not apply.[269] Any contention that the voluntary engagement in gambling "waived" the self-incrimination claim, because there is "no constitutional right to gamble," would nullify the privilege.[270] And the privilege was not governed by a "rigid chronological distinction" so that it protected only past or present conduct, but also reached future self-incrimination the danger of which is not speculative and insubstantial.[271] Significantly, then, Justice Harlan turned to distinguishing the statutory requirements here from the "required records" doctrine of *Shapiro*. "First, petitioner . . . was not . . . obliged to keep and preserve records 'of the same kind as he has customarily kept'; he was required simply to provide information, unrelated to any records which he may have maintained, about his wagering activities. This requirement is not significantly different from a demand that he provide oral testimony . . . . Second, whatever 'public aspects' there were to the records at issue in *Shapiro*, there are none to the information demanded from Marchetti. The Government's anxiety to obtain information known to a private individual does not without more render that information public; if it did, no room would remain for the application of the constitutional privilege. Nor does it stamp information with a public character that the government has formalized its demands in the attire of a statute; if this alone were sufficient, the constitutional privilege could be entirely abrogated by any Act of Congress. Third, the requirements at issue in *Shapiro* were imposed in 'an essentially noncriminal and regulatory area of inquiry' while those here are directed to a 'selective group inherently suspect of criminal activities.' . . . The United States' principal interest is evidently the collection

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[269] "Every element of these requirements would have served to incriminate petitioners; to have required him to present his claim to Treasury officers would have obliged him 'to prove guilt to avoid admitting it.'" 390 U.S. at 50.

[270] "The question is not whether petitioner holds a 'right' to violate state law, but whether, having done so, he may be compelled to give evidence against himself. The constitutional privilege was intended to shield the guilty and imprudent as well as the innocent and foresighted; if such an inference of antecedent choice were alone enough to abrogate the privilege's protection, it would be excluded from the situations in which it has historically been guaranteed, and withheld from those who most require it." 390 U.S. at 51. *But cf.* California v. Byers, 402 U.S. 424, 434 (1971) (plurality opinion), in which it is suggested that because there is no "right" to leave the scene of an accident a requirement that a person involved in an accident stop and identify himself does not violate the Self-Incrimination Clause.

[271] Marchetti v. United States, 390 U.S. 39, 52–54 (1968). "The central standard for the privilege's application has been whether the claimant is confronted by substantial and 'real,' and not merely trifling or imaginary, hazards of incrimination . . . . This principle does not permit the rigid chronological distinctions adopted in *Kahriger* and *Lewis*. We see no reason to suppose that the force of the constitutional prohibition is diminished merely because confession of a guilty purpose precedes the act which it is subsequently employed to evidence." Id. at 53–54. *Cf.* United States v. Freed, 401 U.S. 601, 605–07 (1971).