Prosecution of Public Corruption: An Abridged Overview of Amendments Under H.R. 2572 and S. 401

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Summary

The Public Corruption Prosecution Improvements Act (S. 401) and the Clean Up Government Act (H.R. 2572) amend federal law governing the prosecution of federal, state, and local officials. They would:

- Expand the scope of federal mail and wire fraud statutes to reach undisclosed self-dealing by public officials—in response to *Skilling*.
- Modify the mail and wire fraud statutes to encompass any thing of value not just money or property—in response to *Cleveland*
- Amend the definition of official act for bribery purposes—to overcome the *Valdes* decision.
- Adjust the federal gratuities provision to reach "goodwill" gifts—in response to *Sun Diamond.*
- Bring District of Columbia employees within the coverage of the federal embezzlement statute.
- Increase the criminal penalties that attend various bribery, illegal gratuities, embezzlement statutes and related provisions.

They would also change several related procedural provisions:

- Extend the statute of limitations from five to six years for several corruption offenses.
- Authorize the trial of perjury and obstruction charges in the district of the adversely effected judicial proceedings.
- Authorize the trial of multi-district cases in any district in which an act in furtherance is committed.
- Increase the number of public corruption offenses considered racketeering and wiretap predicate offenses.

This is an abridged version of a longer report, CRS Report R42016, *Prosecution of Public Corruption: An Overview of Amendments Under H.R. 2572 and S. 401*, by Charles Doyle, without the footnotes, attribution, or citations to authority found in the longer report. Related CRS Reports include CRS Report R40852, *Deprivation of Honest Services as a Basis for Federal Mail and Wire Fraud Convictions*, by Charles Doyle, and CRS Report R41930, *Mail and Wire Fraud: A Brief Overview of Federal Criminal Law*, by Charles Doyle.

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Introduction

The Public Corruption Prosecution Improvements Act (S. 401) and the Clean Up Government Act of 2011 (H.R. 2572) are virtually identical proposals, one introduced by Senator Leahy and the other by Representative Sensenbrenner. Federal officials prosecute corruption—public and private; federal, state, local, territorial, and tribal—under a number of statutes including those that outlaw bribery, bribery involve federal programs, mail fraud, and/or wire fraud. The bills would expand the scope of these and related federal statutes, increase the penalties for those convicted, and amend related procedures to facilitate prosecution. The bills represent a merger of two prior efforts. One involved reactions to the Supreme Court's *Skilling* decision which limited honest services mail and wire fraud prosecutions to cases of bribery and kickbacks. The other involved a more general concern over the state of law in the area of public corruption. The Senate Judiciary Committee addressed this second concern when it reported S. 1946 to floor during the 110th Congress. The bills track many of the provisions in that earlier proposal. They also mirror proposals offered in the last Congress in the wake of *Skilling*.

Mail and Wire Fraud

Public Officials: Undisclosed Self-Dealing: Federal public corruption statutes have a long history. Federal bribery statutes date back almost to the dawn of the Republic. The mail fraud statute, which forbids the use of the mail in conjunction with a scheme to defraud another of money or property, originated in the mid-eighteenth century. The mail fraud statute's companion, the wire fraud statute, was not enacted until the mid-twentieth century. Shortly thereafter, federal officials had begun to prosecute corrupt state and local officials under the federal mail and wire fraud statutes. Application of the statutes to public corruption was based on the theory that the mail and wire fraud statutes protected both tangible as well as intangible property and that such intangible property included the right of an employer or the public to the honest services of an employee or public official.

The Supreme Court, however, found that interpretation too open ended. In *McNally*, it declared that, "[r]ather than construe the statute in a manner that leaves its outer boundaries ambiguous and involves the Federal Government in setting standards of disclosure and good government for local and state officials, we read §1341 as limited in scope to the protection of property rights."

Congress answered *McNally* with the enactment of 18 U.S.C. 1346, which defines the term "scheme to defraud" in mail and wire fraud statutes to include schemes to "deprive another of the intangible right to honest services."

Faced with vagueness challenges, the lower federal courts devised a number of standards to limit the scope of honest services mail and wire fraud. Rather than endorse any of these standards, the Supreme Court in *Skilling* opted for a narrow construction of honest services fraud. It concluded that "[i]n proscribing fraudulent deprivations of 'the intangible right to honest services,' §1346, Congress intended at least to reach schemes to defraud involving bribes and kickbacks. Construing the honest-services statute to extend beyond that core meaning. . . would encounter a vagueness shoal." As it had done in *McNally*, the Court in *Skilling* urged Congress to speak clearly should it elect to expand the reach of honest services mail and wire fraud.

H.R. 2572 and S. 401 both would expand the mail and wire fraud definition of the term "scheme to defraud" to include a scheme "by a public official to engage in undisclosed self-dealing." The proposals cover federal, state, and local officials, employees, and agents. "Undisclosed self-dealing" has two components. One involves a conflict of interest; the other an obligation to disclose it. The first encompasses a public official's performance of an official act for the purpose, at least in material part, of furthering his own financial interest or that of a spouse, minor child, close business associate, or in some instances, from someone whom the official has received something of value. Official acts include those actions, decisions, and courses of action that come within the official's duties. The second element of undisclosed self-dealing consists of the public official's knowingly failing to disclose material information that he is required by law to disclose. "Material information," as the term is used in the second element is defined to include information relating to pertinent financial matters of the covered officials and those covered by virtue of their relation to those officials.

The proposal defines neither "material," "any thing or things of value," nor "financial interest," as those terms are used in the first element. The omissions may not be problematic. In the absence of a statutory definition, interpretation begins with the ordinary meaning of a term, and may take into account how the term is defined or understood in similar contexts. The dictionary describes "material" as something "having real importance or great consequences." In the context of other statutes relating to fraudulent conduct, something is considered material "if it has a natural tendency to influence" a decision. The bills speak of a public official performing an act for "the purpose, in whole or in *material* part, of furthering or benefitting a financial interest." This would seem to mean that an intent to further or benefit a particular financial interest must play an important or influential part in the official's decision to perform the act.

The terms "thing of value," or "anything of value" are likewise used with some regularity elsewhere in federal criminal law. There is some suggestion that "anything of value" should be read more broadly as "all things of value." In any event, the terms "thing of value" and "anything of value" are understood to refer to a diverse range of both tangible and intangible things including campaign contributions, employment, sex, expunged criminal records, and casual pretrial release supervision.

The meaning of "financial interest" may be a little less transparent. It is not a term regularly used or defined in federal criminal law, but it is a familiar concept in federal conflict of interest provisions. A Justice Department witness emphasized this point when she testified at a congressional hearing on the House bill: "[I]n order to define the scope of the financial interests that underlie improper self-dealing, the provision draws content from the well-established federal conflict-of-interest statute, 18 U.S.C. §208, which currently applies to the federal Executive Branch." Perhaps more to the point, the proposed undisclosed self-dealing section only applies to those financial interests which the law obligates the public official to disclose. The qualifying reporting statute or regulation would ordinarily make clear the financial interests whose disclosures it requires.

In the Justice Department's endorsement of the proposal the same witness testified that, "[U]nder the proposed statute, no public official could be prosecuted unless he or she knowingly conceals, covers up, or fails to disclose material information that he or she is already required by law or regulation to disclose. Because the bill would require the government to prove knowing concealment *and* that any defendant acted with the specific intent to defraud, there is no risk that a person can be convicted for unwitting conflicts of interest or mistakes."

A representative of the criminal defense bar, however, criticized the proposal as constitutionally suspect, contrary to federalism principles, duplicative, and overly simplistic. He argued that the section fails to heed *Skilling* Court's plea for clarity. He envisioned First Amendment implications in the proposal's application to campaign contributions to elected officials. He also characterized the proposal as a "classic example of overcriminalization" that would replicate existing law and intrude upon state prerogatives. Finally, the witness contended that the proposal is at odds with the realities of part-time legislators and other state and local officials.

Even after *Skilling*, the honest services mail and wire fraud statutes reach bribery and kickbacks. The proposal adds unreported self-dealing in public corruption cases. It leaves unchanged the law governing self-dealing in private cases.

The Cleveland Fix: Honest services aside, the mail and wire fraud statutes also outlaw schemes to obtain money or property or to deprive another of "money or property." The "property" protected includes both tangible and intangible property. The Supreme Court in *Cleveland*, however, concluded that the mail fraud statute "does not reach fraud in obtaining a state or municipal license of the kind here involved, for such a license not 'property' in the [defrauded] government regulator's hands."

The House and Senate bills would amend the mail and wire fraud statutes to cover schemes to obtain "money, property or any other thing of value," under a section captioned, "application of mail and wire fraud statutes to licenses and other intangible rights." The earlier Committee report's description of identical language seems to confirm an intent to reverse *Cleveland*:

> Finally, the bill broadens coverage of the mail and wire fraud statutes, which may be used in tandem with other statutes to prosecute public corruption. The term 'money or property' has been interpreted by courts to broadly include a variety of benefits, including intangible rights; but the Supreme Court in *United States* v. *Cleveland,* 531 U.S. 12 (2000), held that state licenses to operate video poker machines were not 'property' within the meaning of the mail fraud statute. The bill would reverse the Supreme Court's holding in Cleveland. As many circuit courts held before Cleveland was decided, licenses, permits and other intangible rights have value to the issuing authority, and, assuming a mailing or a wire, fraudulent deprivation of these rights should be chargeable as federal crimes.

The difficulty is that *Cleveland* did not deny that a license constitutes an interest in property; it held that the state had no property interest in an unissued license. That is, it held that a property wire fraud conviction requires that the "object of the fraud . . . be property *in the victim's hands*." Thus, on its face, the language of the proposed amendment does not fix the *Cleveland* problem. It may dispel any doubt that a license may be a thing of value. It does not speak to the *Cleveland* holding that in the hands of the state an unissued license is valueless. Nevertheless, the inclusion of "things of value" in the money or property mail and wire fraud proscription would enlarge their coverage. The term has been construed generously in other related contexts.

The pre-*Skilling* election cases, however, may provide an example of where the courts might begin to limit the otherwise sweeping language. Two circuits, in cases decided shortly before *Skilling*, relied upon *Cleveland* to deny mail and wire fraud application to state and local campaign dishonesty. Rejecting the argument that an official elected by dishonest means had acquired his salary by a scheme to defraud, the Sixth Circuit said in *Turner*, "In the context of election fraud, the government and citizens have not been deprived of any money or property because the relevant salary would be paid to someone regardless of the fraud. . . .The citizens

have a right to cast their vote in a fair and honest election. However, this is an intangible right. Thus, an elected official's salary does not constitute property in the hands of the victim."

The Fifth Circuit expressed similar views in *Ratcliff*, "Although the parish government is obligated to pay whichever candidate the voters elect, it has no discretion in the matter; its role is purely administrative, implicating the government's role as sovereign, not as property holder. There is thus no basis to view the electorate as an agent of the government such that false statements influencing the voters could be viewed as a fraud on the parish." Neither would apparently deny that fair and honest elections are a thing of value.

Both circuits noted in passing a concern that may be a harbinger of things to come:

> Our analysis in this appeal also takes into account federalism concerns, and on this front we are informed by the Supreme Court's decision in *Cleveland* . . . . In construing the meaning of the terms of the mail fraud statute, we are similarly guided by the principle that unless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance in the prosecution of crimes. . . . And like the Court in *Cleveland,* "[w]e resist the Government's reading of §1341 . . . because it invites us to approve a sweeping expansion of federal criminal jurisdiction in the absence of a clear statement by Congress." 531 U.S. at 24. Finding a scheme to defraud a governmental entity of the salary of elected office based on misrepresentations made during a campaign would "subject to federal mail fraud prosecution a wide range of conduct traditionally regulated by state and local authorities." *Id.* In practice, the Government's theory in this case would extend far beyond the context of campaign finance disclosures to any misrepresentations that seek to influence the voters in order to gain office, bringing state election fraud fully within the province of the federal fraud statutes. The mail fraud statute does not evince any clear statement conveying such a purpose, and the terms of the statute, as interpreted by Supreme Court precedent, simply do not proscribe the conduct for which Ratcliff was indicted.

Bribery Changes

Section 201: The bills also seek to overcome *Sun Diamond* and *Valdes*, two judicial interpretations of the basic federal bribery and illegal gratuities statute, 18 U.S.C. 201. Subsection 201(b) outlaws soliciting or offering anything of value in exchange for an official act. Subsection 201(c) outlaws soliciting or offering anything of value in gratitude ("for or because of") for the performance of an official act. The distinction between the two is the corrupt bargain, the illicit quid pro quo, that marks bribery.

The issue in *Sun Diamond* was whether an illegal gratuities conviction might be based solely on gifts given a public official because of his office, without reference to any particular official act, or whether the conviction could only stand if gifts were sought or provided with a specific official act in mind. The Court unanimously concluded that "in order to establish a violation of 18 U.S.C. §201(c)(1)(A), the Government must prove a link between a thing of value conferred upon a public official and a specific 'official act' for or because of which it was given." Justice Scalia, writing for the Court, asserted this construction, along with the definition of a qualifying "official act," precludes unintended application of the gratuities subsection. The official act requirement plays no less significant a role in avoiding unintended coverage, for as the Court observed, "when the violation is linked to a particular 'official act,' it is possible to eliminate the absurdities *through the definition of that term*. When, however, no particular 'official act' need be identified, and the giving of gifts by reason of the recipient's mere tenure in office constitutes a violation,

nothing but the Government's discretion prevents the foregoing examples from being prosecuted."

The bills would enlarged both the illegal gratuities prohibition and the definition of "official acts." They would also devise an alternative means of avoiding the type of unintended results mentioned in *Sun Diamond*. First, they would amend the proscriptions of subsection 201(c) to prohibit offering or soliciting a gift for or because of "the official's or person's official position," in order to supplement the existing prohibition against gifts for or because of an "official act." The amendment would bring within the scope of the illegal gratuities subsection "status" and "good will" gifts and contributions, without requiring prosecutors to show that they were sought or provided with an eye to any specific official act. As the earlier Committee report explained, "This would allow the statute to reach its intended range of corrupt conduct, including benefits flowing to public officials designed to curry favor for non-specified future acts or to build a reservoir of good will."

Second, they would amend the gratuities offense to create a safe harbor for gifts and campaign contributions permitted by rule or regulation. The earlier Committee report noted that in any event most campaign contributions would not be implicated by the gratuities prohibition. The prohibition is confined to things given to the official personally, and campaign contributions ordinarily are not. The report also confirmed that the exception would help avoid the "horribles" found in Justice Scalia's *Sun Diamond* opinion. The report may have introduced a hint of ambiguity in the exception when it suggested that rules or regulations would rest beyond the pale if they left the particulars of an exception to individual Member or agency discretion.

Third, the bills would amend the definition of official act, applicable to both the bribery and gratuities offenses. The change is designed to repudiate the construction of the term "official act" announced by the D.C. Court of Appeals in *Valdes*. Valdes, a police officer, had received cash in connection with license plate identification and outstanding warrant information he had provided an informant he believed to be a judge. Indicted for bribery, Valdes was convicted of the lesser included offense of receiving an illegal gratuity. The Court of Appeals reversed, declaring, "§201 is not about officials' moonlighting, or their misuse of government resources, or the two in combination." Instead, the term "any question, matter, cause, suit, proceeding or controversy" in the definition of official act "refers to a class of questions or matters whose answer or disposition is determined by the government," the court held. Not every subsequent federal appellate court has concurred.

The phrase in the bills, "any act within the range of official duty," is designed to overcome the *Valdes* interpretation of "official act," and "to ensure that the bribery statute applies to all conduct of a public official within the range of the official's duties." The bills would add the term "course of conduct" to the definition of official act to avoid requiring prosecutors to "establish a one-to-one link between a specific payment and a specific official act." The change would apply to both bribery and illegal gratuity offenses. The bills' illegal gratuity subsection would feature a safety valve for campaign contributions. The bribery subsection would not. Yet, bribery would be prosecutable only in the presence of a corrupt proposal to influence official conduct in exchange of something of value. The House bill would change the word "means" to the word "includes." The Senate bill would not. Under the Senate bill the definition limits; under the House bill it exemplifies.

Section 666: Section 666 outlaws bribery, embezzlement, and other forms of theft, involving more than $5,000, in relation to federal programs. The bills propose several changes in the

language of section 666. They would lower the threshold for federal prosecution from $5,000 to $1,000. The new threshold corresponds to that found in the statute that outlaws embezzlement or other theft of federal property. The defense bar contends, however, that the modification would undo a limitation imposed in the interest of federalism and to avoid federal over criminalization.

The bills would increase the maximum term of imprisonment associated with the offense from, 10 to 20 years. The new maximum would match those under the mail and wire fraud statutes as well as the 20-year maximum that the bills would establish for the bribery of federal officials under section 201.

Embezzle and Other Theft of District Columbia Property

Section 641 outlaws the embezzlement or other theft of money or anything else of value belonging to the United States or one of its agencies or departments. The District of Columbia Code outlaws embezzlement or other forms of theft, regardless of the victim. Violations of the D.C. provision carry a maximum 10-year term of imprisonment, if the value of the property exceeds $1,000 and a maximum of 180 days in other cases. The bills would increase the maximum term of imprisonment for a violation of section 641 from 10 to 20 years, and would fold the property of the D.C. Government and its agencies and departments into the coverage of section 641.

Penalty Increases

When penalty increases were proposed for various federal public corruption offenses during the 110th Congress, the Committee report noted that the increases would reflect "the Committee's view of the serious and corrosive nature of these crimes, and . . . harmonize the punishment of these public corruption-related offenses with similar statutes." Moreover, the Committee was of the opinion that "[i]ncreasing penalties in appropriate cases sends a message to would-be criminals and to the public that there are severe consequences for breaching the public trust."

Reacting to the same proposals replicated in the House and Senate bills, a representative of the defense bar contended that the proposals would "dramatically expand already lengthy prison sentences . . . without any evidence of whether such an expansion is necessary or what the costs of such an expansion would be."

Specifically, the House and Senate bills would increase the maximum term of imprisonment for the following existing federal public corruption offenses: bribery/theft relating to a federal program (18 U.S.C. 666(a): 10 years increased to 20); theft of U.S. property (18 U.S.C 641: 10 years increased to 20); bribery of U.S. officials (18 U.S.C. 201(b): 15 years increased to 20); illegal gratuities (18 U.S.C. 201(c): 2 years increased to 5); promise of a U.S. job for political activity (18 U.S.C. 600: 1 year increased to 10 years); denial of U.S. benefit for want of political contribution (18 U.S.C. 601: 1 year increased to 10 years); soliciting political contributions from fellow U.S. employees (18 U.S.C. 602(1)(4): 3 years increased to 10); intimidation to secure political contributions (18 U.S.C. 606: 3 years increased to 10); soliciting political contributions in U.S. buildings (18 U.S.C. 607(a): 3 years increased to 10); coercion of U.S. employees for political activities (18 U.S. 610: 3 years increased to 10).

Sentencing Guidelines

The bills would direct the United States Sentencing Commission to examine the Guidelines applicable in the case of a conviction under 18 U.S.C. 201 (bribery of federal officials), 641 (theft of federal property) and 666 (theft or bribery in relation to federal programs). The Commission would be instructed to amend the Guidelines "to reflect the intent of the Congress that such penalties be increased in comparison to those currently provided."

Related Provisions

Statute of Limitations: Capital offenses and certain child abduction and sex offenses have no statute of limitations and can be tried at any time. Elsewhere statute of limitations have been established to encourage prompt law enforcement and to avoid the need to defend against stale charges. Most other federal crimes must be prosecuted within five years. The statute of limitations for certain securities fraud cases, for instance, is six years.

Both bills would establish a six-year statute of limitations for the following public corruption offenses or conspiracies or attempts to commit them: 18 U.S.C. 201 (bribery and illegal gratuities involving federal officials or employees); 18 U.S.C. 666 (bribery or theft involving federal programs); 18 U.S.C. 1341 (mail fraud)(honest services fraud involving public officials only); 18 U.S.C. 1343 (wire fraud)(honest services fraud involving public officials only); 18 U.S.C. 1951 (Hobbs Act)(extortion under color of official right only); 18 U.S.C. 1952 (Travel Act)(bribery cases only); and 18 U.S.C. 1962 (RICO)(only when the predicate offenses include bribery under state law, or violations of one of the offenses listed above other than the Travel Act).

The proposal has certain drafting eccentricities. It would establish a six-year statute of limitations for a series of bribery offenses, but only one embezzlement offense (18 U.S.C. 666). It would apply to honest services mail and wire fraud, but not the proposed self-dealing mail and wire fraud. It would apply to the more narrow money laundering statute (18 U.S.C. 1952), but not the more general (18 U.S.C. 1956). Finally, the bills would create a six-year statute of limitations for attempt to commit any of the listed crimes. Yet it is not a crime to attempt to commit some of them. It is a crime to attempt to violate the mail or wire fraud statutes, the Hobbs Act, or the Travel Act; but it is not a separate crime to attempt to violate the bribery provisions of 18 U.S.C. 201 or 666 or the RICO provisions. Nevertheless, the proposal purports to set a six-year statute of limitations for crime and noncrime alike.

Venue: The Constitution insists that federal crimes be tried in the states and districts in which they are committed. Congress may provide by statute for the trial of any crime committed outside any state. In the case of continuous crimes or crimes otherwise committed in more than one place, the Supreme Court in *Rodriguez-Moreno* held that the offense may be tried wherever a conduct element of the offense occurs. Thus, conspiracy may be tried in any district in which an overt act in furtherance of the scheme is committed.

The bills would amend the venue statute to permit trial of an offense, involving use of the mail or interstate commerce or entry of individual or goods into the United States, "in any district in which an act in furtherance of the offense is committed." The proposal would extend both to federal public corruption offenses and to any other federal offenses where federal jurisdiction is predicated on interstate commerce or use of the mail. The representative of the defense bar

objected that the proposal would impose an unfair hardship upon the accused under some circumstances and might lead to forum shopping for that purpose.

The Constitution, however, may limit the proposal's scope to acts in furtherance that constitute conduct elements of the offense. In this context, a recent Second Circuit case may be instructive. In *Tzolov*, the court rejected the argument that venue was necessarily proper where the defendants committed an act in furtherance of the crime charged. In doing so, it distinguished an earlier case in which the act in furtherance case had been a conduct element of the offense.

The House and Senate bills contain other venue proposals, relating to perjury and the obstruction of justice, that would apply in federal public corruption cases and elsewhere. The Supreme Court in *Rodriguez-Moreno* expressly declined to rule on whether venue may lie in the district impacted by the crime charged. The witness tampering statute now has a subsection under which witness tampering and the obstruction of judicial proceedings may be prosecuted "in the district in which the official proceeding . . . was intended to be affected or in the district in which the conduct constituting the alleged offense occurred."

The bills would amend the subsection to permit similar treatment for the prosecution of obstructions in violation of 18 U.S.C. 1504 (writing to influence a federal juror), 1505 (obstructing Congressional or federal administrative proceedings), 1508 (eavesdropping on federal jury deliberations), 1509 (obstructing the execution of federal court orders), 1510 (obstructing federal criminal investigations). At the same time, they would create a new section that would afford federal perjury and subornation prosecutor the same options. The federal appellate cases announced after *Rodriguez-Moreno* suggest that the proposal's obstruction and perjury amendments may be limited to cases in which a conduct element occurs.

Racketeering: Federal racketeering laws—the Racketeer Influenced and Corrupt Organization (RICO) laws—proscribe using a pattern of predicate offenses to conduct the affairs of an enterprise, formal or informal, whose activities impact interstate commerce. Bribery of federal officials, mail fraud, and wire fraud are already RICO predicate offenses. RICO violations are punishable both by imprisonment and by the criminal forfeiture of a defendant's RICO tainted property. RICO predicate offenses are by virtue of that status also money laundering predicate offenses, even in the absence of a completed RICO offense. By the same token, money laundering predicate offenses are by virtue of that status civil forfeiture predicates.

Both bills would add offenses under section 641 (theft of federal property), 666 (theft or bribery involving federal programs), and 1031 (major fraud against the United States) to the list of RICO predicate offenses. The money laundering and forfeiture consequences of RICO status would be less dramatic than might be expected because of existing coverage. Sections 641 and 666 are already money laundering predicate offenses, and sections 666 and 1031 are already civil forfeiture predicates. Thus, the only real money laundering and forfeiture consequences that follow from RICO status would be that section 1031 offenses (major fraud) become money laundering predicates and section 641 (theft of federal property) offenses become civil forfeiture predicates.

Wiretap Authority: Existing law authorizes federal courts to issue orders approving law enforcement installation and use of devices to intercept wire, oral, and electronic communications. The orders are available upon a showing that interception is likely to result in evidence of one of a list specific predicate offenses. Bribery of federal officials, mail fraud, and wire fraud are already predicate offenses. The bills would add offenses under sections 641 (theft

of federal property), 666 (theft or bribery involving federal programs), and 1031 (major fraud against the United States). The Justice Department has testified that "[p]rosecutors often have lamented their inability to use these tools in such cases."

Appeals: The United States Attorney must certify that any appeals by the Government are not taken for purposes of delay and that in the case of an appeal relating to the exclusion of evidence must certify that the evidence is substantial proof of a material fact in the pending case. The bills would permit certification as well by the Attorney General, the Deputy Attorney General, or an Assistant Attorney General.

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