

## EX. ORD. NO. 10307. DELEGATION OF AUTHORITY

Ex. Ord. No. 10307, Nov. 23, 1951, 16 F.R. 11907, provided:

By virtue of the authority vested in me by the act of August 8, 1950, 64 Stat. 419 (3 U.S.C. Supp. 301-303), I hereby delegate to the Secretary of State (1) the authority vested in the President by section 3496 of title 18 of the United States Code (62 Stat. 836) to prescribe regulations governing the manner of executing and returning commissions by consular officers under the provisions of sections 3492-3494 of the said title, and schedules of fees allowable to witnesses, foreign counsel, and interpreters under section 3495 of the said title, and (2) the authority vested in the President by section 3492(c) of title 18 of the United States Code (62 Stat. 835) to prescribe regulations making the provisions of sections 3492-3496 of the said title applicable to diplomatic officers.

Executive Order No. 8298 of December 4, 1939, entitled "Regulations Governing the Manner of Executing and Returning Commissions by Officers of the Foreign Service in Criminal Cases, and Schedule of Fees and Compensation in Such Cases", is hereby revoked.

**§ 3497. Account as evidence of embezzlement**

Upon the trial of any indictment against any person for embezzling public money it shall be sufficient evidence, prima facie, for the purpose of showing a balance against such person, to produce a transcript from the books and proceedings of the Government Accountability Office.

(June 25, 1948, ch. 645, 62 Stat. 836; Pub. L. 108-271, § 8(b), July 7, 2004, 118 Stat. 814.)

## HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 179, 355; section 668 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (R.S. § 887; Mar. 4, 1909, ch. 321, §§ 93, 225, 35 Stat. 1105, 1133; June 10, 1921, ch. 18, § 304, 42 Stat. 24).

This section is a consolidation of section 179 of title 18, U.S.C., 1940 ed., with similar provisions of section 355 of title 18, U.S.C., 1940 ed., and section 668 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary, with changes of phraseology only except that "General Accounting Office" was substituted for "Treasury Department".

Other provisions of said section 355 of title 18, U.S.C., 1940 ed., are incorporated in section 1711 of this title.

Words in second sentence of said section 355 of title 18, U.S.C., 1940 ed., which preceded the semicolon therein and which read "Any failure to produce or to pay over any such money or property, when required so to do as above provided, shall be taken to be prima facie evidence of such embezzlement" were omitted as surplusage, because such failure to produce or to pay over such money or property constitutes embezzlement. (See sections 653 and 1711 of this title.)

## AMENDMENTS

2004—Pub. L. 108-271 substituted "Government Accountability Office" for "General Accounting Office".

**§ 3498. Depositions—(Rule)**

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Time, manner and conditions of taking depositions; costs; notice; use; objections; written interrogatories, Rule 15.

Subpoenas on taking depositions, Rule 17(f).

(June 25, 1948, ch. 645, 62 Stat. 836.)

**§ 3499. Contempt of court by witness—(Rule)**

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Disobedience of subpoena without excuse as contempt, Rule 17(g).

(June 25, 1948, ch. 645, 62 Stat. 836.)

**§ 3500. Demands for production of statements and reports of witnesses**

(a) In any criminal prosecution brought by the United States, no statement or report in the possession of the United States which was made by a Government witness or prospective Government witness (other than the defendant) shall be the subject of subpoena, discovery, or inspection until said witness has testified on direct examination in the trial of the case.

(b) After a witness called by the United States has testified on direct examination, the court shall, on motion of the defendant, order the United States to produce any statement (as hereinafter defined) of the witness in the possession of the United States which relates to the subject matter as to which the witness has testified. If the entire contents of any such statement relate to the subject matter of the testimony of the witness, the court shall order it to be delivered directly to the defendant for his examination and use.

(c) If the United States claims that any statement ordered to be produced under this section contains matter which does not relate to the subject matter of the testimony of the witness, the court shall order the United States to deliver such statement for the inspection of the court in camera. Upon such delivery the court shall excise the portions of such statement which do not relate to the subject matter of the testimony of the witness. With such material excised, the court shall then direct delivery of such statement to the defendant for his use. If, pursuant to such procedure, any portion of such statement is withheld from the defendant and the defendant objects to such withholding, and the trial is continued to an adjudication of the guilt of the defendant, the entire text of such statement shall be preserved by the United States and, in the event the defendant appeals, shall be made available to the appellate court for the purpose of determining the correctness of the ruling of the trial judge. Whenever any statement is delivered to a defendant pursuant to this section, the court in its discretion, upon application of said defendant, may recess proceedings in the trial for such time as it may determine to be reasonably required for the examination of such statement by said defendant and his preparation for its use in the trial.

(d) If the United States elects not to comply with an order of the court under subsection (b) or (c) hereof to deliver to the defendant any such statement, or such portion thereof as the court may direct, the court shall strike from the record the testimony of the witness, and the trial shall proceed unless the court in its discretion shall determine that the interests of justice require that a mistrial be declared.

(e) The term "statement", as used in subsections (b), (c), and (d) of this section in relation to any witness called by the United States, means—

(1) a written statement made by said witness and signed or otherwise adopted or approved by him;

(2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof,

which is a substantially verbatim recital of an oral statement made by said witness and recorded contemporaneously with the making of such oral statement; or

(3) a statement, however taken or recorded, or a transcription thereof, if any, made by said witness to a grand jury.

(Added Pub. L. 85-269, Sept. 2, 1957, 71 Stat. 595; amended Pub. L. 91-452, title I, §102, Oct. 15, 1970, 84 Stat. 926.)

#### AMENDMENTS

1970—Subsec. (a). Pub. L. 91-452, §102(a), struck out “to an agent of the Government” after “(other than the defendant)”.

Subsec. (d). Pub. L. 91-452, §102(b), substituted “subsection” for “paragraph”.

Subsec. (e). Pub. L. 91-452, §102(c), (d), struck out “or” after “by him;” in par. (1), struck out “to an agent of the Government” after “said witness” in par. (2), and added par. (3).

### § 3501. Admissibility of confessions

(a) In any criminal prosecution brought by the United States or by the District of Columbia, a confession, as defined in subsection (e) hereof, shall be admissible in evidence if it is voluntarily given. Before such confession is received in evidence, the trial judge shall, out of the presence of the jury, determine any issue as to voluntariness. If the trial judge determines that the confession was voluntarily made it shall be admitted in evidence and the trial judge shall permit the jury to hear relevant evidence on the issue of voluntariness and shall instruct the jury to give such weight to the confession as the jury feels it deserves under all the circumstances.

(b) The trial judge in determining the issue of voluntariness shall take into consideration all the circumstances surrounding the giving of the confession, including (1) the time elapsing between arrest and arraignment of the defendant making the confession, if it was made after arrest and before arraignment, (2) whether such defendant knew the nature of the offense with which he was charged or of which he was suspected at the time of making the confession, (3) whether or not such defendant was advised or knew that he was not required to make any statement and that any such statement could be used against him, (4) whether or not such defendant had been advised prior to questioning of his right to the assistance of counsel; and (5) whether or not such defendant was without the assistance of counsel when questioned and when giving such confession.

The presence or absence of any of the above-mentioned factors to be taken into consideration by the judge need not be conclusive on the issue of voluntariness of the confession.

(c) In any criminal prosecution by the United States or by the District of Columbia, a confession made or given by a person who is a defendant therein, while such person was under arrest or other detention in the custody of any law-enforcement officer or law-enforcement agency, shall not be inadmissible solely because of delay in bringing such person before a magistrate judge or other officer empowered to commit persons charged with offenses against the laws of the United States or of the District of Columbia

if such confession is found by the trial judge to have been made voluntarily and if the weight to be given the confession is left to the jury and if such confession was made or given by such person within six hours immediately following his arrest or other detention: *Provided*, That the time limitation contained in this subsection shall not apply in any case in which the delay in bringing such person before such magistrate judge or other officer beyond such six-hour period is found by the trial judge to be reasonable considering the means of transportation and the distance to be traveled to the nearest available such magistrate judge or other officer.

(d) Nothing contained in this section shall bar the admission in evidence of any confession made or given voluntarily by any person to any other person without interrogation by anyone, or at any time at which the person who made or gave such confession was not under arrest or other detention.

(e) As used in this section, the term “confession” means any confession of guilt of any criminal offense or any self-incriminating statement made or given orally or in writing.

(Added Pub. L. 90-351, title II, §701(a), June 19, 1968, 82 Stat. 210; amended Pub. L. 90-578, title III, §301(a)(3), Oct. 17, 1968, 82 Stat. 1115; Pub. L. 101-650, title III, §321, Dec. 1, 1990, 104 Stat. 5117.)

#### CONSTITUTIONALITY

For information regarding constitutionality of this section, as added by section 701(a) of Pub. L. 90-351, see Congressional Research Service, *The Constitution of the United States of America: Analysis and Interpretation*, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.

#### AMENDMENTS

1968—Subsec. (c). Pub. L. 90-578 substituted “magistrate” for “commissioner” wherever appearing.

#### CHANGE OF NAME

Words “magistrate judge” substituted for “magistrate” wherever appearing in subsec. (c) pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

### § 3502. Admissibility in evidence of eye witness testimony

The testimony of a witness that he saw the accused commit or participate in the commission of the crime for which the accused is being tried shall be admissible in evidence in a criminal prosecution in any trial court ordained and established under article III of the Constitution of the United States.

(Added Pub. L. 90-351, title II, §701(a), June 19, 1968, 82 Stat. 211.)

### [§ 3503. Repealed. Pub. L. 107-273, div. B, title IV, § 4002(c)(3)(A), Nov. 2, 2002, 116 Stat. 1809]

Section, added Pub. L. 91-452, title VI, §601(a), Oct. 15, 1970, 84 Stat. 934, related to depositions to preserve testimony.

### § 3504. Litigation concerning sources of evidence

(a) In any trial, hearing, or other proceeding in or before any court, grand jury, department,