criminating information was "in principle an attractive and apparently practical resolution of the difficult problem before us," citing *Murphy* with apparent approval.[249]

Congress thereupon enacted a statute replacing all prior immunity statutes and adopting a use-immunity restriction only.[250] Soon tested, this statute was sustained in *Kastigar v. United States*.[251] "[P]rotection coextensive with the privilege is the degree of protection which the Constitution requires," wrote Justice Powell for the Court, "and is all that the Constitution requires. . . ."[252] "Transactional immunity, which accords full immunity from prosecution for the offense to which the compelled testimony relates, affords the witness considerably broader protection than does the Fifth Amendment privilege. The privilege has never been construed to mean that one who invokes it cannot subsequently be prosecuted. Its sole concern is to afford protection against being 'forced to give testimony leading to the infliction of penalties affixed to . . . criminal acts.' Immunity from the use of compelled testimony and evidence derived directly and indirectly therefrom affords this protection. It prohibits the prosecutorial authorities from using the compelled testimony in *any* respect, and it therefore insures that the testimony cannot lead to the infliction of criminal penalties on the witness."[253]

---

nity. Id. at 92. *See also* Gardner v. Broderick, 392 U.S. 273 (1968); Uniformed Sanitation Men Ass'n v. Commissioner of Sanitation, 392 U.S. 280 (1968); Garrity v. New Jersey, 385 U.S. 493 (1967), recognizing the propriety of compelling testimony with a use restriction attached.

[249] Marchetti v. United States, 390 U.S. 39, 58 (1968).

[250] Organized Crime Control Act of 1970, Pub. L. 91–452, § 201(a), 84 Stat. 922, 18 U.S.C. §§ 6002–6003. Justice Department officials have the authority under the Act to decide whether to seek immunity, and courts will not apply "constructive" use immunity absent compliance with the statute's procedures. United States v. Doe, 465 U.S. 605 (1984).

[251] 406 U.S. 441 (1972). A similar state statute was sustained in Zicarelli v. New Jersey State Comm'n of Investigation, 406 U.S. 472 (1972).

[252] Kastigar v. United States, 406 U.S. 441, 459 (1972). *See also* United States v. Hubbell, 530 U.S. 27 (2000) (because the statute protects against derivative use of compelled testimony, a prosecution cannot be based on incriminating evidence revealed only as the result of compliance with an extremely broad subpoena).

[253] 406 U.S. at 453. Joining Justice Powell in the opinion were Justices Stewart, White, and Blackmun, and Chief Justice Burger. Justices Douglas and Marshall dissented, contending that a ban on use could not be enforced even if a use ban was constitutionally adequate. Id. at 462, 467. Justices Brennan and Rehnquist did not participate but Justice Brennan's views that transactional immunity was required had been previously stated. Piccirillo v. New York, 400 U.S. 548, 552 (1971) (dissenting). *See also* New Jersey v. Portash, 440 U.S. 451 (1979) (prosecution use of defendant's immunized testimony to impeach him at trial violates Self-Incrimination Clause). Neither the clause nor the statute prevents the perjury prosecution of an immunized witness or the use of all his testimony to prove the commission of perjury. United States v. Apfelbaum, 445 U.S. 115 (1980). *See also* United States v. Wong, 431 U.S. 174 (1977); United States v. Mandujano, 425 U.S. 564 (1976).