (22 U.S.C. 2778) (50 U.S.C. App. 453)

(1) section 9 of title 13, United States Code (13 U.S.C. 9);

(2) section 214 of title 13, United States Code (13 U.S.C. 214);

(3) section 7213(a)(1) of the Internal Revenue Code of 1954 (26 U.S.C. 7213(a)(1));

(4) section 7213 of the Internal Revenue Code of 1954 (26 U.S.C. 7213);

(5) section 1302 of title 18, United States Code as transferred out;

(6) section 1504 of title 18, United States Code;

(7) section 1505 of title 18, United States Code;

(8) section 1506 of title 18, United States Code;

(9) section 1901 of title 18, United States Code; or

(10) section 1905 of title 18, United States Code;

commits a class E felony.

§2126. Definitions for subchapter

As used in this subchapter the term—

(1) "communications common carrier" has the meaning set forth for the term "common carrier" in section 3(h) of the Communications Act of 1934 (47 U.S.C. 153(h));

(2) "contents", when used with respect to a communication, means information in the communication itself, and includes information that concerns the existence, substance, purport, or meaning of the communication or the identity of a party to the communication;

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(3) "electronic device" means an electronic, mechanical, or other device or apparatus that can be used to intercept a private communication, other than a telephone or telegraph instrument or facility, or any component or equipment, furnished to a subscriber by a communications common carrier in the usual course of its business and being used in a manner for which it was designed;

(4) "intercept" means to acquire the contents of a communication in the course of its transmission to a place by the communication of that communication by the unaided recipient, and includes the acquisition of such contents by simultaneous transmission or by separately formats by an electronic, mechanical, or other device in a manner that will permit its decoding;

(5) "private conversation" means a communication, other than speech, sent by a person exercising an expectation, under circumstances reasonably justifying the expectation, that such communication is not likely to become intercepted, opened, or used without authorized by the intended recipient, and includes such a wire, private cable, newspaper, magazine, courier, or exchanging money;

(6) "private communication" means any message or attempt to convey a message between or among two or more persons under circumstances reasonably justifying an expectation of privacy, whether or not such message is actually received, and includes information which identifies the device or the location of the device used to or attempted to be used to convey the message;

(7) "public servant" means . . . and

(8) "wound"

CHAPTER 23—OFFENSES INVOLVING THE PERSON

Subchapter
1 Homicide offenses
11 Assault offenses
111 Kidnaping and related offenses
IV Sex offenses

Subchapter I—Homicide Offenses

Sec.
2301 Murder
2302 Manslaughter
2303 Definitions for subchapter

§2301. Murder

(a) Whoever—

(1) knowingly engages in conduct and thereby causes the death of another person,

(2) under circumstances manifesting extreme indifference to human life, knowingly engages in conduct and thereby recklessly causes the death of another person, or

offense, or an employee of an Indian tribal government engaged in the performance of such public service duties,

(B) the person whose death is caused is a federally protected foreign official,

(C) the offense is committed by wounding a dangerous weapon against the United States mail, or

(D) the offense is committed by an Indian in Indian country.

§ 2332. Manslaughter

(a) Whoever—

(1) knowingly engages in conduct and thereby recklessly causes the death of another person, or

(2) knowingly engages in conduct and thereby causes the death of another person under circumstances that would constitute an offense under section 2332(a)(1) except for the existence of circumstances constituting a defense under section 2332(b) of this title,

or attempts to do so, shall be punished as provided in subsection (b) of this section.

(b)(1) An offense under subsection (a)(1) of this section is a class B felony.

(2) An offense under subsection (a)(2) of this section is a class C felony.

(c) In a prosecution under this section, no state of mind need be proved with respect to the fact that circumstances constitute a defense under section 2332(b) of this title.

(d) There is Federal jurisdiction over an offense under this section if a circumstance specified in section 2332(c) of this title exists that would give rise to jurisdiction for an offense under section 2332 of this title.

§ 2332. Definition for subchapter

As used in this subchapter, the term "law enforcement officer" means—

(1) a public servant authorized by law or by a government agency to engage in or supervise the prevention, detection, investigation, or prosecution of an offense;

(2) a public servant authorized by law to serve or execute search warrants or to make searches or seizures; or

(3) a public servant authorized to perform official duties under—

(A) [Chapter 2 of title 7, United States Code],

(B) [Chapter 54 of title 7, United States Code],

(C) [Chapter 54 of title 7, United States Code],

(D) [Chapter 28 of title 16, United States Code],

(E) [Chapter 10 of title 21, United States Code],

(F) [Chapter 12 of title 21, United States Code],

(G) [Chapter 15 of title 21, United States Code],

(H) [Chapter 14 of title 22, United States Code],

(I) [Chapter 21 of title 42, United States Code],

(J) during the commission of an offense described in [section 1366 (arson within special maritime and territorial jurisdiction), 2252 (certain activities relating to material involving the sexual exploitation of minors), 2252A (certain activities relating to material constituting or containing child pornography), 2280 (violence against maritime navigation), 2281 (violence against maritime fixed platforms), 2332 (violence against Americans outside the United States), 2332a (use of weapons of mass destruction), 2332b (acts of terrorism transcending national boundaries), 2339 (harboring terrorists), 2339A (providing material support to terrorists), 2339B (providing material support to terrorist organizations), or 2340A (torture) of this title],

(K) during the commission of an offense described in section 924(c) (use of firearm in violent or drug trafficking crime), chapter 113B (terrorism), or chapter 65 (malicious mischief) of this title, or

(L) during the commission of an offense described in section 401(a) (manufacturing or distribution) of the Controlled Substances Act (21 U.S.C. 841(a)) or section 1010(a)(1), 1010(a)(2), or 1010(a)(3) of the Controlled Substances Import and Export Act (21 U.S.C. 960(a)(1), 960(a)(2), or 960(a)(3)), of a felony punishable under those sections,

(2) the first time the conduct referred to in subsection (a)(2) of this section causes the death of a person other than one of the participants in such underlying offense.

(c) DEFINITIONS.—In this section, the term—

(1) "substantial impairment of the ability to appreciate wrongfulness" means substantial impairment of the ability to appreciate the criminality of one's conduct;

(2) "mental disease or defect" does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct, or by a combination of such abnormality and substance abuse;

(3) "mental disease or defect" includes a state of unconsciousness or impaired consciousness that—

(A) substantially impairs the ability of the defendant to appreciate the wrongfulness of his conduct; and

(B) is not self-induced; and

(4) "mental disease or defect" includes a state of unconsciousness or impaired consciousness that substantially impairs the ability of the defendant to appreciate the wrongfulness of his conduct, even though the defendant may be able to perform physical acts with purpose.

(d) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution under subsection (a)(2) of this section that the death was caused by, or resulted from, the use of force by a person other than one of the participants in such underlying offense, and the use of force was—

(1) lawful and proportional to the extent reasonably believed by the defendant; and

(2) the least extreme measure reasonably available to the defendant.

(e) PENALTY.—

(1) IN GENERAL.—Except as provided in paragraph (2), whoever is guilty of murder in the second degree shall be imprisoned for any term of years or for life.

(2) DEATH PENALTY.—Whoever is guilty of murder in the second degree shall be sentenced to death if, in the course of committing the murder, the defendant—

(A) intentionally kills the victim;

(B) intentionally inflicts serious bodily injury that results in the death of the victim;

(C) intentionally participates in an act, contemplating that the life of a person will be taken or that lethal force will be employed, and the victim dies as a result of the act; or

(D) intentionally and specially engages in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constitutes a reckless disregard for human life and the victim dies as a result of the act.

(f) SENTENCING.—In a prosecution under this section, no state of mind need be proved with respect to an element set forth in subsection (e)(2) of this section.

(g) PROCEDURE.—If the government intends to establish the existence of an aggravating factor set forth in subsection (e)(2) of this section, and the defendant is convicted of murder in the second degree, a hearing shall be conducted as soon after the conviction as practicable before the court without a jury to establish the existence of any such aggravating factor. The defendant shall be entitled to notice of such hearing and of the aggravating factor to be proven at such hearing. The defendant shall be afforded a reasonable opportunity to meet such factor. The government shall be entitled to present any information relevant to such factor. The court shall determine admissibility of information relevant to such factor, and may require that it be submitted through stipulation, deposition, or written affidavit. The court shall determine the existence of such factor by a preponderance of the information. If the court finds that such factor has been established, the defendant shall be sentenced to death.

(h) JURISDICTION.—There is Federal jurisdiction over an offense under this section if—

(1) the offense is committed within the special jurisdiction of the United States;

(2) the person whose death is caused is a Member of Congress, Member-of-Congress-elect, or the President of the United States, the President-elect, the Vice President, or, if there is no Vice President, the officer next in the order of succession to the office of President of the United States, the Vice President-elect, or any individual who is acting as President under the Constitution and laws of the United States;

(3) the person whose death is caused is a Federal public servant and is known by the actor to be a judge, juror, law enforcement officer, prosecutor

(10) Chapter 12 of title 46, United States Code; or

(11) Chapter 2 of title 42, United States Code.

Subchapter II—Assault Offenses

§2311. Battery.

(a) Whoever knowingly uses physical force and thereby intentionally causes bodily injury to—

(1) a person whom the actor knows to be a public servant engaged in the performance of the public servant's official duties; or

(2) any other person;

or attempts to do so, shall be punished as provided in subsection (b) of this section.

(b)(1) An offense under subsection (a)(1) of this section is a class C felony.

(2) An offense under subsection (a)(2) of this section is a class D felony.

(c) There is Federal jurisdiction over an offense under this section if—

(1) the offense is committed within the special jurisdiction of the United States;

(2) the person whose bodily injury is caused is a Member of Congress, Member-of-Congress-elect, or the President of the United States, the President-elect, the Vice President, or, if there is no Vice President, the officer next in the order of succession to the office of President of the United States, the Vice President-elect, or any individual who is acting as President under the Constitution and laws of the United States;

(3) the person whose bodily injury is caused is a Federal public servant and it knows by the actor to be a judge, juror, law enforcement officer, probation officer, or an employee of an official detention facility engaged in the performance of such public servant's duties;

(4) the person whose bodily injury is caused is a federally protected foreign individual;

(5) the offense is committed by transmitting a dangerous weapon through the United States mail; or

(6) the offense is committed by an Indian in Indian country.

§2312. Aggravated battery.

(a) Whoever knowingly uses physical force or a deadly weapon and thereby intentionally causes serious bodily injury to—

(1) a person whom the actor knows to be a public servant engaged in the performance of the public servant's official duties; or

(2) any other person;

or attempts to do so, shall be punished as provided in subsection (b) of this section.

(b)(1) An offense under subsection (a)(1) of this section is a class B felony.

(2) An offense under subsection (a)(2) of this section is a class C felony.

(c) There is Federal jurisdiction over an offense under this section if a circumstance listed in section 2311(c) of this title exists that would give rise to Federal jurisdiction for an offense under section 2311 of this title.

§2313. Terroristic battery.

(a) Whoever knowingly uses physical force or a deadly weapon in a manner likely to cause serious bodily injury to—

(1) a person whom the actor knows to be a public servant engaged in the performance of the public servant's official duties; or

(2) any other person;

and deadly recklessly causes a substantial risk of serious bodily injury to that person shall be punished as provided in subsection (b) of this section.

(b)(1) An offense under subsection (a)(1) of this section is a class C felony.

(2) An offense under subsection (a)(2) of this section is a class D felony.

(c) There is Federal jurisdiction over an offense under this section if a circumstance listed in section 2311(c) of this title exists that would give rise to Federal jurisdiction for an offense under section 2311 of this title.

§2314. Aggravated assault.

(a) Whoever knowingly uses physical force or a deadly weapon in a manner likely to cause serious bodily injury to—

(1) a person whom the actor knows to be a public servant engaged in the performance of the public servant's official duties; or

(2) any other person;

and deadly recklessly causes a substantial risk of serious bodily injury to that person shall be punished as provided in subsection (b) of this section.

(b)(1) An offense under subsection (a)(1) of this section is a class B felony.

(2) An offense under subsection (a)(2) of this section is—

(A) a class C felony if it occurs in the course of sexually assaulting another sexually; and

(B) a class B felony in any other case.

(c) There is Federal jurisdiction over an offense under this section if a circumstance listed in section 2311(c) of this title exists that would give rise to Federal jurisdiction for an offense under section 2311 of this title.

§2315. Terrorizing.

(a) Whoever knowingly communicates—

(A) a threat to commit, or to continue to commit, a crime of violence or unlawful conduct dangerous to human life, or

(B) information, that the actor knows to be false, that the communication of a crime of violence is imminent or in progress or that a circumstance dangerous to human life exists or is about to exist,

[with intent to cause] thereby intentionally caused a person or in such a manner as would ordinarily cause a person to believe that a public safety [or to cause] evacuation of a building, a public venue, or a facility of transportation, or [another] other serious disruption to the public, or [attempts to do so, shall be punished as provided in subsection (b) of this section].

(b) An offense under this section is—

(A) a class B felony if the circumstances set forth in subsection (a)(2) of this section if the offense causes any person to be in imminent fear that that person or another person will be killed, brought [kidnapped], or subjected to serious bodily injury, and

(B) a class D felony in any other case.

(c) There is Federal jurisdiction over an offense under this section if—

(1) the offense occurs in the special jurisdiction of the United States;

(2) the threat is communicated to a federally protected foreign individual;

(3) the threat is transmitted in interstate commerce or through the United States mail and is a threat to kidnap or injure any person;

(4) the threat is transmitted through the United States mail, telephone, telegraph, or similar means of communication, and is a threat to injure any person or damage any property by means of a destructive device;

(5) the threat is to damage a motor vehicle or aircraft that is used, or engaged or employed in interstate commerce; or

[(6) the offense is committed by an Indian in Indian country.]

§ 2214. Communicating a threat

[(a) Whoever, with intent to place or cause another person, knowingly communicates—

[(1) a threat to commit or to continue to commit a crime of violence, or unlawful conduct dangerous to human life, or

[(2) information, that the actor knows to be false, that the commission of a crime in imminent or in progress or that a circumstance dangerous to human life exists or is about to exist,]

[or attempts to do so, shall be punished as provided in subsection (b).]

(b) [An offense under this section is—

[(1) a class B felony if the circumstances set forth in subsection (a)(2) of this section if the offense causes any person to be in imminent fear that that person or another person will be killed, brought [kidnapped], or subjected to serious bodily injury, and

[(2) a class D felony in any other case.

(c) There is Federal jurisdiction over an offense under this section if—

(1) the offense occurs in the special jurisdiction of the United States;

(2) the threat is communicated to a federally protected foreign individual;

(3) the threat is transmitted in interstate commerce or through the United States mail and is a threat to kidnap or injure any person;

(4) the threat is transmitted through the United States mail, telephone, telegraph, or similar means of communication, and is a threat to injure any person or damage any property by means of a destructive device;

(5) the threat is to damage a motor vehicle or aircraft that is used, or engaged or employed in interstate commerce; or

[(6) the offense is committed by an Indian in Indian country.]

§ 2215. General provisions for subchapter

(a) It is an affirmative defense to a prosecution—

[(1) under section 2213, or 2214, that the conduct charged was committed as by the person engaged in pursuit of duty; and

[(2) section 2213, [or 2214,] or 2215 that the conduct charged was committed as part of a course of conduct protected under the First Amendment to the Constitution [by the person engaged in exercise of religion, or

[(3) constitutionally foreseeable threats of force [prosecution] by the state and such other person had been made aware of the risk involved by a prior conduct.

(b) As used in this subchapter, the term "law enforcement officer"—

[(1) a public servant authorized by law or by a government agency to engage in or supervise the prevention, detection, investigation, or prosecution of an offense.

[(2) a public servant authorized by law to serve or execute search warrants or to make seizures of property; or

[(3) a public servant authorized to perform official duties under—

[(A) section 2 of title 2, United States Code]

[(B) section 5a of title 2, United States Code]

[(C) section 5a of title 2, United States Code]

[(D) section 3c of title 18, United States Code]

[(E) section 40 of title 22, United States Code]

[(F) section 42 of title 22, United States Code]

[(G) section 45 of title 22, United States Code]

[(H) section 44 of title 22, United States Code]

[(I) section 23 of title 22, United States Code]

[(J) section 52 of title 22, United States Code]

[(K) section 2 of title 22, United States Code]

§ 2311. Kidnaping.

(a) Offense.—Whoever knowingly restrains another person with intent to—

(1) hold that person for ransom or reward;

(2) use that person as a shield or hostage; or

(3) commit a felony;

or attempts to do so, commits a class A felony if the actor does not voluntarily release the victim alive and in a safe place prior to trial, and commits a class B felony in any other case.

(b) Place in Federal jurisdiction.—An offense under this section if—

(1) the person restrained is a person listed in section 2302(b) through (d) of this title;

(2) movement across a State or United States boundary of the person restrained occurs during the offense; or

(3) the offense is committed by an Indian in Indian country.

§ 2312. Aggravated criminal restraint.

(a) Offense.—Whoever knowingly—

(1) engages in any conduct that creates divergent for the purpose of hindering circumstances that he has—make reckless disregard of a risk of causing bodily injury to another person; or

(2) leaves and thus exposes person in a place where such other person is not likely to be found; or

(3) holds another person in a condition of involuntary servitude, slavery, or peonage,

and thereby restrains such other person, or attempts to do so, commits a class B felony.

(b) Offense.—Whoever knowingly endangers or threatens to endanger the safety of another person, and thereby causes any person to be restrained, commits a class B felony.

(c) Place in Federal jurisdiction over an offense under this section if a circumstance described in section 2302(b) of this title exists.

§ 2313. Criminal restraint.

(a) Offense.—Whoever knowingly engages in any conduct and thereby restrains another person, or attempts to do so, commits a class A misdemeanor.

(b) Place in Federal jurisdiction over an offense under this section if a circumstance described in section 2302(b) of this title exists.

§ 2314. General provisions for subchapter.

(a) As used in this subchapter, the term—

(1) "minor" means a person who is under the age of 18 years old or is represented to be such a person and if such person's parent, guardian, or other person responsible for such person's welfare has not consented to the commission of conduct;

(2) "to restrain" means to restrict the movement of a person unlawfully and without consent, so as to interfere with such person's liberty, by—

(A) confining that person from which such person's place of residence or is found;

(B) moving that person in any place to another that person from one place to another unless such movement is for a distance that is clearly incidental to the commission of another offense for which the actor may be prosecuted; or

(C) secreting that person in a place where that person is not likely to be found.

(b) It is a defense to a prosecution for an offense under section 2312(a)(2) that the actor is a parent or guardian of the person restrained or is a person responsible for the person's welfare and the person restrained is less than 18 years old.

(c) In the absence of facts indicating a theft of Federal jurisdiction, the failure to release the victim of an offense under section 2311, 2312, or 2313 within 24 hours of the offense is a sufficient indication of the possibility that Federal jurisdiction exists, by virtue of the movement of the victim across a State or United States boundary, to justify the commencement of a Federal investigation of the offense.

Subchapter IV—Sex Offenses.

Sec.
2321. Aggravated criminal sexual conduct.
2322. Criminal sexual conduct.
2323. Sexual abuse of a minor.
2324. Criminal sexual contact.
2325. Definitions for subchapter.

§ 2321. Aggravated criminal sexual conduct.

(a) Offense.—Whoever knowingly—

(1) uses force;

(2) threatens or places another person in fear that any individual will immediately be subjected to death, serious bodily injury, or kidnaping;

and thereby engages in a sexual act with such other person, or attempts to do so, commits a class B felony.

(b) Whoever knowingly—

(1) engages in conduct whereby the actor, by the use of a drug or intoxicant, or otherwise, substantially impairs the ability of another person to appraise or control conduct, without the knowledge or consent of that other person, and with intent to engage in a sexual act with that other person; and

(2) engages thereby in a sexual act with that other person

commits a class B felony.

(2)(A) Whoever knowingly engages in a sexual act with another person who is less than 12 years old commits a class B felony.

(B) In a prosecution under this paragraph, no state of mind need be proved with respect to the fact that the other person is less than 12 years old.

(b) There is Federal jurisdiction over an offense under this section if the offense is committed in the special jurisdiction of the United States or by an Indian in Indian country.

§2422. Criminal sexual coercion

(a) Whoever knowingly engages in a sexual act with another person who is not the actor's spouse if—

(1) such other person—

(A) is incapable of understanding the nature of the conduct,

(B) is physically incapable of resisting, or of declining consent to, the sexual act,

(C) is unaware that a sexual act is being committed, or

(D) participates because of a mistaken belief that the actor is married to the other person, or

(2) the actor knowingly the other person to participate by a threat or by placing the other person in fear,

or attempts to do so, commits a class C felony.

(b) There is Federal jurisdiction over an offense under this section if the offense is committed in the special jurisdiction of the United States or by an Indian in Indian country.

§2422. Sexual abuse of a minor

(a) Whoever knowingly engages in a sexual act with another person who is not the actor's spouse, who is less than 16 years old, and who is at least 5 years younger than the actor shall be punished as provided in subsection (b) of this section.

(b) An offense under this section is—

(1) a class B felony if the actor has attained the age of 21 years; and

(2) a class A misdemeanor in any other case.

(c) It is an affirmative defense to a prosecution for an offense under this section that the actor reasonably believed the other person to be 16 years old.

(d) In a prosecution under this section, no state of mind need be proved with respect to the fact that the other person was at least 5 years younger than the actor.

(e) There is Federal jurisdiction over an offense under this section if the offense is committed in the special jurisdiction of the United States or by an Indian in Indian country.

§2423. Sexual abuse of a ward

(a) Whoever knowingly engages in a sexual act with another person who is not the actor's spouse, who is in official detention, and who is under the custody, supervision, or disciplinary authority of the actor commits a class A misdemeanor.

(b) There is Federal jurisdiction over an offense under this section if—

(1) the offense is committed in the special jurisdiction of the United States; or

(2) the official detention is Federal official detention.

§2423. Definitions for subchapter

As used in this subchapter, the term—

(1) "sexual act" means conduct between human beings consisting of—

(A) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph, contact involving the penis does not occur unless there is penetration, however slight;

(B) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or

(C) the penetration, however slight, of the anal or genital opening of another by an object;

(2) "spouse" means a person—

(A) to whom the actor is legally married and from whom the actor is not legally separated; or

(B) who is 16 years old or older and the actor and such person are living together as husband and wife.

CHAPTER 25—OFFENSES INVOLVING PROPERTY

Subchapter I—Arson and Other Property Destruction Offenses

§2501. Arson

(a) Whoever knowingly causes a fire or sets off an explosion and thereby causes damage to—

(1) a public building;

(2) a building or a public structure;

(C) a civil assault that is not a public facility, or equipment used in support of such assault;

(D) a railroad vehicle that is not a public facility, or a facility or equipment used in support of such railroad vehicle; or

(E) a motor vehicle that is not a public facility, if such damage is caused while engaged in conduct that human life is thereby endangered, or attempts to do so, shall be punished as provided in subsection (b) of this section.

(b) An offense under this section is—

(1) a class B felony if the damage is to a dwelling or public facility;

(2) a class C felony in any other case.

(c) There is Federal jurisdiction over an offense under this section if—

(1) the offense is committed within the special jurisdiction of the United States;

(2) the property that is the subject of the offense is owned by, or is under the care, custody, or control of, the United States, is being purchased, manufactured, constructed, or shipped for the United States, or is subject to a security interest held by the United States;

(3) the property that is the subject of the offense is located within the United States and is owned by, or is under the care, custody, or control of—

(A) a foreign person; or

(B) a federally sponsored foreign individual;

(4) the property that is the subject of the offense is moving in interstate or foreign commerce, or constitutes or is a part of an interstate or foreign shipment;

(5) the property that is the subject of the offense is used in an activity affecting interstate or foreign commerce, and is damaged by a destructive device;

(6) the property that is the subject of the offense is owned by, or is under the care, custody, or control of, an organization receiving financial assistance from the United States, and is damaged by a destructive device;

(7)(A) the property is a civil aircraft, railroad vehicle, or motor vehicle operated, used, or employed in interstate or foreign commerce; and

(B) if the damage is to equipment or a facility used in support of such aircraft, railroad vehicle, or motor vehicle, the offense is committed with intent to damage such aircraft, railroad vehicle, or motor vehicle;

(8) the public facility is a radio, telegraph, telephone, or cable line, station, or system, or similar means of communication, used or intended to be used for military or civil defense functions of the United States; or

(9) the offense is committed by an Indian in Indian country.

(d) It is a defense that, in a prosecution for an offense under this section whose jurisdiction is based upon subsection (c)(3) of this section that the facility was not operated or controlled by the United States and the offense occurred in the course of lawful labor activity, or other lawful concerted activities for the purposes of collective bargaining or other mutual aid and protection which do not injure or destroy any line or system used or intended to be used for the military or civil defense functions of the United States.]

§ 2332f. Aggravated property destruction

(a) Whoever knowingly engages in any conduct and thereby causes damage to—

(1) a public facility,

(2) property, which damage causes a significant interruption or impairment of a function of a public facility, or

(3) property the value of which exceeds $500,

or attempts to do so, shall be punished as provided in subsection (b) of this section.

(b)(1) An offense under subsection (a)(1) or (a)(2) of this section is a class D felony.

(2) An offense under subsection (a)(3) of this section is—

(A) a class D felony if the damage exceeds $1,000,000;

(B) a class D felony in any other case.

(c) In a prosecution under this section, no state of mind need be proved with respect to the value of the damage.

(d) There is Federal jurisdiction over an offense under this section if—

(1) a circumstance specified in section 2331(c)(1)(A) through (C) or section 2331(c)(2) of this title exists;

(2) the property is mail; or

(3) the property is a submarine cable used in whole or in part for radiographic or telephonic communication;

(4) the property is a civil aircraft or railroad vehicle operated, used or employed in interstate commerce, or is equipment or a facility used in support of such aircraft or railroad vehicle and the offense is committed with intent to damage such aircraft or railroad vehicle;

(5) the offense is committed with reckless disregard for the fact that human life is thereby endangered; if

(A) the property is a motor vehicle operated, used or employed in interstate commerce, or

(B) the property is equipment or a facility used in support of such motor vehicle and the offense is committed with intent to damage such motor vehicle, or

(B) the property is a radio, telegraph, telephone, or cable line, station or system, or similar means of communication used or intended to be used for military or civil defense functions of the United States.

[(e) It is a [defense] [bar] to a prosecution for an offense under this section whose jurisdiction is based upon subsection (c)(3) of this section that the facility was not operated or controlled by the United States and the offense occurred in the course of lawful strike activity, or other lawful concerted activities for the purposes of collective bargaining or other mutual aid and protection which do not injure or destroy any line or system used or intended to be used for the military or civil defense functions of the United States.]

§2363. Property destruction

(a) Whoever knowingly [engages in any conduct and thereby recklessly] causes damage to property for attempts to do so,] shall be punished as provided in subsection (b) of this section.

(b) An offense under this section is—

(1) a class A misdemeanor if the property is mail other than a newspaper, magazine, advertising matter or circular, or if the damage exceeds $100.

(2) a class B misdemeanor in any other case.

(c) In a prosecution under this section, no state of mind need be proved with respect to the value of the damage.

(d) There is Federal jurisdiction over an offense under this section if—

(1) a circumstance specified in section 2501(c) (1) through (5) of this title exists;

(2) the property is mail; or

(3) the property is a submarine cable used in whole or in part for telegraphic or telephonic communication;

(4) the property is a civil aircraft or railroad vehicle operated or employed in interstate commerce; or is equipment or a facility used in support of such aircraft or railroad vehicle and the offense is committed with intent to damage such aircraft or railroad vehicle;

(5) the offense is committed with reckless disregard for the fact that human life is thereby endangered and

(A) the property is a motor vehicle operated, used or employed in interstate commerce; or

(B) the property is equipment or a facility used in support of such motor vehicle and the offense is committed with intent to damage such motor vehicle; or

(6) the property is a radio, telegraph, telephone, or cable line, station or system, or similar means of communication used or intended to be used for military or civil defense functions of the United States.

[(e) It is a [defense] [bar] to a prosecution for an offense under this section whose jurisdiction is based upon subsection (c)(3) of this section that the facility was not operated or controlled by the United States and the offense occurred in the course of lawful strike activity, or other lawful concerted activities for the purposes of collective bargaining or other mutual aid and protection which do not injure or destroy any line or system used or intended to be used for the military or civil defense functions of the United States.]

§2364. General provisions for subchapter

(a) It is a defense to a prosecution under section 2361, 2362, or 2363 of this title that the actor's conduct was commenced in by all holders of a legal interest in all property damaged, [or that the actor [reasonably] believed that such consent existed [and was not reckless in this belief].]

(b) [Proof as to jurisdictional elements, if needed.]

(c) As used in this subchapter, the term—

(1) "building" means an immovable or movable structure that is at least partially enclosed, or a separate part of such a structure, and that is designed for use, or used [, in whole or in part], as—

(A) an individual's permanent or temporary home or place of lodging;

(B) a place for persons to engage in matters pertaining to an occupation or a business or a profession, or to government, education, religion, or entertainment; or

(C) a place for the storage of property within which, because of its size or other characteristics, it is apparent that an individual could be present;

(2) "public facility" means—

(A) a facility of public or government communication, transportation, energy supply, water supply, or sanitation;

(B) a facility of a police, fire, or public health agency;

(C) a facility designed for use, or used, as a means of national defense; and

(D) a part of any such facility or any property, structure, or apparatus used in connection with or in support of any such facility; and

(3) "public structure" means a structure, whether or not enclosed, where persons assemble for purposes of an occupation or a business or a profession, or of government, education, religion, or entertainment.

Subchapter II—Criminal Intrusion Offenses

§2511. Criminal entry

(a) Whoever knowingly enters or remains surreptitiously within a building or vehicle that is the property of another, with reckless disregard that the actor is without privilege to do so, and with intent to engage in conduct therein which would constitute—

(1) a Federal felony if Federal jurisdiction exists, or

(2) theft

[an attempt to do so,] shall be punished as provided in subsection (b) of this section.

(b) An offense under this section is—

(1) a class C felony if committed with reckless disregard for the fact that the property is an [occupied] dwelling in which an individual is present.

(2) a class D felony in any other case.

(c) There is Federal jurisdiction over an offense under this section if—

(1) the offense is committed within the special jurisdiction of the United States.

(2) the building is owned by, or is under the care, custody, or control of, the United States.

(3) the building contains a facility of a Federal Government agency, and, if the actor's entering or remaining was in a part of the building other than that in which the facility was located, the conduct intended would have affected the facility itself or something therein.

(4) the building contains a national credit institution, and, if the actor's entering or remaining was in a part of the building other than that in which the credit institution was located, the conduct intended would have affected the credit institution itself or something therein;

(5) the vehicle contains mail, or property that is moving in interstate or foreign commerce, or property that constitutes or is a part of an interstate or foreign shipment and the intent is to commit theft;

(6) the building or vehicle is located within the United States and is owned by, or is under the care, custody, or control of—

(A) a [foreign power];

(B) a [foreign dignitary] who is in the United States; or

(C) an [official guest] of the United States; or

(7) the offense is committed by an Indian in Indian country.

(d) As used in this section, the term "theft" means conduct that would be a violation of subchapter IV of this chapter if Federal jurisdiction exists.

§2512. Criminal trespass

(a) Whoever, without privilege, knowingly enters or remains within [or on] premises that are the property of another—

(1) if such premises are—

(A) a building; or

(B) so enclosed or secured as reasonably to exclude intruders,

(2) if notice prohibiting trespass has been—

(A) communicated to the actor by an authorized person; or

(B) posted in a manner reasonably likely to come to the attention of intruders; or

(3) with intent to engage in conduct therein which would constitute a Federal, State, [or local] offense,

shall be punished as provided in subsection (b) of this section.

(b)(1) An offense under subsection (a)(1) of this section is—

(A) a class A misdemeanor if the premises is a dwelling or [city-owned government premises];

(B) a class B misdemeanor in any other case.

(2) An offense under subsection (a)(2) of this section is a class C misdemeanor.

(3) An offense under subsection (a)(3) of this section is a class B misdemeanor.

(c) There is Federal jurisdiction over an offense under this section if—

(1) the offense is committed within the special jurisdiction of the United States;

[(2) the premises are owned by, or are under the care, custody, or control of, the United States;]

(3) the premises are located within the United States and are owned by, or are under the care, custody, or control of—

(A) a [foreign power];

(B) a [foreign dignitary] who is in the United States; or

(C) an [official guest] of the United States; or

(4) the premises consist of a vehicle that contains mail, or property that is moving in interstate or foreign commerce, or property that constitutes or is a part of an interstate or foreign shipment.

§2513. Stowing away

(a) Whoever without privilege knowingly, and with intent to obtain transportation—

(1) secretes oneself aboard a vessel or aircraft that is property of another, and

(2) is aboard the vessel or aircraft when such vessel or aircraft leaves the [point of embarkation];

commits a class A misdemeanor.

(b) It is a defense to a prosecution under this section that the actor had the consent of the owner, charterer, master, or other person in command of the vessel or aircraft.

(c) There is Federal jurisdiction over an offense under this section if—

(1) the offense is committed within the special jurisdiction of the United States; or

(2) movement of the same extends a State or United States boundary
any in the commission of the offense.

§2514. Definitions for subchapter

As used in this subchapter, the term "premises" includes a building, a struc-
ture, other real property, and a vehicle.
[Definitions of building, structure, and vehicle.]

Subchapter III—Robbery, Extortion, and Blackmail

§2521. Robbery

(a) Whoever knowingly—

(1) uses force and violence; or

(2) threatens or places another person in fear that any person other than the actor will imminently be subject to bodily injury,

and thereby takes property from the person or presence of another with intent to deprive that person of the property or to steal the property, or attempts to do so, shall be punished as provided in subsection (b) of this section.

(b) An offense under this section is—

(1) a class A felony if while committing the offense the actor recklessly [or negligently] causes the death of another person; and

(2) a class B felony in any other case.

[(c) There is Federal jurisdiction over an offense under this section if—

[(1) the offense is committed within the special jurisdiction of the United States;

[(2) the property is owned by, or is under the care, custody, or control of, the United States; is being produced, manufactured, constructed, or stored specifically for the United States; or is subject to a security interest held by the United States];

[(3) the property is owned by, or is under the care, custody, or control of, a [national credit institution];

[(4) the property is mail;

[(5) the property is moving in interstate or foreign commerce, constitutes or is a part of an interstate or foreign shipment, or is in a pipeline system that extends across a State or United States boundary or in a storage facility of such a system;

[(6) the offense is committed against a federally protected foreign individual; or

(7) the offense is committed by an Indian in Indian country.

§2522. Extortion

(a) Whoever knowingly threatens or places another person in fear that—

(1) any person will be subjected to bodily injury or kidnapping, or

(2) that any property will be damaged,

and thereby obtains property of another, or attempts to do so, commits a violation [of] [subsection].

[(b) There is Federal jurisdiction over an offense—

[(1) under this section if—

[(A) a circumstance [described in section 2521(c) of this title exists.

[(B) the offense is committed by a Federal public servant [while] while acting under color of office.

[(C) the offense is committed by a person pretending to be a Federal public servant, [a former Federal public servant,] or a foreign official.

[(D) the offense is committed to collect an extension of credit, as defined in section 2705 of this title.

[(E) the property consists of any part of the compensation of a person employed in the construction, completion, repair, or refurbishing of a Federal public building, Federal public work, or building connected in whole or in part by a loan or grant from the United States, and is obtained by threatening or placing any person in fear in relation to that person's employment; or

[(F) the property is gained by threatening or placing a person in fear in relation to any person's employment under a grant or contract of assistance pursuant to the Economic Opportunity Act of 1964 (42 U.S.C. 2701 et seq.); or

[(2) under subsection (a)(1) of this section if the threat was transmitted through the United States mail or in interstate commerce.]

§2523. Blackmail

(a) Whoever knowingly threatens or places another person in fear that any person will—

(1) engage in conduct constituting a Federal, State, [or local] crime other than a crime described in section 2522;

(2) accuse any person of a Federal, State, [or local] crime;

(3) procure the dismissal of any person from employment, or refuse to employ or renew a contract of employment of any person;

(4) engage in any conduct and thereby [improperly] subject any person to economic loss or injury to such person's business or profession; or

(5) expose a secret or publicize an asserted fact, whether true or false, with intent to subject any person, living or dead, to hatred, contempt, or ridicule, or to impair such person's personal, financial, professional, or business reputation;

and thereby [intentionally] obtains property of another, or attempt to do so, shall be punished as provided in subsection (b) of the section.

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(b) An offense under this section is—

(1) a class C felony if the property has a value in excess of $100,000;

(2) a class D felony if—

(A) the property has a value in excess of $5,000 but not more than $100,000; or

(B) regardless of its monetary value being $5,000 or less, the property consists of:

(i) a firearm, ammunition, or a destructive device;

(ii) a motor vehicle, except as provided in paragraph (4) of this subsection;

(iii) a computer or computer component;

(iv) a motor boat or other maritime vessel;

(v) an aircraft; or

(vi) a set of passports, immigration documents, or official identification documents issued by the United States;

(3) a class A misdemeanor if the property has a value in excess of $1,000 but not more than $5,000; and

(4) a class B misdemeanor in any other case.

(c) In a prosecution for an offense under this section, no state of mind need be proved with respect to any matter described in subsection (b) of this section.

(d) It is a defense to a prosecution for an offense—

(1) under this section, other than a prosecution under subsection (a)(2) of this section, that the defendant—

(A) reasonably believed the owner's conduct to be justified; and

(B) intended solely to compel or induce the other person to take lawful and reasonable action to prevent or remedy the asserted wrong that prompted the owner's conduct; and

(C) with respect to an offense under subsection (a)(2) of this section, reasonably believed that the threatened accusation was true; and

(2) under subsection (a)(4) of this section, that the conduct was lawful business competition, lawful activity on behalf of a labor organization, or other lawful activity.

(e) There is a Federal jurisdiction over an offense described in this section if—

(1) a circumstance specified in section 2521(c) or section 2522 (b)(2) through (b)(7) exists [or has occurred];

(2) the fear in subsection (a)(1) or (a)(2) involves a Federal crime; or

(3) the fear in subsection (a)(6) involves Federal official action.

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§ 2524. General provisions for subchapter

(a) As used in this subchapter the terms "documentary implement", "forgery implement", and "written instrument" have the meanings set forth in section 2545 of this title.

[Definitions of property and property damage]

[(b) It is not a defense to a prosecution under section 2522 or 2523 that the defendant, by the same conduct, also committed an offense described in section 2721 (relating to arson), 2722 (relating to aggravated arson), 2723 (relating to arson), 2724 (relating to burglary), 2725 (relating to criminal mischief), 2726 (relating to criminal tampering), 2727 (relating to criminal trespass), 2728 (relating to criminal entry), or 2729 (relating to stalking).]

Subchapter IV—Theft and Related Offenses

Sec.
2531. Theft.
2532. Trafficking in stolen property.
2533. Receiving stolen property.
2534. Removing a fraudulent mirror.
2535. Burglary; related offenses.
2536. Fraud in a regulated industry.
2537. Communicating a threat.
2538. Unauthorized use of a vehicle.
2539. General provisions for subchapter.

§ 2531. Theft

(a) Whoever, with the intent to deprive another [for a substantial period of time] [permanently] of a [substantial] right to or a [substantial] benefit of property or to appropriate another's property to the actor's own use or to the use of [any] another person, knowingly—

(1) takes and carries away such property without authority;

(2) makes an unauthorized use, disposition, or transfer, of such property; or

(3) uses fraud and thereby obtains such property;

with reckless disregard for the fact that such property is the property of another, or attempts to do so, shall be punished as provided in subsection (b) of this section.

[(b) An offense under this section is—

[(1) a class C felony if the property has a value in excess of $100,000;

[(2) a class D felony if—

[(A) the property has a value in excess of $5,000 but not more than $100,000; or

[(B) regardless of its monetary value being $5,000 or less, the property consists of—

[(i) a firearm, ammunition, or a destructive device;

[(ii) a vehicle, except as provided in paragraph (4) of this subsection.

(2)

(B) a vessel or other instrument owned by, or under the management, or control of, the United States.

(C) a communicating or forging implement designed for the making of a written instrument of the United States.

(D) a key or other implement designed to provide access to mail or to property owned by, or under the care, custody, or control of, the United States; or

(E) mail other than a newspaper, magazine, circular, or ad vertising matter.

(3) a class B felony if the property has a value in excess of $100 but not more than $1,000.

(4) a class A misdemeanor if the property has a value in excess of $100 but not more than $100.

(5) a class B misdemeanor if—

(A) the property has a value of $100 or less; or

(B) notwithstanding the provisions of paragraphs (1), (2), (3), and (4) of this subsection, the property is a motor vehicle or vessel, the defendant is less than eighteen years old, and the defendant's immediate deprivation or appropriation of a temporary nature rather than a permanent nature.

(c)(1) In a prosecution for an offense under this section, no state of mind need be proved with respect to any matter described in subsection (b) of this section.

(2) As used in this section, the term "property" does not include—

(A) services in return for which the provider does not ordinarily receive, and does not expect to receive, something of value.

(B) real property, unless the actor acquires or transfers a legal interest in the property other than through adverse possession; or

(C) [classified government information.]

(d) It is a defense to a prosecution for an offense under subsection (a)(1) or (a)(2) of this section that the property was lost or was delivered to the actor under a mistake as to the identity of the recipient or as to the nature or amount of the property, unless the actor knew that such property was the property of another and failed to take readily available and reasonable measures to restore the property to a person entitled to such property.

(e) There is Federal jurisdiction over an offense under this section if—

(1) the offense is committed within the special jurisdiction of the United States;

(2) the property is owned by, or is under the care, custody, or control of, the United States; is being produced, manufactured, constructed, or stored for the United States; or is subject to a security interest held by the United States;

(3)

(A) the offense is committed by Federal public servants acting under color of office.

(B) the offense is committed by a person proceeding to or from a Federal public servant's or foreign official.

(C) the property has an aggregated value of $1,000 or more and is obtained through the use of one or more communications. Evidence, alleged, logged, from, or stolen credits in a transaction affecting interstate or foreign commerce.

(D) the property is mail.

(E) the property is moving in interstate or foreign commerce, regardless of is a part of an interstate or foreign shipment, or is in a physical system that operates across a State or United States boundary in the commission of the offense.

(F) the property is owned across a State or United States boundary in the commission of the offense and—

(i) has a value of $1,000 or more; or

(ii) is an explosive, communication, a firearm, or a vehicle.

(G) the property is owned by, or is under the care, custody, or control of, a Indian tribal organization.

(H) the property is—

(I) owned by, or is under the care, custody, or control of, an Indian tribe, band, community, group, or pueblo that is subject to a Federal statute relating to Indian affairs, or a corporation, association, or group organized under any such statute, or

(II) the subject of a grant, subgrant, contract, or subcontract pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 2302) or the Act of April 16, 1934 (25 U.S.C. 452 et seq.), and the offense is committed by an agent of a recipient of such a grant, subgrant, contract, or subcontract.

(I) the property is owned by, or is under the care, custody, or control of, an employee benefit plan subject to a provision of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.).

(J) the property is owned by, or is under the care, custody or control of, trust fund established by an employer or by an employee organization as defined in section 3(4) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(4)), or by both, to provide a benefit to the members of an employee organization or to their families;

(K) the property is owned by, or is under the care, custody, or control of, a labor organization as defined in section 3 (i) and (j) of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 402 (i) and (j)), and the offense is committed by an officer, member, or employee of, or a person connected in any capacity with, such organization.

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(11) the offense is committed by an agent or employee of, or a person connected in any capacity with a small business investment company, as defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662), and the property is owned by, or is under the care, custody, or control of such small business investment company;

(12) the property is owned by, or is under the care, custody, or control of, a registered investment company, as defined in section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a));

(13) The offense is committed by a futures commission merchant as defined in section 2(a) of the Commodity Exchange Act (7 U.S.C. 2), by an agent thereof, and (A) the property is that of a customer who is secured by such futures commission merchant to margin, guarantee, or secure trades or contracts of any customer, or (B) the property has accrued to a customer as the result of trades or contracts;

(14) the property is owned by, or is under the care, custody, or control of, an organization engaged in interstate commerce as a common carrier, and the offense is committed (A) by a president, director, officer, or manager of such common carrier, or (B) by an agent of such common carrier riding in a vehicle of such common carrier that is moving in interstate commerce;

(15) the offense is committed by an agent of, or a person connected in any capacity with, an agency receiving financial assistance under the Economic Opportunity Act of 1964 (42 U.S.C. 2701 et seq.), and the property is the subject of a grant or contract of assistance pursuant to such Act;

(16) the offense is committed by a trustee, receiver, custodian, marshal, or other court officer and the property consists of a part of the estate of a bankrupt by or against whom a petition has been filed pursuant to the Bankruptcy Act of 1978 (11 U.S.C. 1 et seq.);

(20) the property consists of a part of a grant, contract, or other form of assistance received, directly or indirectly, from the Law Enforcement Assistance Administration, pursuant to title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3701 et seq.);

(21) the property (A) consists of a coupon, or of an authorization to purchase card, defined in section 3 (c) and (m) of the Food Stamp Act of 1964 (7 U.S.C. 2012 (c) and (m)); or (B) is obtained by the use of such a coupon that has been obtained in violation of the rules governing the issuance of such coupon;

(22) the property consists of agricultural products stored or to be stored in a licensed warehouse pursuant to the United States Warehouse Act (7 U.S.C. 241 et seq.), and licensed receipts have been or are to be issued for such products;

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(23) the property consists of money paid under a law administered by the Veterans' Administration for the benefit of a minor, an incompetent, or another beneficiary, and the offense is committed by a fiduciary of such beneficiary;

(24) the property consists of money, a security, or another asset of the Securities Investor Protection Corporation;

(25) the property is provided or insured under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.);

(26) funds under the Comprehensive Employment Training Act of 1973; and]

(27) the offense is committed by an Indian in Indian country.

[and following as applicable only to subparagraph (26):—

the property consists of any part of the compensation of a person employed in the construction, completion, repair, or rebuilding of a Federal public [bldg., Fed. or] public work, or building financed in whole or in part by a loan or grant from the United States, and is obtained or retained by fraud in relation to that person's employment, and funds under Railroad Retirement Act.]

§2322. Trafficking in stolen property

(a) Whoever knowingly traffics in property of another with reckless disregard for the fact that such property has been stolen [by another] commits an offense of the same class as an offense under section 2531 of this title with respect to that property.

[(b) Definition of trafficking.]

(c) There is Federal jurisdiction over an offense under this section if—

(1) a circumstance specified in section 2531 of this title exists;

(2) the property is an interest bearing obligation of the United States; or

(3) the property has a value of $5,000 or more, or is ammunition, a firearm, or a vehicle, and after having been stolen is [ever] moved across a State or United States boundary.

§2323. Receiving stolen property

(a) Whoever knowingly buys, receives, possesses, or obtains control of property of another with reckless disregard for the fact that such property has been stolen by another commits an offense one class next below the class of an offense under section 2531 of this title with respect to that property.

(b) [Defense of intent to return or notify police.]

(c) There is Federal jurisdiction over an offense under this section if a circumstance specified in section 2531(c) or 2532(b)(3) exists.

§2324. Executing a fraudulent scheme

(a) Whoever knowingly schemes to use fraud with intent to—

(1) obtain property of another person or of a government; or

(2) cause economic loss to another person,

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and engages in any conduct with intent to effectuate such scheme commits a class [D] felony.

(b) There is Federal jurisdiction over an offense under this section if, in furtherance of the scheme, the actor—

(1) uses or causes the use of the United States mail;

(2) transmits, or causes to be transmitted, in interstate or foreign commerce any communication through wire, radio or television; or

(3) causes or induces another person to travel in, or be transported in, interstate or foreign commerce.

§ 2535. Bankruptcy related offenses

(a) Whoever, with intent to deceive a court or an officer thereof or to deceive or harm a creditor of a debtor, knowingly—

(1) transfers or conceals property belonging to the estate of a debtor;

(2) receives a material amount of property from a debtor after the filing of a petition under title 11;

(3) transfers or conceals, in contemplation of a debtor proceeding, the actor's own property or the property of another;

(4) alters, destroys, mutilates, conceals, or makes a false entry in, a document affecting or relating to the property or affairs of a debtor, or withholds such a document from a trustee or other office of the court entitled to possession of the document; or

(5) offers, gives, or agrees to give, or solicits, accepts, or agrees to accept, anything of value because of acting or forbearing to act, or having acted or forborne to act, in a bankruptcy case;

shall be punished as provided in subsection (b) of this section.

(b) An offense under this section is—

(1) a class D felony if the property has a value in excess of $500; and

(2) a class E felony in any other case.

(c) As used in this section the term—

(1) "debtor" means a debtor by or against whom a petition under title 11 has been filed;

(2) "bankruptcy case" means a case under title 11; and

(3) "harm" means to cause loss, deprivation, or reduction in value, with respect to any economic benefit.

§ 2536. Fraud in a regulated industry

[(a) Whoever violates section 912 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1709–2) or section 239(b) of the National Housing Act (12 U.S.C. 1715z–4(b)) (relating to equity skimming in federally insured mortgages of single or multiple family dwellings) commits a class E felony.

(b) Whoever violates section 1404 of the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1703) (relating to the sale or lease of lots in real estate subdivisions); commits a class D felony.

[§ 25—. Criminal infringement of a copyright

[(a) Whoever violates section 506(a) of title 17, United Stated Code, shall be punished as provided in subsection (b) of this section.

[(b) An offense under subsection (a) of this section is—

[(1) a class D felony if the copyright infringed is—

[(A) in a sound recording and the offense involved the reproduction or distribution of 1,000 or more phonorecords during any six month period;

[(B) in a motion picture or an audiovisual work and the offense involved the reproduction or distribution of 200 or more copies of such motion picture or audiovisual work during any six month period; or

[(C) in a sound recording, a motion picture, or an audiovisual work and the offense involved is a second or subsequent offense under this section;

[(2) a class E felony if the copyright infringed is—

[(A) in a sound recording and the offense involved the reproduction or distribution of more than 100 but less than 1,000 phonorecords during any six month period; or

[(B) in a motion picture or an audiovisual work and the offense involved the reproduction or distribution of more than 20 but less than 200 copies during any six month period; and

[(3) a class A misdemeanor in any other case.

[(c) As used in this section, the term—

[(1) "sound recording" has the meaning set forth in section 101 of title 17, United States Code;

[(2) "motion picture" has the meaning set forth in section 101 of title 17, United States Code; and

[(3) "audiovisual work" has the meaning set forth in section 101 of title 17, United States Code.]

§ 2537. Commandeering a vessel

(a) Whoever knowingly uses force, threat of force, or fraud and thereby seizes or exercises control over a vessel or attempts to do so, commits—

(1) a class D felony if the defendant is a member of the crew of the vessel or the offense is committed on the high seas; and

(2) a class E felony in any other case.

(b) As used in this section, the term "vessel" means a self-propelled or wind-propelled craft used or designed for transportation or navigation on, under, or immediately above water.

[§ 2538. Unauthorized use of a vehicle

[(a) Whoever knowingly takes, operates or exercises control over an automobile, aircraft, motorcycle, motorboat, or other motor-propelled vehicle owned

by another person without that person's consent shall be punished as provided in subsection (b) of this section.

[(b) An offense under this section is—

[(1) a class E felony if the vehicle is an aircraft or if the value of the use of the vehicle and the cost of restoration exceed $500; or

[(2) a class A misdemeanor in any other case.

[(c) It is a defense to a prosecution for an offense under this section that the actor reasonably believed that the owner of the vehicle would have consented had such owner known of the conduct upon which the prosecution is based, at or before the time the actor engaged in such conduct.

[(d) There is Federal jurisdiction over an offense under this section if—

[(1) the offense is committed within the special jurisdiction of the United States; or

[(2) the vehicle is the property of the United States.]

§ 2539. General provisions for subchapter

(a) As used in this subchapter, the term—

(1) "counterfeiting implement" and "forging implement" have the meanings set forth in section 2546 (b) and (d);

(2) "written instrument" has the meaning set forth in section 2546(i);

[definitions of property, property of another (to include only commercial service), value (as value of interest taken), etc.]

[(b) Theft of classified government information to be dealt with in espionage subchapter.]

(c) [carry forward proof provisions of §§ 3487 and 643 of title 18.]

Subchapter V—Counterfeiting, Forgery, and Related Offenses

§ 2541. Counterfeiting

(a) Whoever—

(1) with intent to deceive or harm another person or a government; or

(2) knowing that the actor is facilitating another's deceiving or harming a person or government;

knowingly makes, utters, or possesses a counterfeited written instrument shall be punished as provided in subsection (b) of this section.

[(b) grading.]

[(c) jurisdiction.]

§ 2542. Forgery

(a) Whoever—

(1) with intent to deceive or harm another person or a government; or

(2) knowing that the actor is facilitating another's deceiving or harming a person or government;

knowingly makes, utters, or possesses a forged written instrument shall be punished as provided in subsection (b) of this section.

[(b) grading.]

[(c) jurisdiction.]

§ 2543. Criminal endorsement of a written instrument

(a) Whoever, with intent to deceive or harm another person or a government or knowing that the actor is facilitating another's deceiving or harming a person or government, knowingly—

(1) signs or endorses a written instrument purportedly on behalf of another person or a government without authority to do so; or

(2) utters or possesses a written instrument that has been so signed or endorsed;

shall be punished as provided in subsection (b) of this section.

[(b) grading.]

[(c) jurisdiction.]

§ 2544. Criminal issuance of a written instrument

(a) Whoever, with intent to deceive or harm another person or a government or knowing that the actor is facilitating another's deceiving or harming a person or government, knowingly—

(1) issues a written instrument without authority; or

(2) utters or possesses a written instrument that has been so issued;

shall be punished as provided in subsection (b) of this section.

[(b) grading.]

[(c) jurisdiction.]

§ 2545. Trafficking in a counterfeiting implement

(a) Whoever, knowingly makes, traffics in, or possesses a counterfeiting or forging implement with intent that it be used in making a counterfeited or forged written instrument shall be punished as provided in subsection (b) of this section.

[(b) grading.]

[(c) jurisdiction.]

[§ 2546. Trafficking in counterfeit labels for sound recordings, motion pictures, and audiovisual works

[(a) Whoever knowingly traffics in a counterfeit label designed to be affixed to a sound recording, a motion picture, or an audiovisual work commits a class [D] felony.

[(b) As used in this section, the term—

[(1) "counterfeit label" means an identifying label or container that is designed to be affixed to or to enclose a sound recording, a motion picture, or an audiovisual work;

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[(2) "sound recording" has the meaning set forth in section 101 of title 17, United States Code;

[(3) "motion picture" has the meaning set forth in section 101 of title 17, United States Code; and

[(4) "audiovisual work" has the meaning set forth in section 101 of title 17, United States Code.]

§ 2547. Definitions for subchapter

As used in this subchapter, the term—

(1) "counterfeited written instrument" means a written instrument that purports to be genuine but is not, because it has been falsely made or manufactured in its entirety;

(2) "counterfeiting implement" means an engraving, plate, hub, stone, paper, tool, die, mold, ink, photograph, negative, or other implement or impression [especially] designed or suited for the making of counterfeited written instrument;

(3) "forged written instrument" means a written instrument that purports to be genuine but is not because it: (A) has been falsely altered, completed, signed, or endorsed; (B) contains a false addition thereto or insertion therein; or (C) is a combination of parts of two or more genuine written instruments;

(4) "forging implement" means an engraving, plate, hub, stone, paper, tool, die, mold, ink, photograph, negative, or other implement or impression [especially] designed or suited for the making of a forged written instrument;

(5) "obligation of the United States" means a bond, certificate of indebtedness, national bank currency, Federal Reserve note, Federal Reserve bank note, coupon, United States note, Treasury note, gold certificate, silver certificate, fractional note, certificate of deposit, stamp, canceled stamp, postage meter stamp, coin, gold or silver bar coined or stamped at a mint or assay office of the United States, or other representation of value of any denomination, issued pursuant to a Federal statute, except a bill, money order, check, or draft for money, drawn by or upon an authorized officer of the United States;

(6) "security" means (A) an obligation of the United States; (B) a note, stock certificate, treasury stock certificate, bond, treasury bond, debenture, certificate of deposit, interest coupon, bill, check, draft, warrant, money order, money order blank, traveler's check, letter of credit, warehouse receipt, negotiable bill of lading, evidence of indebtedness, certificate of interest in or participation in any profit-sharing agreement collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, or certificate of interest in tangible or intangible property; (C) an instrument evidencing ownerships of

goods, wares, or merchandise; (D) a certificate for, receipt for, or warrant or right to subscribe to or purchase any of the foregoing; (E) an obligation, banknote, bill, coin, or bar issued by a foreign government and intended by the law or usage of such government to circulate as money; (F) a security of a foreign government; (G) a postage stamp, revenue stamp, or uncancelled stamp, whether or not demonetized, issued by a foreign government; or (H) any other written instrument commonly known as a security;

(7) "tax stamp" includes a tax stamp, tax token, tax meter imprint, or any similar evidence of an obligation running to a government or of the discharge of such an obligation;

(8) "utter" means to issue, authenticate, transfer, publish, sell, deliver, transmit, present, display, use, certify, or otherwise give currency to;

(9) "written instrument" means (A) a security; (B) a commercial paper or document, or other commercial instrument containing written or printed matter or its equivalent; or (C) a symbol or evidence of value, right, privilege, interest, claim, or identification that is capable of being used to the advantage or disadvantage of any person; but, except as used in section 2545, does not include a written instrument that is the subject of a counterfeiting, forgery, criminal endorsement, or criminal issuance offense described outside this title; and

(10) "written instrument issued under the authority of the United States" includes a warehouse receipt issued pursuant to the United States Warehouse Act (7 U.S.C. 241 et seq.) and an "authorization to purchase card" as defined in section 3(m) of the Food Stamp Act of 1964 (7 U.S.C. 2012(m)).

Subchapter VI—Nongovernmental Bribery

§ 2551. Bribery of government contractors

Whoever violates section 4 of the Act entitled "An Act to eliminate the practice by subcontractors, under cost-plus-a-fixed-fee or cost reimbursable contracts of the United States, of paying fees or kickbacks, or of granting gifts or gratuities to employees of a cost-plus-a-fixed-fee or cost reimbursable prime contractors or of higher tier subcontractors for the purpose of securing the award of subcontracts or orders", approved March 8, 1946 (41 U.S.C. 54) commits a class E felony.

§ 2552. Labor bribery

(a) Whoever—

(1) being an employer knowingly offers, gives, or agrees to give anything of pecuniary value to a labor organization, or to an officer or agent of a labor organization with intent to influence or reward the recipient re-

garding the recipient's conduct in any transaction or matter concerning that labor organization;

(2) knowingly offers, gives, or agrees to give anything of pecuniary value to—

(A) an administrator, agent, or trustee of an employee benefit plan;

(B) an employer or agent of an employer, any of whose employees are covered by an employee benefit plan;

(C) an agent of an employee organization, any of whose members are covered by an employee benefit plan; or

(D) a person who, or an agent of an organization that, provides employee benefit plan services;

with intent to influence or reward the recipient regarding the recipient's conduct relating to any transaction or matter concerning such employee benefit plan;

(3) knowingly offers, gives, or agrees to give anything of pecuniary value to an officer, agent, or trustee of a labor organization with intent to influence or reward the recipient regarding—

(A) the admission of any person to membership or to a class of membership, or the issuance to any person of the indicia of membership or of a class of membership, in the labor organization;

(B) the work placement of any person by the labor organization; or

(C) any transaction or matter concerning the expenditure, transfer, investment, or other use of the funds, money, securities, property, or other assets of the labor organization; or

(4) being one of the described recipients in paragraphs (1) through (3) of this subsection, knowingly solicits, accepts, or agrees to accept anything of pecuniary value from another that is given with the intent or motive described in the paragraph in which such recipient is described;

commits a class E felony.

(b) As used in this section, the term—

(1) "administrator" has the meaning set forth in section (3)(16)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(16)(A));

(2) "anything of pecuniary value" means anything of value in the form of money, a negotiable instrument, a commercial interest, or anything else the primary significance of which is economic advantage, or in the form of anything else that has a value in excess of $100, but does not include bona fide salary, wages, fees, or other compensation paid in the usual course of business;

(3) "employee organization" has the meaning set forth in section 3(4) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(4));

(4) "employee benefit plan" includes—

(A) the meaning set forth in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(3)); and

(B) any trust fund established by an employer or by an employee organization, or by both, to provide any benefit to the members of the organization or to their families;

(5) "employer" includes a group or association of employers, and a person acting directly or indirectly as an employer or as [an agent of or] in the interest of an employer but does not include [a government] [the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any person subject to the Railway Labor Act [citation], or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization];

(6) "labor organization" has the meaning set forth in [section 3 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 402(i))];

(7) "officer", when used with respect to a labor organization, means a person who is an officer of a labor organization for the purposes of [the Act of June 23, 1947; 61 Stat. 156]; and

(8) "work placement" means a scheme, system, or method whereby members of a labor organization or other persons gain employment or are referred for employment, and includes any such scheme, system, or method that establishes a priority or preference upon the basis of—

(A) seniority within the labor organization;

(B) experience or competency in a particular trade or field of employment;

(C) length of employment in a particular trade or field of employment or with specified employers or within a particular geographical area;

(D) performance on an examination relating to an individual's ability to perform work in a particular trade or field or employment; or

(E) the date of registration on a list of persons available for work.

§ 2553. Sports bribery

(a) Whoever—

(1) with intent to affect the outcome, result, or margin of victory of a publicly exhibited sporting contest knowingly offers, gives, or agrees to give anything of pecuniary value to a participant, official, or other person associated with the contest; or

(2) as a participant, official, or other person associated with the contest, knowingly solicits, accepts, or agrees to accept anything of pecuniary value from another given with intent described in subsection (d);

commits a class D felony.

(b) As used in this section the term "publicly exhibited sporting contest" means a contest exhibited to the public involving human beings or animals, whether as individual participants or teams of participants, the occurrence of which is publicly announced in advance of the event.

Subchapter VII—Investment, Monetary, and Antitrust Offenses

§ 2561. Securities offenses

Whoever violates—

(1) section 24 of the Securities Act of 1933 (15 U.S.C. 77x);

(2) section 325 of the Trust Indenture Act of 1939 (15 U.S.C. 77yyy);

(3) section 32(a) or (c) of the Securities Exchange Act of 1934 (15 U.S.C. 78ff(a) or (c));

(4) section 29 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–3);

(5) section 49 of the Investment Company Act of 1940 (15 U.S.C. 80a–48); or

[larceny and embezzlement see section 37 (15 U.S.C. 80a–36)]

(6) section 217 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–17);

commits a class D felony.

§ 2562. Monetary offenses

(a) Whoever violates—

(1) section 127 of the Act entitled "An Act to amend the Federal Deposit Insurance Act to require insured banks to maintain certain records, to require that certain transactions in United States currency be reported to the Department of the Treasury, and for other purposes," approved October 26, 1970 (12 U.S.C. 1957); or

(2) section 210 of the Currency and Foreign Transactions Reporting Act (31 U.S.C. 1059)

shall be punished as provided in subsection (b) of this section.

(b) An offense under this section is—

(1) a class D felony if—

(A) committed in furtherance of another Federal offense; or

(B) the offense involved more than $100,000 in a 12-month period;

(2) a class E felony in any other case.

§ 2563. Commodities exchange offenses

Whoever violates—

(1) section 9(a) [embezzlement] (b), (d), or (e) of the Commodity Exchange Act (7 U.S.C. 13(a), (b), (d), and (e));

(2) the third sentence of the eleventh paragraph of section 25(a) of the Federal Reserve Act (12 U.S.C. 617);

commits a class D felony.

§ 2564. Antitrust offenses

Whoever violates section 1, 2, or 3 of the Sherman Act (15 U.S.C. 1, 2, or 3) commits a class E felony, but in the case of a corporation, notwithstanding section [3502] of this title, the maximum fine shall be $1,000,000.

CHAPTER 27—[MISCELLANEOUS OFFENSES]

Subchapter I—Racketeering

§ 2701. Racketeering

(a)(1) Whoever knowingly organizes, owns, controls, finances, or otherwise participates in a supervisory capacity in a racketeering syndicate commits a class B felony.

(2) Whoever knowingly engages in a pattern of racketeering and thereby—

(A) acquires or maintains an interest in, or control of an enterprise; or

(B) conducts or participates in the conduct of an enterprise;

commits a class B felony.

(b) There is Federal jurisdiction over an offense under this section if the enterprise or the racketeering syndicate is engaged in, or the activities of such enterprise or syndicate affect, interstate or foreign commerce.

§ 2702. Laundering racketeering proceeds

(a) Whoever knowingly uses or invests proceeds from a pattern of racketeering activity and thereby acquires or maintains an interest in, or establishes an enterprise commits a class C felony.

(b) It is a defense to a prosecution under this section that the proceeds were used to purchase securities of the enterprise on the open market without intent to control or participate in the control of the enterprise, or to assist another person to do so, if the securities of the enterprise directly or indirectly held by the purchaser, or the members of the purchaser's immediate family in any pattern of racketeering activity after such purchase do not amount in the aggregate to one

percent or more of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the enterprise.

(c) There is Federal jurisdiction over an offense under this section if the enterprise is engaged in, or affects, interstate or foreign commerce.

§ 2703. Loansharking

(a) Whoever knowingly—

(1) makes or finances an extortionate extension of credit;

(2) makes or finances an extension of credit—

(A) having an aggregate value in excess of $100, including unpaid interest or similar charges and any other outstanding extensions of credit to the same debtor;

(B) carrying a rate of interest that exceeds an annual rate of 45 percent, calculated according to the actuarial method of allocating payments between principal and interest under which a payment is applied first to the accumulated interest and the balance is applied to the unpaid principal; and

(C) concerning which the repayment, or the performance of any promise given in return, would not in fact be enforceable through civil judicial process against the debtor—

(i) in the jurisdiction within which the debtor, if an individual, resided at the time the extension of credit was made; or

(ii) in every jurisdiction within which the debtor, if an organization, was incorporated or qualified to do business at the time the extension of credit was made;

(3) collects a repayment of an extension of credit that was made or financed [unlawfully, such making or financing having been] in violation of subsection (a)(1) or (a)(2) of this section; or

(4) retaliates against any person for failing to repay an extension of credit made or financed in violation of subsection (a)(1) or (a)(2) by subjecting any person to bodily injury, kidnapping, or injury to reputation, or by damaging property;

shall be punished as provided in subsection (b) of this section.

(b) An offense under this section is—

(1) a class B felony if a violation of subsection (a)(1) of this section;

(2) a class [C] [D] [E] felony if a violation of subsection (a)(2) or (3) of this section; and

(3) a class [ ] felony if a violation of subsection (a)(4) of this section.

§ 2704. Travel or transportation of aid of racketeering enterprises

(a) Whoever, with intent to further an unlawful activity knowingly travels in interstate commerce or foreign commerce, or knowingly uses any facility in interstate commerce or foreign commerce, including the mail, and knowingly—

(1) engages in conduct which would violate section 2301 (relating to murder); 2302 (relating to manslaughter); 2311 (relating to maiming); 2312 (relating to aggravated battery); 2313 (relating to battery); 2314 (relating to aggravated assault); 2315 (relating to terrorizing); or 2316 (relating to communicating a threat) of this title if Federal jurisdiction existed for the offense under that section; or

(2) furthers an unlawful activity;

commits a class D felony.

(b) As used in this section the term "unlawful activity" means—

(1) any enterprise involving conduct which constitutes a violation of section 2741 (relating to operating a gambling business); or 2711 through 2714 (relating to drugs);

(2) an enterprise involving prostitution offenses, narcotics or controlled substances (as defined in section 102(6) of the Controlled Substances Act) in violation of the laws of the State in which they are committed; or

(3) any conduct which would constitute a violation of sections 2501 (relating to arson), 2521 (relating to extortion), 2551–2553 (relating to bribery), if Federal jurisdiction existed for an offense under that section.

§ 2705. Criminal conduct in aid of racketeering

Whoever knowingly engages in conduct—

(1) that would violate section 1751 (relating to bribery and graft), 2501 (relating to arson), 2521 (relating to robbery), 2522 (relating to extortion), 2551 (relating to contractor bribery), 2552 (relating to labor bribery), or 2553 (relating to sports bribery) of this title, if Federal jurisdiction existed for an offense under that section; and

(2) [with reckless disregard for the fact that] such conduct is in connection with any violation of section 2701 of this title;

shall be punished as provided for the violation that would have occurred if such Federal jurisdiction existed.

[In a prosecution for an offense under this section, no state of mind need be proved with regard to the circumstance that the conduct is in connection with any violation of section 2701 of this title.]

§ 2706. Definitions for subchapter

As used in this subchapter, the term—

(1) "creditor" means a person who makes an extension of credit, or who claims by, under, or through a person making an extension of credit;

(2) "debtor" means a person to whom an extension of credit is made, or a person who guarantees the repayment of an extension of credit or who undertakes to indemnify the creditor against loss from a failure to repay the extension of credit;

(3) "enterprise" means (A) a business or other similar [business like] undertaking by a group, an organization or (B) a government or government agency;

(4) "extension of credit" means a loan, a renewal of a loan, or a tacit or express agreement concerning the deferment of the repayment or satisfaction of a debt or claim, however the loan or renewal or agreement arose, whether it is acknowledged or disputed, and whether it is valid or invalid;

(5) "extortionate extension of credit" means an extension of credit with respect to which it is made, that delay in making repayment or failure to make repayment could result in the use of force, or in threatening or placing any person in fear that any person will be subjected to bodily unjury, kidnaping, or injury to reputation, or that any property will be damaged;

(6) "pattern of racketeering activity" means two or more separate acts of racketeering activity, at least one of which occurred after the effective date of this subchapter, [that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics] [which are interrelated] and are not isolated events;

(7) "racketeering activity" means—

(A) conduct constituting under section 1721 (relating to witness bribery), 1722 (relating to tampering a witness or an informant), 1723 (relating to retaliating against a witness or an informant), 1724 (relating to tampering with physical evidence), 1751 (relating to bribery and theft), 1903 (relating to alcohol and tax offenses), 1911 (relating to smuggling), 1912 (relating to trafficking in smuggled property), 2301 (relating to murder), 2302 (relating to manslaughter), 2311 (relating to maiming), 2312 (relating to aggravated battery), 2315 (relating to terrorizing), 2321 (relating to kidnaping), 2501 (relating to arson), [2511 (relating to criminal entry)], 2521 (relating to robbery), 2522 (relating to extortion), 2523 (relating to blackmail), 2531 (relating to theft), 2532 (relating to trafficking in stolen property), 2534 (relating to executing a fraudulent scheme), 2535 (relating to bankruptcy fraud), 2541 (relating to counterfeiting), 2542 (relating to forgery), 2545 (relating to trafficking in a counterfeiting implement), 2551 (relating to bribery of a government contractor), 2552 (relating to labor bribery), 2553 (relating to sports bribery), 2561 (relating to securities offenses), 2562 (relating to monetary offenses), 2704 (relating to loansharking), 2711 (relating to trafficking in an opiate), 2712 (relating to trafficking in drugs), [2721 (relating to explosive offenses)], [2722 (relating to firearms offenses)], or 2741 (relating to engaging in a gambling business); or

(B) conduct constituting a felony under a State statute relating to murder, kidnaping, arson, robbery, bribery, extortion, [theft], [trafficking in stolen property], trafficking, dangerous drugs, or engaging in a gambling business.

(8) "racketeering syndicate" means an "enterprise" of [5] or more persons who [individually or collectively] engage on a continuing basis in conduct constituting racketeering activity, other than racketeering activity consisting solely of conduct constituting a felony under section 1841 (relating to engaging in a gambling business) or under the law of a State relating to engaging in a gambling business; and

(9) "repayment" includes (A) a return, in whole or in part, of an extension of credit, and (B) a payment of interest on, or of a charge for, an extension of credit.

Subchapter II—Drug Offenses

§ 2711. Trafficking in an opiate

(a) Whoever knowingly—

(1) manufactures or traffics in an opiate;

(2) creates or traffics in a counterfeit substance containing an opiate;

(3) imports or exports an opiate, or possesses an opiate aboard a vehicle arriving in or departing from the United States or the customs territory of the United States; or

(4) manufactures or traffics in an opiate for import into the United States;

or attempts to do so, shall be punished as provided in subsection (b) of this section.

(b) An offense under this section is—

(1) a class B felony if—

(A) the opiate weighs 100 grams or more;

(B) the offense consists of distributing the opiate to a person who is less than 18 years old and who is at least 5 years younger than the defendant; or

(C) the offense is committed after the defendant had been convicted of a felony under Federal law relating to an opiate [class A felony?] and

(2) a class C felony in any other case.

§ 2712. Trafficking in drugs

(a) Whoever knowingly—

(1) manufactures or traffics in a controlled substance other than an opiate;

(2) creates or traffics in a counterfeit substance other than a counterfeit substance containing an opiate;

(3) imports or exports a controlled substance other than an opiate, or possesses a controlled substance other than an opiate aboard a vehicle arriving in or departing from the United States or the customs territory of the United States; or

(4) manufactures or traffics in a controlled substance other than an opiate, and other than a substance listed in Schedule III, IV, or V, for import into the United States;

or attempts to do so, shall be punished as provided in subsection (b) of this section.

(b) An offense under this section is—

(1) a class B felony if the controlled substance is phencylidine (PCP), including salts, analogues, precursors, or isomers and their salts;

(2) a class C felony if the cor 'led substance is listed in Schedule I or II and is—

(A) a narcotic drug other than an opiate; or

(B) 454 kilograms or more of marihuana;

(3) a class D felony if the controlled substance is—

(A) a substance listed in Schedule I or II other than—

(i) a narcotic drug;

(ii) 300 grams or less of marihuana; or

(iii) 454 kilograms or more of marihuana; or

[PCP?]

(B) a substance listed in Schedule III;

(4) a class E felony if the controlled substance is a substance listed in Schedule IV;

(5) a class A misdemeanor if the controlled substance is—

(A) a substance listed in Schedule V; or

(B) 100 to 300 grams of marihuana; and

(6) a class B misdemeanor if the controlled substance is less than 100 grams of marihuana;

unless the offense consists of distributing the controlled substance to a person who is less than 18 years old and who is at least 5 years younger than the defendant, in which case the offense is of the class next above that otherwise specified.

§ 2713. Possessing drugs

(a) Whoever knowingly possesses a controlled substance shall be punished as provided in subsection (b) of this section.

(b) An offense under this section is—

(1) a class D felony if the controlled substance is 100 grams or more of an opiate;

(2) a class A misdemeanor if the controlled substance is—

(A) less than 100 grams of an opiate; or

(B) 150 grams or more of marihuana; or

(C) a substance other than an opiate or marihuana;

(3) a class C misdemeanor if the controlled substance is more than 30 grams but less than 150 grams of marihuana; and

(4) an [infraction] if the controlled substance is 30 grams or less of marihuana.

(c) It is a defense to a prosecution under this section that the controlled substance was obtained by the defendant from, or pursuant to a valid prescription or order issued by, a practitioner acting in the course of the practitioner's professional practice.

(d) Notwithstanding any other provision of law, a person who commits an offense consisting solely of an infraction under this section may not be arrested for the offense, but instead shall be issued a summons.

§ 2714. Violating a drug regulation

(a)(1) Whoever violates—

(A) section 402 (a) or (b) of the Controlled Substances Act (21 U.S.C. 842 (a) or (b)) (relating to the dispensing and manufacturing of controlled substances by registered manufacturers, distributors, and dispensers of controlled substances); or

(B) section 1004 of the Controlled Substances Import and Export Act (21 U.S.C. 954) (relating to the importation for transshipment to another country of controlled substances);

commits a class A misdemeanor.

(2) Whoever violates section 403(a) (1), (2), (3), or (5) of the Controlled Substances Act (21 U.S.C. 843(a) (1), (2), (3), or (5)) (relating to the distribution of controlled substances by registrants and the use of labeling implements to render a drug a counterfeit substance) commits a class E felony.

§ 2715. General provisions of subchapter

(a) As used in this subchapter the term—

(1) "import" means to import into the United States from any place outside the United States, or into the customs territory of the United States from any place outside the customs territory of the United States but within the United States;

(2) "customs territory of the United States" means the States of the United States, the District of Columbia, and Puerto Rico;

(3) "traffic" means—

(A) to sell, pledge, transfer, distribute, dispense, or otherwise dispose of to another person as consideration for anything of value; or

(B) to buy, receive, possess, or obtain control of with interest to do any of the things listed in subparagraph (A) of this paragraph;

(4) "dispense" means to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the order of, a practitioner, and includes the prescribing or administering of a controlled substance and the packaging, labeling, or compounding necessary to prepare the substance for such delivery;

(5) "manufacture" means the production, preparation, propagation, compounding, or processing of a drug or other substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of such substance or labeling or relabeling of its container; except that such term does not include the preparation, compounding, packaging, or labeling of a drug or other substance in conformity with applicable State or local law by a practitioner as an incident to the practitioner's administration or dispensing of such drug or substance in the course of the practitioner's professional practice; and the term "manufacturer" means a person who manufactures a drug or other substance;

(6) "Schedule I", "Schedule II", "Schedule III", "Schedule IV", and "Schedule V" refer to the schedules of controlled substances established by section 202 of the Controlled Substances Act (21 U.S.C. 812);

(7) "controlled substance" means a drug or other substance, or immediate precursor, included in Schedule I, II, III, IV, or V but such term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in [subtitle E of the Internal Revenue Code of 1954];

(8) "counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser;

(9) "marihuana" means all parts of the plant botanically classified as genus Cannabis (including all species of such genus), whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative,

mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination;

(10) "narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis—

(A) opium, coca leaves, and opiates;

(B) a compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates;

(C) a substance (and any compound, manufacture, salt, derivative, or preparation thereof) which is chemically identical with any of the substances referred to in subparagraph (A) or (B);

but such term does not include decocainized coca leaves or extracts of coca leaves which extracts do not contain cocaine or ecogonine;

(11) "opiate" means a mixture or substance containing a detectable amount of any narcotic drug that is a controlled substance listed in Schedule I or II, other than a narcotic drug consisting of (A) coca leaves; (B) a compound, manufacture, salt, derivative, or preparation of coca leaves; or (C) a substance chemically identical thereto;

(12) "practitioner" means a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which such person practices or does research, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research;

(13) "production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance; and

(14) "immediate precursor" means a substance—

(A) which the Attorney General has found to be, and by regulation designated as being, the principal compound used, or produced primarily for use, in the manufacture of a controlled substance;

(B) which is an immediate chemical intermediary used or likely to be used in the manufacture of such controlled substance; and

(C) the control of which is necessary to prevent, curtail, or limit the manufacture of such controlled substance.

(b) It is a defense to a prosecution for an offense under section 2711, 2712, or 2713 of this title, that the actor's conduct was authorized by the provisions of the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.).

Subchapter III—Explosives and Weapons Offenses

§ 2721. Explosives offenses

(a)(1)(A) Whoever knowingly receives, transports, or possesses an explosive intended to be used, or with intent that such explosive be used, to commit a felony or an offense that would be a felony if Federal jurisdiction existed shall be punished as provided in subparagraph (B) of this paragraph.

(B) An offense under this section is—

(1) a class A felony if while committing the offense the actor [recklessly] [negligently] causes the death of another person; and

(2) a class B felony if while committing the offense the actor [recklessly] [negligently] causes bodily injury to another person.

(2)(A) Whoever violates section [ ] of the Criminal Code Revision Act of 1979 [section 844(a) of title 18 as transferred out] commits a class C felony.

(B) Whoever violates section [ ] of the Criminal Code Revision Act of 1979 [section 844(b)? of title 18] commits a class A misdemeanor [(j) and (k) only].

(3)(A) Whoever violates section 4472(14) of the Revised Statutes of the United States (46 U.S.C. 170(14) commits—

[(i) a class C felony if while committing the offense the actor [recklessly] [negligently] causes the death of another person; and

[(ii) a class E felony in any other case.]

(B) Whoever violates section 902(h)(2) of the Federal Aviation Act of 1958 (49 U.S.C. 1472(h)(2)) commits a class E felony. [Conforming repeal of 46 U.S.C. 170(15)].

(C) Whoever violates section 110(b) of the Hazardous Materials Transportation Act (49 U.S.C. 1809(b)) commits a class D felony.

(4) Whoever knowingly possesses an explosive with reckless disregard for the fact that it is [in that portion of a building being used [primarily] for the activities of [a][the Federal, Government] [or on the grounds of the United States Capitol Build. .] commits a class A misdemeanor.

(b) It is a defense to a prosecution for an offense under subsection (a)(4) of this section that the possession was in conformity with the written consent of the government agency or person responsible for the management of such building or grounds.

(c) There is Federal jurisdiction over an offense—

(1) under subsection (a)(1) or (a)(4) of this section if the explosive [has been] transported, shipped, or received in interstate or foreign commerce; and

(2) under subsection (a)(4) of this section if the building is owned by, or is under the care, custody, or control of, the United States.

§ 2722. Firearms offenses

(a)(1) Whoever knowingly receives, transports, or possesses a firearm or ammunition that is intended to be used, or with intent that such firearm or ammunition be used to commit a felony or an offense that would be a felony if Federal jurisdiction existed commits a class C felony.

(2) Whoever violates [provisions of title 18 "transferred" out of title 18 by technical amendments] (relating to the regulation and licensing the business of importing, manufacturing, or dealing in firearms or ammunition) commits a class D felony.

(3) Whoever violates section 5861 of the Internal Revenue Code of 1954 (26 U.S.C. 5861) (relating to the registration of importers, manufacturers, and dealers in firearms and the payment of a special occupational tax) commits a class C felony.

(4) Whoever violates section 1202 of the Omnibus Crime Control and Safe Streets Act of 1968 (relating to the receipt, possession, or transportation of firearms by persons prohibited from engaging in such conduct) commits a class E felony.

(b) There is Federal jurisdiction over an offense under subsection [(a)(1)] of this section if the firearm [has been] transported, shipped, or received in interstate or foreign commerce.

§ 2723. Using a firearm or explosive in the course of a crime

(a) Whoever knowingly carries [unlawfully] during the commission of a felony a firearm or explosive or an imitation firearm or explosive or knowingly uses such a firearm or explosive or imitation firearm or explosive to commit a felony shall, in addition to the punishment provided for the commission of such felony, be punished as provided in subsection (b) of this section.

(b)(1) An offense under this section is a class C felony unless the offense is a second or subsequent offense by the same defendant under this subsection, in which case the offense is a class B felony.

(2) Notwithstanding any other provision of law—

(A) in the case of a first offense under this subsection, the court shall sentence the defendant to at least one year imprisonment; and

(B) in the case of a second or subsequent offense by the same defendant under this subsection, the court shall sentence the defendant to at least 2 years imprisonment and shall not suspend such sentence or grant [probation] in such sentence, nor shall such sentence be served concurrently with the term of imprisonment imposed for the [underlying] felony.

(c) There is Federal jurisdiction over an offense under this section if there is Federal jurisdiction over the felony during which the offense takes place.

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§ 2724. Possessing a weapon or explosive aboard an aircraft

(a) Whoever knowingly—

(1) receives, transports, possesses, or secretes aboard an aircraft—

(A) a firearm that is concealed and that is or would be accessible to the actor in flight;

(B) a dangerous weapon [with reckless disregard for the fact that such dangerous weapon] is concealed with intent to be used to commit a crime aboard such aircraft; or

(2) places an explosive aboard an aircraft or attempts to do so shall be punished as provided in subsection (b) of this section.

(b) An offense under this section is—

(1) a class D felony if during the commission of the offense the defendant acted with reckless disregard for the safety of human life;

(2) a class A misdemeanor in all other cases.

(c) It is a defense to a prosecution under this section that the actor's conduct is authorized under a regulation issued by the Administrator of the Federal Aviation Administration.

(d) There is Federal jurisdiction over an offense under this section if the offense is committed on an aircraft in, or intended for operation in, air transportation or intrastate or interstate transportation as defined in section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301).

§ 2725. Definitions for subchapter

As used in this subchapter, the term—

(1) "explosive" means gunpowder, powder used for blasting, all forms of explosives, blasting material, fuze (other than an electirc circuit breaker), detonator, and other detonating agent, smokeless powder, other explosive or incendiary device within the meaning of paragraph (5) of section 232 of title [18 as transferred out], and any chemical compound, mechanical mixture, or device that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, mixture, or device or any part thereof may cause an explosion;

(2) "firearm" means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

(3) "destructive device" means—

(A) any explosive, incendiary, or poison gas—

(i) bomb,

(ii) grenade,

(iii) rocket having a propellant charge of more than four ounces,

(iv) missile having an explosive or incendiary charge of more than one-quarter ounce,

(v) mine, or

(vi) device similar to any of the devices described in the preceding clauses;

(B) any type of weapon (other than a shotgun or a shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and

(C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled;

but such term does not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10; or any other device which the Secretary of the Treasury finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational or cultural purposes.

(4) "dangerous" means—

(A) a firearm; or

(B) any other weapon, device, instrument, material, or substance, whether animate or inanimate, that as used or as intended to be used is capable of producing death or serious bodily injury;

(5) "serious bodily injury" means bodily injury which involves—

(A) a substantial risk of death;

(B) unconsciousness;

(C) extreme physical pain;

(D) protracted and obvious disfigurement; or

(E) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

Subchapter IV—Riot Offenses

Sec.
2731. Inciting or leading a riot.
2732. Providing arms for a riot.
2733. Engaging in a riot.
2734. Definition for subchapter.

§ 2731. Inciting or leading a riot

(a) Whoever—

(1) knowingly incites others to engage immediately in [conduct constituting an offense under section 2533 (relating to engaging in a riot)] [in] [with reckless disregard for] the fact that circumstances exist which present a substantial probability that such incitement will cause the commission of such offense] [and thereby [state of mind?] causes] [a riot], or

(2) during [with reckless disregard for the fact that there is in progress] a riot [which is an offense?], and with intent to [further] such [riot] [commission of such offense], knowingly—

(A) urges participation in [such riot] [and thereby furthers such riot];

(B) leads [such riot] and thereby furthers such [riot]; or

(C) gives commands, instructions, or directions and thereby furthers such [riot];

commits a class C felony if the offense takes place in a Federal official detention facility and a class D felony in any other case.

(b) There is Federal jurisdiction over an offense under this section if—

(1) the offense is committed within the special jurisdiction of the United States; or

(2) the riot involves persons in a Federal facility used for official detention.

§ 2732. Providing arms for a riot

(a) Whoever—

(1) [knowingly] supplies a thing with reckless disregard for the fact that such thing is a [firearm, destructive device, or other] dangerous weapon [see definition]; or

(2) [knowingly] teaches the preparation or use of a thing with reckless disregard for the fact that such thing is a [firearm, destructive device, or other] dangerous weapon;

with intent that such [firearm, destructive device, or other] dangerous weapon be used in a riot shall be punished as provided in subsection (b) of this section.

(b)(1) An offense under subsection (a)(1) of this section is a class D felony.

(2) An offense under subsection (a)(2) of this section is a class E felony.

(c) [Jurisdiction].

§ 2733. Engaging in a riot

(a) Whoever [with reckless disregard for the fact that a riot is underway] [during a riot] [with intent to further a riot] knowingly engages in violent and tumultuous conduct shall be [punishment or grading].

(b) There is Federal jurisdiction over an offense under this section if—

(1) the offense is committed within the special jurisdiction of the United States; or

(2) the offense is committed in a Federal facility used for official detention.

§ 2734. Definition for subchapter

As used in this subchapter the term "riot" means a public disturbance that—

(1) involves [an assemblage of] 10 or more individuals as participants;

(2) involves violent and tumultuous conduct [action] on the part of [some or all of] the participants; and

(3) causes or creates a grave danger of imminently causing bodily injury or [[substantial] damage to property].

Subchapter V—Gambling and Sexual Exploitation of Children

§ 2741. Operating a gambling business

(a) Whoever knowingly—

(1) controls, manages, supervises, [or] directs [, or finances] a gambling business that is illegal in the State or locality in which it occurs;

(2) carries or sends—

(A) a gambling device;

(B) gambling information; or

(C) gambling proceeds;

to any place within a State from any place outside that State; or

[(3) otherwise furthers a gambling business];

shall be punished as provided in subsection (b) of this section.

(b)(1) An offense under subsection (a)(1) of this section is a class D felony.

(2) An offense under subsection (a)(2) or (a)(3) of this section is a class E felony.

(c)(1) There is Federal jurisdiction over an offense under subsection (a)(1) of this section if the conduct required for the offense occurs in the [general or special] jurisdiction of the United States.

(2) There is Federal jurisdiction over an offense under subsection (a)(2) or (a)(3) of this section if—

(A) the United States mail or a facility in interstate or foreign commerce is used [in the commission of] the offense;

(B) movement of any person [or gambling device] across a State or United States boundary occurs [in the commission of] the offense; or

(C) the offense occurs in the [special] jurisdiction of the United States.

(d) If 5 or more individuals are engaged in a gambling business, and such business operates for 2 or more successive days, then, solely for the purpose of obtaining warrants for arrests, interceptions of communications, and other searches and seizures, probable cause that the business has taken in $2,000 or more in any single day shall be considered to be established.

[(e) It is a defense to a prosecution for an offense—

[(1) under subsection (a)(3) of this section that the kind of gambling business or enterprise, the manner in which the business or enterprise, was operated, and the defendant's participation therein, were legal in all States and localities in which it was carried on, including any State or locality from which a customer placed a wager with, or otherwise patronized, the gambling business or enterprise, and any State or locality in which the wager was received or to which it was transmitted.]

[(2) under subsection (a)(2) of this section that—

[(A) the gambling device was carried or sent into, or was en route to, solely a State or locality in which the use of such a device was legal;

[(B) the defendant was a common or public contract carrier, or an employee thereof, and was carrying the gambling device in the usual course of business;

[(C) the defendant was a player or bettor and the gambling device carried or sent was solely a ticket or other embodiment of his claim;

[(D) the transmission of the gambling information was made in connection with news reporting;

[(E) the transmission of the gambling information was from a State and locality in which such gambling was legal into a State and locality in which such gambling was legal; or

[(F) the gambling proceeds were obtained by the defendant as a result of lawful participation in gambling which was legal in all States and localities in which it was carried on, including any State and locality from which the defendant placed a wager or otherwise participated in gambling activity, and any State and locality in which the wager was received or to which it was transmitted.]

(f) As used in this section, the term—

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

(2) "gambling business" means a business [enterprise] involving gambling of any kind that—

(A) has five or more persons engaged in the business; and

(B) has been in substantially continuous operation for a period of thirty days or more or has taken in $2,000 or more in a single day; and

(3) "gambling device" means—

(A) any device covered by section 1 of the Act of January 2, 1951 (15 U.S.C. 1171), and not excluded by section 9 (2) or (3) of the Act of January 2, 1951 (15 U.S.C. 1178 (2) or (3); or

(B) any record, paraphernalia, ticket, certificate, bill, slip, token, writing, scratch sheet, or other means of carrying on bookmaking, wagering pools, bingo or keno games, lotteries, policy, bolita, numbers or similar games, or any equipment for carrying on card or dice games other than cards or dice used in such games;

(4) "gambling information" means information consisting of, or assisting in, the placing of a bet or wager, or the purchase of a ticket in lottery or similar game of chance.

[§ 2742. Sexual exploitation of children

[(a) Whoever knowingly employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, any sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct, shall be punished as provided under subsection (c) of this section, [if such person knows [or has reason to know] that such visual or print medium will be transported in interstate or foreign commerce or mailed, or if such visual or print medium has actually been transported in interstate or foreign commerce or mailed.]

[(b) Whoever, having custody or control of a minor, knowingly permits such minor to engage or to assist any other person to engage in, sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct shall be punished as provided under subsection (c) of this section, [if such person knows [or has reason to know] that such visual or print medium will be transported in interstate or foreign commerce or mailed or if such visual or print medium has actually been transported in interstate or foreign commerce or mailed.]

(c) [Whoever violates this section shall be fined not more than $10,000, or imprisoned not more than 10 years, or both, but, if such person has a prior conviction under this section, such person shall be fined not more than $15,000, or imprisoned not more than two years nor more than 15 years, or both.] [An offense under this section is a class [ ] felony.]

[§ 2743. Certain activities relating to material involving the sexual exploitation of minors

[(a) Whoever—

[(1) knowingly transports or ships in interstate or foreign commerce or mails, for the purpose of sale or distribution for sale, any obscene visual or print medium, if—

[(A) the producing of such visual or print medium involves the use of a minor engaging in sexually explicit conduct; and

[(B) such visual or print medium depicts such conduct; or

[(2) knowingly receives for the purpose of sale or distribution for sale, or knowingly sells or distributes for sale, any obscene visual or print medium that has been transported or shipped in interstate or foreign commerce or mailed, if—

[(A) the producing of such visual or print medium involves the use of a minor engaging in sexually explicit conduct; and

[(B) such visual or print medium depicts such conduct;

shall be punished as provided in subsection (b) of this section.

[(b) Whoever violates this section shall be fined not more than $10,000, or imprisoned not more than 10 years, or both, but, if such person has a prior conviction under this section, such person shall be fined not more than $15,000, or imprisoned not less than two years nor more than 15 years, of both.] [An offense under this section is a class [ ] felony.]

[§ 2744. Definitions for sections 2742 and 2743

[For the purposes of sections 2742 and 2743, the term—

[(1) "minor" means any person under the age of sixteen years;

[(2) "sexually explicit conduct" means actual or simulated—

[(A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

[(B) bestiality;

[(C) masturbation;

[(D) sado-masochistic abuse (for the purpose of sexual stimulation); or

[(E) lewd exhibition of the genitals or pubic area of any person;

[(3) "producing" means producing, directing, manufacturing, issuing, publishing, or advertising, for pecuniary profit; and

[(4) "visual or print medium" means any film, photograph, negative, slide, book, magazine, or other visual or print medium.

[§ 2745. Transportation of minors

[(a) Whoever transports, finances in whole or part the transportation of, or otherwise causes or facilitates the movement of, any minor in interstate or foreign commerce, or within the District of Columbia or any territory or other possession of the United States, with the intent—

[(1) that such minor engage in prostitution; or

[(2) that such minor engage in prohibited sexual conduct, if such person so transporting, financing, causing, or facilitating movement knows or has reason to know that such prohibited sexual conduct will be commercially exploited by any person;

[shall be fined not more than $10,000 or imprisoned not more than 10 years, or both].

[(b) As used in this section—

[(1) the term "minor" means a person under the age of 18 years; and

[(2) the term "commercial exploitation" means having as a direct or indirect goal monetary or other material gain.]

Subchapter VI—Public Health Offenses

Sec.
2751. Fraud in a health related industry.
2752. Distributing adulterated food
2753. Environmental pollution.

§ 2751. Fraud in a health related industry

(a) Whoever, with intent to defraud, violates—

(1) section 9, 10, 11, 14, or 17 of the Poultry Productions Inspection Act (21 U.S.C. 458, 459, 460, 463, or 466) ([insofar as such section relates] to the marking, labeling, and packaging of poultry and poultry products);

(2) section 10, 11, 19, 20, 24, 201, 202, 203, or 204 of the Federal Meat Inspection Act (21 U.S.C. 610, 611, 619, 620, 624, 641, 642, 643, or 644) ([insofar as such section relates] to the marking, labeling, and packaging of meat and meat products);

(3) section 8 of the Egg Products Inspection Act (21 U.S.C. 1037) ([insofar as such section relates] to the marking, labeling, and packaging of eggs and egg products); or

(4) section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331) ([insofar as such section relates] to the adulteration and misbranding of a food, drug, device, or cosmetic);

commits a class E felony.

§ 2752. Distributing adulterated food

Whoever violates—

(1) section 9, 10, 11, 14, or 17 of the Poultry Products Inspection Act (21 U.S.C. 458, 459, 460, 463, or 466) (insofar as such section relates to the distribution of adulterated poultry and poultry products);

(2) section 10, 11, 19, 20, 24, 201, 202, 203, or 204 of the Federal Meat Inspection Act (21 U.S.C. 610, 611, 619, 620, 624, 641, 642, 643, or 644) (insofar as such section relates to the distribution of adulterated meat and meat products); or

(3) section 8 of the Egg Products Inspection Act (21 U.S.C. 1037) (insofar as such section relates to the distribution of adulterated eggs and egg products);

commits a class E felony.

§ 2753. Environmental pollution

Whoever violates—

(1) section 309(c)(1) of the Federal Water Pollution Control Act (33 U.S.C. 1319(c)(1)) (relating to the control of water pollution and to permit conditions and limitations on water pollution);

(2) section 404(s)(4)(A) of the Federal Water Pollution Control Act (33 U.S.C. 1344(s)(4)(A)) (relating to discharge of dredged or fill material into navigable waters);

(3) section 113(c)(1) of the Clean Air Act (42 U.S.C. 1857c-8(c)(1)) (relating to clean air standards and implementation plans and orders of the Administrator under the Clean Air Act);

(4) section 11(a) of the Noise Control Act of 1972 (42 U.S.C. 4910(a)) (relating to the manufacture, sale, and importation of products that violate noise emission standards); or

(5) section 3008(d) of the Solid Waste Disposal Act (42 U.S C. 6928(d)) (relating to transportation and disposal of hazardous waste);

shall be punished as provided in subsection (b) of this section.

(b) An offense under subsection (a) of this section is a class A misdemeanor in the circumstances set forth in—

(1) subsection (a)(1), unless before the commission of the offense the defendant has been convicted of an offense described in subsection (a)(1), in which case the offense is a class E felony;

(2) subsection (a)(2), unless before the commission of the offense the defendant has been convicted of an offense described in subsection (a)(2), in which case the offense is a class E felony;

(3) subsection (a)(3), unless before the commission of the offense the defendant has been convicted of an offense described in subsection (a)(3), in which case the offense is a class E felony;

(4) subsection (a)(4), unless before the commission of the offense the defendant has been convicted of an offense described in subsection (a)(4), in which case the offense is a class E felony;

(5) subsection (a)(5), unless before the commission of the offense the defendant was convicted of an offense described in subsection (a)(5), in which case the offense is a class E felony.

[Notwithstanding the provisions of section 3502 of this title, the authorized fine for a class A misdemeanor under this section is not more than $25,000 per day of violation or the authorized fine otherwise available under section 3502, whichever is higher, and the authorized fine for a class E felony described in this

section is not more than $50,000 per day of violation or the authorized fine otherwise available under section 3502, whichever is higher.

SUBTITLE III—SENTENCING

CHAPTER 31—GENERAL PROVISIONS

§ 3101. Authorized sentences

(a) Except as otherwise provided by law, a defendant who is found guilty of an offense described in any Federal law shall be sentenced in accordance with this chapter so as to achieve the purposes set forth in section 3102 of this title, to the extent that such purposes are applicable in light of all the circumstances of the case.

(b) An individual who is found guilty of an offense shall be sentenced to—

(1) a term of conditional discharge, probation, or post-release supervision as authorized by chapter 33 of this title;

(2) a fine as authorized by chapter 35 of this title; or

(3) a term of imprisonment as authorized by chapter 37 of this title.

(c) An organization that is found guilty of an offense shall be sentenced to—

(1) a term of conditional discharge as authorized by chapter 33 of this title; or

(2) a fine as authorized by chapter 35 of this title.

§ 3102. Purposes of sentencing

(a) The purposes of sentencing are to—

(1) provide punishment commensurate with the seriousness of the offense and to promote respect for the law;

(2) provide adequate deterrence to criminal conduct;

(3) protect the public from further crimes by the defendant;

(4) provide the defendant with needed education, vocational training, medical care, and other correctional treatment in the most effective manner;

(5) provide restitution to [victims] [aggrieved parties] for actual damages [or loss] caused by the offense for which the defendant is convicted; and

(6) reconcile the victim, community and offender.

(b) As used in this section, the term "punishment commensurate with the seriousness of the offense" means that the severity of the sentence is proportionate and directly related to the severity of the offense and the harm done and that similar crimes committed under similar circumstances receive similar sentences.

§ 3103. Factors to be considered in sentencing

(a) The court, in determining the particular sentence to be imposed, shall consider—

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the purposes of sentencing set forth in section 3102 of this title;

(3) the kinds of sentences available, including effective alternatives to imprisonment; and

(4) applicable sentencing guidelines and policy statements on sentencing under chapter 43 of this title in effect on the date of the offense.

[(b) In addition to the factors set forth in subsection (a) of this section, the court [shall] [may] consider that the sentence imposed should be the least severe measure necessary to achieve the purposes of sentencing set forth in section 3102 of this title and that sentences not involving imprisonment are to be imposed unless measures less restrictive than imprisonment have been imposed on the defendant frequently or recently and have been unsuccessful.]

§ 3104. Imposition of sentence

(a) The court shall impose sentence without unreasonable delay.

(b) Before imposing sentence, the court shall afford counsel an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask whether the defendant wishes to make a statement or to present information in mitigation of punishment. The attorney for the Government shall have an equivalent opportunity to speak to the court.

(c) When imposing sentence, the court shall—

(1) make such findings as are necessary to resolve any material fact in controversy that may affect sentencing;

(2) make such findings as are necessary to determine the applicable sentencing guideline;

(3) specify the applicable sentencing guideline; and

(4) state on the record the reasons for the imposition of the particular sentence, and if the sentence is not consistent with the applicable sentencing guideline, the specific reasons for imposition of a sentence different from that provided for in such guideline.

(d) The court shall impose a sentence that is consistent with the sentencing guidelines prescribed under chapter 43 of this title, unless the court finds that an aggravating or mitigating circumstance should result in another sentence.

§ 3105. Presentence report

(a)(1) The probation service of the court shall make a presentence investigation and submit a presentence report to the court before the imposition of sentence unless—

(A) with permission of the court, the defendant waives such investigation and report; or

(B) the court finds that there is in the record information sufficient to enable the meaningful exercise of sentencing discretion and the court explains such finding on the record.

(2) The presentence report shall contain—

(A) any prior criminal record of the defendant;

(B) applicable sentencing guidelines and policy statements on sentencing under chapter 43 of this title; and

(C) any other information that may aid the court in sentencing, including—

(i) a statement of the circumstances of the commission of the offense and circumstances affecting the defendant's behavior;

(ii) the nature and extent of nonprison programs and resources available and the applicability of such programs and resources to the defendant;

(iii) a statement of the harm done to or loss suffered by any victim; and

(iv) in the case of an offense for which a monetary sanction may be imposed, a statement of the financial resources of the defendant, the financial needs of the defendant and the defendant's dependents, the restitution needs of the victim, and any gain derived from or loss caused by the criminal conduct of the defendant.

(3) The presentence report shall not be submitted to the court or its contents disclosed to any person unless the defendant has pleaded guilty or nolo contendere or has been found guilty, except that the court may, with the written consent of the defendant, inspect a presentence report at any time.

(b)(1)(A) Except as provided in subparagraph (B) of this paragraph, at least 5 days before imposing sentence, the court shall furnish to the defendant or defendant's counsel a copy of the presentence report and shall give the defendant or defendant's counsel an opportunity to comment on such report. The requirement of the preceding sentence may be waived by the parties.

(B) If, in the opinion of the court, the presentence report contains matter relating to—

(i) diagnostic opinion that might seriously disrupt a program of rehabilitation;

(ii) sources of information obtained upon a promise of confidentiality; or

(iii) any other information that, if disclosed, might result in physical or other harm to the defendant or another person;

the court, in lieu of furnishing such matter under subsection (b)(1)(A) of this section, shall state orally or in writing a summary of any such matter to be relied on in determining sentence, and shall give the defendant or defendant's counsel an opportunity to comment on such matter. The statement may be made to the parties in camera.

(2) Any information disclosed to the defendant or defendant's counsel under this subsection shall also be disclosed to the attorney for the Government.

(3) Any copy of a presentence report or written statement made available under this subsection shall be returned to the probation service of the court immediately after the imposition of sentence, unless the court otherwise directs.

(4) The reports of studies and recommendations contained therein made by the Director of the Bureau of Prisons under section [4205(c), 4252, 5010(e), or 5037(c)] of this title shall be considered a presentence report within the meaning of this section.

§3106. Presentence hearing

(a) Not earlier than 5 days after the date on which a presentence report is furnished under section 3105(b)(1)(A) or a statement in lieu of such report is made under section 3105(b)(1)(B), the court, upon motion of the defendant or the Government, or on order of the court—

(1) shall hold a presentence hearing in open court to resolve any material fact in controversy affecting the sentencing decision; and

(2) may hold a presentence hearing in open court or in camera to otherwise assist the court in considering any matter that is relevant to the sentencing decision.

(b) The court may allow the parties to subpena witnesses and call or cross-examine witnesses, including the person who prepared the report of the presentence investigation and any person whose information, contained in such report, is relevant to the sentencing decision. A hearing under this section shall be recorded, and at the conclusion of such hearing the court shall make specific findings of fact relating to any material fact in controversy.

(c) The party alleging the existence of facts or circumstances which may be relevant to the sentencing decision shall prove the existence of those facts or circumstances by a preponderance of the evidence. The Government shall prove the existence of previous criminal convictions beyond a reasonable doubt.

§3107. Sentencing classification of offenses outside this title

(a) Except as otherwise provided in this title, an offense described outside this title that is not specifically classified in the section defining such offense, is classified—

(1) if the maximum imprisonment authorized is—

(A) more than 180 days, as a Class A misdemeanor;

(B) more than 30 days but less than 180 days, as a Class B misdemeanor;

(C) more than 5 days but less than 30 days, as a Class C misdemeanor; or

(D) 5 days or less, or if no imprisonment is authorized, as an infraction; or

(2) if the maximum imprisonment authorized for a second or subsequent conviction is 24 months or more, as a Class E felony.

(b) An offense classified under subsection (a) of this section carries all the incidents assigned to the class of offense except that—

(1) the maximum term of imprisonment that may be imposed is the term authorized by the provision describing the offense;

(2) the maximum fine that may be imposed is the fine authorized by the provision describing the offense.

CHAPTER 33—CONDITIONAL DISCHARGE, PROBATION, AND POST-RELEASE SUPERVISION

Subchapter I—Conditional Discharge

§3301. Applicability of conditional discharge

A defendant who is found guilty of an offense may be sentenced to conditional discharge unless—

(1) the offense is a class A felony; or

(2) the defendant is sentenced at the same time to probation or imprisonment for the same or a different offense.

§3302. Term of sentence of conditional discharge

The authorized terms of conditional discharge are—

(1) for a felony, not more than 60 months;

(2) for a misdemeanor, not more than 24 months; and

(3) for an infraction, not more than 12 months.

§3303. Considerations in sentencing to conditional discharge

The court, in determining whether to impose a sentence of conditional discharge and the term and conditions of such sentence, shall—

(1) consider the factors set forth in section 3103 of this title; and

(2) give primary consideration to the purposes of sentencing set forth in section 3102(a) (2), (4), (5), and (6) of this title.

§ 3304. Conditions of conditional discharge

(a)(1) The court shall require, as a condition of a sentence of conditional discharge, that the defendant not commit a Federal or State offense during the term of conditional discharge.

(2) The court may impose additional conditions of a sentence of conditional discharge if such conditions—

(A) are reasonably related to the factors set forth in section 3103 of this title; and

(B) involve no greater deprivation of liberty than is reasonably necessary.

(b) Under subsection (a)(2) of this section, the court may require that the defendant—

(1) make restitution to a victim [aggrieved party] for actual damages [or loss] caused by the offense for which the defendant is convicted;

(2) meet family responsibilities, including the support of dependents;

(3) pay a fine as provided in chapter 35 of this title or as otherwise ordered by the court; and

(4) comply with any other requirement, except service of a term of imprisonment.

§ 3305. Monitoring compliance with conditions

(a) The court may enter such orders as may be necessary to monitor the defendant's compliance with the conditions of a sentence of conditional discharge.

(b) The probation service of the court is authorized to perform such duties as are reasonably necessary to monitor compliance with conditions of a sentence of conditional discharge.

Subchapter II—Probation

§ 3321. Applicability of probation

A defendant who is found guilty of an offense may be sentenced to a term of probation unless—

(1) the offense is a class A felony; or

(2) the defendant is sentenced at the same time to conditional discharge or to imprisonment (other than under section 3324(b)(8) of this title) for the same or a different offense.

§ 3322. Term of sentence of probation

The authorized terms of probation are—

(1) for a felony, not more than 60 months;

(2) for a misdemeanor, not more than 24 months; and

(3) for an infraction, not more than 12 months.

§ 3323. Considerations in sentencing to probation

The court, in determining whether to impose a sentence of probation and the term and conditions of such sentence, shall—

(1) consider the factors set forth in section 3103 of this title; and

(2) give primary consideration to the purposes of sentencing set forth in section 3102(a) (1), (2), (4), (5), and (6) of this title.

§ 3324. Conditions of probation

(a)(1) The court shall require, as conditions of a sentence of probation, that the defendant—

(A) not commit a Federal or State offense during the term of probation; and

(B) make restitution to any victim [aggrieved party] for actual damages [or loss] caused by the offense for which the defendant is convicted, unless the court determines that restitution is impractical.

(2) The court may impose additional conditions of a sentence of probation if such conditions—

(A) are reasonably related to the factors set forth in section 3103 of this title; and

(B) involve no greater deprivation of liberty than is reasonably necessary.

(b) Under subsection (a)(2) of this section, the court may require that the defendant—

(1) meet family responsibilities, including support of dependents and any such condition shall have priority over an obligation to pay a fine;

(2) pay a fine imposed under chapter 35 of this title;

(3) work conscientiously at suitable employment or pursue conscientiously a course of study or vocational training that will equip the defendant for suitable employment;

(4) refrain from frequenting specified kinds of places or from associating unnecessarily with specified persons;

(5) refrain from excessive use of alcohol or any use of a narcotic drug or other controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) without a prescription by a licensed medical practitioner;

(6) refrain from possessing a firearm, destructive device, or other dangerous weapon;

(7) upon certification by the Attorney General that a suitable program is available, subject to a requirement by the Attorney General that the defendant pay costs incident to such program, and with the consent of the defendant—

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(A) undergo available medical or psychiatric treatment for all or a part of the term of probation, and remain in a specified institution [is] if required for such treatment; or

(B) reside at, or participate in the program of, a community treatment facility for all or part of the term of probation.

(8) remain in the custody of the Bureau of Prisons during the first year of the term of probation for any time or intervals of time including weekends and parts of days totalling no more than the lesser of 180 days or the term of imprisonment authorized for the offense;

(9) work in community service;

(10) reside in or refrain from residing in a specified place or area;

(11) remain within the jurisdiction of the court;

(12) report to a probation officer;

(13) permit a probation officer to visit the defendant at reasonable times at home or elsewhere;

(14) answer truthfully inquiries of a probation officer that are relevant to the conditions of probation;

(15) notify a probation officer promptly of any change in address or employment; or

(16) notify a probation officer promptly if arrested or questioned by a law enforcement officer.

Subchapter III—Post-Release Supervision

§ 3331. Applicability of post-release supervision

A defendant who is found guilty of an offense and is sentenced to a term of imprisonment of more than 12 months, may also be sentenced to a term of post-release supervision after imprisonment.

§ 3332. Term of sentence of post-release supervision

The authorized terms of post-release supervision are—

(1) for a class A, class B, class C, or class D felony, not more than 24 months; and

(2) for a class E felony, or for 2 or more misdemeanors, not more than 12 months.

§ 3333. Considerations in sentencing to post-release supervision

The court, in determining whether to impose a term of post-release supervision and the term and conditions of such sentence, shall consider the factors set forth in section 3103 of this title.

§ 3334. Conditions of post-release supervision

The court shall require, as a condition of post-release supervision, that the defendant not commit another Federal or State offense during the term of post-release supervision. The court may impose additional conditions of post-release supervision, if such conditions—

(1) are reasonably related to the factors set forth in section 3103 of this title; and

(2) involve no greater deprivation of liberty than is reasonably necessary.

§ 3335. Contingent term of imprisonment for persons sentenced to post-release supervision

A defendant who is found guilty of an offense and is sentenced to a term of imprisonment and a term of post-release supervision shall also be sentenced to a separate contingent term of imprisonment of not more than 90 days to be served as ordered under section 3349(a)(5) for violations of post-release supervision. Such contingent term of imprisonment may not be imposed for more than 30 days for any violation of a condition of post-release supervision arising out of a single incident. A contingent term of imprisonment shall be served only in a community treatment or correctional facility.

Subchapter IV—General Provisions for Chapter

§ 3341. Commencement of term of sentence of conditional discharge, probation, or post-release supervision

(a) The term of a sentence of conditional discharge or probation commences on the date on which the sentence is imposed unless the court orders otherwise.

(b) The term of a sentence of post-release supervision commences on the date of the release of the defendant from imprisonment.

§ 3342. Finality of judgment involving conditional discharge, probation, or post-release supervision

A judgment of conviction that includes a sentence of conditional discharge, probation, or post-release supervision is a final judgment, notwithstanding that such a sentence subsequently may be modified or revoked.

§ 3343. Multiple sentences of conditional discharge or probation

(a)(1) Multiple sentences of conditional discharge, whether imposed at the same time or at different times, run concurrently.

(2) Multiple sentences of probation, whether imposed at the same time or at different times, run concurrently.

(b) The term of a sentence of conditional discharge or probation runs concurrently with the term of any other sentence for a Federal or State offense to which the defendant is subject or becomes subject during the term of the sentence of conditional discharge or probation, except that such term does not run concurrently with the term of a sentence of imprisonment.

§ 3344. Termination of sentence of conditional discharge, probation, or post-release supervision

At any time before the expiration of the term of a sentence of conditional discharge, probation, or post-release supervision, the court may on its own motion or on motion of the defendant or the Government terminate such sentence if the court is satisfied that the conduct of that defendant and the interests of justice warrant such termination.

§ 3345. Modification of term or conditions of sentence of conditional release, probation, or post-release supervision

At any time before the expiration of a sentence of conditional discharge, probation, or post-release supervision, the court may, after opportunity for a hearing at which the defendant is entitled to the assistance of counsel modify the term and conditions of such sentence.

§ 3346. Written statement of conditions of sentence of conditional discharge, probation, or post-release supervision

The court shall direct that a probation officer furnish to the defendant a written statement setting forth all conditions of a sentence of conditional discharge, probation, or post-release supervision with sufficient specificity to serve as a guide for the defendant's conduct.

§ 3347. Summons and warrant for violation of condition of conditional discharge, probation, or post-release supervision

(a) If a defendant is alleged to have violated a condition of a sentence of conditional discharge, probation, or post-release supervision, in a material respect—

(1) a probation officer may issue a summons for such defendant to appear at a preliminary hearing under section 3349 of this title; or

(2) with respect to a sentence of probation or post-release supervision, the court may issue a warrant to retake the defendant.

(b)(1)(A) A summons or warrant under this section shall be issued as soon as practicable after discovery of the alleged violation. Imprisonment of the defendant shall not be deemed grounds for delay of such issuance, except that, in the

case of a defendant charged with but not convicted of a Federal or State offense, issuance of a summons may be suspended pending disposition of the charge.

(2) If a defendant is serving a sentence of imprisonment for a Federal or State offense, a summons or warrant under this section may operate with respect to such defendant as a detainer.

(c) A summons or warrant under this section shall be accompanied by a written statement setting forth—

(1) the conditions alleged to have been violated;

(2) the time, place, and purpose of the preliminary hearing;

(3) the defendant's rights under section 3348(d) of this title; and

(4) the action which the court is authorized to take by section 3349 of this title.

§ 3348. Preliminary hearing and revocation hearing with respect to alleged violation of sentence of conditional discharge, probation, or post-release supervision

(a)(1) If a defendant is alleged to have violated a condition of a sentence of conditional discharge, probation, or post-release supervision, the court with jurisdiction over the defendant or, upon order of such court, a court reasonably near the place of the alleged violation shall conduct a preliminary hearing without unnecessary delay to find if there is probable cause to believe that such a violation has occurred. Upon a finding of probable cause, the court may—

(A) order a revocation hearing under subsection (b) of this section and order that the defendant be incarcerated pending such hearing, or, if—

(i) incarceration of the defendant is not warranted by the frequency or seriousness of alleged violations;

(ii) the defendant is likely to appear for future proceedings; and

(iii) the defendant is not a danger to himself or other persons;

temporarily restore the defendant to conditional release, probation, or post-release supervision pending such hearing; or

(B) order that the proceedings relating to the alleged violation be terminated without a revocation hearing if such action is in the interest of justice.

(2) Conviction of a Federal or State offense committed after the imposition of a sentence of conditional discharge, probation, or post-release supervision constitutes probable cause under this section.

(b) Not later than 60 days after the date on which a finding of probable cause is made and an order is entered under subsection (a)(1)(A) of this section, the court shall hold a revocation hearing. Such hearing may be held at the same time and place as the preliminary hearing.

(c) At a preliminary hearing and a revocation hearing, the defendant shall have the opportunity—

(1) to be represented by counsel;

(2) to be apprised of the adverse evidence and to confront and cross-examine adverse witnesses; and

(3) to appear and testify and to present witnesses and relevant evidence.

(d) The defendant may waive the right to a preliminary hearing and to a revocation hearing.

§3349. Action concerning violation of condition of conditional discharge, probation, or post-release supervision

(a) If the court, after a revocation hearing, determines by a preponderance of the evidence that a defendant who has been sentenced to conditional discharge, probation, or post-release supervision has violated a condition of such sentence, the court may—

(1) continue such sentence unchanged;

(2) reprimand the defendant;

(3) modify the conditions of such sentence;

(4) with respect to a sentence of conditional discharge or probation, revoke such sentence and impose on the defendant any sentence that the court was authorized to impose at the time of initial sentencing, except that, with respect to a sentence of conditional discharge, the court may impose a sentence involving imprisonment only if the court finds that the defendant engaged in conduct constituting a violation of a condition of the sentence and constituting a Federal or State felony; or

(5) with respect to a sentence of post-release supervision, order the defendant to be imprisoned under section 3335 of this title.

(b) In carrying out subsection (a) of this section, the court shall consider—

(1) if the defendant has been convicted of a Federal or State offense, the seriousness of such offense; and

(2) the frequency and seriousness of other violations of the conditions of the sentence.

(c) If the court—

(1) revokes the sentence and imposes a new sentence upon the defendant involving payment of a fine; or

(2) modifies the sentence by increasing any monetary obligation of the defendant;

any money paid by the defendant pursuant to a condition of the sentence shall be credited toward any monetary obligation imposed upon the defendant as a part of the new sentence or as a result of the modification of the sentence.

(d) If the court revokes a sentence of probation and imposes a sentence of imprisonment—

(1) any time served in confinement during the sentence of probation shall be counted toward that term of imprisonment; and

[(2) [at least one-half of any] time served under probation supervision without a violation of the conditions of probation shall be counted toward

that term of imprisonment, but in no event shall such credit prevent a court from imposing a sentence of imprisonment with a term of up to 30 days for the violation of probation conditions.]

(e) If the court modifies a sentence of probation by extending the term of such sentence or by increasing a period of confinement imposed as a condition of such sentence—

(1) any time served in confinement during the sentence of probation shall be counted toward the modified period of confinement; and

(2) any time served under probation supervision without a violation of the conditions of probation shall be counted toward the modified term of the sentence of probation.

(f) If the court modifies a sentence of post-release supervision by extending the term of supervision to impose a period confinement for such defendant's contingent term of imprisonment any time served in confinement pursuant to a revocation of post-release supervision or any time served under supervision without a violation of the conditions thereof shall be counted towards the maximum permissible terms of post-release supervision.

(g) A determination under this section shall be made on the record not later than 21 days after the date on which the revocation hearing is concluded and shall include a statement of the reasons for such determination.

(h) The power of the court to revoke a sentence of conditional discharge, probation, or post-release supervision for violation of a condition, and to impose another sentence, extends beyond the expiration of the term of probation or post-release supervision for any period reasonably necessary for the adjudication of matters arising before the expiration of such term if, before such expiration, a summons or warrant is issued under section 3347 of this title on the basis of an allegation of the violation.

CHAPTER 35—FINES

§3501. Applicability of fine

A defendant who is found guilty of an offense may be sentenced to pay a fine to the clerk of the court who shall deposit amounts received from fines in the general fund of the Treasury as miscellaneous receipts.

§3502. Amount of sentence of fine

Except as provided in subsection (b) of this section or as otherwise provided by Act of Congress, the authorized fines are—

(1) for a felony, not more than [$100,000];

(2) for a misdemeanor, not more than [$10,000]; and

(3) for an infraction, not more than [$500].

(b) In lieu of a fine under subsection (a) of this section, a defendant who is found guilty of an offense through which pecuniary gain is directly derived by the defendant may be sentenced to pay a fine of not more than the gross gain so derived.

§ 3503. Considerations in sentencing to fine

The court, in determining whether to impose a fine, and the amount, time for payment, and method of payment of a fine, shall—

(1) consider—

(A) the factors set forth in section 3103 of this title;

(B) the defendant's income, regardless of source, earning capacity and financial resources, including the nature of the burden that payment of the fine will impose on the defendant and on any person who is legally dependent upon the defendant;

(C) the proof received at trial or as a result of a guilty plea, concerning any pecuniary gain derived by the defendant; and

(D) any other pertinent equitable consideration; and

(2) give primary consideration to—

(A) the purposes of sentencing set forth in section 3102(a) (1), (2), and (5) of this title; and

(B) the need to deprive the defendant of illegally obtained gains from the offense for which the defendant is convicted.

§ 3504. Conditions of fine

(a) The court may require, as a condition of a sentence of fine, that payment be made within a specified period of time or in specified installments, but such period shall not be greater than the maximum term of probation or imprisonment for the offense, whichever is greater. If not otherwise required by such a condition, payment of a fine shall be due immediately.

(b) The court may not impose an alternative sentence as a condition of a sentence of fine.

§ 3505. Payment of fines relating to organizations

If a fine is imposed on an organization, it is the duty of each individual authorized to make disbursement of the assets of the organization to pay the fine from assets of the organization. If a fine is imposed on an agent or shareholder of an organization, the fine shall not be paid, directly or indirectly, out of the assets of the organization.

§ 3506. Modification or remission of fine

(a)(1) A defendant who has been sentenced to pay a fine, and who has paid part but not all of such fine, may petition the court for extension of the time for payment, modification of the method of payment, or remission of all or part of the unpaid portion.

(2) The court, if it finds that—

(A) the circumstances that warranted imposition of the fine in the amount imposed, or payment by the time or method specified, no longer exist; or

(B) it is otherwise unjust to require payment of the fine in the amount imposed or by the time or method specified;

may enter an appropriate order.

(b) A defendant who has been sentenced to pay a fine and who, after the date on which such sentence is imposed, voluntarily makes restitution to the victim of the offense may petition the court for a remission of an unpaid portion of the fine. The court, if it finds that the interests of justice will be served, may enter an order remitting an unpaid portion of the fine, if the remitted amount does not exceed the amount of such restitution.

§ 3507. Enforcement of sentence of fine

A fine may be enforced by the United States in the same manner as a judgment in a civil action.

CHAPTER 37—IMPRISONMENT

§ 3701. Applicability of imprisonment

A defendant found guilty of an offense may be sentenced to a term of imprisonment.

§ 3702. Term of sentence of imprisonment

The authorized terms of imprisonment are—

(1) for a class A felony, not more than life;

(2) for a class B felony, not more than 160 months;

(3) for a class C felony, not more than 80 months;

(4) for a class D felony, not more than 40 months;

(5) for a class E felony, not more than 18 months;

(6) for a class A misdemeanor, not more than 12 months;

(7) for a class B misdemeanor, not more than 6 months; and

(8) for a class C misdemeanor, not more than 30 days.

§ 3703. Considerations in sentencing to imprisonment

(a) The court in determining whether to impose a term of imprisonment and the length of such term shall consider the factors set forth in section 3103 of this title and shall give primary consideration to the purposes of sentencing set forth in section 3102(a) (1), (2), and (3) of this title.

(b) The court shall not consider the defendant's need for correctional treatment as a justification for imposing a term of imprisonment or in determining the length of a term of imprisonment.

§ 3704. Modification of term of imprisonment

The court may not modify a term of imprisonment after such term is imposed [except that the court—

[(1) upon motion of the Director of the Bureau of Prisons and notice to the defendant and the prosecutor and after considering the factors set forth in section 3103 of this title to the extent that they are applicable, may reduce the term of imprisonment, if the court finds that extraordinary and compelling reasons warrant such a reduction;

[(2) may modify a term of imprisonment to the extent otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure;

[(3) in the case of a defendant who has been sentenced to a term of imprisonment in excess of 10 years, including a life term, may upon motion of the [defendant] [Director of the Bureau of Prisons] after the defendant has served 10 years of the sentence of imprisonment reduce the term of imprisonment, after considering the factors set forth in section 3103 of this title to the extent that they are applicable, if it finds that changed circumstances warrant such a reduction; and]

[(4) may upon motion of the defendant, reduce the term of imprisonment if there is a showing that—

[(A) the sentencing guideline applicable to the defendant has been reduced in a guideline promulgated by the Judicial Conference [which is applicable to the defendant]; and

[(B) a reduction in the term of imprisonment is in the interests of justice.]

§ 3705. Multiple sentences of imprisonment

(a)(1) Multiple sentences of imprisonment run concurrently unless the court determines that consecutive terms are required by exceptional factors, which the court sets forth in detail.

(2) The court may not order that multiple sentences of imprisonment run consecutively if—

(A) such sentences are for an offense described in section 1102 (conspiracy) or 1101 (attempt) and an offense that was the objective of such conspiracy or attempt;

(B) a sentence is for an offense necessarily included in another offense for which a sentence to a term of imprisonment is imposed;

(C) such sentences are for convictions—

(i) based on the same conduct;

(ii) arising from the same criminal episode; or

(iii) based on instances of conduct motivated by a common purpose or plan, and resulting in the repeated commission of the same offense or affect the same person or persons or the property of the same person or persons; and

(D) such sentences are for offenses which differ only in that one offense prohibits a kind of conduct generally and the other offense prohibits a specific type of such general conduct.

(3) The aggregate of consecutive terms of imprisonment may not exceed the maximum term of imprisonment authorized for an offense one grade higher than the most serious offense for which the defendant is being sentenced.

§ 3706. Commencement of term of imprisonment and credit for time served

(a) A sentence to a term of imprisonment commences on the date on which the defendant is received in custody for service of such sentence.

(b) A defendant shall be given credit toward the service of a term of imprisonment for any time spent in official detention before the date on which the sentence commences—

(1) as a result of the offense for which the sentence is imposed; or

[(2) as a result of any other offense for which the defendant is held in custody after the commission of the offense for which the sentence was imposed that has not been credited against another sentence.]

(c) [[Subject to any permissible computation of sentences explicitly authorized by this section,] the Bureau of Prisons shall credit against the imprisonment term of any Federal sentence all time served in a State or local institution after the commission of the Federal offense if such time was served as a result of a Federal detainer.]

CHAPTER 39—PRISON ADMINISTRATION

Subchapter I—Prisons

§ 3901. Limitation on detention; control of prisons

(a) No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress.

(b)(1) The control and management of Federal penal and correctional institutions, except military or naval institutions, shall be vested in the Attorney General, who shall promulgate rules for the government thereof, and appoint all necessary officers and employees in accordance with title 5.

(2) The Attorney General may establish and conduct industries, farms, and other activities and classify the inmates, and may provide for their proper government, discipline, treatment, care, rehabilitation, and reformation.

§ 3902. Bureau of Prisons; director and employees

The Bureau of Prisons shall be in charge of a Director appointed by and serving directly under the Attorney General. The Attorney General may appoint such additional officers and employees as the Attorney General deems necessary.

§ 3903. Duties of Bureau of Prisons

(a) The Bureau of Prisons, under the direction of the Attorney General, shall—

(1) have charge of the management and regulation of all Federal penal and correctional institutions;

(2) provide suitable quarters and provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States, or held as witnesses or otherwise;

(3) provide for the protection, instruction, and discipline of all persons charged with or convicted of offenses against the United States; and

(4) provide technical assistance to State and local governments in the improvement of their correctional systems.

(b) This section does not apply to military or naval penal or correctional institutions or the persons confined therein.

§ 3904. Powers of Bureau of Prisons employees

(a) An officer or employee of the Bureau of Prisons may make arrests without warrant for violations of sections 1713, 1714, and 2731 of this title, if such officer or employee has reasonable grounds to believe that the arrested person is guilty of such offense, and if there is likelihood of his escaping before a warrant can be obtained for such person's arrest. If the arrested person is a fugitive from custody, such person shall be returned to custody. Officers and employees of the

Bureau of Prisons may carry firearms under such rules and regulations as the Attorney General may prescribe.

(b) The wardens and superintendents, associate wardens and superintendents, chief clerks, record clerks, and parole officers, of Federal penal or correctional institutions, may administer oaths to and take acknowledgments of officers, employees, and inmates of such institutions, but shall not demand or accept any fee or compensation therefor.

§ 3905. Medical relief; expenses

(a) Upon request of the Attorney General, the Secretary of Health, Education, and Welfare shall detail regular and reserve commissioned officers of the Public Health Service, pharmacists, acting assistant surgeons, and other employees of the Public Health Service to the Department of Justice for the purpose of supervising and furnishing medical, psychiatric, and other technical and scientific services to the Federal penal and correctional institutions.

(b) The compensation, allowances, and expenses of the personnel detailed under this section may be paid from applicable appropriations of the Public Health Service in accordance with the law and regulations governing the personnel of the Public Health Service, such appropriations to be reimbursed from applicable appropriations of the Department of Justice; or the Attorney General may make allotments of funds and transfer of credit to the Public Health Service in such amounts as are available and necessary, for payment of compensation, allowances and expenses of personnel so detailed, in accordance with the law and regulations governing the personnel of the Public Health Service.

§ 3906. Classification and treatment of prisoners

The Federal penal and correctional institutions shall be so planned and limited in size as to facilitate the development of an integrated system which will assure the proper classification and segregation of Federal prisoners according to the nature of the offenses commited, the character and mental condition of the prisoners, and such other factors as should be considered in providing an individualized system of discipline, care, and treatment of the persons committed to such institutions.

§ 3907. Commitment to Attorney General; residential treatment centers; extension of limits of confinement; work furlough

(a) A person convicted of an offense against the United States shall be committed, for such term of imprisonment as the court may direct, to the custody of the Attorney General of the United States, who shall designate the place of confinement where the sentence shall be served.

(b) The Attorney General may designate as a place of confinement any available, suitable, and appropriate institution or facility, whether maintained by the Federal Government or otherwise, and whether within or without the judicial

district in which the person was convicted, and may at any time transfer a person from one place of confinement to another.

[(c) Narcotics addicts, drug abusers, alcoholics, or youthful offenders shall [, in the discretion of the Attorney General] be provided with specialized programs within a prison facility or within a separate institution.]

(c) The Attorney General may extend the limits of the place of confinement of a prisoner as to whom there is reasonable cause to believe such prisoner will honor this trust, by authorizing such prisoner, under prescribed conditions, to—

(1) visit a specifically designated place or places for a period not to exceed 30 days and return to the same or another institution or facility. An extension of limits may be granted to permit a visit to a dying relative, attendance at the funeral of a relative, the obtaining of medical services not otherwise available, the contacting of prospective employers, the establishment or reestablishment of family and community ties or for any other significant reason consistent with the public interest; or

(2) work at paid employment or participate in a training program in the community on a voluntary basis while continuing as a prisoner of the institution or facility to which he is committed, provided that—

(A) representatives of local union central bodies or similar labor union organizations are consulted;

(B) such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and

(C) the rates of pay and other conditions of employment will not be less than those paid or provided for work of similar nature in the locality in which the work is to be performed.

A prisoner authorized to work at paid employment in the community under this paragraph may be required to pay, and the Attorney General is authorized to collect, such costs incident to the prisoner's confinement as the Attorney General deems appropriate and reasonable. Collections shall be deposited in the Treasury of the United States as miscellaneous receipts.

(d) The willful failure of a prisoner to remain within the extended limits of such prisoner's confinement, or to return within the time prescribed to an institution or facility designated by the Attorney General, shall be deemed an escape from the custody of the Attorney General punishable as provided in section 1716 of this title.

(e) As used in this section—

(1) the term "facility" includes a residential community treatment center; and

(2) the term "relative" means a spouse, child (including stepchild, adopted child or child as to whom the prisoner, though not a natural

parent, has acted in the place of a parent), parent (including a person who, though not a natural parent, has acted in the place of a parent), brother, or sister.

§ 3908. Penitentiary imprisonment; consent

(a) Persons convicted of offenses against the United States or by courts-martial punishable by imprisonment for more than one year may be confined in any United States penitentiary.

(b) A sentence for an offense punishable by imprisonment for one year or less shall not be served in a penitentiary without the consent of the defendant.

§ 3909. Copy of commitment delivered with prisoner

Whenever a prisoner is committed to a warden, sheriff, or jailer by virtue of a writ, or warrant, a copy thereof shall be delivered to such officer as authority to hold the prisoner, and the original shall be returned to the proper court or officer, with the officer's return endorsed thereon.

§ 3910. Transfer for State offense; expense

(a)(1) Whenever any Federal prisoner has been indicted, informed against, or convicted of a felony in a court of record of any State or the District of Columbia, the Attorney General shall, if the Attorney General finds it in the public interest to do so, upon the request of the Governor or the executive authority thereof, and upon the presentation of a certified copy of such indictment, information or judgment of conviction, cause such person, prior to his release, to be transferred to a penal or correctional institution within such State or District.

(2) If more than one such request is presented in respect to any prisoner, the Attorney General shall determine which request should receive preference.

(3) The expense of personnel and transportation incurred shall be chargeable to the appropriation for the "Support of United States Prisoners".

(b) This section does not limit the authority of the Attorney General to transfer prisoners under other provisions of law.

§ 3911. Temporary safekeeping of Federal offenders by marshals

United States marshals shall provide for the safekeeping of any person arrested, or held under authority of any enactment of Congress pending commitment to an institution.

§ 3912. Federal prisoners in State institutions; employment

(a) For the purpose of providing suitable quarters for the safekeeping, care, and subsistence of all persons held under authority of any enactment of Congress, the Director of the Bureau of Prisons may contract, for a period not exceeding 3 years, with the proper authorities of any State, territory, or political subdivision thereof, for the imprisonment, subsistence, care, and proper employment of such persons.

(b) Such Federal prisoners shall be employed only in the manufacture of articles for, the production of supplies for, the construction of public works for, and

the maintenance and care of the institutions of, the State or political subdivision in which they are imprisoned.

(c) The rates to be paid for the care and custody of such persons shall take into consideration the character of the quarters furnished, sanitary conditions, and quality of subsistence and may be such as will permit and encourage the proper authorities to provide reasonably decent, sanitary, and healthful quarters and subsistence for such persons.

§ 3913. Federal institutions in States without appropriate facilities

If by reason of the refusal or inability of the authorities having control of any jail, workhouse, penal, correctional, or other suitable institution of any State or territory, or political subdivision thereof, to enter into a contract for the imprisonment, subsistence, care, or proper employment of United States prisoners, or if there are no suitable or sufficient facilities available at reasonable cost, the Attorney General may select a site either within or convenient to the State, territory, or judicial district concerned and cause to be erected thereon a house of detention, workhouse, jail, prison-industries project, or camp, or other place of confinement, which shall be used for the detention of persons held under authority of any Act of Congress, and of such other persons as in the opinion of the Attorney General are proper subjects for confinement in such institutions.

§ 3914. Subsistence for prisoners

The Attorney General shall allow and pay only the reasonable and actual cost of the subsistence of prisoners in the custody of any marshal of the United States, and shall prescribe such regulations for the government of marshals as will enable the Attorney General to determine the actual and reasonable expenses incurred.

§ 3915. Expenses of prisoners

The expenses attendant upon the confinement of persons arrested or committed under the laws of the United States, as well as upon the execution of any sentence of a court thereof respecting them, shall be paid out of the Treasury of the United States in the manner provided by law.

§ 3916. Transportation expenses

(a) Prisoners shall be transported by agents designated by the Attorney General or the Attorney General's authorized representative.

(b) The reasonable expense of transportation, necessary subsistence, and hire and transportation of guards and agents shall be paid by the Attorney General from such appropriation for the Department of Justice as the Attorney General shall direct.

(c) Upon conviction by a consular court or court martial the prisoner shall be transported from the court to the place of confinement by agents of the Department of State, the Army, Navy, or Air Force, as the case may be, the expense to be paid out of the Treasury of the United States in the manner provided by law.

§ 3917. Appropriations for sites and buildings

(a) The Attorney General may authorize the use of a sum not to exceed $100,000 in each instance, payable from any unexpended balance of the appropriation "Support of United States prisoners" for the purpose of leasing or acquiring a site, preparation of plans, and erection of necessary buildings under section 3913 of this title.

(b) If in any instance it is impossible or impracticable to secure a proper site and erect the necessary buildings within the limitation of subsection (a) of this section the Attorney General may authorize the use of a sum not to exceed $10,000 in each instance, payable from any unexpended balance of the appropriation "Support of United States prisoners" for the purpose of securing options and making preliminary surveys or sketches.

(c) Upon selection of an appropriate site, the Attorney General shall submit to Congress an estimate of the cost of purchasing same and of remodeling, constructing, and equipping the necessary buildings thereon.

§ 3918. Acquisition of additional land

The Attorney General may, when authorized by law, acquire land adjacent to or in the vicinity of a Federal penal or correctional institution if the Attorney General considers the additional land essential to the protection of the health or safety of the inmates of the institution.

§ 3919. Disposition of cash collections for meals, laundry, etc.

Collections in cash for meals, laundry, barber service, uniform equipment, and other items for which payment is made originally from appropriations for the maintenance and operation of Federal penal and correctional institutions, may be deposited in the Treasury to the credit of the appropriation currently available for those items when the collection is made.

§ 3920. Custody of State offenders

(a) The Attorney General, when the Director shall certify that proper and adequate treatment facilities and personnel are available, is hereby authorized to contract with the proper officials of a State or territory for the custody, care, subsistence, education, treatment, and training of persons convicted of criminal offenses in the courts of such State or territory, but any such contract shall provide for reimbursing the United States in full for all costs or other expenses involved.

(b) Funds received under such a contract may be deposited in the Treasury to the credit of the appropriation or appropriations from which the payments for such service were originally made.

(c) Unless otherwise specifically provided in the contract, a person committed to the Attorney General under this section shall be subject to all the provisions of law and regulations applicable to persons committed for violations of laws of the United States not inconsistent with the sentence imposed.

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(d) As used in this section, the term "State" includes any State, territory, or possession of the United States.

§ 3921. Discharge from prison

(a) A person convicted under the laws of the United States shall, upon discharge from imprisonment, or release on parole, be furnished with transportation to the place of conviction or bona fide residence within the United States at the time of commitment or to such place within the United States as may be authorized by the Attorney General.

(b) Such person shall also be furnished with such suitable clothing as may be authorized by the Attorney General, and, in the discretion of the Attorney General, an amount of money not to exceed $100.

§ 3922. Arrested but unconvicted persons

On the release from custody of a person arrested on a charge of violating any law of the United States, but not indicted nor informed against, or indicted or informed against but not convicted, and not admitted to bail, or a person held as a material witness and unable to make bail, the court in its discretion may direct the United States marshal for the district wherein such person is released, pursuant to regulations promulgated by the Attorney General, to furnish the person so released with transportation and subsistence to the place of his arrest, or, at such person's election, to the place of such person's bona fide residence if such cost is not greater than to the place of arrest.

§ 3923. Discharge

Except as otherwise provided by this title a prisoner shall be released at the expiration of such prisoner's term of sentence. If such release date falls upon a Saturday, a Sunday, or a Monday which is a legal holiday at the place of confinement, the prisoner may be released at the discretion of the warden or keeper on the preceding Friday. If such release date falls on a holiday which falls other than on a Saturday, Sunday, or Monday, the prisoner may be released at the discretion of the warden or keeper on the day preceding the holiday.

§ 3924. Orders respecting persons in custody

The Attorney General shall, without charge, bring a prisoner into court or return him to a prison facility on order of a court of the United States or on written request of an attorney for the Government.

§ 3925. Temporary release of prisoners

The Attorney General may release a prisoner from the place of imprisonment for a limited period, if such release appears to be consistent with the purposes for which the sentence was imposed if such release otherwise appears to be consistent with the public interest and if there is reasonable cause to believe that the prisoner will honor the trust to be imposed in such prisoner, by authorizing under prescribed conditions, to—

(1) visit a designated place for a period not to exceed 30 days, and then return to the same or another facility, for the purpose of—

(A) visiting a relative who is dying;

(B) attending a funeral of a relative;

(C) obtaining medical treatment not otherwise available;

(D) contacting a prospective employer;

(E) establishing or reestablishing family or community ties; or

(F) engaging in any other significant activity consistent with the public interest;

(2) participate in a training or educational program in the community while continuing in official detention at the prison facility; or

(3) work at paid employment in the community while continuing in official detention at the penal or correctional facility if—

(A) the rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the community; and

(B) the prisoner agrees to pay to the Attorney General such costs incident to his official detention as the Attoreny General finds appropriate and reasonable under all the circumstances, such costs to be collected by the Attorney General and deposited in the Treasury to the credit of the appropriation available for such costs at the time such collections are made.

§ 3926. Advisory Corrections Council

There is hereby created an Advisory Corrections Council, composed of one United States circuit judge and 2 United States district judges designated from time to time by the Chief Justice of the United States, of one member, who shall be Chairman, designated by the Attorney General, and, ex officio, the Director of the Federal Judicial Center, and the Chief of the Division of Probation of the Administrative Office of the United States Courts. The Council shall hold stated meetings to consider problems of treatment and correction of all offenders against the United States and shall make such recommendations to the Congress, the President, the Judicial Conference of the United States, and other appropriate officials as may improve the administration of criminal justice and assure the coordination and integration of policies respecting the disposition, treatment, and correction of all persons convicted of offenses against the United States. It shall also consider measures to promote the prevention of crime and delinquency, suggest appropriate studies in this connection to be undertaken by agencies both public and private. The members of the Council shall serve without compensation but necessary travel and subsistence expenses as authorized by law shall be paid from available appropriations of the Department of Justice.

§ 3927. Establishment of National Institute of Corrections

(a) There is hereby established within the Bureau of Prisons a National Institute of Corrections.

(b) The overall policy and operations of the National Institute of Corrections shall be under the supervision of an Advisory Board. The Board shall consist of 16 members. The following 6 individuals or the designees of such individuals shall serve as members of the Board ex officio: the Administrator of the Law Enforcement Assistance Administration, the Chief of the Division of Probation of the Administrative Office of the United States Courts, the Director of the Federal Judicial Center, the Associate Administrator for the Office of Juvenile Justice and Delinquency Prevention, and the Assistant Secretary for Human Development of the Department of Health, Education, and Welfare.

(c) The remaining 10 members of the Board shall be selected as follows:

(1) Five shall be appointed initially by the Attorney General for staggered terms: one member shall serve for one year, one member for 2 years, and 3 members for 3 years. Upon the expiration of each member's term, the Attorney General shall appoint successors who will each serve for a term of 3 years. Each member selected shall be qualified as a practitioner (Federal, State, or local) in the field of corrections.

(2) Five shall be appointed initially by the Attorney General for staggered terms: one member shall serve for one year, 3 members for 2 years, and one member for 3 years. Upon the expiration of each member's term the Attorney General shall appoint successors who will each serve for a term of 3 years. Each member selected shall be from the private sector, such as business, labor, and education, having demonstrated an active interest in corrections.

(d) The members of the Board shall not, by reason of such membership, be deemed officers or employees of the United States. Members of the Board who are full-time officers or employees of the United States shall serve without additional compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of the duties vested in the Board. Other members of the Board shall, while attending meetings of the Board or while engaged in duties related to such meetings or in other activities of the Board under this section and section 3928 of this title, be entitled to receive compensation at the rate not to exceed the daily equivalent of the rate authorized for GS–18 by section 5332 of title 5, including travel time and while away from their homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence equal to that authorized by section 5703 of title 5, for persons in the Government service employed intermittently.

(e) The Board shall elect a chairman from among its members who shall serve for a term of one year. The members of the Board shall also elect one or more members as a vice-chairman.

(f) The Board is authorized to appoint, without regard to the provisions of title 5 governing appointment in the competitive service, technical, or other advisory committees to advise the Institute with respect to the administration of this section and section 3928 of this title as it deems appropriate. Members of these committees not otherwise employed by the United States, while engaged in advising the Institute or attending meetings of the committees, shall be entitled to receive compensation at the rate fixed by the Board but not to exceed the daily equivalent of the rate authorized for GS–18 by section 5332 of title 5, and while away from their homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence equal to that authorized by section 5703 of title 5, for persons in the Government service employed intermittently.

(g) The Board is authorized to delegate its powers under this section and section 3928 of this title to such persons as the Board deems appropriate.

(h) The Institute shall be under the supervision of an officer to be known as the Director, who shall be appointed by the Attorney General after consultation with the Board. The Director shall have authority to supervise the organization, employees, enrollees, financial affairs, and all other operations of the Institute and may employ such staff, faculty, and administrative personnel, subject to the civil service and classification laws, as are necessary to the functioning of the Institute. The Director shall have the power to acquire and hold real and personal property for the Institute and may receive gifts, donations, and trusts on behalf of the Institute. The Director shall also have the power to appoint such technical or other advisory councils comprised of consultants to guide and advise the Board. The Director is authorized to delegate the Director's powers under this section and section 3928 of this title to such persons as the Director deems appropriate.

§ 3928. Authority and duties of National Institute of Corrections

(a) In addition to the other powers, express and implied, the National Institute of Corrections shall have authority—

(1) to receive from or make grants to and enter into contracts with Federal, State, and general units of local government, public and private agencies, educational institutions, organizations, and individuals to carry out the purposes of this section and section 3927 of this title;

(2) to serve as a clearinghouse and information center for the collection, preparation, and dissemination of information on corrections, including programs for prevention of crime and recidivism, training of corrections personnel, and rehabilitation and treatment of criminal and juvenile offenders;

(3) to assist and serve in a consulting capacity to Federal, State, and local courts, departments, and agencies in the development, maintenance, and coordination of programs, facilities, and services, training, treatment, and rehabilitation with respect to criminal and juvenile offenders;

(4) to encourage and assist Federal, State, and local government programs and services, and programs and services of other public and private agencies, institutions, and organizations in their efforts to develop and implement improved corrections programs;

(5) to devise and conduct, in various geographical locations, seminars, workshops, and training programs for law enforcement officers, judges, and judicial personnel, probation and parole personnel, correctional personnel, welfare workers, and other persons, including lay ex-offenders, and para-professionals personnel, connected with the treatment and rehabilitation of criminal and juvenile offenders;

(6) to develop technical training teams to aid in the development of seminars, workshops, and training programs within the several States and with the State and local agencies which work with prisoners, parolees, probationers, and other offenders;

(7) to conduct, encourage, and coordinate research relating to corrections, including the causes, prevention, diagnosis, and treatment of criminal offenders;

(8) to formulate and disseminate correctional policy, goals, standards, and recommendations for Federal, State, and local correctional agencies, organizations, institutions, and personnel;

(9) to conduct evaluation programs which study the effectiveness of new approaches, techniques, systems, programs, and devices employed to improve the corrections system;

(10) to receive from any Federal department or agency such statistics, data, program reports, and other material as the Institute deems necessary to carry out its functions. Each such department or agency is authorized to cooperate with the Institute and shall, to the maximum extent practicable, consult with and furnish information to the Institute;

(11) to arrange with and reimburse the heads of Federal departments and agencies for the use of personnel, facilities, or equipment of such departments and agencies;

(12) to confer with and avail itself of the assistance, services, records, and facilities of State and local governments or other public or private agencies, organizations, or individuals;

(13) to enter into contracts with public or private agencies, organizations, or individuals, for the performance of any of the functions of the Institute; and

(14) to procure the services of experts and consultants in accordance with section 3109 of title 5, at rates of compensation not to exceed the daily equivalent of the rate authorized for GS–18 by section 5332 of title 5.

(b) The Institute shall on or before December 31 of each year submit an annual report for the preceding fiscal year to the President and to the Congress. The report shall include a comprehensive and detailed report of the Institute's operations, activities, financial condition, and accomplishments under this section

and section 3927 of this title and may include such recommendations related to corrections as the Institute deems appropriate.

(c) Each recipient of assistance under this section and section 3927 of this title shall keep such records as the Institute shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(d) The Institute, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for purposes of audit and examinations to any books, documents, paper and records of the recipients that are pertinent to the grants received under this section and section 3927 of this title.

(e) This section applies to all recipients of assistance under this section and section 3927 of this title, whether by direct grant or contract from the Institute or by subgrant or subcontract from primary grantees or contractors of the Institute.

Subchapter II—Employment of Prisoners

§ 3981. Federal prison industries; board of directors

(a) Federal Prison Industries, a government corporation of the District of Columbia, shall be administered by a board of 6 directors, appointed by the President to serve at the will of the President without compensation.

(b) The directors shall be representatives of (1) industry, (2) labor, (3) agriculture, (4) retailers and consumers, (5) the Secretary of Defense, and (6) the Attorney General, respectively.

§ 3982. Administration of Federal prison industries

(a) Federal Prison Industries shall determine in what manner and to what extent industrial operations shall be carried on in Federal penal and correctional institutions for the production of commodities for consumption in such institutions or for sale to the departments or agencies of the United States, but not for sale to the public in competition with private enterprise.

(b) The board of directors of Federal Prison Industries shall provide employment for all physically fit inmates in the United States penal and correctional institutions, diversify, so far as practicable, prison industrial operations and so operate the prison shops that no single private industry shall be forced to bear an

undue burden of competition from the products of the prison workshops, and to reduce to a minimum competition with private industry or free labor.

(c) The board of directors of Federal Prison Industries may provide for the vocational training of qualified inmates without regard to their industrial or other assignments.

(d)(1) This chapter applies to the industrial employment and training of prisoners convicted by general courts-martial and confined in any institution under the jurisdiction of any department or agency comprising the Department of Defense, to the extent and under terms and conditions agreed upon by the Secretary of Defense, the Attorney General and the board of directors of Federal Prison Industries.

(2) Any department or agency of the Department of Defense may without exchange of funds, transfer to Federal Prison Industries any property or equipment suitable for use in performing the functions and duties covered by agreement entered into under paragraph (1) of this subsection.

(e)(1) This chapter applies to the industrial employment and training of prisoners confined in any penal or correctional institution under the direction of the Mayor of the District of Columbia to the extent and under terms and conditions agreed upon by the Mayor, the Attorney General, and the Board of Directors of Federal Prison Industries.

(2) The Mayor of the District of Columbia may, without exchange of funds, transfer to the Federal Prison Industries any property or equipment suitable for use in performing the functions and duties covered by an agreement entered into under paragraph (1) of this subsection.

(3) Nothing in this chapter affects the Act approved October 3, 1964 (D.C. Code, sections 24–451 et seq.), entitled "An Act to establish in the Treasury a correctional industries fund for the government of the District of Columbia, and for other purposes".

§ 3983. New industries

(a) Any industry established under this chapter shall be so operated as not to curtail the production of any existing arsenal, navy yard, or other Government workshop.

(b) Such forms of employment shall be provided as will give the inmates of all Federal penal and correctional institutions a maximum opportunity to acquire a knowledge and skill in trades and occupations which will provide them with a means of earning a livelihood upon release.

(c) The industries may be either within the precincts of any penal or correctional institution or in any convenient locality where an existing property may be obtained by lease, purchase, or otherwise.

§ 3984. Purchase of prison-made products by Federal departments

(a) The several Federal departments and agencies and all other Government institutions of the United States shall purchase at not to exceed current market

prices, such products of the industries authorized by this chapter as meet their requirements and may be available.

(b) Disputes as to the price, quality, character, or suitability of such products shall be arbitrated by a board consisting of the Comptroller General of the United States, the Administrator of General Services, and the Director of the Bureau of the Budget, or their representatives. Their decision shall be final and binding upon all parties.

§ 3985. Public works; prison camps

(a) The Attorney General may make available to the heads of the several departments the services of United States prisoners under terms, conditions, and rates mutually agreed upon, for constructing or repairing roads, clearing, maintaining and reforesting public lands, building levees, and constructing or repairing any other public ways or works financed wholly or in major part by funds appropriated by Congress.

(b) The Attorney General may establish, equip, and maintain camps upon sites selected by the Attorney General elsewhere than upon Indian reservations, and designate such camps as places for confinement of persons convicted of an offense against the laws of the United States.

(c) The expenses of transferring and maintaining prisoners at such camps and of operating such camps shall be paid from the appropriation "Support of United States Prisoners", which may, in the discretion of the Attorney General, be reimbursed for such expenses.

(d) As part of the expense of operating such camps the Attorney General is authorized to provide for the payment to the inmates or the inmates' dependents such pecuniary earnings as the Attorney General may deem proper, under such rules and regulations as the Attorney General may prescribe.

(e) All other laws of the United States relating to the imprisonment, transfer, control, discipline, escape, release of, or in any way affecting prisoners, shall apply to prisoners transferred to such camps.

§ 3986. Prison industries fund; use and settlement of accounts

(a) All moneys under the control of Federal Prison Industries, or received from the sale of the products or by-products of such Industries, or for the services of Federal prisoners, shall be deposited or covered into the Treasury of the United States to the credit of the Prison Industries Fund and withdrawn therefrom only pursuant to accountable warrants or certificates of settlement issued by the General Accounting Office.

(b) All valid claims and obligations payable out of such fund shall be assumed by the corporation.

(c) The Federal Prison Industries, in accordance with the laws generally applicable to the expenditures of the several departments and establishments of the government, is authorized to employ the fund, and any earnings that may accrue to the Industries, as operating capital in performing the duties imposed by this

chapter; in the repair, alteration, erection, and maintenance of industrial buildings and equipment; in the vocational training of inmates without regard to their industrial or other assignments; in paying, under rules and regulations promulgated by the Attorney General, compensation to inmates employed in any industry, or performing outstanding services in institutional operations, and compensation to inmates or their dependents for injuries suffered in any industry or in any work activity in connection with the maintenance or operation of the institution where confined. In no event shall compensation be paid in a greater amount than that provided in subchapter I of chapter 81 of title 5.

(d) Accounts of all receipts and disbursements of the corporation shall be rendered to the General Accounting Office for settlement and adjustment, as required by the Comptroller General.

(e) Such accounting shall include all fiscal transactions of the Industries, whether involving appropriated moneys, capital, or receipts from other sources.

§ 3987. Prison industries report to Congress

The board of directors of Federal Prison Industries shall make annual reports to Congress on the conduct of the business of the corporation and on the condition of Federal Prison Industries funds.

§ 3988. Enforcement by Attorney General

In the event of any failure of Federal Prison Industries to act, the Attorney General shall not be limited in carrying out the duties conferred upon the Attorney General by law.

CHAPTER 41—APPEAL OF SENTENCE

§ 4101. Review of sentence

(a) Except as provided in subsection (b) of this section, a defendant may appeal a sentence imposed in a criminal case if the defendant is convicted of—

(1) a felony or misdemeanor and the sentence imposed—

(A) is not authorized by law;

(B) is the result of an erroneous application of the sentencing guidelines; or

(C) is greater than the sentence called for by the sentence guideline; or

(2) a felony and the sentence imposed is within the sentencing guideline and the requirements of section 4102 of this title are met.

(b) A defendant may not appeal a sentence imposed in a criminal case if the sentence is part of a plea agreement accepted by the court and is no greater than the sentence which the attorney for the Government agreed to recommend or not to oppose under the Federal Rules of Criminal Procedure or which is agreed to

by the attorney for the Government and the defendant under the Federal Rules of Criminal Procedure.

§ 4102. Appeal by defendant

(a) A defendant may appeal to a United States Court of Appeals a sentence imposed by a United States district court in a criminal case.

(b) A defendant may commence an appeal of a sentence in a criminal case by filing a notice of appeal in the district court unless the defendant seeks review of a sentence imposed for a conviction of a felony which was within the sentencing guideline, in which case the defendant may file with the United States district court which imposed the sentence a petition for leave to appeal. A petition for leave to appeal shall contain a statement showing a substantial basis for determining that the sentence was clearly unreasonable and shall be filed within 30 days after imposition of the sentence unless such time is extended by the district court upon a showing of good cause.

§ 4103. Sentence review procedure

(a) The clerk of the district court with whom a petition for leave to appeal has been filed under this chapter shall forthwith transmit a copy of such petition to the clerk of the court of appeals and the opposing party.

(b) If the court of appeals grants the petition for leave to appeal or if an appeal is taken by filing a notice of appeal, a clerk of the district court shall certify to the court of appeals a transcript of any proceedings of the district court relevant to sentencing, the presentence report, the transcript of the sentencing proceeding or hearing, and findings of the court upon which the sentence was based, and any additional portions of the record designated by either party.

(c) The court of appeals, in reviewing a sentence, shall consider—

(1) the record on appeal certified by the clerk of the district court;

(2) any findings upon which the sentence was based and any reasons or specific reasons for the sentence imposed;

(3) the appropriate sentence guideline and any relevant sentencing policy statement; and

(4) the opportunity of the district court to observe the defendant, the general purposes of sentencing stated in section 3102 of this title, and the factors to be considered in imposing a sentence set forth in section 3103 of this title.

(d) In the case of an appeal by the defendant, if the court of appeals determines—

(1) in any case where it is alleged that the sentence is not authorized by law or that the sentence imposed was the result of an erroneous application of the sentence guideline, that the sentence has been materially affected;

(2) in the case of a felony or misdemeanor, that a sentence which is greater than that called for in the sentencing guideline is unreasonable; or

(3) in the case of a felony, that a sentence which is within the sentencing guideline is clearly unreasonable;

the court of appeals may modify or reverse the sentence.

(e) If the court of appeals decides to modify or reverse a sentence, the court shall state specific reasons for its conclusions and may in an appeal by a defendant—

(1) vacate the sentence imposed and impose a lesser sentence; or

(2) reverse the sentence imposed and remand the case to the district court for further proceedings or resentencing, except that such resentencing shall not include a more severe sentence than the sentence reviewed.

(f) If a defendant appeals any other issue in a criminal case, such defendant may join the issue of sentence with such other appeal and have sentence reviewed as part of such appeal.

(g) The court of appeals shall permit and may require the party opposing a petition for leave to appeal under this chapter to file an answer. The petition and answer shall be submitted without oral argument, unless the court of appeals otherwise directs.

(h) Except as provided in this chapter, the Federal Rules of Appellate Procedure apply to proceedings under this chapter.

CHAPTER 43—SENTENCING GUIDELINES

§ 4301. Sentencing guidelines

(a)(1) For the purposes of—

(A) promoting fairness and certainty in sentencing;

(B) eliminating unwarranted disparity in sentencing; and

(C) improving the administration of justice;

the Judicial Conference of the United States shall prescribe sentencing guidelines for Federal judges to use in determining appropriate sentences to impose in criminal cases.

(2) Such sentencing guidelines shall—

(A) be submitted to the Congress not later than May 1 of the year in which they are to take effect; and

(B) take effect 180 days after the date of such submission, unless the Congress otherwise provides by law.

(b) Together with any sentencing guideline submitted under subsection (a)(1) of this section, the Judicial Conference of the United States shall submit a statement of the expected impact of such guideline on Federal prisons, criminal dockets of Federal courts, and Federal expenditures. In preparing a statement under this subsection, the Judicial Conference of the United States shall seek information and advice from the Federal Bureau of Prisons, the Administrative Office of the United States Courts, the Office of Management and Budget, and other relevant Federal agencies.

(c) Any amendment to an existing sentencing guideline shall be prescribed and submitted and shall become effective in the manner set forth in subsections (a) and (b) of this section.

§ 4302. Content of sentencing guidelines

(a) The sentencing guidelines prescribed under this chapter shall be based on—

(1) categories of offenders derived from relevant history and characteristics of defendants sentenced in Federal court; and

(2) categories of offenses derived from the nature and circumstances of the offenses for which such defendants are sentenced.

(b) Each sentencing guideline shall indicate for the appropriate disposition of a case within each category of offender and each category of offense.

(c) If a sentencing guideline provides for—

(1) payment of a fine, the guideline shall indicate a range in dollars for the amount of the fine; or

(2) a term of imprisonment, the guideline shall indicate a range in months for the term of imprisonment.

(d) When a sentencing guideline indicates that imposition of a term of imprisonment is appropriate, the term of imprisonment provided for in the sentencing guideline shall reflect the average time actually served by similarly situated offenders who have been convicted of offenses of the kind encompassed in the sentencing guideline.

§ 4303. Policy statements on sentencing

The Judicial Conference of the United States may issue policy statements on sentencing to aid Federal judges in the sentencing process.

§ 4304. Committee on Sentencing

(a) There is established within the Judicial Conference of the United States a Committee on Sentencing which shall—

(1) obtain and analyze on a continuing basis data on the sentences imposed by Federal courts in criminal cases and the nature and circumstances of the offenses and the relevant history and characteristics of defendants in those cases;

(2) recommend sentencing guidelines and policy statements on sentencing to the Judicial Conference of the United States;

(3) in carrying out its functions under this chapter, seek the opinions and participation of a broadly representative cross-section of persons interested in and concerned with the operation of the Federal criminal jus-

tice system, including representatives of the defense bar, the prosecution, and the academic community;

(4) at least annually, make available to Federal courts and other interested persons any sentencing guidelines prescribed under this chapter and relevant information concerning patterns and practices in the sentencing of persons convicted of Federal offenses; and

(5) not later than May 1 of each year, report to the Congress on its activities under this chapter and may include in such report recommendations for appropriate legislation.

(b) For purposes of sections 552, 552a, and 552b of title 5, the Committee on Sentencing shall be deemed an agency.

§ 4305. Membership and organization of the Committee on Sentencing

(a) The Committee on Sentencing shall consist of 7 members appointed by the Judicial Conference of the United States. A member of the Committee on Sentencing may be removed by the Judicial Conference for malfeasance or other good cause.

(b) The membership of the Committee on Sentencing shall reflect—

(1) a variety of backgrounds; and

(2) participation and interest in the Federal criminal justice system.

Four members of the Committee on Sentencing shall be judges of the United States and 3 members shall be persons who are not judges or former judges of the United States or of any State.

(c)(1) The term of a member of the Committee on Sentencing shall be 4 years, except that of the members first appointed, 3 shall have 3-year terms, as specified by the Judicial Conference of the United States at the time of appointment.

(2) No member of the Committee on Sentencing shall serve more than 8 years. A member of the Committee on Sentencing who is appointed to fill a vacancy shall be appointed for the remainder of the term involved.

(d)(1) A member of the Committee on Sentencing who is a full-time officer or employee of the United States shall receive no additional pay by reason of service on the Committee.

(2) A member of the Committee on Sentencing who is not a full-time officer or employee of the United States shall be—

(A) paid the daily equivalent of the maximum annual rate of basic pay payable for grade GS–18 of the General Schedule for each day (including traveltime) during which such member is engaged in the performance of duties vested in the Committee on Sentencing; and

(B) allowed travel and transportation expenses in the manner prescribed in section 5703 of title 5.

(e) The Committee on Sentencing shall designate one of its members to chair the Committee.

§ 4306. Hearings by Committee on Sentencing

The Committee on Sentencing may hold hearings and take testimony for the purpose of carrying out its functions under this chapter.

§ 4307. Cooperation of Federal agencies

The Committee on Sentencing may request services, equipment, personnel, facilities, and information from any Federal agency, including the Administrative Office of the United States Courts and the Federal Judicial Center. Each Federal agency shall comply with such requests to the greatest practicable extent unless otherwise prohibited by law.

CHAPTER 45—POST-SENTENCE ADMINISTRATION

§ 4501. Assistance in conditional discharge, probation, and post-release supervision

A person who is sentenced to conditional discharge, probation, or post-release supervision under chapter 33 of this title, shall, during the term of such sentence, be assisted by a probation officer to the degree warranted by the conditions of such sentence.

§ 4502. Appointment of probation officers

(a) A district court of the United States shall appoint qualified persons to serve, with or without compensation, as probation officers within the jurisdiction and under the direction of the court making the appointment. The court may, for cause, remove a probation officer appointed to serve with compensation, and may, in its discretion, remove a probation officer appointed to serve without compensation.

(b) The order of appointment shall be entered on the records of the court, a copy of the order shall be delivered to the officer appointed, and a copy shall be sent to the Director of the Administrative Office of the United States Courts.

(c) If the court appoints more than one probation officer, one of such officers may be designated by the court as chief probation officer and shall direct the work of all probation officers serving in the judicial district.

§ 4503. Duties of probation officers

A probation officer shall—

(1) instruct each probationer assisted by such officer as to the conditions of the sentence involved, and provide such person with a written statement clearly setting forth all such conditions;

(2) keep informed, to the degree required by the conditions of the sentence involved, as to the conduct and condition of each probationer assist-

ed by such officer, and report the conduct and condition of such person to the sentencing court;

(3) use all suitable methods, not inconsistent with the conditions imposed by the court, to aid each probationer assisted by such officer and to bring about improvements in such probationer's conduct and condition;

(4) be responsible for the supervision of any person sentenced under chapter 33 of this title known to be within the judicial district;

(5) keep a record of such officer's work, and make such reports to the Director of the Administrative Office of the United States Courts as the Director may require;

(6) upon request of the Attorney General, supervise and furnish information about a person within the custody of the Attorney General while on work release, furlough, or other authorized release from his regular place of confinement;

(7) conduct a pre-release investigation with respect to a person about to become eligible for release from imprisonment;

(8) perform any duty with respect to a person on parole that the Parole Commission may designate;

(9) include in any presentence report required to be submitted to the court information necessary to make a realistic evaluation of sentencing alternatives to imprisonment and a statement concerning the appropriate application of any applicable sentencing guidelines prescribed under section 4301 of this title; and

(10) perform any other duty that the court may designate.

§ 4504. Transportation of persons assisted by probation officers

A court, after imposing a sentence of conditional discharge, probation, or post-release supervision, may direct a United States marshal to furnish the defendant with—

(1) transportation to the place to which the defendant is required to proceed as a condition of the sentence involved; and

(2) money, not to exceed such amount as the Attorney General may prescribe, for subsistence expenses while traveling to such destination.

§ 4505. Transfer of jurisdiction over persons assisted by probation officers

A court, after imposing a sentence of conditional discharge, probation, or post-release supervision, may transfer jurisdiction over the defendant to the district court for any other district to which the defendant is required to proceed as a condition of the sentence involved, or is permitted to proceed, with the concurrence of such court. A later transfer of jurisdiction may be made in the same manner. A court to which jurisdiction is transferred under this section is authorized to exercise all powers over the defendant that are permitted by this title.

§ 4506. Arrest and return of persons assisted by probation officers

At any time within the term of conditional discharge, probation, or post-release supervision, the probation officer may for cause arrest the defendant wherever found, without a warrant.

SUBTITLE IV—ADMINISTRATION AND PROCEDURE

CHAPTER 51—GENERAL PROVISIONS

§ 5101. Adequate representation of defendants

(a)(1) Each United States district court, with the approval of the judicial council of the circuit, shall place in operation throughout the district a plan for furnishing representation for any person financially unable to obtain adequate representation—

(A) who is charged with [a felony or misdemeanor (other than a petty offense as defined in section 102 of this title) or with juvenile delinquency by the commission of an act which, if committed by an adult, would be such a felony or misdemeanor or with a violation of probation];

(B) who is under arrest, when such representation is required by law;

(C) who is [subject to revocation of parole,] in custody as a material witness, or seeking collateral relief, as provided in subsection (g) of this section;

(D) for whom the sixth amendment to the Constitution requires the appointment of counsel or for whom, in a case in which he faces loss of liberty, any Federal law requires the appointment of counsel; or

(E) who is entitled to representation under section 3345 or 3348 of this title.

(2) Representation under each plan shall include counsel and investigative, expert, and other services necessary for an adequate defense.

(3) Each plan described in paragraph (1) of this subsection shall include a provision for private attorneys. The plan may include, in addition to a provision

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for private attorneys in a substantial proportion of cases, either of the following or both:

(A) Attorneys furnished by a bar association or a legal aid agency.

(B) Attorneys furnished by a defender organization established in accordance with subsection (h) of this section.

Prior to approving the plan for a district, the judicial council of the circuit shall supplement the plan with provisions for representation on appeal. The district court may modify the plan at any time with the approval of the judicial council of the circuit. It shall modify the plan when directed by the judicial council of the circuit. The district court shall notify the Administrative Office of the United States Courts of any modification of its plan.

(b) Counsel furnishing representation under the plan shall be selected from a panel of attorneys designated or approved by the court, or from a bar association, legal aid agency, or defender organization furnishing representation under the plan. In every criminal case in which the defendant is charged with a [felony or a misdemeanor (other than a petty offense as defined in section 102 of this title) or with juvenile delinquency by the commission of an act which, if committed by an adult, would be such a felony or misdemeanor or with a violation of probation] and appears without counsel, the United States magistrate or the court shall advise the defendant that he has the right to be represented by counsel and that counsel will be appointed to represent him if he is financially unable to obtain counsel. Unless the defendant waives representation by counsel the United States magistrate or the court, if satisfied after appropriate inquiry that the defendant is financially unable to obtain counsel, shall appoint counsel to represent him. Such appointment may be made retroactive to include any representation furnished under the plan prior to appointment. The United States magistrate or the court shall appoint separate counsel for defendants having interests that cannot properly be represented by the same counsel, or when other good cause is shown.

(c) A person for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance before the United States magistrate or the court through appeal, including ancillary matters appropriate to the proceedings. If at any time after the appointment of counsel the United States magistrate or the court finds that the person is financially able to obtain counsel or to make partial payment for the representation, it may terminate the appointment of counsel or authorize payment as provided in subsection (f) of this section, as the interests of justice may dictate. If at any stage of the proceedings, including an appeal, the United States magistrate or the court finds that the person is financially unable to pay counsel whom he had retained, it may appoint counsel as provided in subsection (b) of this section and authorize payment as provided in subsection (d) of this section, as the interests of justice may dictate. The United States magistrate or the court may, in the interests of justice, substitute one appointed counsel for another at any stage of the proceedings.

(d)(1) Any attorney appointed pursuant to this section or a bar association or legal aid agency or community defender organization which has provided the appointed attorney shall, at the conclusion of the representation or any segment thereof, be compensated at a rate not exceeding $30 per hour for time expended in court or before a United States magistrate and $20 per hour for time reasonably expended out of court, or such other hourly rate, fixed by the Judicial Council of the Circuit, not to exceed the minimum hourly scale established by a bar association for similar services rendered in the district. Such attorney shall be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the United States magistrate or the court.

(2) For representation of a defendant before the United States magistrate or the district court, or both, the compensation to be paid to an attorney or to a bar association or legal aid agency or community defender organization shall not exceed $1,000 for each attorney in a case in which one or more felonies are charged, and $400 for each attorney in a case in which only misdemeanors are charged. For representation of a defendant in an appellate court, the compensation to be paid to an attorney or to a bar association or legal aid agency or community defender organization shall not exceed $1,000 for each attorney in each court. For representation in connection with a post-trial motion made after the entry of judgment [or in a probation revocation proceeding] or for representation provided under subsection (g) of this section the compensation shall not exceed $250 for each attorney in each proceeding in each court.

(3) Payment in excess of any maximum amount provided in paragraph (2) of this subsection may be made for extended or complex representation whenever the court in which the representation was rendered, or the United States magistrate if the representation was furnished exclusively before him, certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the chief judge of the circuit.

(4) A separate claim for compensation and reimbursement shall be made to the district court for representation before the United States magistrate and the court, and to each appellate court before which the attorney represented the defendant. Each claim shall be supported by a sworn written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the United States magistrate and the court, and the compensation and reimbursement applied for or received in the same case from any other source. The court shall fix the compensation and reimbursement to be paid to the attorney or to the bar association or legal aid agency or community defender organization which provided the appointed attorney. In cases where representation is furnished exclusively before a United States magistrate, the claim shall be submitted to him and he shall fix the compensation and reimbursement to be paid. In cases where representation is furnished other than before the United States

magistrate, the district court, or an appellate court, claims shall be submitted to the district court which shall fix the compensation and reimbursement to be paid.

(5) For purposes of compensation and other payments authorized by this section, an order by a court granting a new trial shall be deemed to initiate a new case.

(6) If a person for whom counsel is appointed under this section appeals to an appellate court or petitions for a writ of certiorari, he may do so without prepayment of fees and costs or security therefor and without filing the affidavit required by section 1915(a) of title 28.

(e)(1) Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request them in an ex parte application. Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the person is financially unable to obtain them, the court, or the United States magistrate if the services are required in connection with a matter over which he has jurisdiction, shall authorize counsel to obtain the services.

(2) Counsel appointed under this section may obtain, subject to later review, investigative, expert, or other services without prior authorization if necessary for an adequate defense. The total cost of services obtained without prior authorization may not exceed $150 and expenses reasonably incurred.

(3) Compensation to be paid to a person for services rendered by him to a person under this subsection, or to be paid to an organization for services rendered by an employee thereof, shall not exceed $300, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the court, or by the United States magistrate if the services were rendered in connection with a case disposed of entirely before him, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the chief judge of the circuit.

(f) Whenever the United States magistrate or the court finds that funds are available for payment from or on behalf of a person furnished representation, it may authorize or direct that such funds be paid to the appointed attorney, to the bar association or legal aid agency or community defender organization which provided the appointed attorney, to any person or organization authorized under subsection (e) of this section to render investigative, expert, or other services, or to the court for deposit in the Treasury as a reimbursement to the appropriation, current at the time of payment, to carry out this section. Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for representing a defendant.

(g) Any person [subject to revocation of parole] in custody as a material witness, or seeking relief under section 2241, 2254, or 2255 of title 28 [or section 21505 of this title] may be furnished representation pursuant to the plan whenever the United States magistrate or the court determines that the interests of

justice so require and such person is financially unable to obtain representation. Payment for such representation may be as provided in subsections (d) and (e) of this section.

(h)(1) A district or a part of a district in which at least 200 persons annually require the appointment of counsel may establish a defender organization as provided for under subparagraph (A) or (B) of paragraph (2) of this subsection or both. Two adjacent districts or parts of districts may aggregate the number of persons required to be represented to establish eligibility for a defender organization to serve both areas. In the event that adjacent districts or parts of districts are located in different circuits, the plan for furnishing representation shall be approved by the judicial council of each circuit.

(2)(A) A Federal Public Defender Organization shall consist of one or more full-time salaried attorneys. An organization for a district or part of a district or 2 adjacent districts or parts of districts shall be supervised by a Federal Public Defender appointed by the judicial council of the circuit, without regard to the provisions of title 5 governing appointments in the competitive service, after considering recommendations from the district court or courts to be served. This paragraph does not authorize more than one Federal Public Defender within a single judicial district. The Federal Public Defender shall be appointed for a term of 4 years, unless sooner removed by the judicial council of the circuit for incompetency, misconduct in office, or neglect of duty. The compensation of the Federal Public Defender shall be fixed by the judicial council of the circuit at a rate not to exceed the compensation received by the United States attorney for the district where representation is furnished or, if 2 districts or parts of districts are involved, the compensation of the higher paid United States attorney of the districts. The Federal Public Defender may appoint, without regard to the provisions of title 5 governing appointments in the competitive service, full-time attorneys in such number as may be approved by the Judicial Council of the District and other personnel in such number as may be approved by the Director of the Administrative Office of the United States Courts. Compensation paid to such attorneys and other personnel of the organization shall be fixed by the Federal Public Defender at a rate not to exceed that paid to attorneys and other personnel of similar qualifications and experience in the Office of the United States attorney in the district where representation is furnished or, if 2 districts or parts of districts are involved, the higher compensation paid to persons of similar qualifications and experience in the districts. Neither the Federal Public Defender nor any attorney so appointed by him may engage in the private practice of law. Each organization shall submit to the Director of the Administrative Office of the United States Courts, at the time and in the form prescribed by such Director, reports of such organization's activities, financial position, and proposed budget. The Director of the Administrative Office shall submit, similarly as under section 605 of title 28, and subject to the conditions of that section, a budget for each

organization for each fiscal year and shall out of the appropriations therefor make payments to and on behalf of each organization. Payments under this subparagraph to an organization shall be in lieu of payments under subsection (d) or (e) of this section.

(B) A Community Defender Organization shall be a nonprofit defense counsel service established and administered by a group authorized by the plan to provide representation. The organization shall be eligible to furnish attorneys and receive payments under this section if its bylaws are set forth in the plan of the district or districts in which it will serve. Each organization shall submit to the Judicial Conference of the United States an annual report setting forth its activities and financial position and the anticipated caseload and expenses for the coming year. Upon application an organization may, to the extent approved by the Judicial Conference of the United States—

(i) receive an initial grant for expenses necessary to establish the organization; and

(ii) in lieu of payments under subsection (d) or (e) of this section, receive periodic sustaining grants to provide representation and other expenses pursuant to this section.

(i) Each district court and judicial council of a circuit shall submit a report on the appointment of counsel within its jurisdiction to the Administrative Office of the United States Courts in such form and at such times as the Judicial Conference of the United States may specify. The Judicial Conference of the United States may, from time to time, issue rules and regulations governing the operation of plans formulated under this section.

(j) There are authorized to be appropriated to the United States courts, out of any money in the Treasury not otherwise appropriated, sums necessary to carry out the provisions of this section. When so specified in appropriation acts, such appropriations shall remain available until expended. Payments from such appropriations shall be made under the supervision of the Director of the Administrative Office of the United States Courts.

(k) As used in this section, the term "district court" includes the District Court of the Virgin Islands, the District Court of Guam, and the district courts of the United States created by chapter 5 of title 28.

(l) The provisions of this section, other than subsection (h) shall apply in the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit. The provisions of this section do not apply to the Superior Court of the District of Columbia and the District of Columbia Court of Appeals.

§ 5102. Appeal by United States

(a) In a criminal case an appeal by the United States shall lie to a court of appeals from a decision, judgement, or order of a district court dismissing an indictment or information as to any one or more counts, except that no appeal

shall lie where the double jeopardy clause of the United States Constitution prohibits further prosecution.

(b) An appeal by the United States shall lie to a court of appeals from a decision or order of a district courts suppressing or excluding evidence or requiring the return of seized property in a criminal proceeding, not made after the defendant has been put in jeopardy and before the verdict or finding on an indictment or information, if the United States attorney certifies to the district court that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding.

(c) The appeal in all such cases shall be taken within 30 days after the decision, judgment or order has been rendered and shall be diligently prosecuted.

(d) Pending the prosecution and determination of the appeal under this section, the defendant shall be released in accordance with chapter 63 of this title.

(e) The provisions of this section shall be liberally construed to effectuate its purposes.

§ 5103. Procedure to and including verdict

The Supreme Court of the United States shall have the power to prescribe, from time to time, rules of pleading, practice, and procedure with respect to any or all proceedings prior to and including verdict, or finding of guilty or not guilty by the court if a jury has been waived, or plea of guilty, in criminal cases and proceedings to punish for criminal contempt of court in the United States district courts, in the district court for the District of the Virgin Islands, in the Supreme Court of Puerto Rico, and in proceedings before United States magistrates. Such rules shall not take effect until they have been reported to Congress by the Chief Justice at or after the beginning of a regular session thereof but not later than the first day of May, and until the expiration of 90 days after they have been thus reported. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

§ 5104. Procedure after verdict

(a) The Supreme Court of the United States shall have the power to prescribe, from time to time, rules of practice and procedure with respect to any or all proceedings after verdict, or finding of guilt by the court if a jury has been waived, or plea of guilty, in criminal cases and proceedings to punish for criminal contempt in the United States district courts, in the district court for the District of the Virgin Islands, in the Supreme Court of Puerto Rico, in the United States courts of appeals, and in the Supreme Court of the United States. This section shall not give the Supreme Court power to abridge the right of the accused to apply for withdrawal of a plea of guilty, if such application be made within 10 days after entry of such plea, and before sentence is imposed.

(b) The right of appeal shall continue in those cases in which appeals are authorized by law, but the rules made as herein authorized may prescribe the times for and manner of taking appeals and applying for writs of certiorari and

preparing records and bills of exceptions and the conditions on which supersedeas or bail may be allowed.

(c) The Supreme Court may fix the dates when such rules shall take effect and the extent to which they shall apply to proceedings then pending, and after they become effective all laws in conflict therewith shall be of no further force.

§ 5105. Rules of procedure in cases conducted by magistrates; practice and appeal

(a) In all cases of conviction by a United States magistrate an appeal of right shall lie from the judgment of the magistrate to a judge of the district court of the district in which the offense was committed.

(b) The Supreme Court shall prescribe rules of procedure and practice for the trial of cases before magistrates and for taking and hearing of appeals to the judges of the district courts of the United States.

CHAPTER 53—ARREST, LAW ENFORCEMENT, AND OTHER PRELIMINARY MATTERS

§ 5301. Indictment and list of jurors and witnesses for prisoner in capital cases

A person charged with treason or other capital offense shall at least 3 entire days before commencement of trial be furnished with a copy of the indictment and a list of the veniremen, and of the witnesses to be produced on the trial for proving the indictment, stating the place of abode of each venireman and witness.

§ 5302. Demands for production of statements and reports of witnesses

(a) In any criminal prosecution brought by the United States, no statement or report in the possession of the United States which was made by a Government witness or prospective Government witness (other than the defendant) shall be the subject of subpena, discovery, or inspection until such witness has testified on direct examination in the trial of the case.

(b) After a witness called by the United States has testified on direct examination, the court shall, on motion of the defendant, order the United States to produce any statement (as defined in subsection (e) of this section) of the witness

in the possession of the United States which relates to the subject matter as to which the witness has testified. If the entire contents of any such statement relate to the subject matter of the testimony of the witness, the court shall order it to be delivered directly to the defendant for his examination and use.

(c) If the United States claims that any statement ordered to be produced under this section contains matter which does not relate to the subject matter of the testimony of the witness, the court shall order the United States to deliver such statement for the inspection of the court in camera. Upon such delivery the court shall excise the portions of such statement which do not relate to the subject matter of the testimony of the witness. With such material excised, the court shall then direct delivery of such statement to the defendant for the defendant's use. If, pursuant to such procedure, any portion of such statement is withheld from the defendant and the defendant objects to such withholding, and the trial is continued to an adjudication of the guilt of the defendant, the entire text of such statement shall be preserved by the United States and, in the event the defendant appeals, shall be made available to the appellate court for the purpose of determining the correctness of the ruling of the trial judge. Whenever any statement is delivered to a defendant pursuant to this section, the court in its discretion, upon application of that defendant, may recess proceedings in the trial for such time as it may determine to be reasonably required for the examination of such statement by that defendant and that defendants preparation for use of such statement in the trial.

(d) If the United States elects not to comply with an order of the court under subsection (b) or (c) of this section to deliver to the defendant any such statement, or such portion thereof as the court may direct, the court shall strike from the record the testimony of the witness, and the trial shall proceed unless the court in its discretion shall determine that the interests of justice require that a mistrial be declared.

(e) As used in subsections (b), (c), and (d) of this section, the term "statement" in relation to any witness called by the United States means—

(1) a written statement made by such witness and signed or otherwise adopted or approved by such witness;

(2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by such witness and recorded contemporaneously with the making of such oral statement; or

(3) a statement, however taken or recorded, or a transcription thereof, if any, made by such witness to a grand jury.

§ 5303. Power of courts and magistrates

(a) For any offense against the United States, the offender may, by any justice or judge of the United States, or by any United States magistrate, or by any chancellor, judge of a supreme or superior court, chief or first judge of the

common pleas, mayor of a city, justice of the peace, or other magistrate, of any State where the offender may be found, and at the expense of the United States, be arrested and imprisoned or released as provided in chapter 63 of this title as the case may be, for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the office of the clerk of such court, together with the recognizances of the witnesses for their appearances to testify in the case.

(b) A United States judge or magistrate shall proceed under this section according to rules promulgated by the Supreme Court of the United States. Any State judge or magistrate acting hereunder may proceed according to the usual mode or procedure of such judge's or magistrate's State but such judge's or magistrate's acts and orders shall have no effect beyond determining to hold the prisoner for trial or to discharge the prisoner from arrest.

§ 5304. Extraterritorial jurisdiction

(a) Section 5303 of this title applies—

(1) in any country where the United States exercises extraterritorial jurisdiction for the arrest and removal therefrom to the United States of any citizen or national of the United States who is a fugitive from justice charged with or convicted of the commission of any offense against the United States; and

(2) throughout the United States for the arrest and removal therefrom to the jurisdiction of any officer or representative of the United States vested with judicial authority in any country in which the United States exercises extraterritorial jurisdiction, of any citizen or national of the United States who is a fugitive from justice charged with or convicted of the commission of any offense against the United States in any country where it exercises extraterritorial jurisdiction.

(b) Such fugitive first mentioned may, by any officer or representative of the United States vested with judicial authority in any country in which the United States exercises extraterritorial jurisdiction and agreeably to the usual mode of process against offenders subject to such jurisdiction, be arrested and imprisoned or admitted to bail, as the case may be, pending the issuance of a warrant for his removal, which warrant the principal officer or representative of the United States vested with judicial authority in the country where the fugitive shall be found shall seasonably issue, and the United States marshal or corresponding officer shall execute.

(c) Such marshal or other officer, or the deputies of such marshal or officer, when engaged in executing such warrant without the jurisdiction of the court to which they are attached, shall have all the powers of a marshal of the United States so far as such powers are requisite for the prisoner's safekeeping and the execution of the warrant.

§ 5305. Security of the peace and good behavior

The justices or judges of the United States, the United States magistrates, and the judges and other magistrates of the several States, who are or may be authorized by law to make arrests for offenses against the United States, shall have the like authority to hold to security of the peace and for good behavior, in cases arising under the Constitution and laws of the United States, as may be lawfully exercised by any judge or justice of the peace of the respective States, in cases cognizable before them.

§ 5306. Warrant for removal

Only one writ or warrant is necessary to remove a prisoner from one district to another. One copy thereof may be delivered to the sheriff or jailer from whose custody the prisoner is taken, and another to the sheriff or jailer to whose custody such prisoner is committed, and the original writ, with the marshal's return thereon, shall be returned to the clerk of the district to which he is removed.

§ 5307. Powers of Federal Bureau of Investigation

The Director, Associate Director, Assistant to the Director, Assistant Directors, inspectors, and agents of the Federal Bureau of Investigation of the Department of Justice may carry firearms, serve warrants and subpenas issued under the authority of the United States and make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony.

§ 5308. Powers of marshals and deputies

United States marshals and their deputies may carry firearms and may make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony.

§ 5309. Powers of certain officers relating to offenses involving animals and birds

Any employee authorized by the Secretary of the Interior to enforce [sections 42, 43, and 44 of current title 18 as transferred out, and any officer of the customs, may arrest any person who violates section 42 or 44 of current title 18 as transferred out or who such employee or officer of the customs has probable cause to believe is knowingly and willfully violating section 43 of current title 18 as transferred out,] in such employee's or officer's presence or view, and may execute any warrant or other process issues by an officer or court of competent jurisdiction to enforce the provisions of such sections.

§ 5310. Powers of Secret Service

Subject to the direction of the Secretary of the Treasury, the United States Secret Service, Treasury Department, is authorized to—

(1) protect the person of the President of the United States, the members of his immediate family, the President-elect, the Vice President or other officer next in the order of succession to the Office of President, and the Vice President-elect, and the members of their immediate families unless the members decline such protection;

(2) protect the person of a former President and his wife during his lifetime, the person of a widow of a former President until her death or remarriage, and minor children of a former President until they reach 16 years of age, unless such protection is declined;

(3) protect the person of a visiting head of a foreign state or foreign government and, at the direction of the President, other distinguished foreign visitors to the United States and official representatives of the United States performing special missions abroad;

(4) detect and arrest any person committing any offense against the laws of the United States relating to coins, obligations, and securities of the United States and of foreign governments;

(5) detect and arrest any person violating [any of the provisions of sections 2337, 2338, and 3901 of this title and, insofar as the Federal Deposit Insurance Corporation, Federal land banks, joint-stock land banks and Federal land bank associations are concerned, of sections
of this title];

(6) execute warrants issued under the authority of the United States;

(7) carry firearms;

(8) offer and pay rewards for services or information looking toward the apprehension of criminals;

(9) pay expenses for unforeseen emergencies of a confidential nature under the direction of the Secretary of the Treasury and accounted for solely on his certificate; and

(10) performs such other functions and duties as are authorized by law.

In the performance of their duties under this section, the Director, Deputy Director, Assistant Directors, Assistants to the Director, inspectors, and agents of the Secret Service are authorized to make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony. Moneys expended from Secret Service appropriations for the purchase of counterfeits and subsequently recovered shall be reimbursed to the appropriation current at the time of deposit.

§ 5311. Bankruptcy investigations

(a) Any [referee, receiver,] or trustee having reasonable grounds for believing that any violation of the bankruptcy laws or other laws of the United States relating to insolvent debtors, receiverships or reorganization plans has been committed, or that an investigation should be made in connection therewith, shall report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and any offense believed to have been committed. Where one of such officers has made such report, the others need not do so.

(b) The United States attorney thereupon shall inquire into the facts and report thereon to the referee, and if it appears probable that any such offense has been committed, shall without delay, present the matter to the grand jury, unless upon inquiry and examination the United States attorney decides that the ends of public justice do not require investigation or prosecution, in which case the United States attorney shall report the facts to the Attorney General for the Attorney General's direction.

§ 5312. Interned belligerent nationals

Whoever, belonging to the armed land or naval forces of a belligerent nation or belligerent faction and being interned in the United States, in accordance with the law of nations, leaves or attempts to leave said jurisdiction, or leaves or attempts to leave the limits of internment without permission from the proper official of the United States in charge, or willfully overstays a leave of absence granted by such official, shall be subject to arrest by any marshal or deputy marshal of the United States, or by the military or naval authorities thereof, and shall be returned to the place of internment and there confined and safely kept for such period of time as the official of the United States in charge shall direct.

§ 5313. Rewards and appropriations therefor

(a) There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $25,000 as a reward or rewards for the capture of anyone who is charged with violation of criminal laws of the United States or any State or of the District of Columbia, and an equal amount as a reward or rewards for information leading to the arrest of any such person, to be apportioned and expended in the discretion of, and upon such conditions as may be imposed by, the Attorney General of the United States. Not more than $25,000 shall be expended for information or capture of any one person.

(b) If any of such persons shall be killed in resisting lawful arrest, the Attorney General may pay any part of the reward money in the Attorney General's discretion to the person or persons whom the Attorney General shall adjudge to be entitled thereto but no reward money shall be paid to any official or employee of the Department of Justice of the United States.

§ 5314. Powers of postal personnel

(a) Subject to subsection (b) of this section, officers and employees of the Postal Service performing duties related to the inspection of postal matters may, to the extent authorized by the Board of Governors—

(1) serve warrants and subpenas issued under the authority of the United States;

(2) make arrests without warrant for offenses against the United States committed in their presence; and

(3) make arrests without warrant for felonies cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a felony.

(b) The powers granted by subsection (a) of this section shall be exercised only in the enforcement of laws regarding property of the United States in the custody of the Postal Service, including property of the Postal Service, the use of the mails, and other postal offenses.

§ 5315. Preliminary examination

(a) Except as otherwise provided by this section, a preliminary examination shall be held within the time set by the judge or magistrate under subsection (b) of this section, to determine whether there is probable cause to believe that an offense has been committed and that the arrested person has committed it.

(b) The date for the preliminary examination shall be fixed by the judge or magistrate at the initial appearance of the arrested person. Except as provided by subsection (c) of this section, or unless the arrested person waives the preliminary examination, such examination shall be held within a reasonable time following initial appearance, but in any event not later than—

(1) the tenth day following the date of the initial appearance of the arrested person before such officer if the arrested person is held in custody without any provision for release, or is held in custody for failure to meet the conditions of release imposed, or is released from custody only during specified hours of the day; or

(2) the twentieth day following the date of the initial appearance if the arrested person is released from custody under any condition other than a condition described in paragraph (1) of this subsection.

(c) With the consent of the arrested person, the date fixed by the judge or magistrate for the preliminary examination may be a date later than that prescribed by subsection (b) of this section, or may be continued one or more times to a date subsequent to the date initially fixed therefor. In the absence of such consent of the accused, the date fixed for the preliminary hearing may be a date later than that prescribed by subsection (b) of this section, or may be continued to a date subsequent to the date initially fixed therefor, only upon the order of a judge of the appropriate United States district court after a finding that extraordinary circumstances exist, and that the delay of the preliminary hearing is indispensable to the interests of justice.

(d) Except as provided by subsection (e) of this section, an arrested person who has not been accorded the preliminary examination required by subsection (a) of this section within the period of time fixed by the judge or magistrate in compliance with subsections (b) and (c) of this section, shall be discharged from custody or from the requirement of bail or any other condition of release, without prejudice, however, to the institution of further criminal proceedings against such arrested person upon the charge upon which such arrested person was arrested.

(e) No preliminary examination in compliance with subsection (a) of this section shall be required to be accorded an arrested person, nor shall such arrested person be discharged from custody or from the requirement of bail or any other condition of release pursuant to subsection (d) of this section, if at any time subsequent to the initial appearance of such person before a judge or magistrate and prior to the date fixed for the preliminary examination under subsections (b) and (c) of this section an indictment is returned or, in appropriate cases, an information is filed against such person in a court of the United States.

(f) Proceedings before United States magistrates under this section shall be taken down by a court reporter or recorded by suitable sound recording equipment. A copy of the record of such proceeding shall be made available at the expense of the United States to a person who makes affidavit that such person is unable to pay or give security therefor, and the expense of such copy shall be paid by the Director or the Administrative Office of the United States Courts.

§ 5316. Surrender of youthful offenders to State authorities; expenses

(a) Whenever any person under 21 years of age has been arrested, charged with the commission of an offense punishable in any court of the United States or of the District of Columbia, and, after investigation by the Department of Justice, it appears that such person has committed an offense or is a delinquent under the laws of any State or of the District of Columbia which can and will assume jurisdiction over such juvenile and will take that juvenile into custody and deal with that juvenile according to the laws of such State or of the District of Columbia, and that it will be to the best interest of the United States and of the juvenile offender, the United States attorney of the district in which such person has been arrested may forego his prosecution and surrender such person as provided in this section.

(b) The United States marshal of such district upon written order of the United States attorney shall convey such person to such State or the District of Columbia, or, if already therein, to any other part thereof and deliver such person into the custody of the proper authority thereof.

(c) Before any person is conveyed from one State to another or from or to the District of Columbia under this section, such person shall signify willingness to be so returned, or there shall be presented to the United States attorney a demand from the executive authority of such State or the District of Columbia, to which the prisoner is to be returned, supported by indictment or affidavit as prescribed by section 5502 of this title.

(d) The expense incident to the transportation of any such person, as authorized in this section, shall be paid from the appropriation "Salaries, Fees, and Expenses, United States Marshals."

CHAPTER 55—EXTRADITION, TRANSFER, AND INTERSTATE AGREEMENT ON DETAINERS

§ 5501. Scope and limitation of sections 5501 through 5515

The provisions of this section and sections 5502 through 5515 of this title relating to the surrender of persons who have committed crimes in foreign countries shall continue in force only during the existence of any treaty of extradition with such foreign government.

§ 5502. Fugitives from State or territory to State, District or territory

Whenever the executive authority of any State or territory demands any person as a fugitive from justice, of the executive authority of any State, district or territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or territory from whence the person so charged has fled, the executive authority of the State, District or territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the

agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within 30 days from the time of the arrest, the prisoner may be discharged.

§ 5503. Fugitives from State, territory, or possession into extraterritorial jurisdiction of United States

(a) Whenever the executive authority of any State, territory, district, or possession of the United States demands any American citizen or national as a fugitive from justice who has fled to a country in which the United States exercises extraterritorial jurisdiction, and produces a copy of an indictment found or an affidavit made before a magistrate of the demanding jurisdiction, charging the fugitive so demanded with having committed treason, felony, or other offense, certified as authentic by the Governor or chief magistrate of such demanding jurisdiction, or other person authorized to act, the officer or representative of the United States vested with judicial authority to whom the demand has been made shall cause such fugitive to be arrested and secured, and notify the executive authorities making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when such agent appears.

(b) If no such agent appears within three months from the time of the arrest, the prisoner may be discharged.

(c) The agent who receives the fugitive into such agent's custody shall be empowered to transport such fugitive to the jurisdiction from which the fugitive has fled.

§ 5504. Fugitives from foreign country to United States

Whenever there is a treaty or convention for extradition between the United States and any foreign government, any justice or judge of the United States, or any magistrate authorized so to do by a court of the United States, or any judge of a court of record of general jurisdiction of any State, may, upon complaint made under oath, charging any person found within his jurisdiction, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, issue a warrant for the apprehension of the person so charged, that such person so charged may be brought before such justice, judge, or magistrate, to the end that the evidence of criminality may be heard and considered. If, on such hearing, such justice, judge or magistrate deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, such justice, judge or magistrate shall certify the same, together with a copy of all the testimony taken before such justice, judge or magistrate to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and such justice, judge, or magistrate shall issue a warrant for the commit-

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ment of the person so charged to the proper jail, there to remain until such surrender shall be made.

§ 5505. Fugitives from country under control of United States into the United States

(a) Whenever any foreign country or territory, or any part thereof, is occupied by or under the control of the United States, any person who, having violated the criminal laws in force therein by the commission of any of the offenses enumerated in paragraphs (1) through (16) of this subsection, departs or flees from justice therein to the United States, shall, when found therein, be liable to arrest and detention by the authorities of the United States, and on the written request or requisition of the military governor or other chief executive officer in control of such foreign country or territory shall be returned and surrendered as hereinafter provided to such authorities for trial under the laws in force in the place where such offense was committed. The enumerated offenses are as follows:

(1) Murder and assault with intent to commit murder.

(2) Counterfeiting or altering money, or uttering or bringing into circulation counterfeit or altered money.

(3) Counterfeiting certificates or coupons of public indebtedness, bank notes, or other instruments of public credit, and the utterance or circulation of the same.

(4) Forgery or altering and uttering what is forged or altered.

(5) Embezzlement or criminal malversation of the public funds, committed by public officers, employees, or depositaries.

(6) Larceny or embezzlement of an amount not less than $100 in value.

(7) Robbery.

(8) Burglary, defined to be the breaking and entering by nighttime into the house of another person with intent to commit a felony therein.

(9) Breaking and entering the house or building of another, whether in the day or nighttime, with the intent to commit a felony therein.

(10) Entering, or breaking and entering the offices of the Government and public authorities, or the offices of banks, banking houses, savings banks, trust companies, insurance or other companies, with the intent to commit a felony therein.

(11) Perjury or the subornation of perjury.

(12) Rape.

(13) Arson.

(14) Piracy by the law of nations.

(15) Murder, assault with intent to kill, and manslaughter, committed on the high seas, on board a ship owned by or in control of citizens or residents of such foreign country or territory and not under the flag of the United States, or of some other government.

(16) Malicious destruction of or attempt to destroy railways, trams, vessels, bridges, dwellings, public edifices, or other buildings, when the act endangers human life.

(b) Sections 5501 through 5515 of this title, so far as applicable, shall govern proceedings authorized by this section. Such proceedings shall be had before a judge of the courts of the United States only, who shall hold such person on evidence establishing probable cause that such person is guilty of the offense charged.

(c) No return or surrender shall be made of any person charged with the commission of any offense of a political nature.

(d) If so held, such person shall be returned and surrendered to the authorities in control of such foreign country or territory on the order of the Secretary of State of the United States, and such authorities shall secure to such a person a fair and impartial trial.

§ 5506. Secretary of State to surrender fugitive

(a) The Secretary of State may order the person committed under sections 5504 or 5505 of this title to be delivered to any authorized agent of such foreign government, to be tried for the offense of which charged.

(b) Such agent may hold such person in custody, and take him to the territory of such foreign government, pursuant to such treaty.

(c) A person so accused who escapes may be retaken in the same manner as any person accused of any offense.

§ 5507. Provisional arrest and detention within extraterritorial jurisdiction

(a) The provisional arrest and detention of a fugitive, under sections 5304 and 5503 of this title in advance of the presentation of formal proofs, may be obtained by telegraph upon the request of the authority competent to request the surrender of such fugitive addressed to the authority competent to grant such surrender. Such request shall be accompanied by an express statement that a warrant for the fugitive's arrest has been issued within the jurisdiction of the authority making such request charging the fugitive with the commission of the crime for which his extradition is sought to be obtained.

(b) No person shall be held in custody under telegraphic request by virtue of this section for more than 90 days.

§ 5508. Time of commitment pending extradition

Whenever any person who is committed for rendition to a foreign government to remain until delivered up in pursuance of a requisition, is not so delivered up and conveyed out of the United States within two calendar months after such commitment, over and above the time actually required to convey the prisoner from the jail to which he was committed, by the readiest way, out of the United States, any judge of the United States, or of any State, upon application made to him by or on behalf of the person so committed, and upon proof made to him that

reasonable notice of the intention to make such application has been given to the Secretary of State, may order the person so committed to be discharged out of custody, unless sufficient cause is shown to such judge why such discharge ought not to be ordered.

§ 5509. Place and character of hearing

Hearings in cases of extradition under treaty stipulation or convention shall be held on land, publicly, and in a room or office easily accessible to the public.

§ 5510. Evidence on hearing

Depositions, warrants, or other papers or copies thereof offered in evidence upon the hearing of any extradition case shall be received and admitted as evidence on such hearing for all the purposes of such hearing if they shall be properly and legally authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that the same, so offered, are authenticated in the manner required.

§ 5511. Witnesses for indigent fugitives

On the hearing of any case under a claim of extradition by a foreign government, upon affidavit being filed by the person charged setting forth that there are witnesses whose evidence is material to his defense, that he cannot safely go to trial without them, what he expects to prove by each of them, and that he is not possessed of sufficient means, and is actually unable to pay the fees of such witnesses, the judge or magistrate hearing the matter may order that such witnesses be subpenaed; and the costs incurred by the process, and the fees of witnesses, shall be paid in the same manner as in the case of witnesses subpenaed in behalf of the United States.

§ 5512. Protection of accused

Whenever any person is delivered by any foreign government to an agent of the United States, for the purpose of being brought within the United States and tried for any offense of which he is duly accused, the President shall have power to take all necessary measures for the transportation and safekeeping of such accused person, and for such accused person's security against lawless violence, until the final conclusion of such accused person's trial for the offenses specified in the warrant of extradiction, and until such accused person's final discharge from custody or imprisonment for or on account of such offenses, and for a reasonable time thereafter, and may employ such portion of the land or naval forces of the United States or of the militia thereof, as may be necessary for the safekeeping and protection of the accused.

§ 5513. Receiving agent's authority over offenders

A duly appointed agent to receive, in behalf of the United States, the delivery, by a foreign government, of any person accused of crime committed within the United States, and to convey such person to the place of his trial, shall have all

the powers of a marshal of the United States, in the several districts through which it may be necessary for such agent to pass with such prisoner, so far as such power is requisite for the prisoner's safekeeping.

§ 5514. Transportation of fugitive by receiving agent

Any agent appointed as provided in section 5502 of this title who receives the fugitive into such agent's custody is empowered to transport such fugitive to the State or territory from which such fugitive has fled.

§ 5515. Payment of fees and costs

(a) All costs or expenses incurred in any extradition proceeding in apprehending, securing, and transmitting a fugitive shall be paid by the demanding authority.

(b) All witness fees and costs of every nature in cases of international extradition, including the fees of the magistrate, shall be certified by the judge or magistrate before whom the hearing shall take place to the Secretary of State of the United States, and the same shall be paid out of appropriations to defray the expenses of the judiciary or the Department of Justice as the case may be.

(c) The Attorney General shall certify to the Secretary of State the amounts to be paid to the United States on account of such fees and costs in extradition cases by the foreign government requesting the extradition, and the Secretary of State shall cause such amounts to be collected and transmitted to the Attorney General for deposit in the Treasury of the United States.

§ 5516. Scope and limitations of sections 5516 through 5531

(a) The provisions of this section and sections 5517 through 5531 of this title (relating to the transfer of offenders) shall be applicable only when a treaty providing for such a transfer is in force, and shall only be applicable to transfers of offenders to and from a foreign country pursuant to such a treaty. A sentence imposed by a foreign country upon an offender who is subsequently transferred to the United States pursuant to a treaty shall be subject to being fully executed in the United States even though the treaty under which the offender was transferred is no longer in force.

(b) An offender may be transferred from the United States pursuant to this section and sections 5517 through 5531 of this title only to a country of which the offender is a citizen or national. Only an offender who is a citizen or national of the United States may be transferred to the United States. An offender may be transferred to or from the United States only with the offender's consent, and only if the offense for which the offender was sentenced satisfies the requirement of double criminality as defined in section 5517(1) of this title. Once an offender's consent to transfer has been verified by a verifying officer, that consent shall be irrevocable. If at the time of transfer the offender is under 18 years of age the transfer shall not be accomplished unless consent to the transfer be given by a parent or guardian or by an appropriate court of the sentencing country.

(c) An offender shall not be transferred to or from the United States if a proceeding by way of appeal or of collateral attack upon the conviction or sentence be pending.

(d) The United States upon receiving notice from the country which imposed the sentence that the offender has been granted a pardon, commutation, or amnesty, or that there has been an ameliorating modification or a revocation of the sentence shall give the offender the benefit of the action taken by the sentencing country.

§5517. Definitions for sections 5516 through 5531

As used in sections 5516 through 5531 of this title—

(1) the term "double criminality" means that at the time of transfer of an offender the offense for which he has been sentenced is still an offense in the transferring country and is also an offense in the receiving country. With regard to a country which has a federal form of government, an act shall be deemed to be an offense in that country if it is an offense under the federal laws or the laws of any state or province thereof;

(2) the term "imprisonment" means a penalty imposed by a court under which the individual is confined to an institution;

(3) the term "juvenile" means—

(A) a person who is under 18 years of age; or

(B) for the purpose of proceedings and disposition under [chapter 313 of this title] because of an act of juvenile delinquency, a person who is under 21 years of age;

(4) the term "juvenile delinquency" means—

(A) a violation of the laws of the United States or a State thereof or of a foreign country committed by a juvenile which would have been a crime if committed by an adult; or

(B) noncriminal acts committed by a juvenile for which supervision or treatment by juvenile authorities of the United States, a State thereof, or of the foreign country concerned is authorized;

(5) the term "offender" means a person who has been convicted of an offense or who has been adjudged to have committed an act of juvenile delinquency;

[(6) the term "parole" means any form of release of an offender from imprisonment to the community by a releasing authority prior to the expiration of his sentence, subject to conditions imposed by the releasing authority and to its supervision;]

(7) the term "probation" means any form of a sentence to a penalty of imprisonment the execution of which is suspended and the offender is permitted to remain at liberty under supervision and subject to conditions for the breach of which the suspended penalty of imprisonment may be ordered executed;

(8) the term "sentence" means not only the penalty imposed but also the judgment of conviction in a criminal case or a judgment of acquittal in the same proceeding, or the adjudication of delinquency in a juvenile delinquency proceeding or dismissal of allegations of delinquency in the same proceedings;

(9) the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States.

(10) the term "transfer" means a transfer of an individual for the purpose of the execution in one country of a sentence imposed by the courts of another country; and

(11) the term "treaty" means a treaty under which an offender sentenced in the courts of one country may be transferred to the country of which he is a citizen or national for the purpose of serving the sentence.

§5518. Authority of the Attorney General

The Attorney General is authorized—

(1) to act on behalf of the United States as the authority referred to in a treaty;

(2) to receive custody of offenders under a sentence of imprisonment, on parole, or on probation who are citizens or nationals of the United States transferred from foreign countries and as appropriate confine them in penal or correctional institutions, or assign them to the parole or probation authorities for supervision;

(3) to transfer offenders under a sentence of imprisonment, [on parole,] or on probation to the foreign countries of which they are citizens or nationals;

(4) to make regulations for the proper implementation of such treaties in accordance with sections 5516 through 5531 of this title and to make regulations to implement sections 5516 through 5531 of this title;

(5) to render to foreign countries and to receive from them the certifications and reports required to be made under such treaties;

(6) to make arrangements by agreement with the States for the transfer of offenders in their custody who are citizens or nationals of foreign countries to the foreign countries of which they are citizens or nationals and for the confinement, where appropriate, in State institutions of offenders transferred to the United States;

(7) to make agreements and establish regulations for the transportation through the territory of the United States of offenders convicted in a foreign country who are being transported to a third country for the execution of their sentences, the expenses of which shall be paid by the country requesting the transportation;

(8) to make agreements with the appropriate authorities of a foreign country and to issue regulations for the transfer and treatment of juveniles who are transferred pursuant to treaty, the expenses of which shall be paid by the country of which the juvenile is a citizen or national;

(9) in concert with the Secretary of Health, Education, and Welfare, to make arrangements with the appropriate authorities of a foreign country and to issue regulations for the transfer and treatment of individuals who are accused of an offense but who have been determined to be mentally ill; the expenses of which shall be paid by the country of which such person is a citizen or national;

(10) to designate agents to receive, on behalf of the United States, the delivery by a foreign government of any citizen or national of the United States being transferred to the United States for the purpose of serving a sentence imposed by the courts of the foreign country, and to convey such citizen or national to the place designated by the Attorney General. Such agent shall have all the powers of a marshal of the United States in the several districts through which it may be necessary for such agent to pass with the offender, so far as such power is requisite for the offender's transfer and safekeeping; within the territory of a foreign country such agent shall have such powers as the authorities of the foreign country may accord such agent; and

(11) to delegate the authority conferred by sections 5516 through 5531 of this title to officers of the Department of Justice.

§ 5519. Applicability of United States laws

All laws of the United States, as appropriate, pertaining to prisoners, probationers, parolees, and juvenile offenders shall be applicable to offenders transferred to the United States, unless a treaty or sections 5516 through 5531 of this title provide otherwise.

§ 5520. Transfer of offenders on probation

(a) Prior to consenting to the transfer to the United States of an offender who is on probation, the Attorney General shall determine that the appropriate United States district court is willing to undertake the supervision of the offender.

(b) Upon the receipt of an offender on probation from the authorities of a foreign country, the Attorney General shall cause the offender to be brought before the United States district court which is to exercise supervision over the offender.

(c) The court shall place the offender under supervision of the probation officer of the court. The offender shall be supervised by a probation officer, under such conditions as are deemed appropriate by the court as though probation had been imposed by the United States district court.

(d) The probation may be revoked in accordance with [section 30307] of this title and rule 32(f) of the Federal Rules of Criminal Procedure. A violation of the

conditions of probation shall constitute grounds for revocation. If probation is revoked the suspended sentence imposed by the sentencing court shall be executed.

(e) Sections 5521 and 5522 of this title apply following a revocation of probation.

(f) Prior to consenting to the transfer from the United States of an offender who is on probation, the Attorney General shall obtain the assent of the court exercising jurisdiction over the probationer.

§ 5521. Transfer of offenders serving sentence of imprisonment

(a) Except as provided elsewhere in this section, an offender serving a sentence of imprisonment in a foreign country transferred to the custody of the Attorney General shall remain in the custody of the Attorney General under the same conditions and for the same period of time as an offender who had been committed to the custody of the Attorney General by a court of the United States for the period of time imposed by the sentencing court.

(b) The transferred offender shall be given credit toward service of the sentence for any days, prior to the date of commencement of the sentence, spent in custody in connection with the offense or acts for which the sentence was imposed.

(c)(1) The transferred offender shall be entitled to all credits for good time, for labor, or any other credit toward the service of the sentence which had been given by the transferring country for time served as of the time of the transfer.

(2) Any sentence for an offense against the United States, imposed while the transferred offender is serving the sentence of imprisonment imposed in a foreign country, shall be aggregated with the foreign sentence, in the same manner as if the foreign sentence was one imposed by a United States district court for an offense against the United States.

[§ 5522. Transfer of offenders on parole; parole of offenders transferred

[(a) Upon the receipt of an offender who is on parole from the authorities of a foreign country, the Attorney General shall assign the offender to the United States Parole Commission for supervision.

[(b) The United States Parole Commission and the Chairman of the Commission shall have the same powers and duties with reference to an offender transferred to the United States to serve a sentence of imprisonment or who at the time of transfer is on parole as they have with reference to an offender convicted in a court of the United States except as otherwise provided in sections 20716 through 20731 of this title or in the pertinent treaty. Sections 31119; 41301 through 41304; 41305 (d), (e) and (h); 41306 through 41316 of this title shall be applicable.

[(c) An offender transferred to the United States to serve a sentence of imprisonment may be released on parole at such time as the Parole Commission may determine.]

§ 5523. Verification of consent of offender to transfer from the United States

(a) Prior to the transfer of an offender from the United States, the fact that the offender consents to such transfer and that such consent is voluntary and with full knowledge of the consequences thereof shall be verified by a United States magistrate or a judge as defined in section 451 of title 28.

(b) The verifying officer shall inquire of the offender whether the offender understands and agrees that the transfer will be subject to the following conditions:

(1) Only the appropriate courts in the United States may modify or set aside the conviction or sentence, and any proceedings seeking such action may only be brought in such courts.

(2) The sentence shall be carried out according to the laws of the country to which the offender is to be transferred and that those laws are subject to change.

(3) If a court in the country to which the offender is transferred should determine upon a proceeding initiated by the offender or on behalf of the offender that the offender's transfer was not accomplished in accordance with the treaty or laws of that country, the offender may be returned to the United States for the purpose of completing the sentence if the United States requests the offender's return.

(4) Such offender's consent to transfer, once verified by the verifying officer, is irrevocable.

(c) The verifying officer, before determining that an offender's consent is voluntary and given with full knowledge of the consequences, shall advise the offender of the offender's rights to consult with counsel as provided by sections 5516 through 5531 of this title. If the offender wishes to consult with counsel before giving such offender's consent, such offender shall be advised that the proceedings will be continued until such offender has had an opportunity to consult with counsel.

(d) The verifying officer shall make the necessary inquiries to determine that the offender's consent is voluntary and not the result of any promises, threats, or other improper inducements, and that the offender accepts the transfer subject to the conditions set forth in subsection (b) of this section. The consent and acceptance shall be on an appropriate form prescribed by the Attorney General.

(e) The proceedings shall be taken down by a reporter or recorded by suitable sound recording equipment. The Attorney General shall maintain custody of the records.

§ 5524. Verification of consent of offender to transfer to the United States

(a) Prior to the transfer of an offender to the United States, the fact that the offender consents to such transfer and that such consent is voluntary and with full knowledge of the consequences thereof shall be verified in the country in which the sentence was imposed by a United States magistrate, or by a citizen specifically designated by a judge of the United States as defined in section 451 of title 28. The designation of a citizen who is an employee or officer of a department or agency of the United States shall be with the approval of the head of that department or agency.

(b) The verifying officer shall inquire of the offender whether he understands and agrees that the transfer will be subject to the following conditions:

(1) Only the country in which the offender was convicted and sentenced can modify or set aside the conviction or sentence, and any proceedings seeking such action may only be brought in that country.

(2) The sentence shall be carried out according to the laws of the United States and that those laws are subject to change.

(3) If a United States Court should determine upon a proceeding initiated by the offender or on behalf of the offender that his transfer was not accomplished in accordance with the treaty or laws of the United States, the offender may be returned to the country which imposed the sentence for the purpose of completing the sentence if that country requests the offender's return.

(4) Such offender's consent to transfer, once verified by the verifying officer, is irrevocable.

(c) The verifying officer, before determining that an offender's consent is voluntary and given with full knowledge of the consequences, shall advise the offender of the offender's right to consult with counsel as provided in sections 5516 through 5531 of this title. If the offender wishes to consult with counsel before giving such offender's consent, such offender shall be advised that the proceedings will be continued until such offender has had an opportunity to consult with counsel.

(d) The verifying officer shall make the necessary inquiries to determine that the offender's consent is voluntary and not the result of any promises, threats, or other improper inducements, and that the offender accepts the transfer subject to the conditions set forth in subsection (b) of this section. The consent and acceptance shall be on an appropriate form prescribed by the Attorney General.

(e) The proceedings shall be taken down by a reporter or recorded by suitable sound recording equipment. The Attorney General shall maintain custody of the records.

§ 5525. Right to counsel, appointment of counsel

In proceedings to verify consent of an offender for transfer, the offender shall have the right to advice of counsel. If the offender is financially unable to obtain counsel—

(1) counsel for proceedings conducted under section 5523 of this title shall be appointed in accordance with section 5101 of this title; and such appointment shall be considered an appointment in a misdemeanor case for purposes of compensation under such section;

(2) counsel for proceedings conducted under section 5525 of this title shall be appointed by the verifying officer under such regulations as may be prescribed by the Director of the Administrative Office of the United States Courts; the Secretary of State shall make payments of fees and expenses of the appointed counsel, in amounts approved by the verifying officer, which shall not exceed the amounts authorized under section 5101 of this title for representation in a misdemeanor case, but payment in excess of the maximum amount authorized may be made for extended or complex representation whenever the verifying officer certifies that the amount of the excess payment is necessary to provide for fair compensation, and the payment is approved by the chief judge of the United States court of appeals for the appropriate circuit. Counsel from other agencies in any branch of the Government may be appointed, but in such cases the Secretary of State shall pay counsel directly, or reimburse the employing agency for travel and transportation expenses. Notwithstanding section 3648 of the Revised Statutes of the United States (31 U.S.C. 529), the Secretary may make advance payments of travel and transportation expenses to counsel appointed under this subsection.

§ 5526. Transfer of juveniles

An offender transferred to the United States because of an act which would have been an act of juvenile delinquency had it been committed in the United States or any State thereof shall be subject to chapter [313] of this title except as otherwise provided in the relevant treaty or in an agreement under such treaty between the Attorney General and the authority of the foreign country.

§ 5527. Prosecution barred by foreign conviction

An offender transferred to the United States shall not be detained, prosecuted, tried, or sentenced by the United States, or any State thereof for any offense the prosecution of which would have been barred if the sentence upon which the transfer was based had been by a court of the jurisdiction seeking to prosecute the transferred offender, or if prosecution would have been barred by the laws of the jurisdiction seeking to prosecute the transferred offender if the sentence on which the transfer was based had been issued by a court of the United States or by a court of another State.

§ 5528. Loss of rights, disqualification

An offender transferred to the United States to serve a sentence imposed by a foreign court shall not incur any loss of civil, political, or civic rights nor incur any disqualification other than those which under the laws of the United States or of the State in which the issue arises would result from the fact of the conviction in the foreign country.

§ 5529. Status of alien offender transferred to a foreign country

(a) An alien who is deportable from the United States but who has been granted voluntary departure pursuant to section 242(b) or 244(e) of the Immigration and Nationality Act (8 U.S.C. 1252(b), 1254(e)), and who is transferred to a foreign country under sections 5516 through 5531 of this title shall be deemed for all purposes to have voluntarily departed from this country.

(b) An alien who is subject of an order of deportation from the United States under section 242 of the Immigration and Nationality Act (8 U.S.C. 1252), who is transferred to a foreign country under sections 5516 through 5531 of this title shall be deemed for all purposes to have been deported from this country.

(c) An alien who is the subject of an order of exclusion and deportation from the United States under section 236 of the Immigration and Nationality Act (8 U.S.C. 1226), who is transferred to a foreign country under sections 5516 through 5531 of this title shall be deemed for all purposes to have been excluded from admission and deported from the United States.

§ 5530. Return of transferred offenders

(a) Upon a final decision by the courts of the United States that the transfer of the offender to the United States was not in accordance with the treaty or the laws of the United States and ordering the offender released from serving the sentence in the United States the offender may be returned to the country from which he was transferred to complete the sentence if the country in which the sentence was imposed requests such offender's return. The Attorney General shall notify the appropriate authority of the country which imposed the sentence, within ten days, of a final decision of a court of the United States ordering the offender released. The notification shall specify the time within which the sentencing country must request the return of the offender which shall be no longer than 30 days.

(b)(1) Upon receiving a request from the sentencing country that the offender ordered released be returned for the completion of such offender's sentence, the Attorney General may file a complaint for the return of the offender with any justice or judge of the United State or any authorized magistrate within whose jurisdiction the offender is found. The complaint shall be upon oath and supported by affidavits establishing that the offender was convicted and sentenced by the courts of the country to which his return is requested; the offender was transferred to the United States for the execution of such offender's sentence; the offender was ordered released by a court of the United States before he had

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Article I. Powers of Congress and Enumeration

Article II. Executive Branch

Article III. Judicial Branch

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SECTION 206. APPLICATION TO STATE COURT FOR ORDER OF ACCEPTANCE AND ENFORCEMENT.

(a) A petition under this section must be verified and must include a certified copy of any child-custody determination sought to be registered. The petition must state whether to the petitioner's knowledge, the child-custody determination has been vacated, modified, or overturned by any court or whether any proceeding that could affect the current enforceability of the child-custody determination is pending in any court and must identify the date, parties, and contents of each proceeding. The petition must state the petitioner's address and the respondent's address, if known, and provide any other information necessary to confirm the jurisdiction of the court rendering the child-custody determination and the enforceability of the child-custody determination in this State.

(b) Upon receipt of a petition and a certified copy of a child-custody determination, the clerk of court shall cause the petition and determination to be filed. On receipt of a petition filed under this section, the court shall order that the petitioner's address and the respondent's address, if known, and any other information specified in subsection (a) necessary to enforce the child-custody determination, except for information that is confidential or privileged, be kept confidential if the petitioner has alleged in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of the information.

(c) Unless a petition under this section is contested, the court shall enforce the registered child-custody determination by issuing an appropriate order.

SECTION 207. APPLICATION TO STATE COURT FOR ORDER OF NONENFORCEMENT.

(a) A person contesting the validity of a child-custody determination made in another State may seek an order in a court of this State to stay or refuse enforcement of the determination. Unless otherwise provided by this Act or other State law, the court shall exercise its jurisdiction to enforce the determination unless the person seeking nonenforcement proves by clear and convincing evidence that

(c) a family from which, on the date when the communication is to be intercepted, a person is absent for the time being, in connection with the commission of an offence, or is reasonably believed to be, or to be about to be, the victim of, or otherwise connected with, a person who is committing, has committed, or is about to commit, that offence; or

(d) premises in which, or a vehicle on which, it is necessary to effect the interception, in order to intercept communications sent to or from the person mentioned in paragraph (a) or (b).

(3) An order issued pursuant to this section shall—

(a) specify the identity, if known, of the person whose communication is to be intercepted;

(b) specify the nature and location of the facilities from which, or the place at which, the communication is to be intercepted;

(c) direct that the interception be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter;

(d) specify a period, not longer than is necessary in the circumstances, but in any event not longer than thirty days, during which the interception is authorized, and state whether or not the interception shall automatically terminate when the described communication has been first obtained;

(e) require the applicant to make a report to the issuing judge showing what progress has been made toward achievement of the authorized objective and the need for continued interception; and

(f) require that the interception be executed as soon as practicable, be conducted in such a way as to minimize the disruption of communication services not to be intercepted, and be carried out with a minimum of interference with the services that the person from whom the communication is to be intercepted is receiving.

(4) Extensions of an order may be granted, but only upon application for an extension made in accordance with section 2423(1) and upon the court making the findings required by section 2423(2). The period of extension shall be no longer than is necessary to achieve the purposes for which it was granted and in no event for longer than thirty days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the disruption of communication services not to be intercepted, and shall be carried out with a minimum of interference with the services that the person from whom the communication is to be intercepted is receiving.

(5) Whenever an order authorizing interception is entered pursuant to this chapter, the order may require reports to be made to the issuing judge showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the judge may require.

(6) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer, specially designated by the Attorney General, the Deputy Attorney General, the Associate Attorney General, any assistant attorney general, any acting assistant attorney general, any deputy assistant attorney general, or any acting deputy assistant attorney general, or by the principal prosecuting attorney of any State or subdivision thereof acting pursuant to a statute of that State, who reasonably determines that—

(a) an emergency situation exists with respect to an offense that

[illegible]), or [illegible] (relating to espionage), or [illegible] organized crime;

(B) the emergency situation requires that a private communication be intercepted before an order authorizing such interception can, with due diligence, be obtained; and

(C) there are grounds upon which an order could be entered under this subchapter to authorize such interception; and

(2) an application for an order approving the interception is made in accordance with this subchapter within 48 hours after the interception has occurred or commenced.

(b) In the absence of an order approving the interception, the interception shall terminate immediately when the communication sought is obtained or when the application for the order is denied, whichever is earlier. If the application for approval is denied, the contents of any private communication intercepted shall be treated as having been obtained in violation of this subchapter, and a notice shall be served as provided in section [illegible] of this title.

§ [illegible] Records and notice of interception

(a)(1) The contents of a private oral communication intercepted by any means authorized by law shall, unless impracticable, be recorded on a sound recording device, and be recorded in a manner that will protect the recording from editing or other alteration. Immediately upon the expiration of the period set forth in the order, or in an extension of an order, the recording shall be made available to the court issuing the order, shall be sealed under its direction, and shall be placed under such custody as the court may order. The recording may not be destroyed for a period of 10 years, and may not be destroyed after that period except upon an order of the court. A duplicate recording may be made for use or disclosure to the extent that such use or disclosure is appropriate to the proper performance of official duties.

(2) An application made and an order issued under this subchapter shall be sealed by the court issuing the order, shall be placed under such custody as the court may direct, and shall be disclosed only upon a showing of good cause. The application and order may not be destroyed for a period of 10 years, and may not be destroyed after that period except upon an order of the court.

(b)(1) Within a reasonable time, but not more than 90 days, after the termination of the period for which an interception is authorized by an order or an extension of an order, or after the filing of an application, that is subsequently denied, for an order of approval under section [illegible] of this title, the court shall order notice to be served on the person named in the order or in the application, and on such other person who is a party to an intercepted private oral communication as the court may determine to be in the interest of justice. The notice shall include—

(A) the fact and date of the issuance of the order or the filing and denial of the application;

(B) the period of the authorized, approved, or disapproved interception; and

(C) the fact that during the period a private oral communication was or was not intercepted.

(2) The court, upon the filing of a motion by a person upon whom the notice is served, may make available for inspection by such person or such person's counsel any portion of the contents of an intercepted private oral communication, the evidence [illegible] such contents, the application, or the order, that the court determines to be in the interest of justice.

(3) On an ex parte showing of good cause to the court, the serving of the notice may be postponed.

§ [illegible] Use of information obtained from an interception

(a) If a law enforcement officer, while engaged in intercepting a private communication in accordance with the provisions of this subchapter, intercepts a private oral communication which relates to an offense other than an offense specified in the order of authorization or approval, and which does not also relate to an offense specified in the order of authorization or approval, the attorney for the government may, in order to permit the disclosure or use of the contents or evidence derived from the contents during testimony in an official proceeding, move the court for an order approving such interception. The court shall enter such an order if the court finds that the communication was otherwise intercepted in accordance with the provisions of this subchapter.

(b)(1) A law enforcement officer who, by means authorized by this subchapter, has obtained knowledge of the contents of a private communication, [illegible] or evidence derived from such contents, may disclose or use such contents to the extent that such disclosure or use is appropriate to the proper performance of such officer's official duties.

(2) A person who, in accordance with the provisions of this subchapter, has received information concerning the contents of a private communication, including the contents of an authorized interception for which an order has been issued as set forth in section [illegible] of this title, or evidence derived from such contents, may disclose or use such contents while giving testimony under oath or affirmation in an official proceeding under the authority of the United States, a State or a political subdivision of a State.

(c) A privileged private communication that is intercepted in accordance with, or in violation of, the provisions of this subchapter does not lose its privileged character because of its being intercepted.

(d) The presence of the seal provided for by section [illegible], or a satisfactory explanation for the absence of such seal, is a prerequisite to the use or disclosure of the contents of an intercepted private communication, or evidence derived from

(c) the communication was unlawfully intercepted;

(d) the oral or electronic communication was transmitted by the wire, oral, or electronic communication system, or the device used to intercept the communication was located, within this State; or

(e) the interception was conducted in violation of this subtitle.

(2) The Attorney General, or a designee of the Attorney General, may make a motion under paragraph (1) of this subsection regardless of whether there is pending any action or proceeding in relation to which the intercepted wire, oral, or electronic communication was intercepted.

(3) The motion shall be made prior to the trial, hearing, or proceeding unless there was no opportunity to make the motion or unless the aggrieved person was not aware of the grounds for the motion.

(4) A court of competent jurisdiction, upon the filing of a motion by an aggrieved person, may make available to the aggrieved person or the person's counsel any portion of the intercepted wire, oral, or electronic communication, or evidence derived from it, that the court determines to be in the interests of justice.

(5) If the motion is granted, the contents of the intercepted wire or oral communication, and evidence derived from it, may not be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision of a State.

(6) The judge, upon the filing of the motion by the aggrieved person, shall make available to the aggrieved person or the person's counsel for inspection:

(i) the portion of the intercepted communication that the court determines to be in the interests of justice; and

(ii) evidence derived from the intercepted communication.

(b) (1) In addition to any other right to appeal, the State shall have the right to appeal from:

(i) an order granting a motion to suppress made under subsection (a) of this section; or

(ii) the denial of an application for an order of approval if the attorney making the application certifies to the judge or denying the application that the appeal is not taken for the purpose of delay.

(2) The appeal shall be taken within 30 days after the date the order was entered and shall be diligently prosecuted.

(3) The person in whose behalf the application was made may join in an appeal taken by the State.

(c) (1) Except as provided in paragraph (2) of this subsection, within a reasonable time but not later than 90 days after the filing of an application for an order of approval under § 10–408 of this subtitle that is denied or the termination of the period of an order or extensions of an order, the issuing or denying judge shall cause to be served on the persons named in the order or the application, and any other parties to intercepted communications, if the judge determines that it is in the interest of justice, an inventory which shall include notice of:

(i) the fact of the entry of the order or the application;

(ii) the date of the entry and the period of authorized, approved, or disapproved interception, or the denial of the application; and

(iii) the fact that during the period wire, oral, or electronic communications were or were not intercepted.

(2) The judge, upon the filing of a motion, may make available to the person or the person's counsel for inspection the portions of the intercepted communications, applications, and orders that the judge determines to be in the interests of justice.

(3) On an ex parte showing of good cause to a court of competent jurisdiction, the serving of the inventory required by this subsection may be postponed.

(d) The contents of any intercepted wire, oral, or electronic communication, or evidence derived from it, may not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in any court unless each party, not less than 10 days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved.

(e) This 10–day period may be waived by the judge if the judge finds that it was not possible to furnish the party with the above information 10 days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving the information.

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(h) [illegible]

(1) Any period of delay resulting from other proceedings concerning the defendant, including—

(A) delay resulting from any proceeding, including any examinations, to determine the mental competency or physical capacity of the defendant;

(B) delay resulting from any proceeding, including any examination of the defendant, pursuant to section 2902 of title 28;

(C) delay resulting from deferral of prosecution pursuant to section 2902 of title 28;

(D) delay resulting from trial with respect to other charges against the defendant;

(E) delay resulting from any interlocutory appeal;

(F) delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion;

(G) delay resulting from any proceeding relating to the transfer of a case or the removal of any defendant from another district under the Federal Rules of Criminal Procedure;

(H) delay resulting from transportation of any defendant from another district, or to and from places of examination or hospitalization, except

(٢) لا يجوز للمحامي العام أن يتنازل عن أي دعوى أو يسوي أي مطالبة أو يقبل أي مبلغ من المال أو أي شيء آخر ذي قيمة في أي دعوى أو مطالبة إلا بموافقة كتابية من المدعي أو من المحامي المخول بالتقاضي نيابة عنه.

(٣) لا يجوز للمحامي العام أن يتنازل عن أي دعوى أو يسوي أي مطالبة أو يقبل أي مبلغ من المال أو أي شيء آخر ذي قيمة في أي دعوى أو مطالبة إلا بموافقة كتابية من المدعي أو من المحامي المخول بالتقاضي نيابة عنه.

(٤) لا يجوز للمحامي العام أن يتنازل عن أي دعوى أو يسوي أي مطالبة أو يقبل أي مبلغ من المال أو أي شيء آخر ذي قيمة في أي دعوى أو مطالبة إلا بموافقة كتابية من المدعي أو من المحامي المخول بالتقاضي نيابة عنه.

(٥) لا يجوز للمحامي العام أن يتنازل عن أي دعوى أو يسوي أي مطالبة أو يقبل أي مبلغ من المال أو أي شيء آخر ذي قيمة في أي دعوى أو مطالبة إلا بموافقة كتابية من المدعي أو من المحامي المخول بالتقاضي نيابة عنه.

(٦) لا يجوز للمحامي العام أن يتنازل عن أي دعوى أو يسوي أي مطالبة أو يقبل أي مبلغ من المال أو أي شيء آخر ذي قيمة في أي دعوى أو مطالبة إلا بموافقة كتابية من المدعي أو من المحامي المخول بالتقاضي نيابة عنه.

(٧) لا يجوز للمحامي العام أن يتنازل عن أي دعوى أو يسوي أي مطالبة أو يقبل أي مبلغ من المال أو أي شيء آخر ذي قيمة في أي دعوى أو مطالبة إلا بموافقة كتابية من المدعي أو من المحامي المخول بالتقاضي نيابة عنه.

(٨) لا يجوز للمحامي العام أن يتنازل عن أي دعوى أو يسوي أي مطالبة أو يقبل أي مبلغ من المال أو أي شيء آخر ذي قيمة في أي دعوى أو مطالبة إلا بموافقة كتابية من المدعي أو من المحامي المخول بالتقاضي نيابة عنه.

(٩) لا يجوز للمحامي العام أن يتنازل عن أي دعوى أو يسوي أي مطالبة أو يقبل أي مبلغ من المال أو أي شيء آخر ذي قيمة في أي دعوى أو مطالبة إلا بموافقة كتابية من المدعي أو من المحامي المخول بالتقاضي نيابة عنه.

(١٠) لا يجوز للمحامي العام أن يتنازل عن أي دعوى أو يسوي أي مطالبة أو يقبل أي مبلغ من المال أو أي شيء آخر ذي قيمة في أي دعوى أو مطالبة إلا بموافقة كتابية من المدعي أو من المحامي المخول بالتقاضي نيابة عنه.

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(١٤) لا يجوز للمحامي العام أن يتنازل عن أي دعوى أو يسوي أي مطالبة أو يقبل أي مبلغ من المال أو أي شيء آخر ذي قيمة في أي دعوى أو مطالبة إلا بموافقة كتابية من المدعي أو من المحامي المخول بالتقاضي نيابة عنه.

(١٥) لا يجوز للمحامي العام أن يتنازل عن أي دعوى أو يسوي أي مطالبة أو يقبل أي مبلغ من المال أو أي شيء آخر ذي قيمة في أي دعوى أو مطالبة إلا بموافقة كتابية من المدعي أو من المحامي المخول بالتقاضي نيابة عنه.

(١٦) لا يجوز للمحامي العام أن يتنازل عن أي دعوى أو يسوي أي مطالبة أو يقبل أي مبلغ من المال أو أي شيء آخر ذي قيمة في أي دعوى أو مطالبة إلا بموافقة كتابية من المدعي أو من المحامي المخول بالتقاضي نيابة عنه.

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(١٨) لا يجوز للمحامي العام أن يتنازل عن أي دعوى أو يسوي أي مطالبة أو يقبل أي مبلغ من المال أو أي شيء آخر ذي قيمة في أي دعوى أو مطالبة إلا بموافقة كتابية من المدعي أو من المحامي المخول بالتقاضي نيابة عنه.

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(٨٧) لا يجوز للمحامي العام أن يتنازل عن أي دعوى أو يسوي أي مطالبة أو يقبل أي مبلغ من المال أو أي شيء آخر ذي قيمة في أي دعوى أو مطالبة إلا بموافقة كتابية من المدعي أو من المحامي المخول بالتقاضي نيابة عنه.

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(2) cause a detainer to be filed with the person having custody of the prisoner and request him to so advise the prisoner and to advise the prisoner of his right to demand trial.

(c) If the person having custody of such prisoner receives a detainer, such person shall promptly advise the prisoner of the charge and of the prisoner's right to demand trial. If at any time thereafter the prisoner informs the person having custody that he does demand trial, such person shall cause notice to that effect to be sent promptly to the attorney for the Government who caused the detainer to be filed.

(d) Upon receipt of such notice, the attorney for the Government shall promptly seek to obtain the presence of the prisoner for trial.

(e) When the person having custody of the prisoner receives from the attorney for the Government a properly supported request for temporary custody of such prisoner for trial, the prisoner shall be made available to that attorney for the Government (subject, in cases of interjurisdictional transfer, to any right of the prisoner to contest the legality of such person's delivery).

§ 3162. Sanctions

(a)(1) If, in the case of any individual against whom a complaint is filed charging such individual with an offense, no indictment or information is filed within the time limit required by section 3161(b) of this title as extended by section 3161(h) of this title, such charge against that individual contained in such complaint shall be dismissed or otherwise dropped. In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter and on the administration of justice.

(2) If a defendant is not brought to trial within the time limit required by section 3161(c) of this title as extended by section 3161(h) of this title, the information or indictment shall be dismissed on motion of the defendant. The defendant shall have the burden of proof of supporting such motion but the Government shall have the burden of going forward with the evidence in connection with any exclusion of time under section 3161(h)(3) of this title. In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter and on the administration of justice. Failure of the defendant to move for dismissal prior to trial or entry of a plea of guilty or nolo contendere shall constitute a waiver of the right to dismissal under this section.

(b) In any case in which counsel for the defendant or the attorney for the Government (1) knowingly allows the case to be set for trial without disclosing the fact that a necessary witness would be unavailable for trial; (2) files a motion

solely for the purpose of delay which such counsel or attorney knows is totally frivolous and without merit; (3) makes a statement for the purpose of obtaining a continuance which such counsel or attorney knows to be false and which is material to the granting of a continuance; or (4) otherwise willfully fails to proceed to trial without justification consistent with section 3161 of this title, the court may punish any such counsel or attorney, as follows:

(A) in the case of an appointed defense counsel, by reducing the amount of compensation that otherwise would have been paid to such counsel pursuant to section 3006A of this title in an amount not to exceed 25 percent thereof;

(B) in the case of a counsel retained in connection with the defense of a defendant, by imposing on such counsel a fine of not to exceed 25 percent of the compensation to which he is entitled in connection with his defense of such defendant;

(C) by imposing on any attorney for the Government a fine of not to exceed $250;

(D) by denying any such counsel or attorney for the Government the right to practice before the court considering such case for a period of not to exceed 90 days; or

(E) by filing a report with an appropriate disciplinary committee.

The authority to punish provided for by this subsection shall be in addition to any other authority or power available to such court.

(c) The court shall follow procedures established in the Federal Rules of Criminal Procedure in punishing any counsel or attorney for the Government under this section.

§ 3163. Effective dates

(a) The time limitation in section 3161(b) of this title—

(1) shall apply to all individuals who are arrested or served with a summons on or after the date of expiration of the twelve-calendar-month period following July 1, 1975; and

(2) shall commence to run on such date of expiration to all individuals who are arrested or served with a summons prior to the date of expiration of such twelve-calendar-month period, in connection with the commission of an offense, and with respect to which offense no information or indictment has been filed prior to such date of expiration.

(b) The time limitation in section 3161(c) of this title—

(1) shall apply to all offenses charged in informations or indictments filed on or after the date of expiration of the twelve-calendar-month period following July 1, 1975; and

(2) shall commence to run on such date of expiration as to all offenses charged in informations or indictments filed prior to that date.

(c) Subject to the provisions of section 3163(c), section 3162 of this title shall become effective and apply to all cases commenced by arrest or summons, and all informations or indictments filed, on or after July 1, 1980.

§ 3164. Persons detained or designated as being of high risk

(a) The trial or other disposition of cases involving—

(1) a detained person who is being held in detention solely because he is awaiting trial, and

(2) a released person who is awaiting trial and has been designated by the attorney for the Government as being of high risk,

shall be accorded priority.

(b) The trial of any person described in subsection (a)(1) or (a)(2) of this section shall commence not later than ninety days following the beginning of such continuous detention or designation of high risk by the attorney for the Government. The periods of delay enumerated in section 3161(h) are excluded in computing the time limitation specified in this section.

[(c) Failure to commence trial of a detainee as specified in subsection (b) of this section, through no fault of the accused or his counsel, or failure to commence trial of a designated releasee as specified in subsection (b) of this section, through no fault of the attorney for the Government, shall result in the automatic review by the court of the conditions of release. No detainee, as defined in subsection (a) of this section, shall be held in custody pending trial after the expiration of such ninety-day period required for the commencement of his trial. A designated releasee, as defined in subsection (a) of this section, who is found by the court to have intentionally delayed the trial of his case shall be subject to an order of the court modifying his nonfinancial conditions of release under this title to insure that he shall appear at trial as required.]

§ 3165. District plans—generally

(a) Each district court shall conduct a continuing study of the administration of criminal justice in the district court and before United States magistrates of the district and shall prepare plans for the disposition of criminal cases in accordance with this chapter. Each such plan shall be formulated after consultation with, and after considering the recommendations of, the Federal Judicial Center and the planning group established for that district pursuant to section 3168 of this title. [The plans shall be prepared in accordance with the schedule set forth in subsection (e) of this section.]

(b) The planning and implementation process shall seek to accelerate the disposition of criminal cases in the district consistent with the time standards of this chapter and the objectives of effective law enforcement, fairness to accused persons, efficient judicial administration, and increased knowledge concerning the proper functioning of the criminal law. The process shall seek to avoid underenforcement, overenforcement and discriminatory enforcement of the law, prejudice to the prompt disposition of civil litigation, and undue pressure as well as undue delay in the trial of criminal cases.

(c) The plans prepared by each district court shall be submitted for approval to a reviewing panel consisting of the members of the judicial council of the circuit and either the chief judge of the district court whose plan is being reviewed or such other active judge of that court as the chief judge of that district court may designate. If approved by the reviewing panel, the plan shall be forwarded to the Administrative Office of the United States Courts, which office shall report annually on the operation of such plans to the Judicial Conference of the United States.

(d) The district court may modify the plan at any time with the approval of the reviewing panel. It shall modify the plan when directed to do so by the reviewing panel or the Judicial Conference of the United States. Modifications shall be reported to the Administrative Office of the United States Courts.

(e)(1) Plans adopted pursuant to this section shall, upon adoption, and recommendations of the district planning group shall, upon completion, become public documents.

(2) Not later than June 30, 1980, each United States district court with respect to which implementation has not been ordered under section 3163(c) shall prepare and submit a plan in accordance with this section to govern the trial or other disposition of offenses within the jurisdiction of such court during the sixth and subsequent twelve-calendar-month periods following the effective date of section 3161(b) and section 3161(c) in effect prior to the date of enactment of this paragraph.

§ 3166. Contents of district plans

(a) Each plan shall include a description of the time limits, procedural techniques, innovations, systems and other methods, including the development of reliable methods for gathering and monitoring information and statistics, by which the district court, the United States attorney, the Federal public defender, if any, and private attorneys experienced in the defense of criminal cases, have expedited or intend to expedite the trial or other disposition of criminal cases, consistent with the time limits and other objectives of this chapter.

(b) Each plan shall include information concerning the implementation of the time limits and other objectives of this chapter, including—

(1) the incidence of and reasons for, requests or allowances of extensions of time beyond statutory or district standards;

(2) the incidence of, and reasons for, periods of delay under section 3161(h) of this title;

(3) the incidence of, and reasons for, the invocation of sanctions for noncompliance with time standards, or the failure to invoke such sanctions, and the nature of the sanction, if any invoked for noncompliance;

(4) the new timetable set, or requested to be set, for an extension;

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(5) the effect on criminal justice administration of the prevailing time limits and standards, including the effects of the presumption, the duties, the courts, the correctional systems, costs, workloads and appeals;

(6) the incidence and length of, reasons for, and remedies for dismissals with and without prejudice, and information required by the Federal Rules of Criminal Procedure relating to suppression of dismissals granting writs;

(7) the ability of cases within, because of their unique circumstances, diverse sequence or different time limits as a matter of statutory flexibility; and

(8) the incidence of, and reasons for, such [illegible] under section 3166(b) of this title with respect to an indictment or this division; and

(9) the impact of compliance with the time limits of subsections (b) and (c) of section 3161 of this title upon the ability of the courts to commence the trial of cases in the interests of justice.

(c) Each plan enacted by section 3165 of this title shall include information and data concerning the administration of criminal justice in the district, including—

(1) the time span between arrest and indictment, indictment and trial, and conviction and sentencing;

(2) the number of cases presented to the United States Attorney for prosecution, and the numbers of such cases prosecuted and not prosecuted;

(3) the number of cases terminated by other dismissal or by United States Attorney prosecution;

(4) the number of cases disposed of by trial and by plea;

(5) the rates of guilty pleas, dismissal, acquittal, conviction, diversion, or other disposition;

(6) the extent of prosecution deferral and refusal, by numbers of defendants and days in custody or at risk prior to disposition; and

(7)(A) the number of new civil cases filed in the 12-calendar-month period preceding the submission of the plan;

(B) the number of civil cases pending at the close of such period; and

(C) the increase or decrease in the number of civil cases pending at the close of such period, compared to the number pending at the close of the preceding 12-calendar-month period, and the length of time such cases have been pending.

(d) Each plan shall foster cost and delay reduction principles and techniques, including those set forth in chapter 119 of this title, appropriate to the needs of the district court and the circumstances of its caseload. In developing such principles and techniques, the district court shall consider—

(1) the impact of litigation practices and procedures on the time required for pretrial development of cases and on the conduct and duration of trials;

(2) the effectiveness of systems for managing the flow of cases from filing through disposition;

(3) the degree to which the costs of litigation should be reduced by imposing on litigants who cause unnecessary costs due to delay or other improper litigation practices the costs occasioned by such behavior;

(4) the effectiveness of alternative dispute resolution programs in reducing costs and delay;

(5) the benefits of requiring that representatives of parties with authority to bind them in settlement discussions be available during litigation;

(6) the appropriateness of requiring counsel for parties with adequate settlement authority to meet in person at a settlement conference prior to trial in certain cases;

(7) the advisability of referring appropriate cases to early neutral evaluation, mediation, minitrial, and voluntary arbitration and such other techniques as may be developed;

(8) the potential benefit of consolidating related cases for pretrial management; and

(9) the potential benefit of utilizing alternative dispute resolution techniques in cases in which a claim is frivolous or in which frivolous arguments or defenses are interposed.

(e) Each plan may be accompanied by guidelines promulgated by the judicial council of the circuit to govern the management of all discovery and motion practice in accordance with the plan.

§ 476. Reports to Congress

(a) The Administrative Office of the United States Courts, with the approval of the Judicial Conference, shall submit periodic reports to Congress detailing the plans submitted under section 471 of this title. The reports shall be submitted within three months following the final dates for the submission of plans under section 474(b) of this title.

(b) Such reports shall include recommendations for legislative changes or additional supplementary resources to achieve the time limits and objectives of this chapter. The reports shall also contain pertinent information such as the name of the command district as the time of the adoption of the plan, the extent of pretrial detention and release, and a description of the time limits, procedural techniques, innovations, systems, and other methods by which the civil or other dispositions of criminal cases have been expedited or may be expedited in the district. Such reports shall also include the following:

(1) The reasons why, in those cases not in compliance with the time limits of subsections (b), (c), and (e) of section 3161, the provisions of section 3161(h) have not been adequate to accommodate reasonable periods of delay.

(2) The category of offenses, the number of defendants, and the number of counts charged in those cases which are not meeting the time limits specified in subsections (b) and (c) of section 3161.

(3) The additional judicial resources which would be necessary in order to achieve compliance with the time limits specified in subsections (b) and (c) of section 3161.

(4) The nature of the remedial measures which have been employed to improve conditions and practices in those districts with low compliance experience under this chapter or to promote the adoption of procedures and programmes which have been successful in those districts with high compliance experience under this chapter.

(5) If a district has experienced difficulty in complying with this chapter, but an application for relief under section 3173 has not been made, the reason why such application has not been made.

(6) The impact of compliance with the time limits of subsections (b) and (c) of section 3161 upon the civil case calendar in each district as deter-

§ 3173. Sixth amendment rights

No provision of this chapter shall be interpreted as a bar to any claim of denial of speedy trial as required by amendment VI of the Constitution.

§ 3174. Judicial emergency

(a) In the event that any district court is unable to comply with the time limits set forth in section 3161(c) of this title due to the status of its court calendars, the chief judge, where the existing resources are being efficiently utilized, may, after seeking the recommendations of the planning group, apply to the judicial council of the circuit for a suspension of such time limits as provided in subsection (b) of this section. The judicial council of the circuit shall evaluate the capabilities of the district, the availability of visiting judges from within and without the circuit, and make any recommendations it deems appropriate to alleviate calendar congestion resulting from the lack of resources.

(b) If the judicial council of the circuit finds that no remedy for such congestion is reasonably available, such council may, upon application by the chief judge of a district, grant a suspension of the time limits in section 3161(c) in such district for a period of time not to exceed one year for the trial of cases for which indictments or informations are filed during such one-year period. During such period of suspension, the time limits from arrest to indictment, set forth in section 3161(b) of this title, shall not be reduced nor shall the sanctions set forth in section 3162 of this title be suspended; but such time limits from arraignment to trial shall not be increased to exceed 180 days. The time limits for the trial of cases of detained persons who are being detained solely because they are awaiting trial shall not be affected by the provisions of this section.

(c)(1) If, prior to July 1, 1980, the chief judge of any district concludes, with the concurrence of the planning group convened in the district, that the district is prepared to implement the provisions of section 3162 in their entirety, he may apply to the judicial council of the circuit in which the district is located to implement such provisions. Such application shall show the degree of compliance in the district with the time limits set forth in subsections (b) and (c) of section 3161 during the twelve-month period preceding the date of such application and shall contain a proposed order and schedule for such implementation, which includes the date on which the provisions of section 3162 are to become effective in the district, the effect such implementation will have upon such district's practices and procedures, and provision for adequate notice to all interested parties.

(2) After review of any such application, the judicial council of the circuit shall enter an order implementing the provisions of section 3162 in their entirety in the district making application, or shall return such application to the chief judge of such district, together with an explanation setting forth such council's reasons for refusing to enter such order.

(d)(1) The approval of any application made pursuant to subsection (a) or (c) by a judicial council of a circuit shall be reported within ten days to the Director of

the Administrative Office of the United States Courts, together with a copy of the application, a written report setting forth in sufficient detail the reasons for granting such application, and, in the case of an application made pursuant to subsection (a), a proposal for alleviating congestion in the district.

(2) The Director of the Administrative Office of the United States Courts shall not later than ten days after receipt transmit such report to the Congress and to the Judicial Conference of the United States. The judicial council of the circuit shall not grant a suspension to any district within six months following the expiration of a prior suspension without the consent of the Congress by Act of Congress. The limitation on granting a suspension made by this paragraph shall not apply with respect to any judicial district in which the prior suspension is in effect on the date of the enactment of the Speedy Trial Act Amendments Act of 1979.

(e) If the chief judge of the district court concludes that the need for suspension of time limits in such district under this section is of great urgency, such judge may order the limits suspended for a period not to exceed 30 days. Within 10 days of entry of such order, the chief judge shall apply to the judicial council of the circuit for a suspension pursuant to subsection (a).

CHAPTER 219—TRIAL BY UNITED STATES MAGISTRATES

§ 3401. Minor offenses; application of probation laws

(a) When specially designated to exercise such jurisdiction by the district court or courts he serves, and under such conditions as may be imposed by the terms of the special designation, any United States magistrate shall have jurisdiction to try persons accused of, and sentence persons convicted of, minor offenses committed within that judicial district.

(b) Any person charged with a minor offense may elect, however, to be tried before a judge of the district court for the district in which the offense was committed. The magistrate shall carefully explain to the defendant that he has a right to trial before a judge of the district court and that he may have a right to trial by jury before such judge and shall not proceed to try the case unless the defendant, after such explanation, signs a written consent to be tried before the magistrate that specifically waives both a trial before a judge of the district court and any right to trial by jury that he may have.

(c) A magistrate who exercises trial jurisdiction under this section, and before whom a person is convicted or pleads either guilty or nolo contendere, may, with the approval of a judge of the district court, direct the probation service of the court to conduct a presentence investigation on that person and render a report to the magistrate prior to the imposition of sentence.

(b) The probation laws shall be applicable to persons tried by a magistrate under this section, and such officer shall have power to grant probation and to revoke or terminate the probation of any person granted probation by such officer.

(c) Proceedings before United States magistrates under this section shall be taken down by a court reporter or recorded by suitable sound recording equipment. For purposes of appeal a copy of the record of such proceedings shall be made available at the expense of the United States to a person who makes affidavit that such person is unable to pay or give security therefor, and the expense of such copy shall be paid by the Director of the Administrative Office of the United States Courts.

(d) As used in this section, the term "minor offenses" means misdemeanors punishable under the laws of the United States, the penalty for which does not exceed imprisonment for a period of one year, or a fine of $1,000, or both, except that such term does not include any offense punishable under any of the following provisions of law: section 302 of the Labor Management Relations Act, 1947 (29 U.S.C. 186), section [illegible] of the Federal [illegible] Act, [illegible] (U.S.C. [illegible]), and [illegible] sections [illegible] of this title.

CHAPTER 75—WITNESSES AND EVIDENCE

§7301. Refusal to pay as evidence of embezzlement

The refusal of any person, whether in or out of office, charged with the safe-keeping, transfer, or disbursement of the public money to pay any draft, order, or warrant, drawn upon him by the General Accounting Office, for any public money in his possession or control belonging to the United States, no matter in what capacity the same may have been received, or may be held, or to transfer or disburse any such money, promptly, upon the legal requirement of any authorized officer, shall be deemed, upon the trial of any indictment against such person for embezzlement, prima facie evidence of such embezzlement.

§7302. Foreign documents

Any book, paper, statement, record, account, writing, or other document, or any portion thereof, of whatever character [illegible] any copy thereof equally with the original, which is not in the United States shall, when duly certified as provided in section 7305 of this title, be admissible in evidence in any criminal action or proceeding in any court of the United States if

the court finds, from all the testimony taken with respect to such foreign document pursuant to a commission executed under section 7303 of this title, that such document (or the original thereof in case such document is a copy) satisfies the authentication requirements of the Federal Rules of Evidence, unless in the event that the genuineness of such document is denied, any party to such criminal action or proceeding making such denial shall establish to the satisfaction of the court that such document is not genuine. This section does not require the authentication under section 7305 of this title of any such foreign documents which may otherwise be properly authenticated by law.

§7303. Commission to consular officers to authenticate foreign documents

(a) The testimony of any witness in a foreign country may be taken either on oral or written interrogatories or on interrogatories partly oral and partly written, pursuant to a commission issued under this section, for the purpose of determining whether any foreign documents sought to be used in any criminal action or proceeding in any court of the United States are genuine, and whether the authentication requirements of the Federal Rules of Evidence are satisfied with respect to any such document (or the original thereof in case such document is a copy). Application for the issuance of a commission for such purpose may be made to the court in which such action or proceeding is pending by the United States or any other party thereto, after five days' notice in writing by the applicant party, or such applicant party's attorney, to the opposite party, or such opposite party's attorney of record, which notice shall state the names and addresses of witnesses whose testimony is to be taken and the time when it is desired to take such testimony. In granting such application the court shall issue a commission for the purpose of taking the testimony sought by the applicant addressed to any consular officer of the United States conveniently located for the purpose. In cases of testimony taken on oral or partly oral interrogatories, the court shall make provision in the commission for the selection as hereinafter provided of foreign counsel to represent each party (except the United States) to the criminal action or proceeding in which the foreign documents in question are to be used, unless such party has, prior to the issuance of the commission, notified the court that he does not desire the selection of foreign counsel to represent him at the time of taking of such testimony. In cases of testimony taken on written interrogatories, such provision shall be made only upon the request of any such party prior to the issuance of such commission. Selection of foreign counsel shall be made by the party whom such foreign counsel is to represent within ten days prior to the taking of testimony or by the court from which the commission issued, upon the request of such party made within such time.

(b) Any consular officer to whom a commission is addressed to take testimony, who is interested in the outcome of the criminal action or proceeding in which the foreign documents in question are to be used or has participated in the prosecution

(c) No consular officer may grant or issue any passport, or cause any seal of office to be affixed to any paper in the name of any person who is not known or has not satisfactorily proved to be a citizen or national of the United States.

(d) Whenever any person applies for a passport or for the renewal of a passport, or for the amendment of a passport to include the name of a minor child, it shall be the duty of the consular officer to whom such application is made to require such person to subscribe and swear to the truth of a statement in writing setting forth the facts as to the birth and parentage of such minor child and the relationship of such person to such minor child, and such other facts as may be necessary in the case. In the event that one parent has custody of a minor child to the exclusion of the other parent, the application of the parent having custody may be accepted and a passport may be issued to the minor child upon the execution of such statement and such other proof as may be required by the consular officer in the absence of the parent not joining in the application.

(e) Whenever any person who is a national but not a citizen of the United States shall make application for a passport, the consular officer to whom such application is made shall have authority to receive the same, administer the prescribed oath to the applicant, execute the certificate of application, and perform all other acts and things requisite for the proper execution of such application.

(f) Whenever any person who owes allegiance, service, or duty to the United States shall make application for a passport, the consular officer to whom such application is made shall have authority to refuse to issue such passport.

(g) Whenever any person who owes allegiance, service, or duty to the United States shall be within a foreign country and shall apply for a passport, the consular officer to whom such application is made shall have authority to refuse to issue such passport.

(h) Whenever any person who owes allegiance, service, or duty to the United States shall be within a foreign country and shall apply for the renewal of a passport, the consular officer to whom such application is made shall have authority to refuse to renew such passport.

(i) Whenever any person who owes allegiance, service, or duty to the United States shall be within a foreign country and shall apply for the amendment of a passport, the consular officer to whom such application is made shall have authority to refuse to amend such passport.

(j) Whenever any person who owes allegiance, service, or duty to the United States shall be within a foreign country and shall apply for the issuance of a commission to take the deposition of a witness, the consular officer to whom such application is made shall have authority to refuse to issue such commission.

(k) Whenever any person who owes allegiance, service, or duty to the United States shall be within a foreign country and shall apply for the issuance of a commission to take the deposition of a witness, the consular officer to whom such application is made shall have authority to refuse to issue such commission.

(l) Whenever any person who owes allegiance, service, or duty to the United States shall be within a foreign country and shall apply for the issuance of a commission to take the deposition of a witness, the consular officer to whom such application is made shall have authority to refuse to issue such commission.

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SEC.

SEC. Admissibility in evidence of eye witness testimony.

The testimony of a witness that the witness saw the deposed commit or participate in the commission of the crime for which the accused is being tried shall be admissible notwithstanding proof that the witness previously has been convicted in any court established under article III of the Constitution of the United States.

SEC. Depositions to preserve testimony.

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

(b) A defendant is entitled, upon request, to be present at the taking of testimony by deposition. If he is in custody, he shall be brought to the place of the deposition by the officer having him in charge unless he waives in writing his right to be present. If he is not in custody, he shall be notified of the time and place set for the deposition and his right to be present. A defendant not in custody may waive his right to be present only with the consent of the court. A defendant who escapes or who refuses without cause to appear after he has been notified or brought before the officer conducting the deposition waives his right to be present at the taking of the deposition, unless he reasonably believes that he will be killed if he attends the deposition and promptly informs the officer conducting the deposition of his belief and his reasons for it.

(c) A deposition shall be taken upon oral examination. Objections to questions or evidence shall be noted by the officer conducting the deposition but he shall not have any power to rule thereon. Objections not made before the officer shall not be waived unless the court holds that the grounds for the objection could have been obviated or removed if presented at the deposition. Any party may move before the officer conducting the deposition or the court for an order compelling a witness to answer or a deponent to produce evidence. The motion shall state the nature of the witness' or deponent's refusal and the reasons given therefor. The officer conducting the deposition may adjourn the deposition pending the decision of the court on the motion. If the court grants the motion, it may order that the deposition be taken at the place designated by the officer or that the witness be brought before the court. If the court finds that the refusal to answer or produce evidence was without substantial justification, it may treat the refusal as a contempt of court or as a ground for dismissing the charges or rendering judgment against the party responsible for the refusal, or it may take such other action as the interests of justice require.

(d) Subject to such objections to the testimony as may be made and noted pursuant to subdivision (c), evidence which is otherwise admissible may be received at the trial even though the witness is unavailable or was not present when the testimony was taken by deposition.

(e) Depositions may be used by any party for the purpose of contradicting or impeaching the testimony of a deponent as a witness. A deposition may also be used by any party for the purpose of evidencing admissions made by an opposing party. If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.

(f) Depositions shall be filed with the clerk of the court in which the action is pending. Unless otherwise directed by the court, the officer conducting the deposition shall seal the deposition with the original of the notice and the copies required by subdivision (b) of this rule and promptly file it with the clerk who shall not permit the deposition or any copy or any part thereof to be withdrawn or read except upon order of the court.

(g) Unless otherwise directed by the court, the officer conducting the deposition shall charge the costs of the deposition to the party who requested it. Costs of the deposition may be charged to the United States if the person deposed is unable to bear the cost and the court so orders. Any party may request at the taking of the deposition and the court may order that a copy be delivered to him. Costs of copies shall be charged to the party who requested them, except that a defendant who is unable to bear the cost may obtain a copy if the court so orders. Witness fees and mileage shall be paid to witnesses who are not officers or employees of the United States at the rates prescribed by law for witnesses in the courts of the United States. Witness fees and mileage of witnesses who are officers or employees of the United States shall be paid by the agency which employs them.

SEC.

(h) As used in this rule, the term "deposition" includes any examination of any witness conducted by any authorized examining official of any criminal agency in connection with the investigation of any criminal offense or any authorized examining official of a grand jury, whether the examination is conducted within or without the United States, and whether or not a stenographic record is made.

(i) As used in this rule, the term "witness" includes any person who is a national or resident of the United States, or who is physically present in the United States, whether or not he is a party or is subject to the jurisdiction of the United States.

(j) In any criminal proceeding in a court of the United States, a confession made or given by a person who is a defendant before a Commissioner of the United States or before any agent of the Federal Bureau of Investigation or any other person charged with the duty of enforcing the criminal laws of the United States, while such person was in the custody of any law enforcement officer or law-enforcement agency, shall not be admissible solely because of delay in bringing such person before a magistrate or other officer empowered to commit persons charged with offenses against the laws of the United States if, of the delay is found by the trial judge to be unreasonable, such confession is held to be inadmissible by the trial judge, and if such confession was made or given by such person within six hours immediately following such person's arrival at the police station, or in any case in which the delay in bringing such person before such magistrate or other officer is found by the trial judge to be caused by the conscientious objection of the person to execute a waiver of extradition, and the defendant is to be removed to another jurisdiction for arraignment or other proceedings.

(k) This section does not bar the admission in evidence of any confession made or given voluntarily by any person to any other person without any inducement to make it, or at any time at which the person who made or gave such confession was not under arrest or other detention.

(l) As used in this section, the term "confession" means any confession of guilt of any criminal offense or any self-incriminating statement made or given orally or in writing.

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(d) A deposition shall be taken and filed in the manner provided in civil actions, except that it may be taken on oral questions without written interrogatories unless the court directs otherwise. Each party shall bear the costs of the depositions it takes or causes to be taken.

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

(f) At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if it appears that the witness is dead; or that the witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or that the witness is unable to attend or testify because of sickness or infirmity; or that the witness refuses in the trial or hearing to testify concerning the subject of the deposition or part thereof; or that the party offering the deposition has been unable to procure the attendance of the witness by subpoena. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.

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

§ 2241. Limitation concerning sources of evidence

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

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

(2) disclosure of information for a determination if evidence is inadmissible because it is the primary product of an unlawful act occurring prior to June 12, 1965, or because it was obtained by the exploitation of an unlawful act occurring prior to June 12, 1965, shall not be required unless such information may be relevant to a pending claim of such inadmissibility; and

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(3) no claim shall be considered that evidence of an event is inadmissible on the ground that such evidence was obtained by the exploitation of an unlawful act occurring prior to June 12, 1965, if such event occurred more than five years after such allegedly unlawful act.

(b) As used in this section, the term "unlawful act" means any use of any electronic, mechanical, or other device (as defined in section 2510(5) of this title) in violation of the Constitution or laws of the United States or any regulation or standard promulgated pursuant thereto.

SUBTITLE V—ANCILLARY CIVIL PROCEEDINGS

CHAPTER 281—ANCILLARY PUBLIC CIVIL PROCEEDINGS

§ 2281. Civil forfeiture proceeding

(a) In addition to a proceeding under any other Act of Congress, the Attorney General may initiate [illegible] in a district court of the United States an in rem civil proceeding [illegible] pursuant to this section.

(b) In such a civil proceeding [illegible], the court shall order forfeited to the United States any property that the court determines by the preponderance of the evidence is property in a category set forth in subsection (c) of this section.

(c) The categories of property subject to forfeiture under this section are as follows:

(1) Any property used in an offense described in section 2281 [illegible] to obstruct [illegible] by causing deprivation of a vessel or aircraft that is a vessel or aircraft of the commerce of such vessel or aircraft.

(2) Any property used in an offense described in section 2281 [illegible] to engage in an unlawful [illegible] that is being [illegible] about use of explosives from the United States in violation of such section, for the value of that property.

(3) Any property used in an offense described in section [illegible] ing to witness bribery, [illegible] relating to corrupting a witness or an information, or [illegible] relating to tampering with a witness or an information that is [illegible] of value given or promised in violation of such section.]

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(h) Any property used in an offense described in section 2254 (relating to kidnap and gang) that is anything of value given or accepted in violation of such section.]

[(i) Any property used in an offense described in section 1955 (relating to smuggling) that is an object innocent, or being innocent, into the United States, for the value of such object.

[(j) Any property used in an offense described in section 1542 (relating to trafficking in smuggled property) that is an object innocent, or being innocent, into the United States, for the value of such object.

[(k) Any property used in an offense described in section 542 (relating to concealing smuggled property) that is an object innocent, or being innocent, into the United States, for the value of such object.

[(l) Any property used in an offense described in section 1111 (relating to obstructing an election), (relating to obstructing congression), or 2115 (relating to subverting a political organization as a Federal public servant or in a Federal building) that is anything of value given or accepted in violation of such section.]

[(m) Any property used in an offense described in section 2121 (relating to eavesdropping), 2122 (relating to trafficking in an eavesdropping device), or (relating to possessing an eavesdropping device) that is an eavesdropping device.

[(n) Any property used in an offense described in section (relating to operating a fraudulent phone) that is offered as part of the phone or service, or unanimously used in the execution of the phone o- service, for the proceeds of the phone or service.]

[(o) Any property used in an offense described in section (relating to consumer fraud) that is offered, advertised for sale, or sold, for the proceeds of such sale.]

[(p) Any property used in an offense described in section (relating to communicating that is a communication without permission.

[(q) Any property used in an offense described in section (relating to forgery) that is a forgery without permission.]

[(r) Any property used in an offense described in section (relating to trafficking in a communicating impliment) that is a communicating or forging implement.

[(s) Any property used in an offense described in section 2552 (relating to false billing) or 2553 (relating to open billing) that is anything of value given or accepted in violation of such section.]

[(t) Any property used in an offense described in section 2721 (relating to continuous offenses) that is an [engine].

[(u) Any property used in an offense described in section 2722 (relating to firearms offenses) that is a firearm or ammunition.]

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[(v) Any property used in an offense described in section 2723 (relating to using a weapon in the course of a crime) that is a firearm or a dangerous device.]

[(w) Any property used in an offense described in section 2724 (relating to engaging in a gambling business) that is other than real property.]

[(x) Any property used in an offense described in section 2725 (relating to diminishing chinese materials) that is chinese material.

[§2182.] Preventive order

At any time after the initiation [commencement] of a proceeding [in section] under section [2183], the court may enter a restraining order or injunction, may require a performance bond, and may take such other actions [as is in the interest of justice, with respect to any property subject to civil forfeiture.

[§2182.] Execution of civil forfeiture

The Attorney General, upon such terms and conditions as are in the interest of justice, shall seize property ordered forfeited to the United States under section [2183].

[§2184. Procedure for restitution and vitigation]

[§2185. Applicability of other civil forfeiture provisions]

[§2186. Definitions, if needed]

[Subchapter II—Civil Restraint of Racketeering]

* * * * *

Subchapter III—Restriction on Imposition of Civil Disabilities

Sec.
2191. Restriction on imposition of civil disabilities generally
2192. Restriction on imposition of employment disabilities
2193. Relief from [collateral consequences]

§2191. Restriction on imposition of civil disabilities generally

(a) Notwithstanding any other Federal law, a Federal Government agency [a person acting under color of Federal law] may not impose on a person any civil disability [solely] for purposes [primarily] to enhance the punishment of a Federal criminal offense, or [and offense unless—

[(1) there is reasonable relationship between the conduct constituting the offense that was the subject of the conviction, and the right, privilege, or opportunity that is the subject of the civil disability, or

[(2) there is a substantial risk, in light of the conduct constituting the offense and other circumstances, that the person would abuse the right, privilege, or opportunity that is the subject of the civil disability.

(b) The provisions of this section do not apply to the imposition of a civil disability that—

[(1) is ordered by a court as a part of the sentence for the person's offense;

[(2) occurs by operation of law like result of a specific act of Congress;

[(3) affects [rights or labor unions.

[illegible]

§ [illegible]22. Restriction on imposition of employment disabilities

[illegible]

§ [illegible]23. Relief from [illegible] of certain convictions

[illegible]

CHAPTER [illegible]—ANC[illegible] LARY PRIVATE CIVIL PROCEEDINGS

[illegible]

§ 2520. Civil action against an eavesdropping offender

(a) A person whose private oral communication is intercepted, disclosed, or used, in violation of section 2521 relating to eavesdropping shall have a civil cause of action against an offender in an appropriate district court of the United States and shall be entitled to recover—

(1) actual damages, but not less than liquidated damages of $2,000 or $100 per day for each day of violation, whichever is greater,

(2) punitive damages, and

(3) a reasonable attorney's fee and other investigation and litigation costs reasonably incurred.

(b) It is a complete defense to a civil proceeding brought under this section [or any other provision of law] that the defendant acted in reasonable reliance on a court order or legislative authorization.

[§ 2520.]

TITLE II—TECHNICAL AND CONFORMING PROVISIONS

* * * * * * *

CONFORMING PROVISIONS RELATING TO CHAPTER 4 OF TITLE 18, UNITED STATES CODE

Sec. 205. (a) Section 5(b) of the United Nations Participation Act of 1945 (22 U.S.C. 287c(b)) is amended—

(1) by striking out "shall, upon conviction" and all that follows through "years, or both" and inserting in lieu thereof "commits a class A misdemeanor"; and

(2) by striking out "punished by a fine" and all that follows through "imprisonment, or both" and inserting in lieu thereof "punishable in the same manner".

(b) Section 7(b) of the Neutrality Act of 1939 (22 U.S.C. 447(b)) is amended—

(1) by striking out "shall, upon conviction" and all that follows through "years, or both" and inserting in lieu thereof "commits a class A misdemeanor"; and

(2) by striking out "liable to the penalty herein prescribed" and inserting in lieu thereof "punishable in the same manner".

(c) Section 3(c) of the Arms Export Control Act (22 U.S.C. 2778(c)) is amended by striking out "shall upon conviction" and all that follows through "or both" and inserting in lieu thereof "commits a class A misdemeanor".

(d)(1) Subsection (d) of section 3 of the Trading with the Enemy Act (50 U.S.C. App. 3(d)) is amended by striking out "shall be punished" and all that follows through the end of such subsection and inserting in lieu thereof "commits a class A misdemeanor".

(2) Section 5(b)(3) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)(3)) is amended—

(A) by striking out "shall, upon conviction" and all that follows through "years, or both" and inserting in lieu thereof "commits a class A misdemeanor"; and

(B) by striking out "may be punished" and all that follows through "imprisonment, or both" and inserting in lieu thereof "is punishable in the same manner".

(3) Section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16) is amended—

(A) by striking out "shall, upon conviction" and all that follows through "years, or both" and inserting in lieu thereof "commits a class A misdemeanor"; and

(B) by striking out "shall be punished" and all that follows through "imprisonment or both" and inserting in lieu thereof "is punishable in the same manner".]

(e) Section 6 of the Export Administration Act of 1969 (50 U.S.C. App. 2405(e)) is amended—

(1) in subsection (a), by striking out "shall be fined" and all that follows through the end of such subsection and inserting in lieu thereof "commits a class A misdemeanor"; and

(2) in subsection (b), by striking out "shall be fined" and all that follows through the end of such subsection and inserting in lieu thereof "commits an offense that is punishable as set forth in section 2505 of title 18, United States Code."

CONFORMING PROVISION RELATING TO CHAPTER 5 OF TITLE 18, UNITED STATES CODE

Sec. 206. Section 7 of the Farm Labor Contractor Registration Act of 1963 (7 U.S.C. [illegible]) is amended

CONFORMING PROVISIONS RELATING TO SUBCHAPTER A OF CHAPTER 31 OF TITLE 18, UNITED STATES CODE

Sec. 207. (a) Section 24 of the Securities Act of 1933 (15 U.S.C. 77x) is amended by striking out "shall upon conviction" and all that follows through "or both" and inserting in lieu thereof "commits an offense that is punishable as set forth in section 2501 of title 18, United States Code".

(b) Section 325 of the Trust Indenture Act of 1939 (15 U.S.C. 77yyy) is amended by striking out "shall upon conviction" and all that follows through "or both" and inserting in lieu thereof "commits an offense that is punishable as set forth in section 2501 of title 18, United States Code".

(c) Section 32 of the Securities Exchange Act of 1934 (15 U.S.C. 78ff) is amended—

(1) in subsection (a), by striking out "shall upon conviction" and all that follows through "under this section" and inserting in lieu thereof "commits an offense that is punishable as set forth in section 2501 of title 18,

SEC.

(d) Section 4(a) of the Internal Revenue Code of 1954 (26 U.S.C. 4(a)) is amended [illegible]

(e) Section 4(b)(1) of the Internal Revenue Code of 1954 (26 U.S.C. 4(b)(1)) is amended by striking out "the first $" and all that follows through "taxable year." and inserting in lieu thereof "$ per centum of the taxable income of such corporation for the taxable year.".

(f) The amendments made by this section shall apply to taxable years beginning after December 31, 1974.

SEC. 2. (a) Section 11(b)(1) of the Internal Revenue Code of 1954 (26 U.S.C. 11(b)(1)) is amended by striking out "22 per centum" and inserting in lieu thereof "20 per centum".

(b) Section 11(b)(2) of such Code is amended by striking out "48 per centum" and inserting in lieu thereof "46 per centum".

(c) The amendments made by this section shall apply to taxable years beginning after December 31, 1974.

SEC. 3. (a) Section 1201(a) of the Internal Revenue Code of 1954 (26 U.S.C. 1201(a)) is amended by striking out "30 per centum" and inserting in lieu thereof "28 per centum".

(b) The amendment made by this section shall apply to taxable years beginning after December 31, 1974.

SEC. 4. (a) Section 1551(a) of the Internal Revenue Code of 1954 (26 U.S.C. 1551(a)) is amended by striking out "$100,000" and inserting in lieu thereof "$150,000".

(b) Section 1551(b)(1) of such Code is amended by striking out "$100,000" and inserting in lieu thereof "$150,000".

(c) Section 1551(b)(2) of such Code is amended by striking out "$150,000" and inserting in lieu thereof "$200,000".

(d) Section 1551(c) of such Code is amended by striking out "$150,000" and inserting in lieu thereof "$200,000".

(e) Section 1551(d)(2) of such Code is amended by striking out "$25,000" and inserting in lieu thereof "$50,000".

(f) The amendments made by this section shall apply to taxable years beginning after December 31, 1974.

SEC. 5. (a) Section 1561(a) of the Internal Revenue Code of 1954 (26 U.S.C. 1561(a)) is amended by striking out "$100,000" and inserting in lieu thereof "$150,000".

(b) Section 1561(a)(1) of such Code is amended by striking out "$100,000" and inserting in lieu thereof "$150,000".

(c) Section 1561(a)(2) of such Code is amended by striking out "$150,000" and inserting in lieu thereof "$200,000".

(d) Section 1561(a)(3) of such Code is amended by striking out "$25,000" and inserting in lieu thereof "$50,000".

(e) The amendments made by this section shall apply to taxable years beginning after December 31, 1974.

SEC. 6. (a) Section 1562(b)(1) of the Internal Revenue Code of 1954 (26 U.S.C. 1562(b)(1)) is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(b) Section 1562(b)(2) of such Code is amended by striking out "shall, upon election" and all that follows through "as joint" and inserting in lieu thereof "consists of an electing component member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(c) Section 1562(b)(3) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(d) Section 1562(c) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(e) Section 1562(d)(1) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(f) Section 1562(d)(2) of such Code is amended by striking out "shall, upon election" and all that follows through "as joint" and inserting in lieu thereof "consists of an electing component member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(g) Section 1562(d)(3) of such Code is amended by striking out "shall, upon election" and all that follows through "as joint" and inserting in lieu thereof "consists of an electing component member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(h) Section 1562(e) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(i) Section 1562(f)(1) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(j) Section 1562(f)(2) of such Code is amended by striking out "shall, upon election" and all that follows through "as joint" and inserting in lieu thereof "consists of an electing component member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(k) Section 1562(f)(3) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(l) Section 1562(g) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(m) Section 1562(h)(1) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(n) Section 1562(h)(2) of such Code is amended by striking out "shall, upon election" and all that follows through "as joint" and inserting in lieu thereof "consists of an electing component member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(o) Section 1562(h)(3) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(p) Section 1562(i) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(q) Section 1562(j)(1) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(r) Section 1562(j)(2) of such Code is amended by striking out "shall, upon election" and all that follows through "as joint" and inserting in lieu thereof "consists of an electing component member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(s) Section 1562(j)(3) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(t) Section 1562(k) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(u) Section 1562(l)(1) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(v) Section 1562(l)(2) of such Code is amended by striking out "shall, upon election" and all that follows through "as joint" and inserting in lieu thereof "consists of an electing component member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(w) Section 1562(l)(3) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(x) Section 1562(m) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(y) Section 1562(n) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(z) Section 1562(o) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(aa) Section 1562(p) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(bb) Section 1562(q) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(cc) Section 1562(r) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(dd) Section 1562(s) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(ee) Section 1562(t) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(ff) Section 1562(u) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(gg) Section 1562(v) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(hh) Section 1562(w) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(ii) Section 1562(x) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(jj) Section 1562(y) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(kk) Section 1562(z) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(ll) Section 1562(aa) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(mm) Section 1562(bb) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(nn) Section 1562(cc) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(oo) Section 1562(dd) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(pp) Section 1562(ee) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(qq) Section 1562(ff) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(rr) Section 1562(gg) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(ss) Section 1562(hh) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(tt) Section 1562(ii) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(uu) Section 1562(jj) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(vv) Section 1562(kk) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(ww) Section 1562(ll) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(xx) Section 1562(mm) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(yy) Section 1562(nn) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

(zz) Section 1562(oo) of such Code is amended by striking out "shall be" and all that follows through "as joint" and inserting in lieu thereof "consists of a corporation which is a member of a controlled group of corporations on December 31, 1974, and which was a component member of such group for the taxable year including December 31, 1974, shall be treated as a component member of such group for any taxable year beginning after December 31, 1974, unless it is a component member of such group for the taxable year including December 31, 1975, and".

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"United States Code".

(b) Section 2202 of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10441 et seq.) is amended by striking out "shall be fined not more than $3,000, imprisoned for not more than one year, or both," and inserting in lieu thereof "is guilty of an offense and imprisoned for not more than two years,".

(c) Section 2261(b) of title 18, United States Code, is amended—

(1) by striking out the first comma;

(2) by striking out "if the offender" and inserting in lieu thereof "if the offender"; and

(3) by striking out the last comma.

(d) Section 2261A of title 18, United States Code, is amended—

(1) by striking out the first comma;

(2) by striking out "if the offender" and inserting in lieu thereof "if the offender"; and

(3) by striking out the last comma.

(e) Section 2262(b) of title 18, United States Code, is amended—

(1) by striking out the first comma;

(2) by striking out "if the offender" and inserting in lieu thereof "if the offender"; and

(3) by striking out the last comma.

(f) Section 2265(d) of the Violence Against Women Act of 1994 (34 U.S.C. 12291(d)) is amended—

(1) by striking out the first comma;

(2) by striking out "if the offender" and inserting in lieu thereof "if the offender"; and

(3) by striking out the last comma.

(g) Section 922(g)(9) of the Federal Gun Control Act of 1968 (18 U.S.C. 922(g)(9)) is amended—

(1) by striking out the first comma;

(2) by striking out "if the offender" and inserting in lieu thereof "if the offender"; and

(3) by striking out the last comma.

SEC. 3. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this Act and the amendments and repeals made by this Act shall take effect on January 1, 2023, and apply with respect to prosecutions commenced on and after that date.

(b) The law as in effect on December 31, 2022, shall continue in full force and effect with respect to prosecutions commenced before January 1, 2023.

END