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EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS
William P. Tyson, DirectorCLEARINGHOUSE

The Criminal Division has prepared a memorandum which discusses the availability of military assistance and Federal tax information from the Federal Government and which should clarify those limitations imposed by the Posse Comitatus Act and the Internal Revenue Code on the sharing of Federal information and resources with state and local law enforcement officials. Copies have been distributed to each United States Attorney's office.

Specific questions regarding the memorandum should be addressed to the Narcotics and Dangerous Drug Section of the Criminal Division. Copies of the memorandum can be obtained from Ms. Susan A. Nellor, Acting Assistant Director, Executive Office for United States Attorneys (633-4024).

(Executive Office)

EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS
William P. Tyson, DirectorPOINTS TO REMEMBERCriminal Justice Legislation Enacted By The 97th Congress

As a regular service, the Criminal Division will be providing information on those new Public Laws that affect the Division. More important Acts will be outlined in some detail and the statutory changes or additions set forth in full. Acts with more limited impact on the criminal justice system will be noted and the citations given.

Among the more important pieces of criminal justice legislation enacted by the 97th Congress were:

- Public Law 97-123 Social Security Act, Amendment.
A summary and text of criminal provisions follow in this Bulletin.
- Public Law 97-180 Piracy and Counterfeiting Amendments Act of 1982.
A summary and text follow in this Bulletin.
- Public Law 97-200 Intelligence Identities Protection Act of 1982.
A summary and text follow in this Bulletin.
- Public Law 97-248 Tax Disclosure Amendments.
This was interpreted in two mailings from the Assistant Attorney General, Criminal Division, to all United States Attorneys and Strike Force Chiefs dated September 10 and October 12, 1982. The text of the act and some discussion thereof can be found in 30 USAB 465 (No. 17; 9/3/82).
- Public Law 97-267 Pretrial Services Act.
A summary and text follow in this Bulletin.

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Public Law 97-285

Protection of High-Level Public
Officials.A summary and text follow in this
Bulletin.

Public Law 97-291

Victim-Witness Assistance Act.

Changes to the Obstruction of Justice
and Bail Statutes are discussed and the
text set out in 31 USAB Points to
Remember (No.1, 1/21/83).

Public Law 97-292

The Missing Children Act.

Discussion can be found in 31 USAB
Points to Remember (No.1, 1/21/83). The
text will be codified at 28 U.S.C. 1
note, 28 U.S.C. 534, and 28 U.S.C. prec.
531.

Public Law 97-298

Anti-Arson Act of 1982.

The Act is discussed in 31 USAB Points
to Remember (No.1, 1/21/83). The changes
affect 18 U.S.C. 844(e), (f), (h)(1), and
(i).

Public Law 97-351

Implementation of International
Convention on Nuclear Materials.A summary and text follow in this
Bulletin.

Public Law 97-398

False Identification Crimes.

A summary and text follow in this
Bulletin.

Public Law 97-409

Special Prosecutor Act Amendments.

A summary and text follow in this
Bulletin.

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There have also been numerous less important changes and additions. They are identified and the citations noted below. The text of the changes can be obtained if needed from the Office of Legal Support Services, FTS 724-6657.

Public Law 97-79 Lacey Act Amendments of 1981.

An Act to provide for the control of illegally taken fish and wildlife. Changes penalties and sanctions, and provides for forfeiture. 16 U.S.C. 3401 et seq.

Public Law 97-86 Department of Defense Authorization Act, 1982.

This is a general authorization bill for the Department of Defense. Criminal revision in this Act amends the posse comitatus statute to include request from the head of an agency with jurisdiction to enforce the Controlled Substance Act (21 U.S.C. 801 et seq.); the Controlled Substance Import and Export Act (21 U.S.C. 951 et seq.); Immigration and Nationality Act (8 U.S.C. 1324-1328); Tariff Act of 1930 (19 U.S.C. 1401); and Tariff Schedules of the United States (19 U.S.C. 1202). 10 U.S.C. 371 et seq.

Public Law 97-89 Intelligence Authorization Act for Fiscal Year 1982.

Criminal revision in this statute authorizes certain personnel, designated by the Director of the Central Intelligence Agency, the right to carry firearms, 50 U.S.C. 403f(d), and prohibits the unauthorized use of the CIA name, initials, or seal. 50 U.S.C. 403m.

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Public Law 97-96

National Aeronautics and Space
Administration Authorization Act, 1982.

Criminal revision in this statute changes the special maritime and territorial jurisdiction of the United States to include space vehicles. 18 U.S.C. 7.

Public Law 97-98

Agriculture and Food Act of 1981.

This statute changes several criminal sections. Included in these revisions are the unlawful offer for sale or advertisement of protected seed when not certified by a state agency, 7 U.S.C. 1611; minimum mandatory court sentence for criminal offenses and a work restitution program, 7 U.S.C. 2025; provision of arrest and warrant authority to persons employed in the Office of Inspector General, Department of Agriculture, 7 U.S.C. 2270; and prohibition of fraud against agricultural commodities, 7 U.S.C. 612c note.

Public Law 97-116

Immigration and Nationality Act
Amendments of 1981.

This statute makes minor changes in the immigration statute including reducing reliance on alien physicians; deportation; and alien registration and address changes. 8 U.S.C. 1101 note, 18 U.S.C. 1429.

Public Law 97-143

United States Capitol Police, Authority.

This statute authorizes the United States Capitol Police to protect in any area of the United States, the person of any Member of Congress, officers of the Congress, and any member of the immediate family of any such Member or officer, if the Capitol Police Board

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determines such protection to be necessary. In performance of their protective duties, the Capitol Police are authorized to make arrests without warrants. 40 U.S.C. 212a-2.

Public Law 97-145 Export Administration Amendments Act of 1981.

Amends the willful violation section with added monetary and penal penalties. 50 U.S.C. App. 2410(b)(1).

Public Law 97-171 U.S. Government officer or employee injured during an assassination attempt, contribution.

This amendment permits an officer or employee of the United States Government, injured during an assassination attempt, to receive contributions from charitable organizations. 18 U.S.C. 209.

Public Law 97-180 Piracy and Counterfeiting Amendments Act of 1982.

This statute amends Titles 18 and 17 of the United States Code to strengthen the laws against record, tape, and film piracy and counterfeiting. Specifically, this amendment adds monetary and penal penalties, and defines the terms "counterfeit labels" and "traffic." 18 U.S.C. 2318. A new section is also added to this Act under which whoever violates 17 U.S.C. 506a (criminal infringement) shall be punished as provided in this section and such penalties shall be in addition to any other provisions of Title 17 or any other law. 18 U.S.C. 2319.

Public Law 97-200 Intelligence Identities Protection Act of 1982.

This Act amends the National Security Act of 1947 to prohibit the unauthorized disclosure of information identifying certain United States intelligence officers, agents, informants, and sources. Sets forth defense to prosecution if, before the commission of the offense, the United States publicly acknowledged or revealed the aforementioned information. Allows for extraterritorial jurisdiction over an offense committed outside the United States by a citizen of the United States or an alien lawfully admitted for permanent residence. Defines certain terms. 50 U.S.C. 421 et seq., 8 U.S.C. 1101.

Public Law 97-258 Money and Finance. Enactment as Title 31, United States Code. 31 U.S.C. prec. 101 note.

This law amends certain money and finance statutes and certain criminal laws. One of the criminal revisions concerns an officer or employee of the United States Government or the District of Columbia Government knowingly and willfully violating section 1341(a) or 1342 of the Act (authorization of expenditures or obligations and limitation on voluntary service, respectively) 31 U.S.C. 1350. A similar revision also concerns an officer or

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employee knowingly and willfully violating section 1517(a) of the Act (prohibited obligations and expenditures). 31 U.S.C. 1519. Another revision sets forth the criminal penalties of a person violating 31 U.S.C. 5315 and 5318(2) (Reports on foreign currency transactions and compliance and exemptions, respectively). 31 U.S.C. 5322.

Public Law 97-259 Communications Amendments Act of 1982.

This statute concerns several changes in the Federal Communications Commission. The criminal statute amendment in this act adds after "law enforcement functions" the following, "or any officer or employee of the Federal Communications Commission performing investigative, inspection, or law enforcement functions." 18 U.S.C. 1114.

Public Law 97-271 Virgin Island Nonimmigrant Alien Adjustment Act of 1981.

This Act authorizes the granting of permanent residence status to certain nonimmigrant aliens residing in the Virgin Islands of the United States. 8 U.S.C. 1255 note.

Public Law 97-295 United States Code, Titles 10, 14, 37 and 38 amendments.

This law is a general revision law. The criminal penalty in this law provides that a person not complying with the filing requirement shall be fined not more than \$1,000 or imprisoned not more than 6 months or both. 10 U.S.C. 2397(f).

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Public Law 97-297 Threats against former Presidents and
certain other persons, criminal penalty.

An amendment to this Act provides a criminal penalty for threats against former Presidents, major Presidential candidates, and certain other persons protected by the Secret Service. 18 U.S.C. 879.

Public Law 97-300 Job Training Partnership Act.

This Act provides for a job training program to prepare youth and unskilled adults for entry into the labor force. The criminal provision in this law adds a new subsection (c) which provides that any person who willfully obstructs or impedes an investigation or inquiry under the Comprehensive Employment and Training Act or the Job Training Partnership Act, shall be punished by a fine of not more than \$5,000 or imprisoned for not more than one year, or both. 18 U.S.C. 665(c).

Public Law 97-303 Securities and Exchange Commission,
Jurisdiction Clarification.

This statute clarifies the jurisdiction of the Securities and Exchange Commission and the definition of security. Specifically the criminal penalty adds the new sentence "No state law which prohibits or regulates the making or promoting of wagering or gaming contracts, or the operation of bucket shops or other similar or related activities shall invalidate any put, call, straddle, option, privilege, or other security, or apply to any activity which is incidental or related to the offer, purchase, sale, exercise, settlement, or closeout of any such instrument, if such instrument is traded pursuant to rules and regulations of a

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self-regulatory organization that are filed with the Commission." 15 U.S.C. 79s.

Public Law 97-308

Certain persons protected by U.S. Secret Service Protection zones, establishment.

The amendment in this Act authorizes the Secretary of the Treasury to establish zones of protection for certain persons protected by the United States Secret Service. This section sets forth what shall be "protection zones," 18 U.S.C. 1752. An amendment in this Act also raises the monetary penalty. 18 U.S.C. 3056(b).

Public Law 97-312

Department of Agriculture, certain employees' firearm authority.

This Act authorizes certain employees, charged with the enforcement of animal quarantine laws, as designated by the Secretary of Agriculture and the Attorney General of the United States to carry firearms for self-protection. 7 U.S.C. 2274.

Public Law 97-322

Coast Guard Authorization Act of 1982.

This statute sets forth authorization for the Coast Guard for Fiscal Years 1982, 1983 and 1984. The criminal provision in this statute amends part of the Federal Boat Safety Act of 1971, by adding to the monetary penalty. 46 U.S.C. 1483.

Public Law 97-352

Perishable Agricultural Commodities Act, 1930, Amendment.

This Act amends the Perishable Agricultural Commodities Act, 1930, to require the Secretary of Agriculture to accept the payment of monetary penalties for certain

admitted and infrequent violations involving misrepresentation under this Act. 7 U.S.C. 499b(5).

Public Law 97-359

Immigration and Nationality Act, Amendment; Certain Children of United States Citizens, Admission.

This Act amends the Immigration and Nationality Act to provide preferential treatment in the admission of certain children of United States citizens. 8 U.S.C. 1151, 1153.

Public Law 97-364

Alcohol Traffic Safety Programs and National Driver Register.

An Act to amend Title 23, United States Code, to encourage the establishment by states of effective alcohol traffic safety programs and to require the Secretary of Transportation to administer a national driver register to assist state driver licensing officials in electronically exchanging information regarding the motor vehicle driving records of certain individuals. The criminal violation in this statute concerns the willful and knowing disclosure of information. The penalty for such disclosure is a fine of not more than \$10,000 or imprisonment for not more than one year, or both. This statute also provides that any person who knowingly and willfully requests or under false pretenses obtains information specified in this section or any person who receives such information as protected by this section shall be fined not more than \$10,000 or imprisoned for not more than one year, or both. 23 U.S.C. 401 note.

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Public Law 97-390

Supreme Court Police.

This Act authorizes the Supreme Court Police to protect the person of the Chief Justice of the United States; any Associate Justice of the Supreme Court; and any official guest of the Supreme Court; and the person of any officer or employee of the Supreme Court while they are engaged in their official capacity. It also authorizes the Supreme Court police to make arrests; carry firearms; and police specific property designated in the Act. 40 U.S.C. 13n, 40 U.S.C. 13p.

Public Law 97-415

Nuclear Regulatory Commission Appropriations.

This Act authorizes appropriations for the Nuclear Regulatory Commission. The criminal amendment concerns the sabotage of nuclear facilities or fuel. It adds a new subsection providing that any person who intentionally and willfully causes or attempts to cause an interruption of normal operations of any facility through the unauthorized use of or tampering with the machinery components or controls of any such facility shall be fined not more than \$10,000 or imprisoned for not more than ten years, or both. 42 U.S.C. 2284(b).

Public Law 97-424

Highway Improvement Act of 1982.

This Act authorizes appropriations for construction of certain highways, for highway safety, and for mass transportation in urban and rural areas. The criminal amendment adds false or fraudulent statements under this Act to those prohibited by 18 U.S.C. 1001. 42 U.S.C. 1613. This Act also adds a definition for the term interstate commerce. 49 U.S.C. 10927 note.

Public Law 97-444 Futures Trading Act of 1982.

This statute extends and amends the Commodity Exchange Act. The criminal statutes in this Act include an antifraud provision covering commodity trading advisors or their associate, and commodity pool operators or their associate, 7 U.S.C. 60; adds to the monetary and penal penalties of 7 U.S.C. 13; and adds a new subsection for prosecution of any person who aids and abets another person who has violated any provision of this Act while under their control.

Public Law 97-451 Federal Oil and Gas Royalty Management Act of 1982.

This Act ensures that all oil and gas originated on public lands and the Outer Continental Shelf are properly accounted for. The criminal penalty states that any person who commits an act for which a civil penalty is provided for in section 109(d) of the Act shall, upon conviction, be punished by a fine of not more than \$50,000 or by imprisonment for not more than 2 years or both. 30 U.S.C. 1720.

Public Law 97-453 Conservation and Management of Fisheries.

This Act amends the Conservation and Management of the Fisheries Act approved April 13, 1976 (90 Stat 331 et seq.). The criminal amendments in this Act strike out ", or imprisonment for not more than 1 year, or both" in 16 U.S.C. 1859(b) and authorize persons charged by the Secretary with law enforcement responsibilities to make arrests. 16 U.S.C. 1861(b).

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Public Law 97-461 Plant Pest, Plant Disease, Livestock and Poultry Acts Amendments.

This Act authorizes the Secretary of Agriculture to assess civil penalties with respect to violations of certain Acts relating to the prevention of the introduction and dissemination into the United States of plant pests, plant diseases, and livestock and poultry diseases, and to increase the amount of criminal fines which may be imposed with respect to violations of such Acts. 7 U.S.C. 150bb; 7 U.S.C. 150gg; 7 U.S.C. 164; 7 U.S.C. 149; and 21 U.S.C. 104s.

SOCIAL SECURITY ACT, AMENDMENT

On December 29, 1981, the President approved Public Law 97-123 relating to the restoration of minimum benefits under the Social Security Act. The Act also amends 42 U.S.C. 408 (which is hereinafter set out as amended) to provide penalties for the misuse of social security numbers and the counterfeiting of social security cards.

42 U.S.C. 208(g) is first amended by inserting the words "or for the purpose of obtaining anything of value from any person," which brings fraud against persons not involved with the Social Security program within the coverage of the statute.

A new subsection (3) adds new acts considered to be a misuse of social security cards by making it unlawful to (1) alter; (2) buy or sell; (3) counterfeit social security cards; or (4) possess a regular or counterfeit card with intent to sell or alter it.

All unlawful acts affecting social security numbers or cards are raised from misdemeanors to felonies, by increasing the maximum fine from \$1,000 to \$5,000 and the maximum term from one to five years imprisonment.

These amendments are effective with respect to violations committed after December 29, 1981, the date of enactment.

§408. Penalties

Whoever--

(a) for the purpose of causing an increase in any payment authorized to be made under this subchapter, or for the purpose of causing any payment to be made where no payment is authorized under this subchapter, shall make or cause to be made any false statement or representation (including any false statement or representation in connection with any matter arising under subchapter E of chapter 1, or subchapter A or E of chapter 9 of the Internal Revenue Code of 1939, or chapter 2 or 21 or subtitle F of the Internal Revenue Code of 1954) as to--

(1) whether wages were paid or received for employment (as said terms are defined in this subchapter and the Internal Revenue Code), or the amount of wages or the period during which paid or the person to whom paid; or

(2) whether net earnings from self-employment (as such term is defined in this subchapter and in the Internal Revenue Code) were derived, or as to the amount of such net earnings or the period during which or the person by whom derived; or

(3) whether a person entitled to benefits under this subchapter had earnings in or for a particular period (as determined under section 403(f) of this title for purposes of deductions from benefits), or as to the amount thereof; or

(b) makes or causes to be made any false statement or representation of a material fact in any application for any payment or for a disability determination under this subchapter; or

(c) at any time makes or causes to be made any false statement or representation of a material fact for use in determining rights to payment under this subchapter; or

(d) having knowledge of the occurrence of any event affecting (1) his initial or continued right to any payment under this subchapter, or (2) the initial or continued right to any payment of any other individual in whose behalf he has applied for or is receiving such payment, conceals or fails to disclose such event with an intent fraudulently to secure payment either in a greater amount than is due or when no payment is authorized; or

(e) having made application to receive payment under this subchapter for the use and benefit of another and having received such a payment, knowingly and willfully converts such a payment, or any part thereof, to a use other than for the use and benefit of such other person; or

(f) willfully, knowingly, and with intent to deceive the Secretary as to his true identity (or the true identity of any other person) furnishes or causes to be furnished false information required by the Secretary in connection with the establishment and maintenance of the records provided for in section 405(c)(2) of this title; or

(g) for the purpose of causing an increase in any payment authorized under this subchapter (or any other program financed in whole or in part from Federal funds), or for the purpose of causing a payment under this subchapter (or any such other program) to be made when no payment is authorized thereunder, or for the purpose of obtaining (for himself or any other person) any payment or any other benefit to which he (or such other person) is not entitled, or for the purpose of obtaining anything of value from any person, or for any other purpose

(1) willfully, knowingly, and with intent to deceive, uses a social security account number, assigned by the Secretary (in the exercise of his authority under section 405(c)(2) of this title to establish and maintain records) on the basis of false information furnished to the Secretary by him or by any other person; or

(2) with intent to deceive, falsely represents a number to be the social security account number assigned by the Secretary to him or to another person, when in fact such number is not the social security account number assigned by the Secretary to him or to such other person; or

(3) knowingly alters a social security card issued by the Secretary, buys or sells a card that is, or purports to be, a card so issued, counterfeits a social security card, or possesses a social security card or counterfeit social security card with intent to sell or alter it; or

(h) discloses, uses, or compels the disclosure of the social security number of any person in violation of the laws of the United States;

~~shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.~~ shall be guilty of a felony and upon conviction thereof shall be fined not more than \$5,000 or imprisoned for not more than five years, or both.

PIRACY AND COUNTERFEITING AMENDMENTS
ACT OF 1982

On May 24, 1982, President Reagan approved Public Law 97-180 which completely rewrites Section 2318 and adds a new Section 2319 to Title 18 concerning trafficking in counterfeit labels for phonorecords, and motion pictures or other audiovisual works, and criminal infringement of a copyright.

Section 2318 provides a substantial increase in maximum penalties from two years and/or \$25,000 to five years and/or \$250,000 for trafficking in counterfeit labels. The old requirement of fraudulent intent has been eliminated and it is sufficient if the offense were "knowingly" committed. The label need no longer be affixed to the packaged product; it is sufficient if it is "designed to be affixed."

By definition, one who acquires the article for personal use does not fall within the term "traffic" and is, therefore, excluded from the Act. The term "counterfeit label" includes simulated genuine labels that have not previously existed.

The current jurisdictional basis of interstate and foreign commerce has been extended to include offenses committed within the territorial or special maritime or aircraft jurisdiction of the United States, offenses involving the use of the mail, and circumstances where the counterfeit label is affixed or designed to be affixed to the copyrighted work. This latter provision affords pendent jurisdiction based on claims under the Federal copyright law.

The forfeiture provisions have been retained.

Section 2319 supplements rather than supplants other remedies in the copyright law. 17 U.S.C. 506(a), which sets forth the substantive offense, is unchanged.

A gradation of penalties is established, based on the number of infringing copies and the time frame within which they are made or distributed.

The word "copies" is included to make clear that unauthorized reproduction and distribution of a copyrighted sound recording in the form of videocassettes or videodiscs is a covered offense.

The words "one or more" recordings or pictures are intended to make clear that the offense may involve one or more different pictures or recordings. For example, distributing 65 movies, each with a different title, within the 180 day period would constitute an offense.

Section 506(a) of Title 17 is amended to provide that the penalties for infringement under that section will be those contained in the new Section 2319 of Title 18.

PUBLIC LAW 97-180—MAY 24, 1982

96 STAT. 91

Public Law 97-180
97th Congress

An Act

To amend titles 18 and 17 of the United States Code to strengthen the laws against record, tape, and film piracy and counterfeiting, and for other purposes.

May 24, 1982
[S. 691]

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 "Piracy and Counterfeiting Amendments Act of 1982".

Piracy and
Counterfeiting
Amendments
Act of 1982.
18 USC 2311
note.

SEC. 2. Section 2318 of title 18, United States Code, is amended to read as follows:

"§2318. Trafficking in counterfeit labels for phonorecords, and copies of motion pictures or other audiovisual works

"(a) Whoever, in any of the circumstances described in subsection (c) of this section, knowingly traffics in a counterfeit label affixed or designed to be affixed to a phonorecord, or a copy of a motion picture or other audiovisual work, shall be fined not more than \$250,000 or imprisoned for not more than five years, or both.

"(b) As used in this section—

"(1) the term 'counterfeit label' means an identifying label or container that appears to be genuine, but is not;

"(2) the term 'traffic' means to transport, transfer or otherwise dispose of, to another, as consideration for anything of value or to make or obtain control of with intent to so transport, transfer or dispose of; and

"(3) the terms 'copy', 'phonorecord', 'motion picture', and 'audiovisual work' have, respectively, the meanings given those terms in section 101 (relating to definitions) of title 17.

"(c) The circumstances referred to in subsection (a) of this section are—

"(1) the offense is committed within the special maritime and territorial jurisdiction of the United States; or within the special aircraft jurisdiction of the United States (as defined in section 101 of the Federal Aviation Act of 1958);

"(2) the mail or a facility of interstate or foreign commerce is used or intended to be used in the commission of the offense; or

"(3) the counterfeit label is affixed to or encloses, or is designed to be affixed to or enclose, a copyrighted motion picture or other audiovisual work, or a phonorecord of a copyrighted sound recording.

"(d) When any person is convicted of any violation of subsection (a), the court in its judgment of conviction shall in addition to the penalty therein prescribed, order the forfeiture and destruction or other disposition of all counterfeit labels and all articles to which counterfeit labels have been affixed or which were intended to have had such labels affixed.

Definitions.

49 USC 1301.

96 STAT. 92

PUBLIC LAW 97-180—MAY 24, 1982

“(e) Except to the extent they are inconsistent with the provisions of this title, all provisions of section 509, title 17, United States Code, are applicable to violations of subsection (a).”

SEC. 3. Title 18, United States Code, is amended by inserting after section 2318 the following new section:

18 USC 2319.

“§ 2319. Criminal infringement of a copyright

“(a) Whoever violates section 506(a) (relating to criminal offenses) of title 17 shall be punished as provided in subsection (b) of this section and such penalties shall be in addition to any other provisions of title 17 or any other law.

“(b) Any person who commits an offense under subsection (a) of this section—

“(1) shall be fined not more than \$250,000 or imprisoned for not more than five years, or both, if the offense—

“(A) involves the reproduction or distribution during any one-hundred-and-eighty-day period, of at least one thousand phonorecords or copies infringing the copyright in one or more sound recordings;

“(B) involves the reproduction or distribution, during any one-hundred-and-eighty-day period, of at least sixty-five copies infringing the copyright in one or more motion pictures or other audiovisual works; or

“(C) is a second or subsequent offense under either of subsection (b)(1) or (b)(2) of this section, where a prior offense involved a sound recording, or a motion picture or other audiovisual work;

“(2) shall be fined not more than \$250,000 or imprisoned for not more than two years, or both, if the offense—

“(A) involves the reproduction or distribution, during any one-hundred-and-eighty-day period, of more than one hundred but less than one thousand phonorecords or copies infringing the copyright in one or more sound recordings; or

“(B) involves the reproduction or distribution, during any one-hundred-and-eighty-day period, of more than seven but less than sixty-five copies infringing the copyright in one or more motion pictures or other audiovisual works; and

“(3) shall be fined not more than \$25,000 or imprisoned for not more than one year, or both, in any other case.

Definitions.

“(c) As used in this section—

“(1) the terms ‘sound recording’, ‘motion picture’, ‘audiovisual work’, ‘phonorecord’, and ‘copies’ have, respectively, the meanings set forth in section 101 (relating to definitions) of title 17; and

“(2) the terms ‘reproduction’ and ‘distribution’ refer to the exclusive rights of a copyright owner under clauses (1) and (3) respectively of section 106 (relating to exclusive rights in copyrighted works), as limited by sections 107 through 118, of title 17.”

SEC. 4. The table of sections for chapter 113 of title 18 of the United States Code is amended by striking out the item relating to section 2318 and inserting in lieu thereof the following:

PUBLIC LAW 97-180—MAY 24, 1982

96 STAT. 93

"2318. Trafficking in counterfeit labels for phonorecords and copies of motion pictures or other audiovisual works.
"2319. Criminal infringement of a copyright."

SEC. 5. Section 506(a) of title 17, United States Code, is amended to read as follows:

"(a) CRIMINAL INFRINGEMENT.—Any person who infringes a copyright willfully and for purposes of commercial advantage or private financial gain shall be punished as provided in section 2319 of title 18." Ante, p. 92.

Approved May 24, 1982.

LEGISLATIVE HISTORY—S. 691 (H.R. 3530):

HOUSE REPORT No. 97-495 accompanying H.R. 3530 (Comm. on the Judiciary).
SENATE REPORT No. 97-274 (Comm. on the Judiciary).

CONGRESSIONAL RECORD:

Vol. 127 (1981): Dec. 1, considered and passed Senate.
Vol. 128 (1982): May 10, H.R. 3530 considered and passed Senate, amended; passage vacated and S. 691 passed in lieu.

INTELLIGENCE IDENTITIES
PROTECTION ACT

On June 23, 1982, Public Law 97-200, the Intelligence Identities Protection Act, was enacted. The Act amends the National Security Act of 1947 to prohibit the unauthorized disclosure of information identifying certain United States intelligence officers, agents, informants, and sources.

Section 601 establishes three distinct criminal offenses for the intentional disclosure to unauthorized persons of information identifying covert agents.

Section 601(a) applies to those individuals who have been given authorized access to classified information which identifies a covert agent. Such an individual would be subject to a fine of \$50,000 or imprisonment for ten years, or both, if he intentionally discloses, to any individual not authorized to receive classified information, any information identifying such agent, knowing that the information disclosed identifies such agent, and knowing that the United States is taking affirmative measures to conceal the agent's intelligence relationship to the United States.

Section 601(b) applies to those who learn the identity of a covert agent "as a result of having authorized access to classified information." The distinction between this category of offenders and the category covered by Section 601(a), is that under 601(a) the offender must have had authorized access to specific classified information which identifies the covert agent whose disclosure is basis for the prosecution, while 601(b) requires that the identity be learned only "as a result" of authorized access to classified information in general. Offenders under 601(b) are subject to a fine of \$25,000 or five years in prison, or both. With the two exceptions discussed above, i.e., the relationship of the offender to the classified information and the penalty for conviction, the two offenses, and the elements of proof thereof, are the same.

Section 601(c) applies to any person who discloses the identity of a foreign agent. As is required by subsections (a) & (b), the government must prove that the disclosure was intentional and that the relationship was classified. The

government must also prove that the offender knew that the government was taking affirmative measures to conceal the classified intelligence relationship of the covert agent. As is also the case with subsections (a) & (b), the actual information disclosed does not have to be classified. However, the government must prove that the defendant knew that he was disclosing a classified relationship the government seeks by affirmative measures to conceal .

Unlike the previous two sections, authorized access to classified information is not a prerequisite to conviction under Section 601(c). The United States must prove that the disclosure was made in the course of a pattern of activities, i.e., a series of acts having a common purpose or objective; that the pattern of activities was intended to identify and expose covert agents; and that there was reason to believe such activities would impair or impede the foreign intelligence activities of the United States.

Section 602(a) provides that it is a defense to prosecution under Section 601 that, before the commission of the offense with which the defendant is charged, the United States had publicly acknowledged or revealed the intelligence relationship to the United States of the individual the disclosure of whose intelligence relationship to the United States is the basis for prosecution. "Publicly acknowledged" encompasses such public activities as official publications of the United States, or official statements or press releases made by those acting on behalf of the United States, which specifically acknowledge an intelligence relationship. The United States has "revealed" an intelligence relationship if it has disclosed information which names, or leads directly to the identification of, an individual as a covert agent.

Sections 602(b)(1) and (2) ensure that a prosecution cannot be maintained under Section 601(a), (b), or (c), upon theories of aiding and abetting, misprision of a felony, or conspiracy, against an individual who does not actually disclose information unless the government can meet the proof requirements of Section 601(c).

Section 602(c) provides that disclosures made directly to the House or Senate Intelligence Committees are not criminal offenses.

Section 602(d) provides that it is not an offense under Section 601 for an individual to disclose information that solely identifies himself as a covert agent.

Section 603 requires an annual report from the President to the House and Senate Intelligence Committees on measures to protect the identities of covert agents.

Section 604 authorizes the federal government to prosecute a United States citizen or permanent resident alien for an offense under Section 601 committed outside the United States.

Section 605 states that no provision of the Act authorizes the Executive branch to withhold information from the Congress.

Section 606 defines "classified information," "authorized," "disclose," "covert agent," "intelligence agency," "informant," "officer" and "employee," "Armed Forces," "United States," and "pattern of activities."

96 STAT. 122

PUBLIC LAW 97-200—JUNE 23, 1982

Public Law 97-200
97th Congress

An Act

June 23, 1982
[H.R. 4]

To amend the National Security Act of 1947 to prohibit the unauthorized disclosure of information identifying certain United States intelligence officers, agents, informants, and sources.

Intelligence
Identities
Protection Act
of 1982.
50 USC 401 note.

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 "Intelligence Identities Protection Act of 1982".

SEC. 2. (a) The National Security Act of 1947 is amended by adding at the end thereof the following new title:

"TITLE VI—PROTECTION OF CERTAIN NATIONAL SECURITY INFORMATION

"PROTECTION OF IDENTITIES OF CERTAIN UNITED STATES UNDERCOVER INTELLIGENCE OFFICERS, AGENTS, INFORMANTS, AND SOURCES

50 USC 421.

"SEC. 601. (a) Whoever, having or having had authorized access to classified information that identifies a covert agent, intentionally discloses any information identifying such covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such covert agent and that the United States is taking affirmative measures to conceal such covert agent's intelligence relationship to the United States, shall be fined not more than \$50,000 or imprisoned not more than ten years, or both.

"(b) Whoever, as a result of having authorized access to classified information, learns the identity of a covert agent and intentionally discloses any information identifying such covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such covert agent and that the United States is taking affirmative measures to conceal such covert agent's intelligence relationship to the United States, shall be fined not more than \$25,000 or imprisoned not more than five years, or both.

"(c) Whoever, in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States, discloses any information that identifies an individual as a covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such individual and that the United States is taking affirmative measures to conceal such individual's classified intelligence relationship to the United States, shall be fined not more than \$15,000 or imprisoned not more than three years, or both.

"DEFENSES AND EXCEPTIONS

50 USC 422.

"SEC. 602. (a) It is a defense to a prosecution under section 601 that before the commission of the offense with which the defendant

PUBLIC LAW 97-200—JUNE 23, 1982

96 STAT. 123

is charged, the United States had publicly acknowledged or revealed the intelligence relationship to the United States of the individual the disclosure of whose intelligence relationship to the United States is the basis for the prosecution.

“(b)(1) Subject to paragraph (2), no person other than a person committing an offense under section 601 shall be subject to prosecution under such section by virtue of section 2 or 4 of title 18, United States Code, or shall be subject to prosecution for conspiracy to commit an offense under such section.

“(2) Paragraph (1) shall not apply (A) in the case of a person who acted in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States, or (B) in the case of a person who has authorized access to classified information.

“(c) It shall not be an offense under section 601 to transmit information described in such section directly to the Select Committee on Intelligence of the Senate or to the Permanent Select Committee on Intelligence of the House of Representatives.

Information, transmittal to congressional committees.

“(d) It shall not be an offense under section 601 for an individual to disclose information that solely identifies himself as a covert agent.

“REPORT

“SEC. 603. (a) The President, after receiving information from the Director of Central Intelligence, shall submit to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives an annual report on measures to protect the identities of covert agents, and on any other matter relevant to the protection of the identities of covert agents.

50 USC 423.

“(b) The report described in subsection (a) shall be exempt from any requirement for publication or disclosure. The first such report shall be submitted no later than February 1, 1983.

“EXTRATERRITORIAL JURISDICTION

“SEC. 604. There is jurisdiction over an offense under section 601 committed outside the United States if the individual committing the offense is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act).

50 USC 424.

8 USC 1101.

“PROVIDING INFORMATION TO CONGRESS

“SEC. 605. Nothing in this title may be construed as authority to withhold information from the Congress or from a committee of either House of Congress.

50 USC 425.

“DEFINITIONS

“SEC. 606. For the purposes of this title:

50 USC 426.

“(1) The term ‘classified information’ means information or material designated and clearly marked or clearly represented, pursuant to the provisions of a statute or Executive order (or a regulation or order issued pursuant to a statute or Executive

96 STAT. 124

PUBLIC LAW 97-200—JUNE 23, 1982

order), as requiring a specific degree of protection against unauthorized disclosure for reasons of national security.

“(2) The term ‘authorized’, when used with respect to access to classified information, means having authority, right, or permission pursuant to the provisions of a statute, Executive order, directive of the head of any department or agency engaged in foreign intelligence or counterintelligence activities, order of any United States court, or provisions of any Rule of the House of Representatives or resolution of the Senate which assigns responsibility within the respective House of Congress for the oversight of intelligence activities.

“(3) The term ‘disclose’ means to communicate, provide, impart, transmit, transfer, convey, publish, or otherwise make available.

“(4) The term ‘covert agent’ means—

“(A) an officer or employee of an intelligence agency or a member of the Armed Forces assigned to duty with an intelligence agency—

“(i) whose identity as such an officer, employee, or member is classified information, and

“(ii) who is serving outside the United States or has within the last five years served outside the United States; or

“(B) a United States citizen whose intelligence relationship to the United States is classified information, and—

“(i) who resides and acts outside the United States as an agent of, or informant or source of operational assistance to, an intelligence agency, or

“(ii) who is at the time of the disclosure acting as an agent of, or informant to, the foreign counterintelligence or foreign counterterrorism components of the Federal Bureau of Investigation; or

“(C) an individual, other than a United States citizen, whose past or present intelligence relationship to the United States is classified information and who is a present or former agent of, or a present or former informant or source of operational assistance to, an intelligence agency.

“(5) The term ‘intelligence agency’ means the Central Intelligence Agency, a foreign intelligence component of the Department of Defense, or the foreign counterintelligence or foreign counterterrorism components of the Federal Bureau of Investigation.

“(6) The term ‘informant’ means any individual who furnishes information to an intelligence agency in the course of a confidential relationship protecting the identity of such individual from public disclosure.

“(7) The terms ‘officer’ and ‘employee’ have the meanings given such terms by section 2104 and 2105, respectively, of title 5, United States Code.

“(8) The term ‘Armed Forces’ means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

“(9) The term ‘United States’, when used in a geographic sense, means all areas under the territorial sovereignty of the United States and the Trust Territory of the Pacific Islands.

“(10) The term ‘pattern of activities’ requires a series of acts with a common purpose or objective.”

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96 STAT. 125

(b) The table of contents at the beginning of such Act is amended by adding at the end thereof the following:

"TITLE VI—PROTECTION OF CERTAIN NATIONAL SECURITY INFORMATION

"Sec. 601. Protection of identities of certain United States undercover intelligence officers, agents, informants, and sources.

"Sec. 602. Defenses and exceptions.

"Sec. 603. Report.

"Sec. 604. Extraterritorial jurisdiction.

"Sec. 605. Providing information to Congress.

"Sec. 606. Definitions."

Approved June 23, 1982.

LEGISLATIVE HISTORY—H.R. 4 (S. 391):

HOUSE REPORTS: No. 97-221 (Comm. on Intelligence) and No. 97-580 (Comm. of Conference).

SENATE REPORT No. 97-201 accompanying S. 391 (Comm. on the Judiciary).

CONGRESSIONAL RECORD:

Vol. 127 (1981): Sept. 23, considered and passed House.

Vol. 128 (1982): Feb. 25, Mar. 1, 15-17, S. 391 considered in Senate.

Mar. 18, H.R. 4 considered and passed Senate, amended.

June 2, 3, House considered and agreed to conference report.

June 10, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 18, No. 25 (1982): June 23, Presidential statement.

PRETRIAL SERVICES ACT

On September 27, 1982, the Pretrial Services Act of 1982 (P.L. 97-267) was enacted, revising 18 U.S.C. 3152-3155. The Act establishes pretrial services for defendants in every Federal judicial district. The most important functions of pretrial services are (1) compiling and verifying personal background information on individuals charged with violation of Federal criminal law for use by judges and magistrates in making bail decisions (within this function, providers of pretrial services are required to inform the court if the release of the defendant may pose a danger to any other person or the community); (2) monitoring and supervising individuals released on bail; and (3) reporting to the court all violations of the conditions of release and recommending necessary modifications in conditions of release.

Section 3152 provides that, for an 18-month period following enactment of the bill, any pretrial services beyond existing demonstration districts (which are authorized to continue operation during the 18-month period) are to be provided under the supervision of the chief probation officers, using existing resources, and with no authority for additional appropriations. After this 18-month period, pretrial services may also be provided under the supervision of chief pretrial services officers, who must be individuals other than those serving as probation officers under 18 U.S.C. 3654. If the district court and circuit judicial council jointly recommend the establishment of pretrial services in their particular district, authority is provided for additional appropriations to support pretrial services. The 18-month delay period allows the district courts, circuit councils, and the Administrative Office of the U.S. Courts to evaluate the needs for pretrial services and the resources available in each district, and to identify those districts which are capable of providing pretrial services within existing resources and those which will need additional resources and will, therefore, be required to utilize the special districts provision of the statute.

Section 3153 provides for the appointment of additional personnel by the chief pretrial services officers and authorizes the chief probation officer to designate existing probation personnel to perform pretrial services functions. Additionally, Section 3153(c)(1) provides for the confidentiality of the information collected in the course of providing pretrial services functions, in order to protect the relationship between the pretrial services office and the particular defendant, and in turn to assure the gathering of the most complete information for the court. The information is protected unless it is to be revealed for the purposes of a bail hearing (including a hearing to determine whether a defendant's bail should be revoked). Section 3153(c)(3) provides that the information collected above is not admissible on the issue of guilt in a criminal judicial proceeding unless the proceeding is for a crime committed in the course of obtaining pretrial release, or for the defendant's failure to appear on the case for which pretrial services were provided. The limitation on admissibility is necessary to further the object of ensuring that the court receives the most complete information possible, while the exceptions to the limitation ensure that defendants cannot attempt to take advantage of the pretrial services process and then shield themselves behind the guarantee of confidentiality.

Section 3154 sets forth in detail the various functions and powers relating to pretrial services, which have been described above. Those functions are, in general, providing the courts with information upon which to base bail determinations and supervising persons released on bail.

Section 3155 requires that each pretrial services officer (or chief probation officer) prepare an annual report to the chief judge of the district court concerning the administration of operation of the pretrial services for the previous year.

96 STAT. 1136

PUBLIC LAW 97-267—SEPT. 27, 1982

Public Law 97-267
97th Congress

An Act

Sept. 27, 1982
[S. 923]

To amend chapter 207 of title 18, United States Code, relating to pretrial services.

Pretrial Services
Act of 1982.
18 USC 3141
note.*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 "Pretrial Services Act of 1982".*

SEC. 2. Section 3152 of title 18, United States Code, is amended to read as follows:

"§ 3152. Establishment of pretrial services

18 USC 3654.

"(a) On and after the date of the enactment of the Pretrial Services Act of 1982, the Director of the Administrative Office of the United States Courts (hereinafter in this chapter referred to as the 'Director') shall, under the supervision and direction of the Judicial Conference of the United States, provide directly, or by contract or otherwise (to such extent and in such amounts as are provided in appropriation Acts), for the establishment of pretrial services in each judicial district (other than the District of Columbia). Pretrial services established under this section shall be supervised by a chief probation officer appointed under section 3654 of this title or by a chief pretrial services officer selected under subsection (c) of this section.

"(b) Beginning eighteen months after the date of the enactment of the Pretrial Services Act of 1982, if an appropriate United States district court and the circuit judicial council jointly recommend the establishment under this subsection of pretrial services in a particular district, pretrial services shall be established under the general authority of the Administrative Office of the United States Courts.

"(c) The pretrial services established under subsection (b) of this section shall be supervised by a chief pretrial services officer selected by a panel consisting of the chief judge of the circuit, the chief judge of the district, and a magistrate of the district or their designees. The chief pretrial services officer appointed under this subsection shall be an individual other than one serving under authority of section 3654 of this title."

SEC. 3. Section 3153 of title 18, United States Code, is amended to read as follows:

"§ 3153. Organization and administration of pretrial servicesPosition
requirements
and
compensation
rate.

"(a)(1) With the approval of the district court, the chief pretrial services officer in districts in which pretrial services are established under section 3152(b) of this title shall appoint such other personnel as may be required. The position requirements and rate of compensation of the chief pretrial services officer and such other personnel shall be established by the Director with the approval of the Judicial Conference of the United States, except that no such rate of compensation shall exceed the rate of basic pay in effect and then payable for grade GS-16 of the General Schedule under section 5332 of title 5, United States Code.

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96 STAT. 1137

“(2) The chief pretrial services officer in districts in which pretrial services are established under section 3152(b) of this title is authorized, subject to the general policy established by the Director and the approval of the district court, to procure temporary and intermittent services to the extent authorized by section 3109 of title 5, United States Code. The staff, other than clerical staff, may be drawn from law school students, graduate students, or such other available personnel.

“(b) The chief probation officer in all districts in which pretrial services are established under section 3152(a) of this title shall designate personnel appointed under chapter 231 of this title to perform pretrial services under this chapter.

“(c)(1) Except as provided in paragraph (2) of this subsection, information obtained in the course of performing pretrial services functions in relation to a particular accused shall be used only for the purposes of a bail determination and shall otherwise be confidential. Each pretrial services report shall be made available to the attorney for the accused and the attorney for the Government.

“(2) The Director shall issue regulations establishing the policy for release of information made confidential by paragraph (1) of this subsection. Such regulations shall provide exceptions to the confidentiality requirements under paragraph (1) of this subsection to allow access to such information—

“(A) by qualified persons for purposes of research related to the administration of criminal justice;

“(B) by persons under contract under section 3154(4) of this title;

“(C) by probation officers for the purpose of compiling presentence reports;

“(D) insofar as such information is a pretrial diversion report, to the attorney for the accused and the attorney for the Government; and

“(E) in certain limited cases, to law enforcement agencies for law enforcement purposes.

“(3) Information made confidential under paragraph (1) of this subsection is not admissible on the issue of guilt in a criminal judicial proceeding unless such proceeding is a prosecution for a crime committed in the course of obtaining pretrial release or a prosecution for failure to appear for the criminal judicial proceeding with respect to which pretrial services were provided.”

SEC. 4. Section 3154 of title 18, United States Code, is amended to read as follows:

“§ 3154. Functions and powers relating to pretrial services

“Pretrial services functions shall include the following:

“(1) Collect, verify, and report to the judicial officer, prior to the pretrial release hearing, information pertaining to the pretrial release of each individual charged with an offense, including information relating to any danger that the release of such person may pose to any other person or the community, and recommend appropriate release conditions for such individual.

“(2) Review and modify the reports and recommendations specified in paragraph (1) of this section for persons seeking release pursuant to section 3146(e) or section 3147 of this chapter.

“(3) Supervise persons released into its custody under this chapter.

18 USC 3651
et seq.

Information
confidentiality.

Regulations.

18 USC 3146,
3147.

96 STAT. 1138

PUBLIC LAW 97-267—SEPT. 27, 1982

"(4) Operate or contract for the operation of appropriate facilities for the custody or care of persons released under this chapter including residential halfway houses, addict and alcoholic treatment centers, and counseling services.

"(5) Inform the court and the United States attorney of all apparent violations of pretrial release conditions, arrests of persons released to the custody of providers of pretrial services or under the supervision of providers of pretrial services, and any danger that any such person may come to pose to any other person or the community, and recommend appropriate modifications of release conditions.

"(6) Serve as coordinator for other local agencies which serve or are eligible to serve as custodians under this chapter and advise the court as to the eligibility, availability, and capacity of such agencies.

"(7) Assist persons released under this chapter in securing any necessary employment, medical, legal, or social services.

"(8) Prepare, in cooperation with the United States marshal and the United States attorney such pretrial detention reports as are required by the provisions of the Federal Rules of Criminal Procedure relating to the supervision of detention pending trial.

18 USC app.

"(9) Develop and implement a system to monitor and evaluate bail activities, provide information to judicial officers on the results of bail decisions, and prepare periodic reports to assist in the improvement of the bail process.

"(10) To the extent provided for in an agreement between a chief pretrial services officer in districts in which pretrial services are established under section 3152(b) of this title, or the chief probation officer in all other districts, and the United States attorney, collect, verify, and prepare reports for the United States attorney's office of information pertaining to the pretrial diversion of any individual who is or may be charged with an offense, and perform such other duties as may be required under any such agreement.

"(11) Make contracts, to such extent and in such amounts as are provided in appropriation Acts, for the carrying out of any pretrial services functions.

"(12) Perform such other functions as specified under this chapter."

SEC. 5. Section 3155 of title 18, United States Code, is amended to read as follows:

"§ 3155. Annual reports

"Each chief pretrial services officer in districts in which pretrial services are established under section 3152(b) of this title, and each chief probation officer in all other districts, shall prepare an annual report to the chief judge of the district court and the Director concerning the administration and operation of pretrial services. The Director shall be required to include in the Director's annual report to the Judicial Conference under section 604 of title 28 a report on the administration and operation of the pretrial services for the previous year."

Report to
congressional
committee.
28 USC 604.

SEC. 6. The table of sections for chapter 207 of title 18, United States Code, is amended by striking out the item relating to section 3152 and all that follows through the item relating to section 3155 and inserting in lieu thereof the following:

PUBLIC LAW 97-267—SEPT. 27, 1982

96 STAT. 1139

- "3152. Establishment of pretrial services.
- "3153. Organization and administration of pretrial services.
- "3154. Functions and powers relating to pretrial services.
- "3155. Annual reports."

SEC. 7. Section 604(a) of title 28, United States Code, is amended by—

- (1) striking out "agencies" in paragraph (9);
- (2) striking out "for pretrial services agencies" and inserting in lieu thereof "providing pretrial services" in paragraph (10);
- (3) by striking out "pretrial service agencies" in paragraph (11) and inserting "offices providing pretrial services" in lieu thereof; and
- (4) by striking out "pretrial services agencies" in paragraph (12) and inserting "offices providing pretrial services" in lieu thereof.

SEC. 8. During the period beginning on the date of enactment of this Act and ending eighteen months after the date of the enactment of this Act, the pretrial services agencies established under section 3152 of title 18 of the United States Code in effect before the date of enactment of this Act may continue to operate, employ staff, provide pretrial services, and perform such functions and powers as are authorized under chapter 207 of title 18 of the United States Code.

18 USC 3152
note.

Ante, p. 1136.

SEC. 9. (a) There are authorized to be appropriated, for the fiscal year ending September 30, 1984, and each succeeding fiscal year thereafter, such sums as may be necessary to carry out the functions and powers of pretrial services established under section 3152(b) of title 18, United States Code.

18 USC 3141
et seq.
Appropriation
authorization.
18 USC 3152
note.

(b) There are authorized to be appropriated for the fiscal year ending September 30, 1983, and the fiscal year ending September 30, 1984, such sums as may be necessary to carry out the functions and powers of the pretrial services agencies established under section 3152 of title 18 of the United States Code in effect before the date of enactment of this Act.

Approved September 27, 1982.

LEGISLATIVE HISTORY—S. 923 (H.R. 3481):

HOUSE REPORTS: No. 97-56 accompanying H.R. 3481 (Comm. on the Judiciary) and No. 97-792 (Comm. of Conference).

SENATE REPORT No. 97-77 (Comm. on the Judiciary).

CONGRESSIONAL RECORD:

- Vol. 127 (1981): June 18, considered and passed Senate.
- Vol. 128 (1982): May 11, H.R. 3481 considered and passed House; proceedings vacated and S. 923, amended, passed in lieu.
Aug. 20, Senate agreed to conference report.
Sept. 15, House agreed to conference report.

PROTECTION OF HIGH GOVERNMENT OFFICIALS

On October 6, 1982, Public Law 97-285 was enacted, approving amendments to 18 U.S.C. 351 and 1751. These amendments provide penalties for crimes against Cabinet Officers, Supreme Court Justices, and presidential staff members. (18 U.S.C. 351 relates to Congressional assassination, kidnapping and assault, and 18 U.S.C. 1751 relates to Presidential assassination, kidnapping and assault.)

Specifically, the amendment to 18 U.S.C. 351 extends its coverage to Cabinet Secretaries (and nominees) and their second-in-command, the Director (and nominee) and Deputy Director of the Central Intelligence Agency, and Justices of (and nominees to) the United States Supreme Court. The amendment to 18 U.S.C. 1751 extends coverage to certain senior staff members employed in the Executive Office of the President and in the Office of the Vice-President.

Additionally, each of the statutes contains a new subsection which provides that the Government need not prove that the offender knew the status of the victim at the time the offense occurred. (These subsections are 18 U.S.C. 351(h) and 1751(j).) Both 18 U.S.C. 351 and 1751 also contain new subsections ((i) and (k) respectively) which provide that the United States has extraterritorial jurisdiction over an offense committed under either section. The purpose of both these amendments was to eliminate any ambiguities in the law on these two issues.

Actual Text of New and Revised Sections

~~§351. Congressional assassination, kidnaping, and assault; penalties~~ Congressional, Cabinet, and Supreme Court assassination, kidnaping, and assault; penalties.

~~(a) Whoever kills any individual who is a Member of Congress or a Member of Congress-elect shall be punished as provided by sections 1111 and 1112 of this title.~~ (a) Whoever kills any individual who is a Member of Congress or a Member of Congress-elect, a member of the executive branch of the Government who is the head, or a person nominated to be head during the pendency of such nomination, of a department listed in section 101 of title 5 or the second ranking official in such department, the Director (or a person nominated to be Director during the pendency of such nomination) or Deputy Director of Central Intelligence, or a Justice of the United States, as defined in section 451 of title 28, or a person nominated to be a Justice of the United States, during the pendency of such nomination, shall be punished as provided by sections 1111 and 1112 of this title.

(b) Whoever kidnaps any individual designated in subsection (a) of this section shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual.

(c) Whoever attempts to kill or kidnap any individual designated in subsection (a) of this section shall be punished by imprisonment for any term of years or for life.

(d) If two or more persons conspire to kill or kidnap any individual designated in subsection (a) of this section and one or more of such persons do any act to effect the object of the conspiracy, each shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual.

(e) Whoever assaults any person designated in subsection (a) of this section shall be fined not more than \$5,000, or imprisoned not more than one year, or both; and if personal injury results, shall be fined not more than \$10,000, or imprisoned for not more than ten years, or both.

(f) If Federal investigative or prosecutive jurisdiction is asserted for a violation of this section, such assertion shall suspend the exercise of jurisdiction by a State or local authority, under any applicable State or local law, until Federal action is terminated.

(g) Violations of this section shall be investigated by the Federal Bureau of Investigation. Assistance may be requested from any Federal, State, or local agency, including the Army, Navy, and Air Force, any state, rule, or regulation to the contrary notwithstanding.

(h) In a prosecution for an offense under this section the Government need not prove that the defendant knew that the victim of the offense was an official protected by this section.

(i) There is extraterritorial jurisdiction over the conduct prohibited by this section.

§1751. Presidential assassination, kidnaping, and assault; penalties. Presidential and Presidential staff assassination, kidnaping, and assault; penalties.

~~(a) -- Whoever kills any individual who is 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, shall be punished as provided by sections 1111 and 1112 of this title.~~ (a) Whoever kills (1) any individual who is 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 the President of the United States, or (2) any person appointed under section 105(a)(2)(A) of title 3 employed in the Executive Office of the President or appointed under section 106(a)(1)(A) of title 3 employed in the Office of the Vice President, shall be punished as provided by sections 1111 and 1112 of this title.

(b) Whoever kidnaps any individual designated in subsection (a) of this section shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual.

(c) Whoever attempts to kill or kidnap any individual designated in subsection (a) of this section shall be punished by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual.

(d) If two or more persons conspire to kill or kidnap any individual designated in subsection (a) of this section

and one or more of such persons do any act to effect the object of the conspiracy, each shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual.

~~(e) Whoever assaults any person designated in subsection (a) of this section shall be fined not more than \$10,000 or imprisoned not more than 10 years, or both.~~ (e) Whoever assaults any person designated in subsection (a)(1) shall be fined not more than \$10,000, or imprisoned not more than ten years, or both. Whoever assaults any person designated in subsection (a)(2) shall be fined not more than \$5,000, or imprisoned not more than one year or both; and if personal injury results, shall be fined not more than \$10,000, or imprisoned not more than ten years, or both.

(f) The terms "President-elect" and "Vice-President-elect" as used in this section shall mean such persons as are the apparent successful candidates for the offices of President and Vice President, respectively, as ascertained from the results of the general elections held to determine the electors of President and Vice President in accordance with title 3, United States Code, sections 1 and 2.

(g) The Attorney General of the United States, in his discretion, is authorized to pay an amount not to exceed \$100,000 for information and services concerning a violation of ~~this section, subsection(a)(1).~~ Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this subsection.

(h) If Federal investigative or prosecutive jurisdiction is asserted for a violation of this section, such assertion shall suspend the exercise of jurisdiction by a State or local authority, under any applicable State or local law, until Federal action is terminated.

(i) Violations of this section shall be investigated by the Federal Bureau of Investigation. Assistance may be requested from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

(j) In a prosecution for an offense under this section the Government need not prove that the defendant knew that the victim of the offense was an official protected by this section.

(k) There is extraterritorial jurisdiction over the conduct prohibited by this section.

IMPLEMENTATION OF THE CONVENTION ON THE PHYSICAL
PROTECTION OF NUCLEAR MATERIAL

On October 18, 1982, President Reagan approved Public Law 97-351 which adds a new section 831 to chapter 39 of Title 18 of the United States Code to implement the Convention on the Physical Protection of Nuclear Material and proscribe certain other activities relating to the security of nuclear material.

Subsection (a)(1) of new 831 punishes someone who, without lawful authority (thereby preserving the exception set forth in the Convention), intentionally receives, possesses, uses, transfers, alters, disposes of, or disperses any nuclear material and thereby causes death or serious bodily injury, or substantial property damage, or who knows that circumstances exist which are likely to cause such death, bodily injury, or property damage.

Subsection (a)(2) punishes theft of nuclear material, including obtaining such material by embezzlement or fraud.

Subsection (a)(3) prohibits robbery of nuclear material, including the knowing use of force or threats of imminent bodily injury and as a result obtaining nuclear material.

Subsection (a)(4) prohibits the use of intentional intimidation, a form of extortion.

Subsection (a)(5) punishes "nuclear blackmail."

Subsection (a)(6) prohibits knowing threats to use nuclear material to cause death or serious personal injury or substantial property damage.

Subsection (a)(7) covers attempts to commit the offenses set forth in Subsections (a)(1)-(4).

Subsection (a)(8) prohibits conspiracies by 2 or more persons to commit the offenses set forth in Subsections (a)(1)-(4).

Subsection (b) sets the penalty for most violations at a fine of not more than \$250,000 and imprisonment for not more than 20 years, with enhancement under certain circumstances and a possible lesser sentence for the conspiracy offense.

Subsection (c) provides the basis for federal jurisdiction. If the offense is committed within the United States or within its special maritime and territorial or special aircraft jurisdiction or if the defendant is a United States national, the prohibited act is covered whether the nuclear material involved is for peaceful purposes or for military, or other non-peaceful purposes. If the material is used for peaceful purposes, the United States may prosecute an offender found within the United States after the offense has been committed, no matter where the offense was committed. Further, if the material is for peaceful purposes the United States may prosecute when the nuclear material is in the transit to or from the United States.

Subsections (d) and (e) set forth exceptions to the posse comitatus prohibition against use of the military for civilian law enforcement.

Subsection (f) defines the terms "nuclear material," "international organization," "serious bodily injury," and "bodily injury."

Finally, the definition of international organization used in defining offenses against internationally protected persons in 18 U.S.C. 1116(b)(5) is amended by adding language designed to reach a public organization created pursuant to treaty or other agreement under international law, and of which the United States is not a member.

PUBLIC LAW 97-351—OCT. 18, 1982

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Public Law 97-351
97th Congress**An Act**

amend title 18 of the United States Code to implement the Convention on the Physical Protection of Nuclear Material, and for other purposes.

Oct. 18, 1982
[H.R. 5228]*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,***SHORT TITLE****SECTION 1.** This Act may be cited as the "Convention on the Physical Protection of Nuclear Material Implementation Act of 1982".Convention on
the Physical
Protection of
Nuclear
Material
Implementation
Act of 1982.
18 USC 831 note.**IMPLEMENTATION OF CONVENTION AND PROHIBITION OF RELATED OFFENSES****SEC. 2.** (a) Chapter 39 of title 18 of the United States Code is amended by inserting after the table of sections at the beginning of such chapter the following new section:**"§ 831. Prohibited transactions involving nuclear materials**

18 USC 831.

"(a) Whoever, if one of the circumstances described in subsection (c) of this section occurs—**"(1)** without lawful authority, intentionally receives, possesses, uses, transfers, alters, disposes of, or disperses any nuclear material and—**"(A)** thereby knowingly causes the death of or serious bodily injury to any person or substantial damage to property; or**"(B)** knows that circumstances exist which are likely to cause the death of or serious bodily injury to any person or substantial damage to property;**"(2)** with intent to deprive another of nuclear material, knowingly—**"(A)** takes and carries away nuclear material of another without authority;**"(B)** makes an unauthorized use, disposition, or transfer, of nuclear material belonging to another; or**"(C)** uses fraud and thereby obtains nuclear material belonging to another;**"(3)** knowingly—**"(A)** uses force; or**"(B)** threatens or places another in fear that any person other than the actor will imminently be subject to bodily injury;

and thereby takes nuclear material belonging to another from the person or presence of any other;

"(4) intentionally intimidates any person and thereby obtains nuclear material belonging to another;

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“(5) with intent to compel any person, international organization, or governmental entity to do or refrain from doing any act, knowingly threatens to engage in conduct described in paragraph (2)(A) or (3) of this subsection;

“(6) knowingly threatens to use nuclear material to cause death or serious bodily injury to any person or substantial damage to property under circumstances in which the threat may reasonably be understood as an expression of serious purposes;

“(7) attempts to commit an offense under paragraph (1), (2), (3), or (4) of this subsection; or

“(8) is a party to a conspiracy of two or more persons to commit an offense under paragraph (1), (2), (3), or (4) of this subsection, if any of the parties intentionally engages in any conduct in furtherance of such offense;

shall be punished as provided in subsection (b) of this section.

“(b) The punishment for an offense under—

“(1) paragraphs (1) through (7) of subsection (a) of this section is—

“(A) a fine of not more than \$250,000; and

“(B) imprisonment—

“(i) for any term of years or for life (I) if, while committing the offense, the offender knowingly causes the death of any person; or (II) if, while committing an offense under paragraph (1) or (3) of subsection (a) of this section, the offender, under circumstances manifesting extreme indifference to the life of an individual, knowingly engages in any conduct and thereby recklessly causes the death of or serious bodily injury to any person; and

“(ii) for not more than 20 years in any other case; and

“(2) paragraph (8) of subsection (a) of this section is—

“(A) a fine of not more than \$250,000; and

“(B) imprisonment—

“(i) for not more than 20 years if the offense which is the object of the conspiracy is punishable under paragraph (1)(B)(i); and

“(ii) for not more than 10 years in any other case.

“(c) The circumstances referred to in subsection (a) of this section are that—

“(1) the offense is committed in the United States or the special maritime and territorial jurisdiction of the United States, or the special aircraft jurisdiction of the United States (as defined in section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301));

“(2) the defendant is a national of the United States, as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101);

“(3) at the time of the offense the nuclear material is in use, storage, or transport, for peaceful purposes, and after the conduct required for the offense occurs the defendant is found in the United States, even if the conduct required for the offense occurs outside the United States; or

“(4) the conduct required for the offense occurs with respect to the carriage of a consignment of nuclear material for peaceful purposes by any means of transportation intended to go beyond the territory of the state where the shipment originates begin-

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ning with the departure from a facility of the shipper in that state and ending with the arrival at a facility of the receiver within the state of ultimate destination and either of such states is the United States.

(d) The Attorney General may request assistance from the Secretary of Defense under chapter 18 of title 10 in the enforcement of this section and the Secretary of Defense may provide such assistance in accordance with chapter 18 of title 10, except that the Secretary of Defense may provide such assistance through any Department of Defense personnel.

10 USC 371 *et seq.*

(e)(1) The Attorney General may also request assistance from the Secretary of Defense under this subsection in the enforcement of this section. Notwithstanding section 1385 of this title, the Secretary of Defense may, in accordance with other applicable law, provide such assistance to the Attorney General if—

18 USC 1385.

(A) an emergency situation exists (as jointly determined by the Attorney General and the Secretary of Defense in their discretion); and

(B) the provision of such assistance will not adversely affect the military preparedness of the United States (as determined by the Secretary of Defense in such Secretary's discretion).

(3) As used in this subsection, the term 'emergency situation' means a circumstance—

"Emergency situation."

(A) that poses a serious threat to the interests of the United States; and

(B) in which—

(i) enforcement of the law would be seriously impaired if the assistance were not provided; and

(ii) civilian law enforcement personnel are not capable of enforcing the law.

(4) Assistance under this section may include—

(A) use of personnel of the Department of Defense to arrest persons and conduct searches and seizures with respect to violations of this section; and

(B) such other activity as is incidental to the enforcement of this section, or to the protection of persons or property from conduct that violates this section.

(5) The Secretary of Defense may require reimbursement as a condition of assistance under this section.

(6) The Attorney General may delegate the Attorney General's function under this subsection only to a Deputy, Associate, or Assistant Attorney General.

(f) As used in this section—

Definitions.

(1) the term 'nuclear material' means material containing any—

(A) plutonium with an isotopic concentration not in excess of 80 percent plutonium 238;

(B) uranium not in the form of ore or ore residue that contains the mixture of isotopes as occurring in nature;

(C) uranium that contains the isotope 233 or 235 or both in such amount that the abundance ratio of the sum of those isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature; or

(D) uranium 233;

(2) the term 'international organization' means a public international organization designated as such pursuant to section 1 of the International Organizations Immunities Act (22

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U.S.C. 288) or a public organization created pursuant to treaty or other agreement under international law as an instrument through or by which two or more foreign governments engage in some aspect of their conduct of international affairs;

“(3) the term ‘serious bodily injury’ means bodily injury, which involves—

“(A) a substantial risk of death;

“(B) extreme physical pain;

“(C) protracted and obvious disfigurement; or

“(D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty; and

“(4) the term ‘bodily injury’ means—

“(A) a cut, abrasion, bruise, burn, or disfigurement;

“(B) physical pain;

“(C) illness;

“(D) impairment of a function of a bodily member, organ, or mental faculty; or

“(E) any other injury to the body, no matter how temporary.”

(b) The table of sections for chapter 39 of title 18 of the United States Code is amended by striking out the items relating to sections 831 through 835 and inserting in lieu thereof the following:

“831. Prohibited transactions involving nuclear materials.”

**AMENDMENT TO DEFINITION OF INTERNATIONAL ORGANIZATIONS USED
IN DEFINING OFFENSES AGAINST INTERNATIONALLY PROTECTED PER-
SONS**

SEC. 3. Section 1116(b)(5) of title 18 of the United States Code is amended by inserting before the period the following: “or a public organization created pursuant to treaty or other agreement under international law as an instrument through or by which two or more foreign governments engage in some aspect of their conduct of international affairs”.

Approved October 18, 1982.

LEGISLATIVE HISTORY—H.R. 5228 (S. 1446):

HOUSE REPORT No. 97-624 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 128 (1982):

July 19, 20, considered and passed House.

Sept. 14, considered and passed Senate, amended.

Sept. 28, House concurred in Senate amendment No. 1; disagreed to certain amendments; concurred in others with amendments.

Oct. 1, Senate concurred in House amendments and receded from its disagreements.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 18, No. 42 (1982):

Oct. 19, Presidential statement.

FALSE IDENTIFICATION CRIME CONTROL ACT OF 1982

On December 31, 1982, President Reagan signed Public Law 97-398, which adds section 1028 to chapter 47 and Section 1738 to chapter 83 of Title 18, United States Code.

Section 1028 proscribes the production or transfer of false identification documents; the possession of 5 or more such documents; possession of an identification document not lawfully issued to the possessor or a false identification document with intent to defraud the United States; knowing production, transfer, or possession of a document-making implement to be used in producing a false identification document; or knowing possession of what is or appears to be an identification document of the United States which is stolen or was produced without authority. These proscriptions apply whenever the identification document or false identification document appears to be issued by the United States or the document-making implement is designed to make such a document; the offense is possession with intent to defraud the United States; or the production, transfer, or possession is in or affects interstate or foreign commerce or involves the use of the mail.

The terms "identification document," "procedure," "document-making implement," "personal identification card," and "State" are defined. Authorized activities by law enforcement and intelligence agencies and activities under the federal Witness Protection Program are excluded from the Act's coverage.

Penalties range from a fine of not more than \$5,000 or imprisonment for not more than one year or both to a fine of not more than \$25,000 or imprisonment for not more than 5 years or both and are graded based on the extent of the danger posed by the activity, the scope of offender's involvement in false identification fraud, and the federal government's interest in the documents involved.

Section 1738 prohibits the mailing of private identification documents without a disclaimer and provides a penalty of a fine of not more than \$1,000 or imprisonment for not more than one year or both for furnishers of identification documents for valuable consideration who mail or transport in interstate or foreign commerce an identification document which bears a birth date or age unless the document is clearly marked "NOT A GOVERNMENT DOCUMENT."

An Act

To amend title 18 of the United States Code to provide penalties for certain false identification related crimes.

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 "False Identification Crime Control Act of 1982".

SEC. 2. Chapter 47 of title 18 of the United States Code is amended by adding at the end the following:

"§ 1028. Fraud and related activity in connection with identification documents

"(a) Whoever, in a circumstance described in subsection (c) of this section—

"(1) knowingly and without lawful authority produces an identification document or a false identification document;

"(2) knowingly transfers an identification document or a false identification document knowing that such document was stolen or produced without lawful authority;

"(3) knowingly possesses with intent to use unlawfully or transfer unlawfully five or more identification documents (other than those issued lawfully for the use of the possessor) or false identification documents;

"(4) knowingly possesses an identification document (other than one issued lawfully for the use of the possessor) or a false identification document, with the intent such document be used to defraud the United States; or

"(5) knowingly produces, transfers, or possesses a document-making implement with the intent such document-making implement will be used in the production of a false identification document or another document-making implement which will be so used;

"(6) possesses an identification document that is or appears to be an identification document of the United States which is stolen or produced without authority knowing that such document was stolen or produced without authority;

or attempts to do so, shall be punished as provided in subsection (b) of this section.

"(b) The punishment for an offense under subsection (a) of this section is—

"(1) a fine of not more than \$25,000 or imprisonment for not more than five years, or both, if the offense is—

"(A) the production or transfer of an identification document or false identification document that is or appears to be—

"(i) an identification document issued by or under the authority of the United States; or

"(ii) a birth certificate, or a driver's license or personal identification card;

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“(B) the production or transfer of more than five identification documents or false identification documents; or

“(C) an offense under paragraph (5) of such subsection;

“(2) a fine of not more than \$15,000 or imprisonment for not more than three years, or both, if the offense is—

“(A) any other production or transfer of an identification document or false identification document; or

“(B) an offense under paragraph (3) of such subsection;

and

“(3) a fine of not more than \$5,000 or imprisonment for not more than one year, or both, in any other case.

“(c) The circumstance referred to in subsection (a) of this section is that—

“(1) the identification document or false identification document is or appears to be issued by or under the authority of the United States or the document-making implement is designed or suited for making such an identification document or false identification document;

“(2) the offense is an offense under subsection (a)(4) of this section; or

“(3) the production, transfer, or possession prohibited by this section is in or affects interstate or foreign commerce, or the identification document, false identification document, or document-making implement is transported in the mail in the course of the production, transfer, or possession prohibited by this section.

“(d) As used in this section—

“(1) the term ‘identification document’ means a document made or issued by or under the authority of the United States Government, a State, political subdivision of a State, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals;

“(2) the term ‘produce’ includes alter, authenticate, or assemble;

“(3) the term ‘document-making implement’ means any implement or impression specially designed or primarily used for making an identification document, a false identification document, or another document-making implement;

“(4) the term ‘personal identification card’ means an identification document issued by a State or local government solely for the purpose of identification; and

“(5) the term ‘State’ includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States.

“(e) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 8481).”

SEC. 3. The table of sections at the beginning of chapter 47 of title 18 of the United States Code is amended by adding at the end the following:

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"1028. Fraud and related activity in connection with identification documents."

SEC. 4. (a) Chapter 83 of title 18, United States Code, is amended by adding at the end thereof the following:

"§ 1738. Mailing private identification documents without a disclaimer

"(a) Whoever, being in the business of furnishing identification documents for valuable consideration, and in the furtherance of that business, uses the mails for the mailing, carriage in the mails, or delivery of, or causes to be transported in interstate or foreign commerce, any identification document—

"(1) which bears a birth date or age purported to be that of the person named in such identification document; and

"(2) knowing that such document fails to carry diagonally printed clearly and indelibly on both the front and back "NOT A GOVERNMENT DOCUMENT" in capital letters in not less than twelve point type;

shall be fined not more than \$1,000, imprisoned not more than one year, or both.

"(b) For purposes of this section the term 'identification document' means a document which is of a type intended or commonly accepted for the purpose of identification of individuals and which is not issued by or under the authority of a government."

(b) The table of sections at the beginning of chapter 83 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"1738. Mailing private identification documents without a disclaimer."

SEC. 5. Section 3001(a) of title 39, United States Code, is amended by striking out "or 1718" and inserting in lieu thereof ", 1718, or 1738".

Thomas P. O'Neill
Speaker of the House of Representatives

Strom Thurmond

~~Vice President of the United States and~~
President of the Senate *ps*

ETHICS IN GOVERNMENT ACT AMENDMENTS OF 1982

On January 3, 1983, Public Law 97-409 was approved, making numerous improvements in the Ethics in Government Act of 1978. The principal changes are a reduction in the number of officials covered and in the duration of coverage, and an increase in the threshold at which the Act is triggered. An additional change is to replace the term "special prosecutor" with the term "independent counsel" throughout the statute. The revisions to the Act are detailed as follows:

Section 591(a) changes the standard for triggering an investigation under this statute. Previously, the Attorney General was required to conduct an investigation pursuant to the Act upon receipt of "specific information" that any person covered by the Act had committed a violation of any Federal criminal law (other than a petty offense). The new law clarifies the type of information needed to trigger an investigation by setting the standard of "information sufficient to constitute grounds to investigate."

Section 591(b) reduces the number of government officials who are covered by the Act and shortens the time period during which those officials are covered.

Section 591(c) is a new provision which provides that the Attorney General can conduct an investigation and apply for an independent counsel upon receipt of information sufficient to constitute grounds to investigate any person not covered by 591(b), if the Attorney General determines that investigation of that person by the Department may result in personal, financial, or political conflict of interest.

Section 592(a) sets forth factors the Attorney General is to consider in determining whether sufficient grounds to investigate exist, namely, the degree of specificity of the information received, and the credibility of the source of the information. That section also provides that, during his conduct of preliminary investigations under the Act, the Attorney General has no authority to convene grand juries, plea bargain, grant immunity or issue subpoenas.

Section 592(b) and (c) set forth the standard for determining whether further investigation is necessary. Previously, the law called for the Attorney General's conclusion that "the matter is so unsubstantiated that no further investigation or prosecution is warranted," or conversely, that further investigation is warranted. The new standard requires a determination by the Attorney General that there are no reasonable (or that there are reasonable) grounds to believe that further investigation or prosecution is warranted. In making this determination, the Attorney General is to comply with the written or other established policies of the Department with respect to the enforcement of criminal laws.

Section 593(f) provides that the Attorney General can, upon a showing of good cause, request a single extension of the 90-day preliminary investigation phase for a period of up to 60 additional days.

Section 593(g) provides for discretionary reimbursement of all or part of the attorney's fees incurred by the subject of an investigation by an independent counsel, provided that no indictment has been brought against the subject, and that the attorney's fees would not have been incurred but for the requirements of the Act.

Section 594(f) requires an independent counsel to comply, except where not possible, with the written or other established policies of the Department of Justice with respect to the enforcement of criminal laws.

Section 594(g) provides that, if consistent with the policies of the Department described above, the independent counsel has the authority to dismiss matters within his prosecutorial jurisdiction without conducting an investigation, or at any subsequent time prior to prosecution.

An Act

To change the coverage of officials and the standards for the appointment of a special prosecutor in the special prosecutor provisions of the Ethics in Government Act of 1978, 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 "Ethics in Government Act Amendments of 1982".

SEC. 2. (a)(1) Chapter 39 of title 28 of the United States Code is amended by—

(A) striking out "special prosecutor" wherever it appears and inserting in lieu thereof "independent counsel"; and

(B) striking out "special prosecutor's" wherever it appears and inserting in lieu thereof "independent counsel's".

(2) The tables of chapters for title 28 of the United States Code and for part II of title 28 are amended by striking out the item relating to chapter 39 and inserting in lieu thereof the following new item: "39. Independent Counsel."

(b)(1) Section 49 of title 28 of the United States Code is amended by—

(A) striking out "special prosecutor" wherever it appears and inserting in lieu thereof "independent counsel";

(B) striking out "special prosecutors" wherever it appears and inserting in lieu thereof "independent counsels"; and

(C) striking out "special prosecutor's" wherever it appears and inserting in lieu thereof "independent counsel's".

(2) The item for section 49 in the table of sections for chapter 3 of title 28 of the United States Code is amended by striking out "special prosecutors" and inserting in lieu thereof "independent counsels".

(c) Title VI of the Ethics in Government Act of 1978 is amended by—

(1) striking out "SPECIAL PROSECUTOR" in the heading for section 601 and inserting in lieu thereof "INDEPENDENT COUNSEL";

(2) striking out "special prosecutors" in subsection (c) of section 601 and inserting in lieu thereof "independent counsels"; and

(3) striking out "SPECIAL PROSECUTORS" in the heading for section 602 and inserting in lieu thereof "INDEPENDENT COUNSELS".

SEC. 3. Paragraphs (3) through (6) of subsection (b) of section 591 of title 28 of the United States Code are amended to read as follows:

"(3) any individual working in the Executive Office of the President who is compensated at or above a rate equivalent to level II of the Executive Schedule under section 5313 of title 5;

"(4) any Assistant Attorney General and any individual working in the Department of Justice compensated at a rate at or

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above level III of the Executive Schedule under section 5314 of title 5;

"(5) the Director of Central Intelligence, the Deputy Director of Central Intelligence, and the Commissioner of Internal Revenue;

"(6) any individual who held any office or position described in any of paragraphs (1) through (5) of this subsection during the period consisting of the incumbency of the President such individual serves plus one year after such incumbency, but in no event longer than two years after the individual leaves office;

"(7) any individual described in paragraph (6) who continues to hold office for not more than 90 days into the term of the next President during the period such individual serves plus one year after such individual leaves office;

"(8) the chairman and treasurer of the principal national campaign committee seeking the election or reelection of the President, and any officer of the campaign exercising authority at the national level, such as the campaign manager or director, during the incumbency of the President."

SEC. 4. (a)(1) Section 591(a) of title 28 of the United States Code is amended by striking out "specific information" and by inserting in lieu thereof "information sufficient to constitute grounds to investigate".

(2) Section 591 of title 28 of the United States Code is amended by adding at the end thereof the following new subsection:

"(c) Whenever the Attorney General receives information sufficient to constitute grounds to investigate that any person not described in subsection (b) of this section has committed a violation of any Federal criminal law other than a violation constituting a petty offense, the Attorney General may conduct an investigation and apply for an independent counsel pursuant to the provisions of this chapter if the Attorney General determines that investigation of such person by the Attorney General or other officer of the Department of Justice may result in a personal, financial, or political conflict of interest."

(b) Section 592(a) of title 28 of the United States Code is amended to read as follows:

"(a)(1) Upon receiving information that the Attorney General determines is sufficient to constitute grounds to investigate that any person covered by the Act has engaged in conduct described in subsection (a) or (c) of section 591 of this title, the Attorney General shall conduct, for a period not to exceed ninety days, such preliminary investigation of the matter as the Attorney General deems appropriate. In determining whether grounds to investigate exist, the Attorney General shall consider—

"(A) the degree of specificity of the information received, and

"(B) the credibility of the source of the information.

"(2) In conducting preliminary investigations pursuant to this section, the Attorney General shall have no authority to convene grand juries, plea bargain, grant immunity, or issue subpoenas."

(c) Section 592(b)(1) of title 28 of the United States Code is amended by striking out "that the matter is so unsubstantiated that no further investigation or prosecution is warranted" and inserting in lieu thereof "that there are no reasonable grounds to believe that further investigation or prosecution is warranted".

(d) Section 592(c)(1) of title 28 of the United States Code is amended by—

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(1) striking out “finds that the matter warrants further investigation or prosecution” and inserting in lieu thereof “finds reasonable grounds to believe that further investigation or prosecution is warranted”;

(2) striking out “that the matter is so unsubstantiated as not to warrant further investigation or prosecution” and inserting in lieu thereof “that there are no reasonable grounds to believe that further investigation or prosecution is warranted”; and

(3) adding at the end thereof the following new sentence: “In determining whether reasonable grounds exist to warrant further investigation or prosecution, the Attorney General shall comply with the written or other established policies of the Department of Justice with respect to the enforcement of criminal laws.”.

(e) Section 592(c)(2) of title 28 of the United States Code is amended—

(1) in clause (A) by striking out “specific information” and inserting in lieu thereof “information sufficient to constitute grounds to investigate”; and

(2) in clause (B) by striking out “such information warrants” and inserting in lieu thereof “reasonable grounds exist to warrant”.

SEC. 5. Section 593 of title 28 of the United States Code is amended by adding at the end thereof the following new subsections:

“(f) Upon a showing of good cause by the Attorney General, the division of the court may grant a single extension of the preliminary investigation conducted pursuant to section 592(a) of this title for a period not to exceed sixty days.

“(g) Upon request by the subject of an investigation conducted by an independent counsel pursuant to this chapter, the division of the court may, in its discretion, award reimbursement for all or part of the attorney’s fees incurred by such subject during such investigation if—

“(1) no indictment is brought against such subject; and

“(2) the attorney’s fees would not have been incurred but for the requirements of this chapter.”.

SEC. 6. (a) Subsection (a) of section 594 of title 28 of the United States Code is amended by—

(1) striking out “and” at the end of paragraph (8);

(2) striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon and “and”; and

(3) adding after paragraph (9) the following:

“(10) consulting with the United States Attorney for the district in which the violation was alleged to have occurred.”.

(b) Subsection (f) of section 594 of title 28 of the United States Code is amended by—

(1) striking out “to the extent that such special prosecutor deems appropriate” and inserting in lieu thereof “except where not possible”; and

(2) striking out “written policies” and inserting in lieu thereof “written or other established policies”.

(c) Section 594 of title 28 of the United States Code is amended by adding at the end thereof the following new subsection:

“(g) The independent counsel shall have full authority to dismiss matters within his prosecutorial jurisdiction without conducting an investigation or at any subsequent time prior to prosecution if to do so would be consistent with the written or other established policies

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of the Department of Justice with respect to the enforcement of criminal laws.”

(d) Paragraph (1) of subsection (a) of section 596 of title 28 of the United States Code is amended by striking out “extraordinary impropriety” and inserting in lieu thereof “good cause”.

SEC. 7. Section 598 of title 28 of the United States Code is amended by striking out “after the date of enactment of this chapter” and inserting in lieu thereof “after the date of enactment of the Ethics in Government Act Amendments of 1982”.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

Actual Text of New and Revised Sections

§591. Applicability of provisions of this chapter

(a) The Attorney General shall conduct an investigation pursuant to the provisions of this chapter whenever the Attorney General receives ~~specific information~~ information sufficient to constitute grounds to investigate that any of the persons described in subsection (b) of this section has committed a violation of any Federal criminal law other than a violation constituting a petty offense.

(b) The persons referred to in subsection (a) of this section are--

(1) the President and Vice President;

(2) any individual serving in a position listed in section 5312 of title 5;

~~(3) any individual working in the Executive Office of the President and compensated at a rate not less than the annual rate of basic pay provided for level IV of the Executive Schedule under section 5315 of title 5;~~

~~(4) any individual working in the Department of Justice and compensated at a rate not less than the annual rate of basic pay provided for level III of the Executive Schedule under section 5314 of title 5, any Assistant Attorney General, the Director of Central Intelligence, the Deputy Director of Central Intelligence, and the Commissioner of Internal Revenue;~~

~~(5) any individual who held any office or position described in any of paragraphs (1) through (4) of this subsection during the incumbency of the President or during the period that the last preceding President held office, if such preceding President was of the same political party as the incumbent President, and~~

~~(6) any officer of the principal national campaign committee seeking the election or reelection of the President.~~

(3) any individual working in the Executive Office of the President who is compensated at or above a rate equivalent to level II of the Executive Schedule under section 5313 of title 5;

(4) any Assistant Attorney General and any individual working in the Department of Justice compensated at a rate at or above level III of the Executive Schedule under section 5314 of title 5;

(5) the Director of Central Intelligence, the

Deputy Director of Central Intelligence, and the Commissioner of Internal Revenue;

(6) any individual who held any office or position described in any of paragraphs (1) through (5) of this subsection during the period consisting of the incumbency of the President such individual serves plus one year after such incumbency, but in no event longer than two years after the individual leaves office;

(7) any individual described in paragraph (6) who continues to hold office for not more than 90 days into the term of the next President during the period such individual serves plus one year after such individual leaves office;

(8) the chairman and treasurer of the principal national campaign committee seeking the election or reelection of the President, and any officer of the campaign exercising authority at the national level, such as the campaign manager or director, during the incumbency of the President.

(c) Whenever the Attorney General receives information sufficient to constitute grounds to investigate that any person not described in subsection (b) of this section has committed a violation of any Federal criminal law other than a violation constituting a petty offense, the Attorney General may conduct an investigation and apply for an independent counsel pursuant to the provisions of this chapter if the Attorney General determines that investigation of such person by the Attorney General or other officer of the Department of Justice may result in a personal, financial, or political conflict of interest.

§592. Application for appointment of a special prosecutor an independent counsel.

~~(a) The Attorney General, upon receiving specific information that any of the persons described in section 591(b) of this title has engaged in conduct described in section 591(a) of this title, shall conduct, for a period not to exceed ninety days, such preliminary investigation of the matter as the Attorney General deems appropriate.~~

(a) (1) Upon receiving information that the Attorney General determines is sufficient to constitute grounds to investigate that any person covered by the Act has engaged in conduct described in subsection (a) or (c) of section 591 of this title, the Attorney General shall conduct, for a period not to exceed ninety days, such preliminary investigation of the matter as the Attorney General deems

appropriate. In determining whether grounds to investigate exist, the Attorney General shall consider--

(A) the degree of specificity of the information received, and

(B) the credibility of the source of the information.

(2) In conducting preliminary investigations pursuant to this section, the Attorney General shall have no authority to convene grand juries, plea bargain, grant immunity, or issue subpoenas.

(b) (1) If the Attorney General, upon completion of the preliminary investigation, finds ~~that the matter is so unsubstantiated that no further investigation or prosecution is warranted~~ that there are no reasonable grounds to believe that further investigation or prosecution is warranted, the Attorney General shall so notify the division of the court specified in section 593(a) of this title, and the division of the court shall have no power to appoint ~~a special prosecutor~~ an independent counsel.

(2) Such notification shall be by memorandum containing a summary of the information received and a summary of the results of any preliminary investigation.

(3) Such memorandum shall not be revealed to any individual outside the division of the court or the Department of Justice without leave of the division of the court.

(c) (1) If the Attorney General, upon completion of the preliminary investigation, ~~finds that the matter warrants further investigation or prosecution,~~ finds reasonable grounds to believe that further investigation or prosecution is warranted, or if ninety days elapse from the receipt of the information without a determination by the Attorney General ~~that the matter is so unsubstantiated as not to warrant further investigation or prosecution~~ that there are no reasonable grounds to believe that further investigation or prosecution is warranted, then the Attorney General shall apply to the division of the court for the appointment of ~~a special prosecutor~~ an independent counsel. In determining whether reasonable grounds exist to warrant further investigation or prosecution, the Attorney General shall comply with the written or other established policies of the Department of Justice with respect to the enforcement of criminal laws.

(2) If--

(A) after the filing of a memorandum under subsection (b) of this section, the Attorney General receives additional ~~specific information~~ information sufficient to constitute grounds to investigate about the matter to which such memorandum related, and

(B) the Attorney General determines, after such additional investigation as the Attorney General deems appropriate, that ~~such information warrants~~ reasonable grounds exist to warrant further investigation or prosecution, then the Attorney General shall, no later than ninety days after receiving such additional information, apply to the division of the court for the appointment of a ~~special prosecutor~~ an independent counsel.

(d) (1) Any application under this chapter shall contain sufficient information to assist the division of the court to select a ~~special prosecutor~~ an independent counsel and to define that ~~special prosecutor's~~ independent counsel's prosecutorial jurisdiction.

(2) No application or any other documents, materials, or memorandum supplied to the division of the court under this chapter shall be revealed to any individual outside the division of the court or the Department of Justice without leave of the division of the court.

(e) The Attorney General may ask a ~~special prosecutor~~ an independent counsel to accept referral of a matter that relates to a matter within that ~~special prosecutor's~~ independent counsel's prosecutorial jurisdiction.

(f) The Attorney General's determination under subsection (c) of this section to apply to the division of the court for the appointment of a ~~special prosecutor~~ an independent counsel shall not be reviewable in any court.

§593. Duties of the division of the court

(a) The division of the court to which this chapter refers is the division established under section 49 of this title.

(b) Upon receipt of an application under section 592(c) of this title, the division of the court shall appoint an appropriate ~~special prosecutor~~ independent counsel and shall define that ~~special prosecutor's~~ independent counsel's prosecutorial jurisdiction. A ~~special prosecutor's~~ An independent counsel's identity and prosecutorial jurisdiction shall be made public upon request of the Attorney General or upon a determination of the division of the court that disclosure of the identity and prosecutorial

jurisdiction of such ~~special-prosecutor~~ independent counsel would be in the best interests of justice. In any event the identity and prosecutorial jurisdiction of such prosecutor shall be made public when any indictment is returned or any criminal information is filed.

(c) The division of the court, upon request of the Attorney General which may be incorporated in an application under this chapter, may expand the prosecutorial jurisdiction of an existing ~~special-prosecutor~~ independent counsel and such expansion may be in lieu of the appointment of an additional ~~special-prosecutor~~ independent counsel.

(d) The division of the court may not appoint as a ~~special-prosecutor~~ an independent counsel any person who holds or recently held any office of profit or trust under the United States.

(e) If a vacancy in office arises by reason of the resignation or death of a ~~special-prosecutor~~ an independent counsel, the division of the court may appoint a ~~special-prosecutor~~ an independent counsel to complete the work of the ~~special-prosecutor~~ independent counsel whose resignation or death caused the vacancy. If a vacancy in office arises by reason of the removal of a ~~special-prosecutor~~ an independent counsel, the division of the court may appoint an acting ~~special-prosecutor~~ independent counsel to serve until any judicial review of such removal is completed. Upon the completion of such judicial review, the division of the court shall take appropriate action.

(f) Upon a showing of good cause by the Attorney General, the division of the court may grant a single extension of the preliminary investigation conducted pursuant to section 592(a) of this title for a period not to exceed sixty days.

(g) Upon request by the subject of an investigation conducted by an independent counsel pursuant to this chapter, the division of the court may, in its discretion, award reimbursement for all or part of the attorney's fees incurred by such subject during such investigation if--

- (1) no indictment is brought against such subject; and
- (2) the attorney's fees would not have been incurred but for the requirements of this chapter.

§594. Authority and duties of a ~~special-prosecutor~~ an independent counsel.

(a) Notwithstanding any other provision of law a ~~special-prosecutor~~ an independent counsel appointed under this chapter shall have, with respect to all matters in such ~~special-prosecutor's~~ independent counsel's prosecutorial

jurisdiction established under this chapter, full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice, the Attorney General, and any other officer or employee of the Department of Justice, except that the Attorney General shall exercise direction or control as to those matters that specifically require the Attorney General's personal action under section 2516 of title 18. Such investigative and prosecutorial functions and powers shall include--

- (1) conducting proceedings before grand juries and other investigations;
- (2) participating in court proceedings and engaging in any litigation, including civil and criminal matters, that such ~~special-prosecutor~~ independent counsel deems necessary;
- (3) appealing any decision of a court in any case or proceeding in which such ~~special-prosecutor~~ participates in an official capacity;
- (4) reviewing all documentary evidence available from any source;
- (5) determining whether to contest the assertion of any testimonial privilege;
- (6) receiving appropriate national security clearances and, if necessary, contesting in court (including, where appropriate, participating in in camera proceedings) any claim of privilege or attempt to withhold evidence on grounds of national security;
- (7) making applications to any Federal court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpoenas, or other court orders, and, for purposes of sections 6003, 6004, and 6005 of title 18, exercising the authority vested in a United States attorney or the Attorney General;
- (8) inspecting, obtaining, or using the original or a copy of any tax return, in accordance with the applicable statutes and regulations, and, for purposes of section 6103 of the Internal Revenue Code of 1954, and the regulations issued thereunder, exercising the powers vested in a United States attorney or the Attorney General; and
- (9) initialing and conducting prosecutions in any court of competent jurisdiction, framing and signing indictments, filing informations, and handling all aspects of any case in the name of the United States.;
and

(10) consulting with the United States Attorney for the district in which the violation was alleged to have occurred.

(b) ~~A special-prosecutor~~ An independent counsel appointed under this chapter shall receive compensation at a per diem rate equal to the annual rate of basic pay for level IV of the Executive Schedule under section 5315 of title 5.

(c) For the purposes of carrying out the duties of the office of ~~special-prosecutor~~ independent counsel, a ~~special prosecutor~~ an independent counsel shall have power to appoint, fix the compensation, and assign the duties, of such employees as such ~~special-prosecutor~~ independent counsel deems necessary (including investigators, attorneys, and part-time consultants). The positions of all such employees are exempted from the competitive service. No such employee may be compensated at a rate exceeding the maximum rate provided for GS-18 of the General Schedule under section 5332 of title 5.

(d) ~~A special-prosecutor~~ An independent counsel may request assistance from the Department of Justice, and the Department of Justice shall provide that assistance, which may include access to any records, files, or other materials relevant to matters within such ~~special-prosecutor's~~ independent counsel's prosecutorial jurisdiction, and the use of the resources and personnel necessary to perform such ~~special-prosecutor's~~ independent counsel's duties.

(e) ~~A special-prosecutor~~ An independent counsel may ask the Attorney General or the division of the court to refer matters related to the ~~special prosecutor's~~ independent counsel's prosecutorial jurisdiction. ~~A special-prosecutor~~ An independent counsel may accept referral of a matter by the Attorney General, if the matter relates to a matter within such ~~special-prosecutor's~~ independent counsel's prosecutorial jurisdiction as established by the division of the court. If such a referral is accepted, the ~~special prosecutor~~ independent counsel shall notify the division of the court.

(f) ~~A special-prosecutor~~ An independent counsel shall, ~~to the extent that such special-prosecutor deems appropriate,~~ except where not possible, comply with the written policies written or other established policies of the Department of Justice respecting enforcement of the criminal laws.

(g) The independent counsel shall have full authority to dismiss matters within his prosecutorial jurisdiction without conducting an investigation or at any subsequent

time prior to prosecution if to do so would be consistent with the written or other established policies of the Department of Justice with respect to the enforcement of criminal laws.

§595. Reporting and congressional oversight

(a) ~~A special prosecutor~~ An independent counsel appointed under this chapter may make public from time to time, and shall send to the Congress statements or reports on the activities of such ~~special prosecutor~~ independent counsel. These statements and reports shall contain such information as such ~~special prosecutor~~ independent counsel deems appropriate.

(b) (1) In addition to any reports made under subsection (a) of this section, and before the termination of a ~~special prosecutor's~~ an independent counsel's office under section 596(b) of this title, such ~~special prosecutor~~ independent counsel shall submit to the division of the court a report under this subsection.

(2) A report under this subsection shall set forth fully and completely a description of the work of the ~~special prosecutor~~ independent counsel, including the disposition of all cases brought, and the reasons for not prosecuting any matter within the prosecutorial jurisdiction of such ~~special prosecutor~~ independent counsel which was not prosecuted.

(3) The division of the court may release to the Congress, the public, or to any appropriate person, such portions of a report made under this subsection as the division deems appropriate. The division of the court shall make such orders as are appropriate to protect the rights of any individual named in such report and to prevent undue interference with any pending prosecution. The division of the court may make any portion of a report under this section available to any individual named in such report for the purposes of receiving within a time limit set by the division of the court any comments or factual information that such individual may submit. Such comments and factual information, in whole or in part, may in the discretion of such division be included as an appendix to such report.

(c) ~~A special prosecutor~~ An independent counsel shall advise the House of Representatives of any substantial and credible information which such ~~special prosecutor~~

independent counsel receives that may continue grounds for an impeachment. Nothing in this chapter or section 49 of this title shall prevent the Congress or either House thereof from obtaining information in the course of an impeachment proceeding.

(d) The appropriate committee of the Congress shall have oversight jurisdiction with respect to the official conduct of any ~~special prosecutor~~ independent counsel appointed under this chapter, and ~~such special prosecutor~~ independent counsel shall have the duty to cooperate with the exercise of such oversight jurisdiction.

(e) A majority of majority party members or a majority of all non-majority party members of the Committee on the Judiciary of either House of the Congress may request in writing that the Attorney General apply for the appointment of a ~~special prosecutor~~ an independent counsel. Not later than thirty days after the receipt of such a request, or not later than fifteen days after the completion of a preliminary investigation of the matter with respect to which the request is made, whichever is later, the Attorney General shall provide written notification of any action the Attorney General has taken in response to such request and, if no application has been made to the division of the court, why such application was not made. Such written persons making the request serve, and shall not be revealed to any third party, except that the committee may, either on its own initiative or upon the request of the Attorney General, make public such portion or portions of such notification as will not in the committee's judgment prejudice the rights of any individual.

§596. Removal of a ~~special prosecutor~~ an independent counsel, termination of office.

(a) (1) A ~~special prosecutor~~ An independent counsel appointed under this chapter may be removed from office, other than by impeachment and conviction, only by the personal action of the Attorney General and only for extraordinary impropriety good cause; physical disability, impairs the performance of such ~~special prosecutor's~~ independent counsel's duties.

(2) If a ~~special prosecutor~~ an independent counsel is removed from office, the Attorney General shall promptly submit to the division of the court and the Committees on the Judiciary of the Senate and the House of Representatives a report specifying the facts found and the ultimate grounds for such removal. The committees shall make available to the public such report, except that each committee may, if

necessary to protect the rights of any individual named in the report or to prevent undue interference with any pending prosecution, delete or postpone publishing any or all of the report. The division of the court may release any or all of such report in the same manner as a report released under section 595(b)(3) of this title and under the same limitations as apply to the release of a report under that section.

(3) ~~A special-prosecutor~~ An independent counsel so removed may obtain judicial review of the removal in a civil action commenced before the division of the court and, if such removal was based on error of law, or fact, may obtain reinstatement or other appropriate relief. The division of the court shall cause such an action to be in every way expedited.

(b)(1) An office of ~~special-prosecutor~~ independent counsel shall terminate when (A) ~~the special-prosecutor~~ independent counsel notifies the Attorney General that the investigation of all matters within the prosecutorial jurisdiction of such ~~special-prosecutor~~ independent counsel or accepted by such ~~special-prosecutor~~ independent counsel under section 594 (e) of this title, and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions and (B) the ~~special-prosecutor~~ independent counsel files a report in full compliance with section 595(b) of this title.

(2) The division of the court, either on its own motion or upon suggestion of the Attorney General, may terminate an office of ~~special-prosecutor~~ independent counsel at any time, on the ground that the investigation of all matters within the prosecutorial jurisdiction of the ~~special~~ prosecutor independent counsel or accepted by such ~~special~~ prosecutor independent counsel under section 594(e) of this title, and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions. At the time of termination, the ~~special-prosecutor~~ independent counsel shall file the report required by section 595(b) of this title.

§597. Relationship with the Department of Justice

(a) Whenever a matter is in the prosecutorial jurisdiction of ~~a special prosecutor~~ an independent counsel under section 594(e) of this title, the Department of Justice, the Attorney General, and all other officers and employees of the Department of Justice, the Attorney General, and all other officers and employees of the Department of Justice shall suspend all investigations and proceedings regarding such matter, except to the extent required by section 594(d) of this title, and except insofar as such ~~special prosecutor~~ independent counsel agrees in writing that such investigation or proceedings may be continued by the Department of Justice.

(b) Nothing in this chapter shall prevent the Attorney General or the Solicitor General from making a presentation as amicus curiae to any court as to issues of law raised by any case or proceeding in which ~~a special prosecutor~~ an independent counsel participates in an official capacity or any appeal of such a case or proceeding.

§598. Termination of effect of chapter

This chapter shall cease to have effect five years ~~after the date of the enactment of this chapter~~ after the date of the enactment of the Ethics in Government Act Amendments of 1982; except that this chapter shall continue in effect with respect to then pending matters before ~~a special prosecutor~~ an independent counsel that in the judgment of such ~~special prosecutor~~ independent counsel require such continuation until that ~~special prosecutor~~ independent counsel determines such matters have been completed.

(Criminal Division)

New Procedures in IRS Section 7609 Summons Cases and Foreign Documents Cases

By memorandum dated December 29, 1982, the Tax Division established new procedures for handling petitions to quash Internal Revenue Service Summons cases under Internal Revenue Code Section 7609, as amended, and requests for foreign documents under recently enacted Section 982 of the Internal Revenue Code. A copy of the Tax Division's memorandum is included as an appendix to this issue of the United States Attorneys' Bulletin. A bluesheet amending the appropriate section(s) of the United States Attorneys' Manual will be issued in the near future.

(Tax Division)

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Kalaris v. Donovan, No. 82-1631 (Jan. 4, 1983). D.J. # 145-10-1788.

Government Personnel -- Removal Of
Administrative Appeals Judges: D.C. Circuit
Reverses District Court, Holding That The
Secretary Of Labor Is Authorized To Remove
Administrative Appeals Judges From Benefits
Review Board At His Discretion.

Plaintiffs in this case were two members of the Benefits Review Board, a three-person, quasi-judicial body which hears appeals from administrative law judge decisions concerning claims for Federal worker's compensation brought under the Longshoremen's and Harbor Workers' Compensation Act, the Black Lung Act, and other statutes. The Longshoremen's Act grants to the Secretary of Labor the authority to appoint members of the Board. The Act does not specify any term for the Secretary's appointees, nor does it say whether, or under what circumstances, the Secretary may remove his appointees from office. In April 1982, the plaintiffs were notified that the Secretary was terminating their membership on the Board and transferring them to other duties within the Department of Labor. Upon plaintiffs' suit, the district court enjoined plaintiffs' removal from the Board. The court held that, in light of the quasi-judicial duties of the plaintiffs, the Longshoremen's Act would be construed to prohibit the Secretary from removing them without cause.

On January 4, 1983, the D.C. Circuit reversed the district court. The D.C. Court accepted our argument that the general and long-standing rule which is applicable to Government employment is that, in the face of statutory silence, the power of removal presumptively is incident to the power of appointment. The court distinguished Supreme Court cases such as Humphrey's Executor v. United States and Weiner v. United States (which had inferred from the assignment of quasi-judicial functions to the FCC and the War Claims Commission an intent by Congress to limit the power of the President to remove his appointees) on the ground that the tenure of those offices had been fixed. The court accepted our argument that a series of 19th century Supreme Court cases (In re Hennen, Reagan v. United States, and Shurtleff v. United States) properly articulated the appropriate rule of statutory construction for employees whose terms are not fixed, even though the functions of these employees is quasi-judicial.

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The court also rejected plaintiffs' contentions that the statute, so construed, was unconstitutional and their contention that Congress had intended to make them Article III judges, with life tenure in their positions.

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State of Louisiana v. Block, No. 82-3218 (Dec. 27, 1982).
D.J. # 147-32M-28.

Administrative Law -- Validity Of Food Stamp
Regulations: Fifth Circuit Upholds The
Validity Of Food Stamp Regulations Which Hold
The States Strictly Liable For The Loss Of
Food Stamps Within Their Custody.

Pursuant to the 1964 Food Stamp Act, the Department of Agriculture promulgated regulations which held the states strictly liable for the loss of food stamps within their custody. In this case, approximately \$140,000 worth of food stamps were stolen from a Louisiana food stamp issuing office. After Louisiana refused voluntarily to reimburse the Federal Government for the loss, the Department proposed to offset the amount of the loss against Louisiana's letter of credit with the Department of Treasury, which was used by the state to draw funds for administration of the Food Stamp Program. Louisiana brought this suit attacking the validity of the regulations and the power of the Department to effectuate the administrative offset.

The court of appeals (per curiam), relying upon the Fourth Circuit's opinion in Hettleman v. Bergland, 642 F.2d 63 (1981), cert. pending, S. Ct. No. 82-583, affirmed the district court's decision upholding the validity of the regulations as "necessary and appropriate" under the Secretary's broad grant of authority to promulgate regulations under Section 4(c) of the 1964 Act. The court also held that the Secretary, pursuant to the Federal Claims Collection Act and regulations, 31 U.S.C. 952(a); 4 C.F.R. 102.1 (1977), which authorize Federal agencies to "take aggressive action . . . to collect all claims of the United

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States for money . . .," had the power administratively to offset the value of the loss against Louisiana's letter of credit.

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Denberg v. Railroad Retirement Board, No. 81-2386 (Jan. 4, 1983).
D.J. # 3235460-3715.

Jurisdiction: Seventh Circuit Holds That A
Claimant For Railroad Retirement Benefits May
Not Bring A Constitutional Challenge In The
District Court But Rather May Seek Judicial
Review Only In The Court Of Appeals.

In 1975, plaintiff, the husband of a retired railroad worker, was among many persons who challenged the provisions of the Railroad Retirement Act and the Social Security Act, which were essentially parallel, under which the husband of a worker could obtain spousal benefits only by showing that he was dependent on his wife for more than one-half of his support, while the wife of a worker did not need to meet such a test. Plaintiff brought a nationwide class action in the district court after receiving an initial denial of benefits by the Railroad Retirement Board, even though the Act provides that judicial review of the denial of benefits is to be obtained by direct appeal in the court of appeals. The district court denied our motion to dismiss in 1976, holding that it had jurisdiction because plaintiff was challenging the constitutionality of the Board's organic statute, an issue upon which the Board is powerless to rule. The court then stayed the proceedings pending the decisions in Califano v. Goldfarb, 430 U.S. 199 (1977), and Railroad Retirement Board v. Kalina, 431 U.S. 909 (1977), which both established that the one-half support test is unconstitutional; the court stayed proceedings again until the decision in Wright v. Califano, 603 F.2d 666 (7th Cir. 1979), cert. denied, 447 U.S. 911 (1980), which established that under the Social Security Act back benefits must be paid to those denied them by the one-half support test retroactive to one year before the date of each individual's application for benefits. The district court then took this case up again and ordered that all persons denied benefits because of the one-half support test be allowed retroactive benefits to April, 1974, even if they had not applied for benefits at all, or only did so at a date later than April 1975. The Board's liability from this order was

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estimated at a range of about \$60 million. On appeal, however, the Seventh Circuit, in a 2-1 vote, reversed, holding that the district court did not have jurisdiction. While claimants did not need to exhaust administrative appeals since this is a constitutional challenge, Judge Posner wrote, that question is distinct from their need to seek judicial review only in the court of appeals, whose jurisdiction is exclusive. The majority, moreover, also held that other class members, while excused from exhausting administrative appeals, still may not seek judicial review without first filing an application. District Judge Foreman (S.D. Ill.) joined the majority. Judge Wood filed a lengthy dissent. Plaintiff intends to seek rehearing en banc.

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Binion v. U.S. Department of Justice, No. 82-5316 (Jan. 6, 1983).
D.J. # 145-12-4175.

FOIA And Privacy Act -- Criminal Law
Enforcement Records: Ninth Circuit Rejects
Disclosure Of Pardon Information Under FOIA
And Privacy Act.

On January 6, 1983, the Ninth Circuit reversed a district court decision which would have released the identities of FBI informants and confidential, deliberative communications of the Pardon Attorney's Office. The informants had given information to the FBI to aid in evaluating the pardon application of a convicted felon. The district court ruled that, since the gathering of information about pardon applicants was neither a criminal "investigation" nor "for a law enforcement purpose," the identity of these confidential sources was not protected by Exemption (7)(D) of the FOIA. As to Pardon Attorney documents revealing the views of Government officials about the Binion pardon application, the district court recognized that such items would seem to fit squarely within FOIA Exemption (5). Nevertheless, the court held that pardon documents were not sufficiently related to criminal law enforcement to meet any of the Privacy Act's Exemption (j)(2) criteria. Therefore all of the Pardon Attorney's documents had to be released under the Privacy Act, according to the district court.

The court of appeals reversed on all issues in an important and highly favorable opinion on several issues of first

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impression. It rejected what it called the "formalistic reading" of FOIA Exemption 7 by the district court and held that FBI's sources should be protected when giving information regarding a convicted felon's application for pardon. In so ruling, the court followed the "rational nexus" test for determining when FBI documents may be classified as "investigatory records compiled for law enforcement purposes." The Pardon Attorney's documents met the Privacy Act's (j)(2)(B) criteria, the Ninth Circuit held, because, for purposes of that Act, the Pardon Attorney was a "criminal law enforcement authority" compiling information for "a criminal investigation." Finally, the court of appeals refused to remand the case, finding that the Pardon Attorney's Vaughn affidavit, which had been rejected by the trial court, was completely satisfactory. The court found that a more specific description of the withheld material would have revealed that which the agency was entitled to conceal.

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United States v. Woodland Development Co., No. 81-4382
(Dec. 23, 1982). D.J. # 130-11-2568.

HUD -- Mortgage Foreclosure: Ninth Circuit
Rejects Effort To Set Aside HUD Mortgage
Foreclosure.

The Secretary of HUD in 1966 insured a \$6 million loan to Woodland for the purpose of building a housing project in Monterey, California. When the first principal payment was due, Woodland defaulted. The Government brought this mortgage foreclosure action, which was opposed with seven "affirmative defenses and counterclaims." In essence, Woodland alleged that HUD caused the default by refusing to raise rents and to make other loans. In 1974, the district court granted our motion for summary foreclosure and dismissed all but one of the counterclaims. In 1980, Woodland moved to amend its counterclaims on "newly discovered" evidence; the Government cross-moved for dismissal of all remaining matters for failure to prosecute. The district court granted the Government's motion, and Woodland appealed all issues.

The Ninth Circuit affirmed, holding, inter alia, that when a

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default is undisputed a court cannot abrogate the Government's right of foreclosure and sale.

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LAND AND NATURAL RESOURCES DIVISION
Assistant Attorney General Carol E. Dinkins

Twitty v. North Carolina, No. 82-1180 (4th Cir. Dec. 27, 1982).
D.J. # 90-5-1-4-88.

EPA PROPERLY AUTHORIZED LANDFILL.

Landowners sought an injunction against, or in the alternative to recover damages for, the construction of a landfill on adjoining property to contain toxic PCBs. The State of North Carolina had proposed to construct the landfill, and EPA approved their proposal. Granting summary judgment in favor of North Carolina and EPA, the district court held, and the Fourth Circuit affirmed, that the EPA Administrator did not abuse his discretion in authorizing the landfill.

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Danks v. Fields, No. 82-1303 (8th Cir. Dec. 28, 1982).
D.J. # 90-2-4-653.

FEE INCREASE BY INTERIOR ON GRAZING
PERMITS INVALID.

The Eighth Circuit reversed the district court and held that the Interior Department violated the terms of certain grazing permits by announcing a fee increase after the date provided for in the permit. The court of appeals rejected the Interior Department's contention that the date set for announcing the fee increase was not binding on the agency. It also rejected the Department's contention that the ranchers were not prejudiced by the Department's failure to timely announce the increase.

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Attorney: Dirk D. Snel (Land and
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Cape May Greene v. Warren, Nos. 82-5203 and 82-5326
(3rd Cir. Jan. 10, 1983). D.J. # 90-5-1-1-1978.

EPA'S IMPOSITION OF GRANT CONDITIONS
PROHIBITING SEWER HOOKUPS IN UNDEVELOPED
FLOOD PLAINS VOIDED.

Reversing the district court, the court of appeals held that EPA acted arbitrarily and capriciously in imposing a condition on a sewage treatment grant which prohibited sewer hookups from future development in currently undeveloped floodplains in Cape May, New Jersey.

In imposing the grant condition, EPA relied primarily on NEPA and Executive Order 11988 on Floodplain Management. The court, however, ruled that NEPA is "essentially procedural" and "provides little, if any, support for an agency taking substantive action beyond that set forth in its enabling act." Slip op., p. 20. While not expressly stating so, the court also apparently found that the agency's action went beyond the limits of the Executive Order. Slip op., p. 22.

The court then found that because EPA's action was not "clearly mandated by the agency's statute," slip op., p. 24, it was arbitrary and capricious, finding that the agency has "encroach[ed] on congressional policies" expressed in the Coastal Zone Management Act ("CZMA"). *Ibid.* This finding was based on the fact that New Jersey's coastal zone plan would allow development in the areas restricted by the grant. The court was not convinced by the fact that the Secretary of Commerce, charged with implementing the CZMA, specifically found that the grant condition was consistent with New Jersey's plan.

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United States v. Boyden, No. 81-4554 (9th Cir. Jan. 10, 1983).
D.J. # 62-11E-13.

SECTION 10 RIVERS AND HARBORS ACT; WHETHER
PERMANENTLY MOORED HOUSE BOATS ARE "STRUCTURES"
UNDER ACT OR "VESSELS" IS QUESTION OF FACT.

The Boydens built two floating residence ("houseboats"), and moored them in navigable waters. The Corps of Engineers

found that they were unpermitted "structures" under Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. 403, and the U.S. sued for their removal. The district court granted summary judgment for the Boydens, holding that the houseboats were "vessels" under 1 U.S.C. 3 and therefore not "structures" within the meaning of Section 10. The court ignored the Corps' regulation defining "structures" to include "permanently moored floating vessels," 33 C.F.R. 322.3(b).

The Ninth Circuit reversed, and remanded for factual determination of whether the houseboats are "permanently moored floating vessels." The court of appeals rejected as a matter of law the notion that "vessels" cannot be "structures" within the reach of Section 10, and upheld the Corps' regulation, which "furthers the legislative intent and adds certainty * * *." The court also reaffirmed that "structures" are presumed to be obstructions to navigable capacity. It also agreed that there was a disputed issue of material fact, i.e., whether the houseboats were capable of safe navigation.

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Swim v. Bergland, Nos. 81-3479, 81-3526, 81-3530 (9th Cir.
Jan 13, 1983). D.J. # 90-1-4-1822.

INDIANS; TREATY-PROTECTED GRAZING RIGHTS
ON LAND NOW WITHIN NATIONAL FOREST GIVES
INDIAN A PRIORITY, NOT JUST FAIR PROPORTION.

By an 1898 agreement, as incorporated into and ratified by the Act of June 6, 1900, 31 Stat. 672, the Shoshone-Bannock Tribes of the Fort Hall Reservation in Idaho ceded 416,000 acres of the reservation to the United States, provided that, so long as the ceded lands remained part of the "public domain," the Tribes would retain the right "to pasture their livestock on said public lands." In 1907, much of the ceded lands were set apart from disposal and became part of Caribou National Forest.

Until the early 1970s, no tribal grazing took place on the ceded lands; all grazing permittees were non-Indians. In 1978 the Forest Service and the Tribes signed a memorandum of understanding, expiring in 1985, designed to implement in part

the 1898 agreement with respect to the reserved grazing rights. The memorandum of understanding provided that, of the total 2303-head grazing capacity on the ceded lands, the Tribes were entitled to graze up to 826 head annually, with any unused tribal grazing capacity to be allotted to non-Indians in the form of annual permits.

The non-Indian stockmen sued the Forest Service, protesting the reduction of their grazing capacity in favor of the Tribes, and contending that the 1978 memorandum of understanding (MOU) was invalid. The Tribes intervened. The district court held that the 1978 MOU was valid, but concluded that the Tribes under the 1898 agreement had reserved only a "fair proportion" of the grazing capacity of the ceded areas, not priority rights to graze the ceded areas in preference to non-Indians. However, the 826-head grazing capacity reserved to the Tribes under the MOU represented a "fair proportion." The non-Indian stockmen appealed, and the Forest Service and the Tribes cross-appealed.

The Ninth Circuit, affirming in part, held that the Tribes had continuing grazing rights on the ceded lands which were not extinguished either by the creation of the national forest in 1907, by subsequent executive action, or by the 1967 settlement of certain claims pending before the Indian Claims Commission. Moreover, as reflected in the 1978 MOU, the reserved grazing rights were "communal grazing rights [retained] by the Tribe as an entity."

On the Government's and Tribes' cross-appeals, the Ninth Circuit reversed. The grazing rights reserved by the 1898 agreement, the court held, were not implicitly limited to a "fair proportion" of the total grazing capacity. Instead, the Tribes reserved a priority as against non-Indians to graze. (The 1978 MOU implemented this priority so as to be non-exclusive; that is, grazing capacity unused by the Tribes in a given year would be allotted by Forest Service permits to non-Indians; an exclusive priority would enable the Tribe itself to lease or allocate unused grazing capacity to others.)

Finally the Ninth Circuit denied that a non-Indian holder of a Forest Service permit held a vested property right to graze the area. The relevant statute, 16 U.S.C. 580, the regulations, and the permits themselves provided for restrictions and termination at the discretion of the Forest Service.

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Sierra Club v. Sigler, No. 82-2101 (5th Cir. Jan. 20, 1983).
D.J. # 90-1-4-2309.

NEPA; CORPS' EIS FAILED TO INCLUDE A
WORST-CASE ANALYSIS OF IMPACTS OF
CATASTROPHIC OIL SPILL OF CONTENTS
OF SUPERTANKERS.

The Sierra Club challenged issuance by the Corps of Engineers of permits authorizing the private construction of a deepwater port for supertankers at Galveston, Texas. The district court upheld the permits against a large number of environmental law claims. The court of appeals affirmed in part and reversed in part, finding two defects in the Corps' compliance with NEPA. First, the court of appeals held that the Corps' EIS failed to include a worst-case analysis of the impacts of a catastrophic oil spill involving the entire contents of a supertanker. The court held that such an analysis was required by the CEQ regulations implementing NEPA, specifically 40 C.F.R. 1502.22. The court said that even though the draft EIS had been promulgated before the effective date of those regulations, the EIS would nevertheless be judged by the standards of the regulations, since the Corps had announced in the EIS that it intended to abide by them. The court also said that the requirement of a worst case analysis did not go beyond the "statutory minima" of NEPA, and could not be avoided simply because the possibility of a total cargo loss by a supertanker was remote.

Second, the court of appeals held that the EIS failed to consider the environmental impacts of bulk commodities activities associated with the project, while at the same time attributing substantial benefits to those activities. The court recognized that no proposals for the construction of bulk commodities terminals were imminent, but held that since the Corps had chosen to extol the benefits of bulk cargo activities in the EIS, it was obliged to fully disclose their environmental costs. Its failure to do so was held to invalidate the Corp's cost-benefit analysis supporting the

grant of the permits. Finally, the court of appeals rejected Sierra Club's argument that the Corps should have considered as an alternative to the project a single-point offshore terminal, which had been proposed by private parties after promulgation of the EIS. The court relied in part on Vermont Yankee's teaching that consideration of after-the-fact developments would make the administrative process never ending.

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OFFICE OF LEGISLATIVE AFFAIRS
Assistant Attorney General Robert A. McConnell
SELECTED CONGRESSIONAL AND LEGISLATIVE ACTIVITIES
JANUARY 6, 1983 - JANUARY 19, 1983

Review of 97th Congress. Several important initiatives directly affecting U.S. Attorneys were enacted into law. These included:

Posse Comitatus Amendments. P.L. 97-86. This measure clarified and codified areas in which military authorities may provide assistance to civilian law enforcement officials, particularly in the areas of information sharing and the loan of military equipment and facilities. The new law also significantly expands the scope of military assistance to civilian law enforcement by authorizing military personnel to assist in the operation of military equipment for civilian law enforcement purposes. P.L. 97-86 implements Recommendation 16(b) of the Attorney General's Task Force on Violent Crime.

Herbicide Use for Marihuana Eradication. P.L. 97-113. This repeal permits use of foreign assistance funds to finance overseas marihuana eradication programs involving the use of paraquat. P.L. 97-113 implements Recommendation 16(a) of the Task Force on Violent Crime.

Tax Disclosure Amendments. P.L. 97-248. These amendments to 26 U.S.C. 6103 facilitate law enforcement access to Federal tax information for use in the investigation and prosecution of non-tax crimes, particularly narcotics trafficking, organized crime and other offenses involving large sums of money. P.L. 97-248 implements Recommendation 28 of the Task Force on Violent Crime.

Protection of High-Level Federal Officials. P.L. 97-285. This measure makes a Federal offense any murder, kidnapping, or assault on high-level White House officials, Cabinet members, Supreme Court justices and other designated officials. This implements Recommendation 23 of the Task Force on Violent Crime.

Arson Amendments. P.L. 97-298. This measure eliminates problems in prior law by clarifying that there is Federal jurisdiction over major arson cases regardless of whether the fire was started by explosion or other means. This implements Recommendation 27 of the Task Force on Violent Crime.

False Identification Crimes. P.L. 97-398. This Department initiative creates Federal criminal sanctions for a wide variety of crimes involving false identification documents not presently covered by Federal law. It is expected that this legislation will be useful in controlling fraud against the Government and other offenses, particularly immigration, fraud, and fleeing prosecution.

Implementation of International Convention on Nuclear Materials. P.L. 97-351. This anti-terrorist measure implements an International Convention to which the United States is a signatory by establishing criminal sanctions for the theft of or extortion using nuclear materials.

Intelligence Identities Protection Act. P.L. 97-200. This legislation provides additional criminal penalties for the unauthorized disclosure of the identities of clandestine U.S. intelligence officers, agents and sources.

Marshals Service of Process. P.L. 97-462. This bill amended Rule 4 of the Federal Rules of Civil Procedure to relieve the Marshals Service of the duty of routinely serving summonses and complaints for private parties' civil actions. The law also amended Rule 4 to permit certain classes of defendants to be served by first class mail with a notice and acknowledgment of receipt form enclosed.

I&NS Efficiency Package. P.L. 97-116. These amendments to the Immigration and Nationality Act eliminated or modified provisions which had proved unnecessary or impractical and costly, and they clarified several sections which had been affected by administrative and judicial decisions.

DOJ Authorities. P.L. 97-377. The most recent continuing resolution for FY 1983 appropriations contains a provision which extends the authorities contained in the DOJ Appropriation Authorization Act for FY 1980 until the end of FY 1983. These important authorities, including the authority to conduct certain types of FBI undercover operations, had lapsed when the last continuing resolution for appropriation authorization expired on February 1, 1982.

Juror Rights. S. 2863. This legislation provides injury compensation to all Federal jurors, clarifies the awarding of attorneys' fees for jurors in protecting their employment rights, and authorizes the service of jury summonses by ordinary mail.

Court of Appeals for the Federal Circuit. P.L. 97-164. This legislation created the Court of Appeals for the Federal Circuit by combining the jurisdiction of the Court of Customs and Patent Appeals with the appellate jurisdiction of the United States Court of Claims. In addition, this measure created the United States Claims Court as an Article I court to perform the trial and congressional reference functions previously exercised by the Commissioners of the Court of Claims.

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Memorandum



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FEBRUARY 4, 1983

Subject New Procedures in IRS Section 7609 Summons Cases and Foreign Documents Cases	Date DEC 29 1982
To United States Attorneys	From <i>GA</i> Glenn L. Archer, Jr. Assistant Attorney General Tax Division

The Congress at the request of the Justice Department and the IRS recently enacted new procedures relating to IRS summonses issued to financial institutions and other "third-party recordkeepers." Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. No. 97-248, Sec. 331. Under amended Internal Revenue Code Section 7609, taxpayers or other persons entitled to notice of issuance of such summonses will no longer be able to stay compliance simply by notifying the recordkeeper not to comply. Instead, for summonses issued after December 31, 1982, compliance can be stayed only by filing a petition to quash within 20 days after notice is given. The old procedures will continue to govern summonses issued on or before December 31, 1982. */ The shift in the burden of commencing litigation over Section 7609 summonses should be extremely beneficial to our respective offices and the IRS.

Another new form of litigation created by TEFRA relates to IRS efforts to obtain foreign documents from taxpayers. TEFRA Sec. 337. Internal Revenue Code Section 982 now permits the IRS to make a "formal document request" for foreign-based documentation. Absent substantial compliance with such a request within 90 days, the taxpayer will not be permitted to offer into evidence at a subsequent civil tax proceeding documents covered by the request. Within the 90-day period, however, the taxpayer has the right to file a petition to quash the request in the appropriate district court. Section 982 applies to formal document requests made after September 3, 1982. A few proceedings to quash have already been commenced.

With regard to Section 7609 summonses, while we anticipate that the statutory changes will reduce the amount of litigation, there will still be a significant number of cases, and your offices should start receiving petitions to quash Section 7609 summonses by mid- to late-January. In view of the importance of Section 7609 summonses to the investigative efforts of the IRS generally and in light of our expectation that the new procedures will raise numerous issues of first impression these cases (and

*/ It should be noted that TEFRA, Sec. 333, also amended Section 7602 to expressly authorize issuance of a summons for a criminal purpose. The Section 7602 amendments were effective on September 4, 1982, and in our view, apply to pending cases regardless of when the summons was served.

also Section 982 petitions to quash) will be handled by Tax Division attorneys at least during the initial stages of litigation until the courts become familiar with these new provisions and some precedent is created. For that reason, I am requesting that upon receipt of a petition to quash, your office contact the appropriate Civil Trial Section of the Tax Division by telephone to notify us of the case. The persons to be contacted are:

Civil Trial
Section

Northern --	James J. Jeffries, III	FTS 724-6575
Southern --	Herbert L. Moody, Jr.	FTS 724-6409
Western --	Stephen G. Fuerth	FTS 724-6543
Central --	S. Martin Teel, Jr.	FTS 724-6585

Unless otherwise instructed by the Tax Division, the petition should then be forwarded to us by express mail.

I would appreciate your bringing these new procedures to the attention of your legal and nonlegal personnel who will have responsibility over these matters.