

NONEXCLUSIVENESS OF SECTION 892(b)

It should be emphasized, however, that the offense under section 892, and the only offense, is the making of an extension of credit with the understanding that criminal means may be used to enforce repayment, or conspiracy to make such an extension. Where this offense can be proved by direct evidence, it may be unnecessary for the prosecution to make use of sections 892(b) and 892(c).

Section 892 is in no sense a Federal usury law. The charging of a rate in excess of 45 percent per annum is merely one of a set of factors which, where there is inadequate evidence to explain them, are deemed sufficiently indicative of the existence of criminal means of collection to justify a statutory inference that such means were, in fact, contemplated by the parties.

FINANCING EXTORTIONATE EXTENSIONS OF CREDIT

In organized crime, loan sharking is normally carried out as a multi-level operation. It is the purpose of section 893 to make possible the prosecution of the upper levels of the criminal hierarchy. It should not be supposed that the enactment of this legislation will suddenly do away with the immense practical difficulties which attend any effort to prosecute the top levels of organized crime. Nevertheless, in those instances where legally admissible evidence can be gathered to trace the flow of funds from the upper levels, the legal capability to prosecute the organizers and financiers of the underworld, as well as loan sharks at the operating level, would appear to be a worthwhile weapon to add to the Government's arsenal.

Section 893 has been carefully drawn to preclude the possibility of creating difficulties for legitimate lenders or those who furnish financing to them. It should be noted that no case is made out where it is shown that funds were advanced to a lender who subsequently collected an indebtedness by criminal means. To come within the prohibition of section 893, the financier must have had reasonable grounds to believe that it was the *intention* of the lender to use the funds for extortionate extensions of credit; that is, extensions of credit whose extortionate character is known to both the borrower and the lender at their inception.

EXTORTIONATE COLLECTION

Not everyone who falls into the clutches of a loan shark is necessarily aware at the outset of the nature of the transaction into which he has entered. Moreover, cases will arise where the use of extortionate means of collection can be demonstrated even though it cannot be shown that a bilateral understanding that such would be the case existed at the outset. Section 894(a) covers these situations by making it a criminal offense to collect an indebtedness by extortionate means, regardless of how the indebtedness arose. Section 894(b) merely codifies a principle of evidence which already appears to be recognized in the case law, but whose importance in this area is sufficiently great to make it desirable to leave no doubt whatever as to its applicability. It allows evidence as to other criminal acts by the defendant to be introduced for the purpose of showing the victim's state of mind. Section 894(c) is similar to section 892(c), discussed above, and was included on the basis of the same considerations.