Journal of Criminal Law and Criminology

Volume 58 | Issue 2 Article 11

1967

# State Grants of Immunity--The Problem of Interstate Prosecution Prevention

Alan D. Singer

THE JOURNAL OF CRIMINAL LAW, CRIMINOLOGY AND POLICE SCIENCE
Vol. 58, No. 2
Printed in U.S.A.


# STATE GRANTS OF IMMUNITY—THE PROBLEM OF INTERSTATE PROSECUTION PREVENTION

ALAN D. SINGER

On June 15, 1964 the Supreme Court of the United States decided two landmark cases—*Malloy v. Hogan*,[1] and *Murphy v. Waterfront Commission of New York Harbor*[2]— which have given rise to a number of problems with respect to the prosecution, by either the federal government or a state, of a person who had previously been granted immunity by another state in return for his compelled testimony.

In *Malloy* the Court held that the fifth amendment was applicable to the states through the fourteenth,[3] and that federal court standards must be applied in determining the extent and limitations of the self-incrimination privilege.[4] In arriving at this conclusion, the Court overruled two prior decisions.[5]

A more complicated and more far reaching issue was presented in *Murphy*: Whether a state grant of immunity need protect the witness from incrimination under federal law, "to which the grant of immunity did not purport to extend."[6] The several defendants in *Murphy* had been subpoenaed to testify at a hearing conducted by the Waterfront Commission of New York Harbor, but refused to testify, even after being granted immunity under a state law,[7] on the ground that their testimony would tend to incriminate them under federal law. This contention was challenged by the Commission on the authority of a 1944 decision of the Supreme Court in *Feldman v. United States*.[8] The *Feldman* case had held that a state grant of immunity need not, in fact could not, protect a witness from prosecution under federal law; consequently, a failure to testify for fear of federal prosecution would not be sufficient grounds for silence.

The Court was not only unpersuaded by the *Feldman* precedent, it specifically overruled it and held: (a) that the self-incrimination privilege would be violated if state compelled testimony could be used to convict a witness in a federal court, but (b) that once a state granted immunity in return for compelled testimony, such testimony could not be used in a federal prosecution.[9] One immediate effect of the second part of this decision was to revitalize those state immunity statutes which had carried an emasculating clause prohibiting a grant of immunity whenever it reasonably appeared that the witness would be subjected to prosecution in another state or by the federal government.[10]

*Murphy* left unresolved, however, such questions and issues as the following: (1) must an immunity statute protect a witness from any *prosecution* for any crime concerning which he testifies, or is it sufficient that only *use* of such testimony be prohibited?; (2) will the holding in the *Murphy* case lead to interjurisdictional disputes because the granting of immunity by one state may, as a practical matter, all but prevent another from prosecuting the witness?; and (3) assuming that the latter problem will arise, what solutions are available short of overruling *Murphy*?

In discussing these problems, it will be necessary to describe how, when and why immunity is nor-

[1] 378 U.S. 1 (1964).
[2] 378 U.S. 52 (1964).
[3] 378 U.S. 1, 3 (1964).
[4] 378 U.S. 1, 11. The court specifically refused to hold that the availability of the federal privilege to a witness in a state inquiry would be determined according to a less stringent standard than is applicable in a federal proceeding, and concluded: "Therefore, the same standards must determine whether an accused's silence in either a federal or state proceeding is justified." 378 U.S. 1, 11.
[5] Twining v. New Jersey, 211 U.S. 78 (1908); Adamson v. California, 332 U.S. 46 (1947).
[6] 378 U.S. 52, 77–78 (1964).
[7] All immunity for testimony, whether granted by a federal or state agency, is granted pursuant to statute. There are 44 federal statutes authorizing the granting of immunity by various federal agencies, grand juries, and Congressional committees. See Comment, 72 YALE L.J. 1598, 1611–1612 (1964) for a list of these statutes.
[8] 322 U.S. 487 (1944).
[9] The court in *Murphy* only talked about the state-federal relationship, and said nothing of a state-state relationship. It is clear, however, that the latter is to be included in the holding of the case.
[10] The Illinois immunity statute provides that the court shall deny the state's motion for a grant of immunity "if it reasonably appears to the court that such testimony or evidence would subject the witness to prosecution, except for perjury committed in the giving of such testimony, under the laws of another State or of the United States." Ch. 38, § 106–4 Ill. Rev. Stat. (1965).

mally granted. Thus the first part of this Comment will deal mainly with the procedural aspects of the granting of immunity, and the traditional extent of the grant prior to *Murphy*.

### The Granting of Immunity

Once a witness claims his fifth amendment privilege, and that claim is upheld by a court,[11] he cannot be compelled to answer any questions unless he is granted immunity coextensive with the constitutional privilege which the grant of immunity supplants.[12] Prior to the *Murphy* decision, the federal rule was that such an immunity statute must protect the witness from any *prosecution* for the offense to which the question relates.[13] However, the *dicta* in *Murphy* seems to have changed this, so that now only *use* of such testimony, or its fruits may be prohibited. Under this rule the witness can be prosecuted if independent, untainted evidence is available.[14]

Mr. Justice White, in his concurring opinion in *Murphy*, was of the opinion that the Court had laid down a new rule: only *use* of the testimony violated the constitutional privilege against self-incrimination. He agreed with this new rule for two reasons: first, because in his view the states could not prevent a federal *prosecution* by a grant of immunity;[15] and secondly because the Constitution does not require protection against all *prosecution*, but only requires that the compelled testimony, or its fruits, shall not be used in a future prosecution of the witness. In his view it is constitutionally possible for a federal prosecution to be based on evidence obtained independently of any testimony given pursuant to a grant of immunity either by a state or the federal government.[16]

Although the "use" standard is more consistent with the purposes of immunity statutes, it does not seem logical that the Court would overrule by implication a seventy year precedent barring a prosecution. If the Court wanted to overrule the long-standing precedent laid down in *Counselman v. Hitchcock* it could have said so in no uncertain terms.

Taking the language of the *Murphy* opinion literally, it merely says that the federal government is prohibited from making use of testimony given in a state investigatory proceeding. Thus it could be concluded that the "use" standard is only meant to apply to prosecutions by other jurisdictions, while the "prosecution" standard is to

---

[11] The privilege against self-incrimination is deemed waived unless invoked, and cannot be invoked in advance of questions actually asked. The privilege can be invoked in any proceeding, civil or criminal, whenever an answer might tend to subject the witness to criminal responsibility for any crime. However, the fact that the witness claims silence on the basis of the privilege does not, in and of itself, mean that the silence is justified—i.e., that the privilege of remaining silent will be granted. The rule is that the witness must have "reasonable cause to apprehend danger from a direct answer", and it is up to the court to say whether silence is in fact justified under this test. See Hoffman v. United States, 341 U.S. 479,486 (1951); Rogers v. United States, 340 U.S. 367 (1951); United States v. Murdock, 284 U.S. 141, 148 (1931).

The Court in *Hoffman* said: "To sustain the privilege, it need only be evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result." 341 U.S. 479, 486–487.

[12] Counselman v. Hitchcock, 142 U.S. 547, 564–565 (1892). The following is a typical immunity statute: ". . . such witness shall not be excused from testifying or from producing books, papers, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled . . . to testify, or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding . . . against him in any court. No witness shall be exempt under this section from prosecution for perjury or contempt committed while giving testimony or producing evidence. . . ." 18 U.S.C. 1406 (1962 Supp.).

[13] 142 U.S. 547. The Court said that for an immunity statute to be valid it must provide "absolute immunity against future prosecution." 142 U.S. at 586.

[14] The Court in *Murphy* stated:

"[W]e hold the constitutional rule to be that a state witness may not be compelled to give testimony which may be incriminating under federal law unless the compelled testimony and its fruits cannot be used in any manner by federal officials in connection with a criminal prosecution against him. We conclude, moreover, that in order to implement this constitutional rule and accommodate the interests of the State and Federal Goverments in investigating and prosecuting crime, the Federal Government must be prohibited from making any such use of compelled testimony and its fruits. This exclusionary rule . . . leaves the witness and the Federal Government in substantially the same position as if the witness had claimed his privilege in the absence of a state grant of immunity." 378 U.S. at 79.

A footnote to this statement said: "Once a defendant demonstrates that he has testified under a state grant of immunity, to matters related to the federal prosecution, the federal authorities have the burden of showing that their evidence is not tainted by establishing that they had an independent legitimate source for the disputed evidence." 378 U.S. at 79.

[15] 378 U.S. at 93. It has been held that the federal government can prohibit state prosecution by granting immunity from prosecution in *any* court for any matter testified to on the basis of the supremacy clause. Brown v. Walker, 161 U.S. 591 (1896); Adams v. Maryland, 347 U.S. 179 (1954).

[16] 378 U.S. at 106.

govern in the jurisdiction granting the immunity.[17] It is hard to say on what basis such a distinction can be rationalized in light of the clear language of *Malloy* that federal standards are to govern fifth amendment rights, and these standards are to be uniformly applied.

A possible explanation is that the Court was concerned about completely preventing prosecution in other jurisdictions for crimes against the laws of those other jurisdictions. Perhaps the Court felt that the "use" standard would adequately protect constitutional rights, and at the same time allow prosecutions for crimes upon "independent" evidence. This solution seems to be the most equitable in light of the conflicting interests and desires of the various jurisdictions—i.e., the desire of one state to investigate, and of the other to prosecute.

The difficulty is that in the majority of cases there is no real difference between the two standards.[18] The burden of proof will be great to show an independent source of evidence, especially if the prosecutor has knowledge of the fact that the individual had testified in another jurisdiction.[19] In such a situation it is almost impossible to show that knowledge of the testimony did not have some influence on the prosecutor's investigation, however slight. The smallest clue derived from the witness's testimony is enough to bar all the evidence, and prevent prosecution.[20]

Whatever the *Murphy* decision was intended to do to the old "prosecution" standard, it has recently been interpreted as overruling it. A New York trial court[21] held the constitutional requirement to be only that no "use" be made of the testimony or its fruits. Immunity from *any* future prosecution is not required, according to the New York Court. This seems to be the better rule. The "prosecution" standard goes beyond the necessary Constitutional requirement. It is not coextensive with the fifth amendment privilege, but goes beyond it. In the few cases in which independent evidence can be shown the "prosecution" standard unnecessarily prevents an indictment and prosecution of that witness.[22]

### Immunity Statutes

The federal and state immunity statutes can be divided into two general categories: "automatic" statutes and "claim" statutes.[23] The automatic statutes grant immunity for anything which a witness may say under oath and pursuant to a subpoena to testify, regardless of whether he claims the fifth amendment privilege.[24] Claim statutes grant immunity only after the witness refuses to testify because of the self-incrimination privilege.[25]

Under an automatic statute, immunity is received for any "matter or thing" concerning which the witness in fact testifies.[26] Under a claim statute, as soon as the witness claims his privilege the government must then decide whether it wishes to exchange immunity for testimony. If it does not, then inquiry must stop.[27] Assertion of the claim need not be formal. "It is enough if it apprise the examining tribunal, and the law officers of the government conducting the investigation, that the witness is unwilling to answer because the answer may incriminate him. . . ."[28]

The major and traditional purpose of an immunity statute is to protect witnesses only against future prosecution.[29] This is because the fifth amendment privilege itself can only protect against subsequent use of the statements made. If the prosecution is impossible because of the running of the statute of limitations, pardon for the crime, or like reasons, the fifth amendment cannot be claimed, and thus immunity need not be granted to secure the desired testimony.[30] It must be re-

[17] This is the view expressed by Judge Sobel in *The Privilege Against Self-Incrimination "Federalized"*, 31 Brooklyn L. Rev. 1, 46 (1964).

[18] See *Comment*, 73 Yale L. J. 1491, 1495 (1964); *Note* 61 Nw. U.L. Rev. 654, 664-665 (1966).

[19] Note the publicity given to the recent case of In Re Grand Jury Investigation of Giancana, 352 F.2d 921 (7th Cir. 1965), *cert. denied*, 382 U.S. 959 (1965).

[20] See *Comment*, 73 Yale L. J. 1491, 1495 (1964).

[21] In re Koota, 35 U.S. L. Week 2046 (New York Sup. Ct., July 18, 1966). See also, *Note*, 61 Nw.U.L. Rev. 654 (1966).

[22] It is unnecessary because such prevention is not constitutionally required. The federal exclusionary rule under the fourth and fifth amendments only prohibits use of the evidence or its fruits. See Mapp v. Ohio, 367 U.S. 643 (1961).

[23] See *Comment*, 72 Yale L.J. 1568, 1611–1612 (1964) for a list of "automatic" and "claim" statutes.

[24] United States v. Monia, 317 U.S. 424 (1943).

[25] "Claim" statutes are distinguishable from "automatic" statutes in that the former specify that immunity attaches to testimony only after the witness claims the privilege against self-incrimination. 18 U.S.C. 1406 (1962 Supp.).

[26] See statute cited in footnote 12, *supra*.

[27] Smith v. United States, 337 U.S. 137, 150 (1949); United States v. Eisele, 52 F. Supp. 105, 108 (D.C. 1943).

[28] United States v. Skinner, 218 F. 870, 879 (S.D.N.Y. 1914); *appeal dismissed* 242 U.S. 663 (1916).

[29] Reina v. United States, 364 U.S. 507, 513 (1960). There are some exceptions to this rule, to be discussed in the text *infra*.

[30] Brown v. Walker, 161 U.S. 591 (1896). The danger

membered that immunity, like the privilege which it supplants, applies only to criminal proceedings, penalties and forfeitures. Refusal to testify cannot be based on fear of retaliation by the person or persons testified against,[31] or on a desire to protect others.

It has been held that testimony under a grant of immunity regarding a crime for which the witness had been convicted, while his appeal from that conviction was pending, moots the conviction.[32] In *Frank v. United States*, the court stated: "Congress has not sought to enable the government to obtain both such compelled testimony and a conviction related thereto which is either not yet obtained or if obtained is pending on appeal . . . the Government may not convict a person and then, pending his appeal, compel him to give self-accusatory testimony relating to the matters involved in the conviction."[33]

Immunity also applies to indictments already returned, but pending trial. The reasoning in this situation is similar to that of the *Frank* case: "the immunity provision would be ineffective if it did not apply to indictments already returned and in which the witness was named as a defendant."[34] Immunity has also been extended to parole revocation hearings. In *United States v. Shillitani*,[35] the court said: "If the charges should relate to matters about which the parolee has testified under a grant of immunity which covers parole revocation hearings, the government would have the burden of showing that its evidence was derived from a source other than the immunized testimony."[36]

All federal immunity statutes apply to "penalties and forfeitures" as well as future criminal prosecutions. However, it is not very clear what a penalty or forfeiture actually is. It is generally said that a penalty "has reference to punishment imposed for any offense against the law. It may be corporal or pecuniary." A forfeiture is distinguished from a penalty in that it has to do with the loss of property, position or some other right.[37] The difference between a penalty and a non-penalty for the purposes of an immunity statute turns on whether the statute under which the loss arises is penal or remedial. A "penalty imposed by the remedial statute is not designed as a punishment for a public wrong, but as redress for a private grievance."[38]

There have been fine distinctions drawn between that which is and is not a penalty. For instance, a proceeding to revoke an architect's registration for bribery has been held to be a penalty or forfeiture within the meaning of the immunity statute.[39] On the other hand, a proceeding to disbar a lawyer has been held not to be such a penalty.[40] Treble damages are also non-penal.[41] For this, another definition has been advanced: "If the object of the penalty is primarily to punish the wrongdoer, the action is criminal. If, however . . . its primary object is to protect the public and to effectuate a public policy sought to be accomplished by the act, it is remedial and is a civil action."[42] Treble damages are thus civil in nature, even though they involve loss of property as punishment for failure to obey statutory law. The distinction is not clear. Whether the primary object of the statute is punishment or protection of the public, the result is the same—loss of property for failure to obey the law. The courts should seek to establish a better definition which draws a clear line of distinction between what kinds of penalties do, and do not, fall within the immunity statutes.

Since immunity is granted by statute, a grant of immunity can only come when the basic charge under investigation is one for which an immunity statute is applicable. However, immunity still can attach to answers which are incriminating with regard to crimes outside the immunity statutes. The rule is that "if in the course of such investigation, in 'responsive' answer to a 'pertinent' question, the witness gives information revealing a 'criminal fact' or indeed a 'clue fact' concerning any crime

---

must be "real and appreciable." 161 U.S. at 598–600. There is no real danger if prosecution is impossible.

[31] See In Re Grand Jury Investigation of Giancana, 352 F.2d 921 (7th Cir. 1965).

[32] Frank v. United States, 347 F.2d 486 (D.C. Cir. 1965) *cert. denied*, 382 U.S. 923 (1965).

[33] 347 F.2d at 491.

[34] United States v. Niarchos, 125 F. Supp. 214, 219 (D.C. 1954).

[35] United States v. Shillitani, 345 F.2d 290 (2nd Cir. 1965), *vacated on other grounds*, 384 U.S. 364 (1966).

[36] 345 F.2d at 293. It is safe to say that all federal immunity grants cover parole revocation hearings, because loss of parole would be a penalty or forfeiture within the meaning of the statutes.

[37] Florida State Board of Architecture v. Seymor, 62 So. 2d 1, 3 (Fla. 1952).

[38] Perkins Oil Well Cementing Co. v. Owens, 293 F.759, 760 (S.D. Cal. 1923).

[39] Florida State Board of Architecture v. Seymor, 62 So. 2d 1 (Fla. 1952).

[40] Florida Bar v. Massfeller, 170 So.2d 834 (Fla. 1964); *In Re Rouss*, 116 N.E. 782 (N.Y. 1917).

[41] Amato v. Porter. 157 F.2d 719 (10th Cir. 1946), *cert. denied* 329 U.S. 812 (1947).

[42] 157 F.2d at 721.

(immunity or non-immunity crime) the witness receives immunity from prosecution for that crime."[43]

Most immunity statutes merely give various administrative agencies the power to grant immunity during the course of their investigations. The basic charge under investigation by these agencies is not conventional crimes, but rather the so-called "economic crimes" as investigated by the SEC or Internal Revenue Service. Only three federal statutes, and some state statutes, such as in Illinois, involve conventional "crimes per se."[44]

Even though a statute deals with administrative agency or grand jury hearings, immunity will nevertheless attach if, in the course of an investigation pertinent to the purposes of the statute, a witness confesses to a "common crime" or divulges a clue which would connect him with that crime.

Immunity is granted to "all testimony . . . insofar as that testimony bears a substantial relation to the subject matter of the [investigation];"[45] and an answer bears a substantial relation to the subject matter if it is responsive to a pertinent question.[46] "The fact that the precise relationship to that subject matter is not revealed by the language of the question does not mean that it is irrelevant to the inquiry. . . ."[47] All that is required is that the answer have some relevance to the question.[48] If the relevance exists, then immunity attaches no matter what the crime.

### The Inter-Jurisdictional Problem

The major problem created by the *Murphy* decision is that a grant of immunity by one jurisdiction may foreclose another from indicting or prosecuting that witness. The potentiality of dispute among the various states is great. Each state has an inherent right to prosecute violators of its laws. The state also has an inherent right to investigate crime within its jurisdiction for the purpose of prosecuting violators of its laws.[49] The problem is that the exercise by one state of its right to investigate may foreclose another state from exercising its right to prosecute.

The answer to this problem is to find a way to constitutionally curb the granting of immunity by various states in order to allow other states and the federal government to prosecute violators of their respective laws. There are three possible ways to do this.

The first is a voluntary agreement by the states and the federal government whereby notice would be given to other jurisdictions before immunity is granted to a witness. The purpose of this notice would be to allow the other states to voice whatever objections they may have to the proposed immunity. In this way arrangements may be made between the interested jurisdictions to allow possible prosecution before the witness is called to testify.[50] Of course, the prosecuting jurisdiction would have to make certain compromises also. Much would depend on the importance of the witness to the investigation in the calling state and the possibility of conviction in some other state. The possibility that the witness may not testify at all, even under threat of contempt, should also be considered.[51] It may also be possible to set up some kind of federal clearing house to facilitate the transmission of information between the states.

The second proposal is to require the state to obtain the permission of the United States Attorney General before granting immunity to a witness whenever the investigation is into criminal conduct which violates both federal and state law.[52] The

[43] Sobel, *The Privilege Against Self-Incrimination "Federalized"*, 31 Brooklyn L. Rev. 1, 15 (1964).

[44] *Id* at 13. These statutes are: (1) *Narcotics*, 18 U.S.C. 1406 (1926 Supp.); (2) *Internal Security*, 18 U.S.C. 3486 (1958); and (3) *"White Slave Traffic"*, 18 U.S.C. 2424(b) (1958). The Illinois statute may be found at Ch. 38, § 106 Ill. Rev. Stat. (1965).

[45] United States v. Harris, 334 F.2d 460, 462 (2d Cir. 1964), *reversed on other grounds*, 382 U.S. 162 (1965); see also United States v. Niarchos, 125 F. Supp. 214, 220 (D.C. 1954).

[46] Sobel, *The Privilege Against Self-Incrimination "Federalized"*, 31 Brooklyn L. Rev. 1, 15 (1964).

[47] United States v. Pagano, 171 F. Supp. 435, 440 (S.D.N.Y. 1959).

[48] Sobel, *supra* note 46.

[49] The courts have consistently recognized the existence of these rights. See Uphaus v. Wyman, 360 U.S. 73 (1959). These rights exist so long as they do not violate due process; see N.A.A.C.P. v. Alabama, 357 U.S. 449 (1958).

[50] If, for example, a state is on the verge of indictment, and the individual's testimony can be postponed till a later date, then such an agreement can easily be made. The hard problem is when the investigation is about to end, and any possible indictment is a year or more away. Important as the prosecution may be, agreement to postpone the granting of immunity seems unlikely.

[51] There is always the possibility of refusing to testify because of fear of retaliation by the person or persons testified against. See *Giancana* case, notes 19 and 31, *supra*.

[52] The constitutional basis for such a statute would be the supremacy clause of the Constitution (Article VI, paragraph 2). In order to facilitate the enforcement of federal law, immunity would be prohibited if it would tend to interfere with investigation and prosecution by the federal government. In other words, such a statute is "necessary and proper" for carrying out a legislative power, and as such becomes the supreme law of the Land.

Attorney General would be guided by considerations of equity among the contesting jurisdictions. Such questions as how close the state is to prosecution, or how important the testimony is to the general investigation, would play an important part in the final determination, either by the Attorney General or the calling state, to allow or disallow the granting of immunity.

A precedent for this kind of screening device already exists within the federal framework itself. Immunity is not granted by any United States Attorney unless cleared with the Attorney General first. The decision of whether to grant immunity is based on two main criteria. First, whether the witness is high in the criminal or other organization under investigation, or only a "middle-man". If he is not high in the organization, then immunity may be granted in order to obtain evidence for prosecution of the men at the top. If he is high in the organization, or is a flagrant law breaker, then prosecution may be more important than information from him. The second criteria is whether the witness will offer information important enough to grant him the immunity, and thus foreclose future prosecution of him. It may be that he does not know enough or will not talk for fear of his life, or the lives of his family.[53] These same considerations could guide the Attorney General under this proposed statute.[54]

Giving the Attorney General this responsibility offers the most efficient means of facilitating the needs and desires of the various jurisdictions, while at the same time posing the least chance of interjurisdictional conflict. Organized crime is a national problem and in order to best protect the interests of society, the decision, or advice, to grant immunity should be made by the federal government. Narcotics, gambling, prostitution, subversive activities and other problems dealt with by most state investigations are not peculiar to that jurisdiction alone. The same problems, sometimes created by the same individuals or organizations, plague every state and the federal government. Thus the granting of immunity to one leader of the underworld, or to one conspirator in an anti-trust violation, can tie the hands of five or ten other jurisdictions with regard to future prosecution of this person.

If investigation and prosecution of members of organized criminal groups or of subversive organizations are not guided by some central authority, the prohibition of the right of states to investigate at all may be the only other solution. This is the third proposed answer to the question, and should only be proposed as a last resort if either of the first two do not work. The federal government can preempt the field of investigation where violation of existing federal law is concerned, or where the crime committed is in interstate commerce.[55] In the final analysis, however, the degree of control which must be exerted by the federal government will depend on the willingness of the various states to cooperate with each other and with the federal government. Each state must realize that its desire to investigate may have to take second place to the need for putting an individual, or members of a group, behind bars somewhere else.

## Conclusion

The ruling in the *Murphy* case that the self-incrimination privilege would be violated if state compelled testimony could be used to convict a witness in a federal court, and the all but inevitable extension of that rule to the states has created a potentiality of conflict between the various jurisdictions. Voluntary cooperation may be employed to combat this conflict, but if this does not prove successful, or does not satisfactorily curb dispute, more stringent measures will have to follow. Preemption of the field by the federal government may become the only answer. Several means of alleviating the problem have been presented in this paper, and the problem is really one of deciding how best to insure selectivity in the granting of immunity. Such insurance may be provided by the states themselves, or it may have to be "subsidized" by the federal government through regulation or preemption of the field. The answer is not an easy one, and will depend in large part on the actual extent of the conflict in the years to come.

[53] See 72 Yale L. J. 1568, 1600–1610 (1964) for a detailed description of the considerations for granting immunity in the Justice Department, and three other federal agencies.

[54] Congress has realized the importance of restricting the granting of immunity. Under the Narcotics Act (18 U.S.C. 1406) approval of the Attorney General is necessary before Congressional committees can grant immunity. 18 U.S.C. 3486 (1958). Former Attorney General Brownell has also suggested the necessity of such approval. See Brownell, *Immunity From Prosecution Versus Privilege Against Self-Incrimination*, 28 Tul. L. Rev. 1 (1953).

[55] Many of the operations of organized criminal groups such as the "Mafia", as well as of subversive organizations and anti-trust conspiracies are interstate in nature. They are thus subject to (capable of) the exclusive jurisdiction of the federal government.