The original documents are located in Box 14, folder "Federal Criminal Code" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

18 U.S.C. § 1001. Statements or entries generally.

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both. (June 25, 1948, ch. 645, 62 Stat. 749.)

THE WHITE HOUSE

WASHINGTON

November 26, 1974

MEMORANDUM FOR: PHIL BUCHEN

FROM: KEN LAZARUS KL

SUBJECT: Federal Criminal Code Project

This is to outline the background and status of efforts to codify our Federal criminal laws and to recommend certain White House initiatives in support of the project.

The Deficiencies of Current Law

Although there have been several consolidations and technical revisions of Federal criminal law (title 18, United States Code) over the years (1877, 1909 and 1948), the United States, unlike many of the States and most of the other countries of the world, has never enacted a true "criminal code." Laws have been drafted to deal with diverse problems on an ad hoc basis. It is not surprising then that our body of criminal law on the Federal level is a haphazard hodgepodge of conflicting, contradictory and imprecise laws piled one upon the other with little relevance to each other or to the state of criminal law as a whole.

The failure to revise and reform our criminal laws has posed a number of acute problems. The first is uncertainty in the law. In some areas, the courts of appeals are divided and enforce a different "federal" law depending on the circuit. A prime example in this regard is the insanity defense. It is possible to identify at least five different formulas for insanity used in the eleven circuits. Uncertainty results also in different interpretations of the same word depending on the statute in which it is used. For example, the word

"willful" has some 78 interpretations. A willful act can be one that is done "voluntarily" in some statutes, an act that is done "with a bad purpose" in others and in one case, an act that is done with "a cruel and malignant heart" --whatever that may mean.

Inconsistencies, loopholes and unnecessary technicalities also result from the present hodgepodge of laws. We now have about 80 Federal statutes dealing with theft -- the definition of the offense depends on the jurisdictional basis, whether it is theft of government property, theft of the mails or theft from interstate commerce.

Other problems arise due to the fact that our laws define an offense in terms of the jurisdiction. For example, under some interpretations, a person does not commit theft of property moving interstate under present federal statutes unless he knew it was traveling interstate. Even if a person stole property in interstate commerce, he could avoid the Federal charge if he could show he didn't know it was moving in interstate commerce. This is a classic example of the guilty going free because of a technicality irrelevant to the offense. Never-used statutes also clutter up our law, e.g., operating a pirate ship on behalf of a "foreign prince"; detaining a United States carrier pigeon; and seducing a female steamship passenger, all statutes still on the books.

The sentencing scheme of our current laws is also erratic. Robbery of a bank carries 20 years while robbery of a post office carries 10 years.

In short, the Federal penal law as a whole reflects neglect. Because of its lack of clarity, consistency and comprehensiveness, it tends to detract from our system of justice.

The History of the Codification Effort

Efforts to codify Federal criminal law can be traced back to the work of the American Law Institute which, in 1952, began the planning and drafting of a "Model Penal Code."

In 1962, the ALI published the "Proposed Official Draft of a Model Penal Code. Immediately thereafter, modern criminal codes were passed in Illinois (1962), Minnesota (1963), New Mexico (1963) and Wisconsin (1965).

The next major step in the lineal progression toward a Federal criminal code, was the development of the New York Revised Penal Law in 1965.

The next key step was taken by the Congress itself in 1966. In that year Public Law 89-801 was enacted, creating a "National Commission on Reform of Federal Criminal Laws," called, after its Chairman, former Governor Edmund G. "Pat" Brown of California, the "Brown Commission." The Commission was charged by the Congress to:

* * *

> Make a full and complete review and study of the statutory and case law of the United States which constitutes the Federal system of criminal justice for the purpose of formulating and recommending to the Congress legislation which would improve the Federal system of criminal justice. It shall be the further duty of the Commission to make recommendations for revision and recodification of the criminal laws of the United States, including the repeal of unnecessary or undesirable statutes and such changes in the penalty structure as the Commission may feel will better serve the ends of justice.

* * *

The Commission prepared its own draft recommendations, which also made important improvements, but followed lineally from the earlier works. The product of nearly three years of deliberation by the Commission, the recommendations were submitted to the Congress and the President on January 7, 1971, in the form of a Final Report. The Report, some 364 pages in length, was tendered not as a final product but, as the Commission noted in its letter of transmittal, as a "work basis" to facilitate congressional choices.

On January 16, 1971, former President Nixon issued a statement commending the Brown Commission for its labors and directing the Department of Justice in a simultaneous memorandum to establish a special team of attorneys within the Department to work closely with appropriate congressional committees and their staffs through the evaluation and recommendation process.

On February 1, 1971, the Senate Subcommittee on Criminal Laws and Procedures (McClellan - Chairman; Hruska - ranking) began hearings and studies on the recommendations of the Commission.

Legislative Developments

A. Senate

During the 92nd Congress, the Criminal Laws Subcommittee held extensive hearings on the subject of a Federal Criminal Code which resulted in the introduction of S. 1 (by Senator McClellan) upon the opening of the 93rd Congress in 1973. S. 1 thus was largely the work of the Subcommittee staff.

In response to the President's directive to propose a thoroughgoing revision of the Federal criminal code, the Attorney General assembled a team of Department of Justice attorneys, most of whom had extensive trial and appellate experience in Federal courts, into a Criminal Code Revision Unit within the Department of Justice.

By early 1973, the Unit had drafted S. 1400 (by Senator Hruska), as a bill to "reform, revise, and codify the substantive criminal law of the United States...".

The Criminal Laws Subcommittee recently concluded hearings on a Federal criminal code. The total hearing record which has been compiled over the last four years totals over 8,000 pages of testimony, statements and exhibits in 14 volumes.

The Subcommittee staff and the Department of Justice have also completed a compromise version bill (S. 1 as amended) and accompanying committee report, hopefully embodying some worthwhile new provisions and the best features of both S. 1 and S. 1400 as introduced, as well as the Final Report of the Brown Commission. This bill (approximately 800 pages in length -- the longest in history) and committee report (approximately 2,000 pages in three volumes) will serve as the basis for anticipated Senate action early next year. The S. 1 designation has been reserved for this purpose in the 94th Congress.

B. House

The bill is within the jurisdiction of the Hungate Judiciary Subcommittee on Criminal Justice which has only monitored the progress of the project to date. Hearings are anticipated to open early in the next session.

Format of the Proposed Code

S. 1, as amended, is divided into two titles. Title I consists of five parts that interlock with each other.

Part 1 embodies the general provisions and principles of the Code. Included in this part are chapters on jurisdiction, culpability, complicity and defenses.

Part 2 consists of all the offenses defined in the Code. Each offense is defined in such a way that the reader knows: (1) the elements of the offense; (2) the requisite state of mind (culpability); (3) the circumstances under which the Federal government can prosecute the offender (jurisdiction); and (4) the sentence for violation of the offense (grading).

In order to determine whether the circumstances warrant prosecution, a reader must engage in the following analysis:

-- What are the elements of the offense?

-- What is the state of mind, i.e., mens rea, that the offender must have with respect to each element? Following the approach of the National Commission, S. 1, as amended, does not contain the requisite state of mind in the definition of the offense. Instead, the state of mind is governed by the general principles of Chapter 3.

-- Does the accused have a defense to the prosecution? Chapter 5 of Part 1 (General Principles) embodies available defenses.

-- Does the Federal government have jurisdiction to prosecute? Each offense contains a jurisdictional subsection stating the circumstances under which Federal jurisdiction exists.

-- What is the sentence for violating the offense? Each section defining an offense contains a subsection stating the category of sentence (classes of grading) that may be imposed.

Part 3 embodies all the sentencing provisions. It defines the classes of grading and states what types of sanctions may be imposed, e.g. probation, parole, imprisonment, fines, etc.

Part 4 contains the procedural sections of existing Title 18 and all of the Federal Rules of Criminal Procedure. It should be noted at this point that the Rules that are incorporated in S. 1, as amended, are those recently promulgated by the Supreme Court. These rules are now scheduled to go into effect August 1, 1975, unless Congress determines otherwise.

Part 5 contains provisions on ancillary private civil remedies, such as civil actions against racketeering offenders.

Title II embodies the conforming amendments for those offenses appearing outside Title 18.

Overview of the Proposed Code

Part I. Chapter 1. General Provisions.

This chapter contains general provisions such as the principles of construction and general definitions.

Chapter 2. Jurisdiction.

Chapter 2 introduces the general treatment of Federal jurisdiction. The Committee Print continues the concept of the National Commission's Final Report, S. 1 and S. 1400 that offenses should be defined in terms of the underlying misconduct (e.g., kidnapping) and that the basis for Federal jurisdiction should be specified separately (e.g., transporting the victim across a state line). The basis for Federal jurisdiction would not be an element of the offense as such but would be proved to the court beyond a reasonable doubt.

Two aspects of Federal jurisdiction in the Commission's Final Report generated controversy on the subject.

First, the Final Report consolidated circumstances giving rise to Federal jurisdiction into twelve broad jurisdictional bases, which were then applied by reference in the penal section. Although these bases were loosely modeled after examples in present Federal law, the consolidation generally resulted in substantial expansions of Federal jurisdiction and less often in contraction of Federal jurisdiction without a rationale for doing so. In order to avoid these problems, the bill as amended describes expressly in each penal

section the Federal jurisdiction applicable to the conduct. This approach adopts a drafting technique which permits a precise duplication, expansion or contraction of present law on an offense-by-offense basis.

Second, the Commission's Report contained a jurisdictional base under which Federal jurisdiction could be asserted over criminal conduct simply because it occurred in the course of any other offense over which Federal jurisdiction existed. This so-called "ancillary jurisdiction" concept if applied generally to every offense would lead to a large expansion in Federal jurisdiction. The concept is retained in the Committee print but is limited extremely in its application by listing in the jurisdictional part of appropriate penal sections those offenses which may confer derivative Federal jurisdiction for the particular offense. For example, reference to the jurisdictional subsection for murder indicates that there is Federal jurisdiction over all murders that occur during the commission of a Federal kidnapping. This approach essentially meets the objections of those critical of the Commission's Final Report.

Chapter 3. Culpable States of Mind.

This chapter defines the specific mental states (the "mens rea" elements) that are used throughout the Code in defining an offense. The current Title 18 uses 79 different terms to define the requisite mental state. This chapter reduces the number of terms used to describe the state of mind to four: intentionally, knowingly, recklessly or negligently. The simplification should permit far more clarity and uniformity of interpretation.

Chapter 4. Complicity.

This chapter sets forth those circumstances under which a person may be criminally liable for the acts of another. For example, the accomplice liability section codifies the doctrine of Pinkerton v. United States, making a co-conspirator guilty of each specific offense committed in furtherance of the criminal conspiracy and as a reasonably foreseeable consequence of the conspiracy.

One significant section in this chapter is the organizational liability provision. It makes an organization (defined to include unions and associations as well as corporations) liable for the acts of its agent committed within his express, implied or apparent authority.

Chapter 5. Bars and Defenses to Prosecution.

For the first time in Federal law, general defenses to prosecution are codified. Except for the defense of insanity, the codified defenses reflect present law in the majority of jurisdictions. The chapter includes such defenses as insanity, entrapment, intoxication, duress, exercise of public duty, self-defense and official misstatement of law. Other than insanity, the defenses that have drawn the most comment are entrapment, public duty, official misstatement of law and use of deadly force.

1. Insanity Defense (Section 522). At present there is no Federal statute defining the insanity defense. As a result, the formulation of the defense has been left to the courts. Uncertainty and a lack of uniformity have been the consequences. Where the type of insanity test adopted by a court of appeals can be discerned, it is possible to discover at least five different formulas used in the 11 circuits.

S. 1400 and S. 1, as originally introduced, adopted different approaches. The S. 1400 revision, which the Committee Print adopts, would permit insanity to serve as a defense to a prosecution only if the insanity precludes a finding of the existence of the required mens rea, the state of mind element. In other words, a defendant could not be convicted if his mental disease or defect negated the requisite state of mind. This proposal would hold all responsible for their criminal acts if done with the requisite criminal intent. Thus, the focus of initial inquiry in criminal trials would be on such questions as "Did the defendant intend to hijack an aircraft?" in case of air piracy, rather than "Could the defendant know right from wrong; could he control his behavior?" Assuming the intent to hijack the aircraft and the requisite conduct, the defendant would be convicted and the question at the time of sentencing would be whether to commit the defendant to prison, to a mental hospital, or to some other program.

In contrast, the S. 1 approach focused on the question of whether the defendant had such a mental disease or defect that he lacked substantial capacity to appreciate the character of his conduct or to control his conduct. This is the standard developed by the American Law Institute.

The real difference between the two approaches is that under S. 1400 the defendant would be convicted and then sent either to prison or a mental hospital. By contrast, under the S. 1 approach he would be found not guilty by reason of insanity and, under civil commitment proceedings, sent to a mental hospital.

2. Entrapment (Section 551). With respect to entrapment, the print adopts the majority view of the Supreme Court on the defense. If a defendant exhibits a predisposition to commit the offense, the defense will not prevail. Where, however, the police encourage the commission of crimes that would not otherwise be committed in order to make an arrest and obtain a conviction, the defendant can successfully assert the defense.

3. Execution of Public Duty (Section 541). The defense of "execution of public duty" incorporates in one section many Federal laws which permit public servants to act in certain ways in the execution of their official duties. Under this provision, for example, it would be a defense to a charge of theft that the defendant was a marshal levying execution on a shipment of goods in interstate commerce. Wiretapping under court order would also be excluded from the prohibition against the interception of private communications.

4. Official Misstatement of Law (Section 552). The defense of "official misstatement of law" is a common law defense that is codified by the bill. Under this provision, if an official erroneously informs a person that it is legal to engage in certain conduct, the actor cannot be prosecuted for such conduct. Some witnesses criticized this provision because it could authorize an official to immunize the conduct of another official by telling the latter that he may legally engage in certain conduct that is later deemed to be illegal. In order to avoid such collusion, the section has been amended to require a public announcement, either orally or in writing, that the law is being officially interpreted so that certain conduct is not criminal in nature.

5. Protection of Persons or Property (Sections 542 and 543). The basic standards for the use of deadly force are the following: (1) the use of deadly force in self-protection or in protection of another is justified only if necessary to avoid a risk of death or serious bodily injury; (2) deadly force is not justified in defense of property; (3) availability of the defense depends upon apparent necessity; (4) the general test of necessity is what is reasonably required under the

circumstances viewed from the standpoint of the defendant; (5) retreat is not a duty, but the opportunity to retreat is made a circumstance to consider in evaluating the reasonableness of the defendant's belief in the necessity of using deadly force; and (6) the mistake-of-fact doctrine applies to the defense.

Part II. Chapter 10. Offenses of General Applicability.

This Chapter codifies the attempt, conspiracy and solicitation offenses. There is under currentlaw no Federal attempt statute of general applicability, although many of the individual offenses contain attempt provisions. This section makes it an offense to attempt to commit any Federal crime. The attempted offense in most instances carries the same penalty as the completed offense on the theory that a defendant who begins to commit an offense should not benefit from a happenstance causing its interruption. Nevertheless, to encourage the abandonment of a criminal enterprise, a voluntary, complete and effective avoidance of the offense constitutes an affirmative defense.

The conspiracy section reflects current law, as developed through judicial interpretations of the present general conspiracy statute. It includes a provision making a co-conspirator liable for substantive offenses committed by other co-conspirators in furtherance of the conspiracy.

With the exception of subornation of perjury, there is no solicitation offense in current Federal law. The Brown Commission recommended a general offense covering the solicitation of another to commit any Federal offense, an approach adopted in S. 1, as amended.

Chapter 11. Offenses Involving National Defense.

Chapter 11 deals with the offenses involving the national defense. Essentially it consists of the provisions concerning treason, sabotage, espionage, and their related subordinate offenses. Despite the great amount of attention focused on several of these provisions during the hearings, for the most part they simply codify existing statute and case law. However, admittedly, there are some areas in which the law is being modified.

Section 1104, for example, makes it an offense for a person to engage in "paramilitary" activities. This section penalizes the use of weapons by a group of persons for the purpose of taking over a government function or a government agency. No comparable provision exists in current law.

Section 1124, which prohibits the disclosure of classified information, is another section where current law has been modified and which received close scrutiny in the hearings. This section makes it an offense for a person in authorized possession of classified information to knowingly communicate such information to a person not authorized to receive it. As originally drafted, it was not a defense to the crime that the information was improperly classified. The rationale behind this approach was that an adequate remedy existed for correcting inappropriate classifications outside the Code, i. e. the recent administrative review procedures created by Executive Order.

As a result of the hearings on the bills, three changes have been made in the Committee Print. First, a complete bar to prosecution would become operative if there were not in existence at the time of the offense an agency and procedures to provide for the review of classifications. Second, an appropriate government official would have to certify prior to prosecution that the classification which was violated was correct.

Third, an affirmative defense is created that would be applicable in instances where the defendant has exhausted his remedies under the administrative review provisions and has not communicated the classified information to a foreign agent or for anything of value. If, and only if, these requirements are met would the defendant be allowed to litigate the appropriateness of the classification.

Furthermore, it should be pointed out that a recipient of the classified information, such as a newsman, is not subject to prosecution under section 1124. The scope of the offense was restricted in this way so as to avoid what some witnesses felt was an encroachment on the freedom of the press.

Chapter 12. Offenses Involving International Affairs.

This chapter is divided into two subchapters. The first subchapter encompasses those offenses that pertain to foreign relations, such as disclosing a foreign code or engaging in an unlawful international

transaction. The second subchapter covers offenses involving immigration, naturalization, and passports, such as unlawful entry into the United States or improper use of a passport. The offenses covered here are basically a codification of present law without major change.

Chapter 13. Offenses Involving Government Processes.

The offenses encompassed by this chapter are those that constitute obstructions of Government functions, whether they be obstructions of justice, contempt offenses, offenses involving false statement, or offenses involving official corruption. For the most part, the chapter reflects current law. However, certain reforms are introduced.

Current law contains an offense of conspiracy to defraud the Government but no substantive offense of defrauding the Government. The current offense has therefore been subject to criticism for punishing a conspiracy to commit an act that is not in itself punishable. Section 1301 establishes the substantive offense of defrauding the Government.

Section 1312 gears the punishment for bail jumping to the nature of the underlying offense. Thus, it will be punished as a felony if the defendant is awaiting trial for a felony, but as a misdemeanor if the underlying offense is a misdemeanor. This reduces the incentive to jump bail in the hope of facing a reduced penalty after sufficient time has passed that the Government's case has grown stale.

Current law covers tampering with witnesses and informants by means of force or threats only in a vague obstruction of justice statute. Section 1323 spells out the prohibited conduct in detail, at the same time including a catch-all clause to insure that the coverage of current law is maintained.

Current law does not make perjury an offense if the false swearing is not material. Section 1342 changes that rule by making such false swearing a misdemeanor. This provision reflects the recognition that such dishonesty should be punished regardless of its materiality.

Section 1343 consolidates in one statute the numerous false statement statutes scattered throughout the United States Code -- 47 in title 18 alone. Oral false statements as well as written ones are covered by the section.

Finally, under Section 1356 public servants are prohibited from using their own official actions or information gained because of their position for private gain while they remain public servants or for one year after they leave public service. As a statute of general applicability, this offense is new to Federal law.

Chapter 14. Offenses Involving Taxation.

This chapter would incorporate Federal criminal tax offenses currently contained in the Internal Revenue Code of 1954 (Title 26, United States Code). This approach was suggested by the Brown Commission and also adopted by both S. 1 and S. 1400. This is consistent with a fundamental precept of codification requiring that all felony offenses be included in Title 18.

The chapter is divided into two subchapters. The first subchapter would cover internal revenue offenses and the second subchapter would contain customs offenses.

Chapter 14 generally recodifies existing law. However, one particularly significant change is introduced with respect to prosecutions for tax evasion (§1401). Under existing law, a successful tax evasion prosecution requires a "net" tax deficiency. Thus, if one were to intentionally understate his income with the intent to evade taxes but, due to oversight or neglect, fail to take available deductions adequate to offset the undeclared income, the case against him would fail.

Section 1401, read together with Section 1001 (Attempts), eliminates the "net" deficiency requirement. Thus, a taxpayer could be prosecuted for understating his income with a criminal intent, despite the fact that no tax was actually due and owing because of overlooked deductions.

It should be noted that the sanction for offenses where there is no "net" deficiency is a class E felony (3 years). However, if there exists a "net" deficiency of $100,000 or less, the penalty is a class D felony (7 years); where a "net" deficiency in excess of $100,000 exists, the sanction is upgraded to a class C felony (15 years).

Chapter 15. Offenses Involving Individual Rights.

This chapter covers offenses involving civil rights, political rights, and privacy.

Civil Rights. Basic coverage of present civil rights statutes is retained, with express language to encompass sex discrimination. The current statute covering conspiracy to deprive a person of his civil rights under color of law is modified to make it clear that the criminal state of mind required for the offense applies to the conduct which deprives a person of a right under the Constitution and law of the United States and does not impose a further requirement that the defendant specifically intend to infringe a federally guaranteed right. Other sections carry forward the coverage of the Civil Rights Act of 1968.

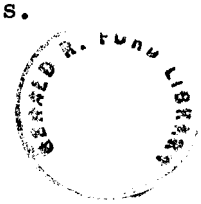
The civil rights provisions also represent an excellent example of use of ancillary federal jurisdiction as a grading mechanism. The basic offenses are generally graded as Class A misdemeanors (1 year); however, federal jurisdiction also exists for serious crimes against persons and property committed in the course of such offenses. Thus, a civil rights offense involving murder would permit federal prosecution for murder. This treatment is similar in concept to the grading provided in present 18 U.S.C. 245.

Privacy. Section 1524 of the Committee Print, although primarily intended to protect information furnished to the government by private citizens as a duty or to obtain a federal benefit, is framed in terms broad enough to prohibit grant jury leaks by grand jurors or government employees. Prosecution for grand jury leaks now is limited to the contempt provisions.

Wiretapping. Due to the recent vintage of the wiretap and surveillance provisions and the controversy that surrounds the subject, the Committee Print carries present law provisions forward without substantive change.

Election Offenses. Section 1511 for the first time in Federal law provides a specific statute covering voting fraud. Heretofore, voting fraud in connection with a Federal election could be reached only under the general civil rights conspiracy statute.

The basic offenses applicable to obstruction or influencing elections are primarily directed at elections of Federal officers. However, the print would for the first time in Federal law permit Federal prosecution for such conduct ostensibly directed at the election of a State or local official if it is a mixed election, that is, an election involving candidates for both Federal and State or local offices.



Chapter 16. Offenses Against the Person.

This chapter contains all of the offenses which protect the person as an individual. Included here are such offenses as murder, manslaughter, maiming, reckless endangerment, kidnapping, aircraft hijacking, and rape. By and large, while the chapter clarifies and simplifies the basic offenses, no substantial changes are made. Two offenses that are innovative, however, are rape and reckless endangerment.

The offense of rape, and the other sexual offenses in the sections that follow, apply without distinction as to the sex of the offender or of the victim; forcible sodomy is included in the definition of the offense. It might be noted that the Committee Print statutory rape provision (Section 1643) can be committed by females but eliminates consensual acts between peers from the traditional offense. No particularized evidentiary requirements, corroboration requirements, or instruction requirements are included, nor is there any defense or grading distinction based upon the promiscuity of the victim.

The reckless endangerment provision is new to Federal law. It provides for an increased penalty for engaging in any criminal conduct which recklessly endangers the life of another. This section can be used in the environmental area. If a defendant pollutes the environment in such a way that it recklessly places or may place another person in danger of death or serious bodily harm, he can be prosecuted under this section. It should be noted that other environmental measures which contain criminal penalties, such as the Clean Air Act, are retained outside Title 18.

Chapter 17. Offenses Against Property.

Chapter 17 incorporates and consolidates the many varied property offenses found throughout the United States Code into some 31 sections. It is in this chapter that the provisions relating to arson, burglary, securities violations and their related offenses are found. It is also in this chapter, perhaps more than in any other, that the consolidation and reduction of unnecessarily repetitious offenses, one of the significant benefits of codification, can be found. By separating the jurisdictional element from the definition of the substantive offense, for example, Section 1731 is able to incorporate the 70-odd theft provisions under current law into a single section. For the most part, Chapter 17 incorporates current law in the area of property offenses, but some notable reforms are also accomplished.

Section 1722, defining the offense of extortion, is designed to correct a "loophole" with regard to the conduct of labor unions in collective bargaining disputes arising out of the recent Supreme Court decision in United States v. Enmons. In that case, the Court held that the Hobbs Act, which prohibits the obstruction of interstate commerce by extortion, was not applicable to otherwise extortionate conduct when that conduct was used to obtain a legitimate goal of collective bargaining. Specifically, the threats of a union leader to blow up a power substation were held not to form the basis for a prosecution under the Act where the reason for this threat was to coerce an employer into meeting the union's concededly legitimate demands for higher wages. Such an interpretation is inconsistent with the construction under other Federal extortion provisions and essentially creates a Federal "claim of right" defense. Section 1722 focuses on the means used rather than the ends sought and would bring such conduct within the definition of extortion.

In addition to consolidating the various theft offenses as noted above, Section 1731 is expanded to cover the theft of services, intangibles and intellectual property as well as tangible goods.

Section 1734 makes it an offense to execute a scheme to defraud. The significance of this section lies in its relationship to the procedural part of the code, where a new statutory injunction remedy is provided to restrain violations, a remedy that should be of considerable importance in protecting potential victims of "white collar" crime. Such a remedy would parallel the effective injunctive relief that has long been available for violations of the fraud provisions of the Securities and Exchange Act.

Another significant reform with application to the labor movement is found in Section 1752, which defines the offense of labor bribery. Under current law, it is an offense to accept money, i.e., a "bribe", to manipulate certain union funds but not others. This situation has largely arisen because of the inability of the law to keep up with the various funds being created by labor unions. Thus, although it is a Federal crime for a pension and welfare official to accept a bribe, that prohibition is currently not applicable to those managing other trust funds for employee benefits.

Section 1752 would extend the Federal law in this area to effectively cover any labor union asset or fund.

Chapter 18. Offenses Involving Public Order, Safety, Health and Welfare

This chapter is divided into seven subchapters.

Subchapter A incorporates a series of organized crime offenses which generally mirror current law under the Organized Crime Control Act of 1970. However, several innovations are worthy of note. First, a distinction is made between simple "racketeering" and "operating" a racketeering syndicate -- the former is punished at a C felony level (15 years) and the latter at a B felony level (30 years). Secondly, a new offense entitled "Washing Racketeering Proceeds" (§ 1803) is created to proscribe the takeover of legitimate businesses with the proceeds of a racketerring enterprise. Finally, Federal loansharking laws are strengthened to reach extortionate and grossly usurious credit transactions, which in present 18 U. S. C. 892 are stated in terms of a prima facie case for proving an extortionate extension of credit.

Subchapter B contains the various Federal drug offenses. Grading distinctions are made based upon the nature of the drug involved and the defendant's role as a trafficker or simple possessor. Most notable are the setting of the penalty for simple possession of marihuana at a Class C misdemeanor (30 days -- Section 1813) and provision for mandatory minimum sentences for trafficking in drugs. (Section 1811).

As to mandatory minimums, current law provides for mandatory minimum sentences with respect to two categories of crime: certain drug trafficking offenses and the commission of an offense involving a firearm.

A mandatory minimum sentence is a minimum term of imprisonment that must be imposed upon a convicted defendant. Current law precludes the possibility of parole. The Committee Print maintains the imposition of mandatory minimums with respect

to the firearms and drug offenses but tempers the effect of this provision by not precluding the possibility of parole.

This approach would recognize the gravity of the offenses involved but would also provide enough flexibility to guarantee that unduly harsh treatment would not be imposed upon rehabilitated convicts.

Subchapter C codifies existing penal provisions involving firearms and explosives. As noted above, mandatory minimum sentences are retained for certain firearms offenses (Section 1823).

Supchapter D generally maintains the substance of existing Federal law concerning riots.

Supchapter E covers gambling, obscenity and prostitution offenses.

Section 1842 generally codifies current law consistent with recent Supreme Court decisions respecting obscenity. The section proscribes any dissemination of obscene material to a minor or to any person in a manner affording no opportunity to avoid exposure to such material. In addition, it proscribes the commercial distribution of obscene material as defined in the section in those instances where such distribution is in violation of state law. This treatment of commercial distribution is parallel to similar Federal gambling prohibitions and recognizes the States as the primary law enforcement authority in obscenity. The Supreme Court recently held that obscenity is determined by local, not national, standards.

With respect to gambling and prostitution, the Code seeks to reach the operators of a gambling or prostitution ring but leaves lesser offenses in this area to state law.

The balance of Chapter 18 covers public health offenses and certain other relatively minor miscellaneous offenses such as a new Federal disorderly conduct provision.

Part III. Sentences.

It is in Part III that the sentencing scheme for the entire United States Code, and not merely title 18, is set out. The sentencing structure is designed to attain the four goals for any criminal sanction that are set out in the very first section of the Code. These goals are: (1) the assurance of just punishment for criminal conduct; (2) the deterrence of such conduct; (3) the protection of the public from persons who engage in such conduct; and (4) the correction and rehabilitation of persons who engage in such conduct. In an attempt to achieve these goals, Part III establishes a system of probation, fines and imprisonment applicable to both individuals and corporate entities. The death sentence is available for persons convicted of murder, treason, espionage or sabotage.

Chapter 20. General Provisions.

Chapter 20 sets out the general provisions applicable to the sentencing of criminal defendants. Authorized sentences for individual (probation, fine, imprisonment, or death) and corporate defendants (probation or fine) are described. Provision is made for the preparation of presentence reports and appellate review of sentences.

Worthy of note is Section 2004, which creates a new criminal sanction whereby an individual who has been found guilty of an offense involving fraud or other deceptive practices, or an organization that has been found guilty of any criminal offense, may be ordered by the court to give notice of its conviction to those persons who are affected by the conviction or who are financially interested in the subject matter of the offense.

Chapter 21. Probation.

Chapter 21 provides for the probation of criminal defendants. This chapter sets out the provisions for its imposition, the conditions that may be attached to it and a section providing for its revocation. Section 2103, which describes the conditions that may be attached to probation, essentially enables a court to condition probation in any

manner that might be conducive to the rehabilitation of the offender. It sets forth a number of conditions to serve as examples of the type of resourceful probationary measures that may be taken, e. g., meet family responsibilities, participate in community programs, etc.

Chapter 22. Fines.

Chapter 22 is composed of four sections that establish the system of fines that may be imposed under the new title 18.

Under the Committee Print, a sentence to a fine may be imposed in addition to any other sentence. Perhaps the most notable feature of the fine provisions is the establishment of a different level of fines for individuals and corporations. An individual may be fined up to $100,000; while a corporation may be fined up to $500,000. Since corporations are almost always possessed of greater assets than individuals, such a differentiation is appropriate. Also noteworthy is the alternative fine authorized by the Code. This provision is applicable to defendants who have derived pecuniary gain from or have caused loss to a victim by their offense. Such defendants may be fined up to twice the gain derived or twice the loss caused, whichever is the greater.

Chapter 23. Imprisonment.

This chapter contains those sections of the Code governing the sentence of imprisonment. Under the new sentencing system, imprisonment may run from a maximum of life for a Class A felony to no more than three years for a Class E felony; from not more than one year for a Class A misdemeanor to a maximum of thirty days for a Class C misdemeanor; and to no more than five days for an infraction.

The chapter sets out the criteria to be imposed in determining a sentence of imprisonment and the rules that will govern the imposition of concurrent or consecutive sentences. Of particular note is the retention and codification of provisions that permit an extended term of imprisonment for "dangerous special offenders."

Chapter 24. Death Sentence.

This chapter, composed of three sections, sets out the procedure to be utilized in determining whether or not the sentence of death shall be imposed for those offenses for which it is provided. The Code adopts the procedure established by S. 1401, as that bill was passed by the Senate in March 1974. Thus, it provides for a bifurcated or two-stage trial with its separate sentencing hearing. It also sets out the specific aggravating and mitigating factors that must be found to be present or absent for the sentence of death to be imposed. If one or more of the designated aggravating factors and none of the mitigating factors is found to exist, the death sentence must be imposed. If, on the other hand, none of the aggravating factors or one or more of the mitigating factors is found to be present, the penalty may not be imposed.

Part IV. Criminal Justice Administration and Procedure.

This part, composed of Chapters 30-38, codifies existing procedural sections of Title 18. Four innovations are worthy of note in this context.

Supchapter A of Chapter 36 codifies the Federal Juvenile Delinquency Act and adopts the procedural changes recently passed by the Senate as the McClellan amendment to S. 821, the Juvenile Justice and Delinquency Prevention Act of 1974, which became Public Law 93-445 on September 7, 1974.

Supchapter B of Chapter 36 provides for the first time in Federal law a civil commitment procedure applicable to individuals found innocent of a Federal crime by reason of a defense of insanity. Under current law, no opportunity for Federal treatment of such individuals is available since the only available civil commitment procedures are found in State law.

Subchapter C of Chapter 37 of the Committee Print would provide for appellate review of criminal sentences in Federal courts.

This is accomplished by statute rather than amendment to the rules of criminal procedure. Section 3725 provides for so-called "two-way review" -- by the prosecutor and/or by the defendant. The standard upon review is "clearly unreasonable". An appeal is not a matter of right but of grace, i.e., the government and defendant are granted authority to file leave to appeal which may be granted or denied by the appellate court.

An appeal would lie in the circuit court and thereafter the Supreme Court. Only sentences imposed upon conviction of a felony which involve imprisonment for a term in excess of one-fifth of the authorized maximum would be appealable by the defendant.

Section 3812 establishes new Federal lien provisions applicable to unpaid criminal fines which parallel the statutory lien treatment of unpaid Federal taxes. This should operate to guarantee greater compliance with imposed Federal criminal fines.

Part V. Ancillary Civil Proceedings.

This part (Chapters 40 and 41) contains two innovations which deserve attention.

Section 4021 establishes a new civil injunction remedy which would be available in mail fraud proceedings. S. 1 contained a much broader authorization for utilization of the injunction remedy.

Supchapter B of Chapter 41 incorporates a new program of limited compensation to victims of Federal crimes. These provisions authorize a civil court action against a revolving fund to be established on the books of the United States Treasury to compensate the innocent victims of violent crimes for personal injury which they may incur as the result of a specified crime.

The section is limited to the Federal level, i.e., Federal compensation to victims of Federal crimes. There is no authorization for appropriations provided. It is anticipated that demands against the fund would be satisfied from increased fine levels, dividends to be declared by the Federal Prisons Industries Board and private contributions.

White House Initiatives

In considering the appropriate role of the White House in the development of the code, four points should be borne in mind. First, the code is a government-wide project and not merely the concern of the Department of Justice. Although Justice has served a primary role in its development to date, the code will ultimately impact on virtually every agency of the Federal government. Secondly, to the extent that the code constitutes a public statement of the Administration on virtually every criminal justice issue facing the nation today, it should be reflective of President Ford's views. Thirdly, the bill has historical significance especially in view of the President's background as a lawyer. Finally, although a code is a possibility in the 94th Congress, as a practical matter success will require White House support for the effort.

Therefore, it would appear that we have some interest in shaping the content of the code as it may reflect on the President and in providing whatever assistance may be desirable and practicable in moving it through the Congress.

At the present time, we can lay a groundwork for our participation in the development of a code over the next few years. First, the matter should be covered in the State of the Union as follows: (1) the need for codification should be endorsed; (2) the necessity of maintaining the integrity of the code in the face of efforts to fractionalize it should be emphasized; (3) the President should call for the logical development and refinement of the Senate bill by the House as opposed to a de novo review of the effort; and (4) the President should indicate that, as he continues to be advised on various issues presented by the code, he will communicate his views to the appropriate committees of Congress.

We should also arrange to meet with Larry Silberman and Ron Gainer (Code Unit at Justice) in order to reconsider major issues presented by the code and to discuss the possibilities for White House assistance. In this latter regard, it is extremely important that efforts be made to ensure that new appointments to the Hungate Subcommittee on the Republican side provide some balance to the membership.

Attachment

Attached is a draft statement on the code project for possible inclusion in the State of the Union message. The draft was done by Justice and does not cover every point which I have noted above. However, it is a good starting point and should give you a feel for the rhetoric in this area.

Closing Note

Would you like me to arrange a meeting on this subject with Larry Silberman and others at Justice in order to explore our appropriate role in the development of this project?

The problem of crime in our country continues to be of serious concern. Increasingly it touches the lives of each of us. While the control of crime is a matter primarily of State responsibility under our Constitution, there are several areas in which it is the principal responsibility of the Federal Government and many other areas in which it is the responsibility of the Federal Government to augment the efforts of the States when it becomes necessary.

Several legislative approaches to the problem of crime have been tried by the Federal Government. Some have helped to alleviate the problem; some have not. Those attempts that have sought to improve the law itself have, on occasion, produced notable advances. But all such past attempts by the Congress have suffered from the fact that, no matter how well-intended or how well-designed, they constituted a piecemeal approach to the problem. We are still left in a situation where one of the most time-consuming aspects of the criminal justice process is in determining what the law is. If the entire body of criminal law could be clarified and simplified, the time of judges and prosecutors and defense counsel could be devoted to the handling of a greater number of cases fairly and expeditiously rather than engaging in endless litigation on fine points of legal interpretation.

Piecemeal repair and improvement has proved to be inadequate. What is needed instead is a complete overhaul of the Federal criminal laws.

A major overhaul of a significant segment of the criminal law has recently been achieved by Congress's passage of the Federal Rules of Evidence. The Judiciary Committees of the House of Representatives and the Senate

to be commended, together with the Judicial Conference, for the painstaking work that has at last codified this large body of law. But even this area is only a fraction of the Federal criminal law that requires overall revision and reform.

I propose as a major goal of this Congress the passage of an entirely new Federal criminal code.

The stage has been set for such a monumental reform. In 1966, largely through the efforts of then-Congressman Richard Poff, the Congress established a commission to evaluate means of reforming the Federal criminal laws. The commission was formed, and, after three years' work under the chairmanship of former Governor Brown of California, it recommended to the Congress a "work basis" for a new Federal criminal code. After two years of Senate Judiciary Committee hearings on the subject, Senators McClellan, Hruska, and Ervin introduced a bill encompassing a complete new code. Thereafter, that Committee held extensive hearings for two more years, it worked closely with attorneys representing all departments and agencies of the Executive Branch, and last October it produced a revised version of the bill to create a new code.

The version of the code contained in the revised Senate bill is, I believe, markedly superior to all previous formulations. It will clarify the law, simplify the law, and improve the law -- and, by doing so, it will make the law more effective against criminal conduct at all levels. It will make the law more effective against those who engage in organized criminal enterprises, and against those who deprive others of their constitutionally guaranteed civil rights; against those who attempt to corrupt our governmental

and political processes, and against those who seek to circumvent the law for personal gain; against those who engage in crimes of violence, and against those who unlawfully deposit poisonous industrial wastes into the Nation's rivers and streams; against those who engage in terrorist activities, and against those who prey upon the poor through fraudulent schemes and usurious loans. It will make the law more effective against all forms of criminal activities.

In a work of this scope -- a scope that embodies all aspects of the criminal laws -- not everyone will agree with every provision. But I think everyone can agree that the bill is a monumental improvement over the existing state of the law. The bill is the product of constructive bipartisan effort. It has my support and the support of this Administration, and it deserves the support of the Congress. I can think of no more appropriate a gift that the Congress might give the Nation, on the two-hundreth anniversary of its birth, than a modern body of laws balancing in a sensitive and sensible fashion the rights of free citizens with the needs of a free society. I pledge to the Congress the full efforts of this Administration to help make the promise of such a gift a reality.

THE WHITE HOUSE
WASHINGTON

Date 7/31/75

TO: PHIL BUCHEN

FROM: KEN LAZARUS

ACTION:

_____ Approval/Signature

_____ Comments/Recommendations

_____ Prepare Response

_____ Please Handle

x For Your Information

_____ File

REMARKS:

THE PRESIDENT'S REMARKS UPON SIGNING
H. R. 6799 INTO LAW
July 31, 1975

I am signing into law today H. R. 6799, the Federal Rules of Criminal Procedure Amendments Act of 1975.

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My heartfelt thanks are extended to the Judicial Conference of the United States which drafted the basic proposals, to the members of the bench and bar who contributed their wisdom and expertise, and to the members of the Congressional committees who devoted so much effort to resolving the difficult choices which were presented.

I am sure that these amendments will further advance the Federal system of criminal justice.

Wednesday 7/30/75

3:45 Ken has shown the Memo for the President to Rod Hills and he thought it was O.K. Mr. Hills initiated it.

Ken has taken it down to Jim Connor. The bill should be here about 5 o'clock. Do you want to wait and look at the bill when you return? Or shall someone read it to you? The paper has to be on its way by 7 this evening. Connor will get the paper and the bill together to send on -- but can be changed if you have a problem.

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Suggests I send copies to all of them --particularly Dick Parsons.

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The bill should be down here by 5 o'clock.

5:45 Gave the message to Wilderotter, who is going to convey it to Mr. Buchen. He will call back if there's a problem. If we don't hear back, we can assume it's O.K.

(Told him Lazarus said basically there's just the change of signing date -- now it would be signed July 31 rather than August 1 -- then there would be no need to note the actual time and place on the bill itself.)

Copy for
Mr. Buchen

THE WHITE HOUSE

WASHINGTON

July 30, 1975

MEMORANDUM FOR THE PRESIDENT

THROUGH: PHILIP BUCHEN by R.H.

FROM: KENNETH LAZARUS

SUBJECT: Enrolled Bill: H.R. 6799, the Federal Rules of Criminal Procedure Amendments Act of 1975

This is to present the referenced bill for your immediate attention. In order to be absolutely certain that it is effective, the measure must be signed into law before August 1 (Washington time) -- 6:00 A.M., Friday, August 1 (Helsinki time).

Background

1. Enabling Acts. 18 U.S.C. Sections 3402, 3771 and 3772 constitute the Federal criminal rules enabling acts. By these provisions, the United States Supreme Court is empowered to promulgate rules of practice and procedure to govern criminal proceedings in our various Federal courts. The authority of the Supreme Court to promulgate such rules is limited, however, by a reserved power of Congress to disapprove any promulgated rule within a period of 90 days from the date of transmission to Congress or the prescribed effective date of the rule whichever is later. Moreover, the Congress is, of course, empowered to affirmatively legislate in this area at any time.

2. 1974 Criminal Rules. By order dated April 22, 1974, the Chief Justice transmitted to Congress a package of proposed changes to the Federal Rules of Criminal Procedure which were to take effect on August 1, 1974, absent Congressional disapproval.

3. Delayed Effective Date. Pub. L. 93-361, July 30, 1974, 88 Stat. 397 provided that the effective date of the proposed changes to the Federal Rules of Criminal Procedure which were embraced by the Supreme Court order of April 22, 1974, was postponed until August 1, 1975.

4. Enrolled Bill. H.R. 6799 contains a series of desirable amendments to the Rules as promulgated by the Supreme Court.

on April 22, 1974. However, in order to be absolutely certain that they are carried into effect, it is necessary to secure Presidential approval of the legislation before August 1, 1975. Approval on August 1 could, create considerable confusion and litigation. Approval after August 1 could be a complete nullity as the Rules promulgated on April 22, 1974, are deisgned to automatically take effect on August 1.

Discussion

The Department of Justice strongly supported most of the amendments (and all of the major ones) contained in H.R. 6799. Two provisions are worthy of mention here.

1. Rules 4 and 9. The enrolled bill rejects the Supreme Court's proposal to transfer the discretion as to whether to use an arrest warrant or a summons, now exercised by United States Attorneys, to the district courts. In the view of the Department, the Court's proposal, because of its tendency to increase the use of a summons, thereby alerting a person that a criminal charge is imminent, would have exacerbated the problem of fugitivity as well as caused a loss of incriminating evidence.

2. Rule 16. The enrolled bill also rejects the Supreme Court's proposal to provide for mandatory pre-trial disclosure of government witnesses. The Court's proposal portended an increase in witness intimidation, assault and assassination, as well as an aggravation of the already difficult task of obtaining witness cooperation. In this area, too, the bill would leave current law intact.

H.R. 6799 passed the House and Senate by voice vote on July 30.

Recommendation

Due to the press of time, it was not possible to process this measure in the normal fashion. However, the Attorney General, Jim Cannon, Jack Marsh, Jim Lynn and Counsel's Office recommend you sign the subject bill into law as soon as possible and not later than 6:00 A.M., Friday August 1 (Helsinki Time).

THE WHITE HOUSE

WASHINGTON

July 29, 1975

MEMO FOR: PHIL BUCHEN

FROM: KEN LAZARUS

Attached is a draft memorandum on the criminal rules legislation.

You should receive the letter from the Attorney General which is referred to at page 2 early tomorrow morning.

Bob Linder advises me that he has requested OMB to prepare the memo referred to on page 2.

I have done what is possible to ensure that the enrolled bill will be presented to the White House as soon as humanly possible and will continue to keep on top of Congressional action.

The memo at page 3 indicates that Cannon, Marsh and Lynn concur in the recommendation of the Attorney General and Counsel's Office. This has not yet been obtained and you might take the opportunity of tomorrow morning's staff meeting to secure their approval.

Attachment

THE WHITE HOUSE

WASHINGTON DRAFT

July 29, 1975

MEMORANDUM FOR THE PRESIDENT

THROUGH: PHILIP BUCHEN

FROM: KEN LAZARUS

SUBJECT: Enrolled Bill: H.R. 6799, the Federal Rules of Criminal Procedure Amendments Act of 1975

This is to present the referenced bill for your immediate attention. In order to be effective, the measure must be signed into law before August 2 (Washington time) -- 6:00 A.M., Saturday, August 2 (Helsinki time).

Background

1. Enabling Acts. 18 U.S.C. Sections 3402, 3771 and 3772 constitute the Federal criminal rules enabling acts. By these provisions, the United States Supreme Court is empowered to promulgate rules of practice and procedure to govern criminal proceedings in our various Federal courts. The authority of the Supreme Court to promulgate such rules is limited, however, by a reserved power of Congress to disapprove any promulgated rule within a period of 90 days from the date of transmission to Congress or the prescribed effective date of the rule whichever is later. Moreover, the Congress is, of course, empowered to affirmatively legislate in this area at any time.

2. 1974 Criminal Rules. By order dated April 22, 1974, the Chief Justice transmitted to Congress a package of proposed changes to the Federal Rules of Criminal Procedure which were to take effect on August 1, 1974, absent Congressional disapproval.

3. Delayed Effective Date. Pub. L. 93-361, July 30, 1974, 88 Stat. 397 provided that the effective date of the proposed changes to the Federal Rules of Criminal Procedure which were embraced by the Supreme Court order of April 22, 1974, was postponed until August 1, 1975.

4. Enrolled Bill. H. R. 6799 contains a series of desirable amendments to the Rules as promulgated by the Supreme Court on April 22, 1974. However, in order to ensure that they become effective, it is necessary to secure Presidential approval of the legislation by August 1, 1975. Approval after August 1 would, at a minimum, create considerable confusion and litigation. Indeed, subsequent approval could be a complete nullity as the Rules promulgated on April 22, 1974, automatically take effect on August 1.

Discussion

The Department of Justice strongly supported most of the amendments (and all of the major ones) contained in H. R. 6799 (see letter from the Attorney General at Tab A). Two provisions are worthy of mention here.

1. Rules 4 and 9. The enrolled bill rejects the Supreme Court's proposal to transfer the discretion as to whether to use an arrest warrant or a summons, now exercised by United States Attorneys, to the district courts. In the view of the Department, the Court's proposal, because of its tendency to increase the use of a summons, thereby alerting a person that a criminal charge is imminent, would have exacerbated the problem of fugitivity as well as caused a loss of incriminating evidence.

2. Rule 16. The enrolled bill also rejects the Supreme Court's proposal to provide for mandatory pre-trial disclosure of government witnesses. The Court's proposal portended an increase in witness intimidation, assault and assassination, as well as an aggravation of the already difficult task of obtaining witness cooperation. In this area, too, the bill would leave current law intact.

Recommendation

Due to the press of time, it was not possible to process this measure in the normal fashion. However, an OMB memorandum is attached for additional information (Tab B).

The Attorney General, Jim Cannon, Jack Marsh, Jim Lynn and Counsel's Office recommend you sign the subject bill into law as soon as possible and not later than 6:00 A. M., Saturday, August 2 (Helsinki time).

Additionally, in view of the possibility that the timing of the legislation vis-a-vis the Court's Rules may someday be the subject of litigation, I suggest that you also note the exact time, date and location on the enrolled bill and have your approval witnessed by a member of the staff who would then be available to provide the Department of Justice with an appropriate affidavit.

OFFICE OF
THE ATTORNEY GENERAL

7/29/75

Ken:

If we have this signed, is this sufficient?

Doug Marvin

Office of the Attorney General
Washington, D. C.

Honorable Philip W. Buchen
Counsel to the President
The White House
Washington, D.C. 20500

Dear Mr. Buchen:

I am writing to you in regard to H.R. 6799, the "Federal Rules of Criminal Procedure Amendments Act of 1975," which I am advised will be enacted by the Congress on July 30 or 31, 1975.

In brief, the background of the bill is that in April of 1974, the Supreme Court promulgated a series of amendments to the Federal Rules of Criminal Procedure pursuant to 18 U.S.C. 3771 and 3772. The amendments were to become effective on August 1, 1974. In order to give itself time to consider the amendments, Congress enacted a statute deferring the effective date of the proposed amendments to August 1, 1975 (P.L. 93-361).

The present legislation, H.R. 6799, is the result of that congressional consideration and embodies several significant modifications favorable to the Department of Justice. These include rejection of the Court proposals (1) to transfer the discretion as to whether to use an arrest warrant or a summons, now exercised by United States Attorneys under Rules 4 and 9, to the district courts, and (2) to provide for mandatory pre-trial disclosure of government witnesses. The bill leaves current law intact in both these areas. In the view of the Department, the first proposal, because of its tendency to increase the use of a summons, thereby alerting a person that a criminal charge is imminent, would have exacerbated the problem of fugitivity as well as caused a loss of incriminating evidence. The second proposal was even more serious and portended an increase in witness intimidation, assault, and assassination, as well as an aggravation of the already difficult task of obtaining witness cooperation. In addition to the foregoing aspects, the bill contains positive features, including new Rules setting forth procedures governing plea bargaining and for notification to the government in advance of trial of a defendant's intent to offer a defense of alibi or insanity. The Department of Justice strongly supported most of the amendments (and all of the major ones) made by Congress to the pending Rules.

There is, however, a serious problem concerning the time in which the legislation must be signed by the President to be effective. As previously indicated, unless superseded by law, the Supreme Court's proposed Rules will automatically take effect on August 1, 1975. It is uncertain, due to the ambiguous wording of H.R. 6799, whether if approved after August 1, 1975, the bill would be deemed to supersede the then in force Supreme Court proposals, and whether, if so, the Court's proposals would nonetheless remain in effect until December 1, 1975, the effective date of H.R. 6799. It seems evident, in any event, that approval after August 1 would create considerable confusion and litigation. To ensure, therefore, that the fruits of H.R. 6799 are not lost or delayed, I urge you to make every effort to secure Presidential approval of the legislation by August 1, 1975. All legal problems could clearly be avoided if Presidential approval on July 31, 1975, were obtained. However, if this proves impossible, it is my understanding that the President's approval of the bill at any time on August 1 would be deemed retroactive to the first instant of that date and accordingly would be sufficient to prevent the adverse consequences mentioned above from coming about.

Sincerely,

Edward H. Levi
Attorney General

THE PRESIDENT'S REMARKS UPON SIGNING
H. R. 6799 INTO LAW
July 31, 1975

I am signing into law today H. R. 6799, the Federal Rules of Criminal Procedure Amendments Act of 1975.

The amendments, some of which have been worked on for more than five years, make important changes in several existing rules and add some new ones. The overall effect of this legislation is to improve the efficiency of the Federal criminal justice system and to enhance the fairness of criminal trials. These goals are accomplished primarily through new Rules providing for increased pretrial discovery to both the prosecution and the defense of information necessary to the preparation of the case, and through new provisions governing the acceptance of guilty pleas and regulating, for the first time, the process of plea bargaining.

My heartfelt thanks are extended to the Judicial Conference of the United States which drafted the basic proposals, to the members of the bench and bar who contributed their wisdom and expertise, and to the members of the Congressional committees who devoted so much effort to resolving the difficult choices which were presented.

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THE WHITE HOUSE

WASHINGTON

July 30, 1975

MEMORANDUM FOR THE PRESIDENT

THROUGH: PHILIP BUCHEN by R. H.

FROM: KENNETH LAZARUS

SUBJECT: Enrolled Bill: H.R. 6799, the Federal Rules of Criminal Procedure Amendments Act of 1975

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1. Enabling Acts. 18 U.S.C. Sections 3402, 3771 and 3772 constitute the Federal criminal rules enabling acts. By these provisions, the United States Supreme Court is empowered to promulgate rules of practice and procedure to govern criminal proceedings in our various Federal courts. The authority of the Supreme Court to promulgate such rules is limited, however, by a reserved power of Congress to disapprove any promulgated rule within a period of 90 days from the date of transmission to Congress or the prescribed effective date of the rule whichever is later. Moreover, the Congress is, of course, empowered to affirmatively legislate in this area at any time.

2. 1974 Criminal Rules. By order dated April 22, 1974, the Chief Justice transmitted to Congress a package of proposed changes to the Federal Rules of Criminal Procedure which were to take effect on August 1, 1974, absent Congressional disapproval.

3. Delayed Effective Date. Pub. L. 93-361, July 30, 1974, 88 Stat. 397 provided that the effective date of the proposed changes to the Federal Rules of Criminal Procedure which were embraced by the Supreme Court order of April 22, 1974, was postponed until August 1, 1975.

4. Enrolled Bill. H.R. 6799 contains a series of desirable amendments to the Rules as promulgated by the Supreme Court

on April 22, 1974. However, in order to be absolutely certain that they are carried into effect, it is necessary to secure Presidential approval of the legislation before August 1, 1975. Approval on August 1 could, create considerable confusion and litigation. Approval after August 1 could be a complete nullity as the Rules promulgated on April 22, 1974, are deisgned to automatically take effect on August 1.

Discussion

The Department of Justice strongly supported most of the amendments (and all of the major ones) contained in H.R. 6799. Two provisions are worthy of mention here.

1. Rules 4 and 9. The enrolled bill rejects the Supreme Court's proposal to transfer the discretion as to whether to use an arrest warrant or a summons, now exercised by United States Attorneys, to the district courts. In the view of the Department, the Court's proposal, because of its tendency to increase the use of a summons, thereby alerting a person that a criminal charge is imminent, would have exacerbated the problem of fugitivity as well as caused a loss of incriminating evidence.

2. Rule 16. The enrolled bill also rejects the Supreme Court's proposal to provide for mandatory pre-trial disclosure of government witnesses. The Court's proposal portended an increase in witness intimidation, assault and assassination, as well as an aggravation of the already difficult task of obtaining witness cooperation. In this area, too, the bill would leave current law intact.

H.R. 6799 passed the House and Senate by voice vote on July 30.

Recommendation

Due to the press of time, it was not possible to process this measure in the normal fashion. However, the Attorney General, Jim Cannon, Jack Marsh, Jim Lynn and Counsel's Office recommend you sign the subject bill into law as soon as possible and not later than 6:00 A.M., Friday August 1 (Helsinki Time).

THE WHITE HOUSE

WASHINGTON

July 30, 1975

MEMORANDUM FOR THE PRESIDENT

THROUGH: PHILIP BUCHEN by R.H.

FROM: KENNETH LAZARUS

SUBJECT: Enrolled Bill: H.R. 6799, the Federal Rules of Criminal Procedure Amendments Act of 1975

This is to present the referenced bill for your immediate attention. In order to be absolutely certain that it is effective, the measure must be signed into law before August 1 (Washington time) -- 6:00 A.M., Friday, August 1 (Helsinki time).

Background

1. Enabling Acts. 18 U.S.C. Sections 3402, 3771 and 3772 constitute the Federal criminal rules enabling acts. By these provisions, the United States Supreme Court is empowered to promulgate rules of practice and procedure to govern criminal proceedings in our various Federal courts. The authority of the Supreme Court to promulgate such rules is limited, however, by a reserved power of Congress to disapprove any promulgated rule within a period of 90 days from the date of transmission to Congress or the prescribed effective date of the rule whichever is later. Moreover, the Congress is, of course, empowered to affirmatively legislate in this area at any time.

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