ment.'"[243] So spoke Justice Frankfurter in 1956, broadly reaffirming *Brown v. Walker* and upholding the constitutionality of a federal immunity statute.[244] Because all but one of the immunity acts passed after *Brown v. Walker* were transactional immunity statutes,[245] the question of the constitutional sufficiency of use immunity did not arise, although dicta in cases dealing with immunity continued to assert the necessity of the former type of grant.[246] But, beginning in 1964, when it applied the Self-Incrimination Clause to the states, the Court was faced with the problem that arose because a state could grant immunity only in its own courts and not in the courts of another state or of the United States.[247] On the other hand, to foreclose the states from compelling testimony because they could not immunize a witness in a subsequent "foreign" prosecution would severely limit state law enforcement efforts. Therefore, the Court emphasized the "use" restriction rationale of *Counselman* and announced that as a "constitutional rule, a state witness could not be compelled to incriminate himself under federal law unless federal authorities were precluded from using either his testimony or evidence derived from it," and thus formulated a use restriction to that effect.[248] Then, while refusing to adopt the course because of statutory interpretation reasons, the Court indicated that use restriction in a federal regulatory scheme requiring the reporting of in-

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[243] Ullmann v. United States, 350 U.S. 422, 438 (1956) (quoting Shapiro v. United States, 335 U.S. 1, 6 (1948)).

[244] "[The] sole concern [of the privilege] is . . . with the danger to a witness forced to give testimony leading to the infliction of 'penalties affixed to the criminal acts'. . . . Immunity displaces the danger. Once the reason for the privilege ceases, the privilege ceases." 350 U.S. at 438–39. The internal quotation is from Boyd v. United States, 116 U.S. 616, 634 (1886).

[245] Kastigar v. United States, 406 U.S. 441, 457–58 (1972); Piccirillo v. New York, 400 U.S. 548, 571 (1971) (Justice Brennan dissenting). The exception was an immunity provision of the bankruptcy laws, 30 Stat. 548 (1898), 11 U.S.C. § 25(a)(10), repealed by 84 Stat. 931 (1970). The right of a bankrupt to insist on his privilege against self-incrimination as against this statute was recognized in McCarthy v. Arndstein, 266 U.S. 34, 42 (1924), "because the present statute fails to afford complete immunity from a prosecution." The statute also failed to prohibit the use of derivative evidence. Arndstein v. McCarthy, 254 U.S. 71 (1920).

[246] *E.g.*, Hale v. Henkel, 201 U.S. 43, 67 (1906); United States v. Monia, 317 U.S. 424, 425, 428 (1943); Smith v. United States, 337 U.S. 137, 141, 146 (1949); United States v. Murdock, 284 U.S. 141, 149 (1931); Adams v. Maryland, 347 U.S. 179, 182 (1954). In Ullmann v. United States, 350 U.S. 422, 436–37 (1956), Justice Frankfurter described the holding of *Counselman* as relating to the absence of a prohibition on the use of derivative evidence.

[247] Malloy v. Hogan, 378 U.S. 1 (1964), extended the clause to the states. That Congress could immunize a federal witness from state prosecution and, of course, extend use immunity to state courts, was held in Adams v. Maryland, 347 U.S. 179 (1954), and had been recognized in Brown v. Walker, 161 U.S. 591 (1896).

[248] Murphy v. Waterfront Comm'n, 378 U.S. 52, 77–99 (1964). Concurring, Justices White and Stewart argued at length in support of the constitutional sufficiency of use immunity and the lack of a constitutional requirement of transactional immu-