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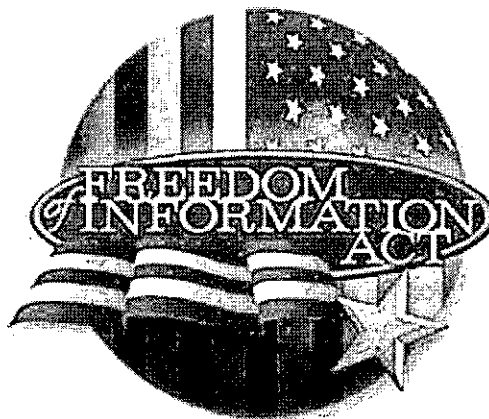
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# **FREEDOM OF INFORMATION AND PRIVACY ACTS**

**SUBJECT: MANUAL OF INVESTIGATIVE  
OPERATIONS AND GUIDELINES (MIOG)**

**Volume: 1 PART 1**



**FEDERAL BUREAU OF INVESTIGATION**



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# PART I

*Manual of  
Investigative  
Operations  
and Guidelines*

# **Manual of Investigative Operations and Guidelines**

## **Part I**

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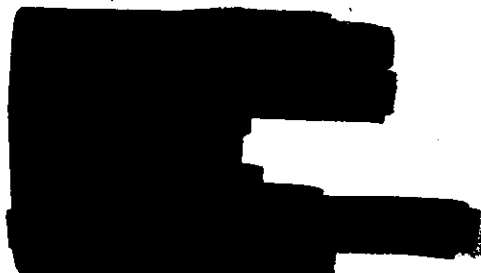
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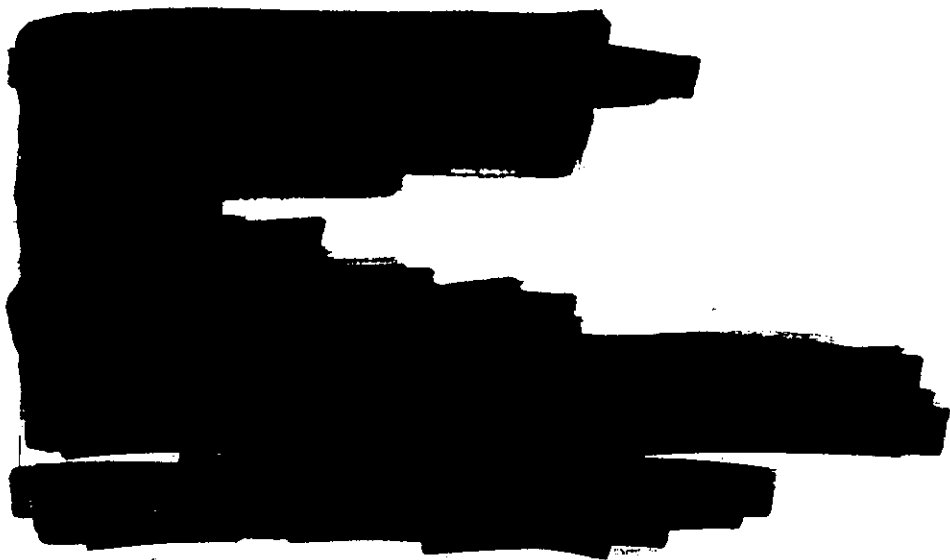
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SECTION 1. INVESTIGATIVE AUTHORITY AND RESPONSIBILITY

1-1 AUTHORITY OF A SPECIAL AGENT

(1) Investigate violations of the laws, including the criminal drug laws, of the United States (Title 21, USC, Section 871; Title 28, USC, Sections 533, 534, and 535; Title 28, CFR, Section 0.85).

(2) Collect evidence in cases in which the United States is or may be a party in interest (28, CFR, Section 0.85 (a) as redelegated through exercise of the authority contained in 28, CFR, Section 0.137 to direct personnel in the FBI).

(3) Make arrests (Title 18, USC, Section 3052).

(4) Serve warrants and subpoenas and civil investigative demands (Title 18, USC, Section 3052; Title 15, USC, Section 1312; and Title 21, USC, Section 876).

(5) Carry firearms (Title 18, USC, Section 3052) when engaged upon official matters and for self-defense.

(6) Administer oaths to witnesses attending to testify or depose in the course of investigations of frauds on or attempts to defraud the United States or irregularities or misconduct of employees or agents of the United States (Title 5, USC, Section 303).

(7) Seize property subject to seizure under the criminal drug laws of the United States (Title 21, USC, Section 881; Title 21, CFR, Section 1316.72).

(8) Perform other duties imposed by law.

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1-2 INVESTIGATIVE RESPONSIBILITY

(1) The FBI is charged with the duty of investigating violations of the laws of the United States and collecting evidence in cases in which the United States is or may be a party in interest, except in cases in which such responsibility is by statute or otherwise specifically assigned to another investigative agency. (Title 28, CFR, Section 0.85 (a))

(2) In addition to the FBI discharging those responsibilities with which it is charged by statutes, the FBI expeditiously carries out directives of the President and the Attorney General.

(3) Our investigative jurisdiction in criminal cases is based on specific violations of Federal laws. Investigations are conducted when information is received indicating a violation of Federal law, over which we have been given investigative jurisdiction, has or may have occurred. The function of a Special Agent of the FBI is to conduct thorough investigations of cases in a legal and ethical manner and to carry each of those cases through to a logical conclusion. Results of investigations are furnished to United States Attorneys and/or the Department of Justice.

(4) Requests for FBI investigations in selected civil matters in which the United States is or may be a party in interest may be received from the United States Attorneys and/or the Department of Justice. These are handled in strict conformity with guidelines furnished by the Department of Justice, as are also investigations of violations of the civil rights, antiriot, election laws, and antitrust laws.

(5) Under no circumstances may a Special Agent of the FBI acting within the scope of his/her employment seek to obtain the commitment of any individual for psychiatric evaluation or otherwise become involved in commitment proceedings. Special Agents subpoenaed to give testimony at commitment proceedings must first comply with the provisions of Part II, Section 6 of this manual. Questions should be referred to Office of the General Counsel, FBIHQ.

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1-3 THE ATTORNEY GENERAL'S GUIDELINES ON GENERAL CRIMES,  
RACKETEERING ENTERPRISE AND DOMESTIC SECURITY/TERRORISM  
INVESTIGATIONS | (See MIOG, Part I, Section 92, 100-1.1,  
137-13, and 266-1.) |

"As the primary criminal investigative agency in the federal government, the FBI has the authority and responsibility to investigate all criminal violations of federal law not exclusively assigned to another federal agency. The FBI thus plays a central role in national law enforcement and in the proper administration of justice in the United States.

"Investigations by the FBI are premised upon the important duty of government to protect the public against general crimes, against organized criminal activity and against those who would engage in political or racial terrorism or would destroy our constitutional system through criminal violence. At the same time, that duty must be performed with care to protect individual rights and to insure that investigations are confined to matters of legitimate law enforcement interest. The purpose of these Guidelines, therefore, is to establish a consistent policy in such matters. The Guidelines should encourage Agents of the FBI to perform their duties with greater certainty, confidence and effectiveness. They should also give the public a firm assurance that the FBI is acting properly under the law.

"These Guidelines provide guidance for all investigations by the FBI of crimes and crime-related activities. Investigations involving foreign intelligence, foreign counterintelligence and international terrorism matters are the subject of separate guidelines. The standards and requirements set forth herein govern the circumstances under which an investigation may be begun, and the permissible scope, duration, subject-matters, and objectives of an investigation.

"All investigations of crime or crime-related activities shall be undertaken in accordance with one or more of these Guidelines. Part I sets forth general principles that apply to all investigations conducted under these Guidelines. Part II governs investigations undertaken to detect, prevent and prosecute specific violations of federal law. Part III A governs criminal intelligence investigations undertaken to obtain information concerning enterprises which are engaged in racketeering activities involving violence, extortion, narcotics or public corruption. Part III B governs criminal intelligence investigations undertaken to obtain information concerning enterprises which seek to achieve political or social change through violence.

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"These Guidelines are issued under the authority of the Attorney General, as provided in 28, U.S.C., 509, 510, and 533.

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- "I. General Principles
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- "VII. Reservation

"I. General Principles | (See MIOG, Part I, 100-1.2.3.) |

"Preliminary inquiries and investigations governed by these Guidelines are conducted for the purpose of preventing, detecting, or prosecuting violations of federal law. They shall be conducted with as little intrusion into the privacy of individuals as the needs of the situation permit.

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"All preliminary inquiries shall be conducted pursuant to the General Crimes Guidelines. There is no separate provision for a preliminary inquiry under the Criminal Intelligence Guidelines. A preliminary inquiry shall be promptly terminated when it becomes apparent that a full investigation is not warranted. If, on the basis of information discovered in the course of a preliminary inquiry, an investigation is warranted, it may be conducted as a general crimes investigation, or a criminal intelligence investigation, or both. All such investigations, however, shall be based on a reasonable factual predicate and shall have a valid law enforcement purpose.

"In its efforts to anticipate or prevent crime, the FBI must at times initiate investigations in advance of criminal conduct. It is important that such investigations not be based solely on activities protected by the First Amendment or on the lawful exercise of any other rights secured by the Constitution or laws of the United States. When, however, statements advocate criminal activity or indicate an apparent intent to engage in crime, particularly crimes of violence, an investigation under these Guidelines may be warranted unless it is apparent, from the circumstances or the context in which the statements are made, that there is no prospect of harm.

"General crimes investigations and criminal intelligence investigations shall be terminated when all logical leads have been exhausted and no legitimate law enforcement interest justifies their continuance.

"Nothing in these Guidelines is intended to prohibit the FBI from collecting and maintaining publicly available information consistent with the Privacy Act.

"Nothing in these Guidelines prohibits the FBI from ascertaining the general scope and nature of criminal activity in a particular location or sector of the economy.

"II. General Crimes Investigations

"A. Definitions

"(1) 'Exigent circumstances' are circumstances requiring action before authorization otherwise necessary under these guidelines can reasonably be obtained, in order to protect life or substantial property interests; to apprehend or identify a fleeing offender; to prevent the hiding, destruction or alteration of evidence; or to avoid other serious impairment or hindrance of an

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investigation.

"(2) 'Sensitive criminal matter' is any alleged criminal conduct involving corrupt action by a public official or political candidate, the activities of a foreign government, the activities of a religious organization or a primarily political organization or the related activities of any individual prominent in such an organization, or the activities of the news media; and any other matter which in the judgment of a Special Agent in Charge (SAC) should be brought to the attention of the United State Attorney or other appropriate official in the Department of Justice, as well as FBI Headquarters (FBIHQ).

"B. Preliminary Inquiries

"(1) On some occasions the FBI may receive information or an allegation not warranting a full investigation -- because there is not yet a 'reasonable indication' of criminal activities -- but whose responsible handling requires some further scrutiny beyond the prompt and extremely limited checking out of initial leads. In such circumstances, though the factual predicate for an investigation has not been met, the FBI may initiate an 'inquiry' involving some measured review, contact, or observation activities in response to the allegation or information indicating the possibility of criminal activity.

"This authority to conduct inquiries short of a full investigation allows the government to respond in a measured way to ambiguous or incomplete information and to do so with as little intrusion as the needs of the situation permit. This is especially important in such areas as white-collar crime where no complainant is involved or when an allegation or information is received from a source of unknown reliability. It is contemplated that such inquiries would be of short duration and be confined solely to obtaining the information necessary to make an informed judgment as to whether a full investigation is warranted.

"A preliminary inquiry is not a required step when facts or circumstances reasonably indicating criminal activity are already available; in such cases, a full investigation can be immediately opened.

"(2) The FBI supervisor authorizing an inquiry shall assure that the allegation or other information which warranted the inquiry has been recorded in writing. In sensitive criminal matters the United States Attorney or an appropriate Department of Justice

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official shall be notified of the basis for an inquiry as soon as practicable after the opening of the inquiry, and the fact of notification shall be recorded in writing.

"(3) Inquiries shall be completed within 90 days after initiation of the first investigative step. The date of the first investigative step is not necessarily the same date on which the first incoming information or allegation was received. An extension of time in an inquiry for succeeding 30-day periods may be granted by FBI Headquarters upon receipt of a written request and statement of reasons why further investigative steps are warranted when there is no 'reasonable indication' of criminal activity.

"(4) Before employing an investigative technique in an inquiry, the FBI should consider whether the information could be obtained in a timely and effective way by less intrusive means. Some of the factors to be considered in judging intrusiveness are adverse consequences to an individual's privacy interests and avoidable damage to his reputation. Whether an intrusive technique should be used in an inquiry depends on the seriousness of the possible crime and the strength of the information indicating the possible existence of the crime. However, the techniques used in an inquiry should generally be less intrusive than those employed in a full investigation. It is recognized that choice of technique is a matter of judgment.

"(5) The following investigative techniques shall not be used during an inquiry:

"(a) Mail covers;

"(b) Mail openings;

"(c) Nonconsensual electronic surveillance or any other investigative technique covered by Title 18, U.S.C., 2510-2521.

"(6) The following investigative techniques may be used in an inquiry without any prior authorization from a supervisory agent:

"(a) Examination of FBI indices and files;

"(b) Examination of records available to the public and other public sources of information;

"(c) Examination of available federal, state and local government records;

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"(d) Interview of the complainant, previously established informants, and confidential sources;

"(e) Interview of the potential subject;

"(f) Interview of persons who should readily be able to corroborate or deny the truth of the allegation, except this does not include pretext interviews or interviews of a potential subject's employer or co-workers unless the interviewee was the complainant;

"(g) Physical or photographic surveillance of any person.

"The use of any other lawful investigative technique that is permitted in an inquiry shall meet the requirements and limitations of Part IV and, except in exigent circumstances, require prior approval by a supervisory agent. Where a technique is highly intrusive, a supervisory agent shall approve its use in the inquiry stage only in compelling circumstances and when other investigative means are not likely to be successful.

"(7) Where a preliminary inquiry fails to disclose sufficient information to justify an investigation, the FBI shall terminate the inquiry and make a record of the closing. In a sensitive criminal matter, the FBI shall notify the United States Attorney of the closing and record the fact of notification in writing. Information on an inquiry which has been closed shall be available on request to a United States Attorney or his designee or an appropriate Department of Justice official.

"(8) All requirements regarding inquiries shall apply to reopened inquiries. In sensitive criminal matters, the United States Attorney or the appropriate Department of Justice official shall be notified as soon as practicable after the reopening of an inquiry.

"C. Investigations

"(1) A general crimes investigation may be initiated by the FBI when facts or circumstances reasonably indicate that a federal crime has been, is being, or will be committed. The investigation may be conducted to prevent, solve and prosecute such criminal activity.

"The standard of 'reasonable indication' is



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substantially lower than probable cause. In determining whether there is reasonable indication of a federal criminal violation, a Special Agent may take into account any facts or circumstances that a prudent investigator would consider. However, the standard does require specific facts or circumstances indicating a past, current or impending violation. There must be an objective, factual basis for initiating the investigation; a mere hunch is insufficient.

"(2) Where a criminal act may be committed in the future, preparation for that act can, of course, amount to a current criminal violation under the conspiracy or attempt provisions of federal criminal law, if there are present the requisite agreement and overt act, or substantial step toward completion of the criminal act and intention to complete the act. With respect to criminal activity that may occur in the future but does not yet involve a current criminal conspiracy or attempt, particular care is necessary to assure that there exist facts and circumstances amounting to a reasonable indication that a crime will occur.

"(3) The FBI supervisor authorizing an investigation shall assure that the facts or circumstances meeting the standard of reasonable indication have been recorded in writing.

"In sensitive criminal matters, as defined in paragraph A(2), the United States Attorney or an appropriate Department of Justice official and FBIHQ shall be notified in writing of the basis for an investigation as soon as practicable after commencement of the investigation.

"(4) The Special Agent conducting an investigation shall maintain periodic written or oral contact with the appropriate federal prosecutor, as circumstances require and as requested by the prosecutor.

"When, during an investigation, a matter appears to arguably warrant prosecution, the Special Agent shall present the relevant facts to the appropriate federal prosecutor. In every sensitive criminal matter, the FBI shall notify the appropriate federal prosecutor of the termination of an investigation within 30 days of such termination. Information on investigations which have been closed shall be available on request to a United States Attorney or his designee or an appropriate Department of Justice official.

"(5) When a serious matter investigated by the FBI is referred to state or local authorities for prosecution, the FBI, insofar as resources permit, shall promptly advise the federal

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prosecutor in writing if the state or local authorities decline prosecution or fail to commence prosecutive action within 120 days. Where an FBI field office cannot provide this follow-up, the SAC shall so advise the federal prosecutor.

"(6) When credible information is received concerning serious criminal activity not within the FBI investigative jurisdiction, the FBI field office shall promptly transmit the information or refer the complainant to the law enforcement agencies having jurisdiction, except where disclosure would jeopardize an ongoing investigation, endanger the safety of an individual, disclose the identity of an informant, interfere with an informant's cooperation, or reveal legally privileged information. If full disclosure is not made for the reasons indicated, then whenever feasible the FBI field office shall make at least limited disclosure to the law enforcement agency having jurisdiction, and full disclosure shall be made as soon as the need for restricting dissemination is no longer present. Where full disclosure is not made to the appropriate law enforcement agencies within 180 days, the FBI field office shall promptly notify FBI Headquarters in writing of the facts and circumstances concerning the criminal activity. The FBI shall make a periodic report to the Deputy Attorney General on such nondisclosure and incomplete disclosures, in a form suitable to protect the identity of informants and confidential sources.

"Whenever information is received concerning unauthorized criminal activity by an informant or confidential source, it shall be handled in accord with paragraph G of the Attorney General's Guidelines on Use of Informants and Confidential Sources.

"(7) All requirements regarding investigations shall apply to reopened investigations. In sensitive criminal matters, the United States Attorney or the appropriate Department of Justice official shall be notified in writing as soon as practicable after the reopening of an investigation.

"III. Criminal Intelligence Investigations

"This section authorizes the FBI to conduct criminal intelligence investigations of certain enterprises who seek either to obtain monetary or commercial gains or profits through racketeering activities or to further political or social goals through activities that involve criminal violence. These investigations differ from general crimes investigations, authorized by Section II, in several important respects. As a general rule, an investigation of a completed criminal act is normally confined to determining who

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committed that act and with securing evidence to establish the elements of the particular offense. It is, in this respect, self-defining. An intelligence investigation of an ongoing criminal enterprise must determine the size and composition of the group involved, its geographic dimensions, its past acts and intended criminal goals, and its capacity for harm. While a standard criminal investigation terminates with the decision to prosecute or not to prosecute, the investigation of a criminal enterprise does not necessarily end, even though one or more of the participants may have been prosecuted.

"In addition, the organization provides a life and continuity of operation that are not normally found in a regular criminal activity. As a consequence, these investigations may continue for several years. Furthermore, as Justice Powell noted, the focus of such investigations 'May be less precise than that directed against more conventional types of crime.' United States v. United States District Court, 407 U.S. 297, 322 (1972). Unlike the usual criminal case, there may be no completed offense to provide a framework for the investigation. It often requires the fitting together of bits and pieces of information many meaningless by themselves to determine whether a pattern of criminal activity exists. For this reason, the investigation is broader and less discriminate than usual, involving 'the interrelation of various sources and types of information.' Id.

"Members of groups or organizations acting in concert to violate the law present a grave threat to society. An investigation of organizational activity, however, may present special problems, particularly where it deals with politically motivated acts. 'There is often a convergence of First and Fourth Amendment values,' in such matters that is 'not found in cases of 'ordinary' crime.' Id. Thus, special care must be exercised in sorting out protected activities from those which may lead to violence or serious disruption of society. As a consequence, the guidelines establish safeguards for group investigations of special sensitivity, including tighter management controls and higher levels of review.

"A. Racketeering Enterprise Investigations | (See MIOG,  
Part I, 92-8, 194-3.7.) |

"This section focuses on investigations of organized crime. It is concerned with investigation of entire enterprises, rather than individual participants in specific criminal acts, and authorizes investigations to determine the structure and scope of the enterprise, as well as the relationship of the members. Except as

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specified below, this authority may be exercised only when the activity engaged in by the racketeering enterprise involves violence, extortion, narcotics, or systematic public corruption.

"1. Definitions

Racketeering activity is any offense, including the violation of state law, encompassed by the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Section 1961(1).

"2. General Authority

"a. The FBI has authority to conduct investigations of racketeering enterprises whose activities involve violence, extortion, narcotics, or systematic public corruption. A racketeering enterprise not engaged in such activities may be investigated under this authority only upon a written determination by the Director, concurred in by the Attorney General, that such investigation is justified by exceptional circumstances.

"b. A racketeering enterprise investigation may be initiated when facts or circumstances reasonably indicate that two or more persons are engaged in a continuing course of conduct for the purpose of obtaining monetary or commercial gains or profits wholly or in part through racketeering activity. The standard of 'reasonable indication' is identical to that governing the initiation of a general crimes investigation under Part II.

"c. Authority to conduct racketeering enterprise investigations is separate from and in addition to general crimes investigative authority under Part II and domestic security/terrorism investigations under Part III. Information warranting initiation of a racketeering enterprise investigation may be obtained during the course of a general crimes inquiry or investigation. Conversely, a racketeering enterprise investigation may yield information warranting a general crimes inquiry or investigation or a domestic security/terrorism investigation.

"3. Purpose

The immediate purpose of a racketeering enterprise investigation is to obtain information concerning the nature and structure of the enterprise, as specifically delineated in paragraph II D below, with a view to the longer range objective of detection, prevention, and prosecution of the criminal activities of the enterprise." (NOTE: IID reference is error; see instead 4.

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Scope, below.)

"4. Scope

"a. A racketeering enterprise investigation properly initiated under these guidelines may collect such information as:

"(i) The members of the enterprise and other persons likely to be knowingly acting in the furtherance of racketeering activity, provided that the information concerns such persons' activities on behalf of or in furtherance of the enterprise;

"(ii) the finances of the enterprise;

"(iii) the geographical dimensions of the enterprise; and

"(iv) the past and future activities and goals of the enterprise.

"b. In obtaining the foregoing information, any lawful investigative technique may be used, in accordance with the requirements of Part IV.

"5. Authorization and Renewal

"a. A racketeering enterprise investigation may be authorized by the Director or designated Assistant Director upon a written recommendation setting forth the facts and circumstances reasonably indicating the existence of a racketeering enterprise whose activities involve violence, extortion, narcotics, or systematic public corruption. In such cases, the FBI shall notify the Attorney General or his designee of the opening of the investigation. An investigation of a racketeering enterprise not involved in these activities may be authorized only by the Director upon his written determination, concurred in by the Attorney General, that such investigation is warranted by exceptional circumstances. In all investigations, the Attorney General may, as he deems necessary, request the FBI to provide a report on the status of the investigation.

"b. A racketeering enterprise investigation may be initially authorized for a period of up to 180 days. An investigation may be continued upon renewed authorization for additional periods each not to exceed 180 days. Renewal authorization

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shall be obtained from the Director or designated Assistant Director. The concurrence of the Attorney General must also be obtained if his concurrence was initially required to authorize the investigation.

"c. Investigations shall be reviewed by the Director or designated senior Headquarters official on or before the expiration of the period for which the investigation and each renewal thereof is authorized.

"d. An investigation which has been terminated may be reopened upon a showing of the same standard and pursuant to the same procedures as required for initiation of an investigation.

"B. Domestic Security/Terrorism Investigations | (See  
MIOG, Part I, 100-1.2.) |

"This section focuses on investigations of enterprises, other than those involved in international terrorism, whose goals are to achieve political or social change through activities that involve force or violence. Like racketeering enterprise investigations, it is concerned with the investigation of entire enterprises, rather than individual participants and specific criminal acts, and authorizes investigations to determine the structure and scope of the enterprise as well as the relationship of the members.

"1. General Authority | (See MIOG, Part I,  
100-1.2.2.) |

"a. A domestic security/terrorism investigation may be initiated when the facts or circumstances reasonably indicate that two or more persons are engaged in an enterprise for the purpose of furthering political or social goals wholly or in part through activities that involve force or violence and a violation of the criminal laws of the United States. The standard of 'reasonable indication' is identical to that governing the initiation of a general crimes investigation under Part II. In determining whether an investigation should be conducted, the FBI shall consider all of the circumstances including: (1) the magnitude of the threatened harm; (2) the likelihood it will occur; (3) the immediacy of the threat; and (4) the danger to privacy and free expression posed by an investigation.

"b. Authority to conduct domestic security/terrorism investigations is separate from and in addition to

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general crimes investigative authority under Part II, racketeering enterprise investigations under Part III A and international terrorism investigations under the Attorney General's Guidelines for Foreign Intelligence Collection and Foreign Counterintelligence Investigations. Information warranting initiation of an investigation under this section may be obtained through the course of a general crimes inquiry or investigation, a racketeering enterprise investigation, or an investigation of international terrorism. Conversely, a domestic security/terrorism investigation may yield information warranting a general crimes inquiry or investigation, a racketeering enterprise investigation, or an investigation of international terrorism.

"c. In the absence of any information indicating planned violence by a group or enterprise, mere speculation that force or violence might occur during the course of an otherwise peaceable demonstration is not sufficient grounds for initiation of an investigation under this section. For alternative authorities see Part II relating to General Crimes Investigations and the Attorney General's Guidelines on 'Reporting on Civil Disorders and Demonstrations Involving a Federal Interest.' This does not preclude the collection of information about public demonstrations by enterprises that are under active investigation pursuant to paragraph B 1(a) above.

"2. Purpose | (See MIOG, Part I, 100-2.1.) |

"The immediate purpose of a domestic security/terrorism investigation is to obtain information concerning the nature and structure of the enterprise, as specifically delineated in paragraph (3) below, with a view to the longer range objectives of detection, prevention, and prosecution of the criminal activities of the enterprise.

"3. Scope | (See MIOG, Part I, 100-2.2.) |

"a. A domestic security/terrorism investigation initiated under these guidelines may collect such information as:

"(i) the members of the enterprise and other persons likely to be knowingly acting in furtherance of its criminal objectives, provided that the information concerns such persons' activities on behalf or in furtherance of the enterprise;

"(ii) the finances of the enterprise;

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"(iii) the geographical dimensions of the enterprise; and

"(iv) past and future activities and goals of the enterprise.

"b. In obtaining the foregoing information, any lawful investigative technique may be used in accordance with requirements of Part IV.

"4. Authorization and Renewal | (See MIOG, Part I,  
100-2.3.) |

"a. A domestic security/terrorism investigation may be authorized by the Director or designated Assistant Director upon a written recommendation setting forth the facts or circumstances reasonably indicating the existence of an enterprise, as described in this subsection. In such cases, the FBI shall notify the | Terrorism

and Violent Crimes Section, Criminal Division, Department of Justice, | of the opening of the investigation. In all investigations the Attorney General may, as he deems necessary, request the FBI to provide a report on the status of the investigation.

"b. A domestic security/terrorism investigation may be initially authorized for a period of up to 180 days. An investigation may be continued upon renewed authorization for additional periods each not to exceed 180 days. Renewal authorization shall be obtained from the Director or designated Assistant Director.

"c. Investigations shall be reviewed by the Director or designated Senior Headquarters official on or before the expiration period for which the investigation and each renewal thereof is authorized.

"d. Each investigation should be reviewed at least annually to insure that the threshold standard is satisfied and that continued allocation of investigative resources is warranted. In some cases, the enterprise may meet the threshold standard, but be temporarily inactive in the sense that it has not engaged in recent acts of violence, nor is there any immediate threat of harm -- yet the composition, goals and prior history of the group suggests the need for continuing federal interest. Under those circumstances, the investigation may be continued, but reasonable efforts should be made to limit the coverage to information which might indicate a change in the status or criminal objectives of the enterprise.

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"e. An investigation which has been terminated may be reopened upon a showing of the same standard and pursuant to the same procedures as required for initiation of an investigation.

"f. The FBI shall report the progress of a domestic security/terrorism investigation to the Terrorism and Violent Crimes Section not later than 180 days after the initiation thereof, and the results at the end of each year the investigation continues. The Terrorism and Violent Crimes Section shall review the results of each investigation at least annually.

"IV. Investigative Techniques | (See MIOG, Part I, 100-2.2.) |

"A. When conducting investigations under these guidelines the FBI may use any lawful investigative technique. Before employing a technique, the FBI should consider whether the information could be obtained in a timely and effective way by less intrusive means. Some of the factors to be considered in judging intrusiveness are adverse consequences to an individual's privacy interests and avoidable damage to his reputation. Whether a highly intrusive technique should be used depends on the seriousness of the crime and the strength of the information indicating the existence of the crime. It is recognized that choice of technique is a matter of judgment.

"B. All requirements for use of a technique set by statute, Department regulations and policies, and Attorney General Guidelines must be complied with. The investigative techniques listed below are subject to the noted restrictions:

"1. Informants and confidential sources must be used in compliance with the Attorney General's Guidelines on the Use of Informants and Confidential Sources;

"2. Undercover operations must be conducted in compliance with the Attorney General's Guidelines on FBI Undercover Operations;

"3. Undisclosed participation in the activities of an organization by an undercover employee or cooperating private individual in a manner that may influence the exercise of rights protected by the First Amendment must be approved by FBIHQ, with notification to Department of Justice;

"4. Nonconsensual electronic surveillance must be conducted pursuant to the warrant procedures and requirements of Title

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18 U.S.C. 2510-2521;

"5. Pen registers and trap and trace devices must be installed and used pursuant to the procedures and requirements of Title 18 U.S.C. 3121-3127;

"6. Access to stored wire and electronic communications and transactional records must be obtained pursuant to the procedures and requirements of Title 18 U.S.C. 2701-2710;

"7. Consensual electronic monitoring must be authorized pursuant to Department policy. For consensual monitoring of conversations other than telephone conversations, advance authorization must be obtained in accordance with established guidelines. This applies both to devices carried by the cooperating participant and to devices installed on premises under the control of the participant. See USAM 9-7.013. For consensual monitoring of telephone conversations, advance authorization must be obtained from the SAC and the appropriate United States Attorney, except in exigent circumstances;

"8. Searches and seizures must be conducted under the authority of a valid warrant unless the search or seizure comes within a judicially recognized exception to the warrant requirement. See also, Attorney General's Guidelines on Methods of Obtaining Documentary Materials Held by Third Parties; (See MIOG, Part II, Section 28.)

"9. Whenever an individual is known to be represented by counsel in a particular matter, the FBI shall follow applicable law and Department procedure concerning contact with represented individuals in the absence of prior notice to their counsel. The SAC or his designee and the United States Attorney shall consult periodically on applicable law and Department procedure.

"V. Dissemination of Information

"The FBI may disseminate information during investigations conducted pursuant to these guidelines to another Federal agency, or to a State or local criminal justice agency when such information:

"A. falls within the investigative or protective jurisdiction or litigative responsibility of the agency;

"B. may assist in preventing a crime or the use of violence or any other conduct dangerous to human life;

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"C. is required to be furnished to another Federal agency by Executive Order 10450, as amended, dated April 27, 1953, or a successor Order;

"D. is required to be disseminated by statute, interagency agreement approved by the Attorney General, or Presidential Directive; and to other persons and agencies as permitted by Sections 552 and 552a of Title V, U.S.C.

"VI. Cooperation with Secret Service

"The FBI is authorized to provide investigative assistance in support of the protective responsibilities of the Secret Service, provided that all preliminary inquiries or investigations are conducted in accordance with the provisions of these guidelines.

"VII. Reservation

"A. Nothing in these guidelines shall limit the general reviews or audits of papers, files, contracts or other records in the government's possession, or the performance of similar services at the specific request of a Department or agency of the United States. Such reviews, audits or similar services must be for the purpose of detecting or preventing violations of federal law which are within the investigative responsibility of the FBI.

"B. Nothing in these guidelines is intended to limit the FBI's responsibilities to investigate certain applicants and employees under the federal personnel security program.

"C. These guidelines are set forth solely for the purpose of internal Department of Justice guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any manner, civil or criminal, nor do they place any limitation on otherwise lawful investigative and litigative prerogatives of the Department of Justice."

EFFECTIVE: 12/16/96

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1-4 INFORMATION REGARDING THE EXERCISE OF FIRST AMENDMENT  
RIGHTS

(1) All information received or made available to the FBI during the course of an investigation should be evaluated for its pertinence to the investigation. This is particularly true when the information concerns the exercise of an individual's or group's First Amendment rights. In such cases, the information concerning the exercise of First Amendment rights should be made a matter of record only if it is pertinent to and within the scope of an authorized law enforcement activity.

(2) When public-source printed material concerning the exercise of First Amendment rights is obtained and a decision made to retain such material, a notation must be placed on the material describing the reason(s) it was collected and retained. The notation must clearly indicate the specific investigative interest(s) which led to the decision to retain the item.

(3) Certain printed public source material may contain a characterization of a group, individual or activity. When such information is disseminated to FBIHQ, FBI field offices or outside the FBI, the transmitting communication should state that the characterization has not been made by the FBI, but by a third party. However, if the characterization comports in whole or in part with the results of independent FBI investigation, the transmitting communication may so state.

EFFECTIVE: 08/22/89

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SECTION 2. FBI MANAGEMENT AND ALLOCATION PROGRAMS

2-1 NATIONAL PRIORITY PROGRAMS

EFFECTIVE: 06/26/91

2-1.1 Foreign Counterintelligence (FCI)

EFFECTIVE: 06/26/91

2-1.1.1 Definition

The FCI Program consists of the gathering of information and conducting of activities to protect against espionage and other intelligence activities, sabotage, or assassinations conducted by, for, or on behalf of foreign powers, organizations or persons, or international terrorist activities, but not including personnel, physical, document, or communications security programs.

EFFECTIVE: 06/26/91

2-1.1.2 Objective

The primary program objective is the neutralization of hostile intelligence and international terrorist activities within the United States.

EFFECTIVE: 06/26/91

2-1.2 Organized Crime

EFFECTIVE: 06/26/91

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2-1.2.1 Definition

Organized Crime is defined as any group having some manner of formalized structure and whose primary objective is to obtain money through illegal activities. Such groups maintain their position through the use of violence or threat of violence, corrupt public officials, graft or extortion and generally have a significant impact on the people in their locales or region or the country as a whole.

EFFECTIVE: 06/26/91

2-1.2.2 Objective

The long-term mission of the FBI's Organized Crime Program is to eliminate the La Cosa Nostra (LCN) and other organized crime groups as significant threats to American society through sustained coordinated investigations that support successful prosecutive action. This mission encompasses use of the criminal and civil provisions of the Racketeer Influenced and Corrupt Organizations (RICO) Statute and concomitant seizure and forfeiture of assets acquired with the proceeds of crime or used in the commission of crime.

EFFECTIVE: 06/26/91

2-1.2.3 Ranking of Organized Criminal Activities

(1) LCN

(a) Labor Racketeering

(b) RICO LCN Family Enterprise activities (predicates include generic state crimes of murder, kidnaping, gambling, arson, robbery, bribery, extortion and dealing in obscene matters or narcotics; and encompass various Federal offenses including extortion, gambling, obstruction of justice, labor racketeering, securities fraud, narcotics dealing, and unlawful currency transactions).

(c) Corruption (direct LCN involvement)

(2) Asian Organized Crime (AOC) Groups

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(a) RICO enterprise activities

(b) Corruption (direct AOC involvement)

(3) Italian Organized Crime (IOC) Groups

(a) RICO enterprise activities

(b) Corruption (direct IOC involvement)

(4) Other significant organized criminal groups engaged in organized criminal activities and having a national or multidivisional/jurisdictional impact.

EFFECTIVE: 06/26/91

2-1.3 Drug

EFFECTIVE: 06/26/91

2-1.3.1 Definition

The Drug Program of the FBI endeavors to reduce the incidence of illegal drug trafficking and other criminal activity which drug trafficking generates, through investigations conducted on a systematic, coordinated, and sustained basis. This mission is implemented in the FBI's National Drug Strategy through a series of objectives which specifically delineate our role in drug investigations.

EFFECTIVE: 06/26/91

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2-1.3.2 Objective

The primary objective of the Bureau's Drug Program is to conduct effective, coordinated investigations against major drug trafficking organizations on a nationwide basis, ultimately neutralizing networks involved in the distribution of heroin, cocaine, marijuana and dangerous drugs, and seizing their illegal profits through forfeiture proceedings.

EFFECTIVE: 06/26/91

2-1.4 Counterterrorism

EFFECTIVE: 06/26/91

2-1.4.1 Definition

The Counterterrorism Program of the FBI principally consists of two groups of investigative matters involving acts of terrorism. One group involves the investigation of terrorist individuals or groups and is preventive in nature. The other group, the reactive type, deals with the terrorist act after it takes place.

EFFECTIVE: 06/26/91

2-1.4.2 Objective

Primary objectives of this program are to detect and prevent the activities of individuals or groups who are or will be involved in acts of violence and violation of Federal laws that are terrorist in nature.

EFFECTIVE: 06/26/91

2-1.5 White-Collar Crime



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EFFECTIVE: 11/20/90

2-1.5.1 Definition

These crimes are generally defined as those illegal acts characterized by deceit, concealment, violation of trust, and not dependent upon the application or threat of physical force or violence. They are committed to obtain money, property, or services; to avoid payment of money, property, or services; or to secure personal business advantage.

EFFECTIVE: 11/20/90

2-1.5.2 Objective

Our principal program objective is to detect, investigate, and provide investigative support in resolving white-collar criminal activities within the jurisdiction of the FBI.

EFFECTIVE: 11/20/90

2-1.5.3 Ranking of Activities

(1) Bank closings and bank embezzlements involving losses exceeding \$100,000.

(2) Fraud Against the Government involving federal government officials or losses exceeding \$25,000, bribery and other public corruption cases involving federal officials.

(3) State or local public corruption matters involving those officials at management or executive levels or involving systematic corruption within a state or local government agency.

(4) National and international wire and mail fraud schemes involving losses in excess of \$25,000 or ten or more victims.

(5) All other White-Collar Crime matters.

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EFFECTIVE: 10/01/97

||2-1.6 Violent Crimes and Major Offenders|

EFFECTIVE: 07/23/90

||2-1.6.1| Fugitive|Subprogram|

| (1) | Definition

The Fugitive|Subprogram|of the FBI includes locating and apprehending both Federal fugitives and those local fugitives for whom Federal assistance has been requested.

| (2) | Objective

The primary objective of this|subprogram|is the apprehension of violent subjects.

| (3) | Ranking of Activities

| (a) | Subjects wanted for a crime of violence against the person such as murder, manslaughter, forcible rape, robbery and aggravated assault; one convicted of such a crime within the past five years or one who has been incarcerated after conviction for a crime of violence and escapes from custody or supervision (parole, probation) prior to completion of their sentence or term of supervision.

| (b) | Subjects wanted for a crime involving the loss or destruction of property valued in excess of \$25,000, one being sought for criminal charges involving in excess of two ounces of heroin or cocaine, 1,000 pounds of marijuana or 10,000 dosage units of clandestinely manufactured dangerous or hallucinogenic drugs; one convicted of the above crimes within the past five years or one who has been incarcerated after conviction for such offenses and escapes from custody or supervision (parole, probation) prior to completion of their sentence or term of supervision.

| (c) | All others.

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EFFECTIVE: 07/23/90

||2-1.6.2| Government Reservation Crimes|Subprogram|

| |(1)| Definition

These crimes encompass theft or destruction of Government property and crimes on Government reservations or in Indian country. Also included are other miscellaneous crimes, such as Selective Service Act (SSA) violations, wherein the United States is or may be a party in interest.

| |(2)| Objective

The|subprogram|objective is the identification, investigation and prosecution of criminals and criminal groups whose crimes are (1) directed against property owned by the United States Government, (2) committed on property where the United States Government has jurisdiction and/or (3) involve the United States Government as a party in interest.

| |(3)| Ranking of Activities

| |(a)| Crime on Government Reservation involving death or serious bodily injury and other personal crimes of violence, i.e., kidnaping, assault, rape, robbery, etc.

| |(b)| Crime on Indian Reservation involving death or serious bodily injury and other personal crimes of violence, i.e., kidnaping, assault, rape, robbery, etc.

| |(c)| Crime on Indian Reservation - embezzlement and/or fraud involving tribal funds.

| |(d)| Other personal crimes on Government reservations or in Indian country.

| |(e)| All other incidents of theft or destruction of Government property.

| |(f)| All property crimes on Government reservations or in Indian country.

| |(g)| All other miscellaneous crimes wherein the

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United States Government is or may be a party in interest.

EFFECTIVE: 07/23/90

||2-1.6.3| Interstate Theft|Subprogram|

| (1) | Definition

The Interstate Theft|Subprogram|of the FBI consists principally of Thefts from Interstate Shipments, Interstate Transportation of Stolen Property, the Interstate Transportation of Stolen Motor Vehicles, the Destruction of Aircraft or Motor Vehicles and Interstate Transportation in Aid of Racketeering - Arson (non-LCN).

| (2) | Objective

The primary objective of the Interstate Theft|Subprogram|is the identification and resolution of property crimes within the jurisdiction of the FBI, particularly those of a patterned, commercialized, or major nature; and the neutralization of active criminals and organized crime groups.

| (3) | Ranking of Activities

The below violations are not ranked in order of importance. A successful program depends on the field offices identifying, in their territories, those major problem areas in property crimes wherein FBI attention can best produce significant results and impact on the problem.

| (a) | Theft From Interstate Shipment

- | 1. | Full Trailer/Container - Hijacking
- | 2. | Full Trailer/Container - Other
- | 3. | Less Than Trailer/Container (Package) -  
Air-Rail-Sea-Truck

| (b) | Interstate Transportation of Stolen Motor Vehicle - Commercialized Theft

| (c) | Interstate Transportation of Stolen Property

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- | Industrial Espionage
  - | 1. | Commercial/Institutional/Heavy Equipment,
  - | 2. | Personal/Residential/Hotel-Motel/Auto
  - | (d) | Destruction of Aircraft or Motor Vehicles
  - | (e) | Interstate Transportation in Aid of Racketeering
- Arson (non-LCN)

EFFECTIVE: 07/23/90

2-1.6.4 Violent Crimes Subprogram (See MIOG, Part I, 7-19, 91-33, 184-10, 192-22, 252-13, 256-10, 272-6.2; MAOP, Part II, 3-1.1, 3-1.2; Correspondence Guide-Field, 1-17.)

(1) Definition

The Violent Crimes Subprogram of the FBI principally consists of a group of reactive investigative matters involving the common characteristic of threatened or actual personal injury or loss of human life.

(2) Objective

Our primary objective in this subprogram is to produce the necessary immediate response to prevent personal injury, and secondarily to resolve those matters where the violation is an accomplished fact.

(3) Ranking of Activities

The response to each violation should adhere to the existing MIOG instructions for each classification. Set forth below is the composition of the Violent Crimes Subprogram by classification, subclassification, and character:

- (a) 7A - Kidnapping
- 7B - Kidnapping - International Parental Kidnaping Crime Act (IPKCA)
- (b) 9A - Extortion - All aggravated and/or specific threats or demands involving

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domestic and foreign mail and interstate communications.

9B - Extortion - All others, including nonaggravated and/or nonspecific mail and telephone threats.

9C - Extortion - Interstate Domestic Violence

9D - Extortion - Interstate Violation of a Protection Order

(c) 31B - White Slave Traffic Act - Non-LCN

31C - White Slave Traffic Act - Sexual Exploitation of Children

31D - White Slave Traffic Act - All other cases

(d) 56A - Election Laws - Threats against or personal injury to named persons, federal, state or local level - Violation of Title 18, USC, Section 245 (b)(1)(A)

(e) 89A - Assassinating, Kidnapping or Assaulting a Member of Congress

89B - Assaulting, Killing or Attempting to Kill a Federal Officer

89C - Assassinating, Kidnapping or Assaulting an Executive Department Head or Director, CIA

89D - Assassinating, Kidnapping or Assaulting a Supreme Court Justice

89E - Conspiracy to Impede or Injure an Officer

89F - Crimes Against Family Members of Federal Officials

(f) 91A - Bank Robbery

91B - Bank Burglary, Larceny, \$10,000 or more

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- 91C - Bank Burglary, Larceny, under \$10,000
- 91D - Bank Robbery, Burglary, Larceny Suspect Program
- 91E - Bank Robbery Clinics, Conferences and Seminars
- 91F - Bank Extortion
- (g) 145B - Interstate Transportation of Obscene Matter - Non-LCN
- 145C - Interstate Transportation of Obscene Matter - Sexual Exploitation of Children
- 145D - Interstate Transportation of Obscene Matter - All other cases
- (h) 164A - Crime Aboard Aircraft - Confirmed aircraft hijacking
- 164B - Crime Aboard Aircraft - Interference and Threats
- 164C - Crime Aboard Aircraft - All others
- (i) 166C - Interstate Transportation in Aid of Racketeering (Murder for Hire) - Other than organized crime
- 166E - Interstate Transportation in Aid of Racketeering (Violent Crimes/Street Gangs)- Other than organized crime
- (j) 175A - Assassinating, Kidnapping or Assaulting the President or Vice President
- 175B - Assassinating, Kidnapping or Assaulting a Presidential or Vice Presidential Staff Member
- 175C - Threats Against the President, Protection of the President
- (k) 178 - Interstate Obscene or Harassing Telephone

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Calls

- (i) Deleted
- (m) 184A - Police Killings - Investigation Requested  
184B - Police Killings - Other
- (n) 192B - Hobbs Act - Commercial Institutions  
192C - Hobbs Act - Armored Carriers
- (o) 244 - Hostage Rescue Team
- (p) 250 - Tampering with Consumer Products
- (q) 251A - Controlled Substances - Robbery  
251B - Controlled Substances - Burglary
- (r) 252A - National Center for the Analysis of  
Violent Crime/Violent Criminal  
Apprehension Program  
252B - National Center for the Analysis of  
Violent Crime/Criminal Investigative  
Analysis Program  
252C - National Center for the Analysis of  
Violent Crime/Research and Development  
Program  
252D - National Center for the Analysis of  
Violent Crime/Training Program  
252E - National Center for the Analysis of  
Violent Crime/Arson and Bombing  
Investigative Services Program  
252F - National Center for the Analysis of  
Violent Crime/Crisis Management Program
- (s) 256C - Hostage Taking - Nonterrorism Related  
(See MIOG, Part I, Section 256; MAOP,  
Part II, 3-1.1, 3-1.2.)

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(t) 272C - Money Laundering - Violent Crimes/Major  
Offenders Program

EFFECTIVE: 11/25/96

2-1.6.5 Violent Crimes and Major Offenders/Organized Crime Drug  
Enforcement Task Force Subprogram

(1) Definition

The Violent Crimes and Major Offenders/Organized  
Crime Drug Enforcement Task Force Subprogram of the FBI principally  
consists of a group of investigative matters involving street/drug  
gangs that use violence in furtherance of their drug enterprise.

(2) Objective

Our primary objective in this subprogram is the  
elimination of these violent drug/street gangs through the use of the  
task force concept and aggressive Federal prosecution.

(3) Ranking of Activities - (Also refer to "All SACs  
airtel, "National Strategy" dated 11/16/93).

(a) 92D\* - Racketeering Enterprise  
Investigations (REI) - Gangs

(b) 245D\* - Organized Crime Drug Enforcement  
(OCDE) Task Force - Gangs

EFFECTIVE: 02/16/94

2-2 OTHER PROGRAMS

EFFECTIVE: 07/23/90

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2-2.1 Deleted

EFFECTIVE: 07/23/90

2-2.1.1 Deleted

EFFECTIVE: 07/23/90

2-2.1.2 Deleted

EFFECTIVE: 07/23/90

2-2.1.3 Deleted

EFFECTIVE: 07/23/90

2-2.2 Applicant Investigations - Reimbursable and  
Nonreimbursable

EFFECTIVE: 07/23/90

2-2.2.1 Definition

The Applicant Program of the FBI consists of those investigations of a background nature conducted pursuant to statute, Executive order, or other governmental requests designed primarily to develop necessary information regarding an individual's character, reputation, associates, loyalty, and qualifications.

EFFECTIVE: 07/21/95

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2-2.2.2 Objective

The primary objective of this program is to select those individuals best qualified for FBI employment and conduct thorough, penetrative background investigations to ensure maintenance of the highest professional standards. In our efforts on behalf of other agencies, this program has as its goal the expeditious and careful development of all necessary background data to support agency decisions with respect to employment, appointment, clearance, etc.

EFFECTIVE: 07/23/90

2-2.2.3 Ranking of Activities

Due to the nature of this program, individual classifications are not ranked in priorities but cases are responded to on an individual basis.

- (1) United States Courts Applicants - Reimbursable
- (2) Departmental Applicants - Nonreimbursable
- (3) |Deleted|
- (4) Department of Energy - Reimbursable
- (5) Nuclear Regulatory Commission - Reimbursable
- (6) |Deleted|
- (7) Security of Government Employees - Reimbursable
- (8) Security of Government Employees - Nonreimbursable
- (9) |Deleted|
- (10) Special Inquiry - Reimbursable
- (11) Special Inquiry - Nonreimbursable
- (12) Bureau Applicants - Special Agent
- (13) Bureau Applicants - Support Personnel

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- (14) Applications for Pardon After Completion of Sentence  
- Non-reimbursable
- (15) Deleted
- (16) Drug Enforcement Administration - Reimbursable

EFFECTIVE: 07/23/90

2-2.3 Civil Rights

EFFECTIVE: 07/23/90

2-2.3.1 Definition

The Civil Rights Program of the FBI generally addresses those investigative matters which involve the actual or attempted abridgment of rights provided to the citizens and inhabitants of the United States under the Constitution or laws of the country.

EFFECTIVE: 07/23/90

2-2.3.2 Objective

It is the primary objective of this program to enhance and protect those rights through expeditious and thorough attention to matters within our investigative jurisdiction.

EFFECTIVE: 07/23/90

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2-2.3.3 Ranking of Activities

Because of the responsive nature of this program, the individual classifications are not ranked in priorities, but violations are responded to as the circumstances demand.

- (1) Civil Rights
- (2) Civil Rights - Voting Laws
- (3) Involuntary Servitude and Slavery
- (4) Civil Rights Act of 1964 - Criminal Interference
- (5) Civil Rights Act of 1964 - Civil Discrimination
- (6) Discrimination in Housing - Criminal Interference
- (7) Discrimination in Housing - All Other
- (8) Deleted
- (9) Equal Credit Opportunity Act
- (10) Federal Revenue Sharing
- (11) Civil Rights of Institutionalized Persons Act

EFFECTIVE: 07/23/90

2-2.4 FBI Security Program

EFFECTIVE: 07/23/90

2-2.4.1 Definition

The Security Program of the FBI consists of six operational program activities known as Industrial Security, Security Clearance Investigations, Personnel Security, Information Security, Physical Security, and Sensitive Compartmented Information/Special Access Program.

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EFFECTIVE: 07/23/90

2-2.4.2 Objective

The primary objective of this program is the protection of National Security Information (NSI) through the management of its six operational activities.

EFFECTIVE: 07/23/90

2-2.4.3 Ranking of Activities

The following activities are not ranked in any order of importance, but are equally significant to the functioning of the Security Program of the FBI.

(1) Personnel Security - Adjudications of FBI applicants and employees for access to NSI, as well as personnel security countermeasures.

(a) Adjudications - trustworthiness determinations made by the Security Programs Manager (SPM) pursuant to the provisions of Executive Order 10450.

(b) Countermeasures - proactive and preventive personnel security subprograms:

1. Marriage Subprogram - requires that employees notify the SPM of intended spouse's identity 60 days in advance of marriage.

2. Foreign Travel Subprogram - requires employees notify the SPM of all intended foreign travel 30 days in advance.

3. Five-Year Reinvestigation Subprogram - requires employees submit to a full-field reinvestigation at least once every five years. This reinvestigation includes the interviews of supervisors, co-workers, neighbors, references, associates, and roommates and verification of education, military service, and court actions. Also, criminal and indices searches are conducted on the employee and all individuals over the age of 16 residing with the

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employee. Adjudication of this reinvestigation determines the trustworthiness of an employee in accessing national security information. (See MIOG, Part I, 67-18, 67-18.1.1; MAOP, Part I, 20-26.)

4. Foreign Contact Subprogram - requires employees to notify the SPM in writing of all significant contact with non-U.S. citizens.

5. Outside Employment Subprogram - requires employees to notify the SPM of intended outside employment 30 days in advance.

6. Roommates Subprogram - requires employees to notify the SPM of all individuals (non-Bureau/nonmembers of the immediate family) with whom an employee resides or intends to reside with for a period of 30 days or more.

(2) Information Security - protection of NSI through security awareness programs; countermeasures for safeguarding hard-copy and electronic media information; conducting damage assessments for compromised NSI.

(3) Physical Security - ensures safety of FBI personnel and protection of NSI by preventing penetration of FBI facilities by hostile and/or unauthorized individuals, groups, or organizations.

(4) Sensitive Compartmented Information/Sensitive Accesses - ensures the continued protection of information obtained from extraordinarily sensitive sources through an access adjudication and briefing process developed by the Director of Central Intelligence, but administered by the SPM.

(5) Industrial Security

(a) Personnel Clearance Investigations - determines contractor trustworthiness for access to NSI.

(b) Facility Clearance Investigations - site inspections of contractor facilities to ensure ability to handle and safeguard NSI.

(c) Nonclassified Personnel/Access - approval of contract or non-FBI personnel access to FBI facilities to perform a contract or service not requiring exposure to NSI.

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(6) Security Clearance Investigations

(a) Classified Information Procedures Act (CIPA) - pursuant to requests from the Department of Justice (DOJ) Security Officer, security clearance investigations are conducted on U.S. District Court personnel, defense counsel and staff, as well as special prosecutors and staff, and in any case where classified information may be accessed by persons outside the Executive Branch, as a result of criminal or civil law violation investigations.

(b) Foreign Intelligence Surveillance Act (FISA) - requires security clearance investigations be conducted for issuance of clearance by DOJ to telecommunications personnel involved in installation or continuation of FISA court orders.

(c) Joint Task Forces - security clearance investigations for state or local law enforcement officers involved in joint investigative efforts with FBI personnel where classified information, sensitive operations, or sensitive locations are accessed by these persons.

(d) Other - security clearance investigations of persons outside the Executive Branch to whom classified information originated by, or in the possession of, the FBI will be released.

EFFECTIVE: 04/10/96

||2-2.5 Deleted - see 2-1.6.1|

EFFECTIVE: 07/23/90

||2-2.5.1 Deleted - see 2-1.6.1.|

EFFECTIVE: 07/23/90

||2-2.5.2 Deleted - see 2-1.6.1.|



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EFFECTIVE: 07/23/90

||2-2.5.3 Deleted - see 2-1.6.1.|

EFFECTIVE: 07/23/90

||2-2.6 Deleted - see 2-1.6.2|

EFFECTIVE: 07/23/90

||2-2.6.1 Deleted - see 2-1.6.2.|

EFFECTIVE: 07/23/90

||2-2.6.2 Deleted - see 2-1.6.2.|

EFFECTIVE: 07/23/90

||2-2.6.3 Deleted - see 2-1.6.2.|

EFFECTIVE: 07/23/90

||2-2.7 Deleted - see 2-1.6.3|

EFFECTIVE: 07/23/90

||2-2.7.1 Deleted - see 2-1.6.3|

EFFECTIVE: 07/23/90

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||2-2.7.2 Deleted - see 2-1.6.3|

EFFECTIVE: 07/23/90

||2-2.7.3 Deleted - see 2-1.6.3|

EFFECTIVE: 07/23/90

||2-2.8 Deleted - see 2-1.6.4|

EFFECTIVE: 07/23/90

||2-2.8.1 Deleted - see 2-1.6.4|

EFFECTIVE: 07/23/90

||2-2.8.2 Deleted - see 2-1.6.4|

EFFECTIVE: 07/23/90

||2-2.8.3 Deleted - see 2-1.6.4|

EFFECTIVE: 07/23/90

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SECTION 1. FBI NATIONAL ACADEMY

1-1 GENERAL INFORMATION

EFFECTIVE: 07/23/90

1-1.1 Facts About the National Academy (NA)

Established on 7/29/35, the NA course is 11 weeks in length, and is conducted at the FBI Academy, Quantico, Virginia. The primary purpose of the NA is to afford appropriate and meaningful education and training to executives and instructors from municipal, county, and state law enforcement agencies. There are no charges for tuition, books, laundry, dry cleaning or equipment used. Meals and lodging are also furnished all attendees without cost. Travel expense between their place of assignment and the Academy will be paid for all domestic municipal, county, and state officers. Round-trip air coach fare is furnished. Incidental personal expenses must be handled by the officer or his/her department. The curriculum covers such areas as: criminal law, police management, behavioral science, forensic science, law enforcement communication, fitness/health, and a specialized instruction program in the law enforcement arts. Applications from law enforcement agencies of limited jurisdiction and law enforcement activity will not be considered in absence of complete justification. Where any doubt exists, each application will be reviewed. A healthy lifestyle is encouraged.

EFFECTIVE: 07/14/95

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1-1.2 Qualifications for Attendance

Applicant must:

(1) Be of good moral character and reputation and outstanding in the law enforcement profession.

(2) Be nominated by the head of his/her agency without regard to race, color, sex or national origin.

(3) Be at least 25 years of age.

(4) Be a regularly appointed full-time law enforcement officer with a minimum of five years of law enforcement experience, without significant interruption, who agrees to remain in law enforcement a minimum of three years after graduation.

(5) Be in excellent health and physical condition, medically certified for strenuous physical exertion and regular participation in physical training. Certification must be made as a result of a physical examination by a medical doctor of the candidate's choice and at candidate's expense. Forms SF-88 and FD-300 must be submitted, reviewed and approved as a condition of acceptance prior to invitation. Candidate's weight must be within desirable limits for his/her height and frame or must score a body fat measurement of not more than 25.3 percent. All NA candidates are required to meet the weight standards by the deadline date established for each session. If a candidate is unable to meet the required deadline, he/she is to be removed from consideration until the weight is acceptable.

(6) Have at least a high school diploma or high school equivalency certificate.

EFFECTIVE: 07/14/95

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1-1.3 Nominating Candidates

(1) When an NA application is received by a field office, a 1-Dead file should be prepared. The receipt of the application should be acknowledged by the field office. Any withdrawal of a candidate for the NA by the head of an agency should be acknowledged in writing by the SAC.

(2) The office indices must be checked, Special Agents who deal directly with the department consulted, and any other additional sources necessary must be checked for information concerning the law enforcement agency recommending representation at the NA. The communication to FBIHQ nominating the candidate must show that this check has been made. If there is any information in the office files or otherwise known by the office revealing any difficulty with the agency or unfavorably reporting upon the integrity and efficiency of the agency, this information must be set out in the communication to FBIHQ, even though it has been furnished previously.

(3) When applicant is to be considered for a specific NA class, SAC, ASAC, field supervisor or Special Agents directly involved in NA matters will personally, formally interview applicant. The interviewer should review application for completeness and clarify any ambiguities during the interview. Interview Form FD-319 must be completed.

(4) When the field office is ready to recommend a candidate for a specific session, the office will send to FBIHQ by FD-456 appropriate forms, including application, interview form, and fingerprints. UACB, the field office will institute the investigation with a 21-day deadline for submitting completed results, by summary electronic communication, to FBIHQ.

(5) NA investigations should be completed no later than 120 days prior to the beginning of the session for which a candidate is recommended and in accordance with instructions reflected under major topic 1-2.

(6) Office of origin will set forth leads to lead offices on Form FD-456. No additional communications should be sent to FBIHQ until the investigation is completed, discontinued, or unless some express reason exists.

(7) Results of investigation should be promptly reported to FBIHQ, Attention: National Academy Admissions Office - Quantico,

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| by|electronic communication|summary as described under secondary topic  
1-2.3.

(8) Upon receipt of registration forms, Special Agent coordinator will ensure that applicant's course selection questionnaire is completed and returned as per instructions contained in the forms.

EFFECTIVE: 11/05/97

1-1.4 Invitation Policy Regarding Applicants (See Legal Attache Manual, Part I, 6-5.3)

(1) Upon review of applicant's completed investigative results, invitations to attend NA will be made by letter from FBIHQ. SAC and Agents assigned to SAC's office are not to promise applicant or his/her agency that he/she will attend a certain session of NA. SACs and Agents are to be extremely careful in relations with local authorities in order that no one can infer he/she will be attending next session.

(2) Upon receipt of a copy of letter of invitation, the SAC must cause an acceptance to be forwarded to FBIHQ without delay. If delay will occur or for some reason invitation will be declined, SAC shall notify FBIHQ immediately furnishing details as to situation. Because of the considerable disruption and confusion created as a result of a late cancellation, no standby candidate will be substituted for a primary candidate when the primary candidate is dropped from the program within (5) working days of reporting to Quantico.

(3) One week prior to the commencement of each NA session, the SAC must forward an|electronic communication|to the Bureau, Attention: Training Division, certifying that each of the prospective NA applicants scheduled to take firearms training is knowledgeable regarding FBI firearms range safety rules and has a reasonable proficiency with weapons used in our training. SAC will also certify that the applicant was advised that he/she is expected to attend all classes promptly and regularly during the NA session.

(4) Thirty days prior to a candidate reporting to the NA, field offices will certify that he/she meets the desirable weight or body fat standards. Those not meeting established standards should be

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rescheduled to a future session when they do meet the weight standards, and a standby candidate may be substituted to fill the vacancy. Should a field office send a candidate who is overweight, the candidate will be accepted into the program; however, the field office will be penalized by losing a slot for the next NA session.

EFFECTIVE: 11/05/97

1-1.5 Post Graduate Policy

(1) Graduates should be contacted by Agents within two weeks after graduation and by the SAC at the earliest practical opportunity.

(2) Advise FBIHQ of contacts by routing slip unless contacts provide information which would assist FBIHQ in improving NA program, in which case submit by electronic communication.

(3) Deleted

(4) Graduates to be invited to attend regular firearms training of Agents UACB.

(5) FBIHQ will add all NA graduates to a computerized mailing list.

(6) When information is received that an NA graduate moves out of a field office territory, his/her new residence should be verified. This pertains to NA graduates who are actively employed in law enforcement or are in retirement and eligible for continued membership in FBINA Associates. Upon verification, office of origin should forward NA graduate's file to field office covering his/her new residence. Office of origin should retain NA graduate's index card and make a notation on card that graduate has moved and his/her NA file has been sent to field office wherein he/she resides.

(7) Deleted

(8) SACs may designate or approve attendance of their Agent personnel at meetings and conferences of FBINA Associates when these events are held within the field office territory. It is expected that good judgment will be exercised in making such assignments, and SAC must coordinate travel to meetings and

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conferences held outside field office territory with and obtain approval from SAC of office covering territory to be visited. Spouses and families may accompany Bureau personnel to these meetings where no increase in costs to the government would result and there exist no other factors requiring disapproval. In this regard, an SAC may authorize on a case-by-case basis an Agent's spouse to travel in a Bureau automobile while the Agent is en route to and from a function in which the Agent has an official role, provided the Bureau vehicle is used exclusively as basic transportation to and from the FBI sanctioned function. The foremost consideration in granting such a request should be whether such travel would be considered to be in the best interest of the government. Among the factors to be considered are length of time of the function and distance to be traveled.

(See MIOG, Part II, 23-8.1; MAOP, Part I, 1-3.1; Part II, 1-2.1, 8-5.)

EFFECTIVE: 11/05/97

1-1.6 Deleted

EFFECTIVE: 11/05/97

1-2 APPLICANT INVESTIGATIONS

EFFECTIVE: 01/22/90

1-2.1 Investigative Guidelines

(1) A thorough investigation must be made of all National Academy (NA) applicants, supervised by the SAC, to determine if the applicant is an outstanding police officer. NA applicant investigation must be conducted with same degree of thoroughness and penetrative analysis as investigation of Special Agent applicants.

(2) The applicant's date of birth must be verified. This may be done through review of education records, employment records or



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other appropriate official sources. Resolve any discrepancies in date of birth through appropriate Bureau of Vital Statistics records.

(3) It is not necessary to interview references unless information developed during other facets of investigation would dictate otherwise.

(4) Former and present law enforcement employments and ranks held should be checked thoroughly. Birth date, time in law enforcement and education may be verified through a review of the applicant's personnel file.

(5) The applicant's superiors and a sampling of his/her associates in law enforcement must be interviewed with a serious effort to determine the applicant's competency as a law enforcement officer and his/her potential for advancement. This aspect of the investigation will carry significant weight in determining a police officer's suitability for NA training.

(6) Credit and arrest records must be searched in locales of residence on the applicant for the five-year period preceding the initiation of the investigation. All credit checks will be processed by contractor personnel at FBIHQ. Authority to Release Information Form (FD-406) must be completed by and obtained from the applicant at the time of initial interview and forwarded to FBIHQ.

(7) Field office indices must be searched on the applicant and his/her law enforcement agency. Results must be specifically reported.

(8) Applicant's physical condition must be ascertained not only by having applicant submit to physical examination and having results reported on Standard Form 88 but also by interviewing acquaintances. If an applicant has recently undergone a physical examination which will not be more than one year old on his/her anticipated graduation day from the NA, this examination reported on forms SF-88 and FD-300 will be acceptable. The applicant will bear the full expense of the examination.

(9) The highest level of education the applicant has attained must be verified. This may be accomplished by determining from his/her appropriate official personnel file, his/her highest diploma, equivalency, or degree. If the file does not reflect this information, the applicant's educational level must be verified through the appropriate educational institution.

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(10) Periods of time not accounted for in the application form must be ascertained, investigated, and the details furnished to FBIHQ.

(11) If, during investigation of applicant, matters arise reporting unfavorably upon law enforcement agency by which applicant is employed, this information should be brought to FBIHQ's attention with specific reference to the NA applicant. Such matters include complaints charging civil rights violations by members of the department, charges of graft or corruption, or uncooperative attitude by executive head or other members of the agency.

(12) Allegations reporting unfavorably upon character or reputation of applicant must be completely resolved.

(13) When a candidate previously investigated has not been invited to attend for reasons not precluding future attendance, investigation must be brought up to date if more than six months old. If investigation is less than six months but more than 90 days old, make current indices, credit and arrest checks; and report results in summary airtel in which appointment is recommended. All updated credit checks will be processed by contractor personnel at FBIHQ.

(14) If all investigation proves favorable, letter of invitation will be sent from FBIHQ.

(15) These procedures place full responsibility on the field for insuring that all NA attendees meet the high standards required.

EFFECTIVE: 12/10/91

1-2.2 Investigation of Military Service Candidates

It is not necessary to conduct full investigations of NA applicants of U.S. Military Services. Office of origin will be the office covering applicant's present place of assignment. Restrict investigations of U.S. Military candidates to the following unless information is obtained indicating additional inquiry is desirable:

(1) Name check of applicant in field office indices.

(2) Submission of the applicant's fingerprints to FBIHQ for search through Criminal Justice Information Services Division

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records.

(3) Verification of applicant's birth, education and law enforcement experience through review of military personnel file. Comment on applicant's service record as appropriate, e.g., awards, decorations, courtmartials, nonjudicial punishment, etc. Appropriate military intelligence records must be checked.

(4) Interview of the applicant's immediate superior and if practical, one or two of his/her associates in his/her current post of assignment. Inquiries should also be made of established sources at his/her current post of assignment making certain there is no information known to them which would preclude acceptance of the applicant.

(5) Credit and criminal checks of applicant at all places of residence in the United States for the five-year period preceding the initiation of the investigation. All credit checks will be processed by contractor personnel at FBIHQ. A completed and signed FD-406 should be forwarded to FBIHQ.

(6) Interview of applicants by SAC, ASAC, field supervisors or Special Agents directly involved in NA matters, the same as other applicants.

(7) Submit results of physical examination on SF-88 and FD-300. If applicant has undergone a physical examination that will be less than one year old on the anticipated day of his/her graduation from the NA, a copy of that physical accompanied by a completed FD-300 will satisfy this requirement.

(8) Results of investigation should be reported in the same manner as for local candidates and as explained below.

EFFECTIVE: 07/14/95

1-2.3 Reporting Results of Investigations

EFFECTIVE: 12/10/91

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1-2.3.1 |Lead|Offices

Investigative results will be furnished to the office of origin by|electronic communication|summary. Unfavorable or questionable information will be set forth in detail. Copies should not be forwarded to FBIHQ.

EFFECTIVE: 11/05/97

1-2.3.2 Office of Origin

Upon completion of all investigation, will submit an |electronic communication|summary of all results. |Investigative|notes must be maintained in the 1-A|evidence envelope|in the case file.

EFFECTIVE: 11/05/97

1-2.3.3 |Electronic Communication|Summary

The|electronic communication|summary, in clear, concise, succinct language, should be sent: Attention: National Academy Admissions Office - Quantico, and should contain the following information under the headings indicated:

(1) Birth - Set forth date and place of birth and statement that birth data has been verified.

(2) Education - Verification of high school graduation or receipt of high school equivalency certificate and higher education of applicant, if applicable. If applicant has acquired a college degree from an accredited institution and this is verified, it will not be necessary to confirm his/her high school graduation.

(3) Law Enforcement Experience - Dates of law enforcement service and rank attained; recommendation of pertinent superiors and peers should be included. National Academy graduates in applicant's department or neighboring departments should be contacted. If these contacts are favorable, a statement to that effect will suffice.

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Briefly summarize his/her experience and potential.

(4) Deleted

(5) Record Checks and Supportive Data - Status of the applicant's credit should be determined. Credit checks will be processed by contractor personnel at FBIHQ. Field offices must ensure the various release forms (i.e., FD-406) utilized in applicant-type investigations are completed and forwarded to FBIHQ. Include a statement that arrest records are negative regarding the applicant, if such is the case. If arrest records are located within the five-year period preceding the investigation, FULL DETAILS MUST BE OBTAINED AND SET OUT ALONG WITH THE RECOMMENDATION OF THE SAC REGARDING THE SAME. Also report in this section the results of field office indices checks.

(6) Deleted

(7) Physical Condition - Physical Examination Form SF-88 and accompanying FD-300 should be submitted as enclosures to the electronic communication summary if not previously submitted. A serology test and an EKG are required for all applicants. Applicants must meet Bureau weight standards and be physically qualified based on physical examinations and interviews with acquaintances.

(8) Recommendation of SAC - SAC should indicate that all investigative results have been reviewed AND COMMENT ON APPLICANT'S OUTSTANDING CHARACTERISTICS AS WELL AS OBSERVATIONS AND RECOMMENDATIONS ON ANY ADVERSE INFORMATION.

(9) Direct Invitation To - Provide the name and address of the agency head or other individual to whom the invitation should be directed. Usually this is the same individual who nominated the applicant.

EFFECTIVE: 11/05/97

1-2.4 Character - FBI National Academy Applicant

EFFECTIVE: 12/10/91

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1-3 ADVANCED SPECIALIZED TRAINING FOR CRIMINAL JUSTICE  
PERSONNEL AT THE FBI ACADEMY (NON-FBI NATIONAL ACADEMY)

In addition to the FBI National Academy Program, the Training Division schedules on an annual basis selected short-term courses to address the technical, investigative and management needs of the local law enforcement community. Details regarding selection criteria and administrative requirements are contained in the Manual of Administrative Operations and Procedures, Part II, Section 8-4.

EFFECTIVE: 04/28/86

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SECTION 2. NEUTRALITY MATTERS

2-1 STATUTES

Title 18, USC, Sections 956 and 958-962; Title 22, USC,  
Sections 1934 and 401

EFFECTIVE: 01/31/78

2-1.1 Section 956. Conspiracy to Injure Property of Foreign  
Government

"(a) If two or more persons within the jurisdiction of the United States conspire to injure or destroy specific property situated within a foreign country and belonging to a foreign government or to any political subdivision thereof with which the United States is at peace, or any railroad, canal, bridge, or other public utility so situated, and if one or more such persons commits an act within the jurisdiction of the United States to effect the object of the conspiracy, each of the parties to the conspiracy shall be fined not more than \$5,000 or imprisoned not more than three years, or both.

"(b) Any indictment or information under this section shall describe the specific property which it was the object of the conspiracy to injure or destroy."

EFFECTIVE: 01/31/78

2-1.2 Section 958. Commission to Serve Against Friendly Nation

"Any citizen of the United States who, within the jurisdiction thereof, accepts and exercises a commission to serve a foreign prince, state, colony, district, or people, in war, against any prince, state, colony, district, or people, with whom the United States is at peace, shall be fined not more than \$2,000 or imprisoned not more than three years, or both."

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EFFECTIVE: 01/31/78

2-1.3 Section 959. Enlistment in Foreign Service

"(a) Whoever, within the United States, enlists or enters himself, or hires or retains another to enlist or enter himself, or to go beyond the jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people as a soldier or as a marine or seaman on board any vessel of war, letter of marque, or privateer, shall be fined not more than \$1,000 or imprisoned not more than three years, or both.

"(b) This section shall not apply to citizens or subjects of any country engaged in war with a country with which the United States is at war, unless such citizen or subject of such foreign country shall hire or solicit a citizen of the United States to enlist or go beyond the jurisdiction of the United States with intent to enlist or enter the service of a foreign country. Enlistments under this subsection shall be under regulations prescribed by the Secretary of the Army.

"(c) This section and sections 960 and 961 of this title shall not apply to any subject or citizen of any foreign prince, state, colony, district, or people who is transiently within the United States and enlists or enters himself on board any vessel of war, letter of marque, or privateer, which at the time of its arrival within the United States was fitted and equipped as such, or hires or retains another subject or citizen of the same foreign prince, state, colony, district, or people who is transiently within the United States to enlist or enter himself to serve such foreign prince, state, colony, district, or people on board such vessel of war, letter of marque, or privateer, if the United States shall then be at peace with such foreign prince, state, colony, district, or people."

EFFECTIVE: 01/31/78



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2-1.4 Section 960. Expedition Against Friendly Nation

"Whoever, within the United States, knowingly begins or sets on foot or provides or prepares a means for or furnishes the money for, or takes part in, any military or naval expedition or enterprise to be carried on from thence against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States is at peace, shall be fined not more than \$3,000 or imprisoned not more than three years, or both."

EFFECTIVE: 01/31/78

2-1.5 Section 961. Strengthening Armed Vessel of Foreign Nation

"Whoever, within the United States, increases or augments the force of any ship of war, cruiser, or other armed vessel which, at the time of her arrival within the United States, was a ship of war, or cruiser, or armed vessel, in the service of any foreign prince or state, or of any colony, district, or people, or belonging to the subjects or citizens of any such prince or state, colony, district, or people, the same being at war with any foreign prince or state, or of any colony, district, or people, with whom the United States is at peace by adding to the number of the guns of such vessel, or by changing those on board of her for guns of a larger caliber, or by adding thereto any equipment solely applicable to war, shall be fined not more than \$1,000 or imprisoned not more than one year, or both."

EFFECTIVE: 01/31/78

2-1.6 Section 962. Arming Vessel Against Friendly Nation

"Whoever, within the United States, furnishes, fits out, arms, or attempts to furnish, fit out or arm, any vessel, with intent that such vessel shall be employed in the service of any foreign prince, or state, or of any colony, district, or people, to cruise, or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States is at peace; or

"Whoever issues or delivers a commission within the United States for any vessel, to the intent that she may be so employed-

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"Shall be fined not more than \$10,000 or imprisoned not more than three years or both..."

EFFECTIVE: 01/31/78

2-1.7 Title 22, USC, Section 1934. Munitions Control

This statute commonly known as Munitions Control Act, and regulations issued thereunder provide all persons engaged in manufacture, importation, or exportation of arms, ammunition, or implements of war must register with Department of State and secure a license from State Department to import or export these items.

Maximum penalty, \$25,000 or two years, or both.

EFFECTIVE: 01/31/78

2-1.8 Title 22, USC, Section 401. Seizure Powers

(1) "(a) Whenever an attempt is made to export or ship from or take out of the United States any arms or munitions of war or other articles in violation of law, or whenever it is known or there shall be probable cause to believe that any arms or munitions of war or other articles are intended to be or are being or have been exported or removed from the United States in violation of law, the Secretary of the Treasury, or any person duly authorized for the purpose by the President, may seize and detain such arms or munitions of war or other articles and may seize and detain any vessel, vehicle, or aircraft containing the same or which has been or is being used in exporting or attempting to export such arms or munitions of war or other articles. All arms or munitions of war and other articles, vessels, vehicles, and aircraft seized pursuant to this subsection shall be forfeited..."

(2) Executive Order 10863 conferred seizure power authority upon the Attorney General, and Department of Justice Order 200-60 redelegated this authority to the Director of the FBI. Department of Justice Order 271-62, section 0.89, printed in the Federal Register 6-1-62, restated this redelegation of authority to the Director. By agreement with the Treasury Department, this authority is to be exercised by the FBI only in Neutrality cases.

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EFFECTIVE: 06/18/87

2-1.9 Purpose and Procedure of Seizures

(1) The Department has advised that the dominant purpose of seizure powers under Section 401 is to accomplish forfeiture of arms and munitions of war which have been the subject of attempted exportation in violation of law. The FBI may make seizures under Section 401 only in those instances during investigations of violation of Neutrality statutes in which it develops that arms will be illegally exported, the seizures must be made to prevent the illegal exportation, and arrests are not to be made. It is mandatory, obviously, that probable cause exists to believe that the material is about to be illegally exported. If arrests are to be made, seizures must be made incidental to lawful arrest or on basis of a search warrant and not under Section 401.

(2) Prior to making any seizure under Section 401, FBIHQ authority must be obtained wherever possible, using whatever means of communication warranted under the circumstances. SAC may authorize seizure under Section 401 only in those instances in which time is of essence and does not permit prior communication with FBIHQ.

(3) The FBI has been delegated authority to institute civil administrative forfeiture proceedings pursuant to Section 401. The Forfeiture and Abandoned Property manual contains the step-by-step procedure to be followed for seizures and civil forfeiture proceedings (judicial and administrative) conducted in conjunction with this violation.

EFFECTIVE: 06/18/87

2-2 ELEMENTS

EFFECTIVE: 06/18/87

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2-2.1 Section 956

Persons within the jurisdiction of the U.S. conspire to damage property in a foreign country and owned by a foreign government with which the U.S. is at peace and one or more of the conspirators commits an act within the jurisdiction of the U.S. to carry out the conspiracy.

EFFECTIVE: 06/18/87

2-2.2 Section 958

Citizen of U.S. within its jurisdiction accepts and exercises a commission to serve against any country with which U.S. is at peace.

EFFECTIVE: 07/18/86

2-2.3 Section 959

(1) Anyone within U.S. enlists to serve in foreign service, or

(2) Anyone within U.S. hires or retains another to enlist or enter himself/herself in foreign service, or

(3) Anyone within U.S. hires another to go beyond jurisdiction of U.S. with intent to be enlisted in foreign service.  
(Not necessary that war exist anywhere to constitute violation of this section.)

EFFECTIVE: 07/18/86

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2-2.4 Section 960

(1) Anyone within U.S. knowingly begins or sets on foot any military or naval expedition or enterprise to be carried on from the U.S. against a country with which U.S. is at peace.

(2) Anyone within U.S. knowingly provides or prepares a means for or furnishes money for or takes part in any military or naval expedition or enterprise to be carried on from the U.S. against a country with which U.S. is at peace.

EFFECTIVE: 07/18/86

2-2.5 Section 961

Anyone within U.S. increases or augments force of any ship of war, which at time of arrival in U.S. was ship of war belonging to country at war with country at peace with U.S.

EFFECTIVE: 07/18/86

2-2.6 Section 962

(1) Anyone within U.S. fits out or arms, or attempts to do so, any vessel to be employed by any country to commit hostilities against country with which U.S. is at peace.

(2) Anyone within U.S. issues or delivers commission for any vessel with the intent to be so employed.

EFFECTIVE: 07/18/86

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2-2.7 Title 22, USC, Section 1934

(1) Requires all persons engaged in manufacture, importation, or exportation of arms, ammunition, or implements of war to register with Department of State and secure license from State Department for exportation or importation of these items.

(2) Violations of this section under investigative jurisdiction of U.S. Customs Service. Under normal circumstances alleged violations should be referred directly by field office receiving complaint to local office of U.S. Customs Service, except under circumstance outlined in (2-3).

EFFECTIVE: 07/18/86

2-3 POLICY

(1) Neutrality Matters are investigated by the FBI as criminal violations. They frequently have international ramifications. Since such violations have also become increasingly terroristic in essence, the Department of Justice, Department of State, National Security Council, Secret Service, as well as various other interested Government agencies, have expressed their continuing interest in such matters. FBIHQ must, therefore, be promptly notified of all alleged violations of Title 18, USC, Section 956 and Sections 958-962.

(2) Interview the complainant thoroughly to obtain full facts, identities of parties concerned, citizenship, nationality, and other available pertinent information. Thereafter, promptly report to FBIHQ in form of letterhead memorandum all facts developed so that same may be relayed to the Criminal Division of the Department for its review. Do not conduct any additional investigation until FBIHQ, at the request of the Criminal Division, so instructs.

(3) Duplication of effort has been experienced in the investigation of violations of Neutrality statutes under FBI jurisdiction which also involve violations of the Munitions Control Act (Title 22, USC, Section 1934). That Act is under the primary investigative jurisdiction of the U.S. Customs Service, Department of the Treasury.

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EFFECTIVE: 07/18/86

2-3.1 Jurisdictional Agreement with Treasury Department

In order to eliminate such duplication, the following agreement with the Treasury Department was entered into in 1955:

(1) If Customs Service receives an allegation of a violation of the Munitions Control Act (Title 22, USC, Section 1934), it will investigate all matters arising therefrom, even though they subsequently involve statutes relating to Neutrality violations within FBI jurisdiction. If, however, Customs determines in the course of its investigation facts which involve a conspiracy of major proportions against a foreign government, Customs may request the FBI to assume investigation. Field offices must not accept for investigation these referrals from the local office of Customs. In that instance inform Customs it should refer the matter to FBIHQ through its Headquarters in Washington, D. C. Advise FBIHQ immediately of such requests.

(2) If we receive complaint alleging possible violation of the Munitions Control Act (Title 22, USC, Section 1934), the complaint should be referred by the field office receiving it to the local office of U. S. Customs Service for appropriate action. Do not conduct any investigation.

(3) If we receive an allegation of violation of Neutrality laws under FBI jurisdiction (Title 18, USC, Sections 958-962, inclusive), we will investigate all phases including violations of the Munitions Control Act under Customs jurisdiction which may arise therefrom.

(4) If Customs receives an allegation of violation of Neutrality laws under FBI jurisdiction (Title 18, USC, Sections 958-962, inclusive), it will refer such allegations to FBI locally for any action warranted and Customs Service will not conduct any investigation.

(5) In all of the above instances, communications containing results of investigation will be exchanged by the FBI and the U. S. Customs Service to keep them completely informed. Appropriate liaison must be maintained by FBI field office and local offices of U.S. Customs Service.

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EFFECTIVE: 01/31/78

2-4 CHARACTER - NEUTRALITY MATTERS - (Identify Country)

EFFECTIVE: 01/31/78



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SECTION 3. OVERTHROW OR DESTRUCTION OF GOVERNMENT

3-1 STATUTE

Title 18, USC, Section 2385, proscribes advocacy of overthrowing or destruction of the Government of the United States, or government of any State, Territory, District or Possession thereof, or government of any political subdivision therein by force or violence.

EFFECTIVE: 01/31/78

3-2 INSTRUCTIONS

You are referred to Section 100, Part I, MIOG, because advocating the overthrow or destruction of Government has now been incorporated in that section.

EFFECTIVE: 01/31/78

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SECTION 4. FIREARMS ACTS

4-1 STATUTES

- (1) Title 18, USC, Sections 921-930
- (2) Deleted
- (3) Title 26, USC, Sections 5801-5872

EFFECTIVE: 06/26/91

4-1.1 Title 18, Sections 921-930  
Gun Control Act of 1968 or  
State Firearms Control Assistance Act

The Gun Control Act principally (1) prohibits the shipment, transfer or receipt of firearms or ammunition in interstate or foreign commerce to or by nonfederally licensed persons; (2) licenses manufacturers, importers and collectors of, and dealers and pawnbrokers, in, firearms and ammunition; (3) regulates imports through a permit system; (4) restricts the use of certain ammunition; (5) prohibits the possession of firearms and dangerous weapons in federal facilities; (6) provides for an additional five-year term of imprisonment for one who uses or carries a firearm during a violent or drug trafficking crime (see MIOG, Part I, 281-2.1.18).

EFFECTIVE: 05/10/96

4-1.2 Deleted

EFFECTIVE: 06/26/91

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4-1.3 Title 26, Sections 5801-5872, National Firearms Act

This act imposes a tax and registration on making or transfer of all fully automatic weapons, sawed-off rifles and shotguns, certain firearms oddities and destructive devices.

EFFECTIVE: 06/26/91

4-2 POLICY

The FBI has only a secondary jurisdiction over the enforcement of the National Firearms Act, and the State Firearms Control Assistance Act. Primary investigative jurisdiction rests in the U.S. Treasury Department and has been delegated by the Secretary of the Treasury to the Bureau of Alcohol, Tobacco and Firearms. The Internal Revenue Service still has jurisdiction over the collection of taxes imposed by these statutes and issuing the transfer orders as provided by the National Firearms Act. The Bureau of Alcohol, Tobacco and Firearms enforces the criminal violations. Therefore, unless a violation of the National Firearms Act or the State Firearms Control Assistance Act grows out of a violation within the FBI's primary investigative jurisdiction, no investigation should be conducted and any complaint received should be referred to the Bureau of Alcohol, Tobacco and Firearms. Pertinent information concerning convictions obtained by the FBI under these acts should be furnished to the nearest regional office of the Bureau of Alcohol, Tobacco and Firearms. This may be furnished in a form of a short dissemination memorandum.

EFFECTIVE: 06/26/91

4-3 INVESTIGATIVE PROCEDURE

(1) Active investigation should be conducted by the FBI in National Firearms Act or State Firearms Control Assistance Act violations when these violations directly relate to any investigation over which the FBI has primary investigative jurisdiction. This will include, but not be limited to, FBI investigations of domestic security/terrorism matters.

(2) Every Agent should immediately make certain that the firearm in the possession of the subject or alleged to have been

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transported in interstate or foreign commerce is a weapon meeting the definition of a firearm by the National Firearms Act or the State Firearms Control Assistance Act.

(3) When necessary to trace firearms that are covered by the National Firearms Act Amendment of 1968, which includes sawed-off shotguns, machine guns, shotgun pistols, bazookas, automatic weapons, odd noncommercial weapons, and explosive and incendiary devices, registered with the Bureau of Alcohol, Tobacco and Firearms (ATF) and to obtain documentary evidence of nonregistration of particular weapons or to determine if a subject or suspect has registered weapons other than those being traced, requests should be made through the appropriate district office of ATF. Furnish the type of firearms or explosive and incendiary device, including manufacturer, model, caliber or gauge, barrel length, overall length, serial number, and name and address of interested U.S. Attorney (USA). If certification is needed for court proceeding, this will be furnished directly to the interested USA by ATF.

(4) To trace all regular and sporting guns during normal business hours, the interested FBI field office should call directly to ATF Headquarters and furnish as much of the following information as available: priority of request (urgent, expedite, routine), requesting agency, location and telephone number, date, Special Agent's name, manufacturer, caliber or gauge, magazine or cylinder capacity, barrel length, finish, serial number, country of origin, any other identifying marks, and reason for trace. ATF 24-hour-a-day telephone numbers for receiving requests is [REDACTED] 62. If an emergency exists after business hours, ATF Headquarters Command Center, which operates 24 hours a day, will initiate traces. Command Center FTS number is [REDACTED]

(5) If ammunition is being considered, the particular ammunition under investigation should be carefully described to make certain it meets the requirements of the ammunition section of the State Firearms Control Assistance Act.

(6) Where the basis of prosecution is one of the provisions of the State Firearms Control Assistance Act requiring proof of a prior conviction of or an indictment for a crime punishable by imprisonment for a term exceeding one year, such a crime may be either a state or a Federal offense and in either instance the USA should be consulted as to the proper method of introducing evidence of the prior state or Federal conviction.

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EFFECTIVE: 06/26/91

4-4 CHARACTER

National Firearms Act or State Firearms Control Assistance  
Act, depending upon the type of violation being investigated.

EFFECTIVE: 06/26/91

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SECTION 5. INCOME TAX

5-1 INCOME TAX

The Internal Revenue Service, under the direction of the Commissioner, has general supervision over the determination, assessment, and collection of all internal revenue taxes. Violations of the Federal income tax laws which are reported to FBIHQ are forwarded directly to the Commissioner of Internal Revenue Service, Washington, D. C. Similar information furnished to field offices should be forwarded to the nearest district director of Internal Revenue Service in the field.

EFFECTIVE: 01/31/78

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SECTION 6. INTERSTATE TRANSPORTATION OF STRIKEBREAKERS

6-1 STATUTE

Title 18, USC, Section 1231.

EFFECTIVE: 10/18/88

6-1.1 Elements

(1) Subject, who is not operating as common carrier:

(a) Willfully transports any person who is employed  
or is to be employed, or

(b) Knowingly travels himself/herself

(c) In interstate or foreign commerce

(2) For the purpose of obstructing or interfering by  
force or threats with either:

(a) Peaceful picketing by employees during any labor  
controversy affecting wages, hours, or conditions of labor, or

(b) Exercise by employees of any of rights of self-  
organization or collective bargaining.

EFFECTIVE: 10/18/88

6-2 POLICY

Upon receipt of complaint of information indicating a  
possible violation, obtain opinion of USA as to whether there is  
sufficient indication therein of a violation to justify investigation.  
Advise FBIHQ in the event complaint or information concerns an  
extremely prominent or controversial figure, or if the circumstances  
dictate a need to do so.

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EFFECTIVE: 10/18/88

6-3 REPORTING PROCEDURES

(1) Advise FBIHQ by airtel within 60 days setting forth the facts of the complaint and a succinct summary of the preliminary investigation conducted.

(2) A closing airtel should be submitted to FBIHQ restating the predication for opening the investigation, summarizing the investigative findings and detailing the disposition of the investigation.

EFFECTIVE: 10/18/88

6-4 INVESTIGATIVE PROCEDURES

In conducting logical investigation:

(1) Establish identity, not only of actual employer who is having labor difficulties and who pays wages of strikebreakers who are sent to the employer, but also of all persons who transported or caused strikebreakers to be transported to employer, such as employment or detective agency operators.

(2) Obtain details of all overt acts by those transported after arrival at destination, including date of arrival, how soon thereafter overt acts took place and what other activities intervened.

(3) Obtain criminal and employment records of those transported as evidence bearing upon whether they were employed as bona fide and qualified workers rather than as strikebreakers.

(4) Establish:

(a) Existence of labor controversy and peaceful picketing, or other activities in connection with self-organization or collective bargaining

(b) How these activities were interfered with by strikebreakers and extent of interference. Consider interviews of union officials and examination of union records regarding this.



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(5) In cases involving interference with picketing, determine whether it was peaceful. Consider interviews of employers, workers who continued to work and crossed picket lines for this purpose, police officers assigned to maintain order on picket line, and check of police records.

EFFECTIVE: 10/18/88

||6-5| PENALTIES

Not more than \$5,000 fine and/or not more than two years' imprisonment.

EFFECTIVE: 02/08/80

||6-6| CHARACTER - INTERSTATE TRANSPORTATION OF STRIKEBREAKERS

EFFECTIVE: 02/08/80

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SECTION 7. |KIDNAPPING|

7-1 STATUTES

| Title 18, USC, Sections|1201, 1202 and 1204.|

EFFECTIVE: 11/09/94

7-1.1 Section 1201. Kidnapping (See MIOG, Part I, 7-1.3,  
89-2.2(8).)

"(a) Whoever unlawfully seizes, confines, inveigles,  
decoys, kidnaps, abducts, or carries away and holds for ransom or  
reward or otherwise any person, except in the case of a minor by the  
parent thereof, when --

"(1) the person is willfully transported in  
interstate or foreign commerce;

"(2) any such act against the person is done within  
the special maritime and territorial jurisdiction of the United  
States;

"(3) any such act against the person is done within  
the special aircraft jurisdiction of the United States as defined in  
|section 46501 of title 49;|

"(4) the person is a foreign official, an  
internationally protected person, or an official guest as those terms  
are defined in section 1116(b) of this title, or

"(5) the person is among those officers and employees  
designated in Section 1114 of this title and any such act against the  
person is done while the person is engaged in, or on account of, the  
performance of official duties,

"shall be punished by imprisonment for any term of years or for life."

"(b) With respect to subsection (a)(1), above, the failure  
to release the victim within 24 hours after he shall have been

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unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away shall create a rebuttable presumption that such person has been transported in interstate or foreign commerce.

"(c) If two or more persons conspire to violate this section and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life.

"(d) Whoever attempts to violate subsection (a)(4) or (a)(5) shall be punished by imprisonment for not more than twenty years.

"(e) If the victim of an offense under subsection (a) is an internationally protected person, the United States may exercise jurisdiction over the offense if the alleged offender is present within the United States, irrespective of the place where the offense was committed or the nationality of the victim or the alleged offender. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 46501(2) of title 49.

"(f) In the course of enforcement of subsection (a)(4) and any other sections prohibiting a conspiracy or attempt to violate subsection (a)(4), the Attorney General may request assistance from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

"(g) Special rule for certain offenses involving children.

"(1) To whom applicable. -If-

"(A) the victim of the offense under this section has not attained the age of eighteen years; and

"(B) the offender-

"(i) has attained such age; and

"(ii) is not-

"(I) a parent;

"(II) a grandparent;

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"(III) a brother;

"(IV) a sister;

"(V) an aunt;

"(VI) an uncle; or

"(VII) an individual having legal  
custody of the victim;

"the sentence under this section for such offense shall be  
subject to paragraph (2) of this subsection."

"(2) Guidelines.-The United States Sentencing  
Commission is directed to amend the existing guidelines for the  
offense of 'kidnapping, abduction, or unlawful restraint,' by  
including the following additional specific offense  
characteristics:..."

"(h) As used in this section, the term 'parent' does not  
include a person whose parental rights with respect to the victim of  
an offense under this section have been terminated by a final court  
order."

EFFECTIVE: 12/23/96

7-1.2 Section 1202. Ransom Money

"Whoever receives, possesses, or disposes of any money or  
other property, or any portion thereof, which has at any time been  
delivered as ransom or reward in connection with a violation of  
section 1201 of this title, knowing the same to be money or property  
which has been at any time delivered as such ransom or reward, shall  
be fined not more than \$10,000 or imprisoned not more than ten years,  
or both."

EFFECTIVE: 07/11/85

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| 7-1.3 | Deleted |

EFFECTIVE: 12/23/96

| 7-1.4 Section 1204. International Parental Kidnaping Crime Act

"(a) Whoever removes a child from the United States or retains a child (who had been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights shall be fined under this title or imprisoned not more than three years, or both.

"(b) As used in this section---

"(1) the term 'child' means a person who has not attained the age of 16 years; and

"(2) the term 'parental rights,' with respect to a child, means the right to physical custody of the child---

"(A) whether joint or sole (and includes visiting rights); and

"(B) whether arising by operation of law, court order, or legally binding agreement of the parties.

"(c) It shall be an affirmative defense under this section that---

"(1) the defendant acted within the provisions of a valid court order granting the defendant legal custody or visitation rights and that order was obtained pursuant to the Uniform Child Custody Jurisdiction Act and was in effect at the time of the offense;

"(2) the defendant was fleeing an incidence or pattern of domestic violence;

"(3) the defendant had physical custody of the child pursuant to a court order granting legal custody or

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visitation rights and failed to return the child as a result of circumstances beyond the defendant's control, and the defendant notified or made reasonable attempts to notify the other parent or lawful custodian of the child of such circumstances within 24 hours after the visitation period had expired and returned the child as soon as possible.

"(d) This section does not detract from The Hague Convention on the Civil Aspects of International Parental Child Abduction, done at The Hague on October 25, 1980."

EFFECTIVE: 11/09/94

7-1.4.1 Reference in the text of Title 18, U.S. Code, Section 1204

Sense of the Congress regarding Use of Procedures Under the Hague Convention - "It is the sense of the Congress that, inasmuch as use of the procedures under the Hague Convention on the Civil Aspects of International Parental Child Abduction has resulted in the return of many children, those procedures, in circumstances in which they are applicable, should be the option of first choice for a parent who seeks the return of a child who has been removed from the parent."

EFFECTIVE: 11/09/94

7-1.4.2 Hague Convention Signatories

(1) The United States signed the Convention in 1988 and implemented federal legislation under the International Child Abduction Remedies Act (Title 42, USC, 11601, 1988).

(2) At present, the Convention is in force in 37 countries which include: Argentina, Australia, Austria, the Bahamas, Belize, Bosnia-Herzegovina, Burkina Faso, Canada, Chile, Croatia (formerly Yugoslavia), Denmark, Ecuador, Finland, France, Germany, Greece, Honduras, Hungary, Ireland, Israel, Luxembourg, Macedonia, Mauritius, Mexico, Monaco, Netherlands, New Zealand, Norway, Panama,

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Poland, Portugal, Romania, Spain, Sweden, Switzerland, the United Kingdom, and the United States.

EFFECTIVE: 11/09/94

7-1.4.3 Comments and Clarifications regarding the Hague Convention on the Civil Aspects of International Parental Child Abduction

Hague Convention Remedies

(1) The Hague Convention is an agreement among its signatories that, subject to certain limited exceptions and conditions, a child who is habitually resident in one country that is a party to the Convention and who is removed to or retained in another country that is a party to the Convention in breach of the left-behind parent's custody rights shall be promptly returned to the country of habitual residence. This creates a treaty obligation to return an abducted child under 16 years of age if application is made within one year from the date of the wrongful removal or retention.

(2) After one year, the court is still obligated to order the child returned unless the person resisting return demonstrates that the child is settled in the new environment. A court may refuse to order a child returned if there is a grave risk that the child would be exposed to physical or psychological harm or otherwise placed in an intolerable situation in his or her country of habitual residence. A court may also decline to return the child if the child objects to being returned and has reached an age and degree of maturity at which the court can take account of the child's views. Finally, the return of the child may be refused if the return would violate the fundamental principles of human rights and freedoms of the country where the child is being retained.

(3) Hague Convention remedies should be sought as soon as possible after an abduction or wrongful retention has taken place. In order to apply for the return of a child a parent must exercise a "right of custody" which includes "rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence." Each country that is a party to the Convention has designated a Central Authority to carry out specialized duties under the Convention. An application may be submitted either

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to the U.S. Central Authority, (CCS) or directly to the Central Authority where the child is being held.

(4) Congress, in enacting this statute expressed the intent that nothing in the new IPKCA should be construed as superseding the "1980 Hague Convention on the Civil Aspects of International Child Abduction," and that the Hague Convention civil remedies are the procedures of choice in international parental kidnap matters.

EFFECTIVE: 11/09/94

7-1.4.4 Preliminary DOJ Policy on Reported Violations of the IPKCA

(1) The Department of Justice (DOJ) has stated that the Hague Convention, where applicable, should be the option of first choice for a parent who seeks the return of an abducted child from an extraterritorial location. This policy is based on the success of the Hague Convention and the belief that the existence of pending criminal charges against the abducting parent may adversely impact the willingness of foreign courts to order the return of the child.

(2) Even in situations where the abducted child is taken to a non-Hague Convention country, coordination through the Departments of Justice and State may provide a means to determine the child's welfare and whereabouts and effect the return of the abducted child.

(3) Based on the above, prior approval must be obtained by the local United States Attorney's office from the Criminal Division, DOJ, before the initiation of a prosecutive action (i.e., application for arrest warrant) to enforce the IPKCA.

EFFECTIVE: 11/09/94



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7-2 VENUE

(1) Venue lies in any district from, through or into which the defendant transported the kidnaped person in interstate commerce. Generally, the field office covering the place of abduction is considered office of origin (00).

(2) If a Federal officer or employee is abducted outside the jurisdiction of any particular state or district, venue shall be in the district in which the offender or any one of two or more joint offenders is arrested or is first brought. When this occurs, the 00 will be the field office covering the judicial district where prosecution is pursued.

(3) If such offender or offenders are not so arrested or brought into any district, an indictment for kidnaping may be filed in the district of the last known residence of the offender(s) or if no such residence is known, the indictment may be filed in the District of Columbia. Again, the 00 would be the office where the indictment is filed.

EFFECTIVE: 07/11/85

7-3 DEFINITIONS

(1) The term "United States" is defined in Title 18, USC, Section 5.

(2) The term "special maritime and territorial jurisdiction of the United States" is defined in Title 18, USC, Section 7. (See MIOG, Part II, 1-1.4.)

(3) The term "special aircraft jurisdiction of the United States" is defined in Title 49, USC, Section 46501. (See MIOG, Part I, 164-3.)

(4) The term "parent" in Section 1201, does not include a person whose "parental rights" have been permanently terminated by a final court order. The Criminal Division, Department of Justice, advised that the term "parental rights" is generally defined in Title 18, USC, Section 1204, and the term "final court order" applies to the various procedural findings made by a state court.

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EFFECTIVE: 12/23/96

7-4 COMMENTS AND CLARIFICATIONS REGARDING THE FEDERAL  
KIDNAPING STATUTE

EFFECTIVE: 07/11/85

7-4.1 Instituting Investigation

(1) Every report of a violation wherein circumstances indicate the person has or possibly has been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away, though not accompanied by a demand for ransom, reward or otherwise, is to be afforded an immediate preliminary inquiry to determine if an investigation under the Federal Kidnaping Statute is warranted. There must be an evaluation of all the evidence, circumstances and information to determine whether the sum total indicates that a person may have been unlawfully seized, etc.

(2) All Special Agents should fully understand that all elements of the Federal Kidnaping Statute need not be present in order to institute a preliminary inquiry.

(3) In instances when a Federal officer or employee designated in Title 18, USC, Section 1114, is abducted while the person is engaged in, or on account of, the performance of his or her official duties, a kidnaping investigation should be immediately instituted. It should be noted that the person kidnaped need not be transported in interstate or foreign commerce in order to meet the elements of Subsection (a) (5) of Title 18, USC, Section 1201.

EFFECTIVE: 07/11/85

7-4.2 The Terms, "Seized," "Confined," "Inveigled," "Decoyed,"  
"Kidnaped," "Abducted," and "Carried Away"

For the purposes of this section, the mention of one or more of the above terms includes all of the above terms through inference.

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EFFECTIVE: 07/11/85

7-4.3 The Clause "holds for ransom or reward or otherwise"

(1) Kidnapings are committed for reasons other than just ransom or reward. Among the many motivations for a kidnaping are sexual assault, abuse or exploitation; child stealing; romance; custodial or domestic disputes; religious or cult considerations; deprogramming; political considerations; narcotic involvements; retribution; and transportation in connection with other crimes. These additional motivations should be considered within the understanding of the term "otherwise."

(2) Simply, the kidnaping must be with intent to secure some benefit for the kidnaper.

EFFECTIVE: 11/18/83

7-4.4 24-Hour Presumptive Clause

(1) All Special Agents should be crystal clear in their understanding concerning what the 24-hour presumptive clause means and what it does not mean. The clause does not create a presumption of kidnaping, but only a presumption of interstate transportation after 24 hours in cases in which evidence exists that the victim has been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted or carried away.

(2) The fact that the law creates a rebuttable presumption of interstate transportation after 24 hours in cases where there is evidence of an abduction makes it obvious that, in order to make a sound determination, an immediate preliminary inquiry should be initiated (refer to 7-4.1). There will be instances, of course, where a clear-cut abduction exists and it is necessary to immediately institute an investigation under the Federal Kidnaping Statute without waiting for the lapse of 24 hours.

EFFECTIVE: 11/18/83

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7-4.5 Mysterious Disappearance of a Minor of Tender Years

(1) The mysterious disappearance of a minor, especially a minor of tender years, under circumstances which suggest involuntariness, abduction, etc., is of special concern and should receive an immediate FBI response. A minor is defined under federal law as any individual less than 18 years of age. A "minor/child of tender years," is generally defined as less than 8 years of age. This age range is used because children of this age group generally have not established independence from parental control, and generally do not have the survival skills necessary to protect themselves from physical abuse and exploitation.

(2) Historically, minors of tender years mysteriously disappear with no indicia of abduction. These disappearances occur while at their residences, while playing in their neighborhoods or at playgrounds, while on the way to and from school and at school, and while shopping with relatives or performing shopping errands for relatives. (See (5) below.)

(3) In many cases, these minors of tender years are later found to have been the victims of foul play or are never again seen.

(4) In these cases, considerations for instituting a preliminary inquiry should transcend indicia of abduction. Considerations should include the results of searches by local authorities, reports of suspicious persons and events, the child's past behavioral patterns, the child's capability to wander or run away from home and the circumstances surrounding the mysterious disappearance. (See (5) below.)

(5) For example, in the case of a three-month-old child mysteriously disappearing from a crib or shopping cart, or a seven year old mysteriously disappearing under circumstances listed in 7-4.5(2), and after exploring those considerations listed in 7-4.5(4), it may become necessary to institute a preliminary kidnaping inquiry based upon a logical inference of abduction.

(6) Preliminary inquiries instituted in these matters should be closely coordinated with the USA at the very onset inasmuch as a subsequent opinion regarding Bureau jurisdiction under the Federal Kidnaping Statute is likely to be sought. Field offices should remain alert to the fact that FBI participation in these cases may also be offered or supported through the use of the Domestic Police Cooperation Investigation (62D classification), the National Center for the Analysis of Violent Crime (252 classification), FBI

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forensic and Laboratory support, and other FBI classification and investigative resources.

EFFECTIVE: 11/09/94

7-4.6 Kidnaping of an Infant - Nontraditional Abduction

(1) As in the cases involving the mysterious disappearances of minors of tender years, abductions of an infant are usually not carried out with the usual motives of ransom, profit, sexual interaction, custody disputes, etc. The CID, FBIHQ, and the National Center for the Analysis of Violent Crime have closely studied infant abductions and have formulated a series of logical investigative steps.

(2) The following investigative steps are being furnished to assist field offices that institute kidnaping investigations wherein the victim is an infant. These suggested procedures are not all inclusive nor should they be construed as mandatory. They are being furnished to supplement the experience and knowledge of the case Agent.

(a) Determine if the motivation for the abduction is traditional (i.e., ransom, sexual exploitation) or if it appears to be a nontraditionally motivated abduction (the subject is a person who wants a child to have as his/her own).

(b) If it is a nontraditionally motivated abduction, conduct a thorough crime scene search and neighborhood investigation. This type of abduction frequently occurs in hospitals and the perpetrator may well have visited the scene prior to committing the abduction, i.e., asking questions about hospital schedules, procedures, etc.

(c) If the abduction occurred at a hospital, review the records of that hospital and nearby hospitals for recent infant deaths, miscarriages, and hysterectomies.

1. If the crime occurred at some location other than a hospital, hospitals in the vicinity of the scene of the abduction should be checked as outlined above.

2. It is suggested that these hospital checks

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go back two years in time.

(d)

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(e) Be alert to unwitnessed home or early births when the woman or her partner is out of town at the time of birth.

(f) The strategy that has proven most effective in these cases is the cooperative involvement of the media. In this regard, it is imperative that the law enforcement agencies, as well as any other entities involved, including the victim's family/physician, speak with "one voice." There should be one and only one source of information for the media. If the wrong information is aired, the potential exists that the kidnaper will kill or "discard" the victim.

(3) The Behavioral Science Investigation Support Unit (BSISU) should be consulted prior to the release of any information to the media. BSISU will assist the field in conducting a coordinated media campaign.

Factors considered by the BSISU and the field office will be:

(a) Who is to address the media (family member, FBI, police, etc.)

(b) How much information should be released?

(c) Degree of family involvement

(d) What information should be held back so that media interest can be maintained?

(e) What language/terminology should be used?

(f) Minimization of the gravity of the act. This is done in an attempt to elicit information from the family and friends of the subject. This is essential; as in the majority of cases, the abductor does not voluntarily return the victim.

(4) In examining 30 infant abductions the following generalities were drawn:

(a) The perpetrator in each instance was a female,

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except in one case where the subject was a homosexual.

(b) The ages of the subjects cluster in two groups: 16 to 21 years and 32 to 42 years. These groups approximate the beginning and end of childbearing years.

(c) The older subject may have a significantly older or younger male partner.

(d) The abduction is intraracial.

(e) Prior to the commission of the crime, the subjects displayed an excessive interest in other people's children.

(f) The female subjects felt that in order to maintain an existing relationship with their male partner, they must provide a child and further that they must "bear" a child. As a result, a significant number of female subjects feigned pregnancy. As the feigned pregnancy comes to term the subjects become desperate and need to produce a baby. It is at this point that the abduction occurs with the female subject claiming the victim as her new baby.

(g) In those instances where the subjects feigned a pregnancy, their male partners appeared to be very gullible and believed the victims were their own children.

(h) The use of a ruse by the subjects is common. In hospital abductions the subjects impersonated a nurse or hospital employee. When the abductions took place at a residence, the subjects would pretend to be seeking employment or asked to use the phone, etc. Although the subject's motivation in these cases is to obtain a child, Agents should treat them with caution as they have been known to resort to violence.

(5) Questions regarding nontraditionally motivated infant abductions should be directed to BSISU and CID.

EFFECTIVE: 02/20/90

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7-4.7 Parental Kidnapping of His/Her Own Minor (See MIOG, Part I, 88-7.1.)

(1) As specifically set forth in Title 18, USC, Section 1201 (a), a parent cannot be prosecuted under the federal Kidnapping Statute for kidnapping his/her own minor. However, on 12/2/93, the International Parental Kidnaping Crime Act of 1993 was enacted into law; this legislation created a new section under Title 18, USC, Section 1204, which makes the kidnapping or abduction of a minor by a natural parent accompanied by removal or retention of the child outside the United States a federal violation.

(2) Section 1201(h) defines a "parent" and specifically EXCLUDES a person whose parental rights have been permanently terminated by a final court order. Reports of parental abductions wherein the abductor is an individual whose parental rights have been legally terminated should be promptly discussed with the United States Attorney, to determine if federal prosecution is warranted under Section 1201.

(3) In a custodial or domestic dispute where it is a known fact that one parent has taken his/her own minor against the wishes of the other parent, and the child remains within the United States, no kidnapping investigation should be initiated. However, upon receipt of such a complaint; reference should be made to Part I, Section 88, of this manual entitled "Unlawful Flight to Avoid Prosecution, Custody, Confinement and Giving Testimony," wherein procedures are set forth for unlawful flight to avoid prosecution assistance in interstate parental kidnapping cases.

(4) Instances of parental kidnap/abduction with the intent to deprive one parent of their parental rights and accompanied by removal and/or retention outside the United States should be addressed under Title 18, USC, Section 1204, and a kidnap investigation or preliminary inquiry initiated.

EFFECTIVE: 05/25/95



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||7-4.8| Kidnaping of a Minor by a Relative Other Than a Natural Parent

The abduction of a minor by a relative other than a natural parent may constitute a violation of the Federal Kidnaping Statute and necessitates an immediate preliminary inquiry.

EFFECTIVE: 02/20/90

||7-4.9| Kidnaping by a Religious Cult

(1) An immediate preliminary inquiry is to be instituted regarding an allegation of a kidnaping or an unlawful confinement by a religious cult. Every effort should be made to locate and interview the victim. The interview should be conducted under conditions wherein candid responses on the part of the victim can reasonably be expected.

(2) Preliminary inquiries instituted in these matters should be closely coordinated with the USA at the very onset inasmuch as a subsequent opinion regarding Bureau jurisdiction under the Federal Kidnaping Statute is likely to be sought.

EFFECTIVE: 02/20/90

||7-4.10| Kidnaping for the Purpose of Deprogramming

(1) An immediate preliminary inquiry is to be instituted regarding an allegation that a parent has kidnaped his/her adult offspring from a religious cult or has accomplished same through an arrangement with a third party. Deprogramming and removing the offspring from the influence of the religious cult are usually the motivations for these incidents. Every effort should be made to locate and interview the victim. The interview should be conducted under conditions wherein candid responses on the part of the victim can reasonably be expected.

(2) Preliminary inquiries instituted in these matters should be closely coordinated with the USA at the very onset inasmuch as a subsequent opinion regarding Bureau jurisdiction under the Federal Kidnaping Statute is likely to be sought.

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EFFECTIVE: 02/20/90

||7-4.11| Kidnaping of a Foreign Official, Official Guest or  
Internationally Protected Person

As referred to in Title 18, USC, Section 1201(a)(4), Title 18, USC, Section 116, entitled "Murder or Manslaughter of Foreign Officials, Official Guests, or Internationally Protected Persons," is addressed in its entirety in Part I, Section 185 of this manual entitled "Protection of Foreign Officials and Official Guests of the United States."

EFFECTIVE: 02/20/90

||7-4.12| Proposed Kidnaping

An immediate preliminary inquiry is to be instituted regarding a proposed kidnaping. Immediate contact should be established with the intended victim, who should be advised of the plot and requested to maintain close contact with the field office. The Bureau will not provide bodyguards nor similar security for an intended victim; however, the field office should take every precautionary measure in order to be fully capable of handling the violation in the event the proposed scheme materializes.

EFFECTIVE: 02/20/90

||7-4.13| Hoax-Type Kidnaping

When FBI investigative effort has been expended in a matter determined to be a "hoax-type" kidnaping, the facts regarding same should be presented to the USA for a prosecutive opinion under Title 18, USC, Section 1001 (Fraud and False Statements).

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7-4.14 Missing Person

(1) In a report of a missing person wherein it is known that no indication of an abduction or possible abduction exists, the FBI has no jurisdiction for investigation under the Federal Kidnaping Statute. However, subsequent information indicating that the person is or is possibly being held for ransom, reward or otherwise establishes indicia of abduction and necessitates a preliminary inquiry under the Federal Kidnaping Statute.

(2) In a strictly missing person matter, the local authorities should be offered Bureau assistance under the domestic police cooperation guidelines (Part I, Section 62 of this manual); under the "Missing Children Act," Title 28, USC, Section 534 (NCIC Operating Manual, Part 8, entitled "Missing Person File"); and through the cooperative services of the Bureau's Criminal Justice Information Services and Laboratory Divisions. In cases where a minor, especially a minor of tender years, has disappeared and is reported missing with no indication of an abduction or voluntariness, consideration for instituting a preliminary inquiry must be similarly exercised because the minor may be particularly vulnerable and FBI participation and/or assistance to local authorities can be critical. These incidents should be closely coordinated with local authorities and the United States Attorney's office.

EFFECTIVE: 11/09/94

|| 7-4.15 | Potential Hobbs Act, Extortion and Interstate  
Transportation of Stolen Property Violations

A violation of the Federal Kidnaping Statute may also involve Hobbs Act, Extortion and/or Interstate Transportation of Stolen Property violations. In the event subsequent facts are developed indicating there is no violation of the Federal Kidnaping Statute, FBI investigative jurisdiction under these additional violations should still be considered.

EFFECTIVE: 02/20/90

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||7-4.16|      Bondsmen

Transportation of a "bond jumper" by a bondsman in interstate commerce does not constitute a violation of Title 18, USC, Section 1201. The American bondsman has the common law right to arrest and transport a "bond jumper" in interstate commerce for the purpose of surrendering him/her to the proper authorities for appearance before the court allowing the bond. This right to arrest is codified in Title 18, USC, Section 3142; however, individual states may regulate bondsmen. The transportation of a "bond jumper" by a foreign bondsman out of the United States would constitute an encroachment upon the sovereignty of the United States and may be reached by Title 18, USC, Section 1201. Encroachments upon other sovereign actions by United States bondsmen may be precluded, similarly.

EFFECTIVE: 02/20/90

7-5      CLARIFICATION REGARDING AN INVESTIGATION AS OPPOSED TO A  
PRELIMINARY INQUIRY

(1) The "Attorney General's Guidelines on Criminal Investigations of Individuals and Organizations," dated 12/2/80, addresses when an investigation can properly be opened, how an investigation should be conducted and when an investigation should be terminated. | (See MIOG, Part I, 7-6(2).) |

(2) By "Memorandum to All Special Agents," entitled "The Attorney General's Guidelines on Criminal Investigations of Individuals and Organizations," dated 12/30/80, the distinctions between conducting an investigation as opposed to a preliminary inquiry were clarified as follows.

"An investigation may only be instituted when there are facts or circumstances that 'reasonably indicate' a Federal criminal violation has occurred, is occurring, or will occur. This standard of 'reasonable indication' is substantially lower than probable cause, but does require specific facts or circumstances indicating a violation. Where the factual basis for an investigation does not yet exist, but some action appears to be necessary in regard to an allegation concerning a possible Federal criminal violation or activity, these Guidelines permit the limited procedure of conducting a 'preliminary inquiry.'

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"A 'preliminary inquiry' should be conducted solely to obtain the information necessary to make an informed judgment as to whether an investigation is warranted... Once a 'reasonable indication' of criminal activity has been developed during a 'preliminary inquiry,' an investigation may be instituted. When a 'preliminary inquiry' fails to disclose a 'reasonable indication' of criminal activity to justify an investigation, the 'preliminary inquiry' should be terminated."

(3) By airtel dated 3/17/83, entitled "Attorney General's Guidelines for the Conduct of Domestic Security/Terrorism Investigations..." all field offices and Legal Attaches were furnished a copy of the Attorney General's revised Guidelines which became effective 3/21/83. Although the revised Guidelines focus on Domestic Security/Terrorism investigations, they also contain minor modifications to those portions of the Attorney General's Guidelines governing General Crimes investigations. Preliminary inquiries, for example, were extended from 60 to 90 days. Refer to the Bureau airtel dated 3/17/83 cited above for additional details regarding other modifications applicable to General Crimes investigations. (See MIOG, Introduction, 1-3.)

(4) In a preliminary inquiry, mere contact with local authorities will not suffice to make an informed judgment as to whether a kidnaping investigation is warranted. To reach an informed judgment will require active investigation including interviews with knowledgeable police officials and family members, and possibly the setting of auxiliary office investigative leads, crime scene searches, Laboratory Division's assistance, and the application of appropriate investigative techniques permitted under the Attorney General's Guidelines.

EFFECTIVE: 09/24/93

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7-6 DEPARTMENTAL INSTRUCTIONS REGARDING QUESTIONABLE CASES

(1) The Criminal Division, DOJ, has in effect a policy whereby it closely reviews any decision by the Bureau not to conduct an investigation in those missing person cases wherein the facts indicate possible violations of the Federal Kidnaping Statute. Under this policy, the Bureau is expected to refer information concerning questionable missing person cases to the DOJ for review. USAs who become aware of a missing person case in their district, which may involve a kidnaping, have been instructed by the DOJ to ensure that such information is brought to its attention. Refer to the "United States Attorneys' Manual," Title 9, "Criminal Division," chapter 60, page four, dated 5/23/78, for full details.

(2) Bureau guidelines for instituting a preliminary inquiry and an investigation (refer to 7-4.1 and 7-5) address the Bureau's initial involvement in questionable cases.

(3) Although close coordination with the USA is recommended throughout all kidnaping matters, it is especially important in questionable cases.

(4) In the event a case remains questionable at the completion of the preliminary inquiry, the case should be discussed with the USA for an opinion regarding Bureau jurisdiction under the Federal Kidnaping Statute.

(5) In the event the questionable character of the case is not resolved through discussion with the USA, the OO should refer the matter through FBIHQ for a DOJ review.

(6) Each field office should ensure that cases are not presented to the USA prematurely since the development of sufficient facts to enable the USA to render a prosecutive opinion is a Bureau responsibility.

EFFECTIVE: 11/18/83

7-7 INVESTIGATIVE POLICY

Every kidnaping preliminary inquiry and investigation should be afforded priority attention and be allocated those resources necessary for its resolution.

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EFFECTIVE: 11/18/83

7-8 INVESTIGATIVE OBJECTIVES

(1) The Bureau's primary objective is to effect the safe return of the kidnaped victim.

(2) The secondary objectives are the identification, apprehension and prosecution of the subject(s) and the recovery of any ransom payment.

EFFECTIVE: 11/18/83

7-9 OBTAINING FEDERAL PROCESS

Federal process should be obtained as soon as possible after the subject is identified and it is determined that the subject will be prosecuted federally.

EFFECTIVE: 11/18/83

7-10 REPORTING PROCEDURES

EFFECTIVE: 11/18/83

7-10.1 Initial Notifications

(1) Immediately advise FBIHQ by telephone or teletype, depending upon the exigency of the circumstances, of every preliminary inquiry and investigation instituted under the Federal Kidnaping Statute. The initial teletype should be comprehensive, setting forth when and how the field office was first notified, full descriptive data regarding the victim, the identity and descriptive data of any subject or suspect, full details of the abduction or possible abduction including any known or suspected motive, the results of investigation by local authorities, action planned by local authorities, the results of the field office's investigation, action planned by the field office, any existent USA opinion, and a statement

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as to whether the field office is instituting a preliminary inquiry or an investigation.

(2) Surrounding field offices and any other field office deemed appropriate should be included as recipients of the initial teletype to FBIHQ.

(3) A Kidnaping Offense Report, FD-705, should be submitted to FBIHQ by the office of origin within 21 calendar days after the initial kidnaping report is received. This submission should include a brief narrative of the kidnaping attached to the FD-705. (See MIOG, Part I, 7-10.5(2).)

(4) A supplemental report, Part II of the FD-705, should be submitted by the office of origin within 21 calendar days after one or more of the following developments occur: (See MIOG, Part I, 7-10.5(2).)

(a) Ransom demanded.

(b) Subject(s) identified and Federal/state process initiated.

(c) Victim located.

(d) Deleted

(5) The FD-705 should be submitted to FBIHQ immediately upon the closing of a kidnaping investigation. (See MIOG, Part I, 7-10.5(2).)

(6) In cases initiated under the International Parental Kidnaping Crime Act of 1993 (IPKCA), the Violent Crimes and Major Offenders Section and the International Relations Branch, CID, FBIHQ, will both be promptly notified, by teletype or appropriate communication, to ensure that FBI investigations impacting on foreign countries are properly vetted through FBIHQ, FBI Legats, DOJ - Office of International Affairs, and the Department of State.

(7) Form FD-705, the Kidnaping Offense Form, should not be submitted for matters investigated under the IPKCA as this form is not relevant to incidents of parental abduction.

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EFFECTIVE: 11/09/94

7-10.2 Notifications Regarding Subsequent Significant  
Developments

FBIHQ and other field offices deemed appropriate should be kept apprised of subsequent significant developments.

EFFECTIVE: 02/20/90

7-10.3 Submission of LHMs in a "Kidnaping by a Religious  
Cult," 7-4.9, and a "Kidnaping for the Purpose of  
Deprogramming," 7-4.10

(1) The DOJ has expressed its desire to assess the magnitude of these matters and to be responsive to the concerns of certain citizens and religious organizations regarding allegations of "brainwashing" by religious cults and deprogramming abductions.

(2) Therefore, in addition to the reporting procedure set forth in 7-10.1, a succinct LHM (original and four copies) should be submitted to FBIHQ by airtel within 20 working days of receipt of the initial complaint. Any existent USA opinion should be reflected therein.

(3) Upon receipt of the LHM, FBIHQ will disseminate same to the Criminal Division, DOJ.

EFFECTIVE: 02/20/90

7-10.4 Prosecutive Reports

In those instances wherein a prosecutive report is prepared, normally only one copy of the report should be designated for FBIHQ. For details regarding report writing, refer to the MAOP, Part II, 10-14, entitled "Types of Reports," and 10-15, entitled "Prosecutive Report."

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EFFECTIVE: 02/20/90

7-10.5 Notification to FBIHQ Regarding Final Outcome

In order that the FBIHQ substantive case file may reflect the final outcome of each violation; the following FBIHQ notification policy should be adhered to by the office of origin.

(1) | Ensure all appropriate statistical accomplishments have been submitted by FD-515.

(2) | In cases in which a USA declines or defers prosecution or in cases determined not to be a violation of the Federal Kidnaping Statute, a closing communication should be directed to FBIHQ clearly setting forth the basis for closing. This closing communication does not eliminate the requirement for submission of the final FD-705. See 7-10.1(3), (4) and (5). |

EFFECTIVE: 10/26/87

7-11 STATE PROSECUTION

(1) FBIHQ desires that the results of state prosecution be followed in kidnaping cases even though Federal prosecution has been completed, declined or deferred by the USA.

(2) In those instances wherein Federal prosecution was declined or deferred, if the defendant or defendants in the state prosecution are acquitted or received a comparatively light sentence, a valid reason exists for again presenting the case to the USA, looking toward Federal prosecution.

EFFECTIVE: 02/20/90

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7-12 CONTINGENCY PLANNING

FBIHQ does not consider it feasible to develop a single kidnaping response and subsequent investigative plan which would be applicable to every field office. Therefore, each field office is responsible for the development and maintenance of a kidnaping operations plan which will meet its needs, while still fulfilling the FBI's investigative responsibilities.

EFFECTIVE: 02/20/90

7-13 FBI INTERACTION WITH PARENTS, GUARDIANS AND FAMILY MEMBERS  
OF KIDNAP VICTIMS

(1) The Bureau must continually demonstrate the utmost concern for and empathy with the emotional trauma which a victim's parents, guardians or family members undergo. All situations must be addressed in an entirely professional manner consistent with the Bureau's role as a public servant.

(2) Parents, guardians or family members, unless determinable and articulable facts preclude doing so, should be kept advised of those investigative developments which can be disseminated without jeopardizing the integrity of the investigation.

(3) While the Bureau is bound to the prohibition against divulging pending case matters to the public, attention is drawn to the special concern of an identified parent, guardian or family member and the due regard for same which the Bureau should exhibit.

(4) Every SAC, through the Victim-Witness Coordinator (VWC), is charged with the responsibility to ensure that all provisions of the Victim and Witness Protection Act of 1982 are met, as well as the Victims' Rights Statutes contained in the Crime Control Act of 1990. The VWC should be apprised of kidnap/child abduction incidents, as appropriate, so that referrals and services available to victims and their families are determined and readily accessible.

EFFECTIVE: 11/09/94

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7-14 INVESTIGATIVE CONSIDERATIONS

Due to the variance of circumstances in kidnaping investigations, the investigative considerations set forth herein are not to be considered all inclusive but should serve only as a general guide in conducting kidnaping investigations. In the event an abduction of an infant has taken place, refer to 7-4.6.

EFFECTIVE: 02/20/90

7-14.1 Initial Report of a Kidnaping

(1) The name, address, telephone number and current location of the individual reporting the kidnaping should be obtained.

(2) The complete name and full descriptive information of the victim should be obtained.

(3) In cases involving the abduction/mysterious disappearance of a minor, field offices should not rely solely upon reports or referrals from local law enforcement, but should also remain alert to possible violations identified through the victim(s), witnesses, and media reports. The field office should be prepared to address these incidents either through a full kidnaping investigation or the use of the preliminary inquiry, whichever is most appropriate at the time of the report.

EFFECTIVE: 11/09/94

7-14.2 Residence Coverage

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EFFECTIVE: 11/18/83

7-14.3 Interviews of Family Members

(1) One Special Agent should be designated in charge of interacting with the victim's family. Whenever possible, this Special Agent should deal directly with a single family spokesperson to avoid conflict with other family members.

(2) The character, extent and nature of inquiries which are pursued should be in accordance with the instructions of the Special Agent in charge. All ideas which originate with family members should be noted and referred to the Special Agent in charge.

(3) Family members must be repeatedly and almost constantly interviewed in a conversational manner. The interviews should cover all matters pertinent to the investigation and be structured as to facilitate staying abreast of the family's thinking. It is imperative that Special Agents assigned to family interviews be consistent in their expressions in order that all problems might be addressed without contradiction.

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(4) Questions propounded to family members and responses thereto should be noted to avoid repetition.

(5) Special Agents should be frank and responsive at all times with regard to the questions and problems posed by the family members. However, unnecessary information should not be volunteered. Impressions of mystery and evasiveness should be avoided.

(6) Efforts should be made to obtain the following during the course of the family member interviews:

(a) Current photograph of the victim.

(b) Description of the victim's wearing apparel at the time of kidnaping.

(c) Listing of personal belongings in possession of the victim at the time of kidnaping.

(d) Victim's complete physical description.

(e) Complete background data of the victim.

(f) Victim's hair specimens.

(g) Victim's fingerprints.

(h) Identities of the family physician, dentist and church official (if appropriate) and the means for locating them at any time.

(i) Availability of the victim's medical and dental history.

(j) Identities of family friends and associates.

(k) Identities of all individuals who have been notified or have knowledge of the kidnaping for the purpose of cautioning them against divulging knowledge of the kidnaping.

(l) Identities of servants and service personnel.

(m) Activities of the victim and family prior to the kidnaping.

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- (n) Normal activities and itineraries of the family.
- (o) Family's financial status.
- (p) Family's insurance coverage.
- (q) Possible suspects.

(7) The family should be cautioned regarding undesired disclosure of the situation to the news media.

(8) News media inquiries with the family should be handled by the most stable family member available or referred to a predesignated family spokesperson fully aware of all aspects of the situation.

(9) The family should be encouraged to coordinate all news media responses with the Bureau.

EFFECTIVE: 11/18/83

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EFFECTIVE: 11/18/83

7-14.5 Ransom Demands

(1) When a kidnaping has received news media attention, it is not uncommon for an individual not involved in the kidnaping to attempt to extort a ransom from the victim's family.

(2) All ransom demands should be accepted as emanating from the kidnaper until investigation indicates otherwise.

(3) Ransom demands conveyed by an opportunist may constitute Federal Extortion or Hobbs Act violations or violations of applicable state laws.

EFFECTIVE: 11/18/83



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7-14.6 Ransom Payment and Coverage

(1) The decision whether or not to comply with the ransom demand is that of the victim's family.

(2) The most important consideration relative to ransom payment is the safety of the victim. The degree of danger will vary from case to case and must be assessed accordingly.

(3) The pros and cons of any action in this regard should be frankly discussed with the family.

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The safe return of the victim is the FBI's primary objective, and, until the victim is released, the apprehension of the kidnaper and the recovery of the

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ransom are secondary objectives.

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(16) Sufficient personnel and all necessary equipment and supplies should be made available for immediate use.

EFFECTIVE: 11/18/83

7-14.7 The National Crime Information Center's (NCIC) Missing Person File

The OO should immediately enter the victim's identity in the NCIC's Missing Person File under the involuntary category. Refer to the NCIC Operating Manual, Part 8, entitled "Missing Person File," for detailed information.

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EFFECTIVE: 11/18/83

7-14.8 The Criminal Justice Information Services  
Division's (formerly Identification Division) Missing  
Person File

(1) The OO should immediately determine the existence of  
a fingerprint card for the victim.

(2) A victim's fingerprint card already on file with the  
Criminal Justice Information Services Division should be entered in  
the Criminal Justice Information Services Division's Missing Person  
File.

(3) A victim's fingerprint card not on file with the  
Criminal Justice Information Services Division should be submitted to  
that division for entry in the Missing Person File.

(4) Refer to Part II, 14-10.3, of this manual entitled  
"Missing Person Fingerprint File," for detailed information.

EFFECTIVE: 04/08/96

7-14.9 Scientific Aids

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(a)

(b)

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(2) Deleted

(3)



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(4) The polygraph technique should be used in strict compliance with Part II, 13-22, of this manual entitled "Polygraph Examinations."

EFFECTIVE: 07/17/95

7-14.10 Circular Letters

(1) On a selective basis, it may be desirable to circularize state, county, and city law enforcement agencies by circular letter in an effort to recover the kidnaped victim and identify or locate the subject.

(2) The utilization of this technique may prove especially beneficial in those instances wherein the victim is a minor of tender years and investigation indicates the motive for kidnaping to be child stealing rather than ransom or reward.

(3) In considering the desirability of the issuance of a circular letter, it should be determined whether local law enforcement agencies have already issued or intend to issue a similar type bulletin. In any event, close coordination with the local law enforcement agencies having jurisdictional interest in the investigation should be effected to preclude a duplication of effort.

(4) The SAC may authorize the issuance of a circular letter within the field office's territory.

(5) Circularization in contiguous field offices may be authorized by the SAC on a UACB basis.

(a) An airtel should be directed to FBIHQ requesting this additional circularization on a UACB basis and must include sufficient facts and justification to enable FBIHQ to properly

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evaluate the additional circularization.

(b) Contiguous offices must be included as recipients of the airtel with leads set forth requesting the desired circularization.

(c) The airtel should enclose three copies of the proposed circular letter for FBIHQ to assist in the evaluation, with sufficient copies enclosed for contiguous offices to accomplish the desired circularization.

(6) In all instances, the circular letter must include the following:

(a) A brief and concise narrative of the kidnaping.

(b) A recent photograph of the victim and the victim's physical description.

(c) The subject's physical description and, if available, a photograph or artist's conception of the subject.

(d) A caution statement regarding the subject and a statement that no action should be taken which would endanger the kidnaped victim.

(e) A statement that if any positive information is developed, immediately contact the local office of the FBI, the telephone number of which should be set forth on the inside, front cover of a local telephone directory.

(7) Circularization beyond contiguous offices requires prior FBIHQ approval in accordance with existing instructions governing circular letters.

(8) Refer to Part II, 21-24, of this manual entitled "Circular Letters," for detailed information.

(9) The OO must ensure that the necessary administrative controls are initiated by which to cancel the circular letter when it is no longer needed.

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7-14.11 Public Appeal Through Local News Media

(1) On a highly selective basis, it may be desirable to issue a public appeal through local news media for the safe return of a kidnaped victim and/or for information concerning the whereabouts of the victim.

(2) The utilization of this technique may prove especially beneficial in those instances wherein the victim is a minor of tender years and investigation indicates the motive for kidnaping to be child stealing rather than ransom or reward.

(3) Paramount in considering the desirability of this technique is whether any reason exists to believe that public appeal will result in the victim being harmed by the subject.

(4) The SAC may authorize the issuance of a public appeal through local news media, but only with the written consent of the victim's parents, guardians or appropriate next of kin.

(5) FBIHQ must be notified by teletype prior to any issuance of a public appeal in this regard in order to appropriately respond to news media inquiries.

(6) A public appeal through local news media should be conducted by the SAC or his/her designate.

(7) Unless reasons preclude inclusion, the public appeal through local news media for the safe return of a kidnaped victim and/or for information concerning the whereabouts of the victim should include that information set forth in 7-14.10(6).

(8) All public appeals in this regard should be in strict accordance with the instructions set forth in the MAOP, Part II, 5-1, entitled "Policy and Guidelines for Relations with News Media," and 5-2, entitled "Contacts with News Media."

EFFECTIVE: 11/18/83

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7-14.12 Crime Scene Examination

It is imperative that all crime scenes be thoroughly examined and that all items of evidentiary value be preserved. Refer to Part II 13-6.4, of this manual entitled "Crime Scene Search," and Section 15, entitled "Latent Fingerprint Identification," for detailed information.

EFFECTIVE: 10/23/86

7-14.13 Proposed Kidnaping

(1) The intended victim should be interviewed for a detailed listing of all suspects, together with other pertinent information which would not be available in the event the intended victim is actually kidnaped.

(2) Handwriting examples, fingerprints, major case prints and photographs of the intended victim should be obtained.

EFFECTIVE: 10/23/86

7-14.14 Advising Local Law Enforcement Authorities

(1) Unless conclusive reasons preclude doing so, local law enforcement authorities should be advised of the kidnaping or proposed kidnaping inasmuch as they may already be or may become involved in the investigation independent of the Bureau.

(2) Establishing and maintaining effective liaison with local law enforcement authorities during the course of a preliminary inquiry or an investigation are equally important for it may be determined that no violation of the Federal Kidnaping Statute exists and that the violation is strictly local in nature.

EFFECTIVE: 10/23/86

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7-14.15 General Guidelines for International Parental Kidnaping  
Crime Act Investigations

(1) Expeditiously identify the known or suspected foreign location of the abducting parent and child and promptly coordinate with the United States Attorney (USA). The USA will make a determination as to willingness to extradite and will coordinate any requests through DOJ-Office of International Affairs.

(2) Appropriate "Stops" should be in place in the event that the fugitive flees the United States or attempts re-entry while a fugitive. These stops should include NCIC entry and modifications; the Form FD-315 (INS Lookout Notice for a foreign national who is the subject of an FBI fugitive investigation); and requests for the appropriate INTERPOL "Red Notice" or "Blue Notice," through FBIHQ.

(3) The abducting parent and child may be travelling extraterritorially on U.S. passports. The passport numbers should be identified and a request made of the Department of State (DOS) to have the passport revoked or a "lookout" placed. The existence of a felony warrant or a fugitive warrant for a felony (UFAP) is a ground for revocation of the passport. Note that the passport revocation process requires DOS notification to the passport holder(s).

(4) FBI employees have no authority to request foreign officials to arrest, detain or extradite a fugitive. FBI personnel should not make direct contact with foreign law enforcement in pursuit of a fugitive, but should leave such contacts to the Department of Justice - Office of International Affairs (DOJ-OIA), appropriate FBI Legats, or INTERPOL-United States National Central Bureau (USNCB).

(5) Issues related to the citizenship of the abducting parent and victim child, existence of an extradition treaty in force, applicability of the fugitive warrant and related charges within the details of the relevant treaty, the Hague Convention, etc., are matters which must be reviewed prior to the issuance of an extradition, provisional arrest, or repatriation request. At a minimum, the field office should establish the citizenship status of the abducting parent and child.

(6) FBI Legats at the known/suspected foreign location should be provided with details of the IPKCA investigation as early as possible. The notification should be by LHM, with cover airtel, setting forth details of the investigation, or by teletype suitable for dissemination. The Legat should not be requested to seek active



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investigation by the foreign law enforcement agency without previous discussions with DOJ-OIA. Preliminary leads should be for the purpose of verifying the abducting parent's and child's locations, citizenship, etc., through passive means in the foreign country. An LHM and cover airtel should be prepared and forwarded to FBIHQ for dissemination to INTERPOL for leads in those foreign countries where there is no FBI Legat coverage.

(7) The USA should be prepared to provide all documentation required in support of the extradition, provisional arrest, or repatriation request. This will include a variety of documents, affidavits, depositions, etc., which must be translated, certified, and transmitted to the diplomatic representative of the foreign country.

(8) FBI field offices and Legats should not routinely accept or solicit transportation/escort responsibility for the fugitive parent or victim child. Investigative or other circumstances may exist where the FBI appropriately seeks this responsibility and these should be coordinated through the substantive FBIHQ Unit and DOJ-OIA.

(9) Field offices are requested to identify the extraterritorial location of the abducting parent/child in their investigative files. Form FD-65 may be utilized for this purpose by utilizing the "Miscellaneous" block in the form, stating "Known (or suspected) to be located in (country)" in the block. This will facilitate the tracking of subjects in the databases maintained by FBIHQ.

(10) Field offices must maintain NCIC entries on extraterritorial fugitives until the fugitive is returned to the United States for prosecution. No "Clear/Cancel" or "locates" are to be placed against the NCIC record until the subject is in federal custody in the United States regardless of whether the substantive case is in pending or pending-inactive status.

(11) If the abducted child is suspected to be in a Hague Convention country, the custodial parent should be advised that assistance can be obtained through contact with the Child Custody Division, Office of Citizens Consular Services (CCS), Room 4817, U.S. Department of State (DOS), 2201 C Street, N.W., Washington, D.C. 20520-4818, Telephone Number 202-736-7000.

(12) Even in situations when the abducted child is taken to a non-Hague Convention country, the DOS may be able to initiate

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efforts to locate the abducted child, inquire as to the child's welfare, and possibly open communications to effect a return of the child. This action should be closely coordinated with the affected Legat.

EFFECTIVE: 11/09/94

7-15 RANSOM MONEY

EFFECTIVE: 10/23/86

7-15.1

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☒ Deletions were made pursuant to the exemptions indicated below with no segregable material available for release to you.

Section 552

Section 552a

☐ (b)(1)

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☐ (d)(5)

☒ (b)(2)

☐ (b)(7)(B)

☐ (j)(2)

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☐ (b)(6)

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MEG Manual 7-15.1 pages 7-43 and 7-44; 7-15.2 page 7-45; 7-15.3 pages 7-45 and 7-46  
7-15.4 pages 7-47, 7-48, and 7-49

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7-15.5

(1)

(2)

(3) Circularization in contiguous field offices may be authorized by the SAC on a UACB basis.

(a) An airtel should be directed to FBIHQ requesting this additional circularization on a UACB basis and must include sufficient facts and justification to enable FBIHQ to properly evaluate the additional circularization.

(b) Contiguous offices must be included as recipients of the airtel with leads set forth requesting the desired circularization.

(c) The airtel should enclose three copies of the proposed circular letter for FBIHQ to assist in the evaluation, with sufficient copies enclosed for contiguous offices to accomplish the desired circularization.

(4) In all instances, the circular letter must include the following:

(a) A brief and concise narrative of the kidnaping

(b)

(c) The subject's physical description and, if available, a photograph or artist's conception of the subject.

(d)

(e) A caution statement regarding the subject and a statement that no action should be taken which would endanger anyone's safety.

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(f) A statement that if any positive information is developed, immediately contact the local office of the FBI, the telephone number of which should be set forth on the inside, front cover of a local telephone directory.

(5) Circularization beyond contiguous offices requires prior FBIHQ approval in accordance with existing instructions governing circular letters.

(6) Refer to Part II, 21-24, of this manual entitled "Circular Letters," for detailed information.

(7) The OO must ensure that the necessary administrative controls are initiated by which to cancel the circular letter when it is no longer needed.

EFFECTIVE: 10/23/86

7-15.6

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EFFECTIVE: 10/23/86

| 7-16 | DELETED - SEE MIOG, PART II, SECTION 32. |

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EFFECTIVE: 10/07/93

7-17 LIAISON WITH LOCAL LAW ENFORCEMENT AUTHORITIES

(1) It is incumbent upon each field division to ensure that local law enforcement authorities fully understand the Bureau's jurisdiction and national policy for instituting a preliminary inquiry and an investigation under the Federal Kidnaping Statute.

(2) It is also incumbent upon each field division to ensure that local law enforcement authorities fully understand Bureau assistance available under the domestic police cooperation guidelines (Part I, Section 62 of this manual); under the "Missing Children Act" (Title 28, USC, Section 534) (NCIC Operating Manual, Part 8, entitled "Missing Person File"); and through the cooperative services of the Bureau's Identification, Laboratory and Training Divisions in those cases wherein it is determined that no violation of the Federal Kidnaping Statute exists.

(3) Liaison with local law enforcement authorities should be established and maintained to ensure that violations and possible violations of the Federal Kidnaping Statute will be promptly reported to FBI field divisions or resident agencies in the event an offense is initially received by those authorities.

EFFECTIVE: 10/23/86

7-18 NEWS MEDIA INQUIRIES POLICY

(1) In many cases, violations of the Federal Kidnaping Statute generate intense public and media interest. The FBI's news media inquiries policy is in strict compliance with instructions issued by the DOJ concerning the release of information in criminal and civil matters. These instructions are contained in Title 28, CFR, Section 50.2.

(2) For complete details regarding this topic, including a restatement of the above CFR instructions, refer to the MAOP, Part II, 5-1, entitled "Policy and Guidelines for Relations with News Media," and 5-2, entitled "Contacts with News Media."

(3) Utmost discretion should be exercised in releasing to

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the news media any information concerning a kidnaping investigation in order not to jeopardize the safety of the victim.

EFFECTIVE: 10/23/86

7-19 CHARACTER AND CLASSIFICATION - KIDNAPPING (See MIOG, Introduction, 2-1.6.4; MAOP, Part II, 3-1.1 & 3-1.2.)

(1) Investigations of violations of the Kidnapping statutes, Sections 1201 and 1202, will be conducted under the 7A classification.

(2) Investigations of violations of the IPKCA, section 1204, will be conducted under the 7B classification. IPKCA cases should be captioned as follows:

JOHN DOE;  
MARY DOE (name of abducted child) - VICTIM;  
KIDNAPPING - INTERNATIONAL PARENTAL KIDNAPING CRIME ACT  
(IPKCA);  
OO: XX

EFFECTIVE: 10/18/95

| 7-20 | DELETED |

EFFECTIVE: 11/09/94

|| 7-21 HOSTAGE TAKING

Refer to MIOG, Part I, Section 256, for proper handling.

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EFFECTIVE: 08/22/89

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PRINTED: 02/18/98



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SECTION 8. MIGRATORY BIRD ACT

8-1 STATUTES

Title 18, USC, Section 43

Title 16, USC, Sections 703 through 718

EFFECTIVE: 01/31/78

8-1.1 Investigative Jurisdiction

Primary jurisdiction regarding migratory game, fish, and birds lies with Fish and Wildlife Service of Department of Interior.

EFFECTIVE: 01/31/78

8-2 ELEMENTS

For details see USC at:

(1) Title 18 (Crimes and Criminal Procedure)

(2) Title 16 (Conservation)

EFFECTIVE: 01/31/78

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8-3 POLICY

(1) Allegations of violations submitted by closing prosecutive report to FBIHQ

(a) FBIHQ refers matters to Department of Justice

(b) Department of Justice will either request FBI investigation or refer matter to Department of Interior.

(2) Investigation conducted only upon authority from FBIHQ.

(3) No reports submitted for purposes of recording criminal convictions as statistics, unless FBI conducted investigation.

EFFECTIVE: 01/31/78

8-4 PENALTIES

Refer to citations listed in 8-2 above.

EFFECTIVE: 01/31/78

8-5 CHARACTER - MIGRATORY BIRD ACT

EFFECTIVE: 01/31/78

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SECTION 9. EXTORTION

9-1 BACKGROUND | (See MIOG, Part I, 7-4.14, 89-2.7, 89-3.6, 89-3.9, 175-6, 251-5, 251-10.) |

(1) The Extortion Statute was passed by Congress on July 8, 1932, and originally was embodied in the United States Code (USC) under Title 18, Sections 338A and 338B. These sections have been amended from time to time and are presently set forth in Sections 876 and 877 of that title.

(2) Included within the Bureau character of Extortion are those sections of Title 18 which deal with blackmail (Section 873), threats transmitted by interstate or foreign communications other than by mail (Section 875) as well as threatening communications transmitted through the mail (Sections 876, 877).

(3) On November 10, 1986, the President signed into law S. 1236, the "Criminal Law and Procedures Technical Amendments Act of 1986." This law was effective November 10, 1986, and one of its provisions deals with Title 18, USC, Section 875 - Interstate Communications. Title 18, USC, Section 875 was expanded to include threats transmitted in foreign commerce.

(4) Under the Violent Crime Control and Law Enforcement Act of 1994, Title 18, U.S. Code, Sections 2261 and 2262, were enacted. These sections are part of the "Safe Homes for Women Act of 1994" and create federal violations aimed at domestic violence. Domestic violence is defined to include "...felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse...." (See MIOG, Part I, 9-2.5 and 9-2.6.) |

EFFECTIVE: 11/25/96

9-2 STATUTES

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EFFECTIVE: 05/11/87

9-2.1 Section 873 - Blackmail

(1) "Whoever, under a threat of informing, or as a consideration for not informing, against any violation of any law of the United States, demands or receives any money or other valuable thing, shall be fined not more than \$2,000 or imprisoned not more than one year, or both."

(2) The elements of blackmail are (1) coercion and (2) unlawful consideration. Refer to 228 Fed. Sup. 345, U.S. v. Smith, U.S. District Court, Louisiana, 1964.

EFFECTIVE: 05/11/87

9-2.2 Section 875 - Interstate Communications

"(a) Whoever transmits in interstate|or foreign|commerce any communication containing any demand or request for a ransom or reward for the release of any kidnapped person, shall be fined not more than \$5,000 or imprisoned not more than twenty years, or both.

"(b) Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate|or foreign|commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined not more than \$5,000 or imprisoned not more than twenty years, or both.

"(c) Whoever transmits in interstate|or foreign|commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined not more than \$1,000 or imprisoned not more than five years, or both.

"(d) Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate|or foreign|commerce any communication containing any threat to injure the property or reputation of the addressee or of another or the reputation of a deceased person or any threat to accuse the addressee or any other person of a crime, shall be fined not more than \$500 or imprisoned not more than two years, or both."

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EFFECTIVE: 05/11/87

| 9-2.3 Section 876 - Mailing Threatening Communications

(1) Violations of Section 876 are the same as enumerated under Sections 875 (a), (b), (c), and (d) except that the threat/extortion is conveyed to the victim/addressee by way of the United States Postal Service (USPS).

(2) Penalties for violation of Section 876 are the same as those under Sections 875 (a), (b), (c), and (d).

(3) The use of the mail to communicate any threat to injure the reputation of the addressee (alive or deceased) or to accuse the addressee or any other person of a crime is a violation punishable by fines up to \$500 or imprisonment not to exceed two years. Jurisdiction rests solely with the U.S. Postal Inspector.

EFFECTIVE: 03/28/84

| 9-2.4 Section 877 - Mailing Threatening Communications from a Foreign Country

(1) Violations of Section 877 are the same as enumerated under Section 875 (a), (b), (c), and (d) except that the threat/extortion is placed in the bona fide mail service of a foreign country for delivery to the USPS and by it for delivery to the addressee in the United States.

(2) 9-2.3 (3) applies to Section 877.

EFFECTIVE: 03/28/84

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9-2.5 Section 2261 - Interstate Domestic Violence (See MIOG,  
Part I, 198-7.)

(1) "A person who travels across a state line or enters or leaves Indian Country with the intent to injure, harass, or intimidate that person's spouse or intimate partner, and who, in the course of or as a result of such travel, intentionally commits a crime of violence and thereby causes bodily injury to such spouse or intimate partner."

(2) "A person who causes a spouse or intimate partner to cross a state line or to enter or leave Indian Country by force, coercion, duress, or fraud and, in the course or as a result of that conduct, intentionally commits a crime of violence and thereby causes bodily injury to the person's spouse or intimate partner."

(3) A person who violates this section shall be fined under this title, and imprisoned-

(a) for life or any term of years, if death of the offender's spouse or intimate partner results;

(b) for not more than 20 years if permanent disfigurement or life-threatening bodily injury to the offender's spouse or intimate partner results;

(c) for not more than 10 years, if serious bodily injury to the offender's spouse or intimate partner results or if the offender uses a dangerous weapon during the offense;

(d) as provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a federal prison); and

(e) for not more than five years, in any other case, or both fined and imprisoned.

EFFECTIVE: 11/25/96

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9-2.5.1 Section 2261 - Interstate Domestic Violence - Elements  
(See MIOG, Part I, 198-7.)

(1) This law requires specific intent at the time of crossing the state line.

(2) The parties must fall under the statutory definition of spouse or intimate partner.

(3) There must be bodily injury for prosecution under this statute. A kidnapping with no resulting physical injuries would not fall under this statute.

(4) Section 2261(2) - This statute does not require a showing of specific intent to cause a spouse or intimate partner to travel across the state or Indian territory line. However, it does require proof of force, coercion, duress or fraud.

(5) Section 2261(2) - The subject must intentionally commit a crime of violence during the course of, or as a result of, the travel.

EFFECTIVE: 11/25/96

9-2.6 Section 2262 - Interstate Violation of Protection Order  
(See MIOG, Part I, 198-7.)

(1) "A person who travels across a state line or enters or leaves Indian Country with the intent to engage in conduct that:

"(A) (i) violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued; or

"(ii) would violate subparagraph (A) if the conduct occurred in the jurisdiction in which the order was issued."

(2) "A person who causes a spouse or intimate partner to cross a state line or to enter or leave Indian Country by force, coercion, duress or fraud, and in the course or as a result of that

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conduct, intentionally commits an act that injures the person's spouse or intimate partner in violation of a valid protection order issued by a State."

(3) Penalties for violation of Section 2262 are the same as those under Section 2261.

EFFECTIVE: 11/25/96

9-2.6.1 Section 2262 - Interstate Violation of Protection Order - Elements (See MIOG, Part I, 198-7.)

(1) There must be specific intent at the time of crossing the state line.

(2) Section 2262(b) does not require the same specific intent. It is sufficient to prove the subject caused the crossing of the state line and intended to injure the victim in violation of a valid protective order.

(3) Many state protective orders are merely mutual restraining orders and will not conform to the statutory requirements.

EFFECTIVE: 11/25/96

9-3 JURISDICTION

The FBI has exclusive jurisdiction over all of the above sections except those parts of Sections 876 and 877 wherein the threatened act is to injure a person's reputation and/or accuse a person of a crime and/or reveal illicit practices or associations. Such matters should be promptly referred to the U.S. Postal Inspector for handling.

EFFECTIVE: 03/28/84



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9-4

DEPARTMENTAL INSTRUCTIONS

(1) Note the provisions of Section 875 specifically refer to threatening communications received by corporations. Opinion of the Criminal Division of the Department of Justice (DOJ) indicates that Sections 876 and 877 will apply in cases in which threatening communications are received by corporations, as well as those in which such communications are received by private individuals.

(2) The Criminal Division of the DOJ has furnished an opinion indicating that "intent to extort" as contemplated by this act must be an intent to secure something of benefit for the sender of the threatening communication or communications. This opinion indicated that the Criminal Division does not consider it sufficient that the demand be for the recipient of the letter to give up something which would not prove to be of benefit to the sender of the communication. When doubt exists as to the "intent to extort" or where it appears questionable as to whether the thing demanded is a "thing of value," the appropriate United States Attorney (USA) should be immediately consulted for the purpose of determining whether prosecution would be authorized in the event the identity of the writer of the letter is established by subsequent investigation.

(3) The DOJ has advised that with regard to threats made to destroy public buildings, public facilities, ships, or other property, no violation exists under Federal Extortion Statutes unless a specific threat is made to injure a person or unless such threat is coupled with an attempt to extort money or other thing of value. It was stated that a violation of Title 18, USC, Section 844(e), pertaining to explosives, appears to be present in those situations in which a threat to such public facilities or other property is made. This code section is referred to in Part I, Section 174, of this manual. Violations of this type should be submitted under the bombing matters caption and handled in accordance with appropriate existing instructions.

(4) A threat has been defined, as set forth in the USAs' Manual, Title 9 - Criminal Division, under paragraph 9-60.340, entitled "Special Considerations," as, "'an avowed present determination or intent to injure presently or in the future.' United States v. Metzdorf, 252 Fed. 933, 938; United States v. Marino, 148 F. Supp. 75, 77. The question of whether particular language constitutes a threat is for the trier of fact to determine. United States v. Pennell, 144 F. Supp. 317 (D.C. Cal., 1956). The Fourth Circuit has held that if a reasonable recipient familiar with the context of the communication would interpret it as a threat, the issue should go to

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the jury. United States v. Maisonet, 484 F. 2d 1356 (1973). The District Court for Montana has held that a threat need not be of such a nature as to have actually induced fear in the mind of the recipient. United States v. Holder, 302 F. Supp. 296 (1969), affirmed 427 F. 2d 715."

EFFECTIVE: 03/28/84

9-5 POLICY

EFFECTIVE: 03/28/84

9-5.1 Acceptance of Extortion Matters Referred to the FBI by  
Local Law Enforcement

(1) Prior Bureau policy precluded the acceptance of any extortion matter wherein local authorities had conducted a preliminary investigation even if the subject(s) had been identified and/or apprehended. Realizing that in most extortion cases local/state laws/statutes are applicable as well as Federal statutes, this policy has been modified with regard to acceptance of cases wherein local authorities may have conducted a preliminary investigation.

(2) When an extortion matter is referred to the Bureau from another law enforcement agency, the field office should do the following:

(a) Review the fact situation for elements to determine that a violation of the Federal Extortion Statute has occurred or may occur.

(b) Consult with the appropriate USA or Assistant United States Attorney (AUSA) to ensure that a prosecutable Federal case exists. Inasmuch as the local investigation may preclude successful Federal prosecution, a USA's or AUSA's opinion is mandatory.

(3) Blanket acceptance of referred extortion matters is to be avoided. However, where a viable Federal case exists and FBI investigation and Federal prosecution are appropriate means to address the extortion, acceptance should be considered.

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EFFECTIVE: 03/28/84

9-5.2 Prosecution Under the Hobbs Act

Consideration should be given to the use of the Hobbs Act as a vehicle of prosecution where the extortion scheme includes the use of intrastate phone calls or without the use of the USPS, e.g., hand-delivered notes. The DOJ has instructed all USAs that when such a fact situation is encountered (where it may be desirable to charge a violation under the Hobbs Act), the DOJ must be consulted. See also Part I, Section 192, of this manual.

EFFECTIVE: 03/28/84

9-5.3 Extortion Involving a Federal Judge, U.S. Attorney or Assistant U.S. Attorney

(1) When a Federal judge, USA or AUSA is the victim, the appropriate offices of the United States Secret Service (USSS) and United States Marshal Service (USMS) should be immediately advised. Additionally, if investigation is initiated, close contact should be established and maintained with the USMS.

(2) The FBI has investigative jurisdiction in extortion matters involving Federal judges, USAs and AUSAs. The USMS will provide security if requested by the judge, USA, or AUSA who is the victim in the matter. The FBI does not provide "threat assessments," but any investigative information which will aid the USMS in meeting its security responsibilities should be promptly furnished to that agency as it is developed. See also Part I, 89-2.8, of this manual, for additional details regarding the handling of "threat assessment requests."

(3) FBIHQ is required to advise the Executive Office of USAs at the DOJ in addition to the USSS and USMS of each threat matter involving a USA or AUSA as the intended victim. The teletype or other communication reporting such matters to FBIHQ should be factual, concise, and in a form suitable for dissemination.

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EFFECTIVE: 03/28/84

9-5.4 Extortions of Officials or Employees of a Federal, State or Local Government Where the Threat is to Cause Bodily Harm or Redress a Grievance

(1) Dissemination of the facts of the case and the name of the subject(s), etc., is to be made to the USSS locally and at the headquarters level.

(2) FBIHQ will, in the case of a Federal employee, disseminate the pertinent facts, if appropriate, to the victim's employing agency.

(3) In each such case, FBIHQ is to be notified by telephone, teletype or airtel enclosing a summary LHM suitable for dissemination. The form of notification is dependent on the exigency of the matter. Telephone notification must be confirmed promptly by teletype.

(4) Appropriate law enforcement agencies should immediately be apprised of these matters so that those responsible for the official's/employee's security may take the necessary action.

(5) In many cases, the official's/employee's mail is screened by an administrative aide(s) who brings such extortions to the attention of the Bureau. The intended victim in these matters is to be notified of the threat unless there is a sound investigative reason not to. Promptly advise FBIHQ of any instance in which the intended victim was not notified and the reason(s) why such notification was not made.

(6) If the victim is a U.S. Representative, U.S. Senator or other U.S. Government official, see Part I, 89-3.10, 89-3.13 and 89-3.14, of this manual, concerning notification policy to include FBIHQ and the Washington [Metropolitan|Field Office| (WMFO)]. In addition, the communication notifying of an extortion matter with one of the above persons as the victim should be sent to the field office which covers the victim's "home" district/residence with a lead to make appropriate notifications at the official's office and to the concerned local law enforcement agencies.

EFFECTIVE: 02/16/89

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PRINTED: 02/18/98

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9-5.5 Acceptance of Interstate Domestic Violence Matters  
Referred to the Violent Crimes Program

When an Interstate Domestic Violence matter is referred from another agency, the field office should do the following:

(1) Review the fact situation for elements to determine that a violation of the federal Interstate Domestic Violence Statute (Title 18, USC, Sections 2261 and 2262) has occurred.

(2) Consult with the appropriate USA or Assistant United States Attorney (AUSA) to ensure that a prosecutable federal case exists. Inasmuch as the local investigation may preclude successful federal prosecution, a USA's or AUSA's opinion is mandatory.

(3) Blanket acceptance of referred Interstate Domestic Violence matters is to be avoided. However, where a viable federal case exists and FBI investigation and federal prosecution are appropriate, a case should be initiated.

(4) Violent Crimes/Fugitive Unit, Criminal Investigative Division, is responsible for these cases at FBIHQ.

EFFECTIVE: 11/25/96

9-6 NOTIFICATION OF VIOLATIONS TO FBIHQ - GENERAL

(1) In all cases where the victim is a Federal, state or local government official, FBIHQ must be initially notified by telephone, teletype or airtel enclosing a summary LHM, depending upon the exigency of the matter. Refer also to Part I, Section 175, of this manual, for specific FBI/USSS agreements regarding dissemination policy and format to be used.

(2) If initial notification to FBIHQ is by telephone, a confirming teletype must be promptly submitted.

(3) The format of the teletype should be suitable for dissemination.

(4) Telephone and/or teletype notification is also required where:

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- (a) The media is affording coverage.
- (b) The victim has high public exposure.
- (c) The victim is a company dealing with the manufacture, distribution or sale of goods consumed by the public and the threat involves the adulteration of its product.

(5) In all other extortions, the exigency of the matter will dictate notification to FBIHQ.

(6) The notification teletype should set forth the facts, as known, to include a succinct summary of the contents of the extortionate letter. If the extortion message is short, i.e., not more than two pages of a teletype, it should be quoted in its entirety in the initial teletype to the Bureau.

(7) In minor unaggravated cases where the USA declines prosecution, FBIHQ notification is not required. Promptly confirm the USA's opinion in writing and close such matters.

EFFECTIVE: 02/16/89

9-7 INVESTIGATIVE PROCEDURES

(1) Upon receipt of a complaint, a preliminary inquiry is to be conducted to ascertain the existence of a federal violation within the Bureau's jurisdiction. This inquiry should include an immediate, thorough interview of the addressee/victim of the extortion.

(2) Promptly notify FBIHQ by telephone, teletype, airtel or letter, as exigencies dictate, of all extortion complaints where active investigation is to be conducted and where dissemination is made locally to an agency and FBIHQ must also disseminate the information at the headquarters level. (See 9-5.3, 9-5.4 and 9-6.)

(3) The original extortion letter is to be promptly forwarded by airtel to FBIHQ, Attention: Laboratory Division, for examination. A copy of the letter should also be designated for the Violent Crimes/Fugitive Unit, Criminal Investigative Division (CID). The cover airtel should briefly set forth the facts of the case and specifically request the types of Laboratory Division examinations

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desired. Refer to Part II, Section 13, of this manual, entitled "Laboratory Division Aids to Investigations," and Part II, Section 15, of this manual, entitled "Latent Fingerprint Identification," for the types of analyses available through the Laboratory Division.

(4) Identification of those who have handled the extortion letter is necessary so that elimination fingerprints can be obtained for later reference. The unavoidable handling of the letter or document before it comes into the possession of the field office should not preclude the requesting of latent fingerprint examinations. However, appropriate handling instructions should be given to those who may receive subsequent letters from the extortionist so that minimal handling of the evidence occurs.

(5) Deleted

(6) The medium by which an extortionate message is conveyed to the victim may include telephone calls, tape recordings and videotapes. Analyses can be conducted by the Laboratory and Information Resources Divisions on these types of evidence. Refer to Part II, 16-8, of this manual, for details of examinations which can be conducted on this evidence.

(7)



(8)



b2/b7E

(9) If the President and/or Vice President of the United States is(are) the intended victim(s) of the extortion, refer to Part I, Section 175, of this manual, for proper handling. (Title 18, USC, Section 871, is under the exclusive jurisdiction of the USSS.)

(10) FBIHQ should be advised prior to initiating an investigation of possible violations of the Extortion Statute wherein local police officers and ranking public figures in state or local government are victims. The reason for this is that most extortion matters are also violations of applicable local or state laws. If

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requested, the FBI will defer investigation of those matters involving local police officers and ranking public figures in state or local government to the appropriate local or state law enforcement agency.

EFFECTIVE: 03/21/95

9-7.1

(1)

(2)

EFFECTIVE: 02/27/95

9-7.2

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FEDERAL BUREAU OF INVESTIGATION  
FOIPA  
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2

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- ☒ Deletions were made pursuant to the exemptions indicated below with no segregable material available for release to you.

Section 552

☐ (b)(1)

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☐ (b)(7)(A)

☐ (b)(7)(B)

☐ (b)(7)(C)

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☒ (b)(7)(E)

☐ (b)(7)(F)

☐ (b)(8)

☐ (b)(9)

Section 552a

☐ (d)(5)

☐ (j)(2)

☐ (k)(1)

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MFOG Manual Section 9-7. 2 pages 9-15 and 9-16

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(5)

EFFECTIVE: 09/17/97

9-8

REPORTING REQUIREMENTS

(1) In all matters where the preliminary inquiry results in a full investigation being conducted and where the USA's Office has advised it will prosecute the identified subject(s), a prosecutive report must be prepared. See Manual of Administrative Operations and Procedures, Part II, 10-14 and 10-15, for reporting formats.

(2) In cases where the investigation develops a subject and the USA's Office declines prosecution or defers prosecution to local or state authorities, a report is not required. However, in the event that local/state authorities rely heavily on the FBI investigation, a prosecutive report is the best format for trial preparation and subsequent Agent testimony. Secure USA approval before disseminating such prosecutive reports to local or state authorities.

(3) If dissemination to another Federal agency (USSS, USMS, Executive Office of USAs, etc.) has been made, extra copies of the prosecutive report should be designated for FBIHQ to disseminate. If headquarters level dissemination is not necessary, submit only one copy of the prosecutive report to FBIHQ.

(4) In all other cases a report is not required and the case must be closed by memorandum, letter, airtel, etc. If FBIHQ was advised of the case, ensure FBIHQ files are completed by notification that the matter is closed. This may be accomplished in three ways:

(a) In unknown subject cases by letter or airtel.

(b) In cases where the USSS or another agency was notified, ensure a succinct letterhead memorandum of the investigative effort is disseminated to that agency and an original plus three copies of the LHM are sent by cover airtel to FBIHQ. FBIHQ will disseminate one copy of the letterhead memorandum to each concerned agency at the headquarters level.

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(c) In cases where the Federal or local prosecutive process results in the generation of an "Accomplishment Report" (FD-515), the case may be closed by submission of this form when the final outcome of the judicial process is known.

EFFECTIVE: 03/28/84

9-9 NUCLEAR EXTORTION

(1) FBIHQ is to be notified by telephone of all extortions wherein a nuclear or radiological device or nuclear weapon is involved. In addition to all logical extortion investigative steps, refer to Part I, 117-7, of this manual, for additional investigative steps which must be followed.

(2) Telephonic notification is to be followed promptly by teletype.

(3) If FBIHQ assistance is needed in a nuclear extortion matter, contact should be made directly with the Domestic Terrorism Unit, Violent Crimes and Major Offenders Section, CID.

EFFECTIVE: 05/25/93

9-10 BIOLOGICAL EXTORTION (See MIOG, Part I, Section 279.)

EFFECTIVE: 06/18/97

9-11 VENUE

General - Venue generally is governed in Extortion matters by Title 18, USC, Section 3237. This section states venue lies in any district from, through, or into which commerce or mail moves.

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EFFECTIVE: 07/23/90

9-12 CHARACTER

(1) Extortion.

(2) Deleted

(3) When an extortion arises out of a situation wherein the threat involves a credible nuclear threat such as a nuclear weapon or radiological dispersal device, the case should be investigated as an Atomic Energy Act (AEA) matter in the Domestic Terrorism Program. The character of such cases should be carried as: AEA-Extortion. FBIHQ should be promptly informed of these types of cases so that contacts may be made with the appropriate federal agencies to determine the credibility of the threat. If the threat assessment and subsequent investigation determines the threat is a hoax, OO has the option of continuing its investigation as an AEA matter or converting it to an extortion matter under the 9 classification. See Part I, Section 117, of this manual, for additional details regarding AEA-Extortion matters.

(4) Blanket acceptance of referred Interstate Domestic Violence/Interstate Violation of a Protection Order matters is to be avoided. However, where a viable federal case exists and FBI investigation and federal prosecution are appropriate, a case should be initiated. The character should be carried as: Extortion - Interstate Domestic Violence OR Extortion - Interstate Violation of a Protection Order.

EFFECTIVE: 06/18/97

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SECTION 10. RED CROSS ACT

10-1 STATUTES

Title 18, USC, Section 706 and 917.

EFFECTIVE: 01/31/78

10-1.1 Section 706 (Red Cross)

EFFECTIVE: 01/31/78

10-1.1.1 Elements

- (1) Whoever, corporation, association or person
- (2) fraudulently wears or displays
- (3) the sign or insignia or colored imitation of the Greek Red Cross on a white ground
- (4) or the words Red Cross or Geneva Cross
- (5) to induce the belief that party is an American Red Cross member or agent.

EFFECTIVE: 01/31/78

10-1.2 Section 917 (Red Cross Members and Agents)

EFFECTIVE: 01/31/78

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10-1.2.1 Elements

- (1) Whoever, within the United States
- (2) fraudulently represents himself
- (3) as an American Red Cross member or agent
- (4) to solicit, collect or receive money or material.

EFFECTIVE: 01/31/78

10-2 POLICY

(1) Present results preliminary investigation to USA to obtain view toward criminal prosecution on basis allegations will be developed by complete investigation, or advise regarding any other action. (USA may decide subjects be requested to desist practices, instead of requiring full investigation.)

- (2) Inform local Red Cross disposition of investigation.
- (3) Investigations conducted similar to impersonation matters.

EFFECTIVE: 01/31/78

10-3 PENALTIES

- (1) Section 706 - \$250 fine and/or six months imprisonment.
- (2) Section 917 - \$500 fine and/or one year imprisonment

EFFECTIVE: 01/31/78

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10-4 INVESTIGATIVE PROCEDURE

(1) Determine from local representative Red Cross whether subject actually member or agent of Red Cross.

(2) If local Red Cross cannot definitely declare whether subject member or agent Red Cross, make further check with national headquarters of American National Red Cross, Washington, D. C., through Washington|Metropolitan|Field Office.

EFFECTIVE: 10/16/90

10-5 CHARACTER - RED CROSS ACT

EFFECTIVE: 10/16/90

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SECTION 11. TAX (OTHER THAN INCOME)

11-1 TAX (OTHER THAN INCOME)

The Miscellaneous Tax Unit of the Internal Revenue Service administers the internal revenue laws as they apply to other than alcohol, social security, and income and profits taxes, preparing regulations in connection therewith, receiving, auditing, and verifying the returns, and reviewing and disposing of claims for refund and abatement. Complaints coming within this category are handled at FBIHQ and in the field according to the same system set forth in Section 5, Income Tax, in this manual.

EFFECTIVE: 01/31/78



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SECTION 12. |DRUG DEMAND REDUCTION|

12-1 DRUG DEMAND REDUCTION PROGRAM (DDRP) BACKGROUND  
AND POLICY

| (1) BACKGROUND ON THE DRUG DEMAND REDUCTION PROGRAM AND  
THE COMMUNITY OUTREACH PROGRAM

(a) In 1988, the Drug Demand Reduction Program (now known as the Community Outreach Program) was created to augment the enforcement efforts of the FBI as a long-term solution to the drug abuse problem. The program called for a mature and experienced Special Agent to serve as a Drug Demand Reduction Coordinator (DDRC) in each of the FBI's field offices nationwide. In public appearances and speaking engagements, DDRCs promoted the FBI's role in drug enforcement and demand reduction. DDRCs' duties included:

1. fostering appropriate communication between the FBI's law enforcement and prevention initiatives;

2. establishing a network of resources throughout their territories;

3. disseminating prevention materials;

4. facilitating prevention programs, speeches, events, etc.; and

5. coordinating the development and growth of regional programs with FBIHQ to ensure maximum economy and effectiveness.

Recognizing the interdependency of children, parents, other adults, community groups, businesses, schools, social services, and health services, the FBI focused its DDRP efforts on three areas: the community, the schools, and the workplace. In connection with these activities, the FBI entered into prevention programs or partnerships with several national and local organizations.

(b) Since 1990, the Community Outreach Program focused its efforts primarily on socioeconomic and disadvantaged youth from impoverished inner-city and rural areas. The FBI's Adopt-A-School Program, including the Junior Special Agent, Mentoring, and

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Tutoring programs, was created as a means of reaching out to these at-risk youths. Other Community Outreach Program initiatives included sponsoring little league baseball, softball, soccer, and/or basketball teams for inner-city disadvantaged youth, providing instructors for criminal justice classes, and conducting training for security personnel. FBI senior managers attended community town hall meetings and met regularly with community and business leaders. Through these interactions, the Community Outreach Program developed partnerships with national and local organizations. In 1994, the FBI's Citizens' Academy was established and merged under the umbrella of the COP.

(2) COMBINING THE DRUG DEMAND REDUCTION PROGRAM AND THE  
COMMUNITY OUTREACH PROGRAM

(a) Linking community service, drug abuse prevention, and law enforcement is a major national trend as grass roots efforts have brought about federal government support for public safety initiatives. The Director's memorandum, dated November 9, 1993, combined the Drug Demand Reduction Program (DDRP) and the Community Outreach Program (COP) under the authority of the Victim-Witness/Community Outreach Unit, Criminal Investigative Division (CID). The Assistant Director of CID is responsible for program oversight. The combined program, called the Community Outreach Program, includes all Adopt-A-School, Junior Special Agent, Mentoring, and Tutoring programs, as well as crime, drug, gang, and violence prevention efforts.

(b) Effective September 2, 1994, the Drug Demand Reduction Coordinator's position was converted from Special Agent to professional support personnel. However, due to the nature of the work and high profile of the program, certain circumstances may require a Special Agent to accompany the COP Specialist. Therefore, while the coordinator position is now filled by a support employee, it may be necessary to assign a Special Agent to work in concert with the COP Specialist. For example, when safety concerns arise, or when an experienced law enforcement officer's perspective is required, then the use of Special Agent personnel is justified.

(3) PROGRAM DUTIES AND RESPONSIBILITIES

(a) The COP Specialist will be responsible for FBI community-related efforts, including developing/training volunteers, tracking the budget, scheduling activities, submitting the annual report, coordinating the FBI's Citizens' Academy, and providing resources.

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(b) Each SAC will decide whether or not to assign a support employee part or full time to the COP Specialist position.

(c) Each field division will assess the needs of its territory and deliver a fitting product (see COP Specialist's Manual for component models). Each division may choose to emphasize certain programs or even merge some, or all, into one. It is expected that each field division will be unique, yet will follow the policy and guidelines set forth by FBIHQ. Following are three basic examples of how a field division might implement the COP (many other variations are possible):

1. Continue its long-standing commitments in the schools, the workplace, and the community.

2. Concentrate its resources in Adopt-A-School, Junior Special Agent, Mentoring, and Tutoring programs, community and organization partnerships, and youth sports programs.

3. Formulate partnerships with organizations, such as the Urban League or the League of United Latin American Citizens to educate youth and young adults in anti-gang, -drug, and -violence initiatives, local Boys and Girls Clubs of America through the SMART MOVES, establishing an FBI Citizens' Academy, and assisting community neighborhood watch associations.

(4) REPORTING PROCEDURES

(a) Each field division is required to submit an ANNUAL report summarizing its COP activities to FBIHQ marked to the Attention of the Victim-Witness/Community Outreach Unit, CID.

(b) The annual accomplishments report must be furnished on a timely basis, adhering to the following schedule:

REPORTING PERIOD

DATE DUE

January 1 through December 31

January 20

(c) The annual accomplishments report should contain the following:

1. A summary of the COP activities for the reporting period. The COP components chosen by the field division

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should be set forth and adequately described. DO NOT merely submit a list of where and when presentations were given, but summarize each component briefly and give examples of how your division implemented the COP. See the COP Specialist's Manual for an example.

2. Statistics on volunteerism to determine the strength of overall field support for the COP and to meet reporting requirements for the Department of Justice. See the COP Specialist's Manual for a sample format.

3. The annual report must include a plan for spending (budget formulation) for the next fiscal year. See the COP Specialist's Manual for an example.

4. An itemized accounting of acquisitions and other expenses (budget execution). See the COP Specialist's Manual for a sample format.

5. Requests for enhancements should be requested on an as-needed basis. For approval, enhancement requests must be justified in writing. Field division budget allotments are based on historical spending patterns and justifications.

(d) The annual report is important and necessary for a variety of reasons, including:

1. The "Annual COP Report," which is provided to each field division, other government agencies, the law enforcement community, and the general public.

2. SAC evaluations and inspection reports.

3. Field division budget allotments.

4. Innovative, resourceful, and creative efforts, which can then be shared with other COP Specialists or possibly developed into a regional or national program.

5. Special studies or responses to special requests from other FBI entities, government agencies, law enforcement, academicians, and the general public.

(5) POLICY AND GUIDELINES

(a) FBI Name, Seal, Initials, and the COP Logo - see COP Specialist's Manual for details.

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1. Use of the FBI name, seal, initials, and the COP logo must be closely monitored to ensure their use falls within guidelines set forth by law, regulation, and FBI policy.

2. Use of the FBI name, seal, initials is regulated by Title 18, United States Code, and Title 41, Code of Federal Regulations.

3. All promotional campaigns must have written FBIHQ authority to use the FBI name, seal, initials, and/or the COP logo. The authority to grant approval lies with the Employee Benefits Unit (EBU), Personnel Management and Benefits Section, Personnel Division. Requests for approval are submitted to FBIHQ COP which redirects them to EBU on a case-by-case basis.

(b) COP Spending Guidelines - see the COP Specialist's Manual for details.

1. Each field division's COP funds are included as part of its overall supply budget and are to be used for COP supplies, conference space, and/or honorariums.

2. When using COP funds, both the COP item number [REDACTED] and the subobject classification number [REDACTED] MUST be indicated. b2

3. Each field division may expend up to \$500 on a project without prior FBIHQ approval. All expenditures over \$500 MUST be requested via electronic communication to FBIHQ for approval. The funds may be expended following receipt of written approval.

4. All COP expenditures must follow routine procurement policies and procedures.

5. Under procurement regulations, COP funds are to be spent on items for "target" groups. Items MUST exhibit a drug-free message and have a purchase value of \$5 or LESS.

6. Under procurement regulations, ONLY representation funds can be used to purchase food, clothing, or items for liaison and tokens of appreciation (e.g., certificates and plaques). COP funds CANNOT be used for such purchases.

7. All travel and per diem expenses associated with COP MUST be funded from the field division's travel budget, NOT

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from COP funds.

(c) Working with Celebrities - Celebrity reputations are fragile. Unforeseen events sometimes change a celebrity's public acceptance to one of public dislike and even condemnation. For this reason, FBIHQ COP discourages association with celebrities.

(d) Fundraising - "The FBI cannot accept funding (resources) from any source other than Congress or from sources approved by Congress" (Prohibition: Title 31, USC, Section 484).

1. The FBI name, seal, initials, COP logo, manpower, or funds are not to be used to assist private entities in their fundraising activities, regardless of the worthwhile nature of the event.

2. FBI employees are to refrain from fundraising activities for COP purposes.

3. FBI employees are to refrain from supplementing the COP budget at their own expense.

EFFECTIVE: 09/19/97

12-2 CHARACTER - DRUG DEMAND REDUCTION

This character was formerly "DRUGS" and was changed to "DRUG DEMAND REDUCTION PROGRAM" in 1993. The character was again changed to "DRUG DEMAND REDUCTION" in Fiscal Year 1998 when it was combined with the Community Outreach and Victim/Witness Assistance Programs. To find historical versions of the old 12 classification known as "DRUGS," contact the Manuals Desk. Instructions for investigations of drug violations are located in MIOG, Part I, Section 281.

EFFECTIVE: 09/19/97

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SECTION 14. SEDITION

14-1 STATUTES

Title 18, USC, Sections 2387, 2388, and 2391

EFFECTIVE: 01/31/78

14-1.1 Section 2387 - Activities Affecting Armed Forces Generally

"(a) Whoever, with intent to interfere with, impair, or influence the loyalty, morale, or discipline of the military or naval forces of the United States:

"(1) advises, counsels, urges, or in any manner causes or attempts to cause insubordination, disloyalty, mutiny or refusal of duty by any member of the military or naval forces of the United States; or

"(2) distributes or attempts to distribute any written or printed matter which advises, counsels, or urges insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States...Shall be fined not more than \$10,000 or imprisoned not more than ten years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

"(b) For the purposes of this section, the term 'military or naval forces of the United States' includes the Army of the United States, Navy, Air Force, Marine Corps, Coast Guard, Naval Reserve, Marine Corps Reserve, and Coast Guard Reserve of the United States; and, when any merchant vessel is commissioned in the Navy or is in the service of the Army or the Navy, includes the master, officers, and crew of such vessel."

EFFECTIVE: 01/31/78

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14-1.2 Section 2388 - Activities Affecting Armed Forces During War

"(a) Whoever, when the United States is at war, willfully makes or conveys false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies; or

"Whoever, when the United States is at war, willfully causes or attempts to cause insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States, or willfully obstructs the recruiting or enlistment service of the United States, to the injury of the service of the U. S., or attempts to do so...Shall be fined not more than \$10,000 or imprisoned not more than twenty years, or both.

"(b) If two or more persons conspire to violate subsection (a) of this section and one or more such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in said subsection (a).

"(c) Whoever harbors or conceals any person who he knows, or has reasonable grounds to believe or suspect, has committed, or is about to commit, an offense under this section, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

"(d) This section shall apply within the admiralty and maritime jurisdiction of the United States, and on the high seas, as well as within the United States."

EFFECTIVE: 01/31/78

14-1.3 Section 2391 - Temporary Extension of Section 2388

"The provisions of Section 2388...in addition to coming into full force and effect in time of war shall remain in full force and effect until six months after the termination of the national emergency proclaimed by the President on December 16, 1950...or such earlier date as may be prescribed by concurrent resolution of the Congress, and acts which would give rise to legal consequences and penalties under Section 2388 when performed during a state of war shall give rise to the same legal consequences and penalties when they are performed during the period above provided for."



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EFFECTIVE: 01/31/78

14-2 DEPARTMENTAL OPINIONS

(1) To assist in determining types of utterances which fall within prohibition of sedition statutes, Department of Justice has designated following types of statements as being within prohibition of statutes:

(a) False statements of facts in time of war intended to interfere with the prosecution of war

(b) Utterances in time of war which cause or attempt to cause insubordination in armed forces

(c) Utterances which have the direct effect of obstructing enlistment or the operation of the draft

(d) Advocacy of armed revolt or overthrow of Government by force and violence

(2) Above types of utterances not considered all-inclusive of possibilities presented by sedition statutes but only guides.

EFFECTIVE: 01/31/78

14-3 POLICY

(1) Department of Justice has advised that United States Attorneys (USAs) are not to authorize prosecution without prior departmental authority in each individual case; therefore, no request should be made of USA for institution of prosecution. Department has instructed, however, that in all cases involving sedition in which facts justify consideration, copies of reports should be designated for the office of interested USA.

(2) Copies of reports will be referred to Department by FBIHQ for decisions relative to prosecution. Should the USA authorize prosecution, proceed in accordance with his instructions since it is presumed he will have complied and obtained prior authorization. Where such prosecutive action is authorized by a local USA and no advice from FBIHQ has been received indicating knowledge that this action has been

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approved by the Department, immediately advise by telephone or teletype of action taken. In order that FBI can properly discharge its obligation to investigate all cases involving the distribution of seditious literature and be aware of all such publications, make necessary arrangements to be advised of all publications in your district which might be considered seditious. Within 24 hours after seditious article reaches general public, each field office must prepare teletype summary of article for FBIHQ which must be followed by two copies of publication in which it appeared. Such articles will be of type which reflect race prejudice, anti-Semitism and material tending to cause disunity. Cover all meetings of organizations engaged in seditious activities and bring to attention of FBIHQ statements of seditious nature or having propaganda significance by most expeditious means warranted.

EFFECTIVE: 01/31/78

14-4 INVESTIGATIVE PROCEDURE

EFFECTIVE: 01/31/78

14-4.1 General

- (1) Ascertain whether persons involved are civilian or uniformed personnel of Army, Navy, or Air Force.
- (2) Ascertain whether offense occurred on military or naval establishment, reservation, base, field, port or harbor, under jurisdiction of Army, Navy or Air Force or on merchant vessel commissioned in Navy or in service of Army or Navy.
- (3) If so, communicate facts to proper official of Army or Navy or Air Force and conduct no investigation until a request is received through proper channels.
- (4) General investigation should seek to establish identity and location of all witnesses. All persons present when words spoken should be interviewed immediately and made matter of record before lapse of time may impair effectiveness and probative value of their testimony.
- (5) Important to establish in greatest detail factual setting in which language was used since necessary part of proof in sedition case.

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(6) If member of armed forces present, ascertain name, address, rank, branch of service and serial number. If men having obligations under Selective Service Act present, ascertain locality, birth and selective service status of each witness in addition to other identifiable information. Efforts should be made to determine whether or not speaker was aware of presence of member of armed forces or persons having obligation under draft laws.

(7) If speech was public in nature and delivered to audience, ascertain in detail circumstances under which made. Inquiry should establish whether speech was delivered extemporaneously or from prepared script. Inquiry should include date, time and place of occurrence, as well as chronology of events leading up to utterance of seditious statements. Ascertain age, sanity, sobriety and general demeanor of speaker. Manner in which words spoken has important bearing on speaker's intent and must be clearly established before facts will warrant prosecution. Determine if words addressed generally to all persons within sound of speaker's voice were spoken without prompting or in response to a question and determine whether words expressed in a deliberate manner or in temperamental outburst.

(8) Witnesses should be asked to evaluate effect of language upon persons addressed. Inquire whether result of words was to arouse patriotic ardor of listeners or whether its effect was demoralizing.

(9) Determine whether alleged seditious words have been repeated by other persons since they were first uttered and with what results.

(10) Bear in mind possibility that this investigation may uncover other violations of existing statutes, such as failure to comply with postal regulations, income tax or registration law requirements.

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14-4.2 Written or Printed Words

(1) Investigation of seditious statements appearing in written or printed material should include inquiries extending beyond analysis and examination of alleged seditious expressions themselves.

(2) If statements appear in a publication regularly issued, obtain copies of the publication circulated before and after issue in question and analyze from standpoint of ascertaining its seditious content and establishing criminal intent of prospective defendants.

(3) Analysis of seditious statements should seek to determine whether statements are in fact original or plagiarized reproduction or quotation from other sources.

(4) In some cases, it may be necessary to examine content of each issue for a period of several months to develop seditious character of publication. In such cases, analysis of any one issue may fail to disclose clearly seditious statements, whereas quantitative analysis of number of issues may establish constant emphasis and frequent repetition of same themes. Half-truths, continual slanting of facts, habitual dishonest presentation and interpretation of world and national events are cumulative in effect and may be seditious as a matter of law. Efforts should be made to establish repetition of same themes and same treatment of them in number of issues.

(5) Completely identify group or organization responsible for authorship, printing, and publication of printed or written material in question. Inquiry should not overlook possible collaboration, sponsorship, support, and financial assistance of outside individuals and other organizations. Consider possibility of subsidy and influence by foreign sources.

[REDACTED]

(6)

[REDACTED]

(7)

[REDACTED]

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(8)



(9)



(10) Under first offense defined in Title 18, USC, Section 2388, dealing with false reports or statements, courts have held not necessary to prove such false reports or statements were made to persons who are or are liable to become members of the military forces.

(11)



(12)



(13)



(14)



(15)



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14-5 VENUE

Department has advised no sedition case has raised question of venue. Venue must in all cases be determined by Office of U. S. Attorney.

EFFECTIVE: 01/31/78

14-6 PENALTIES - MAXIMUM

(1) Section 2387 - \$10,000 or 10 years, or both, and ineligibility for Government employment for five years after conviction.

(2) Section 2388 - \$10,000 or 20 years, or both. Harboring - \$10,000 or 10 years, or both.

EFFECTIVE: 01/31/78

14-7 CHARACTER - SEDITION

(1) Where reports are prepared involving possible violation of sedition statutes and Selective Service Act, following rule as to character of case is to apply:

(a) Where individual endeavors to counsel, aid, or abet another individual to evade provisions of Selective Service Act, case should be carried under character, "Selective Service Act."

(b) Where an organization counsels, aids, or abets a group of individuals, character should be shown as "Selective Service Act - Sedition."

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SECTION 15. THEFT FROM INTERSTATE SHIPMENT

15-1 STATUTES

Title 18, USC, Section 659

Title 18, USC, Section 660

Title 18, USC, Section 2117

EFFECTIVE: 01/31/78

15-1.1 Section 659

"Whoever embezzles, steals, or unlawfully takes, carries away, or conceals, or by fraud or deception obtains from any pipeline system, railroad car, wagon, motor truck, or other vehicle, or from any tank or storage facility, station, station house, platform or depot or from any steamboat, vessel, or wharf, or from any aircraft, air terminal, airport, aircraft terminal or air navigation facility with intent to convert to his own use any goods or chattels moving as or which are a part of or which constitute an interstate or foreign shipment of freight, express, or other property; or

"Whoever buys or receives or has in his possession any such goods or chattels, knowing the same to have been embezzled or stolen; or

"Whoever embezzles, steals, or unlawfully takes, carries away, or by fraud or deception obtains with intent to convert to his own use any baggage which shall have come into the possession of any common carrier for transportation in interstate or foreign commerce or breaks into, steals, takes, carries away, or conceals any of the contents of such baggage, or buys, receives, or has in his possession any such baggage or any article therefrom of whatever nature, knowing the same to have been embezzled or stolen; or

"Whoever embezzles, steals, or unlawfully takes by any fraudulent device, scheme, or game, from any railroad car, bus, vehicle, steamboat, vessel, or aircraft operated by any common carrier moving in interstate or foreign commerce or from any passenger thereon

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any money, baggage, goods, or chattels, or whoever buys, receives, or has in his possession any such money, baggage, goods, or chattels, knowing the same to have been embezzled or stolen. . . "

EFFECTIVE: 01/31/78

15-1.1.1 Elements

Elements of violations growing out of the embezzlement, stealing, or unlawful taking from any pipeline system, railroad car, wagon, motor truck, etc., of any goods or chattels moving as or which are a part of or which constitute an interstate or foreign shipment of freight, express, or other property.

(1) The theft or embezzlement violation:

(a) Goods or chattels moving as or which are a part of or which constitute an interstate or foreign shipment of freight, express, or other property in one of the places named in section 659.

(b) The goods or chattels have been embezzled, stolen, or obtained by fraud or deception.

(2) The buying, receiving, or possessing violation:

(a) Goods or chattels were moving as or were a part of or constituted an interstate shipment or foreign shipment of freight or express in one of the places named in the statute.

(b) The actual theft or embezzlement of same.

(c) Guilty knowledge on the part of the buyer, receiver, or possessor of such goods or chattels that they have been stolen or embezzled. [Pursuant to Title 18, USC, Section 21, the element of guilty knowledge may also be established by proof that the defendant believed that the property was stolen or embezzled, after or as a result of an official representation as to the nature of the property (see MIOG, Part II, 1-1.12).]

NOTE that in subparagraphs (1) and (2) above, the theft, embezzlement, etc., need not be from a vehicle operated by a common carrier. The Department is of the opinion that a theft, etc., of freight or express moving in interstate commerce taken from a consignor-owned or -controlled vehicle is within the above portions of section 659.



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(3) Elements of violations growing out of the embezzlement, theft, or unlawful taking or obtaining by fraud or deception of any baggage in the possession of any common carrier for interstate or foreign transportation:

(a) Baggage is in the possession of any common carrier for transportation in interstate or foreign commerce.

(b) The baggage has been embezzled, stolen, or obtained by fraud or deception.

(c) Baggage is in the possession of any common carrier for transportation in interstate or foreign commerce.

(d) Contents of same are broken into, or stolen, or concealed.

(e) Baggage is in the possession of any common carrier for transportation in interstate or foreign commerce.

(f) Baggage has been embezzled, stolen, broken into, or any of the contents have been stolen.

(g) Buying, receiving, or possessing such baggage or any article therefrom knowing the same has been embezzled or stolen. Pursuant to Title 18, USC, Section 21, the element of guilty knowledge may also be established by proof that the defendant believed that the property was stolen or embezzled, after or as a result of an official representation as to the nature of the property (see MIOG, Part II, 1-1.12).

(4) Elements of violations growing out of the embezzlement, theft, or unlawful taking by fraud of money, baggage, goods, or chattels from any railroad car, bus, vehicle, aircraft, etc., operated by any common carrier moving in interstate or foreign commerce or from any passenger thereon:

(a) The embezzlement, theft, or unlawful taking from a vehicle violation. Money, baggage, goods, or chattels have been embezzled, stolen, or unlawfully taken by a fraudulent device, scheme, or game from railroad car, bus, vehicle, or aircraft operated by any common carrier. The vehicle was moving in interstate or foreign commerce.

(b) The embezzlement, theft, or unlawful taking from

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a passenger violation. Money, baggage, goods, or chattels have been embezzled, stolen or unlawfully taken by a fraudulent device, scheme, or game from a passenger while that passenger was on any railroad car, bus, vehicle, steamboat, vessel, or aircraft operated by any common carrier and moving in interstate or foreign commerce.

(c) The buying, receiving, or possessing of such property violation. Money, baggage, goods, or chattels have been stolen or embezzled as outlined in (4)(a) and (4)(b) above. Guilty knowledge on the part of the buyer, receiver, or possessor of such goods that they have been stolen or embezzled. Pursuant to Title 18, USC, Section 21, the element of guilty knowledge may also be established by proof that the defendant believed that the property was stolen or embezzled, after or as a result of an official representation as to the nature of the property (see MIOG, Part II, 1-1.12).

(5) The subsequent interstate or foreign transportation of such property:

Money, freight, express, baggage, goods, or chattels as have been stolen as outlined in either subparagraphs (1), (2), (3), or (4) above. The statute provides that such subsequent transportation shall constitute a separate offense and subject the offender to the penalties under the section for unlawful taking. Venue for such subsequent interstate transportation lies in any district into which such money, freight, etc., shall have been removed or into which the same shall have been brought by the offender.

EFFECTIVE: 10/23/95

15-1.1.2 Other Provisions

(1) Venue - The offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any district in which the defendant may have taken or been in possession of the said money, baggage, goods, or chattels.

(2) To establish the interstate or foreign commerce character of any shipment in any prosecution under this section the waybill or other shipping document of such shipment shall be prima facie evidence of the place from which and to which such shipment was made. The removal of property from a pipeline system which extends

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interstate shall be prima facie evidence of the interstate character of the shipment of the property.

(3) A judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution under this section for the same act or acts. Nothing contained in this section shall be construed as indicating an intent on the part of Congress to occupy the field in which provisions of this section operate to the exclusion of State laws on the same subject matter, nor shall any provision of this section be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of the section or any provision thereof.

(4) The carrying or transporting of any such money, freight, express, baggage, goods, or chattels in interstate or foreign commerce, knowing the same to have been stolen, shall constitute a separate offense and subject the offender to the penalties under this section for unlawful taking, and the offense shall be deemed to have been committed in any district into which such money, freight, express, baggage, goods, or chattels shall have been removed or into which the same shall have been brought by such offender.

EFFECTIVE: 01/31/78

15-1.1.3 Possible Violations

(1) Those dealing with the embezzlement, theft, or unlawful taking of any goods or chattels from any pipeline system, railroad car, wagon, motor truck, or other vehicle, etc.

(a) The embezzling, stealing, or unlawful taking, carrying away, or concealing, or the obtaining by fraud or deception, from any pipeline system, railroad car, wagon, motor truck, or other vehicle or from any tank or storage facility, station, station house, platform, or depot, or from any steamboat, vessel, wharf, aircraft, air terminal, airport, aircraft terminal, or air navigation facility with intent to convert to his own use any goods or chattels moving as or which are a part of or which constitute an interstate or foreign shipment of freight, express, or other property.

(b) The buying, receiving, or possessing such goods or chattels knowing them to have been stolen or embezzled.

(c) The embezzling, stealing, or unlawful taking,

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carrying away, or obtaining by fraud or deception with intent to convert to his own use any baggage which shall have come into the possession of any common carrier for transportation in interstate or foreign commerce or the breaking into, stealing, taking, carrying away, or concealing any of the contents of such baggage or the buying, receiving, or possessing any such baggage or any article therefrom knowing the same to have been embezzled or stolen.

(d) The embezzling, stealing, or unlawful taking by any fraudulent device, scheme, or game from any railroad car, bus, vehicle, steamboat, vessel, or aircraft operated by any common carrier moving in interstate or foreign commerce or from any passenger thereon any money, baggage, goods, or chattels or the buying, receiving, or possessing such property knowing the same to have been stolen or embezzled.

EFFECTIVE: 01/31/78

15-1.2 Section 660

"Whoever, being a president, director, officer, or manager of any firm, association, or corporation engaged in commerce as a common carrier, or whoever, being an employee of such common carrier riding in or upon any railroad car, motor truck, steamboat, vessel, aircraft or other vehicle of such carrier moving in interstate commerce, embezzles, steals, abstracts, or willfully permits to be misapplied, any of the moneys, funds, credits, securities, property, or assets of such firm, association, or corporation arising or accruing from, or used in, such commerce, in whole or in part, or willfully or knowingly converts the same to his own use or to the use of another..."

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15-1.2.1 Elements

(1) Offenses by officers:

(a) A president, director, officer or manager of any firm, association or corporation engaged in interstate commerce as a common carrier.

(b) Embezzles, steals, abstracts, willfully misapplies, or willfully permits to be misapplied any of the moneys, funds, credits, securities, property or assets of such firm, association, or corporation arising or accruing from, or used in such commerce in whole or in part or willfully or knowingly converts, the same to his own use or to the use of another.

(2) Offenses by employees:

(a) An employee of any firm, association, or corporation engaged in commerce as a common carrier.

(b) Riding in or upon any railroad car, motor truck or steamboat, vessel, aircraft, or other vehicle of such carrier moving in interstate commerce.

(c) Embezzles, steals, abstracts or willfully misapplies or willfully permits to be misapplied, any of the moneys, funds, credits, securities, property, or assets of such firm, association, or corporation arising or accruing from or used in, such commerce in whole or in part, or willfully knowingly converts the same to his own use or to the use of another.

EFFECTIVE: 01/31/78

15-1.2.2 Other Provisions

(1) Venue - The offense shall be deemed to have been committed not only in the district where the violation first occurred but also in any district in which the defendant may have taken or had possession of such moneys, funds, credits, securities, property, or assets.

(2) "A judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution hereunder for the same act or acts."

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(3) The Department is of the opinion that under the employee's embezzlement portion of section 660 the vehicle must actually be moving in interstate commerce at the time the embezzlement occurs in order to constitute a violation. The Department also is of the opinion that the employee must be riding in or on one of the specified vehicles at the time of the embezzlement in order to have an offense.

EFFECTIVE: 01/31/78

15-1.2.3 Possible Violations

(1) Those dealing with embezzlements, etc., by officers of firm, association, or corporation engaged in commerce as a common carrier:

The embezzling, stealing, abstraction, willful misapplication, or willful consent to misapplication by a president, director, officer, or manager of any firm, association, or corporation engaged in commerce as a common carrier of any of the moneys, funds, securities, etc., of such firm, etc., arising or accruing from or used in such commerce, in whole or in part, or the willful conversion of the same to his own use or the use of another.

(2) Those dealing with embezzlements, etc., by employees of firm, etc., engaged in commerce as a common carrier riding in or upon conveyance of such carrier moving in interstate commerce.

EFFECTIVE: 01/31/78

15-1.3 Section 2117

"Whoever breaks the seal or lock of any railroad car, vessel, aircraft, motor truck, wagon or other vehicle or of any pipeline system containing interstate or foreign shipments of freight or express or other property, or enters any such vehicle or pipeline system with intent in either case to commit larceny therein . . ."

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EFFECTIVE: 01/31/78

15-1.3.1 Elements

(1) Breaking or entering carrier facilities (seal- or lockbreaking)

(a) A seal or lock was unlawfully broken.

(b) The seal or lock was on a railroad car, vessel, aircraft, motor truck, wagon, or other vehicle, or of any pipeline system.

(c) The specified conveyance contained interstate or foreign shipments of freight, express, or other property.

(d) An intent to commit larceny in the specified conveyance.

(2) The railroad car, vessel, aircraft, pipeline system, etc., entering violation

(a) A railroad car, vessel, aircraft, pipeline system, etc., was entered.

(b) The specified conveyance contained interstate or foreign shipments of freight, express, or other property.

(c) An intent to commit larceny in the specified conveyance.

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15-1.3.2 Other Provisions

"A judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution under this section for the same act or acts. Nothing contained in this section shall be construed as indicating an intent on the part of Congress to occupy the field in which provisions of this section operate to the exclusion of State laws on the same subject matter, nor shall any provision of this section be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of the section or any provision thereof."

EFFECTIVE: 01/31/78

15-1.3.3 Possible Violations

(1) Those dealing with the breaking of the seal or lock, and the entry therein

(a) The unlawful breaking of the seal or lock of any railroad car, vessel, aircraft, motor truck, wagon, or other vehicle or of any pipeline system containing interstate or foreign shipments of freight, express, or other property.

(b) The entry of such vehicle or pipeline system with intent in either case to commit larceny therein.

EFFECTIVE: 01/31/78

15-2 DEFINITIONS

(1) An interstate shipment is a shipment of freight, express, baggage, or any kind of shipment which begins in one state and ends in another, or which begins in one state and ends in the same state, if in getting to its destination it actually goes through another state.

(2) A foreign shipment is a shipment of freight, express, baggage, or any kind of shipment which begins in the U. S. and ends in a foreign country or vice versa.

(3) Interstate or foreign character of a shipment - the



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general rules is that a shipment becomes of interstate or foreign character when it is delivered into the custody and control of the carrier by the consignor. It retains its interstate or foreign character until actually delivered to the consignee, unless it remains undelivered an unreasonable length of time. If question exists as to whether stolen shipment was of interstate character at time of theft, embezzlement, etc., consult USA at outset of investigation.

(4) Hijacking - this term applies only where force is used, there is a display of violence or victim is put in fear, i.e., common-law definition of robbery.

EFFECTIVE: 06/09/80

15-3 INVESTIGATIVE PROCEDURE

EFFECTIVE: 06/09/80

15-3.1 Buyers, Receivers and Possessors

These provisions of the statute are aimed at "fences" who by their willingness to handle stolen goods foster thievery. It must be remembered that the taking section of the statute prohibits several things: (1) stealing; (2) embezzling; (3) unlawfully taking; (4) unlawfully carrying away; (5) unlawfully concealing; (6) obtaining by fraud or deception. The "fence" section prohibits three things: (1) buying; (2) receiving; (3) possessing such goods and chattels if accompanied by a knowledge that they have been previously stolen or embezzled. By the plain wording of this statute, if such goods and chattels have been originally removed from the interstate shipment by other means, such as obtaining them by fraud or deception there can be no conviction of the buyer, receiver or possessor, because he/she can't have knowledge they have been stolen when they haven't been stolen. [But see Title 18, USC, Section 21, pursuant to which the element of guilty knowledge may also be established by proof that the defendant believed that the property was stolen or embezzled, after or as a result of an official representation as to the nature of the property (see MIOG, Part II, 1-1.12).]

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EFFECTIVE: 10/23/95

15-3.2 Guilty Knowledge

In receiving cases by far the most difficult and important investigative procedure is to prove the receiver knew or should have known from the circumstances that the property had been stolen or embezzled. There follow some suggestions for consideration:

(1) The testimony of the person who stole or embezzled goods, which is usually admissible as to the guilty knowledge of the person receiving, buying or possessing them.

(2) Circumstantial evidence, such as: the concealment of the goods; the fact that the goods had been recently stolen; similar prior activities of the accused; knowledge by the accused of the criminal tendencies of the thieves; payment by the accused of a price much lower than the well established market value of the goods; destruction by the accused of identification marks on the goods; and false statements by the accused as to the source from which he/she obtained the goods. (See MIOG, Part I, 87-4.4(3).)

(3) Pursuant to Title 18, USC, Section 21, the element of guilty knowledge may also be established by proof that the defendant believed that the property was stolen or embezzled, after or as a result of an official representation as to the nature of the property (see MIOG, Part II, 1-1.12).

EFFECTIVE: 10/23/95

15-3.3 Establishing the Interstate or Foreign Character of a Shipment

(1) Obtain copy of waybill or other shipping document. This is prima facie evidence of place from which and to which shipment made. Ascertain name and address of person who has custody of original waybill or other shipping document and can produce same in evidence. If not readily available, set out leads to obtain such documentation only in priority investigations or in cases wherein prosecution is anticipated.

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(2) If waybill or other shipping document cannot be located for production in evidence, endeavor to ascertain following:

Identities of individuals who packed, labeled, and checked stolen shipment; who transferred goods from consignor to carrier; who obtained bill of lading or receipt; who checked goods at receiving depot or terminal; who transferred goods from depot to car or vehicle; who sealed car; who were in charge of shipment during transportation.

EFFECTIVE: 06/09/80

15-3.4 Identification of Stolen Interstate Shipment

(1) Obtain complete description of stolen merchandise to assist in locating same and to establish subsequently that goods found in possession of suspect actually identical with stolen merchandise.

(2) Consignor may be able to assist in identifying recovered goods.

(3) If serial numbers or other positive identifying markings present, obtain same.

(4) Consider stops and circularization to effect recovery of goods.

(5) Difficult to obtain conviction unless some of stolen property recovered, though not impossible.

(6) Where stolen goods not susceptible of positive identification, do not discontinue investigation for this reason inasmuch as it may be possible to identify them by chain of witnesses who have had them in their possession since theft.

(7) In cases reported to Bureau long after theft occurred concerning property incapable of positive identification, extensive inquiries might not be warranted in absence of plausible leads pointing to thief.

(8) It is necessary to definitely establish by serial number or a chain of witnesses that the property in the possession of the receiver is the same property which has been previously stolen from an interstate shipment. In this connection, while the Federal

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strip tax stamps across the tops of individual whiskey bottles do not have individual serial numbers, they all do have serial numbers in groups bearing the same numbers. The possibilities of definitely identifying an individual bottle of whiskey, if all whiskey bottles bearing the same strip stamp number can be accounted for except those stolen, should not be overlooked. The whiskey bottling concern is the proper place to obtain data relative to the disposition of a certain series of strip stamps.

EFFECTIVE: 06/09/80

15-3.5 Hijacking

(1) Hijacked truck should always be processed for fingerprints.

(2) Interview driver of hijacked truck as soon as possible. Obtain complete statement, including any suspects|driver|has. View truck driver with suspicion if suspects not immediately developed. If any indication|driver|is involved, conduct background investigation concerning|driver|. Consider reinterview of truck driver after reasonable length of time. Consider physical surveillance of suspect truck driver.

(3) Conduct investigation at terminal from which hijacked truck dispatched for information concerning suspicious individuals. Be alert for collusion on part of terminal employees. In many hijackings and major thefts, the "finger man" will be employee or ex-employee of victim carrier.

EFFECTIVE: 06/09/80

15-3.6 Introduction of Waybills into Evidence

Title 28, USC, Section 1732, makes entries which are made in usual course of business admissible by their custodian. This may be valuable as to producing waybills, etc.

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15-3.7 Miscellaneous Procedures

(1) If violation consists of theft from vehicle of common carrier, or from passenger thereon, ascertain points of departure and destination of vehicle. Conductor of train, pilot of aircraft, etc., can usually furnish necessary evidence to prove interstate factor. If violation consists of practicing fraudulent scheme or game on passenger, such as crooked dice or marked cards, local police may be able to assist in furnishing suspects.

(2) If theft occurs from vehicle in transit, obtain identity of carrier employees who last noted shipment to be intact and who first found it stolen. This will assist in establishing point of theft.

(3) If violation consists of theft, embezzlement, etc., of goods from interstate shipment, necessary to prove corpus delicti by evidence of actual theft, embezzlement, etc. In some instances, interstate shipments are found short at destination as result of error by consignor, loss in transit or misdirection.

(4) If violation consists solely of unlawfully breaking the seal, matters should be promptly presented to the appropriate USA before conducting investigation. If prosecution authorized, search should be made for such seal. It may later be possible for FBI Laboratory to establish that knives or tools found in possession of suspects were used to break seal. In seal-breaking violation, remember that intent to commit larceny in vehicle is necessary element of offense. This is of particular importance if nothing stolen from pertinent vehicle. Ascertain identities of individuals who placed seal on vehicle and who last noted it intact. Endeavor to establish venue by ascertaining where seal broken.

EFFECTIVE: 06/09/80

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15-3.8 Modus Operandi

These thefts can be perpetrated in a number of ways, i.e., conversion of overage by truck driver, terminal employee secreting package in personally owned car, collusion between terminal employee and truck driver to load extra cartons on latter's vehicle, "tail gate" thefts, which may be thefts of opportunity by passer-by or perpetrated by organized ring whose members actually surveil trucks, checker using "fast count" to mislead driver and thus not turning over to driver all items called for by shipping documents, etc.

EFFECTIVE: 06/09/80

15-4 POLICY

(1) If complainant or victims are found to be local bootleggers, black-market operators, or racketeers, submit information to USA before continuing investigation.

(2) Where a theft from interstate shipment case has been first unsuccessfully investigated by local authorities or railroad police and then reported to the Bureau long afterwards, the same should be promptly closed if the subjects are unknown and no immediate leads to identify them are apparent. Also, in all such cases in which the subjects are unknown and there is no immediate indication they will become known, no effort should be made to obtain or report the so-called shipping data or any other information of purely jurisdictional import not connected with identifying the subjects.

(3) In all hijackings and in other theft from interstate shipment cases which are of major importance or of unusual interest, including all trailer loads and full container shipments, promptly advise FBIHQ of the pertinent facts and of the progress being made in the investigation. This notification should normally be made by teletype as soon as possible after the theft or hijacking is reported. In unusual instances, it may be deemed advisable to inform FBIHQ by telephone. The victim driver's name, date of birth, and results of office indices check should be included in the initial teletype. This in turn will be searched in Bureau indices and positive results furnished.

(4) Investigation of armed hijackings and trailer load thefts of interstate shipment cases to commence the "same day" after receipt of complaint; other TFIS cases should be handled according to

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the circumstances of the case and consistent with the local USA guidelines. This policy will not apply in those instances where the complainant has delayed reporting the theft or loss for several days or longer after determining that the property was stolen or missing. The latter complaints should be acknowledged telephonically or as otherwise appropriate and investigation initiated consistent with the facts of the complaint and manpower commitments.

(5) In cases involving Section 660, complainant will almost invariably be official or owner of victimized carrier. If subject, who in vast majority of cases will be truck driver, is readily available or can be located with reasonable effort, driver should be interviewed promptly. Case may then usually be presented to USA. Note under elements of Section 660 that this statute is narrow one. If it appears that extensive, drawn-out investigation will be necessary to locate suspect for interview, examine facts of complaint carefully to ascertain if violation present. If doubt exists, present to USA promptly.

(6) Upon receipt of a complaint involving a minor theft from interstate shipment where there are no known aggravating or unusual circumstances, immediately present the facts to USA for a prosecutive opinion or handle in accordance with existing blanket declination policy for TFIS violations. If USA will not consider federal prosecution, conduct no investigation. Refer matter to local law enforcement agency having jurisdiction over violation. So advise complainant and confirm with USA in accordance with procedural agreements. These cases should be handled from a control file in accordance with the procedure set forth in Buairtel to Albany dated 3/10/76, under the caption "Use of Personnel."

(7) The standards established under the "quality vs. quantity" concept should not preclude targeting instances of organized thievery involving a series of package thefts from the same carrier wherein experience has shown that such thefts can amount to a significant monetary loss in a short period of time.

(8) To ensure accurate retrieval of information, indexing standards require that the following data be set forth in the title of unsub, TFIS cases:

(a) Name of common carrier, or if unknown, the name of the consignee or consignor;

(b) Type of merchandise; e.g., televisions, liquor, etc.;

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and (c) Location where theft occurred (city and state);

(d) Date of theft, if known.

(e) Retail value of the merchandise. (Do not include the value of the tractor and/or trailer. These should be included in the body of the teletype.)

NOTE: The setting forth of VINs, serial numbers, model numbers, and license plate numbers in captions of TFIS cases should be avoided.

(9) In TFIS violations involving armored carrier/courier losses, an FD-430 must be submitted to FBIHQ, Attention: Violent Crimes/Fugitive Unit, Criminal Investigative Division, in duplicate, within 30 working days. Submission of the FD-430 will be required in all cases involving an armored carrier/courier loss regardless of the amount. Any investigation should continue to be consistent with current Bureau policy and local USA guidelines. The OO shall determine if regional or other field office notification is necessary. (See MIOG, Part I, 87-5.3.2(5), 91-3.2, 91-12.1, 91-12.2, & 192-11.2; MAOP, Part II, 9-6.)

(10) Effective January 1, 1985, the phrase "property or cargo" was added to the "Motor Vehicle" definition in Title 18, USC, Section 31 (DAMV Statute - Part I, 149-1.1.5 of this manual), to cover trucks. As a result, a person who destroys or damages a truck with intent to endanger the driver or another person on board, or with reckless disregard for their safety, can be prosecuted under Title 18, USC, Section 33 (DAMV). (See MIOG, Part I, 26-4.6 & 149-5.1.)

(a) DOJ has advised that expansion of the term "Motor vehicle" is not intended to "federalize" every attack upon a truck which endangers persons on board, and offices should develop prosecutive guidelines with respect to this statute through their law enforcement coordinating committees.

(b) Employees assigned TFIS investigations should be aware of the provisions of the above section since violations of this nature may be brought to their attention.

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EFFECTIVE: 01/08/96

15-5 LIAISON AND COVERAGE

This is one of the cardinal points in successful handling of theft from interstate shipment matters. Coverage must be established with carriers, local law enforcement agencies, railroad police, trucking associations, traffic groups, insurance companies, representatives of the Interstate Commerce Commission, etc., in order that violations will be reported to us promptly. The best means of maintaining such liaison is by periodic personal contact. Theft From Interstate Shipment posters, suitable for distribution to all types of carriers, are available at all times and may be obtained by requesting same from FBIHQ. These posters have been found to be effective in strengthening liaison with carriers, educating them as to our jurisdiction and deterring thievery.

EFFECTIVE: 02/16/89

15-6 PENALTIES

(1) Section 659 - A fine of not more than \$5,000 or imprisonment for not more than ten years, or both. If the amount or value of such money, baggage, goods, or chattels does not exceed \$100, the offender shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(2) Section 660 - A fine of not more than \$5,000 or imprisonment for not more than ten years, or both

(3) Section 2117 - A fine of not more than \$5,000 or imprisonment for not more than ten years, or both.

EFFECTIVE: 07/11/85

15-7 CHARACTER - THEFT FROM INTERSTATE SHIPMENT (TFIS)

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EFFECTIVE: 07/11/85

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SECTION 17. FRAUD AGAINST THE GOVERNMENT -  
DEPARTMENT OF VETERANS AFFAIRS  
| (SEE MIOG, PART I, SECTION 46.) |

| 17-1 | BACKGROUND

| The 17 classification was eliminated and reclassified in  
Fiscal Year 1996 as 46G (Fraud Against the Government - Department of  
Veterans Affairs). See MIOG, Part I, Section 46. |

EFFECTIVE: 07/31/97

| 17-2 | DELETED |

EFFECTIVE: 07/31/97

| 17-3 | DELETED |

EFFECTIVE: 07/31/97

| 17-3.1 | Deleted |

EFFECTIVE: 07/31/97

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| 17-3.1.1 | Deleted |

EFFECTIVE: 07/31/97

| 17-3.2 | Deleted |

EFFECTIVE: 07/31/97

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EFFECTIVE: 07/31/97

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EFFECTIVE: 07/31/97

| 17-3.3 | Deleted |

EFFECTIVE: 07/31/97

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| 17-3.3.1 | Deleted |

EFFECTIVE: 07/31/97

| 17-3.4 | Deleted |

EFFECTIVE: 07/31/97

| 17-3.4.1 | Deleted |

EFFECTIVE: 07/31/97

| 17-4 | DELETED |

EFFECTIVE: 07/31/97

| 17-5 | DELETED |

EFFECTIVE: 07/31/97

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EFFECTIVE: 07/31/97

| 17-7 | DELETED |

EFFECTIVE: 07/31/97

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SECTION 18. MAY ACT

18-1 STATUTE

Title 18, USC, Section 1384.

EFFECTIVE: 06/15/81

18-1.1 Section 1384. Prostitution Near Military and Naval Establishments

(1) "Within such reasonable distance of any military or naval camp, station, fort, post, yard, base, cantonment, training or mobilization place as the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or any two or all of them shall determine to be needful to the efficiency, health, and welfare of the Army, the Navy, or the Air Force, and shall designate and publish in general orders or bulletins, whoever engages in prostitution or aids or abets prostitution or procures or solicits for purposes of prostitution, or keeps or sets up a house of ill fame, brothel, or bawdy house, or receives any person for purposes of lewdness, assignation, or prostitution into any vehicle, conveyance, place, structure or building, or permits any person to remain for the purpose of lewdness, assignation, or prostitution in any vehicle, conveyance, place, structure or building, or part thereof, knowing or with good reason to know that it is intended to be used for any of the purposes herein prohibited shall be fined not more than \$1,000 or imprisoned not more than one year, or both."

(2) "The Secretaries of the Army, Navy, and Air Force and the Federal Security Administrator (now Secretary of Health and Human Services) shall take such steps as they deem necessary to suppress and prevent such violations thereof, and shall accept the cooperation of the authorities of States and their counties, districts, and other political subdivisions in carrying out the purpose of this section."

(3) "This section shall not be construed as conferring on the personnel of the Departments of the Army, Navy or Air Force or the Health and Human Services any authority to make criminal investigation searches, seizures, or arrests of civilians charged with violations of this section."

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EFFECTIVE: 06/15/81

18-2 DEPARTMENTAL INSTRUCTIONS

The Department has pointed out:

(1) FBI has investigative jurisdiction over criminal violations of the act but not with policing responsibilities.

(2) In most cases violations of the act would also constitute violations of the state law and state and local law enforcement agencies have concurrent jurisdiction.

(3) Arrangements could be worked out with local police to carry out the necessary patrols and make arrests for petty individual infractions.

(4) This leaves the FBI the task of investigating organized violations of a major character.

EFFECTIVE: 06/15/81

18-3 MISCELLANEOUS

(1) Effective April 11, 1953, the Federal Security Administrator was abolished and all functions of the Federal Security Administrator were transferred to the Secretary of Health, Education and Welfare. The Department of Health, Education and Welfare was subsequently abolished and all functions of that department were transferred to the Department of Health and Human Services, effective May 4, 1980.

(2) It should be noted that violations of this statute occur primarily in time of war.

EFFECTIVE: 06/15/81



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18-4 POLICY

(1) The May Act is subject to invocation only by the Secretary of the Army, Secretary of the Navy, or Secretary of the Air Force. After invocation it is the FBI's responsibility to investigate violations of the May Act. Prior to invocation, the FBI has no responsibility under the act and accordingly makes no recommendation as to the desirability of invocation and expresses no opinions as to the necessity therefor.

(2) The Secretaries of the Army, the Navy, and the Air Force, and the Secretary for Health and Human Services are authorized and directed to take such steps as they deem necessary to suppress and prevent violations of the act and also to accept the cooperation of state, county and local authorities in carrying out the purposes of the act.

(3) The act shall not be construed as conferring on the personnel of the Army, Navy, or Air Force, or the Department of Health and Human Services any authority to make criminal investigations, searches, seizures or arrests of civilians charged with violation of the act.

(4) In the past the Federal Security Administrator (now Secretary of Health and Human Services), the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force have stipulated that a reasonable opportunity should be given local authorities in the vicinity of the military establishments to curb prostitution at those localities before the May Act is invoked. Whenever the May Act is invoked the SAC and all investigative personnel should be alert to point out to all interested parties that FBI investigations under the May Act are conducted pursuant to congressional enactment and are not to be interpreted as an indication of any desire on the part of the FBI to enter the field of local vice control.

EFFECTIVE: 06/15/81

18-5 VENUE

Judicial district wherein offense is committed.

EFFECTIVE: 06/15/81

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18-6 CHARACTER - MAY ACT

EFFECTIVE: 06/15/81

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SECTION 21. FOOD AND DRUGS

21-1 FOOD AND DRUGS

The Food and Drug Administration enforces the Food, Drug, and Cosmetic Act; Tea Act; Import Milk Act; Caustic Poison Act; and Filled Milk Act. Its activities are directed mainly toward promoting purity, standard potency, and truthful and informative labeling of the essential commodities covered by the provisions of these five acts, as well as not controlled depressant and stimulant drugs. Complaints of this nature received at FBIHQ are referred to the Commissioner of Food and Drug Administration, Washington, D. C. Similar complaints received in the field should be referred to the nearest field component of the Food and Drug Administration.

EFFECTIVE: 01/31/78

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SECTION 23. PROHIBITION

23-1 PROHIBITION

The Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury is charged with the administration of the laws relating to the manufacture, warehousing, and distribution of spirituous liquors, wines, fermented liquors, and industrial alcohol. Bootlegging activities and other violations of the alcohol tax laws which are reported to FBIHQ are referred to the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, Washington, D. C. Similar complaints received by field offices should be reported to the nearest field representatives of the Bureau of Alcohol, Tobacco and Firearms.

EFFECTIVE: 01/31/78

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SECTION 25. SELECTIVE SERVICE ACT

25-1 STATUTES

Criminal Provisions, Title 50, App., USC; Reemployment  
Provisions, Title 38, USC, Sections 2021 - 2026

EFFECTIVE: 05/08/81

25-2 REGISTRATION

(1) On March 29, 1975, the President issued Proclamation 4360, which revoked all former proclamations providing for registration under the Military Selective Service Act, and terminated then existing Selective Service registration procedures. The Selective Service System ceased registrations effective midnight, April 1, 1975. Subsequently, all related registrant processing was also terminated, including issuance of replacement status cards, classification action of any kind, action by area offices regarding nonregistrants or late registrants.

(2) The below registration provisions were in effect prior to April 1, 1975, and should read in that context. These provisions predicate the basis for Selective Service investigations of registration violations before the above date.

(a) Male citizens of the United States who have attained the eighteenth anniversary of the day of their birth and have not yet attained the twenty-sixth anniversary of the day of their birth are required to register.

(b) Generally aliens admitted to the United States for permanent residence who are between the ages of 18 and 26 are required to register. Nonimmigrant aliens are not required to register for so long as they maintain that status.

(c) Persons on active duty in the Armed Forces, cadets and midshipmen at the service academies, members of the reserve components of the Armed Forces on procurement programs at a certain few military colleges, the curriculum of which has been approved by the Secretary of Defense, are not required to register while they

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certify and he must also designate the specific reason registration is not required of him.

EFFECTIVE: 07/18/86

25-3 INDUCTIONS

(1) The statutory authority to induct persons into the Armed Forces expired on July 1, 1973. This, of course, does not change the status of our investigations of those persons who did not comply with induction orders issued prior to July 1, 1973.

(2) The Military Selective Service Act and Selective Service regulations have not deleted all references to induction and if and when the Congress reestablishes the authority to induct, those references in the law and regulations will again be applicable.

(3) The major responsibilities of the Selective Service System at the present time are the maintenance of records and the retaining of the nucleus of a system which may be required in the event of future registration.

EFFECTIVE: 07/18/86

25-4 PARDON

(1) All persons who may have committed any offense between 8/4/64 and 3/28/73, in violation of the Military Selective Service Act (SSA) or any rule or regulation promulgated thereunder.

(2) All persons convicted of any SSA violation committed during the same period.

(3) All SSA violators who have taken citizenship in another country, and therefore, could have been excluded from returning to the United States. They may now return as visitors and apply for U.S. citizenship under the same regulations as any alien.

(4) All SSA offenders who participated in President Ford's clemency program. Any conditional clemency will now be made a full pardon.

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(a) Excluded from the Presidential Pardon are all those whose violation of the law involved force or violence and any employees of the Selective Service System who may have violated the SSA.

(b) The pardon also orders the Attorney General to drop all pending investigations against alleged SSA violators and not to initiate new investigations with the exception of the previously mentioned two exclusions.

EFFECTIVE: 02/16/89

25-5 INVESTIGATIVE PROCEDURES

(1) Since the reinstitution of the SSA, cases are referred by the DOJ simultaneously to the United States Attorney's (USA) Office having jurisdiction and to FBIHQ.

(2) Upon receipt of the DOJ referrals, the USA's Office sends a registered letter to the subject advising him of his failure to register with the Selective Service System (SSS) and being a possible violator of the Military Selective Service Act, Title 50, USC, Section 462(A).

(3) SSA cases are transmitted by FBIHQ to the field by cover airtel with the following instructions:

(a) Prior to the initiation of investigation, contact the Selective Service Data Management Center, Great Lakes, Illinois, to determine if captioned individual has registered since his case was referred to DOJ. This contact can be made using the Data Management Center toll-free number, which is included in each FBIHQ airtel sent to each field office.

(b) Consult with the USA's Office to determine if captioned individual has been contacted. DOJ instructions to USA suggest sending a registered letter to potential violators stating prosecution will be considered if registration is not accomplished. USA may request direct contact with captioned individual by an Agent.

(c) If captioned individual is indicted and prosecuted, submit an original and two (2) copies of prosecutive report to FBIHQ for dissemination.

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(d) Upon closing of case, regardless of reason, submit an original and three (3) copies of an LHM to FBIHQ for dissemination.

(4) Selective Service Act-Fraud Against the Government (SSA-FAG) and Selective Service Act-Failure to Register (SSA-FTR) matters - The Department of Education, Office of the Inspector General, Washington, D.C., conducts quality control studies and program reviews from which the number of registration-age student aid applicants are checked against Selective Service records. As a result, certain individuals are identified as student loan applicants who have certified that they are registered with the Selective Service System and who apparently have not registered. The Department of Education refers the names of alleged nonregistrants to the Department of Justice for investigation. The FBI will assume the lead role in these investigations under the supervision and direction of the Violent Crimes and Major Offenders Section, Criminal Investigative Division, FBI Headquarters.

Under Selective Service regulations, an individual is not deemed registered until the pertinent data is entered into the Selective Service master computer file, 32 C.F.R. Section 1615.1. Because of processing delays, it may take up to 60 to 90 days from the time a registration form is submitted to Selective Service until the data is actually entered into the master computer file. Thus, some of the student aid applicants referred for investigation may have submitted Selective Service registration forms but, because of processing delays, a record of registration might not be readily located.

(a) Bureau airtels initiating new SSA-FAG investigation cases will be sent to the field and will include identifying data for the nonregistrant subject, information on schools attended, and instructions for obtaining school records from regional offices of the Department of Education, Office of the Inspector General.

(b) Because of the delay in the processing of Selective Service registration forms, prior to any investigation contact should be made with the Selective Service Data Management Center (DMC), Great Lakes, Illinois, to determine if the subject has registered since the time his case was referred to the Department of Justice.

(c) Pursuant to Section 1113(b) of Public Law 97-252, if it is determined that any applicant was registered with Selective Service on or before June 30, 1983, no further investigation

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should be conducted and an original and three copies of an LHM containing results of inquiries should be submitted to FBIHQ for dissemination to the Department of Justice. With regard to applicants who are not registered or who registered after June 30, 1983, a complete investigation should be conducted with results submitted to the appropriate United States Attorney's Office and to FBIHQ for dissemination to the Department of Justice.

The Department's policy in failure-to-register investigations is to afford nonregistrants an opportunity to avoid prosecution by registering with Selective Service. It is the position of the Department, however, that this policy should not extend to situations where the failure-to-register offense has been compounded by a false-statement offense. Therefore, in conducting these investigations, care should be taken to ensure that no representations are made to the subject or his counsel that the investigation will be terminated if the subject registers prior to indictment.

(d) For administrative purposes, Selective Service Act cases involving failure-to-register violations only will be designated as Selective Service Act-Failure to Register (SSA-FTR) matters. Selective Service Act cases involving failure-to-register violations coupled with false-statement violations will be designated as Selective Service Act-Fraud Against the Government (SSA-FAG) matters.

EFFECTIVE: 02/16/89

25-5.1 General Procedures

(1) The subject's Selective Service file should be reviewed for information of lead value. Unnecessary effort and expense can be eliminated by a thorough review of the Selective Service file, and no other investigation should be conducted prior to this file review in the absence of good reason to the contrary. The Selective Service System at National Headquarters has stated that all of its files on violators who have been referred to a USA's office will be forwarded to its headquarters, Washington, D.C. Such a central repository will ensure a uniform policy as to access and protect the integrity of the files in the event a file is necessary for a court proceeding. Thus, any lead for the review of a Selective Service file on any of our subjects should be directed to the Washington|Metropolitan|Field Office, which will maintain liaison with Selective Service Headquarters.

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(2) According to the Selective Service System, the files on all other registrants will be destroyed upon the arrival of the twenty-sixth birthday of the registrants. Only the registration card, classification card and the classification record for nonviolators will be maintained at Regional Federal Record Centers. Our access to those records would also be sought via Selective Service Headquarters, based upon either the written approval of the registrant or the existence of pending prosecution of the registrant.

(3) During the aforementioned file review, and throughout the remainder of the investigation, Agents must be alert for evidence bearing upon the willfulness or lack thereof, of the violation. The USA must have a clear indication of the presence or absence of willfulness on the part of the violator in order to render a sound prosecutive opinion.

EFFECTIVE: 10/16/90

25-5.2 Placing Wanted Notices

(1) After review of Selective Service file, the usual next step in the investigation is locating and interviewing the subject. If initial attempts to locate the subject are unsuccessful, a wanted notice, FD-165, may be placed with the FBI Criminal Justice Information Services Division, indicating on the wanted notice that subject is wanted for questioning in a Selective Service matter. When the wanted notice is no longer necessary, promptly remove it. If, however, process is obtained, subject becomes a fugitive, and an FD-65, fugitive form, is issued. It will be automatically canceled when the fugitive stop is eventually removed.

(2) Wanted notices should not, as a general practice, be placed with law enforcement agencies. There is no objection to requesting a local law enforcement agency to be alert for a particular subject, but the local agency should clearly understand that subject is only wanted for interview, when that is the case, and subject's arrest is not desired. Care should be taken to advise the local agency when subject is no longer wanted.

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EFFECTIVE: 04/08/96

25-5.3 Subjects Currently in the Armed Forces

(1) When a case is received from the USA due to a subject's failure to register with Selective Service and investigation indicates that subject is not required to register under the provisions of 25-2 (2) (c) REGISTRATION above, verify subject's military status through appropriate checks and advise USA.

(2) This may happen because the Defense Department has not advised Selective Service of subject's entry into the Armed Forces by use of Form DD-53. When the USA's Office has received information that a registrant has entered the Armed Forces, and registrant's Selective Service file does not contain a DD-53, the USA's Office is required by Selective Service procedural directives to submit SSS Form 720 to the appropriate component of the Armed Forces, requesting information concerning registrant's Armed Forces status. When the Selective Service file indicates that the USA's Office has received information indicating the subject is, or may be, on active duty, and SSS Form 720 has not been submitted to the military by the USA's Office, discuss with the USA with the view of returning case to the Selective Service for further processing.

EFFECTIVE: 07/18/86

25-5.4 Fictitious Registrations

(1) The Selective Service Registrants Processing Manual provides that whenever the USA's Office has its mailings returned because of an apparently fictitious name or address, or whenever the USA has any other reason to believe that a registration is fictitious, USA shall, after reasonable efforts to determine the facts, report the responsible person as a violator. Upon receipt of such a case from the USA, investigation should be made promptly to ascertain whether registration is fictitious. Ordinarily, this can be determined by checking out all information furnished by subject at time of registration. If all information is false or cannot be substantiated, registration may be considered fictitious, and an appropriate LHM should be prepared, a copy of which must be furnished to USA. Although fictitious registrations may be motivated by desire for identifying document to accomplish any of an infinite variety of

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purposes, from enlisting in the Armed Forces or obtaining employment to evading arrest for desertion or past criminal offenses, majority of such registrations fall within one of the following categories:

(a) Registrations by juveniles to obtain Selective Service cards for identification purposes in obtaining access to places, activities, or employments from which normally excluded because of their youth.

(b) Registrations by persons desiring an identification document to aid in consummation of a crime, such as cashing stolen, forged, or worthless checks, or otherwise obtaining something of value by illegal means.

(2) While primary purpose of investigation in cases involving apparent fictitious registrations is to establish whether registrations are, in fact, fictitious, and may be canceled by the USA, each fictitious registration is a violation of the Act and every effort should be made during investigation to identify subject so a decision as to prosecution may be obtained from USA. Unless unusual circumstances exist, extensive investigation is not to be conducted to identify subject, once it has been established registration is fictitious.

EFFECTIVE: 07/18/86

25-5.5 Aliens Referred by Selective Service for Failure to Register

A male alien between the ages of 18 and 26 who is admitted for permanent residence in the United States, or whose previous temporary visa status is changed to permanent residence in the United States is advised by INS of his obligation to register with Selective Service. This is normally accomplished by having the alien read and sign INS form I-59, Selective Service Registration Notice. INS forwards the executed I-59 to the appropriate State Director of Selective Service, along with a copy of INS form I-181, Memorandum of Creation of Record of Lawful Permanent Residence. Cases will be referred by Selective Service to the USA when it appears to the State Director of Selective Service that the alien has not registered with Selective Service in that state. It is noted that the alien may have moved from the state of his initial U.S. residence and may have registered with Selective Service in another state. As of this writing, there is no operable central system in Selective Service

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which may be used to determine if a person is registered anywhere in the Nation. When presenting these cases to the USA, advise USA of the evidence available in Selective Service and/or INS files which indicates the alien was aware of his obligation to register.

EFFECTIVE: 10/24/85

25-5.6 No Card Cases

(1) For many years, Selective Service registrants were issued SSS Form 2, Registration Certificate, and SSS Form 110, Notice of Classification. In late 1974, Selective Service developed SSS Form 7, Status Card, which has been phased in to replace both SSS Forms 2 and 110. Registrants may be encountered who possess any one, two or all three of these documents.

(2) There is no law or regulation which requires a registrant to have in his possession evidence of Selective Service registration. Selective Service Regulation 1641.6 provides, however, that failure to have evidence of registration in possession shall be prima facie evidence of failure to register. There is no regulation which requires the registrant to exhibit registration documents to any person.

(3) Cases of persons in custody of local authorities will be referred to field offices because these persons do not possess registration documents. It is to be clearly understood and imparted to local authorities, however, that no arrests or detentions for sole purpose of determining an individual is in possession of registration documents are desired. Such action may constitute illegal arrest or detention and Bureau will not be party to such activities on part of local authorities who may be overzealous or attempting to use this Act as authority for arrest of individuals in instances where no grounds for arrest under local laws and ordinances. Detention of an individual on charge of "hold for FBI," or any similar phraseology, while registration is being verified must be neither requested nor tolerated. It is responsibility of SAC to advise USA of above policy so there will be no misunderstanding on his/her part as to course of action the Bureau will pursue in these cases.

(4) Verification of registration of subjects in police custody who do not possess registration documents.

(a) If subject in custody of local police without

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cards and has NOT been charged with and arraigned on local offense, immediately advise local authorities that subject's continued detention on Selective Service charges is not desired by the FBI. Institute investigation to determine subject's Selective Service status.

(b) If subject is being held on local charges and will be so held regardless of whether or not he possesses registration documents, institute investigation to determine if subject is registered, and if subject found not to be registered, present facts to appropriate USA for his/her opinion as to prosecution. Advise local authorities of USA's decision.

EFFECTIVE: 10/24/85

25-6 SELECTIVE SERVICE PERSONNEL

(1) If complaint is received alleging official or employee of Selective Service System has violated criminal provisions of Act, thoroughly interview complainant to secure all details upon which complaint based. If complaint specific and believed to have substance, appropriate investigation should be promptly initiated. FBIHQ must be advised of allegation immediately. If prosecution authorized furnish prosecutive report to FBIHQ. If prosecution declined, furnish closing LHM to FBIHQ.

(2) Miscellaneous complaints alleging misconduct on part of draft officials, unaccompanied by specific allegations of fraud, should be referred to State Director of Selective Service. For example, a complainant may submit list of registrants complainant considers incorrectly classified, without alleging facts upon which prosecution might be predicated. Matters which are administrative in nature should be referred to State Director of Selective Service for handling. If criminal violation indicated, Selective Service System may then refer matter to USA for investigation.

EFFECTIVE: 10/24/85

25-7 VIOLATORS LOCATED ABROAD



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EFFECTIVE: 10/24/85

25-7.1 Aliens Located Abroad

(1) Public Law 414, 82nd Congress, commonly known as the McCarren-Walter Act, enumerated the general classes of aliens ineligible to receive visas and excluded from admission into the United States. These exclusion provisions are incorporated into Title 8, USC, Section 1182 (a). Title 8, USC, Section 1182 (a) (22), provides that aliens who have departed from or who have remained outside the United States to avoid or evade training or service in the armed forces in time of war or a period declared by the President to be a national emergency, are one category of excludable aliens. On March 16, 1964, the Department of Justice issued Order Number 314-64, which established the procedure for invoking this exclusion statute. The procedure was set forth as follows and remains in effect:

(a) USA shall examine his/her file and investigative reports in each case and, upon determination Section 1182 (a) (22) is applicable, he/she shall so notify the field office of FBI.

(b) FBI will furnish INS all information pertinent to application of above Section. Application of the law from an administrative viewpoint shall thereafter be responsibility of INS. Where appropriate, FBI should also make such information available to State Department.

(c) USA shall notify the Selective Service System Headquarters of names and Selective Service number in such cases so its records may be appropriately noted.

(d) In all cases involving aliens in which indictment not returned, cases may be closed in offices of USAs and FBI. Where indictments have been returned, the USA may request Department's authorization to dismiss.

(2) It should be noted that this statute does not require that the aliens have been convicted for violation of Selective Service Laws, or even prosecuted. It is also important to note that the exclusion statute may be invoked against an alien who may have been a citizen of the U.S. at the time that he chose to leave or remain outside the U.S. to avoid military service.

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EFFECTIVE: 10/24/85

25-7.2 Investigative Steps

(1) Conduct thorough review of Selective Service file.

(2) In those cases in which initial review of Selective Service file indicates subject is an alien, thoroughly review INS file to obtain background information, facts concerning alien's admission to the United States, and to determine whether subject ever became a naturalized U.S. citizen. For Title 8, USC, Section 1182, (a) (22), to apply, SUBJECT MUST BE AN ALIEN.

(3) Conduct logical investigation to attempt to verify that subject is abroad. In many cases, this information can be obtained from logical sources in the United States, including, but not limited to, close relatives and INS records. In limited instances, leads may be sent to Legats to verify subject's foreign location. Bear in mind, however, that asking an agency of a foreign nation to conduct investigation of one of the citizens of that nation on behalf of a U.S. agency is a sensitive matter, and such requests must be held to a minimum.

(4) Conduct logical investigation to attempt to determine subject's reason for departure from and/or remaining outside the United States. Do not set leads to have the subject interviewed for this purpose.

(5) When the aforementioned investigation, and any other logical investigative steps have been completed, and it has been determined that subject is an alien, discuss the applicability of Title 8, USC, Section 1182 (a) (22), with USA. In some cases, Selective Service process may already have been obtained by this time. If not, both Title 50, App., Section 462 violation, and the Title 8 exclusion process should be presented at the same time.

(6) If USA invokes Title 8, USC, Section 1182 (a) (22), submit a succinct LHM of the investigation, original and four copies to FBIHQ. These LHMs will be disseminated at FBIHQ and will serve as a basis for INS and Department of State to institute procedures to exclude the alien from admission into the United States. If Selective Service prosecution is declined or dismissed, this LHM should be a closing LHM. If Selective Service process is to remain outstanding, the LHM should reflect a pending inactive status and the case should

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| (4) | Restrictive passport action

(a) When process is outstanding and U.S. citizen is abroad, even though subject's precise whereabouts are unknown, the matter of restrictive passport action should be discussed with the USA. The revocation, restriction or denial of a passport should usually result in hampering subject's movements overseas, and may encourage subject to return to the United States.

(b) The USA initiating the request should address a letter to Director, Passport Office, Department of State, Attention: PT/LS, Washington, D.C. 20524, incorporating the following data: name, birth data and passport concerning subject; brief statement of the felony charges pending against subject and prosecutive action taken in the matter; information as to subject's present location abroad, if known; statement by the USA that prosecution of subject will be undertaken if and when subject returns to the United States; request by the USA that restrictive passport action be taken; enclose a copy of the Federal complaint and warrant or indictment and warrant.

EFFECTIVE: 10/24/85

25-8

REEMPLOYMENT PROVISIONS

Title 38, USC, Sections 2021 - 2026

(1) These sections of the law give veterans, both draftees and persons enlisted in the armed forces for limited periods, certain rights regarding restoration of employment with former civilian employers. The sanctions imposed upon an employer who violates these provisions are essentially civil in nature. The U.S. District Court is empowered to specifically require a former employer to reemploy the veteran.

(2) No investigation should be conducted in these cases except upon specific request by the USA. Advise FBIHQ by letter immediately upon the receipt of such a request. Discuss necessary and logical investigative steps with the USA. These investigations must receive preferred and expeditious attention to ensure the security of returning veterans.

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EFFECTIVE: 07/18/86

25-8.1 Privacy Act - Requirements

(1) When interviewing anyone in the above classification, in order to solicit information about himself/herself or his/her own activities, the interviewing Agent must follow the procedures described in Part I, 190-5, (2) and (3) of this manual.

(2) When interviewing an individual to solicit information concerning someone other than the interviewee (thereby classifying that individual as a source of information) the interviewing Agent must follow the procedure relating to promises of confidentiality as described in Part I, 190-7 of this manual.

EFFECTIVE: 07/18/86

25-9 CLOSING COMMUNICATIONS

(1) If the case is closed administratively, for whatever reason, submit an original and three copies of an LHM suitable for dissemination setting forth complete details of the investigation to FBIHQ. In the event subject's case proceeds to indictment and prosecution, submit an original and two copies of the prosecutive report to FBIHQ for dissemination to DOJ. An LHM may be used, except in cases involving aliens, employees of Selective Service, bombings, or interference with the Selective Service System, counseling, Aiding and Abetting, burning or mutilating registration cards, veterans reemployment, or prominent people. Do not use an LHM to report statistical accomplishments to FBIHQ.

(2) SSA-FAG and SSA-FTR cases: If it is determined that any applicant was registered with Selective Service on or before June 30, 1983, no further investigation should be conducted and an original and three copies of an LHM containing results of inquiries should be submitted to FBIHQ for dissemination to the DOJ. In the event subject's case proceeds to indictment and prosecution, submit an original and two copies of the prosecutive report to FBIHQ for dissemination to the DOJ.

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EFFECTIVE: 07/18/86

25-10 REPORTING PROCEDURES

(1) No communication need be submitted to FBIHQ at the outset of a routine selective service investigation or if prosecution is not authorized. If prosecution is authorized, a prosecutive report is to be submitted.

(2) An original and two copies of the prosecutive report should be submitted to FBIHQ upon the authorization of prosecution by the USA, or when a specific request for such report is made by the USA or FBIHQ.

(3) If the subject becomes a fugitive, two copies of an FD-65 should be promptly submitted to FBIHQ, and one copy submitted directly to the Savannah Information Technology Center (SITC), by the office of origin. Upon the fugitive's apprehension or location, the locating office must promptly notify FBIHQ by teletype (at least ROUTINE in precedence) and claim the appropriate statistical accomplishment via the Integrated Statistical Reporting and Analysis Application (ISRAA). The office of origin must ensure that all auxiliary offices are notified by teletype to discontinue. (See MIOG, Part I, 76-1.8, 76-2.9, 76-3.13, 88-12, 115-7, & Part II, 21-29.)

(4) In reporting the results of prosecutive action following the submission of a prosecutive report, while Form R-84 (if applicable) is to be forwarded to FBIHQ, a separate letter (airtel with LHM if dissemination desired) should also be submitted detailing the final disposition of each subject. The required letter should note that the appropriate statistical accomplishment has been claimed via the ISRAA.

EFFECTIVE: 10/11/94

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25-11 CHARACTER - SELECTIVE SERVICE ACT

(1) In reemployment cases, character is "SELECTIVE SERVICE ACT - REEMPLOYMENT."

(2) In cases concerning organized opposition to the Act, character is "SELECTIVE SERVICE ACT - SEDITION."

(3) In Selective Service Act cases involving only failure-to-register violations, the character will be "SELECTIVE SERVICE ACT - FAILURE TO REGISTER."

(4) In cases involving failure-to-register violations coupled with false statement violations, character will be "SELECTIVE SERVICE ACT - FRAUD AGAINST THE GOVERNMENT."

EFFECTIVE: 07/18/86

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SECTION 26. INTERSTATE TRANSPORTATION OF STOLEN MOTOR  
VEHICLE OR AIRCRAFT

26-1 STATUTES

Title 18, USC, Sections 511, 512, 513, 2119, 2311 (in part), 2312, 2313, 2321, and 2322. (See MIOG, Part I, 87-4.2.1.)

EFFECTIVE: 10/13/93

26-1.1 Section 511. Altering or Removing Motor Vehicle  
Identification Numbers

"(a) A person who -

"(1) knowingly removes, obliterates, tampers with, or alters an identification number for a motor vehicle or motor vehicle part; or

"(2) with intent to further the theft of a motor vehicle, knowingly removes, obliterates, tampers with, or alters a decal or device affixed to a motor vehicle pursuant to the Motor Vehicle Theft Prevention Act, shall be fined under this title, imprisoned not more than five years, or both.

"(b) (1) Subsection (a) of this section does not apply to a removal, obliteration, tampering, or alteration by a person specified in paragraph (2) of this subsection (unless such person knows that the vehicle or part involved is stolen).

"(2) The persons referred to in paragraph (1) of this subsection are -

"(A) a motor vehicle scrap processor or a motor vehicle demolisher who complies with applicable State law with respect to such vehicle or part;

"(B) a person who repairs such vehicle or part, if the removal, obliteration, tampering, or alteration is reasonably necessary for the repair;

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"(C) a person who restores or replaces an identification number for such vehicle or part in accordance with applicable State law; and

"(D) a person who removes, obliterates, tampers with, or alters a decal or device affixed to a motor vehicle pursuant to the Motor Vehicle Theft Prevention Act, if that person is the owner of the motor vehicle, or is authorized to remove, obliterate, tamper with or alter the decal or device by -

"(i) the owner or his authorized agent;

"(ii) applicable state or local law; or

"(iii) regulations promulgated by the Attorney General to implement the Motor Vehicle Theft Prevention Act.

"(c) As used in this section, the term -

"(1) 'identification number' means a number or symbol that is inscribed or affixed for purposes of identification under the National Traffic and Motor Vehicle Safety Act of 1966, or the Motor Vehicle Information and Cost Savings Act;

"(2) 'motor vehicle' has the meaning given that term in section 2 of the Motor Vehicle Information and Cost Savings Act;

"(3) 'motor vehicle demolisher' means a person, including any motor vehicle dismantler or motor vehicle recycler, who is engaged in the business of reducing motor vehicles or motor vehicle parts to metallic scrap that is unsuitable for use as either a motor vehicle or a motor vehicle part;

"(4) 'motor vehicle scrap processor' means a person

"(A) who is engaged in the business of purchasing motor vehicles or motor vehicle parts for reduction to metallic scrap for recycling;

"(B) who, from a fixed location, uses machinery to process metallic scrap into prepared grades; and

"(C) whose principal product is metallic scrap for recycling;

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but such term does not include any activity of any such person relating to the recycling of a motor vehicle or a motor vehicle part as a used motor vehicle or a used motor vehicle part.

"(d) For purposes of subsection (a) of this section, the term 'tamper with' includes covering a program decal or device affixed to a motor vehicle pursuant to the Motor Vehicle Theft Prevention Act for the purpose of obstructing its visibility."

Special attention should be given the definition of a motor vehicle in Section 511. That definition, also applicable to Sections 512 and 2321, includes any vehicle driven or drawn by mechanical power for primary use on public streets, roads, or highways. (See Title 15, USC, Section 1901(15).) This would include trailers, but not include construction or farm equipment not manufactured primarily for street use. The definition of a motor vehicle in Section 2311 (see 26-1.8) includes self-propelled vehicles designed for running on land. This would include farm and construction equipment, but not trailers.

EFFECTIVE: 10/19/94

26-1.1.1 Section 511A. Unauthorized Application of a Decal or Device

"(a) Whoever affixes to a motor vehicle a theft prevention decal or other device, or a replica thereof, unless authorized to do so pursuant to the Motor Vehicle Theft Prevention Act, shall be punished by a fine not to exceed \$1,000."

"(b) For purposes of this section, the term, theft prevention decal or device, means a decal or other device designed in accordance with a uniform design for such devices developed pursuant to the Motor Vehicle Theft Prevention Act."

EFFECTIVE: 10/19/94

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26-1.2 Section 512. Forfeiture of Certain Motor Vehicles and  
Motor Vehicle Parts

"(a) If an identification number for a motor vehicle or motor vehicle part is removed, obliterated, tampered with, or altered, such vehicle or part shall be subject to seizure and forfeiture to the United States unless -

"(1) in the case of a motor vehicle part, such part is attached to a motor vehicle and the owner of such motor vehicle does not know that the identification number has been removed, obliterated, tampered with, or altered;

"(2) such motor vehicle or part has a replacement identification number that -

"(A) is authorized by the Secretary of Transportation under the National Traffic and Motor Vehicle Safety Act of 1966; or

"(B) conforms to applicable State law;

"(3) such removal, obliteration, tampering, or alteration is caused by collision or fire or is carried out as described in section 511(b) of this title; or

"(4) such motor vehicle or part is in the possession or control of a motor vehicle scrap processor who does not know that such identification number was removed, obliterated, tampered with, or altered in any manner other than by collision or fire or as described in section 511(b) of this title."

| The FBI has been delegated authority to institute civil administrative forfeiture proceedings pursuant to Section 512. The Forfeiture and Abandoned Property manual contains the step-by-step procedure to be followed for seizures and civil forfeiture proceedings (judicial and administrative) conducted in conjunction with this violation. |

EFFECTIVE: 06/18/87



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26-1.3 Section 513. Securities of the States and Private  
Entities (See MIOG, Part I, 26-7.)

"(a) Whoever makes, utters, or possesses a counterfeited security of a State or a political subdivision thereof or of an organization; or whoever makes, utters, or possesses a forged security of a State or political subdivision thereof or of an organization, with intent to deceive another person, organization, or government shall be fined not more than \$250,000 or imprisoned for not more than ten years, or both."

"(b) Whoever makes, receives, possesses, sells, or otherwise transfers an implement designed for or particularly suited for making a counterfeit or forged security with the intent that it be so used shall be punished by a fine of not more than \$250,000 or by imprisonment for not more than ten years, or both."

EFFECTIVE: 07/31/97

26-1.4 Elements - Section 513 (Securities of States and Private  
Entities)

(1) That an individual make, utter, or possess a counterfeit or forged security (or blank form) of a state. This would include a motor vehicle title.

(2) That the individual intends to deceive another person, organization, or government.

(3) Although this section does not require that the security be transported in interstate commerce, its use should be limited to those situations which do involve interstate commerce.

(4) FBIHQ - Department of Justice approval must be obtained prior to the use of this section wherein no interstate commerce is present.

EFFECTIVE: 07/31/97

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26-1.5 Section 2119. Motor Vehicles (See MIOG, Part I,  
26-2.9 & 26-7.)

"Whoever, with the intent to cause death or serious bodily harm, takes a motor vehicle that has been transported, shipped, or received in interstate or foreign commerce from the person or presence of another by force or violence or by intimidation, or attempts to do so, shall-

"(1) be fined under this title or imprisoned not more than 15 years, or both;

"(2) if serious bodily injury (as defined in Section 1365 of this title) results, be fined under this title or imprisoned not more than 25 years, or both; and

"(3) if death results, be fined under this title or imprisoned for any number of years up to life, or sentenced to death."

EFFECTIVE: 10/19/94

26-1.6 Section 2312. Transportation of Stolen Vehicles (See MIOG, Part I, 26-7.)

"Whoever transports in interstate or foreign commerce a motor vehicle or aircraft, knowing the same to have been stolen, shall be fined under this title or imprisoned not more than 10 years, or both."

EFFECTIVE: 10/13/93

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|26-1.7| Section 2313. Sale or Receipt of Stolen Vehicles | (See MIOG, Part I, 26-7.) |

"Whoever receives, possesses, conceals, stores, barter, sells, or disposes of any motor vehicle or aircraft, which has crossed a State or United States boundary after being stolen, knowing the same to have been stolen shall be fined under this title or imprisoned not more than 10 years, or both."

Federal criminal jurisdiction is retained over a stolen motor vehicle even after it ceases to be a part of interstate commerce. It is no longer necessary to prove a continuing interstate commerce nexus regarding a stolen vehicle taken across state lines after October 25, 1984.

EFFECTIVE: 10/13/93

|26-1.8| Section 2311. Definitions - Applicable to Sections 2312 and 2313 | (See MIOG, Part I, 26-1.1(1).) |

"Aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of or for flight in the air.

"Motor vehicle" includes an automobile, automobile truck, automobile wagon, motorcycle, or any other self-propelled vehicle designed for running on land but not on rails.

"Securities" includes... (in part) voting-trust certificate; valid or blank motor vehicle title; certificate of interest...." (See Part I, 87-1.1.1 (Definitions), of this manual, for additional details.)

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26-1.9 Elements - Sections 2312 and 2313

(1) That the motor vehicle, security, or aircraft was stolen

(2) That the motor vehicle, security, or aircraft was transported in interstate or foreign commerce

(3) That the person transporting the motor vehicle, security, or aircraft knew it to have been stolen, or that the person receiving, possessing, concealing, storing, bartering, selling, or disposing of the motor vehicle, security, or aircraft knew it to have been stolen. [Pursuant to Title 18, USC, Section 21, the element of guilty knowledge may also be established by proof that the defendant believed that the motor vehicle, security, or aircraft was stolen, after or as a result of an official representation as to the nature of the property (see MIOG, Part II, 1-1.12).]

EFFECTIVE: 10/23/95

||26-1.10| Section 2321. Trafficking in Certain Motor Vehicles or Motor Vehicle Parts

"(a) Whoever buys, receives, possesses, or obtains control of, with intent to sell or otherwise dispose of, a motor vehicle or motor vehicle part, knowing that an identification number for such motor vehicle or part has been removed, obliterated, tampered with, or altered, shall be fined not more than \$20,000 or imprisoned not more than ten years, or both.

"(b) Subsection (a) does not apply if the removal, obliteration, tampering, or alteration -

"(1) is caused by collision or fire; or

"(2) is not a violation of Section 511...."

Neither Sections 511 nor 2321 cover the simple possession of a vehicle or component with a falsified or removed identification number. Section 511 is limited to the person who removes or falsifies the identification number or who aids or abets such conduct. Section 2321 covers the trafficker of such vehicles or components, not a mere

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possessor.

EFFECTIVE: 10/13/93

|26-1.11 Section 2322. Chop Shops (See MIOG, Part I, 26-2.10 & 26-7.)

"(a) In general, 'Unlawful Action' means any person who knowingly owns, operates, maintains, or controls a chop shop or conducts operations in a chop shop shall be fined under this title or by imprisonment for not more than 15 years, or both. If a conviction of a person under this paragraph is for a violation committed after the first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to any fine and imprisonment.

"(b) For purposes of this section, the term 'chop shop' means any building, lot, facility, or other structure or premise where one or more persons engaged in receiving, concealing, destroying, disassembling, dismantling, reassembling, or storing any passenger motor vehicle or passenger motor vehicle part which has been unlawfully obtained in order to alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate, or remove the identity including the vehicle identification number or derivative thereof, of such vehicle or vehicle part and to distribute, sell, or dispose of such vehicle or vehicle part in interstate or foreign commerce."

EFFECTIVE: 10/13/93

|26-1.12| Elements - Sections 511 (Altering or Removing Motor Vehicle Identification Numbers), 512 (Forfeiture of Certain Motor Vehicles and Motor Vehicle Parts), and 2321 (Trafficking in Certain Motor Vehicles or Motor Vehicle Parts)

(1) Section 511 - that the identification number for a motor vehicle or major component part knowingly be removed, obliterated, tampered with, or altered.

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| (2) | Section 512 - any motor vehicle or motor vehicle part where the identification number has been removed, obliterated, tampered with, or altered is subject to seizure.

| (3) | Section 2321 - any person who buys, receives, possesses, or obtains control of such a vehicle or part, knows the identification number has been removed, obliterated, tampered with or altered and intends to sell or otherwise dispose of the vehicle or part.

(4) These sections do not require that the vehicle or part be transported in interstate commerce.

EFFECTIVE: 10/13/93

26-2 POLICY | (See MIOG, Part I, 87-3.4.) |

EFFECTIVE: 10/13/93

26-2.1 Office of Origin

| (1) | The office of origin in cases relating to violations of Section 2119 (carjacking) and 2322 (chop shops) will be the office covering the place where the offense is committed. (See MIOG, Part I, 26-2.9.) |

| (2) | The office of origin in most other motor vehicle cases will be that office covering the place where the stolen car is recovered. It may be desirable in certain cases to change the office of origin from the place of recovery to the place of theft or the place where the principal criminal activity is taking place. An example of this is a case in which a commercial theft (CT) ring is involved. This is in accord with departmental instructions to USAs that prosecution should be instituted in the district into which the stolen motor vehicle is last brought unless it would appear that by reason of unusual circumstances it is inexpedient to institute prosecution in that district but rather in the district from which the vehicle was first brought.

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EFFECTIVE: 10/13/93

26-2.2 Referral of Complaints

When a complaint is received and no investigation is to be conducted in the field office where the complaint was received, the following procedure is to apply:

(1) The complaint shall be prepared for transmittal to the appropriate offices, and include the basic data, as well as source of the complaint.

(2) A file copy of the outgoing communication from the office receiving complaint should all be placed in "26-0" file. Thus, the office receiving the complaint but having no subsequent investigative work to perform shall not open and close a case or make assignment cards when its sole function is to transmit the complaint to other field offices for investigation.

EFFECTIVE: 08/19/85

26-2.3 Liaison Program

(1) Every field office must maintain an efficient and productive liaison program with all possible sources of ITSMV cases. Good liaison can best be obtained by ensuring that referrals are followed up by promptly instituting investigation.

(2) The liaison program should be structured to reflect any established prosecutive policy of the USA in the district concerned. Some USAs have established blanket declination policies in certain ITSMV matters.

(3) Examples of sources which should be included in the program are:

- (a) Local and state police agencies
- (b) State and/or local motor vehicle registration

bureaus

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(c) New and used car dealers

(d) Automobile auctions

(e) Automobile salvage and junk dealers, and

(f) National Insurance Crime Bureau (NICB)

(4) Effective liaison is also essential in Interstate Transportation of Stolen Aircraft (ITSA) investigations.

(5) Examples of sources which should be included for ITSA matters are:

(a) Local and state police

(b) Federal Aviation Administration (FAA)

(c) Aircraft dealers, repair and refueling facilities, transient tie-down centers, salvage dealers, and airport operators

(d) International Aviation Theft Bureau (IATB)

(e) El Paso Intelligence Center (EPIC)

EFFECTIVE: 10/13/93

26-2.3.1 NCIC Entry (See MIOG, Part I, 26-2.9.)

Where automobiles are involved in Bureau cases, such as Crime on Government Reservation, Bank Robbery, Kidnaping, or in carjackings and similar cases and the vehicle identification number (VIN), license plate number, and descriptive data of the automobile are known, these should be included in NCIC immediately, if whereabouts of vehicle or license plate is unknown (whether stolen or not). In addition, cases of special interest involving theft of automobiles and/or major automobile component parts should also be included in NCIC. Ensure vehicle, license plate and/or component parts are removed from NCIC when they are located.

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26-2.4 Characterization of Agencies as Sources of Information

(1) NATIONAL INSURANCE CRIME BUREAU (NICB). NICB is a nonprofit organization maintained by a voluntary association of automobile insurance companies. It is private in character, in the nature of a quasi-official service organization but not a private detective agency. Its functions are to receive, correlate, and distribute to law enforcement agencies information regarding stolen motor vehicles and to aid law enforcement agencies authorities in tracing, identification, and recovery of stolen motor vehicles. Bureau Agents may properly make use of the services of NICB as a source of Bureau cases, to check their records for data on stolen automobiles, and in some instances, NICB personnel may assist Bureau Agents in the examination and identification of suspected stolen automobiles. NICB may also serve to trace the ownership history and title record of an automobile from the factory to the present possessor.

(2) INTERNATIONAL AVIATION THEFT BUREAU (IATB). IATB is a project of the Airline Owners and Pilots Association (AOPA). IATB was instituted in 1974 and is supported by the aviation insurance industry. The mission of IATB is to accept aviation-related theft information, publish this information for the industry to reduce thefts, and compile statistics and work closely with law enforcement at all levels. The publication of the quarterly "Alert Bulletin" often results in recoveries or further information leading to recoveries of stolen aircraft or avionics. IATB is not in the business of investigation, only statistical support for related agencies. IATB is located at the AOPA Headquarters, 421 Aviation Way, Frederick, Maryland 21701, telephone: (301) 695-2022.

(3)

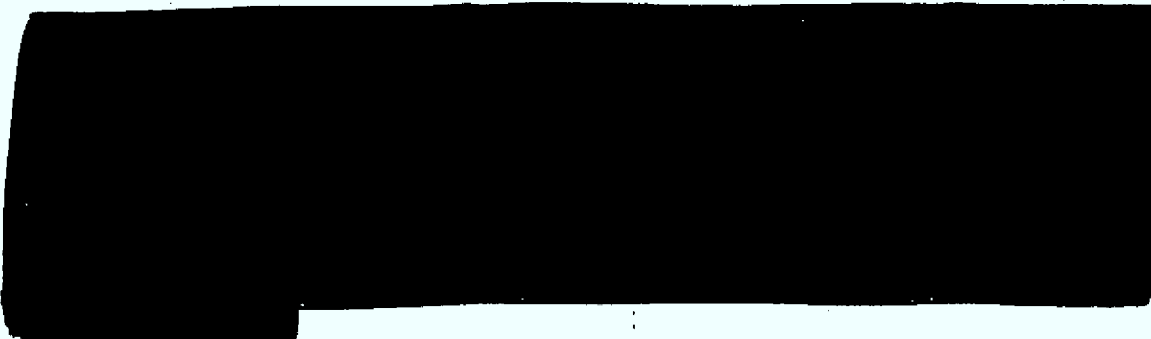


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b2 per DEA

EFFECTIVE: 10/13/93

26-2.5 Verification of Recovered Vehicles and Physical  
Examination of Stolen Automobiles Involved in Commercial  
Thefts (See MIOG, Part I, 26-2.9.)

(1) In carjacking cases, telephone calls, followed by teletypes, should be considered in setting out leads concerning the identification of vehicles suspected of having been taken by force, suspected carjackers, or the location of stolen or suspect vehicles depending upon the exigency of the circumstance. Leads set out in this fashion must be covered immediately as the lives of victims may be at risk. In other cases, consider use of teletypes in setting out leads concerning the identification of a suspected stolen car and for the purpose of determining whether or not it is stolen. Upon receiving such a lead, the receiving office must advise the sending office of all available information within 24 hours after receipt of the communication. Where common sense and good judgment indicate a teletype is not necessary, an electronic communication may be used.

(2) A thorough physical examination of the stolen car should be done promptly in order to correctly identify the vehicle and to eliminate tedious and unnecessary record searches. Special care should be given to the processing of vehicles when they are the subject of a carjacking investigation in order to safeguard potential evidence such as hairs, fibers, and body fluids. This physical examination of stolen cars must be done by qualified law enforcement officers or laboratory personnel for several reasons:

(a) To locate and properly preserve physical evidence and

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(b) To discover any alteration of identifying numbers on the automobile and other such indications of possible commercial theft ring activity.

(c) To assist in the gathering of pertinent data on vehicles and in the preparation of FD-302s, FD-653, Motor Vehicle Inspection Inventory Record, may be used. The FD-653 is an optional administrative form which, if used, is to be retained in a 1-A envelope (FD-340 and/or FD-340b) with the Agent's notes. (See MIOG, Part I, 26-2.7(2), 149-3(3)(g) & Legal Handbook for Special Agents, 5-7.2(3)(e).)

(3)

[REDACTED]

THIS BOOK should be afforded the same security as other official FBI manuals but it should be readily available and thoroughly understood by Bureau Agents conducting physical examinations of stolen cars. Also of assistance to Bureau Agents is the "National Insurance Crime Bureau (NICB) Manual for Identification of Automobiles" which contains information relating to public identification on automobiles. Bureau Agents assigned to these cases should, if possible, possess this NICB manual.

(4)

[REDACTED]

(5)

[REDACTED]

(6) The points listed above also pertain to ITSA investigations [REDACTED]

EFFECTIVE: 04/07/97

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26-2.6 Custody of Recovered Vehicles (See MIOG, Part I,  
26-2.9; & MAOP, Part II, |2-4.4.14.)|

Bureau Agents should not take possession of a stolen motor vehicle or aircraft unless necessary. However, special attention must be given to carjacked vehicles, especially in circumstances where victims have been injured or killed. In such circumstances, it may be necessary for Bureau Agents to secure such vehicle in order to ensure its proper processing for significant evidence. Any problem arising out of custody of such vehicle or aircraft must be immediately discussed with the appropriate USA. In this respect, a stolen motor vehicle or aircraft located in the hands of an apparently innocent purchaser may subsequently involve a civil action. Care must be taken to ensure that the Bureau does not become involved in such civil action; attention must be directed to the provisions of Departmental Order 501-73 (previously Departmental Order 381-67, 324-64, 260-62, and 3229) and Departmental Order No. 3464, Supplement No. 4 (Revised), concerning the confidential character of FBI reports and records.

EFFECTIVE: 10/16/96

26-2.7 Commercial Theft (CT) Ring Cases

(1) A CT case is one in which an individual or group of persons is involved in commercial auto theft activities. These cases must receive imaginative, thorough, and continuous investigative attention. In CT cases the office of origin should assign a number to each stolen and suspect car under investigation and all offices should follow the numbering system assigned by the office of origin. In the initial stages of these cases, all leads should be set forth by expedite communications and these leads should be given preferential investigative attention.

(2) The basic and essential investigative steps in all ITSMV-CT cases are the prompt location, physical examination, and correct identification of each stolen car involved and the identification of each subject involved in the handling of each car. Generally in a CT case there will be subjects other than the actual transporters and receivers of stolen vehicles who will be acting in conspiracy with the violators of the substantive statutes. Investigation should be conducted to show the extent that these subjects, such as thieves, fences, motor number changers, and preparers of fictitious motor vehicle documents, have entered into a

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conspiracy to transport stolen autos in interstate commerce. To assist in gathering all pertinent data regarding the recovered vehicle, the FD-653, Motor Vehicle Inspection Inventory Record, may be used. (See MIOG, Part I, 26-2.5(2)(c), 149-3(3)(g) & Legal Handbook for Special Agents, 5-7.2(3)(e).)

EFFECTIVE: 11/15/93

26-2.8 Laboratory Automobile Files (See MIOG, Part II, 13-13.5.)

(1) NATIONAL AUTOMOBILE ALTERED NUMBERS FILE: The FBI Laboratory is maintaining in the National Automobile Altered Numbers File selected specimens, including surface replica plastic impressions of altered vehicle identification numbers found on stolen cars, trucks and heavy equipment. The purpose of this file is to have a central repository for such specimens of altered numbers so that comparisons can readily be made at any time in an attempt to identify recovered stolen cars and possibly link such vehicles with commercialized theft rings nationwide or other cases investigated by the Bureau. (See MIOG, Part I, 26-2.5(5).)

The field has been supplied with kits containing surface replica plastic, along with instructions for its use in making impressions of altered die-stamped vehicle identification numbers (VIN). Upon recovery of a stolen motor vehicle bearing an altered VIN, BEFORE ANY ATTEMPT IS MADE TO RESTORE THE ORIGINAL VIN, plastic impressions should be made and forwarded to the Laboratory. For detailed instructions for making plastic impressions of stamped numbers, see Part II, 13-13.3.1 of this manual. For information on number restoration, also see MIOG, Part II, 13-14.2 (10).

(2) Deleted

EFFECTIVE: 04/07/97

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26-2.9 | Carjacking (See MIOG, Part I, 26-1.5, 26-2.1, 26-2.3.1,  
26-2.5, 26-2.6, & 26-7(2).)

(1) A carjacking is defined by Title 18, USC, Section 2119, as the taking or attempted taking, with a firearm, of a motor vehicle from the person or presence of another by force and violence or by intimidation. Due to the differing priorities within various field offices, the response to carjacking may vary between divisions. In all jurisdictions, the Bureau should seek to assist the state and local police departments as needed in their investigation of carjacking. Field offices experiencing gang activity, organized crime activity involving carjacking and or cases of significant notoriety should take an active role in the investigation of carjacking under appropriate Federal statutes.

(a) The carjacking statute applies only to carjackings in which the defendant is armed with a firearm. An unarmed carjacking or one in which the defendant is armed with any other type weapon is not a Federal offense under this provision. The statute adopts the definition of a firearm contained in Title 18, USC, Section 921(a) (3). Such term does not include an antique firearm.

(b) The interstate commerce nexus is established by the movement of the vehicle (not the firearm) in interstate or foreign commerce. To prove the interstate nexus, it should be necessary to show only that the vehicle traveled at some time in interstate or foreign commerce. The NICB can assist in this respect. When supplied with the vehicle identification number of a motor vehicle via inquiry through the Bureau's information center at Butte, NICB can furnish a detailed history of a motor vehicle including its place and date of assembly and all subsequent shipments. NICB can furnish documentation for court and expert witness testimony when needed.

(2) FBIHQ should be advised by teletype of any carjacking cases which involve a loss of life and those that generate significant media attention.

(3) The Federal statute which addresses carjacking, the Anti-Car Theft Act of 1992, specifies that the FBI is to have Federal criminal investigative responsibility for violations arising under this statute. Violations of Title 18, USC, Section 2119 should be addressed under the TURK classification 26A and be characterized as ITSMV-CARJACKING. FBIHQ should be advised by teletype of any incursions by other Federal law enforcement agencies in its jurisdiction relative to carjacking.

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EFFECTIVE: 10/13/93

26-2.10 Chop Shops (See MIOG, Part I, 26-1.11.)

(1) Title 18, USC, Section 2322 makes it illegal for anyone to knowingly own, operate, maintain, or control a chop shop or to conduct operations in a chop shop. For the purposes of this section, a chop shop is defined as any building, lot, facility, or other structure or premise where one or more persons engage in receiving, concealing, destroying, disassembling, dismantling, reassembling, or storing any passenger motor vehicle or motor vehicle part which has been unlawfully obtained in order to alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate, or remove the identity, including the vehicle identification number or derivative thereof, of such vehicle or vehicle part and to distribute, sell, or dispose of such vehicle or vehicle part in interstate or foreign commerce.

(2) Violations of Title 18, USC, Section 2322 should be addressed under the TURK classification 26B and be characterized as ITSMV-CHOP SHOPS.

EFFECTIVE: 10/13/93

26-2.11 Accomplishments

(1) The recovery value of vehicles or major component parts will be credited to field offices in those instances when the item itself is actually recovered by FBI personnel. The fact that a bona fide ITSMV case exists and an automobile or part has been recovered does not mean that an office will automatically be credited with the value of the recovered item.

(2) Recovery value will be credited to the field office submitting the statistical accomplishment via the Integrated Statistical Reporting and Analysis Application (ISRAA). Border field offices will make a record of value of such motor vehicle, part, or aircraft located or recovered in their respective territories in

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Mexico and Canada when the recovery is the direct result of FBI investigation. The field office where a motor vehicle, part, or aircraft was stolen will record recovery value where it is located or recovered in remaining parts of Mexico and Canada or in any other foreign country when the recovery is a direct result of specific FBI investigation. If a stolen automobile, part, or aircraft is recovered by Bureau personnel in the same state in which it was stolen (not having been transported interstate), the recovery value will be credited to the office of recovery upon submission via the ISRAA.

(3) In determining value of recovered stolen automobiles, Blue Book value should be followed. Where Blue Book value is unrealistic, such being case where vehicle or part is in a wrecked or dismantled condition upon recovery, the value should be secured from best available local estimate. In such cases, acceptable sources of valuation would include reputable automobile dealers and insurance company adjusters. In no instances are Bureau personnel to furnish an opinion as to value nor are values to be obtained from owners of stolen vehicles.

EFFECTIVE: 11/15/93

||26-2.12| Reporting Procedure

Prosecutive report in CT cases need be prepared:

- (1) When prosecutive action is undertaken
- (2) When requested by USA's Office
- (3) When needed by field supervisory personnel

EFFECTIVE: 10/13/93



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26-3 DEPARTMENTAL PROSECUTIVE POLICY

(1) In March, 1970, the Department of Justice issued prosecutive guidelines to all USAs regarding prosecution of ITSMV cases. The Department felt that the desirability of deferring many of these cases to local authorities for prosecution should be emphasized. USAs were instructed to defer prosecution to local authorities in individual cases involving persons under 21 years of age, unless such a person is a recidivist who has been arrested twice previously for motor vehicle theft and had been incarcerated on one or more occasions for this or other offenses. In order for a USA to authorize ITSMV prosecution of an individual over 21 years of age, this individual should have been convicted of a previous felony in any jurisdiction. The USA may also consider prosecution if:

(a) The stolen vehicle is used in the commission of a separate felony for which punishment less than ITSMV could be expected from local court;

(b) The stolen vehicle is demolished; sold, stripped, or grossly misused; and

(c) An individual steals more than one vehicle in such a manner as to form a pattern of conduct. No prosecution is to be considered with regard to "joy-riding" thefts.

(2) To determine if a subject has a prior record which would qualify him/her for prosecution under the above guidelines, field offices should first check the subject through the Interstate Identification Index (see Part II, Section 14-12.3.3 of this manual). If this inquiry is negative, a teletype should be directed to FBIHQ, Attention: Criminal Justice Information Services Division. Include all available identifying data and request the Criminal Justice Information Services Division to furnish any record by return teletype.

(3) The Department instructed USAs that CT cases and multitheft operations should continue to be investigated and prosecuted. Bureau Agents should thoroughly investigate all CT cases and discuss their prosecutive merits with USAs at an appropriate time.

(4) The guidelines stated above apply to motor vehicles, NOT AIRCRAFT. All ITSA cases should be presented for prosecutive opinion, absent specific prosecutive guidelines for a particular judicial district.

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(5) Concerning Section 513 (Securities of the States and Private Entities), FBIHQ and Department of Justice authority must be obtained prior to its use where no interstate element exists.

EFFECTIVE: 04/08/96

26-3.1 Juvenile Offenders

A large number of subjects involved in stolen motor vehicle investigations are juveniles (17 years of age and younger). These cases should be promptly discussed with the USA for his/her decision as to Federal prosecution. The USA should be furnished with adequate background information on the juvenile such as his/her prior arrest record, aggravated circumstances of the present offense, present and past juvenile delinquency status with local authorities, and other special background data. Should the USA decline, the case should be immediately referred to state or local prosecuting authorities for their consideration under applicable state statutes. The obtaining of the juvenile's background should not occasion any delay in the prompt and timely presentation of the case.

EFFECTIVE: 10/13/93

26-4 INVESTIGATIVE PROCEDURES (See MIOG, Part I, 87-3.4.)

In investigating these violations, the following suggestions are made. Many of the suggestions as to motor vehicles also apply in general to aircraft:

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26-4.1 Proof of Theft

(1) It should be immediately examined and proper notes made of the license, identification and other assembly numbers, together with any distinctive marks, stains, damages, and equipment which may prove of value in identifying it.

[REDACTED] Notes taken during this examination should be preserved in a exhibit envelope (FD-340 and/or FD-340b) for future reference during the trial.

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(2) If the owner is not known, trace ownership by use of assembly numbers through NICB automobile associations or offices covering the factory and dealer to whom shipped. Information on ownership of aircraft can be obtained from the license and airworthiness certificates required to be in the aircraft, or by lead to Washington Metropolitan Field Office furnishing the aircraft's description and license number and requesting contact with Federal Aviation Administration headquarters for ownership data.

(3) Owner of vehicle in most cases will not be notified of its recovery by Bureau personnel unless requested by office of origin. NCIC will request department which entered stolen vehicle in NCIC to notify owner. In those few instances in which vehicle has not been entered in NCIC, owner should promptly be notified of its recovery and location by office of origin instructing appropriate office to handle. Following examination of a vehicle by office of origin, they may desire to have owner interviewed. If an auxiliary office receives such a request, ascertain following:

(a) Date, place, and hour of theft

(b) The means by which he/she can identify the vehicle, ascertaining whether he/she ever saw the identification or other assembly numbers and can testify from his/her own independent knowledge and recollection as to them. If not, information should be secured as to the nature of documents, notes, or papers from which he/she can refresh his/her memory. The owner should be informed that he/she will be a necessary witness before the grand jury and at the trial. He/She should be acquainted with the general nature of the testimony expected of him/her.

(c) His/Her evidence of ownership, such as certificate of title and registration card. He/She should be instructed to preserve carefully these papers in order that he/she may bring them with him/her when subpoenaed as a witness.

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- the theft
- (d) Who last had possession of the vehicle before the theft
  - (e) The circumstances surrounding the theft and any lead as to the identity of the thief
  - (f) When and to whom the theft was reported
  - (g) If it appears vehicle was fraudulently obtained, rented, or borrowed from the owner, develop fully all circumstances tending to show the practice of fraud, deceit, or trickery in obtaining possession of it, and intent on the part of the subject to convert to his/her own use.
  - (h) If practicable, arrange for the owner to examine the vehicle after its location or recovery in order that he/she may positively identify it.

EFFECTIVE: 10/13/93

26-4.2 Evidence and Witnesses Regarding Theft

If it is necessary to prove identity of the stolen vehicle by assembly numbers, a complete chain of evidence should be set forth tracing the stolen vehicle from the point of its location or recovery to the owner. If the identification number on the stolen vehicle has been changed, the USA ordinarily will desire the following chain of witnesses:

(1) The person who located or recovered it, with original notes as to all assembly numbers at the time

(2) Investigator or other person, with original notes,

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(3) Proper witness from factory which manufactured vehicle, with assembly records showing correct identification and assembly numbers

(4) Proper witness, with necessary records, from office of dealer who sold vehicle to owner

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(5) Proper witness, with records, from office of motor vehicle registration bureau of state in question, showing identification number of vehicle sold to and registered by owner

(6) Owner of vehicle with evidence of ownership, such as certificate of title and registration card

EFFECTIVE: 08/19/85

26-4.3      Ownership of Vehicle

If the owner is a firm or concern, either a partnership, or corporation, the necessary information as to the exact name of such firm, partnership, or corporation shall be included in the prosecutive report. Also show the state under the laws of which it was incorporated.

EFFECTIVE: 08/19/85

26-4.4      Proof of Vehicle Transported in Interstate or Foreign  
Commerce

(1) Show the date, hour when, place where, and by whom it was located or recovered, and from whom it was recovered or in whose possession it was located.

(a) Interview thoroughly and, if possible, obtain written statement of persons from whom it was recovered or in whose possession it was located.

(b) Interview the persons who recovered it.

(2) Show all points from, through, and to which it was transported, by evidence obtained from subject, persons recovering it, or any other persons having knowledge of the transportation. Interview other persons having knowledge of the transportation. Secure all corroborating details, such as garage or airport records of storage and repairs while en route, and hotel registrations of transporters. As venue for prosecution lies in the district where it was stolen, or at any point in any judicial district of another state through which it was transported, or in the judicial district into which it was brought, showing all points into or through which the

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vehicle was transported frequently will enable USAs to select as the place for prosecution a judicial district from, into, or through which all stolen vehicles handled by the subject were brought. In this way complete evidence as to the various violations on the part of the defendant may be submitted to the same grand and petit juries.

EFFECTIVE: 08/19/85

26-4.5 Proof of Guilty Knowledge of Theft by the Accused

(1) The transporter frequently is the thief and proof to the effect that he/she stole it is conclusive evidence that he/she knew it to be stolen at the time of the transportation.

(2) Guilty knowledge on the part of the transporter frequently is proved by circumstantial evidence such as:

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]
- (e) [REDACTED]
- (f) [REDACTED]
- (g) [REDACTED]
- (h) [REDACTED]
- (i) [REDACTED]

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[REDACTED]

(3) On the part of the person who received, possessed, concealed, stored, bartered, sold, or disposed of it--in some cases it is necessary to prove the theft and interstate transportation of the vehicle in order to give the federal government jurisdiction. It is then necessary to prove guilty knowledge on the part of the receiver, etc., to the effect that it has been stolen. Such guilty knowledge usually is proved by circumstantial evidence similar to that mentioned above.

(4) Pursuant to Title 18, USC, Section 21, the element of guilty knowledge may also be established by proof that the defendant believed that the property was stolen, after or as a result of an official representation as to the nature of the property (see MIOG, Part II, 1-1.12).

EFFECTIVE: 10/23/95

26-4.6 Definition of Motor Vehicle (See MIOG, Part I, 15-4, 26-1.8, 149-5.1.)

(1) Employees should be aware of the definition of a motor vehicle as set forth in Title 18, USC, Section 31 (DAMV Statute - Part I, Section 149-1.1.5 of this manual).

(2) Effective January 1, 1985, a motor vehicle is described under this section as "... every description of carriage or other contrivance propelled or drawn by mechanical power and used for commercial purposes on the highways in the transportation of passengers, passengers and property, or property or cargo." Based on this definition, a person who destroys or damages a truck with intent to endanger the driver or another person on board, or with reckless disregard for their safety, can be prosecuted under Title 18, USC, Section 33 (DAMV Statute).

(3) DOJ has advised that expansion of the term "motor vehicle" is not intended to "federalize" every attack upon a truck which endangers persons on board, and offices should develop prosecutive guidelines with respect to this statute through their law enforcement coordinating committees.

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EFFECTIVE: 01/08/96

26-5 NATIONWIDE STOLEN AIRCRAFT ALERT PROCEDURES

EPIC will automatically request an FAA alert on all aircraft entered into NCIC as stolen. Area alerts for specific regions of the country can also be requested through EPIC, but these are done by request only and not automatically.

EFFECTIVE: 08/19/85

26-6 VENUE

Venue lies in any district from, through, or into which the motor vehicle, motor vehicle component parts, security or aircraft has been transported (Title 18, USC, Section 3237).

EFFECTIVE: 08/19/85

26-7 PENALTIES

(1) Title 18, USC, Section 511 (Altering or Removing Motor Vehicle Identification Numbers), five years in prison or a \$10,000 fine or both.

(2) Title 18, USC, Section 513 (Securities of the States and Private Entities), ten years in prison or a \$250,000 fine or both. (See MIOG, Part I, 26-1.3.)

(3) Title 18, USC, Section 2119 (Motor Vehicles), up to 15 years in prison and a fine or both; if serious bodily injury occurs, fine and imprisonment for up to 25 years or both; if death occurs, fine and up to life imprisonment or both. (See MIOG, Part I, 26-1.5 & 26-2.9.)

(4) Title 18, USC, Section 2312 (Transportation of Stolen Vehicles), up to ten years in prison or fined or both. (See MIOG, Part I, 26-1.6.)



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| (5) | Title 18, USC, Section 2313 (Sale or Receipt of Stolen Vehicles), up to ten years in prison or fined or both. (See MIOG, Part I, 26-1.7.) |

| (6) | Title 18, USC, Section 2321 (Trafficking in Certain Motor Vehicles or Motor Vehicle Parts), up to ten years in prison or a \$20,000 fine or both. | (See MIOG, Part I, 26-1.10.) |

| (7) | Title 18, USC, Section 2322, (Chop Shops), up to fifteen years in prison or a fine or both. (See MIOG, Part I, 26-1.11.) |

| (8) | Title 18, USC, Section 3623 (Alternative fines), should also be consulted.

EFFECTIVE: 10/13/93

26-8

CHARACTER - INTERSTATE TRANSPORTATION OF STOLEN MOTOR VEHICLE OR INTERSTATE TRANSPORTATION OF STOLEN AIRCRAFT  
| (See MIOG, Part I, 87-3.4.) |

For commercial thefts, see also 87 - Interstate Transportation of Stolen Property - Heavy Equipment (HE)

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SECTION 27. PATENT MATTER

27-1 STATUTES

Title 35, USC, entitled "Patents," was revised and codified by the enactment of Public Law 593, 82nd Congress, approved 7-19-52, and became effective 1-1-53. Violations occurring prior to 1-1-53 should be considered under the former code sections.

(1) Title 35, USC, Section 31, "Regulations for agents and attorneys" and Section 32, "Suspension or exclusion from practice (formerly Title 35, USC, Section 11), provides that the Commissioner, subject to the approval of the Secretary of Commerce, may prescribe regulations governing the recognition and conduct of agents or attorneys representing others before the Patent Office, and may, under certain conditions, suspend or exclude either generally or in any particular case, any agent or attorney from further practice before the Patent Office.

(2) Title 35, USC, Section 33, "Unauthorized representation as practitioner" (formerly Title 35, USC, Section 11a), is quoted as follows: "Whoever, not being recognized to practice before the Patent Office, holds himself out or permits himself to be held out as so recognized, or as being qualified to prepare or prosecute applications for patent, shall be fined not more than \$1,000 for each offense."

Note: Section 11a provided a fine of not less than \$50 and not exceeding \$500.

(3) Title 35, USC, Section 181, "Secrecy of certain inventions and withholding of patent"; Section 182, "Abandonment of invention for unauthorized disclosure"; Section 183, "Right to compensation"; Section 184, "Filing of application in foreign country"; and Section 185, "Patent barred for filing without license" (formerly Title 35, USC, Section 42), provides that whenever publication or disclosure by the grant of a patent on an invention in which the Government has a property interest may be detrimental to the national security, in the opinion of the interested Government agency, the Commissioner may order the invention kept secret and withhold the granting of a patent. If such invention has been published, or disclosed in violation of such order or an application for a patent has been applied for in a foreign country without the consent of the Commissioner, the patent may be held abandoned. An applicant, whose patent has been withheld for security reasons, under certain conditions

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may apply for compensation for damage or use by the Government caused by the order.

(4) Title 35, USC, Section 186, "Penalty" (formerly Title 35, USC, Section 42c), provides parties covered by secrecy requirements in Section 181 who publish or disclose information regarding patent, or violate provisions of Section 184 with regard to filing applications for patent in foreign country, are subject to not more than \$10,000 fine or 2 years' imprisonment or both.

(5) Title 35, USC, Sections 271 through 292 (formerly Title 35, USC, Sections 49, 50, 66, 67, 69, 70, 71, 72a, 73, 74, and 75), deals with infringement of patents and remedies.

Title 35, USC, Section 292, "False marking" (formerly Title 35, USC, Section 50), is quoted as follows:

"(a) Whoever, without the consent of the patentee, marks upon, or affixes to, or uses in advertising in connection with anything made, used, or sold by him, the name or any imitation of the name of the patentee, the patent number, or the words 'patent,' 'patentee,' or the like, with the intent of counterfeiting or imitating the mark of the patentee, or of deceiving the public and inducing them to believe that the thing was made, or sold by or with the consent of the patentee; or "Whoever marks upon, or affixes to, or uses in advertising in connection with any unpatented article, the word 'patent' or any word or number importing that the same is patented, for the purpose of deceiving the public; or "Whoever marks upon, or affixes to, or uses in advertising in connection with any article, the words 'patent applied for,' 'patent pending,' or any word importing that an application for patent has been made, when no application for patent has been made, or if made, is not pending, for the purpose of deceiving the public - "Shall be fined not more than \$500 for every such offense."

"(b) Any person may sue for the penalty, in which event one-half shall go to the person suing and the other to the use of the United States."

(6) Title 18, USC, Section 497, Letters patent "Whoever falsely makes, forges, counterfeits, or alters any letters patent granted or purporting to have been granted by the President of the United States; or "Whoever passes, utters, or publishes, or attempts to pass, utter or publish as genuine, any such letters patent, knowing the same to be forged, counterfeited or falsely altered - "Shall be fined not more than \$5,000 or imprisoned not more than ten years, or both."

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EFFECTIVE: 01/31/78

27-2 POLICY

(1) Due to close relationship between criminal and civil aspects of patent laws, criminal investigation concerning above violations conducted only after USA advises allegations warrant criminal prosecution.

(2) Civil procedures alone, available to injured party in connection with infringement of patent, not investigated by Bureau.

(3) Allegations involving violations under Title 18, USC, Section 497, should be thoroughly discussed with the USA before initiating any investigation. Since there has been no prosecution brought under this section, assure USA discusses facts with the Criminal Division, U. S. Department of Justice, prior to authorizing any prosecutive action.

EFFECTIVE: 01/31/78

27-3 CHARACTER - PATENT MATTER

EFFECTIVE: 01/31/78

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SECTION 28. COPYRIGHT MATTER

28-1 STATUTES

| Title 17, USC, Section 506; Title 18, USC, Sections 2318  
and 2319. |

EFFECTIVE: 01/26/83

28-2 ELEMENTS

| (1) | Section | 506(a). Criminal Infringement - Any person  
who infringes a copyright willfully and for purposes of commercial  
advantage of private financial gain. |

| (2) | Section | 506(c). Fraudulent Copyright Notice - Any  
person who, with fraudulent intent, places on any article a notice of  
copyright or words of the same purport, that such person knows to be  
false, or who, with fraudulent intent, publicly distributes or imports  
for public distribution any article bearing such notice or words that  
such person knows to be false.

| (3) | Section | 506(d). Fraudulent Removal of Copyrighted  
Notice - Any person who, with fraudulent intent, removes or alters any  
notice of copyright appearing on a copyrighted work.

| (4) | Section | 506(e). False Representation in Application  
for Copyright - Any person who knowingly makes a false representation  
of a material fact in the application for copyright registration  
provided for by Section 409, or in any written statement filed in  
connection with the application.

| (5) Section 2318. Trafficking in Counterfeit Labels for  
Phonorecords, and Copies of Motion Pictures or Other Audiovisual Works  
- Whoever, in any of the circumstances described below knowingly  
traffics in a counterfeit label affixed or designed to be affixed to a  
phonorecord, or a copy of a motion picture or other audiovisual  
work. The circumstances referred to above are-

| (a) the offense is committed within the special  
maritime and territorial jurisdiction of the United States, or within

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the special aircraft jurisdiction of the United States (as defined in Section 101 of the Federal Aviation Act of 1958);

(b) the mail or a facility of interstate or foreign commerce is used or intended to be used in the commission of the offense; or

(c) the counterfeit label is affixed to or encloses, or is designed to be affixed to or enclose, a copyrighted motion picture or other audiovisual work, or a phonorecord of a copyrighted sound recording.

EFFECTIVE: 01/26/83

28-3 POLICY

(1) Investigations involve the illegal manufacture, distribution, sale and/or exhibition of musical compositions (sheet music) and sound recordings (records and tapes), motion picture films, audiovisual works (video games), television shows, books, objects of art, and other copyrightable works, for profit. The policy of the Department of Justice (DOJ) regarding copyright violations is to pursue criminal investigations and prosecutions generally in the areas of sound recordings, motion pictures and audiovisual works (video games), primarily because adequate civil remedies are available to copyright proprietors whose rights have been violated in other areas.

The United States Attorney (USA) should be contacted prior to conducting investigations involving infringement of copyrighted works other than sound recordings, motion pictures and audiovisual works.

(2) Generally, investigation in all copyright cases should be directed toward locating and identifying the producers, principal distributors, and publishers of unauthorized duplications of copyrighted products in order to eliminate the sources of illicit productions.

(3) Investigative experience in sound recording and motion picture cases has shown a most effective method to identify manufacturers and distributors is to locate retailers, seize contraband found in plain view and available to general public, only after making a purchase of illegal sound recording or film. If retailer has not been previously advised of provisions of the

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Copyright Statute and warned of violation, record warning and index in offices' indices. On second occasion, contact USA and consider seizure of contraband, arrest warrant, subsequent indictment and additional investigation to locate distributor or manufacturer.

(4) Sound Recordings

(a) The DOJ is primarily interested in prosecuting manufacturers and distributors of pirated copies; however, retailers should be considered subjects for prosecution, since the statute covers any willful infringement for purposes of commercial advantage or private financial gain. The prosecution of retailers will usually depend on their awareness of the Copyright Statute and the extent of their cooperation in our investigation and prosecution of major suppliers.

(b) All unauthorized duplications of sound recordings, whether pre-2-15-72 or post-2-15-72, are prosecutable in Federal court and all such pirated sound recordings may be seized when executing search warrants or consents to search. Prosecution of pre-2-15-72 sound recording infringements are prosecutable for infringement of the musical composition copyright (sheet music) and not for infringement of sound recording copyright.

NOTE: The unauthorized duplication of a pre-2-15-72 sound recording infringes the underlying musical composition copyright regardless of whether or not the duplicator tenders royalty payments to the copyright owner.

(5) Motion Picture Films, Television Programs and Audiovisual Works (Video Games) - As in other copyrighted cases, the object of investigation is to determine source of production, actual producer of unauthorized copies, and identity of distributors, subdistributors, wholesalers, and retailers or collectors.

(6) Motion Picture Sound Tracks

(a) Sound tracks derived directly from motion pictures are covered by copyright on the motion picture and not by sound recording copyright. However, motion picture sound tracks which have been re-recorded may have their own sound recording copyright.

(b) Section 401 of the Copyright Act of 1976 requires a copyright notice for a motion picture sound track be present only on copies of a work; and consistent with case law under the Copyright Act of 1909, the new legislation does not consider a



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phonorecord a copy. Section 401 copyright notice is therefore not required on phonorecords. To protect any new matter present on a soundtrack album, the owner should place on each phonorecord embodying that new matter, a second copyright notice, as required under Section 402(b) of the Act.

(c) Under DOJ policy investigations should center on motion picture or sound recording infringements, excluding soundtrack, whenever possible.

EFFECTIVE: 09/20/89

28-4 INVESTIGATION

EFFECTIVE: 09/20/89

28-4.1 Investigation to Determine Copyright

(1) Office receiving complaint should promptly determine whether a product is copyrighted and, if so, the identity of the copyright holder. The individual rights in copyrighted works enumerated in Section 106 may be owned individually or collectively. Therefore, when conducting preliminary investigation with respect to the copyright owner(s), some care should be exercised in determining ownership of the particular right being infringed.

(2) In order to save investigative time, information regarding copyright registration on current albums, tapes, and single records, should be obtained directly from the Recording Industry Association of America (RIAA) headquarters in New York, New York. From these records, which are filed by the name of the artist and cross-referenced to the title of the song or album, the following information is available: copyright registration number, release date, address and telephone number of the copyright holder, and the person to contact to determine if an individual or company has permission to duplicate a particular sound recording. Copyright registration pertaining to copyrighted motion picture films, television, educational and training films can be obtained from the Film Security Office of the Motion Picture Association of America (MPAA), 14144 Ventura Boulevard, Sherman Oaks, California 91428, telephone (818) 995-6600. The Film Security Office of the MPAA can also determine the gauge in which the film has been released, i.e.,



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70mm, 35mm, 16mm, 8mm, Super 8, or 3/4-inch or 1/2-inch video. For example, if a video copy of a film is located and it is determined that a studio had only released the film in 35mm or 16mm format, the video is obviously illegal.

(3) | The MPAA and RIAA have also established toll-free "hotlines" to receive antipiracy complaints from anywhere in the United States. The MPAA number is 1-800-NO-COPYS (1-800-662-6797), and the RIAA number is 1-800-BAD-BEAT (1-800-223-2328). Offices receiving information or complaints concerning films, video, or sound piracy may wish to refer the complainant to either the MPAA or RIAA if there is insufficient information or available resources to initiate a copyright investigation. |

| (4) | If information regarding copyright registration on sound recording or motion picture is not available through the RIAA or MPAA, or a copy of the registration certificate is needed for court, a lead should be set out for the Washington|Metropolitan|Field Office to obtain this information from the U.S. Copyright Office. Under Section 708 of the Copyright Law of 1976, which became effective January 1, 1978, each certified Copyright Registration Certificate obtained from the Copyright Office will cost the Bureau \$4.

| (5) | In certain cases, where a particular bootleg or counterfeit operation is large in scope, violations of Title 17 may be prosecuted under other criminal statutes including Interstate Transportation of Stolen Property, Mail Fraud and, in especially aggravated cases, Racketeer Influenced and Corrupt Organizations statute.

EFFECTIVE: 09/20/89

28-4.2 Search Warrants

(1) Section 509(a) authorizes the seizure of infringing copies and means of producing such copies when used, intended for use, or possessed with intent to use, in violation of criminal provisions of the Copyright Law, Section 506(a).

(2) Consider obtaining search warrants for search of premises utilized by distributor, wholesaler, retailer or others and subsequent seizure of contraband located. A copy of complete inventory of items seized must be left on premises searched, along with a copy of the search warrant.

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(3) In searching, be alert for evidence of existence of other locations for storage of alleged items utilized by subject, customer records, and information regarding distributors of raw materials. If located, obtain search warrant if consent to search cannot be obtained.

(4) Note that in conducting searches, all pirated sound recordings may be seized whether pre-2-15-72 or post-2-15-72.

(5) Because of decisions in the First and Ninth Circuit Courts of Appeal, the DOJ has advised care should be exercised in describing, both on the face of the warrant and in the affidavit, the property (i.e., pirated copies) to be seized. For example, the affidavit should describe with some degree of particularity the various ways in which pirated copies of copyrighted sound recordings or motion pictures differ from their legitimate counterparts. The description on the face of the warrant should make reference to the particular description in the affidavit. Also, Agents should detail their experience and expertise in detecting pirate copies.

EFFECTIVE: 09/20/89

28-4.3 Seizures Without a Warrant

According to DOJ, pirated sound recordings and motion picture films which are being sold in public (street vendors, flea markets, etc.) can be seized without a search warrant, providing the USA in the district in which the search is conducted concurs with this procedure. The basis for this warrantless seizure is the fact that an offense is being committed in the presence of an Agent, and there is no expectation of privacy; therefore, a warrant is not necessary. The sound recordings and films seized must be displayed openly and in a public place where the Agent has a right to be present as a member of the public. In order to establish the profit element of the Copyright Statute, Agent must purchase one or more of the pirate copies or witness the sale of a pirate copy. [REDACTED]

[REDACTED] This procedure for warrantless seizures is limited to open-air, transient and movable locations. In those instances where retail stores are concerned, warrants should be obtained.

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EFFECTIVE: 09/20/89

28-4.4 Forfeiture and Destruction

(1) Title 17, Sections 509 (a) and (b) provide that "all copies or phonorecords manufactured, reproduced, distributed, sold or otherwise used, intended for use, or possessed with intent to use in violation of (the Copyright Law), and all plates, molds, matrices, tapes, film negatives, or other articles by means of which such copies or phonorecords may be reproduced, and all electronic, mechanical, or other devices for manufacturing, reproducing or assembling such copies or phonorecords may be seized and forfeited to the United States." The FBI has been delegated authority to institute civil administrative forfeiture proceedings pursuant to Section 509. The Forfeiture and Abandoned Property Manual contains the step-by-step procedure to be followed for seizures and civil forfeiture proceedings (judicial and administrative) conducted in conjunction with this violation.

(2) Title 17, Section 506(b) of the Copyright Law provides that when any person is convicted of any violation of subsection (a) (criminal infringement) the court in its judgment of conviction shall, in addition to the usual penalty, order the forfeiture and destruction or other disposition of all infringing copies or phonorecords and all implements, devices or equipment used in the manufacture of such infringing copies or phonorecords.

(3) Title 18, Section 2318(d) provides that when any person convicted of any violation of Title 18, USC, Section 2318(a) (Trafficking in Counterfeit Labels), the court in its judgment of conviction shall, in addition to the penalty therein described, order the forfeiture and destruction or other disposition of all counterfeit labels and all articles to which counterfeit labels have been affixed or which were intended to have had such labels affixed.

EFFECTIVE: 09/20/89

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28-4.5 Examination by Technical Services Division

(1) In sound recording violations, send suspected pirate sound recordings to Technical Services Division (TSD) for aural comparisons with legitimate sound recordings. Request should also be made for examination of labels and slip jackets, if appropriate, which will be conducted by the Laboratory.

(2) An authorized copy of the copyrighted sound recording should be obtained from the manufacturer or the manufacturer's representative and submitted at the same time the sound recording is submitted to the Technical Services Division (TSD).

(3) The chain of custody of the authorized copy of the copyrighted sound recording must be maintained and this authorized copy must be dated and initialed by the manufacturer's representative who will be available to testify as to the ownership of the copyright and the existence of any licensing agreements.

(4) Prior to requesting comparison by TSD

(a) Secure copyright verification

(b) Contact USA to determine whether USA will prosecute in the event TSD determines suspected copies are pirated, and, if so, number of counts USA desires to charge for a determination as to number of suspected sound recordings that should be sent for comparison. If USA does not intend to prosecute, there is no need to request comparison by TSD.

EFFECTIVE: 06/18/87

28-5 VENUE

Where offense is committed, begun, or completed.

EFFECTIVE: 06/18/87

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28-6 DISCLOSURE TO PRIVATE SECTOR

(1) Pursuant to the published routine uses of information maintained in the FBI central records system, we are authorized to disclose certain information relative to a copyright matter investigation to the copyright proprietor injured by the infringement of the copyright, in order to assist him/her in the initiation or maintenance of a civil copyright infringement action against the person charged with the violation.

(2) In accordance with departmental recommendations, it is preferable for the copyright proprietor to initiate the civil action, after which the plaintiff in the case can avail himself/herself of civil discovery to request testimony of FBI personnel involved in the investigation, for which the Department normally will give approval.

(3) Where the copyright proprietor claims he/she has insufficient information to institute a suit, he/she must be able to demonstrate a specific need for our information, the release of which is always discretionary. Where disclosure appears warranted, it must be restricted to only that which is needed for initiation of the suit. Usually a list of pirated material and the identity and location of the person charged with the copyright infringement will suffice for this purpose.

(4) Requests for information relative to suspects or others not actually charged with a violation of Title 17, U.S. Code, should ordinarily be denied, as disclosure could constitute an unwarranted invasion of individual privacy under current, applicable standards.

EFFECTIVE: 06/18/87

28-7 PENALTIES

(1) Title 17, Section 506(a) - Criminal Infringement - Penalties for violation of Section 506(a) are set forth in Title 18, USC, Section 2319 and are as follows:

(a) Those who reproduce or distribute 1,000 or more unauthorized sound recordings or 65 or more unauthorized copies of a motion picture or audiovisual work during any 180-day period, the maximum penalty is five years' imprisonment and/or a \$250,000 fine.

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(b) Those that reproduce or distribute more than 100 but less than 1,000 unauthorized sound recordings, or more than 7 but less than 65 unauthorized copies of a motion picture or audiovisual work during any 180-day period, the maximum penalty is two years' imprisonment and/or a \$250,000 fine.

(c) Those that reproduce or distribute 100 or less unauthorized copies of a sound recording or 7 or less unauthorized copies of a motion picture or audiovisual work during a 180-day period, or where more than 180 days has elapsed between violations, the maximum penalty is one-year imprisonment and/or a \$25,000 fine.

(2) Title 17, Section 506(c) - Maximum penalty is a fine of not more than \$2,500.

(3) Title 17, Section 506(d) - Maximum penalty is a fine of not more than \$2,500.

(4) Title 17, Section 506(e) - Maximum penalty is a fine of not more than \$2,500.

(5) Title 18, Section 2318 - Trafficking in Counterfeit Labels - Maximum penalty is a fine of not more than \$250,000 and/or imprisonment for not more than five years.

NOTE: The statute of limitations on violations of Title 17 is three years.

EFFECTIVE: 06/18/87

28-8 CHARACTER - COPYRIGHT MATTER

EFFECTIVE: 06/18/87

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SECTION 29. FINANCIAL INSTITUTION FRAUD

29-1 BACKGROUND

(1) On October 12, 1984, the President signed the Comprehensive Crime Control Act of 1984 which became Public Law 98-473. This act amended Title 18 of the United States Code (USC), by amending Section 215 "Receipt of Commissions or Gifts for Procuring Loans," deleting Section 216, creating Section 1344 "Bank Fraud" and Section 1345 "Injunctions Against Fraud." (See MIOG, Part I, 192-5 (3).)

(2) On August 3, 1986, the President signed a revision of Title 18, USC, Section 215, entitled "Bank Bribery Amendments Act of 1985."

(3) On August 9, 1989, the President signed the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) which became Public Law 101-73. This act specifically addressed the ten banking-related offenses which consist of Title 18, United States Code (USC), Sections 215 (Bribery), 656 and 657 (Embezzlement/Misapplication), 1005 and 1006 (False Entries), 1007 (Federal Deposit Insurance Corporation Transactions), 1014 (False Statements), 1344 (Bank Fraud), 1341 (Mail Fraud), and 1343 (Wire Fraud), if the Mail Fraud and Wire Fraud offenses involved a federally insured financial institution. This act:

(a) increased maximum penalties for violation of each of the ten banking-related offenses to 20 years' imprisonment and/or \$1,000,000 fine (the Crime Control Act of 1990 increased the maximum penalties for violation of the ten banking-related offenses from 20 years to 30 years' imprisonment);

(b) increased the Statute of Limitations for the ten banking-related offenses from five years to 10 years, including those offenses for which the Statute of Limitations had not expired as of August 9, 1989;

(c) amended Title 18, USC, Section 1961, the Racketeer Influenced and Corrupt Organizations (RICO) Statute, to add Title 18, USC, Section 1344 (Bank Fraud) as a RICO predicate offense;

(d) amended Title 18, USC, Section 1510 (Obstruction



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of Justice) to prohibit an officer, director, partner, or employee of, or an agent or attorney for, a financial institution to disclose the existence or contents of federal grand jury subpoenas for records issued in connection with investigations of possible violations of the ten banking-related offenses. The maximum term of imprisonment is five years if the disclosure is made to any person with the intent to obstruct a judicial proceeding, or one year if the disclosure is made to a customer or any other person named in the subpoena;

(e) provided for civil forfeiture in connection with eight banking offenses (excluding Mail Fraud and Wire Fraud) and authorized criminal forfeiture upon conviction of any of the ten banking-related offenses, or conspiracy to commit any of these ten offenses;

(f) required that the U.S. Sentencing Commission promulgate sentencing guidelines for ten banking-related offenses that "provide for a substantial period of incarceration" if the offense substantially jeopardizes the safety and soundness of a federally insured financial institution;

(g) authorized the Attorney General to bring civil actions to recover civil penalties for violations of ten banking-related offenses;

(h) authorized the federal banking agencies to pay a reward for information which leads to the recovery of over \$50,000 through restitution, criminal fine, civil money penalty or forfeiture. The maximum reward cannot exceed the lesser of 25 percent of the recovery or \$100,000;

(i) created a new cause of action, or "whistleblower" protection, for financial institution employees who are fired because they provided information about alleged violations to a banking agency or DOJ. Persons who are involved in alleged violations or who provided substantially false information will not be able to pursue such actions;

(j) amended the Fair Credit Reporting Act to provide specifically that a credit reporting agency must furnish consumer credit report records when served with a federal grand jury (FGJ) subpoena for those records;

(k) authorized the disclosure of FGJ information to a federal banking agency for use in relation to any matter within the agency's jurisdiction, if a court finds that there is a "substantial

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need" for the disclosure;

(l) authorized the disclosure of FGJ information concerning a banking law violation, without a court order, to an attorney for the government for use in enforcing a related civil forfeiture proceeding;

(m) added additional exceptions to Section 1113 of the Right to Financial Privacy Act of 1978, permitting the disclosure of information to federal banking agencies relevant to the examination, conservatorship, or receivership of financial institutions;

(n) abolished the Federal Home Loan Bank Board (FHLBB) and the position of the Chairman of FHLBB as the chief regulator of the savings and loan industry;

(o) established the Office of Thrift Supervision, within the Department of the Treasury, to regulate the savings and loan industry;

(p) gave the Federal Deposit Insurance Corporation (FDIC) the duty of insuring the deposits of savings associations, in addition to banks. Insurance funds relating to banks and savings associations are to be administered separately by FDIC through the Bank Insurance Fund (BIF) and the Savings Association Insurance Fund (SAIF), respectively;

(q) established the Federal Savings and Loan Insurance Corporation (FSLIC) Resolution Fund, managed by FDIC, to assume the assets and liabilities of FSLIC and close out its affairs;

(r) authorized FDIC to act as a conservator or receiver for federally insured banks and savings associations. This gives FDIC the authority to operate an institution as a going concern, facilitate its merger or acquisition, or liquidate the institution;

(s) established the Resolution Trust Corporation (RTC) to resolve the affairs of failed and insolvent savings associations. The RTC is to be exclusively managed and staffed by FDIC and will exercise the FDIC's conservatorship and receivership powers; (See (6).)

(t) abolished the Federal Asset Disposition Association (FADA), the assets of which are to be liquidated by the RTC within 180 days of enactment;

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(u) broadened the group of individuals and entities covered by the Federal Deposit Insurance Act and Federal Credit Union Act by substituting the new term "institution-affiliated party," and replacing the term "bank" with "depository institution" so that enforcement provisions are applicable to both banks and savings associations;

(v) authorized federal banking agencies to take enforcement actions against "institution-affiliated parties" for up to six years following resignation or other departure from a financial institution, retroactively applied;

(w) substantially increased the maximum amount for civil money penalties, expanded the scope of misconduct covered by civil money penalty provisions, and authorized federal banking agencies to take action to collect these penalties;

(x) increased the criminal penalty for participation in the affairs of a depository institution in violation of a removal order to a maximum of five years' imprisonment and \$1,000,000 fine;

(y) broadened the prohibition against participation in the affairs of insured depository institutions by persons who have been convicted of any criminal offense involving dishonesty or breach of trust, and increased the maximum criminal penalty to five years' imprisonment and \$1,000,000 per day fine;

(z) added state criminal charges as grounds for removal of an "institution-affiliated party" from a financial institution;

(aa) required the federal banking agencies to jointly establish their own pool of administrative law judges, and to develop a set of uniform administrative rules and procedures within 24 months;

(bb) mandated an interagency task force study of the desirability and feasibility of the delegation of additional investigative and enforcement authority to the regional offices of the federal banking agencies; and

(cc) added the Securities and Exchange Commission as one of the agencies which may share information under Section 1112(e) of the Right to Financial Privacy Act of 1978.

(4) On November 29, 1990, the President signed the "Crime

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Control Act of 1990 (CCA)." The CCA affects all criminal investigative programs of the FBI with Title XXV of CCA, "The Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990" most affecting the area of financial institution fraud. Title XXV:

(a) established Title 18, U.S. Code (USC), Section 1032, as a criminal offense for concealing assets from the Federal Deposit Insurance Corporation (FDIC), the Resolution Trust Corporation (RTC), any conservator appointed by the Comptroller of the Currency or the Director of the Office of Thrift Supervision, or the National Credit Union Administration Board, acting as conservator or liquidating agent;

(b) established Title 18, USC, Section 1517, concerning the obstruction of an examination of financial institution by any agency of the United States;

(c) established Title 18, USC, Section 225, (Financial Crime Kingpin Statute), which makes it a crime to engage in a continuing financial crime enterprise. The enterprise is defined as bank frauds that involve four or more persons from which any one person has received \$5 million or more in a 24-month period. The penalty for the Kingpin Statute is ten years to life and/or \$10 million fine for individuals or \$20 million for corporations;

(d) increased maximum penalties for violation of the ten banking-related offenses from 20 years' to 30 years' imprisonment;

(e) prohibits certain convicted persons, such as those convicted of any of the bank-related statutes, from participating in or controlling a depository institution, for a minimum period of ten years, except by order of the sentencing court;

(f) established a 10-year statute of limitations for RICO offenses involving financial institutions;

(g) authorized wiretap (Title III) authority for bank fraud and related offenses;

(h) stipulated that the U.S. Sentencing Commission shall promulgate guidelines such that offenders of certain bank fraud statutes be assigned an offense level not less than level 24 under Chapter 2;

(i) made fraudulent transfers of a financial

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institution voidable if they occur within five years before the appointment of a conservator or receiver;

(j) made certain financial institution fraud debts nondischargeable in bankruptcy. It also disallowed the use of bankruptcy to evade depository institution capital commitments;

(k) prohibited certain convicted debtors from purchasing the assets of any insured depository institution;

(l) extended the statute of limitations for civil penalties under FIRREA to 10 years.

(m) increased the list of crimes for which civil forfeiture is available.

(n) requires the Attorney General to compile and collect extensive data on the nature and number of financial institutions investigations, prosecutions, and enforcement proceedings and report monthly to Congress through 12/31/91 and quarterly thereafter.

(o) created an Office of Special Counsel for Financial Institution Fraud (five-year sunset provision) within the Office of the Deputy Attorney General, DOJ, to supervise and coordinate investigations and prosecutions of financial institution fraud. The Special Counsel is to ensure that federal laws relating to financial institution fraud are utilized to the fullest extent possible, including civil enforcement, asset seizure, forfeiture, money laundering and racketeering, and that adequate resources are devoted to financial institution fraud;

(p) directed the Attorney General to establish Financial Institution Fraud Task Forces;

(q) directed the Attorney General to establish a Senior Interagency Group to assist in identifying the most significant financial institution fraud cases and promote interagency coordination as a tool to fight financial institution fraud;

(r) established an eight-member National Commission to examine and identify the origin and causes of the S & L crisis. This commission will have the power to conduct hearings, receive evidence, and subpoena witnesses. The Commission is required to submit a detailed report to the President within nine months of electing a chairperson;

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(s) provides a mechanism, "declarations" for private citizens (declarant) to bring forward information that the government is unaware of, which would help in civil and criminal financial institution fraud cases. Declarant CANNOT have participated in the underlying illegal activities or profited from them. Declarant, if the information they provided is relied upon in securing a criminal conviction, may receive between \$5,000 and \$100,000. They may also receive a percentage (maximum \$1.6 million) of any recovery by the U.S. based on their declaration;

(t) provides rewards up to \$50,000 to informants, individuals who provide tips or leads but are NOT declarants, if their information leads to a conviction, whether or not the U.S. actually recovers assets from the offender.

(5) On November 30, 1992, Section 1542 of the Housing and Community Development Act of 1992 was enacted which requires that, unless otherwise prohibited by law, the heads of federal agencies will disclose to the appropriate federal financial institution regulatory agencies any information that is believed to raise significant concerns regarding the "safety and soundness" of any depository institution doing business in the United States. This Act ensures that information necessary to protect depositors at our Nation's depository institutions is forwarded in a timely manner to the appropriate regulatory agencies. (See MIOG, Part I, 29-2.2.3 & 29-6.5.)

(6) Pursuant to the terms of the Resolution Trust Corporation (RTC) Completion Act, the RTC ceased to exist as of 12/31/95. All remaining RTC matters have been transferred to the Federal Deposit Insurance Corporation (FDIC).

EFFECTIVE: 11/21/96

29-2 STATUTES, PENALTIES AND DEFINITIONS

EFFECTIVE: 06/26/91

29-2.1 Statutes and Penalties

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EFFECTIVE: 06/26/91

29-2.1.1 Section 212. Offer of Loan or Gratuity to Bank Examiner

"Whoever, being an officer, director or employee of a financial institution which is a member of the Federal Reserve System or the deposits of which are insured by the Federal Deposit Insurance Corporation, or of any National Agricultural Credit Corporation, or of any Farm Credit Bank, bank for cooperatives, production credit association, Federal land bank association, agricultural credit association, Federal land credit association, service organization chartered under section 4.26 of the Farm Credit Act of 1971, the Farm Credit System Financial Assistance Corporation, the Federal Agricultural Mortgage Credit Corporation, the Federal Farm Credit Banks Funding Corporation, the National Consumer Cooperative Bank, or other institution subject to examination by a Farm Credit Administration examiner, or of any small business investment company, makes or grants any loan or gratuity, to any examiner or assistant examiner who examines or has authority to examine such bank, corporation, or institution, shall be fined not more than \$5,000 or imprisoned not more than one year, or both; and may be fined a further sum equal to the money so loaned or gratuity given.

"The provisions of this section and section 213 of this title shall apply to all public examiners and assistant examiners who examine member banks of the Federal Reserve System or insured financial institutions, or National Agricultural Credit Corporations, whether appointed by the Comptroller of the Currency, by the Board of Governors of the Federal Reserve System, by a Federal Reserve Agent, by a Federal Reserve bank, by the Federal Deposit Insurance Corporation, by the Office of Thrift Supervision, or by the Federal Housing Finance Board, or appointed or elected under the laws of any state; but shall not apply to private examiners or assistant examiners employed by a clearing-house association or by the directors of a bank."

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29-2.1.2 Section 213. Acceptance of Loan or Gratuity by Bank Examiner

"Whoever, being an examiner or assistant examiner of member banks of the Federal Reserve System or financial institutions the deposits of which are insured by the Federal Deposit Insurance Corporation, or a farm credit examiner or examiner of National Agricultural Credit Corporations, or an examiner of small business investment companies, accepts a loan or gratuity

from any bank, corporation, association or organization examined by him or from any person connected herewith, shall be fined not more than \$5,000 or imprisoned not more than one year, or both; and may be fined a further sum equal to the money so loaned or gratuity given, and shall be disqualified from holding office as such examiner."

EFFECTIVE: 06/26/91

29-2.1.3 Section 214. Offer for Procurement of Federal Reserve Bank Loan and Discount of Commercial Paper

"Whoever stipulates for or gives or receives, or consents or agrees to give or receive, any fee, commission, bonus, or thing of value for procuring or endeavoring to procure from any Federal Reserve bank any advance, loan, or extension of credit or discount or purchase of any obligation or commitment with respect thereto, either directly from such Federal Reserve bank or indirectly through any financing institution, unless such fee, commission, bonus, or thing of value and all material facts, with respect to the arrangement or understanding therefor shall be disclosed in writing in the application or request for such advance, loan, extension of credit, discount, purchase, or commitment, shall be fined not more than \$5,000 or imprisoned not more than one year, or both."

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29-2.1.4 Section 215. Receipt of Commissions or Gifts for  
Procuring Loans

"(a) Whoever--

"(1) corruptly gives, offers, or promises anything of value to any person, with intent to influence or reward an officer, director, employee, agent, or attorney of a financial institution in connection with any business or transaction of such institution; or

"(2) as an officer, director, employee, agent, or attorney of a financial institution, corruptly solicits or demands for the benefit of any person, or corruptly accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business or transaction of such institution; shall be fined not more than \$1,000,000 or three times the value of the thing given, offered, promised, solicited, demanded, accepted, or agreed to be accepted, whichever is greater, or imprisoned not more than 30 years, or both; but if the value of the thing given, offered, promised, solicited, demanded, accepted, or agreed to be accepted does not exceed \$100, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

"(c) (sic) This section shall not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business.

"(d) (sic) Federal agencies with responsibility for regulating a financial institution shall jointly establish such guidelines as are appropriate to assist an officer, director, employee, agent, or attorney of a financial institution to comply with this section. Such agencies shall make such guidelines available to the public."

Note: Four versions of section 215 are in force. The first is applicable to offenses occurring prior to October 12, 1984. The second applies to offenses occurring in the period beginning October 12, 1984, and ending September 2, 1986. The third is applicable to offenses occurring in the period beginning September 3, 1986, and ending August 9, 1989, when FIRREA was signed into law. The fourth applies to offenses occurring after the signing into law of FIRREA, August 9, 1989.

Note: Alternative fine provisions are contained in Title 18, USC, Section 3571.



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29-2.1.5 | Section 225. Continuing Financial Crime Enterprise

"(a) Whoever

"(1) organizes, manages, or supervises a continuing financial crimes enterprise; and

"(2) receives \$5,000,000 or more in gross receipts from such enterprise during any 24-month period,

"shall be fined not more than \$10,000,000 if an individual, or \$20,000,000 if an organization, and imprisoned for a term of not less than 10 years and which may be life.

"(b) for purposes of subsection (a), the term 'continuing financial crimes enterprise' means a series of violations under section 215, 656, 657, 1005, 1006, 1007, 1014, 1032, or 1344 of this title, or section 1341 or 1343 affecting a financial institution, committed by at least 4 persons acting in concert."

EFFECTIVE: 06/26/91

29-2.1.6 | Section 334. Issuance of Federal Reserve or National Bank Notes

"Whoever, being a Federal Reserve Agent, or an agent or employee of such Federal Reserve Agent, or of the Board of Governors of the Federal Reserve System, issues or puts in circulation any Federal Reserve notes, without complying with or in violation of the provisions of law regulating the issuance and circulation of such Federal Reserve notes; or

"Whoever, being an officer acting under the provisions of chapter 2 of Title 12, countersigns or delivers to any national banking association, or to any other company or person, any circulating notes contemplated by that chapter except in strict accordance with its provisions--

"Shall be fined not more than \$5,000 or imprisoned not more than five years, or both."

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||29-2.1.7| Section 655. Theft by Bank Examiner

"Whoever, being a bank examiner or assistant examiner, steals, or unlawfully takes, or unlawfully conceals any money, note, draft, bond, or security or any other property of value in the possession of any bank or banking institution which is a member of the Federal Reserve System or which is insured by the Federal Deposit Insurance Corporation, or from any safe deposit box in or adjacent to the premises of such bank, shall be fined not more than \$5,000 or imprisoned not more than five years, or both; but if the amount taken or concealed does not exceed \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and shall be disqualified from holding office as a national bank examiner or Federal Deposit Insurance Corporation examiner.

"This section shall apply to all public examiners and assistant examiners who examine member banks of the Federal Reserve System or banks the deposits of which are insured by the Federal Deposit Insurance Corporation, whether appointed by the Comptroller of the Currency, by the Board of Governors of the Federal Reserve System, by a Federal Reserve Agent, by a Federal Reserve bank, or by the Federal Deposit Insurance Corporation, or appointed or elected under the laws of any State; but shall not apply to private examiners or assistant examiners employed only by a clearinghouse association or by the directors of a bank."

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||29-2.1.8| Section 656. Theft, Embezzlement, or Misapplication by Bank Officer or Employee

"Whoever, being an officer, director, agent or employee of, or connected in any capacity with any Federal Reserve bank, member bank, national bank or insured bank, or a receiver of a national bank, or any agent or employee of the receiver, of a Federal Reserve Agent, or an agent or employee of a Federal Reserve Agent or of the Board of Governors of the Federal Reserve System, embezzles, abstracts, purloins or willfully misapplies any of the moneys, funds or credits of such bank or any moneys, funds, assets or securities intrusted to

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the custody or care of such bank, or to the custody or care of any such agent, officer, director, employee or receiver, shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both; but if the amount embezzled, abstracted, purloined or misapplied does not exceed \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

"As used in this section, the term 'national bank' is synonymous with 'national banking association'; 'member bank' means and includes any national bank, state bank, or bank and trust company which has become a member of one of the Federal Reserve banks; and 'insured bank' includes any bank, banking association, trust company, savings bank, or other banking institution, the deposits of which are insured by the Federal Deposit Insurance Corporation."

Note: Alternative fine provisions are contained in Title 18, USC, Section 3571.

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||29-2.1.9| Section 657. Lending, Credit and Insurance Institutions

"Whoever, being an officer, agent or employee of or connected in any capacity with the Reconstruction Finance Corporation, Federal Deposit Insurance Corporation, National Credit Union Administration, Home Owners' Loan Corporation, Farm Credit Administration, Department of Housing and Urban Development, Federal Crop Insurance Corporation, Farmers' Home Corporation, the Secretary of Agriculture acting through the Farmers' Home Administration, or the Farm Credit System Insurance Corporation, a Farm Credit Bank, a bank for cooperatives or any lending, mortgage, insurance, credit or savings and loan corporation or association authorized or acting under the laws of the United States or any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, or by the National Credit Union Administration Board or any small business investment company, and whoever, being a receiver of any such institution, or agent or employee of the receiver, embezzles, abstracts, purloins or willfully misapplies any moneys, funds, credits, securities or other things of value belonging to such institution, or pledged or otherwise intrusted to its care, shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both; but if the amount or value embezzled, abstracted, purloined or misapplied does not exceed \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both."

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Note: Alternative fine provisions are contained in Title 18, USC, Section 3571.

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||29-2.1.10| Section 658. Property Mortgaged or Pledged to Farm Credit Agencies

"Whoever, with intent to defraud, knowingly conceals, removes, disposes of, or converts to his own use or to that of another, any property mortgaged or pledged to, or held by, the Farm Credit Administration, any Federal intermediate credit bank, or the Federal Crop Insurance Corporation, Farmers' Home Corporation, the Secretary of Agriculture acting through the Farmers' Home Administration, any production credit association organized under sections 1131-1134m of Title 12, any regional agricultural credit corporation, or any bank for cooperatives, shall be fined not more than \$5,000 or imprisoned not more than five years, or both; but if the value of such property does not exceed \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both."

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||29-2.1.11| Section 1004. Certification of Checks

"Whoever, being an officer, director, agent, or employee of any Federal Reserve bank or member bank of the Federal Reserve System, certifies a check before the amount thereof has been regularly deposited in the bank by the drawer thereof, or resorts to any device, or receives any fictitious obligation, directly or collaterally, in order to evade any of the provisions of law relating to certification of checks, shall be fined not more than \$5,000 or imprisoned not more than five years, or both."

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||29-2.1.12| Section 1005. Bank Entries, Reports and Transactions

"Whoever, being an officer, director, agent or employee of any Federal Reserve bank, member bank, bank or savings and loan holding company, national bank or insured bank, without authority from the directors of such bank, issues or puts in circulation any notes of such bank; or

"Whoever, without such authority, makes, draws, issues, puts forth, or assigns any certificate of deposit, draft, order, bill of exchange, acceptance, note, debenture, bond, or other obligation, or mortgage, judgment or decree; or

"Whoever makes any false entry in any book, report, or statement of such bank or company with intent to injure or defraud such bank or company, or any other company, body politic or corporate, or any individual person, or to deceive any officer of such bank or company, or the Comptroller of the Currency, or the Federal Deposit Insurance Corporation, or any agent or examiner appointed to examine the affairs of such bank or company, or the Board of Governors of the Federal Reserve System;

"Whoever, with intent to defraud the United States or any Agency thereof, or any financial institution referred to in this section, participates or shares in or receives (directly or indirectly) any money, profit, property, or benefits through any transaction, loan commission, contract, or any other act of any such financial institution--

| "Shall be fined not more than \$1,000,000 or imprisoned not more than |30| years, or both.

"As used in this section, the term 'national bank' is synonymous with 'national banking association'; 'member bank' means and includes any national bank, state bank, or bank or trust company, which has become a member of one of the Federal Reserve banks; an 'insured bank' includes any state bank, banking association, trust company, savings bank, or other banking institution, the deposits of which are insured by the Federal Deposit Insurance Corporation."

Note: Alternative fine provisions are contained in Title 18, USC, Section 3571.

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||29-2.1.13| Section 1006. Federal Credit Institution Entries, Reports  
and Transactions

"Whoever, being an officer, agent or employee of or connected in any capacity with the Reconstruction Finance Corporation, Federal Deposit Insurance Corporation, National Credit Union Administration, Home Owners' Loan Corporation, Farm Credit Administration, Department of Housing and Urban Development, Federal Crop Insurance Corporation, Farmers' Home Corporation, the Secretary of Agriculture acting through the Farmers' Home Administration, or the Farm Credit System Insurance Corporation, a Farm Credit Bank, a bank for cooperatives or any lending, mortgage, insurance, credit or savings and loan corporation or association authorized or acting under the laws of the United States or any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation or by the National Credit Union Administration Board, or any small business investment company, with intent to defraud any such institution or any other company, body politic or corporate, or any individual, or to deceive any officer, auditor, examiner or agent of any such institution or of department or agency of the United States, makes any false entry in any book, report or statement of or to any such institution, or without being duly authorized, draws any order or bill of exchange, makes any acceptance, or issues, puts forth or assigns any note, debenture, bond or other obligation, or draft, bill of exchange, mortgage, judgment, or decree, or, with intent to defraud the United States or any agency thereof, or any corporation, institution, or association referred to in this section, participates or shares in or receives directly or indirectly any money, profit, property, or benefits through any transaction, loan, commission, contract, or any other act of any such corporation, institution, or association, shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both."

Note: Alternative fine provisions are contained in Title 18, USC, Section 3571.

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||29-2.1.14| Section 1007. Federal Deposit Insurance Corporation  
Transactions

"Whoever, for the purpose of influencing in any way the action of the Federal Deposit Insurance Corporation, knowingly makes or invites reliance on a false, forged or counterfeit statement, document, or thing

"shall be fined not more than \$1,000,000 or imprisoned, not more than 30 years, or both."

Note: Alternative fine provisions are contained in Title 18, USC, Section 3571.

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||29-2.1.15| Section 1011. Federal Land Bank Mortgage Transactions

"Whoever, being a mortgagee, knowingly makes any false statement in any paper, proposal, or letter, relating to the sale of any mortgage, to any Federal land bank; or

"Whoever, being an appraiser, willfully overvalues any land securing such mortgage--

"Shall be fined not more than \$5,000 or imprisoned not more than one year, or both."

EFFECTIVE: 06/26/91

||29-2.1.16| Section 1013. Farm Loan Bonds and Credit Bank Debentures

"Whoever deceives, defrauds, or imposes upon, or attempts to deceive, defraud, or impose upon any person, partnership, corporation, or association by making any false pretense or representation concerning the character, issue, security, contents, conditions, or terms of any farm loan bond, or coupon, issued by any Federal land bank or banks; or of any debenture, coupon, or other obligation, issued by any Federal intermediate credit bank or banks, or by any National Agricultural Credit Corporation; or by falsely pretending or representing that any farm loan bond, or coupon, is anything other than, or different from, what it purports to be on the



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face of said bond or coupon, shall be fined not more than \$500 or imprisoned not more than one year, or both."

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[|29-2.1.17| Section 1014. Loan and Credit Applications Generally;  
Renewals and Discounts; Crop Insurance

"Whoever knowingly makes any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of the Reconstruction Finance Corporation, Farm Credit Administration, Federal Crop Insurance Corporation, Farmers' Home Corporation, the Secretary of Agriculture acting through the Farmers' Home Administration, any Farm Credit Bank, production credit association, agricultural credit association, bank for cooperatives, or any division, officer, or employee thereof, or of any regional agricultural credit corporation established pursuant to law, or of the National Agricultural Credit Corporation, a Federal land bank, a Federal land bank association, a Federal Reserve bank, a small business investment company, a Federal credit union, an insured State-chartered credit union, any institution the accounts of which are insured by the Farm Credit System Insurance Corporation, the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Federal Home Loan Bank System, National Credit Union Administration Board, upon any application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, or loan, or any change or extension of any of the same, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefor, shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both."

Note: Alternative fine provisions are contained in Title 18, USC, Section 3571.

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29-2.1.18 | Section 1032. Concealment of Assets from Conservator,  
Receiver, or Liquidating Agent of Financial Institution

"Whoever

"(1) knowingly conceals or endeavors to conceal an asset or property from the Federal Deposit Insurance Corporation, acting as conservator or receiver or in the Corporation's corporate capacity with respect to any asset acquired or liability assumed by the Corporation under section 11, 12, or 13, of the Federal Deposit Insurance Act, the Resolution Trust Corporation, any conservator appointed by the Comptroller of the Currency or the Director of the Office of Thrift Supervision, or the National Credit Union Administration Board, acting as conservator or liquidating agent;

"(2) corruptly impedes or endeavors to impede the functions of such Corporation, Board, or conservator, or

"(3) corruptly places or endeavors to place an asset or property beyond the reach of such Corporation, Board, or conservator, shall be fined under this title or imprisoned not more than 5 years or both."

EFFECTIVE: 06/26/91

|29-2.1.19| Section 1306. Participation by Financial Institutions

"Whoever knowingly violates section 5136A of the Revised Statutes of the United States, section 9A of the Federal Reserve Act, or section 20 of the Federal Deposit Insurance Act, shall be fined not more than \$1,000 or imprisoned not more than one year, or both."  
(See|29-2.1.27|below.)

Note: Alternative fine provisions are contained in Title 18, USC, Section 3571.

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||29-2.1.20| Section 1341. Mail Fraud

FIRREA and the CCA amended Section 1341 by providing a penalty of up to 30 years' imprisonment and a \$1,000,000 fine for violations affecting a financial institution. See MIOG, Part I, Section 36 for the statute and elements.

EFFECTIVE: 06/26/91

29-2.1.21 Section 1343. Wire Fraud

FIRREA and the CCA amended Section 1343 by providing a penalty of up to 30 years' imprisonment and a \$1,000,000 fine for violations affecting a financial institution. See MIOG, Part I, Section 196.

EFFECTIVE: 10/01/97

||29-2.1.22| Section 1344. Bank Fraud

"Whoever knowingly executes, or attempts to execute, a scheme or artifice--

"(1) to defraud a financial institution; or

"(2) to obtain any of the moneys, funds, credits, assets, securities or other property owned by or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises; shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both."

Note: Alternative fine provisions are contained in Title 18, USC, Section 3571.

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||29-2.1.23| Section 1345. Injunctions Against Fraud

"Whenever it shall appear that any person is engaged or is about to engage in any act which constitutes or will constitute a violation of this chapter (Title 18, USC), the Attorney General may initiate a civil proceeding in a district court of the United States to enjoin such violation. The court shall proceed as soon as practicable to the hearing and determination of such an action, and may, at any time before final determination, enter such a restraining order or prohibition, or take such other action, as is warranted to prevent a continuing and substantial injury to the United States or to any person or class of persons for whose protection the action is brought. A proceeding under this section is governed by the Federal Rules of Civil Procedure, except that, if an indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure."

EFFECTIVE: 06/26/91

||29-2.1.24| Section 1510. Obstruction of Criminal Investigations

"(a) Whoever willfully endeavors by means of bribery to obstruct, delay, or prevent the communication of information relating to a violation of any criminal statute of the United States by any person to a criminal investigator shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

"(b) (1) Whoever, being an officer of a financial institution, with the intent to obstruct a judicial proceeding, directly or indirectly notifies any other person about the existence or contents of a subpoena for records of that financial institution, or information that has been furnished to the grand jury in response to that subpoena, shall be fined under this title or imprisoned not more than 5 years, or both.

"(2) Whoever, being an officer of a financial institution, directly or indirectly notifies--

"(A) a customer of that financial institution whose records are sought by a grand jury subpoena; or

"(B) any other person names in that subpoena; about the existence or contents of that subpoena or information that has been furnished to the grand jury in response to that subpoena,

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shall be fined under this title or imprisoned not more than one year, or both.

"(3) As used in this subsection--

"(A) the term 'an officer of a financial institution' means an officer, director, partner, employee, agent, or attorney of or for a financial institution; and

"(B) the term 'subpoena for records' means a Federal grand jury subpoena for customer records that has been served relating to a violation of, or a conspiracy to violate--

"(i) section 215, 656, 657, 1005, 1006, 1007, 1014, or 1344; or

"(ii) section 1341 or 1343 affecting a financial institution.

"(C) As used in this section, the term 'criminal investigator' means any individual duly authorized by a department, agency, or armed force of the United States to conduct or engage in investigations of or prosecutions for violations of the criminal laws of the United States."

EFFECTIVE: 06/26/91

29-2.1.25 Section 1517. Obstructing Examination of Financial Institution

"Whoever corruptly obstructs or attempts to obstruct any examination of a financial institution by an agency of the United States with jurisdiction to conduct an examination of such financial institution shall be fined under this title, imprisoned not more than 5 years, or both."

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||29-2.1.26| Section 3293. Statute of Limitations

"No person shall be prosecuted, tried, or punished for a violation of, or a conspiracy to violate--

"(1) section 215, 656, 657, 1005, 1006, 1007, 1008, 1014, or 1344; or

"(2) section 1341 or 1343, if the offense affects a financial institution;

unless the indictment is returned or the information is filed within 10 years after the commission of the offense."

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||29-2.1.27| Other Statutes

(1) In addition to the above sections, Title 12, USC, Sections 25a, 339, and 1829a, respectively, prohibit certain other activities: Financial institutions may not deal in lottery tickets; deal in bets used as a means or substitute for participation in a lottery; announce, advertise, or publicize the existence or identity of any participant or winner, as such, in a lottery; permit the use of any part of their own offices by any person for any purpose forbidden above.

(2) These institutions are not prohibited from accepting deposits or handling checks or other negotiable instruments or performing other lawful banking services for a state operating a lottery, or for an employee of that state charged with the administration of the lottery. (See|29-2.1.19|above.)

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29-2.2 Definitions

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29-2.2.1 Criminal Acts

As used in the preceding sections, the below acts are defined:

(1) Embezzlement -

To "embezzle" means willfully to take, or convert to one's own use, another's money or property, of which the wrongdoer acquired possession lawfully, by reason of some office or employment or position of trust. The elements of "embezzlement" are that there must be relationship such as that of employment or agency between the owner of the money and the defendant, the money alleged to have been embezzled must have come into the possession of defendant by virtue of that relationship and there must be an intentional and fraudulent appropriation or conversion of the money. If embezzlement is charged, the conversion alleged may not be to some third party other than the embezzler himself/herself.

(2) Abstraction -

Abstraction is the act of one who, being an officer of a financial institution, wrongfully takes or withdraws moneys, funds or credits with the intent to injure or defraud the financial institution or some other person, and without the financial institution's or board of directors' knowledge or consent, converts them to the use of oneself or some other person or entity other than the financial institution.

(3) Misapplication -

The term "misapplication" means a willful and unlawful misuse of moneys, funds or credit of the financial institution made with intent to injure or defraud the financial institution. "The prescribed misapplication of funds occurs when funds are distributed under a written, printed, etc., record which misrepresents the true state of the document with the intent that bank officials, bank examiners or the Federal Deposit Insurance Cooperation will be deceived." Misapplication should be charged where there is a third party beneficiary.

(4) False entry -

An entry in books of a financial institution which is intentionally made to represent what is not true or does not exist, with intent either to deceive its officers or a bank examiner or to

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defraud the financial institution.

(5) Defraud -

To make a misrepresentation of an existing material fact, knowing it to be false intending another to rely and under circumstances in which such person, financial institution, corporation, etc., does rely on their damage. (Intent to defraud: means an intention to deceive another person, and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property.)

(6) Connected In Any Capacity -

Includes any person who has such a relationship to the institution that he/she could injure it by committing one or more of the criminal offenses set out in Title 18, USC, Sections 656 and 657.

EFFECTIVE: 06/26/91

29-2.2.2 Section 20. Financial Institution Defined

"As used in this title, the term 'financial institution' means-

"(1) an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act);

"(2) a credit union with accounts insured by the National Credit Union Share Insurance Fund;

"(3) a Federal home loan bank or a member, as defined in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422), of the Federal home loan bank system;

"(4) a Federal land bank, Federal intermediate credit bank, bank for cooperatives, production credit association, and Federal land bank association;

"(5) a System institution of the Farm Credit System, as defined in section 5.35(3) of the Farm Credit Act of 1971;

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"(6) a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act).

"(7) a Federal Reserve bank or a member bank of the Federal Reserve System;

"(8) an organization operating under section 25 or section 25(a) of the Federal Reserve Act; or

"(9) a branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978)."

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29-2.2.3 Safety And Soundness of Any Depository Institution

As used in MIOG, Part I, Section 29-1 (5), the below terms are defined:

(1) Safety and Soundness - The terms "Safety" and "Soundness" are commonly used in laws governing financial institution regulation, and safety and soundness determinations fall within the special expertise of the federal financial institution regulatory agencies. The terms are generally used as a measure of an institution's financial health, the integrity of its operations, and its ability to remain financially viable. In determining whether an institution is operating in a safe and sound manner, regulators typically consider such factors as whether the institution has sufficient capital, good quality assets, competent management and broad supervision, strong earnings history and adequate liquidity. Financial institution regulators also consider whether the institution and its officers, directors, and subsidiaries and other affiliates operate in compliance with applicable laws and regulations or engage in acts or omissions that are contrary to prudent banking standards, present an abnormal risk of loss or harm to the institution, or are fraudulent or dishonest. Additionally, regulators assess the extent to which suspicious or criminal misconduct occurs within an institution with, or without, the institution's knowledge or complicity, even if it may not result in monetary loss or damage to the institution.

(2) Any Depository Institution - Any Depository



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Institution refers to any bank or savings association, foreign or domestic, insured or uninsured, operating in the United States.

EFFECTIVE: 05/26/94

29-3 JURISDICTION

(1) The Federal Bureau of Investigation (FBI) has investigative jurisdiction in all matters referred to above. On 11/5/90 in the Treasury, Postal Service and General Government Appropriations Act, Public Law 101-509, section 528(a), the United States Secret Service (USSS) was given concurrent jurisdiction in financial institution fraud matters. The concurrent jurisdiction was to expire with the authority of the Resolution Trust Corporation. The Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322, amended Public Law 101-509 extending the concurrent jurisdiction of the USSS in financial institution fraud matters until 12/31/2004. The Act provided that USSS participation is subject to the supervision of the Attorney General (AG). It provided that USSS shall not initiate investigations independent of the supervision of the AG. On 3/1/91, the AG delegated his authority to accept the services and coordinate the activities of the USSS in financial institution fraud investigations to the Director of the FBI. On 3/22/91, the FBI and USSS Directors signed a letter of agreement establishing a protocol to most effectively and efficiently coordinate the jurisdiction responsibilities.

(2) The USSS, by way of Title 18, USC, Section 3056 (Powers, Authorities, and Duties of the USSS), has primary, investigative jurisdiction in Title 18, USC, Section 1007 (Federal Deposit Insurance Corporation Transaction) and Title 18, USC, Section 657 (Embezzlements and Thefts) and Sections 1006 (Federal Credit Institution Entries, Reports and Transactions), 1011 (Federal Land Bank Mortgage Transactions), 1013 (Farm Loan Bonds and Credit Bank Debentures), and 1014 (Fraud and False Statements) for violations of these statutes occurring within federal land banks, joint-stock land banks, and national farm loan association.

(3) Jurisdictional problems, if any, should be resolved in coordination with FBIHQ.

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EFFECTIVE: 11/21/96

29-4 POLICY

EFFECTIVE: 06/26/91

29-4.1 Investigative Policy

The FBI will investigate any allegation of a significant crime, within its authority, that will be prosecuted by the United States Attorney (USA) in the appropriate district. Given the significant priority that has been placed upon this crime problem by Congress, the Department of Justice, as well as the FBI, and in an effort to provide a Special Agent in Charge (SAC) the latitude necessary to appropriately address the crime problem in his/her division, all FIF matters are designated as priority case matters; regardless of the dollar loss involved. However, it will still be incumbent upon each SAC to ensure that the highest priority FIF matters within his/her division are being appropriately addressed. Consideration should be given to the implementation of a "fast track" program to handle lower dollar loss cases when justified by volume and the USA's prosecutive support.

EFFECTIVE: 06/30/93

29-4.2 Prosecutive Policy

EFFECTIVE: 06/26/91

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29-4.2.1 Bank Bribery

"The primary purposes of Title 18, USC, Section 215 are to ensure fair access to the resources and services provided by the federally protected financial community and to guard against the corrupt (i.e., the unlawful and wrongful use of one's position to procure some benefit for oneself or for another person, contrary to a fiduciary duty and the rights of others) dissipation of such resources and services. As a general rule, bank officials who misuse their position, thereby violate their private trust, would be the primary focus for prosecution. If state law is not adequate to cover the illegal bank bribery activity, careful consideration should be given to federal prosecution."

(1) Congress agreed in passing the revised Title 18, USC, Section 215, that the purpose of the statute was "to deter instances of corruption in the banking industry where efforts are made to undermine an employee's fiduciary duty to his or her employer."

(2) This statute makes both the offeror or acceptor of a bribe subject to prosecution and makes the offense a felony if the amount of the bribe exceeds \$100.

EFFECTIVE: 06/26/91

29-4.2.2 Misapplication/Embezzlement

The purpose of Title 18, USC, Sections 656 and 657 is to protect the assets of banks having a Federal relationship.

They usually relate to a particular class of individuals; i.e., officers, directors, agents, employees, or whoever is connected in any capacity with any of the designated institutions.

(1) Elements of Offenses

(a) The essential elements of the crime are as follows: (1) the accused must be of the designated class of persons (2) of a particular type of federally connected institution, and (3) he/she must have willfully misapplied moneys, funds or credits of such institution or entrusted to its custody (4) with the intent to injure or defraud the institution.

(b) The honest exercise of official discretion in

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good faith, without fraud, for the advantage, or supposed advantage of the association is not punishable; but if official action is taken, not in the honest exercise of discretion, in bad faith, for personal advantage and with fraudulent intent, it is punishable. It is generally necessary to allege that the moneys, funds or credits were converted to the use of the accused or to some party other than the bank.

(2) Examples

(a) Bad loans

May be the result of bad or inefficient management as opposed to criminal misapplication. A misapplication may occur by either granting an unsecured loan to a person who is known to be unable to financially repay or by granting a loan knowing that the collateral is inadequate and valueless. The bad loan is often connected with an interest of a bank officer or employee in the borrower. The bad loan may be a misapplication, however, without any showing that the bank officer personally benefited from the transaction, if it can be shown that the officer acted in reckless disregard of the bank's interest.

(b) Dummy Loans (Nominee Loans)

A misapplication occurs where an officer of a bank knowingly lends money to fictitious or financially insecure borrowers, where the loans are for the banker's own benefit and his/her interest in said loans is concealed from the bank. Circumstances where third party loans are in violation of the statute are as follows: (1) where the bank official knew the named debtor was either fictitious or wholly unaware that his/her name was being used; (2) where the bank official knew that the named debtor was financially incapable of repaying the loan, the proceeds of which he/she passed on to a third party; and (3) where the bank officials assured the named debtor, regardless of his/her financial capabilities, that they would look for repayment only to the third party, who actually received the loan proceeds.

(3) In addition to Title 18, USC, Sections 656 and 657, consideration should also be given to other statutes in connection with third-party loans for the benefit of bank officials. An officer of a national or FDIC insured bank can be prosecuted for receiving directly any benefit from a loan transaction under Title 18, USC, Section 215; and an officer of a savings and loan association or credit institution can be prosecuted under Title 18, USC, Section

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1006, for participation, directly or indirectly, in any loan. Further, if a banking regulation is violated, the participants in the scheme might possibly be prosecuted on the theory of a conspiracy to defraud the United States through a deliberate circumvention of a regulatory program. Finally, consideration may be given to a violation of Title 18, USC, Section 1014, if the borrower, even if financially responsible, falsifies the loan application as to the purpose of the loan. Proof that normal loan procedures are circumvented or facts were concealed from other bank officers or the board of directors would be indicative of fraudulent intent.

EFFECTIVE: 06/26/91

29-4.2.3 False Statements

(1) This section (Title 18, USC, Section 1014) covers knowingly making false statements or willfully overvaluing any property or security for the purpose of influencing in any way the action of the enumerated agencies and organizations.

(2) Elements of Offense

The elements of the offense are: (1) making a false statement or willfully overvaluing property or security knowing same to be false, (2) for the purpose of influencing in any way the action, (3) of the enumerated agencies and organizations. Actual damage is not an essential element of the offense.

EFFECTIVE: 06/26/91

29-4.2.4 False Entries

(1) Title 18, USC, Sections 1005 and 1006 prohibit false entries and are correlative to Title 18, USC, Sections 656 and 657. A violation of one of these statutes usually occurs in conjunction with Title 18, USC, Sections 656 and 657, since a false entry is often used to cover up embezzlement and misapplications.

(2) The aim of the statute is to give assurance that, upon inspection of a bank, public officers and others will find its books of account to be a reflection of the bank's true financial condition. If a note representing a sham transaction is entered on

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provision to prosecute check-kiting cases involving nonemployees.

(d) Previously enacted statutes were not clear if a bogus offshore bank was used to victimize an insured institution and the criminal conduct took place outside the U.S.

This statute, which is written in language similar to that of the mail fraud and the wire fraud statutes, was passed in an effort to correct these problems and to anticipate future activity. It should be noted that FIRREA has made this bank fraud statute a predicate offense under the Racketeering Influenced and Corrupt Organizations (RICO) statute.

EFFECTIVE: 06/26/91

29-4.2.6 Injunctions Against Fraud

(1) The purpose of this legislation is to provide an effective tool to prevent the continuation of a fraudulent scheme during the pendency of the investigation. As the Senate Judiciary Committee reported, "...the investigation of fraudulent schemes often takes months, if not years, before the case is ready for criminal prosecution, and innocent people continue to be victimized while the investigation is in progress. ...Even after indictment or the obtaining of a conviction, the perpetrators of fraudulent schemes continue to victimize the public."

(2) Those who wish to use the injunctive statute should take particular note that during the pendency of the injunction, but before the indictment is returned, the Federal Rules of Civil Procedure apply both to procedure and to discovery. Thus, defense counsel may be able to use the fact that the injunction is pending to seek discovery of materials which would not be discoverable under the Federal Rules of Criminal Procedure. Once the indictment is returned, the Federal Rules of Criminal Procedure apply. Presumably, where an injunction or other equitable relief occurs during the pendency of the grand jury investigation, the grand jury records would still be subject to Rule 6 of the Federal Rules of Criminal Procedure, but other materials, such as investigative notes and reports of interviews, may be discoverable under the civil discovery rules. Thus, in seeking a preindictment injunction, you may be opening the door for extensive discovery of your case.

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EFFECTIVE: 06/26/91

29-4.2.7 Kingpin Statute

The Continuing Financial Crime Enterprise Statute, Title 18, USC, Section 225, created a means to prosecute individuals for a series of violations of Title 18, USC, Sections 215, 656, 657, 1005, 1006, 1007, 1014, 1032, or 1344, or sections 1341 and 1343 affecting a financial institution. To use this statute, at least four people acting in concert must be involved in financial institution fraud with at least any one person receiving \$5 million or more in gross receipts during any 24-month period. Individuals prosecuted face a minimum sentence of ten years and can be imprisoned for life. Under this statute, individuals can be fined up to \$10 million and corporations can be fined up to \$20 million.

EFFECTIVE: 06/26/91

29-4.2.8 Concealment of Assets

The aim of Title 18, USC, Section 1032 (Concealment of Assets from Conservator, Receiver, or Liquidating Agent of Financial Institution) is to make it a criminal act to hide or attempt to hide assets from the Federal Deposit Insurance Corporation, or any conservator appointed by the Comptroller of the Currency, the Director of the Office of Thrift Supervision, or the National Credit Union Administration Board.

EFFECTIVE: 11/21/96

29-4.2.9 Obstructing an Examination

This statute makes it a criminal act to obstruct or attempt to obstruct an examination of a financial institution by any Federal agency responsible for conducting such an examination.

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EFFECTIVE: 06/26/91

29-5 INVESTIGATIVE PROCEDURES

(1) Deleted

(2) Complaints of Section 1014 violations (false statements) and all matters involving losses or exposure to the financial institution of less than \$25,000 should be discussed with the appropriate U.S. Attorney prior to conducting any investigation so as to determine whether the U.S. Attorney will prosecute should a violation be proven.

(3) Confer with the appropriate official of the bank or institution unless he/she is a subject under investigation or with the receiver of the suspended bank or institution.

(4) Obtain evidence of Bureau's jurisdiction, such as national bank charter, date of issuance; Federal Reserve System certificate of membership, date of issuance and number; Federal Deposit Insurance Corporation certificate number and date of issuance; or credit union charter.

(5) Obtain history and description of subject, including information set forth in the personal records of the subject at the bank or institution under investigation. FIRREA amended the Fair Credit Reporting Act so that a credit report can now be obtained by a Federal grand jury subpoena.

(6) On cases involving insiders, the supervisory agency should be contacted. Officers of financial institutions are required to periodically submit personal financial statements. They sign off on the statement of condition (which could give Title 18, USC, Section 1001 violations), and examiners' workpapers (line, loan, or tab sheets) may contain evidentiary statements made to regulators by officers of the financial institution.

(7) Prior to obtaining SAC authority for a polygraph examination in all Financial Institution Fraud (FIF) cases, the USA should be contacted to ensure that USA will consider prosecution should a subject be identified. (See MIOG, Part II, 13-22.3(4).)

(8) Deleted



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EFFECTIVE: 06/30/93

29-6 REPORTING RULES

FIRREA requires the Attorney General to report annually to Congress on enforcement actions, including data relating to investigations, prosecutions, and convictions or other dispositions. The FD-467 captures the information requested by Congress relating to Suspicious Activity Reports (SAR).

EFFECTIVE: 11/21/96

29-6.1 Receipt of Suspicious Activity Report (SAR)

(1) An FD-467 should be prepared by the office of origin upon the opening of all 29 classification cases and entered into Automated Case Support (ACS) by rotor personnel. In all instances where an SAR is received, whether a case is opened or not, an FD-467 must be prepared. When multiple SARs are received relating to the same case, an FD-467 must be completed for each.

(2) The FD-467 may be handwritten and is to be maintained in the case file or with the SAR if a case is not opened. The FD-467 should NOT be submitted to FBIHQ.

(3) For instructions on completing the FD-467, see the Correspondence Guide - Field, Section 3-54.3.

(4) Upon the receipt of an SAR, notification must be made to the referring financial institution (if applicable, i.e., the institution is not the subject of the case), the supervisory agency for the institution, and the U.S. Attorney's Office of the action taken on the SAR. Notification may be made in the form of a letter, a monthly report, or documented telephone conversation. Computerized reports are available from the FD-467 application to assist in this notification process.

(5) SARs will not be mailed to individual field offices; they are filed at the Internal Revenue Service's Computer Center

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located in Detroit, Michigan. In order to access the SAR Database, the FBI has developed an application that disseminates SARs to each field office based on the ZIP Code where the activity occurred. Effective 5/20/96, each field office can access the FBI SAR application through the Financial Institution Fraud application within ACS.

(6) Each field office should routinely ensure that the number and types of violations being reported in the SAR application are consistent with those previously reported using the Criminal Referral Form.

EFFECTIVE: 11/21/96

29-6.1.1 Supervisory Agencies

The following is a list of the supervisory agencies:

(1) Federal Deposit Insurance Corporation (FDIC)

(a) any state nonmember insured bank (except a District bank)

(b) foreign bank having an insured branch

(2) Office of Comptroller of Currency (OCC)

(a) any national banking association

(b) District bank

(c) Federal branch

(d) agency of a foreign bank

(3) Federal Reserve Bank (FRB)

(a) any state member-insured bank (except a District bank)

(b) any bank holding company and any subsidiary of a bank holding company (other than a bank)

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(c) any agency or commercial lending company other than a Federal agency

(d) any foreign bank which does not operate an insured branch

(e) supervisory or regulatory proceeding arising from the authority given to the Board of Governors under section 7(c)(1) of the International Banking Act of 1978, including such proceeding under the Depository Institutions Supervisory Act

(4) Office of Thrift Supervision (OTS)

(a) any savings association

(b) any savings and loan holding company

(5) National Credit Union Administration

EFFECTIVE: 02/12/92

29-6.1.2 Definitions

(1) "State bank" - incorporated under the laws of any state

(2) "District bank" - any state bank operation under the Code of Law of the District of Columbia

(3) "member" - means any institution which has subscribed for the stock of a Federal Home Loan Bank

(4) "national bank" - any national charter bank, i.e., any bank with the word "national" or "N.A." in its title

EFFECTIVE: 02/12/92

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29-6.2 Field Office Reporting Requirements to FBIHQ

(1) FBIHQ should be notified by teletype within five working days upon the opening, upon any major action, and upon the completion of any case that may have a significant impact on Bureau policy or receives wide media coverage. (Airtel, LHMs, and prosecutive reports are no longer required to be sent to FBIHQ.)

(2) Submit R-84 (Final Disposition) and FD-515 (Statistical Accomplishment) forms.

EFFECTIVE: 07/19/95

29-6.3 Deleted

EFFECTIVE: 02/12/92

29-6.4 Deleted

EFFECTIVE: 12/10/91

29-6.5 Field Office Reporting Requirements To Federal Financial Institution Regulatory Agencies Relative To Section 1542 of the Housing And Community Development Act of 1992 (See also MAOP, Part II, 10-9 (24))

(1) Having obtained an opinion from an Assistant United States Attorney (AUSA) that disclosure is required, a Letterhead Memorandum (LHM) (one copy) setting forth the facts which raise significant concern regarding the safety and soundness of any depository institution doing business in the U.S. (see MIOG, Part I, 29-1 (5)) shall be disseminated to the appropriate federal regulatory agency, with the original and three copies sent to the Financial Institution Fraud Unit, Room 3849, FBIHQ. Exceptions to this disclosure requirement are:

(a) Information obtained by the Central Intelligence Agency (CIA) shall be disclosed directly to the Attorney General (AG)

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or the Secretary of the Treasury (SOT). After consultation, said information will then be disclosed by the CIA, AG, or SOT to the appropriate regulators;

(b) Special reporting procedures are to be administered BY THE AG OR SOT where required disclosure may jeopardize a pending civil investigation or litigation, or a pending criminal investigation or prosecution, may result in serious bodily injury or death to a Government employee, informant, witness or their respective families, or may disclose sensitive investigative techniques and methods; and

(c) Legislation does not require disclosure of information received in connection with a pending grand jury investigation or information whose disclosure is otherwise prohibited by law.

(2) If an exception is requested, the United States Attorney's Office will handle the appropriate reporting to the DOJ. Each field office shall submit an original LHM and three copies to FBIHQ summarizing the facts which justify the exception.

EFFECTIVE: 05/26/94

29-7 FINANCIAL INSTITUTION FRAUD SUBCLASSIFICATIONS (See MIOG, Part I, 29-5(2) and MAOP, Part II, 3-1.1 & 3-1.2.)

The subclassifications of Financial Institution Fraud cases capture statistical data to include Direct Agent Work Years (DAWY) expenditures and accomplishments. Listed below are the applicable subclassifications:

29A Financial Institution Fraud - Loss or losses contributing to the failure of a federally insured BANK.

29B Financial Institution Fraud - Loss or loss exposure of \$100,000 or more involving a federally insured BANK.

29C Financial Institution Fraud - Loss or loss exposure of \$25,000 to \$99,999 involving a federally insured BANK.

29D Financial Institution Fraud - Loss or losses

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contributing to the failure of a federally insured SAVINGS ASSOCIATION.

29E Financial Institution Fraud - Loss or loss exposure of \$100,000 or more involving a federally insured SAVINGS ASSOCIATION.

29F Financial Institution Fraud - Loss or loss exposure of \$25,000 to \$99,999 involving a federally insured SAVINGS ASSOCIATION.

29G Financial Institution Fraud - Loss or losses contributing to the failure of a federally insured CREDIT UNION.

29H Financial Institution Fraud - Loss or loss exposure of \$100,000 or more involving a federally insured CREDIT UNION.

29I Financial Institution Fraud - Loss or loss exposure of \$25,000 to \$99,999 involving a federally insured CREDIT UNION.

29J Financial Institution Fraud - Loss or loss exposure of under \$25,000 involving a federally insured financial institution and HANDLED VIA FAST TRACK.

29K Financial Institution Fraud - Loss or loss exposure of under \$25,000 involving a federally insured financial institution and not HANDLED VIA FAST TRACK.

EFFECTIVE: 10/18/95

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SECTION 31. WHITE SLAVE TRAFFIC ACT

31-1 STATUTES

Title 18, USC, Sections 2421-2424, effective 2/6/78;  
amended 11/7/86 by Child Sexual Abuse and Pornography Act of 1986,  
Public Law 99-628.

EFFECTIVE: 06/18/87

31-1.1 Section 2421. Transportation Generally

"Whoever knowingly transports any individual in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title or imprisoned not more than five years, or both."

EFFECTIVE: 06/18/87

31-1.1.1 Deleted

EFFECTIVE: 06/18/87

31-1.2 Section 2422. Coercion and Enticement

"Whoever knowingly persuades, induces, entices, or coerces any individual to travel in interstate or foreign commerce, or in any Territory or Possession of the United States, to engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title or imprisoned not more than five years, or both."

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EFFECTIVE: 06/18/87

| 31-1.2.1 | Deleted |

EFFECTIVE: 06/18/87

31-1.3 Section 2423. Transportation of Minors

"Whoever knowingly transports any individual under the age of 18 years in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title or imprisoned not more than ten years, or both."

EFFECTIVE: 06/18/87

| 31-1.3.1 | Deleted |

EFFECTIVE: 06/18/87

31-1.4 Section 2424. Filing Factual Statement About  
Alien Individual

"(a) Whoever keeps, maintains, controls, supports, or harbors in any house or place for the purpose of prostitution, or for any other immoral purpose, any alien individual within three years after that individual has entered the United States from any country, party to the arrangement adopted July 25, 1902, for the suppression of the white-slave traffic, shall file with the Commissioner of Immigration and Naturalization a statement in writing setting forth the name of such alien individual, the place at which that individual is kept, and all facts as to the date of that individual's entry into the United States, the port through which that individual entered, that individual's age, nationality, and parentage, and concerning that individual's procurement to come to this country within the knowledge of such person; and 'Whoever fails within thirty days after commencing to keep, maintain, control, support, or harbor in any house or place



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for the purpose of prostitution, or for any other immoral purpose, any alien individual within three years after that individual has entered the United States from any country, party to the said arrangement for the suppression of the white-slave traffic, to file such statement concerning such alien individual with the Commissioner of Immigration and Naturalization; or 'Whoever knowingly and willfully states falsely or fails to disclose in such statement any fact within that person's knowledge or belief with reference to the age, nationality, or parentage of any such alien individual, or concerning that individual's procurement to come to this country--' Shall be fined not more than \$2,000 or imprisoned not more than two years or both.

"(b) In any prosecution brought under this section, if it appears that any such statement required is not on file in the office of the Commissioner of Immigration and Naturalization, the person whose duty it is to file such statement shall be presumed to have failed to file said statement, unless such person or persons shall prove otherwise. No person shall be excused from furnishing the statement, as required by this section on the ground or for the reason that the statement so required by that person, or the information therein contained, might tend to criminate that person or subject that person to a penalty or forfeiture, but no information contained in the statement or any evidence which is directly or indirectly derived from such information may be used against any person making such statement in any criminal case, except a prosecution for perjury, giving a false statement or otherwise failing to comply with this section."

EFFECTIVE: 08/23/88

31-1.4.1 Deleted

EFFECTIVE: 08/23/88

31-2 DELETED

EFFECTIVE: 08/23/88

31-3 POLICY

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EFFECTIVE: 08/23/88

31-3.1 Presenting Facts to USAs

Agents should understand that the duty of interpreting departmental policy involving prosecution of WSTA cases rests solely with USAs. It is not desired that Agents carry on any investigative activity which could in any way be considered unnecessary or ineffective. Agents should bear in mind that the Department's instructions to the USAs do not change the Bureau's position in any manner with regard to the necessity for thoroughly handling all WSTA cases. These instructions increase our responsibility of developing and bringing to the attention of the USA all facts which indicate that prosecution is warranted.

EFFECTIVE: 08/23/88

31-3.1.1 Sexual Exploitation of Children

Particular attention should be paid to any situation or report that a pedophile may have transported a minor in interstate or foreign commerce to engage in any sexual activity for which any person can be charged with a criminal offense. These amendments to the Mann Act (Public Law 99-628, 11/7/86) provide the Bureau with excellent criminal statutes to investigate those individuals who take children across state lines or out of the country and then sexually abuse them. Violations of Title 18, USC, Sections 2421, 2422 and 2423 are to be investigated by the FBI.

EFFECTIVE: 08/23/88

31-3.2 Emphasis on Organized Commercialized Prostitution

Direct particular attention to organized commercialized prostitution. Where it is common knowledge that prostitution is flourishing unmolested in a city, it is incumbent upon the FBI to make an appropriate preliminary investigation in that community with a view to determining whether those engaged in the prostitution activities are violating the WSTA. (See 31-5.)

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EFFECTIVE: 08/23/88

31-4 INVESTIGATIVE PROCEDURES

(1) The primary step in any WSTA investigation is to secure a signed statement from the victim, showing the interstate transportation for prostitution or any sexual activity for which any person can be charged with a criminal offense. In prostitution cases care should be taken not to create any basis for a charge of intimidation or inducement in obtaining statements from the victim, since the courts have held that the individual may be found guilty of conspiracy to violate the act although the conspiracy involved that person's own transportation.

(2) Secure all possible evidence to corroborate the statement of the victim by interviewing that individual's relatives and associates and other persons in a position to give pertinent information.

(3) Secure all possible documentary evidence to corroborate the statement of the victim. [REDACTED]

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(4) Interviews with victims of this type of case or with informants or others involved in alleged law violations are at all times to be conducted in a completely businesslike manner. Precautions should be taken to prevent the interviewing employee becoming involved in a compromising situation. Where such interviews are to be conducted in hotel rooms or other places out of the presence of witnesses, every effort should be made to have present a second Bureau employee.

EFFECTIVE: 08/23/88

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31-4.1 Essential Facts to Obtain

As to persons involved:

(1) The names (with aliases), descriptions, brief personal histories, reputation, marital status, and identification records of subject and victim.

(2) Previous acquaintances and attendant relations between subject and victim.

(3) The facts as to the places of residence of victim when that individual is an alien, as well as the probable immoral purposes connected with that individual's immigration; and the place of birth, citizenship, naturalization status, date of last entry into the U.S., port of entry, and means of travel to the U.S. of any subject or victim who might be an alien.

EFFECTIVE: 06/18/87

31-4.2 As to Transportation in Interstate and Foreign Commerce:

(1)

(2)

(3)

(4)

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EFFECTIVE: 06/18/87

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31-4.3 As to Purposes Involved in the Transportation:

(1) [REDACTED]

(2) [REDACTED]

(3) [REDACTED]

(4) [REDACTED]

(5) [REDACTED]

b2/b7E

EFFECTIVE: 06/18/87

31-4.4 As to Circumstances of Aggravation or Mitigation:

(1) The facts as to whether the victim is of tender age (under 18 years old) or previously chaste; whether the victim is a married woman, with young children, who has been induced to leave her husband.

(2) The facts as to the motives of the complainant, the pendency of divorce proceedings, the probability of state prosecution, the indication of any blackmail scheme, and the attitude of victim as possible witness.

(3) The indication that the victim voluntarily, and without any overreaching, consented to the immoral agreement.

EFFECTIVE: 06/18/87

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31-5 PRELIMINARY INVESTIGATION IN CITIES WHERE PROSTITUTION IS  
KNOWN TO BE FLOURISHING UNMOLESTED

(1) Determine where the principal houses of prostitution  
are located and who operates them.

(2) [REDACTED]

(3) [REDACTED]

(4) [REDACTED]

(5) [REDACTED]

(6) [REDACTED]

b2/b7E

EFFECTIVE: 06/18/87

31-6 INTERSTATE TRANSPORTATION OF VENEREALLY INFECTED PERSONS

Title 42, USC, Section 264 empowers the Surgeon General, with the approval of the Secretary of Health and Human Services, to make and enforce such regulations as in Surgeon General's judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the states or possessions, or from one state or possession into any other state or possession. Pursuant to this authority, the Public Health Service has promulgated regulations which are set forth in the Federal Register. Volume 12, #97, dated 5-16-47, page 3187, captioned "Public Health,"

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regulation 12.2 defines the communicable diseases as anthrax, chancroid, cholera, dengue, diphtheria, granuloma, inguinale, infectious encephalitis, favus, gonorrhea, lymphogranuloma venereum, meningococcus meningitis, plague, poliomyelitis, psittacosis, ringworm of the scalp, scarlet fever, streptococcic sore throat, smallpox, syphilis, trachoma, tuberculosis, typhoid fever, typhus, and yellow fever. Regulation 12.11 restricts the travel of such infected persons. This regulation states that a person who has a communicable disease in the communicable period shall not travel from one state or possession to another without a permit from the health officer of the state, possession, or locality of destination, if such permit is required under the law applicable to the place of destination. Stopovers other than those necessary for transportation connections shall be considered as places of destination. Violations of the various regulations are subject to criminal punishment according to the provisions of Title 42, USC, Section 271, which provides that anyone who violates the regulations is punishable by fine of not more than \$1,000 or imprisonment of not more than one year, or both. These regulations should be considered as possible assistance in connection with the development of prosecution of violations of the WSTA, especially in dealing with subjects and victims with contagious disease who have violated the terms of these regulations and who, on interview, have been found to be uncooperative and hostile.

EFFECTIVE: 02/16/89

31-7. REFERRAL OF COMPLAINTS TO HHS OR USA

When original complaints are received dealing solely with interstate transportation of persons infected with venereal and other contagious diseases, no investigation should be conducted but the matter should be referred to the nearest office of the U.S. Public Health Service of the Department of Health and Human Services (HHS) for attention. However, if evidence of a violation of any interstate quarantine regulation is obtained during the course of investigation being conducted by the Bureau and such evidence involves the subjects or victims of the investigation, the facts should be referred to the USA for his/her decision relative to prosecution. If prosecution is authorized, the necessary investigation should be conducted by the Bureau to substantiate the violation.

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EFFECTIVE: 02/16/89

31-8 POSSIBLE APPLICATION OF INVOLUNTARY SERVITUDE AND SLAVERY  
STATUTES

When conducting WSTA investigations, Agents should be alert to facts which indicate that the victim(s) were held or sold into conditions of involuntary servitude and slavery through use of force, threat of force, or coercion. Such situations may constitute violations of the Involuntary Servitude and Slavery and related statutes. Full details of these laws, as well as FBI policy and procedure, are set forth in Part I, Section 50 of this manual.

EFFECTIVE: 02/16/89

31-9 REPORTING PROCEDURES

| Each field office should advise FBIHQ, Criminal Investigative Division (CID), Violent Crimes Unit (VCU), whenever a WSTA investigation is opened. Thereafter, every six months, the Office of Origin (OO) should submit a summary Letterhead Memorandum (LHM) providing details of the investigation conducted. A summary LHM should also be submitted when the case is closed. |

EFFECTIVE: 09/22/93

31-10 VENUE

Venue lies in any district from, through, or into which transportation occurs or in the District of Columbia or territory or possession of the United States wherein such transportation occurs. (Title 18, USC, Section 3237)

EFFECTIVE: 02/16/89



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31-11 CHARACTER - WHITE SLAVE TRAFFIC ACT

EFFECTIVE: 02/16/89

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SECTION 32. IDENTIFICATION (FINGERPRINT MATTERS)

32-1 IDENTIFICATION (FINGERPRINT MATTERS)

Information concerning the above classification is set forth in MIOG: Part II, Sections 14 and 15.

EFFECTIVE: 09/24/93

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SECTION 33. UNIFORM CRIME REPORTING (UCR) PROGRAM

33-1 BACKGROUND

(1) Uniform Crime Reports provide a periodic nationwide assessment of crime not available elsewhere in the criminal justice system. Participation on the part of state and local law enforcement agencies, although voluntary, has resulted in reporting coverage of approximately 96 percent of the total United States population. The UCR Program was developed by the International Association of Chiefs of Police (IACP). This organization continues to serve in an advisory capacity to the UCR Program through its Committee on Uniform Crime Records. At the request of the IACP, the FBI assumed operational responsibilities for this program on 9/1/30 under an Act of Congress approved 6/11/30.

(2) In June 1966, the National Sheriffs' Association (NSA) established a committee on UCR to serve in an advisory capacity to the NSA membership and the national UCR Program.

(3) Participation in the UCR has historically been through a direct relationship between individual law enforcement agencies and the UCR Program. State UCR programs have been developed with the cooperation of the FBI. There are 44 such programs, many of which have mandatory reporting requirements for local law enforcement. In those states having state UCR programs, local crime data is submitted directly to a state agency and required information forwarded to the national program as a by-product of that state's efforts.

(4) While the current UCR system will remain the principle reporting program for years to come, a new, enhanced program is being introduced around the country on a limited basis. Known as the National Incident-Based Reporting System (NIBRS), the new program is designed to collect data on an incident-by-incident basis (incident-based reporting) within an expanded set of crime categories. Details about the offense, offender, victim, property, and arrestee will provide substantial information on crimes reported to police. The enhanced UCR is designed for automated systems exclusively and will include a quality assurance program.

(5) To function in an advisory capacity concerning UCR policy and provide suggestions on uses of the data collected under

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NIBRS, a Uniform Crime Reporting Data Providers Advisory Policy Board (APB) was established in 1988. Its charter has since expired. With the formation of the Criminal Justice Information Services (CJIS) Division, of which the UCR Program is a part, a CJIS Advisory Board has been implemented. The CJIS Advisory Board will advise the FBI on policy issues concerning UCR, as well as the NCIC Program and Identification Services.

(6) The Anti-Drug Abuse Act of 1988 contained a separate Act which requires federal law enforcement participation in the UCR Program. Entitled the "Federal Uniform Crime Reporting Act of 1988," it directs the Attorney General of the United States to collect crime statistics which comprise the national UCR Program from all federal agencies "that routinely investigate crime activities, including the Department of Defense." The FBI and other federal law enforcement agencies will find it necessary to enhance their data collection methods and reporting functions in order to fulfill the Act's mandate. The FBI will serve as the lead agency and will be responsible for coordinating federal implementation of the program and ensuring uniformity and implementation of the program and ensuring uniformity and data quality. The FBI's UCR Program will administer the program. Plans to implement the redesigned UCR Program at the federal level are underway. Data produced as a result of the Act should be of tremendous benefit to all levels of law enforcement, to the Executive and Legislative Branches, and to many other interests.

(7) In response to a growing concern about hate crimes, Congress, on April 23, 1990, enacted the "Hate Crime Statistics Act of 1990." The Act requires the Attorney General to establish guidelines and collect, as part of the UCR Program, data "about crimes that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity, including where appropriate the crimes of murder, nonnegligent manslaughter; forcible rape; aggravated assault, simple assault, intimidation; arson; and destruction, damage or vandalism of property." The FBI's UCR Program was assigned the task of developing the procedures for, and managing the implementation of, the collection of hate crime data. Although the Hate Crime Statistics Act mandated collection for only five years, the FBI considers the statistics collection to be a permanent addition to the UCR Program. The data collection captures information about the type of bias serving as the motivating factor, the nature of the offense, and various descriptors pertaining to both victims and offenders. Hate crimes are not separate distinct offenses, but rather traditional crimes motivated by the offender's bias. It was, therefore, not necessary to create whole new crime categories. Hate crime data could be collected by merely capturing additional information about

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crimes already being reported to UCR. Bias motivations reported are those specifically addressed by the enabling Act, i.e., prejudice against a race, religion, sexual orientation, or ethnic group. Because of the difficulty of ascertaining the offender's subjective motivation, bias is reported when the law enforcement investigation reveals sufficient objective facts to lead a reasonable and prudent person to conclude that the offender's actions were motivated, in whole or in part, by bias. For counting purposes, one offense is counted for each victim of a "crime against person." One offense is counted for each distinct operation of "crime against property," regardless of the number of victims. Notification of hate crime incidents is received by the FBI's UCR Program from city, county, and state law enforcement agencies through various types of media ranging from paper reporting forms to floppy disks and magnetic tapes. Individual reports are submitted for each hate crime incident coming to the attention of law enforcement agencies participating in the UCR Program. Quarterly reports are used to advise that no hate crimes occurred within the reporting jurisdiction. Reports are sent through state-level UCR Programs or directly to the FBI from agencies in states without Programs or whose state Programs have not begun collection.

EFFECTIVE: 07/18/95

33-2 PUBLICATION AND DISTRIBUTION OF CRIME DATA

(1) The UCR publication "Crime in the United States" is published annually, with preliminary Crime Index data being published on a semiannual basis. The term, Crime Index, is utilized in Uniform Crime Reports to include the crimes of murder and nonnegligent manslaughter, forcible rape, robbery, aggravated assault, burglary-breaking and entering, larceny-theft, motor vehicle theft and arson. The Crime Index is widely cited in newspapers and periodicals and is used as a "yardstick" to measure the level of criminality in our society. Information presented in the annual publication entitled "Crime in the United States" gives the police executive the ability to measure crime in a particular locale and the ability to assess the degrees of success of the department in coping with the crime problem. Principal features of Uniform Crime Reports are, of course, listed in the Table of Contents of that publication. Also, a publications list is contained in one of the appendices of the book. The semiannual releases contain trend information, which enables the reader to compare the crime situation of one reporting period to that in a

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preceding period. Additionally, limited historical information is presented, which illustrates current levels of reported crime to those in previous years. Data is also presented setting forth the number of Crime Index offenses reported by individual cities having 100,000 or more inhabitants.

(2) A publication entitled "Law Enforcement Officers Killed and Assaulted" produced by the UCR Program on an annual basis addresses the following three topics: first, the felonious and accidental line-of-duty deaths of federal, state, and local law enforcement officers; second, nonfatal assaults on sworn local, county, and state law enforcement officers; and finally, nonfatal assaults on officers of certain federal agencies employing the majority of personnel responsible for protecting government officials, enforcing and investigating violations of federal laws, and prosecuting and incarcerating offenders. The publication is designed to aid in developing and revising officer training programs; selecting and assigning personnel; designing and adopting new equipment; and supporting budgetary requests aimed at safeguarding law enforcement officers. Information on the felonious, line-of-duty killings of federal, state and local law enforcement officers is disseminated in semiannual press releases.

In connection with its Law Enforcement Officers Killed and Assaulted Program, the national UCR staff published a special report on officer homicides in September 1992. With the assistance of the FBI's Behavioral Science Unit and an outside consultant, the staff developed a protocol from which to interview offenders convicted of having killed law enforcement officers. The data collected as a result of the interviews are published in the study, "Killed in the Line of Duty," which examined extensively 51 distinct cases involving the felonious killings of 54 law enforcement officers by 50 offenders to attempt a better understanding of the nature of these fatal attacks.

A follow-up study entitled "Violence Against Law Enforcement Officers" is underway. It will examine selected incidents of serious assault by cutting instrument or firearm where the victim officer survived the incident.

(3) Information about the National Incident-Based Reporting System (NIBRS) is contained in four publications. "Volume 1: Data Collection Guidelines" is for the use of state and local UCR Program personnel (i.e., administrators, training instructors, report analysts, coders, data entry clerks, etc.) who are responsible for collecting and recording NIBRS crime data for submission to the FBI. It contains a system overview and descriptions of the offenses,

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offense codes, reports, data elements, and data values used in the system. "Volume 2: Data Submission Specifications" is for the use of state and local systems personnel (i.e., computer programmers, analysts, etc.) who are responsible for preparing magnetic tapes for submission to the FBI. It contains the tape data submission instructions, tape layouts, error-handling procedures, designations of mandatory and optional data elements, and data element edits that must be followed in submitting magnetic tapes to the FBI for NIBRS reporting purposes. "Volume 3: Approaches to Implementing an Incident-Based Reporting (IBR) System" is for the use of state and local systems personnel (i.e., computer programmers, analysts, etc.) who are responsible for developing a state or local IBR system which will meet NIBRS' reporting requirements. It contains suggested approaches to developing an IBR system, including a model incident report, standard data entry guide, data entry screens, and software design suggestions. "Volume 4: Error Message Manual" contains designations of mandatory and optional data elements, data element edits, and error messages. A new NIBRS edition of the UCR Handbook has also been published to assist law enforcement agency data contributors implementing NIBRS within their departments. This document is geared toward familiarizing local and state law enforcement personnel with the definitions, policies, and procedures of NIBRS.

(4) Guidelines for reporting hate crime are contained in two documents, the "Hate Crime Data Collection Guidelines" and the "Training Guide for Hate Crime Data Collection." The FBI also publishes annual statistical reports pertaining to hate crime. Other topical studies highlighting unique aspects of hate crime are planned. The first UCR hate crime data was limited 1991 figures issued in a press release April 4, 1991. The first annual publication on hate crime was entitled "Hate Crime Statistics - 1992."

(5) Beginning with the 1988 edition, the publication entitled "Bomb Summary" is being issued by the Bomb Data Center, Laboratory Division. The "Bomb Summary" contains statistics relative to explosive and incendiary bombings in the United States.

(6) UCR publications are mailed to the contributors of UCR data, FBI field divisions and resident agencies, and state-level UCR Programs. No mailing list is maintained for other data users. Copies of the "Law Enforcement Officers Killed and Assaulted" book and preliminary Semiannual Uniform Crime Reports are distributed free of charge and may be requested directly from the UCR Program, Programs Support Section, FBI, Gallery Row Building, Washington, D.C. 20535. While "Crime in the United States" is furnished free of charge upon

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request of government and law enforcement agencies, other requesters must purchase the book from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(7) For requesters other than law enforcement or other government agencies, the UCR Program, Programs Support Section, FBIHQ, charges a fee for unpublished or out-of-print data. Any requests for such information should be referred to the UCR Program, Programs Support Section, FBI, Gallery Row Building, for handling.

EFFECTIVE: 07/18/95

33-3 RETENTION OF UCR PUBLICATIONS

Every FBI field office should retain Uniform Crime Reports for the last two years in order to respond to questions concerning crime figures from the general public. Policy matters, however, should be referred to FBIHQ. The latest preliminary crime release should be maintained so it will be convenient for reference. Each resident agency of a field office should maintain copies of Uniform Crime Reports and semiannual releases as issued. Nothing contained in Uniform Crime Reports publications is confidential; and after the official release, news agencies are welcome to the information.

EFFECTIVE: 05/26/89

33-4 OTHER PUBLICATIONS OF ASSISTANCE TO LAW ENFORCEMENT

All forms, guides, manuals, handbooks, and booklets utilized in the UCR Program are provided free of charge. Many state UCR programs have designed individualized reporting forms and handbooks; and these are also provided by the states free of charge to law enforcement agencies. The National UCR Handbook provides necessary instructions on how to prepare the various report forms utilized in UCR. The Manual of Law Enforcement Records provides outlines for basic police records systems and sample records forms. Each field division should maintain copies of these two publications.

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EFFECTIVE: 05/26/89

33-5 FBIHQ REQUESTED CONTACT WITH DELINQUENT CONTRIBUTORS

If FBIHQ requests that a law enforcement agency be contacted concerning a delinquent report and the agency explains the form was mailed when due, the agency should be requested to mail a duplicate of the report to FBIHQ, Attention: UCR Program, Programs Support Section.

EFFECTIVE: 08/18/94

33-6 FBIHQ REQUESTED CONTACT WITH NONCONTRIBUTORS

FBIHQ will normally only request that field offices contact noncontributors in those states not having state UCR programs. In the event such contact is required, the following should be done:

(1) Review of the "UCR Handbook" with particular emphasis on the section covering the preparation of the monthly Return A (the monthly Return A is the basic reporting form utilized in this program).

(2) Review this section (Section 33 of MIOG) in order to be conversant relative to UCR matters.

(3) Discuss with the contacted agency the various types of records maintained by the agency, mindful that the monthly Return A should be prepared from a record of each offense reported or known to police as distinguished from a mere record of persons arrested for crimes.

(4) If the records of the contacted agency appear to be inadequate or incapable of producing information for Uniform Crime Reports, offer the "Register of Incidents/Offenses" (daily log), which is illustrated in the "UCR Handbook."

(5) Assist the contacted agency in the actual preparation of the Return A for the previous month. Once this report is completed and signed by the Chief or other department head, it should be mailed to FBIHQ, Attention: UCR Program, Programs Support Section.

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EFFECTIVE: 12/02/94

33-7 OBTAINING UCR SUPPLIES

Supplies necessary for the preparation of Uniform Crime Reports may be requested by means of the UCR Supply Request (Form ||1-722| or by merely placing a notation on the monthly crime report of the contributing agency.

EFFECTIVE: 12/02/94

33-8 FIELD OFFICES' RESPONSIBILITY TO UCR SPECIAL PROGRAMS

EFFECTIVE: 05/26/89

33-8.1 Police Killings

Each field division is to advise FBIHQ by teletype of the line-of-duty killing of any police officer. Further instructions are set forth in Part I, Section 184 of this manual.

EFFECTIVE: 05/26/89

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SECTION 35. CIVIL SERVICE

35-1 CIVIL SERVICE

Requests for information concerning civil service positions and complaints pertaining to civil service matters which are received at FBIHQ are referred directly to the Office of Personnel Management, Washington, D.C. Similar information reported to field offices should be forwarded to the nearest regional office of the Office of Personnel Management.

EFFECTIVE: 04/08/80

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SECTION 36. MAIL FRAUD

36-1 STATUTE

Title 18, USC, Section 1341, frauds and swindles.

"Whoever having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than \$1,000 or imprisoned not more than five years or both. If the violation affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both."

EFFECTIVE: 06/26/91

36-1.1 Elements

(1) A scheme devised or intended to be devised to defraud or for obtaining money or property by means of false pretenses.

(2) The mails must be used in furtherance of such scheme.

EFFECTIVE: 06/26/91

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36-2 POLICY

(1) Inspection service of U.S. Postal Service is specifically charged with duty of investigating use of mails in furtherance of scheme or artifice to defraud.

(2) Complaints involving allegations of mail fraud only, with no allegation of violation over which Bureau has primary jurisdiction, should be referred to nearest postal inspector.

(3) During course of investigations of cases within the Bureau's primary investigative jurisdiction, evidence of violations of mail fraud statute may be disclosed. In such cases, the complete investigation of mail fraud statute may be disclosed. In such cases, the complete investigation of mail fraud angle shall be made by Bureau as part of regular investigation. Agents should be on alert for mail fraud violations in any kind of investigation.

EFFECTIVE: 06/26/91

36-3 CHARACTER - MAIL FRAUD

EFFECTIVE: 06/26/91

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SECTION 39. FALSELY CLAIMING CITIZENSHIP

39-1 STATUTES

Title 18, USC, Sections 911 and 1015 (a) (b).

EFFECTIVE: 09/21/81

39-1.1 Section 911 (Citizen of the United States)

EFFECTIVE: 09/21/81

39-1.1.1 Elements

- (1) Whoever falsely and willfully
- (2) Represents himself/herself to be a U.S. citizen

EFFECTIVE: 09/21/81

39-1.2 Section 1015 (a) (b) (Naturalization, Citizenship, or  
Alien Registry)

EFFECTIVE: 09/21/81

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39-1.2.1 Elements

(1) Section 1015 (a)

- (a) Whoever knowingly
- (b) while under oath
- (c) makes false statement
- (d) in any case relating to naturalization, citizenship,  
or registry of alien

(2) Section 1015 (b)

- (a) Whoever knowingly
- (b) with intent to avoid duty or liability imposed by law
- (c) denies citizenship
- (d) after being naturalized or admitted as citizen

EFFECTIVE: 09/21/81

39-2 POLICY

|The FBI has only secondary jurisdiction over the enforcement of crimes involving Falsely Claiming Citizenship, Title 18, USC, Sections 911 and 1015. Primary investigative jurisdiction rests in the Immigration and Naturalization Service (INS). Therefore, unless a violation of these statutes grows out of a violation within the FBI's primary investigative jurisdiction, no investigation should be conducted and any complaint received should be referred to INS. Pertinent information concerning convictions obtained by the FBI under these acts should be furnished to the nearest regional office of INS. This may be furnished in the form of a short dissemination memorandum. |

EFFECTIVE: 09/21/81

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39-3 PENALTIES

- (1) Section 911 - \$1,000 fine and/or three years' imprisonment.
- (2) Section 1015 - \$5,000 fine and/or five years' imprisonment.

EFFECTIVE: 09/21/81

39-4 CHARACTER - FALSELY CLAIMING CITIZENSHIP

EFFECTIVE: 09/21/81



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SECTION 40. PASSPORT AND VISA MATTER

40-1 STATUTES

Title 18, USC, Sections 1541-1546

EFFECTIVE: 11/08/78

40-2 GENERAL INFORMATION

EFFECTIVE: 11/08/78

40-2.1 Definitions

(1) Passport - A formal document issued by a competent officer of a country to a citizen for the purpose of identifying  
|citizen|and attesting to|his/her|citizenship while in a foreign country.

(2) Visa - A document issued by a host nation granting permission to an alien to enter the host nation. Two primary types of visas are the U.S. Immigrant and U.S. Non-Immigrant visas.

EFFECTIVE: 11/08/78

40-2.2 Issuance of Passports

(1) U.S. Passports are granted and issued only to American citizens by the Passport Office, Department of State, and are valid for a period of five years.

(2) Individuals desiring a U.S. Passport must execute a written application, under oath, before a passport agent, clerk of a Federal court, clerk of any state court of record or a judge or clerk of any probate court, or a postal employee designated by the postmaster at a post office which has been selected to accept passport applications. Abroad, passport applications must be executed before a U.S. diplomatic or

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consular officer.

(3) All passport applicants must show proof of U.S. citizenship. If applicant was born in the United States, applicant shall present his/her birth certificate when applying for a passport. The following items are acceptable if they contain the signature and either a physical description or a photograph of the applicant:

- (a) Previous U.S. Passport.
- (b) A certificate of naturalization or of derivative citizenship.
- (c) Driver's license (temporary or learner's permit not acceptable).
- (d) A governmental (Federal, state, municipal) identification card or pass.
- (e) In the event the applicant is not able to establish identity, same can be attested to by an identifying witness who has known the applicant for at least two years.

EFFECTIVE: 11/08/78

40-2.3 Issuance of Visas

(1) An alien desirous of obtaining a visa must first file application, accompanied by original birth certificate, police and medical certificate, and other essential facts to justify American Consul in issuing visa.

(2) Visa Office of the Department of State merely acts as an auxiliary to Immigration and Naturalization Service as pertains to the issuance of visas.

(3) The immigrant visa permits the recipient to settle in the United States as a permanent resident while the nonimmigrant visa permits an alien to remain in the United States for a temporary stay and for an expressed purpose.

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EFFECTIVE: 10/16/90

40-3 POLICY

EFFECTIVE: 10/16/90

40-3.1 Passports

(1) Conduct no active investigation upon receipt of a complaint.

(2) Forward pertinent information to FBIHQ by LHM for transmittal to the Passport Office, Department of State which has primary investigative jurisdiction. Include in LHM, all available identifying data for assistance of Passport Office.

(3) Passport Office, Department of State, on occasions, requests the Bureau to conduct investigation. Additionally, Passport Office will waive, on individual case basis, investigative jurisdiction in cases wherein FBI has ongoing investigation in which FBI has primary investigative interest. All waivers of this nature will be secured through FBIHQ by liaison with Passport Office, Department of State, Washington, D.C.

(4) Requests for check of records of Passport and Visa Office, Department of State, or obtaining duplicates of passport applications or visas should be set forth for WMFO. Include all available data to facilitate locating records. Department of State reference of file numbers should be set forth if known.

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40-3.2 Visas

(1) Conduct no active investigation concerning immigration visas.

(2) All complaints should be promptly referred by field office to appropriate Immigration and Naturalization Service Office, which agency supervises entry and departure of aliens.

EFFECTIVE: 10/16/90

40-4 INVESTIGATIVE PROCEDURES

EFFECTIVE: 10/16/90

40-4.1 Issuance of False Passports of Unauthorized Person -  
Section 1541

(1) Passport Office, Department of State, will advise FBIHQ at time investigation requested whether subject authorized to issue passports. If subject unknown at time facts are referred by Passport Office and subsequent investigation reveals subject's identity, set out lead for WMFO to contact Passport Office to determine if subject so authorized.

(2) Fraudulent passport should be obtained and transmitted to FBI Laboratory properly marked as evidence for examination to prove if it is a fraudulent passport.

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40-4.2 False Statement in Application - Section 1542

(1) Investigations will be conducted with the view to proving falsity of statements appearing in application for passport. In cases where fraudulent passport application is based upon a deceased infant identity, both the birth and death certificate must be secured for evidence purpose.

(2) Investigation will consist, for the most part, of record checks and interviews of acquaintances and other individuals who may have some independent knowledge of false statement.

(3) In cases involving false statements by naturalized citizens, consideration should be given to information available at Immigration and Naturalization Service.

EFFECTIVE: 10/10/83

40-4.3 Falsely Made, Forged, Altered, Mutilated, or Counterfeit Passports - Section 1543

Consideration should be given to facilities of FBI Laboratory in this type examination. Examination should be requested of all questioned materials, particularly in regard to erasures and eradications, handwriting and typewriter examinations, paper examinations, examination of seal on passport, examination for latent prints of subject, etc.

EFFECTIVE: 09/24/93

40-4.4 Use of a Passport of Another - Section 1544

(1) This type investigation deals primarily with establishing identity and showing that subject not identical with individual mentioned in passport.

(2) Passport should be examined in an effort to identify and locate person to whom originally issued. Photograph of subject appearing on passport should be exhibited to witnesses and old acquaintances to establish subject identity and to prove subject is not identical with person to whom passport originally issued.

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EFFECTIVE: 10/10/83

40-4.5 Securing of Arrest Warrant

In cases where the Passport Office has waived primary investigative jurisdiction and where FBI has, at a later date, obtained arrest warrants, promptly notify FBIHQ by teletype, under individual case caption and in form suitable for dissemination, that an arrest warrant has been issued. Also, include in this teletype, specific identifying data such as when and where the warrant was secured, warrant number, recommended bond, if any, and basis for the issuance of the warrant.

EFFECTIVE: 10/10/83

40-5 STATUTE OF LIMITATIONS - 10 years

EFFECTIVE: 10/10/83

40-6 REPORTING REQUIREMENTS

(1) Upon receipt of a complaint or information concerning a passport violation, forward pertinent information to FBIHQ, including available identifying data, by LHM or other appropriate communication in a form suitable for dissemination depending upon the exigencies of the situation. However, when FBIHQ receives the initial complaint from the Passport Office and refers same to the field office for investigation, no LHM will be required for 120 days. Subsequent to submission of initial LHM by the field office, a status LHM concerning active investigations will be required every 120 days thereafter, until the case is resolved. This pertains only to cases where process has not been obtained.

(2) In those cases where process has been obtained, notify FBIHQ by teletype followed by a report within five days. Subsequent reports should be submitted at six-month intervals unless there is a need to report significant developments such as arrests, convictions, or dismissals, which should be submitted as they occur.

(3) Submit five copies of report to FBIHQ designating one copy

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for Criminal Division, U.S. Department of Justice and one copy for U.S.  
Passport Office, Department of State.

EFFECTIVE: 10/10/83

40-7 VENUE

Venue lies in the city where fraudulent passport application was  
made.

EFFECTIVE: 10/10/83

40-8 CHARACTER - PASSPORT AND VISA MATTER

EFFECTIVE: 10/10/83

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SECTION 42. FUGITIVE DESERTERS

42-1 BACKGROUND

The FBI, by agreement with the Department of Defense (DOD) will conduct investigations to apprehend military deserters in those situations where aggravating circumstances exist, in addition to the deserter offense. (See Part II, 18-3, of this manual for detailed Memorandum of Understanding (MOU) listing situations which warrant FBI involvement.)

EFFECTIVE: 11/08/78

42-2 INVESTIGATIVE AUTHORITY

EFFECTIVE: 11/08/78

42-2.1 Statutes

Title 10, USC, Section 808 (article 8); Title 10, USC, Section 885 (article 85)

EFFECTIVE: 11/08/78

42-2.1.1 Title 10, USC, Section 808 (article 8)

Any civil officer having authority to apprehend offenders under the laws of the United States or of a State, Territory, Commonwealth, or Possession, or the District of Columbia may summarily apprehend a deserter from the armed forces and deliver him/her into custody of those forces.

EFFECTIVE: 11/08/78



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42-2.1.2 Title 10, USC, Section 885 (article 85)

Any member of the armed forces of the United States who is found guilty of desertion or attempt to desert shall be punished by death or such other punishment as a court-martial may direct if the offense is committed in time of war or by such punishment, other than death, as a court-martial may direct if the desertion or attempt to desert occurs at any other time.

EFFECTIVE: 11/08/78

42-2.2 Other Provisions

(1) FBI investigative authority does not extend to the apprehension of mere military absentees but is limited to deserters alone and in accordance with an agreement with the military, those deserting under aggravating circumstances. (See Part II, 18-3, of this manual.)

(2) The FBI will seek the location of military personnel (discharges not executed) who have been convicted of one or more of the Uniform Code of Military Justice (UCMJ) articles listed in formal FBI-DOD "MOU" (See Part II, 18-3, of this manual.) who subsequently escape from military confinement.

EFFECTIVE: 11/08/78

42-3 POLICY

EFFECTIVE: 11/08/78

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42-3.1 Investigations Accepted and Initiated by FBIHQ

FBIHQ will accept requests for assistance to locate military deserters who absent themselves under aggravated circumstances when:

(1) The Military Department Headquarters provides FBIHQ with written notice specifying the serious offense, in addition to the desertion, of which the absentee is suspected, and

(2) Such notice (usually DA-3835 Army and DD-553, other services) indicates that appropriate judicial or administrative disposition is contemplated upon the deserter's return to military control.

EFFECTIVE: 11/08/78

42-3.2 Exceptions

Requests for fugitive assistance will be honored when, according to the military, the offense committed in addition to the desertion while not one of those listed in the formal FBI-DOD "MOU," because of its circumstances, is so aggravated that the deserter's return to military control is desired. In these few instances, requests for FBI investigations will be closely monitored by the Military Department Headquarters. The appropriate headquarters will provide FBIHQ with factual details explaining the seriousness of the offense to support an FBI investigation.

EFFECTIVE: 11/08/78

42-3.3 Requests for Investigation Received Directly by the Field

On occasion the field may receive requests for deserter assistance directly from military commands and may initiate an investigation

(1) When an authorized military officer requests the assistance of a field office in apprehending an escaped prisoner of the armed services whose discharge has not been executed and who has been convicted of one of the UCMJ articles enumerated in the FBI-DOD "MOU." (See Part II, 18-3, of this manual.)

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(2) In the above instances, FBIHQ must be immediately advised by teletype of the request for investigation. This teletype, which may be submitted on a UACB basis, must request FBIHQ approval to initiate investigation and is to set out full details justifying FBI involvement. Of course, the escapee must fit the criteria as listed in the "MOU."

EFFECTIVE: 11/08/78

42-3.3.1 Exceptions

In those escape situations involving military prisoners not convicted of one of the listed UCMJ articles, or in any other situation, if a request for FBI investigation is received by the field directly from the military, conduct no active investigation. Instruct the military command that a formal request of FBIHQ must be made by the appropriate Military Department Headquarters. Upon receipt of this formal request, if facts warrant, FBIHQ will instruct that an investigation be initiated.

EFFECTIVE: 11/08/78

42-4 RECEIPT OF MILITARY REQUEST FOR FBI INVESTIGATION FORM  
(DD-553 or DA-3835)

(1) Office of origin should promptly cause an administrative inquiry (z) to be made of NCIC to insure that the military entry in the wanted persons file of NCIC is still in existence before a case is opened and assigned.

(2) If this NCIC administrative inquiry fails to reveal any military NCIC entry a case should not be opened.

(a) Advise FBIHQ and all auxiliary offices by ROUTINE teletype.

(b) Place a copy of the military Request for Investigation form and the ROUTINE teletype into 42-0.

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EFFECTIVE: 11/08/78

42-4.1 Supervision of Cases

EFFECTIVE: 11/08/78

42-4.1.1 Duty of Office of Origin

The responsibility for the close supervision of deserter cases rests upon the office of origin.

(1) An important duty is the obligation to advise all auxiliary offices having outstanding leads to discontinue investigation when the office of origin learns that subject has been:

- (a) Apprehended
- (b) Discharged
- (c) Returned to military control, or
- (d) For other reasons is no longer wanted.

(2) The office of origin will, by ROUTINE teletype, notify FBIHQ and all auxiliary offices upon receipt of information indicating subject has been located or apprehended.

(3) The office of origin is also responsible to assure that all auxiliary offices are aware of dangerous aspects, suicidal tendencies, etc., concerning subjects.

EFFECTIVE: 08/12/86

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42-4.2 Other Provisions

(1) An initial fugitive airtel (FD-65) is not necessary in deserter cases. However, a supplemental form (FD-65) should be submitted to show any changes, additions, or deletions to identifying data furnished in correspondence from FBIHQ initiating the investigation.

(2) The statute of limitations (3 years) does not apply to wartime desertions. Wartime periods are 12-7-41 to 7-25-47, 6-25-50 to 7-27-53, and 8-10-64 to 1-27-73.

EFFECTIVE: 08/12/86

42-4.2.1 Arrest in Private Premises

Although the FBI possesses explicit statutory authority to apprehend deserters, the Supreme Court has held that an arrest warrant is required to effect an entry to arrest in a subject's home in the absence of consent or exigent circumstances. Where the entry will occur on third-party premises, the Supreme Court has held a search warrant must also be obtained. (See Legal Handbook for Special Agents, Section 3-7.) To facilitate the obtaining of appropriate warrant(s), forms obtained from the Department of Defense should include a declaration under oath by the subject's Commanding Officer which will provide the FBI with the deserter's identity, his/her military assignment, and the circumstances surrounding his/her desertion. The office of origin, upon receipt of this information, should obtain an arrest warrant for the deserter and promptly advise auxiliary offices of the outstanding warrant. If the information on the forms lacks adequate specificity, the subject's Commanding Officer should be interviewed.

EFFECTIVE: 08/12/86

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42-5 INTERVIEWS AND CONFESSIONS OF DESERTERS

U.S. Court of Military Appeals has held that if a deserter suspect or subject is subjected to custodial interrogation for any statement which might be used against him/her on a charge of desertion or other military offense, he/she must first be given full warning of constitutional safeguards.

EFFECTIVE: 08/12/86

42-6 DISPOSITION OF DESERTERS AFTER APPREHENSION

(1) When a deserter is apprehended by Bureau Agents or otherwise located, the following action must be taken:

(a) If apprehension or location is by an auxiliary office - immediately (within 24 hours) place "located" in Bureau NCIC record which will notify the office of origin and FBIHQ. The auxiliary office's "located" on the Bureau record will be office of origin's authority to "clear" NCIC and notify FBIHQ and all auxiliary offices by ROUTINE teletype to discontinue. Any military NCIC record should be also "located"; this serves as notification to military authorities. (See MAOP, Part II, 10-9.)

(b) If apprehension or location is by the office of origin - immediately notify FBIHQ and all auxiliary offices by ROUTINE teletype. Office of origin will "clear" Bureau NCIC record and place a "located" in any military record in NCIC (within 24 hours.) (See MAOP, Part II, 2-5.2.4, 7-2.2.1.)

(c) If locate is placed by military agency - office of origin will immediately (within 24 hours) clear NCIC and will notify FBIHQ and auxiliary offices to discontinue.

(d) If locate is placed by agency other than another FBI office or the military - office of origin will immediately instruct the office covering the area of the "locating" agency to promptly verify both the identity and the apprehension of the fugitive. Following this verification, office of origin will immediately (within 24 hours) clear NCIC record. The appropriate communication advising of the subject's apprehension must be submitted to FBIHQ and interested offices.

(2) Local military authorities should be promptly advised

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of the deserter's whereabouts. After apprehension, deserters are to:

(a) Be turned over to the military, or

(b) Turned over to local authorities to be held for the military.

(3) Additionally, the deserter should be fingerprinted and photographed or arrangements made for this to be done. If no identification record is needed for prosecutive action, which will be the circumstances in most instances, the block on the face of the criminal fingerprint card (FD-249) which reads "Reply desired?" should also be marked. If deserter is charged with a substantive offense, either local or federal, such as car theft or interstate transportation of a stolen motor vehicle, and his/her prints show this, the block should be checked "Yes" and Criminal Justice Information Services Division will answer with a copy of his/her record.

EFFECTIVE: 02/14/97

| 42-7 | DELETED |

EFFECTIVE: 08/12/86

42-8 INVESTIGATION AT MILITARY OR NAVAL INSTALLATION

The office covering the military or naval installation from which the deserter absented himself/herself will not receive copies of communications initiating the deserter investigation except in Marine Corps deserter cases from Camp Lejeune, North Carolina.

EFFECTIVE: 11/08/78

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42-8.1 Leads

(1) If investigation is desired at such military or naval installation, appropriate leads should be set out to the office covering such installation. These leads should state the specific investigation desired such as:

(a) Review of military file, if available,

(b) A check of the individual's personal effects, or

(c) Conduct inquiry at the unit level in an effort to develop military associates.

(2) The office of origin may request appropriate office to check records of military branch involved at any time after initial leads have been exhausted where doing so offers potential of developing additional leads.

EFFECTIVE: 11/08/78

42-8.2 Personal Effects - Navy

(1) Personal effects of Navy deserters deserting west of the Mississippi will be shipped to U.S. Naval Supply Center, Oakland, California.

(2) Personal effects of Navy deserters deserting east of the Mississippi will be shipped to Naval Supply Center, Naval Base, Norfolk, Virginia.

EFFECTIVE: 11/08/78

42-8.2.1 Final Disposal of Personal Effects - Navy

Personal effects of Navy deserters will be maintained for a period of one or two years before final disposal is made.

EFFECTIVE: 11/08/78



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42-8.3 Personal Effects - Army

(1) Generally for the first ninety days after AWOL status (as opposed to deserter status), subject's personal effects will be kept at subject's place of military assignment. After ninety days contact must be made with Ft. Benjamin Harrison, Indiana, to determine the location of subject's personal effects.

(2) Subject's military file record will be sent to Ft. Benjamin Harrison ninety days from date he/she is considered AWOL.

EFFECTIVE: 11/08/78

42-9 REQUEST FOR DESERTERS' FBI IDENTIFICATION RECORD

Upon processing the military request for FBI investigation forms (DD-553 or DA-3835) at FBIHQ, a stop is placed in the Criminal Justice Information Services Division regarding that record is noted, the office of origin will be furnished two copies and two copies of that individual's photograph and negative, if available.

EFFECTIVE: 04/08/96

42-10 TESTIMONY AND DEPOSITION OF AGENT

When competent authority of the armed services requests an Agent furnish a deposition concerning details of a deserter's apprehension, SAC is authorized to approve such deposition in routine deserter apprehensions. Where unusual circumstances are involved or where an Agent's presence for testimony before a court-martial is requested, send an airtel or teletype to FBIHQ setting forth the full facts and advising of the action contemplated, unless advised to the contrary by FBIHQ.

EFFECTIVE: 08/12/86

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42-11 LOCATION OF DESERTERS AND ABSENTEES INCIDENTAL TO OTHER INVESTIGATIONS

(1) When a deserter or absentee, not the subject of an FBI investigation, is located incidental to another investigation, advise military authorities of the individual's whereabouts, if known.

(2) Where information disseminated to military or local authorities results in the return of a deserter to military control, fugitive credit may be taken even though no formal request for assistance was received from the military. To claim credit, submit a succinct letter to FBIHQ, sufficiently complete as to require no reference to other communications. The letter should contain the following items:

(a) Individual's full name, social security account number with appropriate suffix indicating branch of service and brief identifying data.

(b) Information received as to possible whereabouts and to whom disseminated.

(c) Date and place of return to military control based on information disseminated.

(d) Data establishing subject is actually a deserter rather than a mere absentee, including date of unauthorized absence.

(e) Statement to the effect that a request for deserter credit (a fugitive locate) is being claimed by Form FD-515.

(3) Form FD-515 should be submitted for statistical purposes.

(4) Desertion in these instances may be established in the field. If this data is not available to the office locating the deserter, it may be obtained by the office covering the location of the individual's organizational command. In most situations, an individual is declared a deserter upon completion of 29 consecutive days of unauthorized absence.

EFFECTIVE: 11/01/93

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42-12 REPORTING PROCEDURES

(1) Upon initiating a deserter investigation referred from FBIHQ, no initial FD-65 or other communication need be submitted to FBIHQ. Upon the deserter's apprehension or location, the locating office must promptly submit a ROUTINE teletype to FBIHQ and the office of origin, followed by Form FD-515. The office of origin must ensure that all auxiliary offices are notified by teletype to discontinue.

(2) As a general rule, Prosecutive Reports are not required in deserter cases and, therefore, are not to be submitted to FBIHQ unless a specific request is made for same.

EFFECTIVE: 08/12/86

42-13 HARBORING DESERTER FUGITIVES

EFFECTIVE: 08/12/86

42-13.1 Statute

Title 18, USC, Section 1381

(1) Section 1381. Enticing desertion and harboring deserters. "Whoever entices or procures, or attempts or endeavors to entice or procure any person in the Armed Forces of the United States, or who has been recruited for service therein, to desert therefrom, or aids any such person in deserting or in attempting to desert from such service; or

(2) "Whoever harbors, conceals, protects, or assists any such person who may have deserted from such service, knowing him to have deserted therefrom, or refuses to give up and deliver such person on the demand of any officer authorized to receive him - -

"Shall be fined not more than \$2,000 or imprisoned not more than three years, or both."

EFFECTIVE: 08/12/86

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42-13.2 Policy

(1) It is desirable in this type of case to present the facts to the USA at an early stage to determine USA's prosecutive opinion. The Department has ruled it is not necessary that the alleged deserter be convicted by court-martial of desertion prior to a successful prosecution of the individual charged with harboring deserter. It is necessary in all cases that the person harboring the member of the armed forces know that the individual harbored is a deserter or that he/she intended to desert.

(2) In cases where information is developed that a deserter is being harbored and no immediate necessity exists to enter the harborer's premises to apprehend the deserter, the facts should be presented to the USA. Through this means either (1) a search warrant may be obtained to enter the premises of the harborer, or (2) a complaint may be filed against the harborer and a warrant obtained for his/her arrest, and entry made to execute this warrant. This will assure that a subsequent prosecution for harboring will not be jeopardized because of an illegal entry.

EFFECTIVE: 08/12/86

||42-13.3| Elements

Member of the Armed Forces of the United States who is a deserter or intends to desert is:

(1) Harbored, concealed, protected or assisted

| (2) With knowledge of|his/her|deserter status or|his/her| intention to desert

EFFECTIVE: 11/08/78

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||42-13.3.1| Other Provisions

(1) Enticing or procuring a member of the armed forces of the United States to desert or assisting him/her to desert

(2) Refusing to give up a deserter upon demand of any authorized officer

(3) Attempt to do either of the above

EFFECTIVE: 11/08/78

||42-13.4| Investigative Procedure

(1) The deserter should be interviewed as soon as possible and every effort made to obtain a signed statement. The deserter should be specifically asked if the person who harbored him/her knew he/she was a member of the armed forces and knew he/she was in deserter status. The harborer should be thoroughly interviewed as soon as possible and every effort made to obtain a signed statement.

(2) When interviewing persons technically classed as "absentees" regarding the activities of persons who harbored them, they should be closely questioned regarding their intention at the time they left their post of duty and for any facts indicating they did not intend to return to the service. Several factors could indicate these individuals had no intention of returning to the service. The individual should specifically be questioned as to whether the person who harbored deserter knew of deserter's intention not to return to duty.

(3) After preliminary inquiry, the facts should be presented to the USA to determine if USA desires further investigation. This procedure may save unnecessary work since some USAs, as a matter of policy, frequently decline prosecution where there is lack of aggravating circumstances.

EFFECTIVE: 11/08/78

||42-14| VENUE - District where harbored

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EFFECTIVE: 11/08/78

|| 42-15 | CHARACTER - DESERTER - HARBORING

EFFECTIVE: 11/08/78

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SECTION 43. ILLEGAL WEARING OF UNIFORM OR DECORATIONS, ET AL.; ILLEGAL MANUFACTURE, USE, POSSESSION OR SALE OF EMBLEMS AND INSIGNIA; ET AL.; FRAUDULENT PRACTICES CONCERNING CERTAIN MILITARY AND NAVAL DOCUMENTS; SEALS AND SYMBOLS OF AGENCIES OF THE UNITED STATES

43-1 STATUTES

Title 18, USC, Sections 702, 703, and 704

EFFECTIVE: 01/31/78

43-1.1 Section 702. Uniform of Armed Forces and Public Health Service

EFFECTIVE: 01/31/78

43-1.2 Elements

Wearing the uniform or distinctive part thereof, or similar to the uniform of any of the Armed Forces, or Public Health Service or any auxiliary of such without authority.

EFFECTIVE: 01/31/78

43-1.3 Penalty

A fine of not more than \$250 or imprisonment of not more than six months, or both.

EFFECTIVE: 01/31/78

43-1.4 Section 703. Uniform of Friendly Nation

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EFFECTIVE: 01/31/78

43-1.5 Elements

Wearing the uniform or any naval, military, police, or other official uniform, decoration, or regalia or colorable imitation of a foreign government with which the United States is at peace without authority and with intent to deceive or mislead.

EFFECTIVE: 01/31/78

43-1.6 Penalty

A fine of not more than \$250 or imprisonment of not more than six months, or both.

EFFECTIVE: 01/31/78

43-1.7 Section 704. Military Medals or Decorations

EFFECTIVE: 01/31/78

43-1.8 Elements

Wearing, manufacturing, or selling any decoration or medal authorized by Congress for the Armed Forces or any medal, badge, or decoration awarded to the members of such forces without authority.

EFFECTIVE: 01/31/78

43-1.9 Penalty

A fine of not more than \$250 or imprisonment of not more than six months, or both.



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EFFECTIVE: 01/31/78

43-1.10 Miscellaneous

The Department has advised that pursuant to the authority contained in Section 704, Title 18, the Secretary of the Army has established rules and regulations concerning the sale and manufacture of military decorations and awards (which include the honorable discharge button). Under these regulations dealers must have a certificate of authority from the Department of the Army, must restrict their sale to certain individuals, and must keep a record of their sales. (See Army regulations #600-90 dated February 24, 1944, Washington, D.C.) The failure to comply with these rules and regulations constitutes a violation of Section 704, Title 18, USC. Subjects in Illegal Wearing of Uniform cases, therefore, who have in their possession such military insignia, decorations, and awards which they are not entitled to wear, should be thoroughly interrogated concerning the manner in which they came into possession of such insignia, etc. If there is specific evidence of an illegal sale on the part of an identified dealer, a separate investigation should be initiated concerning this dealer.

EFFECTIVE: 01/31/78

43-1.11 Investigative Procedures

(1) An intent to defraud is not necessary to constitute a violation of Illegal Wearing of a Uniform. As a matter of fact, the court will not inquire into any reason or purpose in wearing the uniform. It is sufficient to prove that the uniform is duly prescribed and worn without authority.

(2) The Agent should have a witness from the appropriate military or naval organization available to testify that the uniform is duly prescribed, as well as evidence obtained from the Washington headquarters of the military or naval organization that the subject had no authority to wear same. This evidence, in addition to proof of wearing, is sufficient to establish a violation.

(3) When subjects are interviewed and statements are taken, the Agent should make certain the subject includes a statement

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that he was not a member of the military or naval organization represented by the uniform and knew he had no authority to wear same. The signed statements taken from those individuals who wear without authority the uniform of the U. S. Maritime Service should incorporate information pertaining to the similarity of the uniform worn to one of the four uniforms mentioned in Title 18, USC, Section 702.

(4) It is imperative that before arresting an individual in the uniform of a high ranking officer of the U. S. Army or Navy the Agent should make certain the individual is an imposter rather than a bona fide officer. When such a subject is taken into custody or even closely questioned, particular care must be taken to make certain that he is not possessed of weapons with which to harm himself or others.

(5) In connection with investigations involving Illegal Wearing of the Uniform violations, consideration should be given to the possibility of prosecutive action of related offenses as set out in Section 43-2 captioned "Illegal Manufacture, Use, Possession, or Sale of Emblems and Insignia" and Section 43-3 "Fraudulent Practices Concerning Certain Military and Naval Documents; Seals and Symbols of Agencies of the United States."

EFFECTIVE: 01/31/78

43-1.12 Exceptions

These sections do not prohibit members of organizations from wearing their prescribed uniforms which are authorized by state or regulation, or members of the following organizations: officers and enlisted men of the National Guard, members of the Boy Scouts, individuals who serve as officers in time of war and have been honorably discharged and desire to wear their uniforms on occasions of ceremony, instructors and members of cadet corps of educational institutions, civilians attending authorized courses in naval and military institutions, actors portraying military or naval characters, retired officers of the Army and Navy, and those persons who have served honorably in the armed forces during the war who desire to wear their uniform upon occasions of ceremony.

EFFECTIVE: 01/31/78

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43-1.13 Venue

Jurisdiction for prosecution lies where the uniform or other prohibited apparel is worn.

EFFECTIVE: 01/31/78

43-1.14 Character - Illegal Wearing of Uniform

EFFECTIVE: 01/31/78

43-2 STATUTES

Title 18, USC, Sections 701, 705, 707, and 710.

Title 50, Appendix, USC, Section 2284.

Title 46, USC, Section 249c.

EFFECTIVE: 05/08/80

43-2.1 Section 701. Official Badges, Identification Cards, Other  
Insignia

EFFECTIVE: 05/08/80

43-2.2 Elements

Manufacture, sell or possess any badge or insignia prescribed by the head of any department or agency of the United States Government without authority.

EFFECTIVE: 05/08/80

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43-2.3 Penalty

A fine of not more than \$250 or imprisonment of not more than six months, or both.

EFFECTIVE: 05/08/80

43-2.4 Section 705. Badge or Medal of Veterans' Organizations

EFFECTIVE: 05/08/80

43-2.5 Elements

Manufacture, sell or resell, or reproduce any badge or other insignia of any veterans' organization without authority.

EFFECTIVE: 05/08/80

43-2.6 Penalty

A fine of not more than \$250 or imprisonment of not more than six months, or both.

EFFECTIVE: 05/08/80

43-2.7 Section 707. 4-H Club Emblem Fraudulently Used

EFFECTIVE: 05/08/80

43-2.8 Elements

Wearing or displaying the sign or emblem of the 4-H clubs to induce belief of membership, association, or agent thereof with intent to defraud.

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EFFECTIVE: 05/08/80

43-2.9 Penalty

A fine of not more than \$250 or imprisonment of not more than six months, or both.

EFFECTIVE: 05/08/80

43-2.10 Section 710. Cremation Urns for Military Use

EFFECTIVE: 05/08/80

43-2.11 Elements

Manufacture, or sell without authority a cremation urn of a design approved by the Secretary of Defense.

EFFECTIVE: 05/08/80

43-2.12 Penalty

A fine of not more than \$250 or imprisonment of not more than six months, or both.

EFFECTIVE: 05/08/80

| 43-2.13 | Deleted |

EFFECTIVE: 05/08/80

| 43-2.14 | Deleted |

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EFFECTIVE: 05/08/80

| 43-2.15 | Deleted |

EFFECTIVE: 05/08/80

43-2.16      Section 249c. Regulations Governing Manufacture, Sale,  
Possession or Display of Decorations

EFFECTIVE: 05/08/80

43-2.17      Elements

Manufacture, possession, sale, or display of merchant  
marine or other seamen's decorations without authority.

EFFECTIVE: 05/08/80

43-2.18      Penalty

A fine not more than \$250 or imprisonment of not more than  
six months, or both.

EFFECTIVE: 05/08/80

43-2.19      Section 2284. Civil Defense Identity Insignia;  
Manufacture, Possession or Wearing

EFFECTIVE: 05/08/80

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43-2.20 Elements

Manufacture, possess, or wear without authority civil defense insignia.

EFFECTIVE: 05/08/80

43-2.21 Penalty

A fine of not more than \$1,000 or imprisonment of not more than one year, or both.

EFFECTIVE: 05/08/80

43-2.22 Investigative Procedure

(1) Section 701 - Ascertain whether the badge, card, or other insignia in question is the official badge, card, or insignia of the Federal agency involved, and obtain a witness who can so testify. Where the badge, card, or insignia is a colorable imitation, obtain a sample of the insignia imitated for use of the USA and FBIHQ in determining whether the imitation is colorable. Ascertain from the department whose insignia is used whether its use has been authorized.

(2) Section 705 - The following veterans' organizations are covered by this section: American Legion, Grand Army of the Republic, United States Blind Veterans of the World War, United Spanish War Veterans, Marine Corps League, Disabled American Veterans of the World War, Veterans of Foreign Wars of the United States, Navy Club of the United States, and the National Yeoman. Auxiliaries of these organizations are also protected by this section by virtue of Public Law 661.

(3) Section 710 - When a complaint is received concerning a violation of this statute, the following facts should be obtained from the complainant:

(a) Is the design of the cremation urn the same or similar to the approved design.

(b) Does the manufacturer have a contract with the Federal Government for the manufacture of these urns.

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(c) If a complaint is received as to the use, the identity of the sellers and purchasers should be obtained. You should obtain identifying information which will make it possible to determine whether the deceased served in the armed forces.

Where the initial complaint suggests a violation of the statutes, appropriate leads should be set forth for the Washington Metropolitan Field Office to check with the Department of Defense to determine whether the cremation urns were manufactured, sold, or used in accordance with the regulations of the Secretary of Defense. The USA should be contacted before any extensive investigation is conducted for his/her prosecutive opinion.

(4) Section 182d - Upon receipt of information alleging a violation, the necessary investigation should be instituted immediately. If a signed statement is obtained from a subject, this statement should include the admission that the subject realized he/she was not entitled to wear the emblem or insignia. Every investigation should be directed, in addition to obtaining full facts surrounding the substantive violation, toward learning the source of the insignia since Federal statutes also provide for the illegal sale of authorized insignia. (See Title 18, USC, Section 701.)

(5) Section 249c - After complaints are received and preliminary inquiry is made, the facts should be promptly discussed with the USA in order that he/she may render an opinion as to prosecution before any extensive investigation is conducted.

(6) Section 2284 - When a complaint is received concerning the illegal manufacture of civil defense insignia, a lead should be set forth for the Washington Metropolitan Field Office to ascertain whether such firm is manufacturing in compliance with regulations of the Federal Emergency Management Agency.

EFFECTIVE: 10/16/90

43-2.23 Venue - where the offense occurred



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EFFECTIVE: 11/20/90

|| 43-2.24 | Character

Illegal Manufacture, Use, Possession, or  
Sale of Emblems and Insignia

Illegal Manufacture, Sale, or Use of  
Military Cremation Urn

Illegal Manufacture, Possession, or Wearing  
of Civil Defense Insignia

EFFECTIVE: 11/20/90

43-3 STATUTES

Title 18, USC, Sections 498, 499, 506, 709, 711, 711a, 712, 713,  
and 714.

Title 12, USC, Sections 1457 and 1723a(e).

Title 22, USC, Section 2518.

EFFECTIVE: 01/31/78

43-3.1 Section 498. Military or Naval Discharge Certificates

"Whoever forges, counterfeits, or falsely alters any certificate of discharge from the military or naval service of the United States, or uses, unlawfully possesses or exhibits any such certificate, knowing the same to be forged, counterfeited, or falsely altered, shall be fined not more than \$1,000 or imprisoned not more than one year, or both."

EFFECTIVE: 01/31/78

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43-3.2 Section 499. Military, Naval, or Official Passes

"Whoever falsely makes, forges, counterfeits, alters, or tampers with any naval, military, or official pass or permit, issued by or under the authority of the United States, or with intent to defraud uses or possesses any such pass or permit, or personates or falsely represents himself to be or not to be a person to whom such pass or permit has been duly issued, or willfully allows any other person to have or use any such pass or permit, issued for his use alone, shall be fined not more than \$2,000 or imprisoned not more than five years, or both."

EFFECTIVE: 01/31/78

43-3.3 Section 506. Seals of Departments or Agencies

"Whoever falsely makes, forges, counterfeits, mutilates, or alters the seal of any department or agency of the United States; or

"Whoever knowingly uses, affixes, or impresses any such fraudulently made, forged, counterfeited, mutilated, or altered seal to or upon any certificate, instrument, commission, document, or paper, of any description; or

"Whoever, with fraudulent intent, possesses any such seal, knowing the same to have been so falsely made, forged, counterfeited, mutilated, or altered -

"Shall be fined not more than \$5,000 or imprisoned not more than five years or both."

EFFECTIVE: 01/31/78

43-3.4 Section 709. False Advertising or Misuse of Names to Indicate Federal Agency

"Whoever, except with the written permission of the Director of the Federal Bureau of Investigation, knowingly uses the words 'Federal Bureau of Investigation' or the initials 'F.B.I.,' or any colorable imitation of such words or initials, in connection with any advertisement, circular, book, pamphlet or other publication, play, motion picture, broadcast, telecast, or other production, in a manner reasonably calculated to convey the impression that such advertisement, circular,

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book, pamphlet or other publication, play, motion picture, broadcast, telecast, or other production, is approved, endorsed, or authorized by the Federal Bureau of Investigation";

"Shall be punished as follows: a corporation, partnership, business trust, association, or other business entity, by a fine of not more than \$1,000; an officer or member thereof participating or knowingly acquiescing in such violation or any individual violating this section, by a fine of not more than \$1,000 or imprisonment for not more than one year, or both..."

EFFECTIVE: 01/31/78

43-3.5 Section 711. "Smokey Bear" Character or Name

"Whoever, except as authorized under rules and regulations issued by the Secretary of Agriculture after consultation with the Association of State Foresters and the Advertising Council, knowingly manufactures, reproduces, or uses the character 'Smokey Bear,' originated by the Forest Service, United States Department of Agriculture, in cooperation with the Association of State Foresters and the Advertising Council for use in public information concerning the prevention of forest fires, or any facsimile thereof, or the name 'Smokey Bear' as a trade name or in such manner as suggests the character 'Smokey Bear' shall be fined not more \$250 or than imprisoned not more than six months, or both."

EFFECTIVE: 01/31/78

43-3.6 Section 711a. "Woodsy Owl" Character or Name

"Whoever, except as authorized under rules and regulations issued by the Secretary, knowingly and for profit manufactures, reproduces, or uses the character 'Woodsy Owl', the name 'Woodsy Owl', or the associated slogan 'Give a Hoot, Don't Pollute' shall be fined not more than \$250 or imprisoned not more than six months, or both."

EFFECTIVE: 01/31/78

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43-3.7 Section 712. Misuse of Names, Words, Emblems, or Insignia

"Whoever, in the course of collecting or aiding in the collection of private debts or obligations, or being engaged in furnishing private police, investigation, or other private detective services, uses or employs in any communication, correspondence, notice, advertisement, or circular the words 'national', 'Federal', or 'United States', the initials 'U.S.', or any emblem, insignia, or name, for the purpose of conveying and in a manner reasonably calculated to convey the false impression that such communication is from a department, agency, bureau, or instrumentality of United States or in any manner represents the United States, shall be fined not more than \$1,000 or imprisoned not more than one year, or both."

EFFECTIVE: 01/31/78

43-3.8 Section 713. Use of the Great Seal of the United States or of the President or the Vice President of the United States

"Whoever knowingly displays any printed or other likeness of the great seal of the United States, or of the seals of the President or the Vice President of the United States, or any facsimile thereof, in, or in connection with, any advertisement, poster, circular, book, pamphlet, or other publication, public meeting, play, motion picture, telecast, or other production, or on any building, monument, or stationery, for the purpose of conveying, or in a manner reasonably calculated to convey, a false impression of sponsorship or approval by the Government of the United States or by any department, agency, or instrumentality thereof, or whoever, except as authorized, knowingly manufactures, reproduces, sells, or purchases for resale, either separately or appended to any article manufactured or sold, any likeness of the seals of the President or Vice President, or any substantial part thereof, shall be fined not more than \$250 or imprisoned not more than six months, or both."

EFFECTIVE: 01/31/78

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43-3.9 Section 714. "Johnny Horizon" Character or Name

"Whoever, except as authorized under rules and regulations issued by the Secretary of the Interior, knowingly manufactures, reproduces, or uses the character 'Johnny Horizon', or any facsimile thereof, or the name 'Johnny Horizon' as a trade name or mark, or in such a manner as suggests the character 'Johnny Horizon', so that such use is likely to cause confusion, or to cause mistake, or to deceive shall be fined not more than \$250 or imprisoned not more than six months, or both."

EFFECTIVE: 01/31/78

43-3.10 Section 1457. Misuse of Name "Federal Home Loan Mortgage Corporation"

"Except as expressly authorized by statute of the United States, no individual or organization (except the Corporation) shall use the term 'Federal Home Loan Mortgage Corporation', or any combination of words including the words 'Federal', and 'Home Loan', and 'Mortgage', as a name or part thereof under which any individual or organization does any business...No individual or organization shall use or display (1) any sign, device, or insignia prescribed or approved by the Corporation for use or display by the Corporation or by members of the Federal home loan banks, (2) any copy, reproduction, or colorable imitation of any such sign, device, or insignia, or (3) any sign, device or insignia reasonably calculated to convey the impression that it is a sign, device, or insignia used by the Corporation or prescribed or approved by the Corporation, contrary to regulations of the Corporation prohibiting, or limiting, or restricting, such use or display by such individual or organization. An organization violating this subsection shall for each violation be punished by a fine of not more than \$10,000. An officer or member of an organization participating or knowingly acquiescing in any violation of this subsection shall be punished by a fine of not more than \$5,000 or imprisonment for not more than one year or both. An individual violating this subsection shall for each violation be punished as set forth in the sentence next preceding this sentence."

EFFECTIVE: 01/31/78

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43-3.11 Section 1723a(e). Misuse of Name "Federal National  
Mortgage Association"

"No individual, association, partnership, or corporation, except the body corporate created by Section 1717 of this title, shall hereafter use the words 'Federal National Mortgage Association' or any combination of such words, as the name or a part thereof under which he or it shall do business. Every individual, partnership, association, or corporation violating this prohibition shall be guilty of a misdemeanor and shall be punished by a fine not exceeding \$100 or imprisonment not exceeding thirty days, or both, for each day during which such a violation is committed or repeated."

EFFECTIVE: 01/31/78

43-3.12 Section 2518. Misuse of Name "Peace Corps"

"(b) (1) The use of the official seal or emblem and the use of the name 'Peace Corps' shall be restricted exclusively to designate programs authorized under this chapter."

"(2) Whoever, whether an individual, partnership, corporation, or association, uses the seal for which provision is made in this section, or any sign, insignia, or symbol in colorable imitation thereof, or the words 'Peace Corps' or any combination of these or other words or characters in colorable imitation thereof, other than to designate programs authorized under this chapter, shall be fined not more than \$500 or imprisoned not more than six months, or both. A violation of this subsection may be enjoined at the suit of the Attorney General, United States Attorneys, or other persons duly authorized to represent the United States."

EFFECTIVE: 01/31/78

43-3.13 Miscellaneous

Generally violations of Sections 498 and 499 are brought to FBIHQ's attention in the course of investigation of other violations within the FBI's jurisdiction, such as impersonation, illegal wearing of uniform, fraud against the Government, theft of Government property, deserters, and selective service.

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EFFECTIVE: 01/31/78

43-3.14 Policy

(1) When complaints are received in field, original complainant should be thoroughly interviewed relative to allegation, after which any necessary preliminary inquiry should be made. Thereafter, facts developed should be promptly discussed with USA in order that he may render an opinion as to prosecution before field has conducted an extensive investigation. In regard to possible violations of Sections 498 and 499, point out to USA whether civilian or military personnel are involved in these cases in order that facts may be properly considered and evaluated by him. Jurisdictional problems may arise where service personnel are involved and in such instances assistance of USA should be solicited.

(2) In regard to violations of Section 711, "Smokey Bear," and Section 711a, "Woodsy Owl," the FBI is to conduct no initial investigation until a preliminary compliance investigation is conducted by Department of Agriculture and referred to the Department of Justice. FBIHQ will then be notified by the Department of Justice as to what action is appropriate. Complaints received regarding "Smokey Bear" or "Woodsy Owl" are to be referred to nearest office of Department of Agriculture. Promptly prepare a letterhead memorandum containing details and furnish to FBIHQ for dissemination to Department of Justice and Department of Agriculture. One copy of this letterhead memorandum should be furnished to local office of Department of Agriculture.

(3) Violations of Section 714, "Johnny Horizon," will be handled through the Department of Interior in the same manner as the "Smokey Bear" violation with the Department of Agriculture.

(4) When complaints concerning unauthorized use of the FBI's name (Section 709) are brought to your attention, pertinent facts, together with copies of substantiating exhibits, should be sent to FBIHQ by letter. There should be no discussions held with USA prior to receipt of authorization from FBIHQ.

(5) By Departmental opinion, 11/3/54, investigative jurisdiction as to all violations under Section 709, with exception of those offenses enumerated in paragraph three of said section in its entirety, is vested in the FBI. Offenses under paragraph three of Section 709 relating to use of words "Federal Deposit," "Federal Deposit Insurance," or "Federal Deposit Insurance Corporation" or a combination of any three of these words are within investigative jurisdiction of Secret

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Service. As to specialized handling of violations of misuse of name "Federal Housing Administration" or initials "FHA" refer to the section of this manual concerning Department of Housing and Urban Development matters.

(6) The Department of Justice has advised the FBI should undertake investigation of all possible violations of criminal provisions of Peace Corps Act, Title 22, USC, Section 2518. Upon receipt of complaints regarding violations, full facts should be developed and timely presentation should be made to USA in district where violation occurred to determine whether allegation has prosecutive merit.

EFFECTIVE: 01/31/78

43-3.15 Venue

Where the offense occurred.

EFFECTIVE: 01/31/78

43-3.16 Character

(1) Section 498 - Miscellaneous - Forging or Using Forged Certificate of Discharge from Military or Naval Service;

(2) Section 499 - Miscellaneous - Falsely Making or Forging Naval Military, or Official Pass;

(3) Section 506 - Miscellaneous - Forging or Counterfeiting Seal of Department or Agency of the U. S.;

(4) Sections 709 and 712; Title 12, Sections 1457 and 1723a (e); and Title 22, Section 2518 - False Advertising or Misuse of Names, Words, Emblems or Insignia;

(5) Section 711 - Unauthorized Use of "Smokey Bear" symbol;

(6) Section 711a - Unauthorized Use of "Woodsy Owl" symbol;

(7) Section 713 - Misuse of the Great Seal of the United States or the Seals of the President or the Vice President of the United States;  
or



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(8) Section 714 - Unauthorized Use of "Johnny Horizon" Symbol

EFFECTIVE: 01/31/78

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SECTION 44. | RACIAL VIOLENCE OR DISCRIMINATION;  
RELIGIOUS VIOLENCE OR DISCRIMINATION;  
VOTING LAWS - RACIAL |

44-1 STATUTES

| The | United States Code (USC) | statutes covered under  
| this section | of | the | manual are as follows:

| (1) Title 18, Section 241, USC, Conspiracy Against  
| Rights | (See MIOG, Part I, 44-1.1, 50-1.5, 56-3.1, 282-1.1.) |

| (2) | Deleted |

| (3) Title 18, Section 243, USC, Exclusion of Jurors on  
| Account of Race or Color | (See MIOG, Part I, 44-1.3.) |

| (4) Title 18, Section 244, USC, Discrimination Against a  
| Person Wearing Uniform of Armed Forces | (See MIOG, Part I, 44-1.4.) |

| (5) Title 18, Section 245, USC, Federally Protected  
| Activities | (See MIOG, Part I, 44-1.5.) |

| (6) Title 18, Section 246, USC, Deprivation of Relief  
| Benefits | (See MIOG, Part I, 44-1.6.) |

| (7) Title 18, Section 247, USC, Damage to Religious  
| Property; Obstruction of Persons in the Free Exercise of Religious  
| Beliefs. | (See MIOG, Part I, 44-1.7.) |

| (8) Title 42, Section 1973i, USC, Voting Rights Act of  
| 1965 | (See MIOG, Part I, 44-1.8.) |

| (9) Title 42, Section 1973dd, USC, Overseas Citizens  
| Voting Rights Act of 1975 | (See MIOG, Part I, 44-1.9.) |

EFFECTIVE: 01/31/94

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44-1.1 Title 18, U.S. Code, Section 241 - Conspiracy Against  
Rights | (See MIOG, Part I, 44-1 (1), 50-1.5, 50-2.4,  
56-3.1, 177-2 (6), 177-2.6.) |

This statute makes it unlawful for two or more persons to conspire to injure, oppress, threaten, or intimidate any inhabitant of any State, Territory or District in the free exercise or enjoyment of any right or privilege secured to him/her by the Constitution or the laws of the United States, or because of his/her having exercised the same. It further makes it unlawful for two or more persons to go in disguise on the highway or on the premises of another with the intent to prevent or hinder his/her free exercise or enjoyment of any rights so secured. Among the rights secured from interference by private individuals over the years by the courts which have described them as basic substantive rights of Federal citizenship are the following:

- (1) The rights enumerated under the Homestead laws
- (2) The right to vote in a Federal election
- (3) The right of a voter in Federal elections to have his/her ballot fairly counted
- (4) The right to be free from violence while in Federal custody
- (5) The right to assemble and petition the Federal Government
- (6) The right to testify in Federal courts
- (7) The right to inform a Federal officer of a violation of Federal law
- (8) The right to furnish military supplies to the Federal Government for defense purposes
- (9) The right to enforce a decree of a Federal court by contempt proceedings
- (10) The right of a Federal officer not to be interfered with in the performance of his/her duties | (See MIOG, Part I, 89-2.2.) |
- (11) The right to be free to perform a duty imposed by the Federal Constitution

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(12) The right to travel freely from one state to another

In addition to the above rights, the United States Supreme Court in United States v. Price, 383 US 787 (1966), held that where state participation was involved in the conspiracy, Section 241 covers those rights secured under the 14th Amendment to the U.S. Constitution, which include protection against state action depriving any person of life, liberty, and property without due process of law.

EFFECTIVE: 01/31/94

| 44-1.2 | Deleted |

EFFECTIVE: 01/31/94

44-1.3 Title 18, U.S. Code, Section 243 - Exclusion of Jurors on Account of Race or Color

This statute holds that no citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit jurors in any court of the United States, or any state on account of race, color or previous condition of servitude. It is also a crime for any officer or other person charged with any duty in the selection or summoning of jurors to exclude or fail to summon any citizen for such cause.

EFFECTIVE: 11/23/87

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44-1.4 Title 18, U.S. Code, Section 244 - Discrimination Against  
Persons Wearing Uniform of Armed Forces

This statute makes it a crime for anyone being a proprietor, manager, or employee of a theater or other public place of entertainment or amusement in the District of Columbia, or in any Territory, or Possession of the United States to cause any person wearing the uniform of any of the armed forces of the United States to be discriminated against because of that uniform.

EFFECTIVE: 11/23/87

44-1.5 Title 18, U.S. Code, Section 245 - Federally Protected  
Activities (See MIOG, Part I, 89-3.6, 89-3.9 (2),  
89-4.7 (3), 175-8 (3)(c), 175-11 (5)(f), & 177-2.7.)

(1) Prohibits willful injury, intimidation, or interference, or attempt to do so, by force or threat of force of any person or class of persons because of their activity as: (See (3).)

(a) A voter, or person qualifying to vote, a candidate campaigning for elective office, a poll watcher, or an election official in any primary, special, or general election which includes all local, state and Federal elections;

(b) A participant in, or a person enjoying, any benefit, service, privilege, program, facility, or activity provided or administered by the United States; (See (5).)

(c) An applicant for Federal employment or an employee of the Federal Government; (See (5).)

(d) A juror or prospective juror in a Federal court;  
or

(e) Participant in, or a person enjoying the benefits of, any program or activity receiving Federal financial assistance.

(2) Prohibits willful injury, intimidation, or interference or attempt to do so, by force or threat of force of any person because of race, color, religion, or national origin and because of his/her activity as: (See (3).)

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(a) A student or applicant for admission to any public school or public college; (See (5).)

(b) A participant in, or a person enjoying, any benefit, service, privilege, program, facility, or activity provided or administered by a state or local government; (See (5).)

(c) An applicant for private or state employment or a private or state employee; a member or applicant for membership in any labor organization or hiring hall; or an applicant for employment through any employment agency, labor organization or hiring hall; (See (5).)

(d) A juror or prospective juror in a state court;

(e) A traveler or user of any facility of interstate commerce or common carrier; or (See (5).)

(f) A patron of any public accommodation including hotels, motels, restaurants, lunchrooms, bars, gas stations, theaters, arenas, amusement parks, or any other establishment which serves the public and which is principally engaged in selling food or beverages for consumption on the premises. (See (5).)

(3) Prohibits interference by force or threat of force against any person because he/she is or has been, or in order to intimidate such person or any other person or class of persons from participating or affording others the opportunity or protection to so participate, or lawfully aiding or encouraging other persons to participate in any of the benefits or activities listed in items (1) and (2), above without discrimination as to race, color, religion, or national origin.

(4) Section 245 is applicable to any person or class of person whether or not they acted under color of law. Section 245 specifically provides that no prosecution of any offense described therein shall be undertaken except upon written certification of the Attorney General that prosecution by the United States is in the public interest and necessary to secure substantial justice.

(5) It is noted that Section 245 applies when force and/or violence is utilized within the context of the above statute. When a violation of Section 245 occurs, criminal penalties attach. Those portions of the above-described statute applying to items (1) (b) and (c) and (2) (a), (b), (c), (e), and (f) are investigated as a violation of the Civil Rights Act of 1964, classification 173, when

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allegations are of a nonviolent and/or discriminatory nature. Violations of statutes which apply under the 173 classification carry civil rather than criminal penalties. (See Section 173 of this manual for appropriate instructions.)

EFFECTIVE: 11/23/94

44-1.6 Title 18, U.S. Code, Section 246 - Deprivation of Relief Benefits

Section 246 provides that no person shall directly or indirectly deprive, attempt to deprive, or threaten to deprive any person of any employment, position, work, compensation, or any other benefit provided for or made possible in whole or in part by any Act of Congress appropriating funds for work relief or relief purposes, on account of political affiliation, race, color, sex, religion, or national origin.

EFFECTIVE: 12/16/88

44-1.7 Title 18, U.S. Code, Section 247 - Damage to Religious Property; Obstruction of Persons in the Free Exercise of Religious Beliefs

(1) The statute proscribes two distinct types of conduct: Subsection (a)(1) prohibits intentional damage to, or attempts to damage, religious real property; Subsection (a)(2) prohibits intentional obstruction, or attempted obstruction, by force or threat of force, of any person's free exercise of religious beliefs, without regard to damage to religious real property.

(2) Both subsections establish as a jurisdictional prerequisite the requirement that, in committing the crime, the defendant either travel in interstate or foreign commerce or use a facility or instrumentality of foreign commerce. It is not sufficient that a facility or instrumentality of interstate or foreign commerce be used; such a facility must, in addition, be itself in interstate or foreign commerce. Subsection (a)(1) sets forth an additional jurisdictional prerequisite for a violation of that subsection only, namely, that the loss caused by the defacement, damage, or destruction exceed \$10,000.

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(3) It is important to observe that, on occasion, damage or defacement of religious property resulting in a loss of less than \$10,000 may not suffice to violate Subsection (a)(1) but nevertheless may violate Subsection (a)(2) (e.g., a synagogue spray-painted with anti-Semitic threats, not simply slurs or epithets, apparently directed at a particular person or group in order to intimidate them in the exercise of their religion).

EFFECTIVE: 12/16/88

44-1.8 Title 42, U.S. Code, Section 1973i - Voting Rights Act of 1965

Section 1973i provides that no person acting under color of law, shall fail or refuse to permit any person to vote who is entitled to vote, nor shall they willfully fail or refuse to give effect to such person's vote. This section also prohibits intimidation of or attempts to intimidate persons for voting or urging or aiding others to vote. Alleged violations of this statute having racial aspects are handled under the 44 classification. They are to be captioned, "Civil Rights - Voting Laws." Other alleged violations of Title 42, Section 1973 are handled under the 56 classification and are captioned "Election Laws."

EFFECTIVE: 12/16/88

44-1.9 Title 42, U.S. Code, Section 1973dd - Overseas Citizens Voting Rights Act of 1975

This Act applies to all Federal elections held on or after January 1, 1976. It provides rights for citizens residing overseas to register and vote in the state where they were last domiciled. The Act relates to any Federal election, provided the voter meets all qualifications for voting in the state in which he/she was last domiciled.

EFFECTIVE: 12/16/88



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44-2 TIME UTILIZATION RECORDKEEPING (TURK) DESIGNATION IN 44  
MATTERS

EFFECTIVE: 11/23/87

| 44-2.1 44A Investigations | (See MAOP, Part II, 3-1.1 & 3-1.2.) |

Any allegation of a violation of Title 18, USC, Sections  
| 241, 243, 244, 245 and 246 | which involves | the use of force and/or  
violence is to be handled as a 44A matter.

EFFECTIVE: 01/31/94

| 44-2.2 44B Investigations | (See MAOP, Part II, 3-1.1 & 3-1.2.) |

Any allegation of a violation of Title 18, USC, Sections  
| 241, 243, 244, and 246 | which does not involve the use of force or  
violence is to be handled as a 44B matter. | (Note: Violations of  
Title 18, USC, Section 245, which do not involve the use of force or  
violence are investigated pursuant to MIOG, Part I, Section 173.) |

EFFECTIVE: 01/31/94

| 44-2.3 44C Investigations | (See MAOP, Part II, 3-1.1 & 3-1.2.) |

Any allegation of a violation of Title 42, USC, Sections  
1973i or 1973dd is to be handled as a 44C matter.

EFFECTIVE: 01/31/94

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44-2.4 44D Investigations (See MAOP, Part II, 3-1.1 & 3-1.2.)

Any allegation of a violation of Title 18, USC, Section 247 which involves the use of force or violence is to be handled as a 44D matter.

EFFECTIVE: 01/31/94

44-2.5 44E Investigations (See MAOP, Part II, 3-1.1 & 3-1.2.)

Any allegation of a violation of Title 18, USC, Section 247 which does not involve the use of force or violence is to be handled as a 44E matter.

EFFECTIVE: 01/31/94

44-3 HANDLING OF RACIAL/RELIGIOUS VIOLENCE INVESTIGATIONS

EFFECTIVE: 01/31/94

44-3.1 Initiation of Investigation (See MIOG, Part I, 44-3.2.)

The following circumstances represent EXAMPLES of situations in which racial/religious violence investigations should be initiated:

(1) Upon the receipt of information from a complainant or victim not known to be unreliable, including state, national or local community interest groups.

(2) Upon receipt of either a written or verbal request from the Civil Rights Division (CRD), Department of Justice (DOJ), the latter of which will also be documented by CRD, DOJ

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and transmitted to the field by airtel from FBIHQ. This information is obtained by CRD, DOJ from various sources and sometimes does not include the name of the victim(s) or potential subject(s). Diligent efforts are undertaken to ascertain the identities of such individuals prior to transmittal to the appropriate field office. If logical investigation fails to determine the identities of the individual(s), report the documented results of same to the Civil Rights Unit (CRU), FBIHQ, which will resolve the matter with CRD, DOJ.

(3) Upon receipt of a request for investigation from the United States Attorney's Office (USAO). If the field office believes the USA's request is not warranted and cannot resolve it, promptly advise the Civil Rights Unit (CRU), Criminal Investigative Division (CID), FBIHQ.

(4) Upon receipt of a request for investigative assistance from state or local law enforcement agencies which may have concurrent investigative authority in investigating matters involving racial/religious violence.

(5) Upon receipt of specific information appearing in legitimate print or broadcast media.

(6) If a field office strongly disagrees with the requirements of the DOJ investigative request(s) and taskings, the field office should contact the DOJ attorney generating the investigative request and attempt to resolve any issues. If the field office cannot resolve the matter with DOJ, contact the CRU.

EFFECTIVE: 08/10/94

44-3.2 Initiation of Voting Rights Act Investigations

(1) The same sources enumerated above in 44-3.1 are sources for investigations involving alleged violations of the Voting Rights Act.

(2) In addition, the Voting Rights Section (VRS) of CRD, DOJ will also request investigations in specific instances of alleged violation of the Voting Rights Act. Requests for investigation originating from this section are generally quite detailed, requiring certain specific tasks to be completed by the field. The complex nature of the criminal and civil provisions of the Voting Rights Act

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generally dictates the nature of these requests; failure to complete the requested investigation may jeopardize the chances of successfully enforcing this Act. If any portion of such a request cannot be completed, the field office should promptly contact VRS and discuss any issues with the DOJ attorney generating the investigative request. In the event field offices strongly disagree with the requirements of the DOJ investigative requests and/or taskings, and cannot resolve these issues with VRS, the field office should contact FBIHQ, CRU, to resolve the matter.

EFFECTIVE: 08/10/94

44-4 INVESTIGATIVE PROCEDURE - 44A AND 44D MATTERS WHICH INVOLVE THE USE OF FORCE OR VIOLENCE (SEE MAOP, PART II, 3-1.1 & 3-1.2.)

EFFECTIVE: 01/31/94

44-4.1 Initial Investigation (See MIOG, Part I, 44-5.1 (1) & 44-7.2 (5).)

(1) Interview the victim(s) and/or complainant(s) for full details of allegation(s). As a part of each interview, secure the identity of potential subject(s) and/or witness(es). In interviewing a victim/complainant, it is important that the interviewing Agent ascertain the nature of any threats, intimidation, and physical violence perpetrated against the victim. In interviewing the victim/complainant, he/she should be advised that any information furnished may be used in a court of law. It is necessary to reduce the interview(s) of victim(s), subject(s), and witness(es) to a signed statement only in the following instances:

- (a) Upon specific instructions from FBIHQ.
- (b) Upon specific request of USA.

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(c) Upon specific request of DOJ.

(d) When deemed appropriate by the Special Agent during the course of the interview.

If an individual refuses to provide a signed statement when requested, this declination should be noted in the interviewee's FD-302. (See (3) & (5).)

(2) Obtain copies of all local police reports relevant to the incident under investigation. A cover FD-302 should be prepared identifying the source of these records and the date obtained. Ensure that the copies obtained from local police are legible. Determine the status of any local investigation and/or prosecution against the subjects.

(3) Interview all witnesses to the incident. For those situations where it is necessary to obtain a signed statement from a witness, see above, Section 44-4.1(1).

(4) Locate and preserve physical evidence which may be at the scene of the crime or already in the possession of the local police department. Any forensic examination should be submitted directly to the FBI Laboratory with a copy of the written document requesting the forensic examination to be sent to the CRU, FBIHQ.

(5) Interview any suspects/subjects if identified. MIRANDA warnings are necessary only if the interview is CUSTODIAL in nature. For those instances where it is necessary to obtain a signed statement from the subjects/suspect, see 44-4.1(1), above.

(6) All logical investigation is to be conducted before sending a report to FBIHQ, CRU, which then forwards it to DOJ, CRD. (See Section 44-7 for reporting guidelines.) A copy of this report should also be sent to the USA's office.

EFFECTIVE: 01/31/94

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44-4.2 Additional Investigation Requested By DOJ, CRD

(1) In certain instances, once a closing report has been sent by FBIHQ, CRU, to DOJ, CRD, the DOJ, CRD, will request further investigation to be conducted in a case. This request for further investigation is sent to the CRU, which will forward same to the appropriate field office. Any request for further investigation should be completed within 21 workdays of receipt. If extenuating circumstances exist whereby the requested investigation cannot be completed within 21 workdays, contact FBIHQ, CRU.

(2) Certain occasions arise when a DOJ, CRD, request for investigation has been forwarded to the field office for compliance which is objected to by the field office for a legitimate reason. The office should first contact the DOJ, CRD to discuss and resolve any issues. If a resolution cannot be achieved, contact the CRU.

EFFECTIVE: 08/10/94

44-5 | INVESTIGATIVE PROCEDURE - 44B AND 44E MATTERS WHICH DO  
NOT INVOLVE THE USE OF FORCE OR VIOLENCE (SEE MAOP, PART  
II, 3-1.1 & 3-1.2.) |

EFFECTIVE: 01/31/94

44-5.1 | Specific Investigative Steps

(1) Interview the victim/complainant about the basis of the allegation. Report results of interview on an FD-302, unless advised to the contrary. (See MIOG, Part I, Section 44-4.1.)

(2) Obtain all necessary documentation from the alleged victim which supports his/her claim. If these items are obtained from a source other than the victim, an appropriate FD-302 should be prepared identifying the source of the documents and date of the receipt of same.

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(3) Interview any other individuals identified by the victim as potential victims or witnesses. Obtain any appropriate and necessary documentation from those individuals.

(4) Obtain any local police reports which might exist concerning the alleged incident.

(5) Conduct all logical investigation.

EFFECTIVE: 01/31/94

44-5.2 | Deleted |

EFFECTIVE: 01/31/94

44-6 INVESTIGATIVE PROCEDURE - 44C MATTERS - VOTING LAWS (SEE MAOP, PART II, 3-1.1 & 3-1.2.)

(1) Any allegation of a violation of Title 42, USC, Section 1973i (Voting Rights Act of 1965) or Section 1973dd (Overseas Citizens Voting Rights Act of 1975) involving the use of force or violence is to be investigated in the same manner as a 44A case.

(2) Any allegation of a violation of Title 42, USC, Section 1973i (Voting Rights Act of 1965) or Section 1973dd (Overseas Citizens Voting Rights Act of 1975) which does not involve the use of force or violence is to be investigated in the same manner as a 44B case.

(3) Agents are not to be assigned to "police" elections or act as observers at the polls. If a request is received for this type of activity, immediately advise the appropriate local and/or state officials, the USA, and FBIHQ of the receipt of the request. The board of election commissioners, all appropriate local law enforcement officials, the USA and FBIHQ are to be informed of any report received in regard to anticipated disturbances at the polls. The LHM or report submitted should show the notification to the

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outside agencies specifically identifying agency and official notified, as well as date and time notified.

(4) DOJ has advised that in order to fulfill its mandate, there may be instances where it would be most efficient and/or necessary for the FBI to perform related investigations in the vicinity of the open polls. Such requests, however, should be immediately brought to the attention of CRU, FBIHQ, and will be approved only on the instructions of the DOJ. Once approved, it must be realized that the potential for misunderstanding of the purpose of the FBI's inquiry(s) requires that every effort be made to limit the investigation to only what is absolutely necessary to meet the objective(s) identified by the DOJ. Agents will not enter the polls, or conduct any investigation inside any facility in which the polls are located.

(5) Investigations conducted under Title 42, USC, Section 1973i (Voting Rights Act of 1965) are generally civil in nature. Therefore, unless the DOJ advises the investigation under Title 42 is criminal in nature, the FBI is required under the Privacy Act of 1974 to furnish each individual interviewed with a statement that describes certain provisions of the Privacy Act (set forth in Form FD-496). Form FD-496 should be the only Privacy Act form used in voting rights investigations. The FD-302 used to report results of these interviews should clearly state that the interviewee was furnished a copy of this statement. All other interviewees (third party sources), when feasible, should be apprised of the purpose for which the information is sought and how it will be used. See Part I, 190-7 of this manual for details regarding express promise of confidentiality made to a third party source.

EFFECTIVE: 01/31/94

44-7 | REPORTING GUIDELINES - MATTERS INVOLVING THE USE OF FORCE  
OR VIOLENCE (SEE MIOG, Part I, 44-4.1 (6).)|

EFFECTIVE: 01/31/94



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44-7.1 Submission of FD-610

The FD-610 is to be submitted to FBIHQ, CRU, within five workdays of receipt of the complaint. (See MIOG, Part I, Section 282-8.1 for instructions on completion of the FD-610.)

EFFECTIVE: 01/31/94

44-7.2 Format of 44A and 44D Investigative Report (See MIOG, Part I, 44-8.2 (1) & MAOP, Part II, 3-1.1 & 3-1.2.)

(1) All investigative activity is to be reported utilizing the FD-263 cover page, the FD-204 synopsis page, FD-302s, and investigative inserts. Do not report investigative results by LHM unless specifically authorized by FBIHQ, CRU. All investigative activity is to be completed and reported within 21 workdays of receipt of the complaint. Any delays in meeting this time reporting requirement should be reported to FBIHQ, CRU by FD-205. Because of the nature of these cases (i.e., significant community interest) they should be given prompt attention.

(2) Three (3) copies of reports are to be sent to FBIHQ, CRU and one copy is sent to the U.S Attorney's Office. Of the three copies sent to FBIHQ, only two should contain the FD-263 cover page. The remaining copy without the FD-263 cover page will be sent to DOJ, CRD. One copy of the report is maintained in the FBIHQ, CRU and one is sent to the FBIHQ file.

(3) A completed FD-204 includes a DETAILED synopsis which succinctly sets forth the investigative content of the report and summarizes pertinent facts learned during the course of the investigation. Phrases such as "Interview set forth" and "details set forth" should not be used in the synopsis. The synopsis should contain more than the investigative steps taken by investigating Agents; it should contain investigative results.

(4) A predication statement should be the first sentence following the details heading of the FD-204. It should contain a brief statement on the rationale for the case to be opened.

(5) Victim, subject, and witness interviews are to be set

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forth in FD-302s which are part of the report. As noted above (see MIOG, Part I, 44-4.1), there are certain limited instances when signed statements of the victim(s), subject(s), and witness(es) are to be obtained and made a part of the report.

(6) Police records of less than ten (10) pages are to be included as pages in the report. Records of ten (10) or more pages are to be made enclosures to the report. An FD-302 is to be prepared noting the source of the police records and the date when they were obtained.

EFFECTIVE: 01/31/94

44-8      REPORTING GUIDELINES - MATTERS NOT INVOLVING THE USE OF  
FORCE OR VIOLENCE

EFFECTIVE: 01/31/94

44-8.1      Submissions of FD-610

The FD-610 is to be submitted to FBIHQ, CRU within five workdays of receipt of the complaint. (See MIOG, Part I, Section 282-8.1 for instructions on completion of the FD-610.)

EFFECTIVE: 01/31/94

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44-8.2 Format of Reporting Investigative Results

(1) In any case that has been identified as a significant case by either DOJ, CRD; FBIHQ, CRU; or the field office conducting the investigation (as reported on the initial submission of the FD-610); the results of investigation are to be furnished to FBIHQ, CRU in a report format. (See MIOG, Part I, Section 44-7.2.) In all cases, the results of investigation should be reported by LHM with a cover airtel and FD-302s, investigative inserts, etc., as attachments to the LHM.

(2) In reporting all matters, three (3) copies of the report or LHM should be submitted to FBIHQ, CRU, and one copy be sent to the local USA's office.

EFFECTIVE: 01/31/94

44-9 MISCELLANEOUS

(1) In 1989, Congress passed the Hate Crimes Statistics Act, which mandated that Federal, state, and local law enforcement agencies gather data and report statistics regarding the commission of hate crimes or acts of violence against individuals on the basis of their race, religion, ethnicity, or sexual preference. These statistics are reported to and compiled by the Uniform Crime Reporting Section (UCR), Criminal Justice Information Services (CJIS) Division, which then issues an annual report regarding these incidents. Any questions or issues regarding the Hate Crimes Statistics Act must be referred to UCR, CJIS.

(2) In many racial/religious violence cases, the alleged perpetrators are juveniles. These incidents should not be dismissed merely as pranks or teenagers' malicious mischief or as unprosecutable solely because the alleged perpetrators are juveniles. Juveniles will be prosecuted under the terms of Title 18, USC, Section 5001m et seq, for acts of racial/religious violence. Any local prosecution of juveniles may be claimed as an accomplishment on an FD-515 in accord with applicable standards used in other programs for state/local prosecutions.

(3) No arrests in racial/religious violence cases are to

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be made or complaints filed without prior notification, if feasible,  
to FBIHQ, CRU.

EFFECTIVE: 01/31/94

44-10 PENALTIES

(1) Title 18, USC, Section 241 - maximum of \$10,000  
and/or not more than 10 years. If death results, any term of years or  
for life. (See MIOG, Part I, 50-1.5, 50-2.4.)

(2) Title 18, USC, Section 243 - maximum of \$5,000 fine.

(3) Title 18, USC, Section 244 - maximum of \$500 fine.

(4) Title 18, USC, Section 245 - maximum of \$1,000 and/or  
not more than 1 year. If bodily injury results, maximum of \$10,000  
and/or not more than 10 years. If death results, any term of years or  
for life.

(5) Title 18, USC, Section 246 - maximum of \$10,000  
and/or not more than 1 year.

(6) Title 18, USC, Section 247 - if death results, a fine  
in accordance with this title and imprisonment for any term of years  
or for life, or both; if serious bodily injury results, a fine in  
accordance with this title and imprisonment for not more than 10  
years, or both; and in any other case, a fine in accordance with this  
title and imprisonment for not more than 1 year or both.

(7) Title 42, USC, Section 1973i - maximum of \$10,000  
and/or not more than 5 years.

(8) Title 42, USC, Section 1973dd - maximum of \$5,000  
and/or not more than 5 years.

EFFECTIVE: 01/31/94

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| 44-10.1 | Deleted |

EFFECTIVE: 01/31/94

| 44-10.2 | Deleted |

EFFECTIVE: 01/31/94

| 44-10.3 | Deleted |

EFFECTIVE: 01/31/94

| 44-10.4 | Deleted |

EFFECTIVE: 01/31/94

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EFFECTIVE: 01/31/94

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| 44-10.6 | Deleted |

EFFECTIVE: 01/31/94

| 44-11 | CHARACTER | (SEE MAOP, PART II, 3-1.1 & 3-1.2.) |

- | (1) 44A - Racial Violence - Use of Force
- | (2) 44B - Racial Discrimination - No Violence
- | (3) 44C - Voting Laws - Racial
- | (4) 44D - Religious Violence - Use of Force
- | (5) 44E - Religious Discrimination - No Violence |

EFFECTIVE: 01/31/94

| 44-12 | MOVED TO 44-11 |

EFFECTIVE: 01/31/94

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SECTION 45. CRIMES ON THE HIGH SEAS

45-1 STATUTES

Title 18, USC, Sections 7, 13, Chapters 81, 107, 111,  
and Sections 1243 and 2199.

EFFECTIVE: 10/24/85

45-1.1 Title 18, USC, Section 7 (See MIOG, Part I, 45-5 and  
70-1.1; Part II, 1-1.4.)

Section 7. Special maritime and territorial jurisdiction  
of the U.S. defined "The term 'special maritime and territorial  
jurisdiction of the United States,' as used in this title, includes:

"(1) The high seas, any other waters within the admiralty  
and maritime jurisdiction of the United States and out of the  
jurisdiction of any particular State, and any vessel belonging in  
whole or in part to the United States or any citizen thereof, or to  
any corporation created by or under the laws of the United States or  
of any State, Territory, District, or possession thereof, when such  
vessel is within the admiralty and maritime jurisdiction of the United  
States and out of the jurisdiction of any particular State.

"(2) Any vessel registered, licensed, or enrolled under  
the laws of the United States, and being on a voyage upon the waters  
of any of the Great Lakes, or any of the waters connecting them, or  
upon the Saint Lawrence River where the same constitutes the  
International Boundary Line.

"(3) Any lands reserved or acquired for the use of the  
United States, and under the exclusive or concurrent jurisdiction  
thereof, or any place purchased or otherwise acquired by the United  
States by consent of the legislature of the State in which the same  
shall be, for the erection of a fort, magazine, arsenal, dockyard, or  
other needful building.

"(4) Any island, rock, or key containing deposits of

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guano, which may, at the discretion of the President, be considered as appertaining to the United States.

"(5) Any aircraft belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or any State, Territory, District, or possession thereof, while such aircraft is in flight over the high seas, or over any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.

"(6) Any vehicle used or designed for flight or navigation in space and on the registry of the United States pursuant to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies and the Convention on Registration of Objects Launched into Outer Space, while that vehicle is in flight, which is from the moment when all external doors are closed on Earth following embarkation until the moment when one such door is opened on Earth for disembarkation or in the case of a forced landing, until the competent authorities take over the responsibility for the vehicle and for persons and property aboard.

"(7) Any place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States.

"(8) To the extent permitted by international law, any foreign vessel during a voyage having a scheduled departure from or arrival in the United States with respect to an offense committed by or against a national of the United States."

EFFECTIVE: 02/11/97



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45-1.2 Title 18, USC, Section 13

Section 13 is commonly referred to as the "omnibus" statute and may be used as to crimes not adequately covered by other statutes in this section of the manual when such crimes are committed within the special territorial jurisdiction of the U.S. It deals with laws of states adopted for areas within Federal jurisdiction and states "Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in Section 7 of this title, is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment."

EFFECTIVE: 10/24/85

45-1.3 Title 18, USC, Chapter 81 - Piracy and Privateering

This chapter contains the following sections:

- Section 1651. Piracy under law of nations
- Section 1652. Citizens as pirates
- Section 1653. Aliens as pirates
- Section 1654. Arming or serving on privateers
- Section 1655. Assault on commander as piracy
- Section 1656. Conversion or surrender of vessel
- Section 1657. Corruption of seamen and confederating with pirates
- Section 1658. Plunder of distressed vessel
- Section 1659. Attack to plunder vessel
- Section 1660. Receipt of pirate property
- Section 1661. Robbery ashore

In connection with the above maritime offenses covered by the provisions of the statutes included under Title 18, USC, Chapter 81, pertaining to piracy and privateering, it is important to bear in mind that the places to which these various statutes are applicable are determined from a close examination of each individual section as distinguished from other statutes in which the extent of Federal jurisdiction is limited to the special maritime and territorial jurisdiction of the U.S. as defined in Title 18, USC, Section 7.

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EFFECTIVE: 10/24/85

45-1.4 Title 18, USC, Chapter 107 - Seamen and Stowaways

In the following maritime offenses covered by the provisions of the statutes included under Title 18, USC, Chapter 107, Seamen and Stowaways, and Chapter 111, Shipping, the places to which these various statutes are applicable are determined from a close examination of each individual section.

- Section 2191. Cruelty to seamen
- Section 2192. Incitation of seamen to revolt or mutiny
- Section 2193. Revolt or mutiny of seamen
- Section 2194. Shanghaiing sailors
- Section 2195. Abandonment of sailors
- Section 2198. Seduction of female passenger (Section 3286. Trial. Section 3614. Fine)
- Section 2199: Stowaways on vessels or aircraft

EFFECTIVE: 10/24/85

45-1.5 Title 18, USC, Chapter 111 - Shipping

- Section 2271. Conspiracy to destroy vessel
- Section 2272. Destruction of vessel by owner
- Section 2273. Destruction of vessel by nonowner
- Section 2275. Firing or tampering with vessel
- Section 2276. Breaking and entering vessel
- Section 2277. Explosives or dangerous weapons aboard vessels
- Section 2278. Explosives on vessels carrying steerage passengers
- Section 2279. Boarding vessels before arrival

Note: False reports of violations of Title 18, USC, Sections 2271-2279, are covered by Title 18, USC, Section 35.

EFFECTIVE: 10/24/85

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45-1.6 Title 15, USC, Section 1243

This section provides a five-year sentence or a \$2,000 fine, or both, for anyone who, within the special maritime jurisdiction of the U.S. (as defined in Section 7 of Title 18, USC), manufactures, sells, or possesses any switchblade knife. Refer to Part I, Section 152, of this manual, pertaining to "Switchblade Knife Act."

EFFECTIVE: 10/24/85

45-1.7 Title 18, USC, Section 2199 - Stowaways

The following opinion was submitted by the Department upon inquiry being made by this Bureau relative to its investigative jurisdiction over violations of the Federal stowaway statute, Title 18, USC, Section 2199:

"Prior to June 11, 1940, stowing away on a vessel entering or leaving the United States was not a crime. A stowaway on a vessel entering the United States was merely inadmissible under the immigration laws, if he were an alien (Title 18, USC, subsection 132 (1)). Consequently, the examination of stowaways on vessels entering the United States from foreign countries was within the jurisdiction of the Immigration and Naturalization Service. By the act of June 11, 1940 (Title 18, USC, Section 469, now section 2199) stowing away on a vessel leaving or entering the United States was made a criminal offense. This provision of law is not a part of the immigration laws. Moreover, it does not distinguish between aliens and citizens. A stowaway is guilty of a criminal offense under this provision of law, irrespective of whether or not he is an American citizen. In view of this fact, the investigation of cases of stowaways becomes the function of the Federal Bureau of Investigation, which has charge of investigating all offenses against the United States except those specifically assigned for investigation to other investigative agencies."

Since violations of the Federal stowaway statute occur only when a ship is within the jurisdiction of the U.S., the venue applying to crimes on the high seas does not apply to stowaway violations. Such venue is in the district covering the place where a ship bearing a stowaway who boarded the vessel at some place within or without the jurisdiction of the U.S. first comes into the jurisdiction of the U.S. or the district covering the place within the jurisdiction of the U.S. from which a ship leaves bearing a stowaway who boarded the ship at the place.

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EFFECTIVE: 10/24/85

45-2 VIOLATIONS CONSTITUTING CRIMES ON THE HIGH SEAS

The following sections of Title 18, USC, provide penalties for the specified crimes when committed within the special maritime and territorial jurisdiction of the United States as defined above:

- Section 13. Laws of states adopted for areas within Federal jurisdiction
- Section 81. Arson
- Section 113. Assault
- Section 114. Maiming
- Section 661. Theft
- Section 662. Receiving stolen property
- Section 1025. False pretenses on high seas and other waters
- Section 1111. Murder
- Section 1112. Manslaughter
- Section 1113. Attempt to commit murder or manslaughter
- Section 1201. Kidnaping
- Section 1363. Destroying or injuring buildings or property
- Section 2111. Robbery
- Section 2241. Aggravated sexual abuse
- Section 2242. Sexual abuse
- Section 2243. Sexual abuse of a minor or ward
- Section 2244. Abusive sexual contact

EFFECTIVE: 08/22/89

45-3 MISCELLANEOUS STATUTES DEALING WITH CRIME ON THE HIGH SEAS

In the following maritime or territorial offenses, the places to which these miscellaneous statutes are applicable are determined from an examination of each individual section.

- Section 969. Exportation of arms, liquors, and narcotics to Pacific Islands
- Section 1082. Gambling ships
- Section 1115. Misconduct or neglect of ship officers
- Section 1382. Entering military, naval, or Coast Guard

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Property  
Section 1991. Entering train to commit crime

EFFECTIVE: 08/22/89

45-4 CRIME ON THE HIGH SEAS INVOLVING AIRCRAFT

The Bureau has investigative jurisdiction under the Crimes on the High Seas Statute (Title 18, USC, Section 7) in cases involving aircraft of American registry while such aircraft are in flight over the high seas or over any other waters within the admiralty and maritime jurisdiction of the U.S. and out of the jurisdiction of any particular state.

EFFECTIVE: 08/22/89

45-5 JURISDICTION | (See MIOG, Part I, 45-1.1; Part II, 1-1.4.) |

Article 1, Section 8, Clause 10 of the Constitution of the United States gives Congress the power, "to define and punish piracies and felonies committed on the high seas and offenses against laws of nations."

In general, violations of the Crimes on the High Seas Statutes require that the offenses take place on the high seas, outside the jurisdiction of a particular state and on board an American vessel or aircraft. Of importance is the fact that the courts have interpreted violations occurring upon American vessels in foreign waters as being on the high seas and within the prosecutive jurisdiction of the United States government. For example, a crime of murder committed on an American vessel in a foreign port would be punishable in the United States District Court and, therefore, is within the investigative jurisdiction of the FBI. Such an offense could likewise be a violation of law of that nation within whose territorial waters it occurred. From a practical standpoint, although dual jurisdiction may exist, in any instances prosecution is usually initiated by that nation having a major prosecutive interest. For example, a crime committed on an American vessel in a foreign port participated in only by American nationals may be of no interest to the foreign power involved, whereas if nationals of that country participated in the offense those authorities may desire to exercise

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their prosecutive prerogatives. You should be alert, of course, to the fact that the Crime on the High Seas Statute also applies to offenses occurring on board American aircraft. According to the provisions of Title 18, USC, Section 7, the crimes and offenses described in Title 18, which are limited to the special maritime and territorial jurisdiction of the U.S., punishable in the federal courts when committed:

(1) On the high seas or any other waters within the admiralty and maritime jurisdiction of the U.S. and out of the jurisdiction of any particular state

(2) Within the admiralty and maritime jurisdiction of the U.S. and out of the jurisdiction of any particular state on board an American vessel

(3) On board an American vessel being upon a voyage of any of the Great Lakes or connecting waters or the Saint Lawrence River where it forms the international boundary line

(4) On board an American aircraft while such aircraft is in flight over the high seas or over any other waters within the admiralty and maritime jurisdiction of the U.S. and out of the jurisdiction of any particular state

(5) On board any vehicle used or designed for flight or navigation in space and on the registry of the United States pursuant to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies and the Convention on Registration of Objects Launched into Outer Space.

(6) Subsection (7) to Title 18, USC, Section 7, defines the special maritime and territorial jurisdiction of the United States in that, under this provision, crimes committed outside the jurisdiction of any nation by or against a national of the United States now fall within the special maritime and territorial jurisdiction of the United States. This subsection is intended to provide United States extraterritorial jurisdiction of serious crimes by or against United States nationals, as when such crimes are committed in Antarctica or on an ice floe.

(7) To the extent permitted by international law, on any foreign vessel during a voyage having a scheduled departure from or arrival in the United States with respect to an offense committed by or against a national of the United States.

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EFFECTIVE: 02/11/97

45-6 DEFINITIONS

(1) "Vessel of the United States," as used in Title 18, USC, Section 9, means a vessel belonging in whole or part to the U.S., or any other citizen thereof, or any corporation created by or under the laws of the U.S., or any state, territory, district, or possession thereof.

(2) "Aircraft," as used in Title 18, USC, Section 7, subsection (5), means any aircraft belonging in whole or in part to the U.S. or any citizen thereof, or to any corporation created by or under the laws of the U.S., or any state, territory, district, or possession thereof.

(3) "Out of jurisdiction of any particular State" must be construed to mean out of the jurisdiction of any particular state of the U.S. U.S. v. Furlong, 5 Wheat. (U.S.) 184. The question as to whether a particular place is within the jurisdiction or boundaries of a state is not a simple question of law, but the testimony bearing upon this question, whether of maps, surveys, practical location, and the like, should be submitted to the jury under proper instructions to find the fact. U.S. v. John, 1 Black (U.S.) 484.

(4) "District" means a judicial district defined by act of Congress. U.S. v. Newth, 149 F. 302. The word "district," as used in this provision, includes every territory within which there are courts regularly recognized and having jurisdiction over offenses against the U.S. (28 Op. Atty. Gen. 24).

(5) An offender is "found" within the meaning of this section where he/she is apprehended after coming into port, while the word "brought" means taken into custody on ship and carried into port. U.S. v. Townsend, 219 F. 761. To be "brought" into a district, within the meaning of this section, one must be first apprehended, and it is not enough that he/she merely "arrive" in the district. Kerr v. Shine, 136 F. 61.

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45-7 INVESTIGATIVE PROCEDURE

Since the crime has been committed aboard a ship or aircraft, witnesses may be found among passengers or member of the crew. As an aid in such investigations, the following suggestions are made:

- (1) Ascertain promptly upon the receipt of information with reference to the offense the approximate date and hour of the expected arrival in port of the vessel on which the crime has been committed, and arrange for continued information concerning its progress to the port.
- (2) Ascertain the name of the first U.S. port at which the vessel will call.
- (3) Obtain at the ship company's office the complete roster of the crew or arrange for its future production.
- (4) Examine and identify available records, showing the registry or ownership of the vessel involved and the exact location of the vessel at the time the crime was committed, as an aid in definitely deciding the question of jurisdiction. Discuss any jurisdictional questions with the USA early in the investigation.
- (5) Board the vessel before it docks. Arrangements for this procedure can probably be made through harbor police, the Coast Guard, the Customs or Immigration services.
- (6) Interview the Captain or Commanding Officer of the ship, and obtain his/her statement relative to the offense and the circumstances surrounding it.
- (7) Indicate to the Commanding Officer those members of the crew or passengers desired for interview and made such arrangements as may be possible that none of them be discharged or permitted to go ashore until such interviews have been completed.
- (8) Examine the ship's log and obtain a transcript of pertinent portions.
- (9) Examine, note, and arrange for the proper care of all exhibits.
- (10) Ascertain the prospective itinerary of the vessel so that, if necessary, the vessel and crew may later be found.
- (11) Upon leaving the vessel, submit all facts obtained to the



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USA for a determination as to further action.

EFFECTIVE: 10/24/85

45-8 OTHER PROVISIONS

(1) Title 18, USC, Section 3238, provides the trial of all offenses begun or committed upon the high seas, or elsewhere out of the jurisdiction of any particular state or district, shall be in the district in which the offender, or any one of two or more joint offenders, is arrested or is first brought; but if such offender or offenders are not so arrested or brought into any district, an indictment or information may be filed in the district of the last known residence of the offender or of any one of two or more joint offenders, or if no such residence is known the indictment or information may be filed in the District of Columbia. Venue over offenses committed on the Great Lakes aboard a vessel which is within the boundary of a particular state is in the U.S. District Court having jurisdiction over that area of the state where the offense occurred.

(2) Venue over offenses committed on the Great Lakes beyond the international boundary line and not within the area of a given state is found under the provisions of Title 18, USC, Section 3238, set out above.

EFFECTIVE: 10/24/85

45-9 REPORT WRITING RULES

(1) Forward to FBIHQ copy of any prosecutive summary report prepared in this classification of investigation for the USA's Office, utilizing current Bureau guidelines for the preparation of such reports.

(2) No report need be forwarded under any other circumstances unless it is determined to be the most logical means to disseminate the results of investigation accumulated, or when it is decided that a report is the best means to disseminate such results to other Federal agencies through FBIHQ rather than by means of an LHM.

EFFECTIVE: 10/24/85

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45-10 PENALTIES

Review specific statute for particular penalty.

EFFECTIVE: 10/24/85

45-11 CHARACTER - CRIMES ON THE HIGH SEAS, followed by a descriptive offense; as, CRIMES ON THE HIGH SEAS - MURDER.

EFFECTIVE: 10/24/85

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SECTION 46. FRAUD AGAINST THE GOVERNMENT, ET AL.; RENEGOTIATION ACT -  
CIVIL SUITS, ET AL.; FALSE CLAIMS - CIVIL SUITS

46-1 FRAUD STATUTES

Purpose - to protect the U.S. Government from any attempt to interfere with its lawful functions by deceit or dishonesty; not only where a pecuniary loss may be involved, but whenever the Government's functions are defeated by misrepresentations. The following are only the most commonly used statutes in prosecuting these crimes.

EFFECTIVE: 10/22/84

46-1.1 Conspiracy to Defraud, Title 18, USC, Section 286

Two or more persons, by agreement obtained, or aided in obtaining, payment from the U.S. Government through the submission of false claims.

EFFECTIVE: 10/22/84

46-1.2 False, Fictitious, or Fraudulent Claims, Title 18, USC,  
Section 287

The elements are (1) to make or present a false claim against the U.S. Government while (2) knowing such claim to be false.

EFFECTIVE: 10/22/84

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46-1.3 False Statements, Title 18, USC, Section 1001

To knowingly and willfully falsify a material fact; or make a false, fictitious, or fraudulent statement; or make/use false writing or documents in any matter within the jurisdiction of the U.S. Government. A false complaint given to the FBI, or any other Federal law enforcement agency, that initiates a criminal investigation resulting in the expenditure of time and resources, is a matter within the jurisdiction of the U.S. Government and a violation of this statute. A false statement in an application for Federal employment is also a violation of this statute. A false statement in an application for civilian employment violates this statute if the applicant knows or should reasonably foresee that the application will be submitted to a Federal Government agency for a security check. A false statement may be written or oral, sworn or unsworn. This statute does not apply to false statements made under oath before the grand jury or in a judicial proceeding. False statements made in an interview initiated by a Federal law enforcement agency, or by an employee in a noncriminal personnel matter may, in some instances, constitute a violation of Section 1001. See 46-1.8; Policy, (3), (4) and (6).

EFFECTIVE: 10/22/84

46-1.4 Conspiracy to Commit Offense or Defraud the United States,  
Title 18, USC, Section 371

If two or more persons (1) conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and (2) one or more of such persons commit any act to effect the object of the conspiracy, each shall be fined not more than \$10,000 or imprisoned not more than 5 years or both. If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor. (For additional details see Part I, 62-16 of this manual.)

EFFECTIVE: 10/22/84

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46-1.4.1 Mail Fraud, Title 18, USC, Section 1341

The U.S. Postal Service is specifically charged with the duty of investigating use of the mails in furtherance of a scheme or artifice to defraud. The above notwithstanding, this statute, which carries penalties of a \$1,000 fine and/or '5 years' imprisonment, has been effectively used by the FBI in pursuing Fraud Against the Government (FAG) investigations and should be thoroughly familiar to Agents investigating such matters. The statute citation, key elements, and Bureau policy can be found in Part I, Section 36 of this manual captioned "Mail Fraud."

EFFECTIVE: 10/23/86

46-1.5 Other Fraud Statutes

It is noted that Congress, when approving legislation establishing various federally funded programs, incorporated into that legislation specific criminal statutes which are to be used in prosecuting frauds against such programs or thefts of program funds. When program fraud allegations are received, it will be necessary to determine from the administering agency the identity of specific fraud statutes, if any, which may have been created solely to aid in prosecutions relative to the affected program.

EFFECTIVE: 10/23/86

46-1.5.1 Theft or Bribery Concerning Programs Receiving Federal Funds, Title 18, USC, Section 666

When a state or local government or organization receives \$10,000 or more annually in Federal funds, it is unlawful (1) for an agent or employee to embezzle or misapply \$5,000 or more (2) for an agent or employee to accept a bribe in a matter involving \$5,000 or more or (3) for anyone to offer a bribe to an agent or employee.

EFFECTIVE: 10/23/86

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46-1.5.2 National Organ Transplant Act (NOTA); Prohibition of Organ Purchases (Title 42, USC, Section 274e)

(1) Section 274e, Prohibition of organ purchases, reads as follows:

"(a) Prohibition

"It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration or use in human transplantation if the transfer affects interstate commerce.

"(b) Penalties

"Any person who violates subsection (a) of this section shall be fined not more than \$50,000 or imprisoned not more than five years, or both.

"(c) Definitions

"For purposes of subsection (a) of this section:

"(1) The term 'human organ' means the human kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, and skin, and any other human organ specified by the Secretary of Health and Human Services by regulation.

"(2) The term 'valuable consideration' does not include the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ or the expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ.

"(3) The term 'interstate commerce' has the meaning prescribed for it by section 321(b) of title 21."

(2) Violations of the above law should be opened in Bureau case classification 209 (Fraud Against the Government (FAG) - Health and Human Services (HHS)), and captioned in communications as "FAG-HHS-NOTA," with the addition of Fraud by Wire, Mail Fraud, or others, as appropriate.

(3) Reporting requirements for FAG cases should be

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adhered to in conducting these investigations.

EFFECTIVE: 10/23/86

46-1.5.3 Major Fraud Against the United States (Title 18, USC,  
Section 1031) (See also Part I, Section 46-1.13 of this  
manual)

(1) Prohibits anyone from execution or attempted  
execution of a scheme with intent:

"(1) to defraud the United States; or

"(2) obtain money or property from the United States  
by means of false or fraudulent pretenses, representations, or  
promises, in any procurement of property or services as a prime  
contractor with the United States or as a subcontractor or supplier on  
a contract in which there is a prime contract with the United States,  
if the value of the contract, subcontract or any constituent part  
thereof for such property or services is \$1,000,000 or more,  
shall...be fined not more than \$1,000,000 or imprisoned not more than  
ten years, or both."

(2) Subsection B provides for a maximum fine of  
\$5,000,000 if the scheme involves a conscious or reckless risk of  
personal injury.

(3) Subsection F provides a statute of limitations of  
seven years.

EFFECTIVE: 07/31/97

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46-1.6 Anti-Kickback Act of 1986, Title 41, USC, Sections 51-54

Prohibits any person, as defined in the statute, in all Government contracts from (1) providing or attempting or offering to provide any kickback to employees of a prime contractor, or higher tier subcontractor; or (2) soliciting, accepting, or attempting to accept any kickback for purposes of securing a Government contract or including amount of kickback in contract price charged by a subcontractor to a prime contractor or a higher tier subcontractor or in contract price charged by a prime contractor to the U.S.

EFFECTIVE: 02/20/90

46-1.7 FAG-Federal Lending and Insurance Agencies (FLIA)

Congress has passed legislation establishing a number of federal lending and insurance agencies, some of which are independent agencies, while others operate within the framework of the U.S. Department of Agriculture (USDA) and the Department of Housing and Urban Development (HUD). These agencies engage in direct lending of federal funds, and/or guarantee loans disbursed by private sector (banking/finance industry) sources. Certain agencies offer federal lending insurance. The FBI's PRIMARY investigative jurisdiction regarding violations involving FLIA is limited to the following federal agencies:

(1) Small Business Administration

(2) Deleted

(3) Federal Crop Insurance Corporation - a corporation within USDA.

(4) Federal Emergency Management Agency - this independent agency was chartered to enhance/coordinate emergency preparedness and response resources of the federal, state and local governments with respect to the full range of emergencies - natural, man-made and nuclear.

EFFECTIVE: 07/31/97

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46-1.7.1 Fraud Statutes Pertaining to FLIA

- (1) Title 18, USC, Section 212. Prohibits offer of loan or gratuity to bank examiner.
- (2) Title 18, USC, Section 213. Prohibits acceptance of loan or gratuity by bank examiner.
- (3) Title 18, USC, Section 215. Prohibits receipt of commission or gifts or procuring loans.
- (4) Deleted
- (5) Title 18, USC, Section 217. Prohibits acceptance of consideration for adjustment of farm indebtedness.
- (6) Title 18, USC, Section 657. Prohibits embezzling, abstracting, or misapplying funds, securities, etc., by officers, agents, employees, or receivers of lending, credit, and insurance institutions.
- (7) Title 18, USC, Section 658. Prohibits concealment, removal, disposal, or conversion to personal use of property mortgaged or pledged to farm credit agencies.
- (8) Title 18, USC, Section 1006. Prohibits false entries in Federal credit institution books, reports, and statements.
- (9) Title 18, USC, Section 1011. Prohibits false statements and overvaluing of land in Federal land bank mortgage transactions.
- (10) Title 18, USC, Section 1013. Prohibits making false pretenses or representations in connection with farm loan bonds and credit bank debentures.
- (11) Title 18, USC, Section 1014. Prohibits falsification of loan applications submitted to certain FLIA. (Refer to statute.)
- (12) Title 18, USC, Section 1907. Prohibits disclosure of information by farm credit examiner.
- (13) Title 18, USC, Section 1908. Prohibits disclosure of information by national agricultural credit examiner.
- (14) Title 18, USC, Section 1909. Prohibits performance

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of services for compensation by examiners.

EFFECTIVE: 02/20/90

46-1.8 Policy

(1) Except to the extent that investigations involve allegations of corruption on the part of U.S. Government employee(s), which require a greater degree of administrative scrutiny and more expeditious reporting, other policy and investigative guidelines appearing in this ("46") section of the manual pertain to all FAG violations.

(2) FAG cases must be given prompt and continuous attention. The level of manpower devoted to, and the priority placed upon completion of these investigations should be governed by the circumstances of each case in relation to the entire case load. There is a heightened necessity to promptly resolve those allegations pending against Federal employees due to the fact that the affected Federal agency may delay, or otherwise coordinate, administrative action contemplated against their (subject) employees, with receipt of the results of the completed criminal investigation.

(3) All FAG allegations which serve as predication for opening an investigation must be discussed with the U.S. Attorney early in the investigation. Should the USA concur in the initiation of an investigation, this PRELIMINARY PROSECUTIVE OPINION should cite the applicable statute(s) which applies to the alleged violation, AND a commitment to pursue prosecution should the allegations be substantiated through investigation. If the initial complaint/allegation is not sufficiently specific to enable the Agent to hold an informative discussion with the USA, conduct appropriate investigation to "round out" the allegation such that an adequately detailed discussion may be held. (It should not be necessary for the USA to request such investigation.) Regardless of whether the USA expresses a willingness to prosecute, or declines prosecution out of hand, the opinion (and all AUSA opinions) should be confirmed in writing. The initial 30-day LHM, or closing LHM in the event of a prosecutive declination, is sufficient for this purpose. (See MIOG, Part I, 46-1.3, & 46-1.12(2).)

(4) With regard to referrals wherein the victim Government agency has conducted significant investigation in efforts to determine whether or not a Federal violation has been committed,

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consideration should be given to having the agency investigator present during the preliminary discussions of the case with the USA. Much of the background can then be explained by the agency investigator, thereby minimizing needless duplication of effort.

|(See (6).)|

(5) Pay close attention to SPECIFIC TITLES of Federal, state and local agencies involved (defrauded) in FAG cases, as frequently there exist confusing similarities among such agency or program titles. Failure to properly identify the agency involved may lead to a misunderstanding of the facts. In those instances where a state or local agency which receives PARTIAL FEDERAL FUNDING has been defrauded, a Federal violation MAY have occurred. The COMINGLING of Federal and state (or local) funds should not ordinarily in and of itself be a bar to Federal prosecution. Consideration should be given to advising FBIHQ of those instances wherein comingling of funds is indicated as the reason behind a declination of prosecution. Under appropriate circumstances, FBIHQ will discuss such decisions with the Department of Justice.

(6) Complaints/allegations concerning FLIA and other FAG violations (a) which through legislation or through mutual agreement are not within the FBI's primary investigative jurisdiction or (b) which cannot be afforded adequate investigative attention due to manpower constraints within division and/or the failure of the allegation to "measure up" to prosecutive guidelines of the USA, should be referred to the appropriate local or regional office of the Inspector General for the affected Federal agency. Where no such local or regional office exists, forward the matter to FBIHQ with a request that the matter be referred to the national headquarters of the appropriate agency. (For example, violations relating to Farmers Home Administration matters are investigated by the Office of Inspector General, Department of Agriculture. The FBI does, however, investigate violations which indicate criminal misconduct on the part of USDA employees.) |(See MIOG, Part I, 46-1.3.)|

SPECIAL NOTE: In all instances wherein investigative matters are referred by a field division to another Federal agency BASED UPON MANPOWER CONSTRAINTS, FBIHQ must be advised by LHM; the cover communication should clearly state that pending investigative matters being addressed by the field division are of greater significance than the item of referral. A copy of each such referral should be routed to a special field office file entitled "Fraud Against the Government Matters-Referrals to other Agencies." Ensure proper indexing of such referrals.

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(7) FBIHQ should be promptly notified, by telephone and/or teletype, of the initiation of MAJOR or OTHERWISE SIGNIFICANT FAG cases which may prompt news media (or other) inquiries to be directed to FBIHQ.

(8) Promptly report significant investigative/prosecutive developments to FBIHQ in a form suitable for dissemination to the appropriate Government agency, as that agency may have deferred administrative or civil action regarding contracts, contract negotiations, loan or loan guarantees, etc., pending the outcome of the criminal investigation.

(9) FAG investigations which fail to disclose evidence that a Federal violation has been committed may be "closed" without consultation with the USA, provided all logical investigation has been completed. Prosecutive declinations should include the underlying reason for same (e.g., "no Federal violation substantiated through investigation," "lack of prosecutive merit due to (explanation)," etc.). The PROSECUTIVE DECLINATION of the USA should be confirmed by means of the closing LHM.

EFFECTIVE: 09/16/94

46-1.9 Investigative Procedure

(1) Determine the identity of the governmental agency and agency program (source of funds) which has been defrauded. Based upon the complaint or allegation, ascertain the specific title and section of Federal law which may have been violated. (The "United States Government Manual" is an invaluable guide to understanding departments, independent establishments and Government corporations of the Executive Branch of the Federal Government, as well as the departments and offices of the Legislative and Judicial Branches. All field divisions are issued a copy of this yearly manual.)

(2) Identify those governmental officials having administrative responsibility for the victim agency and/or program. Ascertain which agency procedures have been misapplied or subverted in furtherance of the alleged FAG violations. Take note of any agency practices or procedures, formal or informal, which may adversely affect the investigation and/or future prosecutive action. Be certain to bring such items to the attention of the prosecuting attorney.

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Determine in advance the substance of testimony which Government officials will provide if called upon during trial.

(3) Identify the subject(s) and verify the means by which the subject(s) is alleged to have defrauded the Government.

(4) Identify and obtain any false or fraudulent documentary evidence which will prove the existence of a violation.

(5) Gather evidence of willful intent on the part of the subject(s). Be mindful to obtain/ascertain:

(a)

(b)

(c)

b2/b7E

(6) Special Agents of the FBI are empowered to take signed statements, under oath from witnesses and subjects in those investigations where a Government employee is implicated in criminal misconduct or irregularity, and in those investigations of fraud on, or attempts to defraud, the United States Government. Consideration should be given to obtaining such statements in those instances where such a form of evidence will tend to strengthen the findings of an investigation. It is recognized that this is a judgmental decision, requiring the thoughtful consideration of the experienced investigator. Legal/Evidentiary ramifications of such statements may warrant consultation with the division's principal legal advisor or with the prosecuting attorney associated with the investigation. (Statutory authority for placing witnesses and subjects under oath is contained in Title 5, USC, Section 303.)

(7) Complex FAG cases frequently demand that a close working relationship be maintained with the USA's Office in order to assure that the case "develops" at a pace that will facilitate the prosecutor's comprehension of the complexities of the matter and therefore lend to a timely prosecution of the violation(s). Keep alert to avoid unnecessary investigation. Consideration should be given to the utilization of manpower from other Government agencies to review (audit/examine) their in-house records when such a review does not threaten the integrity of the investigation.

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EFFECTIVE: 03/28/84

46-1.10 Venue

(1) False claim or document - Judicial district where the false document was submitted to or received by the Government.

(2) Oral false statement or the concealment of a material fact(s) - Judicial district where the false statement was uttered or where the concealment occurred.

EFFECTIVE: 02/20/90

46-1.11 Fraud Against the Government - Security Aspect

There are special provisions in this manual, in addition to those contained within this section, with respect to FAG violations which have a "security" aspect. These may be found in other FBI investigations; e.g., Applicant investigations, Security of Government Employee investigations, Domestic Security investigations concerning individuals, and investigations of Atomic Energy Act violations. Appropriate special considerations contained within this manual (as indicated below) should be reviewed prior to the initiation of certain investigations, as follows:

(1) Applicant and Employee Investigations Conducted for Other Government Agencies - General Instructions: See Part II, Section 17, of this manual;

(2) Atomic Energy Act of 1954 - Criminal Violations: See Part I, Section 117, of this manual;

(3) Security of Government Employees: See Part I, Section 140, of this manual.

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| 46-1.12 Reporting Requirements | (See MIOG, Part I, 86-5, 206-4.) |

| (1) | Deleted |

(2) Submit a letterhead memorandum (LHM) (original and four copies) within 30 days of receipt of a FAG complaint/allegation. The LHM should be suitable for dissemination to (a) the Department of Justice, (b) the Office of Personnel Management (in those instances where a federal employee is the SUBJECT of the investigation), and (c) the federal agency(s) affected by the allegation/investigation. The initial LHM should, at a minimum, detail the predication for opening the investigation, summarize the investigation conducted in order to "round out" the allegation(s) and reflect the preliminary prosecutive opinion obtained (see 46-1.8(3) above). Be CERTAIN to DATE the receipt of the complaint and ALL other significant events.

(3) The LHM is the main vehicle utilized for conveying notification of the initiation, status and disposition of FBI investigations to affected federal agencies, as well as the Department of Justice. Inclusion of Rule 6(e) (federal grand jury source) material in an LHM will most often preclude dissemination of that communication outside of the Department of Justice. Thus, Rule 6(e) material should be excluded from LHMs, absent a federal court order authorizing access to other interested parties/agencies. The LHM is NOT to serve as a prosecutive or investigative report.

(4) Federal agencies (Offices of Inspector General) have a statutory right to be informed of the existence of investigations affecting their agencies. Requests for withholding dissemination indicated in (2) above must be SUBSTANTIAL and documented in the "Administrative" section of the cover communication.

(5) The decision regarding preparation of a "prosecutive report" is left to the discretion of the SAC/Field Supervisor and should be considered on a case-by-case basis. The complexity of the investigation and needs of the prosecuting attorney may be determining factors in this decision. USAs' requests for prosecutive reports should be honored in all instances. Prosecutive reports are not routinely disseminated outside of the Department of Justice.

(6) Preparation of interim, advisory LHMs MAY be warranted in certain high profile investigations or in those investigations which are being followed closely by the affected federal agency.

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(7) TITLE CHANGES should be noted in the opening paragraph of LHMs, in order to assist recipients (Offices of Inspector General, etc.) in referencing prior LHMs or correspondence regarding the investigative subject. Other identifiers, agency "titles" or file numbers when known, should be included in LHMs to assist in referencing other agency files.

(8) In those investigations where the USA declines prosecution AND the subject is a federal employee, obtain a specific comment from the USA as to the merits of administrative and/or civil remedies against the federal employee who is the subject of the case in which prosecution is being declined. Ensure the specific comments are confirmed in writing. The comment must be included in the closing LHM. If the USA advises no merit exists, so state. If the USA advised merit does exist, a statement such as "the foregoing declination is made due to the matter not meeting the standards required for federal prosecution by the USA. It should not be construed by your agency, or by other affected agencies, in such a way as to preclude the initiation of such administrative and/or civil remedies as may be appropriate" is suitable.

(9) Deleted

(10) A CLOSING LHM must be prepared for each investigation which has been concluded. This final LHM MUST restate the predication for opening the investigation, summarize investigative findings and detail the disposition of the investigation. Prosecutive action should be DETAILED from indictment, information or complaint, through plea acceptance, trial disposition and/or sentencing, as appropriate. Ensure that a FULL DESCRIPTION of the subject(s) is included in this communication. Again, be certain to DATE all significant events. In 209A matters involving health care providers, one copy of pertinent FD-302s which do not contain grand jury information protected pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure or information that would jeopardize an informant or confidential witness should be sent to FBIHQ for dissemination to the Department of Health and Human Services-Office of the Inspector General (HHS-OIG). The FD-302s should be attached to one copy of the LHM and listed as enclosures for dissemination to HHS-OIG. The FD-302s should be listed by date and name on the cover communication. This could assist the HHS-OIG to recover funds pursuant to the Civil Monetary Penalties Law of 1981. This law can be found at Section 1128A of the Social Security Act or at Title 42, USC, Section 1320-7a. It authorizes the HHS-OIG to impose civil monetary penalties on health care providers who have defrauded HHS. The HHS-OIG will report these recoveries to FBIHQ. FBIHQ will thereafter notify the office of origin, or in accordance



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with the Manual of Administrative Operations and Procedures, Part II, 3-5.2.7, (2) (b), "Joint Investigation Recoveries," a recovery may be claimed by the appropriate field division. (See MIOG, Part I, 209-2.)

(11) SPECIAL NOTE: Every effort should be made to furnish the victim federal agency with constructive criticism concerning weaknesses within the agency's procedures or internal controls which may predispose the agency to fraudulent practices or limit the agency's ability to uncover fraudulent acts after the fact. Such observations on the part of the investigating Special Agent are valuable, and the inclusion of same within the closing LHM (or a separate LHM, if appropriate) is to be encouraged in all instances.

EFFECTIVE: 04/02/97

46-1.13 Penalties (Maximum)

- (1) Title 18, USC, Section 286 - \$10,000 and/or 10 years
- (2) Title 18, USC, Section 287 - \$10,000 and/or 5 years
- (3) Title 18, USC, Section 371 - \$10,000 and/or 5 years for felony; if misdemeanor, no more than penalty for misdemeanor
- (4) Title 41, USC, Sections 51-54 - A fine in accordance with Title 18, Section 3571 ET SEQ. (a fine of not more than \$250,000) and/or 10 years.
- (5) Title 18, USC, Sections 212 & 213 - \$5,000 and/or 1 year and fined a further sum equal to money loaned or gratuity given
- (6) Title 18, USC, Section 215 - \$5,000 and/or 5 years, if amount involved does not exceed \$100, then \$1,000 and/or 1 year.
- (7) Title 18, USC, Section 217 - \$1,000 and/or 1 year
- (8) Title 18, USC, Sections 657 & 658 - \$5,000 and/or 5 years, if amount involved does not exceed \$100, then \$1,000 and/or 1 year
- (9) Title 18, USC, Section 666 - \$100,000 and/or 10 years
- (10) Title 18, USC, Section 1001 - \$10,000 and/or 5 years

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(11) Title 18, USC, Section 1006 - \$1,000,000 and/or 20 years

(12) Title 18, USC, Section 1011 - \$5,000 and/or 1 year

(13) Title 18, USC, Section 1013 - \$5,000 and/or 1 year

(14) Title 18, USC, Section 1014 - \$1,000,000 and/or 20 years

(15) Title 18, USC, Sections 1907-1909 - \$5,000 and/or 1 year

(16) Title 42, USC, Section 274e - \$50,000 and/or 5 years

(17) Title 18, USC, Section 1031 - \$1,000,000 and/or ten years (\$5,000,000 if conscious or reckless endangerment)

EFFECTIVE: 02/20/90

46-1.14 Character (See MAOP, Part II, 3-1.1 & 3-1.2; MIOG, Introduction, 2-1.5.3; Part I, 206-6 & 207-2.)

(1) With the exception of 209 cases, Fraud Against the Government - followed by (a) the name of the Federal department or agency concerned and (b) (Identity of the program or activity where fraud occurred).

(2) Unique classification numbers have been assigned to FAG cases pertaining to certain major Government agencies. Instructions for these classifications are the SAME as contained within this section. The "46" classification will be used for all FAG cases involving Government agencies not specifically identified below (NOTE: BE CERTAIN to include the appropriate ALPHA DESIGNATION within the classification "number." Refer to the substantive section of this manual for the distinction between such alpha components of the classification "number.")

17 A&B FAG - Department of Veterans Affairs (VA)

46 A&B FAG - Agency involved

86 A&B FAG - Small Business Administration (SBA)

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147 A&B FAG - Department of Housing and Urban  
Development (HUD)

206 A&B FAG - Department of Defense (DOD) - Appropriate  
Branch of Military

206 C&D FAG - Department of Agriculture (USDA)

206 E&F FAG - Department of Commerce (DOC)

206 I&J FAG - Department of Interior (DOI)

207 A&B FAG - Environmental Protection Agency (EPA)

207 C&D FAG - National Aeronautics and Space  
Administration (NASA)

207 E&F FAG - Department of Energy (DOE)

207 G&H FAG - Department of Transportation (DOT)

208 A&B FAG - General Services Administration (GSA)

209 A&B Health Care Fraud

210 A&B FAG - Department of Labor (DOL)

213 A&B FAG - Department of Education (DOED)

EFFECTIVE: 12/23/93

46-2 RENEGOTIATION ACT - CIVIL SUITS

EFFECTIVE: 01/31/78

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46-2.1 Background

(1) The Bureau conducts investigation in Renegotiation Act (Civil) suits brought under the Renegotiation Act of 1951 - Title 50, USC, App., Section 1211 et seq.

(2) The Renegotiation Act of 1951, in general, provides that Renegotiation Board is to review the total profit derived by a contractor during a year from all of his renegotiable contracts and subcontracts in order to determine whether or not this profit is excessive. The Board is empowered to eliminate those profits, found to be excessive in accordance with certain statutory factors. Thus, renegotiation is determined with respect to all receipts or accruals from renegotiable contracts and subcontracts of a contractor during a year.

(3) The renegotiation process allows an after-the-fact review of the profits on renegotiable contracts and subcontracts relating to the national defense and space contracts and related subcontracts. This is a renegotiation of a contractor's fiscal-year aggregate profits on these contracts; thus, it is completely different from price adjustments or redeterminations with respect to individual contracts.

(4) Petitions for redeterminations of excessive profits determined by the Renegotiation Board are filed with the U. S. Court of Claims. The Court of Claims has exclusive jurisdiction to determine the amount of excessive profits received or accrued by a contractor or subcontractor in these cases. The Court of Claims may determine that the amount of excessive profits is less than, equal to, or greater than the amount determined by the Board.

(5) The proceeding in the Court of Claims is not a proceeding to review the determination of the Renegotiation Board, but is a de novo proceeding. The decision of the Court of Claims is subject to review only by the Supreme Court upon certiorari in the manner provided in the United States Code for the review of other cases in the Court of Claims.

EFFECTIVE: 01/31/78

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46-2.2 Policy

(1) Investigations are requested by Assistant Attorney General in charge of the Civil Division.

(2) These requests, which contain detailed instructions as to what is desired, usually are accompanied by the renegotiation file and certified copies of all pertinent tax returns and a memorandum entitled, "General Instructions to the Auditor," which are forwarded to assist the Agent in the accounting investigation.

EFFECTIVE: 01/31/78

46-2.3 Investigative Procedure

(1) These investigations are of a civil nature resulting from actions filed by contractors against the U. S. Government in the Court of Claims. These suits pertain to instances where unilateral determination has been made by Government as to the amount of excessive profits realized by the contractor under renegotiation.

(2) In usual cases, all negotiations between plaintiff and Renegotiation Board are based on unverified accounting submissions supplied by plaintiff. It is imperative that a thorough audit be made, and all accounting data be verified or reasons given as to why it could not be verified.

EFFECTIVE: 01/31/78

46-2.3.1 Renegotiable v. Nonrenegotiable Sales

(1) Government is primarily concerned with profits made on plaintiff's renegotiable business. Unless total sales are broken down between renegotiable and nonrenegotiable sales, no determination can be made as to amount of excessive profits earned by plaintiff for year under review. Experience has indicated it is often difficult to classify some portion of plaintiff's sales; therefore, investigating Agent must make some decision in this respect. Various methods of arriving at this decision can be suggested and a few are set out below.

(a) What is opinion of company officials and

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accountants, including outside auditors who may have prepared plaintiff's renegotiation reports and forms?

(b) Were companies to whom the sales were made renegotiated and, if so, what percentage of renegotiable business was arrived at in these cases?

(c) If it is necessary to obtain this information from other sources, leads should be set forth for appropriate offices. Do purchase orders or other records relating to purchase of materials used in construction of items sold show this material was obtained for defense or space contracts and related subcontracts?

(2) Examination should be made of cost records to determine whether direct and indirect costs are properly attributed to renegotiable and nonrenegotiable sales. Basis for plaintiff's allocation of overhead and other indirect costs should be commented on. If any costs are improperly attributed, adjustments and reasons therefore should be clearly indicated. There is no objection to discussing the determination of these sales and related costs with company officials. Should company's stand as to this determination be unreasonable, Agent should point out his reason for believing the stand unreasonable but should not enter into any controversy with officials or their counsel. Agent should, at all times, be in position to support his contention when appropriate time arrives.

EFFECTIVE: 01/31/78

46-2.3.2 Foreign Contracts

The 1951 act provided Renegotiation Board may specifically enumerate contracts to be exempted from renegotiation. Any sales so exempted should be listed separately.

EFFECTIVE: 01/31/78

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46-2.3.3 Profit and Loss Statements

(1) The profit and loss statement should be comparative statement separated as to renegotiable and nonrenegotiable business, setting forth in adjoining columns the accounting data obtained from the plaintiff's submission, the defendant's audit and the differences. A breakdown should be shown as to total business, renegotiable business and nonrenegotiable business; for the plaintiff, the defendant, and the differences. All differences from one column to another should be explained. Where difference is appreciable, account where difference occurs should be analyzed to explain this difference. Comments should be made on accounting theories applied by plaintiff in reallocation of items of income and expense. It is only necessary to submit summary schedules. Auxiliary schedules will be contained in Agent's work papers. The report should emphasize discussion of discrepancies.

EFFECTIVE: 10/16/90

46-2.3.4 Prior Years

The memorandum from the Civil Division will request balance sheets and profit and loss statements for certain years prior to the year for which the plaintiff was renegotiated. Usually it is also requested that comparative statements for this prior period be prepared. The prior period serves as a guide in determining what percentage of profit the plaintiff should be allowed in the renegotiable year under review.

EFFECTIVE: 10/16/90

46-2.3.5 Accounting Working Papers

Copies of all accounting working papers and schedules prepared should be made and forwarded to FBIHQ as an enclosure to the accounting report for transmittal to Civil Division. When a closing report is received from Washington|Metropolitan|Field Office original working papers should then be forwarded to FBIHQ by cover LHM for transmittal to Civil Division for completion of their file.

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EFFECTIVE: 10/16/90

46-2.3.6 Office of Origin

FBIHQ will designate office of origin. The office of origin, upon completion of its investigation, is to submit a letter to FBIHQ with a copy to the Washington|Metropolitan|Field Office requesting that the Washington|Metropolitan|Field Office be designated office of origin and instructing the Washington|Metropolitan|Field Office to follow the|Claims Court|docket until a final decision has been rendered. Included in the letter should be a brief background of the case and the amount involved in the suit. It is not necessary to furnish Washington|Metropolitan|Field|Office|copies of all reports upon being designated origin inasmuch as these reports serve no useful purpose. All cases are to be followed by Washington|Metropolitan|Field Office until a decision is rendered by the court.

EFFECTIVE: 10/16/90

46-2.4 Privacy Act - Requirements

(1) When interviewing anyone in the above classification, in order to solicit information about|himself/herself| or|his/her|own activities, the interviewing Agent must follow the procedures described in MIOG, Part I, 190-5, subparagraphs (2) and (3).

(2) When interviewing an individual to solicit information concerning someone other than the interviewee (thereby classifying that individual as a source of information) the interviewing Agent must follow the procedure relating to promises of confidentiality as described in MIOG, Part I, 190-7.

EFFECTIVE: 10/16/90

46-2.5 Character - Renegotiation Act - Civil Suits



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EFFECTIVE: 10/16/90

46-3 FALSE CLAIMS - CIVIL SUITS

EFFECTIVE: 01/31/78

46-3.1 Statutes

Title 31, USC, Section 231; Title 41, USC, Section 119;  
Title 40, USC, Section 489

EFFECTIVE: 01/31/78

46-3.2 Section 231

EFFECTIVE: 01/31/78

46-3.2.1 Elements

(1) Person liable to suit must be civilian.

(2) Claim is present.

(3) Claim involved must be upon or against U. S. Government or any department or officer thereof. (In conspiracies to defraud U. S., there is no requirement that claim, payment, or allowance of which conspiracy seeks to achieve, be upon or against U.S.)

(4) Claim must be false, fraudulent or fictitious. (If claim itself is not fraudulent, enumerated documents used to aid in obtaining payment of claim against U. S. must contain fraudulent or fictitious statement or entry.)

(5) Person liable to suit had knowledge of false, fraudulent or fictitious character of claim or supporting documents.

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EFFECTIVE: 01/31/78

46-3.2.2 Liability of Persons Making False Claims, Section 231,  
States That

"Any person not in the military or naval forces of the United States, or in the militia called into or actually employed in the service of the United States, who shall make or cause to be made, or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent, or who, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, makes, uses, or causes to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, or who enters into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim, or who, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, who, with intent to defraud the United States or willfully to conceal such money or other property, delivers or causes to be delivered, to any other person having authority to receive the same, any amount of such money or other property less than that for which he received a certificate or took a receipt, and every person authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, who makes or delivers the same to any other person without a full knowledge of the truth of the facts stated therein, and with intent to defraud the United States and every person who knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, sailor, or other person called into or employed in the military or naval service any arms, equipments, ammunition, clothes, military stores, or other public property, such soldier, sailor, officer, or other person not having the lawful right to pledge or sell the same, shall forfeit and pay to the United States the sum of \$2,000, and, in addition, double the amount of damages which the United States may have sustained by reason of the doing or committing such act, together with the costs of suit; and such forfeiture and damages shall be sued for in the same suit."

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EFFECTIVE: 01/31/78

46-3.3 Section 119

EFFECTIVE: 01/31/78

46-3.3.1 Elements

- (1) Any person is liable to suit.
- (2) Claim is present.
- (3) Claim is presented, or caused to be presented, to any officer agent or employee of any U.S. Government agency.
- (4) Claim is false, fraudulent or fictitious.
- (5) Person or persons, for purpose of benefiting any person in connection with contract procurement, performance, negotiation, cancelation or termination have knowledge of false, fraudulent or fictitious statements or entry; or endeavor to cover up or conceal a material fact; or use or engage in any other fraudulent trick, scheme, or device.

EFFECTIVE: 01/31/78

46-3.3.2 Liability of Persons Making False Claims Under Contract Settlement Act. Section 119 States That

"Every person who makes or causes to be made, or presents or causes to be presented to any officer, agent, or employee of any Government agency any claim, bill, receipt, voucher, statement, account, certificate, affidavit, or deposition, knowing the same to be false, fraudulent, or fictitious or knowing the same to contain or to be based on any false, fraudulent, or fictitious statement or entry, or who shall cover up or conceal any material fact, or who shall use or engage in any other fraudulent trick, scheme, or device, for the purpose of securing or obtaining, or aiding to secure or obtain, for any person any benefit, payment, compensation allowance, loan, advance, or emolument from the United States or any Government agency

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in connection with the termination, cancelation, settlement, payment, negotiation, renegotiation, performance, procurement, or award of a contract with the United States or with any other person and every person who enters into an agreement, combination, or conspiracy so to do, (1) shall pay to the United States an amount equal to 25 per centum of any amount hereby sought to be wrongfully secured or obtained but not actually received, and (2) shall forfeit and refund any such benefit, payment, compensation, allowance, loan, advance, and emolument received as a result thereof and (3) shall in addition pay to the United States the sum of \$2,000 for each such act, and double the amount of any damage which the United States may have "sustained by reason thereof, together with the costs of suit."

EFFECTIVE: 01/31/78

46-3.4 Section 489

EFFECTIVE: 01/31/78

46-3.4.1 Elements

- (1) Any person is liable to suit.
- (2) Person has participated in fraudulent trick, scheme, or device.
- (3) The fraudulent trick, scheme, or device is for purpose of obtaining some payment, property or other benefit from U.S. Government or any U. S. Government agency in connection with procurement, transfer or disposition of U. S. Government property.

EFFECTIVE: 01/31/78

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46-3.4.2 Liability under Federal Property and Administrative  
Services Act of 1949. Section 489 States That,

"...Every person who shall use or engage in, or cause to be used or engaged in, or enter into an agreement, combination, or conspiracy to use or engage in or to cause to be used or engaged in, any fraudulent trick, scheme, or device, for the purpose of securing or obtaining, or aiding to secure or obtain, for any person any payment, property, or other benefits from the United States or any Federal agency in connection with the procurement, transfer, or disposition of property under this chapter, chapter 11B of Title 5, chapter 4 of Title 41, and chapter 11 of Title 44--

"(a) shall pay to the United States the sum of \$2,000 for each such act, and double the amount of any damage which the United States may have sustained by reason thereof, together with the cost of suit; or

"(b) shall, if the United States shall so elect, pay to the United States, as liquidated damages, a sum equal to twice the consideration agreed to be given by the United States or any Federal agency to such person or by such person to the United States or any Federal agency, as the case may be; or

"(c) shall, if the United States shall so elect, restore to the United States the money or property thus secured and obtained and the United States shall retain as liquidated damages any property, money or other consideration given to the United States or any Federal agency for such money or property, as the case may be..."

EFFECTIVE: 01/31/78

46-3.5 Suits by Individuals

(1) Statutory provisions (Title 31, USC, Section 232)

(a) Suits may be brought and carried on by any person at his own expense in name of U. S. but cannot be withdrawn or discontinued without written consent of judge and USA.

(b) Copy of complaint must be served upon USA for district in which suit is brought and copy of complaint with written disclosure of evidence and information material to prosecution of suit must be sent to Attorney General, Washington, D. C., via registered

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mail.

(c) U. S. has 60 days after service within which to enter appearance in suit. Person filing suit may carry it on if U. S. fails to enter suit during that period. If U. S. enters case within the 60-day period, suit will be carried on solely by U. S.

(d) In carrying on suit, U. S. is not bound by action taken by person bringing suit except that, in event U. S. does not carry on suit with due diligence within six months from date of its appearance or within time allowed by court, person bringing suit may carry it on.

(e) Court shall have no jurisdiction to proceed with suit by person if suit was based upon information or evidence in possession of agency, officer, or employee of U. S. at time suit was brought.

(f) Court may award person bringing suit, if suit is carried on by U. S., fair and reasonable compensation not to exceed 10% of proceeds of suit or settlement.

(g) Court may award person bringing suit and prosecuting it to final judgement or settlement a fair and reasonable amount not in excess of one fourth of proceeds of suit or settlement in addition to reasonable expenses incurred and court costs.

EFFECTIVE: 01/31/78

46-3.6 Handling of Complaints

(1) From sources other than FBI to effect that private individual has filed a civil suit

(a) Check field office records to determine whether there is or has been criminal investigation.

(b) Furnish FBIHQ with pertinent facts in court action and results of search of indices.

(c) If no prior investigation has been undertaken, contact individual filing suit and obtain all evidence in his possession regarding alleged fraud. Forward information to FBIHQ and take no further action unless specifically authorized by FBIHQ.

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(2) Departmental letter transmitted to field office by FBIHQ. Obtain facts with regard to claim and nature of fraud immediately since Department has limited time in which to consider whether U. S. Government will become party to the suit.

EFFECTIVE: 01/31/78

46-3.7 Policy

Case in which criminal investigation has been undertaken or completed. No action should be taken regarding civil phases of case unless one of two following actions occurs:

(1) Receipt of FBIHQ authority based upon written letter from Civil Division of Department usually containing outline of alleged false claim, statute under which proceeding, facts available, and specific information desired.

(2) Receipt of request for investigation from USA based upon instructions from Civil Division. In this instance FBIHQ should be immediately notified upon receipt of request and communication should state that investigation will proceed UACB.

(3) Receipt of request for investigation from USA without instructions from Civil Division. USA has authority on his/her own initiative to handle civil fraud aspect of following:

(a) Claims arising under Dependents Assistance Act of 1950

(b) Claims against veterans arising out of educational provisions of Servicemen's Readjustment Act but excluding educational institutions

(c) Claims against applicants for Department of Veterans Affairs hospitalization, dental care, medical care, and domiciliary care

(d) Claims against applicants for unemployment and self-employment benefits under Servicemen's Readjustment Act

(e) Claims against applicants for Department of Veterans Affairs pension and disability compensation

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(4) In these instances FBIHQ should be immediately notified upon receipt of request and communication should state that investigation will proceed UACB.

(5) Case in which investigation is requested by Civil Division and it is found that no previous complaint of a criminal nature has been received relating to activity to be investigated in civil action. Investigation should have as purpose the development of both civil and criminal phases. FBIHQ will transmit copies of reports to both Criminal Division and Civil Division of Department.

EFFECTIVE: 10/16/90

46-3.8 Investigative Procedure

(1) Essential data to be obtained

(a) Proof of fraud involved

(b) Aggregate amount of fraud which can be included  
in civil suit

(c) Proof of damages, if any, suffered by U. S.  
Government

(d) Itemization of individual claims involved

(e) Pertinent details regarding contracts and  
contract specifications including type of contract involved

(2) Handling of original statement, exhibits, and evidence. Do not destroy any original investigation of sabotage and fraud against the Government cases, even though statute of limitations has appeared to run under false claims statute, without presenting such matters to FBIHQ for referral to the Civil Division.

(3) Maintain case in pending status to report results of civil suit even though all requested investigation has been conducted.

EFFECTIVE: 10/16/90



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46-3.9 Statute of Limitations

(1) False Claims statute (Title 31, USC, Section 235) - suit must be commenced within six years after commission of the act.

(2) Contract Settlement Act (Title 41, USC, Section 119) - no limitation

(3) Federal Property and Administrative Services Act of 1949 (Title 40, USC, Section 489) - U. S. Court of Appeals, Sixth Circuit, held 3-22-54, in U. S. v. Witherspoon (211 F. (2nd) 858) that suit must be commenced within five years from date when claim first accrued, pursuant to Title 28, USC, Section 2462. Court ruled that exception exists in regard to any suit pertaining to offenses involving fraud or attempted fraud against U.S. during war, in which case statute of limitations is suspended until three years after termination of hostilities as proclaimed by President or Congress (Title 18, USC, Section 3287).

(4) U. S. Court of Appeals, Fifth Circuit, had previously held in U. S. v. Weaver (207 F. (2nd) 796) that there was no applicable statute of limitations under section 26 (b) of the Surplus Property Act (Title 50, USC, Section 1635 (b) which was repealed and re-enacted as section 209 (b) of the Federal Property and Administrative Services Act of 1949 (Title 40, USC, Section 489).

(5) The Civil Division has advised Bureau that policy of the Department will be to press the issue as to applicability of five-year statute before other circuit courts and to urge soundness of decision in U. S. v. Weaver.

(6) Common law action - no limitation on action by U. S. for actual damages arising out of fraud against it.

EFFECTIVE: 10/16/90

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46-3.10 Privacy Act - Requirements

(1) When interviewing anyone in the above classification, in order to solicit information about himself/herself or his/her own activities, the interviewing Agent must follow the procedures described in MIOG, Part I, 190-5, subparagraphs (2) and (3).

(2) When interviewing an individual to solicit information concerning someone other than the interviewee (thereby classifying that individual as a source of information) the interviewing Agent must follow the procedure relating to promises of confidentiality as described in MIOG, Part I, 190-7.

EFFECTIVE: 10/16/90

46-3.11 Character - False Claims - Civil Suits

EFFECTIVE: 10/16/90

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SECTION 47. IMPERSONATION AND RELATED STATUTES

47-1 STATUTES

Title 18, USC, Sections 912, 913, 915, and 916.

EFFECTIVE: 05/08/80

47-1.1 Section 912. Officer or Employee of the United States

"Whoever falsely assumes or pretends to be an officer or employee acting under the authority of the United States or any department, agency or officer thereof, and acts as such, or in such pretended character demands or obtains any money, paper, document, or thing of value, shall be fined not more than \$1,000 or imprisoned not more than three years, or both."

EFFECTIVE: 05/08/80

47-1.1.1 Elements

- (1) Pretends to be officer or employee of U.S. Government
- (2) Acts as such, or
- (3) Demands or obtains a thing of value

Either (2) or (3) coupled with (1) satisfies the statute.

EFFECTIVE: 05/08/80

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47-1.1.2 Policy

(1) So called "no violation" cases where element (1), the false impersonation, is present and the other elements are absent, there is no violation of this Statute. In such cases in which the false impersonation is that of an FBI Agent or a Department of Justice employee the FBI policy is that the impersonator should be appropriately admonished and cautioned to desist if he/she can be located with reasonable effort. In the absence of aggravated circumstances, no more than the basic inquiries to locate the subject should be pursued. If successfully located, a statement that the subject has been so admonished should be set forth in the investigative case file. This should also be done in actual violations in which prosecution is declined. If the false impersonation is that of another Government agency, no effort is made to admonish the impersonator unless he/she is immediately available.

(2) U.S. Government employee violators - Where the impersonator is already an employee of the U.S. Government and the violation is consummated by his/her misrepresenting his/her position, FBIHQ has no objection to the institution of an investigation without specific authority from FBIHQ unless the employee is highly placed. In any event, however, FBIHQ should be immediately advised by letter, airtel, or teletype, as the exigencies of the case may dictate, of the institution of such investigation and the identity of the employee involved.

(3) One file with one office of origin only on each impersonator - Due to the fact that impersonators are often repeat offenders, the FBI policy is to consolidate physically all files at FBIHQ dealing with one impersonator and designate one office as the office of origin having supervisory duties over all his/her current activities. Frequently, when an active impersonator starts across the country using various aliases, a number of offices, having no knowledge of his/her previous activities, open new case files carrying themselves as office of origin. When a field office establishes this impersonator to be identical with the subject of other cases with other offices of origin, FBIHQ should be affirmatively requested to designate the one office of origin and order the necessary file consolidations. It is observed this policy is an exception to the general rule concerning opening files in other violations.

(4) The Department follows these cases and accordingly a copy of the indictment returned or information filed is to be included as enclosure to report.

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(5) These cases should be presented to the USA at an early date to avoid unnecessary investigation.

EFFECTIVE: 05/08/80

47-1.1.3 Investigative Procedure

(1) Interviews with complainants or victims: Established basic investigative techniques should be used in the interviewing of witnesses and the collection of evidence. However, when an impersonation complaint is received, the first step should be to obtain immediately from the complainant or the person who actually heard the statements of impersonation a detailed and accurate account of what actually happened. It is well in most cases to obtain a brief signed statement from the victim. In addition, it should be immediately established as to whether or not the victim relied solely upon the representations of the impersonator in parting with something of value.

(2) Verification of non-Federal employment: It should be immediately verified that the alleged impersonator is not employed in the capacity he/she has alleged. If it should be determined the impersonator was recently employed by the Federal Government, it should be ascertained exactly when his/her compensation ceased, as it has been held that even though a Federal employee resigns and ceases active duty, he/she is considered a Federal employee until his/her compensation actually ceases.

EFFECTIVE: 05/08/80

47-1.2 Section 913. Impersonator Making Arrest or Search

"Whoever falsely represents himself to be an officer, agent, or employee of the United States, and in such assumed character arrests or detains any person or in any manner searches the person, buildings, or other property of any person, shall be fined not more than \$1,000 or imprisoned not more than three years, or both."

EFFECTIVE: 05/08/80

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47-1.2.1 Elements

(1) Falsely represent oneself to be an employee of the  
U.S. Government

(2) Do one of 5 things:

- (a) Arrest a person
- (b) Detain a person
- (c) Search a person
- (d) Search a person's property
- (e) Search a person's buildings

EFFECTIVE: 10/16/90

47-1.2.2 Policy

These cases should be presented to the U. S. Attorney at  
an early date to avoid unnecessary investigation.

EFFECTIVE: 10/16/90

47-1.2.3 Investigative Procedure

A detailed and accurate account of what actually happened  
should be obtained immediately from the complainant so that a verbatim  
statement can be executed setting forth the exact words of the  
impersonator.

EFFECTIVE: 10/16/90

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47-1.3 Section 915. Foreign Diplomats, Consuls, or Officers

"Whoever, with intent to defraud within the United States, falsely assumes or pretends to be a diplomatic, consular or other official of a foreign government duly accredited as such to the United States and acts as such, or in such pretended character, demands or obtains or attempts to obtain any money, paper, document, or other thing of value, shall be fined not more than \$5,000 or imprisoned not more than ten years, or both."

EFFECTIVE: 10/16/90

47-1.3.1 Elements

- (1) Intent to defraud or deceive
- (2) The impersonation of a diplomatic or consular or other official of a foreign government duly accredited as such to the U. S. Government.
- (3) Taking upon oneself to act in the role of the impersonator, demanding a thing of value, or obtaining a thing of value.

EFFECTIVE: 10/16/90

47-1.3.2 Policy

The false personation of any foreign official notified to the State Department will fulfill the requirements necessary to establish a violation of this section. The Department has advised that the Department of State does not consider delegates to the United Nations as being "duly accredited...to the Government of the United States," as officials of a foreign government and consequently the mere impersonation of a delegate of a foreign government to the United Nations would not be a violation of this section. Beyond the foregoing, each case should be presented to the USA for an opinion as to whether the official named is capable of being impersonated.

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EFFECTIVE: 10/16/90

47-1.3.3 Investigative Procedure

As additional investigative procedure to those previously mentioned under Title 18, USC, Section 912, it is pointed out that to determine the nonforeign employment of an impersonator under this section it is necessary in every instance to request the Washington|Metropolitan|Field Office to obtain the desired evidence from the State Department and the representatives of the foreign government involved.

EFFECTIVE: 10/16/90

47-1.4 Section 916. 4-H Club Members or Agents

"Whoever, falsely and with intent to defraud, holds himself out as or represents or pretends himself to be a member of, associated with, or an agent or representative for the 4-H clubs, an organization established by the Extension Service of the United States Department of Agriculture and the land grant colleges, shall be fined not more than \$300 or imprisoned not more than six months, or both."

EFFECTIVE: 01/31/78

47-1.4.1 Elements

- (1) Intent to defraud or deceive
- (2) Impersonate or represent oneself to be a member of, associated with, or agent or representative for the 4-H Club

EFFECTIVE: 01/31/78



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47-1.4.2 Policy

These cases should be presented to the U. S. Attorney at an early date to avoid unnecessary investigation.

EFFECTIVE: 01/31/78

47-1.4.3 Investigative Procedure

The procedures set out for Title 18, USC, Section 912, are applicable to this section.

EFFECTIVE: 01/31/78

47-2 VENUE

Impersonation violations are prosecutable only in the Federal judicial district where the offense occurred. Where the impersonation is by telephone the venue is in the district of the hearer.

EFFECTIVE: 01/31/78

47-3 CHARACTER - IMPERSONATION

EFFECTIVE: 01/31/78

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SECTION 48. POSTAL VIOLATIONS (EXCEPT MAIL FRAUD)

48-1 POSTAL VIOLATIONS (EXCEPT MAIL FRAUD)

Inquiries concerning the postal service and complaints pertaining to the theft of mail or postal matters are forwarded by FBIHQ to the Postmaster General, Washington, D. C. Similar information reported to field offices should be transmitted to the nearest postal inspector in charge whose address can be obtained from any postmaster.

EFFECTIVE: 01/31/78

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SECTION 49. BANKRUPTCY FRAUD

49-1 STATUTES (CRIMINAL)

Title 18, USC, Sections 151-155

EFFECTIVE: 08/23/88

49-1.1 Section 151. Definitions

"Term debtor means an individual, partnership, corporation, or municipality concerning which a bankruptcy petition has been filed under Title 11, of the USC (commonly referred to as the Bankruptcy Code). Term bankruptcy relates to any proceeding, arrangement, or plan pursuant to Title 11, including Chapter 7 (liquidation), Chapter 11 (reorganization), Chapter 12 (family farmers), and Chapter 13 (wage earners). Refer to Title 11, USC, Section 101 for additional definitions."

EFFECTIVE: 08/23/88

49-1.2 Section 152. Concealment of Assets, False Oaths and Claims; Bribery

"Whoever knowingly and fraudulently conceals from a custodian, trustee, marshal, or other officer of the court charged with the control or custody of property, or from creditors in any bankruptcy proceeding, any property belonging to the estate of a debtor; or

"Whoever knowingly and fraudulently makes a false oath or account in or in relation to any bankruptcy proceeding; or

"Whoever knowingly and fraudulently makes a false declaration, certificate, verification, or statement under penalty of perjury as permitted under Section 1746, Title 28, or in relation to any case under Title 11; or

"Whoever knowingly and fraudulently presents any false

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claim for proof against the estate or a debtor, or uses any such claim in any bankruptcy proceeding, personally, or by agent, proxy or attorney, or as agent, proxy, or attorney; or

"Whoever knowingly and fraudulently receives any material amount of property from a debtor after the filing of a bankruptcy proceeding, with intent to defeat the bankruptcy law; or

"Whoever knowingly and fraudulently gives, offers, receives or attempts to obtain any money or property, remuneration, compensation, reward, advantage, or promise thereof, for acting, or forbearing to act in any bankruptcy proceeding; or

"Whoever, either individually or as an agent or officer of any person or corporation, in contemplation of a bankruptcy proceeding by or against him/her or any other person or corporation, or with intent to defeat the bankruptcy law, knowingly and fraudulently transfers or conceals any of his/her property or the property of such other person or corporation; or

"Whoever, after the filing of a bankruptcy proceeding or in contemplation thereof, knowingly and fraudulently conceals, destroys, mutilates, falsifies, or makes a false entry in any recorded information, including books, documents, records, and papers relating to the property or financial affairs of a debtor; or

"Whoever, after the filing of a bankruptcy proceeding, knowingly and fraudulently withholds from a custodian, trustee, marshal, or other officer of the court entitled to its possession, any recorded information including books, documents, records, and papers relating to the property or financial affairs of a debtor,

"Shall be fined not more than \$5,000 or imprisoned not more than five years, or both."

EFFECTIVE: 08/23/88

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49-1.2.1 Elements

(1) Concealment of assets (Section 152) -

(a) Estate in bankruptcy existed.

(b) Duly qualified officer of court, charged with control or custody of property of such estate, appointed. (In composition cases, concealment may be from creditors if no officer of court appointed.)

(c) Property of such estate knowingly and fraudulently concealed from officer. (Proof of first two elements contained in official records of clerk of court, U.S. Trustee, and/or Interim Trustee. Third element may be susceptible to direct proof of physical concealment of property, in which event the evidence necessary is that which will establish the property is that of bankrupt estate, that it was not delivered to the officer from whom the concealment is charged, and that it was concealed by individual charged. In other instances, concealment may be established by circumstantial evidence consisting primarily of testimony of qualified accountant, which is designed to show from records that bankrupt should have had, at bankruptcy, certain amount of merchandise or other property, that he/she delivered to officials of the bankruptcy court a lesser amount, and that shortage not satisfactorily explained.)

(2) Concealment or transfer of assets in contemplation of bankruptcy (Section 152) -

(a) Accused is an individual or an officer or agent of person or corporation.

(b) Accused contemplated bankruptcy proceedings would be instituted as to himself/herself or such person or corporation or intended to defeat the operation of the act.

(c) Accused knowingly and fraudulently concealed or transferred any property of debtor.

(3) Destruction of records (Section 152) -

(a) Petition filed or accused contemplated bankruptcy proceeding would be instituted.

(b) Accused knowingly and fraudulently concealed, destroyed, mutilated, falsified, or made a false entry in any recorded

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information including books, documents, records, and papers relating to the property or financial affairs of a debtor.

EFFECTIVE: 08/23/88

49-1.3 Section 153. Embezzlement by a Trustee or Officer

"Whoever knowingly and fraudulently appropriates to his/her own use, embezzles, spends, or transfers any property or secretes or destroys any document belonging to the estate of a debtor which came into his/her charge as trustee, custodian, marshal, or other officer of the court, shall be fined not more than \$5,000 or imprisoned not more than five years, or both."

EFFECTIVE: 08/23/88

49-1.4 Section 154. Adverse Interest and Conduct of Officers

"Whoever, being a custodian, trustee, marshal, or other officer of the court, knowingly purchases, directly or indirectly, any property of the estate of which he/she is such officer in a bankruptcy proceeding; or

"Whoever, being such officer, knowingly refuses to permit a reasonable opportunity for the inspection of the documents and accounts relating to the affairs of estates in his/her charge by parties in interest when directed by the court to do so -

"Shall be fined not more than \$500, and shall forfeit his/her office, which shall thereupon become vacant."

EFFECTIVE: 08/23/88

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49-1.5 Section 155. Fee Agreements in Cases under Title 11 and Receiverships

"Whoever, being a party in interest, whether as a debtor, creditor, receiver, trustee, or representative of any of them, or attorney for any such party in interest, in any receivership or bankruptcy proceeding in any United States court or under its supervision, knowingly and fraudulently enters into any agreement, express or implied, with another such party in interest or attorney for another such party in interest, for the purpose of fixing the fees or any compensation to be paid to any party in interest or to any attorney for any party in interest for services rendered in connection therewith, from the assets of the estate,

"Shall be fined not more than \$5,000 or imprisoned not more than one year, or both."

EFFECTIVE: 08/23/88

49-2 BANKRUPTCY PROCEDURES

(1) Constitutional provisions - Article 1, Section 8, of Constitution gave Congress the exclusive power to establish uniform bankruptcy laws. The National Bankruptcy Act was passed in 1898 and amended in 1938. The Bankruptcy Reform Act of 1978 superseded prior bankruptcy laws and enacted Title 11, USC, as the bankruptcy code. The Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 revised Title 11, USC, Section 101, and expanded the United States Trustees Program (USTP). The Act (a) establishes 52 additional bankruptcy judgeships throughout the United States; (b) expands on a nationwide basis, the USTP, which was established as a pilot project in 1978 to test a new method of bankruptcy administration in 18 Federal judicial districts; (c) provides for funding of the operations of the USTP through fees paid by users of the bankruptcy system; (d) establishes Chapter 12 of the Bankruptcy Code to provide bankruptcy relief for "family farmers"; and (e) authorizes, on a two-year pilot basis, the establishment of an Electronic Case Management Demonstration Project in three Federal judicial districts.

(2) Purpose of Title 11, USC -

Chapter 1 - general provisions, including definitions and basic concepts.

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Chapter 3 - prescribes the procedure for bankruptcy case administration.

Chapter 5 - general provisions regarding creditors, the debtor, and the estate.

Chapter 7 - procedures for liquidations and distribution of property.

Chapter 11 - procedures for reorganization, whereby the debtor restructures debt without being forced to liquidate the estate and may continue operation of his/her business as a "debtor-in-possession."

Chapter 12 - procedures for bankruptcy relief for "family farmers."

Chapter 13 - procedures for bankruptcy relief for "wage earners," which emphasize problems peculiar to consumer credit for individuals.

(3) Civil provisions of the bankruptcy laws -

(a) United States Bankruptcy Courts are adjuncts of U.S. District Courts. The principal officers are the "United States Bankruptcy Judges," appointed for 14 years by the President to adjudicate matters in his/her bankruptcy district; and "United States Trustees," appointed by the Attorney General to handle day-to-day administration of bankruptcy cases within his/her region. The United States Trustees also have the responsibility for appointing "case trustees" (to be selected from panels of qualified and approved individuals) to assist the United States Trustees in the performance of their responsibilities. The Executive Office for United States Trustees, Department of Justice, Washington, D.C., oversees the administration of the United States Trustee Program.

(b) Attorneys, accountants, appraisers, auctioneers, or other professional persons may be appointed on a showing of necessity to represent or assist the United States Trustee or case trustee.

(c) Proceedings are begun by filing of a petition either by the debtor (voluntary), or by creditors (involuntary). After filing of a voluntary petition, the court automatically issues an order for relief. This means the debtor is under the jurisdiction

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of the court for purposes of adjudication of his/her estate. In involuntary cases, a petition must be filed by three creditors with claims aggregating \$5,000, except that one creditor claiming \$5,000 is sufficient where the total number of creditors is less than 12. If the petition is timely controverted, the court, after trial, shall order relief against the debtor in an involuntary case if:

1. The debtor is generally not paying his/her debts when due, or

2. Within 120 days before the date of the filing of the petition, a custodian (other than a trustee, receiver, or agent appointed by the court to collect for a lien against the debtor's property) was appointed and took possession of less than all of the debtor's property. If the petition is not timely controverted, the court shall order relief against the debtor.

(d) The commencement of a bankruptcy case creates an estate and that estate which is comprised of all the debtor's property, including all legal and equitable interest in property.

(e) Until an order for relief in a bankruptcy case, and except to the extent that the court orders otherwise, any business of the debtor may continue to operate, and the debtor may continue to use, acquire, or dispose of property as if an involuntary case concerning the debtor had not been commenced.

(f) An involuntary case may only be filed under Chapter 7 (liquidation) or Chapter 11 (reorganization) of Title 11 and only by a person (except a farmer), a not-for-profit corporation, or a commercial corporation that may be a debtor under the chapter under which such case is commenced. Involuntary cases are not permitted for municipalities.

(g) The court may, at any time after the filing of an involuntary case under Chapter 7, but before an order for relief is issued, appoint an interim trustee to take possession of the debtor's property, if deemed necessary, to prevent loss to the estate or to preserve the property of the estate. The court may make such an order only upon the request of a party in interest after notice to the debtor and a proper hearing. The debtor may regain possession of such property, before an order for relief by posting a sufficient bond as required by the court.

(h) Involuntary cases may not be filed against foreign banks that are not engaged in business in the United States

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but that have assets located here, unless a foreign proceeding against the bank is pending under foreign law.

(i) The court may award costs, reasonable attorneys' fees, or damages if an involuntary bankruptcy petition is dismissed other than by consent of all creditors and the debtor. In addition, if a petitioning creditor filed the petition in bad faith, the court may award the debtor any damages proximately caused by the filing of the petition.

(j) Compositions, extensions, reorganization, and adjustment plans - Sections of the Act provide that private persons, farmers, railroads, or any corporation, provided for in Chapter 11 of the Act, municipalities, or other political subdivisions of a state may file a petition or answer at any time during a voluntary or involuntary case saying they desire to effect a composition, an extension of time in which to pay obligations, a plan of reorganization, or a plan of readjustment of their liabilities. Purpose of extension provisions is to permit debtors, in the absence of fraud, to readjust their financial structures, pay off their obligations and eliminate their debts. With some variations, the various sections relating to the above classes of debtors provide jurisdiction and powers of court. The title, powers, and duties of officers are same as if a voluntary petition had been filed and order for relief entered on day when the debtor's petition or answer had been filed. The various sections relating to the above debtors provide that United States Bankruptcy Courts exercise original jurisdiction in proceedings for relief of debtors.

(k) The appointment of a trustee is mandatory for a public company, which is defined as a company that has \$5 million in liabilities, excluding tax and trade obligations, and 1,000 security holders. The appointment of a trustee is discretionary in nonpublic company cases, considering the interests of the estate and its security holders.

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49-3 DEPARTMENTAL INSTRUCTIONS AND OPINIONS

(1) Search Warrants - Search warrant to search for concealed property in a bankruptcy case may be issued under Title 28, USC, Section 1651, after appointment and qualification of trustee and property seized under such warrant may be introduced in evidence in a criminal proceeding.

(2) Accounting evidence - Accounting testimony only showing a merchandise shortage on basis of the debtor's books and records is sufficient to make a prima facie case under either of the following circumstances:

(a) If books indicate quantities of goods purchased and sold, thereby allowing determination of quantities of goods that should be on hand at time of bankruptcy.

(b) If books indicate cost of merchandise purchased and sold, thereby making it possible to make a deduction as to how much merchandise, measured in cost, should have been on hand at the time of the bankruptcy. (If the books disclose only the amount received from sales, evidence would not be sufficient, on the theory that it is impossible to determine how much merchandise was actually sold; however, if testimony of accountant is properly supported reflecting sales were made on an average of a certain percentage above cost, such evidence would be sufficient because it indicates merchandise not sold below cost and, therefore, there must be a shortage. If accountant testified to merchandise shortage computed after deducting the markup on sales admitted to by debtor or testified to by an employee, such evidence would support a prima facie case of concealment of assets.)

(3) Theft of property of a bankrupt estate - Where property belonging to estate of debtor is stolen from custody of an officer of court, charged with the control or custody of property, and retained by the thief, thief may be prosecuted for concealment, if shown accused had some knowledge of the bankruptcy.

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49-4 IMMUNITY OF DEBTOR'S TESTIMONY

Prior to 1978, the debtor was immune from prosecution concerning the subject of his/her testimony at the first meeting of creditors and at one subsequent specified hearing. This immunity extended to any evidence derived from his/her testimony and could not be used for lead purposes. Current law, however, prescribes that a debtor is allowed to invoke his/her Fifth Amendment right concerning self-incrimination at hearings without resulting in a denial of a discharge. If the debtor, however, waives invocation of this right, he/she is not immune from prosecution concerning the testimony and the testimony may also be used for lead purposes. United States Trustees, who preside over all hearings, are not authorized to grant immunity, and any request for immunity must be initiated by the Attorney General or by the appropriate United States Attorney through the appropriate U.S. District Court.

EFFECTIVE: 08/23/88

49-5 POLICY

(1) When instituting investigations of violations by officers of the Bankruptcy Court, the Economic Crimes Unit (ECU), White-Collar Crimes Section, FBIHQ, should be promptly notified by airtel or more expeditious means if circumstances dictate. The LHM should set forth allegations and fact that USA has been notified (where matter was not referred by USA's Office) and that he/she is aware of need to notify presiding Federal Judge that an investigation of a court official is in progress.

(2) Circulations to creditors or customers - No circular letters to be mailed to debtor's customers or creditors without prior submission to the ECU for authorization.

(3) Investigations relating to solicitation of proxies, etc., during a railroad reorganization or receivership:

(a) Interstate Commerce Commission may investigate to determine whether any person has violated or is about to violate provisions of this subsection and may aid in its enforcement.

(b) Promptly refer to the ECU complaints relating to alleged violations of this provision.

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(4) Accounting investigations - Responsibility of SAC to assign to accounting phases of bankruptcy cases those Agents who are qualified to handle such assignments.

(5) Investigations at request of USA pertaining to his/her opposing debtor's discharge:

(a) Statute provides USA, when requested by court, shall examine into debtor's conduct and if he/she finds probable cause to do so, oppose discharge if public interest warrants it.

(b) Upon request of USA, Bureau will conduct investigations of this type; however, immediately notify the ECU of any such request giving pertinent circumstances of case.

(6) When initial complaint made by officer of court and USA declines prosecution, case may be closed. Communication indicating declination should contain statement that USA was specifically informed that complaint was made by officer of court.

EFFECTIVE: 11/20/90

49-6

INVESTIGATIVE PROCEDURE

(1) Complaints -

(a) Investigations based on information received from USA, United States Trustees, Bankruptcy Judge, creditors, and attorneys for trustees, and interested parties. Refer to MIOG, Part I, Section 58, for policy regarding allegations of bribery and/or conflict of interest involving court orders.

(b) Maintain contact with all persons in position to have information as to violations.

(c) Responsibility for instituting investigations rests with SAC.

(d) USA must be consulted at beginning of investigation for opinion as to whether facts complained of, if true, constitute prosecutable violation(s).

(2) Initial steps -

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(a) Obtain from complainant all information relative to alleged violation.

(b) Specific facts indicating exact nature of violation should be sought as it is not desirable to engage in general investigation in nature of a "fishing expedition" on general allegations of fraud.

(c) Bankruptcy records should be examined and necessary preliminary facts obtained to establish jurisdiction.

(d) Preliminary survey should not interfere with prompt investigation of leads requiring immediate attention, such as direct information as to the location of concealed assets.

(3) Planning the investigation -

(a) From preliminary information obtained, it is possible to plan subsequent course of action to be followed.

(b) Determine as soon as possible in concealment case whether facts indicate simple physical concealment by debtor of identified articles or a scheme formulated in anticipation of bankruptcy with or without connivance of others.

(c) Any association of debtor with individuals known to have been connected with other bankruptcies should be given attention.

(d) Determine whether it will be possible to establish violation by direct evidence or whether expert testimony of accountants will be necessary and whether it appears likely evidence can be developed as to other alleged violations; i.e., destruction of records, false claims, mail fraud, fraud by wire, etc.

(e) Where indications of more than one violation present, it is desirable that the investigation be directed toward establishment of those most susceptible to proof.

(4) Types of evidence and source of leads -

(a) Official bankruptcy records are sources of necessary and useful information; should be examined at beginning of investigation; will be found with the Bankruptcy Court clerk, U.S. Trustee, case trustee, or attorney for trustee.

[REDACTED]

b2/b7E

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[REDACTED]

Transcripts of testimony of debtor or person designated to testify on behalf of corporate bankrupt to be reviewed.  
Transcripts of other witnesses to be reviewed.

(b) A petition may be filed by trustee for a summary order directing debtor to turn over assets alleged to be in his/her possession or for which he/she has failed to account. Evidence in support of such petition is valuable and should be examined. Should a compliance with turnover order be noted, it would indicate concealment of assets and in such instances a comprehensive investigation should be conducted, particularly to determine source of funds used in complying with turnover order. One of bases for an objection to discharge which may be filed by creditors is that bankrupt has violated one of criminal provisions of the Act. Issue thus raised is one with which Bureau's investigation is concerned and evidence presented at hearing upon the specification may be admissible in a criminal prosecution.

(c) In some instances it is possible to prove existence of unaccounted-for assets by testimony of an accountant who has made examination of bankrupt's books and records. Such unaccounted-for assets are ordinarily figured in merchandise, but may also be computed as to cash, equipment, accounts or notes receivable, as well as presentation of an abnormal shrinkage in assets.

[REDACTED]

b2/b7E

[REDACTED] Books of bankrupt, if complete, will supply all the necessary figures. Where books are not complete, it may be necessary, in order to determine beginning inventory, to resort to financial statements issued by debtor. In addition, data regarding beginning inventory may be obtained by interviewing debtor and his/her employees and examination of work papers of debtor's accountant. To determine purchases of debtor in instances in which records of the debtor not complete, it may be necessary to circularize creditors upon obtaining FBIHQ authority. Copies of pertinent invoices and financial records deemed pertinent may be requested in circular letter.

(d) [REDACTED]

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[REDACTED]

(e) [REDACTED]

[REDACTED]

b2/b7E

(f) Facts in every bankruptcy investigation are necessarily unique, and it must lie in discretion of Agent conducting the investigation, counselled by SAC, to determine evidence which can and should be developed, and to shape course of inquiry along logical lines.

(g) |Deleted|

(5) Recovery of concealed assets -

(a) Recovery of concealed assets in possession of debtor or associates is of great value in establishing violation.

(b) When concealed assets are discovered, follow procedures pertaining to searches and seizures.

(c) Persons taking inventory of recovered merchandise should properly indicate, on each article if necessary, their identifying mark, or take appropriate notes for assistance in their possible testimony.

(6) Scam bankruptcy or "Bustout"

(a) "Bustout" is the slang term used to describe a scheme employed in establishing or acquiring a business, buying large quantities of merchandise on credit and thereafter disposing of the merchandise without paying the creditors.

(b) Most of these operations are reported by informants and industry sources before a voluntary or involuntary bankruptcy petition is filed. Investigations are to be instituted



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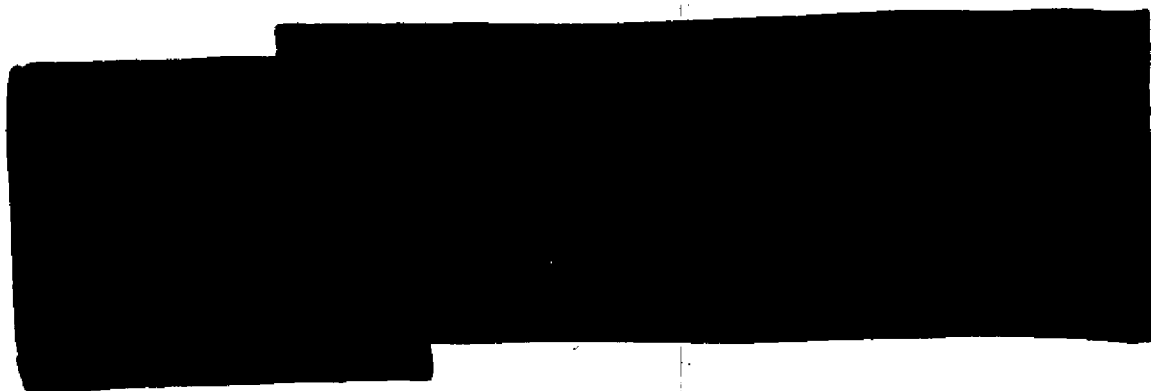
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promptly and discreetly to develop evidence before the operator has terminated his/her scheme and destroyed any records evidence which may exist. Other violations which may be present in a "bustout" include fraud by wire (Title 18, USC, Section 1343), mail fraud (Title 18, USC, Section 1341), and interstate transportation of stolen property (Title 18, USC, Section 2314).

(c) The National Association of Credit Management (NACM) is an organization of over 45,000 representatives of manufacturers, distributors, service companies, and financial institutions which extend credit to the nation's businesses. NACM is committed to prevention and detection of business credit frauds assisting law enforcement agencies in obtaining successful prosecutions of individuals involved in these frauds. The NACM Loss Prevention Department maintains a computerized data base, with information dating to 1963, relating to actual and suspected business credit frauds, including names, aliases, background information, addresses, prior businesses, and modus operandi of individuals involved. This information is available to law enforcement agencies upon request. NACM members additionally alert the Loss Prevention Department as suspicious credit matters come to the members' attention, such as unsolicited or unusual merchandise orders, fraudulent credit references, nonpayment of credit invoices, etc. The NACM Loss Prevention Department is located at 401 Wythe Street, Suite 2A, Alexandria, Virginia 22314, telephone (703) 684-3436.

(7) Use of charts or graphs in court -



b2/b7E

EFFECTIVE: 03/23/92

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49-7 REPORTING RULES

(1) Bankruptcy cases must be presented to the USA and cannot be closed administratively.

(2) Upon initiating a bankruptcy investigation (except investigations initiated on receipt of a citizen's complaint alleging a loss of less than \$50,000), submit an airtel to the Economic Crimes Unit (ECU), White-Collar Crimes Section, FBIHQ, with an accompanying LHM setting forth a summary of allegations and, if known, name and physical description of any subject(s) developed.

(3) Two copies of prosecutive report, when required, are to be submitted to ECU, one of which is disseminated by the ECU to the Criminal Division, Department of Justice. A copy of the report should be furnished to the USA.

(4) The ECU must be advised of the final disposition of each case. At the conclusion of the case, an LHM should be submitted containing the ultimate prosecutive disposition.

(5) Where no prosecutive reports are necessary, such as in an immediate declination or when USA declines prior to required submission of a prosecutive report, an LHM containing a synopsis of the case, identity of the subject(s), and prosecutive disposition may be submitted in lieu of a report.

EFFECTIVE: 11/20/90

49-8 STATUTE OF LIMITATIONS

(1) Five years from date of offense except in concealment of assets.

(2) Concealment cases - is continuing offense -  
Limitation begins to run on date discharge granted or denied debtor.  
(Title 18, USC, Section 3284)

EFFECTIVE: 11/20/90

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49-9 VENUE

- (1) Lies in district in which offense committed
- (2) In concealment cases - in district in which petition filed or in district in which ancillary proceeding instituted if assets concealed from such ancillary trustee

EFFECTIVE: 11/20/90

49-10 PENALTY - (MAXIMUM)

- (1) Section 152 - \$5,000 or 5 years, or both
- (2) Section 153 - \$5,000 or 5 years, or both
- (3) Section 154 - \$500 and forfeiture of office
- (4) Section 155 - \$5,000 or 1 year, or both

EFFECTIVE: 11/20/90

49-11 CHARACTER - BANKRUPTCY FRAUD

EFFECTIVE: 11/20/90

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SECTION 50. INVOLUNTARY SERVITUDE AND SLAVERY

50-1 STATUTES

U.S. Constitution, 13th amendment; Title 18, USC, Sections 1581-1588, 241 and 242.

EFFECTIVE: 02/16/89

50-1.1 Constitution of the United States, 13th Amendment

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. Congress shall have power to enforce this article by appropriate legislation.

EFFECTIVE: 02/16/89

50-1.2 Section 1581. Peonage; Obstructing Enforcement

(1) Whoever holds or returns any person to a condition of peonage, or arrests any person with the intent of placing him/her in or returning him/her to a condition of peonage, or

(2) Whoever obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

EFFECTIVE: 02/16/89

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50-1.3 Section 1583. Enticement Into Slavery

(1) Whoever kidnaps or carries away any other person, with the intent that such other person be sold into involuntary servitude, or held as a slave; or

(2) Whoever entices, persuades or induces any other person to go on board any vessel or to any other place with the intent that he/she may be made or held as a slave, or sent out of the country to be so made or held; shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

EFFECTIVE: 02/16/89

50-1.4 Section 1584. Sale Into Involuntary Servitude

Whoever knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude, any other person for any term, or brings within the United States any person so held, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

EFFECTIVE: 02/16/89

50-1.5 Section 241. Conspiracy Against Rights

(1) If two or more persons conspire to injure, oppress, threaten, or intimidate any inhabitant of any State, Territory or District in the free exercise or enjoyment of any right or privilege secured to him/her by the Constitution or laws of the United States, or because of his/her having so exercised the same; or

(2) If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his/her free exercise or enjoyment of any right or privilege so secured;

(3) They shall be fined not more than \$10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

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(4) In the event a victim is not a U.S. citizen, then a possible violation of Title 18, USC, Section 371, Conspiracy, is to be considered. Policy and procedure relating to this statute is contained in Part I, Section 62-16 through 62-16.8 of this manual.

EFFECTIVE: 02/16/89

50-1.6 Section 242. Deprivation of Rights Under Color of Law

Whoever, under color of any law, statute, ordinance regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his/her color, or race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and if bodily injury results, fined and/or imprisoned not more than 10 years. If death results, shall be subject to imprisonment for any term of years or for life.

EFFECTIVE: 02/16/89

50-1.7 Other Applicable Statutes - Slave Trade

- (1) Title 18, USC, Section 1582. Vessels for slave trade
- (2) Title 18, USC, Section 1585. Seizure, detention, transportation or sale of slaves
- (3) Title 18, USC, Section 1586. Service on vessels in slave trade
- (4) Title 18, USC, Section 1587. Possession of slaves aboard vessel
- (5) Title 18, USC, Section 1588. Transportation of slaves from United States

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EFFECTIVE: 02/16/89

50-2 ELEMENTS

EFFECTIVE: 02/19/85

50-2.1 Section 1581

- (1) A person must hold or return any other person; or
- (2) A person must arrest any other person with intent to place him/her in or return him/her
- (3) To compulsory service not provided by law
- (4) Because of a debt, either real or pretended
- (5) Against the victim's will

EFFECTIVE: 02/19/85

50-2.2 Section 1583

- (1) A person must kidnap or carry away any other person
- (2) With intent that the other person will be sold into compulsory service, or held as a slave; or
- (3) A person must induce any other person to board a vessel or to go to any place
- (4) With intent that the other person will be made or held as a slave, or sent out of the country to be so made or held
- (5) Against the victim's will

EFFECTIVE: 02/19/85

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50-2.3 Section 1584

(1) A person must knowingly and willfully hold in compulsory service or sell into compulsory service any other person against that person's will; or

(2) A person must knowingly and willfully bring into the United States any other person held in compulsory service.

EFFECTIVE: 02/16/89

50-2.4 Section 241

(1) Two or more persons must conspire

(2) To deprive any inhabitant of any State, Territory or District of rights secured to citizen by the Constitution (specifically in this violation - the right to be free from slavery and involuntary servitude)

EFFECTIVE: 02/16/89

50-2.5 Section 242

(1) A person must act under color of law

(2) To deprive any inhabitant of rights secured to inhabitant by the Constitution (specifically in this violation - the right to be free from slavery and involuntary servitude)

EFFECTIVE: 02/16/89



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50-3 POLICY

In Departmental Circular #3591, dated 12/12/41, addressed to all USAs, the Department noted that in numerous alleged peonage violations, prosecution had been declined by the USAs because of the absence of the element of debt. The Department pointed out that, while case law under Title 18, USC, Section 444 (now Title 18, USC, Section 1581), holds that debt is the "basal element of peonage," Sections 443, 51, and 52 (now Sections 1583, 241, and 242 respectively) disregard entirely the element of debt. The USAs were advised of the Department's desire to emphasize and depend upon the issue of involuntary servitude and slavery in lieu of peonage (debt plus involuntary service).

This Department circular also advised as follows:

"In the matter of control by one over the person of another, the circumstances under which each person is placed must be determined, i.e., the subservience of the will of one to the other. Open force, threats or intimidation need not be used to cause a person to go involuntarily from one place to another to work and to remain a such work; nor does evidence of kind treatment show an absence of involuntary servitude."

EFFECTIVE: 02/16/89

50-4 INVESTIGATIVE PROCEDURE (See MIOG, Part I, 50-4.2 (2).)

For purpose of this classification, a complaint is any allegation made or information received from any source not known to be unreliable, which includes legitimate public press or other legitimate news media, indicating a possible violation exists.

(1) Upon receipt of a complaint, a request for investigation by the USA or a request for investigation by the U.S. Department of Justice, the field division must promptly submit Form FD-610 (within five (5) workdays of receipt of complaint). All items on the form are to be completed on the initial submission or later by supplemental submission. This action is to be taken prior to the close of each case in all Civil Rights matters. Along these lines, the field division should make an effort to provide the maximum amount of information on the initial submission. Do not delay submission of FD-610 if all data is not immediately available. Submit a supplemental form when additional information necessary to complete

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the form is secured. In those instances where FBIHQ is advised by telephone or teletype of a new case, the FD-610 should be submitted at the earliest possible moment. Specific instructions regarding the completion of the FD-610 are set forth in Part I, 282-8.1 of this manual. If death has occurred, advise FBIHQ immediately and conduct no investigation. If preliminary investigation conducted, closing report must be submitted to FBIHQ with a copy to the USA within 21 workdays of receipt of complaint. (See MAOP, Part II, 2-5.2.4.)

(2) Investigations under these statutes are to be given immediate, preferred, and continuous attention in order that they may be promptly and meticulously completed in an impartial manner. These cases are to be handled by experienced Agents. Controversy, criticism, or unusual publicity arising in connection with these cases is to be immediately reported to FBIHQ.

(3) Department has authorized USA to request up to and including preliminary investigations of routine violations of these statutes. Advise FBIHQ by wire of any such requests and conduct investigation desired. If request is illogical or unwarranted or other circumstances exist indicating investigation is not desirable, furnish details of request to FBIHQ by wire and conduct no investigation UACB. Full investigation should not be conducted unless approved by FBIHQ. If a field office strongly disagrees with the requirements of the DOJ investigative request(s) and taskings, the field office should contact the DOJ attorney generating the investigative request and attempt to resolve any issues. If the field office cannot resolve the matter with DOJ, contact the CRU.

(4) No complaints are to be filed and no arrests are to be made in cases of this type without FBIHQ authority.

(5) The services of local law enforcement officers must not be used without FBIHQ authority.

(6) The Agents should be alert to the possibility that the victim and other witnesses might suffer abuse or mistreatment as a result of their furnishing information. Any such situation should be immediately brought to the attention of FBIHQ and the USA.

(7) When exhibits are obtained, sufficient copies are to be made so that two may be furnished to FBIHQ, one to the USA, and one kept in the field office file.

(8) Contact the USA for USA's views as to the merits and as to whether further investigation appears desirable.

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(9) All investigative activity is to be completed and reported within 21 work days of receipt of the complaint. Any delays in meeting this reporting requirement should be reported to FBIHQ, Civil Rights Unit, by FD-205.

(10) Signed statements should be obtained from the original complainant and other persons who furnish pertinent information, as well as from the victim(s) and subject(s) whenever possible.

(11) Interview victims and witnesses out of the presence of and without knowledge of the subject, if possible.

(12) In all interviews, efforts should be made to develop information showing the nature of the alleged compulsory service and whether the victim is held against victim's will. All facts relative to alleged physical mistreatment of the victim should also be obtained.

(13) Efforts should be made to corroborate the victim's statements through interviews with others who may have been in a position to observe the relationship between the victim and victim's employer. Among those who should be considered for interview are other employees of the subject, neighbors and their employees, tradesmen, and others who may have had occasion to contact the subject.

(14) If the allegations involve the arrest of the victim for the purpose of returning victim to victim's employer, the exact nature of the charges and the full details of all local action should be ascertained.

(15) Detailed information as to how the victim(s) and witnesses, as well as the subject(s) can be located at a future date, if required, should be obtained.

EFFECTIVE: 08/10/94

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50-4.1 Investigations Involving Migrant Labor Camps

The Civil Rights Division (CRD) by memorandum on 2/4/80, amended by CRD memorandum on 11/2/81, requested the following procedures for conducting ISS investigations involving migrant labor camps:

"This memorandum sets forth the procedures that should be followed in instituting and conducting preliminary investigations of complaints of involuntary servitude or peonage which involve the operation of migrant labor camps. These procedures need not be followed in situations not involving migrant labor camps.

"The preliminary investigation set out in this memorandum should be conducted:

"(1) When the Federal Bureau of Investigation receives direct complaints, or otherwise receives information regarding an incident which indicates a possible violation of Title 18, United States Code, Sections 1581(a) or 1584, involving migrant laborers.

"(2) When the Civil Rights Division, or a United States Attorney, requests a preliminary investigation of a possible violation of these statutes involving migrant laborers.

"Upon receipt of such complaint or request, please conduct the following preliminary investigation:

"1. Interview the complainant and all other non-worker witnesses identified by the complainant.

"2. Interview all alleged victims who have left the labor camp. Interview of these victims should determine the method of recruitment, the method of payment, whether the worker is indebted to the crewleader, how such indebtedness was incurred, force used or threatened to be used against laborers, and the identities and descriptions of all foremen, cooks, bookkeepers, and truckdrivers. In addition, determine the name or descriptions of other workers who may wish to leave the camp. Determine how the alleged victims made their way from the camp. Photograph any visible injuries to the alleged victims. Photographs should be taken, even if no injuries are claimed to assist in locating victims in the future. Obtain from the alleged victims any physical evidence, such as pay receipts, pay envelopes, etc., which relate to their employment.

"3. The labor camp should be promptly visited to conduct

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appropriate investigation regarding any other alleged victims. This will include identifying any persons who want to leave the camp. Possible victims should be advised that U.S. laws provide no person should be forced to work against his will even if he owes money to someone at the camp. Necessary arrangements should be made with local authorities and social agencies for transportation and other assistance needed by those persons desirous of leaving the camp. Agents should insure that any workers are permitted to leave and that reasonable assistance is rendered to them in this regard.

"4. If any workers identified as possible victims do not indicate a desire to leave on their own or to be transported from the camp, they should be privately interviewed to determine if they fear reprisal from anyone for leaving.

"5. Take all persons desiring to leave the camp to an appropriate place for interview and conduct full interviews as in #2 above.

"6. In view of the difficulty in securing Grand Jury attendance of migrant workers after interview, the alleged victims and witnesses should be told that it is important for them to provide some address through which they can be contacted. In effort to keep track of alleged victims, they should be encouraged to contact state or local employment services and migrant assistance programs so that they can be reemployed. Each potential witness should be advised of the importance of informing the FBI frequently of his or her location. Photographs should be taken to assist in locating victims and witnesses in the future.

"7. Determine whether any complaints have been made to local police or sheriff's offices or local Wage and Hour Division representatives of the U.S Department of Labor concerning the subject or workers under the subject's control. If so, obtain copies of all relevant documents.

"8. Interview the crewleader and the foremen, cooks, bookkeepers, and truckdrivers working for him. (These interviews should be conducted after interviews specified in #5 above.) These individuals should specifically be questioned concerning specific incidents mentioned by the alleged victims. In addition, they should be questioned concerning methods of recruitment, methods of bookkeeping, methods of payment, methods of charging the workers for room, board, work materials (e.g., gloves, alcohol, tobacco and the like), and the indebtedness of each particular worker to the crewleader. Determine whether the crewleader and each regular

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employee thereof has the registration certificate required to be kept by the Farm Labor Contractor's Registration Act. (7 U.S.C. Section 2045)

"9. Copy of your reports should be sent to the U.S. Attorney as well as the CRD. In matters which may have prosecutive merit the appropriate U.S. Attorney should be orally apprised of the facts developed, and a detailed teletype summary should be sent to FBIHQ for relay to the CRD, prior to preparing the written report, since prompt resort to grand jury processes may be necessary to secure attendance of witnesses."

EFFECTIVE: 02/19/85

50-4.2 INVESTIGATIONS INVOLVING WHITE SLAVE TRAFFIC ACT (WSTA),  
SEXUAL EXPLOITATION OF CHILDREN AND INTERSTATE  
TRANSPORTATION IN AID OF RACKETEERING (ITAR)-PROSTITUTION

(1) FBI policy and procedure involving WSTA, Sexual Exploitation of Children and ITAR-Prostitution are set forth in Part I, Sections 31, 145, and 166 of this manual;

(2) Agents should be alert when conducting Sections 31, 145, and 166 investigations to facts which indicate that victims may have been held or sold into conditions of involuntary servitude or slavery by subjects through use of force, threat of force, or coercion. If such information is developed, a separate investigation is to be conducted pursuant to 50-4(1) through (15). If circumstances exist which would dictate that a separate 50 case not be opened, advise FBIHQ so that the matter can be discussed with the CRD, DOJ.

(3) In addition to these investigative steps, Agents are to photograph any visible injuries to the alleged adult victim(s), (minor children should not be photographed as such action could cause additional trauma if they have been the victims of sexual abuse where photographs were taken);

(4) Obtain any medical records pertinent to victim's(s') injuries and interview appropriate medical personnel;

(5) If possible, secure from the alleged victim(s) any physical evidence such as pay records, photographs, etc., which may relate to conditions of their being held and forced to perform work or services against their will.

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EFFECTIVE: 02/19/85

50-5 VENUE

The venue of Involuntary Servitude and Slavery cases is in the judicial district where the offense occurred. In Conspiracy cases, it is in any judicial district in which the parties conspired or where an overt act in furtherance of the conspiracy was committed.

EFFECTIVE: 02/19/85

50-6 MEMORANDUM OF UNDERSTANDING

- (1) "MEMORANDUM OF UNDERSTANDING BETWEEN FEDERAL BUREAU OF INVESTIGATION AND THE DEPARTMENT OF LABOR' EMPLOYMENT STANDARDS ADMINISTRATION WAGE AND HOUR DIVISION REGARDING VIOLATIONS OF FEDERAL STATUTES RELATING TO INVOLUNTARY SERVITUDE AND SLAVERY"

"The purpose of this memorandum is to develop a close working relationship between the Federal Bureau of Investigation (FBI) and the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division (WHD) with respect to the enforcement of Federal laws which involve Involuntary Servitude and Slavery (ISS).

"POLICY

"It shall be the policy of both the FBI and the WHD to exchange information relative to violations disclosed or alleged during the course of their investigative activity. The Federal statutes primarily involved in this agreement are Involuntary Servitude and Slavery (FBI), the Farm Labor Contractor Registration Act (WHD), and the Fair Labor Standards Act (WHD).

"PROCEDURE

"FBI

When the FBI receives information during the course of investigative activity indicating a possible violation of the Farm Labor Contractor

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Registration Act or the Fair Labor Standards Act, the WHD Office covering the area in which the alleged violation occurred will be notified in a timely fashion. This initial contact will be followed with a written summary of the allegation(s) set forth in an FBI letterhead memorandum. This memorandum will be furnished to the WHD Office which was provided the initial information by the FBI. A copy of the memorandum will be forwarded to FBI Headquarters for transmittal to the WHD National Office, ATTENTION: Office of the Administrator.

"WHD

When the WHD receives information, during the course of investigative activity, indicating a possible violation of the Involuntary Servitude and Slavery Statutes, the FBI Office covering the area in which the alleged violation occurred will be notified in a timely fashion. This initial contact will be followed with a written summary of the allegation(s) set forth in a WHD memorandum. This memorandum will be furnished to the Special Agent in Charge of the FBI Field Office which was provided the initial information by the WHD. A copy of the memorandum will be forwarded to the Regional WHD Office and thereafter to the WHD National Office for transmittal to FBI Headquarters, ATTENTION: Civil Rights Unit, Criminal Investigative Division.

"INTER-AGENCY FEEDBACK

The Civil Rights Unit, FBI Headquarters, and the Office of the Administrator, WHD National Office will maintain liaison concerning matters of mutual interest relating to policy matters as set forth in this memorandum. A portion of this liaison will involve the dissemination of information concerning the final action(s) taken in each case developed and investigated under the terms of this memorandum.

12-8-82  
DATE

/s/ William H. Webster  
WILLIAM H. WEBSTER  
Director  
Federal Bureau of Investigation

12-27-82  
DATE

/s/ Robert B. Collyer  
ROBERT B. COLLYER  
Deputy Under Secretary for  
Employment Standards  
U.S. Department of Labor"



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(2) "MEMORANDUM OF UNDERSTANDING BETWEEN FEDERAL BUREAU  
OF INVESTIGATION AND IMMIGRATION AND NATURALIZATION  
SERVICE REGARDING VIOLATIONS OF FEDERAL STATUTES  
RELATING TO INVOLUNTARY SERVITUDE AND SLAVERY

"The purpose of this memorandum is to develop a closer working relationship between the Federal Bureau of Investigation (FBI) and the Immigration and Naturalization Service (INS) with respect to the enforcement of Federal laws which relate primarily to Involuntary Servitude and Slavery (ISS).

"POLICY

"It shall be the policy of both the FBI and the INS to exchange information relative to violations of Federal law disclosed or alleged during the course of their investigative activity. The Federal statutes primarily involved in this agreement are Involuntary Servitude and Slavery (FBI), and Alien Smuggling (INS).

"PROCEDURE

"FBI

When the FBI receives information during the course of investigative activity indicating a possible violation of Alien Smuggling laws, the INS Office covering the area in which the alleged violation occurred will be notified in a timely fashion. This initial contact will be followed with a written summary of the allegation(s) set forth in an FBI letterhead memorandum. This memorandum will be furnished to the INS office which was provided the initial information by the FBI. A copy of the memorandum will be forwarded to FBI Headquarters for transmittal to the INS Headquarters; ATTENTION: Anti-Smuggling.

"INS

When the INS receives information, during the course of investigative activity, indicating a possible violation of the ISS statutes, the FBI Office covering the area in which the alleged violation occurred will be notified in a timely fashion. This initial contact will be followed with a written summary of the allegation(s) set forth in an INS memorandum. This memorandum will be furnished to the Special Agent in Charge of the FBI Field Office which was provided the initial information by the INS. A copy of the memorandum will be forwarded to the Regional INS Office and thereafter to the INS National Headquarters for transmittal to FBI Headquarters; ATTENTION: Civil

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Rights Unit, Criminal Investigative Division.

"INTER-AGENCY FEEDBACK

The Civil Rights Unit, FBI Headquarters, and the Anti-Smuggling Unit, INS National Headquarters will maintain liaison concerning matters of mutual interest relating to policy matters as set forth in this memorandum. A portion of this liaison will involve the dissemination of the final prosecutive action taken in each case developed and investigated under the terms of this memorandum.

12-8-82  
DATE

/s/ William H. Webster  
WILLIAM H. WEBSTER  
Director  
Federal Bureau of Investigation

12-15-82  
DATE

/s/ Alan C. Nelson  
ALAN C. NELSON  
Commissioner  
Immigration and Naturalization Service"

EFFECTIVE: 02/19/85

50-7 CHARACTER - INVOLUNTARY SERVITUDE AND SLAVERY

EFFECTIVE: 02/19/85

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SECTION 51. JURY PANEL INVESTIGATIONS

51-1 POLICY

Jury panel investigations are conducted by a field office only after FBIHQ authorization.

(1) FBIHQ will authorize investigation only upon receiving specific written request from appropriate Assistant Attorney General.

(2) USAs are required to submit their requests for jury panel investigations directly to the appropriate Assistant Attorney General (regardless of time element involved) and to make any follow-up requests or inquiries by the same procedure.

(3) In preparing the report, the names of the prospective jurors should be listed in alphabetical order and the information as to each such person set forth on a separate page or pages.

EFFECTIVE: 01/31/78

51-2 INVESTIGATIVE PROCEDURES

When a jury panel investigation is authorized, specific instructions as to the nature of the investigation are forwarded to the field office by FBIHQ. Ordinarily, these investigations are restricted to ascertaining arrest records of the individuals and checking their names through the field office indices. Credit checks are not to be made due to restrictions placed on dissemination of credit information by the Fair Credit Reporting Act. No inquiries should be made concerning a person's religious or political beliefs, or his membership in, or affiliation with, labor unions or other organizations. No neighborhood inquiries should be made and no surveillances of any type should be conducted.

EFFECTIVE: 01/31/78

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51-3 CHARACTER - JURY PANEL INVESTIGATION

EFFECTIVE: 01/31/78

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SECTION 52. GOVERNMENT PROPERTY - THEFT, ROBBERY, EMBEZZLEMENT, ILLEGAL POSSESSION, ET AL.; GOVERNMENT PROPERTY - DESTRUCTION OF, ET AL.; INTERFERENCE WITH GOVERNMENT COMMUNICATIONS SYSTEM

52-1 STATUTES

Title 18, USC, Sections 641, 1024, 1660, 2112, and 2114.

EFFECTIVE: 08/28/91

52-1.1 Section 641. Public Money, Property or Records

EFFECTIVE: 08/28/91

52-1.2 Elements

(1) Theft

(a) That the property belonged to the U. S. or any department or agency thereof

(b) That it was taken and carried away by the subject

(c) That the subject took and carried away the property with the intention of converting it to his/her own use or the use of another

(2) Embezzlement

(a) That the property was U. S. Government property

(b) The official status of the subject

(c) That the property came into subject's possession lawfully, together with the manner in which he/she received it, including information as to whether it was received by virtue of his/her official status or otherwise

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(d) That such property was fraudulently converted or appropriated to the use of the subject

EFFECTIVE: 08/28/91

52-1.3 Policy (Section 641)

(1) In handling complaints involving minor thefts of Government property where there are no known aggravating or unusual circumstances, immediately present facts to USA for a prosecutive opinion. If USA will not consider Federal prosecution, conduct no investigation, advise complainant, and confirm conversations to USA and complainant in writing. Where appropriate, refer matter to law enforcement agency having jurisdiction over violation and also furnish this information to USA and complainant.

(2) For administrative reporting requirements and procedures governing the loss and/or theft of Government property from FBI space, refer to MAOP, Part II, Section 6-7.5.

(3) Investigations Regarding Criminal Allegations  
Against Public Officials

(a) It is recognized that during the course of an investigation within this classification information is sometimes developed alleging that a Federal, state or local official is in violation of Federal law. If the focus of the investigation continues to be this substantive classification and/or Federal crimes committed by a person who merely happens to be a Federal, state or local official, "Corruption-Related Matter," should be added to the character of the case, and it will continue to be managed under the Violent Crimes and Major Offenders Program. If, however, the focus of the investigation shifts to the abuse of his/her position of trust by the Federal, state or local official in violation of Federal criminal law, a new "Corruption of Federal Public Officials" (58) or "Corruption of State and Local Public Officials" (194) matter should be opened within the White Collar Crimes Program.

(b) |Deleted|

(c) |Deleted|

(d) |Deleted|

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(e) |Deleted|

EFFECTIVE: 09/16/94

52-1.4 Section 1024. Purchase or Receipt of Military, Naval, or  
Veteran's Facilities Property

EFFECTIVE: 08/28/91

52-1.5 Elements

(1) That the property was furnished by the U. S. to any  
soldier or other person enumerated in this section.

(2) That the subject purchased or received such property  
in pledge

(3) That the subject had knowledge or reason to believe  
that:

(a) The property had been furnished by the U. S.  
under a clothing allowance to a soldier or other person enumerated in  
this section, or

(b) That the property had been taken from the  
possession of the U.S. Pursuant to Title 18, USC, Section 21, the  
element of guilty knowledge may also be established by proof that the  
defendant believed that the property had been taken from the  
possession of the U.S., after or as a result of an official  
representation as to the nature of the property (see MIOG, Part II,  
1-1.12).|

EFFECTIVE: 10/23/95

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52-1.6 Section 1660. Receipt of Pirate Property

"Whoever, without lawful authority, receives or takes into custody any vessel, goods or other property, feloniously taken by any robber or pirate against the laws of the United States, knowing the same to have been feloniously taken, shall be imprisoned not more than ten years."

EFFECTIVE: 08/28/91

52-1.7 Section 2112. Robbery (Personal Property of United States)

EFFECTIVE: 08/28/91

52-1.8 Elements

- (1) Personal property of Government
- (2) In the lawful custody of some person
- (3) Taken by the subject from the person or presence of such person

EFFECTIVE: 08/28/91

52-1.9 Section 2114. Robbery (Mail, Money or Other Property of United States)

EFFECTIVE: 11/20/90



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52-1.10 Elements

(1) That property of the U. S. was lawfully in the custody of some person

(2) That the subject either:

(a) Robbed such person of this property, or

(b) Assaulted such person with intent to rob him/her of this property

EFFECTIVE: 11/20/90

52-1.11 Penalties

(1) Section 641. Property over \$100 in value, maximum of \$10,000 or ten years, or both

Property \$100 or less in value, maximum of \$1,000 or one year, or both.

(2) Section 1024. Maximum of \$500 or imprisoned not more than two years, or both.

(3) Section 1660. Maximum of not more than ten years.

(4) Section 2112. Maximum of not more than 15 years.

(5) Section 2114. (U. S. Mail) - first offense, maximum of ten years. If wounds, or puts life in jeopardy, or for second offense, maximum of 25 years.

EFFECTIVE: 11/20/90

52-1.12 Venue

Venue in all theft or robbery of Government property cases are ordinarily in the district where the crime was perpetrated.

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EFFECTIVE: 11/20/90

52-1.13 Investigative Procedure

To show that the property in question is that of the United States, or was manufactured under contract for the armed forces

[REDACTED] In cases involving robbery and

embezzlement [REDACTED]

b2/b7E

If the property meets the criteria for NCIC, it should be searched and/or entered into NCIC. The quantity and value of the property should be learned.

EFFECTIVE: 11/20/90

52-1.14 Miscellaneous

For food stamp thefts that are considered under the Theft of Government Property violation, see Interstate Transportation of Stolen Property, Section 87-4.7.1, of this manual.

EFFECTIVE: 09/13/93

52-1.15 Theft of Government Property Outside the United States

The FBI exercises primary investigative jurisdiction over all violations of Section 641 occurring outside the United States. Violations participated in by American nationals who are outside of the jurisdiction of military authorities must either be disposed of by local authorities in the country in which the offense occurred or by the FBI. Since the foreign power may have little or no interest in thefts of U.S. property, the majority of these violations would be handled by the FBI and prosecuted in U.S. District Court. Thefts by

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military personnel abroad is usually prosecuted by military authorities unless the military offender is returned to the jurisdiction of the U.S. District Court and investigation can economically be handled by the FBI.

EFFECTIVE: 11/20/90

52-1.16 Tracing of Firearms Stamped "U.S. Property"

FBI Agents are frequently furnished information concerning private individuals who are alleged to have in their possession firearms stamped "U.S. Property." No active investigation or circularization of military establishments is warranted in these instances in the absence of additional facts. In such cases, a description of the weapon should be searched through NCIC, and if no record is located a letter should be prepared for the local offices of the Air Force, Army, and Navy intelligence setting out the information which has been obtained.

EFFECTIVE: 11/20/90

52-1.17 Character

The character of such cases depends on the exact nature of the offense; that is, whether it related to a theft, embezzlement, robbery, illegal possession, or destruction of Government property. For example, in a theft case the character could be Theft of Government Property and in a robbery, Robbery of Government Property, etc.

EFFECTIVE: 11/20/90

52-2 STATUTES

Title 18, USC, Sections 1361, 1855, 1856, 2071.

EFFECTIVE: 01/31/78

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52-2.1 Section 1361. Government Property or Contracts

EFFECTIVE: 01/31/78

52-2.2 Elements

- (1) That the property was U. S. property
- (2) That the subject without lawful right injured or damaged such property
- (3) That such injury or depredation was willfully committed

EFFECTIVE: 01/31/78

52-2.3 Section 1855. Timber Set Afire

EFFECTIVE: 01/31/78

52-2.4 Elements

- (1) That timber, underbrush, grass, or other inflammable material upon the public domain was set on fire
- (2) That the subject willfully and without authority set the fire

EFFECTIVE: 01/31/78

52-2.5 Section 1856. Fires Left Unattended and Unextinguished

EFFECTIVE: 01/31/78

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52-2.6 Elements

- (1) Set a fire upon the public domain near any inflammable material and leave without extinguishing it
- (2) Permits it to spread beyond his control
- (3) Allows it to burn unattended

EFFECTIVE: 01/31/78

52-2.7 Section 2071. Concealment, Removal, or Mutilation  
Generally

EFFECTIVE: 01/31/78

52-2.8 Elements

- (1) That the record, book, paper or document was on file or deposit with
  - (a) Any court of the U. S., or
  - (b) In any public office, or
  - (c) With any judicial or public officer of the U. S.
- (2) That it was concealed, removed, mutilated, obliterated or destroyed by the subject
- (3) That such concealment, removal, etc., was willfully done without lawful right

EFFECTIVE: 01/31/78

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52-2.9 Penalties

(1) Section 1361. Damage to property over \$100 in value, maximum of \$10,000 or ten years, or both.

Property \$100 or less in value, maximum of \$1,000 or one year, or both.

(2) Section 1855. Maximum of \$5,000 or imprisoned not more than five years, or both

(3) Section 1856. Maximum of \$500 or imprisoned not more than six months, or both.

(4) Section 2071. Maximum of \$2,000 or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding office under the United States.

EFFECTIVE: 01/31/78

52-2.10 Policy

In general, the FBI will investigate forest fires in the more aggravated cases or those cases which are incendiary in origin, or where numerous fires have occurred that are malicious in nature, upon the condition that the complaint is immediately reported to the FBI. It is not desired that investigation be conducted in cases inconsequential in scope but that activities be confined to the larger, more aggravated types.

EFFECTIVE: 01/31/78

52-2.11 Character - Destruction of Government Property

EFFECTIVE: 01/31/78

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52-3 STATUTE

Title 18, USC, Section 1362

EFFECTIVE: 01/31/78

52-3.1 Section 1362. Interference With Government Communications

"Whoever willfully or maliciously injures or destroys any of the works, property, or material of any radio, telegraph, telephone or cable, line, station, or system, or other means of communication, operated or controlled by the United States, or used or intended to be used for military or civil defense functions of the United States, whether constructed or in process of construction, or willfully or maliciously interferes in any way with the working or use of any such line, or system, or willfully or maliciously obstructs, hinders, or delays the transmission of any communications over any such line, or system, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both."

EFFECTIVE: 01/31/78

52-3.2 Miscellaneous

"In the case of any works, property, or material, not operated or controlled by the United States, this section shall not apply to any lawful strike activity, or other lawful concerted activities for the purposes of collective bargaining or other mutual aid and protection which do not injure or destroy any line or system used or intended to be used for the military or civil defense functions of the United States."

EFFECTIVE: 01/31/78

52-3.3 Character - Interference With Government Communications  
System

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EFFECTIVE: 01/31/78

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SECTION 54. CUSTOMS LAWS AND SMUGGLING

54-1 CUSTOMS LAWS AND SMUGGLING

The U. S. Customs Service administers the powers and duties vested in the Secretary of the Treasury pertaining to the importation and entry of merchandise into and the exportation of merchandise from the U. S., and the regulation of certain marine activities. The principal function of the U. S. Customs Service is the assessment and collection of import duties and, incident to this, the prevention of smuggling. Complaints received on such matters by field offices should be referred to the nearest district office of the U. S. Customs Service. Those received at FBIHQ are referred to the Commissioner of Customs, Washington, D. C.

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SECTION 55. COUNTERFEITING

55-1 COUNTERFEITING

The U. S. Secret Service, which is part of the Treasury Department, is empowered to suppress the counterfeiting of U. S. coins, notes, and other obligations and securities of the Government. Violations of this nature which are reported to FBIHQ are referred to the Director, U. S. Secret Service, Department of the Treasury, Washington, D. C. Information of a similar nature received by field offices should be reported to the nearest office of the U. S. Secret Service.

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SECTION 56. ELECTION LAWS

56-1 BACKGROUND

Primary responsibility for conducting elections in general rests with the states. Federal laws selectively seek to protect significant Federal interests and ensure that the dictates of the Constitution are not willfully abridged. Investigative jurisdiction concerning Federal election law violations is shared between the FBI and Federal Election Commission (FEC). The 1971 Federal Election Campaign Act (FECA) with subsequent amendments of 1974, 1976, and 1979, has transferred to the FEC numerous matters that were the primary investigative responsibility of the FBI. These include statutes dealing with reporting and campaign finance violations including contributions to, and expenditures of, Federal political candidates. The FEC has the power to initiate civil injunctive proceedings against violators of statutes for which it has primary investigative jurisdiction. Should the FEC determine there is probable cause to believe that a knowing and willful violation of the FECA has been committed, it may refer the matter to the Department of Justice (DOJ) for criminal prosecution. Only in the circumstances of aggravating factors, or in the presence of knowing and willful misconduct as set forth below, does the DOJ address possible criminal prosecution administrative enforcement remedies of the FEC.

EFFECTIVE: 01/18/91

56-2 DEFINITIONS

The following general definitions are applicable to Federal election laws to initially determine if criminal jurisdiction may exist. More specific or qualifying definitions within a given statute may override these definitions.

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56-2.1 Election

Any ballot procedure in which candidates for elective office are voted upon which includes a general, special, primary or run off contest.

EFFECTIVE: 01/18/91

56-2.2 Candidate

An individual who seeks nomination or election to office. Supportive actions by individuals to meet this definition include taking the action necessary under the law of a state to qualify for nomination for election and/or the receipt or expenditure to bring about this desired result.

EFFECTIVE: 01/18/91

56-2.3 Contribution or Expenditure

The receipt or disbursement of anything of value for the purpose of influencing an election.

EFFECTIVE: 01/18/91

56-3 SUMMARY OF CRIMINAL STATUTES FOR WHICH THE FBI HAS PRIMARY INVESTIGATIVE JURISDICTION

EFFECTIVE: 01/18/91

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56-3.1 Title 18, USC, Section 241 - Conspiracy Against Rights of  
Citizens

(1) Makes it unlawful for two or more persons to conspire to injure, oppress, threaten or intimidate any inhabitant of any State, Territory or District in the exercise of a right or privilege secured to him/her by the Constitution or laws of the United States. Election law violations under the statute are felonies punishable by fines up to \$10,000 and/or imprisonment up to ten years, or for any term of years or for life, if death results. This statute must affect a Federal election in some manner; however, if racial discrimination exists, refer to civil rights.

(2) Possible violations cover conspiracies by election officials to stuff ballot boxes, conspiracies to prevent the official count of ballots in primary elections, conspiracies to illegally register voters and/or cast absentee ballots in their names, and conspiracies to injure, oppress, threaten or intimidate a voter in the exercise of his or her right to vote.

EFFECTIVE: 01/18/91

56-3.2 Title 18, USC, Section 242 - Deprivation of Rights Under  
Color of Law

Makes it unlawful for anyone acting under color of law, statute, ordinance, regulation or custom to willfully deprive a person of any rights, privileges or immunities secured or protected by the Constitution or laws of the United States. Prosecutions under Section 242 need not demonstrate the existence of a conspiracy; however, the defendants must have acted illegally under color of law. Election law violations under the statute are misdemeanors punishable by fines up to \$1,000 and/or imprisonment up to one year, or for any term of years or for life, if death results. This is the substantive statute of Title 18, USC, Section 241.

EFFECTIVE: 01/08/82

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56-3.3 Title 18, USC, Section 245 - Federally Protected Activities

Prohibits interference by violence or threat of violence with exercising the right to vote or run for office or otherwise in any election, Federal, state or local. If racially motivated, handle as civil rights matter under the 44 classification.

EFFECTIVE: 01/08/82

56-3.4 Title 18, USC, Section 592 - Troops at Polls

Makes it unlawful to place troops or armed men at the polls in a general or special election except when necessary "to repel armed enemies of the United States." This statute is not applicable to primaries. It has been interpreted by the Department to prohibit Agents of the FBI from conducting investigations inside the polls on election day. It is a felony statute and violations are punishable by a fine up to \$5,000 and/or up to five years in prison.

EFFECTIVE: 01/08/82

56-3.5 Title 18, USC, Section 593 - Interference by Armed Forces

Makes it unlawful for members of the armed forces to interfere with election processes. The statute is a felony statute and violations are punishable by a fine of up to \$5,000 and/or up to five years in prison.

EFFECTIVE: 01/08/82

56-3.6 Title 18, USC, Section 594 - Intimidation of Voters

Prohibits the intimidation or coercion of voters for the purpose of interfering with the right to vote for a candidate for Federal office. The statute is not applicable to primaries. It is a misdemeanor statute and violations are punishable by a fine of up to \$1,000 and/or up to one year in prison.

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EFFECTIVE: 01/08/82

56-3.7 Title 18, USC, Section 595 - Interference by  
Administrative Employees of Federal, State, or Territorial  
Government

Prohibits any public officer or employee within the Federal, state, or local Government in connection with an activity financed wholly or partially by the United States from using his or her official authority to interfere with or affect the nomination or election of a candidate for Federal office. This statute is aimed at the misuse of official authority and does not prohibit normal campaign activities by Federal, state or local employees that are consistent with the Hatch Act restrictions on political activities. The statute expressly exempts employees of any educational institution or agency. It is a misdemeanor statute, and violations are punishable by fines of up to \$1,000 and/or up to one year in prison.

EFFECTIVE: 01/08/82

56-3.8 Title 18, USC, Section 596 - Polling Armed Forces

Prohibits any person from polling any member of the armed forces with reference to his or her choice of, or vote for, political candidates. "Polling" is defined to include questioning which implies that an answer is compulsory. It is a misdemeanor statute and violations are punishable by fines of up to \$1,000 and/or up to one year in prison.

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56-3.9 Title 18, USC, Section 597 - Expenditures to Influence Voting

Prohibits making or offering to make an expenditure to any person to vote or withhold his or her vote, or to vote for or against any candidate for Federal office, and soliciting, accepting or receiving any such payment. It applies to vote buys directed at all stages of the nomination and election process. The vehicle used to buy the vote may be anything of value. Violations are misdemeanors punishable by fines of up to \$1,000 and/or imprisonment up to one year, except as to willful violations which are felonies punishable by fines up to \$10,000 and imprisonment up to two years. Under this statute, it must be shown that the Federal election was impacted. See Title 42, USC, Section 1973 i(c) below concerning vote buying for state or local candidates.

EFFECTIVE: 01/08/82

56-3.10 Title 18, USC, Section 598 - Coercion by Means of Relief Appropriations

Prohibits the use of funds appropriated by Congress for relief or public-work projects to interfere with, restrain or coerce any person in the exercise of his or her right to vote at any election. Violations are misdemeanors punishable by fines up to \$1,000 and/or imprisonment for up to one year.

EFFECTIVE: 01/08/82

56-3.11 Title 18, USC, Section 599 - Promise of Appointment by Candidate

Prohibits a candidate for Federal office from promising appointments to any public or private position or employment in return for support of his or her candidacy. It is a misdemeanor statute, and violations are punishable by fines of up to \$1,000 and/or imprisonment for up to one year except that willful violations are felonies punishable by fines of up to \$10,000 and imprisonment for up to two years. This statute has potential utility in situations where one candidate attempts to secure the withdrawal of an opponent by offering him or her a private job.



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EFFECTIVE: 01/08/82

56-3.12 Title 18, USC, Section 600 - Promise of Employment or  
Other Benefit for Political Activity

(1) Section 600 makes it unlawful for anyone to promise any employment or benefit derived from an Act of Congress as consideration, favor, or reward for past or future political activity, or for support or opposition to any candidate or any party in any election. Violations are misdemeanors punishable by fines up to \$10,000 and/or imprisonment up to one year. (See also Title 18, USC, Section 599 and Title 18, USC, Section 595.)

(2) Section 600 applies to the interjection of political considerations into the award of any Federal benefit or employment. It applies to federally funded jobs, grants or benefits as well as to Federal jobs. It reaches situations where Federal benefits are held out to induce future political activity, as well as those instances where Federal benefits are used as patronage rewards for past political fidelity.

(3) This statute has been interpreted by the DOJ to not include the interjection of political considerations in the hiring of high level Government personnel who perform "policy" making functions for elected public officials. This statute has also been interpreted by the Department to not intend to criminalize the interjection of political considerations in the termination of public employees who perform "policy making" for elected officials with respect to which a degree of political loyalty is a necessary aspect of competent performance.

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56-3.13 Title 18, USC, Section 601 - Deprivation of Employment or  
Other Benefit for Political Contribution

(1) Section 601 makes it unlawful for any person knowingly to cause or attempt to cause any other person to make a contribution on behalf of any candidate or political party by depriving or threatening to deprive employment or benefits made possible by an Act of Congress. The statute applies to candidates and political parties at the Federal, state or local level, and the term "contribution" includes anything of value, including services. It is a misdemeanor statute and violations are punishable by fines up to \$10,000 and/or imprisonment up to one year.

(2) Like Section 600, Section 601 reaches all employment and benefits that are funded by the Congress. The statute is not restricted to Federal jobs, although threats to terminate Federal employment are specifically covered in such situations. Section 601 offenses are lesser included crimes within Title 18, USC, Section 606, where the threatened employee is a Federal civil servant.

EFFECTIVE: 01/08/82

56-3.14 Title 18, USC, Section 602 - Solicitation of Political  
Contributions

This statute prohibits Senators, Representatives, candidates for Congress, officers and employees of the United States, and persons receiving compensation for services from money derived from the U.S. Treasury, from knowingly soliciting any contribution from any other such officer, employee or person. The statute applies to contributions made for the purpose of influencing Federal elections only. Violations are felonies punishable by fines up to \$5,000 and/or by imprisonment for up to three years. The Department has taken a consistent and public position that this statute does not reach voluntary political interaction between Federal employees. However, it does reach any situation where factors are present in a political transaction which indicate that the contribution being solicited was less than voluntary, and that the solicited employee was consciously placed in a position where he or she felt obliged to give.

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56-3.15 Title 18, USC, Section 603 - Making Political Contributions

This statute prohibits any Federal officer or employee, or person receiving compensation for services from money derived from the U.S. Treasury from making a contribution for the purpose of influencing a Federal election to any other such officer, employee, or person, or to any Senator or Representative in the Congress, if the person receiving the contribution is his or her "employer or employing authority." The statute covers contributions for Federal elections only and treats contributions to authorized committees as tantamount to contributions to the individual who authorized the committee. It is a felony statute and violations are punishable by fines up to \$5,000 and/or imprisonment up to three years.

EFFECTIVE: 01/08/82

56-3.16 Title 18, USC, Section 604 - Solicitation From Persons on Relief

Prohibits any person from soliciting or receiving contributions for any political purpose from any person known to be entitled to or receiving compensation, employment or other benefits made possible by Act of Congress appropriating funds for relief purposes. It is a misdemeanor statute and violations are punishable by fines of up to \$1,000 and or up to one year's imprisonment.

EFFECTIVE: 01/08/82

56-3.17 Title 18, USC, Section 605 - Disclosure of Names of Persons On Relief

Prohibits the furnishing, disclosure, or receipt for any political purpose, to a candidate, committee, or campaign manager, of any list of persons receiving compensation, employment or benefits made possible by Act of Congress appropriating funds for relief purposes. It is a misdemeanor statute and is punishable by fines up to \$1,000 and/or imprisonment up to one year.

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EFFECTIVE: 01/08/82

56-3.18 Title 18, USC, Section 606 - Intimidation to Secure  
Political Contributions

Makes it unlawful for a Senator, Representative, Federal officer or employee to discharge, promote, or reduce the rank or compensation of any other Federal officer or employee for making or failing to make any contribution for any political purpose. It is a felony statute and violations are punishable by fines up to \$5,000 and/or imprisonment for up to three years. The Department has taken the position that this statute, like Section 601, does not apply to the termination of policy making political appointees.

EFFECTIVE: 01/08/82

56-3.19 Title 18, USC, Section 607 - Place of Solicitation

Section 607 makes it unlawful for anyone to solicit or receive a political contribution in any room or building where Federal employees are engaged in the conduct of official duties. It also forbids political solicitations on Federal military reservations. Its purpose is to protect the integrity of Federal office space from politicalization, and to protect the Federal work force from being subjected to political demands while they are on duty. Unlike Section 602, the employment status of the solicitor is immaterial.

EFFECTIVE: 01/08/82

56-3.20 Title 42, USC, Section 1973 i(c) - False Information in  
Registering or Voting

This statute makes it unlawful in an election in which a Federal candidate is on the ballot:

(1) to knowingly and willfully give false information as to name, address, or period of residence to a voter registrar for the purpose of establishing one's eligibility to vote;

(2) to conspire with another person to falsely register

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or illegally vote; or

(3) to pay, offer to pay, or accept payment for registering to vote or voting.

Violations are felonies punishable by a fine up to \$10,000 and/or imprisonment up to five years. It is sufficient under this statute that a Federal candidate was on the ballot at the time the illegal conduct in question took place. It is not necessary to show that the Federal contest was impacted as is the case with Title 18, USC, Sections 241, 242, and 597.

EFFECTIVE: 01/08/82

56-3.21 Title 42, USC, Section 1973 i(e) - Voting More than Once

This statute makes it unlawful to vote more than once in connection with any general, special, or primary election in which a Federal candidate is on the ballot. Violations are felonies punishable by fines up to \$10,000 and/or imprisonment up to five years. It is not necessary to prove under Section 1973 i(e) that the multiple vote in question be proven to have actually affected a Federal contest.

EFFECTIVE: 01/08/82

56-3.22 Title 18, USC, Section 1341 - Mail Fraud

Through the Mail Fraud Statute, Federal jurisdiction may be obtained over any activity which improperly corrupts the electoral process, as long as the mails can be shown to have been used to further this objective. This is most frequently the case in matters involving misuse or tampering with absentee ballots since the casting of absentee ballots normally involves the transmission of materials through the mails. It is not necessary that Federal candidates have been on the ballot during the election at issue in order for Federal jurisdiction to be obtained through this theory. Federal jurisdiction rests on the use of the U.S. mails. Violations of the Mail Fraud Statute are felonies punishable by fines up to \$1,000 and imprisonment for up to five years.

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EFFECTIVE: 01/08/82

56-4 VIOLATIONS WHICH ARE PRIMARILY INVESTIGATED BY THE FEDERAL ELECTION COMMISSION BUT WHICH MAY BE INVESTIGATED BY THE FBI UPON REQUEST OF THE DOJ

The Federal Election Campaign Act (FECA) and Amendments of 1974, 1976, and 1979, to a large measure superseded FBI investigative jurisdiction in favor of the noncriminal remedies of the FEC. The FECA contains financing and reporting statutes for Federal candidates and political committees. It is Department policy that criminal prosecution of these matters will only be entertained when violations are committed with aggravated intent and which involve substantial amounts of money. The Department maintains liaison with the FEC and determines if FBI should investigate (see 56-11 of this manual).|

EFFECTIVE: 01/08/82

56-4.1 Campaign Financing Statutes

EFFECTIVE: 01/08/82

56-4.1.1 Title 2, USC, Section 441a - Limitations on Contributions and Expenditures

(1) This statute contains two separate sets of contribution limits. Contributions from individuals may not exceed:

(a) \$1,000 to a candidate per election,

(b) \$20,000 to a national party committee per year,

or

(c) \$5,000 to any other political committee per year  
(Section 441a(a) (1)).

(2) Contributions from "multicandidate political committees" (i.e., those registered six months with FEC that have received contributions from over 50 persons and that support at least five candidates) may not exceed:

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(a) \$5,000 to a candidate per election,

(b) \$15,000 to a national party committee per year,

or

(c) \$5,000 to any other political committee per year

(Section 441a(a) (2)).

In addition, individuals are also subject to an over-all annual aggregate contribution limitation of \$25,000 (Section 441a(a) (3)).

(3) The above contribution limits do not apply to the transfer of funds between national, state, and local party committees. The limits also do not apply to transfers between affiliated political committees (i.e., those operated by the same person, corporation or union); however, all affiliated committees share a single contribution limit with respect to contributions they make to candidates and other committees (Section 441a(a) (5)). A separate provision permits the Republican and the Democratic Senatorial Campaign Committee, as well as the national party committees, to contribute up to a combined maximum of \$17,500 to any candidate for the Senate during the year in which he or she is standing for election (Section 441a(h)).

(4) Section 441a(b) imposes limits on expenditures by presidential candidates who have elected to receive Federal funds for their primary or general election campaigns. Under Section 441a(d), the national party committees are permitted to spend certain amounts on behalf of the general election campaigns of candidates affiliated with their parties who are running for the office of President, or for Congress.

(5) Violations of the statute must have been committed in a "knowing and willful" manner in order to be criminally prosecutable under Title 2, USC, Section 437g(d). Accordingly, most of the cases prosecuted under this statute involve grossly excessive transactions that are effected either surreptitiously (e.g., through cash or conduits) or in the furtherance of some felonious objective such as a bribe.

EFFECTIVE: 01/08/82

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56-4.1.2 Title 2, USC, Section 441b - Contributions or Expenditures  
by National Banks, Corporations, or Labor Organizations

(1) This statute prohibits a national bank or federally chartered corporation from making a contribution or expenditure in connection with any election to Federal, state or local office. It also prohibits any corporation or any labor organization from making a contribution or expenditure in connection with any Federal election. Finally, Section 441b makes it unlawful for any officer of a national bank, corporation, or labor organization to consent to a prohibited contribution or expenditure and for any candidate, political committee, or other person knowingly to accept such a contribution. Section 441b does not apply to or restrict the personal political activity of corporate or union officers that is financed exclusively from personal sources.

(2) The core of this complex statute is its ban on the use of corporate treasury funds and monies required as a condition for membership in labor organizations to engage in "active electioneering" in Federal campaigns. It does not apply to the use of such funds to finance communications on any subject between labor unions and their membership or between corporations and their stockholders. Nor does it apply to nonpartisan expenditures or to costs of publishing statements of editorial opinion in legitimate corporate or union-owned newspapers. This statute does not forbid corporations or unions from using their treasury money to establish and operate affiliated Political Action Committees (PACs), provided the activities of the PACs are confined to soliciting voluntary political donations from corporate stockholders or union members and their respective families, and provided further that the funds thus raised were maintained in separate accounts.

(3) In view of the fact that criminal violations of the FECA must have been committed with "willful" intent (Title 2, USC, Section 437g(d)), the FBI's involvement in the investigation of this type of matter is generally confined to instances where the corporate or union funds are taken directly out of the corporate or union treasury and laundered on their way to politicians.

(4) Although Section 441b reaches contributions and expenditures by national banks to local election contests, it does not apply to funds expended in connection with referenda or ballot propositions.



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EFFECTIVE: 01/08/82

56-4.1.3 Title 2, USC, Section 441c - Contribution by Government Contractors

(1) This statute prohibits any person who has or is negotiating for a contract to furnish material, equipment or supplies to the U.S. Government, from making, or promising to make a political contribution. This statute has been construed by the Department of Justice and by the FEC to reach only donations that are made or promised for the purpose of influencing the nomination or election of candidates for Federal office. The statute applies to all types of businesses: sole proprietorships, partnerships, as well as corporations. It reaches gifts that are made from the "business" or "partnership" assets of such firms. However, with respect to unincorporated businesses, the FEC has ruled that this statute does not prohibit donations that are made from the personal assets of the firm's constituent owners. Officers and stockholders of incorporated Government contractors are not covered by Section 441c since the Government contract in such instances is with the corporate entity and not its constituent officers.

(2) Section 441c applies only to business entities that have or are negotiating for a contractual relationship with an agency of the United States. Thus, the statute does not reach those who have contracts with non-Federal agencies to perform work under a Federal program or grant. Nor does this statute reach businessmen and professionals who provide services to third party beneficiaries under Federal programs that necessitate the signing of agreements with the Federal Government such as physicians performing services for patients under the medicare program.

(3) The same exemptions that apply to Section 441b also apply to Section 441c. Thus, Government contractors may make certain types of nonpartisan expenditures, may establish and administer PACs, and may communicate with their stockholders concerning political subjects.

(4) As with Section 441b, the role of the Justice Department in enforcing this statute is confined to instances of "willful" avoidance of the statutory dictates. See Title 2, USC, Section 437g(d). Other less aggravated violations are handled administratively by the FEC.

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EFFECTIVE: 01/08/82

56-4.1.4 Title 2, USC, Section 441d - Publication and Distribution  
of Statements and Solicitations

(1) Section 441d requires that any political communication which is made in writing or through a broadcasting station which

(a) expressly advocates the election or defeat of a clearly identified candidate or

(b) solicits contributions, state who paid for and authorized the communication.

In addition, if the communication is not authorized by any candidate, the communication must specifically state that it is not so authorized.

(2) Note that this section does not prohibit all anonymous campaign materials but only anonymous literature or advertisements which solicit contributions or expressly advocate a candidate's election or defeat. This statute is applicable only to Federal elections.

EFFECTIVE: 01/08/82

56-4.1.5 Title 2, USC, Section 441e - Contributions by Foreign  
Nationals

This statute prohibits any foreign national from making directly or through any other person, any contribution in connection with any Federal, state, or local election. It also prohibits any person from knowingly soliciting or accepting such a contribution. The term "foreign national" is defined as a foreign principal within the meaning of the Foreign Agents Registration Act (Title 22, USC, Section 611), or an individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence.

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EFFECTIVE: 01/08/82

56-4.1.6 Title 2, USC, Section 441f - Contributions in the Name of Another Prohibited

(1) This statute makes it unlawful for any person to make a contribution in the name of another person, or for any person knowingly to permit his/her name to be used to make such a contribution. This statute also prohibits any person from knowingly accepting a contribution made by one person in the name of another person.

(2) Violations of Section 441f can arise from a defendant giving funds to a middleman for the purpose of having the middleman complete the contribution to a Federal candidate. Violations may also occur where the defendant reimburses someone who has already given to a candidate, thus converting the original donor's contribution to his/her own. Under such circumstances, the motive is usually preservation of anonymity since the donation will be reported publicly as having been made by the middleman rather than by the true source. The use of middlemen is also frequently a means by which a single donor may give more than the contribution limits in Title 2, USC, Section 441a allow.

(3) Violations of Section 441f sometimes take the form of a "slush fund" generated through fictitious bonuses to corporate or union executives to enable them to make contributions to politicians which their corporate or union employers would be prohibited from making by Title 2, USC, Section 441b.

(4) Although the donor and the middleman are equally liable under Section 441f, the customary approach to this type of case is to use the conduits as witnesses to convict the person who supplied the funds. This approach recognizes the principal purpose of the FECA as a law designed to assure public disclosure of large campaign donations, and to prevent certain types of donations which Congress has deemed potentially damaging to the public good. It also is in keeping with the fact that most Section 441f violations are merely means to other illegal ends.

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56-4.1.7 Title 2, USC, Section 441g - Limitations on Contribution  
of Currency

(1) This statute makes it unlawful for any person to make contributions of currency of the United States or of any foreign country to any candidate for Federal office which exceed \$100. The limitation is cumulative and applies to the candidate's entire campaign for nomination and election.

(2) This limitation on currency giving differs from the contribution limitations in Section 441a.

EFFECTIVE: 01/08/82

56-4.1.8 Title 2, USC, Section 441h - Fraudulent Misrepresentations  
of Campaign Authority

(1) This statute prohibits any Federal candidate, or any agent of a Federal candidate from fraudulently misrepresenting himself/herself as having authority to speak or act on behalf of any other candidate or party. It also makes it unlawful for anyone willfully and knowingly to participate in, or conspire to participate in, any plan to misrepresent someone as acting for another candidate or party.

(2) The statute is directed toward "dirty tricks" activities such as the infiltration of an opponent's campaign organization for the purpose of damaging the opponent's campaign. Unlike most of the provisions of the FECA, Section 441h is not subject to any monetary threshold before criminal jurisdiction attaches.

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56-4.1.9 Title 2, USC, Section 441i - Acceptance of Excessive Honorariums

(1) This statute imposes limitations on the amount of honoraria which may be accepted by elected or appointed officers and employees of the Federal Government. Such individuals may accept honoraria which do not exceed:

- (a) \$2,000 per appearance, speech, or article, or
- (b) an aggregate of \$25,000 per calendar year.

The statute excludes from the limits amounts accepted for travel and subsistence expenses for the individual and his/her spouse or an aide, as well as amounts paid for agent's fees or commissions.

(2) The FEC has defined "honorarium" to mean a payment of money or anything of value received by an officer or employee of the Federal Government if it is accepted as consideration for an appearance, speech or article.

(3) Although the honorarium statute is part of the FECA, Congress has specifically exempted honoraria from the definition "contribution." Thus, an incumbent Congressman or Congresswoman running for reelection may accept both a \$2,000 "honorarium" and a \$1,000 "contribution" from the same person without violating the contribution limits in Section 441a.

EFFECTIVE: 01/08/82

56-4.1.10 Title 2, USC, Section 439a - Use of Surplus Campaign Funds

(1) This statute establishes principles governing the permissible use of surplus campaign funds donated to Federal candidates and the political committees supporting them.

(2) As a general rule, such surplus funds may be used to defray the expenses of the candidate in connection with the discharge of his/her duties as an elected public official. They may be contributed to charities entitled to tax exempt status under Title 26, USC, Section 501(c); they may be transferred to political committees directly affiliated with the national, state or local apparatus of a political party; or they may be used for "any other lawful purpose." Transfers of surplus campaign funds to political committees affiliated

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with political parties are also exempted from the contribution limitations contained in Title 2, USC, Section 441a, which would normally apply to transfers between political committees.

(3) The 1979 amendments to the FECA provided that as a general rule the personal use of surplus funds is prohibited. This is considered a violation of the FECA, and as such is subject to the enforcement machinery which governs the rest of the Act. An exception to this general rule exists with respect to personal conversions by Congressmen or Congresswomen who were members of the 96th Congress on January 8, 1980, when the 1979 FECA became law. The amended version of Section 439a allows such incumbents to use surplus funds for personal purposes.

EFFECTIVE: 01/08/82

56-4.2 FECA Reporting Statutes

(1) Title 2, USC, Sections 431-434, and Title 2, USC, Sections 438-439 set forth reporting of campaign organizational requirements that are imposed by the FECA. The statutes also set forth the organization and powers of the FEC, definitions applicable to the FECA, organization and registration of political committees and various reporting and disclosure statements which must be reported to the FEC. Violations of the recordkeeping, reporting and campaign organization provisions of the FECA that are committed in a knowing and willful manner and involve more than \$2,000 may be subject to criminal prosecution. The Department, however, rarely intervenes in offenses of this type and customarily defers them to the FEC for noncriminal disposition. Further information concerning the above statutes is found in the Department publication entitled, Federal Prosecution of Election Offenses, furnished to all field divisions.

FEC records filed by Federal candidates regarding campaign contributions and expenditures are available to the FBI without regard to subpoena and may have utility in certain Federal corruption investigations. They may be obtained via a specific lead to the Washington|Metropolitan|Field Office.

(2) A rare exception to the policy outlined in (1) above exists where information originally furnished in the form of a reporting violation also reflects evidence that a violation of another criminal statute for which the FBI has investigative jurisdiction is involved.

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EFFECTIVE: 10/16/90

56-5 PENALTY FOR FECA VIOLATIONS

Title 2, USC, Section 437g(d) provides as follows:

(1) Any person who knowingly and willfully commits a violation of any provision of this Act which involves the making, receiving, or reporting of any contribution or expenditure aggregating \$2,000 or more during a calendar year shall be fined or imprisoned for not more than one year, or both. The amount of this fine shall not exceed the greater of \$25,000 or 300 percent of any contribution or expenditure involved in such violation.

(2) In the case of a knowing and willful violation of Section 441(b) (3), the penalties set forth in this subsection shall apply to a violation involving an amount aggregating \$250 or more during a calendar year. Such violation of Section 441b(b) (3) may incorporate a violation of Section 441c(b), 441f, or 441g of this title.

(3) In the case of a knowing and willful violation of Section 441h of this title, the penalties set forth in this subsection shall apply without regard to whether the making, receiving, or reporting of a contribution or expenditure of \$1,000 or more is involved.

EFFECTIVE: 10/16/90

56-6 EFFECT ON STATE LAW

Title 2, USC, Section 453, provides that the FECA controls and supersedes inconsistent state laws where the subject of campaign finance matters with respect to Federal campaigns is concerned. Accordingly, for all practical purposes campaign finance matters involving candidates for Federal office are exclusively matters of Federal jurisdiction and concern.

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EFFECTIVE: 10/16/90

56-7 STATUTE OF LIMITATIONS

The statute of limitations for FECA offenses is three years. The statute of limitations for statutes over which the FBI has exclusive jurisdiction is five years.

EFFECTIVE: 10/16/90

56-8 POLICY

(1) Prosecution of election law matters generally rests with U.S. Attorneys (USA). The Election Crimes Branch (ECB), Public Integrity, Criminal Division, DOJ, requires that all complaints, informations, and indictments charging election offenses must be cleared through ECB. The use of subpoenas to secure election records and the use of grand jury in these matters also requires approval of the ECB. The obtaining of the above clearances is the responsibility of the USA and may be obtained telephonically in emergency situations. The ECB is also responsible for establishing overall prosecutive policy in this rapidly developing area of law and assuring a nationwide standard of prosecution.

The ECB, DOJ, is staffed with attorneys knowledgeable in the sometimes complex prosecutorial issues involved in this sensitive area. Frequently, the ECB assists USAs in prosecutive strategy in these matters. On occasion, due to workload, recusal or complexity considerations, a departmental attorney may be assigned to handle the matter in lieu of USA. In these instances, the investigative and prosecutive functions between the DOJ attorney and the FBI will be the same as has been established with USAs.

(2) USAs are authorized to request the FBI to conduct preliminary investigations in election law matters for which the FBI has sole investigative jurisdiction. See 56-9 of this manual for scope of preliminary investigation. Under all circumstances, full investigations must be approved by the DOJ by way of communication through FBIHQ (see 56-10 of this manual).

(3) The quality of enforcement jurisdiction over campaign financing offenses requires a close and continuing relationship



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between the DOJ and FEC. The official flow of information between the DOJ and the FEC is governed by a formal Memorandum of Understanding. The DOJ is responsible for maintaining this liaison with FEC on a case-by-case basis. All complaints alleging violations of the campaign finance or reporting provisions of the FECA which are received by the FBI should be brought immediately to the attention of the DOJ by way of FBIHQ (see 56-11 of this manual) and no further action taken. USAs are not authorized to request preliminary investigations in FECA matters. The DOJ has advised USAs that they should not refer these matters directly to the FEC or otherwise attempt to deal themselves with the FEC enforcement staff. In the event that an ongoing investigation into non-FECA offenses produces evidence indicating that FECA crimes may be involved in the pattern of conduct, the pertinent facts must be brought promptly to the attention of FBIHQ.

(4) The policy of the FBI in election fraud matters is to refrain from intervening in an ongoing elective contest in such a way that the investigation is allowed to become a campaign issue. This frequently requires that overt investigation of a matter occur at the conclusion of the election at issue.

(5) The greatest amount of care and discretion must be exercised in these cases due to their potential political sensitivity. They are to receive the close personal attention of the SAC and must be completed at the earliest possible date. Any unusual problems encountered should be submitted immediately to FBIHQ. The investigations are to be handled by experienced and mature Agents. The services of Agents best qualified by experience and training are to be utilized. All deadlines set by the Bureau must be met. The investigations are to be conducted in a strictly fair and impartial manner and no statements indicating prejudice are to be made. Two Agents should be present at all interviews of subjects and potential subjects. Other interviews should also be conducted by two Agents whenever circumstances indicate this should be done.

(6) Agents are not to be assigned to "police" elections or act as observers at the polls. Agents will not enter the polls or conduct any investigation inside any public facility in which the polls are located. The Department has been advised that in order to fulfill its mandate they may be instances where it would be most efficient and/or necessary for the FBI to perform related investigations in the vicinity of the open polls. Such requests, however, should be immediately brought to the attention of FBIHQ and will be approved only on the instruction of the DOJ. Once approved, it must be realized that the potential for misunderstanding of the

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purpose of the FBI's inquiry(s) require that every effort be made to limit the investigation to only what is absolutely necessary to meet the objective(s).

EFFECTIVE: 01/08/82

56-9 INVESTIGATIONS (See 56-8 (2).)

EFFECTIVE: 01/08/82

56-9.1 Handling of Complaints

(1) Upon receipt of a complaint, interview the complainant and obtain full circumstances of the alleged violation, including nature of the election, local, state or Federal, names of candidates, possible subjects or suspects and/or witnesses, types of physical evidence which may exist and other immediately available details.

(2) Present facts known to USA for opinion as to whether a preliminary investigation should be conducted if allegation sufficiently credible.

EFFECTIVE: 01/08/82

56-9.2 Preliminary Investigation

Preliminary investigations may be requested by the USA or by the DOJ through FBIHQ. They should entail some or all of the following and should be described in the first sentence of communications as "This is a preliminary investigation."

(1) Interview of complainants, victims, and immediately available witnesses

(2) Interview of subjects (only if specifically requested by the Department)

(3) Obtaining of any physical evidence, including documents, ballots and other pertinent evidence

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(4) Taking of photographs, if appropriate, to the nature of the alleged violation

(5) Any other logical investigation to round out the facts of the complaint.

(6) Among other things, it should be determined what Federal and/or local candidates or political issues would be affected by the alleged irregularities. If alleged irregularities involve handling, marking or counting of ballots, determine whether each voter executes single ballots or ballots containing multiple candidates covering state and local, as well as Federal candidates and issues.

(7) Take signed statements, if possible, from complainants, victims, witnesses, and subjects.

(8) Upon referral to the Department of the results of a preliminary investigation, the Department may later request additional specific investigation. In such instances, the request will be forwarded to the field by FBIHQ with appropriate instructions and the subsequent communication should contain a statement in the first paragraph of the details to the effect, "This is a continued preliminary investigation."

(9) DOJ policy concerning the prosecution of election fraud offenses for which the FBI has exclusive investigative jurisdiction is to give selective consideration based on how the fact situation impacts Federal interests. The following general categories, in descending order of priority, are set forth to serve as a guide as to the extent of preliminary investigation that should be conducted.

(a) Category #1 - This category includes all election fraud matters that reflect a pattern of conduct which has as its object to affect the outcome of Federal contests for Congressmen or Congresswomen, Senators, or President. Federal law preempt state laws in all such instances. Thus when a case falls in this category, Federal intervention is virtually mandatory.

(b) Category #2 - This category includes all patterns of electoral abuse which occur in the setting of a Federal election which can be shown to have impacted adversely upon the outcome of a Federal contest, but which were directed at improperly affecting the outcome of state or local contests.

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(c) Category #3 - This category includes all patterns of electoral abuse which occur in the setting of a Federal election, but where the fraud in question cannot be shown to have impacted adversely upon a Federal contest.

(d) Category #4 - This category includes all the remaining situations in which a pattern of electoral abuse occurs during an election where Federal candidates were not on the ballot.

(10) Other factors bearing on DOJ prosecutive policy:

(a) The extent that the geographic area involved has suffered voting abuses in the past.

(b) The extent that the pattern of election abuse may be related to a pattern of local corruption or other activity.

(c) The ability and willingness of state election enforcement agencies to deal with the problem.

EFFECTIVE: 01/08/82

56-10 ADMINISTRATIVE AND REPORTING PROCEDURE FOR MATTERS UNDER  
EXCLUSIVE FBI INVESTIGATIVE JURISDICTION

Advise FBIHQ via LHM (original and three copies) when credible complaint results in USA opinion that a preliminary investigation is not warranted. Submit in closed status. LHM will be disseminated by FBIHQ to DOJ for review. Include succinct summary of facts and reason for USA opinion. Form FD-365 may be used to transmit LHM to FBIHQ. One copy of LHM should be furnished to USA.

EFFECTIVE: 01/08/82

56-10.1 Where Preliminary Investigation Requested by USA

Advise FBIHQ via LHM (original and three copies) within ten days when preliminary investigation initiated as requested by USA. Include succinct summary of facts and AUSA opinion as to statute(s) believed violated.

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EFFECTIVE: 01/08/82

56-10.2 Upon Completion of Preliminary Investigation

(1) Advise FBIHQ via LHM (original and three copies) of facts obtained and opinion of USA as to whether full investigation should be conducted. If none requested, submit in closed status. One copy of LHM should be furnished to USA. USAs may not decline prosecution in these matters. LHM will be disseminated by FBIHQ to DOJ for review.

(2) Should USA request full investigation, submit LHM in pending status with request of FBIHQ to refer to DOJ for approval. A recommendation for a full investigation should be supported by a commitment to prosecute by the USA if allegations are supported by facts developed. No further investigation should be conducted pending response from FBIHQ. In urgent situations, this request should be submitted by teletype with follow-up LHM.

EFFECTIVE: 01/08/82

56-10.3 Upon Completion of Full Investigation

Submit closing LHM to FBIHQ (original and three copies) for dissemination to DOJ following resolution of matter. Include additional summary of facts developed and results of prosecution or other disposition.

EFFECTIVE: 01/08/82

56-11 ADMINISTRATIVE AND REPORTING PROCEDURE FOR MATTERS  
RELATING TO FECA OFFENSES

Advise FBIHQ by LHM (original and three copies) or by teletype if significant allegation received. Conduct no further investigation until advised by FBIHQ. USAs cannot authorize preliminary investigation in FECA matters. The DOJ will determine if matter to be referred to FEC or FBI for investigation.

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|| 56-12 CHARACTER - ELECTION LAWS |

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SECTION 58. |CORRUPTION OF FEDERAL PUBLIC OFFICIALS|

58-1

BACKGROUND

(1) The FBI defines a public corruption case as any criminal investigation opened under any classification, wherein it is alleged that a public official has abused his/her position of trust within a governmental entity in violation of a Federal criminal law. A public official is defined as an individual elected or appointed to a position of trust in a governmental entity or political subdivision thereof. FBI corruption cases can involve officials ranging from local government regulatory inspectors to officials at the highest levels of the Federal Government.

(2) There are a number of criminal statutes which may be applicable to corruption cases. Although there is some overlap, there generally are specific Federal criminal laws applicable to corruption of Federal, as opposed to state and local, officials.

(3) This manual section deals with Federal public corruption matters. MIOG, Part I, Section 194 should also be consulted as it applies to corruption of state and local public officials.

EFFECTIVE: 09/16/94

58-2

SCOPE

(1) The purpose of the 58 classification is to incorporate, within one classification, corruption matters involving Federal public officials where the focus of the investigation is on the Federal public officials' abuse of office, regardless of the Federal statute alleged to have been violated. However, allegations against a Federal official which intertwine with contracts or programs being administered by a Federal executive branch, department or agency may be classified under an appropriate Fraud Against the Government classification. Likewise, allegations against a Federal official which intertwine with drugs and/or organized crime (OC) activity may be classified under an appropriate OC/Drug Program classification. The important factor is the PRIMARY FOCUS of the investigation. This

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determination is to be made by the field office.

(2) The 58 classification extends as well to the offer or solicitation of bribes to or from a juror or witness in any Federal proceeding and others who are not identified as a Federal public official.

(3) The following criteria should be utilized in the classification of a corruption matter as a Corruption of Federal Public Officials matter (58) within the White-Collar Crime Program.

(a) The public official involved is an individual elected or appointed to a position of trust in a Federal governmental entity or an employee or person acting on behalf of a Federal governmental entity.

(b) The corrupt activity of the Federal official requires the use of his/her official position and is in violation of Federal law.

(c) The focus of the investigation is on the abuse of the position of trust by the Federal public official in violation of Federal law, as opposed to Federal crimes being committed by a person who happens to be a Federal public official.

(d) When considering the opening of an investigation of a Federal public official, it is extremely important to determine, immediately upon receipt of such allegations, whether or not the Federal public official is considered a person covered under the Independent Counsel provisions of the Ethics in Government Act (MIOG, Part I, Section 211-4). Questions concerning coverage should be immediately brought to the attention of the Public Corruption Unit (PCU), FBIHQ, for resolution before proceeding further.

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58-3 FEDERAL STATUTES FREQUENTLY APPLIED TO FEDERAL PUBLIC  
CORRUPTION INVESTIGATIONS

A variety of Federal criminal statutes can be applied in Federal public corruption investigations. The following is meant only to highlight the elements of the most frequently used statutes. The opinion of the respective USA's office should be sought for further clarification of judicial interpretations and the distinctions among the various Federal judicial circuits. It is also important to note that the following overview of the statutes is limited to their use in the public corruption context.

EFFECTIVE: 09/16/94

58-3.1 Bribery of Public Officials and Witnesses (Title 18, USC,  
Section 201) (See MIOG, Part I, 49-6(1).)

(1) The major statute utilized in prosecuting corruption of federal officials is the federal bribery statute. Federal public officials, including members of Congress and other officers, employees, or persons acting for or on behalf of the United States or its agencies; departments or branches in any official function may be charged under the federal bribery statute. This statute prohibits a PUBLIC OFFICIAL, directly or indirectly, from corruptly soliciting, seeking, accepting, receiving, or agreeing to receive anything of value, either personally or for another person or entity, for himself/herself in return for being influenced in the performance of an OFFICIAL ACT by him/her, being influenced to do or omit to do any act in violation of his/her official duty. It further prohibits any individual, directly or indirectly, from giving, offering or promising anything of value to a public official, with intent to influence any official act, influence such public official to get involved in any fraud in the United States, or to induce such public official to do or omit to do any act in violation of his/her official duty.

(2) The term, "public official," for the purposes of this section, is defined as a person who is a "Member of Congress, Delegate, or Resident Commissioner, either before or after such official has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency, or branch of government thereof, including the District of Columbia, in

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any official function, under or by authority of any such department, agency, or branch of government, or a juror." It further includes any person who has been nominated or appointed to be a public official, or who has been officially informed that they will be nominated or appointed.

(3) The term, "official act," means "any decision or action on any question, matter, cause, suit, proceeding or controversy which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit."

(4) The federal bribery statute has, as an element of the violation, an intent provision. That is to say that there must be a QUID PRO QUO in which the bribery is paid and received in exchange for influence with respect to an official act. Unlike other public corruption statutes, this exchange must be proven. The gratuity subsections of the bribery statute, Title 18, USC, Section 201(c), provide alternative means of addressing corruption by Federal officials when a QUID PRO QUO cannot be shown.

(5) The penalty for violating Section 201 is a fine not more than three times the monetary equivalent of the thing of value, or imprisonment for not more than 15 years, or both, and discretionary disqualification from public office.

EFFECTIVE: 07/31/97

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58-3.3 Interstate and Foreign Travel or Transportation in Aid of  
Racketeering Enterprise Act (ITAR) (Title 18, USC, Section  
1952) (See MIOG, Part I, 194-3.3.)

(1) ITAR, often referred to as the Travel Act, makes it a  
Federal offense to travel interstate or use interstate facilities,  
with the intent to:

(a) distribute the proceeds of any  
| unlawful activity; or |

(b) commit a violent crime in furtherance of any  
| unlawful activity; or |

(c) | otherwise promote, manage, establish, carry on, |  
or facilitate any unlawful activity

(2) "Unlawful activity" is defined as including the acts  
of extortion and bribery.

(3) A public official violates ITAR when he/she travels  
interstate or uses interstate facilities, i.e., transportation  
carriers, mail couriers, United States mails, and telephones, in  
furtherance of the bribery scheme. This act is particularly useful in  
lieu of, or as an alternative, to Hobbs Act when there is no proof of  
the effect a victim's loss had on interstate commerce or where there  
are no series of predicate offenses as required under the Racketeer  
Influenced and Corrupt Organization Statute.

(4) The penalty for violating Section 1952 is a fine or  
imprisonment for not more than five years, or both.

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58-3.4 Mail Fraud (Title 18, USC, Sections 1341 and 1346) (See MIOG, Part I, 36-1 & 194-3.4.)

(1) A public official who uses the United States mails in furtherance of schemes to defraud a governmental entity or others has violated the Mail Fraud Statute. Examples of these schemes include officials who rig the awarding of contracts to benefit themselves. Such schemes have almost always required mailings. It is not necessary that the official mailed something himself/herself or directly received the item in the mail. It is sufficient that he/she knowingly caused the mails to be used or reasonably should have known that the mails would be used in furtherance of the scheme.

(2) The Mail Fraud Statute has been used in a most effective manner in public corruption prosecutions under the theory that a fraudulent scheme which extended to an official's acts, deprived the citizens of the full and faithful services of the public official. This theory was, however, limited considerably in a Supreme Court decision, *McNally v. United States*, which held that the intent of the statute did not extend to this intangible right of citizens to honest Government. For Acts prior to November 18, 1988, it must be shown that the citizens were defrauded of actual money or property. The Omnibus Anti-Drug Abuse Act of 1988 amended the Mail Fraud Statute by adding Section 1346, which "for the purposes of this chapter the term scheme or artifice to defraud includes a scheme or artifice to deprive another of the intangible right to honest services." Therefore, the "intangible rights" theory may still be used to prosecute officials for acts occurring after November 18, 1988.

(3) The penalty for violating Sections 1341 or 1346 is a fine or imprisonment for not more than five years, or both.

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58-3.5 Wire Fraud (Title 18, USC, Section 1343) (See MIOG,  
Part I, 194-3.5.)

(1) A public official who transmits or causes to be transmitted by means of wire, telephone, radio, or television, any writings, sounds, signals, pictures, or signs, in interstate commerce, for the purpose of defrauding a governmental entity or others, has violated the Wire Fraud Statute.

(2) The penalty for violating Section 1343 is a fine or imprisonment for not more than five years, or both.

(3) Similar to the Mail Fraud Statute, an example of the use of the Wire Fraud Statute in corruption matters would be to prosecute a public official who has used the telephone or computer systems in interstate commerce in furtherance of a kickback scheme involving governmental contracts.

EFFECTIVE: 09/16/94

58-3.6 Racketeer Influenced and Corrupt Organizations (RICO)  
(Title 18, USC, Sections 1961-1963) (See MIOG, Part I,  
194-3.6.)

(1) RICO, traditionally a powerful weapon against organized crime, has also been used most effectively in public corruption investigations, especially systemic corruption found in a governmental entity.

(2) As it relates to public corruption, RICO makes it a Federal offense for any person to engage in a pattern of racketeering activity that has a specified relationship to an enterprise (i.e., investing proceeds, acquiring or maintaining interest in or conduct the affairs of) that affects interstate commerce.

(3) In the context of public corruption investigations, a pattern of racketeering activity may be two or more state or Federal crimes, to include traditional corruption-related offense such as bribery, extortion, mail fraud, wire fraud, obstruction of Federal criminal investigations, tampering with Federal witnesses, victims or informants, and violating currency transaction reporting requirements.

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(4) An enterprise includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact, although not a legal entity. Enterprises in previous prosecutions have included police departments, law firms, court systems, and even less formal associations of individuals joined in some corrupt scheme.

(5) Section 1962(d) makes it a crime to conspire to commit the substantive RICO offenses.

(6) The penalty for violating Section 1962 is a fine or imprisonment for not more than 20 years (or life if the predicate violation carries a life sentence), or both, as well as significant criminal and civil forfeiture provisions.

EFFECTIVE: 09/16/94

58-4 | CONFLICT OF INTEREST (Title 18, USC, Sections 202, 203, 205 - 211)

EFFECTIVE: 01/22/90

58-4.1 Section 203. Compensation to Members of Congress, Officers, and Others in Matters Affecting the Government

(1) Solicitation or receipt of compensation by a Government employee, the elements are:

(a) Employed by the United States

(b) Rendered service or agreed to for or on behalf of the United States

(c) In a matter in which the United States has direct or substantial interest

(d) Solicited or received compensation, or agreed to

(2) Give or offer compensation to Government employee, the elements are:

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58-4.6      Section 209. Salary of Government Officials and Employees  
Payable Only by United States

(1) Receipt from private sources of any salary, contribution to or supplementation of salary as compensation for services as a Government employee, as well as payment, contribution to, or supplementation of a Government salary.

(2) The penalty for violating Section 209 is a fine or imprisonment for not more than one year, or both.

EFFECTIVE: 09/16/94

58-4.7      Section 210. Offer to Procure Appointive Public Office

(1) Offer or payment to procure appointive Government office.

(2) The penalty for violating Section 210 is a fine or imprisonment for not more than one year, or both.

EFFECTIVE: 09/16/94

58-4.8      Section 211. Acceptance or Solicitation to Obtain  
Appointive Public Office

(1) Solicitation or acceptance of payment to procure appointive Government office.

(2) The penalty for violating Section 211 is a fine or imprisonment for not more than one year, or both.

EFFECTIVE: 09/16/94

58-4.9      Section 202. Definitions (See Title 18, USC, Section  
202)

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58-4.4      Section 207. Disqualification of Former Officers and  
Employees in Matters Connected with Former Duties or  
Official Responsibilities; Disqualification of Partners

(1) Former Government employees are prohibited for all time from handling matters before the Government in which they participated personally and substantially as United States employees.

(2) Partners of former Government employees are subject to the same limitations as employees under (1) above.

(3) Government employees who do not participate directly in a Government matter, but who had it under their official responsibility, cannot become involved in such matter for a private interest for two years after their responsibility has ended.

(4) The penalty for violating Section 207 is a fine or imprisonment for not more than two years, or both, except subsection dealing with partners for which the penalty is a fine or imprisonment for not more than one year, or both.

EFFECTIVE: 09/16/94

58-4.5      Section 208. Acts Affecting a Personal Financial Interest

(1) Government employees personally and substantially transacting official business with companies with which they, members of their families, business associates, or prospective employers have a pecuniary interest.

(2) The penalty for violating Section 208 is a fine or imprisonment for not more than two years, or both.

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- (a) Whoever gives or offers compensation
  - (b) To a Government employee
  - (c) For services rendered or to be rendered
  - (d) In a matter in which the United States has a direct or substantial interest
- (3) Partners of Government employees are also restricted under this statute in line with provisions of Section 207, which follows.
- (4) The penalty for violating Section 203 is a fine or imprisonment for not more than two years, or both, and the employee shall be incapable of holding any office of honor, trust, or profit under the United States.

EFFECTIVE: 09/16/94

58-4.2 Section 205. Activities of Officers and Employees in Claims Against and Other Matters Affecting the Government

(1) Government employees and their partners prosecuting claims against the United States.

(2) The penalty for violating Section 205 is a fine or imprisonment for not more than two years, or both.

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58-4.3 Section 206. Exemption of Retired Officers of the Uniformed Services

Exemption of Retired Officers of the Uniformed Services from provisions of Sections 203 and 205.

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58-5 PREDICATION - See Section 194-4

(1) Predication may be defined as those facts and circumstances that would provide a reasonable basis to suspect that a public official has engaged in or is engaged in conduct which is a violation of Federal criminal laws. Rumor or innuendo that often circulates throughout a community about public officials is not, in itself, sufficient to initiate an investigation. Also, official misconduct, in itself, may not be a violation of Federal law. Specific and articulable facts or circumstances from a credible source indicating a possible violation of Federal law are necessary. Unlike reasonable suspicion, there are varying degrees of predication. Different types of investigative techniques require varying levels of predication. The amount of predication required is determined by the intrusiveness and sensitivity of the investigative technique being contemplated.

(2) Predication fluctuates throughout an investigation, going up and down dependent on the level of credible information present at any point in time. Information developed during an investigation which decreases the level of predication requires that the investigation be discontinued or that the type of investigative techniques being utilized be scaled back in terms of intrusiveness and sensitivity. Therefore, predication must be CONTINUALLY evaluated for each subject of the investigation. Before initiating an investigation or before initiating a new investigative technique within an ongoing investigation, it is extremely important that the facts and circumstances be thoroughly evaluated to the fullest extent possible to ascertain the accuracy of the information and to determine whether the amount of information currently on hand supports the type of investigation to be conducted in terms of predication. This corroboration must always be accomplished in a manner that not only avoids compromise of the investigation, but also averts premature public disclosure of the allegation(s) which would likely cause harm to the public official's reputation. When corroborating the information, careful consideration should be given to a number of factors, to include:

(a) The CREDIBILITY OF THE SOURCE - It is important to ascertain the specificity and basis of the source's knowledge of the allegation. It should be determined whether the information is based on personal observations and conversations, or was learned from

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another source. Even an anonymous source may be deemed credible when the information provided is in such detail that only an individual with personal knowledge could have provided it.

(b) The RELIABILITY OF THE SOURCE - The track record of the source for dependability and truthfulness is most important. In those cases where no track record exists, there are other indicators of reliability which may be considered, such as admissions against interests by the source, the risks of making false statements to an Agent and/or the source's professional or personal standing in the community.

(c) The MOTIVATION OF THE SOURCE - Careful scrutiny must be given to the possible factors which could motivate the source to furnish the allegation. Interviewing Agents should be alert for the source who is a political enemy of the official or may in some way benefit from publicity about an investigation of the official. In some cases, the source may believe that he/she has been harmed in some way by the actions of the official. In addition, there are many individuals who, while properly motivated to report official corruption, misunderstand the operation of Government or an official's action. Their complaint may be based on some misperception of what is otherwise legitimate official conduct.

(3) Every effort should be made to test the available information in some discreet manner to demonstrate the likelihood of its accuracy. [REDACTED] may be used to support the allegation in question. The information should be examined to determine if there exists some legitimate explanation for the alleged misconduct. Public officials enjoy considerable discretion in their positions and have many competing interests to serve in making their decisions. Some very appropriate reason may be offered later for the official action.

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(4) By properly evaluating and verifying the information, the potential for error and unnecessary injury is minimized, and the public's confidence in the FBI's conduct in corruption investigations will not be jeopardized. Each field office should be CONSISTENT in the level of predication required to initiate investigations and utilize various investigative techniques. EACH PUBLIC OFFICIAL DESERVES CONSIDERATION AS TO PREDICATION, NO MATTER WHAT POLITICAL PARTY, RACE OR RELIGIOUS AFFILIATION TO WHICH THAT PUBLIC OFFICIAL BELONGS. In more difficult circumstances, FBIHQ should be consulted to ensure consistency in the decision making process on a national

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| basis. |

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| 58-6 | POLICY AND INVESTIGATIVE PROCEDURES |

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| 58-6.1 | General

(1) Public corruption investigations are viewed as among the most sensitive investigative matters that the FBI handles. These investigations demand a circumspect and prudent approach since much is at stake for any public official who becomes the focus of a corruption investigation. The livelihood of public officials is based on his/her reputation and character. As there is usually intense media attention surrounding these investigations, the reputation of the official may be adversely and irreparably affected. Media attention and accusations of unfair targeting often accompany these investigations resulting in additional pressure on the investigating Agent(s) and field office management. Occasionally, political influences attempt to affect the investigation and/or its outcome. It is for these reasons that executive management must play an active role in the investigation by providing the attention, commitment and patience necessary to accomplish the desired tasks. It is also for these reasons that FBIHQ also maintains close oversight over public corruption investigations.

(2) The decision to investigate a public corruption matter must be personally approved by the SAC, or in his/her absence, the Assistant Special Agent in Charge (ASAC), after a consideration of the predication, i.e., facts or circumstances which reasonably indicate a Federal violation for which the FBI has jurisdiction may have occurred, is occurring, or will occur. Consideration should also be given to the presence of reasonable investigative avenues and whether or not it can be reasonably expected that a resolution may be achieved. The PCU, FBIHQ reviews the facts contained in letterhead memoranda (LHMs) submitted at the opening of each case to ensure consistency of predication on a national basis. The complexity of

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these matters will cause some difficult decisions concerning initiating investigations. In those cases, it is recommended that the PCU be consulted for advice.

(3) High-impact public corruption cases include matters involving present or former high-ranking or prominent officials or cases highlighted by the national news media. High-ranking officials include Federal elected officials, Federal judges, Presidential appointees, departmental attorneys, U.S. Attorneys (USA), ASSISTANT USAs (AUSA), and all persons covered by the Independent Counsel provisions of the Independent Counsel Reauthorization Act of 1994.

(a) FBIHQ authority is required whenever a high-ranking official, listed above, is to be interviewed in connection with ANY investigative matter.

(4) All 58 matters are to be afforded immediate and continuous attention.

(5) It is absolutely essential to prove that the action or decision to be influenced is within the scope of the Federal employee's authority and powers. Such scope is not necessarily confined to statutory authority, but embraces duties performed by the employee as established by usage and customs of his/her agency.

(6) In solicitation of bribe(s) by a Government employee, if the action or decision he/she claims the ability to influence is clearly outside the scope of his/her powers, violation of Title 18, USC, Section 872 (Extortion), may be present.

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58-6.2 Preliminary Inquiry | Versus Full Investigations (See MIOG,  
Part I, 194-5.2.) |

(1) | All investigations, whether preliminary or full, should be designed to RESOLVE the allegations regarding each subject in a TIMELY manner. Full investigations provide for the full range of investigative techniques and should be initiated when the combined predicate information raises a reasonable suspicion that corruption has occurred and reasonable investigative avenues are available. Frequently, however, the FBI receives or develops information not

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deemed sufficient to predicate the opening of a full investigation, but warranting further inquiry on a limited basis to determine the credibility of the allegation. This limited inquiry usually consists of interviews, source contacts, and/or record reviews. Under these circumstances, the SAC may authorize the opening of a preliminary inquiry.

(2) | In an effort to minimize potential damage to individuals' reputation and character, preliminary inquiries shall be completed within 90 days after the initiation of the inquiry, with extensions for each succeeding 30-day period on an "unless advised to the contrary by the Bureau" (UACB) basis. Requests for extensions should be furnished by teletype to FBIHQ no later than five working days prior to the expiration of the 90-day and/or subsequent 30-day period. This teletype should include the reason the preliminary inquiry could not be completed in the designated time frame and the need for the extension. A preliminary inquiry should be promptly converted to a full investigation or closed as soon as appropriate justification is achieved for either action.

(3) | The investigative techniques employed during any investigation, absent exigent circumstances, must avoid to the extent possible, adverse consequences to an individual's privacy and/or damage to reputation. As preliminary inquiries do not require the same level of predication as full investigations, [REDACTED]

[REDACTED] are not authorized, nor are [REDACTED]

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58-6.3 Initial Contact with the Prosecutor - See MIOG, Part I, 194-5.3.

(1) Upon the decision to open a preliminary inquiry or full investigation, the responsible USA/AUSA must be contacted as soon as practical and an opinion obtained as to Federal jurisdiction and commitment to prosecute if facts developed substantiate the allegation. This does not imply that the responsible attorney authorizes or directs the investigation. If exceptional circumstances logically preclude contact with the above prosecutors, FBIHQ should be advised, at which time an opinion will be obtained from an appropriate

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official of the Public Integrity Section (PIS), Department of Justice (DOJ).

(2) The predicated facts presented to the prosecutor by the FBI should be of sufficient clarity to suggest possible theories of prosecution involving SPECIFIC STATUTES. Although specific details of the alleged corruption may be unclear, the prosecutor should set up guideposts as to what kind of factual situation would be prosecutable. As the investigation develops additional facts, the prosecutor should refine the opinion in an ongoing process until the indictment stage. A refined early opinion allows the FBI to develop an investigative plan directed toward proving identified elements of specific Federal criminal statutes. A thorough initial discussion with the prosecutor can eliminate wasted investigation, reinterviews of witnesses and extraneous record reviews.

(3) During contacts with the prosecutor, an Agent must be aware that the prosecutor is often primarily concerned with the legal and prosecutive aspects of the investigation. As a result, discussions with AUSA's normally progress towards discussing legal issues and often ignore the equally important issues of predication, intrusiveness and third-party liability issues. AGENTS SHOULD ENSURE THAT THESE ISSUES ARE THOROUGHLY DISCUSSED WITH THE AUSA PRIOR TO CONDUCTING AN INVESTIGATION OR UTILIZING A PARTICULAR INVESTIGATIVE TECHNIQUE.

(4) Although USAs are necessarily political appointees, the quality of individuals appointed as USA makes it extremely rare for a person's political affiliation to interject itself in a public corruption investigation. However, it is always wise to avoid any APPEARANCE of political partisanship or conflict of interest, and therefore, dependent on the circumstances, it may be advisable for the USA to recuse himself/herself and/or his/her office from a particular investigation. Most often, recusals are initiated by the USA. Some situations call for recusal of the USA without the USA being advised of any facts regarding the case. If a field office believes that there should be a recusal and the USA is unwilling to recuse himself/herself, or if the matter cannot be openly discussed with the USA to initiate recusal, the PCU should be contacted so that DOJ can be consulted. In these instances, the PIS, DOJ will assume prosecutive responsibility for the investigation.

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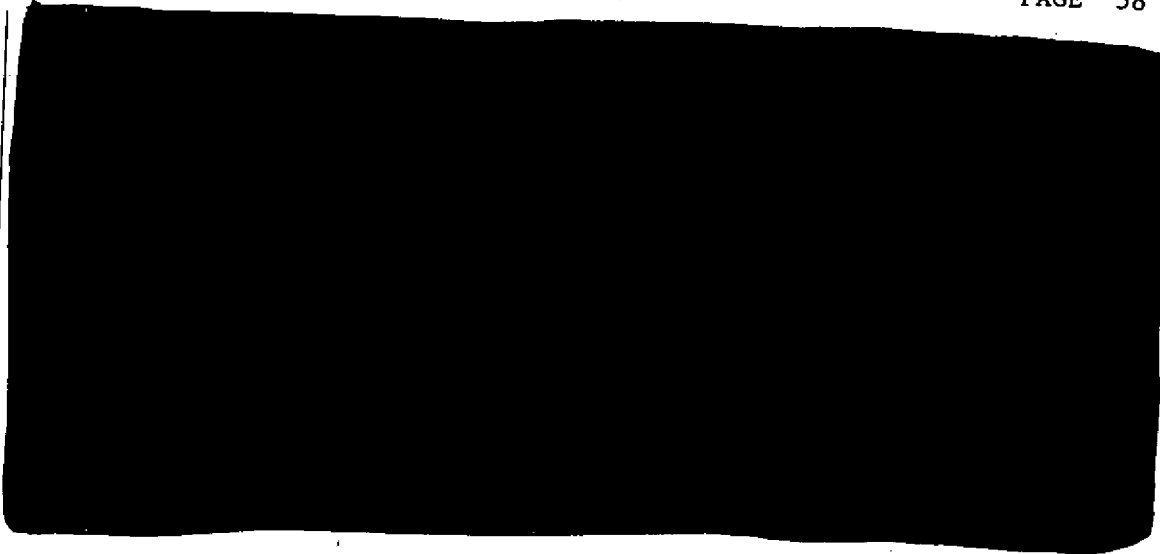
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58-6.5 Arrest of Public Officials

Only under unusual circumstances should arrest warrants be requested from the USA or Strike Force Attorney in lieu of summonses following indictment or issuance of an information regarding corruption of public officials. Such an unusual situation would exist when information has been received that the subject contemplates fleeing to avoid legal process. While it is recognized that the final decision to issue a warrant or summons is the responsibility of the court and the USA's Office, FBI policy, in this regard, should be made known to the USA's Office.

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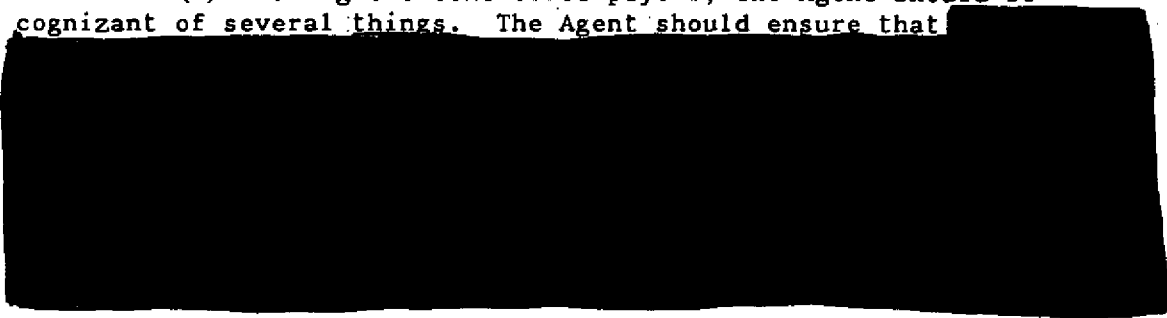
58-6.6 Bribe Payments (See MIOG, Part I, 194-5.6; Part II, 10-14.1.4.)

(1) Clearly, the controlled payoff of a public official offers far more compelling evidence for the jury than the historical testimony of witnesses of past events. In the latter situation, the jury must rely on the recollection of observations of others. The controlled payoff through an audio and/or video recording places the juror right at the scene, and as it has been said before, "tapes don't lie." Agents should always be alert for the possibility of making controlled bribe payments.

(2) Bribe payments to all public officials must be authorized in advance by an appropriate FBI official, either SAC or FBIHQ. The level of authority required depends on the amount of the payoff and the level of official being bribed. Bribes to officials of a managerial or executive-level or higher require FBIHQ approval. FBIHQ authority is also required for bribe payments to an official in less than a managerial/executive level, if the amount of the bribe exceeds \$20,000 (\$10,000 per recipient). These approval levels apply as well to UCOs. Approval of a Group I UCO does not automatically include bribe payment authority.

(3) FBIHQ authority to pay a bribe requires a teletype setting forth the circumstances, particularly the details of the official's solicitation or demand, the anticipated scenario, the identity of the public official, the amount of the payoff, and an AUSA's prosecutive opinion that the controlled payoff will provide evidence of a Federal violation and he/she is committed to prosecution.

(4) During the controlled payoff, the Agent should be cognizant of several things. The Agent should ensure that



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(5) FBIHQ generally will not approve payments to a middleman in the absence of recorded conversations with the public official indicating that the public official is aware that money is being paid and what the money is being paid for and a commitment by a prosecutor to prosecute the middleman. Payment authorization for middlemen is based on the level of the public official the middleman allegedly represents. If payments are authorized to a middleman, appropriate measures should be made to follow the money to the public official.

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58-6.7 Closing Investigations

(1) The ultimate goal of an investigation is to RESOLVE the allegations. This is particularly true in investigations that have become known to the public and/or the media. The investigation of a public official itself will do harm (deserving or not) to the official's reputation if the matter does not reach resolution. Therefore, prior to closing a public corruption investigation a thorough review must be conducted to ensure that all investigative avenues have been pursued. Upon closing a public corruption investigation without resolution, a field office must document why the matter cannot be resolved. An example of the importance of this is that frequently, public officials who have been subjects of FBI criminal investigations, are considered for Presidential appointments. During the consideration process, the White House requests FBI records checks which results in a review of the substantive criminal investigative file(s) concerning the official being considered. If the case has been closed and the investigation and/or file is incomplete as to how the matter was resolved or why it could not be resolved, the decision as to the appointment could be most difficult and may result in either a deserving candidate not being appointed to a job or an undeserving candidate being appointed.

(2) Although it is advisable to seek prior concurrence of the prosecutor, PRELIMINARY INQUIRIES may be closed administratively with the personal approval of the SAC (ASAC in SAC's absence) when

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allegations are determined to be false or baseless, or when the matter obviously has no prosecutive merit. Full investigations may be closed upon completion of prosecutive action or upon declination by the prosecutor. Upon the closing of all cases, preliminary inquiry or full investigation, there must be written confirmation of the closing with the prosecutor within 30 days following closing. This may be accomplished by furnishing the prosecutor a copy of the closing LHM that is being forwarded to FBIHQ or by separate letter.

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58-7 INVESTIGATIONS

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58-7.1 Bribery Matters

(1) Ascertain the identities of the complainant and the parties to the bribe, the purpose of the bribe (when possible), and the preliminary opinion of the USA regarding: (1) the existence of a Federal violation, (2) jurisdiction, (3) entrapment, and (4) commitment of prosecution if the allegation is substantiated.

(2) Bribes, by their very nature, are secretive crimes. Often payoffs are made in cash and are known only to the parties involved. For this reason, circumstantial evidence is particularly important.

[REDACTED] to corroborate the allegation(s).

(3) Particular care should be exercised in planning

[REDACTED] Expert handling of this vital phase of an investigation is often the key to successful prosecution.

(4) Since complaints of prospective payoffs generally indicate the existence of a promise or a solicitation of a bribe, a

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crime may have been committed within the definition of the statutes. Discuss with the USA the desirability of obtaining an arrest warrant, summons, or oral authorization to arrest, prior to making the payoff.

(5) In those cases where a Government employee is the subject of the investigation, obtain documentary evidence detailing the official status of the employee and the scope of that employee's duties. This should include those duties formally assigned to the employee and those duties customarily executed by the employee, even though there is no formal assignment of same.

(6) Ascertain the specific action to be taken by the Federal official or employee as a result of the bribe.

(7) In investigating complaints made by Federal Government employees, be alert for indications that the Federal Government employee may have solicited the bribe payment, but reported the matter when the employee later believed the acceptance or solicitation of a bribe became known to others.

(8) Consult FBIHQ if the SAC believes circumstances make it inadvisable to discuss the complaint or any investigative developments with the USA.

(9) If a suggestion or hint of a bribe is made to a Special Agent, the Agent should immediately inform the SAC. The SAC will consult with the USA in planning the future course of action against the subject.

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58-7.2 Conflict of Interest Matters

(1) Since many alleged violations may be technical in nature, consult the USA promptly upon receipt of a complaint to ascertain whether the USA will consider prosecution if the allegations are verified through investigation, and for legal guidance the USA may have to offer which may be of assistance in planning the investigation.

(2) The investigation must establish that the subject was

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a Government employee at the time of the activity alleged to be within the scope of Conflict of Interest sanctions.

(3) Diligent efforts must be made to cover any impending payoffs and to establish the nature and extent of any prior compensation received by the Government employee, whether direct or indirect.

(4) The sanctions against "Special Government Employees" are less restrictive than those against regular employees; therefore, the specific employment status of the Special Government Employee must be verified at the outset of the investigation.

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58-7.3 Bribes to or From Jurors, Witnesses or Non-Federal Officials

(1) FBIHQ authorization is required to conduct investigations based upon requests by USAs or Federal judges concerning complaints arising from trials of matters in which the FBI does not have primary jurisdiction, or in which the underlying investigation was conducted by another Government agency. FBIHQ authorization is also required prior to initiation of investigation into allegations of the bribery of jurors in pending trials.

(2) Advise the USA immediately upon receipt of complaints regarding violations connected with trials in progress or about to begin. Obtain the USA's assurance that the presiding judge has been informed and concurs with the initiation of an investigation prior to undertaking same. Interviews with witnesses and jurors in such pending cases should be conducted only upon the direction of the USA with the authorization of the presiding judge. (See also Section 72, "Obstruction of Justice," in this manual.) Every effort should be made to avoid incidents which might permit claims of prejudice or provide grounds for a mistrial.

EFFECTIVE: 01/22/90

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58-8 REPORTING REQUIREMENTS

Due to the sensitive nature of these investigations, FBIHQ will provide close oversight to all public corruption matters, particularly as to predication, potential third-party liability and "look bad" issues. Steps are taken by FBIHQ to ensure that the level of predication necessary to initiate an investigation is uniform throughout the field. Also, as public corruption is a highly specialized investigative field with numerous issues, the PCU at FBIHQ is often able to suggest investigative techniques which have proven to be successful and identify and offer solutions to various complicated potential third-party liability and "look bad" issues. In order to facilitate oversight necessary to accomplish these tasks, certain reporting and administrative procedures have been established.

EFFECTIVE: 09/16/94

58-8.1 High Profile Investigations

(1) The opening of investigations (preliminary or full) of significant interest, i.e., those matters which would logically be expected to generate significant media attention and/or public interest on a national scale, require an immediate teletype submitted to FBIHQ the day of opening in addition to required LHMs. This teletype should contain a synopsis of the same information to be contained in the opening LHM. Significant developments in cases involving high-level public officials must be communicated to FBIHQ by telephone or teletype. In these cases, expect periodic requests from FBIHQ for interim status teletypes/LHMs.

(2) Any significant development in any public corruption case which could receive national attention or cause high-level (i.e., congressional or high-level executive branch) inquiry of FBIHQ should be reported immediately to FBIHQ by the most expeditious and appropriate means.

EFFECTIVE: 09/16/94

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58-8.2 | Cover Airtel/LHM

In ALL public corruption cases, an airtel (original only) and LHM (original and one copy) must be sent to FBIHQ within 30 calendar days of the opening of the case. The LHM is disseminated to the appropriate DOJ section, usually PIS or the Office of Professional Responsibility, or both. Sensitive information, statutorily prohibited material, or source identities should not be disclosed in the LHM. The field office should identify all sources referred to in the LHM by name or symbol number, as appropriate, in the administrative section of the cover airtel. The LHM should note whether the matter is opened as a full investigation or preliminary inquiry and should include the facts predicated the case, the initial investigative steps contemplated and the USA's opinion that the allegation(s) indicate that a violation of Federal law may have occurred and if proven, the USA is committed to prosecuting the matter. A copy of the LHM should be provided to the USA's Office.

EFFECTIVE: 09/16/94

58-8.3 | Case Conversion to Full Investigation

An airtel and LHM should also be submitted to FBIHQ at the time a public corruption case is converted from a preliminary inquiry to a full investigation, with justification for the conversion. It is possible that preliminary inquiries opened on multiple subjects may result in sufficient evidence being developed to convert the investigation to a full investigation on some, but not all, of the subjects originally named in the title of the case. If any subject is being eliminated as a subject of the case at the time of the conversion to a full investigation, that subject must be fully identified in the LHM converting the case to a full investigation, with complete justification for eliminating that individual as a subject of the case. A copy of that LHM must be sent to the appropriate AUSA.

EFFECTIVE: 09/16/94



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58-8.4 Closings

(1) All full investigations in known subject public corruption matters where no prosecutive action has resulted require closings based on a prosecutive opinion. The prosecutive opinion should address each individual who had been named as a subject of the investigation at any time.

(2) A closing airtel (original only) and LHM (original and one copy) must be prepared for each investigation which has been concluded. This final LHM must restate the predication for opening the investigation, summarize investigative findings, detail the disposition of the investigation AS TO EACH SUBJECT, and provide the opinion of the AUSA. The LHM should also state why a matter cannot be resolved if no resolution can be reached. Any prosecutive action should be detailed from indictment, information or complaint, through plea acceptance, trial disposition, and/or sentencing, as appropriate. Ensure that descriptive data which will positively identify the subject(s) for indexing purposes is included in the cover airtel of the closing LHM. THE DISPOSITION OF ALL ALLEGATIONS OF CRIMINALITY MADE AGAINST ALL SUBJECTS IN A CASE, TO INCLUDE CODE NAME CASES, MUST BE ADDRESSED AND REPORTED IN THE CLOSING LHM.

(3) Administrative closings should show the steps taken to address the allegations and explain why further investigation is not warranted and/or possible.

EFFECTIVE: 09/16/94

58-8.5 Prosecutive Reports

The decision regarding preparation of a prosecutive report is left to the discretion of the SAC/field supervisor and should be considered on a case-by-case basis. The complexity of the investigation and needs of the prosecuting attorney may be determining factors in this decision. Prosecutive reports are not to be routinely disseminated outside the DOJ.

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EFFECTIVE: 09/16/94

| 58-8.6 | Deleted |

EFFECTIVE: 09/16/94

| 58-8.7 | Deleted |

EFFECTIVE: 09/16/94

| 58-9 | FIELD OFFICE REQUESTS FOR FINANCIAL DISCLOSURE STATEMENTS  
OF FEDERAL PUBLIC OFFICIALS

All field offices should direct all requests for financial disclosure statements which are filed by Federal public officials under the Ethics in Government Act of 1978 to FBIHQ, Attention: White-Collar Crimes Section, for handling. Included among these public officials are United States Members of Congress, members of the Federal judiciary, and high-ranking officials of the executive branch. The request should include a concise summary of the facts of the investigation and justification for the financial disclosure statement.

EFFECTIVE: 01/22/90

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58-10 CHARACTER - CORRUPTION OF FEDERAL PUBLIC OFFICIALS (CFPO)

- 58A CFPO - Executive Branch
- 58B CFPO - Judicial Branch
- 58C CFPO - Legislative Branch
- 58D CFPO - Federal Bribery - other

EFFECTIVE: 10/18/95

58-11 VENUE

Lies in judicial district where specific offense occurs.

EFFECTIVE: 01/22/90

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SECTION 60. ANTITRUST

60-1 STATUTES

Title 15, USC, Sections 1-7, Sections 12-27 and Sections  
13 a-c

EFFECTIVE: 01/31/78

60-1.1 Sections 1-7

Sherman Antitrust Act of July 2, 1890 (1-7, Title 15),  
basic statute under which investigations conducted. Certain sections  
read as follows:

(1) Section 1

(a) Trusts, etc., in restraint of trade illegal;  
exception of resale price agreements; penalty

"Every contract, combination in the form of  
trust or otherwise, or conspiracy, in restraint of trade or commerce  
among the several States, or with foreign nations, is declared to be  
illegal: Provided, that nothing contained in Sections 1 to 7 of this  
title shall render illegal, contracts or agreements prescribing  
minimum prices for the resale of a commodity which bears, or the label  
or container of which bears, the trademark, brand or name of the  
producer or distributor of such commodity and which is in free and  
open competition with commodities of the same general class produced  
or distributed by others, when contracts or agreements of that  
description are lawful as applied to intrastate transactions, under  
any statute, law, or public policy now or hereafter in effect in any  
State, Territory, or the District of Columbia in which such resale is  
to be made, or to which the commodity is to be transported for such  
resale, and the making of such contracts or agreements shall not be an  
unfair method of competition under Section 45 of this title: Provided  
further, that the preceding provision shall not make lawful any  
contract or agreement, provided for the establishment or maintenance  
of minimum resale prices on any commodity herein involved, between  
manufacturers, or between producers, or between wholesalers, or  
between brokers, or between factors, or between retailers, or between

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persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage in any combination or conspiracy declared by Sections 1 to 7 of this title to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punishable by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court." (As amended 8-17-37 by Miller-Tydings amendment)

(2) Section 2

(a) Monopolizing trade a felony; penalty

"Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court."

(3) Section 3

(a) Trusts in Territories or District of Columbia illegal; combination a felony

"Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory or Territories and any State or States or the District of Columbia and any State or States or foreign nations, is declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court."

(4) Section 4

(a) Jurisdiction of courts; duty of district attorneys; procedure

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"The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of section 1-7 of this title; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition and the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises."

EFFECTIVE: 01/31/78

60-1.2 Other Provisions

There are a number of other laws which are supplementary to Sherman Act and under which Bureau may be called upon to conduct investigations. These include:

(1) Clayton Act of 1914 (Sections 12-27, Title 15)

(a) Section 13 prohibits arbitrary price discrimination as between different purchasers of like commodities, where effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce. This prohibition does not prevent price differentials which make only due allowance for differences in cost of manufacture, sale, or delivery resulting from differing methods or quantities in which such commodities are sold or delivered. Further, the act does not prohibit price differentials caused by changes in market conditions or in the marketability of goods, such as the actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales or sales caused by discontinuance of business.

(b) Clayton Act (Section 13) also prohibits payment or acceptance of commission, brokerage or other compensation or furnishing of services or facilities upon terms not accorded to all purchasers on proportionally equal terms.

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(c) Section 14 declares unlawful sales or lease agreements which contain conditions prohibiting buyer or lessee from using or dealing in goods, machinery or other commodities of competitors of lessor or seller where effect of such agreement may be substantially to lessen competition or tend to create a monopoly.

(d) Section 15 provides that any person injured in his business or property by violation of antitrust laws may sue therefore in any district court of United States in district in which defendant resides or is found or has an agent, and shall recover threefold the damages sustained, plus cost of suit, including reasonable attorney's fees. The Government may recover actual damages and cost of suit.

(e) With respect to suits by injured parties to recover treble damages, mentioned above, Section 16 provides that a final judgment or decree rendered in any criminal or civil prosecution brought by Government under antitrust laws to the effect that defendant has violated said laws shall be prima facie evidence against such defendant in any suit brought by any other party as to all matters established by such defendant's conviction in Government's case. This does not apply to consent judgments or decrees entered before any testimony has been taken or to judgments or decrees in actions brought by Government to recover damages.

(f) Section 17 states, "The labor of a human being is not a commodity or article of commerce." This section provides that nothing contained in antitrust laws shall be construed to forbid existence and operation of nonprofit labor, agricultural, or horticultural organizations instituted for purposes of mutual help, or to forbid their members from lawfully carrying out legitimate objects of such organizations.

(g) Section 18, known as the "Anti-Merger" section of Clayton Act, prohibits acquisition by one corporation of any part of the stock or assets of another corporation where in any line of commerce in any section of the country, effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly. This section does not prohibit purchase of stock solely for investment, nor does it prevent formation or ownership of subsidiary corporations.

(h) Section 22 provides that any proceeding under antitrust laws against a corporation may be brought not only in district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business. Section 24 provides that

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directors, officers or agents of a corporation may be found guilty as individuals for illegal acts of corporation if those acts were authorized, ordered or done by such individuals.

15) (2) Robinson-Patman Act of 1936 (Section 13 a-c, Title

This act prohibits sales contracts which allow to purchaser any discount, rebate, allowance, or advertising service charge not available to competitors of purchaser. Also prohibits sales in any part of U.S. at prices lower than those charged elsewhere, or sales at unreasonably low prices, for purpose of destroying competition or eliminating a competitor.

(3) Miscellaneous

Section 32, Title 15, provides that no person shall be prosecuted for any transaction, matter or thing concerning which he may testify or produce evidence in any proceeding under Sections 1-11 of this title, but that he may be prosecuted for perjury committed in so testifying. Section 33 states that this immunity extends only to a natural person who, in obedience to a subpoena, gives testimony or produces evidence, documentary or otherwise, under oath.

Department may request investigation under other statutes not mentioned above. In such cases, refer to appropriate code section.

EFFECTIVE: 01/31/78

60-1.3 Elements

(1) To prove violation of Section 1, Title 15, it must be shown that:

(a) A contract, combination, agreement or conspiracy has been formulated which has for its purpose

(b) The restraint of trade or commerce among the several states or with foreign nations

Note that this section outlaws per se any illegal agreement which seeks to set up a restraint of trade.



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(2) Section 2, Title 15, deals with monopolies in interstate or foreign commerce. Three possible violations exist:

- (a) The actual monopolization, or
- (b) The attempt to monopolize, or
- (c) A conspiracy to monopolize

Each of the above elements may be considered a separate and distinct offense.

(3) Section 3, Title 15, is aimed against agreements and combinations in restraint of trade or commerce in any Territory of the United States or in the District of Columbia or between any Territory or the District of Columbia and any state or foreign nation. The section thus adds another jurisdictional element to the statute.

(4) Penalty for violating any of the above three sections is a maximum fine of \$1,000,000 if a corporation, or, if any other person, \$100,000, or imprisonment not exceeding three years or both.

EFFECTIVE: 01/31/78

60-2 POLICY

- (1) Departmental authority

Investigations conducted only at request of Assistant Attorney General (AAG) in charge of Antitrust Division of Department. Upon receipt of request for investigation from Antitrust Division, FBIHQ forwards to interested field offices, copies of Antitrust Division letter outlining general scope of investigation desired. Request from Antitrust Division to serve a civil investigative demand will be considered by FBIHQ and interested field office will be instructed to serve demand if considered desirable under existing circumstances.

- (2) Request from Antitrust Division representative in the field

(a) Since investigations must be authorized by AAG in charge of Antitrust Division, no requests for investigation received from antitrust representatives in the field (or from USAs)

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can be afforded attention unless investigation has been authorized by the AAG and by FBIHQ. In requesting investigation Department may indicate that case will be handled by a regional office of Antitrust Division (or by USA.) Thereafter, supplementary requests may be received from regional antitrust attorneys (or from USA.) Such requests must be in writing, and two copies of same are to be furnished to FBIHQ. Pursuant to Department's request, FBIHQ furnishes one copy to AAG, Antitrust Division. If in an emergency, regional antitrust attorney (or USA) requests investigation in a matter not previously authorized by AAG and FBIHQ, matter may be handled by telephone or teletype.

(b) Agents are to serve civil investigative demands as requested by the Antitrust Division only with the approval of FBIHQ. Requests received from regional offices of Antitrust Division or from USA for Agents to serve demands are to be in writing. Two copies of requests are to be furnished expeditiously, as warranted by existing circumstances, to FBIHQ with SAC's recommendation with respect to serving same. Sufficient time is to be allowed FBIHQ to reply if demand will be served unless advised to the contrary by FBIHQ. FBIHQ will consider approving an Agent to serve a demand only when the demand is directly associated with a request for Agents to examine and analyze records furnished in response thereto.

(3) Requests from USAs for investigation of new case

If USA requests investigation of new alleged antitrust violation, not previously authorized by AAG and FBIHQ, his attention should be invited to departmental policy which requires prior authorization by the AAG before institution of a new antitrust case.

(4) Receipt of complaints

Upon receipt of complaint in field, thoroughly interview complainant and obtain from him information suggested under "Investigative Procedure." Conduct no investigation and submit closing report. One copy of each report is forwarded by FBIHQ to Antitrust Division.

(5) Advise officials of companies interviewed and those requested to furnish or give access to files, books, and records that Bureau investigation is being made at the request of the AAG in charge of the Antitrust Division, referring to him by name.

(6) Involved and complicated antitrust investigations should be assigned only to Agents with considerable experience in

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conducting this type of investigation. In assigning Agents to assist in these investigations, every effort should be made to afford experience to additional personnel.

(7) Federal Trade Commission jurisdiction FTC has basic responsibility for enforcement of Clayton and Robinson-Patman Acts. Criminal prosecution handled by Antitrust Division of Department. If it appears FTC has investigated matter being handled by Bureau, Antitrust Division must be advised and duplication of effort avoided.

EFFECTIVE: 01/31/78

60-3 INVESTIGATIVE PROCEDURE

(1) Handling of original complaints

Where complaint originates in a Bureau field office, complainant should be thoroughly interviewed and the following will illustrate type of information which should be elicited from him:

(a) Details concerning character and course of business in particular industry affected and a statement as to manner in which the alleged violation has been accomplished. Usually, the complainant is a very satisfactory source of information, in that being, presumably, an injured party, he is anxious to assist in the investigation in every respect. Ascertain his exact position in line of commerce; i.e., whether a retailer, wholesaler, etc.

(b) Names and addresses of all prospective defendants and such detailed information as may be available concerning their places in the industry, their parts in alleged violations, and effect their activities have had on the entire industry.

(c) Names and addresses of all others engaged in the industry who are not alleged to have had a part in the conspiracy. In this group an effort should be made to distinguish between those who may have been injured by activities of prospective defendants and those not so injured. Usually those injured in their business by activities of prospective defendants will cooperate fully with the Government in investigation and prosecution.

(d) Specific manner in which alleged violation effected by prospective defendants.

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(e) Whether prospective defendants are members of a trade association, and information as to membership practices and activities of such association.

(f) Any other lines of inquiry to secure all information in complainant's possession bearing upon alleged violation.

(2) Exhibits

(a) Exhibits located during investigation, either original documents or copies thereof, should be properly identified by Agent to permit his testimony as to location of same. Identifying data, including date and Agent's initials, should be placed on document so as not to invalidate it. If photographs or photostats made, finished print should be identified. If exhibits are numerous, a separate listing or "Exhibit Control Sheet" may be made to identify them. Prepare copies of such list for field, FBIHQ, Antitrust Division, and USA's files.

(b) Forward as enclosures to report (properly described on FD-204), exhibits, exhibit control sheets, and original signed statements to FBIHQ for transmittal to Department or to appropriate Bureau field office for transmittal to regional antitrust office (or USA) handling case.

Exhibits are to include all written material furnished by or obtained from persons interviewed, such as notes and written responses to questions.

(c) Copies of exhibits need not be made for FBIHQ or field office file unless advisable in view of contemplated future investigation.

(3) Civil investigative demands and designation of deputy custodians

Provision of the Antitrust Civil Process Act, Public Law 87-664, 9-19-62, (Title 15, USC, Section 1311-1314), authorize the Attorney General and the AAG, Antitrust Division, to compel any corporation, association, partnership, or other legal entity, not a natural person, under investigation to produce documentary evidence relevant to a civil antitrust investigation, prior to institution of civil or criminal proceedings, by issuance and service of a written civil investigative demand. The legislation permits use of

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information and documents so obtained in criminal antitrust prosecution. Demands may be served by Agents but do not require persons served or other officials or employees of the companies served to respond to questioning by Agents. Agent may also be designated by the AAG, Antitrust Division, to serve as deputy custodians of documents so obtained.

(a) In serving civil investigative demands approved by FBIHQ, original and one copy are to be furnished individual served. Original is to be executed by company and forwarded by company to custodian named therein. Copy is to be retained by company. Individual served may be advised that any questions relative to demand may be directed to custodian named therein. Immediately following service of demand, Agent serving same shall establish proof of service by executing a signed certification, properly notarized, which will identify by number the demand served, name of the individual and company, and date and place where served. Submit original of certification immediately to named custodian and retain copy in field office case file. Advise FBIHQ promptly of service.

(b) To facilitate Bureau examination and analysis of records obtained by a demand, an Agent who will participate in the examination and analysis may be selected by SAC to be designated by AAG, Antitrust Division as deputy custodian of records obtained by service of demand. FBIHQ is to be promptly advised of identity of Agent designated so Antitrust Division can be advised.

(c) Agents are not to make material produced in response to civil investigative demand available to any individual other than a duly authorized officer, member, or employee of Department of Justice without consent of custodian who must obtain consent of person who produced the material.

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60-4 VENUE

Action against a corporation may be brought not only in district whereof it is an inhabitant but also in any district wherein it may be found or transacts business; and all process in such cases may be served in district of which it is an inhabitant, or wherever it may be found. Majority of antitrust cases prosecuted as conspiracies and usual rules as to venue in conspiracy cases apply as to both corporate and individual defendants.

EFFECTIVE: 01/31/78

60-5 PRIVACY ACT - REQUIREMENTS

When interviewing anyone in the above classification, except during the criminal phases of the investigation, in order to solicit information about himself or his own activities, the interviewing Agent must follow the procedures described in MIOG: Part I, 190-5, subparagraphs (2) and (3).

When interviewing an individual to solicit information concerning someone other than the interviewee (thereby classifying that individual as a source of information), except during the criminal phases of the investigation, the interviewing Agent must follow the procedure relating to promises of confidentiality as described in MIOG: Part I, 190-7.

EFFECTIVE: 01/31/78

60-6 CHARACTER - ANTITRUST

EFFECTIVE: 01/31/78

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SECTION 61. TREASON

61-1 STATUTES

EFFECTIVE: 01/31/78

61-1.1 Title 18, USC, Section 2381 - Treason

"Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death, or shall be imprisoned not less than five years and fined not less than \$10,000, and shall be incapable of holding any office under the United States."

EFFECTIVE: 01/31/78

61-1.2 Title 18, USC, Section 2382 - Misprision of Treason

"Whoever, owing allegiance to the United States and having knowledge of the commission of any treason against them, conceals and does not, as soon as may be, disclose and make known the same to the President or to some judge of the United States, or to the governor or to some judge or justice of a particular State is guilty of misprision of treason and shall be fined not more than \$1,000, or imprisoned not more than seven years, or both."

EFFECTIVE: 01/31/78

61-2 RELATED STATUTES

EFFECTIVE: 01/31/78



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61-2.1 Title 18, USC, Section 2389 - Recruiting for Service  
Against United States

"Whoever recruits soldiers or sailors within the United States, or in any place subject to the jurisdiction thereof, to engage in armed hostility against the same; or Whoever opens within the United States, or in any place subject to the jurisdiction thereof, a recruiting station for the enlistment of such soldiers or sailors to serve in any manner in armed hostility against the United States--Shall be fined not more than \$1,000 or imprisoned not more than five years, or both."

EFFECTIVE: 01/31/78

61-2.2 Title 18, USC, Section 2390 - Enlistment to Serve Against  
United States

"Whoever enlists or is engaged within the United States or in any place subject to the jurisdiction thereof, with intent to serve in armed hostility against the United States, shall be fined \$100 or imprisoned not more than three years, or both."

EFFECTIVE: 01/31/78

61-2.3 Title 18, USC, Section 756 - Internee of Belligerent  
Nation

"Whoever, within the jurisdiction of the United States, aids or entices any person belonging to the armed forces of a belligerent nation or faction who is interned in the United States in accordance with the law of nations, to escape or attempt to escape from the jurisdiction of the United States or from the limits of internment prescribed, shall be fined not more than \$1,000 or imprisoned not more than one year, or both."

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61-2.4 Title 18, USC, Section 757 - Prisoners of War or Enemy Aliens

"Whoever procures the escape of any prisoner of war held by the United States or any of its allies, or the escape of any person apprehended or interned as an enemy alien by the United States or any of its allies, or advises, connives at, aids, or assists in such escape, or aids, relieves, transports, harbors, conceals, shelters, protects, holds correspondence with, gives intelligence to, or otherwise assists any such prisoner of war or enemy alien, after his escape from custody, knowing him to be such prisoner of war or enemy alien, or attempts to commit or conspires to commit any of the above acts, shall be fined not more than \$10,000, or imprisoned not more than ten years, or both." "The provisions of this section shall be in addition to and not in substitution for any other provision of law."

EFFECTIVE: 01/31/78

61-3 CONSTITUTIONAL PROVISIONS

Section 3, Article 3, of the Constitution of the United States provides: "Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court. The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture, except during the Life of the Person attainted."

EFFECTIVE: 01/31/78

61-4 ELEMENTS

EFFECTIVE: 01/31/78

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61-4.1 Treason

(1) Person must owe allegiance to the United States. Statute applicable to all persons owing allegiance to U. S., whether citizens or aliens, domiciled or residing in U. S. Law is clear that every individual owes fidelity and allegiance to Government. Citizen owes absolute and permanent allegiance to his Government until he renounces his citizenship and becomes citizen of another country.

(2) Person must have performed overt act of levying war against the U. S. Act of levying war against U. S., according to court decisions, interpreted as where men meet openly in armed array or in such crowds that mere numbers supply element of force which might otherwise be given by arms, with purpose or intention of nullifying or preventing execution of general law of Congress.

Resistance to U. S. in its sovereign capacity is essential element. To establish violation must have proof of prior agreement, intent, and of an overt act. Waging of war against U. S. requires overt acts in furtherance of a plan to overthrow the authority of the Government either in whole or in some territory or political subdivision. Overt act must be in furtherance of treasonable intent, and words, oral, written, or printed, however reasonable, seditious or criminal, of themselves do not constitute overt act within meaning of statute, or

(3) Person must have performed overt act of adhering to enemies of U. S., giving them aid and comfort within U. S., or elsewhere. Applies only to acts done after commencement of war which would aid or assist enemy, selling or giving material or supplies to enemy, assisting enemy in physical conduct of war and furnishing information to enemy which would be of assistance to enemy or injury to U. S.

EFFECTIVE: 01/31/78

61-4.2 Misprision of Treason

(1) Person owes allegiance to U.S.

(2) Person had knowledge of commission of act of treason.

(3) Person concealed this knowledge and did not immediately disclose it to President, some judge of the U.S., governor of particular state or judge or justice of a particular state.

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EFFECTIVE: 01/31/78

61-5 INVESTIGATIVE PROCEDURE

(1) Treason involves breach of allegiance and is highest crime known to this country. It is only crime embodied in the Constitution.

(2) Constitution expressly provides that conviction for treason can be had only "on the testimony of two witnesses to the same overt act, or on confession in open court."

(3) Treason differs from other crimes in that there are no accessories, all persons being regarded as principals.

(4) Any evidence indicating possible violation of treason statute should receive immediate, continuous and preferred investigation. FBIHQ must be advised immediately of basic facts.

(5) Informants or individuals who furnish information indicating possible violation of treason statute should be thoroughly and painstakingly interviewed to ascertain all available details as to words, acts, documents, letters, et cetera, upon which allegation of possible treason based.

(6) Information received from any source indicating that firearms and ammunition are being collected for possible treasonous undertakings should be subject of immediate and thorough investigation to ascertain details concerning type of firearms and ammunition, source thereof, place of storage, and identity of individuals involved. Investigation must be pursued for purpose of definitely determining whether arms or ammunition actually being collected and stored in connection with treasonous plot or other possible violations within FBIHQ's jurisdiction, such as neutrality laws.

[REDACTED]

Such allegations should be subject to discreet investigation to determine basis for suspicion of treason. In latter connection necessary to ascertain following:

(a) Identity of individuals responsible or sponsoring organization, together with information discreetly obtained concerning their citizenship, reliability, and loyalty.

(b) All information indicating any connection between the

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organization and any foreign government, political party, individual, corporation, or other association. Also, any connection between group involved and groups, organizations, or individuals operating within U.S. and known to be disloyal to this Government.

(c) Correct nature of activities of organization being undertaken. This may be ascertained by ordinary investigative efforts or utilization of confidential informants, surveillances, and other investigative techniques.

(7) In the event specific evidence obtained indicating possible treasonable plot or undertaking, investigation must be pursued to determine entire ramifications of plot and identity of all individuals involved.

(8) Actual investigative steps and methods will parallel those mentioned in other sections of this manual in connection with national defense matters.

EFFECTIVE: 09/25/91

61-6 POLICY

The Department of Justice must specifically authorize prosecution in each case. Inquiry concerning Department's decision should be sent to FBIHQ.

EFFECTIVE: 09/25/91

61-7 VENUE

(1) Treason - where act committed and if committed outside U. S. in district where first brought or first found.

(2) Misprision of treason - where report of treason should have been made.

EFFECTIVE: 09/25/91

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SECTION 62. ADMINISTRATIVE INQUIRIES, ET AL

62-1 MISCONDUCT INVESTIGATIONS OF FBI EMPLOYEES, OFFICERS AND  
EMPLOYEES OF THE DEPARTMENT OF JUSTICE AND FEDERAL  
JUDICIARY

EFFECTIVE: 05/08/80

62-1.1 Policy

(1) Allegations concerning misconduct on the part of officers or employees of the Department of Justice or of the Federal judiciary which do not involve violations of any statute within the Bureau's investigative jurisdiction should be forwarded to FBIHQ immediately by letterhead memorandum (LHM) or by more expeditious means if the circumstances warrant. (If teletype or telephone is used, follow with LHM.)

(2) No investigation is to be conducted without FBIHQ authority.

(3) When authority is granted, the office to which the matter is referred by FBIHQ will be the office of origin and, upon completion of investigation, that office should submit a closing report.

(4) Reports are not to be furnished to USAs unless FBIHQ so directs.

(5) Investigations are to be handled in an expeditious manner.

(6) Allegations concerning misconduct on the part of an FBI employee will be handled as set forth in the MAOP, Part I, Section 13, entitled "Disciplinary Matters."

EFFECTIVE: 05/08/80

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62-1.2 Other Investigations of Government Employees

EFFECTIVE: 05/08/80

62-1.2.1 Policy

(1) Administrative investigations involving Government officials or employees shall not be conducted without prior FBIHQ authority.

(2) Prior FBIHQ authorization is not necessary in the investigation of alleged criminal violations by Government officials or employees when the alleged activities are unrelated to their official duties, except when such officials or employees are highly placed.

(3) FBIHQ authorization is not necessary in investigations of criminal violations within our primary jurisdiction by any official or employee of the Department of Justice even though the activities are related to their official duties.

(4) In any event FBIHQ should be immediately advised by LHM transmitted by airtel, or by teletype, as the exigencies of the case dictate, of the full facts of the complaint and the action being taken. (If teletype is used, also submit LHM by airtel immediately.)

(5) Investigation of violations of statutes within the Bureau's investigative jurisdiction by Treasury Department employees and other persons in matters within the administrative control of the Treasury Department are conducted by the Bureau under a Justice Department agreement with that Department dated 2-5-55. This agreement supplements Public Law 725, 83rd Congress (approved 8-31-54), which confers upon the Attorney General and FBI the authority to investigate violations of Title 18, USC, on the part of Government employees unless such authority is otherwise assigned by another provision of law.

(6) Because of certain provisions of the Internal Revenue Code relative to corruption violations involving employees of the Treasury Department, an agreement was necessary to bestow exclusive jurisdiction upon the FBI in these matters. Prior to this agreement, the Bureau was estopped from conducting investigations of allegations of bribery and fraudulent practices on the part of employees of the Treasury Department by the provisions of Public Law 79, 82nd Congress,

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approved by the President on 7-16-51. The Bureau is to be informed immediately of the receipt of complaints of violations within the Bureau's jurisdiction on the part of the Treasury Department personnel or in Treasury Department matters. A brief statement of the facts of the complaint and the action being taken is to be forwarded to FBIHQ by Air Mail Special Delivery letters, airtel, teletype, or telephone depending upon the urgency of the circumstances. (If teletype or telephone is used, follow with LHM.) In a complaint involving a Treasury Department employee, the initial communication to the Bureau should identify the employee, his/her position, and the Treasury branch where he/she is employed. Any instances of delay on the part of the Treasury Department in referring complaints, encroachment by the Treasury Department of the Bureau's investigative jurisdiction, or lack of cooperation by Treasury Department officials or employees should be immediately referred to FBIHQ. Submit four copies of an LHM in all cases in which investigation is instituted. Dissemination of the LHM will be made in Washington, D.C., and no copies of LHMs are to be furnished on a local level other than to USAs.

EFFECTIVE: 02/22/88

62-1.3 Misconduct Investigations of FBI Employees

EFFECTIVE: 02/22/88

62-1.3.1 Policy

(1) Allegations of criminality or serious misconduct on the part of FBI employees.

(2) Inquiries will be conducted and reported as described in MAOP, Part I, Section 13, entitled "Disciplinary Matters."

(3) Inquiries will be placed in a separate|263| classification file, both in the field division and FBIHQ, and stored in the SAC's safe in the field and in the secure personnel file section at FBIHQ.

EFFECTIVE: 02/22/88



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62-1.4 Privacy Act - Requirements

(1) When interviewing anyone in the above classification, in order to solicit information about himself/herself or his/her own activities, the interviewing Agent must follow the procedures described in Part I, 190-5, subparagraphs (2) and (3), of this manual.

(2) When interviewing an individual to solicit information concerning someone other than the interviewee (thereby classifying that individual as a source of information), the interviewing Agent must follow the procedure relating to promises of confidentiality as described in Part I, 190-7, of this manual.

EFFECTIVE: 02/22/88

62-1.5 Character - Administrative Inquiries

The character "Administrative Inquiry," which is applicable to investigations of personnel of the Department of Justice and the Federal judiciary only, should be used until such time as FBIHQ instructs that it be changed to some substantive violation. In the event the allegation is against an FBI employee, the character will be "Office of Professional Responsibility Matter (OPRM)" and should be dealt with in accordance with Part I, Section 263, of this manual.

EFFECTIVE: 02/22/88

62-2 STATUTES

Title 13, USC, Sections 211-214, 221-224, 304, 305

(1) Section 211 - Receiving or securing compensation for appointment of employees.

(2) Section 212 - Refusal or neglect of employees to perform duties.

(3) Section 213 - False statements, certificates, and information.

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(4) Section 214 - Wrongful disclosure of information.

(5) Section 221 - Refusal or neglect to answer questions; false answers.

(6) Section 222 - Giving suggestions or information with intent to cause inaccurate enumeration of population.

(7) Section 223 - Refusal, by owners, proprietors, etc., to assist census employees.

(8) Section 224 - Failure to answer questions affecting companies, business, religious bodies, and other organizations; false answers.

(9) Section 304 - Delayed filings.

(10) Section 305 - Miscellaneous other violations of rules or regulations.

EFFECTIVE: 01/31/78

62-2.1 Jurisdiction

(1) Bureau of the Census, Department of Commerce, conducts censuses and surveys of population, agriculture, manufacturers, businesses, and other subjects at various intervals. Most common is decennial census conducted since 1790, which covers population, unemployment, and housing. Penal provisions of Census Act, codified in Title 13, USC, cover offenses committed by census employees and others. These penal provisions apply to various censuses and surveys handled by Bureau of the Census.

(2) Department of Justice has advised that violations of Section 212 covering refusal of census employees to perform their official duties should normally be handled by Bureau of the Census and disposed of administratively. Only in exceptional instances will a case of this nature be referred to FBI for investigation. Each such case will be judged on an individual basis before any referral is made for FBI investigation. Investigative jurisdiction of offenses directly involving Government employees outlined in Sections 211, 213, 214 lies with FBI.

(3) Offenses committed by persons other than census

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employees are covered in Sections 221-224, 304, and 305 and are investigated by Bureau of the Census. Complaints received with regard to offenses not within FBI jurisdiction should be referred to nearest office of Department of Commerce without investigation.

EFFECTIVE: 01/31/78

62-2.2 Policy

(1) Immediately discuss complaints received within FBI jurisdiction with USA to determine whether he will consider prosecution should allegations be substantiated by investigation.

(2) If USA will consider prosecution, promptly advise FBIHQ of allegations and preliminary opinion of USA and initiate investigation immediately.

(3) If prosecution will not be considered or is declined by USA, submit closing prosecutive report promptly.

(4) Letterhead memorandum is to be submitted to FBIHQ with initial communication when allegations concern Government employee. Include preliminary opinion of USA in letterhead memorandum.

EFFECTIVE: 01/31/78

62-2.3 Investigative Procedures

(1) Interview all subjects and important witnesses under oath and take sworn signed statements where possible. If person refuses to be placed under oath or declines to furnish a signed statement, note such facts in details of report on interview report form. Statutory authority for administering oath is set out in Title 5, USC, Section 303.

(2) Agents should be alert for indicated impersonation of census enumerators, which will be handled under character of "Impersonation" and in accordance with existing instructions of that violation.

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EFFECTIVE: 01/31/78

62-2.4 Character - Census Matters

EFFECTIVE: 01/31/78

| 62-3 | STATUTE

EFFECTIVE: 05/08/79

62-3.1 Title 28, USC, Section 534 - Acquisition, Preservation,  
and Exchange of Identification Records; Appointment of  
Officials

"(a) The Attorney General shall -

"(1) acquire, collect, classify, and preserve  
identification, criminal identification, crime, and other records;  
and

"(2) exchange these records with, and for the  
official use of, authorized officials of the Federal Government, the  
States, cities, and penal and other institutions.

"(b) The exchange of records authorized by subsection (a)  
(2) of this section is subject to cancellation if dissemination is  
made outside the receiving departments or related agencies.

"(c) The Attorney General may appoint officials to perform  
the functions authorized by this section."

EFFECTIVE: 05/08/79

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62-3.2 Jurisdiction

Department of Justice has advised that pursuant to the provisions of Section 534, noted above, the FBI is authorized to acquire, locate, or pass on various records to local agencies, effect cooperation between local law enforcement or verify the location of a person whose interview is desired for a local or state law enforcement agency.

EFFECTIVE: 05/08/79

62-3.3 Policy

(1) Upon receipt of requests for investigation from local or state law enforcement agencies involving matters in which there is no FBI jurisdictional interest, the FBI's cooperative role will be limited to the acquisition of records or information from the criminal files of local or state law enforcement agencies or records of nongovernmental organizations and concerns and other governmental agencies.

(a) Records or information are defined as material normally available to law enforcement agencies which can be obtained without a court order.

(b) When obtaining material outlined above, dissemination authority must be obtained from that agency providing the records/information, when appropriate.

(2) In addition to record gathering and dissemination noted above, the FBI can act in a liaison capacity between local and state law enforcement agencies to facilitate one agency handling the investigative requests of another.

(3) The FBI, on behalf of a local or state law enforcement agency, may verify the location of an individual. No interviews with subjects, suspects, or witnesses should be conducted by Bureau personnel. No extensive efforts are to be expended to locate individuals for interviews. FBI personnel are to merely verify their whereabouts, such as at a residence address or employment, etc.

(4) Domestic Police Cooperation matters received in the field should be opened on an individual case basis, the subject of the record indexed to the general indices, resulting disclosures recorded

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in accordance with Privacy Act requirements and maintained in accordance with existing instructions pertaining to the destruction of field office files and records, MAOP, Part II, 2-4.5.

(5) SACs may approve use of FBI resources on behalf of local and state agencies providing such action falls within the above guidelines. No communication need be forwarded to FBIHQ advising of the initiation of a Domestic Police Cooperation investigation.

(6) Name check requests for a review of pertinent information contained in our central records system received by FBIHQ from authorized state and local criminal justice agencies will be processed by the Executive Agencies Dissemination Unit, Information Management Division, in accordance with MAOP, Part II, 9-3. Completed responses will be returned to the respective field office which covers the territory of the submitting agency for appropriate dissemination.

(7) Domestic Police Cooperation cases are not to be opened in the field for the purpose of conducting foreign inquiries through Interpol. All state and local law enforcement agencies in the United States have direct access to the United States National Central Bureau (USNCB), Interpol, by mail or via the National Law Enforcement Telecommunications System (NLETS). The USNCB mailing address is: Interpol, U.S. Department of Justice, Washington, D.C. 20530. The NLETS ORI is "DCINTERO/0/."

EFFECTIVE: 10/16/90

62-3.4 Office of Origin

The office which first receives the Domestic Police Cooperation request will act as the office of origin.

EFFECTIVE: 10/16/90

62-3.5 Classification

All Domestic Police Cooperation cases should be classified as 62D matters.

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EFFECTIVE: 10/16/90

62-4 STATUTE  
Title 40, USC, Sections 327-333.

EFFECTIVE: 06/09/80

62-4.1 Section 328  
Outlines eight (8) hour day and forty (40) hour week/overtime statutory requirements for any contract with the United States or District of Columbia (as set forth in Title 40, USC, Section 329). This section has no criminal penalty.

EFFECTIVE: 06/09/80

62-4.2 Section 332  
Prohibits contractors or subcontractors who employ laborers in contracts covered under Title 40, USC, Sections 327 and 332 from intentionally violating the requirements of such sections.

EFFECTIVE: 06/09/80

62-4.3 Penalty (Title 40, USC, Section 332)  
Misdemeanor - \$1,000 fine, 6 months in prison or both.

EFFECTIVE: 06/09/80

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62-4.4 Jurisdiction

(1) The U.S. Department of Labor (DOL) has exclusive jurisdiction to investigate violations of Section 333, and primary jurisdiction to investigate violations of Section 328 and 332.

(2) The FBI has secondary jurisdiction to investigate violations of Section 328 and 332.

(3) The USA has the option of designating whether DOL or the FBI investigates violations of Sections 328 and 332.

EFFECTIVE: 06/09/80

62-4.5 Policy

(1) Upon receipt of complaint or information indicating possible violation, contact USA to determine if an investigation is warranted and whether FBI or DOL is to handle investigation.

(2) If USA designates DOL to handle investigation, submit closing LHM to USA and FBIHQ. USA, rather than FBI, should refer investigation to DOL.

EFFECTIVE: 06/09/80

62-4.6 Reporting Procedures If Investigation Conducted

(1) Advise FBIHQ promptly by airtel, or more expeditious means if the circumstances dictate, when information or complaint is received regarding an individual or organization that is prominent, extremely controversial, or of such stature to focus national attention on the investigation. The communication should include the results of the discussion with the USA and action contemplated by the field office.

(2) In the absence of exigent circumstances requiring more immediate notification, an LHM (original and three copies) should be submitted to FBIHQ within 30 days setting forth the facts of the complaint and a succinct summary of the preliminary investigation conducted. The LHM should also contain the preliminary opinion of the USA and sufficient identification data on



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the subject(s) for indexing purposes. Submission of additional periodic status LHMs is left to the discretion of the SAC unless advised to the contrary by FBIHQ on a case-by-case basis. Any interim LHM submitted should be predicated with a succinct summary of information included in prior communications.

(3) The results and/or summary of investigation should be reported by Prosecutive Summary Report when same is prepared or by LHM (original and three copies) if a Prosecutive Summary Report is not deemed necessary by the SAC. If Prosecutive Summary Report is to be disseminated, the original and two copies should be submitted with copies being designated for the U.S. Department of Justice.

EFFECTIVE: 06/09/80

62-4.7 CHARACTER - CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

EFFECTIVE: 06/09/80

62-5 STATUTES

Title 15, USC, Sections 1681q and 1681r.

EFFECTIVE: 01/31/78

62-5.1 Section 1681q

EFFECTIVE: 01/31/78

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62-5.1.1 Elements

- (1) Any person who knowingly and willfully
- (2) Obtains information on a consumer from a consumer reporting agency under false pretenses.

EFFECTIVE: 01/31/78

62-5.2 Section 1681r

EFFECTIVE: 01/31/78

62-5.2.1 Elements

- (1) Any officer or employee of a consumer reporting agency who knowingly and willfully
- (2) Provides information concerning an individual from the agency's files to a person not authorized to receive that information.

EFFECTIVE: 01/31/78

62-5.3 Departmental Instructions

The Department has advised the FTC is specifically designated as the agency responsible for the administrative enforcement and regulatory provisions of the Fair Credit Reporting Act (FCRA). Should the FTC develop what appears to be a criminal violation under the provisions of this Statute, that agency will refer the matter to the Antitrust Division, Consumer Affairs Section, Department of Justice, or the appropriate USA for consideration as to whether a criminal investigation is warranted. The FBI will be requested to conduct the investigation necessary to establish a violation of the criminal provisions of the FCRA.

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EFFECTIVE: 01/31/78

62-5.4 Policy

(1) Complaints involving alleged violations of the FCRA which do not come specifically within the purview of Sections 1681q or 1681r should be referred to the nearest FTC office.

(2) Valid complaints involving allegations of violations over which the FBI has investigative jurisdiction under Sections 1681q and 1681r should be thoroughly discussed with the USA for his opinion prior to instituting any investigation.

(3) Promptly advise FBIHQ as to details of allegations received, opinion of the USA, and what further action is contemplated.

EFFECTIVE: 01/31/78

62-5.5 Penalties

Sections 1681q and 1681r - \$5,000 fine and/or one year imprisonment.

EFFECTIVE: 01/31/78

62-5.6 Investigative Procedure

(1) Determine the identity of the person or consumer who obtained information from the consumer reporting agency.

(2) Ascertain details regarding the false identity or scheme utilized in obtaining such information from the consumer reporting agency officer or employee who furnished such information to any unauthorized person.

(3) Determine details regarding identity of the consumer reporting agency officer or employee who furnished such information to any unauthorized person.

(4) Obtain and secure any written or printed consumer

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reports or investigative consumer reports involved which could be used at a later date as evidentiary material.

EFFECTIVE: 01/31/78

62-5.7 Character - Fair Credit Reporting Act

EFFECTIVE: 01/31/78

62-6 STATUTE

Title 15, USC, Section 1333

EFFECTIVE: 01/31/78

62-6.1 Elements

Section 1333 of this act makes it unlawful for any person to manufacture, import, or package for sale or distribution within the U. S. any cigarettes the package of which fails to bear the following statement: "Warning: The Surgeon General Has Determined That Cigarette Smoking Is Dangerous To Your Health." Such statement shall be located in a conspicuous place on every cigarette package and shall appear in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the package.

EFFECTIVE: 01/31/78

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62-6.1.1 Other Provisions

Section 1337 exempts from this act cigarettes manufactured, imported or packaged (1) for export from the U. S. or (2) for delivery to a vessel or aircraft, as supplies, for consumption beyond the jurisdiction of the internal revenue laws of the U. S., but such exemptions shall not apply to cigarettes manufactured, imported, or packaged for sale or distribution to members or units of the armed forces of the U. S. located outside of the U. S.

Venue lies in the district in which the manufacture, importation or packaging in violation of the statute occurred.

EFFECTIVE: 01/31/78

62-6.1.2 Policy

Complaints received of violations of this act should be submitted to FBIHQ in a form suitable for dissemination to the Department and no investigation conducted pending receipt of specific instructions to do so from FBIHQ. If subsequent investigation is ordered, furnish results to USA and FBIHQ concerning possible violations of this act. FBIHQ will furnish to the Criminal Division for prosecutive determination.

EFFECTIVE: 01/31/78

62-6.1.3 Penalty

A fine of not more than \$10,000 (misdemeanor).

EFFECTIVE: 01/31/78

62-6.1.4 Character - Federal Cigarette Labeling and Advertising Act

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EFFECTIVE: 01/31/78

62-7 INSTRUCTIONS

You are referred to Section 62, Administrative Inquiries, Et Al for additional information concerning Federal Judiciary Investigations.

EFFECTIVE: 01/31/78

62-8 STATUTE

Title 18, USC, Section 874. Kickbacks from public works employees.

"Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined not more than \$5,000 or imprisoned not more than five years, or both."

EFFECTIVE: 01/31/78

62-8.1 Elements

(1) Person is employed in construction, or repair of any public building or work, or a building or work financed in whole or in part by loans or grants from U.S.

(2) Employee is induced by force, intimidation, threat of procuring dismissal from such employment, or by any other manner whatsoever to give up any part of the compensation to which he is entitled under his contract of employment.

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EFFECTIVE: 01/31/78

62-8.2 Legal Interpretations of Statute

(1) Persons liable -

(a) Statute is not limited to contractors, subcontractors, or employers of labor (U.S. v. McGraw, 47 F. Supp. 927).

(b) Foreman with authority to hire and discharge is included (U.S. v. Laudani, 320 U.S. 543).

(c) Union officials - Compelling workers to use some of their compensation as union membership initiation fees held not to be violation in case of U.S. v. Carbone, 327 U.S. 633, since "closed shop" involved in that case was within legitimate aims of unions and initiation fees are traditionally an incident to union membership. This decision did not exempt union officials from liability under statute, but merely held that legitimate union activities by them are not violations (U.S. v. Alsup, 219 F. (2d) 72, certiorari denied 4-4-55). Department opinion - Carbone decision applies only to initiation fees and does not approve as legitimate other fees collected from employees by union officials, such as work permit fees collected from nonunion employees for permission to work. Also, closed shop agreement in that case under which employer agrees to hire only those approved by union is not lawful since passage of Labor Management Relations Act and activities of union officials based on closed shop would not now be legitimate. Department points out distinction between "closed shop" and "union shop" contracts. Latter, which is legitimate under LMRA (Title 29, USC, Section 158 (a) (3)), gives employer free hand in hiring but requires that within specified time nonunion employee must join union.

(2) Type of work -

(a) "Construction.... or repair... work" covers shoring of bomb crates in boxcars for which payment or part payment is made from Federal funds even though boxcars are not owned by Federal Government (Department opinion).

(b) Also applies to construction of sheathing in vessel, but not to general stevedoring service (Department opinion).

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(3) Source of kickback payments -

(a) Must be made out of money received as wages from employment involved in case. Kickback paid from borrowed money probably not covered even though loan subsequently paid from wages in question (Department opinion).

(b) Kickbacks by independent contractors furnishing equipment and operators not covered (Department opinion).

(c) No kickback in violation of statute exists if employee was induced, by, whatever means, to accept, upon employment, lower rate of pay than that fixed by government contract with employer but to which contract employee was not party (U.S. v. Charlick, 26 F. Supp. 203). See 62-8.3 below.

(4) Inducement for payment -

(a) Payment need not be induced by "force, intimidation or threat of procuring dismissal from employment," but may be induced by "any other manner whatsoever." Subject himself need not have power to discharge employee not contributing (Department opinion).

(5) Involvement of Federal funds -

(a) Word "financed" in statute is broad enough to make it applicable to buildings or works made possible in whole or in part by reason of funds which are either being furnished or have been furnished by U.S., even though funds and control thereof have passed to a state (Department opinion).

(b) Statute is applicable to low-rent-housing and slum clearance projects financed in whole or in part with funds made available under Title 42, USC, Sections 1401-1433. (Title 42, USC, Section 1416, (5)).

(c) Also applicable to work financed in whole or in part with funds made available for development of projects under Title 42, USC, Sections 1450-1470 dealing with slum-clearance and urban renewal (Title 42, USC, Section 1459 (b)).

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62-8.3 Related Statutes

Secretary of Labor, pursuant to Title 40, USC, Section 276c, is required to make regulations for contractors and subcontractors engaged in type of work to which KRA applies, including provision that they must furnish weekly sworn affidavits as to wages paid each employee. In cases involving kickbacks to these employers or involving situation described above in 62-8.2 (3) (c), do not overlook probability that these employers made false affidavits or statements to Department of Labor in violation of Title 18, USC, Section 1621 (perjury) or one of false statement statutes (Title 18, USC, Section 1001 et seq.)

EFFECTIVE: 01/31/78

62-8.4 Policy

(1) Upon receipt of complaint or information indicating possible violation, obtain opinion of USA as to whether there is sufficient indication therein of a violation to justify investigation.

(2) Advise FBIHQ immediately of complaints or information received by such means as circumstances dictate. Furnish sufficient details to enable FBIHQ to intelligently appraise situation, including, if available, preliminary opinion of USA.

(3) If circumstances make it inadvisable to consult USA, or having consulted him, to pursue course of action suggested by his opinion, furnish details to FBIHQ by such means as circumstances dictate and hold further action in abeyance pending instructions.

EFFECTIVE: 01/31/78

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62-8.5 Investigative Procedure

- (1) Establish identity of project or work involved, and Government agency furnishing funds.
- (2) Identify labor officials, contractors, or others involved.
- (3) Obtain details of payments made by employees, including dates, places, to whom, manner of payment, witnesses, written evidence, and exact source of funds.
- (4) If payments were made to or solicited by union official, determine:
  - (a) Under what authority from union, if any, he acted.
  - (b) Provisions of collective bargaining agreement, if any, with employer under which union official acted, especially whether it provided for "closed shop" or "union shop." Obtain copy of this agreement.
  - (c) How collection was designated; i.e., was it for initiation fees, dues, permit fees, charity donation, etc.
  - (d) Whether funds collected went into union treasury.
- (5) Interview each employee alleged to have been induced or solicited to make payments. Obtain from each names of other employees in same category.
- (6) Obtain details concerning termination of employment of employees who made kickbacks or were solicited for same. If employee was discharged for inefficiency, due to a general reduction in personnel or for some other reason which might negate suggestion that violation of act is involved, such circumstances should be clearly shown.
- (7) Determine attitude of employees regarding having their identities revealed and testifying in event of prosecution.

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EFFECTIVE: 01/31/78

62-8.6 Character - Kickback Racket Act

EFFECTIVE: 01/31/78

62-9 LANDS DIVISION MATTER

EFFECTIVE: 01/31/78

62-9.1 Background

(1) May 18, 1945, Attorney General advised all USAs and Lands Division field attorneys (Circular #3534, Bulletin #33) FBI could be used in expediting and handling of Lands Division litigations by:

(a) Supplying technical information and assistance in accounting, auditing, documentary analysis, etc.

(b) Locating parents, witnesses, heirs, etc.

(c) General discovery of facts in condemnation or other Lands Division civil cases

EFFECTIVE: 01/31/78

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62-9.2 Policy

(1) USAs or Lands Division field attorneys submit requests for investigation to local field office which initiates investigation. Requests should be specific as to:

- (a) Nature of facts which attorneys desire developed
- (b) Background information indicating scope of investigation

(2) FBIHQ approval not necessary in condemnation actions for Agents to:

- (a) Execute affidavits
- (b) Serve summonses and complaints
- (c) Attempt to have defendants sign form of stipulation

(3) Such affidavits, summonses, complaints, and stipulations will be prepared by the Lands Division attorneys.

(4) Investigations should be limited in scope to request of Lands Division attorneys or USAs. If any unusual requests are received from such attorneys, submit same to FBIHQ for investigative authorization.

EFFECTIVE: 01/31/78

62-9.3 Privacy Act - Requirements

When interviewing anyone in the above classification, in order to solicit information about himself or his own activities, the interviewing Agent must follow the procedures described in MIOG: Part I, 190-5, subparagraphs (2) and (3).

When interviewing an individual to solicit information concerning someone other than the interviewee (thereby classifying that individual as a source of information) the interviewing Agent must follow the procedure relating to promises of confidentiality as described in MIOG: Part I, 190-7.

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EFFECTIVE: 01/31/78

62-9.4 Character - Lands Division Matter

EFFECTIVE: 01/31/78

62-10 OTHER VIOLATIONS AND/OR MATTERS

This is for information fitting no other character.

EFFECTIVE: 01/31/78

62-11 CIVIL SUITS - MISCELLANEOUS

EFFECTIVE: 01/31/78

62-11.1 Background

(1) The Department of Justice and USAs occasionally request that Bureau locate witnesses or conduct investigation in miscellaneous civil matters in which the U. S. Government is a party in interest.

(2) These cases involve litigation or contemplated litigation in various matters not specifically covered by other manual sections, including investigation request in war risk insurance and National Service Life Insurance matters.

(3) In one type of case a suit may be filed by a third party against a cost-plus contractor and the Department or USA undertakes the defense of the suit since the amount of any judgment may be passed on to the Government under the terms of the contract. In other situations the Government as plaintiff may file an action to recover damages.

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EFFECTIVE: 01/31/78

62-11.2 Policy

(1) Cases referred to FBIHQ by Department will be transmitted to the field for investigation.

(2) When request for investigation is received from a USA, the following information would be furnished FBIHQ by letter or airtel unless circumstances require more expedite communication.

(a) Brief resume of background of the case including amount involved.

(b) Statement as to whether a civil suit has actually been filed and, if so, current status of litigation.

(c) Scope of investigation requested by USA.

(d) Statement as to whether any other Government agency has conducted an investigation for trial purposes and, if so, scope of such investigation.

(e) Recommendation of SAC as to whether matter should be accepted for investigation.

(3) If no investigation for trial purposes conducted by any other agency, and if no reason exists for declining to accept case, FBIHQ may be advised investigation going forward UACB. In instances in which there is any doubt that investigation should be conducted, authorization should be requested.

(4) Upon completion of investigation, cases should be placed in a pending inactive status to be periodically followed in U. S. District Court until final action has been concluded. A statistics letter should be submitted to FBIHQ showing:

(a) Amount of suit

(b) Settlement or award

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EFFECTIVE: 01/31/78

62-11.3 Privacy Act - Requirements

When interviewing anyone in the above classification, in order to solicit information about himself or his own activities, the interviewing Agent must follow the procedures described in MIOG: Part I, 190-5, subparagraphs (2) and (3).

When interviewing an individual to solicit information concerning someone other than the interviewee (thereby classifying that individual as a source of information) the interviewing Agent must follow the procedure relating to promises of confidentiality as described in MIOG: Part I, 190-7.

EFFECTIVE: 01/31/78

62-11.4 Character - Civil Suits - Miscellaneous

EFFECTIVE: 01/31/78

62-12 STATUTES

Title 50, APP., USC, Sections 510-590

EFFECTIVE: 01/31/78

62-12.1 Purpose

Act is designed to provide for temporary suspension of legal proceedings and transactions which may prejudice civil rights of persons in military service of U. S. during period specified in act. Criminal provisions are within Bureau's investigative jurisdiction.

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EFFECTIVE: 01/31/78

62-12.1.1 Section 520. False Affidavits or Declarations

In any action or proceeding commenced in any court, if there be a default of any appearance by defendant, the plaintiff, before entering judgment, shall file in the court an affidavit or written unsworn declaration under penalty of perjury in lieu of an affidavit setting forth facts showing the defendant is not in military service. If unable to file such affidavit or declaration, plaintiff shall in lieu thereof file affidavit or declaration setting forth either defendant is in military service or plaintiff not able to determine whether or not defendant is in service.

EFFECTIVE: 01/31/78

62-12.1.2 Section 530. Eviction or Distress

No eviction or distress shall be made during period of military service of any premises for which agreed rent does not exceed \$150 per month, occupied chiefly for dwelling purposes by wife, children, or other dependents of a person in military service, except upon leave of court granted upon application therefor or granted in an action or proceeding affecting right of possession.

EFFECTIVE: 01/31/78

62-12.1.3 Section 531. Installment Contracts for Purchase of Property

No person (or his assignor) who has received under a contract for the purchase of real or personal property, or of lease or bailment with a view to purchase of such property, a deposit or installment of the purchase price, or a deposit or installment under the contract, lease, or bailment from a person or from assignor of a person who, after the date of payment of such deposit or installment, has entered military service, shall exercise any right or option under such contract to rescind or terminate the contract or resume possession of the property for nonpayment of any installment thereunder due or for any other breach of the terms thereof occurring



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prior to or during the period of such military service, except by action in a court of competent jurisdiction.

EFFECTIVE: 01/31/78

62-12.1.4 Section 532. Mortgages, Trust Deeds, etc.

No sale, foreclosure, or seizure of property for nonpayment of any sum due under any such obligation, or for any other breach of the terms thereof, whether under a power of sale, under a judgment entered upon warrant of attorney to confess judgment contained therein, or otherwise, shall be valid if made after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 and during the period of military service or within three months thereafter, except pursuant to an agreement as provided in Title 50, App., Section 517, unless upon an order previously granted by the court and a return thereto made and approved by the court.

EFFECTIVE: 01/31/78

62-12.1.5 Section 534. Termination of Leases by Lessees

No person shall knowingly seize, hold, or detain the personal effects, clothing, furniture, or other property of any person who has lawfully terminated a lease covered by this section, or in any manner interfere with the removal of such property from premises covered by such lease, for purpose of subjecting or attempting to subject any of such property to a claim for rent accruing subsequent to date of termination of such lease.

EFFECTIVE: 01/31/78

62-12.1.6 Section 535. Protection of Assignor of Life Insurance Policy and Enforcement of Storage Liens

Section relates to assignment of life insurance policies by a person in military service as security for obligations contracted prior to entering service and to foreclosure of storage liens on personal property for similar purposes.

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EFFECTIVE: 01/31/78

62-12.2      Miscellaneous

Title 50 App., USC, Section 464, provides that all provisions of act applicable to all persons inducted into military service pursuant to Universal Military Training Act.

EFFECTIVE: 01/31/78

62-12.3      Penalties

(1) Any act or attempt in violation above sections is a misdemeanor.

(2) Punishable by imprisonment not to exceed one year or fine not to exceed \$1,000, or both.

EFFECTIVE: 01/31/78

62-12.4      Character - Soldiers' and Sailors' Civil Relief Act of  
1940

EFFECTIVE: 01/31/78

62-13      STATUTE

Title 19, USC, Section 1304

Section 1304 requires every article imported into U. S., its immediate container, and package in which article imported, shall be marked, stamped, etc., in legible English words, in a conspicuous place, in such manner as to indicate country of origin of article, in accordance with regulations prescribed by Secretary of Treasury.

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EFFECTIVE: 01/31/78

62-13.1 Elements

(1) Articles involved of foreign origin and have been imported into U. S.

(2) Articles coming within provisions of Tariff Act of 1930 requiring country of origin be designated on imported articles.

(3) Marks indicating country of origin have been defaced, destroyed, removed, altered, etc., with intent to conceal information given thereby or contained therein.

(4) Defacement, destruction, removal, etc., of marks occurred after articles passed through U. S. Customs Service.

EFFECTIVE: 01/31/78

62-13.2 Investigative Jurisdiction

(1) Vested in either FBI or U. S. Customs Service dependent upon time identifying marks removed from imported article.

(2) If marks indicating country of origin removed from article after passed through U. S. Customs Service, FBI has primary jurisdiction.

(3) If marks removed prior to time merchandise cleared Customs, violation investigated by that agency.

EFFECTIVE: 01/31/78

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62-13.3 Investigative Procedures

(1) Determine if allegation of violation indicates labels or marks indicating country of origin removed subsequent to importation into U. S.

(2) Determine if Secretary of Treasury has promulgated any particular regulations concerning marking of particular article in question.

(3) Interview appropriate officials of Customs at port of entry of goods to ascertain if articles were properly marked prior to release from Customs.

(4) Ascertain if records exist indicating articles were properly marked so it can later be shown labels or marks were actually removed subsequent to importation.

(5) Ascertain identity of each person, corporation, or organization having possession of articles subsequent to their receipt in this country to ascertain if marks were still on articles at time they possessed same.

(6) Locate any person believed to be in a position to have knowledge of removal or alteration of labels or marks.

EFFECTIVE: 01/31/78

62-13.4 Penalties

Imprisonment of not more than 1 year, or fine of not more than \$5,000, or both.

EFFECTIVE: 01/31/78

62-13.5 Character - Tariff Act of 1930

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EFFECTIVE: 01/31/78

62-14 STATUTES

Title 15, USC, Sections 375 and 376

EFFECTIVE: 01/31/78

62-14.1 Section 375 (Definitions)

(1) The term "person" includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.

(2) The term "cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

(3) The term "distributor licensed by or located in such State" means:

(a) In the case of any state which by state statute or regulation authorizes the distribution of cigarettes at wholesale or retail, any person so authorized, or

(b) In the case of any other State, any person located in such State who distributes cigarettes at wholesale or retail, but such term in no case includes a person who acquires cigarettes for purposes other than resale.

(4) The term "use," in addition to its ordinary meaning, means the consumption, storage, handling, or disposal of cigarettes.

(5) The term "tobacco tax administrator" means the State official duly authorized to administer the cigarette tax law of a State.

(6) The term "State" includes the District of Columbia, Alaska, Hawaii, and the Commonwealth of Puerto Rico.

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(7) The term "transfers for profit" means any transfer for profit or other disposition for profit, including any transfer or disposition by an agent to his principal in connection with which the agent receives anything of value.

EFFECTIVE: 01/31/78

62-14.2 Section 376 (Reports to State Tobacco Tax Administrators;  
Contents; Presumptive Evidence)

(1) Any person who sells or transfers for profit cigarettes in interstate commerce, whereby such cigarettes are shipped into a State taxing the sale or use of cigarettes, to other than distributor licensed by or located in such State, or who advertises or offers cigarettes for such a sale or transfer and shipment, shall:

(a) First file with the tobacco tax administrator of the State into which such shipment is made or in which such advertisement or offer is disseminated a statement setting forth his name and trade name (if any), and the address of his principal place of business and of any other place of business; and

(b) Not later than the 10th day of each calendar month, file with the tobacco tax administrator of the State into which such shipment is made, a memorandum or a copy of the invoice covering each and every shipment of cigarettes made during the previous calendar month into such State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, and the quantity thereof.

(2) The fact that any person ships or delivers for shipment any cigarettes shall, if such shipment is into a State in which such person has filed a statement with the tobacco tax administrator under subsection (1)(a) above, be presumptive evidence that such cigarettes were sold, or transferred for profit, by such person, and that such sale or transfer was to other than a distributor licensed by or located in such State.

EFFECTIVE: 01/31/78

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62-14.2.1 Elements

(1) Cigarettes were sold, offered for sale, or were shipped in interstate commerce.

(2) Purchasers were consumers and not distributors licensed by or located in state into which cigarettes were shipped.

(3) Vendor did not prior to sale or advertising first file with tobacco tax administrator of the state into which shipment was made or in which advertisement or offer is disseminated a statement setting forth his name, trade name (if any), and the address of his principal place of business, and

(4) Vendor did not, by 10th day of following month, file with tobacco tax administrator of the state into which each shipment is made a memorandum or copy of invoice covering each and every shipment of cigarettes during the previous calendar month into such state; the memorandum or invoices in each case to include the name and address of the person to whom the shipment was made, the brand, and the quantity thereof.

(5) Sale or shipment by vendor made "for profit."

EFFECTIVE: 01/31/78

62-14.3 Policy

(1) Obtain prosecutive opinion of USA before conducting any investigation where complaint alleges single illegal interstate shipment of cigarettes.

(2) Where subject ships cigarettes into numerous states, office covering origin of subject's operations should furnish by letter to FBIHQ lists reflecting identity and address of cigarette customers by states. FBIHQ will obtain opinion of Criminal Division to avoid unnecessary investigation which could result if matter presented to USAs in all states involved. Experience has shown prosecutions usually are limited to one or two states even though subjects have engaged in illegal operations in numerous states.

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EFFECTIVE: 01/31/78

62-14.4 Penalties

Violations are misdemeanors punishable by \$1,000 fine or imprisonment for not more than six months, or both.

EFFECTIVE: 01/31/78

62-14.5 Character - Unreported Interstate Shipment of Cigarettes

EFFECTIVE: 01/31/78

62-15 STATUTE

Title 29, USC, Sections 201-219

Fair Labor Standards Act of 1938, popularly known as Wage and Hour Law, fixes minimum wages (Section 206) and maximum hours (Section 207) for employees, with certain exceptions (Section 213), engaged in commerce or in production of goods for commerce. It also contains regulations concerning child labor (Section 212), and learners, apprentices, and handicapped workers (Section 214). It creates Wage and Hour Division in Department of Labor and provides for an Administrator with authority to vary the above regulations under certain conditions.

EFFECTIVE: 01/31/78



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62-15.1 Elements

The act declares it unlawful:

- (1) To transport, sell, etc., goods in production of which any employee was employed in violation of act.
- (2) To violate any provision of wage and hour sections of act, or any regulation or order of Administrator with respect to learners, apprentices, and handicapped workers.
- (3) To discharge or discriminate against an employee who has filed a complaint or acted pursuant to any provision of act.
- (4) To violate any of child labor provisions of act.
- (5) To knowingly keep record or file report that is false in some material respect.

EFFECTIVE: 01/31/78

62-15.2 Investigative Jurisdiction

Wage and Hour Division of the Department of Labor is charged with investigation of alleged violations of criminal provisions. Complaints alleging such violation should be immediately referred to nearest regional office of the Wage and Hour Division for whatever action it may deem advisable.

EFFECTIVE: 01/31/78

62-15.3 Policy

Bureau will conduct investigation relative to alleged violations of criminal provision upon request of USA. Generally, this request will entail accounting investigation by Bureau accountant. Bureau will also conduct investigations that may be requested by USA in connection with a suit filed under this act against Government cost-plus-a-fixed-fee contractor if the suit will be actively defended by USA. If private counsel has been engaged to defend suit for contractors, no investigation should be conducted by Bureau. It is not necessary to obtain FBIHQ authority to conduct these

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investigations; however, FBIHQ should be promptly advised of receipt of request for investigation from USA.

EFFECTIVE: 01/31/78

62-15.4 Investigative Procedure

Upon receipt of request from USA for investigation under this act, conference should be held with him to determine the scope and nature of investigation to be conducted. USA should be requested to furnish Bureau office with letter outlining in detail, investigation desired. Thereafter, investigation should be conducted in accordance with his written request.

EFFECTIVE: 01/31/78

62-15.5 Penalties

Act provides penalties consisting of a fine not exceeding \$10,000 or imprisonment for not more than six months, or both. No imprisonment on the first offense.

EFFECTIVE: 01/31/78

62-15.6 Character - Fair Labor Standards Act of 1938 (Wage and Hour Law)

EFFECTIVE: 01/31/78

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62-16 STATUTE

Title 18, USC, Section 371 (formerly Section 88, Title 18, USC), effective 9-1-48. Violations occurring prior to 9-1-48 should be considered under the provisions of the former code section.

Section 371. Conspiracy to commit offense or to defraud United States- "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

"If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor."

EFFECTIVE: 01/31/78

62-16.1 Elements

(1) Two or more persons agree together to:

(a) Commit any offense against the U.S.; or

(b) Defraud the U.S. in any manner or for any purpose

(2) One or more of the conspirators commits an overt act to effect the object of the conspiracy.

(3) Note: Conspiracy to commit a crime is an offense separate and distinct from the crime which is the object of the conspiracy. The essence of conspiracy is in the agreement, not in the commission of the substantive crime. An agreement among two or more persons to accomplish a lawful objective by unlawful means meets the definition of conspiracy. A conspiracy is punishable even though it does not succeed in achieving its objective. It requires at least two persons. A corporation or unincorporated association may be a conspirator, and may conspire with their officers and employees. A conspirator need not join the conspiracy at its inception, but is bound by the prior acts and statements in furtherance of the common

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objective if he thereafter knowingly joins the conspiracy. Conspiracy under the general conspiracy statute cannot be proven in the absence of an overt act by one or more of the conspirators in furtherance of the objective of the conspiracy. The overt act itself need not be a criminal offense. It is sufficient if it demonstrates the conspiracy is at work.

EFFECTIVE: 01/31/78

62-16.2 Related Statutes

(1) In addition to Title 18, USC, Section 371, numerous statutes carry special conspiracy sections. In the investigation of a conspiracy to violate a particular Federal statute, determine whether the statute contains its own conspiracy section.

(2) Where violations of Federal criminal statutes are committed jointly or by more than one person, the related statutes hereinafter set forth should be considered. As a general rule evidence sufficient to prove a violation under Title 18, USC, Section 371, or a violation of any substantive statute, may be sufficient to prove a violation of any one of the following related statutes in cases where more than one person is involved.

(a) Title 18, USC, Section 372 (formerly Section 54, Title 18, USC) (Conspiracy to impede or injure officer)

(b) Title 18, USC, Section 2 (Principals)

(c) Title 18, USC, Section 3 (formerly Section 551, Title 18, USC) (Accessory after the fact)

(d) Title 18, USC, Section 4 (formerly Section 251, Title 18, USC) (Misprisions of felony)

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62-16.3 Statute of Limitations

Since the crime of conspiracy is not complete until an overt act has been completed in the furtherance of an original agreement between two or more persons, the statute of limitations does not begin to operate until an overt act by one of the conspirators has been committed. Likewise, if a series of overt acts is committed in the furtherance of the original agreement, the statute of limitations begins to operate anew upon the commission of each act, and the proper manner to determine when the statute of limitations operates on a conspiracy violation is to determine the date of the last overt act. Conspiracy is a continuing offense. If an agreement between two or more persons to violate a law of the U.S. were made in 1910 and successive overt acts in the furtherance of that agreement took place each year until 1955, the statute of limitations would not operate until 1960. Of course, the question of whether the original agreement continues through a lengthy period is a question of fact for the jury. *Brown v. Elliott*, 225 U.S. 392; *U.S. v. Brace*, 149 F. 874; *Ryan v. U.S.*, 216 F. 13; *Ware v. U.S.*, 154 F. 577; *U.S. v. Barber*, 157 F. 889; *U.S. v. Bradford*, 148 F. 413.

EFFECTIVE: 01/31/78

62-16.4 Policy

Although a conspiracy to violate any Federal statute is a violation of Title 18, USC, Section 371, jurisdiction is assumed only over conspiracy to violate substantive statutes within the primary investigative jurisdiction of the FBI. Complaints received alleging conspiracies to violate statutes not within the FBI's primary investigative jurisdiction should be promptly furnished the appropriate investigative agencies.

EFFECTIVE: 01/31/78

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62-16.5 Investigative Procedure

(1) A set plan for investigations of conspiracies cannot be accurately stated. While the same elements are necessary in each conspiracy case, the object of the conspiracy may be a violation of any one of the criminal statutes or simply to defraud the U.S. In this way each case presents different problems. Also, there is a wide latitude in the kind of proof, since circumstantial evidence of a general character indicating both the agreements and the overt acts is admissible. The following suggestions of essential information are offered as to each of the elements.

(2) In connection with establishing the agreement, ascertain the identities of all persons concerned with the possible agreement. This should include complete data as to names, aliases, addresses, descriptions, the extent of the previous associations of subjects in prior criminal operations similar to those under investigation, and the degree of business, social, or criminal intimacy in general.

(3) Evidence of all acts, meetings, and transactions between the subjects of a material nature with relation to the suspected agreement should be obtained and inquiries should be extended as far as necessary beyond the time the agreement is believed to have been consummated.

(4) Procure all evidence possible from which a jury would form the natural conclusion that the subjects mutually agreed, planned, acquiesced in, or intended to carry out the object of their agreement.

(5)



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(6) Bear in mind that while it is not necessary to prove the existence of a formal agreement in the nature of a contract it still is necessary to prove that two or more persons had a meeting of the minds in the perfection of a plan having as its object the violation of any law of the U.S. or committing any fraud against the U.S. in order to fulfill the requirements of element 1; that is, the existence of an agreement.

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(7) It will be helpful in the investigation of this type of case if the Agent considers the completed crime of conspiracy to consist of, first, the agreement, and then the commission of one or more actual overt acts in the furtherance of the original plan. With regard to proving overt acts, the Agent should obtain evidence as to each act or transaction engaged in by one or more of the subjects for the purpose of carrying out the original agreement. This necessitates not only establishing the dates and places but also circumstantial evidence that the act in question furthers the conspiracy.

(8) Any physical act on the part of one or more of the conspirators constitutes an overt act in the fulfillment of element 2. If two individuals conspired to rob a national bank and one of them purchased an automobile as a getaway car, the purchase of the automobile would be an overt act which, added to a previously proved agreement to rob the bank, would complete the crime of conspiracy.

(9) Bear in mind that where evidence of the agreement is vague intensive investigation of all overt acts frequently leads to evidence proving the agreement. Therefore, in the case of the automobile, if it was developed one of the subjects mentioned to the automobile salesman that he and a friend planned to use the automobile as a getaway car, then that evidence would tend to prove both the overt act of purchasing the automobile and the agreement.

EFFECTIVE: 01/31/78

62-16.6 Venue

Venue lies in any district in which such offense was begun, continued, or completed. (Title 18, USC, Section 3237.)

EFFECTIVE: 01/31/78

62-16.7 Classification

The classification is the same as the substantive violation which was the object of the conspiracy.

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EFFECTIVE: 01/31/78

62-16.8 Character

The character is the same as the substantive violation with conspiracy added; e.g., Bank Robbery - Conspiracy.

EFFECTIVE: 01/31/78



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SECTION 63. MISCELLANEOUS - NONSUBVERSIVE

63-1 MISCELLANEOUS - NONSUBVERSIVE

NOTE: This classification for FBIHQ, Information Management  
Division use only.

EFFECTIVE: 10/16/90

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SECTION 64. FOREIGN MISCELLANEOUS

64-1 FOREIGN MISCELLANEOUS

This is a control file utilized by FBIHQ and field offices as a repository for intelligence information of value on the above subject.

Information in this file is broken down by country.

The 64 classification is also used for the Development of  
|Espionage, Counterintelligence and Counterterrorism|Awareness (DECA)  
program and administrative and financial matters relating to other  
|intelligence programs. See|the NATIONAL FOREIGN INTELLIGENCE PROGRAM  
MANUAL (NFIPM).|

EFFECTIVE: 02/14/97

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SECTION 65. ESPIONAGE

65-1. ESPIONAGE

Information concerning the 65 classification is set forth in a separate FBI manual, the NATIONAL FOREIGN INTELLIGENCE PROGRAM MANUAL (NFIPM).

EFFECTIVE: 02/14/97

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SECTION 66. ADMINISTRATIVE MATTERS

66-1 ADMINISTRATIVE MATTERS

You are referred to the Manual of Administrative Operations and Procedures, Part II, 2-4.2.1, for pertinent information concerning the use of the above classification.

EFFECTIVE: 01/31/78

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SECTION 67. BUREAU APPLICANT MATTERS - GENERAL

67-1 RECRUITING AIDS

A Bureau career offers many advantages when compared with private industry. A few of these are sick leave, annual leave and the retirement system. Available in all field offices are brochures entitled "FACE UNIQUE CHALLENGES: A Career as an FBI Special Agent," and "NON-AGENT POSITIONS WITH THE FBI: Technical...Specialty...Clerical." These brochures, along with a current salary chart and appropriate applications, and job description fact sheets should be furnished to all prospective employees and sources of applicants. Recruiters are encouraged to stress that Washington, D.C. offers historical, cultural and educational opportunities not found elsewhere. Recruiters are also encouraged to make use of media recruiting such as newspaper and television advertisements.

EFFECTIVE: 10/25/89

67-2 HOUSING, COUNSELING AND TRAINING - WASHINGTON, D.C.

A Housing Office is set up to secure suitable accommodations for our employees in the Washington, D.C., area. Housing lists are maintained and every effort is made to obtain the best accommodations possible within the price range persons can afford. When employees first enter on duty, they are counseled to insure that any problem which might be confronting them can be acted upon immediately. This counseling continues throughout a person's career. Prospective employees are to be made familiar with the excellent training available in the typing and shorthand classes conducted at FBIHQ.

EFFECTIVE: 10/25/89

67-3 INQUIRIES

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EFFECTIVE: 10/25/89

67-3.1 Employment Opportunities

All field offices and FBIHQ possess detailed information regarding qualifications for and the availability of positions in the Bureau. All inquiries are to be immediately acknowledged by furnishing requested information including an application (FD-140), if desired. No letter of transmittal is necessary to furnish employment information to an applicant. Any applicant (support or Special Agent) who submits an incomplete application is to be recontacted within 30 days and requested to furnish the necessary information.

EFFECTIVE: 10/25/89

67-3.2 Status of Application

EFFECTIVE: 10/25/89

67-3.2.1 Deleted

EFFECTIVE: 10/25/89

67-3.2.2 Support Positions

Support applicants actively seeking FBI employment will be apprised of the final resolution of their applications in the following manner:

(1) The field offices will be required to advise all support applicants as to whether they pass or fail the entrance tests. The pass/fail letters for the Clerical Selection Battery (CSB) written test are computer-generated through the support applicant tracking system located within the on-line Bureau Personnel Management System (BPMS).

(2) The field offices will be required to initiate the "no encouragement" letters for the support applicants that receive an

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unfavorable recommendation during the interview. If a field office determines that a "no encouragement" letter should be sent to a support applicant under these circumstances, then the field office should forward a "no encouragement" letter to the applicant.

For clerical support applicants, the pass/fail letters for the CSB interview are computer-generated by the field office through the support applicant tracking system within the BPMS.

(3) FBIHQ will send "no encouragement" letters to all support applicants when the background investigation has been properly discontinued.

(4) FBIHQ will send "no encouragement" letters to all support applicants that are determined to be unqualified for FBI employment during final review at FBIHQ.

(5) The field office responsible for the recruiting of the support applicant will receive a copy of the "no encouragement" letter.

(6) Drug Usage "No Action" Letters (See also 67-3.2.3 and 67-16.2.2.)

(a) Field offices will notify applicants determined to be ineligible for employment based on experimentation with marijuana which occurred during the last three years or more than 15 times and/or whose experimentation with other illegal drug(s) or combination of illegal drugs, other than marijuana, occurred during the last ten years or more than five times.

(b) As of February 27, 1991, anabolic steroids are defined as an illegal drug under the FBI's drug policy. If applicant used anabolic steroids after February 27, 1991, field offices will follow guidelines set forth in current preemployment drug usage policy.

(c) If applicant used anabolic steroids prior to February 27, 1991, full details concerning the usage, to include frequency of use and specific time, should be referred to the Bureau Support Applicant Unit (BSAU) to determine whether the usage would be disqualifying for employment. BSAU will evaluate these matters on a case-by-case basis following consultation with the Health Care Programs Unit and the Office of the General Counsel.

(d) Determination concerning any other drug-related situations/usage (which would include the purchase/selling of any

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illegal drug, illegal use of any drug while employed in any law enforcement or prosecutorial position, or while employed in a position which carries with it a high level of responsibility or public trust) or unusual circumstances are to be referred to BSAU for decision and notification.

BSAU will notify applicants whose processing is discontinued based on admitted drug usage during preemployment polygraph testing or subsequent processing. (See MIOG, Part I, 67-7.10.)

EFFECTIVE: 03/24/97

67-3.2.3 Special Agent Position

(1) Special Agent applicants being processed under the Special Agent Selection System automatically receive a letter generated by the computer informing them of their status based on performance in the Special Agent Entrance Examination. This letter advises an applicant that:

(a) the test score is competitive and he/she is eligible for interview,

(b) the test score is not competitive and applicant should request retesting in one year if he/she has not already tested the maximum number of times.

Applicants afforded a formal interview receive a computer-generated letter advising either that they have successfully passed the interview and will be eligible for further consideration after a thorough review of their application, or that the interview score does not make them eligible for further processing and that another interview can be requested in one year if they have not already had the maximum number of interviews. Any applicant who is disqualified from further consideration based on interview results will also be appropriately advised. (See 67-17.3 and 67-17.3.6.)

(2) Inasmuch as each field office receives data concerning current qualifying scores, projected hiring needs, and the approximate number and size of scheduled New Agent classes, all routine inquiries should be handled by the Applicant Coordinator.

(3) Under no circumstances should personnel in a field



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office give an applicant any indication that he/she has been appointed until such time as FBIHQ personnel advise that the appointment has been approved.

(4) Should an applicant be disqualified at the prebackground stage of processing, it is the field office's responsibility to advise the candidate in writing. Those individuals who have progressed to the background stage will be notified of their status by FBIHQ.

(5) Drug Usage "No Action" Letters (See also 67-3.2.2 and 67-16.2.2.)

(a) Field offices will notify applicants determined to be ineligible for employment based on experimentation with marijuana which occurred during the last three years or more than 15 times and/or whose experimentation with other illegal drug(s) or combination of illegal drugs, other than marijuana, occurred during the last ten years or more than five times.

(b) As of February 27, 1991, anabolic steroids are defined as an illegal drug under the FBI's drug policy. If applicant used anabolic steroids after February 27, 1991, field offices will follow guidelines set forth in current preemployment drug usage policy.

(c) If applicant used anabolic steroids prior to February 27, 1991, full details concerning the usage, to include frequency of use and specific time, should be referred to the Special Agent Applicant Unit (SAAU) to determine whether the usage would be disqualifying for employment. SAAU will evaluate these matters on a case-by-case basis following consultation with the Health Care Programs Unit and the Office of the General Counsel.

(d) Determination concerning any other drug-related situations/usage (which would include the purchase/selling of any illegal drug, illegal use of any drug while employed in any law enforcement or prosecutorial position, or while employed in a position which carries with it a high level of responsibility or public trust) or unusual circumstances are to be referred to SAAU for decision and notification.

SAAU will notify applicants whose processing is discontinued based on admitted drug usage during preemployment polygraph testing or subsequent processing. (See MIOG, Part I, 67-7.10.)

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EFFECTIVE: 04/29/97

67-4 EMPLOYMENT OF RELATIVES

EFFECTIVE: 10/22/84

67-4.1 Public Law 90-206

Approved 12/16/67, places restrictions on employment of relatives by individuals defined as a "public official." A "public official" is defined as an employee in whom is vested or to whom is delegated the authority to appoint, promote, or advance individuals or to recommend individuals for appointment, employment, promotion or advancement. The law applies to the executive, legislative and judicial branches of Government.

EFFECTIVE: 10/22/84

67-4.2 Relative

A relative is the father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

EFFECTIVE: 10/22/84

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67-4.3 Restrictions on Public Official

(1) A public official shall not advocate a relative for appointment, employment, promotion, or advancement to a position in the public official's agency. For Bureau employees, this means the entire Department of Justice. This also includes an agency over which the public official exercises jurisdiction or control.

(2) A public official shall not appoint, employ, promote, or advance a relative to a position in the agency or in an agency over which the public official exercises jurisdiction or control. This further means the relative of a public official of the agency or of a public official who exercises jurisdiction or control over the agency, if the public official has advocated the appointment, employment, promotion or advancement of that relative.

(3) A public official who recommends a relative or refers a relative for consideration by a public official lower in chain of command (the line of supervisory personnel that runs from a public official to the head of the agency) for appointment, employment, promotion, or advancement is deemed to have advocated the action involved concerning the relative.

EFFECTIVE: 10/22/84

67-4.4 Restrictions on a Relative

An individual appointed, employed, promoted, or advanced in violation of the law is not entitled to pay. The law does not prohibit relatives of public officials from being appointed, employed, promoted or advanced in the same agency as the public official. However, in such cases, the record must show that the public official did not advocate or effect the appointment, employment, promotion, or advancement of a relative.

EFFECTIVE: 01/11/85

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67-4.5 Inquiry

Refer any questions in this matter to FBIHQ. Any complaint received of a violation by someone outside the Bureau should be referred to the Government entity involved. The law does not provide criminal provisions and the Bureau does not have investigative jurisdiction.

EFFECTIVE: 01/11/85

67-5 | MILITARY STATUS

Individuals in Ready Reserve are not eligible for transfer to Standby Reserve until they have completed a period of active duty (excluding active duty for training periods). FBIHQ will request transfer to Standby Reserve provided an individual does not have a military occupational specialty (MOS) that is of a critical nature. During initial interview, applicant should be requested to furnish his/her MOS number so that a determination can be made as to whether this position is considered critical. The only military status a Special Agent is permitted to have is "Standby Reserve." |

EFFECTIVE: 01/11/85

67-6 PRIVACY ACT AND CONFIDENTIALITY

(1) When interviewing someone under this classification for information concerning themselves or their activities, the interviewing Agent must follow the procedures described in Part I, 190-5 (2) and (3) of this manual.

(2) When interviewing an individual to solicit information concerning someone other than the interviewee (thereby classifying that individual as a source of information), the interviewing Agent must follow the procedure relating to promises of confidentiality as described in Part I, 190-7 of this manual. Therefore, persons furnishing information in Bureau applicant matters who request confidentiality may be granted same under the provisions of the Privacy Act. If a person is granted confidentiality under the provisions of the Privacy Act, this must be clearly set out in the communication reporting the interview. T symbols are not to be used in Bureau applicant matters.

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EFFECTIVE: 01/11/85

67-7 BUREAU APPLICANT INVESTIGATION

EFFECTIVE: 12/10/91

67-7.1 Initiation of Investigation | (See MIOG, Part II, 35-9.2.) |

(1) Field offices, in initiating and completing Bureau support applicant background investigations, should use the applicant's employment availability as a principal guide. Additionally, before background investigations of Bureau support applicants are initiated, the applicants are to be recontacted to reaffirm their interest in Bureau employment if long time periods have passed since the initial interview of the applicant.

(2) All supplemental investigations are ordered by FBIHQ unless otherwise specifically instructed. In no case is any supplemental investigation of a former Bureau employee to be instituted before Bureau has had an opportunity to review former employee's personnel file and make a determination as to whether he/she is eligible for reinstatement.

(3) Field offices are furnished pertinent information derived from Bureau file search of applicant and relatives listed on application during processing of investigation. Results of field office indices search on applicant, however, should be updated and commented on when furnishing results of office indices search on the applicant's relatives during the investigation.

(4) Field offices should set leads to all Legats when setting out original leads. In cases where the State Department records should be checked, advise FBIHQ immediately and provide all information by facsimile for lead to be covered. | (See also MAOP, Part II, Section 10-4.3, and Correspondence Guide - Field, |2-5.5.11.) |

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EFFECTIVE: 04/07/97

67-7.1.1 Drug Testing of SA Applicants (See MIOG, Part II,  
35-9.2.)

Applicants for the SA position must have urine specimens taken in connection with the FBI's Drug Deterrence Program at the time of background initiation. Unless this procedure is adhered to in a timely manner, there will be insufficient time for forwarding to FBIHQ and subsequent analysis. Should any applicant enter on duty for New Agents' training without having been previously drug tested within the past year, he/she will immediately be sent back to the field office for proper processing. (See MIOG, Part I, 67-16.2.2 for preemployment drug usage policy and guidelines.)

EFFECTIVE: 07/25/97

67-7.2 Deadlines

(1) Thirty calendar days except where FBIHQ advises otherwise.

(2) Deadline necessary to ensure early appointment of applicant if determined to be qualified.

(3) Deadline date is date report to be received at FBIHQ.

(4) In furnishing leads to additional offices, advise them of deadline. Such leads must be expeditiously furnished other offices as soon as developed to avoid delay in completion of investigation.

(5) If unavoidable circumstances cause delay, field supervisor or Agent handling case should notify FBIHQ by Form FD-205 setting forth all information required on the form. The FD-205 may be filled out in legible longhand. Field office need not retain copy if notation made on serial in file regarding sending of FD-205. It should reach FBIHQ by deadline date.

(6) |Deleted|

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EFFECTIVE: 11/25/94

67-7.3 Character - Bureau Applicant (Position Sought)

EFFECTIVE: 04/24/90

67-7.4 Assignment of Cases (See MIOG, Part II, 35-9.2.)

Must be assigned immediately upon receipt in field office  
when investigation originates from FBIHQ.

EFFECTIVE: 04/07/97

67-7.5 Indices Search

(1) Each field office must make a careful search, and advise FBIHQ of the results, of its general and any other specialized indices (except Confidential and ELSUR), concerning the below-listed individuals/entities. Confidential and ELSUR indices need not be searched.

(a) Applicant - Name, including variations and additional names developed during investigation, should be searched by offices covering places of residence, employment, or education. Advise FBIHQ and interested offices of additional names developed.

(b) Close relatives residing in field office territory - Include in search not only names of close relatives known when investigation was initiated, but also those identified during course of investigation. It is not necessary to search names of relatives under 18 years of age.

(c) References and others - Search names of references residing in a particular division. They need be searched only as name appears in reference material furnished. Searches of variations in name and initials are not required. File searches of names of additional references developed during investigation should

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be made by use of Form FD-160, which should be block-stamped and initialed for filing. Where common sense dictates, names of persons with whom applicant has been closely associated during his/her adult life, such as roommates, close social friends, and others, where relationship would warrant, must be searched against field office indices.

(d) Organizations - If applicant lists membership in any organization, the nature of which is not readily known, determine same during interview. No abbreviations are to be utilized. The name(s) of the organization(s) is to be searched and results furnished to FBIHQ.

(2) Field offices are not required to perform computerized indices checks (i.e., Criminal Law Enforcement Application (CLEA) and Intelligence Information System (IIS)) as these will be conducted by FBIHQ. However, in the event additional information is needed concerning data received as a result of these checks, the appropriate field office will be contacted for further clarification/investigation.

(3) Results of search on applicants are to be reported in the initial communication after receipt of the application and should be updated and commented on during investigation when reporting results of office indices search on relatives and roommates.

(4) Searches through ELSUR indices will be conducted exclusively by FBIHQ unless a field office is specifically requested by FBIHQ. ELSUR indices should be searched for the applicant, close relatives, current roommates, and any roommates who have resided with the applicant within the past five years. ELSUR indices are checked using a three-way search by FBIHQ.

EFFECTIVE: 11/25/94



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67-7.6 Objectives of Investigation

(1) To determine whether applicant is or is not qualified for Bureau employment and whether his/her employment would constitute security risk.

(2) Following specific points of inquiry are basic and fundamental and must be kept in mind throughout course of investigation. All contacts and interviews should be directed at developing these objectives:

(a) Character - actions and statements which reveal an applicant's general attitude and possession of characteristics such as trustworthiness, reliability, and discretion or lack thereof.

(b) Associates - types of persons, businesses, groups, organizations or movements with which an applicant has been associated, with particular concern as to whether his/her associations have been of a disreputable or disloyal nature.

(c) Reputation - comments concerning the applicant's general standing in the community.

(d) Loyalty - actions and statements revealing the applicant's attitude and allegiance toward the United States and its constituted form of government or sympathies with any foreign government or ideology.

(e) Ability - establishment of applicant's ability to perform Special Agent or support duties is essential. In this regard, the interviewee should be asked if he/she recommends the applicant for the specific position being applied for. In this respect, the investigator should elicit specific statements and concrete examples as to how the interviewee arrived at his/her conclusion. Each interviewee should be questioned concerning applicant's daily appearance, personality, aggressiveness, how he/she reacts under pressure and strain, and his/her amenability to working long hours. With respect to SPECIAL AGENT APPLICANTS only, the investigator should also ensure that specific statements and examples are obtained regarding the APPLICANT's ability to meet the public, physical fitness, agility, and athletic endeavors. If school, military, and employment records contain comments along these lines, they should be secured. All of the above-mentioned prerequisites have a direct bearing on final selection of Special Agent and support applicants and should be reported so that FBIHQ will be in a position to fully evaluate his/her overall qualifications before

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rendering final judgment.

(f) Bias or Prejudice - the existence of bias or prejudice against any class of citizens or any religious, racial or ethnic group, is of interest and concern to the FBI. Investigators should conduct appropriate investigation to obtain comments to resolve any issue and/or allegation of bias or prejudice that is received concerning an applicant.

(g) Financial Responsibility - each person interviewed who is knowledgeable of the applicant will be asked questions which will elicit information as to whether or not the applicant has a lifestyle or spending habits consistent with his or her means. The purpose of these questions is to determine if the applicant is financially responsible.

(h) Alcohol Abuse - each person interviewed who is knowledgeable of the applicant will be asked if the applicant is known to abuse alcohol. Obtain specific details regarding any such activity.

(i) Drug Abuse - each person interviewed who is knowledgeable of the applicant will be asked if the applicant is known to abuse prescription medications or to use illegal drugs or narcotics. Obtain specific details regarding any such activity.

EFFECTIVE: 01/31/94

67-7.7 Instructions for Investigative Personnel (See MIOG, Part II, 35-9.2.)

(1) Advise persons interviewed of exact position for which applicant is being considered.

(2) Do not convey impression that applicant being investigated is under suspicion or that investigation is of a criminal or subversive nature.

(3) Purpose of interviews is to get information, not to give information. Avoid possibility for accusation of character assassination or spreading of rumors.

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- (4) Investigation must be painstakingly exact, fair, unbiased.
- (5) Interviews must be thorough and exhaustive.
- (6) Request those interviewed to treat inquiries as confidential.
- (7) Investigating Agent should be persistent in his/her effort to pursue every lead to its logical conclusion.
- (8) Derogatory information should be fully developed and reported in detail. Ascertain facts on which derogatory conclusions predicated and follow through in questioning to obtain such facts. If derogatory information is developed, telephonically advise FBIHQ without delay. Advise all auxiliary offices by teletype (copy to FBIHQ) if so instructed by FBIHQ. Reports should show unbiased and complete inquiry. If some question exists regarding accuracy of derogatory information, identify original sources. Field offices discovering derogatory data must ensure that sufficient investigation is conducted to verify or disprove same. Promptly advise other offices which should be cognizant of derogatory information to facilitate their part of the investigation. All questions concerning information furnished under a promise of confidentiality will be resolved at FBIHQ in accordance with provisions of the Privacy Act of 1974 (Title 5, USC, Section 552a (e) (2)).
- (9) Do not protract investigation when derogatory information developed obviously disqualifies applicant for Bureau employment.
- (10) Bear in mind that copies of applicant reports may be disseminated upon request to any agency within executive branch of government, as well as under the provisions of FOIPA.
- (11) The results of derogatory information developed on support and Special Agent applicants should be reported to FBIHQ on an FD-302. The results of completed favorable background investigations on support and Special Agent applicants should be submitted to FBIHQ by summary airtel, teletype, or report.
- (12) Deleted
- (13) Deleted
- (14) Be aware of Privacy Act and confidentiality

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considerations as listed previously in 67-6 of this section.

(15) A knowing and willful false, fictitious, or fraudulent statement in an application for federal employment is a violation of Title 18, USC, Section 1001, False Statements. For additional instructions see Part I, Section 46, of this manual, entitled "Fraud Against the Government."

EFFECTIVE: 10/13/95

67-7.8 Scope of Investigation (See MIOG, Part II, 35-9.2.)

(1) Birth - Verify date and place of birth through appropriate records; i.e., Bureau of Vital Statistics or county records. The practice of verifying birth through school and employment records is not acceptable.

(2) Naturalization - If applicant or immediate relatives, including in-laws, are not native citizens of the United States, verify naturalization through Immigration and Naturalization Service (INS) records or court records. In this respect, when setting out leads to have such information verified, it is imperative that sufficient information be furnished, such as date and place of entry into the United States, date and place of naturalization, and naturalization number. A naturalization certificate should only be obtained if the naturalization information cannot be verified through the INS. If an applicant is a native citizen of the United States but born outside the United States or its possessions, a copy of the applicant's State Department Certificate of Birth should be acquired from the applicant. If citizenship is derivative, specific information should be obtained as set forth above concerning individuals from which citizenship is derived. If an immediate relative is not a citizen, review files of INS and report any pertinent information. If record is not located in local office of INS, determine where located and set out lead to have record reviewed. If an applicant's relative is a native citizen of the United States but foreign born, a copy of their State Department Certificate of Birth should be acquired from the applicant.

(3) Marital status - Resolve any doubt as to marital status by review of records. Verify divorce or separation and ascertain cause of action. Ascertain if any adverse publicity, notoriety, or scandal attached to divorce proceedings. Interview

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divorced spouse unless circumstances dictate otherwise. If at any time during course of investigation information is developed that applicant is engaged or contemplates marriage, applicant should be recontacted to confirm information and, if positive, full identity of future spouse and immediate relatives should be obtained and appropriate investigation conducted.

(a) A spousal interview should be conducted on all Special Agent applicant cases. A spousal interview should not be conducted on a support or specialty case unless deemed necessary.

(4) Neighborhoods

(a) The neighborhood investigation is one of the most important steps of the investigation. It is here that you get an insight into the applicant. During this phase of investigation, specific inquiry should be made as to applicant's everyday appearance, dress, personality, and any other traits which might affect his/her suitability for Bureau employment.

(b) Interview neighbors, including current and former roommates, at applicant's places of residence during past five years.

(c) If derogatory information is developed, interview persons, including roommates, if appropriate, in logical neighborhoods without limitation as to time. Particularly, include all neighborhoods where it might be expected that derogatory information could be further developed. It is not necessary to conduct neighborhood investigations if applicant has resided less than a 30-day period unless special reason exists. Bear in mind applicants may have been forced to leave residence after brief period due to unfavorable activity. When derogatory information is developed which may be based only on gossip, rumor, or personality clash, every effort must be made to resolve such information.

(5) References

(a) Years and extent of association on part of applicant with reference should be clearly established during interview.

(b) Interview all references except a reference concerning whom information is known which would preclude interview or if an isolated reference is furnished by applicant and he/she cannot be contacted without expenditure of unreasonable time and travel which

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would result in delay of investigation. Request applicant to submit a substitute reference. Set forth unavailability of isolated reference when furnishing results of investigation to FBIHQ.

(c) If derogatory information exists concerning a reference, ascertain nature and extent of his/her association with applicant.

(d) If reference is personal physician of applicant, especially support applicants, specific comments should be secured concerning applicant's medical history and current physical condition. If any serious physical or mental defect is developed as a result of this interview and FBIHQ has not been previously advised, it should be brought to immediate attention of FBIHQ.

(e) If a reference is also listed on the application under a separate heading (employers, social acquaintances, relative, roommate, friends, or acquaintances employed by the FBI), request applicant to submit a substitute reference. If applicant provides references who are related to one another or who reside in the same household, request applicant to submit a substitute reference.

(6) Social acquaintances

(a) Years and extent of association on part of applicant with social acquaintances should be clearly established during interview.

(b) Interview all social acquaintances listed except acquaintances concerning whom information is known which would preclude interview, or if an isolated acquaintance is furnished by applicant and he/she cannot be contacted without expenditure of unreasonable time and travel which would result in delay of investigation. In such instance, request that applicant submit a substitute acquaintance. Set forth unavailability of isolated acquaintance when furnishing results of investigation to FBIHQ. Those acquaintances interviewed should be in the same general age group as applicant and should be familiar with his/her background through association in schools, churches, clubs, employments and the like. Searching and penetrative inquiries must be made of these individuals to ensure that all pertinent information in their possession is obtained.

(c) If a social acquaintance is also listed on the application under a separate heading (employers, references, relative, roommate, friends, or acquaintances employed by the FBI), request

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applicant to submit a substitute social acquaintance. If the applicant provides social acquaintances who are related to one another or who reside in the same household, request applicant to submit a substitute social acquaintance.

(7) Relatives and associates

(a) Obtain information concerning close relatives and associates during course of investigation on applicant. References and neighborhood of applicants are likely sources of such information. Close relatives under ordinary circumstances include spouse, parents, brothers, sisters, in-laws and adult offspring (includes all relatives requested on BUAP Form FD-140). Be alert to special instances of circumstances which may require broadening this definition. Set out lead for FBIHQ with adequate identifying data to check records of Central Intelligence Agency

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(b) Although independent investigation (except indices checks in all cases and arrest checks on close relatives) is not normally conducted on relatives or associates, derogatory allegations concerning such persons may necessitate discreet inquiries of informants and reliable sources to verify or refute allegations. If derogatory information exists concerning relative or associate, ascertain nature and extent of his/her association with applicant. (See (12)(b) of this section.)

(c) It is necessary to interview, conduct arrest checks, and indices checks on CURRENT roommates. FORMER roommates who have resided with the applicant for the past five years should also be interviewed and indices checks conducted on them. Arrest checks should be conducted on former roommates ONLY if a date of birth is provided by the applicant. If the roommate resided with the applicant OVER five years ago, no investigation will be necessary.

(8) Education

(a) High school education must be verified. Verification should include receipt of high school diploma if applicant has advised that such has been received. If diploma is to be awarded at a future date, obtain and report approximate graduation date. Any education subsequent to high school, including attendance at college, other institutions of higher learning, business schools, etc., should be verified and receipt of degrees confirmed. If applicant has received baccalaureate degree, it is not necessary to

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verify high school attendance. Applicants who are recipients of an associate degree in an academic discipline from accredited colleges whose academic credits are transferable to a degree granting four-year college or university will not require verification of high school attendance unless adverse information is developed reflecting on the suitability of the applicant. In these cases, appropriate investigation should be conducted at the high school level to completely resolve the issue(s).

(b) In verifying education at any level, the following points should be fully covered: final grade point average; class standing; subjects failed; any disciplinary action taken; extracurricular activities; honors and awards; attendance record with specific comments as to reason for absenteeism and tardiness, if available. In the case of Special Agent applicants, it is necessary to verify that any baccalaureate degree awarded to the applicant was considered a resident degree. In those instances when any baccalaureate degree is from a nonresident school, it is necessary to verify that the postgraduate degree is from a resident school. This procedure is also required in any case involving a Special Agent applicant applying under the Law Program who has only two years of undergraduate work inasmuch as this work too must be resident work to be qualifying. If a release is required by educational institution before this information can be furnished, applicant should be requested to authorize same (Form FD-406 is to be used for this purpose). If he/she refuses, no further action should be taken on application for employment and his/her case should be immediately discontinued.

(c) A representative number of school officials and teachers should be interviewed and comments secured as to applicant's demeanor, dress, associates, ability, personality, amenability to instruction and correction, leadership ability, athletic endeavors, character, and loyalty. If any information is developed which raises a question as to applicant's suitability for Bureau employment, this must be completely resolved and, if warranted, additional interviews should be conducted.

(d) When information appears in school record indicating necessity to contact a particular teacher, every effort should be made to locate and interview that teacher. It is recognized that due to lapse of time or size of class, school officials and teachers may be unable to recall applicant. Therefore, it is not necessary to interview professors if it has been over three years since the applicant's last date of attendance. Bear in mind that there may be information in record specifically commenting on very

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items required to be covered during actual interview of school officials and teachers.

(9) Employment

(a) All employments, regardless of duration and including part-time employments, must be verified. Periods of unemployment should be accounted for in investigation.

(b) Review of employment record should be made and following information secured: dates of employment; position held and nature of duties; salary; reason for termination if applicable; attendance and tardiness record; disciplinary action; and awards. In any instance wherein the applicant has held employment, past or present, with a law enforcement agency, the records of the internal affairs unit of this agency are to be checked during the investigation. This is in addition to the check of appropriate personnel records. Any additional employments developed during course of review of employment records should be verified.

(c) Supervisors and a representative number of co-workers should be interviewed and specific comments secured concerning amenability to supervision, ability to work under pressure, leadership ability, emotional stability, maturity, character, reputation, associates, and loyalty. In any instance wherein applicant's previous or current employers cannot provide the identity of applicant's immediate supervisor or co-workers because of the employer's policy, applicant should be contacted and requested to provide the identity of the immediate supervisor and a representative number of co-workers. Interviews of military personnel's supervisors, co-workers, etc., are limited to two years prior to date of their last military service, if their military service was within five years prior to the date of their application. (See (19)(b) and MIOG, Part II, 17-6.5 & 17-6.6.) When application is for the position of computer programmer or computer systems analyst, the supervisor should also be requested to comment specifically on the applicant's technical abilities in the programming and/or analyst field. These comments should be recorded essentially verbatim and made available to FBIHQ when reporting results of investigation. If the applicant is not currently employed in a programmer or analyst position, the most recent previous employment wherein he/she held this type of position should be used for this interview. Any adverse information developed concerning suitability for employment with FBI must be completely resolved and, where warranted, additional interviews must be conducted. (See 67-10.11.)

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(d) If applicant has been in business for himself/herself, interview competitors and conduct appropriate neighborhood investigation in the area of applicant's place of business.

(e) It will be necessary to verify any departments and/or agencies to which the applicant has previously applied for a position. Applicant should be requested to provide a vacancy number and complete address of each agency. If currently under consideration by the agency, ascertain whether all investigation to date has been favorable; if not, request details about an unfavorable information developed. If applicant is no longer being considered, determine the reason, i.e., voluntary withdrawal, lack of vacancies, development of derogatory information, etc.

(f) It is not necessary to verify an applicant's lack of employment while he/she is a full-time student since their activities are accounted for. However, verification should be made of any unemployment if applicant was not attending school and the application does not reflect any employment(s) during the time period(s) in question.

(10) Organizations

(a) During course of investigations, make inquiries to determine whether applicant has been affiliated with subversive groups or organizations and extent of his/her participation therein. Make careful investigation to verify or disprove such alleged affiliations.

(b) Verification of CPA Status or Admittance to State Bar - In Special Agent applicant investigations, if applicant claims to be a Certified Public Accountant (CPA) or to have been admitted to an official state bar, such information should be verified during course of investigation, with appropriate grievance committee records also being checked. It is not necessary to verify membership in any voluntary bar association, such as the American Bar Association, state and local associations, etc.

(11) Security informants - If allegations are received indicating disloyal or subversive affiliations, contact appropriate security informants.

(12) Law Enforcement Agencies

(a) In all localities of residence, education and

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employment, check applicant's name against files of local law enforcement agencies. This should include a check of Military Police records in instances where applicant has resided on base at a military installation. Include spouse in law enforcement checks in areas of residence, education and/or employment since marriage, but have traffic violations and Motor Vehicle Department license checks made for the applicant only.

(b) Check names of close relatives and roommates and, in any case deemed advisable, associates, against files of local law enforcement agencies at present place of residence and at present place of employment and/or school attendance. This should include a check of Military Police records in a situation where the relative is residing on base at a military installation. Do not initiate inquiries concerning relatives' traffic violations and Motor Vehicle license checks. (See (7)(b) of this section.)

(c) If a record is located, report all data developed which indicates applicant or applicant's relative is identical with the subject of the record.

(d) In reviewing records of law enforcement agencies, it is noted that frequently arrests are made on charges which are generic and indefinite in nature. Examples of such vague charges are disorderly conduct, loitering, suspicious person, investigation, general principles, etc. In such an instance, it is NOT sufficient merely to report that applicant was arrested on such a charge, but exact nature of his/her activities resulting in arrest must be ascertained. Charge of disorderly conduct might encompass activities ranging from sexual deviation to making loud noises. EXACT nature of such charge must be ascertained. If necessary, pursue matter even to extent of locating and interviewing arresting officers to determine exact offense.

(e) Some law enforcement agencies departmentalize their operations making it necessary to check records of various squads and bureaus within agency. Checks of records of each such individual squad or bureau MUST be made. Check should include traffic violations for applicant only.

(f) Checks should not be limited to police departments, but MUST INCLUDE records of sheriffs' offices and other duly constituted law enforcement agencies.

(g) If an arrest check discloses any outstanding warrants on an applicant's relative, the current location of that

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relative along with any other pertinent information should be forwarded to the agency which issued the warrant.

(h) In states having centralized criminal histories on computer, such records must be checked on applicants and relatives to cover their states of listed residency and employment and, in the case of the applicant, states of listed education and military service.

(13) Financial Responsibility

(a) Credit checks will be processed by contractor personnel at FBIHQ on applicant's name in all localities covering his/her residence, employment, or education for the most recent seven-year period. It is not necessary to individually verify an account an applicant lists on the FD-140, Application for Employment, that is not shown on the credit bureau report if the credit report is favorable. However, individual creditors must be contacted wherein the credit bureau report reflects any history of late payments. Additionally, if the account is significant enough that the applicant would not be offered Bureau employment if the account is not current, i.e., tax and mortgage payments and large loans and student loans, verification of such is necessary. The same policy applies to accounts held jointly with a relative and/or other individual(s).

It is not necessary to verify a student loan that is listed in applicant's credit report as currently being in a deferred status as the applicant is not required to begin payment on the loan until they have graduated from college. All student loans must be individually checked at the respective institution handling the loan if the applicant is no longer attending college. Any account revealed by credit bureau records to be in default or have a history of late payment(s) should be further verified by directly accessing the records of this account at the issuer of the credit. In checking status of credit accounts, utilize FD-406, DOJ-461, DOJ-462, and DOJ Letterhead Memorandum entitled "Customer Rights Under the Right to Financial Privacy Act of 1978." A separate set of executed DOJ documents will be necessary to access the records of each separate financial institution or credit card issuer in the event individual credit checks are needed. The following information should be included when verifying delinquent accounts: outstanding balance, any penalties or interest added to the amount owed, the date the account was classified as uncollectible, classified as a "charge off" account, or placed for collection or repossession if applicable, whether any applicable repayment plan has been agreed upon and, if so, whether the creditor holder is adhering to the agreement.

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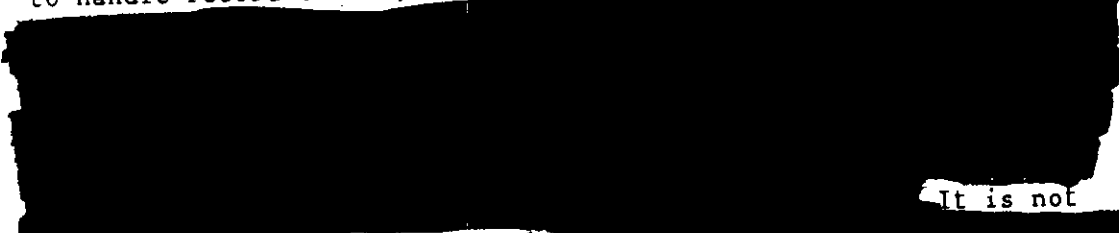
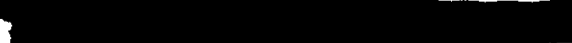
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(b) If an account is found to be either currently in collection or currently over 120 days or more past due, the applicant must be interviewed concerning this account. The interview should obtain the applicant's comments as to whether he/she is aware that the debt(s) exists and if there have been any attempts made by the applicant to satisfy this obligation. This interview additionally affords the applicant the opportunity to clarify any underlying circumstances which are not apparent during a review of credit records regarding these delinquent accounts.

(14) File searches - Information obtained from file searches previously referred to should be utilized in connection with investigation and as lead material.

(15) Agency checks - FBIHQ personnel will conduct Office of Personnel Management (OPM) checks for all applicants and the National Crime Information Center record check for any applicant who is scheduled to enter on duty. A Defense Clearance and Investigations Index check will only be conducted on those applicants who are serving or have served in the military or employed by the military in a civilian capacity. WFO, in appropriate instances, must receive a lead to handle record checks, such as at the State Department, etc. If an

 It is not necessary to conduct a CIA check  A CIA check should also be conducted if the applicant has applied for a position with the CIA. (See (7)(a) of this section.)

If an applicant has been or is currently employed with a federal government agency, a lead should be sent to the Washington Field Office to conduct an Inspector General check to determine if any records exist concerning internal complaints and/or grievances filed against the applicant.

(16) Reinterview of applicant

(a) Applicant may be reinterviewed for purpose of procuring additional information not previously furnished by him/her or to clarify information received during investigation. Under no circumstances should applicant be advised directly or by implication

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of any derogatory information learned about him/her. All sources of any information must be maintained in complete confidence.

(b) Applicant may be reinterviewed when question is raised regarding his/her interest in Bureau employment to determine if still interested.

(c) To further ensure support applicant investigations are complete, thorough, and up to date, prior to issuing an appointment letter, it will be necessary for field personnel to contact the applicant at the current residence address immediately prior to submission of the final communication, to determine if the applicant has had any employment, education, or arrests, subsequent to initial interview.

1. If positive response is received, it will be necessary to verify same and include the following paragraph in the final communication: "Applicant contacted on (date) and advised that (he or she) has had no additional education, employment or arrests with the exceptions indicated above."

2. If the response is negative and no additional investigation is warranted, the last paragraph in the final communication to the Bureau shall read: "Applicant contacted on (date) and advised that (he or she) has had no additional education, employment, or arrests since last interviewed."

(17) Bureau acquaintances - Bureau acquaintances of applicant must be interviewed or must submit recommendations as to whether they believe applicant is suitable for Bureau employment.

(18) Selective Service status - If applicant is a male born after 12/31/59, FBIHQ will determine whether applicant is in compliance with the Military Selective Service Act, which requires that all males born after 12/31/59 register with the Selective Service System (SSS). FBIHQ will make this determination by telephonically (toll free) accessing a computerized system maintained by the SSS at its Selective Service Data Management Center, Great Lakes, Illinois. If discrepancies are disclosed concerning the applicant's registration with SSS, a lead may be set by FBIHQ to the Chicago Office to follow up directly at SSS.

If an applicant who is favorably recommended registered with the SSS prior to 4/1/75, and had a special classification such as a 1-A-0, 4-F, or 1-Y, details regarding reason for same must be ascertained from applicant. It may also be necessary to secure physicians' statements

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and/or information from hospital records prior to arranging a physical examination, as complete details regarding a history of illnesses or injuries must be furnished to appropriate examiner at time of physical examination.

(19) Military service - (See also 67-5 of this section.)

(a) If in Reserve, ascertain whether Ready or Standby. If applicant is currently in military reserve, determine whether active or inactive (Standby normally inactive but may be active on volunteer basis) and have applicant furnish complete address for reserve unit to which he/she is currently assigned. Whether in active or inactive reserve, records must be reviewed in all Bureau applicant cases. If applicant is affiliated with an active reserve unit, also interview superiors and fellow reservists regarding current

performance. During supplemental investigation, reserve status must be rechecked when more than 60 days have elapsed since previous check. If affiliated with active reserve unit, supplemental investigation must include reinterview of superiors and fellow reservists to ensure that applicant remains in good standing with unit.

(b) Instruct office covering repository of records to review service record. Veterans' Readjustment Benefits Act of 1966 granted preference rights to individuals who had over 180 consecutive days of active military duty after 1/31/55, except that such benefits were withheld from those serving on active duty for training under Title 10, USC, Section 511 (d), in the National Guard or Reserve (the so-called six-monthers). Public Law 94-502, enacted 10/15/76, however, abolished peacetime veterans' preference points for those individuals entering on active duty after 10/14/76, except for those who were disabled, or those who served in a campaign or war. In reviewing records of those applicants whose dates of service might make them eligible for preference rights, ascertain, where possible, whether or not active duty was for training. A copy of applicant's DD-214 should be obtained for those who have prior military service. The field office should attempt to locate and interview superiors for any military service within the last two years. (See (9)(c) above, and MIOG, Part I, 67-11.1.2 (3)(a); Part II, 17-6.5 and 17-6.6 and MAOP, Part I, 10-3.)

(c) A reservist, other than a member of Army National Guard or Air National Guard, ordered to active duty, active duty for training, or annual active duty for training receives credit for such service in determination of his/her leave category and computation of service under Civil Service Retirement Act. No credit

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is given for inactive duty training; that is, scheduled weekly or monthly assemblies or drills. National Guard service is creditable only during periods when organization or a unit thereof is actually mustered into or activated in U.S. Army or Air Force. Report information obtained (including exact dates on active duty) concerning military duty in sufficient detail to permit Bureau to determine leave-earning or retirement.

(d) Report information concerning any physical disability disclosed in record, together with any facts indicating it was caused or aggravated by military service.

(e) It is required that the field office, designated by FBIHQ at the time background investigation is initiated, provide the following information from applicant's military file: original date of enlistment; date of entry into active duty and date of honorable release from same; highest rank attained; dates of reserve service; date of honorable discharge, if appropriate; status of remaining service obligation, if any; information about any foreign service; statement about any disciplinary action, including court martials and periods of AWOL; military occupation; list of awards received; ratings from most recent performance appraisals; any medical information indicating a possible disability, mental or physical, which could affect applicant's job performance; a list of all duty stations; and copies of conduct and efficiency reports.

(20) Alcohol or drug abuse - Every interviewee should be specifically questioned as to whether the applicant is a known alcohol abuser or is known to have made unauthorized use of drugs of abuse such as cocaine, heroin, LSD or marijuana. An affirmative response will require the development of specific details, including a determination as to whether the knowledge is direct or hearsay. Any positive information should, of course, be fully explored during the course of the investigation in order to completely resolve any allegations of alcohol or drug abuse on the part of the applicant.

EFFECTIVE: 04/07/97



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67-7.9 Bureau Applicant Program Personnel Security Interview  
(PSI), Security Officer Matters, Foreign  
Counterintelligence (See MIOG, Part I, 261-2(2)(c) 8.)

A PSI is required during the course of a Bureau applicant investigation when the applicant's "Application for Employment," Form FD-140, indicates certain factors (set out below) are present. The following information describes factors under which a PSI should be conducted, who should conduct the PSI, areas to cover during the PSI, proper submission of results to FBIHQ, and how to capture time spent on the PSI for Time Utilization and Recordkeeping (TURK) purposes.

EFFECTIVE: 10/14/93

67-7.9.1 Role of Executive Order (EO) 10450 in Bureau Applicant  
PSIs (See MIOG, Part I, 261-2(2)(c) 8.)

(1) EO 10450, entitled "Security Requirements for Government Employment," requires the Government employment of any individual to be clearly consistent with the interests of national security. It requires all Federal employees to be reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States. It enumerates the following security factors which, depending on the relation of the Government employment to the national security, must be considered as criteria in evaluating cases. The security criteria are:

(a) Any behavior, activities, or association which tend to show that the individual is not reliable or trustworthy.

(b) Any deliberate misrepresentations, falsifications, or omission of material facts.

(c) Any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction, or sexual perversion.

(d) Any illness, including any mental condition, of a nature which in the opinion of competent medical authority may cause significant defect in the judgment or reliability of the employee, with due regard to the transient or continuing effect of the illness and the medical findings in such case.

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(e) Any facts which furnish reason to believe that the individual may be subjected to coercion, influence, or pressure which may cause the person to act contrary to the best interests of the national security.

(f) Commission of any act of sabotage, espionage, treason, terrorism or sedition, or attempts thereat or preparation therefor, or conspiring with, aiding or abetting another to commit or attempt to commit any act of sabotage, espionage, treason, terrorism or sedition.

(g) Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, or revolutionist, or with an espionage or other secret agent or representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the Government of the United States or the alteration of the form of Government of the United States by unconstitutional means.

(h) Advocacy of the use of force or violence to overthrow the Government of the United States, or of the alteration of the form of Government of the United States by unconstitutional means.

(i) Knowing membership, with specific intent of furthering the aims of, or adherence to and active participation in, any foreign or domestic organization, association, movement, group, or combination of persons (hereinafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or any state or subdivision thereof by unlawful means.

(j) Intentional, unauthorized disclosure to any person of security information, or of other information, disclosure of which is prohibited by law or willful violation or disregard of security regulations.

(k) Performing or attempting to perform duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States.

(l) Refusal by the individual, upon the ground of constitutional privilege against self-incrimination, to testify before a congressional committee regarding charges of his/her alleged "disloyalty or other misconduct."

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(2) The Personnel Security Unit (PSU), Intelligence Division, utilizing the minimum standards set forth in EO 10450, after reviewing the results of the investigation, adjudicates whether the applicant is reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States. The PSU recommends to the Assistant Director, Criminal Investigative Division, whether or not the hiring of the applicant is clearly consistent with the interests of national security.

EFFECTIVE: 07/22/93

67-7.9.2 Instructions for the Initiation of the PSI (See MIOG, Part I, 261-2(2)(c) 8; Part II, 35-9.2; National Foreign Intelligence Program Manual, Part 1, 8-1.1.)

(1) The processing field office, utilizing guidelines set forth, will review the FD-140 and initiate appropriate action for the PSI to be conducted.

(2) A review of the application for employment (FD-140) should be conducted for all applicants who are favorably recommended at the time of their employment interviews to determine if a PSI is warranted. It becomes incumbent upon the processing office to conduct the PSI. The results of the PSI are to be forwarded along with the FD-140, FD-190a, fingerprint card, release forms, etc., to the Special Agent Applicant Unit or Bureau Support Applicant Unit, Personnel Division, for appropriate action. If, after review of the PSI by the Personnel Security Unit (PSU), National Security Division, determines that a polygraph is needed the processing office will be contacted by PSU and advised of such.

(3) A PSI will be instituted whenever any of the following factors are present after a review of the FD-140:

(a) Foreign birth of applicant, listed relatives, or individuals with whom the applicant resided over a period of thirty days or more (i.e., roommates, cohabitant).

(b) Foreign travel or foreign residences of applicant.

(c) Relatives of applicant or applicant's immediate

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family (including in-laws) who reside outside the United States (except U.S. citizens serving in the Armed Forces of the United States or employed by the U.S. government).

(d) Employment by (or representatives or agent of) any foreign government by the applicant or members of immediate family (including in-laws).

(e) Contacts by applicant or members of immediate family (including in-laws) with friends, associates, or others residing outside the United States.

(f) Whenever an applicant lists federal or military employment to determine if the applicant's previous employment required access to United States classified/restricted information. When appropriate, this includes former FBI employees applying for reinstatement.

(4) A PSI of the applicant is to be conducted by an experienced FCI Agent, preferably with expertise in the areas of concern in the applicant's background. The interviewing Agent must review the application and any investigation conducted to identify those security concerns associated with the applicant, as delineated in EO 10450.

(a) When the applicant's background indicates he/she has had any connection (travel, relatives, contacts, etc.) with a specified foreign country (see National Foreign Intelligence Program (NFIP) Manual, Introduction, 1-1), an experienced FCI Agent should conduct an in depth PSI and make a recommendation as to whether the applicant should be afforded a polygraph examination.

(b) In those offices where an FCI Agent is not available to conduct the PSI, the National Security Division, FBIHQ, should be contacted for a determination as to whether a non-FCI Agent can be utilized or whether assistance could be provided by another field office.

(c) In those applicant cases where the applicant has traveled to or has a connection with a foreign country NOT listed in the NFIP Manual, Introduction, 1-1, it will be left to the discretion of the SAC as to whether an FCI or non-FCI Agent will be utilized to conduct the PSI.

(5) All PSIs must be done personally; no telephonic PSIs are permitted.

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(6) Although the main thrust of the PSI should be developed through the expertise of the assigned FCI-trained Special Agent, the following points, at a minimum and, where applicable, must be addressed.

(a) Details regarding all travel outside the United States including any unsupervised travel or side trips while in the military; specific locations and purpose of all trips; length of stay; organizations and/or individuals with whom there was contact; follow up contacts; any traveling companions; and interviewing Agent should review the applicant's passport for possible additional foreign travel data.

(b) Contacts with foreign officials or police agencies while traveling outside the United States.

(c) Any contacts by applicant or family members, as listed in the application, with the individuals living or working outside the United States; any contacts with applicant or family by foreign nationals or representatives visiting or residing in the United States.

(d) Associations and the degree of same developed with foreign nationals, citizens, and/or organizations; background data regarding such persons, to include past roommates.

(e) Any personal associates, business or otherwise, developed with foreign nationals, as a result of current employment, clubs, or organizations, etc.

(f) Details of any approach to exchange United States currency for local foreign currency, purchase of clothing, or other illegal market items, etc.

(g) Noting applicant's current overextended credit situation and past delinquency, applicant's ability to manage finances; reason for past delinquency.

(7) The following additional points should be covered when the applicant and/or applicant's parents are foreign born:

(a) Details regarding motivation for applicant and/or applicant's family to immigrate to the United States; naturalization status of family, if not previously provided; provide exact dates of naturalization for all relatives; family background in

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native country to include employment, any affiliation with a foreign government, Communist Party, or other political entity; if Communist Bloc country, how and why family allowed to leave; any return trips to native country by applicant or family; any plans to return in future; reason why remainder of family remain in native country; any visits to United States by these family members; background, etc., of relatives remaining in foreign country; how applicant and spouse met if either foreign born; and when applicant and his family emigrated into the United States, provide exact dates.

(b) Loyalty of applicant to the United States and its citizens versus those of native country; should he/she become Bureau employee, reaction to official information he/she might obtain regarding native country, relatives, or acquaintances of personal or family interest from that country; reaction to "hostage-type" situation involving terrorist organization or government of foreign country. Motivation for becoming FBI employee.

(c) Any member of applicant's family who may have been affiliated with, participated in, or supported any activities of any radical, militant, or terrorist groups.

(d) Applicant's prior possible contacts with non-U.S. intelligence agencies; any further such contacts; details regarding same.

(e) Details regarding possible dual citizenship held by applicant and applicant's family. To what rights or privileges are they entitled and have they exercised any of these rights or privileges from the other country? What are their intentions regarding the other citizenship?

(f) Reasons for any delay by the applicant or immediate family in not applying for U.S. citizenship.

(g) Details of all foreign travel prior to applicant's and immediate family's immigration to the United States. Review should be made of foreign passport to verify this travel.

(8) If applicable, determine if the applicant was granted a security clearance whenever a review of the FD-140 indicates the applicant was employed by the federal government, United States military, or worked on a government contract; determine dates of clearance granted and ended and level of clearance granted, and if polygraph(s) was given.

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(9) In all cases, would applicant submit to a polygraph examination focusing on foreign counterintelligence-type questions to dispel security concerns of any unresolved issues developed during the investigation.

(10) The results of the PSI are to be transmitted by the field applicant program supervisor or Security Countermeasures Program Manager in a separate communication or teletype, immediately upon completion and marked to the attention of the Security Programs Manager (SPM), National Security Division (NSD), FBIHQ, with a copy designated for Special Agent Applicant Unit or Bureau Support Applicant Unit, Personnel Division, FBIHQ. Simultaneously, copies should also be disseminated to interested offices with leads to resolve any security concerns resulting from the interview. Receiving offices should promptly handle such leads and report results to the SPM, NSD, FBIHQ. These documents may contain classified information and should be marked and handled accordingly.

(11) The time expended on this interview is to be captured for TURK purposes under the FBI Security Program, entitled "Security Officer Matters," by utilization of 261B. (See the MIOG, Part I, Section 261-2(2)(c) 8.) Additionally, for TURK purposes a record of the interview is to be maintained in the field office in a control file under the 261B classification. (See MIOG, Part I, Section 261-2(2)(d); NFIP Manual, Part 1, 8-1.1.)

EFFECTIVE: 04/29/97

67-7.10 Polygraph Examinations of FBI Applicants (See also MIOG, Part I, 67-17.3.8 (4); Part II, 13-22.12, 35-9.2.)

(1) All FBI applicants for support and Special Agent (SA) positions, including on-board support employees who apply for the SA position, must undergo a polygraph examination focusing on national security issues, use or sale of illegal drugs and completeness of the FD-140 (Application for Employment - FBI). Standardized testing formats have been provided to each field polygraph examiner for their use. These examinations are to receive priority attention and should be handled in a manner that will expedite the applicant process.

(a) Deleted

(b) Deleted

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(c) Deleted

(d) Deleted

(2) The Special Agent|Applicant Unit (SAAU) and the Bureau|Support Applicant|Unit (BSAU),|Personnel Division will ensure all FBI applicants are advised that they will be required to submit to a polygraph examination during the processing of their application and prior to their employment to assist in the resolution of issues directly related to national security, the FBI guidelines regarding the sale and use of illegal drugs and the accuracy/completeness of the FD-140 (Application for Employment - FBI).

(3) Any pertinent information developed during the polygraph examination should be provided in writing by the applicant on a supplemental information form.

(4) A preemployment polygraph examination is one element of the overall applicant screening process. It is not to be considered as a substitute for a thorough and complete background investigation. The preemployment polygraph test is NOT designed to assess trustworthiness and suitability in areas NOT covered by the examination.

(5) Failure to submit to a polygraph examination, or failure to satisfactorily cooperate during the examination will be considered in determining whether the applicant shall be hired. Prior to the examination, the examiner will obtain the applicant's agreement in writing to take the polygraph examination (FD-328b).

(6) |SAAU and BSAU|will notify applicants determined not to be eligible for employment based on admission of illegal drug usage during preemployment polygraph testing. (See MIOG, Part I, 67-3.2.2 & 67-3.2.3.)

EFFECTIVE: 04/07/97



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67-7.10.1 Polygraph Examinations of FBI Applicants - Drug Issues  
(See MIOG, Part II, 13-22.12.1.)

(1) All applicants for permanent employment with the FBI are required to submit to a polygraph examination on specific issues, i.e., those which relate to their trustworthiness and eligibility for a "Top Secret" security clearance (security issues) and those which relate to their use of illegal drugs (drug use) as well as veracity of information furnished on their application. To address questions and concerns regarding use of the polygraph for drug issues, an applicant will be placed in one of three specific categories:

- (a) Passed - No Indication of Deception
- (b) Failed - Deception Indicated
- (c) Inconclusive - Unable to Determine Results

(2) Concerns raised regarding use of the polygraph to address drug use and/or results of drug use examinations predominantly are associated only with the second category--those cases in which an applicant failed the examination. Cases involving a failed polygraph examination on drug use will be readily categorized as follows:

- (a) Failed - Subsequently Admitted Deception - Drug Use EXCEEDS FBI Suitability Standards
- (b) Failed - Subsequently Admitted Deception - Drug Use DOES NOT EXCEED FBI Suitability Standards
- (c) Failed - Denies Deception

(3) Applicants whose polygraph results fall into the first category above merit NO further consideration for employment. These applicants do not meet FBI suitability standards regarding drug use.

(4) Applicants who fall into the second category above are NOT eligible for further applicant processing. A lack of candor displayed by an applicant during the polygraph phase warrants their disqualification. Each applicant should be advised of the significance of candor during the applicant process and advised to tell the truth prior to their polygraph examination.

(5) Applicants whose drug use polygraph examination results fall into the last category, "Failed - Denies Deception,"

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warrant particular review. In those instances in which an applicant fails the polygraph on drug use issues and maintains that he/she has told the truth and can offer no explanation for the deceptive outcome of his/her polygraph, the FBI will take the following action:

(a) On-Board Support Personnel Applying for the Special Agent (SA) Position: When an on-board support employee fails a polygraph examination regarding drug use issues, that fact must be reported to the Office of Professional Responsibility (OPR) so that an appropriate inquiry may be conducted. In such cases, the employee will be required to submit to an interview conducted under the auspices of an OPR investigation regarding his/her use of, or other association with illegal drugs, and a signed sworn statement will be taken from the employee regarding his/her involvement in the illegal use of drugs. In addition, OPR will conduct appropriate investigation to determine if the employee has used illegal drugs post-employment with the FBI and/or used illegal drugs preemployment and failed to disclose the exact nature or extent of that use to the FBI. During the course of the OPR inquiry, the employee will be required to again submit to a polygraph examination regarding drug use. The second polygraph examination will be conducted by a polygrapher other than the individual who administered the first examination. If the employee fails the second examination, the administrative inquiry will continue, as may be appropriate, in accordance with current FBI policy in such matters and no further processing for the SA appointment will be conducted. If the employee passes the second polygraph examination regarding drug use and has not admitted deception on the prior examination or involvement with or use of illegal drugs previously unknown to the FBI, OPR will complete its inquiries and forward its findings to the Adjudication Unit. Upon adjudication, SAAU will once again consider the employee for the SA position.

(b) Outside Applicants Who Fail the Polygraph Examination regarding Drug Use and Deny Deception: Individuals who seek FBI employment and fail their polygraph examination regarding drug use will be disqualified from further consideration except in limited circumstances. Each applicant will be advised by the Personnel Division of the results of his/her examination and whether he/she has been determined eligible for further processing.

(6) If an applicant from outside the FBI fails the polygraph, and maintains that he/she has not been deceptive, he/she may request to be considered for further applicant processing. This request should be sent by the applicant directly to the FBIHQ division head or SAC that previously has been sponsoring the applicant's employment application. If deemed appropriate by the FBIHQ division

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head or SAC, the applicant should be thoroughly interviewed regarding his/her use/involvement with illegal drugs. This interview should be conducted by an experienced Special Agent other than the polygrapher or SA previously involved in processing the applicant for employment. The result of that interview must be documented in detail in an FD-302. It will be the responsibility of an FBIHQ division head or SAC to personally review the applicant's file to determine if further consideration is warranted on the merits of the case. An FBIHQ division head or SAC may submit a written recommendation to the Personnel Division to request that an applicant be given a second polygraph on the basis of the information developed subsequent to the polygraph examination. Such information should, of course, provide a basis justifying the applicant's reexamination. To ensure consistency and equity in decisions to afford such applicants further consideration, the Deputy Assistant Director - Personnel Officer, Personnel Division, will be responsible for approval of the decision to afford an outside applicant a second polygraph examination.

EFFECTIVE: 04/29/97

67-7.11 Updating Investigations (See also MIOG,  
Part I, 67-12, & 67-17.3.8; Part II, 35-9.2.)

When initiating background investigation on an applicant, either support or Special Agent who has previously been investigated or whose application has been on file for some time, the following should be borne in mind:

(1) A new application must be obtained if the previous application is more than one year old or if there have been any substantial changes since its submission. If a new application is not required, the prior application should be thoroughly updated.

(2) A new fingerprint card must be furnished if the prior one is more than one year old. Applicants for reinstatement must be refingerprinted regardless of length of separation.

(3) In all instances, it will be necessary to conduct appropriate credit and criminal checks on applicants if six months or more have elapsed since previous checks. Credit checks will be conducted by contractor personnel at FBIHQ. An update should not be conducted unless an appointment is imminent.

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(4) If an applicant has changed his/her residence or employment since previous investigation was conducted, in addition to conducting appropriate checks of new neighborhoods and jobs, it will be necessary to recheck the employment applicant held and/or the neighborhood in which he/she resided at time of prior investigation to determine whether anything of an unfavorable nature occurred subsequent to completion of the previous check. The same applies to credit and criminal checks. Credit checks will be processed by contractor personnel at FBIHQ on applicant's name in all localities covering his/her residence, employment, or education for the most recent seven-year period.

(5) If background investigation was conducted more than one year ago, the following investigation will need to be completed again: reference and social acquaintance interviews; indices and arrest checks concerning applicant's relatives and current roommate if applicable; Bureau acquaintance interviews if applicable; and current roommate if applicable. Also, a new Personnel Security Interview (PSI) should be afforded the applicant if new foreign travel was taken or if applicant held a security clearance after the previous PSI. A new drug test should be obtained from applicant if the previous one is over a year old. Headquarters' agency checks to include name search, ELSUR check, identification check, CLEA, IIS, and OPM check will not be repeated unless it has been one year since the last checks were conducted.

[REDACTED]

b3  
b7c CIA

(6) The following applies to the updating of a Special Agent applicant investigation. The physical examination and laboratory tests must be repeated if they are more than one year old.

(7) The following applies to the updating of a support applicant investigation. If applicant's current employment has previously been checked, it will not be necessary to recontact this employer unless six months have elapsed since the original investigation was conducted.

(8) A polygraph examination will be necessary on all former Bureau employees, both Agent and support.

EFFECTIVE: 04/29/96

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67-8 MAINTENANCE OF AVAILABILITY LISTS ON SUPPORT APPLICANTS

EFFECTIVE: 02/16/89

67-8.1 Potential Availability List

A potential availability list is to be maintained for applicants to be considered for positions in field offices only.

(1) This list should contain the names of applicants whose applications indicate they possess the minimum qualifications for Bureau employment, who have passed the appropriate tests, and whose interview results were favorable.

(2) When an opening occurs or is anticipated, the field office is required to obtain approval to fill position from FBIHQ. If approval is granted, then applicant on the potential availability list who has been on the list the longest or has the best qualifications, will be immediately contacted to see if he/she is interested in FBI employment. If interested, investigation should be instituted with a 21-day deadline, and application and related papers immediately forwarded to FBIHQ.

(3) It will be incumbent upon each SAC to ensure that the potential availability list contains individuals of both sexes and minority groups and that the policy of equal opportunity is strictly complied with in all cases. This will be followed closely by FBIHQ and the Inspection Staff during their field office inspections.

(4) If it is determined that an applicant is no longer interested in FBI employment after being placed on the potential availability list, his/her name should be deleted. An applicant's name can also be deleted if he/she has been on the list for two years and has not been hired.

EFFECTIVE: 02/16/89

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67-9 QUALIFICATIONS FOR GENERAL SUPPORT POSITIONS (See MIOG,  
Part I, 67-10, 67-11.1.2, 67-11.2.)

Individuals must be U.S. citizens, at least 16 years of age, and a high school graduate or possess a General Education Development (GED) equivalency certificate. Applicants must also successfully complete the Clerical Selection Battery (CSB) written test/structured interview, polygraph examination, drug test, and a background investigation, and agree to remain with the Bureau for at least one year provided they receive an appointment and their work is satisfactory. Field offices may initiate processing (written test) if the applicant is within six months of receiving his/her high school diploma or GED certificate. (Also, see MIOG, Part I, 67-16.2.2 for preemployment drug usage policy and guidelines, and 67-12 for reinstatement policy for former support employees.)

Applicants for Wage-Grade positions are not required to be high school graduates (or equivalent), and do not have to take the CSB written test/structured interview. However, they must successfully complete a drug test, polygraph examination, and a background investigation.

EFFECTIVE: 03/24/97

67-9.1 Physical Ability (See MIOG, Part I, 67-16.2.1 (2).)

(1) Applicants for the positions of auto mechanic, police officer, investigative specialist, and electronics technician must undergo a physical examination and be found qualified for the position sought. Applicants for these positions should have satisfactory vision. If an applicant's uncorrected vision is worse than 20/200 (Snellen) in either eye and/or is not correctable to 20/20 in one eye and at least 20/40 in the other eye, applicant may be considered for a support position, but must be advised that visual deficiency will preclude consideration for the Special Agent position. Applicants who have defective color vision must be advised this deficiency may preclude them from consideration for the Special Agent position.

(2) In determining the physical qualification, certain requirements may be waived for veterans and the disabled if they can efficiently perform the duties of the position. The Bureau seeks to recruit and place these persons if at all possible.

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(3) If an applicant is pregnant, she is to be processed under current suitability guidelines. The Pregnancy Discrimination Act makes it clear that Title VII of the Civil Rights Act of 1964, as amended, forbids discrimination on the basis of pregnancy, childbirth, or related medical conditions. An employer cannot refuse to hire a woman because of her pregnancy-related condition as long as she is able to perform the major functions necessary for the job.

EFFECTIVE: 05/21/97

67-9.2 Placement and Processing of Disabled Individuals for  
Support Positions (See MIOG, Part I, 67-11.2.)

(1) There have been instances where an individual with a disability has been processed in one field office for placement in another field office or at FBIHQ. In such instances it is of paramount importance that the office of interview present a true and complete picture of the applicant. In this connection, good placement analysis is based on the "whole person" concept. The applicant must be evaluated in terms of total capacity--aptitudes, skills, training and experience. All these factors must be considered to place the individual in a particular job. In addition, the severity of the disability and the limitations imposed on the individual should be described in detail so that an appropriate placement can be made. Determine whether the individual's disability is isolated to one area or whether the person is multidisabled. For example, it should be indicated the applicant has a speech impediment and a mild case of cerebral palsy with all limitations from the cerebral palsy identified, i.e., unable to file, stand for long periods of time, etc.

(2) Basic criteria in processing disabled individuals before application is forwarded to FBIHQ should be as follows:

(a) Qualifications and Limitations - A full evaluation should be made of the applicant's physical limitations and whether the applicant can meet the requirements of the position for which he/she is being considered.

(b) Testing - In processing applicants who are blind or deaf, special instructions are needed from FBIHQ and results of tests, as well as the Braille tests and tapes themselves, must be returned to FBIHQ before any processing is begun.

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Each case will be considered on its merits and FBIHQ will order background investigation in these matters.

EFFECTIVE: 04/29/96

67-9.3 Availability

All support applicants must be available for assignment to either day or night shifts. They are to be informed that they may also be called upon to work weekends. Any restriction on the applicant's availability is to be set forth clearly on the interview sheet.

EFFECTIVE: 02/16/89

67-9.4 Appointment

Appointments for support positions are temporary indefinite appointments in accordance with Public Law 843, approved 9/27/50, and are probationary for one year. Positions in the Bureau are excepted by law from competitive Civil Service, and in view of this fact, employee's acceptance of a Bureau appointment automatically constitutes relinquishment during the employee's tenure of any competitive status the employee may have acquired. When appointed support applicants for FBIHQ cannot enter on duty as scheduled, they may be given a revised reporting date. In such cases, the facts are to be immediately furnished to FBIHQ which then will advise of the new reporting date.

EFFECTIVE: 02/16/89



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67-10 SPECIFIC QUALIFICATIONS FOR SUPPORT POSITIONS

Listed below are several support positions and their specific qualifications in addition to those general qualifications listed above in 67-9. In addition to the positions set forth below, various specialized positions in technical fields such as engineering and communications, are available. Applicants inquiring about such positions should furnish a detailed resume to FBIHQ for evaluation.

EFFECTIVE: 02/16/89

| 67-10.1 Clerical Positions | (See MIOG, Part I, 67-11.2.) |

Grade levels for new employees are being determined by evaluating each applicant's education and work experience. Clerk GS-3 - Must be a high school graduate or possess a GED. Clerk GS-4 - Must be a high school graduate (or equivalent) with at least three months of general experience or one year of education above the high school level (with at least a C average). Clerk GS-5 - Must be a college graduate (with at least a C average) or a high school graduate (or equivalent) with at least six months' general experience equivalent to the GS-4 level (this can be determined through description of duties being performed and salary).

EFFECTIVE: 04/29/96

| 67-10.2 | Office Automation Clerk/Assistant |

| (1) Office Automation Clerk/Assistant | GS-3 - Must be a high school graduate (or equivalent) able to type 30-39 words per minute (wpm). | Office Automation Clerk/Assistant | GS-4 - Must be a high school graduate (or equivalent) able to type 40 wpm. | Office Automation Clerk/Assistant | GS-5 - Must be a high school graduate (or equivalent) able to type 40 wpm with at least six months' specialized experience. | No exceptions or adjustments to these requirements (wpm) may be made. |

| (2) All applicants for an Office Automation Clerk/Assistant position must pass the Clerical Selection Battery

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(CSB) Typing OR Word Processing Test at the appropriate words per minute for each grade level. NOTE: CERTIFICATE OF PROFICIENCY FROM NON-FBI SOURCES, INCLUDING SELF-CERTIFICATION, CONCERNING AN APPLICANT'S OR EMPLOYEE'S TYPING SKILL WILL NOT BE ACCEPTED AS QUALIFYING IN LIEU OF THE TYPING OR WORD PROCESSING TEST.

EFFECTIVE: 04/29/96

67-10.3 Clerk-Stenographers

Clerk-Stenographer GS-5 - Must be a high school graduate (or equivalent) and pass the Clerical Selection Battery (CSB) Typing or Word Processing Test at 40 wpm and take shorthand at 80 wpm.

EFFECTIVE: 04/29/96

67-10.3.1 Deleted

EFFECTIVE: 04/29/96

67-10.4 Photographers

Photographic applicants must have at least three years' experience including processing, contact printing, enlarging, and/or color printing. It is also required that a photographer have a general knowledge of the chemicals used in photographic processing. The entrance grade for this position is determined by the applicant's experience and proficiency.

EFFECTIVE: 02/16/89

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67-10.5 Nurses

Nurses (GS-7) must be registered. Applicants with a Bachelor's Degree may be considered if they possess six months' experience, other than that received during school training, preferably in dispensary work (clinical or occupational health). Applicants with a three-year resident college degree may be considered with one year of experience, six months of which must be in the above category. Those with an Associate's Degree or a two-year diploma must have two years' experience, six months of which must be in the above category.

EFFECTIVE: 02/16/89

67-10.6 Fingerprint Examiners

Vacancies in the position of Fingerprint Examiner are filled from within the Bureau by employees who show potential for training and advancement as Fingerprint Examiners. Fingerprint positions are available only at FBIHQ.

EFFECTIVE: 02/16/89

67-10.7 Language Specialist (See MAOP, Part I, Section 22.)

All applicants for the Language Specialist and Translator positions must be given an audiometric examination. The standard required for passing the audiometer examination will be the same as set forth for Special Agent applicants in 67-16.2.1(3).

EFFECTIVE: 05/21/97

| 67-10.8 | Deleted |

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EFFECTIVE: 04/07/97

67-10.9 Laboratory Physical Science and Biological Laboratory  
Technicians

Laboratory Physical Science (GS-5 to GS-11) and Biological  
Laboratory Technicians (GS-5 to GS-12) must have degrees from colleges  
or universities with a major in one of the sciences. Strong  
consideration will be afforded those applicants possessing graduate  
degrees and experience in the area of their academic work.

EFFECTIVE: 04/07/97

67-10.10 Electronics Technicians

Electronics Technicians (ETs) usually enter in grade GS-5  
or GS-7. Higher grades are available in the communications field  
depending upon an applicant's education and experience.

(1) At the GS-5 level, an applicant must have formal  
training in basic electronics and be capable of assisting in ordinary  
repair and maintenance of electronic and FM radio equipment.

(2) At the GS-7 level, an applicant must possess formal  
training and experience in electronics. The applicant needs to have a  
thorough knowledge of the fundamental principles of electronics and FM  
radio equipment. Also required is the ability to perform corrective  
and preventive maintenance on electronic and FM radio equipment. This  
applicant must be proficient in the use of a wide range of tools and  
complex electronic test equipment.

(3) Applicants for the ET position must be willing to  
travel and accept assignments in any part of the United States or  
Puerto Rico, work on day, evening or midnight shifts, and accept  
special assignments. These applicants, in addition to their regular  
interview, must complete and sign the FD-318 entitled "Electronics  
Questionnaire." This form is to be reviewed in the applicant's  
presence by a senior ET. The ET is to interview the applicant to  
evaluate the applicant's answers on the FD-318 and his/her technical  
knowledge. The FD-318, along with the applicant's papers and

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application, is to be sent to FBIHQ for evaluation. If an ET applicant wears glasses, he/she is to be advised that if offered an appointment as an ET he/she must provide himself/herself with one pair of nonmetallic safety eyeglasses prior to entering on duty.

EFFECTIVE: 06/10/88

67-10.11 Computer Programmer and Computer Systems Analyst

(1) Education - Applicant must have at least a four-year college degree in computer science, mathematics, or one of the physical sciences. The formal educational requirement will be waived only when applicant can satisfactorily demonstrate his/her level of experience and/or training in the field of Automatic Data Processing (ADP) is of such a degree as to warrant an exception.

(2) Entrance Test - The applicant must also pass a computer programming aptitude test to qualify for one of these positions. Applicants for these positions should be processed as usual. (Investigation may be instituted by the field on applicants applying for Computer Programmer and Computer Systems Analyst positions who are favorably recommended for Bureau employment, and who indicate at the time of their interview that they will accept a lower support position if they do not qualify in the positions for which they are applying. Investigation should not be instituted by the field on those applicants who are not interested in accepting a lower position. In either case, the application and results of the interview should be furnished to FBIHQ for review to determine if the applicant is educationally qualified or has the necessary work experience to qualify for the programmer or analyst position. If appropriate, a computer programming aptitude test will be sent to the field from FBIHQ and should immediately be administered to the applicant and the results returned to FBIHQ. After the test score has been evaluated, the field will be advised of the position for which applicant is qualified.)

(3) Resume - A resume and college transcripts should be submitted to FBIHQ along with the application in order to provide the Information Resources Division with information necessary for further interview considerations.

(4) Salary - Basic entrance salary and position will be commensurate with education, training, and experience, and will be determined following review of application by the Information

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| Resources | Division.

(5) Employment Agreement - Applicants applying for these positions should be willing to remain with the FBI for a period of one year after completion of a formal training program of approximately six months.

EFFECTIVE: 04/29/96

67-11 GENERAL INSTRUCTIONS FOR PROCESSING SUPPORT APPLICANTS

No work is more important than properly testing, interviewing, evaluating, and investigating applicants for positions with the Bureau. Interviews and investigations must be exhaustive and designed to uncover any information bearing on an applicant's suitability for employment with this Bureau.

EFFECTIVE: 03/23/92

| 67-11.1 Application (FD-140) | (See MIOG, Part I, 67-17.1.1(2).) |

| The Form FD-140 must be completely executed and signed by the applicant. The interviewing official is to ensure that the application is accurate with any omission or discrepancies being resolved | after completion of the Clerical Selection Battery | formal interview. Abbreviations are not to be used on this form. Regarding applicants and their references and/or relatives who are of Hispanic origin, it is essential that the patronymic and matronymic names of all such individuals be obtained as well as the full married name of all married females. The patronymic name is to be followed by the matronymic name. In the case of a married female, the full married name is necessary to include given name, patronymic last name followed by the matronymic last name and husband's surname.

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67-11.1.1 Preliminary Application for Technical Support Positions  
(FD-646b)

(1) The FD-646b must be utilized as the first step in initiating the processing for technical support applicants. This form, filled out completely and accurately, examined by the Applicant Coordinator and/or appropriate FBIHQ division, should be forwarded to FBIHQ, Attention: Bureau Support Applicant Unit, for initial processing. Other FBIHQ divisions, principally Information Resources Division, also utilize this form heavily. The FD-646b contains all necessary data to rapidly and promptly process all technical support applicants. This allows a quick and immediate review of the application similar to that conducted on the FD-646 (Preliminary Application for Special Agent Position), thereby eliminating all the lengthy data required on the FD-140. This should facilitate a much easier entry into the personnel system for both the applicants and reviewing officials. The FD-140 should be given only to those applicants who are going to be processed further in the selection system.

(2) The FD-140 will not be required at the initial application; but, as a practical matter it can be given to applicants when they appear for initial interview or testing. This will allow them extra time to begin completing the form while awaiting test results or FBIHQ review, in anticipation of a successful continuation of their processing. The procedure regarding the use of the FD-646b should be explained and disseminated to all individuals in each field division handling applicant responsibilities.

(3) Applicant Coordinators and support employees handling the FD-646b should ensure all applicants have read the FOIPA statement on the back of the form.

(4) The reverse side of the FD-646b can be utilized for extra space to continue any answers needed. It is noted the obtaining of the Social Security Account Number is voluntary and is not required until an applicant actually enters on duty.

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67-11.1.2 | Support Applicant Tracking System

The FBI has on-line scoring and a tracking system for its general (clerical) support applicants. This database, located within the Bureau Personnel Management System (BPMS), contains all necessary identifying (background) information on all applicants who meet minimum requirements, dates and pass/fail results of the various selection measures (tests and interview), and information that tracks the applicants through the extended applicant process (i.e., polygraph, drug test, background investigation, EOD date, and disqualification reason, if any). It is essential that the database be complete, accurate, and up to date at all times. It is the responsibility of the processing field office to enter the data described below and to ensure accuracy on all elements that change (address, position title for which applicant wishes to be considered, etc.). The following data elements are highlighted for particular importance:

(1) UNIVERSAL CASE FILE NUMBER (UCFN) - A 67 classification UCFN must be obtained by the processing field office on all applicants who meet the minimum requirements (see MIOG, Part I, 67-9). This is done through the on-line Automated Case Support (ACS) System that is available to all field offices. The field office must enter the UCFN and identifying background information into the support applicant tracking system within the BPMS before submitting the Clerical Selection Battery (CSB) written test answer sheet (3-829) to FBIHQ for grading. Otherwise, the test cannot be graded.

(2) RACE AND GENDER - Race and gender are not considered in the selection process for any position with the FBI; however, each item is a necessary component in some of the ongoing analyses of the selection tools to ensure that they are fair and meet legal requirements. The information for these items is based on the applicant's responses on the FD-804 (Applicant Background Survey). After entering that information into the BPMS, the office is to destroy the FD-804 (no copy is retained).

If the applicant does not return the FD-804, the data fields for race, gender, and disability code should be left blank in BPMS. If the applicant advises that he/she does not wish to furnish that information, an "N" should be entered into the field(s). Should the applicant later furnish the information for these fields, the office may enter the data into BPMS. Applicants should be encouraged to furnish this information. Once entered, however, it cannot be



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modified except through the FBI's Office of Equal Employment Opportunity Affairs.

(3) VETERANS' PREFERENCE - The Veterans' Preference Act of 1944, as amended, and codified in various provisions of Title 5, United States Code, applies for civilian positions in the Excepted Service, such as the FBI. There is a mandatory data field in the BPMS support applicant tracking system for this information, which must be entered by the field office at the time an applicant record is entered or modified. The points (5 or 10) are then applied as a component of the total numeric score AFTER an applicant passes the CSB written test and structured interview. Any points given, however, must be based on specific qualifying criteria discussed below, and only when the field office is in receipt of appropriate documentation to support the claim of eligibility.

(a) Criteria for Veterans' Preference Eligibility

The criteria for determining eligibility for veterans' preference points are as follows: For federal employment, "Veteran" is defined as a person who was separated with an honorable discharge or under honorable conditions from active duty in the Armed Forces performed:

1. in a war; or,
2. in a campaign or expedition for which a campaign badge has been authorized; or,
3. during the period beginning 4/28/52, and ending 7/1/55; or,
4. for more than 180 consecutive days, OTHER THAN FOR TRAINING, any part of which occurred during the period beginning 2/1/55 and ending 10/14/76.
5. A person who entered on active duty in the Armed Forces after 10/14/76 and before 9/8/80 may qualify if he/she:
  - a. served during a war or campaign or expedition for which a campaign badge has been authorized, or
  - b. is a disabled veteran.
6. A person who enlisted in the Armed Forces after 9/7/80, or who entered on active duty (through means other than

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enlistment) on or after 10/14/82 may qualify if he/she:

a. served during a war or in a campaign or expedition for which a campaign badge has been authorized and has completed 24 months of continuous service or the full period called or ordered to active duty, or

b. served during a war or in a campaign or expedition for which a campaign badge has been authorized and was discharged early under Title 10, USC, Section 1171 or for hardship under Title 10, USC, Section 1173, or

c. is a disabled veteran. (See MIOG, Part I, 67-7.8 (19).)

A disabled veteran is a person who was separated under honorable conditions from active duty in the Armed Forces performed AT ANY TIME and who has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension. Veterans' preference for reason of disability must be withdrawn when the veteran recovers from the service-connected disability, unless he/she is receiving compensation, pension, or disability retirement benefits, or was awarded the Purple Heart.

Another form of veterans' preference you may encounter is "Derived Preference." This preference is granted to the widow/widower or mother of a deceased veteran, or to the spouse or mother of a disabled veteran, if these individuals assert their right to use it. It is derived preference because it is based on the military service of someone else - a veteran who is not using the preference. If the disabled veteran does decide to use his/her service for preference, the spouse or mother is no longer entitled to the preference.

An amnesty or clemency discharge does not meet the requirement for a discharge under honorable conditions. Therefore, no preference can be granted to persons with amnesty or clemency discharges.

(b) Proof of Veterans' Preference Eligibility

The burden of proof to justify veterans' points rests with the applicant and, ideally, should be submitted with the FD-646 or FD-140 application form. The applicants should be given information at the time they are given the FD-646 or FD-140 concerning the

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required documentation in order for them to claim veterans' preference points. Should a person have difficulty obtaining the necessary documentation to claim veterans' preference, the field office should be available to assist in obtaining the required documentation and, if necessary, make telephone calls or write letters for this purpose.

Acceptable documentation is a copy of the DD-214, or in the case of service-connected disabilities, a copy of the SF-15 or other applicable documentation from the Department of Veterans Affairs, the branch of Armed Forces in which the applicant served, or the National Archives and Records Administration's National Personnel Records Center (Military). Field offices are responsible for forwarding this documentation to the Bureau Support Applicant Unit with the opening of a background investigation.

A quick point of reference justifying preference points is a Campaign or Armed Forces Expeditionary Medal for service in a campaign/war (5 points), or a Purple Heart (10 points).

EFFECTIVE: 03/24/97

67-11.2 General Support (Clerical) Applicant Testing and  
Interviewing (See MIOG, Part I, 67-12.)

(1) With the implementation of new selection procedures for general support applicants, the results of the Short Employment Test (SET), Bureau Typing Test, and interview format on the FD-190a will no longer be used to process or select applicants for general support positions which are entry-level and clerical in nature.

(2) The SET has been replaced by the Clerical Selection Battery (CSB), which consists of a set of written tests and a structured interview, as well as a Typing or Word Processing Test for positions that require a qualified typist. The CSB may only be used for entry-level support positions, grades GS-3 to GS-6, where duties are mostly of a clerical nature. If not a CSB-approved position, this determination will be made after a review of the position description(s) and job analysis information. Offices MUST request such a review by contacting the Personnel Assessment Group (PAG), Personnel Resources Unit, Personnel Division.

(3) Upon completion of the CSB written test, Form 3-829

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(Clerical Selection Test Answer Sheet) must be sent to the Personnel Resources Unit (PRU), PAG, using Form FD-859 (CSB Shipping Invoice) as a cover communication. The following forms, which must be filled out completely, must be maintained by each field office to document each test session. They are to be submitted to the PAG only when a situation/complaint occurs that deviates from normal test procedures:

(a) FD-840 (Applicant Checklist for the CSB Written Test);

(b) FD-829 (FBI Record Sheet for Test Administrators); and

(c) FD-833 (Nondisclosure Statement for Selection Tests and Interviews Used by the Federal Bureau of Investigation); and

(d) FD-841 (Examinee Roster for the Clerical Selection Battery Written Test).

(4) The FD-828 (FBI Test/Interview Usage and Inventory Log) must be filled out and maintained in the field office to document each time a controlled (serialized) CSB test or interview item is removed from and returned to the safe.

(5) Only clerical applicants who pass the CSB written test are interviewed, and all applicants who do pass the test must be afforded the CSB structured interview. Once the CSB structured interview has been administered, the following forms must be submitted to the PRU, PAG, using Form FD-859 (CSB Shipping Invoice) as a cover communication:

(a) FD-800 (Clerical Applicant Rating Form); and

(b) 3-842 (Clerical Applicant Interview Rating Sheet).

The following forms must also be completed during the CSB structured interview, but they are retained in the field office applicant file:

(a) FD-535 (Privacy Act Notice);

(b) FD-798 (Clerical Applicant Preliminary Interview); and

(c) FD-858 (Clerical Selection Battery (CSB) Interview Follow-Up Sheet), if used.

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(6) |CSB EXEMPTION FOR SPOUSE/CHILDREN OF SPECIAL AGENTS (SAs) KILLED IN THE LINE OF DUTY - The surviving spouse and children of SAs officially listed as killed in the line of duty are exempt from the CSB written test. However, they are subject to an interview and all other steps in the standardized applicant process in that they must: (a) meet threshold qualifications (U.S. citizenship, possess a high school diploma or equivalent, be at least 16 years of age, and agree to remain with the FBI for at least one year); (b) be subject to proficiency testing (i.e., typing and word processing test, if applying for a position that requires a "qualified typist"); (c) undergo and pass the structured CSB interview; and (d) successfully pass all of the final stages of applicant processing (polygraph examination, Personnel Security Interview, drug testing, and background investigation). If the spouse/children previously worked for the FBI, the "reinstatement interview" (see MIOG, Part I, 67-12) applies in lieu of the CSB structured interview.

(7) | INVENTORY - The CSB|serialized|materials|and answer sheets for the written test (3-829) and interview (3-842)|are issued and controlled by the PAG of the Personnel Resources Unit. |These| materials will be issued only to|CSB|Certified Test Administrators (CTAs) who have been trained by the PAG, and they must be afforded strict security at all times. Only trained|CSB|CTAs may have access to|these|materials. The CSB written test booklets, interview booklets, and typing/word processing booklets are reusable. As such, they are serialized and charged out to the CTA who is accountable for their proper maintenance, administration, and security. |(See (8).)|

(8) |SECURITY (See MIOG, Part I, 67-11.2(7)) - Only CSB CTAs may have access to the serialized, controlled CSB materials at any time (i.e., while in storage or in actual use) and only they may administer the instruments (test and interview) to the applicants. They are solely responsible for following established procedures to ensure and maintain the security of these materials. Any procedural deviations or compromise of test and interview materials in any way will be investigated and could result in the removal of CTA status/authorization and the possibility of administrative action against the CTA.

Except as specified herein, the CSB materials (used and unused) must be maintained separately from routine office files and supplies, in a safe to which only CSB CTAs have access. This is necessary to preserve the integrity and security of the testing and interviewing process. Only the following forms, once completed, may be sent to the respective field office applicant files:

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(a) FD-840 (Applicant Checklist for the CSB Written Test);

(b) FD-833 (Nondisclosure Statement for Selection Tests and Interviews Used by the Federal Bureau of Investigation);

(c) FD-798 (Clerical Applicant Preliminary Interview Questions);

(d) FD-535 (Privacy Act Notice); and

(e) FD-858 (CSB Interview Follow-Up Sheet) (if used).

(9) TRAINING - Only field office personnel who have been trained by the PAG may administer the CSB written test battery and conduct the structured CSB interview. Training is a three-day course that covers all aspects of the CSB, including scoring of the interview.

(10) SCORING

(a) The CSB written test answer sheets (3-829) must be sent by overnight delivery to FBIHQ, Attention: Personnel Assessment Group, Personnel Resources Unit, for scoring. The answer sheets will be optically scanned and computer scored. The pass/fail results will be automatically placed into the BPMS tracking system for office retrieval.

(b) The CSB structured interview will then be given by specifically trained field office personnel to those applicants who passed the CSB written test. The interview rating sheet (3-842) must be sent by overnight delivery to FBIHQ, Attention: Personnel Assessment Group, Personnel Resources Unit, for processing. The interview sheets will also be optically scanned and computer scored through the on-line system within BPMS. Upon request, the PRU, PAG will prepare a best-qualified list of the offices' support applicants to assist in the selection of those applicants to be further processed (i.e., polygraph, Personnel Security Interview, drug test).

(c) The scoring procedures, however, are dependent upon correctly entering Bureau file numbers and demographic information into the BPMS prior to submitting the CSB tests/interviews to the PAG. Otherwise, the computer will reject test/interview sheets without scoring them. The pass/fail results will be automatically

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placed into the BPMS tracking system for office retrieval, and offices will computer generate the appropriate status letters to general support applicants. With regard to the CSB Typing/Word Processing Test, offices will be responsible for scoring and key entering the test form, test date, and results (words per minute) into the support applicant tracking system of the BPMS.

| (11) | SELECTION OF TEST TAKERS

(a) The CSB test takers must meet the minimum qualifications (see MIOG, Part I, 67-9, Qualifications for General Support Positions). Those applicants applying for GS-4 or GS-5 level positions must have post-high school education or qualifying work experience. Positions at the GS-6 level require one year of specialized experience and are reviewed on a case-by-case basis in consultation with the Pay Administration and Support Staffing Unit at FBIHQ. (See MIOG, Part I, 67-10.1, Clerical Positions.) The current list of general support positions approved for use of the CSB consists of the following:

Clerk  
Clerk-Typist (Retitled Office Automation Clerk/Assistant)  
Computer Operator  
Communications Operator  
Data Transcriber (Typing)  
\*Duplicating Equipment Operator  
\*File Assistant (OA) (Plus Additional Measures)|  
File Clerk  
File Clerk (Data Transcriber)  
| Identification Record Clerk (Data Transcribing)|  
Identification Record Clerk (Typing)  
Mail Clerk  
Mail and File Clerk  
Microform Equipment Operator  
| \*Office Management Assistant (Stenography/OA) (Plus  
Additional Measures)|  
Quality Evaluation Assistant (Data Transcribing)  
| \*Secretary| (Plus Additional Measures)  
Security Complaint Clerk/Assistant  
Security Guard/Warder  
Telecommunications Operator  
Time and Leave Clerk

| \*Additional measures can be obtained by contacting the PAG of the  
Personnel Resources Unit, FBIHQ|

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The number of applicants tested with the CSB should be consistent with the number of vacancies to be filled, with consideration for test failures and other disqualifying factors that may surface during the course of a background investigation, polygraph examination, etc.

(b) In circumstances where an office has an excessive number of applications from individuals who meet minimum qualifications, the number of test takers will be scaled down through a random selection process conducted by the PAG prior to CSB testing. Random selection is necessary to ensure fair, consistent, nondiscriminatory, and legally justifiable selection procedures. The PAG will offer guidance to the field in determining what number of applicants is excessive and will make the random selection of test takers from the list of threshold qualified applicants supplied by the field office. Again, random selection comes into play only in situations where an excessive number of applicants apply for very limited vacancies (i.e., greater than 20 applicants per vacancy).

(c) An exception to the random selection process will be made for those applicants who are reinstatements and must take the CSB written test (see Section 67-12). These applicants will not be subject to the random selection process to take the CSB tests. If they pass the CSB (test battery and interview), their processing may continue. All other CSB applicants will have to participate in the random selection process as indicated above.

| (12) | RETEST POLICY - If an applicant fails the CSB written battery of tests, he/she will be eligible to retake an alternate version after six months, providing that the office has vacancies. A second failure will result in his/her elimination from any further consideration. If the applicant fails the CSB interview, no further consideration will be afforded him/her for employment (no reinterview). The two versions of the Typing or Word Processing Test may be given to an applicant (if necessary) with no imposed waiting period between test sessions or limit on the number of times tested.

| (13) | APPLICANTS WITH DISABILITIES - In support of laws governing disabled applicants, current Bureau policy requires that applications received from qualified persons who identify themselves as having a disability, which may require a reasonable accommodation, be processed in the same manner as those applications received from qualified persons who do not have or do not identify themselves as having a disability. If applications are received from qualified persons who identify themselves as having a disability, the Persons with Disabilities Program Manager must be notified prior to administration of the CSB or other testing procedures to discuss



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reasonable accommodations (if requested). The Persons with Disabilities Program Manager may be contacted within the Office of Equal Employment Opportunity Affairs, FBIHQ. Refer to MIOG, Part I, 67-9.2, "Placement and Processing of Disabled Individuals for Support Positions."

(14) DESTRUCTION OF CSB TEST AND INTERVIEW MATERIALS -  
(See also MAOP, Part II, 2-4.5.2.)

(a) The following CSB materials, which are forwarded to FBIHQ (no copies retained in the field office), must be retained by the PRU, PAG, FBIHQ, for at least two calendar years and will be destroyed at the expiration of the two-year period:

1. 3-829 (Clerical Selection Test Answer Sheet);
2. 3-842 (Clerical Applicant Interview Rating Sheet);
3. FD-800 (Clerical Applicant Rating Form);
4. Training and Experience (T&E) Questionnaires that supplement the CSB for specific positions; and
5. Interview Summary Rating Forms that supplement the CSB for specific positions.

(b) The following forms must be retained in each applicant's field office file and submitted to FBIHQ (Attention: Bureau Support Applicant Unit) as part of the package when each applicant's background investigation is initiated. They will be destroyed pursuant to existing Bureau file destruction policy:

1. FD-840 (Checklist for the CSB Written Test);
2. FD-833 (Nondisclosure Statement for Selection Tests and Interviews Used by the Federal Bureau of Investigation);
3. FD-798 (Clerical Applicant Preliminary Interview Questions);
4. FD-858 (CSB Interview Follow-Up Sheet) (if used); and

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5. FD-535 (Privacy Act Notice).|

EFFECTIVE: 03/24/97

67-11.2.1 Administration of Tests

(1) In an effort to administer the tests in the most efficient manner, the field offices should attempt to test several applicants together whenever possible. However, on those occasions when there is only one applicant available, the tests can and should be administered on an individual basis.

(2) The generally accepted conditions of good test administration should be observed. Good lighting, comfortable seating, adequate desk or table space, and freedom from noise and other distractions are necessary for valid scores and for maintaining the good will of the applicant.

(3) Those administering the tests should have a stop watch, a regular watch with a second hand, or any other timer which will enable them to time the tests with complete accuracy. Timing errors should be kept to a second or two at the most.

EFFECTIVE: 08/19/85

| 67-11.2.2 |Deleted|

EFFECTIVE: 04/29/96

| 67-11.2.3 |Deleted|

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EFFECTIVE: 04/29/96

| 67-11.2.4 | Deleted |

EFFECTIVE: 04/29/96

| 67-11.3 | Deleted |

EFFECTIVE: 04/29/96

67-11.3.1 Social Security Number

All applicants should be advised that should they be offered and accept appointment with the Bureau, it will be necessary that they have a social security number at time they report for duty. If they do not have one, they should make arrangements to obtain one immediately. The applicant is to be advised that the social security number is required for the proper handling of tax information by the Internal Revenue Service. Furnishing the social security number is mandatory in accordance with Executive Order 9397, dated 11/22/43 and Internal Revenue Code, Section 6109.

EFFECTIVE: 09/25/91

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67-11.3.2 Applicants of Asian Ancestry

Each applicant of Asian ancestry, particularly those born outside the United States, at time of interview is to be requested to furnish a copy of his/her birth certificate. Each applicant is to be instructed, at time of interview, to furnish his/her name and the names of all relatives in Chinese characters. This will allow the Laboratory Division to transliterate the names for appropriate searches. Refer to the Foreign Counterintelligence Manual, Part I, Section 200, for detailed information as to how this information should be set forth. This information should be submitted to FBIHQ concurrently with the application, when possible, or expeditiously upon completion of the interview.

EFFECTIVE: 09/25/91

67-11.3.3 Deleted

EFFECTIVE: 09/25/91

67-11.3.4 Military Status

Applicant's military status should be ascertained. (See 67-5 of this section for further information.)

EFFECTIVE: 05/28/85

67-11.3.5 Verifying Prior Government Service

(1) If an applicant is presently employed by another Federal Civilian Agency, an SF-75, "Request for Preliminary Employment Data," must be completed and forwarded to FBIHQ. This form must also be completed for those applicants who have been employed by a Federal Civilian Agency within the past 60 days.

(2) The SF-75 will be used to ensure proper coverage from the time of entrance on duty (EOD) for Civil Service Retirement, social security, health insurance benefits and employees' group life insurance benefits. For those employees who EOD with no break in

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service, the SF-75 will be used to make any necessary salary adjustments. It does not serve as authorization to process other personnel actions, such as service computation dates giving credit for this service for retirement purposes or transferring leave. This can only be adjusted upon receipt of the 3-781, "Transcript of Federal Service." No salary adjustments can be made for individuals whose only previous Federal service was military.

EFFECTIVE: 05/28/85

67-11.3.6 Lesser Positions

Applicants for GS-3 or GS-4 Clerk-Typist and GS-4 Clerk-Stenographer positions are to be specifically asked whether they would be willing to accept a clerical position if they fail to qualify for the position sought. Their answer to the question must be reported.

EFFECTIVE: 05/28/85

67-11.3.7 Support Applicants Who Possess a Bachelor's Degree

The following three points must be covered with all applicants applying for a support position who possess at least a Baccalaureate Degree:

(1) It must be carefully explained to the applicant that if employed in a support capacity, he or she will begin employment performing routine clerical work and the Bureau is not in a position to accelerate advancement solely because the applicant has a college degree.

(2) If a favorably recommended applicant for a support position would obviously be precluded from future consideration for the Special Agent position for any reason including vision, personality, missing limb or some trait or condition which could not be overcome, he or she must be so advised.

(3) If the favorably recommended support applicant is not considered disqualified for future Special Agent consideration and his/her interest in a support position is for the purpose of qualifying for the Special Agent position, a total of three years'

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work experience of a full-time, fairly continuous nature will be required. This can include work experience gained prior to Bureau employment. The applicant should be made fully aware, however, that service with the Bureau does not automatically guarantee a future appointment to the Special Agent position. Support employees aspiring to the Agent position will be processed in the same manner as all other applicants and must compete with all other candidates on an equal basis for the openings available.

EFFECTIVE: 07/27/81

67-11.3.8 Fingerprinting

All Bureau applicants who are favorably recommended for employment should be fingerprinted at time of interview on the applicant fingerprint card (FD-258). It is not necessary to fingerprint those applicants who are unfavorably recommended. When an employee enters on duty, he/she is also fingerprinted on the personnel fingerprint card (FD-380). Applicants must be fingerprinted by Bureau personnel and not referred to police agencies.

EFFECTIVE: 07/27/81

67-11.3.9 Support Applicant Interview Form (FD-190a)

This form has been designed for the interviewing of support applicants.

(1) | The FD-190a is NOT used for general support entry-level positions (GS-3/6) in which the basic duties are clerical in nature. The FD-190a has been replaced by the Clerical Selection Battery (CSB) structured interview.

(2) | However, the FD-190a is still being used for all higher grade support positions which include technical and specialty positions. This form is not required for the Honors Internship Program.

(3) | The dimensions rated under the captions of "Personal Appearance" and "Evaluation of Applicant as Result of Interview" have been revised to increase the relevancy to support applicants and job requirements and/or performance.

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(4) The adjective ratings for dimensions under these two captions have been revised in the form of a horizontal rating scale. Most of these dimensions have three descriptive adjectives and five possible rating areas to facilitate the rating in degrees. For example, under the caption of Personal Appearance, the dimension of Initial Impression has the descriptive adjective ratings of Outstanding, Average, and Poor in a horizontal rating scale of five possible rating areas. If the applicant's initial impression was considered to be above average, then that rating area between the descriptive adjectives of Average and Outstanding would be marked. Exceptions to the dimensions having three descriptive adjectives are the dimensions of Build, where there are seven descriptive adjectives and ratings areas, and the dimension of Assurance, where there are four descriptive adjectives and five rating areas.

EFFECTIVE: 04/29/96

67-11.3.10 Deleted

EFFECTIVE: 04/29/96

67-11.4 Disposition of Application and Related Papers (See MIOG, Part I, 67-11.2.)

(1) SUBMITTING COMPLETED WRITTEN TEST MATERIALS

After an applicant has been given the Clerical Selection Battery (CSB) written test, the field office must submit the following to FBIHQ, Attention: Personnel Assessment Group, Personnel Resources Unit, using Form FD-859 (CBS Shipping Invoice) as a cover communication:

(a) 3-829 (Clerical Selection Test Answer Sheet)

(b) FD-840 (Applicant Checklist for the CSB Written Test) (only if necessary)

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(c) FD-829 (Record Sheet for Test Administrators)  
(only if necessary)

(d) FD-833 (Nondisclosure Statement for Selection  
Tests and Interviews Used by the Federal Bureau of Investigation)  
(only if necessary); and

(e) FD-841 (Examinee Roster for the CSB Written  
Test) (only if necessary).

(2) SUBMITTING COMPLETED INTERVIEW MATERIALS

(a) After a CSB interview, the field office must  
submit the following to FBIHQ, Attention: Personnel Assessment Group,  
Personnel Resources Unit, using Form FD-859 (CSB Shipping Invoice) as  
a cover communication:

1. FD-800 (Clerical Applicant Rating Form); and
2. 3-842 (Clerical Applicant Interview Rating  
Sheet).

(b) The FD-798 (Clerical Applicant Preliminary  
Interview Questions), FD-535 (Privacy Act Notice), and if necessary,  
FD-858 (CSB Interview Follow-Up Sheet) are also filled out at the  
time of the CSB interview. However, they are retained in the field  
office and submitted to FBIHQ as part of the package when a  
background investigation is initiated on the applicant.

EFFECTIVE: 03/24/97

67-11.5 Physical Examinations

(1) General support and most specialty applicants do not  
require a preemployment physical examination. The specialty  
positions of auto mechanic, police officer, investigative specialist,  
and electronics technician do require a preemployment physical  
conducted at an FBI-designated examining facility. The FBI will bear  
the cost of this examination. Obtain complete details regarding any  
medical history applicant lists which would bear on suitability for  
any of the aforementioned specialty positions. Physical examinations  
must be scheduled on a timely basis to allow for a thorough review by  
FBIHQ before an appointive decision may be made. See FD-300 for



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required scope of examination.

(2) Bureau Form FD-300 and government forms SF-88 and SF-93 are to be used for appropriate specialty applicants. It is the responsibility of the field office to ensure these forms are completely executed by the examining physician and that all necessary tests have been afforded.

(3) Language Specialist applicants are to be afforded an audiometer test only.

EFFECTIVE: 05/21/97

67-12 REINSTATEMENT POLICY FOR FORMER SUPPORT PERSONNEL (See MIOG, Part I, 67-7.11, 67-9, and 67-11.2.)

A "REINSTATEMENT" is defined as an applicant who met his/her initial employment obligation as a permanent part-time or full-time employee during prior FBI service, REGARDLESS OF THE DATES OF THAT SERVICE. By definition, individuals given temporary, seasonal, and/or intermittent appointments (i.e., summer employees, Honors Interns, temporary Tour Guides) are not reinstatement applicants and must compete at all stages of processing (i.e., must undergo the Clerical Selection Battery written test and interview if applying for a permanent part-time or full-time entry-level clerical vacancy). This policy does not apply to staff on long-term disability (see the Manual of Administrative Operations and Procedures (MAOP), Part I, 15-1.12) or to those who are ex-military personnel (see MAOP, Part I, 10-1) or on military furlough (10-5.4).

EFFECTIVE: 04/29/96

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67-12.1 Reinstatement Hiring Procedures for Support Positions  
(See MIOG, Part I, 67-12.2, 67-12.3 and 67-12.4.)

Upon receipt of a request for reinstatement, a communication should be directed to FBIHQ, Bureau Support Applicant Unit (BSAU). A determination regarding eligibility for reinstatement will thereafter be made at FBIHQ, BSAU, based on review of the exit interview and performance appraisals. The field office will be appropriately advised. Under no circumstances should active consideration be given to a reinstatement request until FBIHQ, BSAU approval has been received. If such approval is granted, the following steps must be followed in sequential order when processing reinstatements for FBI support positions:

When a request for reinstatement is received and a vacancy exists, the BSAU must be informed. BSAU will review the former employee's personnel file for the exit interview to determine if he/she was recommended for rehire and the last performance appraisal(s) on record (maximum of three). In this regard:

(1) If the applicant was not recommended for rehire or left under negative circumstances, the applicant will not be further processed.

(2) If the applicant was recommended with reservations for rehire, the exit interview information should be carefully considered in terms of the position for which the applicant is being considered. From the information provided, BSAU might determine that the applicant is not eligible for rehire. However, if the information is not complete enough to determine whether the applicant is eligible for rehire, BSAU will authorize further processing to gather additional information to make an informed decision.

(3) If the applicant was recommended for rehire, BSAU will review the last three performance appraisal ratings in file. Each of these must have an overall rating of at least "Fully Successful" in order for the applicant to be considered further. If the applicant has only one or two previous performance review(s), each one must still be at least "Fully Successful" for further consideration.

However, ALL critical elements in the last performance appraisal must have been rated at least "Fully Successful" for further consideration. If one or more of the element ratings is/are less than "Fully Successful," the applicant will not be considered for reinstatement.

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(4) If authorized by BSAU, each support applicant who is not required to take the Clerical Selection Battery must receive a reinstatement interview in connection with his/her reinstatement request to determine:

(a) whether the applicant understands the current requirements, duties and responsibilities of the position, and is willing and able to meet them;

(b) how he/she is qualified for the advertised position;

(c) why he/she wants to return to the FBI;

(d) how he/she has been employed since leaving the FBI; and

(e) the reason(s) for his/her resignation and the manner in which those problems/issues, if any, have been resolved.

Each office is to make an assessment of the depth of the applicant's commitment to a long-term career with the FBI and make a recommendation to BSAU concerning the preliminary suitability of the individual for rehire in the advertised position.

(5) If the reinstatement interview is favorable, each office will interview or set out leads to interview the applicant's former supervisor(s) and co-workers for his/her last three years of FBI employment. The results of the reinstatement interview, assessment/recommendation, and the preliminary interviews are then forwarded to FBIHQ, BSAU. While this process is underway, the processing of other qualified applicants should not be stopped or delayed.

EFFECTIVE: 03/24/97

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67-12.2 Clerical Reinstatement with FBI within Two Years  
of Last FBI Employment

If a reinstatement applicant is eligible for rehire, is being considered for an entry-level clerical position, and an application is received within two years of his/her cease-active-duty date, he/she will not have to take the Clerical Selection Battery (CSB) written test and structured interview. That person will, however, have to pass the CSB Typing or Word Processing Test if applying for a position that requires the services of a "qualified typist," and will also have to be afforded a reinstatement interview and processing as described above in 67-12.1.

EFFECTIVE: 04/29/96

67-12.3 Clerical Reinstatement with FBI More Than Two Years  
from Last FBI Employment

If the reinstatement applicant is eligible for rehire, is being considered for an entry-level clerical position and an application is not received within two years of his/her cease-active-duty date, he/she will have to take the Clerical Selection Battery (CSB) written test and structured interview. In this situation, the individual will not be afforded the reinstatement interview and processing as referred to in 67-12.1. However, if the reinstatement applicant previously passed the CSB, he/she will not have to retake the CSB as those prior test/interview scores are still valid. This applicant would be afforded the reinstatement interview and the processing as described above in 67-12.1.

EFFECTIVE: 04/29/96

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67-12.4 Reinstatement Applicant for Specialty Position

If the reinstatement applicant is eligible for rehire, and is being considered for a specialty or professional support position, he/she must be afforded the reinstatement interview and processing as described above in 67-12.1, plus any other selection procedure(s) as applicable to the specific position.

EFFECTIVE: 04/29/96

67-12.5 Preferential Treatment for Reinstatement Applicants

When a field office has an entry-level clerical position to fill and has reinstatement applicants who must take the Clerical Selection Battery, these applicants may be tested/interviewed ahead of the rest of the office's pool of applicants if the field office makes an initial determination that these individuals are highly qualified for the position. However, once interviewed, no further preferential treatment will be given to these individuals. They must compete for final selection and appointment along with all other applicants.

EFFECTIVE: 04/29/96

67-13 PART-TIME EMPLOYMENT | (See MAOP, Part I, 20-21, 20-28.4.) |

Part-time employment is a scheduled workweek between 16 and 32 hours per week if the employment became effective on or after April 8, 1979, according to Public Law 95-437.

(1) Processing procedures and requirements regarding applications, the Clerical Selection Battery scores (test and interview results), and background investigations are the same for part-time support employees as for full-time support employees.

(2) The following regulations apply to part-time employees:

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(a) A prearranged work schedule must be set forth on the appointment letter.

(b) Prior Bureau approval is needed before any work schedule changes are made, whether they be temporary, permanent, or of short duration.

(c) A scheduled lunch period is required if the workday is in excess of four hours.

(d) Health benefits - The government pays a prorated share based on the number of scheduled work hours per pay period.

(e) Annual leave and sick leave accrual is based on the number of scheduled work hours per pay period compared to a full 80-hour pay period, determined by years of service.

(f) The part-time employee is entitled to overtime pay for hours worked in excess of eight per day or 40 per week. Employee is entitled to straight hourly pay for hours worked in excess of the schedule up to eight per day or 40 per week. Prior Bureau approval is needed before a part-time employee may work in excess of his/her schedule.

EFFECTIVE: 03/24/97

67-14

HONORS INTERNSHIP PROGRAM

(1) The FBI Honors Internship Program (HIP) is designed to expose outstanding undergraduate and graduate students to career opportunities within the FBI during the summer months. This program is similar to other internships and cooperative education programs utilized as recruitment vehicles. One objective of the HIP is to enhance the FBI's visibility on college campuses throughout the United States. The program has also been an excellent recruitment vehicle to locate and identify outstanding minorities and women for future careers with the FBI.

(2) In those field offices where Special Agent Recruiters (SARs) are assigned, the SARs will be responsible for recruiting only highly qualified candidates for the HIP. In those field offices without SARs, the Applicant Coordinators (ACs) will continue to assume this responsibility. The FBI HIP is an extremely selective and

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competitive program with only a limited number of interns being appointed each summer. As such, each field office SAR or AC is requested to contact appropriate college/university placement offices to ensure that the most recent HIP brochure, entitled "FBI Honors Internship Program, A Summer Internship That Lasts A Lifetime," is available for prospective applicants. Each brochure should include an FD-646a application.

EFFECTIVE: 02/27/96

67-14.1 Selection Procedure

(1) Each Special Agent in Charge may nominate candidates for consideration in the HIP. All candidates must be currently enrolled in a college or university at the time they are nominated.

(2) All field offices, with the exception of those offices listed below, may submit a maximum of five candidates to FBIHQ for consideration. Candidates should not be stack-ranked by the nominating offices; however, all candidates must be highly qualified for the program. Field offices submitting a minimum of three candidates will be guaranteed one intern selection.

(3) The following field offices where Special Agent Recruiters are assigned may submit a maximum of ten candidates to FBIHQ for consideration. Again, candidates should not be stack-ranked by the nominating offices; however, all candidates must be highly qualified for the program. These field offices submitting a minimum of six candidates will be guaranteed two intern selections.

The field offices are:

Atlanta	El Paso	New Orleans	San Diego
Baltimore	Honolulu	New York	San Francisco
Birmingham	Houston	Norfolk	San Juan
Boston	Kansas City	Oklahoma City	WMFO
Charlotte	Los Angeles	Philadelphia	
Chicago	Miami	Phoenix	
Detroit	Newark	San Antonio	

(4) When considering nominees, offices should recruit individuals from all ethnic groups to ensure diversity in the class composition. All field office nominations are to be forwarded to

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the Personnel Resources Unit, Personnel Division, along with all appropriate documents necessary for processing, no later than December 1st of each year. A selection committee at FBIHQ will select the finalists and alternates. Each field office is responsible for notifying unsuccessful HIP candidates. This will include those candidates (submitted to FBIHQ) who are not selected to participate in the HIP. After the selectees have been chosen and the field offices have been notified, FBIHQ will send conditional letters of employment to the finalists and alternates. Headquarters will then order a drug urinalysis, polygraph examination, Personnel Security Interview, and a full-field background investigation for each finalist. The finalists who successfully complete their background investigations will be sent an appointment letter from FBIHQ.

(5) All application packages are to be processed through the field offices before being submitted to FBIHQ. Application packages received at FBIHQ without being processed by a field office will be forwarded to the appropriate field office for processing. Nominees should be interviewed and recommended by the SAC or a designated official. The purpose of the SAC interview/recommendation is to help the selection committee to determine each nominee's suitability for the HIP.

EFFECTIVE: 02/27/96

67-14.2 Qualifications

The qualifications for applicants for this program are as follows:

- (1) Undergraduate students must be in their junior year of college and attending full-time at the time they apply to the HIP;
- (2) Graduate-level students must be enrolled in a college or university and attending full time;
- (3) Students must be returning to their respective campuses following the program;
- (4) Applicants must have a cumulative grade point average of 3.0 or above;



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(5) Applicants must be United States citizens.

EFFECTIVE: 02/27/96

67-14.3 Application Process

(1) Each field office should ensure appropriate contacts are made with selected colleges/universities so nominations can be made and forwarded to the Personnel Resources Unit, Personnel Division, no later than the December 1st deadline. Each HIP applicant is expected to complete/submit the following:

- (a) an FD-646a application form
- (b) a current academic transcript
- (c) a two-page resume
- (d) a written recommendation from the appropriate dean or department head
- (e) a 500-word essay addressing the applicant's motivation for participating in the program
- (f) two professional photographs (photographs should be current, approximately 2 X 2 inches in size, and a good likeness of the candidate)
- (g) an FD-804 (Applicant Background Survey)

The application package should be submitted to the field office nearest to the applicant's college/university by the November 1st deadline. Each field office should ensure that appropriate data, including demographic information, concerning all nominees is entered into the Specialty Applicant System of the Bureau Personnel Management System.

Each nomination package to FBIHQ should include the following:

- (a) an FD-646a (Preliminary Application)
- (b) an FD-140 (Application for Employment)

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- (c) an FD-406 (Authority to Release Information)
- (d) an academic transcript
- (e) letter(s) of reference
- (f) a two-page resume
- (g) a 500-word essay
- (h) fingerprint card
- (i) two professional photographs
- (j) SAC's Interview/Recommendation

(2) All nominees must be briefed regarding the beginning/ending dates of the HIP. Any nominee who is unable to participate through the ending date should be considered ineligible for the program.

(3) Selections will be based upon academic achievements, life and work experiences, area of study, interest in law enforcement, and the needs of the Bureau. A selection committee will convene at FBIHQ in December to make the selections.

EFFECTIVE: 02/27/96

67-14.4 Assignments

(1) Interns receive a two-day orientation at FBIHQ in Washington, D.C., and thereafter, are assigned to an FBIHQ division or to the FBI Academy based in Quantico, Virginia. Assignments are made based upon the intern's interest, educational discipline, life/work experience, and potential contribution to the FBI. Each intern will be under the direct supervision of an FBI manager within the appropriate division to which he/she will be assigned. Undergraduate students will be paid at the GS-6 step 1 level and graduate students will be paid at the GS-7 step 1 level on the government pay scale. FBIHQ will reimburse the intern's transportation expenses for round-trip travel to and from the Washington, D.C. area to participate in the HIP. All other related expenses must be borne by the intern. Honors interns will be given the option of receiving a two-week salary

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advance upon arrival at Headquarters, and consequently will not receive their last two-week pay check. Interns are also responsible for securing their own housing arrangements; however, the Personnel Resources Unit will provide the interns with information on lodging in the Washington, D.C. area.

(2) Honors interns will be required to have their salary checks direct deposited. All interns will commence their employment with the FBI at the beginning of the first pay period in June. Interns will conclude their employment on approximately the third Friday in August.

EFFECTIVE: 02/27/96

67-14.5 Program Objective

(1) The Honors Internship Program (HIP) was implemented in an effort to enhance the FBI's visibility in recruiting efforts at a variety of colleges and universities in the United States. Due to the very selective and highly competitive nature of the few internships to be awarded in this program, only those individuals with strong academic credentials who possess the characteristics and motivations desired in FBI employees and who would be excellent representatives of the FBI upon their return to their various campuses will be selected. Due to the FBI's specific long-range personnel needs which include individuals with skills and education in the areas of engineering, computer science, foreign languages, political science, law, and accounting, particular emphasis will be given to individuals from these academic areas.

(2) There are certain fundamental roadblocks to quick, efficient processing of HIP candidates, that although not problems in and of themselves, may preclude a short-term resolution. Given the short period within which the application, processing and background investigation must occur, and then weighed against the short period of employment, anything in an HIP candidate's background which lengthens this period could mitigate against selection. For instance, applicants with extensive overseas travel, or with relatives overseas, particularly if either involve countries on the National Security Threat List, would be somewhat problematic. The delay and additional investigative steps made necessary by such make it questionable whether these applicants could be fully investigated prior to employment. In summary, the field should weigh such potential

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complications as these and exercise judgment accordingly. The above is presented to act not as a total bar against such candidates, for, in reality, some of the most competent interns had such security issues that required resolution. Rather, this is an element of the program that needs to be carefully analyzed by the field, prior to making any recommendation.

EFFECTIVE: 02/27/96

67-15 DELETED

EFFECTIVE: 08/28/91

67-16 QUALIFICATIONS FOR SPECIAL AGENT POSITION (entrance GS-10)

EFFECTIVE: 08/28/91

67-16.1 General Requirements - All Applicants For SA Position

(1) Must be citizens of the United States.

(2) Must be willing and available to serve in any part of the United States or Puerto Rico where their services are required.

(3) Must have reached their 23rd birthday but not their 37th birthday on the date that they enter on duty. An individual who has had prior employment as a Federal law enforcement officer and who is covered by the retirement provisions contained in Title 5, USC, Section 8336(c), may be considered for appointment beyond age 37. As defined in Title 5, USC, Section 8331(20), a Federal law enforcement officer is an individual whose duties are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the laws of the United States, including employees engaged in this activity who are transferred to a supervisory or administrative position. Former Federal fire fighters, as defined in Title 5, USC, Section 8331(21), may also be considered for appointment after reaching their 37th birthday. It will be the responsibility of any applicant affected by the foregoing to provide the documentation necessary to

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| support his/her eligibility for consideration beyond age|37.|

(4) Must agree, in writing, to remain with Bureau for at least three years provided they receive an appointment and their work is satisfactory.

(5) Must have a valid license to drive an automobile at time of entry on duty.

EFFECTIVE: 08/28/91

67-16.2 Physical

EFFECTIVE: 07/23/90

67-16.2.1 General Physical Requirements (See MIOG, Part I, 67-9.1 (1) and 67-16.2.2.)

(1) Height - No restrictions; however, applicants must be capable of handling complete range of duties expected of all Special Agents.

(2) Vision - Must possess uncorrected visual acuity no worse than 20/200 (Snellen) in each eye, with correction to 20/20 in one eye and at least 20/40 in the other eye.

(3) Hearing - No applicant will be accepted if found by audiometer test to have a hearing loss exceeding a 25 decibel average American National Standards Institute (ANSI) in either ear in the frequency range 1000, 2000, and 3000 Hertz. (Hertz is a unit of frequency equal to one cycle per second.) No single reading in that range may exceed 35 decibels and no applicant will be accepted if found to have a hearing loss exceeding 35 decibels at 500 Hertz or 45 decibels at 4000 Hertz. To determine from an audiogram if an applicant meets the hearing standard on the ANSI scale, add decibel losses in the 1000, 2000, and 3000 Hertz frequency range blocks and divide by three to obtain the average decibel loss in each ear. If the audiogram is based on the International Standards Organization (ISO) scale, the same method may be used. If the audiogram is based on the American Standard Association (ASA) scale, to convert recorded decibel losses so they will be comparable with the ANSI standard, add 10 to the decibel loss in the 1000, 2000, and 3000 blocks and divide

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by three to arrive at the average decibel loss in each ear. Also add 15 to the decibel loss in the 500 block and five to the decibel loss in the 4000 Hertz block.

(4) Must be in excellent physical condition and can have no defects which would interfere with the use of firearms or with participation in raids, dangerous assignments, or defensive tactics. Applicant's physical and visual condition will be ascertained through a rigid physical examination conducted at a government examining facility where possible. FBI will bear cost of this examination. A private doctor's report will not be accepted in lieu of a government medical report unless specific approval is obtained from FBIHQ. Obtain complete details regarding any medical history applicant lists which would bear on suitability for Agent position. Secure physicians' statements and information from hospital or military records, etc., where warranted, so that, if not disqualifying, they can be made available to government examiner at time of applicant's physical examination to assist the examiner in determining whether applicant is physically qualified for all duties of the Agent position. (To obtain necessary information signed medical releases may be required from applicant.) If applicant has a history of any illnesses or injuries which might require special tests, such as cardiology or orthopedic consultations, arrange for these to be performed at time of physical examination.

(5) Results of physical examination are submitted on SF-88, a report of medical examination, and its attachment, FD-300. Medical examiner must be furnished with a report of medical history (Form SF-93) executed by applicant, which assists doctor in the doctor's evaluation. Form FD-300a concerning the applicant's estimated ability to perform specific exercises must also be executed by the examining physician.

(6) Agent applicants must be certified for strenuous physical exertion, and must be within limits as contained on FD-300 form. If an applicant's weight exceeds desirable limits based on the FD-300 form, a body fat measurement must be afforded as a determining factor for further processing. The maximum allowable body fat percentage for Agent applicants is 19 percent for males and 22 percent for females.

(7) Preemployment Physical Fitness Test

(a) To ensure that Special Agent (SA) applicants report to New Agents' Class in proper physical condition, all applicants must perform satisfactorily on a preemployment physical

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fitness test prior to their being tendered an appointment letter. The areas of measurement are: body fat assessment, sit-ups (two minutes), push-ups (maximum number), pull-ups (maximum number), two-mile run, and flexibility. These six measurements will provide the Bureau with an excellent indication of the candidate's body strength, muscle endurance, abdominal muscle endurance, cardiovascular endurance, and body fat composition. Appointees must score a minimum of two or more points in the percent body fat category and one or more points in each of the remaining categories, excluding flexibility, before receiving an appointment to New Agents' Class at Quantico.

The test must be administered immediately following a preemployment physical examination certifying the applicant for strenuous physical exertion. It is imperative that it be afforded during the background investigation stage since no appointment will be made until such time as the applicant can display the proper level of physical fitness. Furthermore, applicants must be retested if the test is more than 60 days prior to their entrance-on-duty date at Quantico.

(b) A Waiver of Liability form (FD-701) must be executed by the applicant when he/she takes the written test (Special Agent Entrance Examination). He/She should at that time be advised of the necessity to prepare for the preemployment test. A second waiver will be obtained at the time of actual testing. The first waiver will serve to minimize the FBI's liability during any preparation the applicant might undertake while the second waiver will be obtained to minimize liability during the actual testing.

(c) The Applicant Coordinator should coordinate the testing process for all applicants and apprise the applicant of the site and procedures that will be used. While facilities, weather and other conditions may vary from field office to field office, consistency and uniformity should be maintained where possible. The Applicant Coordinator will maintain meticulous records regarding administration of the test and scores obtained by individual applicants. Personnel present must be familiar with test procedures.

(d) The following guidelines should be used in administering the preemployment physical fitness test:

1. Bureau personnel and applicant should meet at a site and time agreed upon.

2. Applicant should execute a second Waiver of Liability (FD-701) at the time of actual testing.

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3. Allow reasonable period of time for warm-up.
  4. Review test sequence and procedures. Allow reasonable recuperation time between events--generally not to exceed five minutes.
  5. Record results on the Preemployment Physical Fitness Test Evaluation Sheet, Form FD-740, and forward same to FBIHQ.
  6. Bureau personnel present during testing should witness results by signing the Preemployment Physical Fitness Test Evaluation Sheet, Form FD-740.
  7. Applicants failing initial test must satisfactorily perform retest within six months of the date of the initial test. During this period retests will be granted by the field based on totality of circumstances (i.e., prior score obtained, improvements between testing, Bureau hiring needs, etc.). Applicant must request retests by recontacting appropriate field office. After six months, Special Agent Applicant Unit, Personnel Division, should be contacted and decision will be made as to future action to be taken.
  8. Submit results to FBIHQ with original waivers. Copies will be maintained by field office.
- (e) Satisfactory performance is a score of two or more points in the percent body fat category and one or more points in each of the remaining categories, excluding the flexibility category, at one testing session. Failure to perform satisfactorily in one or more events will necessitate retesting in all above categories.

EFFECTIVE: 05/13/97



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67-16.2.2 Automatically Disqualifying Factors (See MIOG, Part I, 67-7.1.1 and 67-9.)

(1) These include distant vision which exceeds 20/200 in either eye or is not correctable to 20/20 in one eye and at least 20/40 in the other eye; a hearing loss in either ear in the 1000, 2000, and 3000 Hertz frequency range which amounts to more than a 25 decibel average on the ANSI scale or a single reading in that range which exceeds 35 decibels or a reading which exceeds 35 decibels at 500 Hertz or 45 decibels at 4000 Hertz. (See MIOG, Part I, 67-16.2.1.)

(2) DRUG USE - The FBI is firmly committed to a drug-free society and workplace. Therefore, the unlawful use of drugs by FBI employees will not be tolerated. Furthermore, applicants for employment with the FBI who currently are using drugs will be found unsuitable for employment. The FBI does not condone any prior unlawful drug use by applicants. The FBI realizes, however, some otherwise qualified applicants may have used drugs at some point in their past. The guidelines set forth should be followed for determining whether an applicant's prior use makes him/her unsuitable for employment, balancing the needs of the FBI to maintain a drug-free workplace and the public integrity necessary to accomplish its law enforcement mission, with the desirability of affording the opportunity of employment to the broadest segment of society consistent with those needs. These guidelines apply equally to Agent and support applicants.

(a) GUIDELINES (See 67-3.2.2 and 67-3.2.3.)

1. An applicant who has illegally used any drug while employed in any law enforcement or prosecutorial position, or while employed in a position which carries with it a high level of responsibility or public trust, will be found unsuitable for employment. Refer to Special Agent Applicant Unit (SAAU) for decision and notification.

2. An applicant who is discovered to have deliberately misrepresented his/her drug history in connection with his/her application will be found unsuitable for employment. Field offices will notify applicant of unsuitability for employment.

3. An applicant who has sold any illegal drug will be found unsuitable for employment. Refer to SAAU for decision and notification.

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4. An applicant who has used anabolic steroids after February 27, 1991 or illegally used any drug, other than experimental use of cannabis, within the past ten years will be found unsuitable for employment, absent compelling mitigating circumstances. Experimental use of drugs other than cannabis which occurred more than ten years prior to the application for employment will be evaluated based upon the general factors specified below. Field offices will notify applicant of unsuitability for employment.

5. Anabolic steroids have been defined as an illegal drug under the FBI's drug policy since February 27, 1991. Prior to February 27, 1991, anabolic steroids came under the provisions of Title 21, USC, Section 353 in that they could legally "be dispensed only upon a written prescription of a practitioner licensed by law to administer such drug..." or upon an oral prescription or a refill if the proper procedures were followed. "The act of dispensing a drug..." contrary to the provisions of section 353 "results in the drug being misbranded while held for sale." In determining eligibility for applicants who have used anabolic steroids prior to February 27, 1991, the following guidelines are to be followed: (a) Refer to SAAU the full details concerning the usage, to include the frequency of use and specific time frame. SAAU will evaluate these matters on a case-by-case basis, following consultation with the Health Care Programs Unit and the Office of General Counsel.

6. An applicant who has used cannabis within the past three years will be found unsuitable for employment. Experimental use of cannabis which occurred more than three years prior to the application for employment will be evaluated based upon the general factors specified below. Field offices will notify applicant of unsuitability for employment.

(b) GENERAL FACTORS - In determining suitability, the following general factors have been identified by the Office of Personnel Management and will be taken into account:

1. The kind of position for which the person is applying, including the degree of public trust or risk in the position;
2. The nature and seriousness of the conduct;
3. The circumstances surrounding the conduct;
4. The recency of the conduct;

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5. The age of the applicant at the time of the conduct;
6. Contributing societal conditions; and,
7. The absence or presence of rehabilitation or efforts toward rehabilitation.

(c) Security determinations will continue to be made pursuant to Executive Order 10450, with illegal drug usage viewed in terms of the general factors listed above with respect to the suitability determination.

(d) The following parameters will be used regarding the definition of "experimental":

Use of cannabis 15 times or less and/or use of any other drugs a combined total of five (5) times or less should be considered experimental and will be acceptable, consistent with the time limitations set forth in the new policy. Under exceptional circumstances, the Assistant Director (AD), Personnel Division (PD), on his/her own initiative or at the request of the Director; Deputy Director; AD; General Counsel; Inspector-in-Charge of an FBIHQ office; or Special Agent in Charge of a field division, may determine that drug usage outside these parameters does not disqualify an applicant for employment. The PD shall maintain a record of all requests for such exceptions and the reasons for the determination to grant or deny such a request.

(e) Finally, the drug policy also states that "an applicant who has illegally used any drug while employed in any law enforcement or prosecutorial position, or while employed in a position that carries with it a high level of responsibility or public trust, will be found unsuitable for employment." In lieu of defining specific positions of trust to which this provision applies, the AD, PD, will be responsible for making decisions regarding the application of this particular guideline when necessary.

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67-16.2.3 Frequently Disqualifying Factors

Included in this category are color vision problems; an ulcer history; a history of asthma, diabetes or rheumatic fever; a slipped disc, even if surgically corrected; history of seizure disorder (epilepsy); or any type of arthritis. Any unique or special physical history should be resolved as early as possible in the processing of applicants. If necessary, consultation with the Health Care Programs Unit, Personnel Division, at FBIHQ should take place. Health matters will be reviewed on a "case-by-case" basis as they pertain to the essential job functions of the position occupied or the position for which a person is requesting consideration. The process will have multiple-level review by nurses, physicians and program managers.

(1) |Deleted|

(2) Ulcer history - Any applicant with an ulcer history should be requested to obtain a statement from physician who treated him/her covering the following points: type of ulcer applicant had and whether diagnosis was based on results of an upper GI series; whether applicant was hospitalized, and, if so, when and for how long; what methods of treatment were utilized; whether applicant is at present under any medication or on any special diet; whether condition is currently considered cured; and whether doctor feels that pressures to which an Agent is subjected are likely to bring about a recurrence of the ulcer. If information furnished by applicant's physician is not, in itself, disqualifying, ensure that his/her government physical examination includes an upper GI series and that examining physician is aware of pressures of Agent position.

(3) Asthma history - Applicant who has had a history of asthma should be requested to secure a statement from doctor who treated him/her setting forth following information: age at onset of asthmatic attacks; severity and frequency of attacks; what medication, if any, has been utilized in treating him/her; whether applicant has ever been incapacitated due to asthma and, if so, when and for how long; when applicant had last attack; whether applicant has ever had any allergy workups, and whether moving to different geographic locations in the United States would aggravate the condition. If information furnished by applicant's physician indicates an asthmatic history extending into applicant's teens, statement should be furnished FBIHQ and further instructions awaited. If applicant has had no asthmatic attacks since age twelve, proceed with the processing, but make information secured available to the government medical examiner.

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(4) Insulin-dependent diabetes mellitus is disqualifying for appointment to the Special Agent position. For diabetics whose condition can be controlled by diet alone or with oral hypoglycemic agents, however, each case will be evaluated individually. In such cases, it is imperative that the applicant furnish the necessary medical documentation from his/her physician at the outset of the processing so that a determination can be made as to whether the applicant is eligible for further consideration. Medical documentation should include a detailed case history, as well as information about how the disease is being treated, and a prognosis for the future. This information should be forwarded to the Bureau for evaluation prior to the institution of any formal processing of the application. It is anticipated that the determination of a candidate's eligibility for further consideration may include contact with the physician treating the applicant to inform that individual in detail about the nature of the Special Agent position and to obtain his/her opinion about the applicant's suitability for such employment given his/her diabetic condition.

(5) Rheumatic fever history - If applicant indicates a history of rheumatic fever, have him/her secure a statement from physician who treated him/her indicating age at which he/she had this disease; whether applicant had more than one attack; whether applicant was hospitalized or required to remain in bed for a lengthy period of time and, if so, for how long; whether his/her activities have ever been restricted as a result of having had this disease; and whether doctor is aware of any residuals from disease which might affect applicant's suitability for Agent position. If statement does not, in itself, appear to preclude further consideration of applicant, proceed with the processing but ensure government examiner is furnished with background information and that examination includes an electrocardiogram.

(6) Orthopedic conditions - Orthopedic consultations should be included as a part of physical if applicant has had a history of bone, joint, or related problems, such as a slipped disc or other back difficulty, trick knee or shoulder, any arthritic condition, etc. In such cases, applicant should be appropriately tested in your office by the Principal Firearms Instructor to ensure he/she has no problems obviously restricting his/her ability to handle firearms or participate in defensive tactics.

(7) Special Agent applicants with a seizure disorder (epilepsy) or a history of a seizure disorder must:

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(a) Not be on any anticonvulsant therapy for a period of not less than two (2) years prior to applying for the Special Agent position.

(b) Be seizure-free for a period of two (2) years prior to applying for the Special Agent position.

(c) Have had a normal neurological examination.

(d) Have had a normal awake and sleep electroencephalogram free of epileptiform abnormalities within the past year.

EFFECTIVE: 05/13/97

67-16.3 Qualifying Programs and Educational Requirements

EFFECTIVE: 03/23/92

67-16.3.1 Law Program

Must be graduates from state-accredited resident law schools and have successfully completed at least two years of resident undergraduate work at a college or university accredited by one of the six regional accrediting bodies of the Commission on Institutions of Higher Education.

EFFECTIVE: 03/23/92

67-16.3.2 Accounting Program

Must possess a four-year resident degree from a college or university accredited by one of the six regional accrediting bodies of the Commission on Institutions of Higher Education. In those instances when applicants have four-year, nonresident degrees but also have postgraduate degrees from resident colleges or universities, they meet the educational requirements, provided both degrees were attained at colleges and universities accredited by one of the six regional accrediting bodies of the Commission on Institutions of Higher

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Education.

In addition to the foregoing, an individual applying for a Special Agent position will be eligible for inclusion in the Special Agent Accountant Program (SAAP) upon meeting at least one of the following criteria:

(1) The applicant is registered as a Certified Public Accountant (CPA) in any of the 50 states, the District of Columbia, Guam, Puerto Rico, or the U.S. Virgin Islands.

(2) The applicant has attained a baccalaureate or an advanced degree in accounting and successfully completed the FBI Special Agent Accountant examination or the written portion of the CPA examination.

(3) The applicant has attained a baccalaureate or an advanced degree in a business discipline (i.e., business management, business administration, economics, finance, financial administration). Also, the applicant must have completed a minimum of 24 semester hours, or the equivalent number of quarter hours, of accounting courses as well as 3 hours of a business law course. (This requirement is generally consistent with state qualifications to sit for the CPA examination.) The following courses must have been completed:

Accounting Principles (6 hours)  
Intermediate Accounting (6 hours)  
Cost Accounting (3 hours)  
Advanced Accounting (3 hours)  
Elective Accounting Courses (i.e., Federal Tax or auditing) (6 hours)  
Business Law (3 hours)

Additionally, the applicant must have successfully completed the FBI Special Agent Accountant examination or the written portion of the CPA examination.

(4) An applicant who has not passed the CPA examination must provide certification from the college or university at which the degree was earned that the applicant is academically eligible to sit for the CPA. Certification is to be provided by the school through execution of Form FD-633. A Form FD-633 should be given to the applicant, along with a Form FD-646 (Preliminary Application for Special Agent Position), and it is the applicant's responsibility to have the form executed by the school. Unless the applicant is

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threshold qualified under another basic entrance program, no processing should occur beyond the test phase until the above certification has been provided.

EFFECTIVE: 05/17/93

67-16.3.3 Language Program

Must possess a four-year resident degree from a college or university accredited by one of the six regional accrediting bodies of the Commission on Institutions of Higher Education and be fluent in a language for which the Bureau has a current need. In those instances when applicants have four-year, nonresident degrees but also have postgraduate degrees from resident colleges or universities, they meet the educational requirements, provided both degrees were attained at colleges and universities accredited by one of the six regional accrediting bodies of the Commission on Institutions of Higher Education.

EFFECTIVE: 05/17/93

67-16.3.4 Engineering/Science Program

Applicants with the following backgrounds will be considered; however, all candidates must possess a four-year, resident degree from a college or university accredited by one of the six regional accrediting bodies of the Commission on Institutions of Higher Education. Should the applicants not meet the foregoing criteria but instead possess a four-year, nonresident degree (with the above accreditation) as well as a postgraduate, resident degree, also with the above accreditation, they do meet the necessary educational requirements.

(1) Bachelor's degree in Electrical Engineering, Metallurgy, Electronic Engineering, Mechanical Engineering, or Aerospace Engineering; or a Master's degree in any Engineering discipline; or a Bachelor's degree in an Engineering discipline other than those specified above, with three years of engineering-related work experience.



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(2) Master's or doctor's degree in physics, chemistry, biological science, geology, pharmacy, pharmacology, toxicology, mathematics, photography or engineering science. To qualify with a degree in biological science, an individual must have satisfactorily completed a minimum of 16 semester hours of chemistry (including organic chemistry) and 8 semester hours in physics. To qualify with a degree in photography, the majority of course work must be in technical applications.

(3) Bachelor's degree in any of the following fields plus a minimum of three years of scientific professional experience in the major field or allied area: physics, chemistry, biological science, geology, pharmacy, toxicology, photography, or engineering/science. Applicants with a degree in photography must have a minimum of three years of professional experience in the major field or allied area involving optics, optical systems, physics or chemistry. General technical photography, forensic photography, medical photography, industrial photography, photogrammetry, or other predominantly technical photographic fields are among the types of background most desired. Applicants must have satisfactorily completed at least 20 hours of course work regarding the physical aspects of the photographic process.

(4) Provision is also made to consider under the Engineering/Science Program individuals having unique expertise in technical areas for which the Laboratory Division or Information Resources Division has an identified need. A determination as to whether an SA candidate may be considered under this provision will be made by the Assistant Director in Charge of the Laboratory Division or Information Resources Division upon an evaluation of the candidate's credentials.

(a) through (c) Deleted

(5) Fingerprint Examiners - Those individuals applying under the Fingerprint Examiner specialty will be evaluated by an official of the Criminal Justice Information Services (CJIS) Division. The basic requirements are as follows: bachelor's degree from a resident, accredited four-year college or university or a nonresident, accredited bachelor's degree and a postgraduate degree from a resident, accredited college or university and a minimum of three years' work experience of which eighteen months has been that of a Fingerprint Examiner. Personnel of the CJIS Division are responsible for reviewing the qualifications of every applicant and certifying his or her acceptability from a technical standpoint. Applicants must obtain a passing grade on a test designed to demonstrate competence

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consistent with the level of knowledge expected of a person with eighteen months of experience.

(6) The FBI requires Special Agents with technical expertise in the use of computers to support business/financial information processing. This expertise is required to investigate computer fraud. Applicants must meet the following qualifications: bachelor's degree in computer science, mathematics, accounting, economics, business administration, public administration, management information systems, physics, engineering, operational research, or management science, or any science, with three years' experience designing and/or developing computer-related systems; or a master's degree in mathematics, physics, engineering, business administration, public administration, operational research, or management science, with two years' experience designing and/or developing computer-related systems; or a master's degree in computer science, management information systems, or a comparable degree with a major curriculum emphasis on the design and development of computer-related systems.

(7) All applicants applying under the Engineering/Science Program must furnish a copy of their college transcripts. No applicant will be considered under the Engineering/Science Program until these transcripts have been reviewed and the individual has been certified by personnel of the FBI Laboratory or, in the case of Fingerprint Examiners, an official of the CJIS Division. Certification of applicants applying under the computer option is handled by an official of the Information Resources Division.

EFFECTIVE: 04/08/96

67-16.3.5 Diversified Program

Applicant must have either:

(1) a four-year resident degree from a college or university accredited by one of the six regional accrediting bodies of the Commission on Institutions of Higher Education or a four-year, nonresident degree with the aforementioned accreditation with a resident, accredited postgraduate degree. Should the applicants possess a four-year degree, they will be required to have three years' work experience of a fairly continuous, full-time nature, or

(2) master's or other graduate degree, resident in nature

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and accredited as above, with two years' work experience of a fairly continuous, full-time nature.

EFFECTIVE: 05/17/93

67-16.3.6 Deleted

EFFECTIVE: 02/25/91

67-17 PROCESSING APPLICANTS FOR THE SPECIAL AGENT POSITION

EFFECTIVE: 02/25/91

67-17.1 General Instructions

(1) No work is more important than properly interviewing, evaluating and investigating applicants for the Special Agent (SA) position with the FBI. Interviews and investigations must be exhaustive and designed to determine applicant's suitability for the position of Special Agent and develop any information bearing on his/her suitability for FBI employment.

(2) Instructions set out herein are not all-inclusive and personnel processing Bureau SA applicants should utilize every resource to ensure applicant's suitability for employment.

EFFECTIVE: 02/25/91

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67-17.1.1 Applications for Employment (FD-646\* and FD-140)

(1) Form FD-646\* (Preliminary Application for Employment), FD-804 (Applicant Background Survey), and FD-843 (Special Agent Qualifications Questionnaire) should be provided to all applicants meeting the basic threshold requirements for employment. If an applicant passes Hurdle I (Written Test) of the Special Agent Selection System (SASS), he/she will be required to submit Form FD-140 (Application for Employment) at this stage of processing.

(2) Form FD-646\* and FD-140, as well as FD-804 and FD-843, must be completely executed and signed by the applicant. Reviewing employee must ensure that the form is accurate, with any omissions or discrepancies being resolved prior to submitting to FBIHQ. There should be no abbreviations. All names should be complete, to include middle names, when possible. Regarding applicants and their references and/or relatives who are of Hispanic origin, it is essential that the patronymic and matronymic names of all such individuals be obtained as well as the full married name of all married females. The patronymic name is to be followed by the matronymic name. In the case of a married female, the full married name is necessary to include given name, patronymic last name, followed by the matronymic last name and husband's surname. When the initial form FD-646\* is received, it should be reviewed to determine whether the applicant is basically qualified for the SA position. If the applicant is not qualified, he/she should be so advised immediately. (See MIOG, Part I, 67-11.1.)

(3) In order to obtain the Universal Case File Number for Special Agent Positions, the FD-646\* is to be submitted to FBIHQ, Information Resources Division (IRD), Personal Attention: Personnel Verification and Records Subunit. The following procedure is required in requesting a Universal Case File Number: (1) alphabetize applications; (2) a cover page alphabetizing each candidate; and (3) a point of contact from the field office along with a facsimile number.

EFFECTIVE: 10/16/95

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67-17.1.2 Social Security Number

All applicants should be advised that if they are offered and accept appointment with the Bureau, it will be necessary that they have a social security number at the time they report for duty.

EFFECTIVE: 09/26/90

| 67-17.1.3 | Deleted |

EFFECTIVE: 06/21/94

67-17.1.4 Report of Separation from Active Duty DD Form 214

All applicants for the SA position indicating active military service must submit a copy of Report of Separation from Active Duty (DD Form 214) along with their application. The DD Form 214 and test results are to be forwarded to FBIHQ in a single package form. Eligibility for veterans' preference is determined from the DD Form 214. Veterans serving in excess of 180 days' active duty (exclusive of training), provided this duty began on or before 10/14/76, are entitled to five points and if disabled, an additional five points. Attendance at one of the military academies - Army, Navy, Air Force or Coast Guard - is considered active duty, provided the attendance began on or before 10/14/76, extended for more than 180 days and was regarded as honorable service. Written documentation of such attendance must be provided. (Those veterans who entered on active duty after 10/14/76 are eligible for veterans' preference points if they are disabled or serve in a campaign or war.) One half of the applicant's veterans' points are added to the Test Ranking Grade and the other half to the interview grade if the applicant has achieved the minimum qualifying scores on the test and the interview.

EFFECTIVE: 09/26/90

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67-17.1.5 Affiliation with Ready Reserve

Special Agent applicants on active duty or in the Ready Reserve of the Armed Forces must transfer to the Standby Reserve or resign if an appointment to the SA position is offered. In the event of a national emergency the FBI must have first claim on the services of its employees. For further information on this matter, refer to 67-5 and MAOP, Part I, 1-17.

EFFECTIVE: 09/26/90

67-17.1.6 SA Applicants of Asian Ancestry

Each applicant of Asian ancestry, particularly those born outside the continental limits of the United States, at the time of the interview should be requested to produce a copy of his/her birth certificate. The interviewing field office will be held responsible for verifying the existence of and obtaining a copy of applicant's birth certificate. Each applicant of this heritage should also be instructed, at time of interview, to furnish his/her name and names of all relatives in Chinese characters for transliteration by the Language Services Unit, Laboratory Division, to allow a thorough search of the names at FBIHQ and other agencies. Refer to the Foreign Counterintelligence Manual, Part I, Section 200, for detailed information as to how this information should be set forth. This information should be submitted to FBIHQ expeditiously.

EFFECTIVE: 09/26/90

67-17.1.7 Fingerprinting (See MIOG, Part II, 14-8.1.5.)

Applicants for the SA position must be fingerprinted at the time of their panel interview. Applicant Fingerprint Cards are to be submitted to FBI Headquarters, Attention: Personnel Division, along with application, interview sheets, questionnaires, and examination papers. In every instance, applicants for FBI positions should be fingerprinted by FBI personnel.

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EFFECTIVE: 04/21/94

67-17.1.8 Deleted

EFFECTIVE: 02/12/92

67-17.1.9 Early Processing

All applicants for the SA position may be tested no more than five months prior to meeting the educational requirements, assuming that upon meeting the educational requirements they will also meet the age and work experience requirements. The only exception to this policy is Attorney applicants who may be processed during the second semester of their second year of law school, provided they will meet all other SA threshold qualifications at the time of graduation. Those individuals who pass the test can then be scheduled for interviews at the beginning of their senior year.

EFFECTIVE: 02/12/92

67-17.1.10 Processing of Offspring of Special Agents Killed in the Line of Duty

Children of Special Agents who have been officially listed in Bureau records as killed in the line of duty can be given special consideration for the Special Agent position. Such applicants must meet the basic threshold qualifications for the Special Agent position such as age, citizenship, education, experience, and physical requirements. This would include passage of necessary examinations to attest to the applicant's proficiency if he/she is applying as either an accountant or linguist. Once all threshold qualifications have been met, the applicant is exempt from Hurdle I (Written Test) of the Special Agent Selection System (SASS). However, the applicant is required to pass Hurdle II (Writing Exercise/Interview) of the SASS. Upon successful completion of Hurdle II, a background investigation will be ordered and physical examination scheduled. Results of the processing will be summarized and forwarded to the Director for sole appointive decision. If appointment is offered, applicant will be placed in a New Agents' Training Class and will be required to successfully complete all phases of this training.

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EFFECTIVE: 10/13/95

67-17.2 Testing of SA Applicants

No applicant's processing should be initiated until it appears evident that he/she meets the basic educational requirements for the position, or will within the time prescribed above. The accreditation of any particular institution should be ascertained by consulting "Lovejoy's College Guide," "Accredited Institutions of Postsecondary Education" or similar publications. In any case where acceptable accreditation or the receipt of a resident degree appears in doubt, the applicant should be required to provide appropriate documentation regarding the questionable item(s) before testing is allowed.

EFFECTIVE: 02/12/92

67-17.2.1 Test Security

All Special Agent Entrance Examination (SAEE) test booklets are serial numbered and charged out to specific field offices for security. Testing materials are to be maintained in the safe of the SAC and should be provided appropriate security. Completed SAEE answer sheets are to be forwarded to SAAU in sealed envelopes, without cover communications.

EFFECTIVE: 04/07/97



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67-17.2.2 Video Cassette Film "FBI Academy - New Agents' Training"

Prior to testing all SA applicants are required to view the Video Cassette Film, "FBI Academy - New Agents' Training." Should an applicant, upon viewing this film, express hesitation relative to his/her desire and ability to attain the SA position, he/she should be counseled to postpone testing until these uncertainties have been completely resolved. In addition, all applicants should be made aware of the fact that they must successfully pass all three phases of training, i.e., academic, physical, and firearms, before graduation from New Agents' Training. They should be orally advised of the requirements in each phase of training, and particular emphasis should be placed on the need for each applicant to be in good physical condition prior to entry on duty.

EFFECTIVE: 02/25/91

67-17.2.3 Selection System Briefing

During testing procedure all SA applicants must be given a briefing relative to our preemployment selection process. This briefing must include the fact that test grades are utilized to determine an applicant's eligibility for interview. After applicant has been interviewed, a combination of test and interview scores is utilized to rank applicants. The highly ranked individuals are then selected for further consideration based on the specialized needs of the FBI. Any necessary travel expenses incidental to the testing or interviewing must be borne by the applicant, unless such travel is ordered by FBIHQ, in which case FBI will bear cost. At no time should it be assumed that an appointment is forthcoming because the opportunity for testing and/or interviewing is offered. Prior to any appointment being made, applicants ranked highly as a result of test and interview scores are thoroughly investigated for the purpose of determining each applicant's suitability for employment as a Special Agent. Appointments are made on a competitive basis due to the limited number of vacancies occurring in this position.

EFFECTIVE: 02/25/91

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67-17.2.4 Tests Given to SA Applicants

(1) All applicants for the SA position are to be afforded the following:

(a) Special Agent Entrance Examination - An examination composed of two ability and three behavioral tests designed to predict Special Agent job performance. The test booklet is not to be written in. Answers are recorded on a marksense Agent Answer Sheet (FD-656) which is computer graded at FBIHQ. It is essential that the instructions on the answer sheet, particularly those pertaining to the coding of responses, be closely followed.

(b) Deleted

(c) Firearms Proficiency Indicator - These tests are designed to predict an applicant's potential for success in the firearms portion of new Agent's training and are to be administered to all SA applicants at the time the Special Agent Entrance Examination is given. The Principal Firearms Instructor should administer the test; in his/her absence an approved Firearms Instructor is authorized to administer the test. All weapons used in these tests must be carefully inspected by the firearms instructor before they are ever handed to an applicant, to ensure they are unloaded and in a safe condition. The results of these tests are to be furnished to the Special Agent and Support Applicant Unit, FBIHQ.

1. Service Revolver - Utilize one of the test weapons, Model 13, provided by Quantico specifically for this purpose. The applicant must take the test in the standing position with a one-hand grip and the arm locked straight out at shoulder level and parallel with the floor. The applicant will then pull the trigger, double action, as many times as possible in 30 seconds. The procedure will be repeated with the other hand and both scores recorded. Minimum passing score is 40 for both strong and weak hands. Any test score more than 60 days old is invalid and candidates must be retested, if necessary.

2. Service Rifle - Utilize an M16A1 (M), .223-caliber rifle without a recoil pad with a weight of 7 pounds 8 ounces. Place the weapon to the shoulder in firing position with the weak hand on the foregrip and the strong hand index finger on the trigger. Hold the weapon in this position for one minute. Record whether the applicant can accomplish this test.

3. Service Shotgun - Utilize a Remington Model

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870 12-gauge pump shotgun with a recoil pad a distance of 14 inches from butt to trigger. Place the weapon to the shoulder in firing position with the weak hand on the foregrip and the strong hand index finger on the trigger. Record whether the applicant is able to reach and operate the trigger with the trigger finger.

Any applicant who, upon initial testing, is unable to achieve a minimum score of 40 with either hand in the trigger-pull test should be furnished a copy of the physical exercises which have been designed to improve grip strength. If such an applicant becomes eligible for further processing, he/she should be retested at time of interview. Any applicant who still has a weakness in the trigger-pull test at that time but is considered an acceptable candidate as a result of the overall interview should be strongly urged to continue to work on developing grip strength to the point where a score of at least 40 in the trigger-pull test can be attained. Retests to assess improvement should be conducted according to the time schedules of both the applicant coordinator and the applicant involved. Results of any testing should be forwarded to FBIHQ. If records indicate that an applicant selected for a background investigation has not yet been able to score 40 in the trigger-pull test, he/she should be retested to determine current level of performance at the time the background investigation is ordered. Thereafter, it will be the responsibility of the office in whose territory the applicant resides to work with the applicant and monitor his/her progress to ensure the applicant is afforded every opportunity to improve to the degree that successful completion of training school can be expected. Progress reports should be submitted to FBIHQ for inclusion in the applicant's file.

(2) Accounting Test - This is a standardized proficiency test designed by the American Institute of Certified Public Accountants. It is to be administered to educationally qualified applicants prior to the Special Agent Entrance Examination and graded by the processing field office. Applicants who have passed a Certified Public Accountant examination, whether or not they are registered Certified Public Accountants, are exempt from taking the accounting proficiency test and should be expeditiously afforded the Special Agent Entrance Examination. Also, if an applicant qualifies under the Diversified, Law, or Engineering/Science Program, as well as the Accounting Program, he/she can be afforded the Special Agent Entrance Examination without awaiting the results of the accounting examination.

(3) Foreign Language Tests - |(See MAOP, Part I, 22-1.)|

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EFFECTIVE: 09/08/93

67-17.2.5 Deleted

EFFECTIVE: 12/16/88

67-17.2.6 Special Agent Applicant Interview Board Background  
Information Form (FD-510)

The FD-510 may be filled out by all applicants at the time of testing and maintained in the field office file until such time as the individual is scheduled for interview.

EFFECTIVE: 12/16/88

67-17.2.7 Retesting

(1) Applicants who when first tested were afforded the test battery consisting of the Cognitive Functions Test and the Agent Entrance Test are eligible to test a total of three times. Thus, applicants who have taken the aforementioned test battery once can take the Special Agent Entrance Examination twice, but applicants who have taken the test battery twice are eligible to take the Special Agent Entrance Examination only once. Six months must elapse between such applicants' first and second testings and one year between the second and third testings. Applicants whose first testing occurred after the implementation of the Special Agent Entrance Examination will be permitted to retest only once, with a one-year waiting period being required between tests. If an applicant elects to retest, the higher Special Agent Entrance Examination score will prevail. Individuals who decide to retest are allowed to retain a previous interview score, if they so desire. (See MIOG, Part I, 67-17.3(2).)

(2) The Accounting Proficiency Test, if passed the first time, is not to be readministered. The Accounting Proficiency Test is limited to two test opportunities with a one-year interval between each test. The higher of the two test scores will remain as the score of the record. (See MAOP, Part I, 22-1 regarding foreign language tests.)

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EFFECTIVE: 09/08/93

67-17.3 Interviewing SA Applicants

Special Agent applicants who were initially afforded the test battery consisting of the Cognitive Functions Test and the Agent Entrance Test can be granted as many as three interviews at graduated intervals. Six months must elapse between an applicant's first and second interview and one year between the second and third interview. Applicants whose first testing occurred after the implementation of the Special Agent Entrance Examination will be permitted to interview a maximum of two times, with a one-year waiting period being required between interviews.

(1) Initial Special Agent interviews - See 67-17.3.2 (1). Support, former employees and relatives of on-board and former employees should be scheduled for interview in another office.

(2) Applicants who retest can retain their original interview score, if they so desire, and applicants who do not wish to retest can request an additional interview. Any individual who receives an interview beyond the initial one will forfeit any previous interview score, the last interview score being the one of record.

(3) Reinterviews - are to be automatically scheduled by the field upon the request of Special Agent applicants provided the following criteria have been met: the initial results are acceptable; the Special Agent Entrance Examination results are currently competitive under a minimum of one selection category; and the required one-year waiting period has been fulfilled since the initial interview. Field offices are not to advise FBIHQ that reinterviews are being scheduled.

(4) It is necessary to request FBIHQ authorization to reinterview any candidate who was previously rated as "unacceptable," since these are permitted on a very selective basis after a consideration of all factors involved.

EFFECTIVE: 02/25/91

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67-17.3.1 Deleted

EFFECTIVE: 02/25/91

67-17.3.2 Interview Board

(1) When eligible, SA applicants will automatically be interviewed by an interview board consisting of three Special Agents, all of whom must have attended the one-week in-service training program for the Targeted Selection Interview (TSI). This is an absolute policy. No exceptions may be made, and the presence of any untrained interviewers on the panel may open the TSI process to a challenge as to the validity of the interview. Supervisory personnel above the relief supervisor level may not participate on the Interview Board. (See MIOG, Part I, 67-17.3 (1).)

(2) All offices MUST conduct a TSI panel interview within established Buded. To expedite processing, each applicant should have been provided an FD-140 at time the entrance examination was afforded, with instructions to complete same. Then, upon notification of eligibility for interview, there will be no delay in having the applicant's FD-140 available for the TSI board.

(3) At the conclusion of the panel interview, the interview should be recorded on the Special Agent Interview Form (FD-190) and immediately scored by the field office. Once the TSI is scored, should the score be competitive, the field is to forward all processing material to the SAAU within established Buded for background initiation consideration. The SAAU will not authorize any background investigation unless in receipt of the FD-190 and the typed interview narrative. Should the score not be competitive, the field office is to forward all processing material directly to the Information Resources Division. In both instances, it is the lead interviewer's responsibility to ensure that the FD-190 has been signed by all three interviewers.

(4) Priority of Interviews - Interviews are to be conducted in accordance with the priorities established by FBIHQ, and furnished to the field periodically.

(5) Availability of Interviewers - Interviewers are to be made available in each field office to ensure SA applicant interviews are conducted in a timely fashion.

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(6) Interviews must be carefully planned, penetrative, exhaustive, and designed to determine an applicant's suitability for the position of Special Agent and to develop any information bearing on his/her suitability for the position. A copy of the FD-190 and narrative is furnished to each auxiliary field office when the background is initiated. It is utilized by investigatory personnel for the purpose of verifying and expanding on the information provided by the applicant during the interview.

(7) Special Agent Dimension Evaluation Work Sheet (FD-511) - FD-511 is to be utilized as note-taking device during the course of interview. Each member of the interview board is to fill out one copy of this form during the interview and subsequently make his/her own independent numerical evaluation of the applicant in each dimension being evaluated. The composite grade on each dimension is arrived at after discussion within the interview board and is then recorded on the FD-190. It is not necessary to fill out an additional FD-511 with a composite grade. The FD-511s are then attached to the FD-510 (Special Agent Applicant Interview Board Background Information Form) and maintained in the field office applicant file subject to normal file destruction procedures.

EFFECTIVE: 04/07/97

67-17.3.3 Deleted

EFFECTIVE: 02/25/91

67-17.3.4 Special Agent Interview Form (FD-190)

All SA applicant interviews are to be recorded on Form FD-190 and forwarded to FBIHQ, as instructed in 67-17.3.2 (3).

(1) The FD-190 must be accurate, completely executed and signed by all three interviewers. Interviewers are obligated to report on this form any information of a derogatory nature developed during the course of the interview which might have any bearing on the applicant's suitability for the SA position.

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(2) In connection with Item #13, Special Agent applicants must be advised that it will be necessary for them to agree to remain in the Bureau's service for at least three years if they receive an appointment and their work is satisfactory. Interviewing Agents must make certain that each SA applicant thoroughly understands the responsibilities inherent in the SA position, that long hours are demanded, that occasional personal hardships are involved, that all assignments are based upon the needs of the service, and that Agent personnel are expected to be completely available for general or special assignment wherever their services are needed.

(3) Item #17 concerning drug usage, if answered affirmatively, must be fully commented on in narrative comments. Ascertain during the interview the exact and complete details of any and all usage as well as the applicant's attitude with regard to usage and the law. The foregoing applies only to marijuana and not to any other drugs of abuse, any usage of which, regardless of the degree, is grounds for an unfavorable recommendation.

(4) Item #27 (Narrative Comments) must contain detailed behavioral justification for numerical grade awarded or each of the eight dimensions, set forth in the same order as dimensions are arranged on the FD-190.

EFFECTIVE: 04/19/91

67-17.3.5 Interview by SAC or ASAC

Subsequent to the interview by the interview board, at the discretion of the SAC, an applicant may be interviewed by either the SAC or the ASAC. Concurrence or nonconcurrence with the findings of the interview board will be reported in the form of an addendum to the FD-190.

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67-17.3.6 Processing of Support Personnel

(1) When a support employee is within the specified time frame of fully qualifying under any of the various Special Agent programs, and provided that his/her services in a support capacity are rated Fully Successful, employee's qualifications are to be briefly set forth in a communication to FBIHQ, with a request to process for the SA position. If employee received his/her college degree after entry on duty with the FBI, a copy of this degree or a transcript of college credits showing issuance of the degree should be attached to the communication. Additionally, if employee is attempting to qualify under the Engineering/Science Program, college transcripts should also be submitted. After review, FBIHQ will issue specific instructions regarding processing, but the written examination to be given employee will be the same as that afforded other applicants. A support employee's test will be processed at FBIHQ, and a letter advising employee of his/her status based on test performance will be sent directly to employee. A copy of same will be forwarded to the SAC, Assistant Director or Inspector in Charge of the division/office to which employee is assigned. (See MAOP, Part I, 17-2.1(4).)

(2) Interviews are afforded support employees only upon specific instructions from FBIHQ. A support employee's formal interview is conducted by the interview board of a field office other than the one to which employee is assigned and will be appropriately designated by FBIHQ in the aforementioned instructions. In the case of support personnel assigned to FBIHQ, the interview will be conducted in one of the surrounding field offices. These interviews must be identical to those afforded to individuals applying from outside the Bureau. The FD-140, FD-190 and typed narrative must be forwarded directly to SASAU for scoring. The results of the interview will be sent to employee by means of a computer-generated status letter.

(3) When a support employee is selected for consideration for appointment to a New Agents' Training Class, a written communication containing processing instructions will be sent by FBIHQ to the employee's office of assignment. Specific comments and recommendations are to be given, in the form of separate memoranda, by each of employee's current and former supervisors to cover a two-year period. Comments should also be obtained from the SAC and a representative number of co-workers, including Agent personnel who are familiar with the employee and can comment relative to his/her suitability for the SA position. If comments and recommendations are favorable, employee should be given a complete physical examination. A drug screening test should also be taken; and arrangements should be

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made to interview employee's spouse, if married. A current application should be obtained and investigation conducted to update all items since employee's entry on duty, including up-to-date criminal checks on all listed relatives. A current neighborhood check should be conducted to include any applicant who currently resides with a relative who is a Bureau employee. It is necessary to interview, conduct arrest and indices checks on CURRENT roommates. FORMER roommates who have resided with the applicant for the past five years should also be interviewed and indices checks conducted on them. Arrest checks should be conducted on former roommates ONLY if a date of birth is provided by the applicant. If the roommate resided with the applicant OVER five years ago, no investigation will be necessary. The only checks not to be initiated are credit checks which will be handled by FBIHQ. References and social acquaintances should not be interviewed. If appointed to the SA position, the support employee will, at the appropriate time, proceed to the FBI Academy at Quantico, Virginia, where he/she will be administered the oath of office.

(4) Support employees meeting the requirements for SA position will continue to be considered for possible appointment to this position upon separation from Bureau service, if they so desire. (See MAOP, Part I, 17-2.1(4).)

EFFECTIVE: 11/25/94

67-17.3.7 Computation of Grades

- (1) Test Ranking Grade (TRG) - This is the grade that is achieved by an applicant in the testing portion of the Special Agent Selection System. It has a maximum of 45 points and is based on an applicant's performance in the Special Agent Entrance Examination.
- (2) Interview Grade - An applicant may earn a maximum of 55 points in the interview.
- (3) Percentile Ranking Grade (PRG) - This is an applicant's total score under the Selection System. It is composed of the TRG, to which is added the interview grade and veterans' preference points, where applicable. The PRG is utilized to rank each applicant in the program(s) under which he/she may qualify.

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(4) Veterans' Points - Any veterans' points earned are awarded one-half to the TRG and one-half to the interview grade if the candidate achieves the minimum qualifying scores on both the test and the interview.

(5) Reprocessing - If an applicant elects to be reprocessed, the higher test score will be the score of record. This score will be combined with the most recent interview score to arrive at the PRG.

EFFECTIVE: 02/25/91

67-17.3.8 Special Agent Reinstatement Requests (See MIOG, Part I, 67-7.11.)

Reinstatement of a former Special Agent is by no means an automatic process. Since resignations and reinstatements of Special Agent personnel are costly to the Bureau, it is to our advantage to keep turnover to a minimum. The Bureau is very favorably disposed to reinstating former Agents because of the benefits that experienced Agents bring back to the FBI. Reinstatement appointments are, however, at the discretion of management and other factors will be considered when approving such an appointment, including the FBI's anticipated hiring plan and specialized needs.

(1) To qualify for reinstatement consideration:

(a) Former Agents who have met their initial three-year obligation during prior service may apply for reinstatement at any time, without regard to the length of time since their resignation. However, reinstatement requests will be denied to applicants who cannot complete 20 years of FBI service by mandatory retirement age.

(b) Deleted

(c) Individuals who are eligible for reinstatement consideration based on the above guidelines will then be required to meet the following criteria:

1. Must meet the same entrance-level medical and general suitability guidelines of a new applicant;

2. Must be completely available for

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assignment/transfer anywhere in the Bureau;

3. Must have received at least an overall Fully Successful rating on all performance appraisals;

4. Must successfully complete an SAC/ASAC interview and be recommended for reinstatement by the interviewer;

5. Must be recommended for reinstatement by his/her former FBI supervisors and co-workers;

6. Must not have resigned during or as the result of an administrative inquiry;

7. Must not have resigned due to academic, firearms or physical fitness failure during New Agents' Training;

8. Must not have retired from the FBI.

(2) Upon receipt of a reinstatement request from a former Agent, you should immediately forward same to FBIHQ. A review of the former Agent's personnel file will be conducted. The request will be immediately denied if any unfavorable information exists or if the individual fails to meet the above guidelines.

(3) If no information is located which warrants an immediate denial, the SAC of the office covering the applicant's current residence will be requested to conduct an in-depth interview of the former Agent. Concurrent with or shortly after the SAC's interview, comments will be solicited from former supervisors and co-workers about the individual's performance and suitability for reemployment. After the above material has been reviewed, a decision will be made as to whether the reinstatement request will be further considered.

(4) Assuming that the comments are favorable and further action is to be taken, an updated background investigation (see Section 67-7.11 for general instructions concerning the updating of investigations), physical fitness test, drug test, physical examination, Personnel Security Interview (PSI) and polygraph examination will be ordered.

(5) Assignment of SAs who have been reinstated will be determined by the Special Agents Transfer Unit based strictly on the needs of the Bureau. The Agent will be given the opportunity to indicate geographic preferences; however, ultimate assignment will be

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determined by the staffing needs of the field offices as well as the need for any skills the Agent may possess. First consideration will be given to assign the Agent to his/her last office of assignment. Unique and unusual situations will continue to be addressed separately and evaluated on a case-by-case basis; for example, reinstating an Agent who qualifies for a Personnel Resource List transfer or who is married to an on-board Agent. (See MAOP, Part I, 11-13.)

(6) Former Agents who were in grades GS-10 through GS-13 at the time of their resignation will be reinstated at their former grade level. Former Agents who were in grades GS-14 or higher will be reinstated at the GS-13 level. (See MAOP, Part I, 8-9.)

(a) Reinstated GS-10 through GS-13 Agents will be placed in a step within the rate range (Steps 1 to 10) of their former grade level that equals as much as the highest previous rate he/she received for previous federal government service. To receive the highest previous rate, the individual's former pay system must be compatible with that of the FBI (i.e., General Schedule).

(b) Agents who resigned at grade GS-14 or higher will be placed in the step of the GS-13 rate range, not to exceed Step 10, that equals as much as the highest previous rate they received for previous federal government service, if the former pay system is compatible with that of the FBI.

(c) A "highest previous rate" is defined as the highest rate of basic pay previously paid to an individual while employed in the federal government. This provision has reference to the actual salary rate rather than the step rate within the grade. The highest previous rate must be for employment in excess of 90 continuous calendar days and cannot be based on a special salary rate or on a rate received for an appointment as an expert or consultant.

(7) A former Agent who at the time of reinstatement has been off the Bureau's rolls for MORE than two years is required to again complete New Agent's Training School. Those who have been off the rolls for LESS than two years will be ordered to report directly to one of our field offices.

EFFECTIVE: 10/16/95

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67-18 CLASSIFICATION 67E--REINVESTIGATION OF FBI PERSONNEL  
(See also MIOG, Introduction, 2-2.4.3; Part I, 259-1,  
261-1; Part II, 26-10; MAOP, Part I, 20-2.5.1, 20-25,  
20-26.)

The 67E personnel reinvestigation classification was in existence at the time the FBI Security Program was approved as an operational program at both Headquarters and in the field in September, 1986. Personnel reinvestigations are an integral part of the Program. However, in order to avoid creating additional files on FBI employees by creating new classifications, it was decided employee investigations emanating from the FBI Security Program would be TURK'd under the existing numerical and alpha designator 67E. Therefore, 67E was reprogrammed from the Applicant Investigations Nonreimbursable Program to the FBI Security Program.

(1) FBI employee reinvestigations are conducted to determine whether or not an employee's continued federal employment is consistent with the interests of national security. The following FBI Security Program activities reflect the various types of reinvestigations where the focus is on employee "trustworthiness" for continued access to National Security Information (NSI) under provisions of Executive Order (EO) 10450 entitled "Security Requirements for Government Employment."

(a) MARRIAGE PROGRAM: This is an investigation of the intended spouse of an FBI employee to determine whether or not the marriage could result in the possible coercion or undue influence by the intended spouse over the employee so as to possibly compromise NSI. (See Manual of Administrative Operations and Procedures (MAOP), Part I, Section 20-2.5.1 and MIOG, Part I, 67-18.1.2(2)(k).)

(b) FIVE-YEAR REINVESTIGATION: In compliance with Executive Orders and Federal Personnel Security policies, all FBI employees are subject to a five-year reinvestigation, which consists of a personnel file review, interviews of employee, supervisors, co-workers, neighbors, references, associates, and roommates, verification of court actions, military service, and education, and criminal and indices searches on the employee and all individuals over the age of 16 residing with the employee. This reinvestigation will cover the period within five years of the date of the employee's entry on duty and at least once every five years thereafter. The results of this investigation will be adjudicated to determine the employee's eligibility to continue access to national security information. (See MIOG, Part I, 67-18.1.1, and MAOP, Part I, 20-26.)

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(c) TRAVEL PROGRAM: This reinvestigation consists of a determination as to what, if any, impact the proposed foreign travel of an employee will have on his/her trustworthiness. This type of reinvestigation could consist of briefings/debriefings, possibly polygraph examinations, etc. (See MAOP, Part I, Section 1-20.)

(d) DELETED

(e) SENSITIVE COMPARTMENTED INFORMATION (SCI) INVESTIGATIONS AND REINVESTIGATIONS: The Security Programs Manager (SPM), FBIHQ, will initiate and direct the field to conduct the initial and five-year update investigations.

The Security Countermeasures Program Manager (SCMPM) within each field office and FBIHQ component is required annually, usually by May 1st of each calendar year, to recertify each employee's SCI access level. The Security Programs Manager (SPM), FBIHQ, is to forward to each FBI component a list of employees with SCI access. The list will contain the employee's name, social security number, SCI access, briefing date/debriefing date and comment section. The comment section is to be used to justify an employee's continued SCI access.

Upon completion of the review and recertification process, the list is to be returned to the SPM, FBIHQ. (See Part II, 26-10.2.6, of this manual and National Foreign Intelligence Program Manual, Part I, 8-2.10.6.)

(f) ROOMMATE BACKGROUND DATA PROGRAM: This is an investigation of all individuals (non-Bureau/nonmembers of the immediate family) with whom an employee resides or intends to reside for a period of 30 days or more. The purpose of this investigation is to assist the FBI in making a determination that an individual residing with an employee does not constitute a potential threat to the national security of the United States, or an imminent threat to the personal safety of an employee. (See MAOP, Part I, Section 20-25.)

(2) The above listing is REPRESENTATIVE of those personnel reinvestigations which will be conducted under the auspices of the FBI Security Program, and field time expended will be TURK'd to the 67E classification. There will be other employee reinvestigations which do not fall squarely within the listing above, and they will also be TURK'd to the 67E. An example of the latter would be excessive financial hardship of an employee.

(3) The other classifications in the FBI Security Program

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are 259, 260, and 261 and are explained in those sections of the MIOG, Part I.

(4) Any questions regarding policy and/or procedures under this classification should be directed to the SPM, Security Countermeasures Section, National Security Division, or members of the SPM's staff in the Personnel Security Unit.

EFFECTIVE: 04/10/96

67-18.1 Procedures for Specific Programs

EFFECTIVE: 12/10/91

67-18.1.1 Five-Year Reinvestigations (See MAOP, Part I, 20-26; MIOG, Introduction, 2-2.4.3; Part I, 67-18.)

The following investigative and recordkeeping instructions are designed to (1) make the most effective use of our limited personnel resources; (2) provide appropriate privacy to the data developed by the investigation; and (3) ensure the FBI is in compliance with National Security Directive 63, Department of Justice Order 2610.2A, and Federal Personnel Manual requirements for government employees with "Top Secret" security clearances.

(1) The SPM's staff will forward directly to the personal attention of the SAC, Legal Attache, Assistant Director in Charge (ADIC), or, in the case of FBIHQ, the Division Assistant Director (AD) or Inspector in Charge, a computerized listing of employees subject to a five-year reinvestigation. These individuals will be mandated to execute Form FD-814, entitled "Five-Year Reinvestigation Questionnaire." Within five years of the date of EOD and at least once every five years thereafter consistent with guidance furnished by the Security Programs Manager (SPM), each employee will be required to execute Form FD-814, entitled "Five-Year Reinvestigation Questionnaire," so that a reinvestigation may be conducted. Failure to complete Form FD-814 could result in the termination of the employee's "Top Secret" security clearance.

(2) Upon receipt of the SPM's computerized listing of



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employees subject to five-year reinvestigations, the field division's investigation will be designated a "67E" matter using the Universal Case File Number of the FBIHQ file and thereafter opened and assigned to the Security Officer (SO), Security Countermeasures Program Manager (SCMPM), and/or other individual deemed appropriate to handle this responsibility. This individual must be one able and willing to afford these matters the extraordinary security and privacy warranted due to the sensitive nature of these investigations.

All information about the employee is to be maintained in the 67 Sub S personnel file and kept under the direct supervision and security of the SAC or ADIC. At FBIHQ, the 67 Sub S personnel file will be maintained in the Special File Room, Information Resources Division.

(3) | The SCMPM/SO should obtain a completed FD-814 from each designated employee. The SCMPM, SO, or other designated employee(s) will review the FD-814 with the employee to ensure completeness and accuracy. Forms with questions unanswered or not signed will be returned.

(4) | The SO or other designated security-trained individual should conduct a Personnel Security Interview (PSI) to identify any areas of potential concern. The results of this PSI should be reported on an FD-302. During the PSI, the employee's FD-814 should be reviewed and the following additional information should be obtained:

(a) The names, addresses (both residence and business), and telephone numbers of three references and three associates who preferably are not FBI employees.

(b) Identify the name, location, and telephone number of employee's current supervisor.

(c) Current addresses and telephone numbers of former roommates should be obtained.

(d) Outside employment of employee.

(e) Alternate residences, such as vacation homes, where the employee might spend a substantial number of days during the calendar year.

(f) Full identifying data will be obtained concerning the other parent of each child born to the employee. This should include name, date of birth, current address, current degree of

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association, social security number (if available), and any other information available concerning this (these) individual(s).

(g) Include an in-depth discussion of the employee's financial and personal situation as it may impact on issues of trustworthiness.

(h) As an accommodation to employees who reside in neighborhoods where knowledge of FBI employment could be detrimental and/or whose neighbors are unaware of their employment, the PSI should include questions designed to elicit this information. Neighborhood investigations will be conducted unless a waiver is requested and received from the SPM.

(5) Each employee will be afforded a reintroduction to their responsibilities in handling sensitive and classified information by reviewing the appropriate briefing form(s). The employee should read and sign each form.

(6) In Headquarters Divisions, the original FD-814, PSI, and additional releases, as necessary, will be forwarded to the SPM, PSU, FBIHQ. The original notes for the PSI will also be forwarded for retention in the Sub S file. FBIHQ PSU personnel will set out leads as required.

(7) In those field offices covered by the Background Investigations Contract Services Unit (BICS), the original FD-814, PSI, results of office indices searches and criminal checks for employee and all individuals over the age of 16 residing with the employee (for field office personnel), and additional releases, as necessary, will be forwarded to the SPM, PSU, FBIHQ, within 30 days from the receipt of the opening communications. A copy of the documentation will also be retained in the employee's field Sub S file. FBIHQ personnel will set out leads as required. (See (12).)

(8) In those offices not covered by BICS, the SCMPM should assign senior, mature Agents in view of the fact that they will be conducting investigations regarding personnel assigned to their office. The sole purpose of the investigation is to assure the employee merits continued access to national security information. Therefore, the investigation will focus in the areas of the character and trustworthiness of the employee.

(a) The full-field reinvestigation will include the following:

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1. Neighborhood inquiry at any place of residence during the past five years (minimum of four neighbors per residence absent extenuating circumstances).

2. Interview of supervisors and co-workers at all places of employment (including FBI) during the period covered.

3. Interview of references, associates, and any roommates who resided with the employee during the period covered.

4. Law enforcement record checks in all jurisdictions of residence, employment, and alternate residences for the employee and all individuals over the age of 16 residing with the employee.

5. Verification of educational courses completed during the period covered.

6. Verification and documentation should be obtained for any court action.

7. Any other investigation deemed appropriate based upon information developed during the inquiry.

(b) Leads should be sent by the office of origin (OO) to lead field offices. A 67E file is to be opened and assigned. Results of investigation should be returned to the OO in sufficient time for inclusion in the final report which is to be submitted by Buded.

(c) The completed package, consisting of the complete FD-814, the PSI, briefing forms, and the original completed reinvestigation report, should be sent to FBIHQ, Attention: PSU.

(9) In all cases, correspondence is to be sent in a sealed envelope and be directed to the "PERSONAL ATTENTION" of the employee's current SAC, ADIC, or to the PSU for all employees assigned to FBIHQ, so that suitable security will be afforded the transmittal of the investigative results. In those occasions where a lead is required to be sent to BICS, the correspondence is to be sent in a sealed envelope and directed to the "PERSONAL ATTENTION" of the BICS Unit, Northern Virginia Metropolitan Resident Agency.

(10) Adverse information is to be fully developed by the SCMPM, SO, or other designated security-trained individual. The results are to be recorded and furnished to the employee's SAC, ADIC,

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AD, or Inspector in Charge for consideration and immediate action, if warranted. Simultaneously, the developed information is to be forwarded to the FBIHQ, PSU, for review, further investigation, if necessary, and adjudication.

(11) Information acquired during this reinvestigation that would be considered inconsistent with the standards set forth in Executive Orders 10450, entitled "Security Requirements for Government Employment," and 12968 entitled "Access to Classified Information," requires a security adjudication by the SPM, FBIHQ. The purpose of the security adjudication is to determine the trustworthiness of the employee and whether or not the employee's access to classified or sensitive information should be continued.

(12) In those offices not covered by BICS, completed investigation, including the fully executed FD-814, is to be forwarded to the SPM, PSU, FBIHQ, within 90 days from the receipt of the opening communication. In those offices covered by BICS, the original FD-814, PSI, and other requested information, as indicated supra in 67-18.1.1(7), is to be forwarded to the SPM, PSU, FBIHQ, within 30 days from the receipt of the computer-generated listing.

(13) All communications concerning an employee's reinvestigation should be filed in the employee's "67 Sub S" file. (See MAOP, Part I, 20-4.1.)

EFFECTIVE: 04/10/96

67-18.1.2 Marriage Program (See MAOP, Part I, 20-2.5.1 (6).)

The Security Officer (SO) will review the FD-292, "Change in Marital Status" form, and the results of a field office records check to determine if a Personnel Security Interview (PSI) is required. The PSI is required when the FD-292 and/or the results of a field office records check indicates certain factors (set out below) are present. The following information describes factors under which a PSI should be conducted, who should conduct the PSI, areas to cover during the PSI, proper submission of results to FBIHQ, and how to capture time spent on the PSI for Time Utilization Recordkeeping (TURK) purposes.

- (1) Role of Executive Order (EO) 10450 in Bureau Employee PSIs

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(a) EO 10450, entitled "Security Requirements for Government Employment," requires the government employment of or retention in employment of any individual to be clearly consistent with the interests of national security. It requires all federal employees to be reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States. It enumerates the following security factors which, depending on the relation of the government employment to the national security, must be considered as criteria in evaluating cases. The security criteria most often emerging with change in marital status cases are:

1. Any behavior, activities, or association which tend to show that the individual is not reliable or trustworthy.

2. Any deliberate misrepresentations, falsifications, or omission of material facts.

3. Any facts which furnish reason to believe that the individual may be subjected to coercion, influence, or pressure which may cause the person to act contrary to the best interests of national security.

4. Other criteria warranting consideration in evaluating cases, but arising less frequently, are enumerated in EO 10450, Section 8(a). (Each SO retains a copy of EO 10450.)

(b) The SPM, utilizing the minimum standards set forth in EO 10450, after reviewing the results of the investigation, adjudicates whether the employee remains reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States.

(2) Instructions for the Initiation and Conduct of PSI

(a) The processing field office, utilizing guidelines set forth, will review the FD-292 and initiate appropriate action for the PSI to be conducted.

(b) The SO of the processing field office will review the FD-292 and will initiate the PSI simultaneously with the initiation of the background investigation. The processing field office will advise the Personnel Security Unit, Security Countermeasures Section, National Security Division (NSD), by a notation at the bottom of the FD-388, the cover letter for the FD-292, that a PSI is required and must be conducted and reported by the same

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Bureau deadline.

(c) A PSI will be instituted whenever any of the following factors are present after a review of the FD-292:

1. The intended spouse is foreign born and does not have United States citizenship.

2. The employee may have possible contact with foreign nationals, as a result of the marriage (i.e., future in-laws are not United States citizens residing in or out of the United States).

3. The intended spouse has a criminal record.

4. The intended spouse is sought by law enforcement authorities in connection with an outstanding warrant.

5. The intended spouse has questionable associations.

(d) While the Special Agent in Charge (SAC) will have the discretion to designate the Special Agent (SA) to conduct the PSI, it is considered beneficial to utilize an FCI-experienced Agent when conducting PSIs when the Bureau has an investigative interest in the country of the intended spouse's origin.

(e) When the background of an employee's intended spouse or future in-laws indicates any connection (travel, residence, relatives, contacts, etc.) with a specified foreign country (see NFIP Manual, Introduction, 1-1.1), an FCI-experienced Agent should conduct an in-depth PSI and determine whether the employee would submit to a voluntary polygraph examination to resolve any remaining security concerns, should a substantial basis exist in accordance with existing FBI policy.

(f) In those cases where the concerns center around the criminal record of the employee's intended spouse, an outstanding open warrant(s) exists for the employee's intended spouse, or the intended spouse has dubious associations, the SO of the processing field office and/or other personnel designated by the SAC should conduct the PSI.

(g) Although the main thrust of the PSI should be developed through expertise of the interviewing personnel, the following points, at a minimum, and where applicable, must be

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addressed:

1. Personal contacts or associations developed with foreign nationals, as a result of employee's marriage.
2. Degree of association and any relevant background data regarding future in-laws and associates who are not United States citizens.
3. Intended spouse's immigration status and consideration for seeking United States citizenship.
4. Determine the employee's awareness of the criminal record of his/her intended spouse.
5. If the employee is aware of the criminal record of his/her intended spouse and this information was not provided on the FD-292 (Question 8 on the FD-292), determine why this information was not provided.
6. Determine if employee knows of any circumstances which could cause him/her to be subjected to coercion, influence, or pressure due to employee's marriage.
7. When the criminal record of the employee's intended spouse centers around illegal drug usage, possession, or distribution of illegal drugs, determine the employee's knowledge of his/her intended spouse's previous or current involvement with illegal drugs and provide details of employee's knowledge.
8. Determine if the employee is familiar with any of his/her intended spouse's associates who may have criminal records and ascertain to what extent he/she has contact with those associates.
9. Determine if the employee's intended spouse or any of the intended spouse's associates made any specific inquiries concerning the FBI duties or the type of information accessible to the employee.
10. Determine if the employee deliberately or inadvertently disclosed sensitive FBI information to the intended spouse or any of his/her associates.
11. The field office will ensure all outstanding warrant(s) are resolved as soon as possible, either by the employee or

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by notifying local law enforcement agencies concerning same.

12. Solicit an explanation from the employee concerning any delinquency in notifying FBIHQ of their marriage (see the MAOP, Part I, Section 20-2.5.1), especially when the delinquency is further aggravated by security concerns arising from the marriage.

13. An unsatisfactory explanation regarding the delinquent submission of Form FD-292 will be referred to the Administrative Summary Unit, Personnel Division, for appropriate administrative action.

14. Failure to execute Form FD-292 will be construed as insubordination and could result in both administrative action and the suspension of the employee's access to classified information until the matter is resolved.

15. In all cases, should a substantial basis exist in accordance with existing FBI policy, ascertain whether the employee will submit to a voluntary polygraph examination to dispel any remaining security concerns.

(h) Following the completion of the PSI, the SO and/or other personnel designated by the SAC, must afford the employee a security awareness briefing, specifically tailored to highlight the security concerns of his/her intended spouse's or his/her family's background, associations, or any other circumstances developed during the PSI and the investigation. This briefing should further remind the employee of his/her responsibility to safeguard national security information and to protect information obtained by him/her, as a result of his/her FBI employment. The employee should be reminded of his/her responsibility to report attempts by anyone to obtain information from him/her and of the criminal penalties for unauthorized disclosures.

(i) In all cases, the SO of the processing field office will review the executed FD-292 for completeness. This review should also identify any facts, as enumerated in EO 10450, which furnish reason to believe the employee's marriage could result in the possible coercion or undue influence by the intended spouse over the employee so as to possibly compromise the interests of national security, or whether the intended spouse or intended spouse's family members are non-U.S. citizens which indicates possible security consequences. The SO must also determine if the employee has access to Sensitive Compartmented Information (SCI) or is being considered for such access and note same in the communication containing the



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results of the PSI and the security awareness briefing. The SPM, in his/her capacity as the designated representative of the Director regarding SCI matters, will evaluate the eligibility of the employee for access to SCI in accordance with the Director of Central Intelligence Directive (DCID) No. 1/14, entitled "Minimum Personnel Security Standards and Procedures Governing Eligibility for Access to SCI." Simultaneously, the SPM will address the security issues bearing on the employee's continued trustworthiness and "Top Secret" security clearance. (Each SO retains a copy of DCID No. 1/14.)

(j) The results of the PSI, investigation and security awareness briefing will be transmitted immediately upon completion by electronic communication to FBIHQ, marked to the attention of the SPM. The caption should list: Official Bureau Name, Position, EOD, Division, Reinvestigation of FBI Personnel, Change in Marital Status.

(k) The time expended on the interview of the employee is to be captured for TURK purposes under the FBI Security Program, entitled "Reinvestigation of FBI Personnel," by utilization of classification 67E. The alpha designator (E) will be followed by the Universal Case File Number of the FBIHQ file. (See MIOG, Part I, Section 67-18(1)(a).)

EFFECTIVE: 02/27/96

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SECTION 69. CONTEMPT OF COURT

69-1 STATUTES

Title 18, USC, Sections 401, 402, 3285, 3691, 3692; Title 10, USC, Section 847; and Rule 42, Federal Rules of Criminal Procedure.

EFFECTIVE: 01/31/78

69-1.1 Section 401 (Power of Court)

EFFECTIVE: 01/31/78

69-1.1.1 Elements

- (1) A person misbehaves
- (2) In the presence of the court or so near thereto as to obstruct justice, or
- (3) An officer of the court
- (4) Misbehaves in an official transaction, or
- (5) A person having a duty to perform a writ, process, order, rule, decree, or command
- (6) Either disobeys or resists

EFFECTIVE: 01/31/78

69-1.2 Sections 402 (Contempts Constituting Crimes)

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EFFECTIVE: 01/31/78

69-1.2.1 Elements

- (1) Any person, corporation, or association having a duty under a writ, process, order, rule, decree, or command of a district court
- (2) Willfully disobeys by doing
- (3) An act or thing forbidden therein
- (4) Such act being a violation of Federal law or the law of the state in which committed.

EFFECTIVE: 01/31/78

69-1.3 Other Statutory Provisions Related to Contempt of Court

- (1) Section 3285 - No proceeding for criminal contempt under Section 402 (see above) for criminal contempt shall be instituted unless begun within one year from the date of the act complained of.
- (2) Sections 3691 and 3692 - These sections provide for the right of trial by jury in certain contempt cases.
- (3) Title 10, USC, Section 847 - Provides for prosecution of persons not subject to military law who have been in contempt of process of military courts.
- (4) Rule 42(a), Federal Rules of Criminal Procedure - Provides for summary punishment by the court for contempts committed in the presence of the judge or so near thereto as to obstruct justice. The judge must certify that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order of contempt shall recite the facts and shall be signed by the judge and entered of record.
- (5) Rule 42(b), Federal Rules of Criminal Procedure - Provides for the prosecution of a criminal contempt charge with notice and hearing in all other criminal contempt cases where the conduct

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constituting the contempt was committed outside the presence of the court.

EFFECTIVE: 12/23/93

69-2 POLICY

(1) SAC may authorize investigation on request of USA or Federal judge, except in the following situations:

(a) Trial in which Bureau did not have primary jurisdiction or conduct original investigation.

(b) Hearing before another agency or congressional committee.

(c) Labor controversy or matter affecting national security.

(2) Advise the USA of all complaints and expeditiously provide full details of all complaints to FBIHQ.

(3) When trial is in progress:

(a) USA must assure that the judge has been informed and is agreeable to the investigation.

(b) Authority of USA and the judge is necessary for interviews of witnesses.

(c) Requests to interview witness in a pending trial should be relayed to FBIHQ for clearance by the Department of Justice. No action should be taken without specific FBIHQ authority.

EFFECTIVE: 01/31/78

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69-3 INVESTIGATIVE PROCEDURES

(1) Investigation of misbehavior on the part of an officer of the court in an official transaction will generally require:

(a) A determination of the official status of the accused.

(b) A description of the official transaction in which he was engaged.

(c) Interviews with witnesses who can testify to the improper conduct.

(2) In investigations involving disobedience or resistance to a writ, process, order, rule, decree, or command of a district court:

(a) Examine court records and other official documents to determine to whom the writ, process, etc., was directed.

(b) Determine the language of the document.

(c) Determine through official records and interviews the time and circumstances under which the order was entered, notice given, service obtained or resulted.

(d) Determine the status of the person, corporation, or association named in the order.

(e) Determine the time and nature of any act of disobedience.

(f) Determine through examination of Federal and State statutes and consultation with the USA whether the acts of disobedience complained of constitute a State or Federal crime.

EFFECTIVE: 01/31/78

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opinions rendered by the United States Attorney's Office should be confirmed in writing and copies of such documents forwarded to the substantive case office of origin.

(2) Results of the investigation and the prosecutive opinion should be reported to FBIHQ (Attention: Civil RICO Unit). Thereafter the office of origin for the contempt of court case should submit reports to FBIHQ in accordance with the reporting requirements of the substantive violation.

EFFECTIVE: 12/23/93

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SECTION 70. CRIMES ON GOVERNMENT RESERVATIONS

70-1 STATUTES

Title 18, USC, Sections 7 and 13

EFFECTIVE: 08/19/85

70-1.1 Section 7. Special Maritime and Territorial Jurisdiction  
of the U.S. Defined

The term "special maritime and territorial jurisdiction of the United States," as used in this title states in part as applies to this section:

"Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building."

EFFECTIVE: 08/19/85

70-1.1.1 Section 7. Jurisdiction Over Crimes by or Against United  
States Nationals In Place Outside the Jurisdiction of Any  
Nation

"Any place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States."

EFFECTIVE: 08/19/85

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70-1.2      Section 13. Laws of States Adopted for Areas Within  
Federal Jurisdiction

"Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in Section 7 of this title, is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment."

EFFECTIVE: 08/19/85

70-2      PENALTIES

The following sections of Title 18, United States Code, provide penalties for the specified crimes when committed within the special maritime and territorial jurisdiction of the United States as defined above:

- Section 13.      Laws of states adopted for areas within  
Federal jurisdiction
- Section 47.      Hunting of wild horses by use of aircraft  
or motor vehicle on Federal reservation
- Section 81.      Arson
- Section 113.      Assault
- Section 114.      Maiming
- Section 661.      Theft
- Section 662.      Receiving stolen property
- Section 1025.    False pretenses on high seas and other  
waters
- Section 1111.    Murder
- Section 1112.    Manslaughter



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Section 1113. Attempt to commit murder or manslaughter

Section 1201. Kidnaping

Section 1363. Destroying or injuring buildings or  
property

Section 2111. Robbery

Section 2241. Aggravated sexual abuse

Section 2242. Sexual abuse

Section 2243. Sexual abuse of a minor or ward

Section 2244. Abusive sexual contact

EFFECTIVE: 08/22/89

70-3

JURISDICTION

(1) Mere ownership of land does not put the United States in a position different from that of an ordinary purchaser. In other words, if the Federal Government buys a piece of land without any special provision relative to jurisdiction thereover, it acquires only a proprietary interest, the extent of which is limited by the terms of the deed.

(2) Unless the state in which the particular property is located consents to the acquisition of jurisdiction or cedes jurisdiction over the property to the United States, the Federal Government does not have the right to investigate or punish crimes which may occur on the property. It is only when the state has parted with its jurisdiction that Congress becomes vested with the right to legislate concerning the property. This may be done by the states by a formal cession to the United States or by simple concession of acquisition of the land by the United States Government from the state.

EFFECTIVE: 08/22/89

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70-4 POLICY

(1) Investigation and prosecution of crimes committed by military personnel - See Part II, Section 18, of this manual pertaining to memoranda of agreements presently in effect between the Departments of Justice and Defense and the Departments of Justice and Transportation (Coast Guard). | (See MIOG, Part II, 18-3 & 18-4.) |

(2) The dangerous nature of investigations involving military personnel - The FBI receives requests from the military authorities for investigative assistance in connection with crimes committed by military personnel on Government reservations and other crimes constituting Federal violations within the FBI's investigative jurisdiction, such as theft of Government property. Generally, such crimes are a violation of Federal statute, as well as a violation of military law. Extreme caution should be used by Agents in the investigation of cases of this type and particular care should be used in apprehending of military personnel for the commission of offenses within the FBI's jurisdiction. This type of individual may be armed and the military offender could realize that under military law he/she may receive a severe penalty. In cases in which an offender is known to be dangerous or circumstances indicate the offender may be dangerous, authorized process should be secured through the office in whose territory the offense was committed prior to conducting an investigation designed to locate and interview dangerous military subjects.

(3) With regard to offenses occurring in U.S. post offices over which there is Federal jurisdiction, an agreement has been had with the postal authorities whereby duplication of investigative effort is avoided. Under the terms of this agreement, postal inspectors will have investigative jurisdiction over offenses committed in post office buildings for which the U.S. Postal Service is responsible, property used in the carriage of the mails, personal property of postal employees, and offenses committed therein by employees of the post office. Investigative jurisdiction over offenses committed in post office buildings other than those already enumerated is with the FBI.

(4) In handling complaints relative to minor crimes on Government reservations where there are no known aggravating or unusual circumstances, immediately present facts to USA for a prosecutive opinion. If USA will not consider Federal prosecution, conduct no investigation, advise complainant, and confirm conversations to USA and complainant in writing. Where appropriate, refer the matter to the law enforcement agency having policing

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jurisdiction, and also furnish this information to USA and complainant. Lesser violations, such as trespassing, petty thievery, drunkenness, disturbing the peace (including minor assaults), reckless driving, drunken driving, speeding, illegal cohabitation, and infractions of rules and regulations imposed by the administering agency, in the absence of aggravated circumstances, should be handled by the Federal agency having administrative and policing responsibilities over the reservation or by local authorities. Petty gambling offenses are generally considered as being in the same category and as such should be controlled by the responsible agency in its ordinary policing function of the reservation. The SAC is authorized to initiate an FBI investigation should a situation arise in which a series of petty offenses or other conditions create an aggravated situation and the case is reported by representatives of the Federal agency charged with the responsibility of policing the reservation or by the USA.

(5) By memorandum dated 8/12/77 and 6/20/77, the Department of Justice advised that violations of Title 21, USC, Section 844, Controlled Substance Act (CSA), occurring on military reservations and in national parks, should be referred to the Drug Enforcement Administration (DEA) for investigation. Complaints concerning CSA violations should be immediately referred to the DEA.

(6) Any drug activity originating on a Government reservation will be directed and managed under the Government Reservation Crimes Subprogram in coordination with the Organized Crime/Drug Operations Sections of the Criminal Investigative Division.

(a) Bureau investigations should be concentrated on and directed at major drug trafficking organizations and specific individual situations to determine the flow of money derived from these activities. Investigative strategy should include discussion with the appropriate prosecuting attorney in an effort to seize assets realized from these drug transactions.

(b)



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(c) To ensure that there is no conflict between the FBI and DEA, prior to the initiation of any drug or primarily drug-related investigation, each field office is required to contact the local DEA office in order to determine:

1. If DEA currently has an ongoing

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investigation with regard to the subject(s) of the proposed FBI investigation;

2. Any intelligence information which DEA has regarding the subject(s), such as class violator or known drug associates; and

3. Any interest on the part of DEA to enter into a joint investigation with the FBI regarding the targeted subject(s) of the FBI investigation.

If DEA currently has an ongoing investigation regarding any of the proposed FBI subjects, FBI assistance should be offered to DEA and specific policy should be established regarding the specific role of the FBI in the investigation.

(d) Following contact with the DEA office, a teletype should be forwarded to FBIHQ, Attention: Interstate Theft/Government Reservation Crimes Unit, Criminal Investigative Division, setting forth the identities of all subjects and/or their organizational base, intelligence data from FBI and DEA records, realistic aims and objectives of the investigation, the nature of the investigation contemplated within the next 90 days and the fact that DEA has been contacted for not only intelligence information but for a decision as to what involvement or role it will have in the investigation. The purpose of this communication will be to seek, on a UACB basis, FBIHQ authority to initiate an investigation regarding the subject matter. Through this quality control, FBIHQ will be able to determine proper allocation of manpower, the quality of cases initiated by FBI field offices and that proper coordination and communication have been initiated with DEA.

(7) For administrative reporting requirements and procedures governing the loss and/or theft of personal property from FBI space, refer to MAOP, Part II, Section 6-7.5.

(8) Investigations Regarding Criminal Allegations Against Public Officials

(a) It is recognized that during the course of an investigation within this classification information is sometimes developed alleging that a Federal, state or local official is in violation of Federal law. If the focus of the investigation continues to be this substantive classification and/or Federal crimes committed by a person who merely happens to be a Federal, state or local official, "Corruption-Related Matter," should be added to the

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character of the case, and it will continue to be managed under the Violent Crimes and Major Offenders Program. If, however, the focus of the investigation shifts to the abuse of his/her position of trust by the Federal, state or local official in violation of Federal criminal law, a new "Corruption of Federal Public Officials" (58) or "Corruption of State and Local Public Officials" (194) matter should be opened within the White Collar Crimes Program.

(b) |Deleted|

(c) |Deleted|

(d) |Deleted|

(e) |Deleted|

EFFECTIVE: 09/16/94

70-5 VENUE

The venue in such cases is in the judicial district in which the situs of the offense is located.

EFFECTIVE: 11/20/90

70-6 INVESTIGATIVE PROCEDURE

(1) Among the places over which the Federal Government most frequently has either exclusive or concurrent jurisdiction under this classification to investigate major crimes are Army, Navy, Marine, Air Force, and Coast Guard reservations, forts, arsenals and armories, post buildings, Federal courthouses, Department of Veterans Affairs facilities, customhouse, and other buildings wherein business of the Federal Government is transacted, national parks, some Federal land, Federal roads and highways, and Federal penal institutions.

(2) While it is impractical to attempt to analyze and make investigative suggestions as to each of the many minor or major crimes on Government reservations and lands, jurisdiction over such crimes should be determined by the USA before the collection of evidence of the particular offense is begun.

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(3) Agents are frequently called upon to investigate homicides occurring on Government reservations; therefore, Agents handling homicide investigations should be thoroughly familiar with the procedures in arranging for autopsies. Valuable evidence may be discovered or possibly destroyed during an autopsy examination. Therefore, if at all possible, a Special Agent completely familiar with the circumstances surrounding the homicide should be present during the autopsy to provide pertinent facts to the coroner or pathologist and to ensure the proper preservation of the evidence.

EFFECTIVE: 11/20/90

70-7 TRIAL OF PETTY OFFENSES BY U.S. MAGISTRATES

In connection with the prosecution of offenses occurring on Government reservations, your attention is directed to Title 18, USC, Section 3401, authorizing the U.S. Magistrates to try petty offenses.

EFFECTIVE: 11/20/90

70-8 CHARACTER

Crime on Government Reservation, followed by a description of the crime; as, Crime on Government Reservation - Murder.

EFFECTIVE: 11/20/90

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SECTION 71. BILLS OF LADING ACT

71-1 STATUTE

Title 49, USC, Section 121

EFFECTIVE: 01/31/78

71-1.1 Elements

"Any person who, knowingly or with intent to defraud, falsely makes, alters, forges, counterfeits, prints or photographs any bill of lading purporting to represent goods received for shipment among the several States or with foreign nations, or with like intent utters or publishes as true and genuine any such falsely altered, forged, counterfeited, falsely printed or photographed bill of lading, knowing it to be falsely altered, forged, counterfeited, falsely printed or photographed, or aids in making, altering, forging, counterfeiting, printing or photographing, or uttering or publishing the same, or issues or aids in issuing or procuring the issue of, or negotiates or transfers for value a bill which contains a false statement as to the receipt of the goods, or as to any other matter, or who, with intent to defraud, violates, or fails to comply with, or aids in any violation of, or failure to comply with any provision of this chapter, shall . . ."

EFFECTIVE: 01/31/78

71-1.1.1 Other Provisions

Title 49, USC, Section 81, provides: "Bills of lading issued by any common carrier for the transportation of goods in any Territory of the United States, or the District of Columbia, or from a place in a State to a place in a foreign country, or from a place in one State to a place in another State, or from a place in one State to a place in the same State through another State or foreign country, shall be governed by this chapter."

Note that venue lies in the judicial district in which the

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violation occurred.

EFFECTIVE: 01/31/78

71-2 INVESTIGATIVE PROCEDURE

(1) Examine records of the common carrier to locate bills of lading involved in a particular shipment believed to be covered by a false or altered bill of lading.

(2) An examination of the records maintained by the consignee should be made to locate the particular bill in question. Complete information should be obtained regarding the shipment as contained in the records of the consignee.

(3) The records of the consignor of the articles or substance shipped under the bill of lading should be thoroughly examined to obtain all information concerning the shipment involved. The Agent should be alert to determine any discrepancies in the records of the consignee, consignor, and common carrier to ascertain if there is any variance in these bills of lading.

(4) Locate and interview the persons who prepared the goods or substances for shipment, ascertaining from them the content of the shipment so that it may be determined if there is any variance between the actual shipment made and the facts as they appear on the bill of lading.

(5) Locate and interview the persons at the point of ultimate destination of the shipment to testify as to the receipt of the shipment and as to the content.

(6) If more than one common carrier is used in the transportation of the goods, the complete route of the transportation should be determined and the appropriate records of each common carrier examined.

(7)



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[REDACTED] If there is any indication that the subject has attempted to evade the payment of Federal taxes, the appropriate office of the Treasury Department should be contacted to ascertain any pertinent information.

(8) The names of all individuals necessary to produce documentary evidence should be obtained, as well as their official capacities and exact addresses.

(9) Interview subject, obtaining from him/her a complete, detailed story of the particular shipment involved. During the course of this interview, an effort should also be made to determine if the subject has been involved in any other offenses. Subject should be closely questioned concerning the identity of any other individuals who may have aided or assisted him/her in committing the particular violation.

(10) During the course of this type of investigation, the Agent should be alert to the possibility of the existence of a conspiracy, and every effort should be made to ascertain the identity of all individuals who may be involved in the offense.

EFFECTIVE: 11/08/78

71-3 REPORT WRITING RULES

(1) Forward to FBIHQ copy of any prosecutive summary report prepared in this classification of investigation for the USA's Office, utilizing current Bureau guidelines for the preparation of such reports.

(2) No report need be forwarded under any other circumstances unless it is determined to be the most logical means to disseminate the results of investigation accumulated, or when it is decided that a report is the best means to disseminate such results to other Federal agencies through FBIHQ rather than via an LHM.

EFFECTIVE: 11/08/78

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||71-4| PENALTIES

A fine not exceeding \$5,000 or imprisonment not exceeding five years or both.

EFFECTIVE: 11/08/78

||71-5| CHARACTER - BILLS OF LADING ACT

EFFECTIVE: 11/08/78

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SECTION 72. OBSTRUCTION OF JUSTICE

72-1 STATUTES

Title 18, USC, Sections 1503 through 1515.

EFFECTIVE: 02/20/90

72-1.1 Section 1503 (Influencing or Injuring Officer or Juror  
Generally)

EFFECTIVE: 02/20/90

72-1.1.1 Elements

(1) A person corruptly or by threat, force, threatening  
letter or communication

(2) Endeavors to influence, intimidate, impede or injures  
the person or property of

(3) A juror or other judicial officer

(4) Because of his/her discharging or having discharged  
his/her duty or

(5) Otherwise influences, obstructs, impedes, or  
endeavors to so hamper justice.

EFFECTIVE: 02/20/90

72-1.2 Section 1504 (Influencing Juror by Writing)

EFFECTIVE: 02/20/90

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72-1.2.1 Elements

- (1) An attempt to influence the action of
- (2) A juror upon any issue pending before the juror or  
pertaining to his/her duties
- (3) By writing or sending him/her a written communication  
which
- (4) Is in relation to such issue or matter.

EFFECTIVE: 02/20/90

72-1.3 Section 1509 (Obstruction of Court Orders)

EFFECTIVE: 02/20/90

72-1.3.1 Elements

- (1) Existence of a Federal court order, judgment, or  
decree
- (2) Knowledge by the subject of the existence of such  
order
- (3) Use of threats or force by the subject
- (4) For the purpose of preventing, obstructing, impeding,  
or interfering with, or willfully attempting to interfere with
  - (a) The exercise of rights under the court order; or
  - (b) The performance of duties under the court order.

EFFECTIVE: 02/20/90

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72-1.4 Section 1510 (Obstruction of Criminal Investigations)

"A" (1) Willfully endeavor by means of bribery

"(2) To obstruct, delay, or prevent the communication of information

"(3) Relating to a violation of any criminal statute of the United States

"(4) By any person to a criminal investigator (defined in the statute as any individual duly authorized by a department, agency, or armed force of the United States to conduct or engage in investigations of or prosecutions for violations of the criminal laws of the United States).

"B (1) Being an officer of a financial institution,

"(2) with intent to obstruct a judicial proceeding, directly or indirectly notifies any other person about the existence or contents of a subpoena for records (defined in the statute as a Federal grand jury subpoena for customer records that has been served relating to a violation of, or a conspiracy to violate Title 18, USC, Sections 215, 656, 657, 1005, 1006, 1007, 1014, or 1344; or Sections 1341 or 1343 affecting financial institution) of that financial institution, or information that has been furnished to the grand jury in response to that subpoena,

"(3) shall be fined under this title or imprisoned not more than five years, or both."

EFFECTIVE: 02/20/90

72-1.5 Section 1512(a) (Killing or Attempts to Kill Another Person)

EFFECTIVE: 02/20/90

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72-1.5.1 Elements

Whoever kills or attempts to kill another person, with intent to

(1) prevent the attendance or testimony of any person in an official proceeding;

(2) prevent the production of a record, document, or other object, in an official proceeding; or

(3) prevent the communication by any person to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release, pending judicial proceedings.

EFFECTIVE: 02/20/90

72-1.6 Section 1512(b) (Tampering with a Witness, Victim, or an Informant)

EFFECTIVE: 02/20/90

72-1.6.1 Elements

(1) Knowing use of intimidation or physical force, or threats, or attempts to do so, or engaging in misleading conduct with intent to

(2) Influence, delay or prevent the testimony of any person in an official proceeding; or

(3) Cause or induce any person to withhold testimony or other evidence from an official proceeding; alter, destroy, mutilate or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding; evade legal process summoning that person to appear as a witness or to produce a record, document, or other object in an official proceeding; or be absent from an official proceeding to which such person has been summoned by legal process; or

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(4) Hinder, delay or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole or release pending judicial proceedings.

EFFECTIVE: 02/20/90

72-1.7 Section 1512(c) (Tampering - Lesser Offense)

EFFECTIVE: 02/20/90

72-1.7.1 Elements

(1) Intentionally harassing another and thereby hindering, delaying, preventing, or dissuading any person from

(2) Attending or testifying in an official proceeding; or

(3) Reporting to a law enforcement officer or judge of the United States the commission or possible commission of a Federal offense or a violation of conditions of probation, parole or release pending judicial proceedings; or

(4) Arresting or seeking the arrest of another in connection with a Federal offense; or

(5) Causing a criminal prosecution or a parole or probation revocation proceeding to be sought or instituted or assisting in such prosecution or proceeding; or

(6) Any attempt to do the above.

EFFECTIVE: 02/20/90

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||72-1.7.2| Affirmative Defense

Defendant's conduct consisted solely of lawful activity and defendant's sole intention was to encourage, induce or cause the other person to testify truthfully.

EFFECTIVE: 07/26/89

||72-1.7.3| Elements Which Need Not Be Proved

(1) An official proceeding need not be pending or about to be instituted at the time of the offense; and

(2) The testimony, record, document, or other object need not be admissible in evidence or free of a claim of privilege.

EFFECTIVE: 07/26/89

||72-1.8| Section 1513 (Retaliating Against a Witness, Victim or Informant)

EFFECTIVE: 07/26/89

72-1.8.1 Elements

(1) Engaging in any conduct and thereby causing bodily injury to another or damage to the tangible property of another or threatening to do so with intent to retaliate against any person; for

(2) The attendance of a witness or party at an official proceeding or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

(3) Any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole or release pending judicial proceedings given by a person to a law enforcement officer; or

(4) Any attempt to do the above.



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EFFECTIVE: 09/13/93

||72-1.9| Section 1514 (Civil Action To Restrain Harassment of a Victim or Witness)

(1) This Section provides for the court's issuing a temporary restraining order prohibiting harassment of a victim or witness in a Federal criminal case if the court finds from the facts shown in an affidavit or "verified complaint" that there are reasonable grounds to believe specific harassment "exists" or that an order is necessary to prevent a Section 1512 or Section 1513 offense other than "misleading conduct."

(2) Section 1514 also provides for the issuance of a long-term protective order valid for such period as the court determines, after a hearing, is necessary to prevent a Section 1512 or Section 1513 offense other than "misleading conduct." Long-term protective orders can be valid for up to three years. Temporary orders may extend only for ten days with one ten-day extension.

EFFECTIVE: 07/26/89

||72-1.10| Section 1515 (Definitions)

(1) Official proceeding means

(a) A proceeding before a judge or court of the United States, a United States Magistrate, a Bankruptcy Judge, or a Federal grand jury

(b) A proceeding before the Congress

(c) A proceeding before a Federal Government agency.

(2) Physical force means physical action against another.

(3) Misleading conduct means

(a) Knowingly making a false statement;

(b) Intentionally omitting information from a

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statement, and thereby causing a portion of the statement to be misleading or intentionally concealing a material fact, and thereby creating a false impression

(c) With intent to mislead, knowingly submitting or inviting reliance on a writing or recording that is false, forged, altered or otherwise lacking in authenticity;

(d) With intent to mislead, knowingly submitting or inviting reliance on a sample, specimen, map, photograph, boundary mark or other object that is misleading in a material respect; or

(e) Knowingly using a trick, scheme or device with intent to mislead.

(4) Law enforcement officer includes employees of the Federal Government authorized under law to engage in or supervise the prevention, detection, investigation or prosecution of an offense or serving as a probation or pretrial services officer.

(5) Bodily injury includes cuts, bruises, burns, physical pain, illness, impairment of mental facility, or "any other injury to the body, no matter how temporary."

(6) Chapter 73, Title 18, USC, Obstruction of Justice does not prohibit or punish the providing of lawful, bona fide, legal representation services in connection with or anticipation of an official proceeding.

EFFECTIVE: 07/26/89

||72-1.11| Other Related Obstruction Statutes Described in Title 18, USC,

(1) Section 1501 - Assault on process server.

(2) Section 1502 - Resistance to extradition agent.

(3) Section 1505 - Obstruction of proceedings before departments, agencies, and committees. (Specific FBIHQ authority required in all cases.)

(4) Section 1506 - Theft or alteration of record or process; false bail.

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(5) Section 1507 - Picketing or parading. (Specific FBIHQ authority required in all cases.)

(6) Section 1508 - Recording, listening to, or observing proceedings of grand or petit juries while deliberating or voting.

EFFECTIVE: 07/26/89

72-2 POLICY

EFFECTIVE: 07/26/89

72-2.1 Handling of Complaints

EFFECTIVE: 07/26/89

72-2.1.1 SAC May Authorize Investigation on Request of USA or Federal Judge in Following Situations:

(1) If obstruction arose from criminal case within the jurisdiction of any Federal agency other than Secret Service, Internal Revenue Service, Immigration and Naturalization Service, U.S. Customs Service, Drug Enforcement Administration, Bureau of Alcohol, Tobacco and Firearms, and U.S. Postal Service. If obstruction arose from case within jurisdiction of seven agencies mentioned, who have their own investigative staffs, it is the position of the FBI and the Department of Justice that obstruction investigation should be conducted by the other agency although coverage of leads in a distant area to assist other agency may be authorized by FBIHQ upon full justification.

(2) If obstruction involves either actual bodily harm or threat thereof to a Federal judge or Federal juror, regardless of case out of which allegation arose.

(3) If obstruction arose from civil case in Federal court in which neither U.S. Government nor any agency thereof is involved.

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EFFECTIVE: 07/26/89

72-2.1.2 Prior FBIHQ Authority is Required in Following Situations:

- (1) Trial in which original investigation conducted by any of the above mentioned agencies.
- (2) Proceedings before departments, agencies, and committees.
- (3) Labor controversy or other matter affecting national security.

EFFECTIVE: 07/26/89

72-2.1.3 Trial in Progress

The USA must assure that the judge has been informed of allegation and is agreeable to investigation.

EFFECTIVE: 07/26/89

72-2.1.4 Obstruction of Court Order Complaint

The Department of Justice has instructed USAs not to request FBI investigation or initiate prosecution of obstruction of court orders without departmental authority. Therefore, dependent upon the urgency of the situation, advise FBIHQ by telephone, teletype, airtel or special delivery letter and conduct no investigation without FBIHQ authority.

EFFECTIVE: 07/26/89

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72-2.2 Other Policy

(1) Full details of complaints must be furnished FBIHQ expeditiously together with action being taken or recommended. (Statutes affecting the area of obstruction of justice are designed to protect the dignity of the courts, and prosecutions in such cases often result in widespread public notice and editorial comment.)

(2) Although USA ordinarily advised of all complaints, if, in sound judgment of SAC, circumstances of complaint or facts developed through investigation make it inadvisable to consult USA or to follow course desired by him/her, advise FBIHQ and take no further action pending FBIHQ instructions.

(3) The Bureau has no statutory authority to afford "protection" to persons affected by the statutes. When a victim, witness, or informant fears physical harm, notify appropriate law enforcement agencies unless the facts of the case indicate such action is undesirable, and notify the person involved of the services available to him/her as set forth in the Federal Guidelines For Fair Treatment of Crime Victims and Witnesses in the Criminal Justice System, and discuss case with USA to seek his/her opinion concerning restraining orders as are provided for in Section 1514.

EFFECTIVE: 07/26/89

72-3 PENALTIES

(1) Section 1503 - \$5,000 fine and/or five years' imprisonment.

(2) Section 1504 - \$1,000 fine and/or six months' imprisonment.

(3) Section 1509 - \$1,000 fine and/or one year's imprisonment.

(4) Section 1510 - \$5,000 fine and/or five years' imprisonment.

(5) Section 1512(a):

(a) in case of a killing:

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1. murder in the first degree; shall suffer death unless the jury qualifies its verdict by adding thereto "without capital punishment," in which he/she shall be sentenced to imprisonment for life

2. murder in the second degree; shall be imprisoned for any term of years or for life

3. voluntary manslaughter; shall be imprisoned not more than ten years

4. involuntary manslaughter; shall be fined not more than \$1,000 or imprisoned not more than three years, or both

(b) in the case of an attempt; imprisonment for not more than twenty years.

(6) Section 1512(b) - \$250,000 fine and/or up to one year's imprisonment.

(7) Section 1512(c) - \$25,000 fine and/or up to one year's imprisonment.

(8) Section 1513 - \$250,000 fine and/or ten years' imprisonment.

EFFECTIVE: 07/26/89

72-4

SUGGESTED INVESTIGATIVE PROCEDURES

(1) Status of an individual as a person covered by the statutes may be established through introduction by competent witnesses of letters of appointment, official records of the court, subpoenas, summonses, jury panels, and similar documents. Such records can generally be located in the offices of Government agencies, clerks of court, U.S. Magistrates, and U.S. Marshals. The exact time when a person received appointment or was served with a subpoena or summons should be reported.

(2) If investigations involving witnesses or jurors indicate a possible perjury, necessary elements of perjury and subornation of perjury violations should be fully developed.

(3) Question victims for complete details. Threats or

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use of force may have been preceded by other acts by subject, such as conversations, gratuities, and advice extended to victim in a disguised effort to curry his/her favor.

(4) Obtain signed statements where possible from victim and witnesses, and USA should be advised of any reluctance to testify.

(5) In the event a threatening communication is directed to or received by a person other than the intended victim, the relationship of the recipient to the victim should be shown, since under statute a violation may exist even if the victim is not direct recipient of communication.

(6) Determine exact language of a threatening communication and all attending circumstances as it may be necessary to introduce evidence that a communication, although veiled, actually implies a threat. Follow instructions relative to transmittal of extortion letters to FBI Laboratory in the transmittal of letters constituting possible violations of obstruction of justice statutes.

(7) Determine the particular interest of subject in the outcome of a trial or other proceeding. Subject's relationship by blood or marriage to parties to a suit, his/her membership in an interested organization, or monetary considerations may explain his/her actions. Determination of identities of persons who stand to gain from the particular outcome of a proceeding may serve to identify an unknown subject.

EFFECTIVE: 07/26/89

72-5 CHARACTER

If no substantive violations investigated, character will be "Obstruction of Justice, Obstruction of Criminal Investigations, etc." When obstruction allegation generated in connection with substantive violation, add "Obstruction of Justice, Obstruction of Criminal Investigations, etc." to the character and do not open new case.

EFFECTIVE: 07/26/89

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SECTION 73. BACKGROUND INVESTIGATION - PARDON ATTORNEY'S OFFICE

73-1 GENERAL INSTRUCTIONS

These instructions are supplemented in part by instructions contained in Part II, Section 17 of this manual. Applicable portions of Part II, Section 17, will be incorporated into this Section as necessary in order to clarify those portions of Part II, Section 17, which pertain to this Section.

EFFECTIVE: 11/24/93

73-2 BASIS FOR INVESTIGATION

(1) The Bureau's authority to conduct Presidential pardon background investigations stems from the Attorney General's responsibility to advise the President in the exercise of his constitutional pardon power.

(a) The Rules Governing Petitions for Executive Clemency (as published in 28 Code of Federal Regulations) provide for the Attorney General to "... cause such investigation (for Executive clemency) to be made of the matter as (he/she) may deem necessary and appropriate, using the services of, or obtaining reports from, appropriate officials and agencies of the Government, including the Federal Bureau of Investigation ..."

(b) Upon receipt of requests from the Pardon Attorney, the Bureau is charged with the responsibility of investigating all petitions for Executive clemency, regardless of whether the conviction involved a violation within the Bureau's investigative jurisdiction.

(2) Petitions for commutation of sentence, including remission of fine, also require background investigations by the Bureau as requested by the Pardon Attorney, pursuant to the Rules Governing Petitions for Executive Clemency. However, such requests are rare and are generally limited in scope.

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EFFECTIVE: 11/24/93

73-3 | ELIGIBILITY FOR PARDON/COMMUTATION OF SENTENCE |

(1) | When a person is convicted in Federal court of a felony, he/she generally loses certain civil rights. The rights he/she loses and the procedure whereby he/she may regain them are governed by laws of the state where he/she resides. These lost rights generally are the right to vote, the right to sit as a juror, the right to bear/possess firearms, and the right to hold public office. Generally, an offender who has completed his/her sentence may not petition for a Presidential pardon until the conclusion of a waiting period of five to seven years (depending on the nature of the offense), following the date of his/her release from confinement or, if no confinement was ordered, following the date of conviction.

(a) Occasionally, the Pardon Attorney, for good cause shown, may grant a waiver of all or a portion of the waiting period to permit earlier consideration of a petition.

(b) While there is no appeal from a pardon decision, unsuccessful petitioners may be permitted to reapply for a pardon two years after the date of denial. In such cases, the Bureau may be requested to conduct a supplemental investigation to bring a prior inquiry up to date.

(2) | No petition for commutation of sentence, including remission of fine, should be filed if other forms of judicial or administrative relief are available, except upon a showing of exceptional circumstances.

EFFECTIVE: 11/24/93

73-3.1 | Deleted |

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EFFECTIVE: 11/24/93

73-4 | OBJECTIVES OF INVESTIGATION

(1) The primary objective of the background investigation is to conduct a thorough, penetrating inquiry which will be useful in an assessment of the petitioner's suitability for a Presidential pardon/commutation of sentence. In general, the investigation should focus on a petitioner's post-conviction adjustment (whether he/she has become and is likely to remain a productive and law-abiding member of society) and acceptance of responsibility for his/her offense.

(2) The Bureau should make every reasonable effort to conduct an inquiry as discreetly as possible to ensure that the specific reason for the investigation is not disclosed to persons interviewed. Persons interviewed should generally be advised that the petitioner has applied for a Government benefit requiring a general background inquiry and that a criminal investigation is not being conducted. (See MIOG, Part I, 73-11.)

(3) Additional objectives are outlined in MIOG, Part II, Section 17-4.

EFFECTIVE: 11/24/93

73-4.1 | Deleted |

EFFECTIVE: 11/24/93

73-4.2 | Deleted |

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EFFECTIVE: 11/24/93

73-5 INITIATION OF INVESTIGATION

Background investigation requests are received at FBIHQ from the Pardon Attorney. Included in these requests are specific instructions from the Pardon Attorney, whether it be a limited inquiry or a full field investigation. The initial lead for the petitioner interview is generally set out in an electronic communication (EC) with a copy of the petition enclosed. All investigative leads as determined through the interview, along with a copy of the petition, should be set out by the interviewing office.

EFFECTIVE: 11/18/96

73-6 SCOPE OF INVESTIGATION

An applicant-type background investigation should be initiated into the petitioner's conduct and reputation upon receipt of the case from FBIHQ. The customary full-field background investigation should cover the entire period following the petitioner's release from prison. If the petitioner was not confined to prison, the investigation should cover the period following the date of conviction. When the petitioner has been the subject of a prior background investigation, the prior investigation will be brought up to date. In some cases, the Pardon Attorney may elect to conduct a limited inquiry (e.g., for a commutation of sentence petition), wherein specific instructions will be set out and forwarded to the appropriate field offices.

EFFECTIVE: 11/24/93

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| 73-7 | GENERAL INSTRUCTIONS

| Refer to MIOG, Part II, Section 17-5, for general  
instructions pertaining to background investigations. |

EFFECTIVE: 11/24/93

|| 73-8 INVESTIGATIVE GUIDELINES

EFFECTIVE: 11/24/93

| 73-8.1 | Deleted |

EFFECTIVE: 11/18/96

| 73-8.2 Predication (See MIOG, Part I, | 73-8.4.) |

| A predication | (basis | for investigation) | is to | be  
included | as the first paragraph of the "Details" section in the  
investigative report of the submitting office. | Set forth the  
predication as follows:

"This background investigation was predicated upon the receipt of a  
Petition for Pardon After Completion of Sentence (or Commutation of  
Sentence), executed by the petitioner on (date of the petition), and  
subsequently forwarded to the FBI by the Office of the Pardon  
Attorney."

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EFFECTIVE: 11/18/96

73-8.3 Interview of Petitioner (See MIOG, Part I, 73-8.4.)

The interview of the petitioner should be conducted at the inception of the background investigation in order to obtain the required background information, and to develop additional areas for inquiry. The results should be reported on an FD-302. The office covering the petitioner's current residence will normally conduct the interview. The narrative of the FD-302 should be sufficiently detailed to indicate that each of the following items (except in commutation of sentence cases wherein the investigative scopes are generally limited) was completely and thoroughly addressed in the interview:

(1) Details of the petitioner's employment history and military service.

Obtain the details concerning the employment of the petitioner since his/her release from prison or conviction, if the petitioner served no time. Include dates of employment, location(s), position(s), name(s) of supervisor(s), etc. Further, determine whether the petitioner has ever been denied employment, dismissed from employment or resigned in lieu of dismissal.

(2) Places of residence.

Obtain the details concerning his/her residence(s) since release from prison or conviction, if the petitioner served no time. Include the name(s) of former/current neighbor(s) who knew petitioner during the past five years of residence and any of the petitioner's current cohabitant(s).

(3) Petitioner's version of the circumstances under which he/she was convicted.

The petitioner should be asked to describe the circumstances surrounding the commission of the offense in his/her own words. The petitioner should not be encouraged to merely restate the account provided in his/her petition or the account contained in the charges and specifications of the indictment or information. The petitioner may be advised that the Pardon Attorney generally takes into account all statements by a petitioner relating to his/her

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acceptance of responsibility, remorse and atonement in evaluating the merits of a pardon petition.

(4) Reason pardon (or commutation of sentence) is desired, including the petitioner's specific need for the same.

Obtain a statement of the specific purpose(s) for which a pardon is sought. If he/she has not already done so, the petitioner should be encouraged to furnish directly to the Pardon Attorney any documentary evidence, such as copies of applicable provisions of state constitutions, statutes or regulations and/or letters from appropriate officials of state administrative agencies, professional associations, licensing authorities or the like, indicating that a pardon will be helpful in accomplishing the purpose for which it is sought.

(5) Petitioner's involvement in community service, charitable or other meritorious activities.

Obtain any information that the petitioner may wish to volunteer regarding these activities. The provision of documentary evidence in this regard is desirable but not necessary.

(6) Information concerning the petitioner's present mode and standard of living.

Obtain information concerning any personal and business credit issues (if any), including but not limited to, repossessions, delinquent student loans, debts placed for collection, etc. Include details concerning any business interests which the petitioner may have.

(7) Any involvement in civil litigation, or in administrative or legislative proceedings of any kind, either as a plaintiff, defendant, respondent, witness, or party in interest.

Include information for the past ten years concerning liens, bankruptcies or lawsuits against the petitioner. Also, include information concerning any delinquent taxes.

(8) Any prior or subsequent criminal record, or any involvement in criminal matters as a suspect.

(9) Obtain specific information (name of school, dates and location) concerning all post-high school education of the petitioner, to include vocational training.

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(10) Obtain biographical data, to include the following:

(a) Marital status, to include details (date(s), place(s), name(s), current location(s)) of any divorce(s) whether occurring before or after the date of conviction, and the identity of ex-spouse(s).

(b) Names, complete dates and places of birth of the petitioner's spouse, parents, children, siblings, cohabitants, and other relatives who occupy the same residence as the petitioner. Also, determine if the petitioner is aware of anything in his/her immediate family's background of a criminal nature. If so, obtain details. If the petitioner's parents do not reside with him/her, obtain their names for birth verification purposes.

(c) If the petitioner indicates that he/she is foreign born, obtain details of his/her citizenship or immigration status (date/place naturalized or registered, naturalization certificate number, alien registration number, etc.). It is not necessary to obtain any details concerning the citizenship of petitioner's spouse or immigration status of petitioner's spouse, immediate relatives or any persons residing with the petitioner, unless specifically requested by FBIHQ. (See MIOG, Part I, 73-8.4.)

(11) Determine if the petitioner has possessed or carried a firearm since his/her conviction/release. Further, determine whether the petitioner has filed a federal or state application for restoration of firearms privileges. If so, determine if this request was granted, denied or withdrawn.

(12) Determine whether the petitioner has voted or registered to vote since the date of conviction/release.

(13) Determine whether the petitioner holds or has previously held any business or professional licenses.

(14) Obtain the details of any professional complaints or any nonjudicial disciplinary action against the petitioner since the date of conviction/release.

(15) Determine whether the petitioner has had any contact with representatives of foreign countries.

(16) Obtain the details of any psychiatric or psychological counseling, including the dates of counseling, and the name and address of each counseling facility and/or counselor,

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| doctor, or other health care provider. |

(17) Determine whether the petitioner has ever | used, possessed, purchased, sold, or distributed illegal drugs, including marijuana, or abused either prescription drugs or alcohol. If so, obtain complete details, e.g., type and amount of drug or alcohol used, time frame and frequency of use. Also, determine whether or not the petitioner has ever participated in any drug/alcohol counseling or rehabilitation programs. If so, obtain details including the dates of counseling and the name and address of each counseling facility and/or counselor, doctor, or other medical care provider. |

(18) Determine whether there are any other current or past circumstances known to the petitioner that could have a bearing on his/her suitability for an Executive clemency.

| (19) | Deleted |

(20) Determine whether the petitioner has ever been the subject of an applicant-type/background investigation.

(21) | If specifically requested by FBIHQ, obtain two sets of the petitioner's fingerprints. A field office will be requested to fingerprint the petitioner only when the Criminal Justice Information Services (CJIS) Division record check, which is conducted by FBIHQ, Special Inquiry and General Background Investigations Unit (SIGBIU), fails to locate an FBI number for the petitioner. This request will normally be made of the field office conducting the petitioner interview. After fingerprinting the petitioner, the field office is to promptly forward both sets to the SIGBIU in order that an FD-165 (Flash Notice) may be placed with the CJIS Division (an FD-165 must be placed in every pardon attorney investigation). The fingerprints may be submitted by routing slip. The routing slip must clearly set forth the Office of the Pardon Attorney case title and file number. It, with the fingerprints, are to be transmitted to SIGBIU using an opaque Bumail penalty envelope (imprinted O-7 information). The envelope is to be addressed to the attention of the SIGBIU Personnel Security Specialist (PSS) assigned the BI. The PSS's identity is set forth in all SIGBIU case-generated communications to the field. FBIHQ, SIGBIU, is responsible for the preparation, and submission to the CJIS Division, of the FD-165. Where appropriate (e.g., upon being advised of petitioner's death--by a field office or otherwise--that petitioner's pardon request has been granted or denied, or to discontinue the background investigation), FBIHQ, SIGBIU, is also responsible for having the



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FD-165 canceled by the CJIS Division. All FD-165s in pardon attorney cases will be canceled by the CJIS Division either if advised by the SIGBIU or automatically after five years, whichever occurs first. (See MIOG, Part II, 14-12.3.4, 14-15.5.1, and 14-15.5.3.)

(22) Deleted

EFFECTIVE: 11/18/96

73-8.4 Investigation

(1) Investigation is to be reported as noted in MIOG, Part I, 73-8.2, 73-8.3 and 73-8.4 (2) (a)-(s).

(2) The investigation is not limited to, but must include, the following information (if appropriate) which is to be included in the "Details" section of the investigative report under separate and appropriate headings as noted below:

(a) Predication (see MIOG, Part I, 73-8.2)

(b) Interview of Petitioner (see MIOG, Part I, 73-8.3)

(c) Court Records - Review court records concerning each federal conviction of the petitioner and include the following information:

1. Name under which the petitioner was convicted;
2. Date of sentence;
3. Sentence imposed;
4. Indictment or information number (specify which) and the U.S. District Court (specify district and location) in which the conviction was obtained;
5. Describe the nature of the charge and citation of the statute or public law violated (distinguish the charges and citations on which the petitioner was indicted from those

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on which he/she was convicted);

6. The nature of the petitioner's plea;

7. Brief summary of the facts surrounding commission of the offense;

8. If fines, restitution, assessments, costs or penalties were imposed, determine whether they were satisfied and the date(s) paid;

9. If community service was ordered, determine whether it was performed and the manner in which the service requirement was discharged.

(d) Probation and Supervised Release  
Records/Interviews - The U.S. Probation Officer should be interviewed to determine the nature of the petitioner's adjustment under supervision, including a record of disciplinary infractions (if any), and the officer's comments and recommendation for or against a Presidential pardon. If access to probation files is denied, immediately notify FBIHQ. It is not necessary to obtain a copy of petitioner's presentence report, unless specifically requested by FBIHQ.

(e) Birth - Verify the petitioner's date and place of birth through records of the Bureau of Vital Statistics.

(f) Naturalization - Verify naturalization, derived citizenship, or immigration status of the petitioner only. It is not necessary to verify the naturalization, derived citizenship or immigration status of petitioner's spouse, close relatives or any persons residing with the petitioner, unless otherwise advised by FBIHQ. (See MIOG, Part I, 73-8.3 (10)(c).)

(g) Marital Status (See MIOG, Part II, 17-6.4.)

1. Verify all divorce(s) which has/have occurred since the date of the petitioner's conviction. Divorce(s) should be verified through a review of appropriate records, e.g., court records. Identify which party was the plaintiff and defendant as well as the grounds for, and date of, the divorce. All other pertinent information must be obtained, e.g., if the petitioner has complied/is complying with all court-ordered obligations on a timely basis (e.g., child or spousal support). If this information is not available through a review of appropriate records, efforts must be

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made to obtain it through an interview of the petitioner's attorney of record in the divorce proceeding or the attorney's representative. If this is unsuccessful, efforts must be made to obtain this information through the petitioner's ex-spouse(s). If the aforementioned efforts fail, then the petitioner is to be recontacted in an effort to obtain/verify the necessary information.

2. The results of each divorce verification, as reported, must clearly indicate whether or not the court imposed any financial obligations on the petitioner, e.g., child or spousal support, etc. If so, identify each and address whether or not the petitioner has complied/is complying with the obligation pursuant to the court's order in a timely manner. If no obligations were/have been imposed, so state.

3. Interview the ex-spouse(s) from petitioner's divorce(s) which occurred during the 15-year period immediately preceding the date of the FBIHQ communication initiating the investigation or since the date of the petitioner's conviction, whichever period of time is less. It is not necessary to interview the ex-spouse(s) of divorce(s) that occurred beyond this period of time, unless requested by FBIHQ or as otherwise deemed appropriate (e.g., see MIOG, Part I, 73-8.4 (g) 1., above).

4. If any question about the petitioner's current or previous marital status develops, attempt to verify through appropriate records. If not available, efforts are to be made to verify through other appropriate sources.

5. All unsuccessful efforts to obtain the necessary information regarding the petitioner's divorce(s) and/or questioned marital status must be clearly reported.

(h) Education - Verify all post-high school education, including vocational training. Interview professors/instructors only if the education has occurred within the past three years.

(i) Neighborhood investigation - Conduct neighborhood inquiries at the petitioner's residences during the five years immediately preceding the date of the background investigation, regardless of the date of conviction/release. Interview at least two neighbors, knowledgeable of the petitioner, for each residence where petitioner has resided for the last five years. If unsuccessful or not possible, a field office's investigative efforts and/or explanation must be set forth in the "Details" section of its

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| investigative report. | If rental property, interview the landlord or manager and review the rental records. Liberally quote remarks which reflect favorably or adversely on the petitioner's conduct and reputation. Singular remarks should contain the interviewee's definition or example(s) for illustration and clarification. A description of the petitioner's mode and standard of living also should be provided. Current cohabitants who are not related to the petitioner must be interviewed.

| (j) | Employment verification - | Verify all employments for the ten-year period preceding the date of the investigation or since the date of petitioner's conviction/release from prison, whichever is less. At a minimum, for each employment determine dates of employment, work record, general character of the petitioner, and reason for termination. |

1. A representative (supervisor or manager) of each employment should be interviewed, consistent with the ten-year criterion. | Additionally, at least one co-worker, knowledgeable of the petitioner, at each employment within the investigations, must be interviewed. If unsuccessful, a field office's investigative efforts and/or explanation must be set forth in the "Details" section of its investigative report. | When not possible, so state and include the reason(s).

2. Personnel records should be reviewed, if available, to determine whether the petitioner has made any false statements in obtaining a particular position, such as any questions concerning a criminal record. If false information is detected, do not under any circumstances advise the employer, but do document the information in the report. If personnel records are not available for review, so state and include the reason(s).

| (k) | Military records - All military service will be verified, regardless of the dates of service. Include dates of service; type of discharge, including a brief summary of facts surrounding discharge if separation occurred other than at the completion of the term of enlistment; decorations awarded, if any; a brief summary of the facts surrounding court-martial proceedings, if any, to include a brief description of offense, sentence imposed and the dates and actions approving or modifying the sentence by the convening and reviewing authorities.

| (l) | Reference interviews - Attached to every petition are character affidavits signed by references (sometimes referred to as character affiants). All references must be

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interviewed for particulars concerning the petitioner's conduct, character, and associates, and to determine their exact opinions and the opportunities they have had for forming such opinions concerning the petitioner. References also should be asked about the petitioner's community and/or charitable activities.

| (m) | Credit/Tax records - Credit inquiries will be conducted at FBIHQ and leads will be sent to appropriate offices to verify the status of specific accounts or to verify bankruptcies, tax liens or other information disclosed in a credit record.

1. Check for tax liens (state and local) when there is questionable financial status as directed by FBIHQ.

2. | Deleted |

| (n) | Law Enforcement Records - FBI | field offices | and appropriate local | and state | law enforcement agencies | covering | all communities where petitioner has resided, been educated or been employed, since his/her conviction/release | from prison, must | be checked for any records on the petitioner. Field office indices checks on petitioner's cohabitants and close relatives (18 years or older) must be conducted by the field office covering where the cohabitants or close relatives reside. Local and state law enforcement agency records checks are not to be conducted on petitioner's cohabitants and close relatives, unless specifically requested by FBIHQ. |

1. Obtain a complete account of the petitioner's criminal history record both prior to and subsequent to the federal offense for which an Executive clemency is sought, including traffic offenses that resulted in an arrest or criminal charge, such as driving under the influence.

2. For each violation, obtain the date of the incident; description of the offense charged; name and location of law enforcement authority involved; and the date, location, and sentence or other disposition.

3. | FBIHQ, SIGBIU, will check FBIHQ records, including criminal history records concerning the petitioner (name and fingerprints checks) and all close relatives/cohabitants (name check only) who are at least 18 years of age. |

| (o) | U.S. Attorney's Office - Check records of the U.S. Attorney's Office wherever the petitioner has resided, been

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educated or been employed within the scope of the investigation.

1. Determine whether official records reflect any pending/closed criminal or civil proceedings (judicial or administrative) unrelated to the offense for which the Executive clemency is being sought.

2. In the event the petitioner was involved in a federal criminal investigation which did not result in prosecution, or was the subject of a government forfeiture or other proceeding, a report of the details and disposition of the matter should be furnished.

3. If a particular U.S. Attorney's office chooses to report such information directly to the Office of the Pardon Attorney, so state in the report.

| (p) | Licensing agencies - Check appropriate regulatory or licensing agencies where the petitioner has indicated he/she holds or has held a professional license, such as real estate, medical, accounting, etc. Determine the petitioner's current standing.

| (q) | Firearms status - | At the outset of the investigation, FBIHQ, SIGBIU, will request the Bureau of Alcohol, Tobacco and Firearms (BATF) Headquarters to check its records regarding the petitioner. Pursuant to this request, BATF Headquarters will provide FBIHQ, SIGBIU, with all pertinent information concerning the petitioner located in BATF Headquarters, and field office, files. |

1. | Deleted |

2. | Field offices covering petitioner's residences since the date of his/her conviction/release from prison are to conduct a check of the appropriate state agency(s) to determine if the petitioner has applied for state relief from firearms disabilities or has violated state firearms prohibitions. If so, obtain complete details of each application or violation, including the disposition. |

3. | Deleted |

4. | Deleted |

| (r) | Voter registration - Determine the bylaws of the

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state election board regarding convicted felons and voting privileges. Check voter registration records to determine whether the petitioner has registered to vote since conviction/release, if applicable.

| (s) | Miscellaneous checks - Refer to MIOG, Part II, Section 17-6 (and all its subtopics), for other record checks which may be applicable to | pardon attorney investigations. |

| (3) | All interviews of individuals knowledgeable of the petitioner | are to | include comments concerning the petitioner's character, associates, reputation, loyalty to the United States, bias, financial solvency, any alcohol abuse, any prescription drug abuse, and any use, possession, purchase, selling or distribution of illegal drugs, including marijuana, | and a general recommendation statement (do not solicit a statement for a pardon recommendation unless the interviewee has indicated prior knowledge of the petition).

EFFECTIVE: 11/18/96

| 73-9 | DISCONTINUING INVESTIGATIONS |

| (1) | Deleted |

| (2) | Deleted |

| (3) | Deleted |

| (4) | Deleted |

| (5) | Discontinuing investigations

(a) Derogatory information - If, during the course of the investigation, a field office develops derogatory information (e.g., the omission or falsification of material facts in the pardon petition or other types of applications, or the arrest of the petitioner subsequent to submission of the petition), the field office is to immediately advise FBIHQ, SIGBIU, by telephone, to be followed within one work day by the facsimiling of FD-302(s), insert(s) and/or other documents containing the information. (See MIOG, Part II, 17-5.1.)

1. Upon receipt of the "facsimiled information"

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from the field office, SIGBIU will immediately consult with the Office of the Pardon Attorney and determine whether or not the investigation will be continued.

2. The field office submitting the above information is to hold further investigation in abeyance until otherwise advised by FBIHQ, SIGBIU.

3. SIGBIU will advise all other offices with outstanding investigation to hold their investigation in abeyance pending SIGBIU's receipt of a determination by the Office of the Pardon Attorney whether to continue the investigation.

4. Upon receipt of the Office of the Pardon Attorney's determination, SIGBIU will promptly advise appropriate field offices whether or not to continue the investigation.

a. If the investigation is discontinued, field offices are to promptly submit an investigative report reflecting all investigation conducted. SIGBIU will provide the Office of the Pardon Attorney with the results of all investigation conducted.

b. If the investigation is to be continued, field offices are to complete, and submit to FBIHQ, SIGBIU, their part of the investigation by the established Bureau deadline.

(b) Death of petitioner - If, during the course of the investigation or thereafter, a field office determines that the petitioner has died, the field office is to immediately advise FBIHQ, SIGBIU, by telephone, to be followed within one work day by the facsimiling of FD-302(s), insert(s) and/or other documents (e.g., copy of death certificate and/or obituary) containing the information which verifies the petitioner's death.

1. Upon receipt of the "facsimiled information" from the field office, SIGBIU will immediately advise the Office of the Pardon Attorney.

2. The field office submitting the above information is to promptly submit an investigative report reflecting the results of any investigation conducted, including that concerning petitioner's death.

3. If petitioner's death occurs during the course of an ongoing investigation, SIGBIU will advise all other



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field offices with outstanding investigation to discontinue their investigation. Those offices are to promptly submit an investigative report reflecting all investigation conducted.

4. SIGBIU will provide the Office of the Pardon Attorney with the results of all investigation conducted.

(6) Deleted

EFFECTIVE: 11/18/96

73-10 DEADLINES

(1) Each background investigation conducted by the FBI, including those conducted at the request of the Office of the Pardon Attorney, has a deadline known as Bureau deadline or BUDED. The BUDED is the date the complete investigation must be received at FBIHQ (in the applicable FBIHQ unit). The BUDED is established by FBIHQ and cannot be changed without FBIHQ authority. The BUDED is to be set forth in each intra-Bureau communication in accordance with FBI policy, whether generated by FBIHQ or the field.

(2) Refer to MIOG, Part II, 17-3.5, and MAOP, Part II, 10-10.3, for additional information regarding deadlines.

EFFECTIVE: 11/18/96

73-11 PRIVACY ACT - REQUIREMENTS

When applicable, all individuals from whom information is being sought in pardon background investigations must be apprised, not only of the purpose of the investigation (see 73-4(2)) and the uses to be made of the information, but also the provisions of the Privacy Act regarding access to records and the allowance for confidentiality as described in Part I, Section 190-7 of this manual.

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EFFECTIVE: 11/24/93

|| 73-12 | CHARACTER - BACKGROUND INVESTIGATION - PARDON ATTORNEY'S  
OFFICE

EFFECTIVE: 11/24/93

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SECTION 74. PERJURY

74-1 STATUTES

Title 18, USC, Sections 1621 (perjury generally), 1622 (subornation of perjury), and 1623 (false declaration before grand jury or court).

EFFECTIVE: 01/31/78

74-1.1 Section 1621 (Perjury Generally)

EFFECTIVE: 01/31/78

74-1.1.1 Elements

- (1) The accused was under oath before a competent tribunal.
- (2) He willfully made a false statement, knowing same to be false.

EFFECTIVE: 01/31/78

74-1.2 Section 1622 (Subornation of Perjury)

EFFECTIVE: 01/31/78

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74-1.2.1 Elements

- (1) The false witness, or person suborned, committed perjury.
- (2) The accused influenced or persuaded the false witness to commit such perjury.
- (3) The accused knew such statements to be false.
- (4) The accused knew the false witness knew the statements to be false.

EFFECTIVE: 01/31/78

74-1.3 Section 1623 (False Declaration Before Grand Jury or Court)

EFFECTIVE: 01/31/78

74-1.3.1 Elements

- (1) The accused was under oath in a proceeding before or ancillary to any court or Grand Jury of the United States.
- (2) He knowingly made a false material declaration; or he made or used any other information, including any book, paper, document, record, or recording, or other material, knowing same to contain any false material declaration.

EFFECTIVE: 01/31/78

74-2 POLICY

EFFECTIVE: 01/31/78

74-2.1 Handling of Complaints

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EFFECTIVE: 01/31/78

74-2.1.1 SAC may Authorize Investigation on Request of USA or  
Federal Judge in Following Situations:

(1) If perjury arose from criminal case within jurisdiction of any Federal agency other than Secret Service, Internal Revenue Service, Immigration and Naturalization Service, U.S. Customs Service, Drug Enforcement Administration, Bureau of Alcohol, Tobacco and Firearms, and U.S. Postal Service. If perjury arose from case within jurisdiction of seven agencies mentioned, who have their own investigative staffs, it is the position of the Bureau and the Department of Justice that perjury investigation should be conducted by the other agency although coverage of leads in a distant area to assist other agency may be authorized by FBIHQ upon full justification.

(2) If USA requests investigation of perjury arising from an alleged false statement by a defendant to obtain Government-paid legal representation under Criminal Justice Act of 1964, if such violation is separable from a substantive case handled by another Federal agency.

(3) If perjury arose from civil case in Federal court in which neither U.S. Government nor any agency thereof is involved.

EFFECTIVE: 01/31/78

74-2.1.2 Prior FBIHQ Authority is Required Where Offense Arose  
From:

(1) Trial in which original investigation conducted by any of above-mentioned agencies.

(2) Proceedings before departments, agencies, and committees.

(3) Proceedings incidental to court action (affidavits, depositions, etc.). This includes all cases not previously mentioned.

(4) Statements by a defendant to the court to obtain Government-paid legal representation under provisions of Criminal Justice Act of 1964, if perjury is not separable from substantive case handled by one of the above-mentioned agencies.

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EFFECTIVE: 01/31/78

74-2.1.3 If Trial is in Progress:

The USA must assure that the judge has been informed of allegation and is agreeable to investigation.

EFFECTIVE: 01/31/78

74-2.1.4 Other Policy

(1) Full details of complaints must be furnished FBIHQ expeditiously with action being taken or recommended.

(2) Exact text of perjured statement should be set forth in details of report as well as whether the false statement was given on direct examination or cross-examination.

EFFECTIVE: 01/31/78

74-3 PENALTIES

(1) Section 1621 - \$2,000 fine and/or five years' imprisonment.

(2) Section 1622 - \$2,000 fine and/or five years' imprisonment.

(3) Section 1623 - \$10,000 fine and/or five years' imprisonment.

EFFECTIVE: 01/31/78

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74-4 INVESTIGATIVE PROCEDURES

(1) Was accused under oath?

(a) Ascertain identity and official status of person who administered oath.

(b) Determine type of tribunal.

(c) Determine whether oath was authorized by a law of the U.S.

(2) Willfulness of false statement.

(a) Willfully means with design and with some degree of deliberation.

(b) If the statement involved is written, obtain original if possible; if oral, obtain transcript of testimony; or in absence of transcript, interview witnesses who can establish content or exact phraseology of the statement.

(3) Materiality of false statement.

(a) Ascertain nature and purpose of the proceedings and all available facts showing the connection between the false statement and the matter under inquiry.

(b) If the statement has no direct bearing on the proceedings, ascertain all facts which would indicate that the false statement was directly relevant, in that it affected the credibility of witnesses or bolstered or the testimony of the witnesses on any material point.

EFFECTIVE: 01/31/78

74-5 CHARACTER

If no substantive violation investigated, character will be "Perjury." When perjury allegation generated in connection with substantive violation, add "Perjury" to the character and do not open new case.

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SECTION 75. BONDSMEN AND SURETIES

75-1 STATUTES

Title 18, USC, Section 1506, paragraph 2, provides that whoever acknowledges, or procures to be acknowledged in any court of the U. S., any recognizance, bail or judgment, in the name of any other person not privy or consenting to the same, shall be fined not more than \$5,000 or imprisoned not more than 5 years, or both.

Prosecutions are usually instituted under the perjury statute (T 18, Sections 1631, 1622). Occasionally the conspiracy statute may be used (T 18, Section 371) and USA may consider using Title 18, Sections 494 and 1001.

EFFECTIVE: 01/31/78

75-2 ELEMENTS

See manual section on perjury.

EFFECTIVE: 01/31/78

75-3 POLICY

Bureau investigates fraudulent criminal bail bonds in all classes of violations of the Federal criminal statutes. Fraudulent bail bonds involve material misrepresentations and should not be confused with forfeited bail bonds (not investigated by Bureau) which involve forfeiture of the bond based on failure of principal to comply with terms of contract. Cases involving habitual or professional bondsmen should receive prompt and thorough attention. Bureau does not investigate immigration bonds furnished in regard to control and regulation of admission and deportation of aliens.

EFFECTIVE: 01/31/78

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75-4 INVESTIGATIVE PROCEDURE

(1) Affidavits of justification which are part of a bail bond include information, such as sureties' financial status, and misrepresentations therein are usually the basis for perjury and conspiracy prosecutions.

(2) A false statement, under oath, made by a person justifying as a surety, or a false statement made in testimony taken before a U. S. Magistrate or other committing magistrate (made by a person justifying as surety on a criminal bail bond), is perjury.

(3) Fraudulent bonds

Following are suggested leads which may vary depending on allegation in each case:

(a) Examine court records. After becoming acquainted with the rules of the court, examine case file in office of clerk of court in which bond is filed and obtain:

Names and addresses of sureties,

Name of principal, that is, the defendant,

Principal amount of bond, as well as docket and/or case number assigned to the bond by official taking the same and the clerk of court,

Listing and description of the property claimed by sureties, including legal and generally known description of the property,

Statements made concerning value of such property, whether encumbrances thereon were listed, and whether or not the surety had qualified on other bonds, and, if so, the amount, date and character of the case in connection with which the prior bonds were furnished,

Name and address of official before whom the bond was executed,

The nature of the charge in connection with which the bond was furnished,

Date bond executed.

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(b) Interview court official. He should be questioned regarding taking of the bond to determine whether the sureties were placed under oath, and whether he, the committing magistrate, made any record of such affirmation. Determine whether sureties were questioned and whether they gave any testimony with regard to representations made in the bond. In cases involving "straw bail" the committing magistrate should be questioned concerning evidence produced by the sureties to show ownership of the property listed in the justification of the bond. Sureties are frequently required to produce tax receipts, warranty deeds, and/or other records evidencing ownership of property. Any defect in such evidence noticed by the committing magistrate should be carefully noted and investigated.

(c) Interview principal and intermediary. Interview the principal and the person who made arrangements for obtaining the surety to ascertain the circumstances under which the bonds were executed by the subjects. Ascertain whether the principal was acquainted with the surety prior to execution of the bond; whether the surety solicited the business; or whether the surety was recommended by a third party and, if so, the identity of such person.

(d) Check title to property. Where it is indicated that surety does not have title to property pledged, determine whether surety was the record owner of such property at the time bond was executed. Search records of the registrar of deeds for full details of ownership. Actual consideration, which is sometimes disclosed by internal revenue tax stamps, should be ascertained, if possible.

If no deed to the property listed can be found on record in the office of the registrar of deeds for the county, interview the grantor, whose name usually will be disclosed in the justification of the bond, to determine whether such person deeded the property to the surety and to obtain all details regarding transfer of the property, such as consideration paid, whether the grantor delivered the deed to the surety. Property in question should be visited to secure a description thereof and to note whether property is occupied and in particular whether it is occupied by a person other than the surety. The real owner of the property involved at time the bond was executed should always be interviewed and his testimony obtained.

(e) Check assessed and market value of property. Possible sources are tax records, neighboring property owners, contractors who made recent improvements, local real estate dealers,

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etc.

(f) Check prior liens. The office of the clerk of the recorder of deeds can provide appropriate index record books from which may be obtained a record of mortgages, tax liens, special assessments, labor liens, judgments, etc., outstanding against the property at the time the bond was executed.

(g) Determine if property pledged on other bonds which were still outstanding in state or Federal courts at time bond which is under investigation was executed.

(h) Interview surety. This may determine whether subject has good, unrecorded title to property listed in bond and will obtain his explanation for statements in affidavit.

(i) Check authorization of agent of surety company when bond furnished by surety company. Determine exact status of agent for company at time bond executed.

EFFECTIVE: 01/31/78

75-5            VENUE

In district wherein material false statements are made.

EFFECTIVE: 01/31/78

75-6            CHARACTER - BONDSMEN AND SURETIES

EFFECTIVE: 01/31/78

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SECTION 76. ESCAPED FEDERAL PRISONERS,  
ESCAPE AND RESCUE, ET AL.;  
PROBATION VIOLATORS, ET AL.;  
PAROLE VIOLATORS AND MANDATORY RELEASE  
VIOLATORS

76-1 ESCAPED FEDERAL PRISONERS, ESCAPE AND RESCUE

EFFECTIVE: 09/20/89

76-1.1 Background

The Escape and Rescue Statute (ERS), Title 18, USC, Sections 751-757, was enacted on 9/1/48. By MOU, effective 10/1/79, the U.S. Marshals Service (USMS) was given investigative and apprehension responsibility for violations of the ERS. By Department of Justice (DOJ) directive concerning the "Policy on Fugitive Apprehension in FBI and DEA Cases," dated 8/11/88, the USMS was given the responsibility of apprehending Federal escapees regardless of the nature of the Federal offense for which the prisoner was held, but does not specify that the USMS had investigative responsibility as set forth in the 1979 MOU. This matter was clarified by DOJ on 12/11/91. DOJ ruled that the FBI would maintain primary investigative jurisdiction over conspiracy to violate the ERS pertaining to any person(s) who rescues, instigates or assists in the escape or planned escape of a Federal prisoner from custody of an institution or officer. A field office wanting to conduct a fugitive investigation only must secure the specific approval of FBI Headquarters and obtain the concurrence of USMS. This can be effected through the Fugitive/Government Reservation Crimes Unit, Criminal Investigative Division.

EFFECTIVE: 09/07/93

76-1.2 Principal Statutes and Penalties

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EFFECTIVE: 09/20/89

76-1.2.1 Section 751. Prisoners Escaping or Attempting to Escape  
From Custody of an Institution or Officer

"(a) Whoever escapes or attempts to escape from the custody of the Attorney General or his authorized representative, or from any institution or facility in which he is confined by direction of the Attorney General, or from any custody under or by virtue of any process issued under the laws of the United States by any court, judge, or magistrate, or from the custody of an officer or employee of the United States pursuant to lawful arrest, shall, if the custody or confinement is by virtue of an arrest on a charge of felony, or conviction of any offense, be fined not more than \$5,000 or imprisoned not more than five years, or both; or if the custody or confinement is for extradition or by virtue of an arrest or charge of or for a misdemeanor, and prior to conviction, be fined not more than \$1,000 or imprisoned not more than one year, or both.

"(b) Whoever escapes or attempts to escape from the custody of the Attorney General or his authorized representative, or from any institution or facility in which he is confined by direction of the Attorney General, or from any custody under or by virtue of any process issued under the laws of the United States by any court, judge, or magistrate, or from the custody of an officer or employee of the United States pursuant to lawful arrest, shall, if the custody or confinement is by virtue of a lawful arrest for a violation of any law of the United States not punishable by death or life imprisonment and committed before such person's eighteenth birthday, and as to whom the Attorney General has not specifically directed the institution of criminal proceedings, or by virtue of a commitment as a juvenile delinquent under section 5034 of this title, be fined not more than \$1,000 or imprisoned not more than one year or both. Nothing herein contained shall be construed to affect the discretionary authority vested in the Attorney General pursuant to section 5032 of this title."

EFFECTIVE: 09/20/89

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76-1.2.2 Section 752. Rescuing, Instigating or Assisting Escape

"(a) Whoever rescues or attempts to rescue or instigates, aids or assists the escape, or attempt to escape, of any person arrested upon a warrant or other process issued under any law of the United States, or committed to the custody of the Attorney General or to any institution or facility by his direction, shall, if the custody or confinement is by virtue of an arrest on a charge of felony, or conviction of any offense, be fined not more than \$5,000 or imprisoned not more than five years, or both; or, if the custody or confinement is for extradition or by virtue of an arrest or charge of or for a misdemeanor, and prior to conviction, be fined not more than \$1,000 or imprisoned not more than one year, or both.

"(b) Whoever rescues or attempts to rescue or instigates, aids, or assists the escape or attempted escape of any person in the custody of the Attorney General or his authorized representative, or of any person arrested upon a warrant or other process issued under any law of the United States or from any institution or facility in which he is confined by direction of the Attorney General, shall, if the custody or confinement is by virtue of a lawful arrest for a violation of any law of the United States not punishable by death or life imprisonment and committed before such person's eighteenth birthday, and as to whom the Attorney General has not specifically directed the institution of criminal proceedings, or by virtue of a commitment as a juvenile delinquent under Section 5034 of this title, be fined not more than \$1,000 or imprisoned not more than one year, or both."

EFFECTIVE: 09/20/89

76-1.2.3 Section 753. Rescue to Prevent Execution

"Whoever, by force, sets at liberty or rescues any person found guilty in any court of the United States of any capital crime, while going to execution or during execution, shall be fined not more than \$25,000 or imprisoned not more than twenty-five years, or both."

EFFECTIVE: 07/28/87

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76-1.2.4 Section 754. Rescue of Body of Executed Offender

"Whoever, by force, rescues or attempts to rescue, from the custody of any marshal or his officers, the dead body of an executed offender, while it is being conveyed to a place of dissection as provided by Section 3567 of this title, or by force rescues or attempts to rescue such body from the place where it has been deposited for dissection in pursuance of said Section 3567, shall be fined not more than \$100 or imprisoned not more than one year, or both."

EFFECTIVE: 07/28/87

76-1.2.5 Section 755. Officer or Other Person Permitting Escape

"Whoever, having in his custody any prisoner by virtue of process issued under the laws of the United States by any court, judge, or commissioner, voluntarily suffers such prisoner to escape, shall be fined not more than \$2,000 or imprisoned not more than two years, or both; or if he negligently suffers such person to escape, he shall be fined not more than \$500 or imprisoned not more than one year, or both."

EFFECTIVE: 07/28/87

76-1.2.6 Section 756. Internee of Belligerent Nation

"Whoever, within the jurisdiction of the United States, aids or entices any person belonging to the armed forces of a belligerent nation or faction who is interned in the United States in accordance with the law of nations, to escape or attempt to escape from the jurisdiction of the United States or from the limits of internment prescribed, shall be fined not more than \$1,000 or imprisoned not more than one year, or both."

EFFECTIVE: 07/28/87



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76-1.2.7 Section 757. Prisoners of War or Enemy Aliens

"Whoever procures the escape of any prisoner of war held by the United States or any of its allies, or the escape of any person apprehended or interned as an enemy alien by the United States or any of its allies, or advises, connives at, aids, or assists in such escape, or aids, relieves, transports, harbors, conceals, shelters, protects, holds correspondence with, gives intelligence to, or otherwise assists any such prisoner of war or enemy alien, after his escape from custody, knowing him to be such prisoner of war or enemy alien, or attempts to commit or conspires to commit any of the above acts, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

"The provisions of this section shall be in addition to and not in substitution for any other provision of law."

EFFECTIVE: 07/28/87

76-1.2.8 Section 1072. Harboring or Concealing an Escaped Prisoner

"Whoever willfully harbors or conceals any prisoner after his escape from the custody of the Attorney General or from a Federal penal or correctional institution, shall be imprisoned not more than three years."

EFFECTIVE: 09/20/89

76-1.2.9 Miscellaneous Statutes

Title 18, USC, Sections 1791 and 1792, which deal with the Bureau's substantive 90 classification, Irregularities in Federal Penal Institutions, should be considered, if appropriate, in connection with violations of the sections enumerated above. (See Part I, Section 90 of this manual.)

EFFECTIVE: 09/20/89

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76-1.2.10 Violations Subsequent to Escape

If subsequent Federal violations occur during or after an escape, the FBI shall investigate these separate violations. In these cases, the FBI and the USMS shall coordinate their investigations in an effort to effect the escapee's apprehension at the earliest date.

EFFECTIVE: 09/20/89

76-1.3 FBI Jurisdiction

EFFECTIVE: 09/20/89

76-1.3.1 General (See MIOG, Part I, 76-1.3.10(5).)

(1) By Department of Justice ruling 12/11/91, primary investigative jurisdiction pertaining to conspiracy to violate the ERS was given to the FBI. Accordingly, the USMS, effective 12/11/91, has investigative and apprehension responsibility only over those subjects who actually escape from the custody of an institution or an officer. Any investigation concerning conspiracy to escape should be initiated under Bureau classification 90, Irregularities in Federal Penal Institutions (IFPI).

(2) If an escaped Federal prisoner (EFP) subject, within the primary jurisdiction of the USMS also becomes an FBI substantive fugitive, of course, the FBI will seek his/her apprehension under the substantive case, but "OO" must advise the U.S. Marshal (USM) in the district holding the warrant of its fugitive involvement and notify the USM's office promptly upon apprehension. This notification will, of course, not change the existing procedure of advising the USM in the district where the subject is located.

(3) Should an EFP within the responsibility of the USMS become a suspect/subject in an FBI substantive case and "OO" desires to actively seek the subject's apprehension under the ongoing substantive matter, this may be done, provided the USMS is notified and the fugitive aspects of the case are an FBI-USMS coordinated effort. Of course, when the fugitive is apprehended or eliminated as a suspect/subject in the substantive case which no longer demands FBI fugitive involvement, the appropriate USM must be notified.

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(4) If any subject of an existing USMS responsibility EFP matter is wanted as a fugitive in an FBI substantive case, the existing "76" case should be consolidated and handled as a dual character substantive case.

(5) If for some reason it should become imperative for an office (OO) to initiate a "76" (EFP) fugitive investigation, involving a non-FBI case, advise FBIHQ on a UACB basis of the facts demanding FBI involvement.

EFFECTIVE: 09/07/93

76-1.3.2 Prosecution

Investigative jurisdiction and responsibility for conspiracy to violate the ERS rests with the FBI effective 12/11/91. In these matters, it is the FBI's responsibility to secure a prosecutive opinion from the USA and prepare reports suitable for prosecutive use.

EFFECTIVE: 09/07/93

76-1.3.3 Obtaining Process

(1) A prisoner who escapes is an automatic fugitive. No process whatsoever is necessary in cases involving escapes after convictions and sentencing.

(2) Inasmuch as removal proceedings may be necessary in those cases involving escapes before conviction and sentencing, a new warrant should be obtained on the original substantive offense if the offense was within the Bureau's primary jurisdiction.

(3) In those cases in which the original offense was not within the Bureau's primary jurisdiction, the USA should be promptly contacted so that a warrant may be obtained under section 751.

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EFFECTIVE: 09/10/79

76-1.3.4 Declination of Prosecution or Dismissal of Process

If the USA declines prosecution of the escapee for EFP or later dismisses the outstanding EFP process while the escapee is in fugitive status, the fugitive investigation should continue. Whether prosecution under the Escape and Rescue Act is anticipated has no bearing on the responsibility to locate Federal escapees since the major objective is to return them to Federal custody to complete their sentence or face the original pending Federal charge.

EFFECTIVE: 09/10/79

76-1.3.5 Escapees from Residential Treatment Centers, Furloughs, and Extended Limits of Confinement

Those prisoners assigned to residential treatment centers, granted furloughs, and/or extension of limits of confinement by the Attorney General, as set out in Title 18, USC, Section 4802, are in escape status within the Escape and Rescue Act when they fail to return to their place of assignment or from furlough as provided by the instructions given them and fall within the USMS's jurisdiction.

EFFECTIVE: 09/10/79

76-1.3.6 INS Escapees

Aliens who escape while in the custody of the U.S. Immigration and Naturalization Service, while being held administratively pending deportation proceedings or on the basis of a warrant of deportation, rather than a substantive Federal offense such as illegal entry or smuggling, are not subject to prosecution under the Escape and Rescue Act and are to be sought for by INS.

EFFECTIVE: 09/10/79

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76-1.3.7 State Prisoners in Federal Custody

(1) Title 18, USC, Section 5003, authorized the Attorney General to contract with officials of a state for the custody of a state prisoner convicted in a state court.

(2) A prisoner committed to the custody of the Attorney General under this section who escapes or attempts to escape violates Title 18, USC, Section 751, and falls within the USMS's jurisdiction.

EFFECTIVE: 09/10/79

76-1.3.8 Military Prisoners

Prisoners convicted and sentenced by a military court-martial are subject to prosecution for EFP and fall within the USMS's jurisdiction if the following conditions exist:

(1) The prisoner was committed to the custody of the Attorney General by the terms of the court-martial sentence. When these conditions exist, the prisoner comes into the constructive custody of the Attorney General at the time sentence is rendered and thereby becomes subject to prosecution for EFP if he/she escapes or attempts to escape.

(2) The prisoner is committed to a place of detention operated by the armed service by the terms of the court-martial but is subsequently transferred to the custody of the Attorney General. When these facts exist the prisoner must actually come into the physical custody of the Attorney General or one of Attorney General's authorized representatives and then escape or attempt to escape before this act can be applied.

EFFECTIVE: 09/10/79

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76-1.3.9 Escapes From Local Custody Where a Federal Detainer has  
been Filed or the Subject has been Federally Sentenced  
Concurrently or Consecutively to the State Offense

(1) When a subject in state custody has been charged federally with an offense under the FBI's jurisdiction and the Federal detainer has been filed but the Federal warrant has not been executed and the subject escapes from local custody, |subject| is a Bureau fugitive under the substantive Bureau offense and should be located and apprehended on the basis of the original warrant charging |subject| with the Bureau offense.

(2) When a subject has been convicted of a state offense and while in state custody the Federal warrant has been executed and the subject is convicted of a Bureau or non-Bureau Federal offense and sentenced concurrently rather than consecutively to the state offense and escapes from local custody, |subject| is an EFP under the Escape and Rescue Act and should be located and apprehended |by the USMS. |

(3) When a subject in state custody has been charged federally with an offense not under the FBI's jurisdiction and Federal detainer has been filed and the subject escapes from local custody, |subject| is not an EFP or Bureau fugitive. The office covering the place of escape may institute a fugitive investigation under the Fugitive Felon Act if requested by the local authorities.

(4) When a subject has been convicted of a state offense and while in state custody the subject is convicted for a Bureau or non-Bureau Federal offense but has not yet been sentenced federally or has been federally sentenced consecutively rather than concurrently and the subject escapes from local custody, |subject| is not an EFP or Bureau fugitive. The office covering the place of escape may institute a fugitive investigation under the Fugitive Felon Act if requested by the local authorities.

(5) The above examples should be distinguished from the situation in which a subject is arrested by the FBI or another Federal agency and is temporarily lodged in a state facility pending his/her appearance before the U.S. Magistrate. If the subject escapes from this state facility, he/she is an EFP and since he/she escaped prior to conviction, a new warrant should be obtained on the original process if the offense was within the Bureau's primary jurisdiction. In these instances the case should be worked out of the substantive matter and EFP added to the character. The fugitive aspects should be coordinated with the USMS and EFP prosecution, by no means, overlooked. In those cases in which the offense was not within the

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| Bureau's primary jurisdiction, the USMS should handle. |

EFFECTIVE: 09/10/79

76-1.3.10 Escapes From Civil Confinement

(1) The Comprehensive Crime Control Act of 1984 (CCCA of 84) was enacted into law on 10/12/84. This Act was responsible for a significant number of changes in the Federal criminal justice system including escapes from Federal civil confinement in EFP matters.

(2) Chapter X, Part L, of the CCCA of 84, entitled "Escape From Custody Resulting From Civil Commitment," amends the Recalcitrant Witness Statute, Title 28, USC, Section 1826, by adding Subsection (c). Subsection (c) covers an escape by an individual who has been civilly confined for refusing to testify before a Federal court or grand jury pursuant to Section 1826. Subsection (c) also covers the escape by an individual following a verdict of not guilty only by reason of insanity and subsequent confinement pursuant to the civil commitment statute, Title 18, USC, Section 4243, added by Chapter IV of the CCCA of 84, entitled "Insanity Defense Reform Act of 1984." In addition, Subsection (c) also covers attempted escapes by individuals confined in the above situations and individuals who aid or assist in such escapes or attempted escapes. Violators are subject to imprisonment for a maximum of three years and a fine of up to \$10,000.

(3) It should be noted that under prior law, persons who escaped from confinement resulting from a civil contempt order under Section 1826 could not be prosecuted since the Escaped Federal Prisoners Statute, Title 18, USC, Section 751, was limited to escapes from custody or confinement by virtue of an arrest or conviction. Section 1826 (c) was passed to remedy this situation.

(4) Subsection 1826 (c) applies from the moment the verdict of not guilty only by reason of insanity is announced until the subject is released after a subsequent court hearing under Section 4243 (c), or is unconditionally released by Federal authorities, or until a state authority takes custody of him/her. Furthermore, Subsection 1826 (c) does not require that the above-mentioned escapes occur while the individual was held under actual guard or direct physical restraint; therefore, custody may be minimal or constructive.

(5) Investigative jurisdiction between the FBI and the

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USMS over Subsection 1826 (c) escapes and subsequent criminal activity by the subjects is identical to the respective jurisdictions dictated by the Department of Justice ruling pertaining to EFP matters as set forth in 76-1.3.1.

EFFECTIVE: 09/07/93

76-1.4 Notification Concerning Escapes and Apprehensions

EFFECTIVE: 09/20/89

76-1.4.1 Bureau of Prisons

The Bureau of Prisons (BOP) facilities should notify the nearest FBI office and USMS office and furnish the details of each escape. The FBI should be notified of escape conspiracy information which becomes known to the BOP.

EFFECTIVE: 09/07/93

76-1.4.2 Bureau Office

(1) In liaison contacts ensure that all escapes involving conspiracy or another FBI violation are promptly reported to the appropriate FBI office so that substantive investigation and FBI-USMS coordinated fugitive inquiry can be initiated.

(2) FBIHQ should be promptly notified by teletype in those instances involving a major mass escape or the escape of a criminal having considerable notoriety of interest to the FBI.

(3) Upon the location of apprehension of the EFP, the USM of the district where located or apprehended should be immediately notified and requested to take custody.



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EFFECTIVE: 09/07/93

76-1.5 Investigative Procedures

(1) Investigation should be given preferred and expeditious attention as soon as the escape is reported in order to promptly apprehend the escapee before he/she is able to leave the general area where the escape was effected.

(2) A definite, prearranged counterescape plan should be formulated concerning roadblocks, terrain search, notification to local police agencies and other investigative steps which, if logical and appropriate, can be immediately utilized.

(3) The prison official reporting the escape should be interviewed regarding the complete details of the escape. This information should be recorded on an FD-302 as possible testimony in the event the escapee is later prosecuted for EFP.

(4) An Agent should promptly examine the subject's prison records to obtain any additional information of lead value.

(5) The office of origin should promptly request the office covering the territory in which the escapee was convicted to review appropriate records and set out the necessary leads in an effort to apprehend the subject.

(6) When reports concerning missing prisoners are received, close liaison must be maintained so that if it proves to be an escape, investigation can be immediately instituted.

(7) Upon the escapee's location or apprehension he/she should be interviewed in detail regarding his/her escape to ensure successful prosecution.

EFFECTIVE: 09/20/89

76-1.6 Office of Origin

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EFFECTIVE: 07/11/85

76-1.6.1 General Rule

(1) The office of origin shall be that office covering the place of the escape, attempted escape, or other offense.

(2) Once an escaped Federal prisoner has been apprehended the office of origin must promptly notify the correctional institution from which the subject escaped.

EFFECTIVE: 07/11/85

76-1.6.2 Exception Case

When a prisoner is released on furlough from a facility in one territory to voluntarily report for permanent transfer to a facility in another territory and prisoner fails to report as required (escapes), the Department has held that venue for EFP prosecution is where the subject was required and failed to report. Therefore, the office covering this location will act as the office of origin in directing the fugitive investigation and will also present the EFP violation for prosecutive opinion. (Only when investigation specifically authorized by FBIHQ.)

EFFECTIVE: 07/11/85

76-1.7 Venue

Prosecution shall be in the district in which the escape, attempted escape, or other offense was committed.

EFFECTIVE: 11/08/78

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76-1.8 Reporting Procedures (See MIOG, Part I, 25-10, 76-2.9, 76-3.13, 88-12, 115-7 & Part II, 21-29.)

(1) No communication need be submitted to FBIHQ at the outset of a routine nonfugitive investigation handled under the Escape and Rescue Statute; however, should good judgment dictate that FBIHQ and/or the Bureau of Prisons Headquarters be advised of such inquiry, a teletype or airtel, together with LHM (if dissemination desired), should be submitted to FBIHQ.

(2) If the subject of an escaped Federal prisoner or Escape and Rescue matter is placed in a fugitive status, two copies of an FD-65 should be promptly forwarded to FBIHQ, and one copy submitted directly to the Savannah Information Technology Center (SITC), by the office of origin. Upon the fugitive's apprehension or location, the locating office must promptly notify FBIHQ by teletype (at least ROUTINE in precedence), followed by Form FD-515 entry into the Integrated Statistical Reporting and Analysis Application (ISRAA). The office of origin must ensure that all auxiliary offices are notified by teletype to discontinue.

(3) One copy of a Prosecutive Report should be submitted to FBIHQ upon the authorization of prosecution by the USA, or when a specific request for such report is made by the USA or FBIHQ.

(4) In reporting the results of prosecutive action following the submission of a Prosecutive Report, while Form R-84 (if applicable) is to be forwarded to FBIHQ, a separate letter (airtel with LHM if dissemination desired) should also be submitted detailing the final disposition of each subject. The required letter should note that Form FD-515 has been entered into the ISRAA.

EFFECTIVE: 10/11/94

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||76-1.9| Character

(1) Escaped Federal Prisoner, applies to all escapes and attempted escapes under Section 751.

(2) Escape and Rescue, applies to all other cases under Sections 752, 755, 756, and 757.

(3) Escaped Federal Prisoner - Harboring, applies to cases under Section 1072.

(4) Irregularities in Federal Penal Institutions, applies to all violations of Sections 1791 and 1792 which arise from investigations of the sections enumerated above.

EFFECTIVE: 11/08/78

76-2 PROBATION VIOLATORS

EFFECTIVE: 09/20/89

76-2.1 Background

By Department of Justice directive dated 8/11/88, the U.S. Marshals Service (USMS) under Title 18, USC, Sections 3651-3656, was given the responsibility for the apprehension of all Federal probation violators (PBV). With the specific approval of FBIHQ and the concurrence of the USMS, an office may conduct such an inquiry.

EFFECTIVE: 09/20/89

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76-2.2 Principal Statute - Section 3651. Suspension of Sentence  
and Probation

"Upon entering a judgment of conviction of any offense not punishable by death or life imprisonment, any court having jurisdiction to try offenses against the United States when satisfied that the ends of justice and the best interest of the public as well as the defendant will be served thereby, may suspend the imposition or execution of sentence and place the defendant on probation for such period and upon such terms and conditions as the court deems best.

"Upon entering a judgment of conviction of any offense not punishable by death or life imprisonment, if the maximum punishment provided for such offense is more than six months, any court having jurisdiction to try offenses against the United States, when satisfied that the ends of justice and the best interest of the public as well as the defendant will be served thereby, may impose a sentence in excess of six months and provide that the defendant be confined in a jail-type institution for a period not exceeding six months and that the execution of the remainder of the sentence be suspended and the defendant placed on probation for such period and upon such terms and conditions as the court deems best.

"Probation may be granted whether the offense is punishable by fine or imprisonment or both. If an offense is punishable by both fine and imprisonment, the court may impose a fine and place the defendant on probation as to imprisonment. Probation may be limited to one or more counts or indictments, but, in the absence of express limitations, shall extend to the entire sentence and judgment.

"The court may revoke or modify any condition of probation or may change the period of probation. The period of probation, together with any extension thereof, shall not exceed five years.

"While on probation and among the conditions thereof, the defendant may be required to pay a fine in one or several sums; and may be required to make restitution or reparation to aggrieved parties for actual damages or loss caused by the offense for which conviction was had; and may be required to provide for the support of any persons, for whose support he is legally responsible.

"The defendant's liability for any fine or other punishment imposed as to which probation is granted, shall be fully discharged by the fulfillment of the terms and conditions of probation."

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EFFECTIVE: 09/20/89

76-2.3 Definition

For Bureau purposes, a probation violator fugitive is a subject for whom a probation violator (bench) warrant was issued by a U.S. District Court and whose location is unknown at the time the warrant is issued.

EFFECTIVE: 09/20/89

76-2.4 Requests for Assistance

(1) Investigation should not be initiated by an office. If assistance is requested, any such requests should, after 8/11/88, be referred to the USMS. Specific FBIHQ approval must be obtained and USMS concurrence and very unusual circumstances must exist for FBI involvement without a substantive violation.

(2) If, after 8/11/88, a new PBV subject, within the primary jurisdiction of the USMS also becomes an FBI substantive fugitive, of course, we will seek his/her apprehension under the substantive case, but "OO" must advise the USM in the district holding the warrant of its fugitive involvement and notify USM's office promptly upon apprehension. This notification will, of course, not change the existing procedure of advising the USM in the district where the subject is located.

(3) Should, after 8/11/88, a PBV within the responsibility of the USMS become a suspect in an FBI substantive case and "OO" desires to actively seek the subject's apprehension under the ongoing substantive matter, this may be done provided the USMS is notified and the fugitive aspects of the case are an FBI-USMS coordinated effort. Of course, when the fugitive is apprehended or eliminated as a suspect in the substantive case which no longer demands FBI fugitive involvement, the appropriate USM must be notified.

(4) If any subject of an existing USMS responsibility PBV matter is wanted as a fugitive in an FBI substantive case, the existing "76" case should be consolidated and handled as a dual character substantive case.

(5) If for some reason it should become imperative for an "OO"

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to initiate a "76" (PBV) fugitive investigation, involving a non-FBI case, advise FBIHQ on a UACB basis of the facts demanding FBI involvement.

EFFECTIVE: 09/20/89

76-2.5 Preliminary Investigation

In addition to the usual fugitive investigation, the following sources should be contacted at the outset of the investigation to obtain information of lead value.

(1) The U.S. Probation Officer to whom the subject was placed under supervision.

(2) The USM to whom the warrant was forwarded.

EFFECTIVE: 09/20/89

76-2.6 Apprehension or Location

(1) When a probation violator is apprehended violator should be turned over to the nearest USM. If located in custody, the USM should be advised of violator's location.

(2) In addition, the nearest U.S. Probation Officer should be notified of the subject's apprehension or location.

EFFECTIVE: 09/20/89

76-2.7 Prosecution

Probation violation is a nonprosecutable offense. When apprehended, the court may revoke the probation and require the subject to serve the original sentence imposed, or any lesser sentence, and if imposition of sentence was suspended, may impose any sentence which might originally have been imposed.

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EFFECTIVE: 09/20/89

76-2.8 Office of Origin

The office of origin shall be that office in whose territory the probation violator warrant was issued for the subject.

EFFECTIVE: 09/10/79

76-2.9 Reporting Procedures (See MIOG, Part I, 25-10, 76-1.8, 76-3.13, 88-12, 115-7 & Part II, 21-29.)

(1) Upon initiating a probation violator investigation, two copies of an FD-65 must be promptly forwarded to FBIHQ, and one copy submitted directly to the Savannah Information Technology Center (SITC), by the office of origin. Upon the fugitive's apprehension or location, the locating office must promptly notify FBIHQ by teletype (at least ROUTINE in precedence), followed by Form FD-515 entry into the Integrated Statistical Reporting and Analysis Application (ISRAA). The office of origin must ensure that all auxiliary offices are notified by teletype to discontinue.

(2) As a general rule, Prosecutive Reports are not required in probation violator cases and, therefore, are not to be submitted to FBIHQ unless a specific request is made for same.

EFFECTIVE: 10/11/94

76-2.10 Character

Probation Violator (PBV). (The original substantive offense should not be included in the character.)

EFFECTIVE: 09/10/79



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76-3 PAROLE VIOLATORS AND MANDATORY RELEASE VIOLATORS

EFFECTIVE: 09/20/89

76-3.1 Background

By Department of Justice directive dated 8/11/88, the U.S. Marshals Service (USMS) was given the responsibility for apprehending all parole violators (PV), Title 18, USC, Sections 4202-4207, and 5037, and mandatory release violators (MRV), Title 18, USC, Sections 4161-4166, when referred for assistance by the U.S. Parole Commission (USPC). With the specific approval of FBIHQ and the concurrence of the USMS and USPC, an office may conduct such an inquiry.

EFFECTIVE: 09/20/89

76-3.2 Principal Statutes

EFFECTIVE: 09/20/89

76-3.2.1 Section 4202. Adult Prisoners Eligible for Parole

"A Federal prisoner, other than a juvenile delinquent or a committed youth offender, wherever confined and serving a definite term or terms of over one hundred and eighty days, whose record shows that he has observed the rules of the institution in which he is confined, may be released on parole after serving one-third of such term or terms or after serving fifteen years of a life sentence or of a sentence of over forty-five years."

EFFECTIVE: 09/20/89

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76-3.2.2 Section 5017. Release of Youth Offenders

"(a) The Division may at any time after reasonable notice to the Director release conditionally under supervision a committed youth offender. When, in the judgment of the Director, a committed youth offender should be released conditionally under supervision he shall so report and recommend to the Division.

"(b) The Division may discharge a committed youth offender unconditionally at the expiration of one year from the date of conditional release.

"(c) A youth offender committed under Section 5010 (b) of this chapter shall be released conditionally under supervision on or before the expiration of four years from the date of his conviction and shall be discharged unconditionally on or before six years from the date of his conviction.

"(d) A youth offender committed under Section 5010 (c) of this chapter shall be released conditionally under supervision not later than two years before the expiration of the term imposed by the court. He may be discharged unconditionally at the expiration of not less than one year from the date of his conditional release. He shall be discharged unconditionally on or before the expiration of the maximum sentence imposed, computed uninterruptedly from the date of conviction."

EFFECTIVE: 09/20/89

76-3.2.3 Section 5037. Parole of Juvenile Delinquents

A juvenile delinquent who has been committed and who, by his/her conduct, has given sufficient evidence that he/she has reformed, may be released on parole at any time under such conditions and regulations as the USPC deems proper if it shall appear to the satisfaction of such Commission that there is reasonable probability that the juvenile will remain at liberty without violating the law.

EFFECTIVE: 09/20/89

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76-3.2.4 Section 4164. Mandatory Released Prisoner Treated as  
Parolee

A prisoner having served his/her term or terms less good time deductions shall, upon release, be deemed as if released on parole until the expiration of the maximum term or terms for which he/she was sentenced less one hundred and eighty days.

EFFECTIVE: 09/10/79

76-3.3 Definition

A parole or mandatory release violator fugitive is a subject for whom a parole or mandatory release violator warrant has been issued by the USPC. No other process is necessary and these warrants are valid anywhere in the United States or its territories.

EFFECTIVE: 09/10/79

76-3.4 Distinction Between Parole and Mandatory Release

EFFECTIVE: 09/10/79

76-3.4.1 Parole

Parole of adult prisoners, youth offenders, and juvenile delinquents is within the discretion of the USPC as provided in Sections 4202, 5017, and 5037 respectively.

EFFECTIVE: 09/10/79

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76-3.4.2 Mandatory Release

(1) Mandatory release is not within the discretion of the USPC. If not paroled, prisoners have a legal right to be mandatorily released either conditionally or unconditionally, when they have served their sentence with "good time" and "industrial good time" deducted, provided their conduct has been satisfactory.

(2) The amount of "good time" and "industrial good time" a prisoner may acquire is statutory and dependent upon the length of his/her sentence.

(3) Section 4161 provides the rate of five days "good time" per month for prisoners sentenced from six months to one year, six days per month on sentences of one to three years, and so on up to the maximum allowance of ten days per month if the sentence is ten years or more.

(4) Section 4162 provides for up to three additional days per month of "industrial good time" for actual employment while incarcerated the first year and up to, but not to exceed, five days per month for any succeeding year of incarceration.

(5) If the "good time" and "industrial good time" earned is more than 180 days, he/she is conditionally released for this period of "good time" and "industrial good time" earned less 180 days.

(6) A conditional release places the individual under the supervision of a U.S. Probation Officer. If he/she violates the conditions while under supervision, a mandatory release violator's warrant can be issued for his/her arrest.

(7) If the "good time" and "industrial good time" earned is 180 days or less, the prisoner is unconditionally released after he/she has served his/her sentence less "good time" and "industrial good time" earned.

(8) An unconditional release does not place the individual under the supervision of the USPC, therefore, a mandatory release violator's warrant cannot be subsequently issued.

EFFECTIVE: 09/20/89

76-3.5 Deleted

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EFFECTIVE: 09/20/89

76-3.6 Requests for Assistance

(1) All parole violator and mandatory release violator warrants are issued by the regional offices of the USPC. Any request for FBI assistance received from the U.S. Probation Officer should be referred to the USMS after 8/11/88. Specific FBIHQ approval, USMS and USPC concurrence, and very unusual circumstances must exist for FBI involvement without a substantive violation.

(2) If, after 8/11/88, a new PV or MRV subject within the primary jurisdiction of the USMS also becomes an FBI substantive fugitive, of course, we will seek his/her apprehension under the substantive case, but "OO" must advise the USM in the district holding the warrant of its fugitive involvement and notify USM's office promptly upon apprehension. This notification will, of course, not change the existing procedure of advising the USM in the district where the subject is located.

(3) Should, after 8/11/88, a PV or MRV within the responsibility of the USMS become a suspect in an FBI substantive case and "OO" desires to actively seek the subject's apprehension under the ongoing substantive matter, this may be done provided the USMS is notified and the fugitive aspects of the case are an FBI-USMS coordinated effort. Of course, when the fugitive is apprehended or eliminated as a suspect in the substantive case which no longer demands FBI fugitive involvement, the appropriate USM must be notified.

(4) If any subject of an existing USMS responsibility PV or MRV matter is wanted as a fugitive in an FBI substantive case, the existing "76" (PV or MRV) case should be consolidated and handled as a dual character substantive case.

(5) If for some reason it should become imperative for an "OO" to initiate a "76" (PV or MRV) fugitive investigation involving a non-FBI case, advise FBIHQ on a UACB basis of the facts demanding FBI involvement.

EFFECTIVE: 09/20/89

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76-3.7 U.S. Parole Commission Structure

(1) Through the Parole Commission and Reorganization Act of 5-14-74, the U.S. Board of Parole became known as the U.S. Parole Commission.

(2) |Deleted|

(3) Starting in May, 1974, its headquarters in Washington, D.C., was abolished and they instituted a policy of decentralization and region- alization through the creation of five regions with headquarter regional offices established as follows:

Philadelphia  
Atlanta  
Dallas  
Kansas City  
San Francisco

Northeast  
Southeast  
South Central  
North Central  
Western

(4) |Deleted|

EFFECTIVE: 09/10/79

76-3.8 Preliminary Investigation

In addition to the usual fugitive investigation the following sources should be contacted at the outset of the investigation to obtain information of lead value.

(1) The U.S. Probation Officer to whom the subject was paroled or released for supervision.

(2) The USM to whom the warrant was forwarded by the USPC.

EFFECTIVE: 09/10/79

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76-3.9 Apprehension or Location

(1) When a parole or mandatory release violator is apprehended he/she should be turned over to the nearest USM. If located in custody, the USM should be advised of violator's location.

(2) In addition, the nearest U.S. Probation Officer should be notified of the subject's apprehension or location.

EFFECTIVE: 08/21/87

76-3.10 Prosecution

Parole and mandatory release violations are nonprosecutable offenses. When apprehended, the USPC may modify the terms and conditions of the parole or revoke the parole and require the prisoner to serve all or any part of the remainder of the original sentence.

EFFECTIVE: 08/21/87

76-3.11 Youth Offender Subjects

(1) Though the Federal Youth Corrections Act (FYCA) was repealed by the Comprehensive Crime Control Act of 1984, Public Law 98-473, effective 10/12/84, individuals under the age of 22 being sentenced before that date upon a guilty plea or conviction were eligible for special sentencing conditions under the FYCA.

(2) Prior to 8-1-77, an individual sentenced under the FYCA, who was released prior to his/her sentence termination date and subsequently declared a parole or mandatory release violator, could only be sought as a fugitive until his/her sentence termination date.

(3) If the subject avoided apprehension until subject's sentence termination date, the warrant was withdrawn by the USPC and the fugitive investigation was discontinued.

(4) This policy was based on the USPC regulation that a youth offender's sentence continues to run from the date of sentencing and the issuance of a parole or mandatory release violator's warrant does not toll the sentence termination date.

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(5) As of 8-1-77, a new regulation of the USPC now provides that the issuance of a parole or mandatory release violator's warrant tolls the sentence termination date of the youth offender if he/she is charged with absconding from supervision or is in escape status.

(6) Based on this regulation, the fugitive investigation for a youth offender should not be discontinued upon his/her sentence termination date if he/she has been charged with absconding from supervision or is in escape status.

(7) For those youth offenders who are declared parole or mandatory release violators and not so charged or in escape status, the warrant will be withdrawn by the USPC upon his/her sentence termination date and the Bureau's fugitive investigation will be discontinued at that time.

EFFECTIVE: 08/21/87

76-3.12 Narcotic Addict Rehabilitation Act (NARA)

The identical USPC regulations, investigative procedures, and Bureau policy that apply to youth offenders, handled under the FYCA, as set forth in Section 76-3.11, also apply to narcotic addicts, handled under NARA, who are committed under Section 4253, for an indeterminate period of time not to exceed ten years, and are conditionally released under supervision under Section 4254.

EFFECTIVE: 09/10/79

76-3.13 Reporting Procedures (See MIOG, Part I, 25-10, 76-1.8, 76-2.9, 88-12, 115-7 & Part II, 21-29.)

(1) Upon initiating a parole or mandatory release violator investigation referred to the field, no initial FD-65 or other communication need be submitted to FBIHQ. Upon the fugitive's apprehension or location, the locating office must promptly notify FBIHQ by teletype (at least ROUTINE in precedence), followed by Form FD-515 entry into the Integrated Statistical Reporting and Analysis Application (ISRAA). The office of origin must ensure that all auxiliary offices are notified by teletype to discontinue.



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(2) As a general rule, Prosecutive Reports are not required in parole and mandatory release violator cases and, therefore, are not to be submitted to FBIHQ unless a specific request is made for same.

EFFECTIVE: 11/01/93

76-3.14 Character

Parole Violator (PV) or Mandatory Release Violator (MRV). (The original offense for which the subject was sentenced should not be carried in the character.)

EFFECTIVE: 09/10/79

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SECTION 77. BACKGROUND INVESTIGATION - PRESIDENTIAL APPOINTMENT  
WITH SENATE CONFIRMATION; - U.S. COURTS; - DEPARTMENT  
OF JUSTICE; - U.S. ATTORNEY'S OFFICE STAFF;  
- U.S. ATTORNEY'S OFFICE;  
- DEPARTMENT OF JUSTICE - REIMBURSABLE;  
BACKGROUND REINVESTIGATION - DEPARTMENT OF JUSTICE

77-1 GENERAL INSTRUCTIONS

These instructions supplement those outlined in Part II,  
Section 17 of this manual and pertain to the following  
subclassifications and positions:

EFFECTIVE: 07/02/93

77-1.1 77A: Background Investigation - Presidential Appointment  
with Senate Confirmation - Nonreimbursable (See MAOP,  
Part II, 3-1.1, 3-1.2 and 10-23; MIOG, Part I, 77-3, Part  
II, 17-2; Correspondence Guide-Field, 1-17.)

- (1) Supreme Court Justice
- (2) U.S. Court of Appeals Judge
- (3) U.S. District Court Judge
- (4) Court of International Trade Judge
- (5) U.S. Claims Court Judge
- (6) Court of Military Appeals Judge
- (7) Court of Veteran Appeals Judge
- (8) Attorney General of the U.S.
- (9) Director, FBI
- (10) Administrator/Deputy Administrator, DEA

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- (11) Deputy Attorney General
- (12) Assistant Attorney General
- (13) U.S. Marshal
- (14) U.S. Attorney
- (15) Department of Justice Executive
- (16) Unspecified Position

| (17) Other |

EFFECTIVE: 12/01/93

77-1.2 77B: Background Investigation - U.S. Courts - 15 Year  
| Scope (or since the candidate's 18th birthday, whichever  
is less) - | Reimbursable (See MAOP, Part II, 3-1.1, 3-1.2  
and 10-23; MIOG, Part I, 77-3, Part II, 17-2, 17-2.1;  
Correspondence Guide-Field, 1-17.)

- | (1) | U.S. Magistrate Judge |
- | (2) | U.S. Bankruptcy Court Judge
- | (3) U.S. Bankruptcy Trustee
- | (4) U.S. Bankruptcy Administrator
- | (5) U.S. Circuit Court Executive
- | (6) U.S. District Court Executive |

The above investigations are conducted for the  
Administrative Office of the U.S. Courts.

EFFECTIVE: 12/20/96

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77-1.3 77C: Background Investigation - U.S. Courts - |10|  
Year |Scope (or since the candidate's 18th birthday,  
whichever is less) - |Reimbursable (See MAOP, Part II,  
3-1.1, 3-1.2 and 10-23; MIOG, Part I, 77-3, Part II, 17-2,  
17-2.1; Correspondence Guide-Field, 1-17.)

(1) |U.S. Probation Officer|

(2) |U.S. Pretrial Services Officer|

(3) |U.S. Public Defender|

(4) |Independent Counsel Staff (does NOT include the  
position of Independent Counsel)

(5) Other|

EFFECTIVE: 12/20/96

77-1.4 |Deleted|

EFFECTIVE: 12/20/96

77-1.5 |77E:| Background Investigation - |Department of Justice -|  
Nonreimbursable (See MAOP, Part II, 3-1.1, 3-1.2 and  
10-23; MIOG, Part I, 77-3, Part II, 17-2; Correspondence  
Guide-Field, 1-17.)

(1) Foreign Intelligence Surveillance Court (FISC) Judge  
(See MIOG, Part II, 23-9.5)

(2) Schedule C (Political Appointment)

(3) Departmental Attorney

(4) Departmental Staff

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- (5) Honor Recruit Attorney
- (6) Paralegal Assistant/Specialist
- (7) Executive Office Staff

EFFECTIVE: 12/01/93

77-1.6 | 77F: | Background Investigation - U.S. Attorney's  
Office | (Staff) - Reimbursable | (See MAOP, Part II, 3-1.1,  
3-1.2 and 10-23; MIOG, Part I, 77-3, 77-4.3, Part II,  
17-2, 17-2.1; | Correspondence Guide-Field, 1-17.)

| U.S. Attorney's Office Staff (Field) |

EFFECTIVE: 12/01/93

| 77-1.7 | Deleted |

EFFECTIVE: 01/03/97

77-1.8 | 77H: | Background Investigation - U.S. Attorney's Office  
(Attorney) | - Reimbursable (See MAOP, Part II,  
3-1.1, 3-1.2 and 10-23; MIOG, Part I, 77-3, | 77-4.3, | Part  
II, | 17-2, 17-2.1; | Correspondence Guide-Field, 1-17.)

- (1) | Assistant U.S. Attorney |
- (2) | Special Attorney |
- (3) | Cross Designated Attorney |

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77-1.9 | 77I: | Background | Investigation | - Department of  
Justice - Reimbursable (See MAOP, Part II, 3-1.1,  
3-1.2 and 10-23; MIOG, Part II, 17-2, 17-2.1; |  
Correspondence Guide-Field, 1-17.)

- | (1) | U.S. Trustee |
- | (2) | Assistant U.S. Trustee |
- | (3) | Chapter 13 Trustee |
- | (4) | Administrative Law/Immigration Judge |
- | (5) | Other |

EFFECTIVE: 12/01/93

77-1.10 | 77J: | Background Reinvestigation - Department of  
Justice - | 10 | Year - Reimbursable (See MAOP, Part II,  
3-1.1, 3-1.2 and 10-23; MIOG, Part I, 77-3, 77-4.11, Part  
II, 17-2, | 17-2.1, | 17-6.8; Correspondence Guide-Field,  
1-17.)

- | (1) DOJ | Executive |
- | (2) DOJ | Attorney |
- | (3) Field | Attorney |
- (4) DOJ Staff
- (5) Field Staff

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77-1.11 77K: Background Reinvestigation - Department of Justice - 7 Year - Reimbursable (See MAOP, Part II, 3-1.1, 3-1.2 and 10-23; MIOG, Part I, 77-3, 77-4.11, Part II, 17-2, 17-2.1, 17-6.8; Correspondence Guide-Field, 1-17.)

- (1) DOJ Executive
- (2) DOJ Attorney
- (3) Field Attorney
- (4) DOJ Staff
- (5) Field Staff

EFFECTIVE: 12/01/93

77-1.12 77L: Background Reinvestigation - Department of Justice - 5 Year - Reimbursable (See MAOP, Part II, 3-1.1, 3-1.2 and 10-23; MIOG, Part I, 77-3, 77-4.11, Part II, 17-2, 17-2.1, 17-6.8; Correspondence Guide-Field, 1-17.)

- (1) DOJ Executive
- (2) DOJ Attorney
- (3) Field Attorney
- (4) DOJ Staff
- (5) Field Staff

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77-1.13 77M: Background Reinvestigation - Department of Justice -  
3 Year - Reimbursable (See MAOP, Part II, 3-1.1, 3-1.2 and  
10-23; MIOG, Part I, 77-3, 77-4.11, Part II, 17-2, 17-2.1,  
17-6.8; Correspondence Guide-Field, 1-17.)

- (1) DOJ Executive
- (2) DOJ Attorney
- (3) Field Attorney
- (4) DOJ Staff
- (5) Field Staff

EFFECTIVE: 12/01/93

77-2 INITIATION OF INVESTIGATION

(1) Completed SF-86 (Questionnaire for Sensitive Positions) forms are received from the referral agencies in most cases. These forms are reviewed by FBIHQ personnel for conformance and completeness. Obvious deficiencies are identified and appropriate leads set forth to resolve inconsistent and/or incomplete information, in addition to routine investigative leads. The initial investigative leads are set by FBIHQ, using the SF-86 as a guide. Any additional leads discovered by the field during investigation should be set out expeditiously (see Part II, Section 17-3.7 of this manual). Individuals conducting investigations should be familiar with Part II, Sections 17 and 23-6 of this manual and Part II, Section 10-13.3 of the Manual of Administrative Operations and Procedures.

(a) For most Presidential appointments (77A cases), the completed SF-86 is not received from the referral agency. The SF-86, Supplement to SF-86, Supplemental Instructions for Completing SF-86, and two copies of the U.S. Department of Justice Tax Check Waiver are sent directly to the candidate from FBIHQ. It is the responsibility of the field to gather these forms during the initial candidate interview and expeditiously forward the original documents, along with fingerprint cards and a copy of the candidate interview (on FD-302), to FBIHQ so appropriate leads may be set forth. In order to ensure prompt handling of the candidate's forms, the initial interview



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of the candidate should be conducted within five (5) working days after receipt of instructions from FBIHQ.

(b) Further, the field is responsible for setting out leads regarding information disclosed by the candidate during his/her initial interview which does not appear on the SF-86.

(2) Investigations in these categories are usually ordered by teletype or airtel and must be given preferential and expeditious attention.

EFFECTIVE: 07/02/93

77-3            SCOPES OF INVESTIGATION (See MIOG, Part I, 77-1.1 through 77-1.13.)

Investigations in these categories should include all investigation required in Part II, Section 17 of this manual, unless otherwise noted. The type of BI will be set out in the opening communication by subclassification. The scopes of investigation for 77 subclassifications are as follows:

(1) 77A - Covers the candidate's adult life, since age 18.

(2) 77B - Covers the past 15 years of the candidate's life or since age 18, whichever is less, but in no case less than two (2) years.

(3) 77C - Covers the past 10 years of the candidate's life or since age 18, whichever is less, but in no case less than two (2) years.

(4) Deleted

(5) 77E - Covers the past 10 years of the candidate's life or to age 18, whichever is less, but in no case less than two (2) years.

(6) 77F - Covers the past 10 years of the candidate's life or to age 18, whichever is less, but in no case less than two (2) years.

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(7) Deleted

(8) 77H - Covers the past 10 years of the candidate's life, or to age 18, whichever is less.

(9) 77I - Covers the past 10 years of the candidate's life, or to age 18, whichever is less.

(10) 77J - Covers the past 10 years of the employee's life.

(11) 77K - Covers the past seven (7) years of the employee's life.

(12) 77L - Covers the past five (5) years of the employee's life.

(13) 77M - Covers the past three (3) years of the employee's life.

EFFECTIVE: 01/03/97

77-3.1 Revised and renumbered as 77-4.3

EFFECTIVE: 07/02/93

77-3.2 Revised and renumbered as 77-4.4

EFFECTIVE: 07/02/93

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| 77-3.3 | Revised and renumbered as 77-4.5 |

EFFECTIVE: 07/02/93

| 77-3.4 | Revised and renumbered as 77-4.2 |

EFFECTIVE: 07/02/93

| 77-4 | ADDITIONAL INVESTIGATIVE GUIDELINES

| In addition to investigation required in Part II, Section  
17 of this manual, the following investigation must be conducted:

EFFECTIVE: 07/02/93

| 77-4.1 | Issues/Derogatory Information Developed

| During any BI, regardless of the scope of investigation  
and/or the questions, issues or derogatory information developed  
should be fully investigated and brought to a logical conclusion.  
This includes a candidate's admission of illegal or unusual activity  
prior to the scope of the BI. |

EFFECTIVE: 07/02/93

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||77-4.2| Qualifications

| In all cases concerning Federal judgeships (including U.S. Bankruptcy and U.S. Magistrate Judges), other Presidential appointments and attorney positions, ascertain the overall qualifications of the candidates, as well as character, loyalty, reputation, etc. Specific comments from each person interviewed should be set forth in the report. In cases concerning U.S. Bankruptcy Judge and U.S. Trustee positions, also obtain comments concerning the candidate's experience in bankruptcy matters.

EFFECTIVE: 07/02/93

77-4.3 Prescreening Reports | (See MIOG, Part I, 77-1.6 & 77-1.8, Part II, 17-2, 17-2.1.) |

Candidates under consideration for field positions in the U.S. Attorneys' Offices (77Fs and 77Hs) undergo a prescreening process in most cases. Contact should be made with the U.S. Attorney's Office where the candidate will serve in order to review the prescreening report and interview the Administrative Officer to obtain any information of interest to our investigation.

EFFECTIVE: 12/01/93

||77-4.4| Bar Membership/Certified Public Accountant (CPA) Status

| If the candidate is an attorney or CPA, determine if he/she is licensed to practice in every state where the candidate has lived or worked since completing his/her professional education. Check grievance committee records in any state where the candidate is or has been licensed. It is not necessary to verify membership in voluntary associations such as the American Bar Association. When verifying that the candidate is licensed to practice, the following statement must appear: "The above-named agency is the licensing agency for attorneys (or CPAs) in the State (or Commonwealth) of (state name)."

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EFFECTIVE: 07/02/93

77-4.5 Judicial and Other Positions Requiring Senate  
Confirmation (See MIOG, Part I, 77-4.6 and 77-4.9.)

Captioned positions require a more in-depth investigation which must encompass the following in addition to investigative instructions set out in Part II, Section 17 of this manual:

| (1) | Verify the candidate's ownership of all real estate, and check deed(s) for any covenants regarding race, religion, etc.

| (2) | Check records of county clerk (or equivalent) to determine if any personal, tax or mechanical liens exist. If so, fully explain. Do not contact Internal Revenue Service for any details regarding federal tax liens, as this is done by the referral agencies.

| (3) | When applicable, determine the candidate's professional reputation, legal ability, types of cases handled, trial experience, courtroom demeanor, reputation for fairness, temperament, bias or prejudice against any group, and ability to weigh conflicting testimony and make factual determinations through:

(a) Interviews of six (6) attorneys who are acquainted with the candidate, to include three (3) attorneys with whom the candidate associates and three (3) who have opposed, or have appeared before, the candidate in court;

(b) Interviews of three (3) federal, state and local judges familiar with the candidate; and

(c) Interviews of the chief federal judge and the U.S. Attorney in the district where the candidate will serve, if appointed.

| (4) | Interview the candidate's personal physician regarding the candidate's health (Senate confirmation cases only).

| (5) | Identify all organizations to which the candidate belongs or has belonged, including private and social clubs. Obtain information from an official about the membership policy of the

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organization with regard to race, religion, sex, etc. Ensure the possibility of de facto discrimination is explored. If the organization has/had a discriminatory membership policy, determine whether the candidate participated in changing or attempting to change the policy.

| (6) | Interview local and state chairpersons of both major political parties (Senate confirmation cases only).

| (7) | Interview local religious and labor leaders in the candidate's geographic area, only when instructed to do so by FBIHQ.

| (8) | Interview leaders of prominent minority/civil rights groups such as the NAACP, National Urban League, NOW or others that are active in the candidate's geographic area. Identify the position held by the interviewee within the organization.

| (9) | Interview three (3) local, state and/or federal law enforcement officials in the district where the candidate will serve, if appointed. Agents are encouraged to interview representatives of agencies other than the FBI. (See MAOP, Part I, Section 1-15.3(5).)

| (10) | Review files of appropriate federal regulatory agency if the candidate is or was employed in a regulated business (e.g., banking, brokerage firm, etc.).

| (11) | Review any articles written by, or speeches made by the candidate for indications of bias or prejudice regarding race, color, religion, gender, etc. (Ensure that the text of any articles or speeches that indicate, or could be construed to indicate, bias are enclosed with the report.)

| (12) | In those cases requiring Senate confirmation, Washington Metropolitan Field Office will interview the U.S. Senators from the state where the candidate will serve and will review U.S. Secret Service and, if appropriate, Office of Inspector General (Investigations) and Public Integrity Section, DOJ files. If past/current DOJ employee, also review Office of Professional Responsibility and personnel files as appropriate.

| (13) | Review records of the state judicial review committee/board, if candidate is/was a city or state judge. Also, review county/state election commission files, if the judge was elected to the position.

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EFFECTIVE: 06/04/96

77-4.6 U.S. Attorney/U.S. Marshal Update BIs

(1) An understanding has been established with the Department of Justice (DOJ) concerning the BIs of U.S. Attorneys and U.S. Marshals who are being considered for reappointment to their current positions, and who have been the subjects of previous FBI BIs as outlined in 77-4.5.

(2) The update BIs should be limited to specific areas identified as follows:

(a) Credit and arrest checks concerning the candidate;

(b) U.S. Attorney's Office record checks concerning the candidate;

(c) Interviews of neighbors at employee's present residence and other residences since the previous investigation, last five (5) years only;

(d) Interviews of the chief Federal judge and two (2) other Federal judges, and the clerk of the court in the candidate's district;

(e) Interview of the U.S. Attorney in the candidate's district (U.S. Marshal candidates);

(f) Interviews of the candidate's listed references and associates;

(g) Interviews of at least three (3) officials of Federal agencies;

(h) Interviews of at least three (3) local police chiefs and sheriffs in the candidate's district;

(i) Check of appropriate DOJ records (Office of Professional Responsibility, Office of the Assistant Inspector General for Investigations, Public Integrity Section and Official Personnel

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File);

(j) State bar and grievance checks (U.S. Attorney candidates); and

(k) FBI record checks concerning the candidate, close relatives and cohabitants.

EFFECTIVE: 07/02/93

77-4.7 U.S. Trustee and Other Trustee Positions

These positions also require a more in-depth investigation which must encompass the following in addition to investigative instructions set out in Part II, Section 17 of this manual:

(1) When applicable, determine the candidate's professional reputation, legal ability, types of cases handled, trial experience, courtroom demeanor, reputation for fairness, temperament, bias (against social classes of citizens, members of any group - religious, ethnic or racial), etc., through the following:

(a) Interviews of three (3) creditor representatives (a creditor representative is an individual, usually an attorney, who represents a creditor's interest at a bankruptcy hearing) who have knowledge of the candidate;

(b) Interviews of two (2) bankruptcy judges before whom the candidate has appeared and/or who have knowledge of the candidate;

(c) Interview of the Chief U.S. Bankruptcy Judge of the district in which the candidate would serve, if appointed.

(2) Review files of appropriate federal regulatory agency if the candidate is or was employed in a regulated business (i.e., banking, brokerage firm, etc.).

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77-4.8 Administrative Law/Immigration Judge Positions

The Executive Office for Immigration Review is responsible for the administration and interpretation of the immigration laws. The Administrative Law and Immigration Judges act independently in their decision-making capacity, and their decisions are administratively final unless appealed or certified to the Board of Immigration Appeals. These quasi-judicial positions also require a more in-depth investigation which must encompass the following in addition to investigative instructions set out in Part II, Section 17 of this manual:

(1) When applicable, determine the candidate's professional reputation, legal ability, types of cases handled, trial experience, courtroom demeanor, reputation for fairness, temperament, bias (against social classes of citizens, members of any group - religious, ethnic or racial), etc., through:

(a) Interview of the Chief Administrative Hearing Officer (Administrative Law Judge candidates only);

(b) Interview of the Chief Immigration Judge (Immigration Judge candidates only); and

(c) Interviews of three (3) developed sources (individuals not provided by the candidate) who have, to the extent practical, knowledge of the candidate's professional reputation, etc.

EFFECTIVE: 06/04/96

77-4.9 U.S. Bankruptcy and U.S. Magistrate Judge Positions

U.S. Bankruptcy and U.S. Magistrate Judge positions do not require Senate confirmation; however, they are judicial positions and require a more in-depth investigation. In addition to investigative instructions set out in Part II, Section 17 of this manual, investigation as set out in 77-4.5 of this section should be conducted in these BIs, unless otherwise indicated.

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EFFECTIVE: 07/02/93

77-4.10 FISC and Other Special Tribunal Judge Positions

(1) The scope of the reinvestigation of a Federal judge under consideration for an appointment to a Special Tribunal is limited to specific areas identified as follows:

(a) Credit and arrest checks concerning the candidate;

(b) Interviews of the neighbors at the candidate's present residence and other residences since the previous investigation, last five (5) years only;

(c) Verification of state bar membership and check grievance records;

(d) Interviews of the chief Federal judge and three (3) other Federal judges (district and appellate) in the candidate's district;

(e) Interviews of three (3) attorneys in private practice who have appeared before the candidate or who have knowledge of the candidate;

(f) Interviews of the U.S. Attorney and the U.S. Marshal in the candidate's district;

(g) Interview of the representative of any social club or organization in which the candidate holds membership to determine if the organization has/had a discriminatory membership policy;

(h) Review of appropriate records at the Administrative Office of the U.S. Courts and the Public Integrity Section, DOJ; and

(i) FBI record checks concerning the candidate, close relatives and cohabitants.

(2) This BI is not an appraisal of the candidate's performance as a Federal judge; therefore, comments regarding judicial

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qualifications should not be elicited. This BI should seek to obtain comments concerning the candidate's character, associates, reputation, loyalty, discretion, personal demeanor, illegal drug use, prescription drug/alcohol abuse, financial responsibility, and bias. As procedure dictates in any BI, should unfavorable information be developed during the course of the investigation, additional investigation will be conducted as necessary to resolve any issues developed.

EFFECTIVE: 07/02/93

77-4.11 Background Reinvestigation for DOJ Positions (77J-M) (See MIOG, Part I, 77-1.10 through 77-1.13, Part II, 17-6.8.)

In addition to investigative instructions set out in Part II, Section 17 of this manual, ensure the investigation includes at least three (3) developed sources (individuals not provided by the employee) who have, to the extent practical, social knowledge of candidate. Developed sources may include other associates, co-workers (peers/support employees), etc. Also, review the Official Personnel File and other appropriate files at DOJ, and interview supervisor(s) and co-workers within the scope of the BI.

EFFECTIVE: 12/01/93

77-5 INTERVIEW OF CANDIDATE/EMPLOYEE

Each candidate/employee must be interviewed. During the interview, he/she should be provided with the following information:

(1) The FBI will be conducting a BI to develop information which others will consider in determining suitability for employment, appointment or reappointment.

(2) The FBI does not participate in such decisions and makes no recommendations pertaining thereto.

(3) The FBI is not restricted in the BI only to information solicited by the SF-86 or any other form submitted.

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All items in Part II, Section 17-3.2 and 17-5.6 of this manual must be covered during the interview.

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||77-6| REPORTING RESULTS OF INVESTIGATION

(1) All investigation must be submitted in investigative report format. This is to include unsuccessful attempts to locate individuals for interview and any investigative results previously set out in airtel or teletype. All investigation in these matters is for other Government agencies and can only be forwarded by report. Each interview must contain statements regarding financial responsibility and whether or not the interviewee is aware of any past/present illegal drug use or prescription drug/alcohol abuse by the candidate.

(2) Reports should be organized to follow in general the sequence presented in Part II, Section 17-6 of this manual. All categories of interviews (i.e., neighborhood, employment, education) must be preceded by headings. Additionally, block headings should separate each residence and employment and should include the name of employing firm/residence address, city/state, and dates of employment or residence as indicated by candidate on the SF-86. If a discrepancy is found in dates during the investigation, the field office should underline the dates obtained during the investigation. This will indicate to FBIHQ that the discrepancy is not the result of a typographical error. Lengthy reports (more than 25 pages) should include a table of contents. If an interview would logically fall under several headings (i.e., a reference who is also a neighbor), report the interview fully under one heading and cross-reference under any other appropriate headings.

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||77-7| POLITICAL|AFFILIATION|

(1) Nonessential references to a candidate's affiliation with any political party should be omitted.

(2) Essential references to political affiliation should be included. An essential reference is one which suggests a possible inclination on the part of the candidate to use the position he or she is seeking for personal political benefit or one which would reflect on the candidate's ability to perform his or her duties fairly without regard to political affiliation or influence. Also, previous candidacy for or occupancy of public office or office in a political party, or personal or political association with an occupant of public or party office would be essential.

EFFECTIVE: 07/02/93

||77-8| REQUEST FOR INVESTIGATION OR NAME CHECK FROM FEDERAL JUDGE|(See MAOP, Part II, 9-4.2.2(2).|

Investigations are conducted only at the specific request of referral agencies and can only be initiated by FBIHQ. Any request by a Federal judge for a BI should be respectfully forwarded to FBIHQ for referral to the Administrative Office of the U.S. Courts. At the request of a Federal judge, the names of persons being considered for court positions can be searched through field office indices and pertinent information furnished to the judge. Care should be exercised in order to fully protect any informant, technique or source.

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||77-9| STATUS INQUIRIES

If any outside inquiries are received concerning the status of a BI, no comment should be made concerning the progress or completion of the investigation. The caller should be politely referred to the agency requesting the BI for a determination of the BI status.

EFFECTIVE: 07/02/93

||77-10| PRIVACY ACT (PA) REQUIREMENTS

(1) When interviewing individuals under this classification for information concerning themselves or their activities, the interviewing Agent must follow the procedures described in Part I, 190-5 (2) and (3) of this manual.

(2) When interviewing an individual to elicit information concerning someone else (thereby classifying that individual as a source of information), the interviewing Agent must follow the procedure relating to promises of confidentiality as described in Part I, 190-7 of this manual. When the interviewee requests confidentiality under the PA, the level of confidentiality must be clearly set forth in the document recording the results of the interview. Refer to Part II, Section 17-5.4 of this manual for additional instructions.

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77-11

CHARACTER - BACKGROUND INVESTIGATION - PRESIDENTIAL  
APPOINTMENT WITH SENATE CONFIRMATION; - U.S. COURTS; -  
DEPARTMENT OF JUSTICE; - U.S. ATTORNEY'S OFFICE STAFF;  
- U.S. ATTORNEY'S OFFICE;  
- DEPARTMENT OF JUSTICE - REIMBURSABLE; BACKGROUND  
REINVESTIGATION - DEPARTMENT OF JUSTICE

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SECTION 78. ILLEGAL USE OF GOVERNMENT TRANSPORTATION REQUESTS

78-1 STATUTES

The principal Federal statutes under which the illegal use of Government transportation requests may be prosecuted are found in Title 18, USC, Sections 287, 495, 508, 641, 1001 and 1002. Of these sections of the U.S. Code, the only one relating solely to Government transportation requests is Section 508, which is quoted as follows:

EFFECTIVE: 01/31/78

78-1.1 Section 508

"Whoever falsely makes, forges, or counterfeits in whole or in part, any form or request in similitude of the form or request provided by the Government for requesting a common carrier to furnish transportation on account of the United States or any department or agency thereof, or knowingly alters any form or request provided by the Government for requesting a common carrier to furnish transportation on account of the United States or any department or agency thereof; or

"Whoever knowingly passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, any such false, forged, counterfeited, or altered form of request--

"Shall be fined not more than \$5,000 or imprisoned not more than ten years, or both."

EFFECTIVE: 01/31/78

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78-2 POLICY

(1) As noted above, Section 508 is the only section relating solely to the counterfeiting or illegal use of Government transportation requests. Sections 287 and 495 relate to false claims generally while Sections 1001 and 1002 relate to false entries or false papers to defraud the U.S. Section 641 is the section dealing generally with the theft or embezzlement of Government property. The illegal use of Government transportation requests might be prosecuted under any of those sections.

(2) In the majority of cases under this violation, USAs have authorized prosecution under the provisions of Title 18, USC, Section 508. This is called to your attention because Section 3056, Title 18, specifically states that the Secretary of the Treasury is authorized to direct and use the U.S. Secret Service to detect, arrest, and deliver into custody any person violating any of the provisions of Section 508.

(3) U.S. Secret Service has exclusive jurisdiction in cases involving a violation of Section 508; accordingly, where information is received indicating a violation of that section, particularly the counterfeiting of Government transportation requests, such information should be submitted by the respective field offices to the nearest representative of the U.S. Secret Service.

EFFECTIVE: 01/31/78

78-3 MISCELLANEOUS

(1) In any case in which Government transportation requests issued to Bureau employees are reported stolen or lost, such investigations should proceed expeditiously.

(2) In the event the investigation is based upon the theory of an Impersonation violation or the Theft of Government Property, it should be conducted in conformity with the suggestions outlined in the pertinent sections of this manual.

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78-4

CHARACTER - ILLEGAL USE OF GOVERNMENT TRANSPORTATION  
REQUESTS

EFFECTIVE: 01/31/78

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SECTION 79. MISSING PERSONS

79-1 | CRIMINAL JUSTICE INFORMATION SERVICES (CJIS) DIVISION  
(FORMERLY THE IDENTIFICATION DIVISION) | MISSING PERSON  
PROGRAM

EFFECTIVE: 12/02/94

79-1.1 Background Information

(1) From 1933 to 1980, the FBI Identification Division (now CJIS) operated a Missing Person Program. Under that Program, the Division's files were searched and missing person notices established at the request of immediate family members or officials acting in their behalf, e.g., law enforcement authorities, Members of Congress, lawyers, and insurance companies. The Program was discontinued in 1980 because of its greatly diminished utility and value resulting from privacy legislation, and because of the availability of missing person-type services in the National Crime Information Center (NCIC).

(2) On October 12, 1982, the President signed into law the Missing Children Act (MCA) which amends Title 28, USC, Section 534, to require the Attorney General to acquire and exchange information to assist federal, state, and local officials in the identification of unidentified deceased individuals and in the location of missing persons (including an unemancipated person as defined by laws of the state of residence of such person). In order to bring the FBI in compliance with the provisions of the Act, certain policies are explained in detail in Part II, Sections 14 and 16 of this manual.

EFFECTIVE: 12/02/94

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79-1.2 Action to be Taken in Missing Person Matters (See MAOP,  
Part II, 7-3.2.)

This matter is considered a noninvestigative matter; therefore, no missing person case should be opened or assigned. If a written or oral request is received, the administrative procedures should be followed, and information on any record entered should be maintained in a 79-0 administrative control file. These procedures are set forth in Part II, 16-16 of this manual. Also, see Part II Section 14, for the Criminal Justice Information Services Division policy regarding the handling of fingerprint cards for missing persons and unidentified deceased persons. (See MIOG, Part II, 14-10.6.)

EFFECTIVE: 12/02/94

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SECTION 80. PUBLIC AFFAIRS MATTERS

80-1 PUBLIC AFFAIRS MATTERS

In field offices, the FBI's public affairs matters are handled under this classification and involve contacts by the FBI with the general public, federal and state agencies, the Armed Forces, corporations, the news media and numerous other outside organizations. These contacts generally relate to matters of interest to the FBI, and pertain to nonsubstantive topics. Contacts with the news media may be recorded under this classification. The following is a list of examples of public relations matters:

- Liaison With Armed Forces
- Contact With Law Enforcement Officials
- Laboratory Matters-Public Relations
- Research Material-Public Relations
- Human Interest Items
- Field Office Open House
- Radio Scripts
- Television Scripts
- Law Enforcement Committees
- News Media Relations
- News Media Contacts
- Media Relations Representative
- Fugitive Publicity
- Radio and Television Broadcasts-Fugitive Matters
- Speeches

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Radio and Television Appearances

Press Conferences

Manuscripts for Speaking Engagements

For additional assistance regarding public affairs  
| matters, see MAOP, Part II, Section 5 (Press and Publicity).

EFFECTIVE: 04/07/97

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SECTION 83. CLAIMS COURT

83-1 BACKGROUND

(1) Court of Claims of United States was authorized by Act of Congress, approved February 24, 1855. It is a court established under the laws of the United States where plaintiffs may present claims for damages caused by United States, its officers, or its agents arising from:

(a) The Constitution, any Act of Congress, or any regulation of an Executive Department.

(b) Any express or implied contract with the United States.

(2) On April 2, 1982, the Federal Courts Improvement Act of 1982 was signed into law. The Act established a new intermediate Federal Appellate Court known as the U.S. Court of Appeals for the Federal Circuit which combined the Court of Claims and the Court of Customs and Patent Appeals into a single appellate court. The Act also created the U.S. Claims Court which inherited the trial jurisdiction of the Court of Claims. The Act became effective on October 1, 1982.

(3) In cases where amount claimed does not exceed \$10,000, United States district courts have concurrent jurisdiction with Claims Court.

EFFECTIVE: 07/12/84

83-1.2 Procedure for Instituting Suit

(1) Suits in Claims Court are instituted by filing a printed petition, verified by affidavit of plaintiff, his/her agent or attorney.

(2) The petition must contain following basic information:

(a) Title of action including full Christian and

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surnames of all plaintiffs

(b) Plain statement of facts, giving date and place, free from argumentative or impertinent matters

(c) Any action taken on the claim by Congress or any department of Government

(d) Any assignment or transfer of claim or any part thereof, and, if so, when and upon what consideration

(e) Plaintiff is justly entitled to recover amount claimed after allowing all just credits and offsets

(f) A clear citation of any Act of Congress, regulation of an Executive Department or Agency, contract, treaty or patent upon which the suit is based

EFFECTIVE: 07/12/84

83-1.3 Hearings

(1) Evidence is presented by plaintiff and defendant at hearings presided over by a judge of the court. The judge rules upon materiality, relevance, or admissibility of evidence offered and form of questions asked.

(2) In cases investigated by Bureau, Agent conducting investigation is oftentimes called as witness for defendant.

(3) Upon conclusion of testimony for both plaintiff and defendant, counsel for each submits to the judge a written request that certain facts be found for his/her client. This request is based on oral testimony and documentary data admitted in evidence at the hearing.

EFFECTIVE: 07/12/84

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||83-1.4| Argument Before the Court

On designated date of trial calendar both parties in suit, through respective counsel, present to the court oral arguments as to merits of their case.

EFFECTIVE: 07/12/84

||83-1.5| Decision of the Court

Court renders decision in printed form which contains:

- (1) Findings of fact
- (2) Discussion of law as to said findings of fact
- (3) Amount of recovery found for plaintiff or basis for dismissal of action

EFFECTIVE: 07/12/84

||83-1.6| Appeal

|Appeals in any cases in Claims Court are taken by petition of either party to the U.S. Court of Appeals for the Federal Circuit. |

EFFECTIVE: 07/12/84

83-2 INVESTIGATIVE PROCEDURE

(1) Requests for investigation of cases pending in Claims Court are received from Assistant Attorney General in charge of Civil Division of Department. General requests include:

(a) Complete investigation of books and records of plaintiff

(b) Auxiliary examination of records of Government departments and agencies

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(2) Specific requests include:

(a) Locating and interviewing certain witnesses

(b) Locating of certain records

(c) Ascertaining of certain basic information with reference to some particular feature of case at issue

(3) Investigation of books and records of plaintiff requires that Agent assigned to investigation study case as reflected by petition of plaintiff and plan a logical and substantial defense to each proposition advanced by plaintiff.

(4) Record of payments made by Government to plaintiff, as reflected by files of General Accounting Office, Washington, D.C., will be secured by Washington|Metropolitan|Field Office upon request of investigating office.

(5) Cases involving alleged extra costs due to delay on part of Government in construction contracts frequently require a determination of following factors: actual period of delay, allocation of overhead to delay period, and variance in labor rates. Progress reports submitted by plaintiff to representative of Government on a construction contract may show date on which construction work began to taper off or actually ceased and actual period of delay can be thereby fixed. Cause of delay and responsibility for it may be fixed by review of correspondence between plaintiff and Government and from information secured in course of interviews with prospective witnesses employed on construction work in question. Allocation of overhead to delay period is usually possible in cases in which contractor has maintained adequate accounting records. In absence of adequate accounting records, Agent must make equitable and practical survey of facts in question and present them in his/her report so basis may be available for their determination. Claims involving alleged variance in labor rates may be verified by reference to rates in force on Government contracts in various localities in which rates have been authorized by U.S. Department of Labor under Title 40, USC, Section 276a. This type case requires careful investigation because terms of contract as to labor conditions are set forth in proposals incidental to advertising for bids for contract in question. Plaintiffs frequently seek to maintain their own construction organization and allege labor available in the locality was not capable of performing required construction work. Records of U.S. Employment Service, if available, may be of material

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assistance in determining adequacy of plaintiff's allegations.

EFFECTIVE: 10/16/90

83-3

REPORTING PROCEDURE

To set forth the results of investigation, particularly in involved and complicated accounting-type cases, in a complete and orderly manner which will materially aid in the defense of the case, the investigation should be carefully planned. The following outline is set forth for guidance in planning investigations of this nature:

(1) Predication - A brief resume of investigative request from Civil Division should be included in the first paragraph of the details of the first report of office of origin.

(2) Scope and extent of investigation - Outline your investigative and audit plans so that you will be able to fully inform the attorney in charge of defense of case as to the ground covered.

(3) History of plaintiff company - Where necessary and pertinent, obtain data pertaining to plaintiff company from commercial credit reporting agencies.

(4) Statement of Government contract - Determine essential pertinent details of contract in question. It is pointed out that plaintiff frequently includes in its petition only such portions of a contract that support its allegations and omits any reference to portions of a contract favorable to defendant. Fully identify contract by number and date.

(5) Claim of plaintiff - Determine essential details of plaintiff's claim, such as: date filed, claim number, allegations contained in claim, and special features of claim.

(6) Facts at issue in case - Determine the main features of both plaintiff's and defendant's case so that Government attorney may be informed of contested facts therein. This could be broken down as follows: plaintiff's position, defendant's position, facts subject to determination by court, and special features.

(7) Facts disclosed by investigation -

(a) Accounting investigation - Ordinarily the

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results of the accounting investigation will be shown in a summary schedule or schedules comparing item by item the results of the audit conducted with plaintiff's claim, setting forth any differences noted and exceptions made. Be prepared to narratively explain these differences in detail for the benefit of the attorney who will be handling the defense.

(b) Facts secured from interview with prospective witnesses

(c) Data secured from other sources

(8) Conclusion - Be prepared to present a brief, concise summary schedule of the audit results, together with a brief summary of any other information developed which is not susceptible of verification by accounting analysis but which may be of value to the Government attorney defending this suit.

EFFECTIVE: 10/16/90

83-3.1 Locating and Interviewing Witnesses

Investigations for purpose of locating and interviewing witnesses are frequently requested by Civil Division of Department. Agent should consider advisability of securing signed statements and/or making complete notes. Agent should secure sufficient background of case in question so he/she may refresh memory of person interviewed who, due to lapse of time and absence of official record, may plead ignorance as to details of transactions inquired of.

EFFECTIVE: 07/12/84

83-4 ACCOUNTING WORKING PAPERS

Copies of all accounting working papers and schedules prepared should be made and forwarded to FBIHQ as an enclosure to the accounting report for transmittal to Civil Division. When a closing report is received from Washington|Metropolitan|Field Office, original working papers should then be forwarded to FBIHQ by cover LHM for transmittal to Civil Division for completion of their file.

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EFFECTIVE: 10/16/90

83-5 OFFICE OF ORIGIN

FBIHQ will designate office of origin which is to remain origin until case is closed. The office of origin, upon completion of its investigation, is to submit a letter to FBIHQ with a copy to the Washington|Metropolitan|Field Office instructing that Washington|Metropolitan|Field Office follow Claims Court docket until a final decision has been rendered. Included in the letter should be a brief background of the case and the amount involved in the suit. The office of origin file is to be placed in a "pending inactive" status. Washington|Metropolitan|Field Office, acting as auxiliary office, is to follow all cases on a monthly basis and advise origin and FBIHQ when a decision is rendered by the court.

EFFECTIVE: 10/16/90

83-6 PRIVACY ACT - REQUIREMENTS

(1) When interviewing anyone in the above classification, in order to solicit information about himself/herself or his/her own activities, the interviewing Agent must follow the procedures described in Part I, 190-5, subparagraphs (2) and (3), of this manual.

(2) When interviewing an individual to solicit information concerning someone other than the interviewee (thereby classifying that individual as a source of information) the interviewing Agent must follow the procedure relating to promises of confidentiality as described in Part I, 190-7, of this manual.

EFFECTIVE: 10/16/90

83-7 CHARACTER - CLAIMS COURT

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EFFECTIVE: 10/16/90

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SECTION 86. FRAUD AGAINST THE GOVERNMENT - SMALL BUSINESS  
ADMINISTRATION | (SEE MIOG, PART I, SECTION 46.) |

86-1 BACKGROUND

| The 86 classification was eliminated and reclassified in  
Fiscal Year 1996 as 46C (Fraud Against the Government - Small  
Business Administration). See MIOG, Part I, Section 46. |

EFFECTIVE: 07/31/97

| 86-2 | DELETED |

EFFECTIVE: 07/31/97

| 86-3 | DELETED |

EFFECTIVE: 07/31/97

| 86-4 | DELETED |

EFFECTIVE: 07/31/97

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| 86-5 | DELETED |

EFFECTIVE: 07/31/97

| 86-6 | DELETED |

EFFECTIVE: 07/31/97

| 86-7 | DELETED |

EFFECTIVE: 07/31/97

| 86-8 | DELETED |

EFFECTIVE: 07/31/97



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SECTION 87. INTERSTATE TRANSPORTATION OF STOLEN PROPERTY

87-1 STATUTES AND JURISDICTION | (See MIOG, Part I, 7-4.15,  
192-5(3), 264-2.5.5.) |

Title 18, USC, Sections | 668, | 2311 (in part), 2314, and  
2315; | 2318, 3294. |

EFFECTIVE: 11/03/94

87-1.1 | Section 668 - Theft of Major Artwork

"(a) Definitions

" 'museum' means an organized and permanent  
institution, the activities of which affect interstate or foreign  
commerce, that--

"(A) is situated in the United States;

"(B) is established for an essentially educational or  
aesthetic purpose;

"(C) has a professional staff; and

"(D) owns, utilizes, and cares for tangible objects  
that are exhibited to the public on a regular schedule.

" 'object of cultural heritage' means an object that  
is--

"(A) over 100 years old and worth in excess of  
\$5,000; or

"(B) worth at least \$100,000.

"(b) Offenses

"(1) steals or obtains by fraud from the care,  
custody, or control of a museum any object of cultural heritage; or

"(2) knowing that an object of cultural heritage has  
been stolen or obtained by fraud, if in fact the object was stolen or  
obtained from the care, custody, or control of a museum (whether or  
not that fact is known to the person), receives, conceals, exhibits,  
or disposes of the object, shall be fined under this title, imprisoned  
not more than 10 years, or both."

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EFFECTIVE: 11/03/94

87-1.1.1 Definitions

"... 'Money' means the legal tender of the United States or of any foreign country, or any counterfeit thereof; . . . .

"'Securities' includes any note, stock certificate, bond, debenture, check, draft, warrant, traveler's check, letter of credit, warehouse receipt, negotiable bill of lading, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate; valid or blank motor vehicle titles; certificate of interest in property, tangible or intangible; instrument or document or writing evidencing ownership of goods, wares, and merchandise, or transferring or assigning any right, title, or interest in or to goods, wares, and merchandise; or, in general, any instrument commonly known as a 'security', or any certificate of interest or participation in, temporary or interim certificate for, receipt for, warrant, or right to subscribe to or purchase any of the foregoing, or any forged, counterfeited, or spurious representation of any of the foregoing;

"'Tax stamp' includes any tax stamp, tax token, tax meter imprint, or any other form of evidence of an obligation running to a State, or evidence of the discharge thereof;

"'Value' means the face, par, or market value, whichever is the greatest, and the aggregate value of all goods, wares, and merchandise, securities, and money referred to in a single indictment shall constitute the value thereof."

The Department has stated that "goods, wares, and merchandise" are sufficiently broad to cover all property not embraced by the words "lands, tenements, and hereditaments." Therefore, this section of the statute covers any and all property of whatever nature, which is subject to larceny.

EFFECTIVE: 08/19/85

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||87-1.2| Section 2311

EFFECTIVE: 11/03/94

||87-1.2.1| Definitions |(See MIOG, Part I, 26-1.8.)|

". . . 'Money' means the legal tender of the United States or of any foreign country, or any counterfeit thereof; . . .

"'Securities' includes any note, stock certificate, bond, debenture, check, draft, warrant, traveler's check, letter of credit, warehouse receipt, negotiable bill of lading, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate; valid or blank motor vehicle titles; certificate of interest in property, tangible or intangible; instrument or document or writing evidencing ownership of goods, wares, and merchandise, or transferring or assigning any right, title, or interest in or to goods, wares, and merchandise; or, in general, any instrument commonly known as a 'security', or any certificate of interest or participation in, temporary or interim certificate for, receipt for, warrant, or right to subscribe to or purchase any of the foregoing, or any forged, counterfeited, or spurious representation of any of the foregoing;

"'Tax stamp' includes any tax stamp, tax token, tax meter imprint, or any other form of evidence of an obligation running to a State, or evidence of the discharge thereof;

"'Value' means the face, par, or market value, whichever is the greatest, and the aggregate value of all goods, wares, and merchandise, securities, and money referred to in a single indictment shall constitute the value thereof."

The Department has stated that "goods, wares, and merchandise" are sufficiently broad to cover all property not embraced by the words "lands, tenements, and hereditaments." Therefore, this section of the statute covers any and all property of whatever nature, which is subject to larceny.

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EFFECTIVE: 11/03/94

||87-1.3| Section 2314 - Transportation of Stolen Goods, Securities,  
Moneys, Fraudulent State Tax Stamps, or Articles Used in  
Counterfeiting |(See MIOG, Part I, 264-2.5.5.)|

"Whoever transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of \$5,000 or more, knowing the same to have been stolen, converted or taken by fraud; or

"Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transports or causes to be transported or induces any person to travel in, or to be transported in interstate commerce in the execution or concealment of a scheme or artifice to defraud that person of money or property having a value of \$5,000 or more; or

"Whoever, with the unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered, or counterfeited; or

"Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any traveler's check bearing a forged countersignature; or

"Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce, any tool, implement, or thing used or fitted to be used in falsely making, forging, altering, or counterfeiting any security, or tax stamps, or any part thereof-

"Shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

"This section shall not apply to any falsely made, forged, altered, counterfeited or spurious representation of an obligation or other security of the United States, or of an obligation, bond, certificate, security, treasury note, bill, promise to pay or bank note issued by any foreign government or by a bank or corporation of

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any foreign country." (Handled by Secret Service as a violation of Title 18, USC, Section 480.)

EFFECTIVE: 11/03/94

| 87-1.3.1 | Moved to 87-1.4.1 |

EFFECTIVE: 07/25/96

||87-1.4| Section 2315 - Sale or Receipt of Stolen Goods,  
Securities, Moneys, or Fraudulent State Tax Stamps

"Whoever receives, possesses, conceals, stores, barter, sells, or disposes of any goods, wares, or merchandise, securities, or money of the value of \$5,000 or more, or pledges or accepts as security for a loan any goods, wares, or merchandise, or securities, of the value of \$500 or more, which have crossed a state or United States boundary after being stolen, unlawfully converted, or taken, knowing the same to have been stolen, unlawfully converted, or taken; or

"Whoever receives, possesses, conceals, stores, barter, sells, or disposes of any falsely made, forged, altered, or counterfeited securities or tax stamps, or pledges or accepts as security for a loan any falsely made, forged, altered, or counterfeited securities or tax stamps, which have crossed a state or United States boundary after being stolen, unlawfully converted, or taken, knowing the same to have been so falsely made, forged, altered, or counterfeited; or

"Whoever receives in interstate or foreign commerce, or conceals, stores, barter, sells, or disposes of, any tool, implement, or thing used or intended to be used in falsely making, forging, altering, or counterfeiting any security or tax stamp, or any part thereof, moving as, or which is a part of, or which constitutes interstate or foreign commerce, knowing that the same is fitted to be used, or has been used, in falsely making, forging, altering, or

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counterfeiting any security or tax stamp, or any part thereof --

"Shall be fined not more than \$10,000 or imprisoned not more than ten years, or both."

EFFECTIVE: 11/03/94

| 87-1.4.1 | Securities Excluded From Section 2315

"This section shall not apply to any falsely made, forged, altered, counterfeited, or spurious representation of an obligation or other security of the United States or of an obligation, bond, certificate, security, treasury note, bill, promise to pay, or bank note, issued by any foreign government or by a bank or corporation of any foreign country." (Handled by Secret Service as a violation of Title 18, USC, Section 480).

EFFECTIVE: 11/03/94

| 87-1.5 | Section 3294

"No person shall be prosecuted, tried, or punished for a violation of or conspiracy to violate Section 668 unless the indictment is returned or the information is filed within 20 years after the commission of the offense."

EFFECTIVE: 11/03/94

| 87-1.5.1 | Moved to 87-1.7.1 |

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EFFECTIVE: 07/25/96

||87-1.6| Jurisdiction of Other Federal Agencies

The interstate or foreign transportation of falsely made, etc., securities which are obligations of the U. S., foreign governments, or foreign corporations are exempt from the provisions of this statute by an exception in the statute itself. This exception is to avoid a conflict of jurisdiction with the Secret Service, U. S. Treasury Department. U. S. Postal Service money orders, money, and government obligations which are falsely made, etc., are not the subject of a violation of this statute. If information is developed of fraudulent interstate transactions in the sale of securities, the facts should be forwarded to the Securities and Exchange Commission as a possible violation of Title 15, USC, Section 77q.

EFFECTIVE: 11/03/94

||87-1.7| Other Provisions Concerning Sections 2314 and 2315

EFFECTIVE: 11/03/94

||87-1.7.1| Statute Language "Cause to be Transported"

Note: While the language "cause to be transported" does not appear in all paragraphs of Section 2314 and in Section 2315, it is observed that Section 2 of Title 18 covers as principals those persons "causing or procuring."

EFFECTIVE: 11/03/94

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||87-1.8| Section 2318 - Transportation, Sale, or Receipt of  
Phonograph Records Bearing Forged or Counterfeit Labels  
|(See MIOG, Part I, 87-4.2.1.)|

"Whoever knowingly and with fraudulent intent transports, causes to be transported, receives, sells, or offers for sale in interstate or foreign commerce any phonograph record, disk, wire, tape, film, or other article on which sounds are recorded, to which or upon which is stamped, pasted, or affixed any forged or counterfeited label, knowing the label to have been falsely made, forged, or counterfeited, shall be fined not more than \$1,000 or imprisoned not more than one year, or both."

EFFECTIVE: 11/03/94

||87-1.9| Conspiracy to Violate Sections 2314, 2315, or 2318

Conspiracies to violate Title 18, USC, Sections 2314, 2315, and 2318, must be prosecuted under the general conspiracy section (Title 18, USC, Section 371).

EFFECTIVE: 11/03/94

87-2 ELEMENTS OF PROOF

EFFECTIVE: 01/31/78

87-2.1 Transportation Elements

EFFECTIVE: 01/31/78



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87-2.1.1 Stolen Property Transportation

- (1) Property is stolen, converted, or taken by fraud.
- (2) Such property, valued at \$5,000 or more, is transported in interstate or foreign commerce.
- (3) The transporter must have knowledge such property had been stolen, converted, or taken by fraud. Pursuant to Title 18, USC, Section 21, the element of guilty knowledge may also be established by proof that the defendant believed that the property had been stolen, converted, or taken by fraud, after or as a result of an official representation as to the nature of the property (see MIOG, Part II, 1-1.12).

(4) It is not necessary for the actual thief or embezzler to perform the transportation. It is only necessary that the person transporting the property knew it to be stolen or taken in any of the ways specifically prohibited.

(5) Where several transportations of less than \$5,000 in value are used to establish the jurisdictional limit, the Department has stated sporadic transactions are not to be grouped, but only a series of transactions closely associated or a continuing course of conduct should be considered.

EFFECTIVE: 10/23/95

87-2.1.2 Transporting Persons

- (1) Scheme is to obtain money or property by false or fraudulent pretenses.
- (2) Such property is valued at \$5,000 or more.
- (3) Persons are transported, caused to be transported, or induced to travel in or be transported interstate as a result of false representations.
- (4) The travel is in execution or concealment of the scheme.

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EFFECTIVE: 01/31/78

87-2.1.3      Transporting Counterfeit Securities, Tax Stamps, or Sound  
Recording Labels

(1) Falsely made, forged, altered, or counterfeited securities or tax stamps, or traveler's checks with forged countersignature, or forged or counterfeited labels on sound recordings are transported in interstate or foreign commerce.

(2) With unlawful or fraudulent intent

(3) The person transporting such spurious securities, tax stamps, or labels on sound recordings knew the same to have been falsely made, forged, altered, or counterfeited. Pursuant to Title 18, USC, Section 21, the element of guilty knowledge may also be established by proof that the defendant believed that the spurious securities, tax stamps, or labels on sound recordings had been falsely made, forged, altered, or counterfeited, after or as a result of an official representation as to the nature of the property (see MIOG, Part II, 1-1.12).

EFFECTIVE: 10/23/95

87-2.1.4      Transporting Tools or Paraphernalia Used In Counterfeiting  
Securities or Tax Stamps

(1) That any tool, implement, or thing used or fitted to be used in falsely making, forging, altering, or counterfeiting any security, tax stamp, or part thereof is transported in interstate or foreign commerce.

(2) The transporter must have an unlawful or fraudulent intent.

EFFECTIVE: 01/31/78

87-2.2      Receiving Elements

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EFFECTIVE: 07/28/87

87-2.2.1 Receiving Stolen Property

- (1) Property is stolen, unlawfully converted, or taken.
- (2) The property so taken in the amount of \$5,000 or more is transported in interstate or foreign commerce.
- (3) The person receiving, possessing, concealing, storing, bartering, selling, or disposing of the property in the amount of \$5,000 or more, knew it to have been stolen, unlawfully converted, or taken. [Pursuant to Title 18, USC, Section 21, the element of guilty knowledge may also be established by proof that the defendant believed that such property had been stolen, unlawfully converted, or taken, after or as a result of an official representation as to the nature of the property (see MIOG, Part II, 1-1.12).]
- (4) The person receiving, etc., same did so after the property had crossed a state or United States boundary.

EFFECTIVE: 10/23/95

87-2.2.2 Receiving Counterfeit Securities, Tax Stamps, or Sound Recording Labels

- (1) The falsely made, forged, altered, or counterfeited items crossed a state or United States boundary.
- (2) The person receiving, etc., same did so after the items had crossed a state or United States boundary.
- (3) The receiver knew items to be falsely made, etc. [Pursuant to Title 18, USC, Section 21, the element of guilty knowledge may also be established by proof that the defendant believed that such items were falsely made, etc., after or as a result of an official representation as to the nature of the property (see MIOG, Part II, 1-1.12).]

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EFFECTIVE: 10/23/95

87-2.2.3 Receiving Tools or Paraphernalia Used in Counterfeiting  
Securities or Tax Stamps

(1) The tools, etc., used or intended to be used in making falsely made, etc., items were moving as, a part of, or constituted interstate or foreign commerce.

(2) The person receiving same did so while they were so moving.

(3) The receiver, etc., knew the tools, etc., were fitted to be used or had been used in falsely making, etc., any security, tax stamp, or any part thereof.

EFFECTIVE: 07/28/87

87-2.3 Pledging Elements

EFFECTIVE: 07/28/87

87-2.3.1 Pledging Stolen Property

(1) Property valued at \$500 or more is stolen, unlawfully converted, or taken.

(2) Such property has crossed a state or United States boundary.

(3) It is pledged or accepted as a security for a loan by one knowing it to have been stolen, unlawfully converted, etc. Pursuant to Title 18, USC, Section 21, the element of guilty knowledge may also be established by proof that the defendant believed that such property had been stolen, unlawfully converted, etc., after or as a result of an official representation as to the nature of the property (see MIOG, Part II, 1-1.12).|

(4) The pledging or acceptance of such property as security for a loan was done after it had crossed a state or United

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States boundary.

EFFECTIVE: 10/23/95

87-2.3.2 Pledging Counterfeited Securities or Tax Stamps

(1) Falsely made, forged, altered, or counterfeited items are transported across a state or United States boundary.

(2) The person pledging or accepting as security for a loan such falsely made, etc., items knew them to be falsely made, etc. Pursuant to Title 18, USC, Section 21, the element of guilty knowledge may also be established by proof that the defendant believed that such items were falsely made, etc., after or as a result of an official representation as to the nature of the property (see MIOG, Part II, 1-1.12).

(3) The pledging or acceptance of such items is done after they have crossed a state or United States boundary.

EFFECTIVE: 10/23/95

87-3 POLICY

EFFECTIVE: 07/28/87

87-3.1 Stolen Property Cases (Includes Property Taken By Fraud or Converted)

EFFECTIVE: 07/28/87

87-3.1.1 Valuation of Stolen Property

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EFFECTIVE: 07/28/87

87-3.1.2 Major Theft Cases

(1) A major theft case is one in which the value of the stolen property exceeds \$50,000.

Transportation of goods, wares, merchandise, securities or money - It is important to determine early in the investigation the value of the property taken. In regard to tangible property, such as clothing, jewelry, automobiles, rare paintings, manufactured articles, etc., the actual value is sought. In the case of articles having no ready market value, such as antiques, the owner's testimony of what he/she paid for the stolen articles, together with an expert appraiser's evaluation, would be very strong evidence of their value. In the case of such items as household goods, their value for jurisdictional purposes is not what they would bring at a secondhand sale but what they are worth to their owner; i.e., original cost less depreciation. In the case of securities, the statute provides the value is the face, par, or market value, whichever is the highest. In the case of merchandise which has not reached the consumer, the courts have held the retail value of such goods is its value for jurisdictional purposes.

(2) When a major theft occurs, immediately institute active investigation

(a) Mere liaison contact with local authorities is not sufficient.

(b) Develop details of the theft, any suspects, and description of stolen property.

(c) Assign sufficient manpower to run out all immediate leads in both office of origin and auxiliary offices expeditiously.

(3) Teletypes in major theft cases

(a) Send to FBIHQ and logical field offices.

(b) Include details of theft, descriptions of stolen property and suspects, results of crime scene search; investigation being taken by your office (and local authorities, if applicable);

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identifying data concerning victim for Bureau indices search, and results of your indices search regarding victim; and leads for auxiliary offices.

(c) Submit initial teletype summary including contemplated investigation as soon as circumstances of theft are ascertained. Within one week after the initial teletype submit a cover airtel with LHM summary to FBIHQ and your surrounding offices including but not limited to, complete description of stolen property and investigation conducted, unless instructed to the contrary by FBIHQ. This LHM summary should be suitable for dissemination and should not include informant information or describe sensitive investigative techniques.

EFFECTIVE: 07/28/87

87-3.1.3 Other Stolen Property Cases (Under \$50,000 in Value)

(1) In any case where circumstances indicate stolen property (valued over \$5,000) may travel interstate or where organized crime figures are involved, prepare appropriate communication to interested offices.

(2) Promptly obtain description of stolen property and its value.

(3) Do not institute investigation unless it is reasonable that stolen property will travel in interstate commerce.

(4) In any case where public interest and publicity may be great, advise FBIHQ expeditiously by teletype of details.

EFFECTIVE: 11/18/83

87-3.2 Fraudulent Check Cases

EFFECTIVE: 11/18/83

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87-3.2.1 Quality Case Concept

(1) [REDACTED]

ba

(2) [REDACTED]

EFFECTIVE: 11/18/83

87-3.2.2 Department of Justice Prosecutive Policy

(1) The Department advises that Section 2314 is not applicable to bad check cases where subject uses true name or an alias by which subject is commonly known.

(2) The Department takes view that local authorities have primary responsibility for prosecuting bad check cases, even when such cases clearly fall within the technical scope of the statute.

(3) Generally, prosecution limited to following circumstances:

(a) The state prevented from successful prosecution because the defendant, evidence, or witnesses are beyond the state's borders.

(b) The subject passed such checks in numerous jurisdictions.

(c) Subject's offenses either do not constitute violations under the applicable state's statutes or are inadequately punishable by such state laws in light of the frequency and scope of the defendant's activities.

(d) The bad check charges are to be brought in conjunction with other Federal charges; e.g., impersonation of a Federal official.



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EFFECTIVE: 03/23/92

87-3.3 Conspiracy to Violate ITSP Statute

The Department has advised conspiracies to violate the ITSP statute are violative of Federal laws even where the theft of property has not actually occurred. When information is received indicating a conspiracy to commit a theft or robbery of \$5,000 or more and transport the proceeds in interstate commerce, immediately discuss facts with USA for determination as to whether investigation should be initiated. In each such instance following discussion with USA, advise FBIHQ of full facts.

EFFECTIVE: 03/23/92

87-3.4 Heavy Equipment Cases

(1) For investigative purposes, heavy equipment will include truck tractors, trailers, off-highway vehicles, construction equipment, and farm equipment. Investigative policies and procedures concerning these thefts will be similar to those pertaining to Interstate Transportation of Stolen Motor Vehicles. (See Part I, Sections 26-2 and 26-4 of this manual.)

(2) One of the significant differences between ITSMV and heavy equipment investigations is that certificates of title are not required for off-highway vehicles, construction equipment, or farm equipment. Ownership can normally be established by means of a trace through the manufacturer.

EFFECTIVE: 03/23/92

87-4 INVESTIGATIVE PROCEDURES

EFFECTIVE: 03/23/92

87-4.1 Stolen Property Cases

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EFFECTIVE: 03/23/92

87-4.1.1 Investigative Steps

(1) Ensure that appropriate crime scene search has been conducted for latent fingerprints and other evidence, and that neighborhood investigation is completed.

(2) |Deleted|

EFFECTIVE: 03/23/92

87-4.1.2 In Major Cases

If a major theft, institute investigation under policy requirements for such cases (see 87-3.1.2). Notify FBIHQ by telephone or teletype of any case in which public interest will be great and press inquiries may be received at FBIHQ.

EFFECTIVE: 03/23/92

87-4.2 Transportation of Falsely Made, Forged, Altered, or Counterfeited Securities, Tax Stamps, or Labels on Sound Recordings

EFFECTIVE: 10/26/87

87-4.2.1 Establish That Security Covered By the Statute

The Agent should first determine if the item in question is covered by the statutes. Section 2311 specifically defines numerous documents as securities. Valid or blank automobile certificates of title, bills of sale, and whiskey warehouse receipts are samples of securities which may be altered, forged, or counterfeited in cases coming to the Bureau's attention.

(For additional information, see Part I, Section 26-1, of this manual.) The Agent should obtain the item transported or as accurate a

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description of same as possible. The Agent must remember that it is not necessary to establish such falsely made, etc., items have been previously stolen or embezzled or that they had any value. Section 2318 dealing with labels on sound recordings applies to all presently known methods of recording sound waves according to the Department of Justice. The Department has also advised that it is immaterial whether the bogus label is attached to a genuine recording.

EFFECTIVE: 10/26/87

87-4.2.2 Odometer Turn-Back Cases

Altered or reset odometers on motor vehicles are made unlawful by Title 15, USC, Sections 1981-1991 (Odometer Requirements), which prior to the passing of Public Law 94-364 (Motor Vehicle Information and Cost Savings Act Amendments of 1976) on July 14, 1976, carried no criminal penalties. The purpose of this statute is to prohibit tampering with odometers on motor vehicles and to establish certain safeguards for the protection of purchasers with respect to the sale of motor vehicles having altered or reset odometers. Title 15, USC, Sections 1981-1991, is directed at an area of crime involving consumer fraud affecting purchasers of previously owned automobiles.

EFFECTIVE: 10/26/87

87-4.2.3 Statutes

Title 15, USC, Sections 1983-1988; Title 18, USC, Sections 2314 and 1343.

EFFECTIVE: 10/26/87

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87-4.2.4 Title 15, USC

(1) Section 1983. Unlawful devices causing odometer to register mileage other than true mileage driven. No person shall advertise for sale, sell, use, or install or cause to be installed, any device which causes an odometer to register any mileage other than the true mileage driven. For purposes of this section, the true mileage driven is that mileage driven by the vehicle as registered by the odometer within the manufacturer's designed tolerance.

(2) Section 1984. Unlawful change of mileage indicated on odometer. No person shall disconnect, reset, or alter, or cause to be disconnected, reset, or altered, the odometer of any motor vehicle with intent to change the number of miles indicated thereon.

(3) Section 1985. Unlawful operation of motor vehicle with knowledge of disconnected or nonfunctional odometer prohibited. No person shall, with intent to defraud, operate a motor vehicle on any street or highway knowing that the odometer of such vehicle is disconnected or nonfunctional.

(4) Section 1986. Conspiracy to violate odometer requirements.

(5) Section 1987. Lawful service, repair, or replacement of odometer; adjustment of mileage and notice of adjustment; failure to adjust mileage or affix notice of adjustment and removal or alteration of notice with fraudulent intent prohibited.

"Nothing in this subchapter shall prevent the service, repair, or replacement of an odometer, provided the mileage indicated thereon remains the same as before the service, repair, or replacement. Where the odometer is incapable of registering the same mileage as before such service, repair, or replacement, the odometer shall be adjusted to read zero and a notice in writing shall be attached to the left door frame of the vehicle by the owner or his agent specifying the mileage prior to repair or replacement of the odometer and the date on which it was repaired or replaced. Any removal or alteration of such notice so affixed shall be unlawful."

EFFECTIVE: 10/26/87

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87-4.2.5 Title 18, USC, Sections 2314 and 1343

(1) Section 2314. Transportation of Stolen Goods, Securities, Moneys, Fraudulent State Tax Stamps, or Articles Used in Counterfeiting.

(2) Section 1343. Fraud by Wire. ITSP and FBW Statutes have been used successfully in widespread odometer turn-back operations. The interstate transportation of falsely made securities is a violation of Title 18, USC, Section 2314, when the certificate of title of an automobile, a security, has the automobile mileage falsely reported on it and the security is transported interstate. Title 18, USC, Section 2314, also prohibits anyone from knowingly transporting in interstate commerce money, in the amount of \$5,000 or more, that has been taken by fraud. The value of certain used cars may exceed \$5,000 and further the combined value of cars with odometer turn-backs sold interstate by an automobile dealer could easily exceed \$5,000 and that such a dealer could be involved in a conspiracy to violate Section 2314. Violations of the FBW and the Mail Fraud Statutes may exist when purchase arrangements for cars with odometer turn-backs are made by interstate wire communications or when a dealer advertises such cars for sale over radio or television, or when the mails are used to transmit certificates of title bearing false information.

EFFECTIVE: 07/18/86

87-4.2.6 Definitions

(1) The term "dealer" means any person who has sold five or more motor vehicles in the past twelve months to purchasers who in good faith purchase such vehicles for purposes other than resale.

(2) The term "distributor" means any person who has sold five or more vehicles in the past twelve months for resale.

EFFECTIVE: 07/18/86

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87-4.2.7 Policy and Investigative Procedure

(1) If it is determined that the case does not involve widespread ring type activity in odometer tampering, then care should be exercised in expending investigative manpower.

(2) Close liaison should be maintained with the USA with regard to these investigations.

(3) Upon receipt of allegation that a certain car dealer or dealers is/are involved in odometer turn-backs certain records may be essential in corroborating the allegation.

(a) The State Motor Vehicle Administration may be very beneficial in advising investigators as to the type of records required by the State that would aid in tracing ownerships and verifying the mileage at the time the vehicle was sold and at the time it was subsequently resold.

(b) Consideration should also be given to subpoenaing sales records maintained by the target used car dealer(s).

(4) Interviews of previous and present owners will aid in verifying the documented mileage regarding a particular vehicle.

EFFECTIVE: 07/23/90

87-4.2.8 Title 15, USC, Section 1990(c)

Title 15, USC, Section 1990(c) sets forth the criminal penalties (misdemeanors) for violations of Title 15, USC, Sections 1981-1991 and reads as follows:

(1) Any person who knowingly and willfully commits any act or causes to be done any act that violates any provision of this subchapter knowingly and willfully omits to do any act or causes to be omitted any act that is required by any such provision shall be fined not more than \$50,000 or imprisoned not more than three years, or both.

(2) Any individual director, officer, or agent of a corporation who knowingly and willfully authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation of any section of this title shall be subject to penalties

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under this section without regard to any penalties to which that corporation may be subject under subsection (a).

EFFECTIVE: 07/23/90

87-4.2.9 Investigative Classification

The investigative classification is 87 and the alpha subdivision will be either "B" or "C," depending upon the total amount of money involved.

EFFECTIVE: 07/23/90

87-4.3 Implements Used in the Manufacture of Falsely Made, etc., Securities or Tax Stamps

The Agent in this violation must be alert to establishing that the transporter knew that the implements had been used or were fitted to be used for this purpose and the transportation was coupled with a fraudulent intent.

EFFECTIVE: 07/28/87

87-4.4 Receiving Violations

(1) Under Section 2314 and part of Section 2315 dealing with tools, etc., used in counterfeiting securities or tax stamps, first establish that the items covered have actually moved from one state or the District of Columbia to another state or foreign jurisdiction or vice versa.

Under Section 2315 (with the exception of that portion relating to tools, etc., used in counterfeiting securities or tax stamps), once stolen or fraudulently obtained property crosses a state line or United States boundary, federal jurisdiction attaches to such property and remains until such property loses its stolen or fraudulently obtained character.

(2) The receiver must be shown to have knowledge that such property has been stolen, unlawfully converted, or taken. It is

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not necessary to show that the receiver had knowledge of the previous interstate or foreign transportation. Also it is necessary to prove that the receiver obtained at least \$5,000 worth of the stolen, etc., property.

(3) With regard to establishing guilty knowledge on the part of the receiver, etc., attention is directed to the Theft From Interstate Shipment section of this manual which discusses the circumstantial evidence to be sought (Part I, Section 15-3.2). To violate the receiving section relating to falsely made, etc., securities or tax stamps, the knowledge to be shown is that the items were falsely made, etc., or that the tools, etc., had been used or were to be used in making falsely made, etc., items. Pursuant to Title 18, USC, Section 21, the element of guilty knowledge may also be established by proof that the defendant believed that such items were stolen, falsely made, etc., after or as a result of an official representation as to the nature of the property (see MIOG, Part II, 1-1.12).

EFFECTIVE: 10/23/95

87-4.5 Pledging Violations

The Agent must prove that the property pledged has an actual value of at least \$500 and the amount it is pledged for is not the basis of jurisdiction. The pledgor and pledgee are both guilty of a violation if the property is valued at \$500 or more and has actually moved interstate if they had knowledge that it had been stolen or embezzled.

EFFECTIVE: 07/28/87

87-4.6 Check Cases

Check cases should be scrutinized with particular care at inception to implement the quality case concept and to reduce the volume of submissions to Laboratory; submissions should be limited to only relevant items in matters with a potential for Federal prosecution.



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EFFECTIVE: 07/28/87

87-4.6.1 Ascertain the Facts Surrounding the Passing of the Check

Ordinarily, the following factors should be considered in this regard:

(1) Specifically determine whether the check was written or endorsed in the presence of the person cashing it. If this is not determined, a subsequent conclusion by the FBI Laboratory that the check was written by a known individual does not prove that the writer negotiated it. In many instances, persons other than the writers of fraudulent checks negotiate them. This is particularly true in ring cases.

(2) Determine the date and hour the check was negotiated. Reliance should not be placed upon the date of the check because many checks are negotiated on other dates. In the elimination of suspects, it may be essential to know the exact time that the check was negotiated.

(3) Any credentials used by the passer purportedly establishing his/her identity should be accurately described.

(4) Ascertain the names of all witnesses who saw or talked to the individual passing the fraudulent check.

(5) Secure the modus operandi used by the check passer, along with the subject of his/her conversation. The method of transportation being used by the passer may prove of value in locating him/her.

EFFECTIVE: 07/28/87

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87-4.6.2 Contact Local Police

After complete information has been obtained from the individual reporting a bad check to the field office, a reasonable inquiry should be made with the check squad of the local police department or some other agency cognizant with bad checks passed in the community to determine if the passer of the check involved may be readily known locally.

EFFECTIVE: 07/28/87

87-4.6.3 Determine If FBI Investigation Warranted

If it is determined that FBI investigation should be undertaken, the original bad check passed should be tactfully obtained. Its return may be promised. If time is of the essence, the FBI Laboratory should be so informed and the return of the check will be expedited. If it is not possible to secure the original check, it will materially assist the FBI Laboratory in its examination if a photographic copy rather than a photostat of the check is forwarded. In photographing the check, a ruler or other measurement is to be included in the photograph so that the exact size of the original document can be ascertained. Both the negative and a positive print of the photograph should be forwarded.

EFFECTIVE: 07/28/87

87-4.6.4 Handling of Check Evidence

The original check or a copy should be forwarded to the FBI Laboratory using Form FD-196 incorporating the following information:

- (1) Complete and accurate descriptions of checks
- (2) The circumstances surrounding the passing of the check, i.e., the modus operandi used, should be set forth briefly.
- (3) As complete a description as possible of the check passer should be included. This is particularly important in assisting the Criminal Justice Information Services Division in eliminating fingerprint cards of persons having the same name as that

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used by the check passer. In all unknown subject multiple check cases, the FBI Laboratory examines the handwriting on fingerprint cards containing names identical with that on the check. This comparison is an automatic procedure which is followed at FBIHQ without a specific request being made by the field office.

(4) Any miscellaneous information which is available should be included on the FD-196. For example, if the signature on the check being transmitted is known to be a simulated forgery, genuine signatures of the individual whose name was forged should be submitted.

(5) A specific request should be made if any examination is desired in addition to search in the National Fraudulent Check File and comparison with signatures on fingerprint cards.

(6) The check itself should be enclosed in a cellophane envelope if a latent fingerprint examination is requested.

(7) Normally the office submitting the first check to the FBI Laboratory is the office of origin. Lacking information to the contrary, the office transmitting the check should consider itself office of origin until advice is received that other checks have preceded its submission to the FBI Laboratory.

(8) The date and city where the check is cashed are to be set forth.

(9) Disposition of specimens is to be set out.

(10) A copy of the FD-196 transmitting the fraudulent check to the FBI Laboratory should be designated for the field office in whose territory the bank upon which the check is drawn is located. That field office should be requested to contact the drawee bank to determine if similar checks have been passed upon that bank. This is done since experience has shown that a check passer will issue a series of checks upon one bank and information concerning those checks can be received more expeditiously from the bank. It follows that the detailed information which is desired on the FD-196 transmitting fraudulent checks to the FBI Laboratory is unnecessary in cases in which the identity of the check passer is known and the check is submitted only for comparison with other checks in the same case.

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EFFECTIVE: 04/08/96

87-4.6.5 Discontinuing Investigation In Check Cases

Assuming that a report is received from the FBI Laboratory which indicates that the check submitted was not the work of a known check passer and the drawee bank advises that no similar checks have been passed on that bank, and in the absence of any other information indicating the contrary, it may be concluded that an isolated bad check is involved and that the case is not one which should be exhaustively investigated under the Bureau's policy as set out above. Should information be received at a later date indicating that the passer of this check is again active in passing additional checks, the case may be reopened.

EFFECTIVE: 01/31/78

87-4.6.6 Action Taken When Forgery or Counterfeit Determined

When FBI Laboratory report indicates check is forged or counterfeit, and/or facts indicate subject is an active violator, the following procedure must be followed:

(1) If the field office covering the drawee bank advises that the check submitted is forged or counterfeited or one of a series of bad checks, a stop should be placed immediately with that bank. The original victims of other checks passed should be ascertained. The office of origin should advise FBIHQ to expedite the Laboratory report inasmuch as this is an indication the subject is an aggravated check passer and the FBI Laboratory may tie his checks into a major case. The facts may or may not be presented to the USA at this time depending upon the urgency of the case. Presentment, generally, is more desirable after the receipt of the Laboratory report.

(2) If the Laboratory report identifies the passer of the check submitted with the subject of another case, pertinent information concerning the previous activities of the check passer will be furnished. The field office submitting the check on the basis of the Laboratory report will be in a position to conduct an intelligent investigation concerning the activities of the check passer in that field office territory and submit the appropriate communication to the office of origin which has correlated the

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investigation of the activities of this check passer prior to that time.

EFFECTIVE: 01/31/78

87-4.6.7 Office of Origin In Check Cases - Designation and Responsibilities

(1) FBIHQ desires that there be only one office of origin in a case involving the passing of bad checks. Ordinarily, the first office submitting a check will remain office of origin and field offices subsequently submitting checks passed by the same subject will be advised in the Laboratory reports as to the original office of origin in an effort to avoid confusion in this regard. Despite the exercise of precaution in this matter, it is apparent when a check passer moves rapidly from one field office territory to another that checks from several localities may be received by the FBI Laboratory at approximately the same time. On many occasions, a case cannot be identified with another pending case until after several communications have been written in various offices. On these occasions, FBIHQ will designate the proper office of origin either on its own volition or upon the receipt of a letter from a field office.

(2) It is necessary for the office of origin to assume responsibility for close supervision of fraudulent check cases. Investigative leads set out for auxiliary offices should be carefully monitored in order that unnecessary investigation may be avoided and valuable investigative leads given immediate attention. It should be borne in mind that if there are two or three processes outstanding for a check passer, the purpose of the remaining investigation is to apprehend him/her rather than collect evidence for additional prosecutions. When a major check passer is apprehended and makes a confession admitting numerous additional violations previously unknown, the undeveloped leads should be set out to fill any necessary gaps in the pending prosecution only. Investigation into the circumstances surrounding the passing of new checks should not be made unless prosecution is authorized in the territory where the checks were passed. After apprehension, the office of origin should make certain it sets out undeveloped leads for all offices where checks have been passed to inform the local police departments of the identity of the check passer in order that the records of such departments may be cleared. This is to be done since these police departments may desire to institute prosecution, as experience has shown that a check passer is seldom prosecuted in more than two or

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three Federal districts regardless of the number of violations involved. The full background of a major check passer should be ascertained when he/she is apprehended. Current photographs and numerous known handwriting specimens should be secured. This action should be taken because experience has revealed a major check passer is a professional and upon his/her release from the penitentiary will probably reenter the field of check passing and be the subject of another investigation.

EFFECTIVE: 04/22/83

87-4.6.8 Presentation to U.S. Attorney's Office

(1) The office of origin should pay particular attention to setting out undeveloped leads for presenting facts to USAs at appropriate times. In this regard, when the sole purpose is to clear the record and additional prosecution is not expected, the facts may be presented in the territory covering the bank on which the checks are drawn rather than in the territory where they were negotiated. This will, in many instances, clear a number of violations with one presentment to the USA. This method has the additional advantage of presenting a large number of individual violations to one USA with more likelihood of prosecution.

(2) It is also pointed out that in addition to causing a check to be transported in interstate commerce by negotiating it the subject may be prosecuted if he/she physically transports a check meeting the requirements of the statute.

(3) It should not be overlooked that Title 18, USC, Section 2314, also prohibits the interstate transportation of paraphernalia used or fitted to be used in falsely making, forging, altering, or counterfeiting any security or tax stamp or part thereof. Agents should be alert to locate any such paraphernalia in check cases. The USA may desire to make the transportation of such paraphernalia a separate count in the indictment.

EFFECTIVE: 04/22/83

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87-4.6.9 Investigation Concerning Printers of Counterfeit Checks  
and Securities

Too little effort has been directed toward ascertaining the identities of the printers of counterfeited checks. If it can be proved that a printer knew the checks |he/she| prepared were counterfeit and would be negotiated by the subject, it is possible to prosecute |him/her| as an aider and abettor in the territory in which the subject is prosecuted as a principal. The success of the investigation will depend upon the acceptance of the office of origin of its responsibility to supervise the widespread activities of auxiliary offices and render frequent advice to them because the auxiliary offices are generally unaware of the complete picture of a check case. From a practical standpoint, detailed investigation in the nature of a collection of evidence should be minimized in the later stages of a check case unless prosecution is expected in the territory where the checks are passed.

EFFECTIVE: 04/22/83

| 87-4.6.10 | Deleted |

EFFECTIVE: 04/22/83

87-4.6.11 Traveler's Check Cases

(1) Section 2314 specifically provides that the transportation in interstate commerce of a traveler's check, validly issued for value, and upon which the purchaser's countersignature has been forged, is a violation of that statute.

(2) The Department has held that a prosecutable offense under Title 18, USC, Section 2314, does exist when blank stolen traveler's checks are transported interstate and the "purchaser's signature" blank is filled in without authority and with requisite intent by the thief or by one chargeable with knowledge that the check is stolen or is not bona fide. The traveler's check would be considered as falsely made (Stinson v. U.S., C.A. 5, 1963, 316 F. (2d) 554) within the meaning of the statute in the same sense that one falsely makes and forges when one alters or fills in blanks of a genuine instrument without authority or contrary to authority given.

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EFFECTIVE: 03/23/92

87-4.7 Deleted

EFFECTIVE: 03/23/92

87-4.7.1 Food Stamp Program Cases

The Department, in Memorandum #656 dated 12/11/69 to all U.S. Attorneys captioned "Food Stamp Program," discusses the problem being faced by the Department of Agriculture in the increasing thefts of food stamps. The Department recognizes that Title VII, USC, Section 2023, establishes in the Department of Agriculture the investigative responsibility for the illegal possession of these stamps (no requirement of interstate transportation). The Department adds, "However, in the event interstate transportation involving \$5,000 or more in stamps obtained by theft or fraud is indicated, the assistance of the FBI can be sought under Title 18, USC, Section 2314 (ITSP)." No investigation is to be instituted into thefts of these stamps without prior Bureau authority. If you are requested to institute investigation of the theft of food stamps, you should immediately advise the Bureau, by appropriate communication, of all details. If the stamps are in the possession of the U.S. Government at the time of theft, consider as a Theft of Government Property (TGP) violation.

EFFECTIVE: 03/23/92

| 87-4.8 | Deleted |

EFFECTIVE: 03/23/92



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87-4.8.1 Fraud Investigations Under the ITSP Statute

(1) Used where loss exceeds \$5,000 in any one incident and no interstate wire communication (telephone call, telex message, or telegram) is used in perpetration of the fraud.

(2) Facts concerning cases involving losses of less than \$5,000, and no use of interstate wire communications may be furnished to FBIHQ to increase the data base maintained in Bureau files concerning these criminals and their schemes.

(3) To establish a violation of Section 2314 involving the transportation of \$5,000 or more of the loss, it is necessary to prove that one or more of the subjects actually transported \$5,000 or more in interstate commerce. Efforts should be made to identify the con artists, ascertain their itinerary after the swindle, and conduct whatever investigation possible to locate the money in another state or evidence that it was transported.

(4) A violation may be established of Section 2314 even though no actual loss occurred, if the projected swindle was to amount to \$5,000 or more and the proposed victim was caused to travel interstate either in a build-up to the swindle or to obtain funds. If the swindle amounting to \$5,000 or more actually takes place, and the victim is caused to travel interstate as part of the process, a violation has occurred even though the funds are never carried out of state.

(5) For definitive information concerning Fraud By Wire violations (FBW), see Part I, Section 196 of this manual.

EFFECTIVE: 07/18/86

87-4.8.2 Other Avenues In Fraud Investigations

(1) Particular circumstances in a case may make prosecutions under the Conspiracy and/or Racketeer Influenced and Corrupt Organization (RICO) Statutes feasible, and should not be overlooked.

(2) The Mail Fraud (MF) Statute (Title 18, USC, Section 1341), under the jurisdiction of the U.S. Postal Service, is an excellent tool with which to attack frauds.

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(a) A fraud coming to your attention, and lacking any FBI jurisdiction, should be immediately reported to a U.S. Postal Inspector, and must not be continued under investigation.

(b) The character of Mail Fraud (MF) may be added to the title where it becomes another statute under which the subject(s) may be prosecuted in conjunction with other charges brought that fall within FBI jurisdiction.

(3) Sources of information in these type investigations include offices of state attorneys general, state or local consumer protection offices, U.S. Postal Inspection Service, Securities and Exchange Commission, Better Business Bureau, chambers of commerce, local district attorneys' offices, among others.

EFFECTIVE: 07/18/86

87-4.8.3

(1)

6a/67E

(2) FBIHQ will search for identification in this file any handwritten, typewritten, or printed specimens obtained during an active confidence scheme investigation and submitted to FBIHQ, Attention: FBI Laboratory, with appropriate request.

EFFECTIVE: 07/23/90

87-4.8.4 Deleted

EFFECTIVE: 07/23/90

87-4.9 Top Thief Target (TTT)

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EFFECTIVE: 07/23/90

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87-4.9.1 Purpose of the TTT

The goal of TTT is to target top thieves, fences, and organized criminal gangs who are involved in stealing and redistributing property valued at tens of millions of dollars. The objective of TTT activity is to identify top thieves, aggressively collect evidence of their violations of Federal statute and stop their activity through prompt arrest and prosecution.

EFFECTIVE: 07/23/90

87-4.9.2

(1)

(2)

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b2/b7E

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EFFECTIVE: 07/23/90

87-4.9.3 Investigative Procedure

- (1) Based on facts or circumstances which indicate that the target may be engaged in or is about to be engaged in criminal activity or the violation of a Federal law, a new 87G case should be opened and assigned to a Special Agent working investigations within the ITS.
- (2) Identify and obtain background information concerning these targets such as photographs, description, criminal record, modus operandi, hangouts, associates, and travel patterns of burglars, armed robbers, and fences, who engage in activities of a magnitude, that indicates they are major violators or potential violators of Federal law such as the ITSMV, ITSP, or TFIS statutes.
- (3) Assign to [redacted] investigative activity Agent(s) whose experience gives him/her a thorough working knowledge of the psychology of burglars, armed robbers, and fences and who is capable of applying unusual or creative investigative techniques.
- (4) All personnel involved should be fully aware of the provisions of the ITSP - Conspiracy, Hobbs Act and Racketeer Influenced and Corrupt Organizations (RICO) statutes which are potentially applicable to the objectives of this program. Consideration should also be given to the use of Title III coverage within the provisions of the Omnibus Crime Control and Safe Streets Act of 1968.

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EFFECTIVE: 07/23/90

87-5 MISCELLANEOUS

EFFECTIVE: 07/23/90

87-5.1

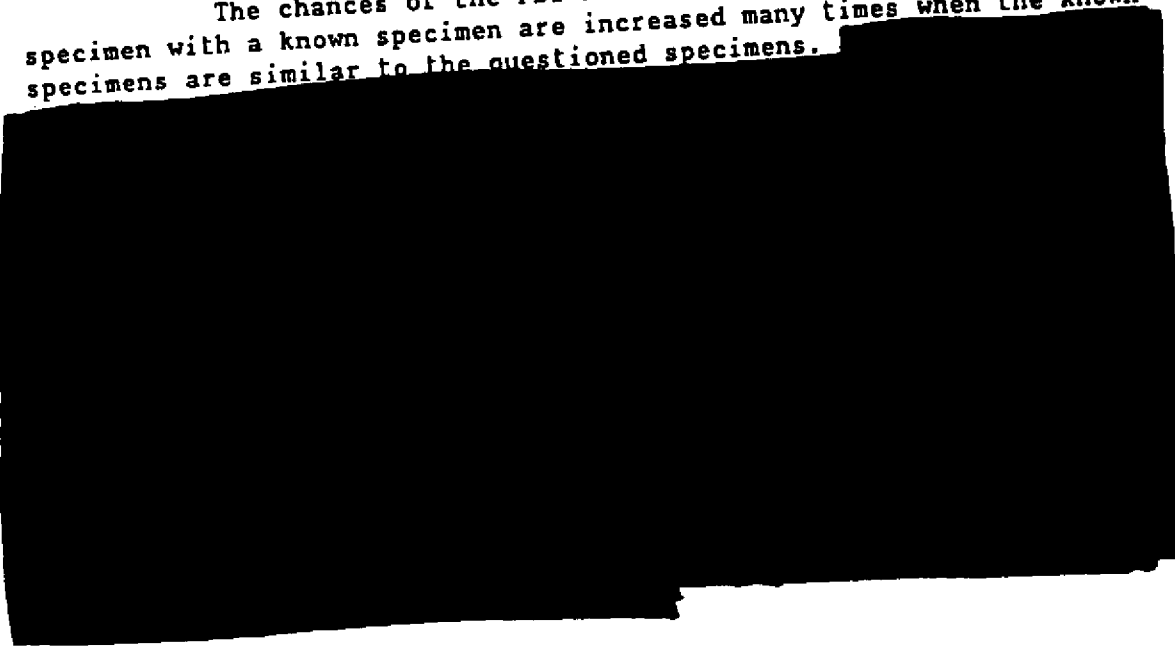


EFFECTIVE: 07/23/90

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87-5.2 Obtaining Known Handwriting Samples

The chances of the FBI Laboratory identifying a questioned specimen with a known specimen are increased many times when the known specimens are similar to the questioned specimens.



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EFFECTIVE: 07/23/90

87-5.2.1 Legal Requirements

(1) Each page of samples taken from a subject should bear subject's own name or initials, written by the subject, as well as the date.

(2) At the conclusion of the sample taking, a statement that the samples were provided voluntarily should be written, in the subject's handwriting, even though dictated by the Agent. It should be dated, and witnessed by the Agent.

(3) If obtained pursuant to a court order, no such statement is necessary. The samples still must be signed by the subject, dated, and witnessed by the Agent.

EFFECTIVE: 07/23/90

87-5.3 Report Writing Rules

EFFECTIVE: 02/16/89

87-5.3.1 Unknown Subject Cases

You should be guided by current Bureau rules concerning preparation of prosecutive reports.

EFFECTIVE: 02/16/89

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87-5.3.2 Other Reporting Requirements

(1) Only one copy of ITSP prosecutive report need be submitted unless dissemination at FBIHQ is desired. If so, that dissemination should be set out in the copy count of the report, with the reason justifying the dissemination stated on the FD-272.

(2) Reports must be prepared when requested by the USA's Office.

(3) A summary airtel should be prepared in any case that generates great public interest or to advise of significant developments in such a case.

(4) In major cases the office of origin should advise logical field offices of details of the theft, suspects' descriptions, description of the stolen property, and request that local law enforcement agencies and informants be contacted. This dissemination should be made in LHM under suitable cover communication, and the LHM must be written so as to allow receiving offices to reproduce it and provide it to such local law enforcement agencies as they determine are appropriate.

(5) In all ITSP cases involving armored carrier/courier losses, an FD-430 must be submitted to FBIHQ, Attention: Violent Crimes Unit, Criminal Investigative Division in duplicate, within 30 working days. The OO shall determine if regional or other field office notification is necessary. (See MIOG, Part I, 15-4(9), 91-12.1, 192-11.1, & 192-11.2; MAOP, Part II, 9-6.)

EFFECTIVE: 11/30/93

87-6 VENUE

Any district in which the offense was begun, continued, or completed (Title 18, USC, Section 3237).

EFFECTIVE: 02/16/89

87-7 PENALTIES

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EFFECTIVE: 02/16/89

87-7.1 Interstate Transportation of Stolen Property (ITSP),  
(Title 18, U.S. Code, Section 2314)

A \$10,000 fine, or ten years' imprisonment, or both.

EFFECTIVE: 02/16/89

87-7.2 Receiving Stolen Property, (Title 18, U.S. Code, Section  
2315)

A \$10,000 fine, or ten years' imprisonment, or both.

EFFECTIVE: 11/18/83

87-8 CHARACTER - INTERSTATE TRANSPORTATION OF STOLEN PROPERTY  
(ITSP)

EFFECTIVE: 11/18/83



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SECTION 88. UNLAWFUL FLIGHT TO AVOID PROSECUTION,  
CUSTODY, CONFINEMENT, AND GIVING TESTIMONY

88-1 BACKGROUND

EFFECTIVE: 07/28/87

88-1.1 Section 1073

The original Unlawful Flight Statute, Title 18, USC, Section 408e, was enacted on 5-18-34, and covered only flights to avoid prosecution and giving testimony in the eight specific crimes of murder, kidnaping, burglary, robbery, mayhem, rape, assault with a dangerous weapon, extortion accompanied by threats of violence, and attempts to commit any of the above. On 8-2-46, it was amended to include flights to avoid custody and confinement after conviction for the above offenses. On 9-1-48, the current Unlawful Flight Statute, Title 18, USC, Section 1073, was enacted. This section was amended periodically to include a total of 11 specific felonies. On 10-4-61, the Organized Crime Bill was enacted which amended Title 18, USC, Section 1073, to include all state felonies and in the case of New Jersey, high misdemeanors. On 12-28-80, Congress enacted Public Law 96-611, Section 10(a) of which states in part, "the Congress hereby expressly declares its intent that Section 1073 of Title 18, United States Code, apply to cases involving parental kidnaping and interstate or international flight to avoid prosecution under applicable state felony statutes."

EFFECTIVE: 07/28/87

88-1.2 Section 1074

Title 18, USC, Section 1074, was enacted on 5-6-60, as part of the Civil Rights Act of 1960. This section added the local offenses of damaging, or attempting to damage, by fire or explosive, any building, structure, facility, vehicle, dwelling house, synagogue, church, religious center, or educational institution, public or private, which were not covered under Section 1073 at that time.

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EFFECTIVE: 07/28/87

88-2 STATUTES, PENALTIES, AND PROSECUTION

EFFECTIVE: 07/28/87

88-2.1 Section 1073

"Whoever moves or travels in interstate or foreign commerce with intent either (1) to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which he flees, for a crime, or an attempt to commit a crime, punishable by death or which is a felony under the laws of the place from which the fugitive flees, or which, in the case of New Jersey, is a high misdemeanor under the laws of said state, or (2) to avoid giving testimony in any criminal proceedings in such place in which the commission of an offense punishable by death or which is a felony under the laws of such place, or which in the case of New Jersey, is a high misdemeanor under the laws of said state, is charged, or (3) to avoid service of, or contempt proceedings for alleged disobedience of, lawful process requiring attendance and the giving of testimony or the production of documentary evidence before an agency of a state empowered by the law of such state to conduct investigations of alleged criminal activities, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

"Violations of this section may be prosecuted only in the Federal judicial district in which the original crime was alleged to have been committed, or in which the person was held in custody or confinement, or in which an avoidance of service of process or a contempt referred to in clause (3) of the first paragraph of this section alleged to have been committed, and only upon formal approval in writing by the Attorney General or an Assistant Attorney General of the United States, which function of approving prosecutions may not be delegated."

EFFECTIVE: 07/28/87

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88-2.2 Section 1074

"(a) Whoever moves or travels in interstate or foreign commerce with intent either (1) to avoid prosecution, or custody, or confinement after conviction, under the laws of the place from which he flees, for willfully attempting to or damaging or destroying by fire or explosive any building, structure, facility, vehicle, dwelling house, synagogue, church, religious center or educational institution, public or private, or (2) to avoid giving testimony in any criminal proceeding relating to any such offense shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

"(b) Violations of this section may be prosecuted in the Federal judicial district in which the original crime was alleged to have been committed or in which the person was held in custody or confinement: Provided, however, That this section shall not be construed as indicating an intent on the part of Congress to prevent any State, Territory, Commonwealth, or possession of the United States of any jurisdiction over any offense over which they would have jurisdiction in the absence of such section."

EFFECTIVE: 07/28/87

88-2.3 FBIHQ Approval is Necessary for Investigation Under  
Section 1074

Upon receipt of a request for Bureau assistance in locating a fugitive subject or witness under Section 1074 (damaging property), immediately advise FBIHQ of the full details and do not conduct any investigation without prior FBIHQ approval.

EFFECTIVE: 07/28/87

88-3 REQUIREMENTS FOR INVESTIGATION

EFFECTIVE: 07/28/87

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88-3.1 Unlawful Flight to Avoid Prosecution

(1) Local authorities must have a warrant outstanding for the subject's arrest charging him/her with an offense covered in the statute and agree to extradite and prosecute upon the subject's apprehension.

(2) There must be sufficient evidence present to show with reasonable certainty that the subject fled interstate for the purpose of avoiding prosecution.

(3) Prior to the issuance of the Federal process the local prosecuting attorney or police agency should request assistance in writing to the USA.

(4) The USA must authorize the filing of a complaint and Federal arrest process must be outstanding prior to the time that investigation is instituted.

EFFECTIVE: 07/28/87

88-3.2 Unlawful Flight to Avoid Custody or Confinement

(1) Local authorities must have a warrant outstanding for the subject's arrest charging him/her with an offense covered in the statute and agree to extradite and prosecute or reconfine upon the subject's apprehension.

(2) There must be sufficient evidence present to show with reasonable certainty that the subject fled interstate for the purpose of avoiding custody or confinement.

(3) Since time is of the essence, upon issuance of a local warrant and an oral request for assistance by a competent local official, immediately present the facts to the USA for authorization of a Federal warrant. Local authorities should be advised to direct a letter to the USA confirming their oral request for assistance; however, do not delay your presentation to the USA and obtaining Federal process awaiting his/her receipt of the written request.

(4) The USA must authorize the filing of a complaint and Federal arrest process must be outstanding prior to the time that investigation is instituted.

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EFFECTIVE: 07/28/87

88-3.3 Unlawful Flight to Avoid Giving Testimony

(1) A criminal proceeding must have been actually instituted against a subject in the state court charging him/her with an offense covered in the statute.

(2) There must be sufficient evidence present to establish that the fugitive witness fled interstate for the purpose of avoiding giving testimony in this criminal proceeding. The fact that a fugitive witness has fled interstate after having been served with a subpoena in the state criminal proceeding will assist in establishing that the purpose of the flight was to avoid testifying. However, where sufficient independent evidence exists to establish that the fugitive witness fled with the purpose of avoiding testifying, it is not necessary that he/she have previously been served with a subpoena.

(3) Local authorities must have a warrant outstanding for the fugitive witness and be willing to extradite upon apprehension.

(4) Prior to the issuance of the Federal process, the local prosecuting attorney or police agency should request assistance in writing to the USA.

(5) The USA must authorize the filing of a complaint and Federal arrest process must be outstanding prior to the time that investigation is instituted.

EFFECTIVE: 07/28/87

88-3.4 Unlawful Flight - Pre-Federal Warrant Investigation

(1) Where a request is received from local or state authorities under the provisions of the Unlawful Flight Statute for FBI fugitive assistance and such request fails to contain sufficient evidence as to the interstate character of the violation to justify or support the issuance of the Federal complaint and warrant, these authorities should first be requested to supply the evidence of requisite character. In particularly serious cases, the FBI may be requested to conduct an investigation to establish the jurisdictional facts of apparent flight after the commission of the state felony. If an SAC does not concur that a case is serious

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62 enough to warrant initiating an investigation to establish the jurisdictional facts of apparent interstate flight, the USA, if USA still desires a preliminary FBI inquiry, as USA has been instructed, may report the matter at once to the Criminal Division, General Litigation and Legal Advice Section, [REDACTED] so that it can be discussed with FBIHQ.

(2) In those situations where the SAC has fully considered the seriousness of the case and does not concur that a pre-Federal warrant UFAP investigation is warranted and the USA still insists on a preliminary FBI inquiry, conduct no investigation and advise the USA that none will be conducted until it is authorized by FBIHQ. It should be suggested to the USA that USA consult with the Department in these situations. Thereafter, advise the [Fugitive/Government Reservation] Crimes Unit, Criminal Investigative Division, by telephone, followed by teletype, of the facts together with the field division's recommendations.

(3) As a general rule, in the absence of Federal UFAP process, anything more than a phone call or inquiries made of local or state authorities is interpreted by FBIHQ as "pre-Federal warrant investigation." Offices are instructed to decline, in all but the most compelling and serious situations, to conduct pre-Federal warrant investigations aimed at developing sufficient probable cause to support the interstate flight of the subject, as this is the responsibility of local and state authorities requesting FBI fugitive assistance. When a pre-Federal warrant investigation is agreed upon by the SAC and the USA without specific Departmental or FBIHQ involvement, submit, on a UACB basis, an airtel setting forth the full facts demanding the office's involvement. Such instances should rarely occur.

EFFECTIVE: 02/16/89

88-3.4.1 Fugitive Task Force (FTF) - Preliminary Inquiry (PI)

(1) In order to establish a practical and effective working relationship in an FTF environment, a PI may be initiated within the Attorney General Guidelines.

(2) Only those matters referred by and originating within the investigative jurisdiction of FTF nonfederal member agencies should be considered for initiation of a PI.

(3) [Deleted]

(4) Prior to initiating a PI, it is important to document

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those facts which indicate the POSSIBILITY that there has been an unlawful flight to avoid prosecution or confinement.

(5) |Deleted|

(6) |The standard for initiating a Preliminary Inquiry (PI) is less than the REASONABLE INDICATION of criminal activity that is necessary to open a full investigation. A PI is based upon the POSSIBILITY of criminal activity. Therefore, the opening communication must state the existence of a state or local felony warrant and additional information which indicates the POSSIBILITY of interstate flight. The following are examples of circumstances which may be combined to form a factual basis to establish the POSSIBILITY of interstate flight:|

(a) |existence of a driver's license;|

(b) |proximity of a subject's last known residence to another state's border;|

(c) |the fugitive has been at large for an extensive period of time;|

(d) |the termination of public utilities; or|

(e) |the existence of a motor vehicle registration.

The above facts are only examples of the information that, in conjunction with a state or local felony warrant, may provide the predication necessary to initiate a PI, and is not intended to be all inclusive.

All cases that are accepted by an FTF shall be opened as a PI or full investigation. A separate file number must be assigned to each fugitive subject referred by state and local agencies; these matters will not be worked out of a control file.

(7) PIs should be completed within 90 days of initiation. Requests for succeeding 30-day extensions should be submitted to FBIHQ on a UACB basis at least 14 calendar days prior to the expiration of the PI. The extension request should include the following information:

(a) The basis for initiation of the PI.

(b) A summary of investigation conducted during the

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initial period or previous extension.

(c) Reason for the extension.

(8) In the event that the PI uncovers no evidence that the subject has fled interstate, authority to continue the investigation ceases and the PI should be closed.

(9) When PC of interstate flight is developed, a federal warrant should immediately be obtained prior to conducting any further investigation.

(10) Out-of-state leads should not be set in PIs without sufficient documented justification. Examples of proper out-of-state leads are record checks or the interview of an incarcerated individual. Leads for out-of-state interview at a location where the subject may be located should be inappropriate. Under NO circumstances should "locate-and-apprehend" leads be set absent federal process.

(11) These matters should be entered in FOIMS as PIs and include "Preliminary Inquiry" in the caption as follows:

JOHN DOE;  
UFAP-(underlying local charge);  
Preliminary Inquiry  
OO: (office of origin)

(12) Upon issuance of federal process "Preliminary Inquiry" should be deleted from the title and the FOIMS entry converted to a full investigation record.

EFFECTIVE: 07/16/96

88-4      STATUTE OF LIMITATIONS

EFFECTIVE: 02/08/80

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88-4.1 Unlawful Flight to Avoid Prosecution, Custody, and  
Confinement

The statute of limitations is tolled in every case of a violation of the Fugitive Felon Act where the flight is with the intent to avoid prosecution, custody, or confinement, since a person cannot be a fugitive felon without also being a fugitive from justice within the meaning of Title 18, USC, Section 3290.

EFFECTIVE: 02/08/80

88-4.2 Unlawful Flight to Avoid Giving Testimony

This situation does not apply in the case of a person fleeing to avoid giving testimony. Since flight to avoid giving testimony is not made punishable by state law, one does not become a fugitive from justice under Title 18, USC, Section 3290, by simply fleeing to avoid giving testimony. Whether or not a person becomes a fugitive from justice from the Federal offense of fleeing to avoid giving testimony becomes a factual question. If the facts show that subsequent to the flight to avoid giving testimony, the witness does in fact become a fugitive from justice, the statute of limitations is tolled.

EFFECTIVE: 02/08/80

88-5 RETURN OF FUGITIVES TO STATE JURISDICTION

EFFECTIVE: 02/08/80

88-5.1 Federal Prosecution

Although a Federal penalty is provided for a violation of this act, its primary purpose is to aid the states in the return of their fugitives for trial or reconfinement. Therefore, Federal prosecution is not intended and will only occur in rare instances upon the formal approval in writing by the Attorney General or an Assistant Attorney General.

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EFFECTIVE: 02/08/80

88-5.2 Extradition is the State's Responsibility

(1) It is not the purpose of this act to supersede state rendition procedures when interstate rendition can be accomplished without the assistance of the federal government. The federal government cannot assume the obligation of returning, through its removal machinery, all these fugitives despite the fact that such persons technically come within the terms of the Fugitive Felon Act. This should be made clear to the state authorities at the time they request assistance.

(2) As an aid to the wanting state authorities, the apprehending office should interview the fugitive regarding the local offense and verbally determine his/her intention regarding waiving state extradition proceedings. The wanting state authorities should be immediately notified of the fugitive's arrest, place of incarceration, admissions, and intention regarding extradition by the office of origin. The office of origin should specifically point out to them that the fugitive is not bound by his/her verbal intent to waive extradition and can at any time before removal demand and receive an extradition hearing.

(3) Unless there are unusual circumstances present in the particular case, the apprehending office should transfer the custody of the fugitive to appropriate state or local authorities without unnecessary delay, and should request the office of origin to notify the United States Attorney's office to promptly move for the dismissal of the complaint. When this procedure is followed, it is not necessary to take the fugitive before a magistrate judge for an initial appearance pursuant to Fed. R. Crim. P. 5(a). (See MIOG, Part II, 2-7.1 and Legal Handbook for Special Agents, 3-5.) (The Department of Justice Criminal Division has advised FBIHQ that it is not necessary to wait until the UFAP warrant has actually been dismissed before releasing the subject to state or local authorities, but it is important that efficient procedures be implemented and followed to make sure that UFAP warrants are promptly dismissed after notification of an arrest is given.) (See MIOG, Part II, 11-1.4.)

(4) Should the wanting state authorities be unwilling to institute extradition proceedings after a subject's apprehension, the USA should be notified in order for him/her to cause dismissal of the federal process.

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| (5) | It is recognized that there will be instances where the state funds for the extradition of fugitives are exhausted, and possibly other situations will arise where it will be recognized as impossible for the state to effect extradition, but in all instances the state authorities should be given an opportunity to return the fugitive by regular rendition.

| (6) | In those instances where state rendition procedure has been attempted and has failed to secure the return of the fugitive, state authorities may request the USA to institute action under the Fugitive Felon Act. The USA must first obtain the authorization of the Department before attempting said action.

EFFECTIVE: 05/10/96

88-5.3 Dismissal of Federal Process

After the fugitive's apprehension and his/her extradition by the wanting state authorities for prosecution on the state offense or reconfinement, the Federal process should be dismissed and the case closed.

EFFECTIVE: 03/11/83

88-6 UNKNOWN SUBJECT CASES

Do not accept a case for investigation where the subject has not been properly identified by state authorities.

EFFECTIVE: 03/11/83

| 88-7 | PARENT-CHILD ABDUCTION MATTERS

EFFECTIVE: 03/11/83

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88-7.1 Policy

(1) The federal Kidnapping Statute specifically precludes from investigation the kidnapping of a minor child by the parent, except in cases where the abducting parent removes or retains the child outside the United States. Cases involving parental removal or retention of the child outside the United States should be investigated under the Kidnapping character as a violation of Title 18, USC, Section 1204, the International Parental Kidnaping Crime Act of 1993. (See MIOG, Part I, Section 7-4.7.)

(2) Parental abductions which do not involve an extraterritorial removal/retention of a child and are interstate in nature are specifically precluded from investigation under the Kidnapping Statutes. However, fugitive investigations in these matters may be instituted under the Unlawful Flight Statute providing the usual unlawful flight requirements that a local or state felony warrant has been issued, local authorities have requested Bureau assistance and agree to extradite when fugitive is located and probable cause is shown to indicate the fugitive has fled the state to avoid prosecution are met. In this regard, cases where the child was legally removed from the state and the warrant subsequently issued when the fugitive parent failed to return the child should be brought to the attention of the USA's Office at the time authorization to file the federal complaint is sought. This should be done so that the USA's Office will be aware that the case should be closely scrutinized to ensure that the "moves or travels in interstate or foreign commerce" provision of the Unlawful Flight Statute has been met in conjunction with the state statute under which the fugitive parent is charged.

EFFECTIVE: 03/20/95

88-7.2 Fugitive Priorities

Fugitive priorities in UFAP cases involving parent-child abduction will be assigned in accordance with the criteria set forth in Part II, 21-2 of this manual.

EFFECTIVE: 08/19/85

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88-7.3 Deleted

EFFECTIVE: 08/19/85

88-7.4 Disposition of Victim Children Located by the FBI

(1) Local authorities, rather than the FBI, have the responsibility for taking custody of a victim child located in their jurisdiction, and their court system has the authority to ensure that the child is returned to the parent having legal custody.

(2) In order to establish a preplanned formulated procedure for the disposition of victim children located by the FBI in UFAP-Parental Kidnaping cases, each field office should contact logical law enforcement agencies and child welfare departments to determine their policies in taking custody of victim children and their court procedures for returning the victim child to the parent having legal custody.

(3) If the victim child is with the fugitive parent at the time of the arrest, the arresting SAs should take temporary custody of the victim child to ensure his/her welfare and safety. The child, however, should be immediately turned over to the appropriate local law enforcement agency or child welfare department which has the ultimate responsibility for the custody and welfare of the child located in its jurisdiction. The FBI should not return the victim child directly to the parent who was in custody of the child prior to the parental kidnaping, since this is the responsibility of the above agencies and their court system.

(4) If the victim child is not with the fugitive parent at the time of the arrest and is subsequently determined to be at school, with a babysitter, staying with a relative, or other like situations, the arresting SAs should not take temporary custody of said child, since the child's welfare and safety are not in question. In these situations, the FBI should immediately notify the appropriate local law enforcement agency or child welfare department of the child's location in order for said agencies to resolve the issues of taking the victim child into protective custody and ensuring the child's return to the parent having legal custody through appropriate court proceedings.

(5) If the location of the victim child is known prior to the pending arrest of the fugitive parent, the FBI, if possible, should notify the appropriate local law enforcement agency or child welfare department beforehand of the child's location in order that the above issues can be resolved by said agencies and coordinated with the arrest of the fugitive

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parent by the FBI.

(6) In addition to reporting the subject's apprehension to FBIHQ, the office of origin, and known auxiliary offices, the specific disposition of the victim child, if located, should be included in the apprehension teletype. This notification should include the identity, location and telephone number of the local custodial agency and the specific individual handling the matter. The office of origin should ensure that the parent having legal custody of the child at the time of the parental kidnaping is promptly notified in order that proceedings may be instituted by said individual to regain custody of the abducted child.

EFFECTIVE: 08/19/85

88-7.5 Access to Information from the Federal Parent Locator Service (FPLS), UFAP-Parental Kidnaping-Child Abduction Matters

FPLS requires that a certification letter be submitted with each request for information regarding a Parental Kidnaping subject. This letter certifies that:

(1) The request is being made solely to locate an individual in connection with a parental kidnaping or child custody case.

(2) Any information obtained through FPLS will be treated as confidential, will be used solely for the purpose for which it was obtained and will be safeguarded in accordance with the Privacy Act of 1974 (Title 5, USC, Section 552a).

(3) That Federal tax information obtained through the FPLS will not be used or disclosed in violation of Title 26, USC, Section 6103, and Title 26, USC, Section 7213 (a) (1).

(4) That SAC, Baltimore, or SAC's designee, will be the certifying official for the FBI. Field offices desiring to request information from the FPLS should submit an airtel to the Baltimore Field Office with a lead at Rockville, Maryland, to contact the FPLS. The airtel should set forth the following descriptive data in order that a complete search of all records available can be made by FPLS:

(a) Subject's name

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- (b) Known aliases
- (c) Social Security Number (SSAN), if known
- (d) Branch of military service, if applicable
- (e) Retired military and branch, if applicable
- (f) Whether subject receives any veteran's benefits
- (g) Federal employee, if applicable (past, present

or retired)

- (h) Date of birth
- (i) Place of birth
- (j) Subject's father's full name, if known
- (k) Subject's mother's full name, including maiden

name, if known

(5) In cases where the SSAN is known, the results of this search will be provided to the FBI within 14 days. If the SSAN is unknown, hand searches will be conducted by the Social Security Administration, which may take several months to complete. FPLS will furnish the address and employment data on file at the time the search is made.

(6) Searches can also be conducted on the victim's name, provided that the applicable descriptive data, as set out above, is furnished. These searches are helpful if the victim is eligible to receive either social security benefits or veteran's benefits from a deceased parent. In some cases, the victim may be employed on a part-time basis.

(7) All offices are reminded that requests for information from FPLS can be made in UFAP-Parental Kidnaping cases only. Leads to contact FPLS should not be set out in any other types of investigation.

EFFECTIVE: 08/19/85

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88-8

JUVENILE SUBJECTS

(1) A request for assistance to locate a juvenile under the Unlawful Flight Statute, who flees interstate to avoid prosecution, custody, or confinement, should be accepted or refused for investigation based on whether the individual has been handled locally as an adult or as a juvenile on the state offense in question.

(2) If the individual has been treated as an adult and charged with or convicted of the substantive criminal offense in question, investigation should be instituted under the Unlawful Flight Statute.

(3) If the individual has been handled as a juvenile and charged with juvenile delinquency or adjudged a juvenile delinquent, the Unlawful Flight Statute does not apply and investigation should not be instituted since juvenile proceedings are not considered a criminal offense.

EFFECTIVE: 08/19/85

88-9

STATE PAROLE AND PROBATION VIOLATORS

(1) Requests for assistance to locate state parole and probation violators who, after conviction for a crime covered by the Unlawful Flight Statute, are placed on parole or probation for said crime and flee interstate, fall within the provisions of the Unlawful Flight Statute.

(2) Local authorities should be advised to submit a formal order revoking the subject's parole or probation, together with a communication to the USA making a formal request for assistance.

(3) These matters, if orally requested, should be promptly presented to the USA and investigation should not be held in abeyance pending receipt by the USA of the above formal written request.

EFFECTIVE: 08/19/85



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88-10 INDIVIDUALS FREE ON STATE BOND

(1) Requests for assistance to locate individuals who flee interstate after being released on local bond to await court action on a charge covered by the Unlawful Flight Statute fall within the provisions of this act and should be promptly presented to the USA.

(2) If USA declines to authorize a complaint for the issuance of an Unlawful Flight warrant based on the grounds that there has not been an actual forfeiture of bond in the case, promptly furnish the full details to FBIHQ by cover airtel enclosing an original and four copies of an LHM for referral to the Department for a final determination.

EFFECTIVE: 08/19/85

88-11 VERIFYING STATE PROCESS AND INTENT TO EXTRADITE AND PROSECUTE OR RECONFIN

The status of the warrant issued by the state authorities for the subject's arrest and their continued intention to extradite and prosecute or reconfine the subject upon his/her apprehension must be confirmed once a year.

EFFECTIVE: 08/19/85

88-12 REPORTING PROCEDURES (See MIOG, Part I, 25-10, 76-1.8, 76-2.9, 76-3.13, 115-7 & Part II, 21-29.)

(1) Upon initiating an unlawful interstate flight fugitive investigation, two copies of an FD-65 should be promptly forwarded to FBIHQ, and one copy submitted directly to the Savannah Information Technology Center (SITC), by the office of origin. Upon the fugitive's apprehension or location, the locating office must promptly notify FBIHQ by teletype (at least ROUTINE in precedence), followed by Form FD-515 entry into the Integrated Statistical Reporting and Analysis Application (ISRAA). The office of origin must ensure that all auxiliary offices are notified by teletype to discontinue.

(2) As a general rule, Prosecutive Reports are not required in unlawful interstate flight cases and, therefore, are not to be submitted to FBIHQ unless a specific request is made for same.

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EFFECTIVE: 10/11/94

88-13 CHARACTER

(1) Section 1073 - UNLAWFUL FLIGHT TO AVOID PROSECUTION (UFAP), UNLAWFUL FLIGHT TO AVOID CUSTODY (UFAC), UNLAWFUL FLIGHT TO AVOID CONFINEMENT (UFAC) - followed by the local substantive offense; or UNLAWFUL FLIGHT TO AVOID GIVING TESTIMONY (UFAT) - followed by the local substantive crime charged in the criminal proceedings.

(2) Section 1074 - UNLAWFUL FLIGHT TO AVOID PROSECUTION (UFAP), UNLAWFUL FLIGHT TO AVOID CUSTODY (UFAC), UNLAWFUL FLIGHT TO AVOID CONFINEMENT (UFAC), UNLAWFUL FLIGHT TO AVOID GIVING TESTIMONY (UFAT) - followed by DAMAGING PROPERTY.

EFFECTIVE: 08/19/85

||88-14 CHILD SUPPORT RECOVERY ACT OF 1992

EFFECTIVE: 11/29/93

| 88-14.1 Statute  
| Title 18, USC, Section 228

EFFECTIVE: 11/29/93

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88-14.2 Background

The Child Support Recovery Act of 1992 (CSRA), Public Law No. 102-521, makes the willful failure to pay a past due support obligation with respect to a child residing in another state a Federal offense. A first violation of the CSRA is punishable by six months' imprisonment and/or fine. Subsequent violations are punishment by two years' imprisonment and/or fine. The FBI has investigatory jurisdiction.

EFFECTIVE: 11/29/93

88-14.3 Elements of the Offense

The United States must prove that the defendant:

- (1) Having the ability to pay,
  - (2) Did willfully fail to pay,
  - (3) A known past due (child) support obligation,
  - (4) Which has remained unpaid for longer than one year
- OR is an amount greater than \$5,000,
- (5) For a child who resides in another state.

Interstate flight is NOT an element of the offense.

EFFECTIVE: 11/29/93

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88-14.4 Definitions

(1) Past due support obligation

The CSRA defines "past due support obligation" as any amount:

(a) determined under a court order or an order of an administrative process pursuant to the law of a state to be due from a person for the support and maintenance of a child or of a child and the parent with whom the child is living; and

(b) that has remained unpaid for a period longer than one year, or is greater than \$5,000.

(2) Willfulness

(a) According to the legislative history, willfulness has the same meaning as it has for the purposes of Federal criminal law. Willfulness is the knowing and intentional violation of a known legal duty.

With respect to ability to pay, the legislative history states:

"The government must establish beyond a reasonable doubt, that at the time payment was due the (defendant) possessed sufficient funds to enable him to meet his obligation or that the lack of sufficient funds on such date was created by (or was the result of) a voluntary and intentional act without justification in view of all the financial circumstances of the (defendant)."

(b) Willfulness cannot be presumed from nonpayment alone. The Government is required to prove that the defendant, as of the date specified as the date of the offense, willfully failed to pay an outstanding amount.

(c) Criminal culpability is not obviated by partial payment of support obligations because the statute defines past due support obligation as "any amount." However, partial payment may be relevant to inability to pay, which would negate willfulness. The circumstances of any case in which partial payment has been made, including the relationship of the amount of partial payment to the total arrearage and ability to pay the arrearage, should be considered before proceeding.

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EFFECTIVE: 11/29/93

88-14.5 Investigative/Prosecutive Procedures/Policy

(1) On 7/13/93, the Attorney General signed national guidelines outlining the procedures to be followed by Department of Justice personnel in the enforcement of the CSRA. These guidelines make the United States Attorney in each judicial district responsible for determining which cases will be selected for investigation and prosecution. Therefore, the FBI will only investigate violations of the CSRA referred by the U.S. Attorneys Offices.

(2) While complaints and referrals for investigation may come from private lawyers, individual complainants, or state and local agencies, as a matter of policy, the U.S. Attorneys Office will generally only accept referrals from state Title IV-D agencies.

(3) Title IV-D of the Social Security Act, 42 USC Section 651 et seq., requires states to establish programs for the enforcement of child support. The agencies operating these programs are known as IV-D agencies. These agencies must pursue child support on behalf of individuals who are receiving public assistance as well as at the request of individuals who are not. In addition, there may be other qualified agencies involved with child support. Ordinarily an individual complainant should be encouraged to work with a IV-D agency or other appropriate agency to pursue other available remedies before action is taken by Federal prosecutors.

(4) Because of the variation among state laws, DOJ policy encourages U.S. Attorneys to coordinate with IV-D officials or their designees and other appropriate officials on local and state levels to establish referral procedures and may wish to establish local committees to develop local guidelines. FBI personnel are authorized to serve on these committees.

EFFECTIVE: 11/29/93

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88-14.6 Referral Package

U.S. Attorneys will require a referral package in every case. Each referral package will include all background information, copies of court records and orders, and ability-to-pay information. As a general rule, cases will be accepted by the U.S. Attorneys Office only if they make clear that all reasonably available remedies have been exhausted. Among such cases, priority should be given to cases where the following is established:

(1) a pattern of flight from state to state to avoid payment or flight after service of process for contempt or contempt hearing; or

(2) a pattern of deception to avoid payment such as changing employment, concealing assets or location, or using false social security numbers; or

(3) failure to make support payments after being held in contempt; or

(4) when the failure to make child support payments has a nexus to other potential Federal charges, such as bankruptcy fraud (i.e., concealing assets), bank fraud (i.e., false statements to a bank), Federal income tax charges (i.e., false statement or tax evasion) or related criminal conduct.

EFFECTIVE: 11/29/93

88-14.7 Notice to Target and Charging

(1) If, after reviewing all pertinent documents, further action is believed to be warranted, the following steps will be taken by the U.S. Attorneys Office prior to filing charges:

(a) Before referring any case involving the CSRA to the FBI, a letter will be sent to the nonpaying parent advising them of the CSRA and that they appear to be in violation of it and requesting payment of the arrearage within a specified period (30 days). If payment is not made, the matter will be referred to the FBI.

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(b) After the FBI completes the investigation and prior to the filing of charges, a second letter will be sent by the U.S. Attorney advising the target that charges will be filed unless satisfactory payment is made within a specified period of time (30 days).

(c) If satisfactory payment is still not forthcoming and no adequate explanation for nonpayment has been advanced, U.S. Attorneys Offices should file charges against the nonpaying parent.

(2) Since the first offense is a misdemeanor, the U.S. Attorneys Office will use summons to obtain the presence of the defendant in court.

(3) As a matter of policy, except in extraordinary cases, pretrial diversion will not be used to resolve these cases, since the impact of the felonious second offense would be avoided by pretrial diversion of the first offense.

(4) To ensure that criminal process is not used to enforce a civil debt, once charges are filed, a case should not be routinely dismissed merely because an offender makes payment.

EFFECTIVE: 11/29/93

88-14.8 Character and Alpha Classification

(1) CSRA matters will be worked as 88E classifications. The CSRA is not a fugitive-related investigation but is a substantive FBI investigation predicated on a violation of Title 18, USC, Section 228, Failure to Pay Legal Child Support Obligations.

(2) These matters should be entered in FOIMS as CSRA MATTERS and include "CSRA MATTERS" in the caption as follows:

JOHN DOE;  
CSRA MATTERS;  
OO: (Office of Origin)

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SECTION 89.

ASSAULTING, KILLING OR ATTEMPTING TO KILL  
A FEDERAL OFFICER; CONGRESSIONAL, CABINET  
AND SUPREME COURT ASSASSINATION, KIDNAPING,  
AND ASSAULT; CONSPIRACY TO IMPEDE OR INJURE  
AN OFFICER; CRIMES AGAINST FAMILY MEMBERS

89-1

BREAKDOWN OF THE 89 CLASSIFICATION (See MIOG, Part I,  
267-4(7).)

The 89 classification is made up of four separate and distinct violations which are as follows: (1) Assaulting, Killing or Attempting to Kill a Federal Officer (AFO/KFO); (2) Congressional, Cabinet, and Supreme Court Assassination, Kidnaping, and Assault; (CCSCAKA); (3) Conspiracy to Impede or Injure an Officer (CIO); and (4) Crimes Against Family Members (CAFM). For purposes of clarity and reference, this section will set forth these violations individually in a four-part format.

NOTE: Upon receipt of information sufficient to initiate an investigation under the Assaulting, Killing or Attempting to Kill a Federal Officer classification, and when the violation has occurred on Indian Lands, a new Crime on Indian Reservation (198G classification) case should be promptly opened. See Section 198-1.5 (7) for complete details.

EFFECTIVE: 11/23/94

89-2

ASSAULTING, KILLING OR ATTEMPTING TO KILL A FEDERAL  
OFFICER

EFFECTIVE: 02/25/91

89-2.1 Deleted

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EFFECTIVE: 11/23/94

89-2.2 Statutes and Penalties (See MIOG, Part I, 44-1.1(10),  
89-3.2(2), 89-3.6(2), 175-2(2).)

Assaulting, Killing or Attempting to Kill a Federal  
Officer is covered by seven statutes which are set forth as follows:

(1) Assaulting, Resisting or Impeding Certain Officers or  
Employees, Title 18, USC, Section 111.

"(a) In general --  
Whoever forcibly assaults, resists, opposes, impedes,  
intimidates, or interferes with any person designated in Section 1114  
of this Title while engaged in or on account of the performance of his  
official duties, or forcibly assaults or intimidates any person who  
formerly served as a person designated in Section 1114 on account of  
the performance of official duties during such person's term of  
service, shall be fined under this title or imprisoned not more than  
three years, or both."

"(b) Enhanced penalty -- Whoever, in the commission  
of any such acts, described in subsection (a), uses a deadly or  
dangerous weapon, shall be fined under this title or imprisoned not  
more than ten years, or both."

(2) Protection of Officers and Employees of the United  
States, Title 18, USC, Section 1114.

"Whoever kills or attempts to kill any judge of the United  
States,

any United States Attorney,  
any Assistant United States Attorney, or  
any United States marshal or deputy marshal or person  
employed to assist such marshal or deputy marshal,  
any officer or employee of the Federal Bureau of  
Investigation of the Department of Justice,  
any officer or employee of the Postal Service,  
any officer or employee of the Secret Service, or of the  
Drug Enforcement Administration,  
any officer or member of the U.S. Capitol Police,  
any member of the Coast Guard,  
any employee of the Coast Guard assigned to perform

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investigative, inspection or law enforcement functions,  
Administration assigned to perform investigative, inspection, or law enforcement functions,  
any officer or employee of the Federal Railroad  
correctional institution,  
any officer or employee of any United States penal or  
any officer, employee or agent of the customs, or of the  
internal revenue or any person assisting him in the execution of his  
duties,  
any immigration officer,  
any officer or employee of the Department of Agriculture  
or of the Department of the Interior designated by the Secretary of  
Agriculture or the Secretary of the Interior to enforce any Act of  
Congress for the protection, preservation, or restoration of game and  
other wild birds and animals,  
any employee of the Department of Agriculture designated  
by the Secretary of Agriculture to carry out any law or regulation, or  
to perform any function in connection with any Federal or State  
program or any program of Puerto Rico, Guam, the Virgin Islands, or any  
other commonwealth, territory, or possession of the United States, or  
the District of Columbia, for the control or eradication or prevention  
of the introduction or dissemination of animal diseases,  
any officer or employee of the National Park Service,  
any civilian official or employee of the Army Corps of  
Engineers assigned to perform investigations, inspections, law or  
regulatory enforcement functions, or field-level real estate  
functions,  
any officer or employee of, or assigned to duty in, the  
field service of the Bureau of Land Management, or  
any officer or employee of the Indian Field Service of the  
United States, or  
any officer or employee of the National Aeronautics and  
Space Administration directed to guard and protect property of the  
United States under the administration and control of the National  
Aeronautics and Space Administration,  
any security officer of the Department of State or the  
Foreign Service, or  
any officer or employee of the Department of  
Education; the Department of Health and Human Services, the Consumer  
Product Safety Commission, Interstate Commerce Commission, the  
Department of Commerce, or of the Department of Labor, or of the  
Department of the Interior, or of the Department of Agriculture  
assigned to perform investigative, inspection or law enforcement  
functions, or  
any officer or employee of the Federal Communications  
Commission performing investigative, inspection or law enforcement

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functions, or

any officer or employee of the Department of Veterans Affairs assigned to perform investigative or law enforcement functions, while engaged in the performance of his official duties, or on account of the performance of his official duties, or

any United States probation or pretrial service officer,

or

any United States magistrate, or any officer or employee of any department or agency within the intelligence community (as defined in Section 3.4(F) of Executive Order 12333, December 8, 1981, or successor orders) not already covered under the terms of this section, or

any attorney, liquidator, examiner, claim agent, or other employee of the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Housing Finance Board, the Resolution Trust Corporation, the Board of Governors of the Federal Reserve System, any Federal Reserve bank, or the National Credit Union Administration, or any other officer, agency or employee of the United States designated for coverage under this section in regulations issued by the Attorney General engaged in or on account of the performance of his official duties or

any officer or employee of the United States or any agency thereof designated to collect or compromise a Federal claim in accordance with Sections 3711 and 3716 - 3718 of Title 31 or other statutory authority shall be punished as provided under Sections 1111 and 1112 of this title, except that any such person who is found guilty of attempted murder shall be imprisoned for not more than twenty years."

(3) | THREATS TO ASSAULT, KIDNAP, OR MURDER A UNITED STATES OFFICIAL, A UNITED STATES JUDGE, A FEDERAL LAW ENFORCEMENT OFFICER, OR AN OFFICIAL WHOSE KILLING WOULD BE A CRIME UNDER TITLE 18, USC, SECTION 1114 ARE COVERED IN TITLE 18, USC, SECTION 115 (B).

On 10/12/84, Title 18, USC, was amended by creating Section 115. This statute makes it a Federal offense to impede, intimidate, interfere with, or retaliate against certain Federal officials by assaulting, kidnaping, or murdering, or threatening to assault, kidnap, or murder a member of his/her family. See 89-5 concerning "Crime Against Family Members of Federal Officials (CAFM)." On 11/18/88, Public Law 100-690 amended Title 18, USC, Section 115 by adding a provision which brought the Federal officials themselves within the purview of the statute. This amendment made it a Federal crime to threaten to assault, kidnap, or murder a United States official, a United States judge, a Federal law enforcement officer or an official whose killing would be a crime under Title 18, USC,

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Section 1114.

Excerpts of this statute concerning threats against Federal officials by threatening or injuring a family member, Title 18, USC, Section 1115, are as follows:

"(a) (1) Whoever -

"... (B) threatens to assault, kidnap, or murder a United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under such section (Title 18, USC, Section 1114),

with intent to impede, intimidate, or interfere with such official, judge or law enforcement officer while engaged in the performance of official duties, or with intent to retaliate against such official, judge, or law enforcement officer on account of the performance of official duties shall be punished as provided in subsection (b)."

"... (b) (4) A threat made in violation of this section shall be punished by a fine of not more than \$5,000 or imprisonment for a term of not more than five years, or both, except that imprisonment for a threatened assault shall not exceed three years."

"(c) As used in this section, the term --

"(1) 'Federal law enforcement officer' means any officer, agent, or employee of the United States authorized by law or by a Government agency to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of Federal criminal law;

"(3) 'United States judge' means any judicial officer of the United States, and includes a justice of the Supreme Court and a United States magistrate; and

"(4) 'United States official' means the President, President-elect, Vice President, Vice-President-elect, a Member of Congress, a member of the executive branch who is the head of a department listed in Title 5, USC, Section 101, or the Director of the Central Intelligence Agency."

(4) Conspiracy to murder, Title 18, USC, Section 1117.  
"If two or more persons conspire to violate section 1111, 1114, or 1116 of this title, and one or more of such persons do any overt act

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to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life."

(5) Murder, Title 18, USC, Section 1111.

"(a) Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, escape, murder, kidnaping, treason, espionage, sabotage, aggravated sexual abuse or sexual abuse, burglary, or robbery or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree.

"Any other murder is murder in the second degree.

"(b) Within the special maritime and territorial jurisdiction of the United States,

"Whoever is guilty of murder in the first degree, shall suffer death unless the jury qualifies its verdict by adding thereto 'without capital punishment,' in which event he shall be sentenced to imprisonment for life;

"Whoever is guilty of murder in the second degree, shall be imprisoned for any term of years or for life."

It should be noted that when enacted, Section 1111 provided for the death penalty under certain circumstances. However, in a 1972 Supreme Court decision, *Furman v. Georgia*, it was held that the imposition of the death sentence constitutes cruel and unusual punishment unless strict statutory standards are provided for its application. Since Section 1111 is discretionary and does not provide the above standards, its death penalty provisions are invalid.

(6) Manslaughter, Title 18, USC, Section 1112.

"(a) Manslaughter is the unlawful killing of a human being without malice. It is of two kinds:

"Voluntary -- Upon a sudden quarrel or heat of passion.

"Involuntary -- In the commission of an unlawful act not amounting to a felony, or in the commission in an unlawful manner, or without due caution and circumspection, of a lawful act which might

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produce death.

"(b) Within the special maritime and territorial jurisdiction of the United States,

"Whoever is guilty of voluntary manslaughter, shall be imprisoned not more than ten years;

"Whoever is guilty of involuntary manslaughter, shall be fined not more than \$1,000 or imprisoned not more than three years, or both."

(7) Assault or Resistance, Title 18, USC, Section 2231.

"(a) Whoever forcibly assaults, resists, opposes, prevents, impedes, intimidates, or interferes with any person authorized to serve or execute search warrants or to make searches and seizures while engaged in the performance of his duties with regard thereto or on account of the performance of such duties, shall be fined not more than \$5,000 or imprisoned not more than three years, or both; and --

"(b) Whoever, in committing any act in violation of this section, uses any deadly or dangerous weapon, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both."

(8) The kidnaping of a federal officer named in Title 18, USC, Section 1114 or designated by regulations issued by the Attorney General for coverage under Title 18, USC, Section 1114 is a violation of Title 18, USC, Section 1201(a)(5). See MIOG, Part I, Section 7-1.1 for the investigation of kidnaping matters.

(9) Protected Officers and Employees of the United States designated by the U.S. Attorney General on 5/18/94, as set forth in the Federal Register, Vol. 59, No. 95.

Part 64, of Title 28, Code of Federal Regulations (CFR) (AG Order No. 1874-94), as set forth in the Federal Register, Vol. 59, No. 95, dated 5/18/94, designates categories of Federal officers and employees who, in addition to those already designated by statute, will be within the protective coverage of Title 18, USC, Section 1114, which prohibits the killing or attempted killing of such designated officers and employees. The categories of Federal officers and employees covered by Section 1114 are also protected, while they are engaged in or account of the performance of their official duties, from a conspiracy to kill, Title 18, USC, Section 1117; kidnaping,

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Title 18, USC, Section 1201 (a)(5); forcible assault, intimidation, or interference, Title 18, USC, Section 111; and threat of assault, kidnap or murder with intent to impede, intimidate, or retaliate against such officers or employees, Title 18, USC, Section 115 (a)(1)(B). In addition, the immediate family members of such officers and employees are protected against assault, kidnap, murder, attempt to kidnap or murder, and threat to assault, kidnap, or murder with intent to impede, intimidate, or retaliate against such an officer or employee, Title 18, USC, Section 115 (a)(1)(A). The protective coverage has been extended to those Federal officers and employees whose jobs involve inspection, investigative or law enforcement responsibilities, or whose work involves a substantial degree of physical danger from the public that may not be adequately addressed by available state or local law enforcement resources.

Title 28, CFR, Part 64, Section 64.2 states "The following categories of Federal officers and employees are designated for coverage under Title 18, USC, Section 1114:

- Court;                   "(a) Judges and special trial judges of the U.S. Tax
- Commission;           "(b) Commissioners and employees of the U.S. Parole
- the Community Relations Service of the Department of Justice;           "(c) Attorneys of the Department of Justice;
- Prisons;               "(d) Resettlement specialists and conciliators of
- Attorney's Office; and employees of the U.S. Attorney's Office           "(e) Officers and employees of the Bureau of
- assigned to perform debt collection functions;           "(f) Criminal investigators employed by the U.S.
- bankruptcy analysts and other officers and employees of the U.S.           "(g) U.S. Trustees and Assistant U.S. Trustees;
- Trustee System who have contact with creditors and debtors, perform           "(h) Attorneys and employees assigned to perform or
- audit functions, or perform other investigative or enforcement           to assist in performing investigative, inspection or audit functions
- functions in administering the bankruptcy laws;           of the Officer of the Inspector General of an "establishment" or a
- to assist in performing investigative, inspection or audit functions           "designated Federal entity" as those terms are defined by Sections 11
- of the Officer of the Inspector General of an "establishment" or a           and 8E, respectively, of the Inspector General Act of 1978, as
- amended, Title 5, USC, app.3, Sections 11 and 8E, and of the Offices           of Inspector General of the U.S. Government Printing Office, the Merit
- of Inspector General of the U.S. Government Printing Office, the Merit           Systems Protection Board, and the Selective Service System.
- Systems Protection Board, and the Selective Service System.           "(i) Employees of the Department of Agriculture at
- the State, District or County level assigned to perform loan making,



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loan servicing or loan collecting functions;

"(j) Officers and employees of the Bureau of Alcohol, Tobacco, and Firearms assigned to perform or to assist in performing investigative, inspection or law enforcement functions;

"(k) Federal air marshals of the Federal Aviation Administration;

"(l) Employees of the Bureau of Census employed in field work conducting censuses and surveys;

"(m) Employees and members of the U.S. Military services and employees of the Department of Defense who:

"1. are military police officers,

"2. have been assigned to guard and protect property of the United States, or persons under the administration and control of a U.S. military service or the Department of Defense, or

"3. have otherwise been assigned to perform investigative, correction or other law enforcement functions;

"(n) The Director, Deputy Director for Supply Reduction, Deputy Director for Demand Reduction, Associate Director for State and Local Affairs, and Chief of Staff of the Office of National Drug Control Policy;

"(o) Officers and employees of the Department of Energy authorized to carry firearms in the performance of investigative, inspection, protective or law enforcement functions;

"(p) Officers and employees of the U.S. Environmental Protection Agency assigned to perform or to assist in performing investigative, inspection or law enforcement functions;

"(q) Biologists and technicians of the U.S. Fish and Wildlife Service who are participating in sea lamprey control operations;

"(r) Uniformed and nonuniformed special police of the General Services Administration; and officers and employees of the General Services Administration assigned to inspect property in the process of its acquisition by or on behalf of the U.S. Government;

"(s) Special Agents of the Security Office of the U.S. Information Agency;

"(t) Employees of the regional, subregional and resident offices of the National Labor Relations Board assigned to perform investigative and hearing functions or to supervise the performance of such functions; and auditors and Security Specialists of the Division of Administration of the National Labor Relations Board;

"(u) Officers and employees of the U.S. Nuclear Regulatory Commission:

"1. assigned to perform or to assist in performing investigative, inspection or law enforcement functions or

"2. engaged in activities related to the review

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of license applications and license amendments;

"(v) Investigators employed by the U.S. Office of Personnel Management;

"(w) Attorneys, accountants, investigators and other employees of the U.S. Securities and Exchange Commission assigned to perform or to assist in performing investigative, inspection, or other law enforcement functions;

"(x) Employees of the Social Security Administration assigned to Administration field offices, hearing offices and field assessment offices;

"(y) Officers and employees of the Tennessee Valley Authority authorized by the Tennessee Valley Authority Board of Directors to carry firearms in the performance of investigative, inspection, protective or law enforcement functions;

"(z) Officers and employees of the Federal Aviation Administration, the Federal Highway Administration, the National Highway Traffic Safety Administration, the Research and Special Programs Administration and the Saint Lawrence Seaway Development Corporation of the U.S. Department of Transportation who are assigned to perform or assist in performing investigative inspection or law enforcement functions;

"(aa) Federal administrative law judges appointed pursuant to Title 5, USC, Section 3105; and

"(bb) Employees of the Office of Workers' Compensation Programs of the Department of Labor who adjudicate and administer claims under the Federal Employees Compensation Act, the Longshore and Harbor Workers' Compensation Act and its extension, or the Black Lung Benefits Act."

EFFECTIVE: 11/23/94

89-2.3 Elements

(1) That the defendant threatened, assaulted, killed or attempted to kill the Federal officer or employee.

(2) That the Federal officer or employee is protected under Title 18, USC, Section 1114.

(3) That when threatened, assaulted, killed, or the attempt to kill occurred while the protected federal officer or employee was engaged in the performance of his/her official duties or the protected federal officer or employee was threatened, assaulted,

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killed or the attempt to kill was on account of the performance of his/her official duties.

(4) Based on a 3/19/45 Supreme Court Decision, UNITED STATES V. FEOLA, it is not necessary to allege and prove under Title 18, USC, Section 111, that the subject knew the victim was a federal officer or employee at the time of the assault. The Supreme Court held that it need only be established that the subject had the specific intent to commit the assault. However, as a matter of investigative and prosecutive policy, such knowledge, if present, should always be obtained. Prior to this Supreme Court decision, the various U.S. Circuit Courts of Appeals were divided as to whether or not the above knowledge on the part of the subject was an essential element.

(5) In regard to the federal Conspiracy Statute, Title 18, USC, Section 371, the above Supreme Court decision also held that it is not necessary to allege and prove that the subjects knew the victim they conspired to assault was a federal officer or employee.

(6) While the above Supreme Court decision dealt only with assaults of federal officers and employees in connection with Title 18, USC, Section 111, the Department of Justice (DOJ) is of the opinion that this decision would also apply to killings of federal officers and employees covered under Title 18, USC, Section 1114, and conspiracies to kill these individuals.

(7) Title 18, USC, Section 111, does not define the term assault. The DOJ has advised that in the absence of this statutory definition, the courts have followed the following common law definition: An attempt with force or violence to do a corporal injury to another consisting of an act which may cause corporal injury, accompanied by circumstances which denote at the time an intention coupled with the present ability of using actual violence against the person. (See MIOG, Part I, 89-3.5(3), 175-4(5).)

(8) The element of force is required under the provisions of Title 18, USC, Section 111, since it states in part, "Whoever forcibly assaults, ...." In many instances the use of force by the subject will be clearly present and will not present a legal issue. It should be noted that mere verbal threats alone do not constitute force; however, a threat of force uttered with the apparent present ability to execute it, such as the subject displaying a weapon or making a threatening gesture which places the victim in fear of bodily harm, legally constitutes force and a violation of the above statute.

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EFFECTIVE: 11/23/94

89-2.4 Method for Determining if a Federal Officer or Employee is Protected Under the Assaulting a Federal Officer (AFO) and Killing a Federal Officer (KFO) Statutes

(1) Upon receipt of a complaint, immediately review Title 18, USC, Section 1114, to determine if the reported victim is specifically listed and, therefore, protected.

(2) If, after the above review, a question exists as to whether or not the reported victim is protected, promptly contact an appropriate Assistant U.S. Attorney (AUSA) for a legal opinion.

(3) If the AUSA cannot resolve the issue, telephonically contact the Violent Crimes/Fugitive Unit, Violent Crimes and Major Offenders Section, Criminal Investigative Division, FBIHQ, for resolution.

EFFECTIVE: 11/23/94

89-2.5 Renaming of Agencies Covered Under Title 18, U.S. Code, Section 1114

(1) Title 18, USC, Section 1114, identifies the agencies, officers, and employees who are covered under the AFO and KFO Statutes.

(2) Occasionally, an agency identified and protected under Section 1114 will undergo an executive reorganization and be renamed. An example is the Bureau of Narcotics and Dangerous Drugs which became the Drug Enforcement Administration.

(3) Based on court interpretations of Title 5, USC, Section 907(a), dealing with executive reorganizations, it has been held that a successor agency is afforded the same degree of protection under Section 1114 as the agency which it replaces. Section 907(a) continues, in effect, those laws existing prior to the reorganization of an agency. Therefore, the FBI should investigate AFO and KFO

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violations involving the successor agency.

EFFECTIVE: 02/16/89

89-2.6 Distinction Between "Engaged In" Versus "On Account Of"  
Performance of Official Duties

(1) The distinction between a protected Government officer who is assaulted, killed or an attempt to kill occurs while "engaged in the performance of his/her official duties" and "on account of the performance of his/her official duties" is as follows:

(a) If a Special Agent is assaulted by a bank robbery fugitive while apprehending him/her, the assault occurred while the Agent was "engaged in the performance of his/her official duties."

(b) If, after being released from prison, the bank robbery subject assaults the above Agent, while either on or off duty, because the Agent had previously arrested him/her, the assault occurred "on account of the performance of his/her official duties."

(2) The above latter distinction is an important factor to be considered if a protected Government officer or employee is assaulted, killed or an attempt to kill occurs while either on or off duty. Consideration should be given to the possibility that the victim was attacked because of past performances of official duties. In such situations, an investigation may be instituted to determine if the attack was so motivated, thus making it a violation of either the AFO or KFO Statutes.

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89-2.7      Comments and Clarification Regarding Threats to Commit an  
Assaulting a Federal Officer or Killing a Federal Officer  
Violation (See MIOG, Part I, 89-2.10(7), 89-2.15(4).)

(1) Threats to assault or kill a protected federal officer or employee constitute a federal violation under Title 18, USC, Section 115(a)(1)(B). A requisite element in providing these crimes is "intent." These crimes must be committed with intent to impede, intimidate, interfere with, or retaliate against United States officials, United States judges, federal law enforcement officers, or officers whose killing would be a crime under Title 18, USC, Section 1114, while those individuals are engaged in the performance of their official duties, or on account of the performance of their official duties.

(2) It should be noted that if captioned threats do not constitute an actual AFO violation, they must be further analyzed as follows to determine if they constitute some other federal or local violation upon which investigative or referral action should be taken:

(a) If captioned threats are conveyed by the U.S. mail or interstate telephone call, FBI jurisdiction under the Federal Extortion Statute exists. See Part I, Section 9 of this manual entitled "Extortion" for complete details.

(b) If the threats involve two or more subjects, a violation under the federal Conspiracy Statute, Title 18, USC, Section 371, or the Conspiracy to Impede or Injure an Officer Statute, Title 18, USC, Section 372, may exist. See 89-4 for complete details.

(c) Captioned threats, under the proper circumstances, could constitute an Obstruction of Justice violation. See Part I, Section 72 of this manual entitled "Obstruction of Justice" for complete details.

(d) Captioned threats, if made by telephone call within the District of Columbia or in interstate commerce, may constitute a violation of the Interstate Obscene or Harassing Telephone Calls Statute, Title 47, USC, Section 223. See Part I, Section 178 of this manual entitled "Interstate Obscene or Harassing Telephone Calls" for complete details.

(3) If the office of origin (00) is in doubt whether captioned threats constitute a federal violation under the FBI's jurisdiction, the fact situation should be promptly presented to an appropriate AUSA for a legal opinion regarding this issue and whether

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an investigation or a "preliminary inquiry" should be conducted in accordance with the current Attorney General's Guidelines governing such procedures.

(4) In the absence of FBI jurisdiction, if it is determined that a federal violation under the investigative jurisdiction of another federal agency exists, such as blackmail which is handled by Postal Inspectors, the case should be referred to the appropriate agency for investigation.

(5) In the absence of a federal violation, instant threats should be referred to local authorities to determine if they constitute an offense which will be investigated by them.

(6) Any presentation to an AUSA for a legal opinion or referral to another federal agency or local authority should be set forth in the notification communication to FBIHQ. See 89-2.10 for complete details.

(7) The OO must immediately notify the victim and any agency having protective responsibility for the victim. In cases involving threats against members of the Federal Judiciary, the Chief Judge of the Judicial District also should be notified of the threat. Notification should include whether the FBI or another agency is investigating the threat. All notifications should be set forth in the initial teletype to FBIHQ.

(8) A confirmation letter to the victim must be sent within five working days after the FBI is made aware of the threat. A copy of the confirmation letter must be directed to any agency having protective responsibility for the victim and, if appropriate, to the Chief Judge of the Judicial District.

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89-2.8 Threat Assessments

(1) In cases involving AFO or KFO threats received by a victim, the FBI may be requested by the agency responsible for protecting the victim for a "threat assessment" of the threats received.

(2) Based on past experience, the above situation will most likely occur when a Federal judge has received an AFO or KFO threat and the local U.S. Marshals Service (USMS) Office is providing the victims with protection. The USMS Office may request the local FBI Office or FBIHQ, through USMS Headquarters, Washington, D.C., for a "threat assessment" to assist them in determining if the protection detail should be continued.

(3) It must be clearly understood that the FBI does not provide "threat assessments" per se. The FBI will not, under any circumstances, render an opinion as to whether the protection should be continued or terminated.

(4) It is necessary, however, when a field office receives such a legitimate request, that it disseminate all known facts regarding the AFO or KFO threats and the results of any pertinent investigation. This dissemination will enable the agency providing the protection to formulate its own "threat assessment" and opinion whether the protection should be continued or terminated. If the threat was developed through an FBI informant, his/her identity must be protected; however, a statement regarding his/her reliability should be provided. In threats developed from other sources known to the FBI, dissemination should include a statement as to their reliability as far as can be determined.

(5) In order to prevent a misinterpretation of the facts, the above dissemination must be made by letterhead memorandum (LHM). In addition, FBIHQ must be promptly notified of the request and the local dissemination by submission of a cover airtel to FBIHQ enclosing four (4) copies of the disseminated LHM.

(6) Requests or "threat assessments" occasionally originate on a headquarters level. In such instances, FBIHQ will promptly notify the appropriate office and request an LHM setting forth details of the threat and the results of any investigation conducted. The information disseminated to the requesting agency will enable it to formulate its own "threat assessment."

(7) Field offices should deal only with local

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representatives of agencies requesting information in connection with threat assessments. Inquiries from the headquarters of those agencies should be referred to FBIHQ.

EFFECTIVE: 02/16/89

89-2.9 FBI Investigative Jurisdiction

(1) The AFO and KFO statutes (Title 18, USC, Sections 111, 115, 1111, 1112, 1114, 1117 and 2231) do not specifically designate the FBI as the responsible investigative agency. However, the DOJ has historically ruled that the FBI has investigative jurisdiction over all federal criminal statutes when no agency is specifically designated to conduct the investigation.

(2) Following passage of the original AFO and KFO Statutes on May 18, 1934, and in accord with the above DOJ ruling, the FBI has investigated, and continues to investigate, all assaults and killings of and attempts to kill federal officers and employees protected under Title 18, USC, Section 1114, with the following exceptions:

(a) Pursuant to a 10/2/56 agreement, the Department of the Treasury has investigative jurisdiction over assaults and killings of and attempts to kill its personnel. See 89-2.13 for complete details.

(b) Pursuant to a 3/5/75 agreement, the Postal Inspectors have investigative jurisdiction over assaults and killings of and attempts to kill postal employees under certain designated conditions. See 89-2.14 for complete details.

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89-2.10 Notification to FBIHQ in Killing a Federal Officer and  
Assaulting a Federal Officer Cases (See MIOG, Part I,  
89-2.7(6), 89-2.11(10).)

(1) FBIHQ should be promptly notified of all new KFO cases by telephone and confirmed by immediate teletype. In addition, FBIHQ should be advised of all subsequent major investigative developments by summary teletype. The teletype reporting a subject's apprehension should include a statement as to whether or not the subject admitted the violation.

(2) In all AFO cases, depending on the urgency of the situation, FBIHQ should be promptly notified by telephone or teletype. Telephone notification to FBIHQ must be confirmed by immediate teletype. In addition, FBIHQ should be advised of all subsequent major investigative developments by summary teletype.

(3) In cases involving a threat to commit an AFO or KFO violation, depending on the urgency of this situation, FBIHQ should be notified by telephone, teletype or airtel. Telephone notification to FBIHQ must be promptly confirmed by teletype. If such cases involve FBI personnel, United States Attorneys or Assistant United States Attorneys as potential victims, notification should be made by telephone or teletype. In cases involving members of the Federal Judiciary, including U.S. Magistrates, refer to 89-2.10(4).

(4) During regular working hours, FBIHQ, Criminal Investigative Division, Violent Crimes/Fugitive Unit, must be immediately notified by telephone of all reports of threats to commit an AFO or KFO violation against any member of the Federal Judiciary, including U.S. Magistrates. If report of a threat occurs outside of regular working hours, telephone the FBIHQ Duty Agent. This telephonic notification should be followed by an "Immediate" teletype to FBIHQ. (See (3) & MIOG, Part I, 89-2.15(3).)

(5) In any AFO or KFO investigation, FBIHQ must be advised by airtel of its closing. This airtel should state the basis for closing. The airtel should also indicate the victim, as well as any agency having protective responsibility for the victim and any Chief Federal Judge (if victim was a member of the Federal Judiciary), was notified that the investigation has been closed.

(6) In regard to AFO or KFO cases involving FBI personnel and threatened or actual AFO or KFO cases involving federal judges, USAs and AUSAs, see 89-2.15 for further details.

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(7) In cases involving a threat to commit an AFO or KFO violation, the teletype or airtel notification to FBIHQ must set forth the complete details of the threat and its means of conveyance. See 89-2.7 for further requirements.

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89-2.11 Investigative Procedures

(1) In KFO violations, signed statements, if possible, should be obtained from all eyewitnesses to the offense and other witnesses who provide any positive information concerning the case. Interviews of individuals who were in the immediate vicinity of the offense but claim not to have seen or heard anything should be recorded in an FD-302 in the event they are later contacted by defense counsel for opposing testimony.

(2) In KFO violations, it is essential to establish that the cause of death occurred by reason of the subject's actions. An autopsy must be performed by a physician who will testify as to the cause of death. Copies of the autopsy report, along with the interview of the performing physician, must be included in the prosecutive report.

(3) In AFO and KFO violations, every effort must be made to recover any weapon used for examination purposes. In addition, the weapon should be traced to establish it was in the subject's possession at the time of the offense.

(4) In AFO and KFO violations, evidence of a prior crime committed by the subject, which may have been the basis for the assault such as his/her attempting to avoid apprehension, may be introduced as evidence to establish a motive for having committed the AFO or KFO violation.

(5) In AFO and KFO violations, a thorough past history of the subject should be developed as this information may be used as rebuttal evidence against him/her during his/her trial.

(6) In AFO cases, the victim should be examined by a physician in order to establish and document the extent of injuries. A copy of the medical report, along with the interview of the examining physician, should be included in the prosecutive report.

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(7) If AFO or KFO threats have been received by the victim and investigation has been or will be instituted by the FBI under the policy set forth in 89-2.7. [REDACTED]

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(8) [REDACTED]

(9) [Deleted]

(10) When FBI personnel are victims in actual or threatened AFO or KFO cases, FBIHQ should be notified as set forth in 89-2.10.

(11) AFO and KFO cases involving FBI personnel must receive immediate and aggressive investigation. When the subject is identified, the case should be promptly presented to the USA's Office in an effort to obtain federal process. If prosecution is declined, FBIHQ should be advised by teletype setting forth the complete details. If appropriate, FBIHQ will discuss the case with the DOJ for a final determination. It is noted that an absence of actual physical injury should not bar federal prosecution.

(12) In the event an AFO or KFO matter arises from a substantive investigation, a separate AFO or KFO case will be opened. A copy of the opening communication should be directed to the substantive unit at FBIHQ.

EFFECTIVE: 03/21/95

89-2.12 [Deleted]

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EFFECTIVE: 11/23/94

| 89-2.12.1 | Deleted |

EFFECTIVE: 11/23/94

89-2.13 Department of the Treasury Personnel

(1) For purposes of this section, the Department of the Treasury is comprised of the United States Secret Service (USSS); Internal Revenue Service; United States Customs Service; and the Bureau of Alcohol, Tobacco, and Firearms.

(2) When the AFO and KFO Statutes were initially enacted into law, the FBI investigated those offenses involving Department of the Treasury officers and employees.

(3) Based on a subsequent desire of the Department of the Treasury to investigate such offenses involving its personnel, a jurisdictional agreement was reached between the Department of the Treasury, FBI, and DOJ.

(4) On 10/2/56, the Attorney General (AG) issued a memorandum ruling that assaults and killings of Department of the Treasury personnel were to be investigated by the Department of the Treasury rather than the FBI. This memorandum also stated that if any case develops wherein the absence of an FBI investigation of it is materially interfering with law enforcement, the AG should be advised.

(5) A Department of the Treasury agency may request an FBI field office to investigate an AFO or KFO matter as an exception to the AG's 10/2/56 ruling. The headquarters of the requesting agency should forward such requests to FBIHQ by the most practical, expeditious means so that FBI investigation, if approved, is not delayed. The field office receiving a request of this type should promptly furnish pertinent details to the Violent Crimes Unit, Criminal Investigative Division, FBIHQ, so appropriate Bureau officials may be informed of the incident and the request.

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EFFECTIVE: 02/16/89

89-2.14 U.S. Postal Service (USPS) Employees

(1) Title 18, USC, Sections 111 and 1114, provide protection to officers and employees of the USPS from assaults, killings and attempts to kill.

(2) On 3/5/74, DOJ issued the following policy directive regarding AFO and KFO matters involving USPS employees:

"Unless otherwise directed by the Department, investigation of assaults on and homicides of personnel of the USPS is for the FBI if incidental to another violation under the primary investigative jurisdiction of the FBI or if the attack is by a nonemployee against a Postal Inspector and for the USPS in all other instances."

(3) For purposes of clarification, based on the above, current FBI and USPS jurisdiction is as follows:

(a) The FBI will investigate assaults and killings of and attempts to kill Postal Inspectors by nonpostal employees.

(b) The USPS will investigate assaults and killings of and attempts to kill Postal Inspectors by postal employees.

(c) The USPS will investigate all other assaults, killings of and attempts to kill USPS officers and employees except in cases where the attack is incidental to another violation under the primary investigative jurisdiction of the FBI or if otherwise directed by DOJ.

(4) In applying the above guidelines, the term "employee" includes all individuals employed by the USPS, regardless of title, other than persons who provide services for the USPS on a fee, contract, job, or piecework basis.

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89-2.15      Assaulting, Killing, Attempting to Kill, or Threats Made  
                 Against Federal Judges, United States Attorneys and  
                 Assistant United States Attorneys | (See MIOG, Part I,  
                 89-2.10(6).) |

(1) It should be noted that while Title 18, USC, Section 1114, lists "any judge of the United States" as being protected from assaults, killings and attempts to kill, U.S. Supreme Court Justices are actually protected under the Congressional, Cabinet, and Supreme Court Assassination, Kidnaping, and Assault Statute, Title 18, USC, Section 351. See 89-3 for complete details. As a consequence, assassinations, kidnapings, attempts to kill, and assaults of U.S. Supreme Court Justices are investigated by the FBI under Section 351, and assaults and killings of or attempts to kill all other federal judges are investigated by the FBI under Sections 111 and 1114, respectively.

(2) Although there is no direct case law in point, DOJ has opined that District of Columbia Superior Court Judges and Judges of Territorial Courts of the Virgin Islands fall within the "any judge of the United States" provision of Section 1114. DOJ, therefore, recommends that an AFO or KFO investigation may be instituted by the FBI if these judges are assaulted, killed or an attempt to kill occurs while engaged in or on account of the performance of their official duties. However, DOJ is also of the opinion that if investigation is instituted by the FBI, prosecution in both instances should be handled by local authorities, who would also have jurisdiction under their laws, unless compelling reasons exist for federal prosecution under Title 18, USC, Sections 111 or 1114.

(3) In regard to actual assaults and killings of or attempts to kill captioned individuals within the elements of Title 18, USC, Sections 111 and 1114, a violation is clearly present and an investigation should be immediately instituted. FBIHQ should be promptly notified of any such violations by telephone and/or teletype, and the notification teletype to FBIHQ should set forth the investigation already conducted and specific leads reflecting the investigation to be conducted. (See 89-2.10(4) for procedures concerning members of the Federal Judiciary.) In addition, FBIHQ should also be advised of all subsequent major investigative developments by a summary teletype.

(4) In regard to threats to assault or kill captioned individuals, Title 18, USC, Section 115 (a)(1)(B) makes it a federal crime to threaten to assault, kidnap, or murder United States officials (whose killing would be a crime under Title 18, USC, Section

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1114) and United States judges. A United States judge is defined as "...any judicial officer of the United States, and includes a justice of the Supreme Court and a United States magistrate...." Title 18, USC, Section 1114 lists both U.S. Attorneys and Assistant U.S. Attorneys as protected officers or employees. Therefore, threats against United States judges, U.S. Attorneys, and Assistant U.S. Attorneys are investigated by the FBI under Title 18, USC, Section 115. See 89-2.7 for instructions regarding proper procedures.

(5) Although AFO and KFO violations involving captioned individuals fall within the FBI's investigative jurisdiction, the FBI does not have legal authority to provide physical protection for those individuals to prevent threatened assaults, killings and attempts to kill. The security and physical protection of captioned individuals are the statutory responsibility of the USMS which is vested under Title 28, USC, Section 569.

(6) Based on the above protective responsibilities of the USMS, an agreement between FBIHQ and the USMS Headquarters was established wherein FBIHQ agreed to promptly notify the USMS both locally and on a headquarters level whenever a threat to assault or kill captioned individuals is received by the FBI, or when such individuals are actually assaulted or killed.

(7) When an investigation is instituted involving one of captioned individuals as a victim or potential victim, close liaison should be established locally with the USMS office responsible for his/her physical protection.

(8) Dissemination of pertinent information to USSS on a local and headquarters level must be made by the FBI whenever an individual threatens, assaults, kills or attempts to kill captioned individuals. See 89-2.19 for additional information.

(9) In conjunction with (6) and (8) above, the office receiving instant threats must promptly notify the nearest office of the USSS and the USMS office covering the victim's location. The notification teletype to FBIHQ should specifically set forth the details of the notification made locally by the FBI and the USMS and the USSS.

(10) Based on an agreement between FBIHQ and the DOJ, FBIHQ has agreed to promptly notify the Deputy Assistant Attorney General, Criminal Division, and the Assistant Director for Legal Services, Executive Office for United States Attorneys, DOJ, Washington, D.C., whenever a threat to assault, kill or attempt to

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kill a USA or AUSA is received by the FBI, or when said individuals are actually assaulted or killed. FBIHQ will handle dissemination of information to the above DOJ officials and the USSS and USMS Headquarters.

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89-2.16      Assaulting, Killing, or Attempting to Kill a Federal  
Officer Cases Involving U.S. Bureau of Prisons (BOP)  
Personnel

(1) Based on a 10/30/52 request by the BOP Headquarters, Washington, D.C., FBIHQ has agreed to disseminate on a headquarters level a copy of FBI reports prepared in AFO and KFO cases involving BOP personnel.

(2) Prior to 6/9/80, the FBI conducted an investigation of all AFO and KFO cases involving BOP personnel.

(3) Based on a February, 1980, Office of Planning and Evaluation field survey of AFO cases in which it was determined that USAs throughout the field were routinely declining prosecution of minor and unaggravated assaults of BOP personnel by inmates in favor of the subject being administratively handled by BOP authorities, the following investigative policy was adopted by the FBI on 6/9/80:

(a) Prior to conducting an investigation of alleged minor and unaggravated assaults of BOP personnel by inmates, a preliminary incident report should be obtained from prison authorities and promptly presented to the USA to determine if Federal prosecution is warranted or if the incident should be handled by administrative procedures available to BOP authorities.

(b) The OO should thereafter promptly, orally advise the local BOP authorities of the USA's opinion regarding prosecution of minor and unaggravated assaults. If prosecution is declined, the above oral dissemination should be confirmed by providing BOP authorities locally with a copy of the letter to the USA confirming his/her declination. BOP authorities may then consider proceeding administratively against the inmate. If an investigation is required or prosecution is authorized by the USA, the above oral notification and subsequent investigation by the FBI at the BOP facility will serve as notice to BOP authorities to refrain from taking administrative

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sanctions against the inmate.

(c) In order for FBIHQ to advise the BOP Headquarters, Washington, D.C., of declination cases in which a prosecutive report is not prepared, the OO should submit to FBIHQ, by cover airtel, three copies of the letter to the USA confirming his/her declination. The cover airtel should set forth a request for FBIHQ to disseminate a copy of the letter to BOP Headquarters, Washington, D.C.

(d) If investigation is instituted and a prosecutive report is prepared, two copies of the report should be submitted to FBIHQ, with one copy designated for BOP Headquarters. Do not disseminate a copy of the prosecutive report locally to the BOP facility involved. The facility should be advised of the final outcome of the investigation by letter or LHM. This communication should merely set forth the prosecutive results and not contain any information which would identify witnesses, sources, or investigative techniques which could be possibly compromised.

EFFECTIVE: 12/19/86

89-2.17 Any Security Officer of the Department of State or the Foreign Service

(1) Title 18, USC, Section 1114, was amended on 8/27/64 to include any security officer of the Department of State or Foreign Service. The intention of this amendment was to extend protection to any of the security officers engaged in protective activities under Title 22, USC, Section 2666.

(2) Section 2666 defines the above security officers as individuals designated by the Secretary of State and authorized to carry firearms for the purpose of protecting heads of foreign states, official representatives of foreign governments, and other distinguished visitors to the United States, the Secretary of State, the Deputy Secretary of State official representatives of the U.S. Government, and members of the immediate families of any such persons, both in the United States and abroad.

EFFECTIVE: 12/19/86

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89-2.18 Nuclear Regulatory Commission (NRC) Inspectors

(1) On 6/30/80, Section 235 of the Atomic Energy Act of 1954 was amended to extend protection to captioned individuals who are assaulted or killed while engaged in the performance of such inspection duties, or on account of the performance of such duties.

(2) Based on an FBI/DOJ management decision, on 8/16/82, Section 117 of this manual entitled "Atomic Energy Act of 1954" was revised to transfer these violations to the 117 classification as an Atomic Energy Act violation.

(3) Investigations involving NRC Inspectors as victims initiated after 8/16/82, are to be handled as set forth in (2) above.

EFFECTIVE: 12/19/86

89-2.19 Dissemination of Information to United States Secret Service in Assaulting a Federal Officer and Killing a Federal Officer Cases

(1) Pursuant to a 2/3/65 agreement between the Bureau and the USSS, the FBI is obligated to disseminate certain types of information developed during AFO and KFO investigations to the USSS, on both a local and headquarters level, to assist the USSS in its statutory protective functions.

(2) The notification teletype to FBIHQ should include the complete fact situation, the identity of the USSS employee notified, the time and date of notification, and the identity of the FBI employee who made the dissemination. FBIHQ will handle dissemination to USSS Headquarters.

(3) In regard to AFO and KFO cases, see Part I, 175-14(2) of this manual entitled "FBI/USSS Agreement Concerning Protective Responsibilities" and Part I, 175-14(3) entitled "USSS Protectees in a Travel Status" for the types of information to be disseminated to the USSS.

EFFECTIVE: 12/19/86

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89-2.20 Department of Justice Prosecutive Policy in Assaulting a  
Federal Officer Cases

The USA's Manual states, in essence, that the focus of the DOJ's prosecutive policy is on Federal officers and employees who have law enforcement duties which regularly expose them to the public, and on staff members of Federal correctional institutions. This protection from assaults and other forms of forcible resistance, enables such persons to perform their required functions effectively, and violent acts against them should be prosecuted vigorously. By contrast, offenses against other types of Federal employees should be referred to a local prosecutor unless the offense is particularly aggravated or there are other unusual circumstances present justifying Federal action.

EFFECTIVE: 12/19/86

89-2.21 Character

- (1) Assaulting or Attempting to Kill a Federal Officer  
(AFO)
- (2) Killing a Federal Officer (KFO)

EFFECTIVE: 12/19/86

| 89-2.22 Subclassification

| See MAOP, Part II, 3-1.1, "FBI Classifications and  
| Subdivided Classifications."

EFFECTIVE: 10/18/95

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89-2.23 Venue

Venue will be in the judicial district where the assault, killing or attempt to kill occurred. Title 18, USC, Section 3236, provides that the crime of murder is committed at the place where the injury was inflicted, the poison administered, or other means employed, which caused the death of the victim, without regard to the place where the death occurred.

EFFECTIVE: 12/19/86

89-2.24 Office of Origin

In AFO or KFO violations, the OO shall be the office in whose territory the assault, killing or attempt to kill occurred.

EFFECTIVE: 12/19/86

89-2.25 Copies of Prosecutive Reports to FBIHQ

Two copies in both AFO and KFO cases.

EFFECTIVE: 12/19/86

89-3 CONGRESSIONAL, CABINET, AND SUPREME COURT ASSASSINATION,  
KIDNAPING, AND ASSAULT (CCSCAKA)

EFFECTIVE: 12/19/86

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89-3.1 Background

(1) Prior to 1/2/71, there were no specific Federal statutes covering the killing, kidnaping, or assaulting of a Member of Congress or a Member-of-Congress-elect, or attempting or conspiring to kill or kidnap such persons. Federal prosecution of the above crimes had to be prosecuted under one of the general Federal criminal statutes, if applicable, or referred to local authorities for prosecution.

(2) On 1/2/71, the Omnibus Crime Control Act of 1970, Public Law 91-644, was enacted into law. Title IV of this Act provided the following protection for Members of Congress, by a new statute, Title 18, USC, Section 351, the Congressional Assassination Statute (CAS), and amended the Authorization for Interception of Wire or Oral Communications Statute, Title 18, USC, Section 2516.

(3) The CAS, Section 351, made it a Federal offense to kill, kidnap, assault, attempt to kill or kidnap, or conspire to kill or kidnap any Member of Congress or Member-of-Congress-elect. The above amendment to Section 2516 added CAS as one of the statutory offenses which could be investigated by use of properly authorized interceptions of wire or oral communications, when such interceptions may provide evidence of these violations.

(4) On 10/6/82, Title 18, USC, Sections 351 and 1751 were amended under Public Law 97-285 to provide penalties for crimes against Cabinet officers, Supreme Court Justices and Presidential staff members, and "for other purposes."

(5) The CAS was amended by the above Public Law to include the assassination, kidnaping, assault, attempts to kill or kidnap, and conspiracies to kill or kidnap the head or his/her second in command of a department in the executive branch of the Government listed under Title 5, USC, Section 101, or an individual nominated to be the head of a department during the pendency of his/her nomination; the Director of Central Intelligence or an individual nominated to be Director during the pendency of his/her nomination; and U.S. Supreme Court Justices, or individuals so nominated during the pendency of their nominations.

(6) Under the 10/6/82 CAS amendment referred to above, the Government need not prove that the subject knew that the victim was an individual protected under this statute, and it also provides for extraterritorial jurisdiction.

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(7) As a result of the 10/6/82 amendment, the CAS was retitled as the Congressional, Cabinet, and Supreme Court Assassination, Kidnaping, and Assault (CCSCAKA) Statute and is the current statute under which the FBI has investigative jurisdiction.

(8) Public Law 97-285 also amended Section 2516 to include CCSCAKA violations as one of the offenses which could be investigated by use of properly authorized interceptions of wire or oral communications, when such interceptions may provide evidence of these violations.

EFFECTIVE: 12/19/86

89-3.2 Statute and Penalties

(1) Set forth below in its entirety is the CCSCAKA Statute, Title 18, USC, Section 351.

"(a) Whoever kills any individual who is a Member of Congress or a Member-of-Congress-elect, a member of the executive branch of the Government who is the head, or a person nominated to be head during the pendency of such nomination, of a department listed in section 101 of title 5 or the second ranking official in such department, the Director (or a person nominated to be Director during the pendency of such nomination) or Deputy Director of Central Intelligence, a major Presidential or Vice Presidential candidate (as defined in section 3056 of this title), or a Justice of the United States, as defined in section 451 of title 28, or a person nominated to be Justice of the United States, during the pendency of such nomination, shall be punished as provided by section 1111 and 1112 of this title.

"(b) Whoever kidnaps an individual designated in subsection (a) of this section shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual.

"(c) Whoever attempts to kill or kidnap any individual designated in subsection (a) of this section shall be punished by imprisonment for any term of years or for life.

"(d) If two or more persons conspire to kill or kidnap any individual designated in subsection (a) of this section and one or more of such persons do any act to effect the object of the

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conspiracy, each shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual.

"(e) Whoever assaults any person designated in subsection (a) of this section shall be fined not more than \$5,000, or imprisoned not more than one year, or both; and if personal injury results, shall be fined not more than \$10,000, or imprisoned for not more than ten years, or both.

"(f) If Federal investigative or prosecutive jurisdiction is asserted for a violation of this section, such assertion shall suspend the exercise of jurisdiction by a State or local authority, under any applicable State or local law, until Federal action is terminated.

"(g) Violations of this section shall be investigated by the Federal Bureau of Investigation. Assistance may be requested from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

"(h) In a prosecution for an offense under this section the Government need not prove that the defendant knew that the victim of the offense was an individual protected by this section.

"(i) There is extraterritorial jurisdiction over the conduct prohibited by this section."

(2) Section 351(a) provides for punishment as provided by Sections 1111 and 1112. Title 18, USC, Section 1111, is the Murder Statute, and Title 18, USC, Section 1112, is the Manslaughter Statute. See 89-2.2 for their text, definitions, and penalties.

EFFECTIVE: 06/18/87



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89-3.3 Elements

(1) The elements of the CCSCAKA Statute are summarized as follows:

(a) That the defendant killed or kidnaped an individual designated in Section 351(a).

(b) That the defendant assaulted an individual designated in Section 351(a).

(c) That the defendant attempted to kill or kidnap an individual designated in Section 351(a).

(d) That two or more persons conspired to kill or kidnap an individual designated in Section 351(a) and one or more of the persons did an act to effect the object of the conspiracy.

(2) In regard to (1)(c) above, the following DOJ opinion pertaining to the identical element under the Presidential and Presidential Staff Assassination, Kidnaping, and Assault (PPSAKA) Statute, Title 18, USC, Section 1751 (see Part I, 175-2 of this manual entitled "Statute and Penalties"), should be noted and followed under the CCSCAKA Statute, Title 18, USC, Section 351.

(a) Under the PPSAKA Statute, the DOJ has ruled that when an individual acting alone threatens to kidnap or kill a protected individual and commits a sufficient overt act to carry out the threat, such as purchasing a weapon, such an act constitutes an attempt to kill or kidnap within the meaning of the PPSAKA Statute. See Part I, 175-3 of this manual entitled "Elements" for complete details.

(b) The DOJ has advised FBIHQ that this opinion regarding the PPSAKA Statute also applies to the identical element within the meaning of the CCSCAKA Statute.

(3) In regard to (1)(d) above, the following DOJ opinion pertaining to the identical element under the PPSAKA Statute should be noted and followed under the CCSCAKA Statute.

(a) Under the PPSAKA Statute, the DOJ has ruled that the FBI has the authority to investigate a credible allegation of a conspiracy to kill or kidnap a protected individual even though the allegation does not include any information regarding an overt act in furtherance of the conspiracy.

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(b) The DOJ has advised FBIHQ that this opinion regarding the PPSAKA Statute also applies to the identical element within the meaning of the CCSCAKA Statute.

(4) It should be noted that Section 351(h) does not require that the subject knew the victim was an individual protected under this statute.

(5) Furthermore, the CCSCAKA Statute does not require that the criminal act occur while the protected individual is engaged in or on account of the performance of his/her official duties.

EFFECTIVE: 12/19/86

89-3.4 Definitions

(1) Member of Congress - One who is a component part of the U.S. Senate or House of Representatives. The DOJ is of the opinion that in addition to U.S. Senators and Representatives, delegates or representatives of special geographical divisions who are extended the privileges of membership, such as the Resident Commissioner from Puerto Rico, are protected under this statute. The DOJ has also advised that in their opinion, the Vice President would be classified as a Member of Congress under this statute; however, prosecutions for any violation involving him/her as a victim should be pursued under Title 18, USC, Section 1751, the PPSAKA Statute, so as to allow use of its more liberal assault and reward provisions.

(2) Member-of-Congress-Elect - One who has been certified by the usual state or local certifying official as having been elected to one of the offices described above. This term does not include a U.S. Senator appointed under the 17th Amendment and while pending entry to office.

(3) Head, Second Ranking Official, or Person Nominated to be Head - Title 5, USC, Section 101, identifies captioned individuals in part by setting forth the 13 executive departments which are referred to under Section 351(a). These Departments are State, Treasury, Defense, Justice, Interior, Agriculture, Commerce, Labor, Health and Human Services, Housing and Urban Development, Transportation, Energy, and Education.

(4) Director of Central Intelligence (DCI) - The DCI is

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the primary advisor to the President and the National Security Council on national foreign intelligence matters. To discharge this and other assigned duties, the Director of the Central Intelligence Agency (CIA) is also the DCI and the head of the Intelligence Community. The Intelligence Community consists of the CIA, the National Security Agency, the Defense Intelligence Agency, certain offices within the Department of Defense, the Bureau of Intelligence and Research of the Department of State, the intelligence elements of the military services, the FBI, and the Departments of Treasury and Energy.

(5) Posse Comitatus - The common law definition is individuals who may be summoned by the sheriff to assist in preserving the public peace or in executing a legal precept that is forcibly opposed. Title 18, USC, Section 1385, which is commonly referred to as the Posse Comitatus Statute, prohibits the use of the military as a posse comitatus or otherwise to execute the laws unless expressly authorized by the Constitution or Act of Congress. Section 351(g) specifically removes this prohibition.

(6) Extraterritorial Jurisdiction - This term describes the legal authority to cause an investigation to be conducted and subsequently prosecute a subject in the United States for a violation of Federal law which was committed by him/her outside the territorial jurisdiction of the United States. Section 351(i) specifically grants extraterritorial jurisdiction for CCSCAKA violations. As a practical matter, these situations will present immense investigative difficulties and may require extradition of the subject to the United States. The DOJ has elected not to furnish investigative and prosecutive guidelines in this area. Each case will be considered individually upon receipt of the facts and the results of a contract with appropriate foreign authorities regarding what action and assistance will be provided to the United States.

EFFECTIVE: 12/19/86

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89-3.5      Comments and Clarification Regarding the Congressional,  
Cabinet and Supreme Court Assassination, Kidnaping, and  
Assault Statute

(1) This statute covers assassinating, kidnaping, assaulting, attempts to kill or kidnap, and conspiracies to kill or kidnap. It does not include mere threats made by a subject against those individuals protected under Section 351(a) unless the threat is to kill or kidnap and the individual who made the threat commits a sufficient overt act in furtherance of carrying it out. See 89-3.3 and 89-3.6 for further details.

(2) The term "kidnap" as used in this statute, merely means "carrying away" the victim, and interstate transportation is not required. In addition, investigation can be instituted immediately since the "24 hour presumptive rule" utilized in the Federal Kidnaping Statute does not apply under Section 351(b).

(3) Section 351(e) does not define the term assault. See 89-2.3 for the definition of assault under the AFO Statute. This definition is also utilized under the CCSCAKA Statute.

(4) Section 351(e) divides assaults into two categories: those that result in personal injury and all others. The personal injury suffered must occur to individuals enumerated under Section 351(a).

(5) The assault penalties under Section 351(e) make no provision for aggravated assaults in which a deadly or dangerous weapon is utilized. The penalty for assault not resulting in personal injury is a \$5,000 fine and/or not more than one year's confinement. If the assailant uses a deadly or dangerous weapon, however, consideration should be given to prosecution under Section 351(c), attempt to kill, even though the intended victim was not personally injured. The penalty for an attempt to kill under Section 351(c) is any term of years or for life.

(6) The conspiracy provisions of Section 351(d) are limited to two objectives, killing or kidnaping, and do not include the objective of assault. In a conspiracy situation involving an assault objective, prosecution must be had under Title 18, USC, Section 371, with Section 351(e), the assault provision, as the underlying charge.

(7) If Federal investigative or prosecutive jurisdiction is asserted, Section 351(f) suspends local jurisdiction for the same

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offense until Federal action is terminated. However, it does not prevent local authorities from cooperating with the FBI during our investigation. Conflicts of jurisdiction resulting from the commission of an independent local offense, such as assaulting a state official incidental to a CCSCAKA violation, are to be resolved on a case-by-case basis.

(8) The death penalty provisions of Section 351(b) and 351(d) are invalid based on a 1972 Supreme Court decision, *Furman v. Georgia*, which required strict statutory standards for its application.

EFFECTIVE: 12/19/86

89-3.6      Comments and Clarification Regarding Threats Made to  
Protected Individuals (See MIOG, Part I, 89-3.8 (4) &  
89-3.10 (2).)

(1) As noted in 89-3.5, mere threats made by a subject to a protected individual do not constitute a violation of the CCSCAKA Statute unless the threat is to kill or kidnap and the individual who made said threat commits a sufficient overt act in furtherance of the threat.

(2) It should be noted that if captioned threats do not constitute an attempt to kill or kidnap under the CCSCAKA Statute, they must be further analyzed to determine if they constitute some other federal or local violation upon which investigative or referral action should be taken by the FBI. Most of the individuals protected under the CCSCAKA Statute are also protected (concerning threats) under Title 18, USC, Section 115. See MIOG, Part I, 89-2.2 for complete details. For those individuals protected under the CCSCAKA statute but not covered under Title 18, USC, Section 115, additional analysis of existing statutes may be required:

(a) If the threat, coupled with an overt act, involves a conspiracy to assault rather than to kill or kidnap a protected individual, FBI jurisdiction will be under the federal Conspiracy Statute, Title 18, USC Section 371, with the assault provisions of the CCSCAKA Statute, Section 351(e), as the underlying charge.

(b) If the threat involves a conspiracy without an overt act against a protected individual, FBI jurisdiction will lie

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under the Conspiracy to Impede or Injure an Officer (CIO) Statute, Title 18, USC, Section 372. See 89-4 for complete details.

| (c) | If the threat is conveyed by the U.S. mail or interstate telephone call, FBI jurisdiction will be under the corresponding federal Extortion Statute. See Part I, Section 9 of this manual entitled "Extortion" for complete details.

| (d) | If the threat is made by telephone within the District of Columbia or in interstate commerce and does not meet the criteria of the federal Extortion Statute, Title 18 USC, Section 875, it may constitute a violation of the Interstate Obscene or Harassing Telephone Calls Statute, Title 47, USC, Section 223. See Part I, Section 178 of this manual entitled "Interstate Obscene or Harassing Telephone Calls" for complete details.

| (e) | Title 18, USC, Section 245(b)(1) entitled "Federally Protected Activities" should be considered as a possible basis for a federal violation and FBI jurisdiction. See Part I, Section 44-1.5 of this manual for complete details.

| (3) | If the OO is in doubt whether captioned threats constitute a federal violation under the FBI's jurisdiction, the fact situation should be promptly presented to an appropriate AUSA for a legal opinion regarding this issue and whether an investigation or "preliminary inquiry" should be conducted in accordance with the AG's Guidelines governing such procedures.

| (4) | In the absence of FBI jurisdiction, if it is determined that a federal violation under the investigative jurisdiction of another federal agency exists, the case should be referred to that agency.

| (5) | In the absence of a federal violation, information received regarding threats should be referred to local authorities as they may constitute a local offense.

| (6) | Details regarding presentation of threat matters to an AUSA for a legal opinion, or their referral to another federal agency or local authorities for handling, should be set forth in the notification teletype to FBIHQ.

| (7) | The office developing the information regarding captioned threats must promptly notify the intended victim if he/she is located within its territory or request the appropriate office to make the notification. The intended victim should also be advised of

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what investigative or referral action is being taken. The above dissemination or requested dissemination should be set forth in the notification teletype to FBIHQ.

EFFECTIVE: 11/23/94

89-3.7 Threat Assessments

(1) In cases involving a CCSCAKA threat received by a victim, the FBI may be requested by the agency responsible for protecting the victim for an assessment of it.

(2) See 89-2.8. The instructions set forth also apply to CCSCAKA matters and should be followed accordingly.

EFFECTIVE: 12/19/86

89-3.8 FBI Versus United States Secret Service Jurisdiction

(1) The following distinctions between the CCSCAKA Statute and the PPSAKA Statute regarding FBI and USSS jurisdiction should be noted.

(2) The FBI has investigative jurisdiction over actual violations of both the above statutes.

(3) Individuals protected under the PPSAKA Statute, other than Presidential and Vice Presidential staff members, are also USSS protectees under the Secret Service Powers Statute, Title 18, USC, Section 3056. Threats made against the above USSS protectees not constituting a PPSAKA violation should be referred to and investigated by the USSS under their Threats Against the President and Successors to the Presidency Statute, Title 18, USC, Section 871. See Part I, 175-9 of this manual entitled "FBI Versus United States Secret Service Jurisdiction" for complete details.

(4) Individuals protected under the CCSCAKA Statute are not USSS protectees. Threats made against these individuals which do not constitute a CCSCAKA or other Federal violation under the FBI's jurisdiction should not be referred to the USSS. See 89-3.6 for complete details regarding FBI policy in this area. See 89-3.13 for

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FBI dissemination requirements in this area.

EFFECTIVE: 12/19/86

89-3.9 Congressional Candidates

(1) Although Title 18, USC, Section 351(a), provides protection to Members of Congress and Members-of-Congress-elect, it does not include those individuals who are candidates for Congress. Therefore, the CCSCAKA Statute is not applicable for establishing investigative jurisdiction in assassinations, kidnaping, assaults, or threats concerning Congressional candidates.

(2) It should be noted, however, that the FBI may have investigative jurisdiction over threats and assaults involving Congressional candidates under other federal statutes if the appropriate elements are present. For complete details and instructions, refer to Part I, Section 9 entitled "Extortion"; Part I, Section 44-1.5; and Part I, Section 56 entitled "Election Laws," of this manual.

EFFECTIVE: 11/23/94

89-3.10 Notification to FBIHQ in Congressional, Cabinet, and Supreme Court Assassination, Kidnaping, and Assault Cases

(1) In all threatened or actual CCSCAKA violations, depending on the urgency of the situation, FBIHQ should be promptly notified by telephone. Telephone notification to FBIHQ must be promptly confirmed by teletype. FBIHQ should also be advised of all subsequent major investigative developments by summary teletype. The teletype reporting a subject's apprehension should include a statement as to whether or not the subject admitted the violation.

(2) In cases involving a threat to commit a CCSCAKA violation, the teletype notification to FBIHQ must set forth the complete details of the threat and its means of conveyance. See 89-3.6, 89-3.13, and 89-3.14 for further requirements.



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EFFECTIVE: 12/19/86

89-3.11 Investigative Procedures

(1) The investigative procedures to follow in threatened and actual CCSCAKA violations are similar to those utilized in threatened and actual KFO and AFO violations. Refer to 89-2.11 for details.

(2) In assassination cases under Title 18, USC, Section 351, refer to 89-3.12 as to the assistance that Armed Forces Institute of Pathology will render upon request.

(3) As noted in 89-3.1, Public Law 97-285 amended the Authorization for Interception of Wire or Oral Communications Statute, Title 18, USC, Section 2516, to include CCSCAKA violations as offenses that can be investigated by use of properly authorized interceptions of wire or oral communications.

EFFECTIVE: 12/19/86

89-3.12 Agreement Between the FBI and the Armed Forces Institute of Pathology (AFIP)

On 8/19/76, the AFIP and the FBI entered into the following self-explanatory Memorandum of Agreement in Presidential and Congressional Assassination matters:

"1. PARTIES: The parties to this agreement are the Armed Forces Institute of Pathology (AFIP) and the Federal Bureau of Investigation (FBI).

"2. PURPOSE: This agreement established procedures and assigns responsibilities for providing AFIP medical investigation expertise to the FBI upon request in the event of the traumatic or unexpected death of the President of the United States, the Vice-President, a Member of Congress, or certain other persons designated in 18 USC 1751 and 18 USC 351.

"3. AUTHORITY: The general authority for this interdepartmental support agreement is 31 USC 686; the specific authorities for the support services to be provided are 18 USC 1751(i)

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and 18 USC 351(g).

"4. RESPONSIBILITIES OF THE AFIP:

"(a) To maintain a current contingency plan for providing medical investigative support to the FBI upon request.

"(b) To designate a staff of board-certified forensic pathologists and allied science personnel adequate to fulfill the responsibilities of this agreement.

"(c) To designate a liaison officer to coordinate with the FBI in planning for and activating this agreement.

"(d) To respond to an FBI request for assistance by conducting a complete medical investigation of death (forensic autopsy) in the event of the traumatic or unexpected death of one or more of those persons specified in paragraph 2, above, such investigation to be conducted at the AFIP if at all possible.

"(e) To dispatch designated members of the AFIP staff to the scene of death to obtain information relevant to the medical investigation and to accompany the remains on return to the AFIP.

"(f) To assume custody and control of all medical records and biological substances pertinent to the medical investigation of death.

"(g) To provide the FBI with a final report of the medical investigation of death and with such progress reports as are appropriate pending the final report, with the FBI to be the sole recipient of these reports.

"(h) To advance such funds as are necessary for current operations in the event it becomes necessary to activate this agreement.

"5. RESPONSIBILITIES OF THE FBI:

"(a) To designate a liaison officer to coordinate with the AFIP in planning for and activating this agreement.

"(b) To review on an annual basis the AFIP contingency plan for providing medical investigation support to the FBI.

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"(c) To assert federal investigative jurisdiction under 18 USC, 1751(h) or 18 USC 351(g) in the event it becomes necessary to activate this agreement.

"(d) To officially request the AFIP to conduct a complete medical investigation of death (forensic autopsy) in the event of the traumatic or unexpected death of one or more of those persons named in paragraph 2, above.

"(e) To obtain release of remains to the AFIP from the custody of local authorities for medical investigation pursuant to this agreement by whatever legal means are deemed necessary and expedient.

"(f) To instruct the FBI Special Agent in Charge at the scene of death to assist the AFIP staff with local travel arrangements and to provide access to the scene of death.

"(g) To obtain special mission aircraft when deemed necessary to expedite the medical investigation of death.

"(h) To assign a Special Agent to attend the medical investigation of death to receive and retain custody of physical evidence obtained during the investigation.

"(i) To receive from the AFIP the final report of the medical investigation of death as well as any progress reports provided and to take responsibility for all further dissemination of such reports.

"(j) To reimburse the AFIP for all funds advanced for current operations in the event it becomes necessary to activate this agreement.

"(k) To advise the United States Secret Service of the existence of this agreement and the AFIP contingency plan and to effect whatever coordination is necessary with that agency.

"6. GEOGRAPHIC LIMITATION: The jurisdictional authority of the FBI is limited to the United States, its territories and possessions. This agreement is similarly limited.

"7. TERM: This agreement shall become effective when executed by the representatives of both parties. It shall be reviewed annually and shall remain in effect until revoked by official action

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of either party communicated to the other.

"8. SIGNATURES:

"(a) For the AFIP: ELGIN C. COWART, 8/19/76  
CAPTAIN, MEDICAL CORPS,  
U.S. NAVY

"(b) For the FBI: The Director  
CLARENCE M. KELLEY, 8/10/76  
Director"

EFFECTIVE: 12/19/86

89-3.13 Dissemination to United States Secret Service in  
Congressional, Cabinet, and Supreme Court Assassination,  
Kidnaping, and Assault Cases

(1) Pursuant to the 2/3/65 agreement between the Bureau  
and the USSS, the FBI is obligated to disseminate certain types of  
information developed during CCSCAKA investigations to the USSS, on  
both a local and headquarters level, to assist the USSS in its  
statutory protective functions.

(2) Since threatened and actual CCSCAKA violations fall  
within the above agreement, dissemination should be made to USSS on  
both the local and headquarters level in the following manner:

(a) The office developing the information should  
promptly telephonically advise the nearest office of the USSS of the  
facts.

(b) The notification teletype to FBIHQ should  
include the complete fact situation, the identity of the USSS employee  
notified, the time and date of notification, and the identity of the  
FBI employee who made the dissemination. FBIHQ will handle  
dissemination to USSS Headquarters.

(c) A dissemination copy of the above teletype  
should be provided to the local USSS office which will serve as  
confirmation of the previous telephonic notification to them. This  
method will eliminate preparing an FD-376 and LHM since all pertinent  
information and notification details will be a matter of record in the  
above teletype.

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EFFECTIVE: 12/19/86

89-3.14 Dissemination to U.S. Capitol Police (USCP) and Others  
Involving Members of Congress

(1) Senate Bill S. 1976 entitled, "An Act to Define the Area of the United States Capitol Grounds, to Regulate the Use Thereof, and for Other Purposes" was passed on 12/16/81 and enacted into law on 12/19/81 under Public Law 97-143.

(2) This Act, in essence, expands the protective functions of the USCP regarding Members and officers of Congress and their immediate families and provides for the USCP to be included and protected under the AFO and KFO Statutes. While the USCP's protective functions have been expanded, the FBI's investigative responsibilities in regard to the AFO, KFO, CCSCAKA and Extortion Statutes remain unchanged with the exception of the USCP now being protected under the AFO and KFO Statutes.

(3) Section 9A(a) of this Act provides, in essence, that subject to the direction of the Capitol Police Board (CPB), the USCP is authorized to protect, in any area of the United States, any Member or officer of Congress, as defined in Section 431 of the Act of 10/26/70 (Title 2, USC, Section 60-1(b)), and their immediate families if the CPB determines such protection to be necessary on a case-by-case basis.

(4) Section 9A(c) authorized the USCP, while in the performance of their protective duties under this Act, to make arrests without a warrant for any offense against the United States committed in their presence, or for any Federal felony, if they have reasonable grounds to believe that the person to be arrested has committed or is committing a felony.

(5) Section 9A(d) provides a penalty of not more than a \$300 fine and/or not more than one year's confinement for anyone who knowingly and willfully obstructs, resists, or intervenes with a member of the USCP performing a protective function under this Act.

(6) As stated above, this Act does not affect the FBI's jurisdiction since Section 9A(e) specifically states that nothing contained therein shall be construed to imply that the protective

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authority granted the USCP is intended to supersede any other agency involving the protection of Members and officers of Congress and their immediate families.

(7) Based on the above-expanded USCP protective duties, USCP has requested the Washington|Metropolitan|Field Office| (WMFO)| to promptly advise USCP of any potential or actual CCSCAKA violations or related threats and any potential or actual Federal Extortion Statute violations or related threats involving Members of Congress and/or their immediate families which are reported to the FBI. This information will be utilized by the USCP for intelligence purposes and to provide the above individuals with any approved protection under the above Act.

(8) |WMFO| is currently disseminating such information to the USCP by existing operational liaison. In order to ensure appropriate dissemination to the USCP by |WMFO| in a timely fashion, all offices must report any receipt of such information or the initial results of any investigation by summary teletype to FBIHQ and WMFO within seven calendar days. |FBIHQ| will handle dissemination of appropriate information to USSS Headquarters.

(9) In addition to the above-required notification to the USCP by |WMFO| and USSS Headquarters by FBIHQ, when Members of Congress are involved as victims, the office developing the information should promptly notify the nearest office of the USSS. See 89-3.13 and ensure in the notification teletype to FBIHQ that the office covering the victim's home district is requested to notify his/her local office and appropriate local law enforcement agencies in the area.

EFFECTIVE: 02/16/89

89-3.15      Dissemination to the Thirteen Protected Executive Branch  
Departments

(1) Title 18, USC, Section 351(a), extends protection to the head, second ranking official, or the person nominated to be head of the Departments of State, Treasury, Defense, Justice, Interior, Agriculture, Commerce, Labor, Health and Human Services, Housing and Urban Development, Transportation, Energy, and Education.

(2) Whenever a threatened or actual CCSCAKA violation or related threat is reported to the FBI involving the individuals set forth above, the appropriate official within victim's department and

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the nearest office of the USSS must be promptly notified by the FBI.

(3) Notification to the Department of Defense will be made by WMFO which will handle notification to all other departments.

(4) In order to ensure the required notifications are made, offices receiving or developing such information will include WMFO in their notification teletype to FBIHQ.

(5) The above teletype or a subsequent communication must include a complete physical description of any subjects developed, background data, and a photograph, if available.

(6) The notification teletype to FBIHQ must set forth the required dissemination to the nearest office of the USSS by the office developing the information and include the identity of the USSS employee notified, the time and date of notification and the identity of the FBI employee who made the dissemination. FBIHQ will handle dissemination to USSS Headquarters.

(7) A dissemination copy of the above teletype should be provided to the local USSS office which will serve as confirmation of the previous telephonic notification to them. This method will eliminate preparing an FD-376 and LHM since all pertinent information and notification details will be a matter of record in the above teletype.

EFFECTIVE: 02/16/89

89-3.16 Dissemination to Supreme Court Police Involving Supreme Court Justices

(1) Under the authority of Title 28, USC, Section 13(f), the Supreme Court has appointed a Deputy U.S. Marshal who, with the approval of the Chief Justice, has appointed and supervises individuals to serve as Supreme Court Police (SCP).

(2) In essence, the SCP serve as law enforcement officers to police the Supreme Court building, grounds, and adjacent streets; protect the Chief Justice and Associate Justices; and are authorized to bear arms and to make arrests.

(3) Based on the above protective responsibilities, WMFO should promptly advise the SCP of any potential or actual CCSCAKA

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violation or related threats involving Supreme Court Justices which are reported to the FBI. This information will be utilized by the SCP for intelligence purposes and to provide protection for the above individuals as may be required.

(4) In order to ensure appropriate dissemination to the SCP by WMFO in a timely fashion, all offices must report any receipt of such information or the initial results of any investigation by summary teletype to FBIHQ and WMFO within seven calendar days.

(5) The initial teletype or subsequent communication must include a complete physical description of any subject developed, background data, and a photograph, if available.

(6) See 89-3.13 for additional requirements pertaining to local USSS dissemination. FBIHQ will handle dissemination to USSS Headquarters.

EFFECTIVE: 02/16/89

89-3.17 Notification to Central Intelligence Agency

(1) Title 18, USC, Section 351(a), extends protection to the Director, a person nominated to be Director during the pendency of such nomination, and the Deputy Director of Central Intelligence.

(2) The Director of Central Intelligence (DCI) is also the Director of the Central Intelligence Agency (CIA). See 89-3.4(4) for complete details.

(3) Whenever a threatened or actual CCSCAKA violation or related threat is reported to the FBI involving the individuals set forth above, the appropriate office at CIA Headquarters, Langley, Virginia, must be promptly notified by WMFO.

(4) In order to ensure the required notification, offices developing such information should promptly forward it to FBIHQ and WMFO by teletype suitable for dissemination.

(5) The initial teletype or subsequent communication must include a complete physical description of any subject developed, background data, and a photograph, if available.

(6) WMFO, in addition to conducting any required



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investigation, will advise the appropriate office of CIA.

(7) See 89-3.13 for additional requirements pertaining to local USSS dissemination.

EFFECTIVE: 02/16/89

89-3.18 Department of Justice Prosecutive Policy in Congressional, Cabinet, and Supreme Court Assassination, Kidnaping and Assault Cases

(1) The USA's Manual states that supervisory responsibility for captioned violations rests with the Criminal Division, DOJ, and instructs that it be immediately notified telephonically when information is developed indicating an actual violation of the CCSCAKA Statute or when other unusual factors are involved.

(2) The USA's Manual further states that DOJ has retained authority to initiate prosecution under this statute. FBIHQ will notify the Criminal Division immediately of actual violations of this statute and provide copies of investigative reports to DOJ. OO should, similarly, promptly inform the appropriate USA and provide copies of investigative reports. The USAs have been instructed by the DOJ to review such reports so that they will be able to render advice to the Criminal Division regarding local factors and circumstances that may have a bearing on the case.

(3) The DOJ has requested to be advised if a victim requests that an investigation be terminated or investigated solely by a local law enforcement agency.

(4) Based on the above DOJ policy, the field should promptly notify the USA's Office when information is developed indicating an actual violation of the CCSCAKA Statute. The initial teletype to FBIHQ should state that the USA has been notified. If a victim requests that an investigation be terminated or investigated solely by a local law enforcement agency, the appropriate USA's Office and FBIHQ should be promptly notified. Submit details, including fact USA was informed, to FBIHQ by teletype.

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EFFECTIVE: 02/16/89

89-3.19 Character

(1) Since the CCSCAKA Statute protects four broad classes of individuals and covers seven types of crimes committed against them, the possible characters involved are numerous.

(2) Although Section 351(a) further subdivides the above four classes of individuals under elected, nominated, deputy, and second in command, for FBI character and management purposes, the classes of individuals protected will be placed into four groups as follows regardless of their status within the group.

(a) Member of Congress

(b) Executive Department Head and Director, CIA

(c) Supreme Court Justice

(d) Major Presidential or Vice Presidential  
Candidate (See Part I, Section 175-8 of this manual.)

(3) The types of crimes prohibited are as follows:

(a) Assassination

(b) Kidnaping

(c) Assault

(d) Attempt to Assassinate

(e) Attempt to Kidnap

(f) Conspiracy to Assassinate

(g) Conspiracy to Kidnap

(4) In order to readily identify the character, class of protected individual, and type of prohibited crime involved, all characters under Section 351 will be designated as CCSCAKA and be further identified, in parentheses, by class of victim and type of crime involved as set forth in the following examples.

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- (a) CCSCAKA (Member of Congress - Assault)
- (b) CCSCAKA (Supreme Court Justice - Assassination)
- (c) CCSCAKA (Executive Department Head - Conspiracy to Kidnap)
- (d) CCSCAKA (Director, Central Intelligence Agency - Conspiracy to Assassinate)
- (e) CCSCAKA (Major Presidential Candidate - Attempt to Assassinate)

(5) Based on the above policy and examples, the proper character for any given CCSCAKA fact situation can be logically determined and should be set forth accordingly.

EFFECTIVE: 06/18/87

89-3.20 89 Congressional, Cabinet, and Supreme Court  
Assassination, Kidnapping, and Assault Subclassifications

See MAOP, Part II, 3-1.1, "FBI Classifications and Subdivided Classifications."

EFFECTIVE: 10/18/95

89-3.21 Case Title

(1) In addition to the subject's name and aliases or an unknown subject designation and aliases, a CCSCAKA case title should include the victim's full name, his/her job title and agency, and the initial date of the threatened or actual violation.

(2) Set forth below is an example of a CCSCAKA case title for reference purposes:

JOHN DOE;  
RICHARD JONES, ATTORNEY GENERAL,  
DEPARTMENT OF JUSTICE

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WASHINGTON, D.C. - VICTIM  
4/25/83  
CCSCAKA (EXECUTIVE DEPARTMENT  
HEAD - ASSAULT)  
OO: WMFO

EFFECTIVE: 10/16/90

89-3.22 Venue

Venue will be in the judicial district where the violation occurred. Title 18, USC, Section 3236, provides that the crime of murder is committed at the place where the injury was inflicted, the poison administered, or other means employed which caused the death of the victim without regard to the place where the death occurred. For offenses committed outside the jurisdiction of any particular state or district, see Title 18, USC, Section 3238, entitled "Offenses Not Committed in Any District."

EFFECTIVE: 10/16/90

89-3.23 Office of Origin

In CCSCAKA violations, the OO shall be the office in which territory the violation occurred. See 89-3.22 for the definition of the place where a murder occurs and in regard to offenses not committed in any district.

EFFECTIVE: 10/16/90

89-3.24 Copies of Prosecutive Reports to FBIHQ

Three copies to FBIHQ, one copy of which will be disseminated to DOJ.

EFFECTIVE: 10/16/90

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89-4 CONSPIRACY TO IMPEDE OR INJURE AN OFFICER (CIO)

EFFECTIVE: 10/16/90

| 89-4.1 | Deleted |

EFFECTIVE: 11/23/94

89-4.2 Statute and Penalties

Set forth below in its entirety is the CIO Statute, Title 18, USC, Section 372.

"If two or more persons in any State, Territory, Possession, or District conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof, or to induce by like means any officer of the United States to leave the place where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties, each of such persons shall be fined not more than \$5,000 or imprisoned not more than six years, or both."

EFFECTIVE: 12/19/86

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89-4.3 Elements

If two or more persons conspire to prevent by force, intimidation, or threat:

- (1) Any person from accepting or holding any United States office;
- (2) Or from discharging any duties thereof;
- (3) Or induce by like means any United States officer to leave his/her required place of duty;
- (4) Or injure him/her or his/her property on account of the performance of his/her duties or while engaged in said duties;
- (5) Or injure his/her property in order to hinder or impede him/her in the performance of his/her duties.

EFFECTIVE: 12/19/86

89-4.4 Comments and Clarification Regarding the Conspiracy to Impede or Injure an Officer Statute

- (1) Unlike the AFO, KFO and CCSCAKA Statutes, which are restricted to those individuals specifically listed, the CIO Statute provides protection to any officer of the United States.
- (2) An officer of the United States is defined as any permanent, temporary, full- or part-time appointed or elected employee of the Federal Government.
- (3) The CIO Statute deals with conspiracy, therefore, it does not apply to a subject acting alone. See 89-4.7 for further details.
- (4) The conspiracy must be directed toward one of the objectives set forth in the CIO Statute.
- (5) The CIO Statute, unlike the general Conspiracy Statute, Title 18, USC, Section 371, and the conspiracy provisions of the CCSCAKA Statute, Title 18, USC, Section 351(d), does not require an overt act in furtherance of the objective; therefore, an appropriate conspiracy by itself constitutes a prosecutable offense.

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EFFECTIVE: 12/19/86

89-4.5 FBI Investigative Jurisdiction

The CIO Statute, Title 18, USC, Section 372, does not specifically designate the FBI as the responsible investigative agency. However, on 12/14/77, the DOJ advised FBIHQ that the FBI has investigative jurisdiction over the above statute.

EFFECTIVE: 12/19/86

89-4.6 Notification to FBIHQ in Conspiracy to Impede or Injure an Officer Cases

(1) Depending on the urgency of the situation, FBIHQ shall be promptly notified by telephone and/or teletype of all CIO cases. Telephone notification to FBIHQ must be promptly confirmed by teletype. The initial teletype notification to FBIHQ should set forth the complete details of the alleged conspiracy. In addition, FBIHQ should also be advised of all subsequent major investigative developments in these cases by summary teletype. The teletype reporting a subject's apprehension should include a statement as to whether or not the subject admitted the violation.

(2) See 89-4.8 for other requirements necessary in the notification teletype to FBIHQ.

EFFECTIVE: 12/19/86

| 89-4.7 Investigative Procedures | (See MIOG, Part I, 89-4.4 (3).) |

(1) Although an overt act in furtherance of the conspiracy is not required under the CIO Statute in order to constitute a prosecutable violation, any such overt act should be documented since it will tend to establish that a conspiracy did, in fact, exist.

(2) Although Section 372 requires a prohibited conspiracy

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involving two or more subjects in order to constitute a violation, if it initially appears that only one subject is involved in the prohibited action against the Government employee, it is permissible for the FBI to institute a preliminary inquiry in order to determine if a conspiracy involving additional subjects is present. If such inquiry fails to develop the required conspiracy, in the absence of any other Federal violation under the FBI's jurisdiction, the matter should be referred to the appropriate law enforcement agency for handling.

(3) If investigation determines the subject was acting alone, Title 18, USC, Section 245(b)(1) entitled "Federally Protected Activities" may be a basis for a Federal violation and FBI jurisdiction. See Part I, Section 44-1.5 of this manual for complete details.

EFFECTIVE: 01/31/94

89-4.8      Dissemination to United States Secret Service and Other  
Agencies in Conspiracy to Impede or Injure an Officer  
Cases

(1) Although CIO violations fall within the FBI's investigative jurisdiction, based on a 2/3/65 agreement between the USSS and the FBI concerning USSS's statutory protective responsibilities, the FBI is obligated to disseminate certain types of information if developed during one of our CIO investigations to the USSS, based on the premise that it may assist them in such responsibilities.

(2) In regard to CIO cases, see Part I, 175-14(2) entitled "FBI/USSS Agreement Concerning Protective Responsibilities" and 175-14(3) entitled "USSS Protectees in a Travel Status" for the types of information to be disseminated to the USSS.

(3) Prompt dissemination of information in the above categories to USSS must be made on a local and headquarters level.

(4) Initial dissemination to USSS locally is to be made telephonically to the nearest office of the USSS by the office developing the information.

(5) The notification teletype to FBIHQ must include the



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identity of the USSS employee notified, the time and date of notification, and the identity of the FBI employee who made the dissemination.

(6) A dissemination copy of the above teletype should be provided to the local USSS office which will serve as confirmation of the previous telephone notification to them. This will eliminate preparing an FD-376 and LHM since all pertinent information and notification details will be a matter of record in the teletype.

(7) In addition, notification of the conspiracy should be promptly made to the victim and his/her Government agency where employed. The notification teletype to FBIHQ should specifically set forth that notification to the victim and his/her Government agency has or will be made.

(8) FBIHQ, upon receipt of the notification teletype, will disseminate the appropriate information to the victim's Government agency headquarters and USSS Headquarters, Washington, D.C.

EFFECTIVE: 06/18/87

89-4.9      Character - Conspiracy to Impede or Injure an Officer  
              (CIO)

EFFECTIVE: 06/18/87

89-4.10      89 Conspiracy to Impede or Injure an Officer  
              Subclassification

See MAOP, Part II, 3-1.1, "FBI Classifications and Subdivided Classifications."

EFFECTIVE: 10/18/95

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89-4.11 Venue

Venue will be in the judicial district where the violation occurred.

EFFECTIVE: 06/18/87

89-4.12 Office of Origin

In CIO violations, the OO shall be the office in which territory the violation occurred.

EFFECTIVE: 06/18/87

89-4.13 Copies of Prosecutive Reports to FBIHQ

Two.

EFFECTIVE: 06/18/87

89-5 CRIMES AGAINST FAMILY MEMBERS OF FEDERAL OFFICIALS (CAFM)  
- INFLUENCING, IMPEDING OR RETALIATING AGAINST A FEDERAL  
OFFICIAL BY THREATENING OR INJURING A FAMILY MEMBER (See  
MIOG, Part I, 89-2.2(3), 175-1(6), 175-2(3).)

EFFECTIVE: 11/23/94

| 89-5.1 | Deleted |

EFFECTIVE: 11/23/94

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89-5.2 Statute and Penalties

Set forth below in its entirety is the Crimes Against Family Members of Federal Officials Statute, Title 18, USC, Section 115:

"Influencing, impeding, or retaliating against a federal official by threatening or injuring a family member

"(a) (1) Whoever-

"(A) assaults, kidnaps, or murders, or attempts to kidnap or murder, or threatens to assault, kidnap or murder a member of the immediate family of a United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under section 1114 of this title; or

"(B) threatens to assault, kidnap, or murder a United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under such section,

with intent to impede, intimidate, or interfere with such official, judge or law enforcement officer while engaged in the performance of official duties, or with intent to retaliate against such official, judge, or law enforcement officer on account of the performance of official duties, shall be punished as provided in subsection (b).

"(2) Whoever assaults, kidnaps, or murders, or attempts to kidnap or murder a member of the immediate family of any person who formerly served as a person designated in paragraph (1), with intent to retaliate against such person on account of the performance of official duties during the term of such person, shall be punished as provided in subsection (b).

"(b) (1) An assault in violation of this section shall be punished as provided in section 111 of this title.

"(2) A kidnaping or attempted kidnaping in violation of this section shall be punished as provided in section 1201 of this title for the kidnaping or attempted kidnaping of a person described in section 1201(a) (5) of this title.

"(3) A murder or attempted murder in violation of this section shall be punished as provided in sections 1111 and 1113 of this title.

"(4) A threat made in violation of this section shall be

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punished by a fine of not more than \$5,000 or imprisonment for a term of not more than five years, or both, except that imprisonment for a threatened assault shall not exceed three years.

"(c) As used in this section, the term--

"(1) 'Federal law enforcement officer' means any officer, agent, or employee of the United States authorized by law or by a Government agency to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of Federal criminal law;

"(2) 'immediate family member' of an individual means--

"(A) his spouse, parent, brother or sister, child or person to whom he stands in loco parentis; or

"(B) any other person living in his household and related to him by blood or marriage;

"(3) 'United States judge' means any judicial officer of the United States, and includes a justice of the Supreme Court and a United States magistrate; and

"(4) 'United States official' means the President, President-elect, Vice President, Vice President-elect, a Member of Congress, a member-elect of Congress, a member of the executive branch who is the head of a department listed in 5 U.S.C. 101, or the Director of The Central Intelligence Agency."

EFFECTIVE: 11/23/94

89-5.3 Elements

The elements of the CAFM Statute are summarized as follows:

(1) That the defendant assaulted, kidnaped, or murdered an individual designated in Section 115(c).

(2) That the defendant(s) attempted to kidnap or murder an individual designated in Section 115(c).

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(3) That the defendant threatened to assault, kidnap or murder an individual designated in Section 115(c).

The above crimes must be committed with the intent to impede, intimidate, interfere with, or retaliate against federal officials, judges or law enforcement officers while engaged in performance of their official duties or on account of the performance of their official duties.

EFFECTIVE: 11/23/94

89-5.4 Investigative Procedures

(1) The general investigative procedures set out for KFO, AFO, CCSCAKA, CIO and Presidential and Presidential Staff Assassination, Kidnaping and Assault matters should be followed in actual or threatened CAFM violations. See this section and Part I, Section 175, of this manual for details.

(2) Investigations involving Title 18, USC, Section 115 should be handled under the substantive classification for the particular official involved. In the event a CAFM investigation is instituted solely under Section 115, classification 89-F should be utilized.

(3) When appropriate and as previously set forth in Part I, Section 89, of this manual, instructions, policies, investigative procedures, jurisdictional agreements (i.e., FBI and Department of the Treasury), notification to FBIHQ and dissemination requirements apply in fulfilling FBI investigative responsibilities under Title 18, Section 115.

(4) "Agreement of Procedures" adopted by the USSS and the FBI will apply to procedures to be followed in the event that a violation of law occurs involving a person or persons protected by the U.S. Secret Service pursuant to law and which falls within the investigative jurisdiction of the FBI. See Part I, Section 175, of this manual.

EFFECTIVE: 12/19/86

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89-5.5 Notification to FBIHQ and Dissemination Responsibilities

(1) FBIHQ should be promptly notified of all new CAFM cases involving a death or serious injury by telephone and confirmed by immediate teletype. In addition, FBIHQ should be advised of all subsequent major investigative developments by summary|teletype.|

(2) In all other CAFM cases, depending on the urgency of the situation, FBIHQ should be promptly notified by telephone or teletype. Telephone notification to FBIHQ must be confirmed by immediate teletype. In addition, FBIHQ should be advised of all subsequent major investigative developments by summary teletype.

(3) In CAFM cases involving a threat, FBIHQ should be notified by telephone, teletype, or airtel depending on the urgency of the situation. Telephone notification to FBIHQ must be promptly confirmed by teletype. If such cases involve the families of officials listed under sections (c)(4) of Section 115, or the families of FBI personnel, Federal judges, USAs or AUSAs as potential victims, notification to FBIHQ should be made by telephone and/or teletype.

(4) See 89-2.19, 89-3.13 and 89-4.8 of this section and Part I, Section 175, of this manual for details of Bureau responsibilities to disseminate certain types of information to USSS to assist in its protective functions.

EFFECTIVE: 06/26/91

89-5.6 Character - Crimes Against Family Members (CAFM)

EFFECTIVE: 06/26/91

| 89-5.7 Classification

For details concerning this topic, refer to Manual of Administrative Operations and Procedures (MAOP), Part II, 3-1.1 entitled "FBI|Classifications|and Subdivided Classifications."

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EFFECTIVE: 10/18/95

89-5.8 Case Title

(1) In addition to the full name of subject(s) and all known aliases, or an unknown subject(s) designation, a CAFM case should include the full name and relationship of the family member to the protected individual(s) designated in Section 115, the name of the protected individual, his/her job title and the initial date of the violation.

(2) EXAMPLE (Actual assault or threat):

JOHN DOE;  
MARY E. SMITH, (Daughter) - VICTIM;  
JOSEPH A. SMITH, SPECIAL AGENT - FBI - VICTIM;  
10/1/86  
AFO - CAFM;  
OO: CHICAGO

(3) If the victim is a family member of a Member of Congress, Cabinet Officer, Supreme Court Justice, or Director of the CIA, the character should be shown as:

CCSCAKA - CAFM

EFFECTIVE: 06/26/91

||89-5.9 Venue

Venue will be governed by the type of violation, assault, kidnaping, attempted kidnaping, murder, attempted murder, or threat to assault, kidnap or murder, as set forth in Section 115.

EFFECTIVE: 12/19/86

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89-5.10 Office of Origin

Office of Origin will be established in the manner set forth in MAOP, Part II, Section 10-16.2.

EFFECTIVE: 12/19/86

89-5.11 Copies of Prosecutive Reports to FBIHQ

Two.

EFFECTIVE: 12/19/86

89-6 THREAT TO LIFE - DISSEMINATION OF INFORMATION (See MAOP, Part II, 9-7; MIOG, Part I, 166-4, 175-22.1, and 179-7.)

The following guidelines cover the FBI's responsibility to warn persons of threats to their life or threats that may result in serious bodily injury and policy regarding notification to other law enforcement agencies of such threats. (Extracted from Resolution 20 dated 12/16/96. See footnotes at the end of this citation.) In all instances, manner depending upon exigencies of situation, FBIHQ should be advised of details of such threats together with a notification of action taken or a recommendation as to action to be initiated UACB.

"III. Guidelines

"A. Warning to the Person.

"(1) Expeditious Warnings to Identifiable Persons.  
Except as provided below in paragraph IIIA(3), when a Federal Law Enforcement Agency has information that a person who is identified or can be identified through reasonable means is subject to credible threat to his/her life or of serious bodily injury, the Agency should attempt expeditiously to warn that person of the nature and extent of the threat.

"(2) Manner, Means, and Documentation of Warning.

"a. The Agency may determine the means and manner of



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the warning, using the method most likely to provide direct notice to the intended victim. In some cases, this may require the assistance of a third party. The Agency must document in writing in its files the content of the warning, and when and where, and by whom it was delivered to the intended victim.

"b. An Agency may seek the assistance of another law enforcement agency to provide the warning. If this is done, the Agency must document in writing in its files the notification of the threat, and when, where, and the name of the other agency's representative to whom it was delivered, along with the other agency's agreement to provide a timely warning.

"(3) Exceptions.

"a. A Federal Law Enforcement Agency need not attempt to warn an intended victim of a threat to his/her life or of serious bodily injury in the following circumstances:

"(i) when providing the warning to the intended victim is likely to cause equal or greater physical harm to one or more persons; 1

"(ii) when the intended victim knows the nature and extent of the specific threat against him/her; or

"(iii) when the intended victim is: (a) a public official who, because of his/her official position, is provided a protective detail; (b) a participant in the Witness Security Program that is administered by the United States Marshals Service; or (c) detained or incarcerated. See paragraph IIIB(1).

"b. Whenever time and circumstances permit, an Agency's decision not to provide a warning in the foregoing circumstances must be approved, at a minimum, by a Senior Field Manager. 2 In all cases, the reasons for an Agency's decision not to provide a warning must be documented in writing in the Agency's files.

"NOTE: This paragraph does not apply to the agencies directly responsible for providing the security for the individuals referred to in paragraph IIIA(3)a(iii), above, when the threat is to the referenced individual. In such cases, documentation, if any, should be created in accordance with the agency procedures.

"B. Notification to Law Enforcement Agencies With Protective or

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Custodial Jurisdiction.

"(1) Expeditious Notification. When a Federal Law Enforcement Agency has information that a person described above in paragraph IIIA(3)a(iii) is subject to any threat to his/her life or of serious bodily injury, the Agency must expeditiously notify other law enforcement agencies that have protective or custodial jurisdiction.

"(2) Means, Manner, and Documentation of Notification. The notifying Agency may determine the means and manner of the notification. When providing notification, the notifying Agency shall provide as much information as possible regarding the threat and the credibility of the threat. The notifying Agency must document in writing in its files the content of the notification, and when, where, and to whom it was delivered.

"C. Notification to Law Enforcement Agencies That Have Investigative Jurisdiction.

"(1) Expeditious Notification. Except as provided below in paragraph IIIC(4), when a Federal Law Enforcement Agency has information that a person (other than a person described above in paragraph IIIA(3)a(iii)) who is identified or can be identified through reasonable means is subject to a credible threat to his/her life or of serious bodily injury, the Agency should attempt expeditiously to notify other law enforcement agencies that have investigative jurisdiction concerning the threat.

"(2) Threats to Occupied Structures or Conveyances. When a Federal Law Enforcement Agency has information that a structure or conveyance which can be identified through reasonable means is subject to a credible threat which could cause loss of life or serious bodily injury to its occupants, the Agency should provide expeditious notification to other law enforcement agencies that have jurisdiction concerning the threat.

"(3) Means, Manner, and Documentation of Notification. The Agency may determine the means and manner of the notification. The Agency must document in writing in its files the content of the notification, and when, where, and to whom it was delivered.

"(4) Exceptions.

"a. A Federal Law Enforcement Agency need not attempt to notify another law enforcement agency that has

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investigative jurisdiction concerning a threat:

"(i) when providing the notification to the other law enforcement agency is likely to cause equal or greater physical harm to one or more persons; or

"(ii) when the other law enforcement agency knows the nature and extent of the specific threat to the intended victim.

"b. Whenever time and circumstances permit, an Agency's decision not to provide notification to another law enforcement agency in the foregoing circumstances must be approved, at a minimum, by a Senior Field Manager. In all cases, the reasons for an agency's decision not to provide notification should be documented in writing in the Agency's files.

"IV. Rights of Third Parties.

"Nothing in these guidelines is intended to create, or does create, an enforceable legal right or private right of action.

Footnotes:

"1 If the equal or greater harm would occur to a Government informant or Agent as a result of his/her participation in an investigation, consideration should be given to extricating that individual from the investigation or taking other appropriate measures in order to minimize the risk.

"2 As used in these guidelines, 'Senior Field Manager' refers to a Federal Law Enforcement Agency operational field manager of the GS-15 rank or higher, or the person serving in that capacity in his or her absence."

EFFECTIVE: 03/14/97

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SECTION 90. IRREGULARITIES IN FEDERAL PENAL INSTITUTIONS

90-1 STATUTES

Title 18, USC, Sections 1791 and 1792.

EFFECTIVE: 07/11/85

90-1.1 Section 1791. Providing or Possessing Contraband in  
Prison

"(a) Offense. A person commits an offense if, in violation of a statute, or a regulation, rule, or order issued pursuant thereto--

"(1) he provides, or attempts to provide, to an inmate of a Federal penal or correctional facility--

"(A) a firearm or destructive device;

"(B) Any other weapon or object that may be used as a weapon or as a means of facilitating escape;

"(C) a narcotic drug as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802);

"(D) a controlled substance, other than a narcotic drug, as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802), or an alcoholic beverage;

"(E) United States currency; or

"(F) any other object; or

"(2) being an inmate of a Federal penal or correctional facility, he makes, possesses, procures, or otherwise provides himself with, or attempts to make, possess, procure, or otherwise provide himself with, anything described in paragraph (1).

"(b) Grading. An offense described in this section is punishable by--

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"(1) imprisonment for not more than ten years, a fine of not more than \$25,000, or both, if the object is anything set forth in paragraph (1)(A);

"(2) imprisonment for not more than five years, a fine of not more than \$10,000, or both, if the object is anything set forth in paragraph (1)(B) or (1)(C);

"(3) imprisonment for not more than one year, a fine of not more than \$5,000, or both, if the object is anything set forth in paragraph (1)(D) or (1)(E); and

"(4) imprisonment for not more than six months, a fine of not more than \$1,000, or both, if the object is any other object.

"(c) Definitions. As used in this section, 'firearm' and 'destructive device' have the meaning given those terms, respectively, in 18 U.S.C. 921 (A)(3) and (4)."

EFFECTIVE: 07/11/85

90-1.2 Section 1792. Mutiny and Riot Prohibited

"Whoever instigates, connives, willfully attempts to cause, assists, or conspires to cause any mutiny or riot, at any Federal penal or correctional facility, shall be imprisoned not more than ten years or fined not more than \$25,000, or both."

EFFECTIVE: 07/11/85

90-1.3 Statutory Amendments Based on the Comprehensive Crime Control Act of 1984 (CCCA of 84)

(1) The CCCA of 84 was enacted into law on 10/12/84 and under Chapter XI, Part H, entitled "Possession of Contraband In Prison," amended the Irregularities in Federal Penal Institutions Statutes, Title 18, USC, Sections 1791 and 1792, as follows:

(2) New Subsection 1791 (a)(1) makes it an offense for any person to provide or attempt to provide to a Federal inmate, in

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violation of a prison rule, regulation, or order, one of the above-listed six classifications of objects.

(3) New Subsection 1791 (a) (2) makes it an offense for a Federal inmate to make, possess, procure or otherwise provide himself/herself with any of the objects enumerated in Subsection (a) (1) or attempt to do so.

(4) New Subsection 1791 (b) provides different grades of penalties, ranging from a prison term of six months and a fine of \$1,000, to a prison term of ten years and a fine of \$25,000, corresponding to the danger represented by the different types of contraband involved.

(5) Prior to the passage of the CCCA of 84, both Sections 1791 and 1792 dealt with prison contraband. Under the above Act, the contraband offenses were all consolidated into Section 1791 and were deleted from Section 1792. Furthermore, this Act, under Section 1792, added a fine of up to \$25,000 to the existing maximum penalty of 10 years for prison mutiny or riot.

(6) It should be noted that Part H of this Act was primarily designed to remedy the following two defects in the above two statutes dealing with prison contraband. Under the former language of Section 1791, it was an offense to introduce contraband into, or to move it from place to place within a prison, but possession, in itself, of a prohibited article was not a violation of Federal law. Furthermore, both Sections 1791 and 1792 provided a penalty of up to 10 years' imprisonment without taking into consideration the danger represented by the different types of contraband involved.

(7) In regard to the seizure of contraband by Bureau of Prisons (BOP) personnel, Part H of this Act added Section 4012 to Title 18, U.S. Code, to provide statutory authority for the summary seizure by the BOP of contraband and for its forfeiture to the Government. Prior to the passage of Section 4012, the right of BOP personnel to seize contraband was derived from the general statutory authority of the BOP, pursuant to Title 18, USC, Section 4042, to provide for the protection and discipline of inmates. Federal courts have differed over the authority of BOP, under the above general language, to seize and retain contraband. Section 4012 clarifies the authority of BOP personnel to summarily seize contraband articles and have them forfeited to the Government. The BOP is presently developing administrative procedures for the forfeiture of seized contraband.

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EFFECTIVE: 07/11/85

90-2 MISCELLANEOUS

The Department of Justice ruled on 12/11/91 that the FBI has primary investigative jurisdiction over conspiracy to violate the ERS (Title 18, USC, Sections 751-757). Conspiracy to violate any of these statutes should be investigated under the 90 classification. The provisions of Title 18, USC, Sections 201 and 202, relating to bribery, should also be considered in investigation of acts which may be in violation of the IFPI statutes.

EFFECTIVE: 09/07/93

90-3 POLICY

(1) When a complaint is received alleging a basic or nonserious violation of these sections, the field office will determine whether preliminary investigation is warranted and will coordinate with the local Bureau of Prisons (BOP) facility. Whenever a complaint is received alleging violations which are serious, sensitive, or unusual, or would cause notoriety in the local or national news media, the field office should initiate investigation promptly and expeditiously advise the Criminal Investigative Division (CID), FBIHQ, by telephone, followed by a communication reporting the facts and results of any investigation initiated. Allegations or complaints concerning BOP personnel should be expeditiously submitted to FBIHQ by LHM and cover communication in order to ensure appropriate coordination with BOP headquarters. Institute investigation promptly. Allegations of civil rights violations relating to violence motivated by racial or religious bias or an illegal act under color of law should be investigated according to MIOG, Part I, Section 44 or 282, respectively.

(2) Cases can be presented to the USA without prior FBIHQ authority.

(3) Reports of riots or sit-down strikes which may not initially involve an FBI violation may be received from authorities. Agents should not enter the penitentiary during such occurrences and

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they should in no way interfere with the prison administration in connection with quelling the riot or the sit-down strike. When notified, effective liaison should be set up and FBIHQ informed immediately. At the first opportunity an Agent should enter the institution and immediately ascertain from the warden if any violation within the FBI's jurisdiction has occurred. As incidents, such as riots or sit-down strikes, may result in violations within the FBI's jurisdiction, sufficient manpower should be available to act immediately if a violation is indicated.

(4) Violations of Title 21, USC, Section 844, Controlled Substance Act (CSA) occurring within federal penal institutions will be handled by the FBI under Title 18, USC, Section 1791. Information developed during CSA violations occurring within federal penal institutions that involve subjects outside the institutions should be referred to the Drug Enforcement Administration.

(5) INVESTIGATIONS REGARDING CRIMINAL ALLEGATIONS AGAINST  
PUBLIC OFFICIALS

(a) It is recognized that during the course of an investigation within this classification information is sometimes developed alleging that a federal, state or local official is in violation of federal law. If the focus of the investigation continues to be this substantive classification and/or federal crimes committed by a person who merely happens to be a federal, state or local official, "Corruption-Related Matter," should be added to the character of the case, and it will continue to be managed under the Violent Crimes and Major Offenders Program. If, however, the focus of the investigation shifts to the abuse of his/her position of trust by the federal, state or local official in violation of federal criminal law, a new "Corruption of Federal Public Officials" (58) or "Corruption of State and Local Public Officials" (194) matter should be opened within the White Collar Crimes Program.

(b) Deleted

(c) Deleted

(d) Deleted

(e) Deleted

(6) RESOLUTION OF HOSTAGE SITUATIONS OR CRIMINAL ACTIONS  
WHICH REQUIRE FBI PRESENCE AT BOP FACILITIES



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"MEMORANDUM OF UNDERSTANDING (MOU)  
BETWEEN THE FEDERAL BUREAU OF PRISONS (BOP)  
AND THE FEDERAL BUREAU OF INVESTIGATION (FBI)  
ON HOSTAGE OR CRISIS INCIDENTS AT BUREAU OF PRISONS FACILITIES

"I. PURPOSE: This Memorandum of Understanding (MOU) is to establish interagency operational policy guidelines for Federal Bureau of Prisons (BOP) and Federal Bureau of Investigation (FBI) personnel for the successful resolution of hostage situations or criminal actions which require FBI presence at BOP facilities.

"II. JURISDICTION:

"A. The BOP has primary responsibility for all operations at federal correctional facilities during routine and emergency operations.

"B. The FBI has primary investigative responsibility for all violations of Title 18 (T18), United States Code (USC), Section 13 (Crimes on a Government Reservation) (CGR) including the jurisdiction as defined in Section 7 (Special maritime and territorial jurisdiction of the United States defined).

"C. The FBI also has investigative responsibility for criminal activities at BOP facilities, to include hostage situations or similar incidents, under T18, USC, Sections 1791 and 1792 (Irregularities in Federal Penal Institutions), and T18, USC, Section 1203 (Hostage Taking).

"III. DEFINITIONS:

"As used herein:

"A. 'BOP On-Scene Commander' refers to a BOP field commander whom the BOP Director has designated as in charge of the BOP facility.

"B. 'FBI On-Scene Commander' refers to an FBI SAC or SAC's designee who is in charge of the FBI resources during an operational response by the FBI.

"C. An 'advisory response' is a minimal FBI response during which the FBI deploys FBI crisis management assets to assist/advise the crisis response resources of the BOP. At this level response, the FBI SAC or SAC's designee will deploy as the FBI's on-scene coordinator. The FBI will not deploy an FBI command and control element.

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"D. An operational response is defined as one during which the FBI deploys significant FBI crisis management resources, as necessary, to resolve the crisis. This level response may consist of HRT deployment, and/or multiple FBI field office SWAT teams, and/or crisis negotiation/behavioral specialists and/or technical personnel. An operational response will always be accompanied by an FBI SAC or SAC's designee and an FBI command and control element.

"IV. ADVANCE COORDINATION:

"A. BOP Wardens and FBI SACs will develop a program to exchange information concerning each BOP facility within a field division's territory. This program will include the specifics of how joint operations will be implemented, site surveys, appropriate interagency training and logistical support during a crisis situation.

"B. BOP and FBI crisis response plans will be prepared by executive management personnel at BOP facilities and FBI field divisions to address specific crisis management requirements at each BOP facility. The crisis response plans will reflect the terms of this MOU and be periodically updated.

"V. IMPLEMENTATION: The decision as to whether FBI involvement constitutes an advisory or operational response will be dependent on the circumstances of the incident, the request from the BOP On-Scene Commander and as necessary, additional direction and/or guidance from BOP and FBI Headquarters.

"VI. COMMAND, CONTROL AND COORDINATION:

"A. In the event of an advisory response by the FBI, the BOP On-Scene Commander will retain command and control of all aspects of the crisis response. BOP Headquarters will retain overall command and control of the incident. The BOP On-Scene Commander will also coordinate with the FBI and keep the FBI informed of all developments. The FBI will have a person designated to the BOP command post.

"1. FBI advisors may be part of HRT, field SWAT, crisis negotiators, behavioral specialists, technical personnel or other assets as agreed upon by the FBI SAC or SAC's designee and BOP On-Scene Commander.

"B. In the event of an operational response by the FBI, which will include an FBI On-Scene Commander and a command and control element, the BOP and FBI On-Scene Commanders will work cooperatively toward

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resolution of the crisis. All actions of the FBI On-Scene Commander will be closely coordinated with the BOP On-Scene Commander who retains overall responsibility for the institution operations and the incident.

"1. During an FBI operational response, the FBI and BOP will immediately form a joint command post upon the arrival of FBI crisis response resources.

"2. Once the FBI fully activates an operational response at the scene, the FBI On-Scene Commander will assume responsibility of all crisis management assets (BOP and FBI) in terms of planning for and executing plans for incident resolution. The FBI On-Scene Commander will consult and coordinate with the BOP On-Scene Commander who retains overall responsibility for the institution and the incident.

"3. BOP and FBI Headquarters command centers will establish a direct link throughout the duration of the incident to exchange information and to address issues of mutual concern as they arise. Issues that cannot be resolved at the scene of the incident or at the command center level will be addressed at headquarters level by senior BOP and FBI staff.

"C. The FBI On-Scene Commander, in consultation with the BOP On-Scene Commander, may initiate an emergency assault should there be imminent threats to life or of serious injury to hostages, inmates, or law enforcement personnel. In all other circumstances, no planned tactical resolution will be initiated without prior specific approval from both BOP and FBI Headquarters.

"D. The FBI On-Scene Commander will conduct additional criminal investigation following the resolution of the incident, including crime scene investigation, if appropriate. Debriefings of all officials involved are required and will be accomplished as soon as possible after the resolution of the incident and will be coordinated through the FBI On-Scene Commander. This requirement does not supersede BOP's policy regarding post incident interviews and investigation.

"VII. TERMS OF AGREEMENT: This MOU will take effect immediately upon signature of all parties.

"For the Federal Bureau of Investigation:

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"/s/ \_\_\_\_\_ 10/25/96  
LOUIS J. FREEH Date  
Director

"For the Federal Bureau of Prisons:

"/s/ \_\_\_\_\_ 10/24/96  
KATHLEEN M. HAWK Date  
Director"

(7) The following MOU was executed for the purpose of establishing local interagency operational procedures and guidelines concerning the conduct of investigations of violations of federal criminal statutes occurring in BOP facilities.

"MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL BUREAU OF  
INVESTIGATION AND THE FEDERAL BUREAU OF PRISONS ON VIOLATIONS OF  
FEDERAL CRIMINAL STATUTES

"I. PURPOSE: The purpose of this Memorandum of Understanding (MOU) is to establish interagency operational procedures and guidelines for the Federal Bureau of Investigation (FBI) and the Federal Bureau of Prisons (BOP) with regard to violations of federal criminal statutes occurring in BOP facilities, on BOP property or which involve BOP staff. In hostage and/or crisis situations, this MOU is superseded by the separate MOU between the FBI and the BOP. In violations of the Federal Escape and Rescue Statutes, this MOU is superseded by the separate MOU between the FBI, the BOP and the United States Marshals Service.

"II. GOALS: It is mutually agreed that general guidelines and procedures should be established and implemented to ensure an efficient and effective response to criminal incidents which occur in BOP facilities, on BOP property or which involve BOP staff. It is further agreed that BOP facilities and FBI field divisions will coordinate their efforts to develop local procedures, as appropriate, and fully share information and the results of their respective investigations to assist each agency in fulfilling its own mission and responsibilities concerning violations of federal criminal statutes occurring at or involving staff of Federal Bureau of Prisons' institutions. The violations in question include, but are not limited to, homicides or suspected homicides, unexplained or unusual deaths, assaults on federal officers or inmates (serious or involving weapons), significant destruction of government property, trafficking

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in contraband, and other serious offenses.

"III. JURISDICTION:

"(A). The BOP has primary responsibility for all operations of a Federal prison facility during routine and emergency situations, as well as during investigations of criminal matters.

"(B). The FBI shall assume primary investigative responsibility and jurisdiction once it has accepted a criminal matter for investigation. Coordination will be implemented and maintained with the BOP as appropriate.

"IV. IMPLEMENTATION:

"(A). The FBI and the BOP will develop and exchange information regarding the facilities at all BOP sites. The information should be included but is not limited to: prison site surveys, appropriate interagency training, and operational support in times of crisis.

"(B). A local operational plan to address resources, manpower, points of contact, notifications, and other relevant matters, will also be prepared by affected local BOP and FBI field office staff in accordance with the terms of this MOU. This plan will be routinely updated.

"V. RESPONSIBILITIES:

"(A). BUREAU OF PRISONS RESPONSIBILITIES:

"(1). Upon the occurrence of any incident that may involve a criminal act, the BOP will take immediate action to secure and preserve the scene of the incident and to identify any witnesses to the incident.

"(2). Upon the occurrence of any incident involving a criminal act, the BOP will immediately notify the appropriate designated FBI representative of the incident. An apparent suicide will be treated as a possible homicide until determined otherwise by a competent authority, such as the coroner or medical examiner. Any further investigative activity by the BOP shall be closely coordinated with the FBI so as to appropriately support the ongoing criminal investigation, while also pursuing administrative actions as appropriate.

"(3). Upon notification, if the FBI does not initiate a criminal investigation, the BOP will assume primary investigative

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responsibility for conducting and documenting an investigation of the incident for possible disciplinary action.

"(B). FEDERAL BUREAU OF INVESTIGATION RESPONSIBILITIES:

"(1). Upon notification by the BOP of the occurrence of an incident that may involve a criminal act, the appropriate designated FBI representative will determine whether to initiate an FBI criminal investigation of the incident. That determination and notification to the BOP concerning the incident will be made as soon as feasible but not greater than 24 hours after the BOP notification to the FBI. The FBI will conduct an on-site investigation of inmate deaths. An apparent suicide will be treated as a possible homicide until determined otherwise by a competent authority such as the coroner or medical examiner.

"(2). In those instances in which the FBI initiates a criminal investigation, the FBI will assume primary investigative responsibility for conducting and documenting the criminal investigation.

"(3). In those instances in which the FBI initiates a criminal investigation, the FBI will coordinate investigative activity with the BOP as appropriate, in order to minimize the disruption to the operation of the BOP facility.

"(4). In those instances in which the FBI has conducted a criminal investigation, the BOP is to be provided notification regarding the closure of the FBI investigative file.

"VI. PROTOCOL: It is agreed that the contents of this MOU will be provided to both agencies involved in this agreement, as well as the Executive Office of United States Attorneys, in order to fully coordinate notification procedures, points of contact to facilitate liaison, crime-scene management and preservation procedures, and development of criminal investigations.

"VII. STANDARD PROCEDURES:

"(A). NOTIFICATION/INITIAL REFERRAL: Upon the occurrence of any incident involving a criminal act, the BOP will immediately notify the appropriate designated FBI representative of the incident. During the initial contact, local BOP staff shall provide information and receive instructions regarding immediate efforts to secure the crime scene until the FBI responds.

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"(B). RESPONSE: When a criminal case is referred to the FBI for investigation, local FBI staff shall respond as soon as practicable either by telephone or by an on-site visit. Following the initial referral, the FBI shall determine whether to initiate an investigation. That determination shall be made and communicated to the BOP as soon as feasible but not greater than 24 hours after the BOP notification to the FBI.

"(C). INVESTIGATION: In the event the local FBI division initiates an investigation, the FBI will assume primary investigative responsibility and jurisdiction. Coordination will be implemented and maintained with the BOP as appropriate. In cases where the FBI requests investigative assistance from the BOP, the FBI will convey instructions regarding the questioning of suspects, preservation of the crime scene or evidence, and any other pertinent instructions.

"VIII. TERMS OF AGREEMENT: This MOU will take effect immediately upon signature of all parties.

"For the Federal Bureau of Investigation:

"/s/ \_\_\_\_\_  
LOUIS J. FREEH  
Director

8/9/96  
DATE

"For the Federal Bureau of Prisons:

"/s/ \_\_\_\_\_  
KATHLEEN M. HAWK  
Director"

8/23/96  
DATE

EFFECTIVE: 04/24/97

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CHARACTER - IRREGULARITIES IN FEDERAL PENAL INSTITUTIONS

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EFFECTIVE: 11/20/90

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SECTION 91. BANK ROBBERY, BANK BURGLARY, BANK LARCENY, BANK  
EXTORTION

91-1 BACKGROUND

The Bank Robbery and Incidental Crimes Statute, Title 18, U.S. Code (USC), Section 2113, was enacted in 1934 making it a Federal violation to rob any national bank or state member bank of the Federal Reserve System. Investigative jurisdiction under this statute was delegated to the FBI. In 1935 this statute was amended to include all banks insured by the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation (FSLIC). In 1937 this statute was expanded to include the violations of bank burglary and bank larceny. In 1950 this statute was amended to cover federally insured savings and loan associations. In 1959 this statute was amended to cover Federal credit unions. In 1986 this statute was amended to include bank robberies committed by extortion.

EFFECTIVE: 10/26/87

91-2 BANK ROBBERY AND INCIDENTAL CRIMES STATUTE AND PENALTIES

EFFECTIVE: 10/26/87

91-2.1 Bank Robbery and Bank Extortion, Title 18, USC, Section 2113(a)

"Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another, or obtains or attempts to obtain by extortion, any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association, shall be fined not more than \$5,000 or imprisoned not more than twenty years, or both."

EFFECTIVE: 10/26/87

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91-2.2 Bank Burglary, Title 18, USC, Section 2113(a)

"Whoever enters or attempts to enter any bank, credit union, or any savings and loan association, or any building used in whole or in part as a bank, credit union, or as a savings and loan association, with intent to commit in such bank, credit union, or in such savings and loan association, or building, or part thereof, so used, any felony affecting such bank, credit union, or such savings and loan association and in violation of any statute of the United States, or any larceny shall be fined not more than \$5,000 or imprisoned not more than twenty years, or both."

EFFECTIVE: 10/26/87

91-2.3 Bank Larceny, Title 18, USC, Section 2113(b)

"Whoever takes and carries away, with intent to steal or purloin, any property or money or any other thing of value exceeding \$100 belonging to, or in the care, custody, control, management, or possession of any bank, credit union, or any savings and loan association, shall be fined not more than \$5,000 or imprisoned not more than ten years or both; or

"Whoever takes and carries away, with intent to steal or purloin, any property or money or any other thing of value not exceeding \$100 belonging to, or in the care, custody, control, management, or possession of any bank, credit union, or a savings and loan association, shall be fined not more than \$1,000 or imprisoned not more than one year, or both."

EFFECTIVE: 10/26/87

91-2.4 Receiving and Possession, Title 18, USC, Section 2113(c)

"Whoever receives, possesses, conceals, stores, barter, sells, or disposes of, any property or money or other thing of value which has been taken from a bank, credit union, or a savings and loan association, in violation of subsection (b) of this statute, knowing the same to be property which has been stolen, shall be subject to the punishment provided by said subsection (b) for the taker."

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EFFECTIVE: 10/26/87

91-2.5      Assault or Life In Jeopardy, Title 18, USC, Section  
2113(d)

"Whoever, in committing, or in attempting to commit, any offense defined in subsections (a) and (b) of this statute, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, shall be fined not more than \$10,000 or imprisoned not more than twenty-five years, or both."

EFFECTIVE: 08/27/90

91-2.6      Kill or Kidnap, Title 18, USC, Section 2113(e)

"Whoever, in committing any offense defined in this section, or in avoiding or attempting to avoid apprehension for the commission of such offense, or in freeing himself or attempting to free himself from arrest or confinement for such offense, kills any person, or forces any person to accompany him without the consent of such person, shall be imprisoned not less than ten years, or punished by death if the verdict of the jury shall so direct."

EFFECTIVE: 08/27/90

91-2.7      Definition of Bank, Title 18, USC, Section 2113(f)

"As used in this section the term 'bank' means any member bank of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, and any institution the deposits of which are insured by the Federal Deposit Insurance Corporation."

EFFECTIVE: 08/27/90

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91-2.8 Definition of Credit Union, Title 18, USC, Section 2113(g)

"As used in this section the term 'credit union' means any Federal credit union and any State-chartered credit union the accounts of which are insured by the National Credit Union Administration Board, and any 'Federal credit union' as defined in section 2 of the Federal Credit Union Act."

EFFECTIVE: 08/27/90

91-3 COMMENTS AND CLARIFICATIONS REGARDING THE BANK ROBBERY AND  
INCIDENTAL CRIMES STATUTE (BRICS)

EFFECTIVE: 08/27/90

91-3.1 Robbery of Bank Messengers

A bank messenger delivering money, etc., to or from a bank covered under the BRICS is considered to have custody and control of the above property on behalf of the bank. A robbery of said property from the messenger is a violation of Section 2113(a), Bank Robbery.

EFFECTIVE: 08/27/90

91-3.2 Robbery of an Armored Carrier

Robbery of an armored carrier may be a violation of Title 18, USC, Section 2113. However, to ensure uniformity, all robberies of armored carriers are to be investigated as Hobbs Act - Armored Carriers violations. (See Part I, Section 192, of this manual, for complete details.)

EFFECTIVE: 08/27/90

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91-3.3 Bank Night Depositories

(1) Regardless of the contractual relationship between the bank and the depositor, such deposits are considered to be within the care, custody, and control of the bank based on the bailment situation created when the deposit is made.

(2) A break-in or attempted break-in of a bank night depository with the appropriate intent constitutes a bank burglary violation. Under these circumstances, if deposits are stolen, a bank larceny violation also exists.

(3) An unsuccessful attempt to intercept or trap deposits placed in a bank night depository with the appropriate intent by means of a device constitutes an unlawful attempt to enter the bank within the meaning of the BRICS and constitutes a bank burglary violation. Under these circumstances, if deposits are stolen, a bank larceny violation also exists.

EFFECTIVE: 10/26/87

91-3.4 Automated Teller Machines (ATMs)

(1) In the early 1970s, ATMs were established both on and off bank premises by federally insured financial institutions.

(2) ATMs provide services ranging from the transfer of funds from one account to another, accepting payments on installment loans, or receiving deposits. An ATM can also dispense cash to a set limit and debit it to the customer's savings or checking account.

(3) For legal purposes, an ATM is a bank or branch bank within the meaning of the BRICS.

(4) The money, deposits, or other things of value which are received by or contained within an ATM belong to or are in the care, custody, or control of the bank.

(5) An ATM located off premises may be serviced solely by the bank or by a third party under contract with the bank.

(6) An ATM by definition is not manned, therefore, the robbery provisions of the BRICS are not applicable; however, a bank burglary or bank larceny violation may occur in connection with an

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ATM.

(7) A break-in or attempted break-in of an ATM of a federally insured banking institution is a bank burglary violation.

(8) A break-in of an ATM of a federally insured banking institution where money or another thing of value is taken with intent to steal or purloin constitutes both a bank burglary and bank larceny violation.

(9) To fraudulently obtain money or another thing of value from an ATM by using a forged, counterfeit or stolen access card under false pretenses is a bank larceny violation.

EFFECTIVE: 10/26/87

91-3.5 Larceny, Larceny by Trick, and False Pretenses in Relation to Bank Larceny

(1) In order for a bank larceny violation to exist, the elements of common law larceny, larceny by trick or false pretenses must be present.

(2) Common law larceny is defined as the taking and carrying away of the personal property of another without his/her consent with intent to steal.

(3) Larceny by trick is defined as obtaining mere possession and not title to the personal property of another by fraudulent representations with intent to steal.

(4) False pretenses are defined as obtaining both possession and title to the personal property of another by fraudulent representations with intent to steal.

(5) If a bank is victimized by means of larceny by trick, such as presentation of bogus coin rolls, quick change schemes, obtaining money or another thing of value from an ATM by using a forged, counterfeit, or stolen access card, etc., there has been a bank larceny violation.

(6) If a bank is victimized by means of larceny by trick, such as a subject posing as an armored car employee authorized to pick up certain funds for delivery to a stated place, it is a bank larceny

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violation. This is based on the fact that the victim bank, based on the false representations, merely intended to turn over possession and not title of the funds to the subject.

(7) It should be noted that Section 2113(b) only applies where the amount of money involved exceeds \$100.00 and there is an actual taking or carrying away with intent to steal or purloin the money or other thing of value. In any situation in which there is doubt whether or not a bank larceny violation has occurred, the USA should be promptly consulted for a legal opinion.

EFFECTIVE: 10/26/87

91-3.6 Attempted Bank Larcenies

It should be noted that Section 2113(b), Bank Larceny, does not contain a provision for an attempted bank larceny and covers only situations in which an actual bank larceny occurs. However, in a situation involving an attempted bank larceny by a burglary, the second paragraph of Section 2113(a), Bank Burglary, will apply even though Section 2113(b), Bank Larceny, does not.

EFFECTIVE: 10/26/87

91-3.7 Theft Not Necessary In a Bank Burglary Violation

(1) A bank burglary violation, Section 2113(a), occurs when the subject forcibly enters or attempts to enter a banking institution with intent to commit any larceny or any felony affecting such banking institution and in violation of any statute of the United States.

(2) It is not necessary that the subject actually steal any property belonging to, or in the care, custody, control, management, or possession of the banking institution in order to be prosecuted for bank burglary. If, during the commission of a bank burglary, the subject actually steals any property, as set forth above, he/she has also committed a bank larceny violation in addition to a bank burglary violation.

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EFFECTIVE: 08/27/90

91-3.8 Theft From Safe-Deposit Boxes

Although the contents of a safe-deposit box belong to the box holder and they are not federally insured, a theft from a safe-deposit box during a bank burglary constitutes bank larceny since the contents are in the care of the bank within the meaning of the BRICS.

EFFECTIVE: 08/27/90

91-3.9 Receiving or Possession of Bank Robbery, Bank Burglary,  
Bank Larceny or Bank Extortion Loot

Under Section 2113(c), Receiving and Possession, it would appear that this offense covers only property, money, or other things of value received or possessed from a bank larceny; however, this section also covers property, money, or other things of value received or possessed from a bank robbery, bank burglary or bank extortion.

EFFECTIVE: 08/27/90

91-3.10 Prosecution for Receiving and Possession

Under Section 2113(c), Receiving and Possession, it is not necessary to prove that the subject knew the property, money, or other thing of value was taken from a bank, credit union, or savings and loan association, in violation of the BRICS, only that the subject knew that the property, money or other thing of value was stolen. Pursuant to Title 18, USC, Section 21, the element of guilty knowledge may also be established by proof that the defendant believed that the property, money or other thing of value was stolen, after or as a result of an official representation as to the nature of the property (see MIOG, Part II, 1-1.12).



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EFFECTIVE: 10/23/95

91-3.11 Death Penalty

Under Section 2113(e), the death penalty provision has been ruled invalid.

EFFECTIVE: 08/27/90

91-3.12 Savings and Loan Association

For purposes of clarification, under Section 2113(f), the term "bank" includes the following banking institutions:

(1) A Federal savings and loan association.

(2) An institution insured by the Federal Deposit Insurance Corporation's Savings Association Insurance Fund.

(3) Deleted

(4) Deleted

EFFECTIVE: 08/27/90

91-3.13 Federal Land Bank

(1) A Federal land bank operating under a charter issued by the Farm Credit Administration is a banking institution operating under the laws of the United States and, accordingly, is covered under the BRICS.

(2) It should be noted, however, that Federal land banks do not accept deposits, deal primarily in mortgages and, therefore, are not a likely target for a 91 subject.

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EFFECTIVE: 08/27/90

| 91-3.14 | State Prosecution Not a Bar to Federal Prosecution

State prosecution for any offense covered under the BRICS is not a legal bar to subsequent Federal prosecution under the above statute; however, there must be compelling reasons and the Attorney General must personally approve such prosecution.

EFFECTIVE: 08/27/90

91-4 BANK PROTECTION ACT OF 1968 AND THE FEDERAL CREDIT UNION  
ACT

EFFECTIVE: 08/27/90

91-4.1 Bank Protection Act (BPA) of 1968

(1) The BPA of 1968, Public Law 90-389, was enacted on 7/7/68 and provides that Federal regulatory agencies shall "promulgate rules establishing minimum standards with which each bank or savings and loan association must comply with respect to the installation, maintenance, and operation of security devices and procedures, reasonable in cost, to discourage robberies, burglaries and larcenies and to assist in the identification and apprehension of persons who commit such acts."

(2) Under the above Act, the following Federal regulatory agencies regulate the following financial institutions:

(a) Comptroller of Currency - national banks and banks located in the District of Columbia;

(b) Federal Reserve System (FRS) - state-chartered banks that are members of the FRS;

(c) Federal Deposit Insurance Corporation (FDIC) - state-chartered banks that are not members of the FRS but the accounts of which are insured by the FDIC;

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(d) Office of Thrift Supervision - Federal savings and loan associations and institutions and state-chartered savings and loan associations and institutions, the accounts of which are insured by the Federal Deposit Insurance Corporation's Savings Association Insurance Fund.

(e) Credit unions are not covered under this Act. Refer to the Federal Credit Union Act citation, 91-4.2.

(3) The regulations of the Federal regulatory agencies were originally published in the Federal Register, Volume 34, Number 11, dated 1/16/69, with certain amendments published in the Federal Register, Volume 38, Number 194, dated 10/9/73, copies of which are available in each office.

(4) All Agents working 91 matters must be familiar with the above regulations. In general, these regulations require certain minimum mandatory security devices and procedures and others that are discretionary, subject to changes ordered by the responsible Federal regulatory agencies.

(5) Mandatory security devices include:

(a) A lighting system during the hours of darkness in the vault area if visible from the outside.

(b) Tamper-resistant locks on exterior doors and windows.

(c) An alarm system or other appropriate device for promptly notifying the nearest responsible law enforcement officers of an attempted or perpetrated robbery or burglary.

(6) Mandatory security procedures include:

(a) The development and utilization of a security program with certain characteristics.

(b) Bait money, comprised of Federal Reserve notes with denominations, bank of issue, serial numbers, and series year recorded, maintained at each teller's station.

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91-4.2 Federal Credit Union Act (FCUA)

(1) The FCUA, amended by Public Law 91-468, enacted on 10/19/70, provides that the Administrator, National Credit Union Administration (NCUA), shall insure the accounts of all Federal credit unions and those state-chartered credit unions who apply for this insurance.

(2) The regulations of the NCUA, which established minimum mandatory security devices and procedures for the above credit unions to discourage robberies, burglaries and larcenies and to assist in the identification and apprehension of persons who commit such acts, became effective on 6/15/71, and copies of these regulations are available in each office.

(3) The minimum mandatory security devices and procedures established by the NCUA under the FCUA are quite similar to the regulations established by the Federal regulatory agencies under the BPA of 1968, and all Agents working 91 matters must be familiar with these regulations.

EFFECTIVE: 10/26/87

91-4.3 Requests by Financial Institutions for FBI Evaluation of Security Devices, Procedures, and Programs

(1) The regulations of the Federal regulatory agencies under the BPA of 1968 and the FCUA also state that the bank security officer may provide for the installation, maintenance, and operation of other security devices after seeking the advice of law enforcement officers and any other appropriate sources.

(2) The above regulations do not require the FBI to furnish financial institutions with an evaluation of their mandatory and/or discretionary security devices and procedures; however, as a matter of policy, it is permissible and desirable for the FBI to orally recommend and encourage their use. For obvious reasons, the FBI should not identify or endorse related equipment by name or manufacturer as being the most desirable.

EFFECTIVE: 02/16/89

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91-4.4 Reporting Noncompliance with Mandatory Security  
Regulations by Financial Institutions to FBIHQ

(1) Enforcement of the mandatory security devices and procedures required by the five Federal regulatory agencies under the BPA of 1968 and the FCUA is the responsibility of the above agencies and the DOJ.

(2) If during the course of an investigation it is determined that a financial institution covered under these Acts is not in compliance with the mandatory security devices and procedures, a letterhead memorandum (LHM), original and four copies, should be submitted to FBIHQ by airtel, marked Attention: |Violent|Crimes Unit, Criminal Investigative Division.

(3) The cover airtel should set forth the proper case title as normally reported; however, the title of the LHM should set forth only the identity and location of the financial institution involved. The body of the cover airtel should identify the Federal regulatory agency which has responsibility for the financial institution involved and a request for FBIHQ to disseminate copies of the enclosed LHM to the Federal regulatory agency and the DOJ. The body of the LHM should set forth a succinct summary of the 91 violation, the date of occurrence and the security violation committed. The body of the LHM should not set forth the identities of any subjects or suspects.

(4) FBIHQ, upon receipt of the above LHM, will forward one copy each to the appropriate Federal regulatory agency and the General Litigation and Legal Advice Section, Criminal Division, Department of Justice, for their consideration in initiating action to correct the situation.

(5) Under the BPA of 1968 and FCUA, a financial institution that violates a mandatory security regulation shall be subject to a civil penalty not to exceed \$100 for each day of future noncompliance.

EFFECTIVE: 02/16/89

91-5

INVESTIGATIVE POLICY AND OBJECTIVE IN BANK ROBBERY, BANK  
BURGLARY, BANK LARCENY AND BANK EXTORTION VIOLATIONS

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EFFECTIVE: 02/16/89

91-5.1 Investigative Policy

The FBI's investigative policy in 91 cases is an immediate measured Agent response by all offices to all violations of the Bank Robbery and Incidental Crimes Statute, with subsequent investigations utilizing sufficient Agent manpower to ensure effective handling of all incidents.

EFFECTIVE: 02/16/89

91-5.2 FBI's Objective

The FBI's objective in 91 cases is to intelligently utilize all allocated funded resources to achieve the maximum federal and local solution rate and prosecutive results possible.

EFFECTIVE: 10/18/95

91-5.3 Manpower Commitments (See MIOG, Part I, 91-9.1.)

FBIHQ is aware that many offices are continually encountering manpower problems in meeting their investigative responsibilities. As a consequence, it is recognized that it may not be possible or desirable to commit extensive manpower resources to every bank robbery, bank burglary, and bank larceny investigation. Those offices having well-trained, effective local law enforcement agencies may have to consider exercising the necessary flexibility in conjunction with local authorities especially when responding to routine bank robbery, bank burglary, and bank larceny violations. The number of Agents responding, the extent of investigation to be conducted and the length of time a case should be kept in a pending status should be determined by responsible supervisory personnel. It must be clearly understood, however, that the FBI must continue to fully meet its investigative responsibilities in this area.

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EFFECTIVE: 10/18/95

91-5.4 Guidelines For Closing Cases

In determining how long a bank robbery, bank burglary, bank larceny or bank extortion case should be kept in a pending status and active investigation conducted when no leads or suspects have been developed, the following policy should be adopted in those cases wherein investigation was instituted.

(1) When an aggressive and thorough investigation has been conducted in a bank burglary/bank larceny case where the loss is less than \$10,000.00 and no leads or suspects have been developed or appear to be forthcoming, the case should be closed within six months. If suspects or new leads are independently developed, the case should be reopened and the investigation reinstituted.

(2) In regard to bank robberies, bank extortions, and bank burglaries/bank larceny cases where the loss exceeds \$10,000.00, it should be understood that the above within-six-month closing policy does not apply due to the inherent seriousness of these violations. These cases should be aggressively and thoroughly investigated for no less than six months before any consideration is given to closing the case due to lack of leads or suspects. Every investigative option must be exhausted and it must be determined that no further evidence is forthcoming. Prior to closing, each case should be judged on its merits, and any doubts whether a case should be closed or remain pending should be resolved in favor of continuing the investigation for whatever time period within the Statute of Limitations is required to solve it or justify its closing.

EFFECTIVE: 10/18/95

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91-5.5 Response and Subsequent Investigative Plan

| (1) | FBIHQ does not believe it is feasible to develop a response and subsequent investigative plan that can be molded to fit each office. Therefore, each SAC will be responsible for the development of a response and subsequent investigative plan, if not already in effect, that will fit the needs of his/her particular office while still fulfilling the FBI's investigative responsibilities. The data, statistics, and factors to be considered in measuring the soundness and effectiveness of each office's bank robbery, bank burglary, bank larceny and bank extortion response and subsequent investigative plans are readily available within each office.

| (2) | Each Agent who may respond and/or conduct investigations involving 91 violations should be made aware of this overall plan and be familiar with all its phases.

| (3) | This overall plan should be reviewed annually by responsible field supervisory personnel to ensure that it is adequately revised to meet changing conditions. |

EFFECTIVE: 08/27/90

| 91-6 | | DELETED |

EFFECTIVE: 08/27/90

| 91-7 | | DELETED |

EFFECTIVE: 08/27/90



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91-8 IMMEDIATE INVESTIGATIVE STEPS TO BE TAKEN AT THE SCENE OF  
A 91 VIOLATION

(1) Establish liaison with local authorities at the scene in order to coordinate the investigation.

(2) Ensure that the crime scene area is protected in order that an appropriate crime scene search can be subsequently conducted.

(3) Promptly obtain a physical description of the subject, his/her clothing, whether armed, bait money taken, getaway vehicle, escape route, and disseminate this information immediately in an effort to apprehend the subject in the area.

(4) Obtain the bank surveillance camera films for prompt processing.

(5) If a demand note was utilized, obtain possession for prompt submission to the FBI Laboratory for examination. See 91-17 of this manual.

(6) Determine the extent and scope of the neighborhood investigation required.

(7) Interview the bank employees and other witnesses at the scene for complete details of the violation and the identities of other possible witnesses. Information furnished which may become testimony should be recorded by FD-302 or a signed statement. In certain situations a signed statement is preferred, such as when a witness is a potential suspect, makes a positive identification of the subject from photographs or personal observation, or where there is reason to believe that the witness may become uncooperative and recant at a later date.

(8) Display appropriate photographs of logical 91 subjects and suspects to the witnesses in an effort to identify the subject at the outset of the investigation. See Section 6-4 of the Legal Handbook For Special Agents entitled "Photographic Identification."

(9) If a stolen getaway vehicle is known or suspected to have been used by the subject, it will often be abandoned by the subject shortly thereafter for a switch car. Based on this premise, ensure that efforts are instituted to locate the getaway car for purposes of a search, latent print examination, area neighborhood

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investigation, and a description of the switch car.

(10) Conduct an appropriate crime scene search at the victim bank. See 91-9 of this manual.

(11) If a hoax bomb device is utilized in the commission of a 91 violation, the entire device, or fragments thereof, should be obtained and submitted with all other evidence to the Materials and Devices Unit, Laboratory Division. See Part II, Sections 13-6.7 and 13-16.6, of this manual.

EFFECTIVE: 04/07/97

91-9 CONDUCTING A 91 CRIME SCENE SEARCH

(1) This citation is not intended to be all inclusive. For further details and instructions regarding crime scene searches, latent prints, evidence, and possible examinations of said evidence, refer to this manual, Part II, 13-6.4, entitled "Crime Scene Search," 15-3 entitled "Latent Print Examinations," 15-4, entitled "Submission of Evidence," Section 13, entitled "Laboratory Division Aids to Investigations," Section 5 of the Legal Handbook for Special Agents entitled "Search and Seizure," and the June, 1974, Police Instructor's Bulletin entitled "Crime Scene Search."

(2) There are four cardinal rules that should be followed in every 91 crime scene search.

(a) The first rule is to protect the crime scene to ensure that any possible evidence is not destroyed or contaminated. Protecting the crime scene is a continuous process which must start upon the arrival of the first Special Agent or police officer at the scene and continue until the crime scene search is completed.

(b) The second rule is to obtain the physical evidence legally. In most instances the 91 crime scene will consist of the bank premises and escape route which are not under the legal control of the subject; therefore, his/her consent or a search warrant will not be required to conduct a search of these areas. However, in other specific instances such as those involving the subject's residence, apartment, motel room, place of employment, vehicle, or getaway car, it is necessary to obtain his/her consent or a search warrant before the crime scene search can be legally conducted. It

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should be noted that searches of the above areas conducted incidental to arrest are limited as to area and point of time; therefore, depending on the scope of the intended search, the subject's consent or a search warrant may be necessary.

For further details regarding searches, see Section 5 of the Legal Handbook for Special Agents entitled "Search and Seizure." Whenever the legality of the intended search is in doubt, the Principal Legal Advisor or an appropriate AUSA should be contacted for a legal opinion prior to the search being conducted.

(c) The third rule is to conduct the crime scene search properly. A thorough search should be conducted in order to ensure that any physical evidence is not overlooked. If in doubt regarding whether a particular item is actually physical evidence or has potential evidentiary value, it should be collected and properly marked and preserved for identification and examination purposes.

(d) The fourth rule is to maintain the proper chain of custody of the evidence collected so that it can be successfully introduced into evidence at the time of trial.

(3) After ensuring that the 91 crime scene is protected, the four basic steps in conducting the crime scene search, in essence, are as follows:

(a) Conduct a preliminary survey of the crime scene in order to establish the overall situation and the objectives and the extent of the search.

In bank burglary violations it is essential to describe in complete detail by FD-302 the method by which the subject gained entrance to the bank and the subject's actions within the bank involving the alarm system, safe, vault, cash drawers, safe-deposit boxes, etc.

(b) Photograph the overall crime scene and the physical evidence located therein.

(c) Conduct a latent print examination.

(d) Collect, record, mark, and preserve the physical evidence recovered at the crime scene.

(4) In addition to the collection of the obvious physical evidence in bank burglary violations, efforts should be directed toward the collection of possible "transfer evidence." Whenever two

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surfaces contact each other, there is a partial transfer of material from one to the other. Typical examples are the subject's clothing, shoes, and vehicle picking up building materials when forcibly entering a bank and safe insulation when forcibly entering a safe. Samples of the appropriate possible "transfer evidence" should be collected at the crime scene for future comparison purposes with the subject's or suspect's clothing, shoes, and sweepings from his/her vehicle in an effort to place him/her at the crime scene.

(5) In regard to bank burglary toolmarks, a thorough examination of the forced entry area and other points of attack within the bank should be conducted in an effort to obtain them for future comparison purposes. The toolmark impressions may be obtained by taking possession of the surrounding area or by casting, whichever is more appropriate.

EFFECTIVE: 10/26/87

91-9.1      Sharing or Delegating Crime Scene Search Responsibilities  
with Local Authorities

(1) Under our investigative policy and objectives in 91 violations (see 91-5.3 of this manual), FBI offices having well-trained, effective local law enforcement agencies may share or delegate crime scene search responsibilities mutually agreed upon with local authorities.

(2) It should be noted, however, that any such mutual agreement must ensure that the crime scene search is properly conducted and, if appropriate, all evidence recovered by local authorities is available to your office for transmittal to the FBI Laboratory Division for examination.

(3) In those 91 violations in which FBI investigation is instituted and local authorities do not have the capabilities to conduct a proper crime scene search, the crime scene search should be conducted by or under the direction of the FBI.

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91-10 FBI SURVEILLANCE OF SUBJECTS AND/OR BANKS INVOLVING A  
CONTEMPLATED 91 VIOLATION

(1) It is the responsibility of the SAC to formulate a course of action and to decide if Special Agents will conduct a surveillance of a subject and/or a bank when information is developed indicating that a 91 violation will be committed involving a known subject and bank, a known subject and unknown bank, or an unknown subject and known bank.

(2) In making the above decision, the SAC must consider all the available facts, including the source's reliability and the FBI's responsibility to avoid unnecessarily endangering human lives.

(3) Because of the danger factor and potential local violations involved, appropriate local law enforcement agencies and bank officials must be notified of contemplated violations unless a valid reason exists for not making such notification.

(4) If a surveillance will be instituted in a case involving more than one subject, the SAC's plan of operation should include the objective of apprehending the subjects on conspiracy charges before they enter the bank in order to minimize the danger to bank employees and other innocent bystanders.

(5) Where appropriate, investigative efforts should be made to develop conspiracy charges and the facts should be promptly presented to the USA to determine if he/she will authorize the apprehension of the subjects for conspiracy. If not, determine from him/her what further actions by the subjects are necessary in order for him/her to make said authorization. Arrangements should be made with the USA to ensure that he/she can be immediately contacted, if necessary, and advised of pertinent developments.

(6) Due to the high potential for physical violence occurring, if the SAC makes the decision to institute a surveillance of the subject, subjects, and/or bank, the SAC or, in his/her absence from the territory, the ASAC and/or 91 Supervisor must afford personal on-the-scene supervision of the surveillance, and every detail of the operation must be thoroughly planned.

(7) Prior FBIHQ authority is not required to conduct surveillances of subjects and/or banks in contemplated 91 violations.

(8) FBIHQ should be notified beforehand of the surveillance by telephone and/or teletype only if unusual

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circumstances exist or if it appears that the case will receive widespread publicity.

(9) In instances where FBIHQ is not notified beforehand of the surveillance, for reasons set forth above, and the subject or subjects are subsequently arrested, FBIHQ should be notified by telephone and/or teletype depending on the circumstances of the arrest, publicity received, or other unusual factors involved.

(10) As noted in number (3) above, in the absence of a valid reason, local law enforcement agencies must be notified of contemplated violations. In regard to the actual FBI surveillance of the subject and/or bank, consideration should be given to having an appropriate number of local law enforcement representatives, if willing, participate in the surveillance to ensure appropriate liaison and responsibility for any local violations that may occur.

EFFECTIVE: 10/26/87

91-11 EXTORTIONATE DEMANDS RECEIVED BY BANK OFFICIALS FOR BANK FUNDS

EFFECTIVE: 10/26/87

91-11.1 Potential FBI Violations

(1) |On November 10, 1986, The President signed into law the "Criminal Law and Procedure Technical Amendments Act of 1986," which amended Title 18, USC, Section 2113(a), to explicitly include bank robberies committed by extortion. The term "extortion" as used in Title 18, USC, Section 2113(a), means obtaining or attempting to obtain property from another person without the other person's consent, induced by the wrongful use of actual or threatened force, violence, or fear. This means that the FBI will have jurisdiction in extortion matters when a bank official receives a threat of physical injury to himself/herself or a member of his/her family through United States mail, by telephone, note, or in person, and is instructed to take bank funds and physically deliver them to an individual off the bank premises or leave them at a designated drop-site. |

(2) In addition, it is a Federal extortion violation if the demand for bank funds is made through the United States mail or by

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interstate telephone call and a Federal kidnaping violation if the bank official or a member of the bank official's family is taken hostage and transported interstate.

(3) It is a bank extortion violation even if the bank official makes no effort to comply with the subject's extortionate threat and demand to physically deliver bank funds to him/her in person, or leave them at a designated drop-site.

(4) It is a bank extortion violation when the bank official attempts to comply with the subject's demand, and the subject does not meet the bank official to take, or attempt to take, the bank funds from his/her person or presence, or does not take the bank funds which were placed at the designated drop-site.

(5)



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EFFECTIVE: 10/26/87

91-11.2 Decisions to Make the Payoff and to Cover the Payoff

(1) In some cases the victim bank official will comply with the subject's demand for bank funds without first notifying his/her bank or the FBI; therefore, the decision whether to make or cover the payoff cannot be made and the FBI will not be able to promptly institute its investigation beforehand.

(2) In the above situation, especially when a hostage was not taken, the possibility that the bank official stole the bank funds rather than the subjects should not be overlooked.

(3) In those instances where the victim bank and the FBI are notified beforehand by the bank official of the subject's demand for bank funds, certain factors will have to be closely considered before a decision can be made regarding whether the subject's demand should be complied with by the bank and whether the payoff should be

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covered by the FBI.

(4) The most important consideration regarding the above decisions is the safety of the victim bank official and/or family member. The degree of danger will vary from case to case and must be assessed accordingly in reaching a decision. For example, in a case where the subject is actually holding the bank official's spouse hostage and threatens to kill the hostage unless subject's demands are met, it is obvious that the danger factor is far more real and imminent than in a nonhostage case where the subject threatens to kill the bank official and/or spouse if official fails to comply with subject's demands.

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(6) The decision whether or not to pay the subject's demand is the bank's decision to make and will be influenced by the danger factor



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[REDACTED]  
(9) [REDACTED]

EFFECTIVE: 10/26/87

91-11.3 Extortion Matters - Investigative Techniques

EFFECTIVE: 10/26/87

91-11.3.1 [REDACTED]

(1) [REDACTED]

(2) [REDACTED]

EFFECTIVE: 10/26/87

91-11.3.2 [REDACTED]

(1) [REDACTED]

(2) [REDACTED]

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[REDACTED]

EFFECTIVE: 10/26/87

91-11.3.3 [REDACTED]

[REDACTED]

EFFECTIVE: 10/26/87

91-12 OFFICE OF ORIGIN (OO) NOTIFICATION TO FBIHQ, SURROUNDING  
OFFICES, AND OTHER OFFICES OF 91 AND 192C VIOLATIONS  
BY FD-430 AND TELETYPE

EFFECTIVE: 10/26/87

91-12.1 Notification to FBIHQ (See MIOG, Part I, 15-4(9),  
87-5.3.2, & 192-11.1; MAOP, Part II, 9-6.)

(1) FBIHQ shall be notified of every bank robbery, bank  
burglary, bank larceny and bank extortion violation within 30 working  
days of the offense by FD-430 with available bank surveillance camera  
photographs attached.

(2) The above notification to FBIHQ should not be delayed  
beyond the 30-day working period awaiting processing of the  
photographs, which may be forwarded afterward by a separate  
communication or by routing slip.

(3) In addition, FBIHQ should be promptly notified by  
telephone and/or teletype in 91 cases of unusual interest such as

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those in which a shooting occurs, a hostage is taken, a large loss is sustained, or where good judgment dictates. FBIHQ should also be advised of all subsequent major developments in these cases by summary teletype. The initial teletype notification to FBIHQ does not eliminate the necessity of the FD-430 submission to FBIHQ within 30 working days.

(4) The FD-430 must contain the OO file number.

(5) After the initial FD-430 submission to FBIHQ, if it is determined that no FBI violation actually occurred, the OO should submit a supplemental FD-430 in order to delete the violation from the bank crime statistics maintained at FBIHQ.

(6) Title changes may be made by supplemental FD-430 as long as the basis for the change is set forth thereon. When an unidentified subject who is included in the National Bank Robbery Album (NABRA) is identified, cancellation of the NABRA circular can be made by checking the appropriate box located on Form FD-430 and by including a request for FBIHQ to cancel the NABRA in an administrative page attached to the supplemental FD-430 (see 91-19 for further details regarding the issuance and cancellation of NABRA circulars).

(7) Cases may be opened and closed upon the submission of the FD-430 to FBIHQ under certain appropriate circumstances such as when a strong local interest is dominant and the USA declines prosecution at the outset of the investigation. This closing procedure does not eliminate the necessity to comply with the FBI's investigative response policy in 91 matters (see 91-5.1), and those investigative results obtained are to be recorded by FD-302 or investigative insert and maintained in the field office file for possible future needs. (See MAOP, Part II, 2-5.2.4.)

(8) An FD-430 with the solution portion completed must be submitted before solution credit can be recorded at FBIHQ. Solution credit may be claimed only in those cases in which all subjects involved have been identified. When a case is solved after the initial FD-430 submission, submit a supplemental FD-430 with only the solution portion completed. Violation and solution data submitted by this form will be furnished to each field office at the close of the fiscal year for verification of this information recorded at FBIHQ.

(9) It is imperative that all FD-430 entries are correct since FBIHQ disseminates pertinent data from these forms to the Federal financial regulatory agencies, the American Bankers Association, and other qualified recipients who are concerned with

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crimes against financial institutions.

(10) In all Hobbs Act - Armored Carrier cases, an FD-430 must be submitted within 30 working days of the offense. See Part I, Section 192-11.1 of this manual for details.

EFFECTIVE: 11/30/93

91-12.2 Notification to Surrounding Offices and Other Offices

(1) In addition to notifying FBIHQ of all 91 violations, the OO shall determine if regional or other field office notification is necessary. Absent photographs of value, distinguishing physical characteristics or a distinguishable MO, there should be no regional distribution of FD-430's. Additionally, there should be no regional distribution of FD-430's, the purposes of which are to change titles or reflect other administrative changes. Such administrative FD-430's should be submitted to FBIHQ only. (See MIOG, Part I, 15-4(9) & 192-11.2.)

(2) Depending on the urgency of the case and the need for specific and immediate investigation, initial notification to the above offices may be made by telephone, teletype, or FD-430.

(3) If initial notification is made to surrounding and other appropriate offices by telephone and/or teletype, these offices should also receive copies of the FD-430 which must be prepared by the OO for transmittal to FBIHQ within 30 working days of the offense.

(4) Teletype notification should include a succinct summary of the offense, the modus operandi (MO) utilized, a description of the subject, specific investigative leads, and any required caution statement. Bank camera surveillance photographs and bank burglary crime scene photographs should be forwarded by FD-430, a separate cover communication, or by routing slip. (See MIOG, Part I, 91-16(4) (b).)

(5) Initial notification by FD-430 should not be delayed beyond 30 working days awaiting processing of the photographs which may be forwarded afterward by a separate cover communication or by routing slip.

(6) Appropriate general leads, such as comparing instant

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MO for similar bank robberies or contacting informants and local law enforcement agencies for information of value, may be set forth in the FD-430.

(7) The FD-430 should contain a statement that only positive information need be reported to the OO by receiving offices.

(8) The FBIHQ and field FD-430 copies should have a second page attached setting forth a detailed narrative summary of the offense in LHM format suitable for dissemination. The decision to disseminate the narrative page to other law enforcement agencies and other authorized institutions or individuals is left to the discretion of the receiving offices.

(9) Since FD-430s do not contain specific investigative leads for auxiliary offices, and the leads set forth, if any, are general in nature as set forth above, they should be filed in the pertinent administrative control files by the receiving offices. It is suggested that the serials be filed by date of bank robbery, state and city in that order. It is not necessary to serialize this mail if filed in a logical, consistent order nor is it necessary to index the title of the communication unless the field office firmly believes it is necessary. This is an exception to the mandatory indexing case title guidelines. The exception is justified due to the informational nature of the FD-430 and the automated availability of the Field Office Information Management System Alternate Office Index Search capability in all FBI offices. (See MAOP, Part II, 2-3.3.1(1).)

EFFECTIVE: 11/30/93

91-13      BANK ROBBERY, BANK BURGLARY, BANK LARCENY AND BANK  
EXTORTION LOOT

EFFECTIVE: 04/19/91

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91-13.1 Establish Loss By Bank Officer

The bank officer, who is competent to testify regarding the bank's ownership, possession, custody, or control of the stolen property, should be interviewed in order to establish the loss by a bank audit and obtain a complete list and description of the stolen property.

EFFECTIVE: 04/19/91

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91-13.2 [REDACTED]

(1) [REDACTED]

(a) [REDACTED]

(b) [REDACTED]

(2) [REDACTED]

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

XXXXXX  
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XXXXXXFEDERAL BUREAU OF INVESTIGATION  
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2 Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

- ☒ Deletions were made pursuant to the exemptions indicated below with no segregable material available for release to you.

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(4)

(5) For complete details regarding stop notices and their administrative handling, see Part II, 10-7, of this manual.

EFFECTIVE: 07/23/90

91-13.6

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(3)

EFFECTIVE: 08/27/90

91-13.7

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[REDACTED]

(4) [REDACTED]

(5) In all instances, the circular letter must include the following:

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

(d) A caution statement, if appropriate, regarding the subject and a statement that no action should be taken which would endanger anyone's safety.

(e) A statement that if any positive information is developed, immediately contact the nearest office of the FBI, the telephone number of which may be found on the first page of your telephone directory.

(f) For complete details regarding circular letters, see Part II, 21-24, of this manual.

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91-13.8 Counting and Reporting Recovered Bank Loot Currency

(1) The exact circumstances surrounding the recovery of known or suspected bank loot must be accurately recorded by the recovering Agent or Agents on an FD-302.

(2) In regard to the recovery of currency, it must be counted separately and independently by two Special Agents to assure the accuracy of the total and recorded on an FD-302. The fact that the currency was counted separately and independently by two Special Agents should be set forth in the body of the FD-302.

(3) The above recovery and tabulation may be recorded on one FD-302, provided that the same two Agents made the recovery and tabulation. If the recovering and tabulating Agents are not identical, two separate FD-302s should be utilized to record these events.

(4) The FD-302 setting forth the tabulation of the currency should be set up in column fashion with headings for denominations, serial numbers, series year, and bank of issue and reported according to the denomination sums in descending order.

(5) Any adding machine tapes utilized to tabulate the currency should be initialed and dated by the counting Agents and retained in the 1-A section of the case file.

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(8) For additional information regarding recovered bank

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loot involving its custody, storage, turning over to the U.S. Marshal, obtaining receipts, etc., see MAOP, Part II, 2-4.4.14, entitled "Handling of Evidence and Property by the U.S. Marshal"; 2-4.4.8, entitled "Valuable Evidence," and 2-4.4.12, entitled "Charge-Out Procedures - Evidentiary Property."

EFFECTIVE: 10/16/96

91-14 NEWS MEDIA INQUIRIES POLICY

- (1) The FBI's news media inquiries policy is in strict compliance with instructions issued by DOJ concerning the release of information in criminal and civil matters. These instructions are contained in Title 28, Section 50.2, of the Code of Federal Regulations (CFR).
- (2) This 91 citation is not intended to be all inclusive. For complete details regarding this topic, including a restatement of the above CFR instructions, see MAOP, Part II, 5-1, entitled "Policy and Guidelines for Relations with News Media," and 5-2, entitled "Contacts with News Media."
- (3) Routine 91 press inquiries received at the field office regarding the investigation should be referred to and answered by either the SAC, ASAC, or media representative within permissible guidelines.
- (4) If an investigation has been instituted, the news media inquiries should be answered by advising the FBI is investigating the case with appropriate resources and would appreciate it if they will refer any person with pertinent information directly to the FBI or to the local police.
- (5) In accordance with departmental policy, no information should be volunteered at any time to the news media concerning the amount of loot obtained. Specific questions by the news media concerning the amount of loot taken may be answered following the arrest or indictment of a subject or subjects for violation of the BRICS.
- (6) Subject to specific limitations imposed by law or court rule or order, under Title 28, Section 50.2, CFR, it is permissible to disclose the following information:

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"A. The Defendant's name, age, residence, employment, marital status, and similar background information.

"B. The substance of the text of the charge contained in the complaint, indictment, or information.

"C. The identity of the investigating and/or arresting agency and the length or scope of the investigation.

"D. The circumstances immediately surrounding an arrest, including the time and place of arrest, resistance, pursuit, possession and use of weapons, and a description of items seized at the time of arrest.

"E. Disclosures should include only incontrovertible, factual matters, and should not include subjective observations. In addition, where background information or facts relating to the circumstances of an arrest or investigation would be highly prejudicial or where the release thereof would serve no law enforcement function, such information should not be made public."

(7) The release of certain types of information generally tends to create dangers of prejudice without serving a significant law enforcement function; therefore, under Title 28, Section 50.2, CFR, the following information should not be disclosed:

"A. Observations about a subject's character.

"B. Statements, admissions, confessions, or alibis attributed to a subject or his refusal or failure to make a statement.

"C. Reference to investigative procedures such as fingerprints, polygraph examinations, ballistic tests, or laboratory tests, or the refusal by the defendant to submit to such tests or examinations.

"D. Statements concerning the identity, testimony, or credibility of prospective witnesses.

"E. Statements concerning evidence or legal arguments in the case, whether or not it is anticipated that such evidence or arguments will be used at trial.

"F. Any opinion as to the subject's guilt, the possibility of a plea of guilty to the offense charged, or the

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possibility of a plea to a lesser offense."

(8) Only SACs, ASACs, and media representatives should participate in question-and-answer interviews with representatives of any news media at the scenes of 91 violations and apprehensions.

(9) Frequently, press inquiries will be received by Special Agents at the scene of a 91 violation or arrest. Those Special Agents, who are so approached, may make the following responses:

(a) Identify themselves as a Special Agent of the FBI.

(b) Furnish the name of the field office to which they are assigned.

(c) State the general nature of the investigative operation, such as, "We are here to investigate the bank robbery."

(d) Except in emergency situations, requests for additional information should be handled by courteously referring the news media to the field office for response by the SAC, ASAC, or media representative.

(e) In an emergency situation, a Special Agent may relay a reporter's questions to the SAC by telephone or radio, and the SAC's response thereto can be furnished to the reporter in the SAC's name by a Special Agent.

(10) The instructions contained in this 91 citation apply solely to contacts with members of the news media and in no way affect circularization of facts concerning a given violation to the law enforcement community, banks, or to other business establishments should this course of action be deemed necessary.

EFFECTIVE: 10/26/87

91-15

BANK ROBBERY - BANK BURGLARY SUSPECTS PROGRAM (BRBBSP)

EFFECTIVE: 10/26/87

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91-15.1 Purpose and Objective

(1) The BRBBSP was instituted on 8/27/63 for the purpose of identifying and developing information on potential bank robbers and bank burglars. The objective of this program is to maintain this information in a current status, thereby enabling a field office to immediately consider these individuals as potential suspects when an unknown subject bank robbery or bank burglary is committed.

(2) While not mandatory, all offices are encouraged to maintain a BRBBSP. This program should be instituted by any office which is experiencing difficulty with unsolved bank robberies and bank burglaries since experience has shown that such offices have benefitted from utilizing this program.

EFFECTIVE: 10/26/87

91-15.2 Effect of the Attorney General's Guidelines on Criminal Investigations of Individuals and Organizations on the BRBBP

(1) Prior to the passage of the above guidelines on 12/22/80, the two sources for opening BRBBSP cases were the identification of a potential bank robbery or bank burglary suspect through routine independent investigation and maintaining liaison with the Bureau of Prisons (BOP), through which BRBBSP cases were opened on inmates who were released from custody after being convicted of bank robbery or bank burglary.

(2) The current Attorney General's guidelines do not prohibit the above first source of BRBBSP cases since the routine independent FBI investigation provides the "reasonable indication" basis for conducting a general criminal investigation (GCI) or the lesser basis for conducting a preliminary inquiry (PI) under this program. However, the above Attorney General's guidelines will prohibit opening a BRBBSP case and conducting either a GCI or PI on a BOP releasee since the mere fact that he/she has been previously convicted of bank robbery or bank burglary does not provide the "reasonable indication" or the lesser basis necessary for conducting a GCI or a PI.

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EFFECTIVE: 10/26/87

91-15.3 Opening BRBBSP Cases

(1) After identifying a bank robbery, bank burglary or larceny suspect through routine independent investigation, an individual 91D case file should be opened and, depending on the circumstances, either a GCI or PI should be conducted.

(2) The objective of the GCI or PI, in addition to further identifying, developing, and maintaining information on a potential bank robber or bank burglar, is to determine if he/she is, in fact, involved in a prior unsolved bank robbery or bank burglary or is planning to commit such an offense.

(3) If deemed appropriate, a bank robbery, bank burglary or larceny suspect in this program may be interviewed during the course of the GCI or PI.

(4) The 91D case file should be utilized to record the suspect's complete description, employment, residence, associates, hangouts, modus operandi, cars, recent photographs, identification record, interview results, and other pertinent data.

(5) During the investigations of these suspects, the possibility of developing informants able to provide information regarding 91 cases should be pursued.

(6) During these investigations, efforts should be made to obtain the suspect's major case prints through logical sources in order that they may be transmitted to the Latent Fingerprint Section, Laboratory Division for inclusion in the suspect's identification files.

(7) For purposes of correctly reporting and maintaining investigative results and recording TURK and MAR data, if the above GCI or PI identifies the bank robbery, bank burglary or larceny suspect as being involved in a prior unsolved bank robbery, bank burglary or larceny, the 91D suspect case file should be closed and the remainder of the investigation should be reported in the existing 91A\*, 91B\*, or 91C case file. If the above GCI and PI determines the bank robbery, bank burglary or larceny suspect is planning or conspiring to commit an identifiable bank robbery, bank burglary or larceny, the 91D suspect case file should be closed and

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all further investigation should be reported in the new 91A\*, 91B\*, or 91C case file.

EFFECTIVE: 09/24/93

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(3) This method of operation will ensure that the FBI continues to receive the above information for possible future lead value; and upon commission of a bank robbery or bank burglary within your territory, said individuals may be considered as possible suspects, if appropriate.

(4) If subsequent information is received indicating [redacted] an individual 91A\*, 91B\*, or 91C case file should be opened and, depending on the circumstances, either a GCI or PI should be conducted.

EFFECTIVE: 08/27/90

91-15.5 | Bank Robbery - Bank Burglary Album

(1) Each office should maintain an office bank robbery - bank burglary album to be utilized as an investigative aid whenever deemed appropriate.

(2) This album should contain photographs, descriptions, and background data of known or suspected bank robbers and bank burglars who reside within or travel into an office's territory. This album should be divided into two sections in order to separate the

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| bank robbers from the bank burglars.

| (3) Periodic reviews of this album should be made in order that individuals no longer believed to be logically included may be removed under authority of the SAC or his/her designated representative. |

EFFECTIVE: 08/27/90

| 91-15.6 | Notifying FBIHQ of BRBBSP Accomplishments

In order for FBIHQ to fully evaluate the fieldwide results of this program, all participating offices shall furnish the following information by airtel as part of the annual Violent Crimes Subprogram Resource Management and Allocation submission.

(1) The number of bank robbery and bank burglary suspects currently under GCI and PI investigation.

(2) A brief summary of cases solved or other accomplishments achieved as a result of this program since the previous FBIHQ notification.

(3) The number of informants developed as a result of this program since the last FBIHQ notification.

(4) The above informants' accomplishments in 91 cases and other FBI, Federal, or local violations.

EFFECTIVE: 08/27/90

91-16 BANK SURVEILLANCE CAMERA PHOTOGRAPHS

(1) The Bank Protection Act of 1968 does not require financial institutions covered under the BRICS to install surveillance cameras and said installations are discretionary on their part.

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[REDACTED]

(3) Bank surveillance camera photographs of the bank robber are important investigative tools since they can be utilized to assist in the subject's identification. In addition, these photographs will record the type of weapon used and the clothing worn by the subject and if recovered from his/her possession may assist in his/her identification. In the case of clothing, if certain unique patterns or defects are recorded in the photographs, the recovery of the clothing and its examination by the FBI Laboratory may result in a positive identification.

[REDACTED]

(4) In an effort to identify the subject, consideration should be given to wide dissemination of the bank surveillance camera photographs by:

- (a) local or regional news media sources;
- (b) FD-430, see 91-12.2;
- (c) NABRA circulars, see 91-19; and
- (d) circular letters, see Part II, 21-24, of this

manual.

(5) [REDACTED]

(a) Interested offices should transmit 35 copies of the unknown subject's photograph to the Albany Office, Attention: Bank Robbery Coordinator, setting forth the above lead. The back of the photographs should list the case title, field office file number, and a physical description of the unknown subject. One copy of the photograph will be retained by the Albany Office.

[REDACTED]

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(b) Any identification or leads developed will be forwarded to the Albany Office. [REDACTED]  
The Albany Office will forward any results received to the OO who will have the responsibility of reviewing the information furnished and setting out any leads deemed appropriate.

EFFECTIVE: 08/27/90

| 91-17 | SCIENTIFIC EXAMINATION OF DEMAND NOTES |

EFFECTIVE: 10/26/87

| 91-17.1 | Bank Robbery Note File |

EFFECTIVE: 10/26/87

91-17.1.1 Background

(1) The BRNF is maintained in the Investigative Operations and Support Section of the FBI Laboratory. It is comprised of a computerized/microfiche file as well as a visual file made up of photographs of handwritten, hand printed, typewritten, and miscellaneous notes which have been used in bank robbery cases throughout the country.

(2) Statistics maintained by FBIHQ have established that demand note bank robberies (DNBRs) constitute a significant percentage of all bank robberies committed each year. [REDACTED]

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||91-17.1.2| Purpose

(1) The purpose of the BRNF is to identify or possibly associate a demand note used in one bank robbery with demand notes used in other bank robberies thereby identifying or associating the subject.

(2) In addition, handwriting samples obtained from subjects or suspects known or suspected of committing DNBRs may be submitted to FBIHQ, Attention: FBI Laboratory, BRNF, by FD-598, entitled "Request for Bank Robbery Note File Examination," for a search through the BRNF in an effort to effect an identification or possible association.

EFFECTIVE: 10/26/87

||91-17.1.3| Policy

The effectiveness of the BRNF is dependent upon all field offices submitting all bank robbery demand notes (BRDNs) recovered by the FBI or local authorities to FBIHQ for searching and comparison purposes. To ensure that the FBI will obtain maximum investigative benefit from the BRNF, the following policy should be strictly complied with:

(1) The originals of all BRDNs that are recovered by the FBI shall be promptly submitted to FBIHQ, Attention: FBI Laboratory, BRNF, by FD-598 for a search through the BRNF with a request for a latent fingerprint examination.

(2) If local authorities have evidentiary custody of the demand note and will conduct their own latent fingerprint examination, the following submission procedure should be followed. Since their latent fingerprint examination will obliterate the demand note, a photographic copy with scale included or a legible Xerox copy, as a last resort, should be obtained prior to their latent fingerprint examination being conducted and promptly submitted by FD-598 to FBIHQ, Attention: FBI Laboratory, BRNF, for a search through the BRNF.

(3) The FD-430, used by the OO to report all 91 violations to FBIHQ, contains information blocks to indicate if a demand note was used in a bank robbery, if it was recovered by the FBI or local authorities and, if recovered, whether it was submitted to FBIHQ for a search through the BRNF. If the FD-430 reflects that a

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recovered demand note was not submitted to FBIHQ, the OO will be requested to submit the original demand note, if recovered by the FBI, or a photographic or Xerox copy, if recovered and retained by local authorities, for examination.

(4) FBIHQ will maintain a record of nonsubmission of recovered BRDNs in order to ascertain individual field office compliance with this policy.

(5) BRDNs, either originals or copies, should not be submitted by FD-430 for search through the BRNF since the FD-598 has been expressly designed for this purpose. Information copies of BRDNs may be attached to FBIHQ and field copies of the FD-430 to assist in assessing the subject's 91 activity.

EFFECTIVE: 10/26/87

91-17.1.4 Submission of BRDNs

(1) In order to prevent intermingling of evidence and to facilitate the BRNF search and a latent fingerprint examination, if requested, a separate transmitting FD-598 should be used for each demand note rather than submitting several demand notes by one communication with multiple case titles.

(2) The submitted demand note will be searched through the BRNF in an effort to effect an identification or possible association. Original demand notes will be returned to the contributing office; however, a photographic copy will be retained in the BRNF for future comparison purposes. Photographic and Xerox copies of demand notes submitted, unless advised to the contrary by the submitting office, will be retained by the FBI Laboratory.

(3) If an office desires a comparison of a demand note being submitted with a demand note or notes used in other specific bank robbery cases, it should make said request and identify the demand notes by case title in the body of the transmitting FD-598.

(4) If, based on the above request, the FBI Laboratory determines that the submitted BRDN was prepared by the writer of the above-suggested BRDNs on file in the BRNF, the search will be terminated. However, if the above search proves negative, the submitted demand note will be searched through the appropriate remainder of the BRNF in an effort to effect an identification or

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possible association.

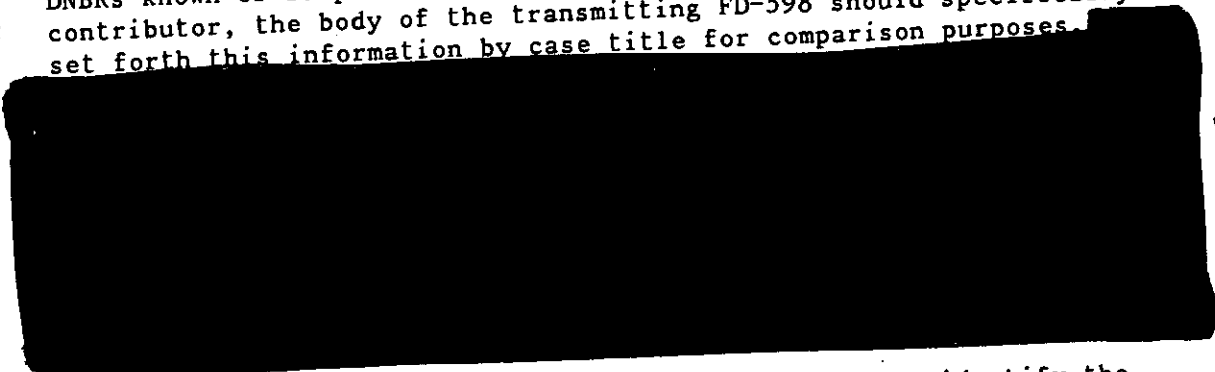
(5) For additional instructions regarding demand note submissions, refer to the instructions section appearing on the reverse side of the FD-598.

EFFECTIVE: 10/26/87

||91-17.1.5| Submission of Handwriting Samples Obtained from Subjects or Suspects Known or Suspected of Committing Demand Note Bank Robberies (DNBRs)

(1) In the above-captioned situation, complete samples should be obtained in accordance with existing instructions (see Part II, 13-17.2.3, and Part I, 87-5.2, of this manual).

(2) If the submitting office is able to identify the DNBRs known or suspected to have been committed by the handwriting contributor, the body of the transmitting FD-598 should specifically set forth this information by case title for comparison purposes.



b2/b7E

(3) If the submitting office is unable to identify the specific DNBRs known or suspected to have been committed by the handwriting contributor, this fact should be set forth in the body of the transmitting FD-598. In these instances, a portion of the submitted handwriting samples should contain examples of demand notes with the type of language commonly utilized by these subjects. The submitted handwriting samples will be searched through the entire BRNF, where feasible, in an effort to effect an identification or possible association.

(4) In regard to the situation set forth in number (2) above, if the FBI Laboratory determines that the specified BRDNs on file in the BRNF were in fact prepared by the handwriting contributor, the search will be terminated. However, if the above search proves

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negative, the submitted handwriting samples will be searched through the appropriate remainder of the BRNF in an effort to effect an identification or possible association.

EFFECTIVE: 10/26/87

91-17.1.6

ba/p7E

EFFECTIVE: 05/26/89

91-17.2 Anonymous Letter File (ALF)

All bank extortion letters should be searched through the ALF. For details regarding the ALF, refer to Part II, Section 13-17.6(2) of this manual, entitled "Anonymous Letter File."

EFFECTIVE: 05/26/89

91-17.3 Extortionate Notes or Letters Received by Bank Officials and/or Family Members

(1) The original extortion note or letter is to be promptly forwarded by airtel to FBIHQ, Attention: Laboratory Division, Investigative Operations and Support Section and Latent Fingerprint Section, for examination. A copy of the note or letter should also be designated for the Violent Crimes/Fugitive Unit, Criminal Investigative Division (CID). The cover airtel should briefly set forth the facts of the case, describe any enclosures, and specifically request the types of Laboratory Division examinations desired. Refer to Part II, Section 13, of this manual, entitled "Laboratory Division Aids to Investigations," and Part II, Section 15, of this manual, entitled "Latent Fingerprint Identification," for the

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| types of analyses available.

(2) Identification of those who have handled the extortion note or letter is necessary so that elimination fingerprints can be obtained for later reference. The unavoidable handling of the letter or document before it comes into the possession of the field office should not preclude the requesting of latent fingerprint examinations. However, appropriate handling instructions should be given to those who may receive subsequent letters from the extortionist so that minimal handling of the evidence occurs.

| (3) |Deleted|

(4) The medium by which an extortionate message is conveyed to the victim may include telephone calls, tape recordings and videotapes. Analyses can be conducted by the |Information Resources| Division on these types of evidence. Refer to Part II, 16-8, of this manual, for details of examination which can be conducted on this evidence.

EFFECTIVE: 03/21/95

| 91-18      AUTOMATED LATENT|FINGERPRINT SEARCH|

| This 91 citation regarding the Automated Latent|Fingerprint Search (ALFS), |the National Unidentified Latent File (NULF), and Major Case Prints (MCP) is directed toward bank robbery (BR), bank burglary (BB), bank larceny (BL) and bank extortion (BE) violations and is not intended to be all inclusive. For further details regarding these matters, see Part II, Section 15, of this manual.

EFFECTIVE: 07/21/95



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91-18.1 Automated Latent Fingerprint Search (See MIOG, Part II,  
15-2.1.)

(1) The Automated Latent Fingerprint Search (ALFS) which replaces the Automated Latent Search of Automated Identification System - Phase III (ALSA3, accesses the Criminal Justice Information Services Division's automated criminal fingerprint file consisting of fingerprints for over 28 million individuals.

(2) Latent prints previously considered for a search in the ALSA3 system will be given the same consideration in conducting an ALFS.

(3) Not all latent fingerprints are suitable for automated searching. The ability to conduct an ALFS relies on determining the approximate fingerprint classification and finger position of the latent fingerprints and the availability of a physical description of the unknown subject (UNSUB). The physical descriptors which can be utilized in an ALFS include sex, race, age, height, weight, eye color, hair color, place of birth, scars, marks and tattoos. All of these physical descriptors are not necessary to conduct an ALFS, but as much of this information as known should be included in your correspondence. The ALFS may also be restricted to specific geographic regions on a state level and any criminal arrest category for which an arrest offense numeric (AON) is assigned.

(4) It is not necessary to request an ALFS. Each case submitted for a latent fingerprint examination is evaluated by LFPS to determine if it meets the criteria for initiating an ALFS.

(5) The results of the ALFS will be incorporated in the LFPS report submitted to the office requesting fingerprint information.

EFFECTIVE: 07/21/95

91-18.1.1 Moved to 91-18.1

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EFFECTIVE: 07/21/95

| 91-18.1.2 | Deleted |

EFFECTIVE: 07/21/95

| 91-18.2 National Unidentified Latent File (NULF) | (See MIOG, Part II, 15-2.2.) |

(1) The NULF is maintained in the LFPS and is broken down into 17 separate federal crime categories, four of which are BR, BB, BL, and all extortions.

(2) The BR, BB, BL and extortion categories contain photographs of the unidentified latent prints submitted by the field to the LFPS for examination or developed by the LFPS from evidence submitted in 91 cases having at least one unknown subject. They are automatically filed in the appropriate crime category of the NULF and do not require a specific request by the field for inclusion. Once a latent print is identified, it is removed from the NULF. In keeping with the Statute of Limitations, they are also removed from the NULF five years after the offense; however, photographs of these latent prints are retained in the evidence section of the Bureau case file.

(3) Classifiable prints in BR, BB, BL and extortion matters are filed by violation and date. The BR and BB categories are further grouped geographically by state. The BR category is grouped by race, sex and geographically by state; however, in some high-volume violation areas, the BR category may be further grouped by field office city.

(4) All classifiable, unidentified latent fingerprints submitted or developed in 91 matters are filed in the NULF under the appropriate crime category.

(5) The field, when submitting unidentified latent prints and/or evidence for examination for latent prints in unknown subject 91 cases, must also enclose MCPs of logical bank employees and

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witnesses for elimination purposes. The LFPS will first compare any latent impressions of value submitted or developed with the elimination MCPs prior to initiating an ALFS. The transmitting communication must contain a description of the unknown subject to assist the LFPS in conducting an ALFS.

(6) Deleted

EFFECTIVE: 07/21/95

91-18.3 Major Case Prints (MCPs)

(1) MCPs consist of recording all friction ridge detail present on the palmar surfaces of the hands and the inner surfaces of the fingers, which includes the extreme sides of the palms and the extreme tips, sides, and lower joints of the fingers. In addition, MCPs must include a fully rolled set of fingerprints recorded on a fingerprint card (FD-249). The MCPs must be identified, dated, and bear the signature of the individual recording them.

(2) All BR, BB, BL and BE subjects should be major case printed when apprehended by the FBI. If apprehended and/or fingerprinted by another law enforcement agency, arrangements should be made to have the subject major case printed and the original or extra copy of his/her MCPs made available to the FBI.

(3) The fingerprint card portion of a subject's MCPs, in addition to all the necessary descriptive data, should set forth the substantive charge--BR, BB, BL or BE--and not merely the United States Code, title, and section reference.

(4) If a subject's MCPs were actually recorded by another law enforcement agency for the FBI, the fingerprint card should contain the FBI office file number and the "Contributor - ORI" block should reflect the FBI as the contributor.

(5) MCPs must be submitted to the Latent Fingerprint Section, Laboratory Division, by a transmitting communication bearing the appropriate case title and the Bureau file number and latent case number, if known. This communication should set forth the purpose for submitting the MCPs and the specific comparisons desired. MCPs should not be submitted to Criminal Justice Information Services Division by a fingerprint card envelope or a routing slip as is normally done with

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single fingerprint cards in other arrest situations.

(6) If the subject of a 91 case is also a suspect in other 91 violations and a comparison of his/her submitted MCPs with latent prints previously developed in these suspect cases is desired, a specific request with the identities of these cases must be set forth in the transmitting communication by case titles and the Bureau file numbers and latent case numbers, if known.

(7) In addition to the comparison of the subject's MCPs with the unidentified latent impressions submitted in 91 cases in which he/she is carried as a subject and those cases in which he/she is considered a suspect, the LFPS will compare his/her MCPs with the corresponding crime category of the NULF on a geographical basis, where applicable. See 91-18.3(9) for an explanation of a geographical search.

(8) A field request for a search of the subject's MCPs being submitted or his/her fingerprints on file in the main fingerprint file of the Laboratory Division through the NULF should be limited to the subject's specific crime category rather than the combined BR, BB, BL and BE categories since it is highly unlikely that the subject will have committed all four types of violations. If a specific reason exists for requesting a search of the subject's submitted MCPs or his/her fingerprints on file through more than one 91 crime category of the NULF, it must be set forth in the transmitting communication in order to justify said request.

(9) Comparison of a subject's submitted MCPs or fingerprints on file through the NULF on a geographical basis consists of the location where the 91 offense occurred, the location of the subject's arrest and those locations reflected on the subject's FBI record within the last five years. If the field desires the geographical search through the corresponding crime category of the NULF be expanded, it must specifically set forth the locations where the subject has traveled or resided and is suspected of having committed additional unknown 91 violations. (See (7).)

(10) It should be noted that only the MCPs or fingerprints of an individual who is carried as a subject in the title of at least one 91 case will be automatically searched through the corresponding BR, BB, BL or extortion categories of the NULF. The BR and BB categories will be searched further on a geographical basis. The MCPs or fingerprints of an individual who is a 91 suspect only will not be compared with the corresponding crime category or categories of the NULF unless this request is specifically set forth in the

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communication.

EFFECTIVE: 04/08/96

91-19 NATIONAL BANK ROBBERY ALBUM (NABRA) CIRCULARS (See MIOG,  
Part I, 91-12.1(6) & 91-16(4)(c).)

(1) When an unsolved FBI 91 matter involves violence, substantial monetary loss, unknown subject(s) that are believed responsible for multiple robberies, and if an identifiable bank surveillance photograph is available, the OO may request FBIHQ to issue a NABRA circular. It is the responsibility of the OO to evaluate the benefits of a NABRA circular. If the OO determines that the issuance of a NABRA circular would not be beneficial, no justification to FBIHQ is necessary. A request for a NABRA circular may be made at any time during the investigation.

(2) In cases involving highly unusual or aggravated circumstances and where no bank surveillance camera photographs are available, the OO may request FBIHQ to consider utilizing artist's conception drawings of the unidentified subject for inclusion in the NABRA program.

(3) A request for a NABRA circular by the OO should be transmitted by airtel to FBIHQ marked Attention: Violent Crimes Unit (VCU), Criminal Investigative Division (CID). The requesting airtel should follow the format of an existing NABRA circular and set forth a brief narrative of the offense, any words spoken by the unknown subject, the text of the demand note, if utilized, the best available description of the unknown subject, and enclose the bank surveillance camera photograph(s) or artist's conception drawing of the unknown subject. In a multiple unknown subjects case, clearly identify the bank surveillance camera photographs and corresponding descriptions as unknown subject number one, unknown subject number two, etc.

(4) Deleted

(5) Upon approval of a NABRA circular request, FBIHQ will assign the unknown subject a NABRA circular number, prepare and print the circular, and distribute same to all offices.

(6) Upon receipt of a NABRA circular, receiving auxiliary

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offices should include it in the NABRA. Do not index the victim bank in the office indices or open an individual substantive case in the absence of specific leads.

(7) In order for this program to be effective, it is essential that all Special Agents working 91 cases have copies of NABRA circulars available for display to witnesses and informants.

(8) The designation "NABRA" and its corresponding number should be carried in the case title in all communications as long as the NABRA circular is outstanding.

(9) The VCU, CID, FBIHQ, should be advised by airtel of any positive results or accomplishments obtained through utilization of NABRA circulars..

(10) When a NABRA subject is identified, his/her circular will be deleted from the NABRA. It is the responsibility of the OO to notify the VCU, CID, FBIHQ, when a NABRA unknown subject is identified and request the NABRA circular be canceled. Upon receipt of said request, the NABRA circular will be canceled and all offices notified by FBIHQ. Form FD-430 may be used to cancel a NABRA circular by checking the appropriate box located on the form and by attaching an administrative page requesting FBIHQ to cancel the circular. Ensure the NABRA circular number is identified and full subject description given. Also advise if NABRA aided in identification of subject. If cancellation of NABRA circular coincides with solution of case, ensure solution portion of Form FD-430 is properly completed.

(11) When a NABRA circular request is pending approval at FBIHQ and the unknown subject is identified, it is the responsibility of the OO to immediately notify the VCU, CID, FBIHQ, to discontinue consideration.

(12) In those instances where the Statute of Limitations has expired for a NABRA subject, FBIHQ will cancel his/her NABRA circular and notify all offices of the cancellation by letter.

EFFECTIVE: 09/07/93

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91-20 FUGITIVE BANK ROBBERY (FUBANK) CIRCULARS

(1) When a 91 subject is in a fugitive status for 15 days and an identifiable photograph is available, the OO shall request FBIHQ to issue a FUBANK circular.

(2) A request for a FUBANK circular by the OO should be transmitted by airtel to FBIHQ marked Attention: |Violent|Crimes Unit, Criminal Investigative Division. The requesting airtel should follow the format of an existing FUBANK circular and set forth a brief narrative of the offense, a description of the subject, details regarding Federal process and enclose the subject's photograph(s).

(3) If special circumstances indicate the desirability of requesting a FUBANK circular prior to the subject being in a fugitive status for 15 days, or if the OO is of the opinion that a qualifying subject should not be included in the FUBANK circular program, advise the |VCU, |CID, FBIHQ, accordingly by airtel setting forth specific reasons.

(4) Upon approval of a FUBANK circular request, FBIHQ will assign the subject a FUBANK circular number, prepare and print the circular, and distribute same to all offices.

(5) Upon receipt of a FUBANK circular, receiving auxiliary offices should index it to the office indices and maintain a copy in a control file established for that purpose rather than opening an individual substantive case in the absence of specific leads.

(6) In order for this program to be effective, it is essential that all Special Agents working 91 cases have copies of FUBANK circulars available for display to witnesses and informants.

(7) The designation "FUBANK" and its designated number should be carried in the case title in all communications as long as the FUBANK circular is outstanding.

(8) The |VCU, |CID, FBIHQ, should be advised by airtel of any positive results or accomplishments obtained through utilization of FUBANK circulars.

(9) When a FUBANK circular fugitive is apprehended or located, the apprehending or locating office, when notifying FBIHQ of the arrest or locate by teletype, should include a request for the |VCU, |CID, to cancel the FUBANK circular. Upon receipt of said

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request, the FUBANK circular will be canceled and all offices notified by FBIHQ.

(10) If the apprehending or locating office of the 91 fugitive has not been previously notified by the OO of a pending FUBANK circular request to FBIHQ for the subject, it is the responsibility of the OO to immediately notify the VCU, CID, to discontinue consideration.

EFFECTIVE: 02/16/89

| 91-21 | DELETED |

EFFECTIVE: 08/27/90

91-22 OBTAIN FEDERAL 91 PROCESS PROMPTLY

Obtain Federal BR, BB, BL or BE process as soon as possible after the subject is identified and it is determined that he/she will be prosecuted federally.

EFFECTIVE: 08/27/90

91-23 UNLAWFUL FLIGHT PROCESS ON 91 SUBJECTS

Do not obtain unlawful flight process on BR, BB, BL or BE subjects without first obtaining clearance from FBIHQ.

EFFECTIVE: 08/27/90



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91-24 NOTIFICATION TO LOGICAL OFFICES REGARDING THE APPREHENSION  
OF 91 SUBJECTS

(1) Upon apprehension of a BR, BB, BL or BE subject, in addition to the routine required FBIHQ and field notification, the OO, if appropriate, should subsequently advise all logical offices of the subject's arrest with a suggestion that he/she be considered as a possible suspect in connection with their appropriate unsolved 91 violations.

(2) The above communication should include a detailed physical description of the subject, MO utilized, his/her photograph, FBI Identification Record and data regarding his/her employments, residences, and travel itineraries.

(3) If FBIHQ has been previously advised of the subject's apprehension, a copy of the above subsequent communication to logical offices need not be furnished to FBIHQ.

EFFECTIVE: 08/27/90

91-25 NOTIFYING FBIHQ OF UNIQUE MODUS OPERANDI AND UNIQUE  
INVESTIGATIVE TECHNIQUES

(1) The details of unique MOs utilized by BR, BB, BL or BE subjects or unique and successful investigative techniques used by Special Agents in BR, BB, BL or BE investigations should be brought to the attention of the Violent Crimes Unit, Criminal Investigative Division, FBIHQ.

(2) The above details should be conveyed to FBIHQ by airtel bearing a dual caption, the substantive 91 case caption followed by the caption "Unique MO and/or Unique Investigative Technique," in order to flag its purpose.

(3) If appropriate, the VCU will incorporate the above MO or investigative technique in the 91 section of this manual and/or notify all offices of the above information by a separate communication for consideration in their 91 investigations.

EFFECTIVE: 02/16/89

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91-26 BANK ROBBERY, BANK BURGLARY, BANK LARCENY AND BANK  
EXTORTION REPORTS

This citation is directed toward specific problem areas noted by FBIHQ in 91 reports and is not intended to be all inclusive. For complete details regarding report writing, see MAOP, Part II, 10-14, entitled "Types of Reports"; 10-15, entitled "Prosecutive Report"; 10-17, entitled "Investigative Report (FD-204)"; 10-20, entitled "Nonprosecutive Summary"; and SAC Memorandum 3-78, dated 1/18/78, entitled "Reporting of Investigative Activities."

EFFECTIVE: 02/16/89

91-26.1 Prosecutive Reports

As a practical matter, the vast majority of reports prepared in 91 violations will consist of prosecutive reports. If assistance is needed in assembling a BR, BB, BL or BE prosecutive report, the writer should refer to the above SAC Memorandum and MAOP, Part II, 10-15.2, entitled "Organizing the Prosecutive Report."

EFFECTIVE: 02/16/89

91-26.2 Copies of Prosecutive Reports to FBIHQ

(1) Normally, only one copy of a 91 prosecutive report should be designated for FBIHQ. If for any reason the writer determines it is necessary for FBIHQ to disseminate a copy or copies of the prosecutive report outside the Bureau on a headquarters level, sufficient copies should be designated for the Bureau in order to accomplish said dissemination.

(2) The desired dissemination should be specifically identified for FBIHQ in the "Copies made:" section of the cover page, FD-272, and should also be set forth in the "Copy to:" section of the FD-517.

EFFECTIVE: 02/16/89

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91-26.3 Narrative of Offense Section, FD-518

(1) The purpose of the "Narrative of Offense:" section of the FD-518 in a prosecutive report is merely to set forth the jurisdictional basis for the 91 investigation and the facts surrounding the 91 violation in narrative form.

(2) Based on the above specific purpose, the "Narrative of Offense:" section should include the basis for the FBI's jurisdiction and Federal prosecution under the Bank Robbery and Incidental Crimes Statute, a detailed narrative of the subject's modus operandi, and the facts surrounding the offense.

(3) Any caution statement, if appropriate, should be included at the conclusion of this section.

(4) As noted above, other aspects of the 91 investigation, such as prosecutive status, witnesses, and evidence, are not to be included in this section and should be set forth in the appropriate sections of the prosecutive report.

EFFECTIVE: 08/27/90

91-26.4 Basis of FBI Jurisdiction and Evidence for Federal  
Prosecution in 91 Violation

In essence, the FBI's jurisdiction and the basis for Federal prosecution in BR, BB, BL and BE violations are based on the fact that the victim bank, credit union, or savings and loan association is federally chartered and/or federally insured. In order to establish the FBI's jurisdiction and evidence for subsequent Federal prosecution under the BRICS, the following details should be obtained from the appropriate banking official. This official will be subpoenaed in order to produce this documentary evidence in court for trial purposes.

(1) National Banks. The national bank charter number and the date issued. The FDIC certificate of insurance number and the date issued.

(2) State chartered banks not a member of the FRS but insured by the FDIC. The FDIC certificate of insurance number and the date issued.

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(3) State chartered banks that are members of the FRS and insured by the FDIC. The FDIC certificate of insurance number and the date issued.

(4) Federal credit unions. The Federal credit union charter number and the date of issue and the National Credit Union Administration certificate of insurance number and the date issued.

(5) Federally insured state credit unions. The National Credit Union Administration certificate of insurance number and the date issued.

(6) Federal savings and loan associations (FSLA). The FSLA charter number and date issued and the FDIC certificate of insurance number and the date issued.

(7) State savings and loan associations insured by the FDIC. The FDIC certificate of insurance number and the date issued.

(8) Federal mutual savings banks (FMSB). The FMSB charter number and date issued and the FDIC certificate of insurance number and the date issued.

EFFECTIVE: 08/27/90

91-26.5      Enclosure and Evidence Sections of Prosecutive Reports

It should be noted that a distinction exists between the above two sections, and for purposes of uniformity, the following guidelines should be followed when preparing a 91 prosecutive report.

EFFECTIVE: 08/27/90

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91-26.6 Enclosure Section

The purpose of the enclosure section is to forward enclosures to recipients outside the Bureau by the prosecutive report. This section must set forth a brief narrative describing the enclosures and identify the intended recipient. In most instances, this section will forward evidentiary enclosures to the appropriate USA for prosecutive purposes. Examples of such enclosures are bank camera surveillance photographs, demand notes, and bank burglary crime scene photographs.

EFFECTIVE: 08/27/90

91-26.7 Evidence Section

(1) The evidence section of the prosecutive report merely lists all items of evidence available to the USA which is critical to successful prosecution of the 91 violation. In addition to a brief description of the evidence, this section should identify who obtained it, its physical location and the pages in the prosecutive report where the full details regarding the evidence are set forth.

(2) The evidence section should not be utilized to enclose evidentiary items to the USA or other recipients outside the Bureau since this is the function of the enclosure section.

EFFECTIVE: 08/27/90

91-27 NOTIFICATION TO FBIHQ OF THE FINAL OUTCOME IN 91 CASES

(1) FBIHQ should be advised by closing letter of the final outcome of known subject cases.

(2) Unsolved cases shall be closed under SAC authority by letter to FBIHQ rather than by memorandum to the SAC. This letter should be brief and contain a concise narrative of the offense, any suspects developed, their descriptions, a summary of investigation conducted, and the basis for closing the case.

(3) In those cases where Federal prosecution is declined, a copy of the FBI Case Status Form, FD-320, to the USA confirming his/her declination should be designated for FBIHQ.

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EFFECTIVE: 08/27/90

91-28 CLAIMING LOCAL CONVICTIONS IN 91 VIOLATIONS BY THE  
ACCOMPLISHMENT REPORT, FD-515

(1) Prior to 10/1/81, the FBI had conducted investigations involving federal violations under its jurisdiction and had failed to receive conviction credit because in many instances these cases were referred to local authorities for prosecution.

(2) Effective 10/1/81, the Accomplishment Report, FD-515, permitted the field to claim a local conviction in the above instances if the FBI's investigative efforts significantly contributed to successful local prosecution.

(3) A succinct statement setting forth the basis for claiming a local conviction can accompany the FD-515 and be entered in the narrative screen in the Integrated Statistical Reporting and Analysis Application (ISRAA); however, supporting documentation must be included in the case file.

(4) The above justification narrative will be reviewed by the appropriate substantive Supervisory Special Agent, of the submitting field office, for their approval before the local conviction will be recorded in ISRAA.

(5) Local conviction statistics approved and submitted by the field will be identified as a local conviction and will be recorded and reported separately and distinctly from federal convictions by both the field and FBIHQ.

(6) The appropriate substantive field office Supervisory Special Agent will ensure that the proper investigative program and FBI violation is credited when a local conviction is approved by the field and submitted to the ISRAA.

(7) It should be noted, in regard to judging an office's performance in the Violent Crimes Subprogram in general and 91 violations, specifically, a local conviction resulting from a BR, BB, BL or BE violation, which was obtained as a result of a significant FBI investigative contribution, will be considered a positive factor.

(8) For complete details regarding the preparation of an

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Accomplishment Report, FD-515, and claiming local convictions, see the instructions in MAOP, Part II, 3-5.1 and 3-5.2.11.

EFFECTIVE: 07/07/97

91-29 BANK CRIME STATISTICS (BCS) REPORT

(1) The BCS report deals with Bank Robbery, Bank Burglary, Bank Larceny, Bank Extortion, Financial Institution Fraud, and Hobbs Act - Armored Carrier violations. (See 192-17.)

(2) In regard to BR, BB, BL and BE violations, the BCS report provides a wealth of specific information such as, but not limited to, number of violations, MOs utilized, loot taken, loot recovered, violence employed, injuries suffered, deaths incurred, and hostages taken.

(3) Three copies of the BCS report are provided to the field by FBIHQ by cover airtel on an annual basis for the period covering January through December.

(4) The BCS report is also made available by FBIHQ to the DOJ, Federal financial regulatory agencies, bank associations, and other interested and qualified individuals and/or organizations.

(5) The cover airtel and BCS report, when received by the field, should be brought to the attention of all appropriate headquarters city and resident agency supervisory and Agent personnel and media representatives.

(6) In order to achieve the above notification, the cover airtel and BCS report may be reproduced as necessary.

(7) Since the BCS report is a public source document, the field may reproduce and disseminate copies to interested and qualified individuals and/or organizations as good judgment dictates.

(8) In addition, the BCS report may also be used as source material in press releases, speeches, bank conferences, clinics, and seminars.

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EFFECTIVE: 06/26/91

91-30 BANK CONFERENCES, CLINICS, AND SEMINARS (BCCS)

EFFECTIVE: 10/26/87

91-30.1 Purpose and Policy

(1) BCCS are an important part of the FBI's training program to educate employees of banking institutions regarding both internal and external crimes committed against them.

(2) BCCS promote security awareness among banking employees and provide opportunities for planning coordinated investigative efforts between field offices and local law enforcement agencies.

(3) Traditionally, the FBI has maintained a "low profile" regarding suggestions concerning appropriate bank security devices and their use by banking institutions. In view of the continued increase in 91 violations, FBIHQ believes that it has become necessary for the FBI to be more aggressive and positive regarding bank security in their contacts with bank officials.

(4) Offices should stress internal bank security with banking officials contacted during BCCS bringing to their attention the vulnerability of their institutions where previously noted.

(5) Agents conducting BCCS may, if requested, examine the overall security program of a banking institution, comment on the practicality and necessity of security methods being used, and volunteer information as to what, if any, additional security devices or procedures may be necessary.

(6) Agents must be careful during the above contacts and examinations not to identify or endorse a particular item of security-related equipment by name or manufacturer as being the most desirable. This does not preclude Agents from describing a specific device which, through experience, has proven to be beneficial to banking institutions or law enforcement agencies.

(7) By airtel dated 11/18/77, captioned "BCCS," all



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offices were provided a copy of the American Bankers Association (ABA) booklet entitled "The Bankers Guide To Security Training." This booklet was prepared by the ABA to help bank security officers in planning and organizing security training programs for their employees. Agents conducting BCCS should familiarize themselves with this booklet.

EFFECTIVE: 10/26/87

91-31 CHARACTER - BANK ROBBERY (BR), BANK BURGLARY (BB), BANK LARCENY (BL), BANK EXTORTION (BE); BR - RECEIVING, BB - RECEIVING, BL - RECEIVING, BE - RECEIVING

EFFECTIVE: 10/26/87

91-31.1 General

Any 91 violation during which a hoax bomb device was utilized will also carry the character HOAX BOMB in the caption of the case.

EFFECTIVE: 04/29/93

91-32 CLASSIFICATION - 91

EFFECTIVE: 10/26/87

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91-33 91 SUBCLASSIFICATIONS (See MIOG, Introduction, 2-1.6.4;  
MAOP, Part II, 3-1.1, 3-1.2.)

The criteria for these subclassifications, which are all  
part of the Violent Crimes Subprogram, are as follows:

91A - Bank Robbery

91B - Bank Burglary, Larceny, \$10,000 or more

91C - Bank Burglary, Larceny, under \$10,000

91D - Bank Robbery, Burglary, Larceny Suspect Program

91E - Bank Robbery Clinics, Conferences and Seminars

91F - Bank Extortion

EFFECTIVE: 10/18/95

91-34 VENUE

(1) In BR, BB, BL and BE violations, venue lies in the  
jurisdiction where the bank is located.

(2) In receiving violations involving proceeds from a BR,  
BB, BL or BE case, venue lies in the jurisdictional district where the  
receiving occurred.

EFFECTIVE: 07/23/90

91-35 OFFICE OF ORIGIN

(1) In BR, BB, BL and BE cases, the OO shall be the  
office in whose territory the violation occurred.

(2) In BR, BB, BL and BE receiving violations, the OO  
shall be the office in whose territory the receiving violation  
occurred.

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EFFECTIVE: 07/23/90

91-36 CASE TITLE

All BR, BB, BL and BE case titles should include subject's name and aliases or unknown subject designation, the name of the institution, its location and the date of the violation. In the case of an extortion, use the date the threat was received.

EFFECTIVE: 07/23/90

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SECTION 92. RACKETEERING ENTERPRISE INVESTIGATIONS (REI)

92-1 INTRODUCTION (See MIOG, Part II, 21-28.6(1).)

(1) A Racketeering Enterprise Investigation (REI) is a criminal intelligence investigation which has as its goal the obtaining of information concerning the composition, structure, and activities of a criminal enterprise engaging in crimes which constitute racketeering activities as defined by statute and the Attorney General Guidelines (AGG).|

(2) |Authority for the FBI to conduct REI investigations is promulgated by the AGG. The AGG set forth background, definitions, scope, general procedures, and considerations regarding REIs. Agents and supervisors involved with REIs must familiarize themselves with the AGG.

(3) REIs may be conducted on racketeering enterprises engaged in criminal violations enumerated in the Racketeer Influenced and Corrupt Organizations (RICO) Act (Title 18, USC, Section 1961). However, necessary authority for REI initiation is dependent upon the violation under investigation. Refer to General Authority, Part I, 92-5. |

EFFECTIVE: 03/25/96

92-2 DEFINITIONS

(1) |"Racketeering" is defined in the AGG as any offense including the violation of state law, encompassed by the RICO Act. |

(2) |"Enterprise" is defined by the RICO Statute as "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." Although the RICO statute definition includes an individual, the AGG specifically authorizes the investigation of "two or more persons engaged in ... racketeering activity." The AGG clearly intend for the FBI to target "... entire enterprises, rather than individual participants in specific criminal acts ..." when utilizing the REI. |

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(3) "Racketeering investigation" is defined by the RICO Act as "any inquiry conducted ... for the purpose of ascertaining ... any violation of this chapter."

EFFECTIVE: 03/25/96

92-3 SCOPE OF INVESTIGATION (See MIOG, Part I, 92-8.)

concerning: An REI properly initiated may collect information

(1) The members of the enterprise and other persons likely to be knowingly acting in the furtherance of racketeering activity, provided that the information concerns such persons' activities on behalf of or in furtherance of the enterprise;

(2) The finances of the enterprise;

(3) The geographical dimensions of the enterprise; and

(4) The past and future activities and goals of the enterprise.

EFFECTIVE: 03/25/96

92-3.1 Deleted

EFFECTIVE: 03/25/96

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92-4 | RELATED SUBSTANTIVE INVESTIGATIONS |

(1) | Subsequent to the initiation of an REI, information may be developed which serves as the basis for opening a substantive criminal investigation. While any lawful investigative technique may be utilized during an REI, investigations which have progressed from intelligence gathering to evidence gathering should result in the initiation of a substantive case. Any investigation that can reasonably be expected to result in enforcement activity or any court proceedings (e.g., arrests, discovery hearings) should be conducted as a substantive criminal investigation. |

(2) | Upon opening a substantive criminal investigation, an REI may continue to gather intelligence on additional members or other criminal activity of the targeted organization, as the scope of the substantive case may be limited to a relatively small portion of the total criminal activity. The REI may also be closed if deemed appropriate. |

(3) | Case Agents and supervisors are responsible for assuring full compliance with the above-mentioned guidelines and Legal Guidelines as referenced in Part I, Section 92-8 of this manual. |

EFFECTIVE: 03/25/96

92-5 | GENERAL AUTHORITY (See MIOG, Part I, 92-1.) |

(1) | General authority to initiate an REI of a Racketeering Enterprise, the activities of which involve violence, extortion, narcotics, or systemic public corruption, lies with the SAC. There is no provision in the AGG which allows for the delegation of this authority. The SAC's approval must be based upon a written recommendation setting forth facts and circumstances reasonably indicating the existence of a Racketeering Enterprise, and must be followed by notification, in proper format, to the Intelligence Development Unit (IDU), Intelligence Section (IS), Criminal Investigative Division (CID), FBIHQ. The Section Chief, Intelligence Section, shall conduct a programmatic review of the REI. If the REI approved by the SAC is deemed deficient pursuant to the review at FBIHQ, field offices will be instructed either to close the REI or to cease active investigation pending submission of additional

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information. Otherwise, the IDU shall notify the Attorney General of the initiation of the REI as required by the AGG.

(2) Per the AGG, REIs NOT involving violence, extortion, narcotics, or systemic public corruption "may be investigated under this authority only upon a written determination by the Director, concurred in by the Attorney General, that such investigation is justified by exceptional circumstances."

EFFECTIVE: 03/25/96

92-6

INITIATION, RENEWAL, AND REOPENING

(1) Upon SAC approval of an REI, the field office shall submit to FBIHQ, Attention: IDU, IS, CID the following:

(a) Cover electronic communication (EC), in appropriate format, containing the date of SAC approval, basis for the investigation, budget requirements (if necessary), and other administrative matters.

(b) The REI profile and Letterhead Memorandum (LHM) in the proper format. Appropriate format for the cover EC, profile and LHM, is delineated in all SAC airtels dated 1/29/92, entitled "RACKETEERING ENTERPRISE INVESTIGATIONS (REIs), DRUG PROGRAM;" and 8/30/93, entitled "STREET GANG INITIATIVE, RACKETEERING ENTERPRISE INVESTIGATIONS - VCMO." This format applies to all REIs, regardless of the criminal offense or organization under investigation.

(c) The REI profile(s) should be properly captured and indexed into a database. Offices with on-line access to the Criminal Intelligence Support Program (CISP) shall enter the profiles into CISP. Field offices without access to CISP are to forward the REI profiles on a disk to FBIHQ, IS, CID for entry into CISP.

(2) Notification to FBIHQ of an REI initiation, renewal or reopening with all supporting documents (e.g., profiles, LHM) will be submitted within 14 calendar days of receiving SAC authority.

(3) The LHM and/or organizational profile should be suitable for dissemination and must include any available information relating to the group's racketeering activities.

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(4) REIs are approved for periods not to exceed 180 days. Authority for renewal is to be obtained 30 days PRIOR to expiration of the REI. REIs that do not receive SAC authority for renewal prior to the date of expiration must be reopened. Reopening follows the same procedure as initiation. When reopening, the dates of the previous investigation must be reported to FBIHQ on the cover EC.

(5) The 180-day investigative period commences upon the date of SAC approval for initiations or reopenings. Properly authorized renewals commence on the day immediately following the date of expiration.

(6) For REIs requiring the approval of the Director, FBIHQ will notify the field office of the effective date of commencement.

(7) SAC authority does not obviate the requirement of the field office to submit all initiations, renewals, reopenings, and closures to FBIHQ for review and/or Attorney General notification.

(8) The field office shall receive a copy of FBIHQ's notification to DOJ of an REI initiation or reopening. There will be NO notice to the field upon FBIHQ approval of a renewal.

EFFECTIVE: 03/25/96

92-7      TERMINATION OF THE REI

Termination of the REI will be accomplished by notifying FBIHQ, by EC, within 30 days of the closure. The REI may be closed at or prior to the expiration of the 180 day authorization period. The REI may be closed in favor of a substantive investigation or due to lack of intelligence being developed. The EC should contain the reason for closure and a brief summary of the field office's investigative efforts. New information developed since the last reporting period should be reported by a profile. There will be no notification to the field upon FBIHQ receipt of a closure.



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EFFECTIVE: 03/25/96

92-8

LEGAL GUIDELINES

(1) An REI case may be opened only when facts and circumstances "reasonably indicate" that individuals have been, are currently or will be involved in a "racketeering enterprise." This standard of "reasonable indication" is substantially lower than "probable cause," but does require specific facts and circumstances; a mere "hunch" is insufficient. The above facts should be included in the LHM to FBIHQ setting forth the basis for the REI.

(2) REIs are to be conducted with minimal intrusion consistent with the need to collect information in a timely and effective manner. The seriousness of the alleged criminal activity and the quality of the information indicating the existence of the activity should be among the factors considered in determining the investigation's proper scope and intrusiveness.

(3) The AGG allow for the use of any lawful investigative technique in accordance with Part IV of the AGG. While a particular investigative technique may be lawful, its appropriateness should be scrutinized by the approving supervisor in view of Part IV of the AGG and Part I, 92-3 and 92-4 of MIOG.

(4) The field supervisor has the responsibility of ensuring that the REI is conducted in a manner consistent with Bureau policy and legal and investigative guidelines established in "The Attorney General Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigations," set out in its entirety in MIOG, Introduction, 1-3.

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92-9 CHARACTER AND CLASSIFICATION (See MAOP, Part II, 3-1.1 and 3.1.2; MIOG, Part I, 245-4, 281-3.)

(1) Racketeering Enterprise Investigations shall be the character carried in the title of all REI matters. All REIs shall carry the 92 classification. The alpha designators shall be assigned as follows:

- A - LCN AND ITALIAN ORGANIZATIONS
- B - CENTRAL/SOUTH AMERICAN ORGANIZATIONS
- C - MEXICAN ORGANIZATIONS
- D - GANGS
- E - ASIAN ORGANIZATIONS
- F - OTHER MAJOR CRIMINAL ORGANIZATIONS
- G - AFRICAN ORGANIZATIONS
- H - EURASIAN, EASTERN EUROPEAN and RUSSIAN ORGANIZATIONS
- I - CARIBBEAN ORGANIZATIONS
- ||J - ALIEN SMUGGLING ORGANIZATIONS|

(2) The following case files shall be opened:

92-(field office designator)-0: REI CONTROL FILE

92-(field office designator)-00: REI ADMINISTRATIVE MATTERS

Appropriate subfiles may be opened to address specific needs of the field office. The subfile letter should reflect the appropriate alpha designator for that program.

Example:

92-HQ-0 REI CONTROL FILE  
Sub G African Organizations  
G1 Unaddressed work  
G2 AO Leads

In this example, the office (HQ) REI control file has subfiles to address different control file matters. Sub G is consistent with the G alpha designator for African Organizations. Sub G1 contains

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unaddressed work relating to African Organizations. Sub G2 would contain leads from other offices regarding African Organizations.

(3) This subfile structure is set forth for the 92-0 and 92-00 files, and is not intended to replace the subfile structure of active 92 cases.

(4) There are to be no other 92 cases which are not active REIs.

EFFECTIVE: 10/01/97

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SECTION 93. ASCERTAINING FINANCIAL ABILITY

93-1 PURPOSE

To ascertain a person's ability to pay a claim, fine, or judgment obtained against him/her by U.S. Government.

EFFECTIVE: 07/27/81

93-2 POLICY

(1) The FBI investigates to determine the financial position of individuals in cases referred by USAs when the Government has secured a judgment or a court has imposed a fine or order of restitution, if the amount of the debt exceeds \$2,500.00, provided the USA has previously taken all action at his/her disposal to collect the debt without success. Requests for investigation of cases in which the debt is smaller may be undertaken when it appears that a fraudulent transfer of assets or other special situation is known to be involved.

(2) It is the USA's responsibility to negotiate settlements with debtors. The FBI does not collect debts and, therefore, should not participate in any discussion meetings with or on behalf of the USA conducted for collection of debt or settlement of the debt from which an appearance of participation could be drawn.

(3) USAs should be asked to obtain or request an updated submission from the debtor a "Personal Financial Statement" form #OBD500. Agents should not in any way participate in aiding the debtor in the preparation of the form.

(4) As a final activity, prior to closing of investigation, the USA should be asked to notify the Case Agent or his/her supervisor of the collection of the debt, should collection occur. The investigative file is to reflect this contact.

(5) Cases should be closed upon completion of investigation without regard for the collection of all or part of the debt.

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(6) If after a case is closed the USA's Office does notify the Case Agent or supervisor of collection, a memorandum to the closed file reflecting the contact should be made and Form FD-515 entered into the Integrated Statistical Reporting and Analysis Application (ISRAA).

(7) No attempt should be made by any field office to survey collections made by the USA's Office, as had been the policy in the past.

(8) The FBI does not investigate the financial position of any individual indebted to the Government by virtue of action of the Internal Revenue Service.

(9) Any unusual developments or novel techniques that arise in cases under investigation should be brought to the attention of FBIHQ.

EFFECTIVE: 11/12/93

93-3

INVESTIGATIVE PROCEDURE

(1) Review records of USA and Clerk of the U.S. District Court to ascertain the amount, date, and manner in which the obligation arose, as well as to determine action taken by USA to collect obligation prior to referring case to FBI.

(2) Glean from the USA's file the identity, position, and location of all persons that may have knowledge of the debtor's financial position.

(3) Photocopy all "Personal Financial Statements" contained in the USA's files.

(4) Conduct interviews of the employees of the Federal agency from whose action the delinquent debt occurred. Obtain all background information concerning the debtor, persons that may have knowledge of the debtor's financial position, and opinions of those interviewed as to the debtor's assets and liabilities. All financial statements, credit bureau reports, and [REDACTED] contained in their files should be photocopied. b7D

(5) If necessary and desirable, interview the debtor

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concerning his/her financial status.

(6) Attempt to obtain from the debtor executed releases that would permit examination of bank records, credit bureau files, credit card issuing companies, brokerage firms, etc., maintained in the debtor's name or under his/her control.

(7) To the extent possible, verify through interview and record reviews all of the data contained on the personal financial statement, credit bureau reports, and/or [REDACTED] b7D

(8) Verify the ownership of any real or personal property in which the debtor is believed to have a financial interest, lives or, if applicable, works. Be alert to the possibility of transfer of assets from the debtor to spouse, relatives, or nominee for the purpose of defeating the collection of debt to the Government.

(9) Review public source documents contained in the County Registry of Deeds, County Prothonotary, County Tax Collector, Clerk of Common Court, Registry of Motor Vehicles, in the debtor's name, to locate assets, liens or judgments.

(10) In report format submit the results of investigation to the USA and close case.

EFFECTIVE: 07/27/81

93-4 PRIVACY ACT, TITLE 5, USC, SECTION 552a - RESTRICTIONS

(1) When interviewing anyone in the above classification, in order to solicit information about himself/herself or his/her own activities, the interviewing Agent must follow the procedures described in MIOG, Part I, Section 190-5, (2) and (3).

(2) When interviewing an individual to solicit information concerning someone other than the interviewee (thereby classifying that individual as a source of information) the interviewing Agent must follow the procedure relating to promises of confidentiality as described in MIOG, Part I, Section 190-7.

EFFECTIVE: 07/27/81

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93-5 THE RIGHT TO FINANCIAL PRIVACY ACT, TITLE 12, USC, SECTION  
3401- RESTRICTIONS

The RFFA prohibits access to financial records maintained by financial institutions (banks, etc.) in AFA matters unless:

(1) the debtor has authorized disclosures by the financial institution to the Government under the provisions of Section 3404 of the Act; or

(2) the Government has sought access under Section 3408 and complied with all its provisions including the provision permitting the debtor to challenge the Government's request; or

(3) the Government under Section 3413(e) seeks access to the records under the Discovery provisions of the Federal Rules of Civil Procedure. (In order for this provision to apply the USA would have to have instituted a civil proceeding apart from that which gave rise to the debt.)

EFFECTIVE: 07/27/81

93-6 CONSUMER CREDIT PROTECTION ACT, TITLE 15, USC, SECTION  
1601 - RESTRICTIONS

The CCPA prohibits access to credit records maintained by credit reporting agencies (credit bureaus, etc.) in AFA matters unless:

(1) the debtor has authorized disclosure by the credit reporting institution to the Government under provisions of Section 1681(b) 3(a) of the Act, or

(2) the Government under Section 1681(b) (1) seeking access to the records has obtained a court order. (Federal Grand Jury subpoenas do not apply. In order to obtain a court order the USA would have to have instituted a civil proceeding apart from that which gave rise to the debt.)

EFFECTIVE: 07/27/81

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| 93-7 CHARACTER - ASCERTAINING FINANCIAL ABILITY |

EFFECTIVE: 07/27/81

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SECTION 94. RESEARCH MATTERS AND GENERAL CORRESPONDENCE

94-1 RESEARCH MATTERS AND GENERAL CORRESPONDENCE

This classification deals with all general correspondence of the FBI with private individuals which does not involve any substantive violation. Most of this type of correspondence concerns general inquiries made by the public relative to the FBI's operations, such as general law enforcement conditions, fingerprinting, FBI Laboratory functions, and information concerning the training of Special Agents and support personnel. This type of general correspondence is also frequently received at FBIHQ from students requesting FBI publications to assist them in different types of school projects. Some letters in this category are sent by private individuals to the Director of the FBI requesting his photograph or commenting on some speech he has given.

This classification also pertains to correspondence received by field offices and at FBIHQ concerning research matters such as law enforcement technology and other matters of a general research nature.

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SECTION 95. LABORATORY|INVESTIGATIVE SERVICES (LIS)|

| 95-1 |LABORATORY INVESTIGATIVE SERVICES|POLICY

| (1) |This classification is normally assigned by FBIHQ to non-Bureau cases where a duly constituted state, county, or municipal law enforcement agency in a criminal matter or another Federal agency in a criminal or civil matter has requested an examination of evidence by the FBI Laboratory|Division.|

| (2) |The following categories of the 95 classification reflect the general crime classifications of the Uniform Crime Report Incident Based System. (See also MAOP, Part II, 3-1.1 and 3-1.2.)

- 95A - LIS - Crimes Against Persons
- 95B - LIS - Crimes Against Property
- 95C - LIS - Crimes Against Society
- 95D - LIS - Civil Cases|

EFFECTIVE: 06/03/94

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SECTION 97. REGISTRATION ACT

97-1 REGISTRATION ACT

Information concerning the 97 classification is set forth  
in a separate FBI manual, the NATIONAL FOREIGN INTELLIGENCE PROGRAM  
MANUAL (NFIPM).

EFFECTIVE: 02/14/97

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SECTION 98. SABOTAGE

98-1 STATUTES

Title 18, USC, Sections 2151 - 2156

Title 50, USC, Section 797

EFFECTIVE: 01/31/78

98-1.1 Section 2151 - Definitions

"The words 'war material' include arms, armament, ammunition, livestock, forage, forest products and standing timber, stores of clothing, air, water, food, foodstuffs, fuel, supplies, munitions, and all articles, parts or ingredients, intended for, adapted to, or suitable for the use of the United States or any associate nation, in connection with the conduct of war or defense activities.

"The words 'war premises' include all buildings, grounds, mines, or other places wherein such war material is being produced, manufactured, repaired, stored, mined, extracted, distributed, loaded, unloaded, or transported, together with all machinery and appliances therein contained; and all forts, arsenals, navy yards, camps, prisons, or other installations of the Armed Forces of the United States, or any associate nation.

"The words 'war utilities' include all railroads, railways, electric lines, roads of whatever description, any railroad or railway fixture, canal, lock, dam, wharf, pier, dock, bridge, building, structure, engine, machine, mechanical contrivance, car, vehicle, boat, aircraft, airfields, air lanes, and fixtures or appurtenances, thereof, or any other means of transportation whatsoever, whereon or whereby such war material or any troops of the United States, or of any associate nation, are being or may be transported either within the limits of the United States or upon the high seas or elsewhere; and all air-conditioning systems, dams, reservoirs, aqueducts, water and gas mains and pipes, structures and buildings, whereby or in connection with which air, water or gas is being furnished, or may be furnished, to any war premises or to the

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Armed Forces of the United States, or any associate nation, and all electric light and power, steam or pneumatic power, telephone and telegraph plants, poles, wires, and fixtures, and wireless stations, and the buildings connected with the maintenance and operation thereof used to supply air, water, light, heat, power, or facilities of communication to any war premises or to the Armed Forces of the United States, or any associate nation.

"The words 'associate nation' mean any nation at war with any nation with which the United States is at war.

"The words 'national-defense material' include arms, armament, ammunition, livestock, forage, forest products and standing timber, stores of clothing, air, water, food, foodstuffs, fuel, supplies, munitions, and all other articles of whatever description and any part or ingredient thereof, intended for, adapted to, or suitable for the use of the United States in connection with the national defense or for use in or in connection with the producing, manufacturing, repairing, storing, mining, extracting, distributing, loading, unloading, or transporting of any of the materials or other articles hereinbefore mentioned or any part or ingredient thereof.

"The words 'national-defense premises' include all buildings, grounds, mines, or other places wherein such national-defense material is being produced, manufactured, repaired, stored, mined, extracted, distributed, loaded, unloaded, or transported, together with all machinery and appliances therein contained; and all forts, arsenals, navy yards, camps, prisons, or other installations of the Armed Forces of the United States.

"The words 'national-defense utilities' include all railroads, railways, electric lines, roads of whatever description, railroad or railway fixture, canal, lock, dam, wharf, pier, dock, bridge, building, structure, engine, machine, mechanical contrivance, car, vehicle, boat, aircraft, airfields, air lanes, and fixtures or appurtenances thereof, or any other means of transportation whatsoever, whereon or whereby such national-defense material, or any troops of the United States, are being or may be transported either within the limits of the United States or upon the high seas or elsewhere; and all air-conditioning systems, dams, reservoirs, aqueducts, water and gas mains and pipes, structures and buildings, whereby or in connection with which air, water or gas may be furnished to any national-defense premises or to the Armed Forces of the United States, and all electric light and power, steam or pneumatic power, telephone and telegraph plants, poles, wires, and fixtures and wireless stations, and the buildings connected with the maintenance

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and operation thereof used to supply air, water, light, heat, power or facilities of communication to any national-defense premises or to the Armed Forces of the United States."

EFFECTIVE: 01/31/78

98-1.2      Section 2152 - Fortifications, Harbor Defenses, or  
Defensive Sea Areas

"Whoever willfully trespasses upon, injures, or destroys any of the works or property or material of any submarine mine or torpedo or fortification or harbor-defense system owned or constructed or in process of construction by the United States; or

"Whoever willfully interferes with the operation or use of any of the above or

"Whoever knowingly, willfully, or wantonly violates any duly authorized and promulgated order or regulation of the President governing persons or vessels within the limits of defensive sea areas, which the President, for purposes of national defense, may from time to time establish by executive order---

"Shall be fined not more than \$5,000 or imprisoned not more than five years, or both."

EFFECTIVE: 01/31/78

98-1.3      Section 2153 - Destruction of War Material, War Premises,  
or War Utilities

"(a) Whoever, when the United States is at war, or in times of national emergency as declared by the President or by the Congress, with intent to injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war or defense activities, or, with reason to believe that his act may injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war or defense activities, willfully injures, destroys, contaminates or infects, or attempts to so injure, destroy, contaminate or infect any war material, war premises, or war utilities, shall be fined not more than \$10,000 or imprisoned not more than thirty years, or both.

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"(b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section."

National emergency was proclaimed by President, December 16, 1950

EFFECTIVE: 01/31/78

98-1.4      Section 2154 - Production of Defective War Material, War Premises, or War Utilities

"(a) Whoever, when the United States is at war, or in times of national emergency as declared by the President or by the Congress, with intent to injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war or defense activities, or, with reason to believe that his act may injure, interfere with, or obstruct the carrying on the war or defense activities, willfully makes, constructs, or causes to be made or constructed in a defective manner, or attempts to make, construct, or cause to be made or constructed in a defective manner any war material, war premises receptacle used or employed in making, producing, manufacturing, or repairing any such war material, war premises or war utilities, shall be fined not more than \$10,000 or imprisoned not more than thirty years, or both.

"(b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section."

National emergency was proclaimed by President, December 16, 1950.

EFFECTIVE: 01/31/78

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98-1.5      Section 2155 - Destruction of National-Defense Materials,  
National-Defense Premises, or National-Defense Utilities

"(a) Whoever, with intent to injure, interfere with or obstruct the national defense of the United States, willfully injures, destroys, contaminates or infects, or attempts to so injure, destroy, contaminate or infect any national-defense material, national-defense premises, or national-defense utilities, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

"(b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section."

EFFECTIVE: 01/31/78

98-1.6      Section 2156 - Production of Defective National-Defense  
Material, National-Defense Premises, or National-Defense  
Utilities

"(a) Whoever, with intent to injure, interfere with, or obstruct the national defense of the United States, willfully makes, constructs, or attempts to make or construct in a defective manner, any national-defense material, national-defense premises or national-defense utilities, or any tool, implement, machine, utensil, or receptacle used or employed in making, producing, manufacturing, or repairing any such national-defense material, national-defense premises or national-defense utilities, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

"(b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section."

EFFECTIVE: 01/31/78



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98-1.7 Peacetime Statutes

Sections 2155 and 2156 are applicable in peacetime, as well as during a proclaimed national emergency or war.

EFFECTIVE: 01/31/78

98-1.8 Title 50, USC, Section 797 (Public Law 831, Section 21)

"(a) Whoever willfully shall violate any such regulation or order as, pursuant to lawful authority, shall be or has been promulgated or approved by the Secretary of Defense, or by any military commander designated by the Secretary of Defense, or by the Director of the National Advisory Committee for Aeronautics, for the protection or security of military or naval aircraft, airports, airport facilities, vessels, harbors, ports, piers, waterfront facilities, bases, forts, posts, laboratories, stations, vehicles, equipment, explosives, or other property or places subject to the jurisdiction, administration, or in the custody of the Department of Defense, any Department or agency of which said Department consists, or any officer or employee of said Department or agency, or by the National Advisory Committee for Aeronautics or any officer or employee thereof, relating to fire hazards, fire protection, lighting, machinery, guard service, disrepair, disuse or other unsatisfactory conditions thereon, or the ingress thereto or egress or removal of persons therefrom, or otherwise providing for safeguarding the same against destruction, loss or injury by accident or by enemy action, sabotage or other subversive actions, shall be guilty of a misdemeanor and upon conviction thereof shall be liable to a fine of not to exceed \$5,000 or to imprisonment for not more than one year, or both.

"(b) Every such regulation or order shall be posted in conspicuous and appropriate places."

National Advisory Committee for Aeronautics ceased to exist September 30, 1958, but Section 797 was not changed.

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98-2 VENUE

- (1) In judicial district where illegal act committed.
- (2) Venue in conspiracy violations in any judicial district where the conspiracy was entered into or overt act occurs.

EFFECTIVE: 01/31/78

98-3 POLICY

EFFECTIVE: 01/31/78

98-3.1 Cases to be Investigated

- (1) Specific complaint with prima facie evidence that act of sabotage has been committed.
- (2) Information that actual or potential saboteurs are at large in the U. S.
- (3) Specific request from one of the military services for FBI investigation of a definite allegation of sabotage even though the case is within the investigative jurisdiction of Air Force, Army, or Navy under the Delimitations Agreement. The intelligence agency with investigative jurisdiction under the Delimitations Agreement must be agreeable to the FBI conducting the investigation and the request must be made promptly after the incident occurs and without prior investigation by another agency.
- (4) If inquiry through local officials or other informed sources reveals cause of incident and eliminates possibility of sabotage, no investigation is necessary. Keep in mind in this connection that a saboteur may be expected to attempt to disguise his work as an accident where feasible.
- (5) Instances of willful damage to or destruction of aircraft in interstate, overseas, or foreign air commerce are investigated under destruction of aircraft or motor vehicles statutes, but bear in mind sabotage violation could be involved.

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EFFECTIVE: 01/31/78

98-3.2 Alleged Plots of Sabotage

(1) Information is frequently received indicating an act of sabotage will be committed. It is often impossible to check the source or accuracy of such information. Take the following action immediately:

(a) Advise FBIHQ by teletype.

(b) Advise local representatives of Air Force, Army, and Navy intelligence agencies; local police; and officials of plant, facility, or utility involved.

(c) Conduct any logical investigation to ascertain basis for report.

(2) In disseminating information regarding an alleged plot of sabotage, the circumstances surrounding the receipt of the report should be outlined and the facts allowed to speak for themselves. Do not attempt to evaluate the information for other agencies and specifically advise them no evaluation has been made.

(3) Protection of lives and property in connection with an alleged plot of sabotage is responsibility of company or military establishment involved and local authorities. Decision regarding action to be taken or searching for alleged bombs will not be made by FBI. Agents are not to participate in searches for suspected bombs or assume responsibility for handling bomb devices.

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98-3.3 Reporting Acts of Sabotage or Industrial Catastrophes

(1) Advise FBIHQ by telephone, teletype, or airtel of:

(a) Any specific complaint of sabotage or any allegation regarding which investigation conducted.

(b) Catastrophes of national interest.

(2) Also advise local representatives of interested intelligence agencies.

(3) Keep FBIHQ advised of pertinent developments.

(4) Information to furnish FBIHQ, if applicable:

(a) Name and location of plant, facility, or utility involved.

(b) Date and time of occurrence.

(c) Available details.

(d) Government contracts involved.

(e) Identity of agency with security responsibility and any interested agencies.

(f) Estimated damage or production loss.

(g) Any hazardous conditions or carelessness involved.

(h) Salvage or repair work under way.

(i) Any information indicating the act resulted from labor union activity, labor dispute, or strike - including identity of union; extent and duration of dispute or strike; names of union representatives and any subversive tendencies; any evidence of subversive influence; and names of, identifying data regarding, and information from office files regarding any logical suspects.

(j) Statement as to whether investigation being conducted. If no investigation being conducted, facts must be complete to justify this course of action.

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(k) If no report being submitted, specific statement to that effect.

(5) When airtel is used to advise FBIHQ of a reported act of sabotage, it must be accompanied by a letterhead memorandum, suitable for dissemination, containing all pertinent information relative to the alleged act of sabotage.

(6) If damage reported as sabotage is definitely attributable to labor union activity, labor dispute, or strike, conduct discreet inquiry if necessary to round out facts, advise FBIHQ and await FBIHQ instructions.

EFFECTIVE: 01/31/78

98-3.4 Slowdown of Production

(1) Slowdown occurs when employees intentionally reduce rate of production. This might be sabotage during period of national emergency as a deliberate plan by subversive forces.

(2) If allegation of sabotage through slowdown received, make discreet inquiry to develop facts but conduct no investigation.

(3) Advise FBIHQ of complaint. Teletype normally not necessary.

(4) Submit closing report under character of sabotage.

Include:

- (a) Identity of company.
- (b) Contracts or production involved.
- (c) Extent and cause of slowdown.
- (d) Effect on production.
- (e) Details of union activity.
- (f) Any indication of subversive activity.

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EFFECTIVE: 01/31/78

98-3.5 Biological Warfare

(1) Sections 2153 and 2155 include the words "contaminates or infects." This specifically covers sabotage by bacteriological, chemical, or radiological means.

(2) Such sabotage could be used against personnel in defense industries, military personnel and establishments, foodstuffs and other material to be used for national defense or the armed forces.

(3) Such sabotage could be accomplished by the introduction of bacteria, chemical agents, or radiological agents in ventilating systems, water supplies, food supplies, livestock, and food or forage crops.

(4) Advise FBIHQ immediately of any allegation concerning bacteriological, chemical, or radiological sabotage.

(5) As preliminary investigative procedure, determine from appropriate authorities, such as plant physicians, public health services, or agriculture departments, whether cause of any epidemic or unusual outbreak of disease has been determined.

(6) Title 50, USC, Sections 851-857, requires the registration of any person who has knowledge of or has received instruction or assignment in espionage, counterespionage, or sabotage service or tactics of a government of a foreign country or a foreign political party. In investigating any reported act of biological, chemical, or radiological sabotage, determine if there has been a violation of this statute in addition to a violation of the sabotage statutes.

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98-3.6 Presentation of Cases to Department

Sabotage cases are not to be discussed with the U.S. Attorney. All questions of law and jurisdiction and requests for prosecutive opinions are to be submitted to FBIHQ for presentation to the Department.

EFFECTIVE: 01/31/78

98-4 INVESTIGATIVE PROCEDURE

EFFECTIVE: 01/31/78

98-4.1 General

(1) Procedure will depend on circumstances of particular case. All cases must be approached thoughtfully and aggressively. Investigations must be logical and complete.

(2) The investigation of an actual instance of sabotage is not complete until the cause is established and the identity of the subject determined. In a case of actual planned sabotage with intent to injure the national defense, consideration must be given to determining if there are any associates or accomplices through thorough investigation and surveillance prior to apprehension.

EFFECTIVE: 01/31/78

98-4.2 Arson

(1) One of the most effective potential means.

(2) Determine if fire protection devices tampered with to make fire more effective.

(3) Make arrangements with local authorities if necessary to protect scene.

(4) Give early consideration to establishing Bureau's jurisdiction prior to extensive investigative effort.

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(5) Important step in arson investigation is determining point in building at which fire originated. Interview any witnesses immediately and ascertain:

- (a) Where was witness when fire occurred.
  - (b) What attracted his attention.
  - (c) Exact point where fire burning when first observed.
  - (d) Exact time and general weather conditions.
  - (e) Technical information of value to Laboratory, such as: color, intensity, and progress of flame, whether fast or slow; color and volume of smoke; unusual odors; and, whether fire at more than one place.
  - (f) Were any explosions heard during fire.
  - (g) General observations, identity of other witnesses, or suspicious circumstances.
  - (h) Action taken by witness after discovering fire.
- (6) If fire occurred in manufacturing plant, witness should be questioned with regard to employment and activities and also questioned as to physical conditions in plant, manufacturing processes, type of raw material, and other information to determine if fire hazards were present which could have caused accidental or spontaneous combustion. Question witness concerning smoking habits of employees and experience concerning any previous fires.
- (7) Check records of local fire department; interview fire department official at scene for leads.
- (8) Make intensive search at point of origin to determine method of incendiarism. Pay particular attention to obtaining suspect devices or material to send to Laboratory.
- (9) Important that materials submitted to Laboratory be accurately described as to place, position, and location where found.
- (10) Consider value of obtaining photographs.



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(11) Search adjacent terrain for evidence, such as footprints, fingerprints, containers which may have contained accelerant used, etc.

(12) Investigate all suspects fully, not only with regard to evidence pointing to them, but to background indicating motive or intent.

(13) Set out below are some suggested sources for background investigations of suspects:

- (a) Associates
- (b) Credit and arrest records
- (c) Bank accounts
- (d) State income tax returns
- (e) Character and reputation, including discreet neighborhood inquiry
- (f) Records of Government agencies, INS, Armed Forces intelligence agencies, etc.
- (g) Employment
- (h) Fellow employees
- (i) Telephone toll calls
- (j) Telegrams
- (k) Surveillance, if warranted
- (l) Develop reliable informants in position to observe subject's activities.
- (m) Obtain complete physical description, including nationality and identification record.

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98-4.3 Sabotage by Explosives

(1) Investigation follows general outline as for arson cases.

(2) Careful examination of scene should be made for bomb fragments, dynamite fuse, detonators, blasting caps, and dynamite wrappers. This type of evidence should be submitted to FBI Laboratory for examination. Also look for footprints, fingerprints, and other types of evidence.

(3) Obtain complete photographs of scene.

(4) Assume no responsibility for handling suspected bombs.

(5) Investigate suspects along lines as indicated in previous section regarding arson.

EFFECTIVE: 01/31/78

98-4.4 Mechanical Sabotage

(1) These cases in majority and cover wide variety of destructive acts.

(2) Obtain all details from original complainant so that investigation may be intelligently planned and approached.

(3) Establish jurisdiction early in investigation.

(4) Where foreign material caused damage, obtain in order to trace to source. Submit material to Laboratory where proper.

(5) When damage occurs from foreign substance in lubricants or fuel, important to obtain sufficient quantity for FBI Laboratory examination. It is suggested one gallon be obtained if possible. Where large amount involved, the sludge which has settled to bottom should also be obtained and transmitted for laboratory examination. Samples of unused stock of oil or fuel involved should also be forwarded to Laboratory for comparison.

(6) Where tools, cutting implements, etc., involved, obtain damaged part for FBI Laboratory comparison with suspect tools

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when available.

(7) All suspects should be fully investigated. See previous section on arson.

(8) Where incident is of recurring type, give consideration to utilizing dyestuffs.

(9) Where board of inquiry held by another Government agency, records should be examined for possible leads. Bureau will consider granting authority for Agent to attend such hearings as interested spectator in appropriate cases.

EFFECTIVE: 01/31/78

98-4.5 Defective Manufacture of War or National Defense  
Materials, Premises, or Utilities

(1) In addition to establishing the elements required by the statute, establish whether the defectively manufactured material will or did malfunction when put to its intended use and what damage will or did result from this malfunction. In order to establish this, the following suggestions are made:

(a) Determine the exact function of the defectively manufactured material.

(b) Determine the nature of the defect.

(c) Determine how this defect will affect the intended function of the material.

(2) The following investigative procedures have been found to be of assistance:

(a) Establish requirements or specifications for material by: government specifications; provisions of contract; established trade practices.

(b) Establish existence of any deviation from requirements by interview of government or plant officials; examination by FBI Laboratory.

(c) Specimens of defective material to be submitted

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to Laboratory whenever practicable.

(d) To establish possibility of injury or damage from use of such material when put to intended use, consider testimony from one of following sources: FBI Laboratory; Army, Navy, Air Force, or other Government expert; expert in private industry; officials of company involved; subjects of the investigation.

(e) Establish that subjects deliberately manufacturing defective materials by review of correspondence between manufacturer and purchaser; determine if manufacturing done surreptitiously; establish purchase and use of equipment not ordinarily used in this manufacturing process; establish whether contracting parties or Government agencies have objected to defective material or improper processes.

(f) Establish motive on the part of subjects as to foreign sympathies; desire to increase profit; desire to maintain production.

(g) If material manufactured for military, advise local representatives of Air Force, Army, and Navy intelligence agencies. Request their assistance in determining where material being used and in arranging for examination of material.

EFFECTIVE: 01/31/78

98-4.6 Aircraft Crashes

(1) The following instructions pertain to deliberately caused crashes of aircraft connected with the national defense which are not covered by the destruction of aircraft or motor vehicles statutes.

(2) Majority of crashes of such aircraft result from causes other than sabotage. To determine cause requires technical knowledge. Cases will normally be referred to FBI after cause of crash established.

(3) Make sure that all evidence which was developed to establish cause of crash has been properly identified and protected and that adequate expert testimony is available to establish cause of crash in any subsequent prosecution.

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(4) Under special circumstances, FBI may conduct investigation to establish cause of crash or take charge of investigation before exact cause of crash determined. Specific FBIHQ authority must be obtained in such instances. Some suggested investigation to establish cause of crash follows:

(a) Careful systematic examination of wreckage

(b) Photographs or sketches showing entire crash scene from various angles; close-up views from various angles; photographs of parts torn loose; photographs of instruments and levers in cockpit; photographs of marks made by airplane on ground.

(c) Persons to be interviewed for information are crew members or other survivors; persons who heard the plane before the crash; eyewitnesses; radio operators in contact with the plane; ground crew members and mechanics who serviced plane.

(d) Witnesses should be interviewed to obtain information as to the maneuvers of plane prior to crash; did plane appear to be out of control; did plane dive into ground or was landing attempted; were all engines operating; was plane on fire; did plane come apart in flight; did engines sound normal; was pilot lost or over unfamiliar territory; was plane on scheduled course; was landing attempt in accordance with normal procedure; was plane in radio contact; did plane's crew experience any mechanical difficulty; was log maintained while plane in flight; were any defects noted during previous flights; weather conditions at time of flight.

(e) In determining condition of airplane or manner in which functioning at time of crash, it is important to observe and carefully note exact position of all instruments in cockpit, such as fuel tank selectors, switches, throttles, etc. The condition of all control surfaces should also be carefully noted. From observation of all these items and discussion with persons experienced in handling aircraft, the condition of the plane and action being taken by pilot can often be determined.

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98-4.7 Reserve Officers' Training Corps (ROTC) Cases

(1) Department has determined that ROTC facilities constitute national-defense or war premises within meaning of Title 18, USC, Section 2151, and a deliberate attack by arson, bombing, fire bombing, or other means would possibly be a violation of Title 18, USC, Sections 2153 and 2155.

(2) Following additional procedures are to be followed in this particular type of case in order to provide information desired by Department for an opinion:

(a) For a complete investigation all pertinent individuals must be interviewed, including members of college or university community unless compelling reasons to the contrary exist.

(b) Develop existence of any plans for protest demonstrations or other acts designed to dramatize opposition to ROTC training.

(c) Submit any leaflets and/or other publicity afforded anti-ROTC protest demonstrations as enclosures to communications to FBIHQ.

(d) Identify specific property belonging to ROTC unit which was damaged or destroyed; obtain a complete inventory of all property maintained by ROTC unit.

(e) Obtain an estimate of actual cost in damage to ROTC facility and any ROTC property damaged or destroyed.

(f) Obtain details as to ownership of ROTC facility, including information as to funding and control of space of the facility utilized for ROTC training.

(g) Determine specific manner by which ROTC unit is identified on exterior of building.

(h) Determine whether ROTC training is compulsory or voluntary. If a subject is developed, determine whether he was denied, previously afforded, or is currently engaged in ROTC training.

(i) Through investigation determine whether subject made any pre-act or post-act statements which would aid in establishing his specific intent to commit sabotage.

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SUBMISSION OF REPORTS

- (1) Initial report in two weeks after complaint received.
- (2) Subsequent reports to be submitted in accordance with  
Bureau reporting procedures.

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CHARACTER - SABOTAGE

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SECTION 100. DOMESTIC SECURITY/TERRORISM INVESTIGATIONS;  
(100A);  
SPECIAL EVENTS MANAGEMENT (100B);  
INFRASTRUCTURE VULNERABILITY/KEY ASSET  
PROTECTION SUBPROGRAM (100C)

100-1 GENERAL PROVISIONS

EFFECTIVE: 12/10/91

100-1.1 Investigative Jurisdiction

Investigations by the FBI under this section are based on the Attorney General's Guidelines on General Crimes, Racketeering Enterprise, and Domestic Security/Terrorism Investigations (AGG). These Guidelines, which became effective March 21, 1983, and were revised April 4, 1989, rescind all previous versions of those Attorney General Guidelines. The full text of these Guidelines is set forth in the Introduction, 1-3, of this manual. Some sections of the Guidelines, such as the "General Principles," the rules governing the "Investigative Techniques," and "Dissemination of Information" have general applicability to all investigations and should be consulted when appropriate. Section III, Part B, governing Domestic Security/Terrorism investigations, together with a commentary on key provisions relating to them, is set forth below in 100-1.2 and 100-1.2.1:

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100-1.2 Domestic Security/Terrorism Investigations (See MIOG,  
Introduction, 1-3, and Part I, 100-1.1.)

"This section focuses on investigations of enterprises, other than those involved in international terrorism, whose goals are to achieve political or social change through activities that involve force or violence. Like racketeering enterprise investigations, it is concerned with the investigation of entire enterprises, rather than individual participants and specific criminal acts, and authorizes investigations to determine the structure and scope of the enterprise, as well as the relationship of the members." (AGG III.B.)

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100-1.2.1 Commentary (See MIOG, Part I, 100-1.1.)

(1) The Guidelines emphasize the need for criminal intelligence in Domestic Security/Terrorism investigations, and treat these investigations as an integral part of the FBI's law enforcement responsibilities.

(2) The rules governing Domestic Security/Terrorism investigations employ the "criminal enterprise" concept so successfully used in organized crime cases. This allows the FBI to cross organizational lines in Domestic Security/Terrorism investigations without regard to what a particular group or element of an organization might call itself. It should enable the Bureau to deal more effectively with groups who knowingly act in furtherance of the criminal objectives of the enterprise. Thus, persons who provide safehouses, money, weapons, or otherwise knowingly support the criminal activities of the terrorist enterprise can be investigated as part of the same criminal enterprise. It will no longer be necessary to open a separate investigation of such groups with a separate justification.

(3) The enterprise concept will also permit the FBI to focus its investigation upon violent factions of a larger group, without investigating the entire group. The new approach recognizes that terrorist groups today have a fluid membership and often lack organizational structure, yet function as a single enterprise directed toward a common goal.

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100-1.2.2 General Authority | (See MIOG, Introduction, 1-3.) |

"a. A domestic security/terrorism investigation may be initiated when the facts or circumstances reasonably indicate that two or more persons are engaged in an enterprise for the purpose of furthering political or social goals, wholly or in part, through activities that involve force or violence and a violation of the criminal laws of the United States. The standard of 'reasonable indication' is identical to that governing the initiation of a general crimes investigation under Part II. In determining whether a full investigation should be conducted, the FBI shall consider all of the circumstances including: (1) the magnitude of the threatened harm, (2) the likelihood it will occur, (3) the immediacy of the threat, and (4) the danger to privacy and free expression posed by an investigation." | (AGG III.B.1.a) |

"b. Authority to conduct domestic security/terrorism investigations is separate from, and in addition to, general crimes investigative authority under Part II, racketeering enterprise investigations under Part III A, and international terrorism investigations under the Attorney General's Guidelines for Foreign Intelligence Collection and Foreign Counterintelligence Investigations. Information warranting initiation of an investigation under this section may be obtained through the course of a general crimes inquiry or investigation, a racketeering enterprise investigation, or an investigation of international terrorism. Conversely, a domestic security/terrorism investigation may yield information warranting a general crimes inquiry or investigation, a racketeering enterprise investigation, or an investigation of international terrorism." | (AGG III.B.1.b) |

"c. In the absence of any information indicating planned violence by a group or enterprise, mere speculation that force or violence might occur during the course of an otherwise peaceable demonstration is not sufficient grounds for initiation of an investigation under this section. For alternative authorities, see Part II relating to General Crimes Investigations and the Attorney General's Guidelines on 'Reporting on Civil Disorders and Demonstrations Involving a Federal Interest.' This does not preclude

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the collection of information about public demonstrations by enterprises that are under active investigation pursuant to paragraph B 1(a) above." (AGG III.B.1.c)

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100-1.2.3 Commentary (See MIOG, Introduction, 1-3.)

(1) Domestic Security/Terrorism Investigations

(a) The enterprise approach authorizes a single level of investigation for Domestic Security/Terrorism investigations, i.e., a criminal intelligence investigation. This permits techniques, such as the development of new informants and the infiltration of organizations when an investigation is begun. Preliminary inquiries involving individual members of an organization or enterprise can be conducted under General Crimes authority as an "Act of Terrorism" (AOT) investigation (266 classification) when facts or circumstances fall short of the "reasonable indication" threshold, but allege some form of specific criminal activity. These preliminary inquiries should be reported under an Act of Terrorism caption and thereafter identify the specific predicate offense (refer to MIOG, Part I, Section 266). The AOT investigation may be used to determine whether leads indicating the specific criminal activity warrant a Domestic Security/Terrorism investigation. This approach draws a sharper distinction between inquiries related to specific criminal conduct and intelligence investigations focused on an entire enterprise.

(b) A Domestic Security/Terrorism investigation may be initiated when "facts or circumstances reasonably indicate that two or more persons are engaged in an enterprise for the purpose of furthering political or social goals, wholly or in part, through activities that involve force or violence and a violation of the criminal laws of the United States." This parallels the standard now followed in Racketeering Enterprise Investigations, and should eliminate any perception that actual or imminent commission of a violent crime is a prerequisite to investigation. It is not necessary to show that a crime is about to be committed, or that persons are planning or preparing to engage in a specific crime. It is sufficient if the facts or circumstances indicate that the enterprise seeks to accomplish its political or social objectives through violence. The standard requires a valid factual predicate and law enforcement

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purpose, but it is substantially lower than the "probable cause" threshold required for arrest.

(c) The Attorney General Guidelines also make clear that there are circumstances in which advocacy of criminal activity may trigger an investigation. (See Part I. General Principles.) They recognize the limitations imposed by the First Amendment and by the Privacy Act of 1974. At the same time they take note of the fact that words can indicate an intent to take action and that the role of intelligence investigations is preventive as well as prosecutorial. The Guidelines call attention to the fact that advocacy should be viewed in the context in which it is made. Some radical statements may be recognized as harmless puffery or rhetoric, whereas others, in the context in which they are made, may be a clear warning of illegal activity to follow. In those latter circumstances, an investigation should be authorized.

(d) The Guidelines make it clear that statements which advocate criminal activity or indicate an apparent intent to engage in crime, particularly crimes of violence, are not immune from investigation. Advocacy of unpopular ideas or lawful political dissent alone is not an adequate basis for investigation, but statements which, taken in context, present a credible threat of crime should not be ignored. The mere fact that one "goes public" with statements indicating an intent to engage in crime or urging others to do so does not convey some special protection under the Constitution. Indeed, some statements such as those threatening the President or a foreign official are themselves crimes; others may constitute evidence of a crime or of an intent to commit a crime.

1. It is important to understand, however, that the advocacy provision in this section does not itself provide any special authority with respect to such matters. It must be implemented in accordance with the other substantive provisions of the Guidelines and only when the threshold standards for an investigation are satisfied. Advocacy of crime may result in the initiation of a full general crimes investigation (266 classification) when the facts or circumstances reasonably indicate that a federal crime has been, is being, or will be committed. It could also lead to the opening of a Domestic Security/Terrorism investigation when the facts or circumstances reasonably indicate that two or more persons are engaged in an enterprise that seeks to accomplish political or social change through force or violence in violation of federal law.

2. In view of these requirements, it is unlikely that a full investigation would be initiated without some

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additional facts or circumstances beyond the statements themselves. As a practical matter, we are seldom confronted with words alone; there is often some additional information available about the persons involved or the circumstances in which the statement was made. That is implicit in the requirement that the statements advocating criminal activity must be viewed in context before further inquiry will be authorized. Furthermore, you should attempt to resolve simple "advocacy" statements in Domestic Security/Terrorism matters through Act of Terrorism (266 classification) preliminary inquiries whenever possible.

3. Nonetheless, the Guidelines do not foreclose the possibility of a full investigation based on advocacy alone, particularly where the statement suggests a serious and immediate prospect of harm. This should not be confused with the standards required by the courts for the imposition of a criminal penalty for the making of certain statements. The Guidelines do not deal with prosecution, but rather with investigation conducted prior to prosecution. Unless the statements themselves are crimes, the Bureau's primary interest here is in determining what those statements tell us about the intent of the individuals involved. It is often difficult to separate "rhetoric" from "intent" and to make an informed judgment about the likelihood of harm without inquiring into the context or circumstances in which the statements were made. It should be sufficient if, on the face of it, the statement qualifies for an AOT preliminary inquiry or full investigation, or a full Domestic Security/Terrorism investigation under the standards required by the Guidelines.

(2) Preliminary Inquiries

(a) All preliminary inquiries will be conducted pursuant to the General Crimes Guidelines. There is no separate provision for a preliminary inquiry in the Racketeering Enterprise or Domestic Security/Terrorism Sections of the Guidelines. You must rely on the authority in the General Crimes Preliminary Inquiries Section to follow up on information or allegations that do not warrant a Domestic Security/Terrorism investigation. (See Part II B of the AGG.) Therefore, preliminary inquiries regarding domestic terrorism matters may not be initiated in Domestic Security/Terrorism investigations (100 classification), but may be initiated in AOT investigations (266 classifications).

(b) Deleted

(c) Deleted

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(d) Deleted

(e) Deleted

EFFECTIVE: 06/23/97

100-2 DOMESTIC SECURITY/TERRORISM INVESTIGATIONS

EFFECTIVE: 12/10/91

100-2.1 Purpose (See MIOG, Introduction, 1-3.)

"The immediate purpose of a domestic security/terrorism investigation is to obtain information concerning the nature and structure of the enterprise, as specifically delineated in paragraph (3) below, with a view to the longer range objectives of detection, prevention, and prosecution of the criminal activities of the enterprise." (AGG III.B.2) (Also see 100-2.2.)

EFFECTIVE: 06/23/97

100-2.2 Scope (See MIOG, Part I, 100-2.1.)

"a. A domestic security/terrorism investigation initiated under these guidelines may collect such information as:

"(i) the members of the enterprise and other persons likely to be knowingly acting in furtherance of its criminal objectives provided that the information concerns such persons' activities on behalf or in furtherance of the enterprise;

"(ii) the finances of the enterprise;

"(iii) the geographical dimensions of the enterprise; and

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"(iv) past and future activities and goals of the enterprise.

"b. In obtaining the foregoing information, any lawful investigative technique may be used in accordance with requirements of Part IV." (AGG III.B.3)

EFFECTIVE: 06/23/97

100-2.3 Authorization and Renewal (See MIOG, Introduction, 1-3.)

"a. A domestic security/terrorism investigation may be authorized by the Director or designated Assistant Director upon a written recommendation setting forth the facts or circumstances reasonably indicating the existence of an enterprise, as described in this subsection. In such cases, the FBI shall notify the Terrorism and Violent Crimes Section, Criminal Division, Department of Justice, of the opening of the investigation. In all investigations the Attorney General may, as he deems necessary, request the FBI to provide a report on the status of the investigation." (AGG III.B.4.a)

"b. A domestic security/terrorism investigation may be initially authorized for a period of up to 180 days. An investigation may be continued upon renewed authorization for additional periods each not to exceed 180 days. Renewal authorization shall be obtained from the Director or designated Assistant Director." (AGG III.B.4.b)

"c. Investigations shall be reviewed by the Director or designated senior headquarters official on or before the expiration period for which the investigation and each renewal thereof is authorized." (AGG III.B.4.c)

"d. Each investigation should be reviewed at least annually to ensure that the threshold standard is satisfied and that continued allocation of investigative resources is warranted. In some cases, the enterprise may meet the threshold standard, but be temporarily inactive in the sense that it has not engaged in recent acts of violence, nor is there any immediate threat of harm--yet the composition, goals and prior history of the group suggests the need for continuing Federal interest. Under those circumstances, the

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investigation may be continued, but reasonable efforts should be made to limit the coverage to information which might indicate a change in the status or criminal objectives of the enterprise." (AGG III.B.4.d)

"e. An investigation which has been terminated may be reopened upon a showing of the same standard and pursuant to the same procedures, as required for initiation of an investigation." (AGG III.B.4.e)

"f. The FBI shall report the progress of a domestic security/terrorism investigation to the Terrorism and Violent Crimes Section not later than 180 days after the initiation thereof, and the results at the end of each year the investigation continues. The Terrorism and Violent Crimes Section shall review the results of each investigation at least annually." (AGG III.B.4.f)

EFFECTIVE: 06/23/97

100-2.3.1 Commentary

There has been a tendency in the past to close domestic security investigations and terminate informant coverage when the violent activity of the group has been dormant for a period of time. If the organization became active again, it was often a difficult and time-consuming process to redevelop informant coverage. The AGG (Part III.B.4.d) permits the FBI to monitor organizations that may be temporarily inactive, but whose prior record or stated objectives indicate a need for continuing federal interest, so long as the threshold standard for investigation is satisfied. Under those circumstances, the investigation may remain in a pending status, and informant coverage can be maintained to the extent necessary to determine whether there is any change in the criminal objectives of the enterprise. The ability to continue an investigation, despite temporary inactivity of acts of violence or lack of immediate threat, is often referred to as the "dormancy provision" of the AGG and is a significant advantage that Domestic Security/Terrorism (100) investigations afford over AOT (266) cases.

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EFFECTIVE: 06/23/97

100-3

RESULTS OF INVESTIGATION

EFFECTIVE: 12/10/91

100-3.1

Reporting

(1) The contents of communications which report the results of Domestic Security/Terrorism investigations should be limited to information about the criminal enterprise under investigation. Recommendations, opinions, and conclusions of the FBI should be included in the administrative portion of the communication, or in the case of letterhead memoranda (LHM), in the cover electronic communication. In preparing LHMs which are disseminated to the Terrorism and Violent Crimes Section, Department of Justice, and to other agencies on a need-to-know basis, emphasis should be placed on factual accuracy.

(2) In all communications submitted under a Domestic Security/Terrorism caption, a statement indicating the authorized period of investigation should be set forth. This statement should be placed after the case caption and after referencing previous communications. For example:

"XYZ ORGANIZATION;  
DOMESTIC SECURITY/TERRORISM;  
OO: NEW YORK";

"Reference New York teletype to Director, 5/1/86;

"Domestic Security/Terrorism investigation authorized  
5/18/86 to expire 11/14/86."

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100-3.1.1 Deadlines (See MAOP, Part II, 10-9(23).)

(1) When a Domestic Security/Terrorism investigation is completed or nearing expiration, the results of the investigation are to be furnished to FBIHQ in an LHM with a cover electronic communication (EC) recommending an extension or closing of the matter. This report is due no later than 180 days after the initiation of the investigation. A second report is due at the end of the first year of investigation. These reports should be presented in a summary, narrative form, containing specific and articulable facts adequate to meet the "reasonable indication" standard of the Attorney General's Guidelines for renewal, or sufficient information which warrants the investigation being placed in a closed status. Any recommendations, opinions or conclusions of the FBI should be included in the cover EC, but not in the LHM. The cover EC should also include a paragraph which sets forth future investigative and prosecutive goals and a paragraph which sets forth the investigative strategy to be implemented in order to attain these goals. The investigative goals paragraph may include objectives which relate to the improvement of the intelligence base, use of technical or undercover techniques, or any other vulnerability which can be exploited. The investigative strategy paragraph(s) should describe how these goals and objectives will be reached during the next 180 days. The LHM and cover EC (hard copy) should be submitted to arrive at FBIHQ at least ten working days prior to the expiration of the current authorization period and should be organized as follows:

(a) Predication - This should include a paragraph(s) relating the circumstances which caused a full DS/T investigation of the captioned group or individuals to be initiated.

(b) Background Information on Group - In addition to a description of the group under investigation, this section should include, but not be limited to, the following:

1. Specific criminal acts the group has committed, or is advocating, to achieve its political or social goals.
2. Key leaders and members of the group.
3. Finances of the group.
4. Geographical dimensions of the group.
5. Planned activities and goals of the group.

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6. Association with other organizations/groups which are subjects of an FBI DS/T investigation.

(c) Activities during the last 180 days - This section should include a summary of investigative results of the office of origin and all auxiliary offices.

(d) Justification for Continuation of Investigation - This segment should set forth in succinct detail how the facts of this investigation conform with the Attorney General's Guidelines for DS/T investigations. It should contain a paragraph(s) which reasonably indicates that two or more persons are continuing to engage in an enterprise for the purpose of furthering political or social goals, wholly or in part, through activities which involve force or violence and a violation of the criminal laws of the United States.

(2) The due date of this report is calculated from the date the Domestic Security/Terrorism investigation was approved by FBIHQ. After the first year, the office of origin should continue to submit reports in ongoing Domestic Security/Terrorism investigations each 180 days. These reporting deadlines allow for compliance with the requirements of the Attorney General Guidelines and do not preclude, nor should they discourage, the reporting of results of investigation by teletype, EC, telephone, or other form of communication to FBIHQ and pertinent field offices during the course of the investigation. Significant data developed during the period between 180-day reports, which requires notification to FBIHQ or dissemination to other agencies, should be submitted by EC, LHM, teletype, or telephone, depending on the exigencies of the situation. Communications containing information of interest for other agencies should be prepared in a form suitable for dissemination. Significant information furnished on an interim basis should also be included in the next regularly scheduled report.

(3) Communications (hard copies) recommending an extension of Domestic Security/Terrorism investigations should be received at FBIHQ no later than ten working days prior to the expiration of such matters.

(4) Deleted

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100-3.1.2 Predications

In Domestic Security/Terrorism investigations, the basis for the investigation shall be set forth as the first paragraph in the details of the initial LHM. Formal predications are no longer required. A statement including pertinent portions of the Attorney General Guidelines is sufficient.

EFFECTIVE: 12/10/91

100-3.1.3 Documentation of Information

All communications should be limited to documented information relevant to the scope of the investigation. No information should be reported concerning an individual's social or personal habits or other background data which is not relevant to an assessment of his/her activities or affiliation with the enterprise under investigation.

EFFECTIVE: 12/10/91

100-3.1.4 Undisclosed Sources

(1) Where the identity of the source of information is not disclosed in a Domestic Security/Terrorism report, an assessment of the reliability of the source shall be provided.

(2) In all communications, the source of the information should be identified by symbol number or name in either the cover pages or administrative section of the communication.

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100-3.1.5 Characterizations

(1) A characterization of the group should be included as part of the initial LHM submitted. Characterizations should be outlined as the first paragraph of the LHM or as an appendix to the LHM.

(2) This instruction eliminates the previous reporting requirement of providing characterizations of subversive organizations. All characterizations should include a statement regarding the political or social goals which the group hopes to achieve through violence, its geographic area of operation, and a summary of the violence or criminal activity it either has been involved in or is advocating in the future. In instances where only advocacy of violence is present, a statement should also be included regarding the ability of group members to carry it out and the likelihood of the harm intended. (For further instructions on the preparation of characterizations, see Part II, 10-17.13, of the Manual of Administrative Operations and Procedures.)

EFFECTIVE: 12/10/91

100-3.1.6 Character

The designation "Domestic Security/Terrorism" should be used in all cases, e.g., "(Name of Organization); Domestic Security/Terrorism." If a subsidiary or front group is involved, include the name or abbreviation of the parent organization, e.g., "(Name of Organization); Domestic Security/ Terrorism - (Name of Subsidiary Organization)."

EFFECTIVE: 12/10/91

100-3.1.7 Copies - 180-Day Reports and LHMs

Five copies of 180-day reports in LHM form should be submitted to FBIHQ, unless instructed otherwise in specific cases. The office of origin should also provide information copies of these reports to involved field offices.

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100-3.1.8 Informant Coverage

Cover electronic communications should include a brief summary of informant coverage available with respect to a group or enterprise, identifying informants who report on the group's activities by symbol number, and showing specifically which informants are members of the group.

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100-3.1.9 Office of Origin

The field office wherein the criminal enterprise is headquartered, or whose Domestic Security/Terrorism activities largely occur in, or impact upon, should be designated as origin. In unusual circumstances where there is doubt which office should be origin, a request should be made to FBIHQ to designate an office of origin. In cases where the office of origin receives information that a criminal enterprise has changed its area of operation to the territory of another division, and justification to investigate exists based on the criminal enterprise's current activities, the office of origin should request verification of this information to be completed within 30 days. If the new area of operation is confirmed, the office of origin will be transferred. The level of investigation being conducted by the previous office of origin should be continued by the new office of origin unless facts, in addition to the criminal enterprise's relocation, indicate that another form of investigation is more appropriate. Reporting deadlines applicable to the former office of origin are to be followed by the new office of origin.

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100-3.2 Additional Reporting Requirements

The following reporting requirements are separate from, and in addition to, the 180-day reports requesting renewal authorization or recommending the closing of a Domestic Security/Terrorism investigation outlined above:

(1) BASIS FOR ADDITIONAL REPORTING - Past investigation of domestic terrorist organizations has demonstrated that in order to achieve success in these cases the primary thrust must be prosecutive; however, experience has also shown that a successful prosecution against a terrorist enterprise does not necessarily mean its demise.

(a) During the course of a DS/T criminal intelligence investigation, specific articulable criminal violations may be identified which would reasonably indicate enforcement activity or court proceedings (e.g., arrest, discovery hearings, etc.) will occur. At that time, a general criminal investigation (266 case) should be opened to focus upon the specific criminal activity. The criminal intelligence investigation (100 case) would continue to focus on the entire enterprise, as the scope of the AOT case may be limited to a relatively small portion of the total activity of that enterprise.

(b) While it may be appropriate for all investigative results generated from an AOT (266) case to be placed in the corresponding 100 file, the converse is not true. Only those details in the 100 case which specifically pertain to the subjects of the AOT case should be placed in the 266 file.

(2) ADDITIONAL REPORTING PROCEDURES - In order to mandate the essential analysis of these groups and to provide for a more adequate and efficient intelligence base in Domestic Security/Terrorism investigations, the following reporting procedures shall be followed.

(a) In addition to the submission of a 180-day LHM requesting renewal authorization or closing of a Domestic Security/Terrorism investigation, the office of origin will also submit separate investigative inserts on individual members of the enterprise, and other persons likely to be knowingly acting in furtherance of its criminal objectives, using the following format:

1. Name and known aliases of subject;
2. Biographical data to include: date of

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birth, place of birth, height, weight, eye and hair color, social security account number, distinguishing marks or characteristics, build, past and current addresses, past and current phone numbers, educational background, employment (past and present), and criminal record to include dates, offense, location, disposition, and FBI state and local agency identifying numbers. Also include Henry and NCIC fingerprint classifications.

3. Short narrative explaining the role or position of the subject in the group or enterprise, including any known or suspected criminal activity in which the subject is or has been involved.

4. Summary of subject's travel, domestic and foreign, including dates and points of travel. Also, detail nature of contacts that subject has had with other groups or enterprises under investigation.

5. Statement of subject's source of finances, if known.

6. Glossy 3 by 5 inch photograph of member, if available. If not available, efforts should be made to obtain one.

(b) In cases where a subject(s) resides within an auxiliary office territory, the auxiliary office will prepare inserts as above, and forward them to the office of origin 30 days prior to the expiration of the current authorization. This will be incorporated into the office of origin's submission to FBIHQ.

(c) Following the initial submission of these inserts, follow-up inserts should contain only information which has changed since the last reporting. Photographs of subjects should be updated at least annually.

(d) To facilitate the preparation of these inserts, subfiles for each subject should be created which will provide appropriate documentation and retrieval capability.

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100-4

PUBLICATIONS OF DOMESTIC SECURITY/TERRORISM ORGANIZATIONS;  
COLLECTION OF PUBLICLY AVAILABLE INFORMATION

(1) The Attorney General Guidelines on General Crimes, Racketeering Enterprise, and Domestic Security/Terrorism Investigations allow the FBI to collect publicly available information subject to the constraints of the Federal Privacy Act of 1974. This Act prohibits the collection, maintenance and dissemination of any record describing how an individual exercises First Amendment Rights, except when authorized by statute, or when pertinent to and within the scope of an authorized law enforcement activity.

(2) The FBI, in this regard, is authorized to collect general information which is available to every citizen even though there is no active investigation. Examples of information we may collect is that which is obtainable through the printed news media data banks, e.g., The NEW YORK TIMES Data Bank, public libraries, newspapers, and magazines. This type of material is collected as library material, and should not be indexed as to particular individuals or placed in FBI files.

(3) Publications issued by a group which is the subject of a Domestic Security/Terrorism investigation can be collected. This type of material can be indexed as to particular individuals and can be made a part of the investigative file.

(4) All information received or made available to the FBI during the course of an investigation should be evaluated for its pertinence to the investigation. This is particularly true when the information concerns the exercise of an individual's or group's First Amendment rights. In such cases, the information concerning the exercise of First Amendment rights should be made a matter of record only if it is pertinent to and within the scope of an authorized law enforcement activity. (See MIOG, Introduction, 1-4; Part I, 190-5.1; MAOP, Part II, 9-4.4.2(2).)

(5) When public-source printed material concerning the exercise of First Amendment rights is obtained and a decision made to retain such material, a notation must be placed on the material describing the reason(s) it was collected and retained. The notation must clearly indicate the specific investigative interest(s) which led to the decision to retain the item.

(6) Certain printed public source material may contain a characterization of a group, individual or activity. When such information is disseminated to FBIHQ, FBI field offices or outside the

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FBI, the transmitting communication should state that the characterization has not been made by the FBI, but by a third party. However, if the characterization comports in whole or in part with the results of independent FBI investigation, the transmitting communication may so state.

EFFECTIVE: 06/23/97

100-5 INFRASTRUCTURE VULNERABILITY/KEY ASSET PROTECTION  
SUBPROGRAM; COUNTERTERRORISM PROGRAM

(1) Background - With the increase of terrorism in the latter half of this century, there has been a developing awareness of the possibility of a terrorist attack against key assets of this nation's infrastructure. This vulnerability was underscored in 1985, by the Vice President's Task Force on Terrorism which concluded that key industrial and governmental assets within this nation's infrastructure could pose attractive terrorist targets with potentially disastrous consequences. As an executive level participant to the task force on terrorism and lead agency for counterterrorism within the United States, the FBI developed and implemented an Infrastructure Vulnerability/Key Asset Protection Subprogram to facilitate protection against this threat.

On November 18, 1988, President Reagan signed Executive Order (EO) 12656, "Assignment of Emergency Preparedness Responsibilities." This EO assigned to 26 Federal agencies "lead" and "support" responsibilities for National Security Emergency Preparedness (NSEP). The Department of Justice (DOJ), was included in the order. Essentially, the EO addresses the need to protect this nation's critical facilities and services in anticipation of a national emergency.

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[REDACTED]

[REDACTED]

(3) Subprogram Objective: The objective of the FBI's Infrastructure Vulnerability/Key Asset Protection Subprogram is to identify key assets, develop liaison, and assist in contingency planning where necessary and, by doing so, to facilitate the protection of the U.S. infrastructure.

[REDACTED]

[REDACTED]

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[REDACTED]

(6) Related Programs:

[REDACTED]

refer  
FEMA

[REDACTED]

refer  
DOD

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(10) TURK: Subclassification used in recording time spent on these matters is 100C.

(11) Character: Infrastructure Vulnerability/Key Asset Protection Subprogram

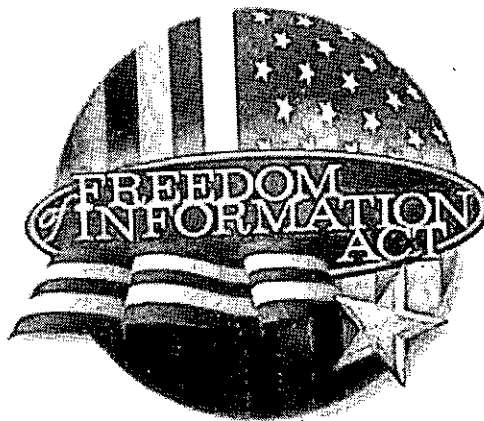
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# **FREEDOM OF INFORMATION AND PRIVACY ACTS**

**SUBJECT: MANUAL OF INVESTIGATIVE  
OPERATIONS AND GUIDELINES (MIOG)**

**Volume: 2 PART 1**



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# **VOLUME II**

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SECTION 102. VOORHIS ACT

102-1 STATUTE

Title 18, USC, Section 1386.

EFFECTIVE: 01/31/78

102-1.1 Registration of Certain Organizations

This act provides that the following organizations shall be required to register with the Attorney General:

"Every organization subject to foreign control which engages in political activity;

"Every organization which engages both in civilian and military activity and in political activity;

"Every organization subject to foreign control which engages in civilian military activity; and

"Every organization, the purpose or aim of which, or one of the purposes or aims of which, is the establishment, control, conduct, seizure, or overthrow of a government or subdivision thereof by the use of force, violence, military measures, or threats of any one or more of the foregoing."

EFFECTIVE: 01/31/78

102-2 DEPARTMENTAL POLICY

Very rarely has the Department authorized prosecution under this statute.

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EFFECTIVE: 01/31/78

102-3 VENUE

Where the violation is failure to register, venue will lie only  
in the District of Columbia.

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102-4 CHARACTER - VOORHIS ACT

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SECTION 103. INTERSTATE TRANSPORTATION OF STOLEN LIVESTOCK

103-1 STATUTES

Title 18, USC, Sections 667, 2311 (in part), 2316, and  
2317

EFFECTIVE: 07/11/85

103-1.1 Section 667 - Theft of Livestock

"Whoever obtains or uses the property of another which has a value of \$10,000 or more in connection with the marketing of livestock in interstate or foreign commerce with intent to deprive the other of a right to the property or a benefit of the property or to appropriate the property to his own use or the use of another, shall be fined not more than \$10,000 or imprisoned not more than five years or both."

EFFECTIVE: 07/11/85

103-1.2 Section 2316 - Transportation of Stolen Livestock

"Whoever transports in interstate or foreign commerce any livestock, knowing the same to have been stolen, shall be fined not more than \$5,000 or imprisoned not more than five years, or both."

EFFECTIVE: 07/11/85

103-1.3 Section 2317 - Sale or Receipt of Stolen Livestock

"Whoever receives, conceals, stores, barter, buys, sells or disposes of any livestock, moving in or constituting a part of interstate or foreign commerce, knowing the same to have been stolen, shall be fined not more than \$5,000 or imprisoned not more than five years, or both."

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EFFECTIVE: 07/11/85

103-1.4 Section 2311 - Definitions

"... 'Livestock' means any domestic animals raised for home use, consumption or profit, such as horses, pigs, llamas, goats, fowl, sheep, buffalo, and cattle, or the carcasses thereof."

EFFECTIVE: 10/24/94

103-1.5 Elements (Title 18, U.S. Code, Sections 2316 and 2317)

- (1) That livestock were stolen.
- (2) That the livestock were transported in interstate or foreign commerce.
- (3) The person transporting the livestock knew them to have been stolen; or, the person receiving, concealing, storing, bartering, selling, or disposing of the livestock knew them to have been stolen. Pursuant to Title 18, USC, Section 21, the element of guilty knowledge may also be established by proof that the defendant believed that the livestock were stolen, after or as a result of an official representation as to the nature of the property (see MIOG, Part II, 1-1.12).

EFFECTIVE: 10/23/95

103-1.6 Elements (Title 18, U.S. Code, Section 667)

- (1) Unlawfully obtaining the property of another having a value of \$10,000 or more.
- (2) Marketing livestock in interstate or foreign commerce.
- (3) Intent to deprive or defraud another through larceny, embezzlement, misapplication, fraud, deception or conduct of a similar

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nature.

EFFECTIVE: 07/11/85

103-1.7 Gist of the Offense

Under Section 667 the gist of the offense is unlawfully obtaining the property of another having a value of \$10,000 or more, or its use, in connection with the marketing of livestock in interstate or foreign commerce. The property could be the livestock itself, or any money, checks, or other property paid to acquire the livestock. The deprivation need not be permanent. Thus, Section 667 can reach the situation involving a defrauded purchaser who does not receive the livestock he/she has paid for, as well as the situation involving a defrauded seller who does not receive payment for the livestock he/she has sold and delivered.

EFFECTIVE: 07/11/85

103-2 INVESTIGATIVE PROCEDURE

(1) Definitely establish actual theft has occurred.

(a) Many reported thefts are results of straying.

(b) If information obtained from other than owner, interview owner or owner's representative.

(c) If scene of theft located, make complete crime scene search with attention directed to [REDACTED]

(2) If facts indicate a violation, obtain information regarding owner's brand, evidence of ownership, tattoos, ear tags, description of the livestock, peculiar markings, full particulars surrounding the theft, and the names and descriptions of suspects and of any vehicles they may utilize or that were seen in the area of the theft. Some states have laws requiring owners to designate a brand and register same. Others have laws providing that a certified copy of a recorded brand is prima-facie evidence of ownership.

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(3) If violation indicated

(a) Immediately notify state brand inspector in state where livestock taken, and request that inspector's organization be alert for livestock bearing owner's brand, for activities of suspects, and for vehicles that may have been seen in area of the theft.

(b) State brand inspectors, and/or local law enforcement officers, frequently have authority to stop and inspect livestock in transit.

(c) Some states require that livestock being transported from or into these states have permits requiring such transportation.

b2  
b7E  
(e) Brand inspectors often have book listing all registered brands for comparison purposes.

(4) If facts indicate stolen livestock may be disposed of through large stockyard, set out leads for offices covering stockyards or other large concentration points of livestock, and request that stops be placed. Same holds true for regional livestock auctions.

(5) If possibility exists stolen livestock slaughtered and sold to butchers.

(a) Determine through sources and local law enforcement agencies which butchers may deal in stolen meat, and

(b) Determine from meat-packing house and their salespeople whether any customer has had sudden, unexplained decrease in purchases.

EFFECTIVE: 07/11/85

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103-3 PRESENTATIONS TO U.S. ATTORNEY'S OFFICE

(1) If livestock obtained through the giving of fraudulent check or security, present facts to USA for prosecutive opinion prior to extensive investigation.

(2) If facts indicate transportation of portions of slaughtered livestock, obtain opinion of USA to determine if such portions fall within statutory term "carcass."

(3) Present facts to USA in single animal theft cases to determine if USA will prosecute such a case. If not, close case administratively and notify brand inspectors and/or local law enforcement agency.

EFFECTIVE: 07/11/85

103-4 REPORT WRITING RULES

(1) Forward to FBIHQ copy of any prosecutive summary report prepared in this classification of investigation for the USA's Office, utilizing current Bureau guidelines for the preparation of such reports.

(2) No report need be forwarded under any other circumstances unless it is determined to be the most logical means to disseminate the results of investigation accumulated, or when it is decided that a report is the best means to disseminate such results to other Federal agencies through FBIHQ rather than via an LHM.

EFFECTIVE: 07/11/85

103-5 VENUE

In an district from, through, or into which such livestock have been transported (Title 18, USC, Section 3237).

EFFECTIVE: 07/11/85



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| 103-6 CHARACTER - INTERSTATE TRANSPORTATION OF STOLEN|LIVESTOCK|

EFFECTIVE: 07/11/85

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SECTION 105. FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

105-1 FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

Information concerning the 105 classification is set forth  
in a separate FBI manual, the NATIONAL FOREIGN INTELLIGENCE PROGRAM  
MANUAL (NFIPM).

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SECTION 109. FOREIGN POLITICAL MATTERS

109-1 FOREIGN POLITICAL MATTERS

This is a control file utilized by FBIHQ and field offices as a repository for intelligence information of value on the above subject.

Information in this file is broken down by Country.

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SECTION 110. FOREIGN ECONOMIC MATTERS

110-1 FOREIGN ECONOMIC MATTERS

This is a control file utilized by FBIHQ and field offices as a repository for intelligence information of value on the above subject.

Information in this file is broken down by Country.

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SECTION 111. FOREIGN SOCIAL CONDITIONS

111-1 FOREIGN SOCIAL CONDITIONS

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SECTION 112. FOREIGN FUNDS

112-1 FOREIGN FUNDS

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SECTION 113. FOREIGN MILITARY AND NAVAL MATTERS

113-1 FOREIGN MILITARY AND NAVAL MATTERS

This is a control file utilized by FBIHQ and field offices as a repository for intelligence information of value on the above subject.

Information in this file is broken down by Country.

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SECTION 115. BOND DEFAULT

115-1 BACKGROUND

The Bail Reform Act of 1984, enacted October 12, 1984, as part of the Comprehensive Crime Control Act of 1984, replaced Sections 3141-3151 of Title 18, United States Code. Sections 3141-3149 were later amended in the Criminal Law and Procedure Technical Amendments Act of 1986, enacted November 10, 1986. Sections 3142 and 3143 were amended, and 3151 added, in Public Law 100-690, enacted November 18, 1988. The new provisions are designed to assure a forthright means of detaining a dangerous offender, and an offender who is likely to flee while pending trial and/or during appeal. Specifically, the new provisions: (1) allow judges and magistrates to consider danger to the community or individuals in setting pretrial release conditions other than financial conditions; (2) permit the imposition of additional types of release conditions, including probationary-type supervision, and permit the rejection of bail money if its source is illegal income; (3) allow pretrial detention of a defendant if no condition of release will assure his/her appearance or ensure the safety of specific individuals or the community in general; (4) provide procedures for revoking the release; (5) bar post-sentence release unless a defendant proves that such release would not pose flight or safety risks and that the case is likely to be reversed on appeal; and (6) raise penalties for bail jumping and provide mandatory penalties for crime committed while on pretrial release. (See 115-3, "Policy," and MIOG, Part II, Section 21-28, regarding the Attorney General guidelines for instructions on the FBI's conduct of these investigations.)

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115-2 PRINCIPAL STATUTES AND PENALTIES

| The following is a list of statutes pertaining to this section:

- Section 3141. Release and detention authority generally
- Section 3142. Release or detention of a defendant pending trial
- Section 3143. Release or detention of a defendant pending sentence or appeal
- Section 3144. Release or detention of a material witness
- Section 3145. Review and appeal of a release or detention order
- Section 3146. Penalty for failure to appear
- Section 3147. Penalty for an offense committed while on release
- Section 3148. Sanctions for violation of a release condition
- Section 3149. Surrender of an offender by a surety
- Section 3150. Applicability to a case removed from a state court
- Section 3151. Refund of forfeited bail
- Section 3152. Establishment of pretrial services
- Section 3153. Organization and administration of pretrial services
- Section 3154. Functions and powers relating to pretrial services
- Section 3155. Annual reports
- Section 3156. Definitions|

EFFECTIVE: 01/22/90

| 115-2.1 | Deleted|

EFFECTIVE: 01/22/90

| 115-2.2 | Deleted|

EFFECTIVE: 01/22/90

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| 115-2.3 | Deleted |

EFFECTIVE: 01/22/90

115-3 POLICY

| (1) By Department of Justice directive dated 8/11/88, the FBI was relieved of the responsibility for handling bond default investigations, in favor of such cases being handled by the U.S. Marshals Service (USMS).

(2) In cases where the FBI is the originating agency and the defendant fails to appear while released on bond, the FBI shall retain jurisdictional responsibility.

(3) If and after the defendant is adjudicated guilty and he/she remains on bond and fails to appear for further court proceedings or fails to surrender to begin serving his/her sentence, the USMS shall assume investigative responsibility.

| (4) If, after 8/11/88, a new bond default subject within the primary jurisdiction of the USMS also becomes an FBI substantive fugitive, of course, we will seek his/her apprehension under the substantive case, but "00" must advise the USM in the district holding the warrant of its fugitive involvement and notify USM's office promptly upon apprehension. This notification will, of course, not change the existing procedure of advising the USM in the district where the subject is located.

| (5) Should, after 8/11/88, a bond default violator within the responsibility of the USMS become a suspect in an FBI substantive case and "00" desired to actively seek the subject's apprehension under the ongoing substantive matter, this may be done provided the USMS is notified and the fugitive aspects of the case are an FBI-USMS coordinated effort. Of course, when the fugitive is apprehended or eliminated as a suspect in the substantive case which no longer demands FBI fugitive involvement, the appropriate USM must be notified.

(6) If any subject of an existing USMS responsibility bond default matter is wanted as a fugitive in an FBI substantive case, the existing "115" case should be consolidated and handled as a dual character substantive case.

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(7) If for some reason it should be imperative for an "00" to initiate a new "115" fugitive investigation involving a non-FBI case, advise FBIHQ on a UACB basis of the facts demanding FBI involvement.

(8) When a bond default case has been referred to and accepted by an office for investigation, promptly ensure that the proper process has been issued and is currently outstanding.

(9) The process issued will be a bench warrant charging the subject with either bond default violation of Title 18, USC, Section 3146, or failure to appear. A failure to appear warrant does not have a USC citation and is not capable of Federal prosecution. It is merely a means by which the subject is ordered arrested and brought before the court to face the original underlying charge for which subject made bond.

(10) Even if the bench warrant issued charged the subject with failure to appear, the proper Bureau character is bond default and failure to appear should not be utilized.

(11) Since a failure to appear warrant is not capable of Federal prosecution, the USA should be promptly contacted for a prosecutive opinion while the subject is in fugitive status for the purpose of indictment for bond default, Title 18, USC, Section 3146, or to attempt to secure future prosecution for bond default upon subject's ultimate apprehension.

(12) In the above instance, the USA may decline prosecution of the subject for bond default while in fugitive status or indicate USA will not attempt to prosecute him/her for bond default when apprehended. As long as the failure to appear warrant remains outstanding, the Bureau's fugitive investigation must continue in order that the subject may be ultimately prosecuted on the underlying Federal charge.

(13) Although a bond default violation is primarily a fugitive-type investigation, it is also a Bureau substantive offense capable of Federal prosecution. During the fugitive investigation, evidence should be obtained to establish his/her willful failure to appear. In addition, upon the subject's apprehension he/she should be interviewed regarding the bond default offense to ensure successful prosecution.

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EFFECTIVE: 01/22/90

115-4 OFFICE OF ORIGIN

(1) Deleted

(2) Where the subject, charged with a Bureau substantive violation, is arrested by the office of origin or an auxiliary office, and is released on bond and fails to appear within the office of origin's territory as required, that office will continue to act as the office of origin since the bond default violation occurred within their territory.

(3) Where the subject, charged with a Bureau substantive violation, is apprehended by an auxiliary office, and is released on bond and fails to appear within their territory as required, the following developments may occur which shall determine who shall act as the office of origin.

(a) Since the substantive warrant issued for the subject has been executed upon subject's apprehension by the auxiliary office, it is no longer outstanding. If the office of origin's USA causes the executed warrant to be reissued or a new warrant to be issued for the subject charging him/her with the original substantive offense, that office shall continue to act as the office of origin regardless if the auxiliary office's USA causes a bond default or failure to appear warrant to be issued for the subject.

(b) If the office of origin's USA does not cause the original executed warrant to be reissued or a new warrant to be issued for the subject charging subject with the original substantive offense, the apprehending auxiliary office will assume office of origin based on the bond default or failure to appear warrant issued in their territory.

(4) In those rare situations, where for whatever reasons the original warrant is not reissued or a new warrant issued within the office of origin's territory and a bond default or failure to appear warrant is not issued within the apprehending auxiliary office's territory, the full details should be promptly furnished FBIHQ via routine teletype by the office of origin for presentation to the Department of Justice for a final determination.

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EFFECTIVE: 01/22/90

115-5 VENUE

Prosecution shall be in the district in which the bond default offense was committed.

EFFECTIVE: 09/10/79

115-6 CLASSIFICATION

(1) When the investigation of the underlying offense was not originally conducted by the Bureau the classification is 115. These should be very infrequent. Approval for same required from FBIHQ.

(2) If the bond default offense arose from a Bureau investigation, it should be handled under the substantive classification.

EFFECTIVE: 09/10/79

115-7 REPORTING PROCEDURES (See MIOG, Part I, 25-10, 76-1.8, 76-2.9, 76-3.13, 88-12, 115-7 & Part II, 21-2.9.)

(1) Upon the initiation of a bond default investigation and the placing of its subject in a fugitive status, two copies of an FD-65 should be promptly forwarded to FBIHQ, and one copy submitted directly to the Savannah Information Technology Center (SITC), by the office of origin. Upon the fugitive's apprehension or location, the locating office must promptly notify FBIHQ by teletype (at least ROUTINE in precedence), followed by Form FD-515 entry into the Integrated Statistical Reporting and Analysis Application (ISRAA). The office of origin must ensure that all auxiliary offices are notified by teletype to discontinue.

(2) One copy of a Prosecutive Report should be submitted to FBIHQ upon the authorization of prosecution by the USA, or when a specific request for such report is made by the USA or FBIHQ.

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(3) In reporting the results of prosecutive action following the submission of a Prosecutive Report, while Form R-84 (if applicable) is to be forwarded to FBIHQ, a separate letter (airtel with LHM if dissemination desired) should also be submitted detailing the final disposition of each subject. The required letter should note that Form FD-515 has been entered into the ISRAA.

EFFECTIVE: 10/11/94

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115-8 CHARACTER

(1) BOND DEFAULT, when the investigation of the original underlying offense was not conducted by the Bureau. These should be very infrequent. Approval for same required from FBIHQ.

(2) Substantive offense - BOND DEFAULT, if the bond default offense arose from a Bureau substantive investigation such as bank robbery, it is a dual character. BANK ROBBERY - BOND DEFAULT.

EFFECTIVE: 09/10/79

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SECTION 116. SPECIAL INQUIRY - DEPARTMENT OF ENERGY;  
SPECIAL INQUIRY - NUCLEAR REGULATORY COMMISSION

116-1 GENERAL INSTRUCTIONS

These instructions supplement those contained in Part II, Section 17 of this manual, and deal with cases other than those referred to FBIHQ by OPM.

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EFFECTIVE: 03/23/89

116-1.1 Deleted

EFFECTIVE: 03/23/89

116-1.2 Deleted

EFFECTIVE: 03/23/89

116-2 AUTHORITY

See Part II, Section 17-1, of this manual for the authority to conduct these investigations.

EFFECTIVE: 03/23/89

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116-3 PRIVACY ACT - REQUIREMENTS

(1) When interviewing individuals under this classification for information concerning themselves or their activities, the interviewing Agent must follow the procedures described in Part I, 190-5 (2) and (3) of this manual.

(2) When interviewing an individual to solicit information concerning someone other than the interviewee (thereby classifying that individual as a source of information), the interviewing Agent must follow the procedure relating to promises of confidentiality as described in Part I, 190-7 of this manual.

EFFECTIVE: 03/23/89

116-4 NATURE OF CASES

All Department of Energy (DOE) and Nuclear Regulatory Commission (NRC) cases are personnel background investigations conducted pursuant to specific written request of the DOE or NRC for persons who are being considered for employment with DOE or NRC or with a DOE or NRC contractor, or are being reinvestigated for their current position.

EFFECTIVE: 03/23/89

116-5 TYPE OF CASES

(1) Full Field Investigation (FFI) - Conducted when no previous background investigation (BI) has been done concerning the individual and covers the past fifteen years as set forth in Part II, Section 17 of this manual.

(2) Update Investigation (UI) - Conducted when there has been a previous BI concerning the individual completed by the FBI or another Government agency which uses the same investigative standards. FBIHQ will determine whether or not an update investigation is appropriate and will advise the field as to the period of time which the BI should cover. Any areas not covered during the previous BI will be set out by FBIHQ in the opening communication for investigation so as to render total coverage commensurate with present standards.

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EFFECTIVE: 03/23/89

116-5.1 Sensitive Compartmented Information (SCI) Cases

Individuals that the DOE has designated as being considered for SCI access are subject to investigation similar in scope to an FFI. However, the scope of these background investigations covers only the last 15 years. SCI cases require that the following checks should also be conducted:

(1) Verify the applicant's date and place of birth at the Bureau of Vital Statistics. Verify naturalization (if applicable);

(2) Check the records of the Immigration and Naturalization Service on any immediate family members (described as spouse, parents, siblings, and children) or current cohabitant(s) (residents of same household, living in spousal-type, or roommate type, relationships, but not domestic/other employees) who are United States citizens other than by birth, or who are resident aliens. (In view of time constraints, naturalization verification through review of court records may prove to be more time efficient.)

(3) Review military records, regardless of military service falling within the 15-year scope.

EFFECTIVE: 07/23/90

116-6 DEADLINES

(1) Budeds in these cases generally will be set from the date of the opening communication as follows: Buded in FFIs will be 30 calendar days; Buded in UIs will be 60 calendar days. Occasionally, the client agency will request expedite cases in which the Buded will be 21 calendar days.

(2) Refer to Part II, 17-3.5 of this manual for specific instructions regarding those situations in which circumstances preclude reporting the complete investigation of a case on or before the deadline.

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EFFECTIVE: 07/23/90

116-7 ORGANIZATION OF REPORT

Reports should be organized to follow the general sequence presented in Part II, Section 17-6, which outlines the scope of FFIs. Reports are directly disseminated to DOE and NRC and, therefore, should be free of typographical errors and administrative information.

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EFFECTIVE: 07/23/90

116-7.1 Interviews

(1) While FBIHQ will not specifically state the number of interviews to be conducted, a sufficient number of interviews of persons knowledgeable about applicant/employee must be conducted to cover the individual's entire adult life in an FFI or during the period since the last investigation in UI cases.

(2) Field offices are also expected to conduct whatever number of interviews are required to thoroughly and completely address any unfavorable information or issues developed during an investigation.

EFFECTIVE: 07/23/90

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SECTION 117. ATOMIC ENERGY ACT OF 1954  
| (SEE MIOG, PART I, SECTION 279.) |

117-1 STATUTES

Title 42, USC, Sections 2011-2284 | (AEA of 1954, as amended).

Title 18, USC, Section 831 (Prohibited Transactions Involving Nuclear Materials). (See MIOG, Part I, 46-1.11(2) and 249-1.) |

EFFECTIVE: 05/25/93

| 117-2 | JURISDICTION

| The | FBI | shall investigate | all alleged or suspected criminal violations | of the AEA of 1954, as amended (Section 2271), and of Title 18, USC, Section 831. |

EFFECTIVE: 05/25/93

| 117-3 | DEFINITIONS

(1) "Atomic Weapon" - any device utilizing atomic energy, exclusive of the means for transporting or propelling the device (where such means is a separable and divisible part of the device), the principal purpose of which is for the use as, or for the development of, a weapon, a weapon prototype, or a weapon test device. (Section 2014(d))

(2) "By-product Material" - (1) any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or

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utilizing special nuclear material, and (2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source. (Section 2014(e))

(3) "Production Facility" - any equipment or device determined by rule of the Department of Energy (DOE) or Nuclear Regulatory Commission (NRC) to be capable of the production of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public, or any important component part especially designed for such equipment or device as determined by the DOE or NRC. (Section 2014(v))

(4) "Restricted Data" - all data concerning the design, manufacture, or utilization of atomic weapons; the production of special nuclear material; or the use of special nuclear material in production of energy, but does not include data declassified or removed from the Restricted Data category pursuant to Section 2162 of the Act. (Section 2014(y))

(5) "Source Material" - uranium, thorium, or any other material which is determined by the DOE or NRC pursuant to the provisions of the Act to be source material; or ores containing one or more of the foregoing materials, in such concentration as the DOE or NRC may by regulation determine. (Section 2014(z))

(6) "Special Nuclear Material" - plutonium, uranium enriched in isotope 233 or in isotope 235, and any other material which the DOE or NRC, pursuant to the provisions of the Act, determines to be special nuclear material; or any material artificially enriched by any of the foregoing, but does not include source material. (Section 2014(aa))

(7) "Utilization Facility" - any equipment or device, except an atomic weapon, determined by rule of the DOE or NRC to be capable of making use of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect public health and safety, or peculiarly adapted for making use of atomic energy in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or any important component part especially designed for such equipment or device as determined by the DOE or NRC. (Section 2014(cc))

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EFFECTIVE: 05/25/93

117-4 | VIOLATIONS - Title 42, USC, Sections 2011-2284  
(Atomic Energy Act of 1954, As Amended)

(1) Section 2077 (Unauthorized Dealings in Special  
Nuclear Materials):

It shall be unlawful for any person to possess or transfer any special nuclear material; transfer or receive any special nuclear material in interstate commerce; export from or import into the United States any special nuclear material; or directly or indirectly engage in the production of any special nuclear material outside of the United States except as authorized by DOE or NRC. (See entire text for exceptions.)

(2) Section 2092 (Unauthorized Dealings in Source  
Material):

Unless authorized by a general or specific license issued by DOE or NRC, no persons may transfer or receive in interstate commerce, transfer, deliver, receive possession of or title to, or import into or export from the United States any source material, except that licenses shall not be required for quantities of source material which, in the opinion of DOE or NRC, are unimportant.

(3) Section 2111 (Unauthorized Dealings in By-Product  
Material):

No person may transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, own, possess, import, or export any by-product material, except to the extent authorized by specific or general licenses issued by DOE or NRC. (See entire text for exceptions.)

(4) Section 2098 (Public Lands - Conflict of Interest):

No individual, corporation, partnership, or association which had any part, directly or indirectly, in the development of the atomic energy program may benefit by any location, entry, or settlement upon the public domain made after such individual, corporation, partnership, or association took part in such project, if

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such individual, corporation, partnership, or association, by reason of having had such part in the development of the atomic energy program, acquired confidential official information as to the existence of deposits of such uranium, thorium, or other materials in the specific lands upon which such location, entry, or settlement is made and subsequent to the date of the enactment of this act made such location, entry, or settlement or caused the same to be made for his, or its, or their benefit.

(5) Section 2122 (Prohibitions Governing Atomic Weapons):

It shall be unlawful for any person to transfer or receive in interstate or foreign commerce, manufacture, produce, transfer, acquire, possess, import, or export any atomic weapon, except as may be authorized by DOE or NRC pursuant to the provisions of the act.

(6) Section 2131 (Equipment Prohibitions):

It shall be unlawful for any person within the United States to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export any utilization or production facility except under and in accordance with a license issued by the DOE or NRC.

(7) Section 2274 (Communication of Restricted Data):

Whoever, lawfully or unlawfully, having possession of, access to, control over, or being entrusted with any document, writing, sketch, photograph, plan, model, instrument, appliance, note, or information involving or incorporating Restricted Data, communicates, transmits, or discloses the same to any individual or persons, or attempts or conspires to do any of the foregoing, with intent to injure the United States or with intent to secure an advantage to any foreign nation, upon conviction thereof, shall be punished (by imprisonment for life or by imprisonment for any term of years or a fine of not more than \$20,000 or both); or communicates, transmits, or discloses the same to any individual or person, or attempts or conspires to do any of the foregoing, with reason to believe such data will be utilized to injure the United States or to secure an advantage to any foreign nation, shall, upon conviction, be punished by a fine of not more than \$10,000 or imprisonment for not more than ten years, or both.

(8) Section 2275 (Receipt of Restricted Data):

Whoever, with intent to injure the United States or with intent to secure an advantage to any foreign nation, acquires or

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attempts or conspires to acquire any document, writing, sketch, photograph, plan, model, instrument, appliance, note, or information involving or incorporating restricted data shall, upon conviction thereof, be punished by imprisonment for life or any term of years or a fine of not more than \$20,000 or both.

(9) Section 2276 (Tampering With Restricted Data):

Whoever, with intent to injure the United States or with intent to secure an advantage to any foreign nation, removes, conceals, tampers with, alters, mutilates, or destroys any document, writing, sketch, photograph, plan, model, instrument, appliance, or note involving or incorporating restricted data and used by any individual or person in connection with the production of special nuclear material, or research or development relating to atomic energy, conducted by the United States, or financed in whole or in part by Federal funds, or conducted with the aid of special nuclear material, shall be punished by imprisonment for life, or by imprisonment for any terms of years or a fine of not more than \$20,000 or both.

(10) Section 2277 (Disclosure of Restricted Data):

Whoever, being or having been an employee of the DOE, NRC, a member of the armed forces, an employee of any agency of the United States, or being or having been an employee of a contractor of DOE, NRC, or of an agency of the United States, or being or having been a licensee of DOE or NRC, knowingly communicates, or whoever conspires to communicate or to receive, any restricted data, knowing or having reason to believe that such data is restricted data pursuant to the provisions of the act or under rule or regulation of DOE or NRC issued pursuant thereto, knowing or having reason to believe such person is not so authorized to receive restricted data shall, upon conviction thereof, be punishable by a fine of not more than \$2,500.

(11) Section 2278a (Trespass Upon DOE or NRC Installations):

Whoever willfully violates DOE or NRC regulations relating to the entry upon or carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property, into or upon any facility, installation, or real property subject to the jurisdiction, administration or in the custody of DOE or NRC shall be punished by a fine of not more than \$1,000.

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Whoever willfully violates DOE or NRC regulations relating to the above subsection with respect to any installation or other property which is enclosed by fence, wall, floor, roof, or other structural barrier shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed \$5,000 or to imprisonment for not more than one year, or both.

(12) Section 2278b (Photographing, etc., of DOE or NRC Installations):

Whoever shall:

(a) make any photograph, sketch, picture, drawing, map, or graphical representation, while present on property subject to the jurisdiction, administration, or in the custody of the DOE or NRC, of any installation or equipment designated by the President as requiring protection against the general dissemination of information relative thereto, in the interest of the common defense and security, without first obtaining the permission of the DOE or NRC, and promptly submitting the product obtained to the DOE or NRC for inspection or such other action as may be deemed necessary; or

(b) uses or permits the use of an aircraft or any contrivance used, or designed for navigation or flight in air, for the purpose of making a photograph, sketch, picture, drawing, map, or graphical representation of any installation or equipment designated by the President as provided in paragraph (1) above (not in this manual), unless authorized by the DOE or NRC, is punishable by a fine of not more than \$1,000 or imprisonment for not more than one year, or both.

(13) Section 2283 (Protection of Nuclear Inspectors):

(a) Whoever kills any person who performs any inspections which:

1. are related to the activity or facility licensed by the DOE or NRC and

2. are carried out to satisfy requirements under this chapter or under any other Federal law governing the safety of utilization facilities required to be licensed under Section 2133 or 2134(b) of this title, or the safety of radioactive materials, shall be punished as provided under Sections 1111 and 1112 of Title 18. The preceding sentence shall be applicable only if such person is



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killed while engaged in the performance of such inspection duties or on account of the performance of such duties.

(b) Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person who performs inspections as described under subsection (a) of this section, while such person is engaged in such inspection duties, or on account of the performance of such duties, shall be punished as provided under Section 111 of Title 18. (See MIOG, Part I, 89-2.18.)

(14)Section 2284 (Sabotage or Interruption of Nuclear Facilities or Fuel):

(a) Any person who intentionally and willfully destroys or causes physical damage to, or who intentionally and willfully attempts to destroy or cause physical damage to:

1. any production facility or utilization facility licensed under this chapter,

2. any nuclear waste storage facility licensed under this chapter,

3. any nuclear fuel for such a utilization facility, or any spent nuclear fuel from such a facility, shall be fined not more than \$10,000 or imprisoned for not more than ten years, or both.

4. any uranium enrichment facility licensed by the NRC.

(b) Any person who intentionally and willfully causes or attempts to cause an interruption of normal operation of any such facility through the unauthorized use of or tampering with the machinery, components, or controls of any such facility, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

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117-4.1 Additional AEA Penalties

(1) Section 2272 (Violation of Specific Sections):

Whoever willfully violates, attempts to violate, or conspires to violate, any provision of Sections 2077, 2122, or 2131 of this Title, or whoever unlawfully interferes, attempts to interfere, or conspires to interfere with any recapture or entry under Section 2138 of this Title shall upon conviction thereof, be punished by a fine of not more than \$10,000 or by imprisonment for not more than ten years, or both, except that whoever commits such an offense with the intent to injure the United States or with intent to secure an advantage to any foreign nation shall, upon conviction thereof, be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than \$20,000, or both.

(2) Section 2273 (Conspiracy):

Whoever willfully violates, attempts to violate, or conspires to violate, any provision of this chapter for which no criminal penalty is specifically provided or of any regulation or order prescribed or issued under Section 2095 or 2201 (b), (i), or (o) of this Title shall, upon conviction thereof, be punished by a fine of not more than \$5,000 or by imprisonment for not more than two years, or both, except that whoever commits such an offense with intent to injure the United States or with intent to secure an advantage to any foreign nation, shall upon conviction thereof, be punished by a fine of not more than \$20,000 or by imprisonment for not more than 20 years, or both.

(3) Section 2278 (Statute of Limitations):

Except for a capital offense, no individual or person shall be prosecuted, tried, or punished for any offense prescribed or defined in Section 2274 to 2276 of this Title unless the indictment is found or the information is instituted within ten years next after such offense shall have been committed.

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117-4.2 Violations - Title 18, USC, Section 831 (Prohibited Transactions Involving Nuclear Materials)

(1) Whoever, if one of the circumstances described in paragraph (3) of this section occurs -

(a) without lawful authority, intentionally receives, possesses, uses, transfers, alters, disposes of, or disperses any nuclear material and

1. thereby knowingly causes the death of or serious bodily injury to any person or substantial damage to property;  
or

2. knows that circumstances exist which are likely to cause the death of or serious bodily injury to any person or substantial damage to property;

(b) with intent to deprive another of nuclear material, knowingly,

1. takes and carries away nuclear material of another without authority;

2. makes an unauthorized use, disposition, or transfer of nuclear material belonging to another;

3. uses fraud and thereby obtains nuclear material belonging to another;

(c) knowingly -

1. uses force; or

2. threatens or places another in fear that any person other than the actor will imminently be subject to bodily injury; and thereby takes nuclear material belonging to another from the person or presence of any other;

(d) intentionally intimidates any person and thereby obtains nuclear material belonging to another;

(e) with intent to compel any person, international organization, or governmental entity to do or refrain from doing any act, knowingly threatens to engage in conduct described in paragraph (b)1. or (c) of this section;

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(f) knowingly threatens to use nuclear material to cause death or serious bodily injury to any person or substantial damage to property under circumstances in which the threat may reasonably be understood as an expression of serious purposes;

(g) attempts to commit an offense under paragraph (a), (b), (c), or (d) of this section; or

(h) is a party to a conspiracy of two or more persons to commit an offense under paragraph (a), (b), (c), or (d) of this section, if any of the parties intentionally engages in any conduct in furtherance of such offense; shall be punished as provided in paragraph (2) of this section.

(2) The punishment for offense under -

(a) paragraphs (a) through (g) of paragraph (1) of this section is -

1. a fine of not more than \$250,000; and,
2. imprisonment -

a. for any term of years or for life; (I) if, while committing the offense, the offender knowingly causes the death of any person; or (II) if, while committing the offense under paragraph (a) or (c) of paragraph (1) of this section, the offender, under circumstances manifesting extreme indifference to the life of an individual, knowingly engages in any conduct and thereby recklessly causes the death of or serious bodily injury to any person; and

b. for not more than 20 years in any other case; and

(b) paragraph (h) of paragraph (1) of this section is -

1. a fine of not more than \$250,000; and
2. imprisonment -

a. for not more than 20 years if the offense which is the object of the conspiracy is punishable under paragraph (a)2.a. of this section; and

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b. for not more than 10 years in any other case.

(3) The circumstances referred to in paragraph (1) of this section are that -

(a) the offense is committed in the United States or the special maritime and territorial jurisdiction of the United States, or the special aircraft jurisdiction of the United States, as defined in section 46501 of title 49;

(b) the defendant is a national of the United States, as defined in Section 101 of the Immigration and Nationality Act (Title 8, USC, Section 1101);

(c) at the time of the offense the nuclear material is in use, storage, or transport, for peaceful purposes, and after the conduct required for the offense occurs, the defendant is found in the United States, even if the conduct required for the offense occurs outside the United States; or

(d) the conduct required for the offense occurs with respect to the carriage of a consignment of nuclear material for peaceful purposes by any means of transportation intended to go beyond the territory of the state where the shipment originates beginning with the departure from a facility of the shipper in that state and ending with the arrival at a facility of the receiver within the state of ultimate destination and either of such states is in the United States.

(4) The Attorney General may request assistance from the Secretary of Defense under Chapter 18 of Title 10 in the enforcement of this section and the Secretary of Defense may provide such assistance in accordance with Chapter 18 of Title 10, except that the Secretary of Defense may provide such assistance through any Department of Defense (DOD) personnel.

(5) The Attorney General may also request assistance from the Secretary of Defense under this subsection in the enforcement of this section. Notwithstanding Section 1385 of this Title, the Secretary of Defense may, in accordance with other applicable law, provide such assistance to the Attorney General if -

(a) an emergency situation exists (as jointly determined by the Attorney General and the Secretary of Defense in their discretion) and

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(b) the provisions of such assistance will not adversely affect the military preparedness of the United States (as determined by the Secretary of Defense in such Secretary's discretion).

(6) As used in this section, the term "emergency situation" means a circumstance -

(a) that poses a serious threat to the interests of the United States; and in which -

1. enforcement of the law would be seriously impaired if the assistance were not provided and

2. civilian law enforcement personnel are not capable of enforcing the law.

(7) Assistance under this section may include -

(a) use of personnel of the DOD to arrest persons and conduct searches and seizures with respect to violations of this section and

(b) such other activity as is incidental to the enforcement of this section or to the protection of persons or property from conduct that violates this section.

(8) The Secretary of Defense may require reimbursement as a condition of assistance under this section.

(9) The Attorney General may delegate the Attorney General's function under this subsection only to a Deputy, Associate, or Assistant Attorney General.

(10) As used in this section -

(a) the term "nuclear material" means material containing any -

1. plutonium with an isotopic concentration not in excess of 80-percent plutonium 238;

2. uranium not in the form of ore or ore residue that contains the mixture of isotopes as occurring in nature;

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3. uranium that contains the isotope 233 or 235 or both in such amount that the abundance ratio of the sum of those isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature; or

4. uranium 233;

(b) the term "international organization" means a public international organization designated as such pursuant to Section 1 of the International Organizations Immunities Act (Title 22, USC, Section 288) or a public organization created pursuant to treaty or other agreement under international law as an instrument through or by which two or more foreign governments engage in some aspect of their conduct of international affairs;

(c) the term "serious bodily injury" means bodily injury which involves -

1. a substantial risk of death;
2. extreme physical pain;
3. protracted and obvious disfigurement; or
4. protracted loss or impairment of the function of a bodily member, organ, or mental faculty; and

(d) the term "bodily injury" means -

1. a cut, abrasion, bruise, burn, or disfigurement;
2. physical pain;
3. illness;
4. impairment of a function of a bodily member, organ, or mental faculty; or
5. any other injury to the body, no matter how temporary.

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EFFECTIVE: 12/23/96

117-5 | PROSECUTIVE POLICY

(1) No action shall be brought against any individual or person for any violation under the AEA unless and until the Attorney General of the United States has advised the DOE or the NRC with respect to such action and no such action shall be commenced except by the Attorney General of the United States: Provided, however, that no action shall be brought under Section 2272, 2273, 2274, 2275, or 2276 of this Title except by the express direction of the Attorney General: and provided further, that nothing in this section shall be construed as applying to administrative action taken by the DOE or NRC. (Section 2271c)

(2) Do not discuss AEA cases with the United States Attorney (USA) until advised to so by FBIHQ. When investigation reaches a point where prosecutive opinion is desirable, FBIHQ will present the case directly to the DOJ. When a case arises in which facts indicate possible violation of the AEA, as well as violations of other criminal statutes (e.g., Fraud Against the Government or Theft of Government Property), refer case to FBIHQ indicating you wish to present facts to the USA. The Department has no objection to a field division working an investigative matter which also involves other Federal violations in conjunction with the AEA allegations as long as the case is coordinated with FBIHQ and DOJ as required by the AEA of 1954.

EFFECTIVE: 05/25/93

117-6 | INVESTIGATIVE PROCEDURES

(1) General Procedures

(a) Conduct preliminary investigation to determine what, if any, violation of the AEA of 1954, or Title 18, Section 831, has occurred. This includes conducting appropriate interviews, as necessary.

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(b) Telephonically contact the Domestic Terrorism Unit (DTU), Violent Crime and Major Offenders Section (VCMOS), Criminal Investigative Division (CID), FBIHQ, to resolve any investigative, legal, or operational questions pertaining to this section.

(c) All requests for technical assistance, either from the DOE, NRC, or internal FBI components, should be coordinated directly with the DTU, VCMOS, CID.

(d) Do not contact DOE or NRC Headquarters components directly without the express authorization of FBIHQ. The VCMOS has established effective procedures to facilitate all requests for such assistance.

(e) The requisite intent necessary to prove violations for sections other than Section 2277 (Disclosure of Restricted Data) is a matter to be evaluated by the jury, but evidence of subject's affiliation with subversive groups, association with officials of foreign nations, or evidence of clandestine conspiratorial incidents should be fully developed as indicative of such intent.

EFFECTIVE: 05/25/93

117-6.1 | Violation of Section 2077 (Unauthorized Dealings in Special Nuclear Material) (See 117-6.2(4).)

(1) Initiate preliminary investigation to determine if material in question is special nuclear material, or some other type of controlled nuclear material;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

b2  
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b2  
b7E

[REDACTED]

(2) Provide the above information by teletype, or in an emergency, by telephone, to the DTU, VCMOS, CID, FBIHQ for an assessment of the credibility of the case.

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(3) Should the subject(s) offer to provide a sample of the material for testing or if material is recovered as evidence, immediately notify FBIHQ. The DTU, VCMOS, CID, will contact the appropriate agency and arrange for experienced and qualified individuals to take custody of the material.

(4) FBIHQ will disseminate information regarding foreign transactions to the appropriate agencies.

EFFECTIVE: 05/25/93

117-6.2 | Violations of Section 2092 (License Requirements for Transfers), Section 2111 (Domestic Distribution, License), and Section 2131 (License Required)

(1) Ascertain whether a license is required and, if so, determine if subject has been issued such. If information is not available locally, request assistance from FBIHQ to obtain license information.

(2) Initiate appropriate interview(s) to determine if amount of source, by-product, or Special Nuclear Material in possession of subject(s) is within the quantitative or qualitative limits requiring a license.

(3) Obtain cooperation of local DOE or NRC office to obtain analysis of uranium, thorium, plutonium, or other material, as required.

(4) Consider use of investigative questions outlined in Section 117-6.1(1)(a), to assist DOE in assessing the credibility of the case.

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117-6.3 | Violation of Section 2098 (Public Land - Conflict of Interest)

(1) Determine if individual, corporation, partnership, or association is involved directly or indirectly, in the atomic energy program. If so, ascertain nature and scope of involvement.

(2) Ascertain if confidential official information was acquired as to the existence of deposits of uranium, thorium, or other materials on public domain, pursuant to involvement in the atomic energy program.

(3) Determine if the deposits were located for the benefit of the individual, corporation, partnership, or association, and the extent of benefit.

(4) Signed statements should be obtained from all subjects and potential witnesses. If subject is an employee or agent of the United States, signed statements under oath should be obtained from the subject and potential witnesses, as provided in Title 5, USC, Section 303. If subject declines to furnish a signed statement or refuses to be placed under oath, an unsigned statement should be taken in accordance with existing instructions and such facts should be recorded in your report.

EFFECTIVE: 05/25/93

117-6.4 | Violation of Section 2122 (Prohibitions Governing Atomic Weapons)

(1) Initiate preliminary investigation to determine if the principal purpose of the device is for the use as, or for the development of, a weapon, a weapon prototype, or a weapon test device.

(2) Determine if the device or any part of the device is classified as restricted data.

(3) Immediately provide the results of the preliminary investigation to the DTU, VCMOS, CID, for coordination with the DOE, DOJ, and other appropriate agencies.

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EFFECTIVE: 05/25/93

117-6.5 | Violations of Section 2274 (Communication of Restricted Data), Section 2275 (Receipt of Restricted Data), and Section 2276 (Tampering with Restricted Data)

(1) Initiate preliminary investigation to determine what type of information (document, writing, sketch, photograph, model, instrument, etc.) was allegedly communicated, transferred, acquired or tampered with; the classification of the information; and, whether it may be declassified for prosecutive purposes. If necessary, contact the DTU, VCMOS, CID, for assistance in determining the classification of the information.

(2) Initiate investigation immediately where there is an allegation that documents were stolen, concealed, or misappropriated under circumstances indicating a violation of the Atomic Energy Act of 1954, or other statutes within FBI jurisdiction. Where there is an indication of loss through gross negligence, consideration should be given to investigation under provisions of the espionage statutes.

(3) Promptly notify FBIHQ of any investigations involving employees of the DOE or NRC. FBIHQ will coordinate investigative results with the DOJ.

(4) Where classified documents are reported missing, a statement should be obtained from the referring agency as to why the matter is being referred for investigation. Confirm in writing to the referring agency the receipt of the complaint, include a statement as to whether or not an investigation is being conducted and, if not, under what conditions an investigation will be conducted. Advise FBIHQ promptly of facts and action being taken.

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||117-6.5.1| Administrative Misfiling |(See FCI Manual, Part I,  
65-8 through 65-8.3.)|

| The DOE and the NRC have the primary responsibility for the security of their documents. | Administrative misplacement or misfiling of documents, or compromise of documents in transmission, are matters to be handled by DOE, NRC, or other Government agency involved, and no investigations should be conducted. If missing documents are of significant importance, maintain close liaison with the interested agency.

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||117-6.5.2| Lax Security |(See MAOP, Part II, Section 9-3.3.3.)|

All facts regarding lax security and negligence should be referred to FBIHQ in letterhead memorandum form suitable for dissemination to the interested agency.

EFFECTIVE: 05/25/93

117-6.6 | Violation of Section 2277 (Disclosure of Restricted Data)

(1) Obtain a signed statement regarding the exact disclosures made, if possible.

(2) Obtain the classification and security significance of the information disclosed, whether the data may be declassified for prosecution, and determine the circumstances surrounding the disclosure.

(3) Obtain background data concerning persons involved, including evidence that individuals making disclosures were aware of security regulations concerning the information disclosed.

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(4) An early interview of the subject is generally advisable. If admissions are obtained, corroborate through investigation.

(5) Proof of intent is not necessary under this section, provided it can be shown the person has knowledge restricted data has been disclosed to a person not authorized to receive it, and the person disclosing same meets the requisites of the statute.

EFFECTIVE: 05/25/93

117-6.6.1 Information Required In Communications

Include in final communication a statement regarding administrative action taken by DOE or NRC or, if military personnel are involved, action to be taken by armed forces.

EFFECTIVE: 05/25/93

117-6.6.2 Leaks of Classified Data to the Press

(1) If requests for investigations of cases of this type are received locally, advise the referring agency in writing that the decision as to investigation will be made at FBIHQ. Furnish details to FBIHQ promptly and take no further action pending FBIHQ authority.

(2) If investigation is authorized, the following information must be obtained:

(a) Date and identity of the article; exact statements alleged to be classified; whether data published is accurate; was data classified properly; can data be declassified for purposes of prosecution, and, if so, name of the person competent to testify concerning classification.

(b) Extent of official dissemination of classified data; whether data had been subject to prior official releases; or if

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declassification had been decided upon prior to publication.

(c) Whether the classified information came from a specific document; if so, origin of the document,

(d) Name of the individual in DOE, NRC, DOD, or other Government agency responsible for security of the classified information published,

(e) Whether the material, background data, or portions thereof, have been previously officially released or published in the press, to make educated speculation on the matter possible.

(f) Whether clearance for publication was sought from proper authorities prior to publication.

EFFECTIVE: 05/25/93

117-6.7 | Violations of Section 2284 (Sabotage of Nuclear Facilities or Fuel)

(1) Allegations indicating possible sabotage directed at the atomic energy program must be thoroughly investigated and resolved. Communications carry dual character, "Atomic Energy Act; Sabotage."

(2) In the case of a possible violation of Section 2284, the field division must immediately notify FBIHQ by telephone.

(3) Prosecution must be authorized by DOJ.

(4) Investigations of sabotage at atomic energy facilities must conform to investigative procedures of Part I, Section 98, of this manual and satisfy the elements of Title 42, USC, Section 2284.

(5) Other possible violations of Federal law may also be applicable during investigation of a sabotage incident at a nuclear facility, such as foreign-inspired strikes, slowdowns, and destruction of Government property. Although the FBI is not interested in legitimate labor-management disputes, it must be alert, through

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adequate informant coverage, for the possibility of planned incidents affecting national security.

(6) In the case of a labor dispute, include full name of international or local union involved; summary of the incident; effect on security of the facility; facts indicating violation within the Bureau's jurisdiction; and other information of value.

(7) The legislative history states that this section is intended to cover a situation when a person willfully and intentionally interrupts, or attempts to interrupt, a power plant's operation by tampering or improperly using the machinery, components, or controls of any nuclear facility.

(8) The phrase "unauthorized use" is described as use without the permission of the licensee. The word "tampering" is described as altering for improper purposes or in an improper manner. The phrase "interruption of normal operation" is described as a cessation of actual production, utilization, or storage operations which, if accomplished, would result in substantial economic harm or cost to the licensee.

(9) This section applies only to specified actions which could cause substantial damage, economic harm, or costs to the licensee, and to willful acts performed with a criminal intent.

(10) This section applies to nuclear power facilities, and nuclear waste storage facilities, licensed under the AEA of 1954, as amended, and any nuclear fuel for a utilization facility or spent nuclear fuel from a utilization facility. It is the policy of the Federal government to include Federal buildings, not licensed under the AEA, that contain Special Nuclear Material, in that damage to Federal buildings, and/or theft of special nuclear materials still fall within the provisions of the U.S. criminal code.

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117-7 | INVESTIGATIVE PROCEDURES FOR OTHER RELATED  
VIOLATIONS

(1) Threat/Extortion under the AEA: (See MIOG, Part I,  
9-9(1).)

(a) All threats and extortions which are investigated as a result of a possible violation of the AEA, or Title 18, USC, Section 831, should be handled in the same manner as prescribed under Part I, Section 9, of this manual. However, DOJ prosecutive opinions will still be necessary, prior to discussion with the USA.

(b) Immediately contact the DTU, VCMOS, CID, as soon as possible and provide an exact copy of the wording of the threat for dissemination to the DOE for a threat assessment.

(c) Upon receipt of the results of the assessment, FBIHQ will notify the appropriate field divisions as to the credibility of the threat.

(d) In the event the extortion or threat is determined to be a hoax, or is not a violation under the AEA of 1954, the field divisions may proceed to investigate this matter as a conventional extortion or threat utilizing guidelines under Part I, Section 9, of this manual, without the requirement of obtaining DOJ opinions.

(e) After coordinating with FBIHQ, the appropriate United States Attorney (USA) may be contacted to proceed with the conventional threat or extortion investigation which is not a violation of the AEA.

(2) Missing Source Material, Special Nuclear Material, or By-Product Material:

(a) Notify FBIHQ and initiate preliminary investigation to determine if materials have been stolen, misappropriated, or diverted. If so, conduct investigation promptly. In cases of uncertainty, submit facts to FBIHQ for evaluation.

(b) Where preliminary investigation indicates loss involving items of little security significance; is the result of inadequate accountability records; or is process loss, submit closing communication.

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(c) Where complicated accountability records are involved, Special Agents with specific training in the accountability of radioactive materials should be utilized wherever possible. If warranted, a request should be made of FBIHQ for a laboratory technician familiar with this type of investigation.

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117-8 | REPORTING PROCEDURES

(1) Immediately advise the DTU, VCMOS, CID, in the following instances of major violations by teletype, or telephone, as facts warrant:

(a) Violations involving foreign-directed espionage or sabotage.

(b) Serious damage to plants or facilities.

(c) Loss of critical Restricted Data or Special Nuclear Material under circumstances indicating a violation of the AEA.

(d) Cases which may receive wide publicity.

(e) Other major and important violations.

(2) Submit a summary communication within two weeks of initiating a preliminary investigation under the AEA, or Title 18, USC, Section 831, to FBIHQ, Attention: DTU, VCMOS, CID.

(3) Submit a Letterhead Memorandum (LHM) (original and four copies) to the DTU, VCMOS, CID, within 30 days of the initiation of an Atomic Energy Act, or Title 18, USC, Section 831 investigation. The LHM should be suitable for dissemination to the DOJ, DOE, and the NRC. The LHM should, at a minimum, detail the predication for initiating the investigation, the names of the other agencies notified, a summary of the investigation, and, if possible, a prosecutive opinion.

(4) A closing LHM (original and four copies) must be

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prepared at the conclusion of each investigation, and submitted to FBIHQ, Attention: DTU, VCMOS, CID. The closing LHM must restate the predication for initiating the investigation, summarize investigation findings, and detail the disposition of the investigation, including prosecutive opinions or administrative action initiated by the DOE or NRC. Ensure that a complete description of all significant events are dated in the closing LHM.

(5) Prosecutive reports should be submitted to FBIHQ, when applicable.

EFFECTIVE: 05/25/93

117-8.1 Dissemination of Reports

(1) Do not disseminate FBI communications to the USA, DOE, or NRC locally without FBIHQ approval. Bureau communications will be disseminated by FBIHQ, through DOE and NRC Headquarters when possible. In the event of an emergency situation necessitating immediate local dissemination, FBIHQ should be advised.

(2) Close liaison should be maintained regarding investigations of individuals of interest to the local DOE and NRC offices.

EFFECTIVE: 05/25/93

117-9 | CONTINGENCY PLANS

(1) Every field office shall develop and maintain a contingency plan for responding to potential nuclear terrorism incidents that may occur within their division. The plan should include a complete security survey of every major DOE and NRC nuclear facility located within their territory. The plans must be updated on an annual basis and changes submitted to the Counterterrorism Planning Unit (CPU), Counterterrorism Section (CTS), Intelligence Division (INTD), by June 1st of each year.

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(2) For the purpose of this section, a major nuclear facility is any NRC-licensed nuclear power plant, or nuclear fuel facility, or a DOE research and weapons laboratory or production facility.

(3) Each field office with one or more major nuclear facilities within its territory shall maintain a list of selected Special Agents for use on investigations requiring immediate access to highly classified information, material, or exclusion areas. The names of these Special Agents must be furnished by each field office to the security officer of the atomic energy installation in order that he/she may effect arrangements for those Agents to be granted immediate appropriate access in connection with official investigations. Each SAC shall select and designate Special Agents for such squads and promptly notify the atomic energy installation security officer of any changes made to the squad.

EFFECTIVE: 05/25/93

117-10 COORDINATION OF FBI TRAINING EXERCISES CONDUCTED AT  
NRC-LICENSED NUCLEAR POWER PLANTS

(1) FBI participation in all field training exercises conducted at NRC-licensed nuclear power plants must be coordinated directly with FBIHQ in advance of the exercise so that the necessary coordination between FBIHQ and NRC Headquarters may be accomplished.

(a) Prior notification must be made to the CPU, CTS, INTD by appropriate communication, providing the following essential information:

1. The name of the NRC-licensed nuclear power plant.
2. The dates of the planned exercise.
3. The nature of the training.
4. The projected number of FBI personnel involved.
5. A notation of special assets, such as

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helicopters and technical equipment, which will be used in the exercise.

6. The names of other agencies involved in the exercise.

7. The projected number of other agency personnel involved.

8. The name of the FBI point of contact on scene.

9. The name of the local utility point of contact.

10. Whether or not regional NRC officials have been advised of the planned exercise, and, if so, the names of those officials.

(2) Upon receipt of the information, the CPU, CTS, INTD will coordinate directly with NRC Headquarters and will obtain the necessary authorization for the exercise from the NRC.

EFFECTIVE: 05/25/93

117-11 REWARDS FOR INFORMATION RECEIVED REGARDING ATOMIC WEAPONS

Title 50, USC, Section 47a-f, provides:

(1) Any person who furnishes original information to the United States-

(a) leading to the finding or other acquisition by the United States of special nuclear material or an atomic weapon which has been introduced into the United States or manufactured or acquired therein contrary to the laws of the United States, or

(b) with respect to the introduction or attempted introduction into the United States or the manufacture or acquisition or attempted manufacture or acquisition of, or a conspiracy to introduce into the United States or to manufacture or acquire, special

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nuclear material or an atomic weapon contrary to the laws of the United States, or

(c) with respect to the export or attempted export, or a conspiracy to export, special nuclear material or an atomic weapon from the United States contrary to the laws of the United States, shall be rewarded by the payment of an amount not to exceed \$500,000.

(2) The Attorney General shall determine whether a person furnishing information to the United States is entitled to a reward and the amount to be paid. Rewards will be authorized by the Awards Board, consisting of the Secretary of the Treasury (Chairman), Secretary of Defense, Attorney General, Director of Central Intelligence, and the Administrator of DOE or one NRC Commissioner. A reward of \$50,000 or more may not be made without the approval of the President.

(3) If the information leading to an award under Section 47b of this Title is furnished by an alien, the Secretary of State, the Attorney General, and the Director of Central Intelligence, acting jointly, may determine that the entry of such alien into the United States is in the public interest and, in that event, such alien and the members of his/her immediate family may receive immigrant visas and may be admitted to the United States for permanent residence.

(4) Any awards granted under Section 47b of this Title shall be certified by the Attorney General and, together with approval of the President in those cases where such approval is required, transmitted to the Director of Central Intelligence for payment out of funds appropriated under National Security Act of 1947, as amended.

(5) Information regarding smuggling of atomic weapons or their components or the illegal manufacture or acquisition of same should be reported promptly and in detail to FBIHQ.

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117-12 HANDLING OF RADIOACTIVE MATERIALS (See MIOG, Part I,  
249-1.)

(1) Millions of packages of radioactive materials are transported in the United States annually. Most shipments consist of medical and industrial products. Other shipments include nuclear power plant fuel, nuclear weapons and weapons material, and radioactive waste generated by hospitals, laboratories, nuclear reactors, and military facilities.

(2) Radioactive materials are packaged, marked, labeled, and placarded with public safety as the foremost goal. The degree of packaging used is commensurate with the hazardousness of the contents. Extremely hazardous radioactive materials are shipped in packaging which does not break under accident conditions. Low-level radioactive materials are shipped in less resistant packages which may break, and the radioactive material could be dispersed. However, if dispersed, these materials would present only a minimal health risk.

EFFECTIVE: 05/25/93

117-12.1 Radiation Protection

The following factors should be considered when evaluating available protection:

(1) If all containers of radioactive material are sealed or closed and are intact, it is unlikely that radioactive hazards are associated with the incident. Efforts should be made to protect the integrity of the containers during handling or transportation.

(2) There are three important factors in protecting individuals from radiation: Time, Distance, and Shielding.

(a) Time. The less time an individual remains in a radiation field, the less exposure that individual will receive.

(b) Distance. The further an individual remains from a radiation source, the less exposure that individual will receive. The intensity of a radiation field decreases as the distance from the source increases.



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(c) Shielding. The more material placed between an individual and a radiation source, the less exposure that individual will receive. The intensity of radiation is reduced by the absorption and scattering processes associated with such material. For gamma radiation, dense material such as lead is most effective as a shield. Beta radiation can be shielded by relatively thin amounts of wood or plastic. Alpha is shielded by virtually any material.

EFFECTIVE: 05/25/93

117-12.2 Emergency Procedures

(1) Radioactive materials released at the scene of an incident, even at levels of little consequence, can result in very small levels of contamination being spread a great distance. The spread of contamination can be controlled by limiting access to and egress from the incident scene. Although, in some cases, the contamination spread would be of insignificant radiological consequence, any detectable amount can prove to be of great concern to the public and news media. RADIOACTIVE MATERIAL SHOULD BE HANDLED BY QUALIFIED PERSONS FROM THE DOE, NRC OR COMPARABLE STATE AGENCY. DO NOT HANDLE ANY MATERIAL SUSPECTED OF BEING RADIOACTIVE UNTIL IT HAS BEEN EXAMINED BY QUALIFIED PERSONNEL.

(2) It is important to treat everything that has been near the incident as potentially radioactive and contaminated until it has been verified by qualified radiation protection personnel to be free of radioactive contamination. Individuals who have contacted potentially contaminated materials should remain on hand until they have been checked by qualified personnel. Only qualified personnel should attempt to clean up a spill of any hazardous materials--radioactive or not.

(3) Emergency advisory support, or other assistance, may be obtained from the DOE or NRC via FBIHQ.

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||117-13| CHARACTER - ATOMIC ENERGY ACT

EFFECTIVE: 05/25/93

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SECTION 119. FEDERAL REGULATION OF LOBBYING ACT

119-1 STATUTES

EFFECTIVE: 01/31/78

119-1.1 Title 2, USC, Section 261-270

(1) The Act provides for the registration of lobbyists active in matters pending before Congress and the filing by them of quarterly reports of receipts and expenditures.

(2) Elements

That the accused:

(a) Prior to registering with the Secretary of the Senate and the Clerk of the House of Representatives for pay or for other consideration attempted to influence passage or defeat of any legislation pending before the Congress of the U. S.; or

(b) After registration failed to file under oath between the first and tenth of each calendar quarter a detailed report of all receipts and expenditures during the preceding calendar quarter in carrying on his work; or

(c) After having been convicted on the above violations, shall within a period of three years from the date of such conviction attempt to influence directly or indirectly legislation before the Congress of the U.S.

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119-1.2 Section 261 (Definitions)

(1) The term "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value and includes a contract, promise or agreement, whether or not legally enforceable, to make a contribution.

(2) The term "expenditure" includes a payment, distribution, loan, advance, deposit, or gift money or anything of value, and includes a contract, promise or agreement, whether or not legally enforceable, to make an expenditure.

(3) The term "person" includes an individual, partnership, committee, association, corporation, and any other organization or group of persons.

(4) The term "Clerk" means the Clerk of the House of Representatives of the United States.

(5) The term "legislation" means bills, resolutions, amendments, nominations, and other matters pending or proposed in either House of Congress, and includes any other matter which may be the subject of action by either House.

EFFECTIVE: 01/31/78

119-1.3 Section 262 (Detailed Accounts of Contributions; Retention of Receipted Bills of Expenditures)

(1) It shall be the duty of every person who shall in any manner solicit or receive a contribution to any organization or fund for the purposes hereinafter designated to keep a detailed and exact account of --

(a) All contributions of any amount or of any value whatsoever:

(b) The name and address of every person making any such contribution of \$500 or more and the date thereof;

(c) All expenditures made by or on behalf of such organization or fund; and

(d) The name and address of every person to whom any

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such expenditure is made and the date thereof.

(2) It shall be the duty of such person to obtain and keep a receipted bill, stating the particulars, for every expenditure of such funds exceeding \$10 in amount, and to preserve all receipted bills and accounts required to be kept by this section for a period of at least two years from the date of the filing of the statement containing such items.

EFFECTIVE: 01/31/78

119-1.4 Section 263 (Receipts for Contributions)

Every individual who receives a contribution of \$500 or more for any of the purposes hereinafter designated shall within five days after receipt thereof render to the person or organization for which such contribution was received a detailed account thereof, including the name and address of the person making such contribution and the date on which received.

EFFECTIVE: 01/31/78

119-1.5 Section 264 (Statements of Accounts Filed with Clerk of House)

(1) Every person receiving any contributions or expending any money for the purposes designated in subparagraph (1) or (2) of Section 266 of this title shall file with the Clerk between the first and tenth day of each calendar quarter, a statement containing complete as of the date next preceding the date of filing--

(a) The name and address of each person who has made a contribution of \$500 or more not mentioned in the preceding report; except that the first report filed pursuant to this title shall contain the name and address of each person who has made any contribution of \$500 or more to such person since August 2, 1946;

(b) The total sum of the contributions made to or for such person during the calendar year and not stated under paragraph (a) of this subsection;

(c) The total sum of all contributions made to or

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for such person during the calendar year;

(d) The name and address of each person to whom an expenditure in one or more items of the aggregate amount of value, within the calendar year, of \$10 or more has been made by or on behalf of such person, and the amount, date, and purpose of such expenditure;

(e) The total sum of all expenditures made by or on behalf of such person during the calendar year and not stated under paragraph (d) of this subsection;

(f) ~~The total sum of expenditures made by or on~~  
behalf of such person during the calendar year.

(2) The statements required to be filed by subsection (1) of this section shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous statement only the amount need be carried forward.

EFFECTIVE: 01/31/78

119-1.6 Section 265 (Preservation of Statements)

A statement required by this chapter to be filed with the Clerk--

(1) Shall be deemed properly filed when deposited in an established post office within the prescribed time, duly stamped, registered, and directed to the Clerk of the House of Representatives of the United States, Washington, District of Columbia, but in the event it is not received, a duplicate of such statement shall be promptly filed upon notice by the Clerk of its non-receipt;

(2) Shall be preserved by the Clerk for a period of two years from the date of filing, shall constitute part of the public records of his office, and shall be open to public inspection.

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119-1.7 Section 266 (Persons to Whom Applicable)

The provisions of this statute shall apply to any person (except a political committee as defined in chapter 8 of this title, and duly organized State or local committees of a political party), who by himself, or through any agent or employee or other persons in any manner whatsoever, directly or indirectly, solicits, collects, or receives money or any other thing of value to be used principally to aid, or the principal purpose of which person is to aid, in the accomplishment of any of the following purposes:

(1) The passage or defeat of any legislation by the Congress of the United States.

(2) To influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States.

EFFECTIVE: 01/31/78

119-1.8 Section 267 (Registration of Lobbyists with Secretary of the Senate and Clerk of House; Compilation of Information)

(1) Any person who shall engage himself for pay or for any consideration for the purpose of attempting to influence the passage or defeat of any legislation by the Congress of the United States shall, before doing anything in furtherance of such object, register with the Clerk of the House of Representatives and the Secretary of the Senate and shall give to those officers in writing and under oath, his name and business address, the name and address of the person by whom he is employed, and in whose interest he appears or works, the duration of such employment, how much he is paid and is to receive, by whom he is paid or is to be paid, how much he is to be paid for expenses, and what expenses are to be included. Each such person so registering shall between the first and tenth day of each calendar quarter, so long as his activity continues, file with the Clerk and Secretary a detailed report under oath of all money received and expended by him during the preceding calendar quarter in carrying on his work; to whom paid; for what purposes; and the names of any papers, periodicals, magazines, or other publications in which he has caused to be published any articles or editorials; and the proposed legislation he is employed to support or oppose. The provisions of this section shall not apply to any person who merely appears before a committee of the Congress of the United States in support of or opposition to legislation; nor to any public official acting in his

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official capacity; nor in the case of any newspaper or other regularly published periodical (including any individual who owns, publishes, or is employed by any such newspaper or periodical) which in the ordinary course of business publishes news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge the passage or defeat of legislation; if such newspaper, periodical, or individual, engages in no further or other activities in connection with the passage or defeat of such legislation, other than to appear before a committee of the Congress of the United States in support of or in opposition to such legislation.

(2) All information required to be filed under the provisions of this section with the Clerk of the House of Representatives and the Secretary of the Senate shall be compiled by said Clerk and Secretary, acting jointly, as soon as practicable after the close of the calendar quarter with respect to which such information is filed and shall be printed in the Congressional Record.

EFFECTIVE: 01/31/78

119-1.9 Section 268 (Reports and Statements Under Oath)

All reports and statements required shall be made under oath, before an officer authorized by law to administer oaths.

EFFECTIVE: 01/31/78

119-1.10 Section 269 (Penalties and Prohibitions)

(1) Any person who violates any of these provisions shall, upon conviction, be guilty of a misdemeanor, and shall be punished by a fine of not more than \$5,000 or imprisonment for not more than twelve months, or by both such fine and imprisonment.

(2) In addition to the penalties provided for in subsection (1) of this section, any person convicted of the misdemeanor specified therein is prohibited, for a period of three years from the date of such conviction, from attempting to influence, directly or indirectly, the passage or defeat of any proposed legislation or from appearing before a committee of the Congress in support of or opposition to proposed legislation; and any person who violates any provision of this subsection shall, upon conviction



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thereof, be guilty of a felony, and shall be punished by a fine of not more than \$10,000, or imprisonment, for not more than five years, or by both such fine and imprisonment.

EFFECTIVE: 01/31/78

119-1.11 Section 270 (Exemptions)

These provisions shall not apply to practices or activities regulated by chapter 8 of this title nor be construed as repealing any portion of said chapter 8 of this title.

EFFECTIVE: 01/31/78

119-2 POLICY

(1) The Attorney General has advised that copies of reports in Federal Regulation of Lobbying Act cases be furnished in all instances only to the Criminal Division.

(2) Upon receipt of a complaint, full details should be obtained from the complainant and incorporated into a closing prosecutive report which should be transmitted immediately to FBIHQ. If deemed necessary FBIHQ should be advised of the details of the complaint by more expeditious means.

(3) USA should not be consulted and no investigation should be initiated pending receipt of instructions from FBIHQ.

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119-3 INVESTIGATIVE PROCEDURES

Investigative effort should be directed to ascertain:

(1) Whether or not the "person" involved solicited, collected, or received contributions of money or things of value;

(2) If so, whether one of the main purposes of the "person" so soliciting, collecting, or receiving the contribution or whether one of the main purposes of the contribution itself, was to influence the passage or defeat of legislation by Congress, and

(3) If the first two conditions prevail, whether the intended method of accomplishing the purpose was by means of direct communication with members of Congress. Such direct pressures may be accomplished either by the lobbyist or through hirelings or by means of an artificially stimulated letter campaign.

EFFECTIVE: 01/31/78

119-4 CHARACTER - FEDERAL REGULATION OF LOBBYING ACT

EFFECTIVE: 01/31/78

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SECTION 120. FEDERAL TORT CLAIMS ACT

120-1 STATUTE

Title 28, USC, Sections 2671 to 2680, permits the U.S. to be sued in tort.

EFFECTIVE: 01/31/78

120-1.1 Section 2674, Liability of United States

"The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.

"If, however, in any case wherein death was caused, the law of the place where the act or omission complained of occurred provides, or has been construed to provide, for damages only punitive in nature, the United States shall be liable for actual or compensatory damages, measured by the pecuniary injuries resulting from such death to the persons respectively, for whose benefit the action was brought, in lieu thereof."

EFFECTIVE: 01/31/78

120-1.2 Section 2672

Provides for the administrative adjustment of claims under this act of (\$25,000) or less by the head of each Federal agency.

EFFECTIVE: 01/31/78

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120-1.3 Venue

(1) Title 28, USC, Sections 1346(b) and 1402(b)

(a) Section 1346(b) provides that the U. S. district courts, together with the U.S. District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims arising under this act.

(b) Section 1402(b) provides any civil action on claims under the act may be prosecuted only in the judicial district where the plaintiff resides or wherein the act or omission complained of occurred.

EFFECTIVE: 01/31/78

120-2 INVESTIGATIVE JURISDICTION

(1) Bureau at specific request of Department or USA accepts for investigation cases involving claims or potential claims in excess of \$1,000 except:

(a) Suits brought against Government employees in state or local courts unless they arise out of the operation of a motor vehicle and the provisions of Title 28, USC, Section 2679(b), et seq., are applicable. (Government will assume defense of employee if acting within scope of his employment).

(b) Special investigations for congressional committees which are considering legislation for the relief of the plaintiff.

(2) Investigations should be instituted upon specific request of USA without FBIHQ authorization.

(3) Bureau also has agreed to conduct investigations for agencies and bureaus of Department of Justice in cases of serious personal injury or death. These investigations may be instituted without FBIHQ authorization at the request of agency or bureau of Department. If they desire to conduct their investigations of accidents, Bureau has no objection, although Bureau will receive and conduct investigations which are referred under FTCA. Promptly advise FBIHQ of institution of such investigations.

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EFFECTIVE: 01/31/78

120-2.1 Investigative Suggestions

(1) Examine files of USA and interested governmental agency for background material and investigative leads.

(2) Obtain from USA at the time he specifically requests an investigation:

(a) Facts surrounding accident

(b) Type of vehicle involved, auto, truck, airplane, etc.

(c) Name of governmental agency involved

(d) Amount of civil suit filed by plaintiff

(e) Name of law firm representing plaintiff

(f) Specific scope of inquiry desired to enable USA to prepare his defense of civil suit against Government.

(g) Definitely determine if USA desires any contact with plaintiff. If so, necessary arrangements should be made by USA with plaintiff's attorney.

(3) When practicable, obtain signed statements from all parties involved and from all potential witnesses. During such interviews ascertain, in addition to regular address, where or through whom individual may be reached on short notice.

(4) Obtain description of scene with accompanying photographs and charts when such material will be of evidentiary or informative value.

(5) Obtain complete information on property damages or personal injuries sustained by all parties, including estimates on amount of property damage and medical reports on personal injuries. Where hospital records are examined, in addition to results of interviews conducted, obtain and report name and address of hospital official who has custody of and can introduce records in court.

(6) Obtain copy of report submitted by local police where they conducted investigation.

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(7) With respect to automobile accidents, additional suggestions and instructions are set forth in the Manual of Administrative Operations and Procedures.

(8) Be alert for contributory negligence on part of plaintiff which would provide grounds for countersuit. In this connection, if USA desires investigation relative to plaintiff's financial ability, conduct investigation specifically requested.

(9) If request for foreign investigation received from USA, advise him Bureau has no facilities with which to conduct such investigations in FTCA cases. Suggest he make such request through Department.

EFFECTIVE: 01/31/78

120-3 STATUTE OF LIMITATIONS

See Title 28, USC, Section 2401(b). A tort claim is barred unless action is begun within two years after such claim accrues.

EFFECTIVE: 01/31/78

120-4 EXCEPTIONS TO FEDERAL TORT CLAIMS ACT

(1) Title 28, USC, Section 2680, lists a number of exceptions wherein the provisions of FTCA do not apply. Those most directly related to Bureau's work are as follows:

(a) Any claim based upon an action or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Government, whether or not the discretion involved be abused.

(b) Any claim arising out of an action or omission of an employee of the Government in administering the provisions of the Trading with the Enemy Act, as amended.

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(c) Any claim arising out of libel, slander, misrepresentation, deceit or interference with contract rights.

EFFECTIVE: 01/31/78

120-5 POLICY

(1) Open case file on each individual plaintiff or group of plaintiffs who file a single civil suit against Government in connection with a particular accident.

(2) Major disasters

(a) Conduct immediate preliminary investigation to determine if Government has or may have an interest.

(b) If so, USA should be immediately apprised of information developed and advised that, in order to preserve evidence and obtain necessary facts, an investigation will be conducted by Bureau in event he so desires.

(c) Advise FBIHQ by telephone or teletype of facts ascertained, whether Government is or may be involved, and whether USA desires an FTCA investigation.

(3) Status

Tort cases should be kept in a pending status until final action has been concluded in U.S. district court. (Case should not be held open to follow results of appeals.) Thereafter closing report should be submitted. |Accomplishment Report| should also be submitted showing:

(a) Amount of suit

(b) Settlement or award

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120-7      PRIVACY ACT - REQUIREMENTS

| (1) | When interviewing anyone in the above classification, in order to solicit information about himself/herself or his/her own activities, the interviewing Agent must follow the procedures described in MIOG, Part I, 190-5, subparagraphs (2) and (3).

| (2) | When interviewing an individual to solicit information concerning someone other than the interviewee (thereby classifying that individual as a source of information), the interviewing Agent must follow the procedure relating to promises of confidentiality as described in MIOG, Part I, 190-7.

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EFFECTIVE: 02/12/92

120-8      CHARACTER - FEDERAL TORT CLAIMS ACT

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SECTION 122. LABOR MANAGEMENT RELATIONS ACT, 1947

122-1 STATUTE

Title 29, USC, Sections 161(2), (6), 162, 176-178, and  
| 186|(a), (b), and (c).|

EFFECTIVE: 11/12/80

122-1.1 Section 161(2)

(1) Contempt of court - failure to answer subpoena

"(2) In case of contumacy or refusal to obey a subpoena issued to any person, any district court of the United States or the United States courts of any Territory or possession, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof."

EFFECTIVE: 11/12/80

122-1.1.1 Procedure

Bureau will assist in locating any individual to testify in proceedings within U.S. District Court after bench warrant has been issued by district court and returned non est by U.S. Marshal.

EFFECTIVE: 11/12/80

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| 122-1.2 Section 161(6)

EFFECTIVE: 11/12/80

| 122-1.2.1 Elements

(1) Requests for information from National Labor  
Relations Board (NLRB)

"(6) The several departments and agencies of the  
Government, when directed by the President, shall furnish the Board,  
upon its request, all records, papers, and information in their  
possession relating to any matter before the Board."

EFFECTIVE: 11/12/80

| 122-1.2.2 Procedure

| Information may be furnished to the NLRB provided  
adequate consideration has been given to the provisions of the  
Privacy Act as it pertains to the type material being requested.  
Any questions should be resolved by contact with FBIHQ. |

EFFECTIVE: 11/12/80

| 122-1.3 Section 162

EFFECTIVE: 11/12/80

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| 122-1.3.1 Elements

| (1) | Interference with an NLRB Member or Agent--|

"Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this subchapter shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than one year, or both."

| (2) Related Statute - Obstruction of Justice (OOJ)

Title 18, USC, Section 1505, OOJ, covers obstruction of the proceedings before any Federal departments or agencies, which include the NLRB. (See Part I, Section 72, of this manual.)|

EFFECTIVE: 11/12/80

| 122-1.3.2 Procedure

| Complaints or information concerning interference with an NLRB member or agent should be discussed immediately with USA to ascertain whether or not there is sufficient indication of a violation to justify investigation. |

EFFECTIVE: 11/12/80

| 122-1.4 Section 176

EFFECTIVE: 11/12/80

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122-1.4.1 Elements

- (1) Conciliation of labor disputes, national emergencies  
- contempt of court

"Whenever in the opinion of the President of the United States, a threatened or actual strike or lock-out affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperil the national health or safety, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its position but shall not contain any recommendations. The President shall file a copy of such report with the Service and shall make its contents available to the public."

EFFECTIVE: 11/12/80

122-1.4.2 Procedure

Attorney General will request Bureau investigations. Should an investigation be authorized under this section, specific instructions will be given field as to nature and extent of investigation desired. Investigations have been requested by Department to establish violations of injunctions under this section as contempt of court.

EFFECTIVE: 11/12/80

122-1.5 Section 177

EFFECTIVE: 11/12/80

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| 122-1.5.1 Elements

- (1) Conciliation of labor disputes, national emergencies  
- contempt of court

"(a) A board of inquiry shall be composed of a chairman and such other members as the President shall determine, and shall have power to sit and act in any place within the United States and to conduct such hearings either in public or in private, as it may deem necessary or proper, to ascertain the facts with respect to the causes and circumstances of the dispute."

EFFECTIVE: 11/12/80

| 122-1.5.2 Procedure

Attorney General will request Bureau investigations. Should an investigation be authorized under this section, specific instructions will be given field as to nature and extent of investigation desired. Investigations have been requested by Department to establish violations of injunctions under this section as contempt of court.

EFFECTIVE: 11/12/80

| 122-1.6 Section 178

EFFECTIVE: 11/12/80

| 122-1.6.1 Elements

- (1) Conciliation of labor disputes, national emergencies  
- contempt of court

"(a) Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out--

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"(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

"(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lock-out, or the continuing thereof, and to make such other orders as may be appropriate.

"(b) In any case, the provisions" of Sections 101-115 "of this title, shall not be applicable.

"(c) The order or orders of the court shall be subject to review by the appropriate United States court of appeals and by the Supreme Court upon writ of certiorari or certification as provided in section 1254 of Title 28."

EFFECTIVE: 11/12/80

| 122-1.6.2 Procedure

Attorney General will request Bureau investigations. Should an investigation be authorized under this section, specific instructions will be given field as to nature and extent of investigation desired. Investigations have been requested by Department to establish violations of injunctions under this section as contempt of court.

EFFECTIVE: 11/12/80

| 122-1.7 |Section 186(a), (b), and (c)|

EFFECTIVE: 11/12/80

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122-1.7.1 Elements

(1) Section 186(a) Prohibits Unlawful Payments or Loans  
by Employers or Persons Acting in the Interest of Employers

"(a) It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, adviser, or consultant to an employer or who acts in the interest of an employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value -

"(1) to any representative of any of his employees  
who are employed in an industry affecting commerce; or

"(2) to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer who are employed in an industry affecting commerce; or

"(3) to any employee or group or committee of employees of such employer employed in an industry affecting commerce in excess of their normal compensation for the purpose of causing such employee or group or committee directly or indirectly to influence any other employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing; or

"(4) to any officer or employee of a labor organization engaged in an industry affecting commerce with intent to influence him in respect to any of his actions, decisions, or duties as a representative of employees or as such officer or employee of such labor organization.

(2) Section 186(b) Prohibits Acceptance or Demands for  
Unlawful Payments

"(b) (1) It shall be unlawful for any person to request, demand, receive, or accept, or agree to receive or accept, any payment, loan, or delivery of any money or other thing of value prohibited by subsection (a) of this section.

"(2) It shall be unlawful for any labor organization, or for any person acting as an officer, agent, representative, or employee of such labor organization, to demand or accept from the operator of any motor vehicle" (as defined in Sections 301-327 of Title 49) "employed in the transportation of property in commerce, or the employer of any such operator, any money or other

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thing of value payable to such organization or to an officer, agent, representative or employee thereof as a fee or charge for the unloading, or in connection with the unloading, of the cargo of such vehicle: Provided, That nothing in this paragraph shall be construed to make unlawful any payment by an employer to any of his employees as compensation for their services as employees.

(3) Section 186(c) Enumerates Nine Exceptions to the Prohibited Activities of (a) and (b)

"(c) (1) in respect to any money or other thing of value payable by an employer to any of his employees whose established duties include acting openly for such employer in matters of labor relations or personnel administration or to any representative of his employees, or to any officer or employee of a labor organization, who is also an employee or former employee of such employer, as compensation for, or by reason of, his service as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement, or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: Provided, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): Provided, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such



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neutral persons as the representatives of the employers and the representatives of employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities; (6) with respect to money or other thing of value paid by an employer to a trust fund established by such representative for the purpose of pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training programs: Provided, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (7) with respect to money or other thing of value paid by any employer to a pooled or individual trust fund established by such representative for the purpose of (A) scholarships for the benefit of employees, their families, and dependents for study at educational institutions, or (B) child care centers for preschool and school age dependents of employees: Provided, That no labor organization or employer shall be required to bargain on the establishment of any such trust fund, and refusal to do so shall not constitute an unfair labor practice: Provided further, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; or (8) with respect to money or any other thing of value paid by any employer to a trust fund established by such representative for the purpose of defraying the costs of legal services for employees, their families, and dependents for counsel or plan of their choice; Provided, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds: Provided further, That no such legal service shall be furnished: (A) to initiate any proceeding directed (i) against any such employer or its officers or agents except in workman's compensation cases, or (ii) against such labor organization, or its parent or subordinate bodies, or their officers or agents, or (iii) against any other employer or labor organization, or their officers or agents, in any matter arising under subchapter II

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of this chapter or this chapter; and (B) in any proceeding where a labor organization would be prohibited from defraying the costs of legal services by the provisions of the Labor-Management Reporting and Disclosure Act of 1959; or (9) with respect to money or other things of value paid by an employer to a plant, area or industrywide labor management committee established for one or more of the purposes set forth in section 5(b) of the Labor Management Cooperation Act of 1978.

"(d) (1) Any person who participates in a transaction involving a payment, loan, or delivery of money or other thing of value to a labor organization in payment of membership dues or to a joint labor-management trust fund as defined by clause (B) of the proviso to clause (5) of subsection (c) of this section or to a plant, area, or industry-wide labor-management committee that is received and used by such labor organization, trust fund, or committee, which transaction does not satisfy all the applicable requirements of subsections (c) (4) through (c) (9) of this section, and willfully and with intent to benefit himself or to benefit other persons he knows are not permitted to receive a payment, loan, money, or other thing of value under subsections (c) (4) through (c) (9) violates this subsection, shall, upon conviction thereof, be guilty of a felony and be subject to a fine of not more than \$15,000, or imprisoned for not more than five years, or both; but if the value of the amount of money or thing of value involved in any violation of the provisions of this section does not exceed \$1,000, such person shall be guilty of a misdemeanor and be subject to a fine of not more than \$10,000 or imprisoned for not more than one year, or both.

"(2) Except for violations involving transactions covered by subsection (d) (1) of this section, any person who willfully violates this section shall, upon conviction thereof, be guilty of a felony and be subject to a fine of not more than \$15,000, or imprisoned for not more than five years, or both; but if the value of the amount of money or thing of value involved in any violation of the provisions of this section does not exceed \$1,000, such person shall be guilty of a misdemeanor and be subject to a fine of not more than \$10,000, or imprisoned for not more than one year, or both."

"(e) The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 381 of Title 28 (relating to notice to opposite party) to restrain violations of this section, without regard to the provisions of section 17 of Title 15 and section 52 of this title, and the provisions" of Sections 101-115 "of this title.

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"(f) This section shall not apply to any contract in force on June 23, 1947, until the expiration of such contract, or until July 1, 1948, whichever first occurs.

"(g) Compliance with the restrictions contained in subsection (c) (5) (B) of this section upon contributions to trust funds, otherwise lawful, shall not be applicable to contributions to such trust funds established by collective agreement prior to January 1, 1946; nor shall subsection (c) (5) (A) of this section be construed as prohibiting contributions to such trust funds if prior to January 1, 1947, such funds contained provisions for pooled vacation benefits."

EFFECTIVE: 05/28/85

122-1.7.2 Significant Exclusions In Coverage

(1) The coverage of this Act is set forth in the definitions under Title 29, USC, Section 142, which in turn refers to the National Labor Relations Act, Title 29, USC, Section 152. Section 152 (2), (3), and (5) exclude from coverage under the Act, inter alia, unions comprised only of the following types of employees:

- (a) Agricultural laborers;
- (b) Individuals having the status of an independent contractor
- (c) Persons subject to the Railway Labor Act (generally railroads subject to the Interstate Commerce Act and interstate airlines).
- (d) Employees of Federal, state, or local governments, and wholly owned government corporations, including Federal Reserve Banks.

(2) The Department of Justice has advised that if a public employee union also represents or would admit to membership employees in the private sector, the union may be covered by the Act. In such instances, the U.S. Attorney should be consulted prior to conducting investigation.

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b2  
b7E  
EFFECTIVE: 07/28/87

||122-1.7.4| Procedure

(1) Complaints or information concerning restrictions on payments or loans (Title 29, USC, Section 186) should be discussed immediately with USA to obtain USA's opinion as to whether information received contains sufficient indication of violation to justify investigation.

(2) Matters may be considered possible violations even if payment or agreement to pay is not made, since this section prohibits request or demand being made. Such matters may be considered possible violations should they involve various parties enumerated under this section in addition to only employer and representative of employees. Also, matters may be possible violations if they involve loans made between parties enumerated in this section. Such parties would include middlemen used to relay payments or loans.

(3) A matter which involves fee or charge for unloading an interstate truck, demanded or accepted by parties enumerated in subsection (b)(2) of this section may also involve violation of Hobbs Act.

(4) Welfare funds - Bureau has investigative jurisdiction under Title 29, USC, Section 186(c)(5), to determine whether any particular welfare fund to which employer contributions are made comes within purview of this subsection of statute and, if so, whether it has been legally established in accordance therewith. Violation of LMRA would be indicated if such fund would not conform to provisions of this statute since contributions to the fund could be considered restricted payments by an employer. In order that USA can make determination as to whether investigation is justified, copies of the following should be obtained and utilized in initial discussion with USA:

(a) Collective bargaining agreement in which provision is made for establishment of welfare fund

(b) Trust agreement establishing fund

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EFFECTIVE: 07/28/87

||122-1.7.3 Potential Problems in Undercover Operations Targeting  
Violations of Title 29, USC, Section 186

b2  
b7E  
[REDACTED]

[REDACTED]

[REDACTED]

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(c) Most recent audit report of fund

(d) Data concerning interstate nature of businesses contributing to fund

This material may be obtainable from employers or employer trustees.

(5) Open separate cases regarding each individual, each employer, or each group of employers who may be involved in payments, loans, or demands for same.

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EFFECTIVE: 07/28/87

||122-1.7.5| Definitions

(1) "Industry affecting commerce" referred to in above section is defined (Title 29, USC, Section 142) as "any industry or activity in commerce or in which a labor dispute would burden or obstruct commerce or tend to burden or obstruct commerce or the free flow of commerce."

(2) "Commerce" is defined (Title 29, USC, Section 152) as "trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country."

EFFECTIVE: 07/28/87

122-2 GENERAL INSTRUCTIONS

Interviews with union officials may be conducted on the authority of the SAC, provided all of the following circumstances exist:

(1) Files of field office where interview to be conducted contain no information to indicate such interview would be inadvisable.

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(2) Interview is not premature and other available sources of information desired from union official have been exhausted.

(3) Interview is absolutely necessary in interest of conducting complete and thorough investigation.

(4) Interview of a union official who is a subject of the investigation is discussed with and concurred in by the U.S. Attorney.

(5) Interview will not interfere with any other investigation of the official or union.

(6) If interview to be conducted by an auxiliary office, that office must ensure their files contain no information to indicate the interview would be inadvisable.

(7) FBIHQ is notified in advance in the event the interviewee is prominent, extremely controversial, or of such stature to focus national attention on the investigation.

EFFECTIVE: 10/18/88

122-3

REPORTING REQUIREMENTS

(1) |An initial airtel with accompanying LHM (original and three copies) should be submitted to FBIHQ within 60 days if the investigation involves LCN members or associates. The LHM should contain the preliminary opinion of the USA and sufficient identification data on the subject(s) for indexing purposes. |

(2) |A progress letter should be submitted to FBIHQ every 180 days containing a summary of investigation conducted to date and a statement regarding investigation contemplated during the next 180 days. |

(3) |A closing airtel should be submitted to FBIHQ with LHM restating the predication for opening the investigation, summarizing the investigative findings and detailing the disposition of the investigation. The LHM should include the final opinion of the USA. |

(4) |If the investigation involves non-LCN groups (i.e., Asian organized crime, Sicilian Mafia, etc.), advise FBIHQ by airtel

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with accompanying LHM as described above within 60 days. The results and/or summary should be reported by LHM (original and three copies).

EFFECTIVE: 10/18/88

122-4 PRIVACY ACT - REQUIREMENTS

(1) When interviewing anyone in the above classification in order to solicit information about himself/herself or his/her own activities, the interviewing Agent must follow the procedures described in Part I, Section 190-5 subparagraphs (2) and (3) of this manual.

(2) When interviewing an individual to solicit information concerning someone other than the interviewee (thereby classifying that individual as a source of information) the interviewing Agent must follow the procedure relating to promises of confidentiality as described in Part I, Section 190-7 of this manual.

EFFECTIVE: 10/18/88

122-5 CHARACTER - LABOR MANAGEMENT RELATIONS ACT, 1947

EFFECTIVE: 10/18/88



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SECTION 125. RAILWAY LABOR ACT

125-1 STATUTES

Title 45, USC, Sections 60, 151-163, and 181-188

EFFECTIVE: 07/27/81

125-1.1 Elements

Carrier, its officers or agents, have violated Act if they willfully:

- (1) Interfere, influence, or coerce representative of employee or interfere with choice of representative (Section 152 - third paragraph)
- (2) Interfere with organization or collective bargaining of employee (Section 152 - fourth paragraph)
- (3) Require any person seeking employment to agree or promise to join or not to join a labor union (Section 152 - fifth paragraph)
- (4) Change rates of pay, rules, or working conditions of its employees contrary to agreement or to Section 156 of this Act (Section 152 - seventh paragraph)
- (5) Fail to notify its employees by printed notices as specified by Mediation Board that all disputes between carrier and its employees will be handled in accordance with requirements as outlined by statute. (Section 152 - eighth paragraph)

EFFECTIVE: 07/27/81

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125-1.1.1 Definitions (Section 151)

(1) Carrier:

Express company;

Sleeping car company;

Carrier by railroad;

Company controlled by a carrier by railroad and engaged in activities directly related to transportation by carrier (other than trucking service);

Airline company;

Term "carrier" does not include street, interurban, or suburban electrical railway unless it is a part of regular railroad system.

(2) Employees -

Individuals employed by carrier except coal miners

(3) Representative -

Person, labor union, organization, or corporation designated by carrier or group of carriers, or by its or their employees to act for it or them

EFFECTIVE: 07/27/81

125-2 POLICY

(1) The U.S. Department of Justice requires prior Criminal Division approval of all prosecutions involving Title 45, USC, Section 152, tenth paragraph, and has instructed all USAs to summarily decline investigation and/or prosecution of all complaints unless they contain allegations of egregious carrier interference with employee rights tantamount to actual or threatened violence, or involving the payment of bribes to employee representatives.

(2) Upon receipt of complaint or information indicating possible violation, present to USA to ascertain whether or not an investigation is warranted.

(3) If USA declines prosecution at the inception, close case and submit an airtel following guidelines as set forth under Reporting Procedures.

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EFFECTIVE: 10/18/88

125-3 REPORTING PROCEDURES

(1) Advise FBIHQ by airtel within 60 days setting forth the facts of the complaint and a succinct summary of the preliminary investigation conducted.

(2) A closing airtel should be submitted to FBIHQ restating the predication for opening the investigation, summarizing the investigative findings and detailing the disposition of the investigation.

EFFECTIVE: 10/18/88

125-4 PENALTY (Section 152 - tenth paragraph)

(1) Misdemeanor  
Fine - minimum - \$1,000; maximum - \$20,000  
Imprisonment - maximum - six months or both, for each offense

(2) Each day during which carrier, officer, or agent willfully fails or refuses to comply with paragraphs of Section 152 shall constitute separate offense.

EFFECTIVE: 07/27/81

125-5 RELATED STATUTE - EMPLOYERS' LIABILITY ACT - TITLE 45, USC, SECTION 60

This Act is contained in Title 45, USC, Sections 51-60. Sections 51-59 provides a civil right of action in Federal court by employees of any railroad that is a common carrier against the employer for damages for injury to or death of such employees resulting from negligence of the employer or its agents. Section 60 does not provide jurisdiction for civil relief, however, is a criminal statute within Bureau investigative jurisdiction.

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EFFECTIVE: 07/27/81

125-5.1 Elements

Anyone violates Act:

(1) Who attempts

(a) by threats, intimidation, order, rule, contract,

regulation, or device whatsoever

(b) to prevent any person from furnishing  
voluntarily information to a person in interest

(c) concerning facts incident to injury or death of  
any employee of any common carrier, or

(2) Who discharges or otherwise disciplines or attempts  
to discipline any employee for furnishing voluntarily to a person in  
interest information described in (1)(c) above.

EFFECTIVE: 07/27/81

125-5.2 Penalty

Upon conviction shall be punished by fine of not more than  
\$1,000 or imprisoned for not more than one year, or both.

EFFECTIVE: 07/27/81

125-5.3 Exception to Act

No contract, rule, or regulation with respect to  
information contained in files of carrier or other privileged or  
confidential reports shall be voided by this Act.

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EFFECTIVE: 07/27/81

125-5.4 Policy

Handle in accordance with policy in 125-2.

EFFECTIVE: 07/27/81

125-6

CHARACTER - RAILWAY LABOR ACT; RAILWAY LABOR ACT -  
EMPLOYERS' LIABILITY ACT (if investigation deals with  
125-5)

EFFECTIVE: 07/27/81

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SECTION 131. ADMIRALTY MATTER

131-1 STATUTES

Title 46, USC, Sections 741 to 752 and 781 to 799 permits suits in admiralty to be brought by or against the United States or against any corporation owned by it.

EFFECTIVE: 01/31/78

131-2 BACKGROUND

(1) During World War II, Government's vessels were directly operated by War Shipping Administration. In conducting these operations of its vessels, the United States, like other ship operators, used three coordinated classes of agents usual in conducting shipping business; namely;

- (a) The shipmaster
- (b) The ship's husband or general agent
- (c) The consignee of the ship or the berth agent

(2) Each agent is responsible directly to United States as "operating owner" for matters with which he is entrusted.

(3) United States employs experienced shipmasters as agents for physical operation and management of vessels afloat, and experienced steamship operators both as general agents to "husband" ship or manage accounting and other shoreside business operations and as berth agents to manage operation of obtaining and discharging cargo and other port services.

(4) United States sometimes insures vessels it operates in this type of operation. When suit is brought against Government, general agent is sometimes codefendant. The underwriters normally permit general agent to select attorneys to assist USA in defending suit. These attorneys are paid by underwriters who sustain expense of investigation, attorney's fees and judgments. Premiums paid to such underwriters by Government are paid

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under agreement which contains a recapture clause. If above expenses paid do not exceed premiums paid by Government a refund will be made to Government.

(5) In addition to these operations by War Shipping Administration and its successor, the Maritime Commission and Maritime Administration, and also operation of regular Navy and Army vessels, there are cargo- and passenger-type vessels operated by the Army Transport Service and the Military Sea Transportation Service. These vessels are crewed by civilian Government employees and are not insured.

EFFECTIVE: 01/31/78

131-3 POLICY

(1) Requests for investigation are referred directly to divisional offices by field office of Admiralty Section of Civil Division or the USA. Cases should not be accepted for investigation in which previous investigation was conducted by another agency.

(2) Differentiate between full investigation for trial purposes and administrative investigation or accident report for disciplinary purposes or accident prevention purposes. Many times Navy, Army, or Coast Guard, or more than one of them, will conduct hearings or investigations for express purpose of fixing responsibility for accident thereby enabling them to take necessary administrative action. This type of investigation or hearing cannot be construed as an investigation within the rule that Bureau will not investigate matters previously investigated by another agency.

(3) There are occasions when case has been entirely investigated by either Admiralty attorneys themselves or employees of another Government agency. Subsequently, requests are received to conduct investigation to bring entire matter to logical conclusion. Bureau's experience has shown that this is not conducive to maximum efficiency in investigations. Consequently, no investigation should be conducted.

(4) Where underwriters permit general agent to select his attorneys to handle dispute, such attorneys are reimbursed to locate and interview their own witnesses. Under no circumstances are you to locate witnesses or conduct investigations to locate witnesses for these attorneys even though request emanated from USA's office, without special authorization from FBIHQ.

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(5) While close cooperation with attorney charged with defense of admiralty suit is important and his suggestions as to lines of inquiry should be followed, Agents should not work under supervision of attorney from Admiralty Section of USA's office or a special assistant to the Attorney General handling admiralty matters.

(6) Investigations ordinarily should be confined to cases in which risk is uninsured and Government has to defend case and sustain whatever loss involved. Any requests for investigation in insured cases should be referred to FBIHQ for authority to investigate, with your recommendations.

EFFECTIVE: 01/31/78

131-4 HANDLING OF CASES

(1) Examine and secure, if possible, a copy of report of investigation previously conducted or minutes of hearing.

(2) Refer to steamship companies as the "general agent," not the "operator."

(3) Files should be opened on each individual plaintiff or group of plaintiffs who filed a single suit against U.S. in connection with a particular accident.

(4) After investigation completed, case should be placed in pending-inactive status until matter is settled in court. A closing report should then be submitted. A statistics letter should then be submitted to FBIHQ showing:

- (a) Amount of suit
- (b) Settlement or award

EFFECTIVE: 01/31/78



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131-5 PRIVACY ACT - REQUIREMENTS

When interviewing anyone in the above classification, in order to solicit information about himself or his own activities, the interviewing Agent must follow the procedures described in MIOG: Part I, 190-5, subparagraphs (2) and (3).

When interviewing an individual to solicit information concerning someone other than the interviewee (thereby classifying that individual as a source of information) the interviewing Agent must follow the procedure relating to promises of confidentiality as described in MIOG: Part I, 190-7.

EFFECTIVE: 01/31/78

131-6 CHARACTER - ADMIRALTY MATTER

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SECTION 134. FOREIGN COUNTERINTELLIGENCE ASSETS (OPERATIONAL  
AND INFORMATIVE ASSETS)

134-1 FOREIGN COUNTERINTELLIGENCE ASSETS (OPERATIONAL AND  
INFORMATIVE ASSETS)

Information concerning the 134 classification is set forth  
in a separate FBI manual, the NATIONAL FOREIGN INTELLIGENCE PROGRAM  
MANUAL (NFIPM).

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SECTION 137. |CRIMINAL|INFORMANTS|(SEE MIOG, PART II,  
10-3; LEGAL ATTACHE MANUAL, 6-12;  
LEGAL HANDBOOK FOR SPECIAL AGENTS, SECTION 8.)|

||137-1| RESPONSIBILITY FOR THE DEVELOPMENT AND OPERATION OF  
INFORMANTS

(1) The SAC of each field office is personally responsible for the establishment of informant coverage concerning criminal activity of interest to the FBI within his/her territory. Particular emphasis is to be placed on the priority investigative matters of the office. Informants are an integral part of the office's overall criminal informant and cooperative witness intelligence base. The SAC must ensure that his/her Agents make every effort to develop quality informants, and that Agents receive the training and guidance necessary to enable them to perform their duties in an effective and efficient manner. The development and operation of informants must be closely supervised, because of the significant contributions which they make to FBI investigations and because of the difficulties inherent in their operation. Accordingly, the SAC should ensure that informant files are reviewed every 60 days by a Supervisory Special Agent.

(2) Each SUPERVISORY SPECIAL AGENT is personally responsible for the establishment of informant coverage concerning criminal matters under his/her supervision. Each Supervisor must ensure that Agents under his/her supervision make every effort to develop quality informants, and that their Agents receive the training and guidance necessary to enable them to perform their duties in an effective and efficient manner. Supervisors will review the informant files of those individuals being developed or operated by Agents under their supervision at least every 60 days. The fact that such a review was conducted must be documented in the informant's file on an FD-675 and indexed on the FD-237. The purpose of this review is to ensure that the informant is being operated in accordance with FBI and Attorney General Guidelines, and that adequate coverage is established for the investigative matters under his/her supervision. In fulfilling this responsibility, it is strongly suggested that the Supervisor periodically meet with the informants being operated by Agents under his/her supervision. When a Supervisor is either the case Agent or alternate Agent for an informant, the responsibility for administrative oversight, including the 60-day informant file reviews,

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authorization for the informant to participate in criminal activity and the initial review of informant payments, belongs to the ASAC.

(3) Each SPECIAL AGENT involved in criminal investigative activities at least 50 percent of his/her time, and not otherwise mitigated, is personally responsible for the development and operation of productive informants to address criminal matters within his/her investigative responsibilities. The SAC of each field office has the prerogative to task Agents not working criminal matters at least 50 percent of their time with the development and operation of their productive informants or liaison contacts. Agents are responsible for ensuring that their informants are operated in a manner which is their consistent with FBI and Attorney General Guidelines.

(4) The CRIMINAL INFORMANT PROGRAM MANAGER is personally responsible for ensuring that the program is operated in an effective and efficient manner, consistent with FBI and Attorney General Guidelines.

(5) The CRIMINAL INFORMANT PROGRAM COORDINATOR is personally responsible for ensuring that the SAC and Criminal Informant Program Manager are made aware of all significant issues and developments which impact on the Criminal Informant Program.

EFFECTIVE: 12/20/93

| 137-1.1 | Moved to 137-2.1 |

EFFECTIVE: 12/20/93

| 137-1.2 | Deleted |

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EFFECTIVE: 12/20/93

||137-2| DEFINITION

An informant is any person or entity who furnishes information to the FBI on a confidential basis. |The FBI will not disclose the identity of an informant, except as provided in 137-4.2. |

EFFECTIVE: 12/20/93

||137-2.1 Categories of Informants

Informants must be classified according to one of the following categories:

(1) Organized Crime (OC) - Those providing information concerning investigations falling within the organized crime program. (Classification 137A).

(2) Top Echelon (TE) - Those providing information concerning [REDACTED]

(3) Criminal (C) - Those providing information concerning investigations into matters of a general criminal nature. (Classification 137B).

(4) Domestic Terrorism (DT) - Those providing information concerning investigations into persons or groups involved in terrorist activities within the United States, such as bombings and other criminal terrorist activities, on which the FBI has an open and approved case. (Classification 137C).

(5) White Collar Crime (WC) - Those providing information concerning violations falling within the white collar crime program. (Classification 137D).

(6) Drugs (D) - Those providing information concerning investigations falling within the drug program. (Classification 137F).

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(7) Confidential Sources (CS) - Those providing information to the FBI on a confidential and regular basis as a result of legitimate employment or routine access to records, and not as a result of association with persons of an investigative interest to the FBI. The information provided by a Confidential Source must be relevant to authorized FBI investigations. The operation of a Confidential Source must be consistent with FBI and Attorney General Guidelines. A Confidential Source may be paid reasonable amounts for services and expenses. (Classification 137E).

EFFECTIVE: 12/20/93

137-3 DEVELOPMENT OF INFORMANTS (See MIOG, Part I,  
137-3.1.2(1).)

The following factors must be taken into consideration in determining an individual's suitability to be an informant:

(1) Whether the person appears to be in a position to provide information concerning violations of law which are within the scope of authorized FBI investigative activity.

(2) Whether the individual is willing to voluntarily furnish information to the FBI.

(3) Whether the individual appears to be directed by others to obtain information from the FBI.

(4) Whether there is anything in the individual's background which would make him/her unfit for use as an informant.

(5) Whether the nature of the matter under investigation and the importance of the information being furnished to the FBI outweighs the seriousness of any past or contemporaneous criminal activity of which the informant may be suspected.

(6) Whether the motives of the informant in volunteering to assist the FBI appear to be reasonable and proper.

(7) Whether the information which the informant can provide could be obtained in a more timely and effective manner

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through other sources or by a less intrusive means.

(8) Whether the informant is sufficiently reliable and trustworthy, and whether there is an adequate means by which to verify his/her truthfulness.

(9) Whether the individual appears to be willing to conform to FBI and Attorney General Guidelines regarding his/her operation.

(10) Whether the FBI will be able to adequately monitor and control the activities of the informant.

(11) Whether his/her use as an investigative technique will intrude upon privileged communications or inhibit the lawful association of individuals or the expression of ideas.

(12) Whether the use of the informant could compromise an investigation or subsequent prosecution which may require the Government to move for a dismissal of the case.

EFFECTIVE: 12/20/93

137-3.1 Suitability and Pertinence Inquiries

Prior to the certification of an individual for use as an informant or Confidential Source, a suitability and pertinence inquiry (SI) must be conducted. The purpose of this inquiry is to determine whether he/she is suitable for use as an informant or Confidential Source and the pertinence of the information likely to be provided.

(1) The SI will be conducted for a period not to exceed 120 days. An extension of the initial 120-day period may be authorized by the SAC. The notification of an extension must be entered into CIMS no later than ten working days prior to the conclusion of the initial 120-day period. It must contain the facts or circumstances which preclude completion of the SI during the initial 120-day period. If an individual cannot be certified within 240 days from initiation of the SI, he/she should be closed.

(2) During the SI, the Agent may accept information volunteered by the individual and may make reasonable payments to him/her for services and expenses. In addition, he/she may be paid

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for the information. However, these individuals may not be used to participate in criminal activities or provide substantial assistance in an undercover operation during the SI period.

(3) An informant in the SI stage of development may not be used in a preliminary domestic security/terrorism investigation without the prior approval of a Supervisory Special Agent. Such approval must be recorded in the file. (See 137-4(16).)

(4) SIs should not be used to develop information concerning an individual for the purpose of inducing him/her to become an informant or a Confidential Source.

(5) Any lawful investigative technique can be utilized in determining an individual's suitability to be an informant.

EFFECTIVE: 06/08/94

137-3.1.1 Administration of the Suitability and Pertinence  
Inquiry

(1) Upon selection of an individual for use as an informant, the field office will assign a 137 field number and an alpha character from the Resource Management Information System. This alpha character will ensure the time devoted to that 137 matter is allocated to the appropriate program. At that time, the field office will also assign a sequential field office symbol number. The symbol number will contain the field office two-letter identifier as a prefix, the symbol number, the letters SI, and the suffix of either an OC, C, DT, WC, CS or D to indicate the primary area in which the informant will be providing informational assistance. Example: BA 12345-SI-WC.

(2) The SI will commence on the date the 137 file is opened.

(3) Specific authority must be obtained from the SAC to conduct an SI for the individuals identified in (a)-(d) below. FBIHQ authority must be obtained prior to converting these individuals to fully operational status. This authority may NOT be obtained on a UACB basis. The specific restrictions concerning the development or operation of these individuals is set forth in Section 137-7. (See MIOG, Part I, 137-3.2(2).)

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- (a) Privileged informants, i.e., attorneys, physicians, members of the clergy, and news media personnel.
- (b) Individuals who are now or were ever in the Witness Security Program.
- (c) Minors (individuals under the age of 18).
- (d) A counselor in a drug treatment program.

(4) Immediately upon the opening of an informant, or upon the conversion of a cooperative witness to an informant, enter all information from the opening memorandum in the CIMS database, with the exception of those individuals identified in 137-7 which may require FBIHQ approval. All memoranda are to contain the following information: (See (5) below and 137-10.)

[REDACTED]

[REDACTED]

\_\_\_\_\_

\_\_\_\_\_

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

\_\_\_\_\_

[REDACTED]

100

- (h) A statement, if applicable, that this is a privileged occupation informant or, if applicable, a statement regarding the individual's occupation or status as a Federal or state parolee or probationer, an inmate, a past or current participant in the Witness Security Program, a law enforcement officer, an elected official, a union official, a minor, an employee of a financial institution, active duty military personnel, a school employee or a counselor in a drug treatment program. The statement should set forth

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the specific nature of the occupation, the type of information being received, how the information will be obtained and the justification for operating the source. The specific requirements for opening and operating such individuals are detailed in Section 137-7.

(5) Immediately upon the conversion of a cooperative witness to an informant, the field office must prepare a memorandum captioned with the field office two-letter identifier, symbol number and file number. However, individuals identified in 137-7.1 and 137-7.2(2) require prior FBIHQ approval. All such conversion memoranda are to contain the information set forth in 137-3.1.1(4). (See MIOG, Part I, 137-10.)

(6) If any of the above information is not available at the time the SI, the information should be obtained and entered into CIMS prior to the conversion of the individual to a fully operational informant.

EFFECTIVE: 06/08/94

137-3.1.2 Certification of Suitability and Pertinence

(1) At the conclusion of the SI, the supervisor must review the informant's file and make a written finding, based on the factors outlined in 137-3, stating whether the informant appears suitable for use and whether the information likely to be obtained from the individual is pertinent to and within the scope of the FBI's investigative responsibility. The supervisor's certification must be documented in the informant's file and indexed on the FD-237. (See MIOG, Part I, 137-3.2(1)(j).)

(2) If it is determined that the individual is not suitable for use as an informant, the inquiry is to be immediately closed by memorandum to the source file, which should include the specific reason(s) for the closing of the inquiry. This data should then be entered in the CIMS database. Additionally, if the informant is closed because of unauthorized criminal activity, other than for misdemeanor arrests, a teletype to FBIHQ, Criminal Informant Unit, is to be prepared detailing the date of arrest, the criminal activity, and the disposition of the charges. (See MIOG, Part I, 137-10.)

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EFFECTIVE: 06/08/94

| 137-3.1.3 | Moved to 137-3.1.2 |

EFFECTIVE: 12/20/93

137-3.2 Conversion From a Suitability and Pertinence Inquiry  
to an Informant (See MIOG, Part I, 137-7.2(1)(a).)

(1) An individual becomes an informant once the supervisor certifies the individual's suitability. A memorandum is prepared, and the information is entered in CIMS. The memorandum must contain the following information in linear paragraph form:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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(j) Certification statement by the field office supervisor described in 137-3.1.2(1).

(k) If handled by a resident agency, identify resident agency.

(1) A statement, if applicable, that the specific requirements for opening and operating individuals detailed in Section 137-7 have been complied with. The statement should set forth specific details on how compliance was obtained.

(2) In the absence of response from FBIHQ, consider the operation of the informant to be approved. However, those individuals identified in Section 137-3.1.1(3)(a) - (d) may not be operated without a specific grant of authority from FBIHQ.

(3) Authority to operate an individual described in Section 137-7.1 must be requested in both the SI and conversion teletypes. Such teletypes may not be sent on a UACB basis.

EFFECTIVE: 06/08/94

137-3.3 | Revised and Moved--See 137-7, 137-7.1, 137-7.1.1,  
137-7.1.2, & 137-7.2 |

EFFECTIVE: 12/20/93

|| 137-3.4 | Revised and Moved--See 137-6 |

EFFECTIVE: 12/20/93

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137-4 OPERATION OF INFORMANTS

(1) Every effort should be made to control the informant's activities when acting at the direction of the FBI to ensure that his/her conduct will be consistent with FBI and Attorney General Guidelines.

(2) Agents should not exercise improper influence on individuals in an attempt to develop them as informants, including promising immunity or reduction of sentence to those who furnish information. Any representations regarding plea agreements, immunity or other prosecutorial consideration for an informant's assistance are to be made only by the United States Attorney's Office.

(3) When it becomes apparent that an informant's role has changed from informational to operational in nature, i.e., making consensual recordings, introducing undercover Agents, purchasing evidence, or otherwise participating in similar operational activities, he/she must be converted to a cooperative witness. (See (15).) Thereafter, he/she must be operated in a manner which is consistent with the Part I, Section 270 of the Manual of Investigative Operations and Guidelines (MIOG).

(4) When it becomes apparent that an informant has furnished false information or that there is some other indication of unreliability, the Agent must promptly advise the SAC and provide FBIHQ with a teletype setting forth the factual background which gave rise to the concern. In addition, the teletype should state whether the informant has appeared as a witness on behalf of the Government in any FBI case or has furnished information which was disseminated to another agency.

(5) All investigative activity must be made a matter of record in the field office files, including negative contacts, to ensure that the informant's files are accurate and complete. However, contacts with an informant for payment purposes only, during which no positive information is generated, need not be reported as a negative contact on an FD-209.

(6) An alternate Agent must be assigned at the time the informant is opened. The alternate Agent must handle some contacts with the informant and must meet or observe the informant by the second contact after conversion. This will ensure the continued use of an informant during the absence or transfer of the case Agent. Any deviation from this requirement must be approved personally by the SAC

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and documented in a memorandum in the informant's file.

(7) Constant care should be exercised to avoid any disclosure to anyone which might result in the identification of an informant or cast suspicion upon an informant, except as described in 137-4.2.

(8) Agents have an affirmative responsibility to check the reliability of their informants.

(9) Operation of informants in undercover operations must be in compliance with FBI policy and "Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations." The operational use of informants in long-term cases or undercover operations may warrant use of a personal services contract between the informant and the FBI. This agreement must be coordinated with the substantive unit at FBIHQ and approved by the Contract Review Unit, FBIHQ. In a situation where prosecution is pending for the informant, a Plea Agreement may be warranted between the informant and the United States Government. Close coordination with the United States Attorney's Office is essential in both of these situations.

(10) All representations made to an informant regarding his/her future prosecution in cases in which he/she is a subject, must be made by the United States Attorney's Office, on behalf of the United States Government, and not by the case Agent or others, on behalf of the FBI.

(11) Care must be exercised in handling informants to ensure that they are provided with no information other than that which is necessary to carry out their assignments. Any disclosure of information to an informant obtained from criminal investigative files must have the express approval of the SAC and be documented in the informant's main file. All disseminations to informants must comply with the provisions of the Privacy Act. No dissemination may be made of information which is classified, which identifies other informants or cooperative witnesses, which is Grand Jury material (see Rule 6(e), Federal Rules of Criminal Procedure), or which is otherwise privileged. When it is decided to disseminate information regarding third persons or entities from FBI files, a teletype must be submitted to FBIHQ, on a UACB basis, under the informant's symbol number caption, setting forth the following information: (See (g) below.)

(a) That the SAC of the field office has authorized dissemination of information from FBI criminal investigative files.

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(b) The nature and seriousness of the matter being investigated.

(c) Specific details outlining the need to furnish the information to the informant.

(d) The specific information which is to be furnished to the informant.

(e) The fact that the information to be released has been coordinated with the appropriate field divisions that may be affected by such dissemination.

(f) In emergency situations, the SAC, or in his/her absence, the ASAC, may authorize the dissemination of such information from criminal investigative files and immediately thereafter advise FBIHQ in the manner described herein.

(g) If it is determined that dissemination of information from either civil or applicant investigative files is necessary in order to give the informant credibility, particularly in investigative matters dealing with loss of life, destruction of property, or which could have other serious consequences, or which may contribute to the solution of a serious crime, the SAC must seek authority from FBIHQ prior to making such a disclosure. The request in this instance must include all information outlined above in 137-4 (11) (a)-(e).

(h) If it is determined that the information from FBI files which is to be given to an informant concerns an individual of no investigative interest to the FBI, the individual should, except in the situations set forth below, be contacted in order to obtain consent to utilize the needed information. Such contact with a third party should not take place if to do so would jeopardize an investigation, disclose the identity of an informant, or when such contact could jeopardize the safety of the individual whose consent is being sought.

(i) When it is not possible or is otherwise inadvisable to obtain the third party's consent, the SAC must obtain authority from FBIHQ to disseminate such information. The request should also set forth the following information:

1. The nature and seriousness of the matter being investigated;

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- | 2. | An outline of the need to furnish the information to the informant;
- | 3. | A list of specific information to be furnished to the informant;
- | 4. | Justification for not advising the individual to whom the information pertains;
- | 5. | What effect such disclosure might have on the individual's reputation in the community; and
- | 6. | The personal recommendation of the SAC.

(j) If it is determined by the SAC that dissemination of information being considered for disclosure to an informant contains derogatory information regarding an individual who is or is not of investigative interest to the FBI, the SAC will personally make a recommendation to FBIHQ requesting authority to utilize such information.

(k) In all cases described above, wherein FBIHQ authority is required for dissemination of information from FBI files to FBI informants, this authority will be granted at the Section Chief level. All instances of such dissemination will be reviewed by the Director or Director's designee annually. The Director or Director's designee will personally authorize the dissemination of information to informants which is taken from applicant or civil files. Further, the Attorney General or Attorney General's designee will be notified of such disseminations.

(12) Informants will not be used to obtain information relating to legal defense plans or strategies. When a person has been formally charged with a crime and criminal proceedings are still pending, informants will not be used to deliberately elicit information concerning the crime(s) for which the person was charged. An individual is formally charged when he/she has been charged by indictment or information or after his/her initial appearance following arrest.

(13) Information of value provided by an informant on violations which are not of an investigative interest to the FBI should be disseminated to the appropriate law enforcement agency. If full disclosure is not made for one of the following reasons, then, whenever feasible, the field office should make at least limited disclosure to the law enforcement agency having jurisdiction. The



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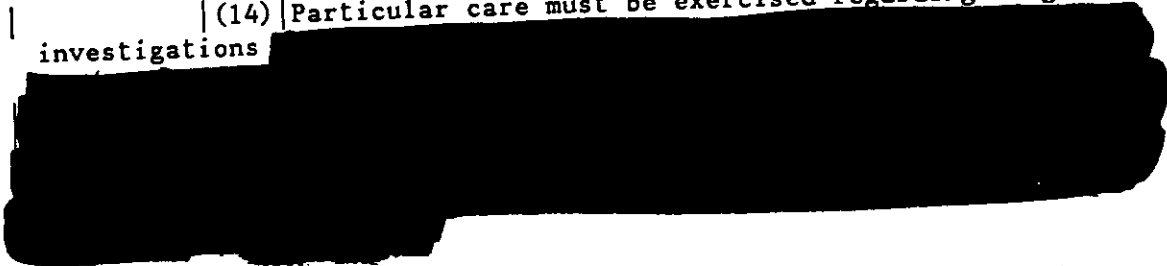
disclosure should be sufficient to apprise them of the nature and extent of the criminal activity. Full disclosure should be made to the appropriate law enforcement agency as soon as the need for restricting dissemination is no longer present. The action taken and the justification for the action should be documented in the informant's main file. Factors to be considered in making such a disclosure are whether the disclosure would jeopardize:

(a) The identity of an informant/cooperative witness;

(b) The life or personal safety of an FBI Agent, informant/cooperative witness or other persons; or

(c) A major ongoing FBI investigation.

(14) Particular care must be exercised regarding drug investigations



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b7E

(15) Increased participation in the investigation of drug trafficking will logically result in expanded use of consensual monitoring techniques. Care must be exercised to ensure that informants do not participate in consensual monitoring activities. An informant must be converted to a cooperative witness before he/she can participate in consensual monitoring activities. Any exceptions to this requirement must receive prior FBIHQ approval. Such individuals should be fully briefed as to the consequences of being converted to a cooperative witness, i.e., that they may be required to testify at trial. (See (3).)

(16) Domestic terrorism informants must be used in compliance with the "Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigations." Prior to opening an informant in a Domestic Terrorism investigation, there must be an open and approved Domestic Terrorism case. (See 137-3.1(3).)

(17) Undisclosed participation in the activities of an organization by an informant in a manner that may influence the exercise of rights protected by the First Amendment must be approved

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by FBIHQ, with notification to the Department of Justice.

(18) The lawful activities of legitimate organizations are not subject to investigation. However, individual members of such organizations may be independently involved in criminal activity. In order to ensure that the privacy of constitutionally protected activities will be respected, the SAC must approve the use of any individual where:

(a) An informant or Confidential Source will make use of formal affiliation with an organization that has a predominantly legitimate purpose, and the informant's or Confidential Source's formal affiliation will give him/her continued access to nonpublic information related to the legitimate purposes of the organization.

(b) An informant or Confidential Source will make use of formal or informal affiliation with an organization that is predominantly engaged in political activities.

(19) In determining whether to use an informant who is engaged in the lawful activities of legitimate organizations, the SAC should consider:

(a) The likelihood of responsible behavior by the informant during the course of his/her organizational membership.

(b) The ability of the FBI to focus the informant's reporting on members of the organization who are involved in criminal activities and to minimize adverse impact on innocent members of the organization.

(c) Whether the use of the informant or Confidential Source might inhibit free association or expression of ideas by innocent members of the organization in the future, or hinder the ability of the organization to function effectively.

(20) In order to avoid the appearance of impropriety, Agents are prohibited from engaging in business or financial relationships with informants. If an exemption to this general prohibition is deemed necessary, the SAC must articulate sufficient background to demonstrate to FBIHQ that the relationship will not create an appearance of impropriety or otherwise reflect adversely upon the FBI.

(21) Sensitive circumstances require particular caution.

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When a criminal informant is operating under the direction of the FBI in any matter, the handling Agent and field Supervisor will review appropriate Attorney General's Guidelines on Undercover Operations Revised 11/13/92 as well as the MIOG, Part I, Section 137 and consult with FBIHQ in the event that questions arise regarding sensitive circumstances. The following represent sensitive circumstances requiring Section Chief level approval (a discussion of extraordinary criminal activity is provided at 137-5.1(2):

(a) Any investigative activity which involves the possibility of a criminal informant engaging in activity which involves "sensitive circumstances" as defined herein, must be presented to the appropriate CID section prior to the activity taking place. The section will either authorize the activity or refer it to the Undercover Review Committee for review/approval. For purposes of these guidelines, sensitive circumstances are involved if there is a reasonable expectation that the investigative activity will involve--

1. An investigation of possible criminal conduct by any elected or appointed official, or political candidate, for a judicial-, legislative-, management-, or executive-level position of trust in a Federal, state, or local governmental entity or political subdivision thereof.

2. An investigation of any public official at the Federal, state, or local level in any matter involving systemic corruption of any governmental function.

3. An investigation of possible criminal conduct by any foreign official or government, religious organization, political organization, or the news media.

NOTE: There are some circumstances involving officials in judicial, legislative, management, or executive-level positions which may logically be considered nonsensitive. In such instances, the Section Chief, White-Collar Crimes Section, FBIHQ, who has a national perspective on matters involving public officials, must be consulted for a determination of sensitive circumstances.

4. Engaging in activity having a significant effect on or constituting a significant intrusion into the legitimate operation of a Federal, state, or local governmental entity.

5. Establishing, acquiring, or using a proprietary.

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6. Providing goods or services which are essential to the commission of a crime, which goods and services are reasonably unavailable to a subject of the investigation except from the Government.

7. Activity that is proscribed by Federal, state, or local law as a felony or that is otherwise a serious crime -- but not including the purchase of stolen or contraband goods; the delivery or sale by the Government of stolen property whose ownership cannot be determined; the controlled delivery of drugs which will not enter commerce; the payments of bribes which are not included in the other sensitive circumstances; or the making of false representations to third parties in concealment of personal identity or the true ownership of a proprietary (this exemption does not include any statement under oath or the penalties of perjury).

NOTE: Some of the above activities, including the controlled delivery of drugs and bribe payments, are subject to specific review and approval procedures. These matters must be coordinated with FBIHQ.

8. A significant risk that a person participating in an investigative activity will be arrested or will supply falsely sworn testimony or false documentation in any legal or administrative proceeding.

9. Attendance at a meeting or participation in communications between any individual and his or her lawyer.

10. A significant risk that a third party will enter into a professional or confidential relationship with a person participating in an investigative activity who is acting as an attorney, physician, clergyman, or member of the news media.

11. A request to an attorney, physician, member of the clergy, or other person for information that would ordinarily be privileged or to a member of the news media concerning an individual with whom the news person is known to have a professional or confidential relationship.

12. Participation in the activities of a group under investigation as part of a Domestic Security investigation or recruiting a person from within such a group as an informant.

13. A significant risk of violence or physical injury to individuals or a significant risk of financial loss.

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14. Activities which could result in significant claims against the United States arising in tort, contract, or for compensation for the "taking" of property.

15. Untrue representations by a person participating in an investigative activity concerning the activities or involvement of any third person without that individual's knowledge or consent.

EFFECTIVE: 12/20/93

137-4.1 Operation of Informants by Task Force Members (See MIOG, Part I, 137-4.2(5).)

(1) The primary purpose of these guidelines is to ensure that the integrity of the Criminal Informant Program is not diminished as a result of the implementation of the task force concept. These guidelines attempt to balance the need to encourage full cooperation among FBI and non-FBI task force personnel, while maintaining the level of security traditionally afforded to FBI informants. To attain this balance, Agents should limit the disclosure of the identities of FBI informants to non-FBI task force members to those situations where it is essential to the effective performance of their duties.

(2) The SAC of the office of origin may authorize task force members to act as a co-case Agent. Task force members who have been authorized by the SAC to act as a co-case Agent may be present at debriefings, witness payments, and have access to the informant's file. However, an alternate FBI case Agent must be assigned to handle the informant in the absence of the case Agent. The FBI case Agent or alternate Agent is ultimately responsible for the operation and control of the informant, including the responsibility for the preparation and submission of the necessary paperwork. A co-case Agent may meet with an informant without being accompanied by an FBI Agent, provided each such contact is fully documented. While the co-case Agent may make such contacts, it is recommended that the case Agent or alternate Agent be present during meetings with the informant. The presence of an Agent at such meetings not only serves to foster rapport, but also to ensure compliance with FBI and Attorney General Guidelines.

(3) Task force members may not be provided with the

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identity of an FBI informant, unless the SAC has granted appropriate disclosure authority or the SAC has approved him/her to be a co-case Agent for that specific individual. All task force members who have been designated as a co-case Agent must be advised of all relevant FBI and Attorney General Guidelines regarding the development and operation of FBI informants. The fact that the co-case Agent has been provided these instructions should be documented in the informant's file.

(4) In addition to being advised of the relevant FBI and Attorney General Guidelines, a task force member who has been authorized to act as a co-case Agent must be advised that:

(a) He/She is not to make any further disclosure of the identity of the informant, including to other members of his/her department or agency.

(b) He/She is not to prepare, or cause to be prepared, any paperwork or other record, other than official FBI records, regarding their contacts with or payments to FBI informants.

(c) He/She may not provide his/her department or agency with any documents or information which identify or tend to identify an FBI informant.

The fact that these instructions have been given to the task force member must be documented in the informant's file.

EFFECTIVE: 12/20/93

137-4.2 Disclosure Authority (See MIOG, Part I, 137-2 & 137-4(7), Part II, 3-8.4.)

(1) The SAC, or in his/her absence the ASAC, is responsible for granting disclosure authority to disclose the identity of an informant and will necessarily cause such disclosure of the release of information contained in an informant's file. In the decision-making process it is recommended the SAC consider the following issues:

(a) The specific nature of the information to be disclosed.

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(b) The name, title and agency or department of all individuals who will have access to the information.

(c) The specific nature of the request, demand or order which generated the disclosure request.

(d) Whether the disclosure will have an adverse impact on any individuals or FBI investigations.

(e) The SAC's recommendation as to whether the FBI should voluntarily comply with the request or whether an attempt should be made to assert appropriate administrative or legal objections to the request, demand or order.

(2) The response to any subpoena, court order, or any request bearing on the identification of an informant or the production of any informant's file, document, data, or disclosure of the identity of the informant to any individual, must have prior SAC approval. Where appropriate, the field office should have the informant execute a release form (FD-746) prior to the disclosure of the informant's identity or any information provided by the informant. Should the informant refuse to sign the release, the refusal should be noted at the bottom of the form and the informant should be advised that the FBI may nevertheless release the informant information requested, as the informant privilege belongs to the FBI as opposed to the informant. The specific admonishment given to the informant should be recorded at the bottom of the form and the form should be witnessed by two Special Agents.

(3) Any disclosure of information in the informant's file outside of the FBI, should be documented in the informant's main file, including the name of the person to whom the informant's identity was disclosed, the specific nature of the information disclosed and the reason for the disclosure.

(4) Physical possession of the source file is never to be transferred to any individual outside the FBI other than a Federal judge for in-camera ex parte review. Any dissemination of serials from the source's files is to be done only after appropriate redaction and subsequent review by both the Principal Legal Advisor and SAC.

(5) Members of joint FBI task forces may be provided with the identity of an informant on SAC authority consistent with Section 137-4.1.

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(6) FBIHQ is to be subsequently advised of the facts and circumstances regarding all disclosure issues.

EFFECTIVE: 12/20/93

137-4.3 Domestic and International Travel by Informants (See MIOG, Part II, 23-8.)

(1) DOMESTIC TRAVEL - An SAC may authorize travel by an informant within the continental United States following coordination with the SAC, or in his/her absence, the ASAC, of the field office to be visited. SAC authorization is only required in instances where the informant is traveling on behalf of or at the behest of the FBI. Travel may not be approved by any other management or supervisory official within the field office. Normal travel within the continental United States should be confirmed by teletype to the affected divisions.

(2) INTERNATIONAL TRAVEL - All informants who travel to an extraterritorial jurisdiction, either on behalf of or at the behest of the FBI, regardless of the number or frequency of such travel, must adhere to the provisions of the "Attorney General Guidelines on the Development and Operation of FBI Criminal Informants and Cooperative Witnesses in Extraterritorial Jurisdictions." The approval mechanism necessary for informants to travel to extraterritorial jurisdictions is set forth in the aforementioned Attorney General Guidelines and may only be obtained on a request-only basis, not on a UACB basis.

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||137-5| INFORMANT PARTICIPATION IN AUTHORIZED AND UNAUTHORIZED  
CRIMINAL ACTIVITY

|An informant may not be authorized to engage in any activity that would constitute a crime under state or Federal law, if engaged in by a private person acting without the authorization or approval of an appropriate FBI and United States Attorney's Office representative, except as authorized by this section. For the purposes of this section, such activity is referred to as "authorized criminal activity."|

EFFECTIVE: 12/20/93

||137-5.1 Informant Participation in Authorized Criminal Activity  
(See MIOG, Part I, 137-5.2(1) & 137-6(1).)|

(1) Approval for participation by an informant in authorized criminal activities of an ordinary nature (those not fitting the definition of extraordinary criminal activity in ||137-5.1(2)), other than the routine purchase of stolen or contraband goods, requires authorization at the ASAC level or above. Participation in the purchase of stolen goods or contraband can be authorized at the level of the field supervisor or above. |For the purpose of these guidelines, drugs are contraband. | The authorizing official must make a written finding in advance of any such activity. | This written finding must be documented in the informant's main file prior to the activity and should specify the facts and circumstances relied upon in making this determination. In emergency situations, the ASAC or the appropriate Supervisory Special Agent may verbally authorize the activity and immediately thereafter document that authorization in the informant's main file. |The finding must state that: (See (3) below.)

(a) The activity is necessary to obtain information or evidence for |paramount|prosecutive purposes, to establish or maintain credibility|or cover|with|persons associated with criminal activity in connection with the investigation,|or to prevent or avoid the danger of|death or serious bodily|injury; or|

(b) The need for participation in a criminal activity by an informant outweighs the seriousness of the conduct

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involved.

(2) Participation by an informant in authorized extraordinary criminal activity may only be made by the SAC, or in the SAC's absence, the ASAC, after consultation with and the approval of the United States Attorney. Additionally, the participation of an informant in any of these activities may constitute a sensitive circumstance, and therefore will require prior approval of the appropriate Section Chief, FBIHQ. The SAC's written determination and a record of the United States Attorney's approval shall be immediately forwarded to FBIHQ and to the Assistant Attorney General in charge of the Criminal Division or his/her designee, in a form suitable to protect the identity of the informant. The United States Attorney's opinion should be confirmed in writing in such a manner as to protect the informant's identity. Extraordinary criminal activity is defined as that activity which may involve a significant risk of violence, corrupt actions by high public officials or severe financial loss to any victim. FBIHQ must be notified by teletype of such authorizations, as well as the concurrence of the United States Attorney. (Sensitive circumstances are discussed in detail at 137-4(21). (See (1) above & (3) below.)

(a) If the SAC reasonably determines that an emergency situation exists requiring an informant's participation in extraordinary criminal activities prior to being able to obtain the United States Attorney's opinion, the SAC may approve the participation on his/her own authority but shall immediately thereafter notify the United States Attorney, FBIHQ and the Assistant Attorney General, Criminal Investigative Division or his/her designee. Situations wherein the SAC could utilize such authority are: to protect loss of life or substantial property, to apprehend or identify a fleeing offender, or to protect the imminent loss of essential evidence. In such emergency situations, the SAC shall attempt to consult by telephone with a senior member of the United States Attorney's Office before approving the informant's participation.

(3) Written findings made pursuant to 137-5.1(1) and (2) must be documented in the informant's main file prior to the activity and should specify the facts and circumstances relied upon in making this determination, the dates for which the criminal activity has been authorized, the concurrence of the United States Attorney and a description of the anticipated criminal activity expected to take place. In emergency situations, the documentation should be done as soon as possible following the activity.

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(4) When it is anticipated that the informant will participate in authorized criminal activity incident to a Group I undercover operation, approval must be given in advance by an Assistant Director on the recommendation of the Criminal Undercover Operations Review Committee, except that the Deputy Director's approval is required for participation in authorized criminal activity involving a significant risk of violence or physical injury to individuals. All approvals must be recorded in writing.

(5) When approval is granted for an informant to participate in criminal activity, he/she will be instructed that under no circumstances are they to participate in any act of violence, initiate a plan to commit criminal acts or use unlawful techniques to obtain information for the FBI.

(6) The field office should, to the extent practicable, ensure that:

(a) The adverse effect of the activity on innocent individuals is minimized.

(b) The informant's participation is minimized and that the informant is not the primary source of technical expertise or financial support for the activity in which he/she will participate.

(c) The informant's participation in the activity is closely supervised by the FBI.

(d) The informant does not directly profit from his/her participation in the activity.

(7) Any proposal by a Confidential Source to engage in otherwise criminal activities in order to gather information changes the status of that individual from Confidential Source to informant.

(8) The alternate contacting Agent or second witnessing Agent must be present whenever the informant is briefed regarding the nature and extent of his/her authorized criminal activity unless strong written justification can be given to and approved by the SAC, or in the absence of the SAC, the ASAC, not to have a second Agent present.

(9) The SAC must review all such criminal activity by informants at least every 90 days. The SAC's review must be documented in the informant's main file or the appropriate control file.

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137-5.2 Informant Participation in Unauthorized Criminal Activity

(1) While carrying out an FBI assignment, an informant or Confidential Source has a unique relationship with the FBI; therefore, his/her participation in any unauthorized activity in connection with an FBI assignment, even of a minor character, must be carefully scrutinized. Hence, whenever it is determined that an informant or Confidential Source has participated in criminal activity which was not authorized pursuant to Section 137-5.1, the field supervisor will ensure that the appropriate law enforcement or prosecutive authorities are advised of any violations of law and make a written determination of whether continued use of the informant is justified. This determination should be documented in the informant's main file.

(a) Whenever a field office learns of the commission of an unauthorized criminal act by an informant or Confidential Source, FBIHQ must be notified immediately. A recommendation must be made whether to notify the appropriate state or local law enforcement or prosecutive authorities of any violation of law, as well as whether continued use of the informant or Confidential Source is justified. In situations where notification to state or local authorities is determined to be inadvisable, or where any request or recommendation is made to state or local authorities to delay or forego enforcement action, the field office must advise FBIHQ of:

1. The facts and circumstances surrounding the informant's or Confidential Source's criminal violation;
2. The nature of the notification or request that was made to state or local law enforcement or prosecutive authorities, and the justification for the notification;
3. The nature of the information gained as a result of the violation; and
4. What use will be made of any information gathered through the violation of law.

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Thereafter, the FBIHQ will make a specific determination on whether to continue use of the informant or Confidential Source.

(b) A field office must notify FBIHQ whenever it learns of participation by an informant or a Confidential Source in an act of violence, even when appropriate state or local law enforcement or prosecutive authorities have been notified. A secure teletype must be submitted to FBIHQ setting forth the facts and circumstances concerning the informant's violent activity, what notification or request has been made to state or local law enforcement or prosecutive authorities, what use will be made of any information gathered through the activity; and, whether the office will continue to use the informant.

(2) In determining whether to notify appropriate Federal, state or local law enforcement or prosecutive authorities of an informant's/Confidential Source's criminal activity, the following factors should be considered:

(a) Whether the crime was completed, imminent or inchoate.

(b) The seriousness of the crime in terms of danger to life and property.

(c) Whether the crime is a violation of Federal or state law, and whether a felony, misdemeanor or lesser offense.

(d) The degree of certainty of the information regarding the criminal activity.

(e) Whether the appropriate authorities already know of the criminal activity and the informant's/Confidential Source's identity.

(f) The effect of notification on FBI investigative activity.

(3) Under no circumstances will the field office take any action to conceal a crime by an informant/Confidential Source.

(4) No factual representations or recommendations may be made regarding the disposition of any charges which may stem from unauthorized criminal conduct by the informant without prior FBIHQ authorization.

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||137-6| GUIDELINES AND INSTRUCTIONS TO BE DISCUSSED WITH  
INFORMANTS

The following matters must be made clear to the informant at the earliest opportunity, but in no event, later than the second contact after being converted. These admonishments must be reiterated at least annually or at any time there is an indication that there is a need. The fact that the informant has been so advised or readvised must be documented in his/her file and indexed on the FD-237. The admonishments are as follows:

(1) ASSISTANCE VOLUNTARY - The informant's assistance is strictly voluntary and will not exempt him/her from arrest or prosecution for any violation of law except where such violations were approved by the appropriate FBI official pursuant to Section 137-5.1.

(2) NOT EMPLOYEE OR UNDERCOVER AGENT - The informant is not and may not consider or represent himself/herself to be an employee or undercover Agent of the FBI.

(3) CONFIDENTIALITY - The informant's relationship must be maintained in the strictest confidence and he/she must exercise constant care to ensure that the relationship is not divulged to anyone.

(4) REPORT POSITIVE INFORMATION - The informant must report all positive information, both inculpatory and exculpatory, as promptly as possible.

(5) JURISDICTION - An informant who is providing information relating to specific criminal violations is to be advised of the pertinent legal issues related to the FBI's jurisdiction in that area.

(6) ACTS OF VIOLENCE - Informants will not participate in acts of violence. When asked to participate in an act of violence or when an informant learns of plans to commit an act of violence, the informant is to take all reasonable measures to discourage the violence, and report the incident to his/her handling Agent at their earliest opportunity.

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(7) UNLAWFUL TECHNIQUES - Informants will not use unconstitutional or unlawful techniques (e.g., breaking and entering, electronic surveillance, opening or tampering with the mail) to obtain information for the FBI.

(8) PLAN CRIMINAL ACTS - Informants will not initiate a plan to commit criminal acts.

(9) PARTICIPATION WITH SUBJECTS - Informants will not participate in criminal activities unless specifically authorized by the FBI.

(10) PAYMENTS ARE INCOME - If the informant is to be paid, he/she must be advised that the payments are taxable for Federal income tax purposes.

(11) GRANT OF CONFIDENTIALITY - The informant must be advised that the FBI will not disclose either his/her identity or the information provided by him/her on a confidential basis which tends to identify him/her, unless necessitated by compelling operational, litigative or prosecutorial considerations.

(12) CONFIDENTIAL SOURCE - Need only be advised that he/she is not acting as an agent or employee of the FBI and that under no circumstances should he/she use unlawful techniques to obtain information. The fact that a Confidential Source has been so advised must be documented in the main file and indexed on the FD-237.

EFFECTIVE: 12/20/93

137-7 RESTRICTIONS REGARDING THE DEVELOPMENT AND OPERATION OF INFORMANTS (See MIOG, Part I, 137-3.1.1 (3) & (4), 137-3.2(1)(1) & Part II, 3-8.6.)

SAC authority is required to initiate an SI on an individual and FBIHQ authority is required to convert that individual to a fully operational privileged informant. For the purposes of this section, the following individuals are to be considered privileged informants: any person admitted to practice law in state court, any licensed physician, any practicing member of the clergy, and any member of the news media. Privileged informants that have been

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certified as to suitability must be authorized by the Assistant Director, Criminal Investigative Division (CID), before they can be converted to a fully operational informant. A field supervisor may approve the acceptance of information from a privileged individual on a one-time basis where the information is not privileged and is not collected at the behest of the FBI.

EFFECTIVE: 12/20/93

137-7.1 Restrictions Concerning the Development and Operation of Privileged Occupation Informants (See MIOG, Part I, 137-3.1.1(5), 137-3.2(3), 137-7.1.2 & Part II, 3-8.6.)

(1) Acceptance of information from a privileged individual on a one-time basis, where the information is not privileged and is not collected at the request of the FBI, may be approved by a field supervisor.

(2) The operation of a privileged informant may constitute a sensitive circumstance and therefore may require the prior approval of the appropriate Section Chief, FBIHQ.

(3) The privileged informant's value to FBI investigative interests should be evaluated in terms of possible Fifth and Sixth Amendment and conflict of interest issues. These individuals will only be approved for operation when it can be clearly articulated that their assistance will be of such significant value to the FBI's law enforcement mission that it outweighs the sensitivity of these areas of concern, and the assistance cannot be reasonably obtained in another manner.

(4) The Principal Legal Advisor must review the results of every contact with all privileged informants to ensure that all legal or ethical issues are identified and properly addressed.

(5) An individual in the privileged category may not be operated as an informant if he/she would be willing to provide information if his/her confidentiality were not protected.

(6) Privileged informants must be advised that:

(a) In seeking information from him/her, the FBI is



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not requesting him/her to violate any legal obligation of confidentiality.

(b) He/She should not furnish any information to the FBI which would violate such a privilege.

(c) The FBI will not knowingly give him/her any assignments which will cause a violation of his/her legal or ethical obligations.

The fact that these advisements were given must be documented in the informant's file.

(7) If it is determined that the informant has furnished information which violates his/her obligation of client confidentiality, such information should be recorded for the purpose of:

(a) Establishing that the information was received and that the issue was recognized.

(b) Documenting that no use was made of the information.

(c) Acknowledging that the information received was relevant to an FBI investigation, and that the investigation proceeded independent of such information.

(8) Use of privileged or other client-related information will be permitted if it is furnished regarding a situation wherein there could be loss of life, serious physical injury, destruction of property of substantial value, result in other serious consequences or which may contribute to the solution of a serious crime. If such a situation does develop, depending upon the exigency of the circumstances, the United States Attorney's Office and FBIHQ must be consulted prior to any use of the privileged information. If, because of exigent circumstances, consultation with the United States Attorney's Office and FBIHQ is not possible prior to the use of the information, both the United States Attorney's Office and FBIHQ must be advised immediately after that use. Only in the most urgent of circumstances should FBIHQ and the United States Attorney's Office prior concurrence not be obtained. Use of privileged information is to be thoroughly documented and will be allowed only in serious situations where to ignore the information could be construed as neglect of duty, notwithstanding the fact that such information may not be admissible in a court of law. (See MIOG, Part I,

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| 137-7.1.1(1.) |

| (9) | Privileged informants who have not made significant contributions | to FBI investigative matters | within any six-month period should be closed. This will preclude the continued operation of marginal privileged informants and limit | contacts with privileged sources to those which are fully justified by operational considerations. |

| (10) | Any change in a privileged informant's status in the community must be immediately brought to the attention of FBIHQ. These changes would include appointment or election to public office, or | extensive | media attention. |

EFFECTIVE: 12/20/93

| 137-7.1.1 Additional Restrictions Regarding the Operation of Attorneys (See MIOG, Part II, 3-8.6.)

The operation of an attorney as an informant presents a significant risk of creating the perception of conflict of interest due to his/her obligation to fully represent his/her client. Due to the sensitivity of these circumstances, the operation of attorney informants must be in strict adherence with the following instructions:

| 137-7.1(8), | (1) | EXCEPT FOR EXTRAORDINARY SITUATIONS AS SET FORTH IN NO INFORMATION | MAY | BE ACCEPTED FROM AN ATTORNEY INFORMANT REGARDING ANY OF HIS/HER CRIMINAL OR CIVIL CLIENTS REGARDLESS OF WHETHER OR NOT THE INFORMATION BEING PROVIDED IS DERIVED FROM A PRIVILEGED COMMUNICATION. The attorney informant should be specifically advised not to furnish any information, privileged or otherwise, concerning his/her clients. THIS RESTRICTION APPLIES TO INFORMATION RECEIVED BY THE ATTORNEY INFORMANT DURING THE ATTORNEY-CLIENT RELATIONSHIP AND DOES NOT APPLY TO INFORMATION RECEIVED BY THE ATTORNEY INFORMANT PRIOR TO OR SUBSEQUENT TO THE ATTORNEY-CLIENT RELATIONSHIP.

| (2) | No | payments | for services | are | to be made to an attorney with a criminal defense practice | without prior FBIHQ approval. |

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137-7.1.2 Additional Restrictions Regarding the Operation of  
Members of the News Media (See MIOG, Part II, 3-8.6.)

In addition to the restrictions set forth in Section 137-7.1, information obtained from privileged informants who are members of the news media must be relevant to the FBI's investigative responsibilities. These individuals are not to be utilized for the purpose of controlling or manipulating the news media. Further, these individuals must be advised that the FBI will not knowingly influence or attempt to influence the editorial policy of the news media.

EFFECTIVE: 12/20/93

137-7.2 Restrictions Concerning the Operation of Specific  
Individuals as Informants Based on their Employment  
or Status (See MIOG, Part I, 137-10.)

(1) The following informants may be authorized for operation by the SAC, or an individual designated by him/her, if the requirements set forth below are met and set forth in the opening teletype. This authorization must be noted in the opening teletype. Where such approval has been granted, the teletype may be submitted on a UACB basis. If the requirements cannot be met, these individuals may be opened on a request-only basis, not on a UACB basis.

(a) FEDERAL OR STATE PROBATION OR PAROLE.  
Individuals on federal or state probation or parole may not be operated as informants in violation of the conditions of their probation or parole. It is required that these conditions be determined during suitability and pertinence inquiries and the results of this determination be documented in the conversion teletype as described in 137-3.2. In those cases where an individual would be in violation of probation or parole restrictions, if operated as an informant, the field office should obtain the necessary probation or parole official's permission to operate the individual. This authorization must be documented in the informant's file. In those

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instances where an individual's probation or parole officer cannot be contacted, FBIHQ must be advised of the reason why this contact cannot be made, the need by the field office to use the individual and a request for FBIHQ to grant authority for use of the individual as an informant. Where a field office deems that it would be inappropriate to contact either the source's probation or parole officer or sentencing judge, the field office may request FBIHQ authorization to operate the individual without the aforementioned concurrences. Such a request must set forth sufficient facts to justify a deviation from the aforementioned policy.

The United States Parole Commission (USPC) requires that parolees and mandatory releasees agree in writing not to act as informants or in other similar capacities for a law enforcement agency. This requirement does not preclude accepting information from such persons as citizen complainants. These individuals may be considered for development as informants when the period of their parole has expired or in those cases wherein the field office has obtained the necessary parole official's permission and this is documented in the conversion teletype described in 137-3.2. The operation of any federal parolee must be in compliance with the USPC rules and regulations.

(b) INMATES. The use of a cellmate informant, that is, one who has been placed in the cell for the purpose of gathering information regarding pending charges, requires the prior approval of FBIHQ and the concurrence of the prosecuting United States Attorney's Office. Cellmate informants may only be used as listening posts and may not question an accused or stimulate conversations concerning charged offenses. (See Legal Handbook for Special Agents, 8-3.3.2(1).) Any use of federal inmates, or anyone in the custody of the U.S. Bureau of Prisons, even if held in a local holding facility, which results in the release or transfer of an inmate informant, in authorized criminal activity, or consensual monitoring involving the inmate wearing a body recorder, must have prior approval of Office of Enforcement Operations (OEO), Criminal Division, Department of Justice (DOJ). This approval should be requested by teletype to the FBIHQ substantive unit subsequent to opening and prior to utilization of the source. (If an informant becomes operational, the informant should be converted to a cooperative witness. Operational is defined as wearing a body recorder, the introduction of an undercover Agent, etc.) In order to facilitate the submission of the appropriate information in the request to DOJ, OEO, the following outline is provided so that a well-informed decision can be made:

1. Location of prisoner;

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2. Identifying data on the prisoner, e.g., date of birth, place of birth, Bureau of Prisons number, Social Security Number, and physical description;
3. Charges for which prisoner is incarcerated; including date, sentence, judicial district, and sentencing judge;
4. Copy of prisoner's arrest record or summary of the arrest record must be submitted;
5. The necessity for utilizing the prisoner in the investigation including what other techniques have been tried and why they have failed;
6. The name of the investigation and his/her role in the crime or organization under investigation;
7. Describe the prisoner's relationship or association with the target(s) under investigation;
8. Are the targets aware of the prisoner's incarceration status? If so, what is the prisoner's cover story to avoid jeopardizing his/her safety or the investigation?
9. Detailed explanation of the operational role the prisoner is to perform;
10. Describe the security measures to be taken to ensure the prisoner's safety, alleviate risk to the public, and prevent the prisoner's escape;
11. Length of time the prisoner will be needed in the activity;
12. Will the prisoner be needed as a witness and will he/she be considered for the Witness Security Program?
13. Will a prison redesignation be necessary upon completion of the operational role?
14. Will the prisoner remain in the custody of the investigative agency; be housed in jails or similar facilities at certain times; or will the prisoner be unguarded except for their own protection?
15. The total number of law enforcement agents

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assigned to the security detail;

16. Has the request been endorsed by the appropriate federal/state prosecutor? If not, provide a detailed explanation. Please provide name, phone number, and location of the Assistant United States Attorney endorsing the request.

17. An interim progress report should be submitted if a continuance, beyond date originally projected for conclusion, is necessary, and a detailed progress report should be submitted at the conclusion of activity;

18. Sealed court order(s) must be obtained after the request has been approved if the prisoner is unsentenced or on writ status.

(c) SWORN LAW ENFORCEMENT OFFICERS. The opening of a sworn law enforcement officer as an informant will be permitted only in those instances where the individual is providing information in investigations into corruption within his/her employing governmental entity. A statement regarding the specific nature of the information to be provided and the reason why the information cannot be furnished to his/her department must be included in the opening teletype.

(d) ELECTED/APPOINTED GOVERNMENT OFFICIALS (FEDERAL, STATE AND LOCAL). These individuals must be advised that the FBI will only accept information concerning alleged criminal violations of law and will not accept information concerning the political beliefs or personal lives of individuals within their governmental body, or the private or confidential deliberations of that body, unless violations of law are occurring. Further, the FBI will not knowingly influence or attempt to influence any action of the governmental body unless in furtherance of a compelling investigative interest and authorized by the appropriate FBIHQ official. The fact that these advisements were given must be documented in the informant's file and set forth in the opening teletype.

(e) UNION OFFICIALS. These individuals must be advised that the information which they provide is subject to the reporting provisions of the Employee Retirement and Income Security Act and that the FBI is not interested in, nor will it accept, information concerning legitimate union activities. Further, the FBI will not knowingly influence or attempt to influence any action of the union.

(f) FINANCIAL INSTITUTION EMPLOYEES. These

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individuals must be briefed on the provisions of the Right to Financial Privacy Act and advised that the FBI will not knowingly accept information which violates the provisions of that Act.

(g) SCHOOL EMPLOYEES. These individuals must be advised of the provisions of Title 20, USC, Section 1232(g), commonly known as the Buckley Amendment. This statute generally prohibits educational institutions and their employees from releasing information from records which they maintain on students of the institution. Such informants must be advised of the provisions of the law, even if the information they are providing is obtained independent of their employment.

(h) ACTIVE-DUTY MILITARY. The provisions of the Posse Comitatus Act, Title 18, USC, Section 1385, may prevent the use of these individuals in certain types of investigations. These individuals must be advised that the FBI will neither seek nor accept assistance or information which will violate the provisions of the Posse Comitatus Act.

(2) The operation of the following informants may only be authorized by FBIHQ, not on a UACB basis. The opening communication should clearly articulate that their assistance will be of such significant value that it outweighs the sensitivity of operating the individual and that the assistance cannot be reasonably obtained in another manner. (See MIOG, Part I, 137-3.1.1 (5).)

(a) WITNESS SECURITY PROGRAM (WSP). The operation of a current or past participant in the WSP requires the approval of the Department of Justice's Office of Enforcement Operations (OEO) (See MIOG, Part II, Section 27-13.2.) A teletype with the [REDACTED] as the subject must be submitted to the Sensitive Information Unit, FBIHQ, Room 4944, with the following information:

1. Name of source or person relocated (source may be a witness or a person relocated as a result of witness's cooperation such as a family member, boyfriend, or girlfriend).

2. Alias(es) used by the witness.

3. Approval of the appropriate headquarters' official of the concerned agency (will be given by the SIU when communication is forwarded to OEO).

4. If the source is not a witness, relationship of source to the witness, and name of witness.

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5. Identifying data on source, e.g., sex, date of birth, place of birth, Social Security Number, and Bureau of Prisons Register Number (if applicable).

6. Source's employment; if unemployed, how source is subsisting; and extent this activity jeopardizes source's livelihood.

7. Name(s) of target(s) of investigation and their role in the crime or organization under investigation.

8. Significance and/or scope of the criminal activity and target(s).

9. Source's relationship or association with the target(s) under investigation.

10. Necessity of utilizing source in investigation, including details about nature of use being requested.

11. Consideration of alternatives to source's use and indication of why they will not work.

12. Detailed account of source's involvement in criminal activity subsequent to being approved for WSP services.

13. Appraisal of whether request centers on source's new criminal involvement, and how source is aware of new criminal activity.

14. The benefit that source expects in return for his/her cooperation.

15. Statement as to whether source's activity requires him/her to testify.

16. Indication as to whether source completed testimony for which he/she was placed in the WSP. If known, district and sponsoring AUSA.

17. If known, details about other agencies' use of source since relocation.

18. Probation or parole status of source (indicate whether U.S. Probation Office and U.S. Parole Commission

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should be notified).

19. Security measures to be taken to ensure source's safety and minimal risk to the public.

20. Use of electronic devices, body recorders, etc. (cooperative witnesses only).

21. Name of case Agent or Agent specifically responsible for safety of source.

22. Length of time source's assistance will be needed regarding this investigation.

23. Whether source is incarcerated; if so, location and whether prosecutor and/or judge should be advised.

24. Whether the source will remain in custody of the FBI, be housed in jails or similar facilities at certain times, or whether source will be unguarded except for his/her own protection.

25. If the source is incarcerated, whether a prison redesignation will be necessary upon completion of activity.

26. Whether source is represented by counsel and whether counsel concurs with activity.

27. If applicable, whether activity has been endorsed by appropriate federal/state prosecutor; if so, name, telephone number and location of prosecutor (cooperative witnesses only).

28. Whether source's activity will require submission of new WSP application and subsequent relocation.

29. Whether the source will be charged/indicted in this investigation.

(b) MINORS (INDIVIDUALS UNDER THE AGE OF 18). In requesting authorization to use a minor as an informant, the field office must indicate whether parental consent has been obtained for his/her use. If such consent has not been obtained, state whether such consent can or will be obtained. If obtaining consent from his/her parents is not feasible, the field office must state the justification for use of such an individual in the absence of parental consent.

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(c) BUREAU OF PRISONS (BOP) PERSONNEL. Utilization of BOP personnel requires approval of the Department of Justice's OEO. In submitting a request for review by OEO, the field must provide the appropriate FBIHQ substantive unit with the following information:

1. Name of BOP employee.

2. Location and job title of employee.

3. Necessity of utilizing the employee in the investigation. If other techniques are available, an explanation is required. Detail the activity in which the employee is to be engaged and the location and length of time the employee will be needed. Advise specifically whether the employee will be required to contact target(s), relatives, friends and associates outside the institution in connection with this investigation.

4. Name(s) of target(s) of the investigation and their role(s) in the crimes or organization under investigation.

5. Security measures to be taken to ensure the employee's safety.

6. Whether the employee will be needed as a witness.

7. Whether a job transfer will, or may, be necessary upon completion of the activity.

8. Whether the activity will jeopardize the employee's family, and if so, how.

9. Name(s), title(s) and location(s) of any BOP personnel and phone numbers with whom this matter has been, or will need to be discussed.

This does not apply to routine interviews of BOP personnel where the employee is not asked to perform an operational role in furtherance of an FBI investigation.

(d) COUNSELORS IN DRUG TREATMENT PROGRAMS. Federal law prohibits the opening of these individuals for the purpose of obtaining information on matters relating to the counseling of patients.

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EFFECTIVE: 07/30/97

137-8 | PAYMENTS TO INFORMANTS | (See MIOG, Part II, 32-1.) |

(1) The SAC is personally responsible for all payments to informants. All payments must be requested by the submission of a draft request form and a memorandum to the SAC. The memorandum must contain the case title, total amount previously paid to the informant during the Fiscal Year (FY), the date the informant file was opened, and the information justifying the requested payment. These requests should be closely scrutinized to ensure that they are commensurate with the value of the information received. This responsibility rests with the field office management.

(2) Payments to informants for services and expenses must be made from his/her case funds based on SAC or, in his/her absence, ASAC authority, and not from the substantive case fund payment authority. In resolving whether a payment should be charged to the informant or substantive case fund, it is useful to determine who derived the primary benefit of the payment, and whether the expense was incurred as a direct cost of operating the informant. Where the payment is made for the purpose of conferring a benefit to the informant or is made as a direct result of operating the informant, it should be charged against the informant's case fund authority and not the substantive case authority.

(3) The alternate contacting Agent or a second witnessing Agent must be present at all payments to an informant unless strong written justification can be given to and approved by the SAC, or in the absence of the SAC, the ASAC, not to have a second Agent present.

(4) An individual who has requested confidentiality may be paid one time for services rendered and/or expenses incurred under SAC authority without being opened as an informant. This one-time payment under SAC authority can be up to [REDACTED]. Should the person be paid a second time, he/she should be opened as an informant. This one-time payment policy may be waived by FBIHQ when necessary to maintain an individual for security or trial purposes. Payments to one-time nonsymbol sources are charged to the field office informant budget using the substantive case file number. Payments are therefore made from the case authority.

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b7E  
(5) The SAC or, in his/her absence, an ASAC, may approve payments to an informant for expenses in obtaining information, the performance of services, or information on a C.O.D. basis up to [redacted] per FY. In situations where an informant will incur expenses, such as travel, in connection with his/her operation or in order to obtain information for the FBI, the SAC may authorize payment of an advance for these expenses prior to the expenses actually being incurred by the informant. Where funds are advanced in this manner, the field office must ensure that the actual expenses incurred by the informant are determined and reconciled with the advance of funds. When the total of such payments to an informant reaches [redacted] additional payment authority must be obtained from FBIHQ before any further payments or advances can be made. Subsequent requests for additional payment authority should be submitted in increments of [redacted] or the amount required for the current FY, whichever is less. Such requests may exceed [redacted] where operational considerations necessitate an enhanced authority level. In these situations, the request should set forth adequate justification for the enhanced authority level.

(6) The request for an additional [redacted] payment authority should be submitted by secure teletype to the CIU, FBIHQ, under the pertinent informant caption on a request-only basis. The teletype must include:

(a) A specific request that an additional [redacted] payment authority be granted.

(b) The total amount paid to the informant to date for the current FY, broken down by services, expenses and total payments.

(c) A concise summary of the information or services provided by the informant, in chronological order, for which he/she has been paid since the last authorization. This summary should include the title and character of each case, the general nature of the information or service provided by the source in the investigation, and a statement as to the value of the information or service provided by the source, including statistical accomplishments attributed to the informant as a result of the information provided. Immediately following this information, set forth a separate paragraph showing the dates of payments under the prior authorization and the amount paid on each date, divided into the amounts paid for services and the amounts paid for expenses. For the benefit of the requesting Agent, this information is available in the field office through on-line inquiry of the Financial Management System (FMS).

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(7) Payments to Informants by an Auxiliary Office (AO)

When an informant provides services to an office other than his/her Office of Origin (OO), care must be taken to record each payment using the informant's file number. This may be accomplished in one of two ways:

(a) If the individual is expected to provide services or information to another office for an extended period of time, close the informant file at the OO and reopen it at the new OO.

(b) If the individual is providing only temporary assistance, the AO may make payment(s) through the draft system using the informant's file number assigned by the OO up to the maximum amount authorized for the FY. The AO must coordinate with the OO to ensure that payments do not exceed the informant's authorization level.

(c) Note that payments to informants will be charged to the informant budget of the field office making the payment.

(8) Lump-sum payments

(a) Each field office is encouraged to submit requests for lump-sum payments for the informant at the conclusion of any case in which he/she has made significant contributions to FBI investigative matters. These requests must be personally approved by the SAC or, in his/her absence, the ASAC. The SAC and ASAC should closely review lump-sum requests to ensure that all payments are justified and that the amount requested is appropriate under the circumstances. Requests for lump-sum payments should be furnished to FBIHQ by teletype captioned with the informant's symbol number, sent to the attention of the CIU, FBIHQ.

(b) Furnish the title and character of the FBI case and all pertinent details which will justify a lump-sum payment. Each funding request concerning any investigative program will be considered strictly on the merits of the case and the significance of the informant's contributions to that investigation. The following issues must be addressed in any request for a lump-sum payment:

1. Significance of the investigation.
2. Degree of assistance rendered by the informant. The following factors should be addressed:

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- a. Whether the informant was responsible for the initiation of the case.
- b. Quality of the information furnished by the informant.
- c. Whether the information was available from other sources.
- d. Length of time which the informant devoted to the investigation.
- e. Whether the informant participated in consensual monitoring activities.
- f. Whether undercover Agents were introduced by the informant.
- g. Potential risk for violence toward the informant or his/her family.
- h. Whether the informant was able to continue his/her normal employment while assisting in the investigation.
- i. Whether the informant suffered any financial loss as a result of his/her cooperation.
- j. Value of seized or forfeited property obtained as a result of his/her cooperation.
- k. Statistical accomplishments attributed to information or assistance provided by this informant.
- l. Whether the informant will testify.
- m. Potential for long-term investigative contributions by the informant.
- n. If the informant is to testify, whether the Federal prosecutor concurs in the payment.
- o. Whether the informant has or will receive any payment for services or expenses from any other law enforcement agencies in connection with the information or services

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| which he/she provided to the FBI. |

| (9) | Regular Pay

Recommendations for informants to receive regular payments should contain full justification and a proposed maximum amount to be paid to the informant on a regular basis. Such requests should contain the same information as provided in a request for additional payment authority and should be submitted by teletype to FBIHQ. The request for regular payment authority should specify the length of time for which the authority is sought and the specific reasons why the individual should be paid on a regular basis rather than by SAC authority. Communications requesting renewal of regular payment authority must be submitted at least one week prior to the expiration of the currently authorized period.

| (10) | Receipts

(a) A receipt must be obtained from all informants at the time of each payment. The receipt is to be signed by the informant using his/her code name, and witnessed by the case Agent or alternate Agent and a witnessing Agent. Both the paying Agent and the witnessing Agent must sign the receipt for all informant payments. Approval for not obtaining a receipt would be rare and must have the personal endorsement of the SAC or, in his/her absence, the ASAC. In the event that a receipt cannot be obtained, a certification, signed by the paying Agent and witnessing Agent, may be submitted as documentation for the payment.

(b) If it becomes necessary to make a correction on a receipt, such corrections must be initialed by the informant using his/her code name initials, and not by the Agent.

(c) Receipts should be forwarded to FBIHQ in accordance with the provisions of the CONFIDENTIAL FUNDING GUIDE. A copy of the receipt attached to the request memo is to be maintained in the informant's main file.

(d) Where payments are to be made to a Spanish speaking informant, Form FD-777, Spanish/English Receipt for Informant and Informant Payments, should be executed to ensure that the terms and the amount of the payment are fully understood by the recipient.

(11) A gift may be made to an informant in lieu of a payment for services with the prior approval of the SAC, or in his/her

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absence, the ASAC. In reviewing such requests, care must be taken to avoid the appearance of impropriety and to ensure that the gift is to be given for strictly operational reasons. Purchase of the gift must be charged to the file number of the informant being paid as a payment for services. Agents are not to accept gifts from informants. For restrictions on financial, business and other dealings with informants, refer to the Manual of Administrative Operations and Procedures, Part I, 1-14.1.

(12) If private individuals or representatives of private industries or insurance companies offer a reward to an informant as a result of information supplied by the informant, they should be provided the pertinent information furnished by the informant if he/she agrees. SAC approval is necessary before participating in such payments. If it is necessary for an Agent to be involved in the reward payment in order to protect the informant, the transaction must be fully documented and appropriate receipts obtained. These transactions must adhere to all informant payment requirements. FBIHQ should be advised of the details of all such transactions.

(13) Income tax considerations

(a) All informants who receive compensation from the FBI for their services must be advised that such compensation must be reported as income when filing Federal income tax forms or other appropriate tax forms. Complete details of any problems the informant has encountered with the taxing authorities should be promptly furnished to FBIHQ.

(b) Informants should set forth income received from the FBI on the Federal income tax return as income received from other sources for personal services. Internal Revenue Service (IRS) regulations exempt law enforcement agencies from filing IRS Form 1099 (Miscellaneous Income Statement) for payments made to an informant. However, FBIHQ will provide a statement of payments made to an informant, upon his/her request, to assist the informant in reporting his/her income to the IRS.

(14) Stipulations regarding payments made to witnesses

(a) In trials in which an informant or other individual was paid a sum of money, and is a prospective witness, FBIHQ will furnish receipts signed by the prospective witness when so ordered by the court. Original receipts and a set of reproduced copies will be transmitted to the field office in the district where the trial will take place. In order for FBIHQ to furnish these



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materials, the appropriate field office must furnish FBIHQ the following information:

1. Correct full name.
  2. All aliases, code names, and symbol numbers.
  3. First date of contact by your office.
  4. Tabulation of all payments, broken down as to services and expenses. Although tabulations are not furnished to the Department, they must reflect all amounts contained in the FMS.
  5. Listing of any advances, refunds and outstanding balance of advances. (See (b).)
  6. Date of last contact by your office. (See (b).)
  7. Whether the individual has been contacted or opened by any other field office. (See (b).)
- (b) Where the informant has previously been used as a witness and tabulation of payments was prepared, information for items 137-8(14)(a)5 through 7 need be given only from date of last trial in which the individual was used.
- (c) Above information should be submitted by separate communication to the Accounting Section, Finance Division. Interdivisional correspondence should be addressed to FBIHQ with copies designated for interested offices.
- (d) When an informant is to testify, the informant's financial condition is to be discussed with him/her to ensure that the informant has fulfilled his/her tax obligations as reasonably as possible. If the informant has received FBI payments for services, the informant is to be reminded that these payments are income. Any payments by other law enforcement agencies are to be fully addressed. Any information developed or known concerning potential tax problems is to be brought to the attention of the United States Attorney's Office.
- (15) Receipt of unemployment compensation (See FCI Manual, Part I, 134-4.7(8)(a).)

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(a) At times, informants may temporarily lose their jobs and become eligible for unemployment compensation. Where unemployment regulations require listing of all sources of income as a prerequisite for unemployment compensation, an informant who is being paid by the FBI must comply with state laws. Informants must be alerted to those local requirements which may impact on them.

(b) Where state requires notification of FBI payments to informants that would necessitate disclosure of identity of the informant, the field office should consider discontinuing payments during the period of unemployment compensation benefits in order to protect his/her identity.

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ADMINISTRATION OF INFORMANTS

(1) Each informant must be assigned a code name which is unique to him/her within the field office. The code name or pseudonym is assigned to the informant as a measure of additional security and must be utilized in signing payment receipts. The code name is to be utilized in place of the informant's true name in the field office payment records. Care must be taken to ensure that the choice of the code name does not tend to identify the informant's true name, occupation, or information which is unique to the informant.

(2) Upon the opening of an informant, all relevant data is to be entered into the Criminal Informant Management System (CIMS) within two business days. All other administrative information pertaining to the informant should be entered into CIMS as soon as it becomes available. The Criminal Informant Program Manager is responsible for ensuring that the data is entered into CIMS and that it is done in a timely manner.

(3) Upon entry in CIMS of the information from the opening memorandum concerning the informant in the suitability and pertinence inquiry, FBIHQ will place a "Wanted-Flash-Cancellation Notice" in the Criminal Justice Information Services Division. When the "Wanted-Flash-Cancellation Notice" is placed, the field office will be advised by FBIHQ of any National Crime Information Center (NCIC) inquiry about the informant. In the event there is no record, the field office will not receive a reply from FBIHQ. When the informant is closed, FBIHQ will automatically cancel any "Wanted-

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Flash-Cancellation Notice" which may have been placed. (See MIOG, Part II, 14-12.3.4.)

(4) Informants are not to be advised of their symbol number. Where an informant furnishes information which necessitates a change in the category designation (i.e., OC, C, D, WC, etc.), the symbol number previously furnished will remain the same; however, the suffix must be changed to indicate the appropriate program designation. The utilization of the suffix in the reporting of information derived from the source is unnecessary although suffix utilization should be continued for administrative purposes or to fulfill other existing needs.

(5) After entering the permanent symbol number from the opening memorandum into CIMS, subsequent communications should contain the informant's symbol number, rather than his/her true name. The informant's symbol number and true name should not appear on any communications which are not secure. All communications concerning an informant's development and/or operation must be submitted by secure teletype.

(6) If an informant was either born or previously domiciled outside the United States, the case Agent should consider sending a secure teletype to the appropriate Legat requesting a background check of the source.

(7) If it is determined that an individual is not suitable for use as an informant, he/she is to be immediately closed by the submission of a memorandum to the field informant file and entry of the data it contains in CIMS, to include a statement setting forth the specific reason for closing the individual and whether the individual should be considered for future use by the FBI.

(8) Upon the closing of an informant, the case Agent must prepare a memorandum stating whether the source's identity was ever made public, i.e., whether he/she ever testified in court. The purpose of this memorandum is to prevent unnecessary or overbroad disclosure of information provided by the informant through a Freedom of Information Act request. In the event that the informant did testify, the case Agent should set forth the general nature and subject matter of the testimony in the memorandum.

(9) Where it is necessary for an informant to be utilized in a field office other than his/her OO, the field OO should furnish the new OO with full background information, including a summary of information previously provided by him/her, descriptive data, payment

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records, mode of travel and any other information useful in the operation of the informant. Any information that reflects negatively upon the reliability of the informant is to be promptly furnished to the field office considering the use of his/her services. The new OO should ensure that the informant is closed in the original OO either prior to submitting an opening communication to FBIHQ or upon entering the information into CIMS.

(10) Whenever an individual is closed, regardless of his/her status, the field office must reinitiate an SI before they can again be operated as a fully operational informant. The opening communication should indicate that the individual is being reopened. The field office must use the same symbol number that was assigned in the previous SI when reopening an individual.

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137-10

INFORMANT COMMUNICATIONS (See MIOG, Part II, 10-10.5.1(2)(e); Correspondence Guide-Field, 2-11 & 3-19.)

(1) All correspondence relating to the development or operation of informants among field offices must be transmitted by secure teletype. The opening, conversion, closing, and extension of informants whose operation is not restricted by their occupation as in MIOG, Part I, 137-7.1 through 137-7.2, are to be documented by memoranda in the field office file. (See MIOG, Part I, 137-3.1.1(4), 137-3.1.1(5), & 137-3.1.2(2)). Any correspondence regarding additional payment authority, participation in extraordinary criminal activity, and unauthorized criminal activity are to be transmitted by secure teletype to FBIHQ. The only exceptions to this instruction are existing forms and FD-209s with accompanying inserts or FD-302s relating to investigative matters of interest to another field office. Surface mail and telephone conversations between field offices and resident agencies regarding informants should be strictly limited. All documents which either identify or tend to identify an informant or cooperative witness must be hand-carried by an Agent. All security concerns should be resolved in favor of hand-carrying sensitive information by an Agent.

(2) All correspondence among field offices and FBIHQ requesting payments to an informant, travel of an informant, or involving the operation of an informant, must be transmitted by secure

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teletype under the informant's symbol number caption and not under a substantive case caption.

(3) All information pertinent to FBI investigative responsibilities furnished by an informant must be promptly reviewed, evaluated, channelized, entered into CIMS and all other necessary action taken.

(4) In criminal cases positive information must be recorded either on investigative inserts or FD-302s. Positive information must not be recorded on FD-209s.

(a) USE OF INSERTS - Information provided by an informant that will not become testimony should be recorded on an investigative insert. The insert will contain the informant's symbol number and the date the information was provided. The original insert will be filed in the informant's subfile and a copy will be routed to the pertinent substantive case file. Information received on two or more substantive investigative matters must be recorded on separate inserts and filed only in the pertinent substantive investigative file. All information furnished by the informant must be filed in the informant's subfile.

(b) USE OF FD-302s - If the informant's information is of evidentiary value and likely to become the subject of testimony, the information must be recorded on an FD-302 in the same manner as if the information were received from any other witness. Three copies of the FD-302 will be prepared. The original of the FD-302 must reveal the identity of the informant, but the identity must be concealed on all copies. Also, the informant's file number must not appear on the original FD-302 or any copy. Transcripts of conversations of the informant will be handled in the same manner as an FD-302. If information from the informant is so singular in nature or reported in a manner which would tend to identify the informant, a succinct summary of the pertinent information should be filed in the substantive file. The following is an example of how an original FD-302 and copy should be prepared.

- ORIGINAL FD-302 -

- EXAMPLE -

(To be filed in informant's main file)

JOHN J. DOE, 123 Main Street, New York, New York,  
furnished the following information:

On March 12, 1984, he saw a green tractor trailer bearing

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Pennsylvania license plate XYZ 111, loaded with cases of cigarettes at a garage at 789 West 11th Street, New York, New York. The cases were from the ABC WAREHOUSE, Winston-Salem, North Carolina, and were addressed to BELL DRUGS, 45 Maple Street, Philadelphia, Pennsylvania.

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Investigation on 3/15/84 At New York City File # Substantive File  
By AGENT'S NAME:typist's initials Date Dictated 3/16/84

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- COPIES OF THE ABOVE FD-302 -  
- EXAMPLE -

(To be filed in informant's subfile and in the  
substantive case file without the true name)

An informant, who has provided reliable information in the past, furnished the following information:

On March 12, 1984, he/she saw a green tractor trailer bearing Pennsylvania license plate XYZ 111, loaded with cases of cigarettes at a garage at 789 West 11th Street, New York, New York. The cases were from the ABC WAREHOUSE, Winston-Salem, North Carolina, and were addressed to BELL DRUGS, 45 Maple Street, Philadelphia, Pennsylvania.

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Investigation on 3/15/84 At New York City File # Substantive File  
By AGENT'S NAME:typist's initials Date Dictated 3/16/84

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(c) FD-209 - An FD-209 will be prepared as a cover sheet for inserts which are filed in the informant's subfile. The FD-209s must not accompany inserts routed to the substantive case file. An FD-209 must also be prepared in triplicate for each FD-302. The FD-209 is used in serializing the FD-302 into the informant's main file (original FD-302 bearing the informant's true name), the informant's subfile (copy of FD-302 identifying the informant only as an informant) and the substantive case file (copy of FD-302

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identifying the informant only as a Confidential Source). The FD-209 will be captioned with the informant's symbol number and bear the file number of the informant's file and the case caption of the substantive case. The following warning statement must appear on the FD-209: "Information contained herein was obtained confidentially. The informant's name is not to be disclosed in any form unless a conscious decision has been made to disclose his/her identity by an appropriate FBI official."

(d) The FD-209 will be used to document all negative contacts with an informant relating to his/her investigative activities as an informant. However, where the informant is contacted for the sole purpose of making payment for services and/or expenses, and they do not provide any information relating to investigative activities, there is no need to document the contact on an FD-209.

(5) Copies of FD-302s or inserts containing informant information which have been disseminated must not be filed in the dissemination control file. These FD-302s or inserts should be filed in the informant's subfile and the pertinent substantive file only. An FD-159 reflecting dissemination should be prepared. Copies should be placed in the informant's main file, and the field office dissemination control file.

(6) Informant information utilized in affidavits for Title III applications, search warrants, complaints, or any other court document must be reviewed by the field supervisor to ensure that the informant information in the document is contained in an insert or FD-302, in both the informant and substantive case files. On the file copy of the legal document in the substantive case file, the case Agent must note the substantive case file, serial number and page of the FD-302 or insert where the informant information can be found which was used in support of the legal document. This notation should be placed in the margins next to the informant's information in the legal document.

(7) Characterizations of informants utilized in affidavits or other legal documents described above should be updated at the filing of each legal document in which an informant's information is used. The serial number of the legal document containing the characterizations (from the substantive case file) must be documented in the informant's main file. This documentation is indexed to the FD-237 and is used in support of statistical accomplishments.

(8) All positive information obtained from an informant

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operated by one field office and which pertains to investigative matters in another field office must be immediately transmitted to that field office. Appropriate copies of FD-209s with accompanying inserts or FD-302s containing that information are to be sent to that field office as enclosures to an airtel under the substantive case caption. Copies of these outgoing communications must be maintained in the informant's main file.

(a) Those FD-209s and accompanying inserts or FD-302s are to be sent to the personal attention of the SAC, or his/her designee, in a sealed envelope. In instances where an entire informant's file, or a substantial portion thereof, is required in another field office, the file should be hand-carried by an Agent.

(b) In a situation wherein an informant is being temporarily operated by an office other than his/her OO, original FD-302s in which the informant is identified will be hand-carried by an Agent in a sealed envelope to the SAC of the informant's OO for inclusion in the informant's file. Nothing in or on the envelope should identify the FD-302s as being connected to an informant matter. The sending office will, however, advise the OO by teletype under the source's symbol number that the FD-302s are being sent.

(c) Any transmission by facsimile of any true name FD-302 or other document which tends to identify the informant must be done by secure facsimile.

(9) All statistics obtained as a result of an informant's information should be claimed on an FD-209 and this FD-209, with nothing attached, should be placed in the informant's main file. The FD-209, containing the substantive case title, file number and statistic claimed, should be indexed to the FD-237.

(10) In instances where a criminal informant reports information pertinent to the FBI's foreign counterintelligence or international terrorism mission, a Subfile B is to be created to maintain that information. The Subfile B is to be appropriately classified. Subsequently, the information should be disseminated to the proper substantive FCI/IT file. (See 137-11 (4)(c).)

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INFORMANT FILES AND INDICES (See MAOP, Part II, 2-5.1.)

(1) A separate and secure room is to be utilized for the maintenance of all informant and cooperative witness indices and pending informant and cooperative witness files. Where possible, all closed informant files should also be maintained in this room or otherwise maintained in a secure and locked condition. All pending and closed informant files are to be maintained under the personal authority of the SAC or a person designated by the SAC. Access to this room will be limited to necessary personnel and this space should be locked at all times when unattended. A log is to be maintained on persons requesting and reviewing informant files. Authority to review an informant's file should be restricted to the SAC, ASAC, the case Agent's supervisor, the Principal Legal Advisor, the case Agent, the alternate Agent, the co-case Agent, the Informant Coordinator, the CIMS Analyst and confidential file room clerk. The file will not leave the room, except for the express purpose of a file review by the supervisor or the handling Agent. Logs must have columns for "date," "file number," "signature of person reviewing file," and "time file charged out" and "in." Informant files should not be located outside this room after close of business hours.

(2) Individual files are to be maintained on all active informants and should be carried as pending. These files, as well as the closed informant files, should be bound in the green file cover and file back (designated as an FD-245a). These files are to be assigned to the Agent who is personally responsible for the development and operation of the informant.

(3) An FD-237 is to be used in the nature of a table of contents or index to indicate where particular data can be found in the file. The form should be carried as the top document in the informant's main file and should not be serialized. This form should be updated regularly as the required information changes.

(4) All informant files should be separated into two sections. Administrative and identifying data is to be maintained in the main file and all information, reports, etc., furnished by the informant should be maintained in the subfile.

(a) Main file items:

- Correspondence requesting approval to open
- 1A file items (photograph, fingerprint card, etc.).
- Indices checks (Local and FBIHQ).

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- NCIC inquiry and response.
- Criminal Justice Information Services Division

Report.

- Local arrest records.
- Credit checks.
- FD-302s in which the identity of the informant has been revealed.
- Inserts in which the identity of the informant is revealed.
- FD-209s used to claim statistical accomplishments.
- FD-209s used as a cover page for above-mentioned FD-302s.

that may tend to identify the informant.

- Payment request memos.
- Draft request forms.
- Signed payment receipts.
- Requests to FBIHQ for additional payment
- Requests to FBIHQ for lump-sum payment
- All other administrative-type correspondence.
- Any correspondence that identifies or tends to identify the informant.
- Documentation authorizing criminal activity.

authority.

authority.

(b) Subfile A items:

- FD-302s in which the identity of the informant is concealed.
- Inserts which conceal identity of the informant.
- FD-209s used as cover page for inserts.
- Negative contact FD-209s.

(c) Subfile B items:

- Classified FD-302s in which the identity of the informant is concealed.
- Classified inserts which conceal identity of the informant.
- Classified FD-209s used as cover page for inserts. (See 137-10(10).)

(5) Symbol number and code name.

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(a) Each informant should be assigned a permanent symbol number and code name unique to the field office. FBIHQ will be advised of the symbol number and the informant's code name through data entry in CIMS. The code name or pseudonym is assigned to the informant as a measure of additional security and is to be utilized in signing payment receipts. The code name is utilized in place of the informant's true name in the field payment ledger.

(b) The informant is not to be advised of his/her symbol number.

(c) The prefix of the symbol number should consist of the appropriate field office abbreviation. The suffix of the symbol number should identify the category of information which the informant is providing.

(d) Although the informant may subsequently furnish information requiring a change in designation, the number previously assigned will remain the same; however, the suffix should be changed to indicate the appropriate designation, i.e., C, OC, TE, WC, DT, D or CS. The utilization of the suffix in the reporting of information derived from the source is unnecessary although suffix utilization should be continued for administrative purposes or other need exists.

(e) After FBIHQ has been advised of the permanent symbol number through data entry in CIMS, and documented in the opening memorandum in the source file, subsequent communications should contain the informant's symbol number rather than the true name. The informant's symbol number and true name should not appear on any communications which are not secure. Any communications submitted to FBIHQ in connection with the operation or administration of the informant should be captioned under the assigned symbol number and not the substantive case caption.

(f) The use of symbol numbers should be restricted to informants and should not be used for any other investigative technique.

(6) Indexing

(a) The informant's true name, aliases and other identifying data are to be indexed into CIMS. A manual index is to be maintained in the confidential file room for those informants indexed prior to the establishment of CIMS.

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(b) No indexing to the general indices should be done from individual informant files. All such indexing should be done from substantive files.

(7) Indices

(a) All offices should maintain an alphabetical name index, a symbol number index, and a code name index for all informants not maintained in CIMS. These indices should be maintained as above in a separate and secure manner under the authority of the SAC or person designated by that official.

(b) SACs should ensure that all necessary searching of these separate indices is conducted.

(c) The result of a search of these indices, either positive or negative, should not be handled in a routine manner similar to a general indices review. Good judgment should be utilized consistent with security concerns. Notification of an informant reference should be coordinated with the appropriate supervisor having responsibility for the mail being searched.

(d) Other indices may be maintained in the confidential file room as deemed necessary by the office for convenience such as an index of informants in other divisions or an index broken down by activity or geographical area. Any such indices should be given the same security as the alphabetical, symbol number and code name indices.

(8) A Form FD-675 entitled, "Supervisor's 60-Day Informant File Review Log" is to be placed immediately underneath the FD-237 in the main informant file. It is to be used to document the Supervisor's review every 60 days as mandated by Bureau policy. It should not be serialized or destroyed. Place a new FD-675 on top of the old form if there is a need for additional certification space.

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137-12 ON-SITE REVIEWS

(1) To enhance the administrative efficiency of the Criminal Informant Program (CIP) at FBIHQ and in the field offices, an on-site review will be conducted periodically of the CIP of each field office.

(2) The purpose of the on-site review is to afford the Criminal Informant Unit an opportunity to review the field CIP from an overall program perspective, by identifying areas which may need attention, and to provide CID with the results of the on-site findings. Each informant's reliability and the action taken when reliability is in question are to be considered during the on-site review. This on-site review should not only be concerned with the number of informants but also with the quality of information furnished, the priority of the investigative programs in which information is provided, and the degree of compliance with FBI and Attorney General policies and guidelines. An on-site review should enable the Criminal Informant Unit to determine whether the field CIP is capable of supporting the investigative programs of the field office, to ensure the worthiness of each informant for continued operation, and to confirm that all informants are being operated within established operational parameters.

(3) Prior to an on-site review, each field office should rate each informant utilizing the scale set forth below by individual investigative program based on information furnished and provide an aggregate overall evaluation for each informant. The evaluation should be based on both contributions consisting of statistical accomplishments and intelligence concerning investigative efforts.

EXCELLENT

Furnishes information of high quality on a continuing basis which usually could not be obtained through other means and which contributes significantly to the FBI's investigative and intelligence gathering efforts.

VERY GOOD

Regularly furnishes quality information which contributes measurably to the investigative and intelligence-gathering efforts of the Bureau.

GOOD

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Furnishes sufficient worthwhile information to remain active and qualified as an informant.

FAIR

| Furnishes | some | information of value for an extended period.

POOR

Informants in this category have furnished no information of value and consideration should be given to closing them.

NEW

Too new to evaluate.

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| 137-13 | ATTORNEY GENERAL'S GUIDELINES ON THE USE OF  
INFORMANTS

| (1) Attorney General guidelines on FBI use of informants and confidential sources are included below in these 137 guidelines.

| (2) These guidelines on the use of informants and Confidential Sources are set forth solely for the purpose of internal FBI guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal, nor do they place any limitations on otherwise lawful investigative and litigative prerogatives of the FBI. |

"ATTORNEY GENERAL'S GUIDELINES ON FBI USE OF  
INFORMANTS AND CONFIDENTIAL SOURCES"

"A. Introduction

"(1) The courts have recognized that the government's use of informants and confidential sources is lawful and often essential to the effectiveness of properly authorized law enforcement investigations. However, use of informants and confidential sources to assist in the investigation of criminal activity may involve an

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element of deception, intrusion into the privacy of individuals, or cooperation with persons whose reliability and motivation can be open to question. It is proper for the FBI to use informants and confidential sources in appropriate investigations, but special care must be taken to carefully evaluate and closely supervise their use, and to ensure that individual rights are not infringed and that the government itself does not become a violator of the law. Though informants and confidential sources are not employees of the FBI, their relationship to the FBI can impose a special responsibility upon the FBI when the informant or confidential source engages in activity where he has received, or reasonably thinks he has received, encouragement or direction for that activity from the FBI.

"(2) To implement these guidelines, the FBI shall issue detailed instructions to all Special Agents responsible for dealing with informants and confidential sources.

"B. Definition of Confidential Source, Informant, and Continuing Basis

"(1) A confidential source, under these guidelines, is any person or entity furnishing information to the FBI on a confidential basis, where such information has been obtained as a result of legitimate employment or access to records and is provided consistent with applicable law.

"(2) An informant, under these guidelines, is any other person or entity furnishing information to the FBI on a confidential basis.

"(3) An informant or confidential source used on a "continuing basis" is one providing information or substantial operational assistance with some degree of regularity. This may be as infrequent as a few times per year, or as frequent as several times per week.

"C. General Authority

"(1) An informant or confidential source may be asked to provide information already in his possession, to provide information which comes to his attention, or to affirmatively seek out information, concerning criminal conduct or other subjects of authorized investigative activity. An informant or confidential source may also be asked to provide operational assistance to the FBI, including furnishing resources or facilities.

"(2) The FBI may only use informants or confidential sources in furtherance of its authorized investigative activities and law

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enforcement responsibilities. Informants and confidential sources may not be used or encouraged to commit acts which the FBI could not authorize for its Special Agents.

"D. Required Findings of Suitability and Pertinence For Any Informant or Confidential Source Used on a Continuing Basis, Any Informant Authorized to Associate in Activities, Participation in Which Otherwise Would be Criminal, and Any Informant or Confidential Source Providing Substantial Operational Assistance in an Undercover Operation

"(1) No informant or confidential source may be used to provide information on a continuing basis, no informant may be authorized to associate in activities, participation in which otherwise would be criminal, nor may any informant or confidential source be used to provide substantial operational assistance in an undercover operation, unless the supervisory FBI official designated below has made written findings:

"(a) that the informant or confidential source appears suitable for such use, and

"(b) that the information likely to be obtained or the operational assistance to be provided is pertinent to authorized FBI investigative activity or law enforcement responsibilities.

"Findings of suitability and pertinence shall be made by a supervisory agent designated by the Director except that in the case of a Domestic Security Investigation, the findings shall be made by a Headquarters official designated by the Director.

"(2) A finding of suitability should be preceded by a preliminary inquiry concerning the proposed informant or confidential source. A preliminary inquiry may only be used to assess suitability. It may not be used to develop information concerning an individual for the purpose of inducing him to become an informant or confidential source. A preliminary inquiry can use any lawful investigative technique except mail covers, access to tax information, any technique requiring probable cause, such as mail openings, nonconsensual electronic surveillance, or searches.

"(3) In determining the suitability of an informant or confidential source, the FBI shall weigh and consider the following factors:



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"(a) the nature of the matter under investigation and the importance of the information or assistance being furnished;

"(b) the seriousness of past and contemporaneous criminal activity of which the informant or confidential source may be suspected;

"(c) the motivation of the informant or confidential source, including any consideration sought from the government for his cooperation;

"(d) the likelihood that the information or assistance which an informant or confidential source could provide is not available in a timely and effective manner by less intrusive means;

"(e) the informant's or confidential source's reliability and truthfulness, or the availability of means to verify information which he provides;

"(f) any record of conformance by the informant or confidential source to Bureau instructions and control in past operations; how closely the Bureau will be able to monitor and control the informant's or confidential source's activities insofar as he is acting on behalf of the Bureau;

"(g) the risk that use of informants or confidential sources in the particular investigation may intrude upon privileged communications, or inhibit the lawful association of individuals or expression of ideas; and

"(h) any risk that use of informants or confidential sources may compromise an investigation or subsequent prosecution, including court-ordered disclosures of identity which may require the government to move for dismissal of the criminal case.

"(4) A preliminary inquiry and written determination regarding suitability and pertinence should be completed within 120 days from the date the inquiry began. FBI Headquarters may authorize one or more extensions beyond 120 days, stating in writing the facts and circumstances precluding an earlier determination.

"(5) Determinations of suitability and pertinence shall be reviewed at least every 90 days by a field supervisor and at least annually by FBI Headquarters.

"(6) If it is determined not to use a person or entity as an

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informant or confidential source, any information collected about the person or entity during the preliminary inquiry without the consent of the person or entity shall be promptly destroyed, unless it is or may become pertinent to authorized investigative activity or the person is a potential witness in a criminal prosecution. Any decision not to destroy all information about the person or entity shall be recorded with explanatory facts and circumstances in an investigative case file and shall be reviewed periodically by the SAC or designated field supervisor.

"(7) At any time the FBI learns an approved informant or confidential source is no longer suitable to provide information or operational assistance, his relationship with the Bureau shall be promptly terminated. FBI Headquarters shall maintain records of informant and confidential source terminations, including a detailed statement of the reasons for each termination. These records shall be subject to periodic review by a designee of the Deputy Attorney General in a form suitable to protect the identity of the informants and confidential sources.

"E. Required Instructions to

"(1) Any Informant used on a Continuing Basis, Any Informant Authorized to Associate in Activities, Participation in Which Otherwise Would be Criminal, Any Informant or Confidential Source Suspected of Substantial Involvement in Unauthorized Past or Continuing Criminal Activities, and Any Informant or Confidential Source Providing Substantial Operational Assistance in an Undercover Operation:

"Each such person shall be advised that his relationship with the FBI will not protect him from arrest or prosecution for any violation of Federal, State, or local law, except where the FBI has determined pursuant to these guidelines that his association in specific activity, which otherwise would be criminal, is justified for law enforcement; and that in carrying out his assignments he shall under no circumstances participate in any act of violence, initiate or instigate a plan to commit criminal acts, or use unlawful techniques to obtain information (e.g., illegal wiretapping, illegal mail openings, breaking and entering, or criminal trespass). Such persons shall be readvised when necessary, at least annually, and at any time there is reason to suspect they are engaged in serious criminal activity.

"(2) Other Confidential Sources Used on a Continuing Basis:

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"In the place of the instructions in paragraph E(1) above, each such confidential source shall be advised that he is not acting as an agent or employee of the FBI, that he should use only lawful techniques to obtain information, and that he should provide information only in accordance with applicable law.

"(3) When the FBI learns that persons under investigation intend to commit a violent crime, any informants or confidential sources used in connection with the investigation shall be instructed to try, to the extent practicable, to discourage the violence.

"(4) A written record shall be made in each informant or confidential source file of the instructions noted above promptly after they are given.

"F. Authorized Participation by Any Informant in Criminal Activities

"An informant or confidential source shall not be authorized to engage, except in accordance with this paragraph, in any activity that would constitute a crime under state or federal law if engaged in by a private person acting without the authorization or approval of an appropriate government official. For purposes of this paragraph, such activity is referred to as 'otherwise criminal' activity.

"(1) A determination that participation by an informant in otherwise criminal activities is justified shall be made only by the supervisory FBI official designated in paragraphs F(2) and (3) below on the basis of his written finding that

"(a) the conduct is necessary to obtain information or evidence for paramount prosecutive purposes, to establish and maintain credibility or cover with persons associated with criminal activity under investigation, or to prevent or avoid the danger of death or serious bodily injury;

"(b) this need outweighs the seriousness of the conduct involved.

"(2) For purposes of these Guidelines there are two types of otherwise criminal activities -- 'extraordinary,' i.e., those involving a significant risk of violence, corrupt actions by high public officials, or severe financial loss to a victim, and 'ordinary.' A determination that participation in activities which, otherwise would be 'ordinary' criminal activities is justified as part of an informant's assignment shall be made by a field office supervisor or higher level official, and shall be recorded in writing

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in advance of any such activity, except that oral approval may be given in an emergency situation where confirmed thereafter in writing as soon as possible. The SAC shall review all such criminal activity by informants at least every 90 days.

"Determinations authorizing participation in such activities may concern a single instance of otherwise criminal activity or a specified group of otherwise criminal activities.

"The written determinations shall be submitted annually to Headquarters for review, and shall be subject to review by a designee of the Deputy Attorney General in a form suitable to protect the identity of the informants.

"(3) A determination that participation in activities which otherwise would be 'extraordinary' criminal activities -- is justified as part of an informant's assignment shall be made only by the SAC and only after the SAC consults with and obtains the approval of the United States Attorney. The consultation shall be in a form suitable to protect the identity of the informant. The SAC's written determination and a record of the United States Attorney's approval shall be immediately forwarded to a senior Headquarters official designated by the Director, and to the Assistant Attorney General in charge of the Criminal Division or his designee, in a form suitable to protect the identity of the informant.

"If the SAC reasonably determines that an emergency situation exists requiring informant participation in activities which otherwise would be extraordinary criminal activities before approval by the United States Attorney can with due diligence be obtained, in order to protect life or substantial property, to apprehend or identify a fleeing offender, or to prevent the imminent loss of essential evidence, the SAC may approve the participation on his own authority but shall immediately notify the United States Attorney, the appropriate senior Headquarters official, and the Assistant Attorney General in charge of the Criminal Division or his designee. In such an emergency situation the SAC shall attempt to consult by telephone with a senior member of the United States Attorney's office before approving participation.

"(4) Upon approving any participation in otherwise criminal activity, the FBI shall repeat to the informant the instruction specified in paragraph E(1).

"The FBI shall also seek, to the extent practicable, to provide:

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"(a) that the adverse effect of the activity on innocent individuals is minimized;

"(b) that the informant's participation is minimized and that the informant is not the primary source of technical expertise or financial support for the activity in which he will participate;

"(c) that the informant's participation in the activity is closely supervised by the FBI; and

"(d) that the informant does not directly profit from his participation in the activity.

"(5) Any proposal by a confidential source to engage in otherwise criminal activities in order to gather information changes the status of that individual from confidential source to informant.

"G. Notifying Appropriate Authorities of Unauthorized Criminal Activity by Any Informant or Confidential Source

"(1) While carrying out an FBI assignment, an informant or confidential source bears a relationship to the FBI such that his participation in any unauthorized activity in connection with the assignment associated with criminal activities, even of a minor character, should be carefully scrutinized and severely regarded. Hence, whenever a Special Agent learns that an informant or confidential source has participated in a criminal activity in connection with an FBI assignment which was not authorized pursuant to the procedures of paragraph F of these guidelines, the Special Agent shall notify a field office supervisor. The supervisor shall make a determination whether to notify appropriate state or local law enforcement or prosecutive authorities of any violation of law and shall make a determination whether continued use of the informant or confidential source is justified. In exceptional circumstances where notification to state or local authorities is determined to be inadvisable, or where any request or recommendation is made to state or local authorities to delay or forego enforcement action, the FBI shall promptly notify the Assistant Attorney General in charge of the Criminal Division or his designee of the facts and circumstances concerning the informant's or confidential source's violation of law, what notification or request has been made to state or local law enforcement or prosecutive authorities, and the supporting reasons, what use will be made of any information gathered through the violation of law, and whether continued use will be made of the

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informant or confidential source.

"(2) Informants who are in a position to have useful knowledge of criminal activities often are themselves involved in a criminal livelihood. It is recognized that in the course of using an informant or confidential source, the FBI may receive limited information concerning a variety of criminal activities by the informant or confidential source, and that in regard to less serious participation in criminal activities unconnected to an FBI assignment, it may be necessary to forego any further investigative or enforcement action in order to retain the source of information. However, whenever a Special Agent learns of the commission of a serious crime by an informant or confidential source, he shall notify a field office supervisor. The supervisor shall make a determination whether to notify appropriate state or local law enforcement or prosecutive authorities of any violation of law and shall make a determination whether continued use of the informant or confidential source is justified. In circumstances where notification to state or local authorities is determined to be inadvisable, or where any request or recommendation is made to state or local authorities to delay or forego enforcement action, the FBI shall immediately notify the Assistant Attorney General in charge of the Criminal Division or his designee of the facts and circumstances concerning the informant's or confidential source's violation of law, what notification or request has been made to state or local law enforcement or prosecutive authorities, and the supporting reasons, and what use will be made of any information gathered through the violation of law. A determination to then continue use of the informant or confidential source must be approved by the Director or a senior Headquarters official, after consultation with the Assistant Attorney General in charge of the Criminal Division or his designee.

"(3) Each FBI field office shall immediately notify FBI Headquarters whenever it learns of participation by an informant or a confidential source in a serious act of violence, even when appropriate state or local law enforcement or prosecutive authorities have been notified. Detailed records shall be maintained at Headquarters regarding each instance of informant or confidential source participation in a serious act of violence, and these records shall be subject to periodic review by a designee of the Deputy Attorney General in a form suitable to protect the identity of the informants and confidential sources. A determination to continue use of the informant or confidential source must be approved by the Director or a senior Headquarters official, after consultation with the Assistant Attorney General in charge of the Criminal Division.

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"(4) In determining whether to notify appropriate state or local law enforcement or prosecutive authorities of criminal activity by FBI informants and confidential sources, the FBI shall consider:

"(a) whether the crime is completed, imminent or inchoate;

"(b) the seriousness of the crime in terms of danger to life and property;

"(c) whether the crime is a violation of federal or state law, and whether a felony, misdemeanor, or lesser offense;

"(d) the degree of certainty of the information regarding the criminal activity;

"(e) whether the appropriate authorities already know of the criminal activity and the informant's or confidential source's identity;

"(f) the effect of notification on FBI investigative activity.

"(5) Under no circumstances shall the FBI take any action to conceal a crime by one of its informants or confidential sources.

"H. Informants and Confidential Sources Under the Obligation of a Legal Privilege of Confidentiality or Affiliated with the News Media

"(1) A person who is under the obligation of a legal privilege of confidentiality or who is affiliated with the news media may be used as an informant or as a confidential source only after express approval in writing by the Director or a designated senior Headquarters official, except that a field office supervisor may approve one-time receipt of information not collected at the request of the FBI where the particular information is unprivileged.

"The FBI shall promptly give written notice, or oral notice confirmed in writing, to the Assistant Attorney General in charge of the Criminal Division or his designee of any such Headquarters authorization. The notice shall include sufficient information to allow meaningful review, and shall set forth the reasons why the individual should be used as an informant or confidential source.

"(2) Any such person approved as an informant or confidential source shall be advised by the FBI that in seeking information from

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him, the FBI is not requesting and does not advocate breach of any legal obligation of confidentiality. A record shall be made and kept in the informant or confidential source file when the advice has been given. This advice shall be provided before accepting information on a continuing basis.

"(3) If, despite the advice to the informant or confidential source that revelation of privileged information is not requested or advocated, he offers to provide information that is privileged or arguably privileged, the offer shall not be accepted unless a field office supervisor determines that serious consequences would ensue from rejection of the offer, such as physical injury to an individual or severe property damage. A report concerning such information and the circumstances that warranted its acceptance shall be promptly forwarded to FBI Headquarters.

"If the information is spontaneously provided by the informant or confidential source, without any offer that would alert the Special Agent to the nature of the information, in circumstances which do not meet the standard serious consequences, the information may be recorded in suitable form for the purpose of establishing that the problem was recognized and that no use was made of the information in the conduct of any investigation.

"(4) Regardless of state law, the procedures of this section must be followed for any licensed physician, any person admitted to practice law in a court of a state, any practicing clergyman, and any member of the news media.

"I. Infiltration of Organization Activities by Informants  
or Confidential Sources Used on a Continuing Basis

"(1) The lawful activities of legitimate organizations are, of course, not subject to investigation. However, individual members of such organizations may be independently involved in criminal activities. In order to assure that the privacy of constitutionally-protected activities will be respected, the FBI should carefully regulate use of informants and confidential sources who will make use of affiliations with legitimate organizations in order to gather information concerning the activities of individual members.

"In particular, when, to obtain information,

"(a) an informant or confidential source will make use of formal affiliation with an organization that has a predominantly legitimate purpose, and the informant's or confidential source's



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formal affiliation will give him continued access to nonpublic information related to the legitimate purposes of the organization; or

"(b) an informant or confidential source will make use of formal or informal affiliation with an organization that is predominantly engaged in political activities,

the determination to use the person as an informant or confidential source on a continuing basis shall be made by the ASAC or SAC.

"(2) In determining whether the use of such an affiliated person as an informant or confidential source on a continuing basis is appropriate, the ASAC or SAC should consider:

"(a) the likelihood of responsible behavior by the informant or confidential source during the course of his organizational membership;

"(b) the ability of the FBI to focus the informant's or confidential source's reporting on members of the organization involved in criminal activities and to minimize adverse impact on innocent members of the organization; and

"(c) whether the use of the informant or confidential source might inhibit free association or expression of ideas by innocent members of the organization in the future, or hinder the ability of the organization to function effectively.

"(3) In approving the use of such an affiliated person as an informant or confidential source on a continuing basis, the ASAC or SAC shall establish procedures, recorded in writing, to minimize any acquisition, retention, and dissemination of information that does not relate to the matter under investigation or to any other authorized investigative activity.

"(4) Nothing in this paragraph limits the authority of the FBI to conduct otherwise proper investigations of illegitimate organizations or organizations engaged in unlawful activities. See the Attorney General's Guidelines on Criminal Investigations of Individuals and Organizations, and on Domestic Security Investigations." (See MIOG, Introduction, Section 1-3 for updated AG Guidelines.)

"J. Minimization in Domestic Security Investigations

"In approving use of an informant or confidential source to

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infiltrate a group under investigation as part of a Domestic Security Investigation, or in recruiting a person from within such a group as an informant or confidential source, an FBI Headquarters official shall establish procedures, recorded in writing, to minimize any acquisition, retention, and dissemination of information that does not relate to the matter under investigation or to any other authorized investigative activity.

"K. Persons Represented by Counsel

"Whenever an individual is known to be represented by counsel in a particular matter, the FBI shall follow applicable law and Department procedure concerning contact with represented individuals in the absence of prior notice to their counsel. The SAC or his designee and the United States Attorney shall consult periodically an applicable law and Department procedure.

"L. Coordination with United States Attorneys and Other Federal Prosecutors.

"In any matter presented to a United States Attorney or other federal prosecutor for legal action (including prosecution, grand jury investigation, application for a search warrant, or application for a wiretap), where the matter has involved the use of an informant or a confidential source in any way or degree, the FBI shall take the initiative to provide full disclosure to the federal prosecutor concerning the nature and scope of the informant's or confidential source's participation in the matter.

"If the FBI deems it necessary to withhold certain information to protect the informant's or confidential source's identity from possible compromise, it shall inform the prosecutor of the general nature of the information that is being withheld.

"M. Compensation for Informants and Confidential Sources

"(1) The FBI may pay informants and confidential sources a reasonable amount of money or provide other lawful consideration for information furnished, services rendered, or expenses incurred in authorized investigative activity. No payment of money or other consideration, other than a published reward, shall be conditioned on the conviction of any particular individual.

"(2) In investigations involving serious crimes or the expenditure of extensive investigative resources, the FBI may

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compensate informants or confidential sources with an extraordinary payment in excess of \$25,000. The Attorney General shall be informed of any such extraordinary payment as he deems necessary.

"(3) Where practicable, compensation agreements with informants or confidential sources in connection with a significant FBI undercover operation shall provide that compensation will depend on compliance with the obligation of confidentiality for investigative information, and shall further provide that any profits derived from a violation of the obligation shall be forfeited to the United States.

"N. Reservation

"These guidelines on the use of informants and confidential sources are set forth solely for the purpose of internal Department of Justice guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal, nor do they place any limitations on otherwise lawful investigative and litigative prerogatives of the Department of Justice."

EFFECTIVE: 12/20/93

| 137-14 | REVISED AND MOVED -- SEE 137-4 (16) THROUGH (19) |

EFFECTIVE: 12/20/93

| 137-15 | DELETED |

EFFECTIVE: 12/20/93

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| 137-16 | REVISED AND MOVED -- SEE 137-13 |

EFFECTIVE: 12/20/93

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SECTION 138. | BACKGROUND INVESTIGATION - INTERNATIONAL  
ORGANIZATIONS

| 138-1 | BACKGROUND INVESTIGATION - INTERNATIONAL ORGANIZATIONS

This classification, formerly entitled "Loyalty of Employees of the United Nations and Other Public International Organizations (LEUN)," was deleted in Fiscal Year 1990 in view of the fact the FBI no longer conducts these investigations. Previously, investigations in this classification stemmed from referrals from the Office of Personnel Management when questions or allegations were received regarding the applicant's loyalty to the U.S. Government as described in Executive Order 10422. The FBI first opened this classification in 1953 to investigate the loyalty to the U.S. of U.S. employees of the United Nations and other international organizations.

EFFECTIVE: 10/25/89

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SECTION 139. INTERCEPTION OF COMMUNICATIONS

|| 139-1 STATUTES

Title 18, USC, Sections 2510, 2511, 2512, 2513 (Public Law 90-351, Omnibus Crime Control and Safe Streets Act of 1968, as amended by Public Law 99-508, the Electronic Communications Privacy Act of 1986); Title 47, USC, Section 605 (Communications Act of 1934, as amended); Title 47, USC, Section 501, (Penalties for violation Title 47, USC, Section 605).

EFFECTIVE: 11/23/87

139-1.1 Title 18, USC, Section 2510 - Definitions (See MIOG, Part I, 264-2.4.)

(1) WIRE COMMUNICATION - Any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce and such term includes any electronic storage of such communication;

| See MIOG, Part II, 10-10.11.2 noting that radio communications transmitted over cordless telephones are included within the definition of "wire communication" and are therefore protected by Title III. |

(2) ORAL COMMUNICATION - Any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, but such term does not include any electronic communication;

(3) ELECTRONIC COMMUNICATION - Any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio electromagnetic, photoelectronic or photooptical system that affects interstate or

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foreign commerce. "Electronic communication" is also specifically defined to exclude a wire or oral communication. Any and all forms of electronic communications, unless specifically exempted, are subject to the provisions of the statute.

For additional definitions refer to Chapter 119 of Title 18, USC.

EFFECTIVE: 06/03/96

139-1.2 Title 18, USC, Section 2511 - Interception and Disclosure of Wire, Oral, or Electronic Communications Prohibited

This section prohibits the interception and disclosure of wire, oral or electronic communications except as otherwise specifically addressed in Chapter 119 of Title 18, USC. Any person is in violation if that person-

(1) intentionally intercepts, endeavors to intercept or procures any other person to intercept or endeavor to intercept, any wire, oral or electronic communication;

(2) intentionally uses, endeavors to use or procures any other person to use or endeavor to use any electronic, mechanical or other device to intercept any oral communication, in circumstances detailed under this Section of Title 18, USC;

(3) intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral or electronic communication in violation of this subsection; or

(4) intentionally uses or endeavors to use, the contents of any wire, oral or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral or electronic communication in violation of this subsection.

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139-1.2.1 Exceptions

(1) It shall not be unlawful under this chapter for an operator of a switchboard, or an officer, employee or agent of a provider of wire or electronic communication service, whose facilities are used in the transmission of a wire, oral or electronic communication, to intercept, disclose or use that communication in the normal course of his/her employment while engaged in any activity which is a necessary incident to the rendition of his/her service or to the protection of the rights or property of the provider of that service, except that a provider of wire or electronic communication service to the public shall not utilize service observing or random monitoring except for mechanical or service quality control checks. Refer to Section 2511 for specific exemptions;

(2) It shall not be unlawful under this chapter for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his/her employment and in discharge of the monitoring responsibilities exercised by the Commission in the enforcement of Chapter 5, Title 47, USC, to intercept a wire or electronic communication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained;

(3) It shall not be unlawful under this chapter for a person acting under color of law to intercept a wire, oral or electronic communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception;

(4) It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire, oral or electronic communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any state;

(5) It shall not be unlawful under this chapter or Chapter 121 of Title 18, USC, for any person-

(a) to intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public;



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(b) to intercept any radio communication which is transmitted-

1. by any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

2. by any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;

3. by a station operating on an authorized frequency within the bands allocated to the amateur, citizen band, or general mobile radio service; or

4. by any marine or aeronautical communications system;

(c) to engage in any conduct which-

1. is prohibited by Section 633 of the Communications Act of 1934; or

2. is excepted from the application of Section 705(a) of the Communications Act of 1934 by Section 705(b) of that Act;

(d) to intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of such interference; or

(e) for other users of the same frequency to intercept any radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system, if such communication is not scrambled or encrypted;

(6) It shall not be unlawful under this chapter-

(a) to use a pen register or a trap and trace device (as those terms are defined for the purposes of Chapter 206 of Title 18, relating to pen registers and trap and trace devices); or

(b) for a provider of electronic communication

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service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful or abusive use of such service;

(7) A person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication while in transmission on that service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient;

(8) A person or entity providing electronic communication service to the public may divulge the contents of such communication-

(a) as otherwise authorized in Title 18, USC, Section 2511 (2)(a) or Section 2517;

(b) with the lawful consent of the originator or any addressee or intended recipient of such communication;

(c) to a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or

(d) which were inadvertently obtained by the service provider and which appear to pertain to the commission of a crime, if such divulgence is made to a law enforcement agency.

EFFECTIVE: 11/23/87

139-1.3 Title 18, USC, Section 2512 - Manufacture, Distribution, Possession, and Advertising of Wire, Oral or Electronic Communication Intercepting Devices Prohibited

Except as otherwise specifically provided in Chapter 119 of Title 18, USC, this section prohibits any person from intentionally-

(1) sending through the mail or sending or carrying in interstate or foreign commerce, any electronic, mechanical or other device, knowing or having reason to know that the design of such

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device renders it primarily useful for the purpose of the surreptitious interception of wire, oral or electronic communications;

(2) manufacturing, assembling, possessing or selling any electronic, mechanical or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral or electronic communications and that such device or any component thereof has been or will be sent through the mail or transported in interstate or foreign commerce; or

(3) placing in any newspaper, magazine, handbill or other publication any advertisement of-

(a) any electronic, mechanical or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral or electronic communications; or

(b) any other electronic, mechanical or other device, where such advertisement promotes the use of such device for the purpose of the surreptitious interception of wire, oral or electronic communications, knowing or having reason to know that such advertisement will be sent through the mail or transported in interstate or foreign commerce.

EFFECTIVE: 11/23/87

139-1.3.1 Exceptions

It shall not be unlawful for-

(1) a provider of wire or electronic communication service or an officer, agent, or employee of, or a person under contract with, such a provider, in the normal course of the business of providing that wire or electronic communication; or

(2) an officer, agent, or employee of, or a person under contract with, the United States, a state or a political subdivision thereof, in the normal course of the activities of the United States, a state, or a political subdivision thereof, to send through the mail, send or carry in interstate or foreign commerce, or manufacture, assemble, possess, or sell any electronic, mechanical, or other device knowing or having reason to know that the design of such device

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renders it primarily useful for the purpose of the surreptitious interception of wire, oral or electronic communications.

EFFECTIVE: 11/23/87

139-1.4 Title 18, USC, Section 2513 - Confiscation of Wire, Oral or Electronic Communication Intercepting Devices

(1) This section provides that any electronic, mechanical or other device used, sent, carried, manufactured, assembled, possessed, sold or advertised in violation of Title 18, USC, Sections 2511 or 2512 may be seized and forfeited to the United States.

(2) The FBI has been delegated authority to institute civil forfeiture proceedings pursuant to Section 2513. The Forfeiture and Abandoned Property manual contains the step-by-step procedure to be followed for seizures and civil forfeiture proceedings (judicial and administrative) conducted in conjunction with this violation.

EFFECTIVE: 11/23/87

139-1.5 Title 47, USC, Section 605 - Unauthorized Publication or use of Communications

Except as authorized by Chapter 119, Title 18, USC, no person receiving, assisting in receiving, transmitting, or assisting in transmitting any interstate or foreign communication by wire or radio shall divulge or publish the existence, contents, substance, purport, effect or meaning thereof, except through authorized channels of transmission or reception-

(1) To any person other than the addressee, his/her agent, or attorney;

(2) To a person employed or authorized to forward such communication to its destination;

(3) To proper accounting or distributing officers of the various communicating centers over which the communication may be passed;

(4) To the master of a ship under whom that person is

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| serving;

| (5) In response to a subpoena issued by a court of  
| competent jurisdiction; or

| (6) On demand of other lawful authority.

No person not being authorized by the sender shall intercept any radio communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person. No person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by radio and use such communication (or any information therein contained) for his/her own benefit or for the benefit of another not entitled thereto. No person having received any intercepted radio communication or having become acquainted with the contents, substance, purport, effect, or meaning of such communication (or any part thereof) knowing that such communication was intercepted, shall divulge or publish the existence, contents, substance, purport, effect, or meaning of such communication (or any part thereof) or use such communication (or any information therein contained) for his/her own benefit or for the benefit of another not entitled thereto.

EFFECTIVE: 11/23/87

| 139-1.5.1 Exceptions

| (1) This section shall not apply to the receiving, divulging, publishing or utilizing the contents of any radio communication which is transmitted by any station for the use of the general public, which relates to ships in distress or which is transmitted by an amateur radio station operator or by a citizens band radio operator;

| (2) This section shall not apply to the interception or receipt by any individual or the assisting of such interception or receipt, of any satellite cable programming for private viewing if-

| (a) the programming involved is not encrypted;

| (b) a marketing system is established and the individuals receiving such programming have obtained authorization for private viewing under that system.

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EFFECTIVE: 11/23/87

139-2 POLICY

(1) Upon receipt of reliable information concerning an interception of communications violation falling within the 139A or 139B classification, the appropriate United States Attorney (USA) should be notified. The USA may request a preliminary investigation be conducted. Such should consist of interviews of complainants, victims and up to three witnesses, along with contact with the telephone company, when appropriate. Unless circumstances indicate otherwise, investigations should also include interviews of subjects. USA will review results and advise on merits of the case. USA is authorized by DOJ to request full-field investigation and initiate prosecution and forfeiture.

(2) | There are a few narrow exceptions to the general rule that the contents of illegally intercepted communications must not be disclosed. Before ANY disclosure or use is made of an unlawfully intercepted communication, the Chief Division Counsel should be consulted, and the concurrence of the appropriate United States Attorney's office obtained and documented. Permissible disclosure and use of illegally intercepted information varies depending on caselaw controlling in the particular judicial district. See Title 18, USC, Section 2517. |

| (3) | Allegations involving federal, state or local public officials as subjects or victims are classified as priority matters. Such matters require prompt and thorough investigation. Evidence should be collected in a timely and effective manner. The same applies to matters where it is alleged that a federal, state or local government agency is the victim. All other allegations concerning interception of communications violation, not otherwise described in | (4) | below, are classified as nonpriority. A declination policy should be established with the appropriate USA for nonpriority matters, to include response to such allegations involving domestic marital disputes.

| (4) | Upon receipt of reliable information concerning an interception of communications violation falling within the 139C or 139D classification (Signal Theft), an initial effort should be made to assess the scope of the activity. Investigations should be limited to persons or companies which manufacture equipment or modify existing commercially available equipment to facilitate the theft of

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communication signals by others. Resources should not be expended in the investigation of end users. These matters should be presented early for an initial prosecutive opinion and thereafter closely followed with the USA.

(5) Allegations involving the interception of cable, satellite or electronic communications for significant commercial gain are classified as priority matters. Significant commercial gain is defined as the manufacture, sale or advertisement to sell any device the design of which renders it primarily useful for the surreptitious interception of protected or encrypted communications, wherein the revenue accruing to the subject exceeds \$25,000. All other allegations involving interception of communication/signal theft matters are classified as nonpriority and should be covered in a declination policy with the USA.

(6) Significant allegations involving the theft of industrial or corporate proprietary information obtained as a result of the illegal interception of business electronic communications should be classified as Fraud By Wire (196 classification) or ITSP matters (87D classification) in lieu of handling under the IOC classification whenever applicable.

(7)



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(8) Agents who may be required to testify in wiretapping prosecutions should confer with the prosecuting attorney in order to formulate a plan for direct examination which would confine cross-examination and in order to be prepared with the appropriate objections to the exploration of matters on cross-examination which are not relevant and are objectionable under the rules of evidence.

(9) Attorney General Order No. 919-80, dated 12/18/80, sets forth procedures to be followed by officers and other employees

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of the Department when served with a subpoena or otherwise ordered to produce or disclose material or information contained in DOJ files or official information in the possession of its employees. Should Agents who are witnesses be compelled by the court, over objection, to give testimony concerning their training and experience, which testimony might reveal material and information within their official possession or contained in DOJ files with respect to confidential investigative techniques, provisions of Attorney General Order No. 919-80 should be invoked. If appropriate, the government's prosecuting attorney should advise the court that the Attorney General has prohibited disclosure of such information in other types of cases because revelation thereof would be inimical to national security and defense of the United States. FBIHQ must be kept promptly advised of all developments in each case where this problem might present itself. (See MIOG, Part II, 6-1.)

| (10) | If complaint is based solely upon "beeps" or other unusual noises upon a telephone line, no investigation should be conducted in absence of other information indicating existence of an unauthorized wiretap and FBIHQ need not be notified of receipt of complaint, unless some unusual circumstances exist that would make it desirable to notify FBIHQ.

| (11) | No violation exists where one party permits a third party to listen to a telephone conversation without the second party's consent unless done for wrongful purpose (commission of crime or tort).

| (12) | Surreptitious listening on a party line telephone and/or later divulgence of information obtained may be a violation and should be discussed with USA in same manner as complaints of other possible interception of communications violations.

| (13) | Generally recording telephone conversations by one party without the knowledge of another party is not a violation of this chapter.

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139-3

INVESTIGATIVE PROCEDURE

(1) Check identification records and Bureau files to determine if subjects have prior convictions under the Interception of Communication statutes set forth in this section. USA should be advised of the subjects' prior interception of communication convictions.

(2) In cases where full-field investigations are initiated-

(a) Evidence must be obtained to prove there was an unauthorized interception, use or disclosure of a communication.

(b) In 139A and B matters both parties to the intercepted conversation must be contacted to ensure that neither consented. On 139C and D matters, Agents should ensure that investigation establishes the requisite knowledge and intent on the part of the subject to violate the statute. This primarily applies to retailers and advertisers.

(c) Consider use of physical surveillances to identify subjects.

(d) Obtain photographs of installation and evidence of equipment used for submission to the Electronic Surveillance Technology Section, Signal Analysis and Processing Unit, Information Resources Division. Normally, devices need not be sent to the [redacted] for examination until full-field investigation requested by USA. The same evidence handling and shipping procedures should be followed as in submitting evidence to the FBI Laboratory (See Part II, Section 13-6.7 of this manual).

(e) [redacted]

(f) [redacted]

(g) Handle search and seizures pursuant to Title 18, USC, Section 2513 in close cooperation and consultation with the USA. (See 139-1.4.)

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EFFECTIVE: 11/24/97

139-4 MISCELLANEOUS

(1) Notwithstanding any other provision of this title or section 705 or 706 of the Communications Act of 1934, it shall not be unlawful for an officer, employee, or agent of the United States in the normal course of his/her official duty to conduct electronic surveillance as defined in Section 101 of the Foreign Intelligence Surveillance Act of 1978, as authorized by that Act.

(2) Nothing contained in this chapter or Chapter 121, or Section 705 of the Communications Act of 1934, shall be deemed to affect the acquisition by the United States Government of foreign intelligence information from international or foreign communications, or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing a means other than electronic surveillance as defined in Section 101 of the Foreign Intelligence Surveillance Act of 1978, and procedures in this chapter and the Foreign Intelligence Surveillance Act of 1978 shall be the exclusive means by which electronic surveillance, as defined in Section 101 of such act, and the interception of domestic wire and oral communications may be conducted.

EFFECTIVE: 11/23/87

139-5 VENUE

Wherever an offense is committed, begun or completed.

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139-6 REPORTING PROCEDURES

(1) Advise FBIHQ, by appropriate teletype, the same day, when opening priority cases involving public officials and/or Federal, state or local government agencies. In such matters, an LHM (original and three copies) must be sent to FBIHQ within ten working days of the opening of the case. This communication should include facts predicated the case, USA's opinion and initial investigative steps contemplated. Additional status communications are at the discretion of the SAC or at the request of FBIHQ. A closing LHM must be prepared for all investigations involving public officials and/or government agencies. This final LHM must restate the predication for opening the investigation, summarize investigative findings and detail the disposition of the investigation. The USA's opinion will be included where that office declines prosecution. Any prosecutive action should be detailed from indictment, information or complaint, through plea acceptance, trial disposition, and/or sentencing, as appropriate.

(2) Upon receipt of complaints alleging violations, not involving public officials and/or government agencies, FBIHQ should be promptly notified by airtel, or by more expeditious means if good judgment so dictates, based on the specific circumstances. Questionable status should contain recommendations of SAC as to action desired. If no investigative action is requested by the USA, the initial airtel should indicate that the investigation has been closed. Confirm USA's opinion by letter. If investigation is requested, investigative results should be furnished to FBIHQ for dissemination to DOJ, Criminal Division, by LHM and/or prosecutive summary report. The original and three copies of an LHM should be forwarded. If prosecutive summary report deemed advisable, two copies should be forwarded to FBIHQ.

EFFECTIVE: 11/23/87

139-7 PENALTY - MAXIMUM

(1) Title 18, USC, Section 2511 - fine or five years' imprisonment or both. In addition to criminal penalties, civil penalties may be applied. See Title 18, USC, Section 2511 for specific circumstance where criminal and civil penalties apply.

(2) Title 18, USC, Section 2512 - fine up to \$10,000 or imprisonment up to five years or both.

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(3) Title 47, USC, Section 605 - for first offense, fine up to \$25,000 or imprisonment up to 1 year or both. For subsequent offenses, fine up to \$50,000 or imprisonment up to 2 years or both.

In accordance with the above sections, there is a sliding scale of penalties in conjunction with the nature of the offense and contingent upon other contributing factors. The above code sections should be referred to for specific penalty considerations.

EFFECTIVE: 11/23/87

139-8

COMPUTATION OF POTENTIAL ECONOMIC LOSS PREVENTED (PELP)  
VALUES IN SIGNAL THEFT MATTERS

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EFFECTIVE: 08/27/90

|| 139-9 | CHARACTER - INTERCEPTION OF COMMUNICATIONS

EFFECTIVE: 08/27/90

| 139-10 SUBCLASSIFICATIONS

See MAOP, Part II, 3-1.1, "FBI Classifications and Subdivided Classifications."

EFFECTIVE: 10/18/95

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SECTION 140. |OFFICE OF PERSONNEL MANAGEMENT - REFERRAL; -  
EMPLOYEES; - OTHER|

140-1 GENERAL INSTRUCTIONS REGARDING GOVERNMENT EMPLOYEE  
SECURITY REFERRAL INVESTIGATIONS (140A AND 140C) | (See  
MIOG, Part I, 46-1.11(3).) |

These instructions supplement those contained in Part II,  
Section 17 of this manual.

(1) The first group of investigations in this category stems from referrals from OPM or other Government agencies wherein a question or allegation has been received regarding the applicant's or employee's loyalty to the Government as described in Section 8(d) of EO 10450. Referrals from OPM (handled under the 151 classification until Fiscal Year 1990) originate at (a) Peace Corps (ACTION-OPM), (b) Department of Energy (DOE-OPM), (c) National Aeronautics and Space Administration (NASA-OPM), (d) Nuclear Regulatory Commission (NRC-OPM), (e) U.S. Arms Control and Disarmament Agency (ACDA-OPM), and (f) U.S. Information Agency (USIA-OPM), and are covered under Public Law 298 and other public laws when an allegation has been received regarding the applicant's loyalty to the Government. Referrals are handled on a headquarters level only. Upon receipt of a referral, FBIHQ forwards it to the Office of the General Counsel of the Department of Justice, where a determination is made as to whether the referral falls within the guidelines of EO 10450. If a request from another agency is received on the field level, the requesting agency should be informed that these investigations are initiated and correlated at FBIHQ and the request must be at the headquarters level. Conduct no investigation in absence of FBIHQ approval. FBIHQ will advise the field concerning the scope of these investigations. | (See MIOG, Part I, 151-1.) |

(2) If substantive information described in Section 8(d) of EO 10450 is received from complainant, or is located in office files, or is developed during other investigation, include such information in LHM to FBIHQ for dissemination to OPM or interested agency in event they desire FBI full field investigation.

(3) If derogatory information requiring no FBI investigation is received (Section 8(a) (1) of EO 10450), submit LHM to FBIHQ suitable for dissemination and also consider local dissemination to concerned agency.

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EFFECTIVE: 09/09/94

140-1.1 Preliminary Inquiries

When a Name Check received at FBIHQ from OPM or other Government agency, and identity of individual with same or similar name cannot be resolved from information available in FBIHQ files, a preliminary inquiry is ordered by FBIHQ. This will consist of checking field offices' files and in some cases employment or police records in an effort to determine identity and significance of available information.

EFFECTIVE: 04/19/91

140-1.2 Interviews

If asked why individual is being investigated in OPM security referral case, state that under an EO Government employees or applicants are checked as part of the Federal employee security program. Mr., Mrs., Miss, or Ms. \_\_\_\_\_ is being checked under this program.

EFFECTIVE: 04/19/91

140-1.3 Dissemination of Reports

If a request is received in the field for copies of OPM security referral reports, advise that these investigations are supervised and correlated at FBIHQ and such requests should be directed to FBIHQ. NO LOCAL DISSEMINATION OF THESE REPORTS SHOULD BE MADE.

EFFECTIVE: 04/19/91

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140-1.4 Full Field Investigations of Army, Navy and Air Force  
Civilian Personnel

(1) At inception of investigation, appropriate office should notify intelligence representative of interested department that investigation is being conducted by FBI under EO 10450. However, no local dissemination of reports or investigative results should be made without prior specific FBIHQ approval.

(2) Notification may be in any form most convenient to field office.

(3) Office file must show notification given and what information furnished.

EFFECTIVE: 04/19/91

140-2 | GENERAL INSTRUCTIONS REGARDING SUITABILITY REFERRAL  
INVESTIGATION (140B)

A second group of investigations in this category also stems from referrals from OPM or other Government agencies wherein a suitability background investigation is being requested concerning key employees. No question or allegation of the applicant's or employee's loyalty to the Government has surfaced.

These instructions supplement those contained in Part II, Section 17 of this manual.

EFFECTIVE: 04/19/91

140-3 | SUBDIVIDED CLASSIFICATIONS

(1) 140A - Office of Personnel Management - Referral (Key Government Employees)

(2) 140B - Office of Personnel Management - Employees (Key OPM or Government Employees)

(3) 140C - Office of Personnel Management - Other (Other Government Employees)

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EFFECTIVE: 04/19/91

||140-4| PRIVACY ACT - REQUIREMENTS

(1) When interviewing individuals under this classification for information concerning themselves or their activities, the interviewing Agent must follow the procedures described in Part I, 190-5 (2) and (3) of this manual.

(2) When interviewing an individual to solicit information concerning someone other than the interviewee (thereby classifying that individual as a source of information), the interviewing Agent must follow the procedure relating to promises of confidentiality as described in Part I, 190-7 of this manual.

EFFECTIVE: 04/19/91

||140-5| CHARACTER - |OFFICE OF PERSONNEL MANAGEMENT - REFERRAL; -  
EMPLOYEES; - OTHER|

EFFECTIVE: 04/19/91



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SECTION 141. FALSE ENTRIES IN RECORDS OF INTERSTATE CARRIERS

141-1 STATUTES

Title 47, USC, Section 220(e); Title 49, USC, Section  
20(7)(b); Title 49, USC, Section 20(7)(f)

EFFECTIVE: 06/26/91

141-1.1 Title 47, Section 220(e)

Violations by employees of telephone, telegraph and radio  
companies

EFFECTIVE: 06/26/91

141-1.1.1 Elements

"Any person who shall willfully make any false entry in  
the accounts of any book of accounts or in any record or memoranda  
kept by any such carrier, or who shall willfully destroy, mutilate,  
alter, or by any other means or device falsify any such account,  
record, or memoranda, or who shall willfully neglect or fail to make  
full, true, and correct entries in such accounts, records, or  
memoranda of all facts and transactions appertaining to the business  
of the carrier . . ."

EFFECTIVE: 06/26/91

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141-1.1.2 Other Provisions

| (1) | The carriers covered are telephone, telegraph, and radio companies engaged as common carriers for hire in interstate or foreign commerce; those engaged in radio broadcasting are not deemed to be common carriers. Title 47, USC, Section 153(h).

| (2) | Jurisdiction over violations by the carriers to contravene provisions of this section rests with the Federal Communications Commission.

| (3) | The Bureau has investigative jurisdiction only over violations by employees who attempt to defraud the employing carriers.

| (4) | Note that this statute defines the violation as a misdemeanor.

EFFECTIVE: 06/26/91

141-1.1.3 Investigative Procedure

These cases will arise out of embezzlements by employees of the interstate carriers who attempt to conceal their shortages by failing to record transactions, reporting them falsely, or by destroying records. The exact nature of the records used by the carriers should be ascertained in order that the Special Agent can properly show where entries are false. Some of these cases may require the services of an accountant, as it may be necessary to examine the records in a manner similar to that used in the Financial Institution Fraud cases.

EFFECTIVE: 06/26/91

141-1.1.4 Policy

If prosecution has already been initiated in the state courts for embezzlement or similar offenses, the investigation should be held in abeyance pending a decision of the USA as to whether he/she will authorize prosecution in Federal court.

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EFFECTIVE: 06/26/91

141-1.2 Title 49, Section 20(7)(b)

Violations by employees of railroads, etc.

EFFECTIVE: 06/26/91

141-1.2.1 Elements

"Any person who shall knowingly and willfully make, cause to be made, or participate in the making of, any false entry in any annual or other report required under this section to be filed, or in the accounts of any book of accounts or in any records or memoranda kept by a carrier, or required under this section to be kept by a lessor or other person, or who shall knowingly and willfully destroy, mutilate, alter, or by any other means or device falsify the record of any such accounts, records, or memoranda, or who shall knowingly and willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of the carrier, lessor, or person, or shall knowingly and willfully keep any accounts, records, or memoranda contrary to the rules, regulations, or orders of the Commission with respect thereto, or shall knowingly or willfully file with the Commission any false report or other document..."

EFFECTIVE: 01/31/78

141-1.2.2 Other Provisions

The carriers covered are railroads, pipeline companies, express companies, sleeping car companies, and suburban electric lines. Such carriers must be engaged in interstate commerce to come within the paragraph. The paragraph does not cover water or steamship lines, motor freight lines, or bus companies. It is contemplated that few cases will come to the Bureau's attention except those arising out of irregularities by employees of railroads.

Note that this statute defines the violation as a misdemeanor.

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EFFECTIVE: 01/31/78

141-1.3 Title 49, Section 20(7) (f)

Violations by special agents, accountants, or examiners of  
Interstate Commerce Commission

EFFECTIVE: 01/31/78

141-1.3.1 Elements

"Any special agent, accountant, or examiner who knowingly and willfully divulges any fact or information which may come to his knowledge during the course of any examination or inspection made under authority of this section, except insofar as he may be directed by the Commission or by a court of judge thereof . . . ."

EFFECTIVE: 01/31/78

141-1.3.2 Other Provisions

Very few cases will arise concerning violations of this particular subsection. However, since the Criminal Division of the Department has advised that this subsection is within the Bureau's jurisdiction, the pertinent subsection is quoted above. Note that subsections a, c, d, and e of Section 20(7) are not within the Bureau's jurisdiction.

According to the Antitrust Division of the Department, the words "any special agent, accountant, or examiner" refer to agents, accountants, or examiners in the employ of the Interstate Commerce Commission.

Note that this statute defines the violation as a misdemeanor.

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EFFECTIVE: 01/31/78

141-2 PENALTIES

(1) Title 47, Section 220(e) - A fine of not less than \$1,000 nor more than \$5,000 or imprisonment for a term of not less than one year nor more than three years, or both (misdemeanor).

(2) Title 49, Section 20(7)(b) - A fine of not more than \$5,000 or imprisonment for not more than two years, or both (misdemeanor).

(3) Title 49, Section 20(7)(f) - A fine of not more than \$500 or imprisonment for not exceeding six months or both (misdemeanor).

EFFECTIVE: 01/31/78

141-3 CHARACTER - FALSE ENTRIES IN RECORDS OF INTERSTATE  
CARRIERS (FERIC)

EFFECTIVE: 01/31/78

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SECTION 142. ILLEGAL USE OF RAILROAD PASS

142-1 STATUTE

Title 49, USC, Section 1 (7)

EFFECTIVE: 01/31/78

142-1.1 Elements

Free transportation for passengers prohibited; exceptions:

"No common carrier subject to the provisions of this chapter, shall, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employees, its officers, time inspectors, surgeons, physicians, and attorneys at law, and the families of any of the foregoing; to the executive officers, general chairmen, and counsel of employees' organizations when such organizations are authorized and designated to represent employees in accordance with the provisions of the Railway Labor Act;" (Sections 151-163 and 181-188 of Title 45) "to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Homes, including those about to enter and those returning home after discharge; to necessary caretakers of livestock, poultry, milk, and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to railway mail-service employees and persons in charge of the mails when on duty and traveling to and from duty, and all duly accredited agents and officers of the U. S. Postal Service and the Railway Mail Service and postal inspectors while traveling on official business, upon the exhibition of their credentials; to customs inspectors, and immigration officers; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such persons: Provided, that this provision shall not be

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construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation: And provided further, that this provision shall not be construed to prohibit the privilege of passes or franks, or the exchange thereof with each other, for the officers, agents, employees, and their families of such telegraph, telephone, and cable lines, and the officers, agents, employees and their families of other common carriers subject to the provisions of this chapter: Provided further, that the term "employees" as used in this paragraph shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed in the employment of a carrier and exemployees traveling for the purpose of entering the service of any such common carrier; and the term "families" as used in this paragraph shall include the families of those persons named in this proviso, also the families of persons killed, and the widows during widowhood and minor children during minority of persons who died, while in the service of any such common carrier."

EFFECTIVE: 01/31/78

142-1.1.1 Other Provisions

"Jurisdiction of offenses under this provision shall be the same as that provided for offenses in Sections 41, 42, and 43 of Chapter 2 of this Title."

Venue: "Every violation of this section shall be prosecuted in any court of the United States having jurisdiction of crimes within the district in which such violation was committed, or through which the transportation may have been conducted; and whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein."

Violations of the above statute come within the Bureau's primary investigative jurisdiction.

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EFFECTIVE: 01/31/78

142-1.1.2 Investigative Procedure

Most violations of this nature are brought to the attention of the Bureau by special agents of the various railroads. Usually these individuals have made a complete investigation of the alleged violation and are in possession of all pertinent facts. Accordingly, much investigative effort can be eliminated by contacting these officials early in the course of the investigation and obtaining the available data they have compiled.

EFFECTIVE: 01/31/78

142-2 PENALTIES

Any common carrier violating this provision shall be deemed guilty of a misdemeanor and for each offense, on conviction, shall pay to the United States a penalty of not less than \$100 nor more than \$2,000, and any person, other than the persons excepted in this provision, who uses any such interstate free ticket, free pass, or free transportation shall be subject to a like penalty.

EFFECTIVE: 01/31/78

142-3 CHARACTER - ILLEGAL USE OF A RAILROAD PASS

EFFECTIVE: 01/31/78



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SECTION 143. INTERSTATE TRANSPORTATION OF GAMBLING DEVICES

143-1 STATUTES

Title 15, USC, Sections 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180. Effective date of this legislation was originally 1-2-51 and further amended effective 12-17-62 following passage of the "Gambling Devices Act of 1962" (Public Law 87-840).

EFFECTIVE: 01/31/78

143-1.1 Section 1171 Definitions

"As used in this chapter--

"(a) The term 'gambling device' means--

"(1) any so-called 'slot machine' or any other machine or mechanical device an essential part of which is a drum or reel with insignia thereon, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

"(2) any other machine or mechanical device (including, but not limited to, roulette wheels and similar devices) designed and manufactured primarily for use in connection with gambling, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

"(3) any subassembly or essential part intended to be used in connection with any such machine or mechanical device, but which is not attached to any such machine or mechanical device as a constituent part.

"(b) The term 'State' includes the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

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"(c) The term 'Possession of the United States' means any Possession of the United States which is not named in paragraph (b) of this section.

"(d) The term 'interstate or foreign commerce' means commerce (1) between any State or Possession of the United States and any place outside of such State or Possession, or (2) between points in the same State or Possession of the United States but through any place outside thereof.

"(e) The term 'intrastate commerce' means commerce wholly within one State or Possession of the United States."

EFFECTIVE: 01/31/78

143-1.2      Section 1172 - Transportation of Gambling Devices as  
Unlawful; Exceptions; Authority of Federal Trade  
Commission

"It shall be unlawful knowingly to transport any gambling device to any place in a State, the District of Columbia, or a Possession of the United States from any place outside of such State, the District of Columbia, or Possession: Provided, That this section shall not apply to transportation of any gambling device to a place in any State which has enacted a law providing for the exemption of such State from the provisions of this section, or to a place in any subdivision of a State if the State in which such subdivision is located has enacted a law providing for the exemption of such subdivision from the provisions of this section, nor shall this section apply to any gambling device used or designed for use at and transported to any licensed gambling establishments where betting is legal under applicable State laws" (Nevada and New Jersey are the only states which have so exempted themselves): "Provided further, That it shall not be unlawful to transport in interstate or foreign commerce any gambling device into any State in which the transported gambling device is specifically enumerated as lawful in a statute of that State. "Nothing in this Act shall be construed to interfere with or reduce the authority, or the existing interpretations of the authority, of the Federal Trade Commission under the Federal Trade Commission Act, as amended (15 USC 41-58)."

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EFFECTIVE: 06/10/88

143-1.3      Section 1173 - Registration of Manufacturers and Dealers;  
Numbering Devices; Maintenance of Records; Transfer or  
Possession of Unnumbered Devices; Alteration of Numbers or  
Marks on Devices; False Entries; Inspection and Access to  
Records

"(a) (1) It shall be unlawful for any person engaged in the business of manufacturing gambling devices, if the activities of such business in any way affect interstate or foreign commerce, to manufacture any gambling device during any calendar year, unless after November 30 of the preceding calendar year, and before the date on which such device is manufactured, such person has registered with the Attorney General under this subsection, regardless of whether such device ever enters interstate or foreign commerce.

"(2) It shall be unlawful for any person during any calendar year to engage in the business of repairing, reconditioning, buying, selling, leasing, using, or making available for use by others any gambling device, if in such business he sells, ships, or delivers any such device knowing that it will be introduced into interstate or foreign commerce after the effective date of the Gambling Devices Act of 1962, unless, after November 30 of the preceding calendar year, and before the date such sale, shipment, or delivery occurs, such person has registered with the Attorney General under this subsection.

"(3) It shall be unlawful for any person during any calendar year to engage in the business of repairing, reconditioning, buying, selling, leasing, using or making available for use by others any gambling device, if in such business he buys or receives any such device knowing that it has been transported in interstate or foreign commerce after the effective date of the Gambling Devices Act of 1962, unless, after November 30 of the preceding calendar year and before the date on which he buys or receives such device, such person has registered with the Attorney General under this subsection.

"(4) Each person who registers with the Attorney General pursuant to this subsection shall set forth in such registration (A) his name and each trade name under which he does business, (B) the address of each of his place of business in any State or possession of the United States, (C) the address of a place of business in any State or Possession of the United States in which such a place of business is located, where he will keep all records required to be kept by him

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by subsection (c) of this section, and (D) each activity described in paragraph (1), (2), or (3) of this subsection which he intends to engage in during the calendar year with respect to which such registration is made.

"(b) (1) Every manufacturer of a gambling device defined in paragraph (a)(1) or (a)(2) of the first section of this Act shall number serially each such gambling device manufactured by him and permanently affix on each such device, so as to be clearly visible, such number, his name, and, if different, any trade name under which he does business, and the date of manufacture of such device.

"(2) Every manufacturer of a gambling device defined in paragraph (a)(3) of the first section of this Act shall, if the size of such device permits it, number serially each such gambling device manufactured by him and permanently affix on each such device, so as to be clearly visible, such number, his name, and, if different, any trade name under which he does business, and the date of manufacture of such device.

"(c) (1) Every person required to register under subsection (a) of this section or any calendar year shall, on and after the date of such registration or the first day of such year (whichever last occurs), maintain a record by calendar month for all periods thereafter in such year of-- "(A) each gambling device manufactured, purchased, or otherwise acquired by him, "(B) each gambling device owned or possessed by him acquired or in his custody, and "(C) each gambling device sold, delivered, or shipped by him in intrastate, interstate, or foreign commerce.

"(2) Such record shall show-- "(A) in the case of each such gambling device defined in paragraph (a)(1) or (a)(2) of the first section of this Act, the information which is required to be affixed on such gambling device by subsection (b)(1) of this section; and "(B) in the case of each gambling device defined in paragraph (a)(3) of the first section of this Act, the information required to be affixed on such gambling device by subsection (b)(2) of this section, or, if such gambling device does not have affixed on it any such information, its catalog listing, description, and, in the case of each such device owned or possessed by him or in his custody, its location. "Such record shall also show (i) in the case of any such gambling device described in paragraph (1)(A) of this subsection, the name and address of the person from whom such device was purchased or acquired and the name and address of the carrier; and (ii) in the case of any such gambling device described in paragraph (1)(C) of this subsection, the name and address of the buyer and consignee thereof

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and the name and address of the carrier.

"(d) Each record required to be maintained under this section shall be kept by the person required to make it at the place designated by him pursuant to subsection (a)(4)(C) of this section for a period of at least five years from the last day of the calendar month of the year with respect to which such record is required to be maintained.

"(e) (1) It shall be unlawful (A) for any person during any period in which he is required to be registered under subsection (a) of this section to sell, deliver, or ship in intrastate, interstate, or foreign commerce or own, possess, or have in his custody any gambling device which is not marked and numbered as required by subsection (b) of this section; or (B) for any person to remove, obliterate, or alter any mark or number on any gambling device required to be placed thereon by such subsection (b).

"(2) It shall be unlawful for any person knowingly to make or cause to be made, any false entry in any record required to be kept under this section.

"(f) Agents of the Federal Bureau of Investigation shall, at any place designated pursuant to subsection (a)(4)(C) of this section by any person required to register by subsection (a) of this section, at all reasonable times, have access to and the right to copy any of the records required to be kept by this section, and in case of refusal by any person registered under such subsection (a) to allow inspection and copying of such records, the U.S. district court for the district in which such place is located shall have jurisdiction to issue an order compelling production of such records for inspection or copying.

EFFECTIVE: 06/10/88

143-1.4      Section 1174 - Labeling and Marking of Shipping Packages

"All gambling devices, and all packages containing any such, when shipped or transported shall be plainly and clearly labeled or marked so that the name and address of the shipper and of the consignee, and the nature of the article or the contents of the package may be readily ascertained on an inspection of the outside of the article or package."

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EFFECTIVE: 01/31/78

143-1.5 Section 1175 - Specific Jurisdiction in which  
Manufacturing, Selling, Repairing, etc., Prohibited

"It shall be unlawful to manufacture, recondition, repair, sell, transport, possess, or use any gambling device in the District of Columbia, in any Possession of the United States, within Indian country as defined in Section 1151 of Title 18 (of the USC) or within the special maritime and territorial jurisdiction of the United States as defined in Section 7 of Title 18 (of the USC.)"

EFFECTIVE: 01/31/78

143-1.6 Section 1176 Penalties

"Whoever violates any of the provisions of Sections 1172, 1173, 1174 or 1175 of this Act shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

EFFECTIVE: 01/31/78

143-1.7 Section 1177 - Confiscation of Gambling Devices and Means  
of Transportation; Laws Governing

"Any gambling device transported, delivered, shipped, manufactured, reconditioned, repaired, sold, disposed of, received, possessed, or used in violation of the provisions of this Act shall be seized and forfeited to the United States. All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as applicable and not inconsistent with the provisions hereof: Provided, That such duties as are imposed upon the collector of customs or any other person with respect to the seizure

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and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws be performed with respect to seizures and forfeitures of gambling devices under this Act by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General."

EFFECTIVE: 01/31/78

143-1.8 Section 1178 Separability of Provisions

"If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

EFFECTIVE: 01/31/78

143-1.9 Section 1179 Exceptions

"None of the provisions of this Act shall be construed to apply--

"(1) to any machine or mechanical device designed and manufactured primarily for use at a racetrack in connection with parimutuel betting:

"(2) to any machine or mechanical device, such as a coin-operated bowling alley, shuffleboard, marble machine (a so-called pinball machine), or mechanical gun, which is not designed and manufactured primarily for use in connection with gambling, and (A) which when operated does not deliver, as a result of the application of an element of chance, any money or property, or (B) by the operation of which a person may not become entitled to receive, as the result of the application of an element of chance, any money or property, or

"(3) to any so-called claw, crane, or digger machine and similar devices which are not operated by coin, are actuated by a crank, and are designed and manufactured primarily for use at carnivals or county or state fairs."

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EFFECTIVE: 01/31/78

143-1.10 Section 1180 Effective Date

"The amendments made by this Act shall take effect on the sixtieth day after the date of its enactment." (December 17, 1962)

EFFECTIVE: 01/31/78

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143-2 ELEMENTS

EFFECTIVE: 01/31/78

143-2.1 Section 1172

(1) A gambling device covered by the Act, subassembly, or essential part thereof is transported into any state, District of Columbia, or possession of the U.S.

(2) The state has not exempted itself from provisions of this act and this section does not apply to any gambling device transported to any licensed gambling establishments where betting is legal under applicable state law, or

(3) The state in which the gambling device is transported in interstate or foreign commerce has specifically enumerated as lawful by state statute the gambling device so transported.

EFFECTIVE: 01/31/78



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143-2.2 Section 1173

(1) Failure of manufacturer to register with the Attorney General.

(2) Failure during any calendar year of any person engaged in business of repairing, reconditioning, buying, selling, leasing, or using gambling devices to register with the Attorney General if he sells, ships, delivers, buys, or receives such device knowing it will be introduced into interstate or foreign commerce.

(3) Failure of person required to register to set forth -

(a) His name and each trade name under which he does business.

(b) Address of each place of business in any state.

(c) The address of where he will keep all records required to be kept by Section 1173.

(d) Each activity he intends to engage in during the calendar year.

(4) Failure of manufacturer to number serially each gambling device so manufactured and permanently affix on each device such number, his name, trade name if different, and date of manufacture.

(5) Failure of any person engaged in business of repairing, reconditioning, buying, selling, leasing, or using any gambling device to number serially each gambling device and permanently affix on each device such number, his name, trade name if different, and date of manufacture.

(6) Failure of every person required to register to maintain record by calendar month of -

(a) Each gambling device manufactured, purchased, or acquired.

(b) Each gambling device owned, possessed, or in his/her custody.

(c) Each gambling device sold, delivered, or shipped in intrastate, interstate, or foreign commerce.

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(7) Failure to maintain records required to be maintained at the required location for a period of five years.

(8) Unlawful for person required to be registered to sell, deliver, or ship in intrastate, interstate, or foreign commerce, or have in custody any gambling device which is not marked and numbered as required or to remove, obliterate, or alter any mark or number on any gambling device required to be placed thereon.

(9) Unlawful to make or cause to be made any false entry in any record required to be kept under this Section.

EFFECTIVE: 06/18/87

143-2.3 Section 1174

(1) To ship or transport any gambling device.

(2) The gambling device or package containing the device is not clearly labeled or marked showing the name and address of the shipper and consignee and nature of the article or the contents of the package from an inspection of the outside of the package.

EFFECTIVE: 06/18/87

143-2.4 Section 1175

(1) To manufacture, recondition, repair, sell, transport, possess, or use any gambling device.

(2) In the District of Columbia, in any possession of the U.S., within Indian country, or within the special maritime and territorial jurisdiction of the U.S.

EFFECTIVE: 06/18/87

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143-2.5 Section 1177

(1) A gambling device may be seized if this device is trans-ported, delivered, shipped, manufactured, reconditioned, repaired, sold, disposed of, received, possessed, or used in violation of the statute.

(2) The seized gambling device shall be forfeited to the U.S.

(3) The FBI has been delegated authority to institute civil administrative forfeiture proceedings pursuant to Section 1177. The Forfeiture and Abandoned Property manual contains the step-by-step procedure to be followed for seizures and civil forfeiture proceedings (judicial and administrative) conducted in conjunction with this violation.

EFFECTIVE: 06/18/87

143-3 EXCEPTIONS

Section 1179 sets forth exceptions concerning certain machines or mechanical devices which are exempted from provisions of this Act.

EFFECTIVE: 06/18/87

143-4 INSPECTION OF RECORDS

Section 1173 authorizes that Agents of the FBI shall at all reasonable times have access to and the right to copy any of the records kept by a person required to register. In case of refusal of any person so registered to allow inspection in copying such records, the U.S. district court for the district in which such place is located shall have jurisdiction to issue an order compelling production of such records for inspection or copying.

EFFECTIVE: 10/16/90

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143-5 POLICY

(1) Section 1177 of the statute provides that gambling devices transported, delivered, shipped, manufactured, reconditioned, repaired, sold, disposed of, received, possessed, or used in violation of the provisions of the Act shall be seized and forfeited to the U.S. This wording of the statute makes it mandatory that these gambling devices be seized; however, as a matter of policy the facts of each case should be discussed with the USA for his/her opinion and authorization for the seizure of the gambling devices.

(2) Deleted

---

(3) Gambling devices on board foreign vessels entering U.S. ports constitute a violation of Title 18, USC, Section 1172. The Department has requested that any violation developed on the part of foreign ships be presented to it for an opinion as to prosecution prior to the seizing of any gambling devices. Any violations developed in this regard should be immediately referred to FBIHQ for presentation to the Department for a decision.

(4) Leads to check the records of the Attorney General to determine if a person required to be registered is so registered in accordance with the provisions of Public Law 87-840 should be set out for the Washington|Metropolitan|Field Office.

(5) When investigations indicate a possible violation of Section 1173 (registration section), the facts should be presented to the USA as early as possible to determine if the activity of the individual or company involved would fall within the purview of the registration section of the statute.

(6) Gambling wheels (a device sometimes known as a wheel of fortune), commonly utilized at fairs and carnivals, are designed primarily for use in connection with gambling. The interstate transportation of such devices would be in violation of Title 15, USC, Sections 1171-1180. When complaints are received concerning gambling wheels, develop the facts and promptly contact the USA for his/her prosecutive opinion.

(7) Any information developed concerning the existence of gambling devices which are not in violation of the interstate transportation of gambling devices statute but whose existence may constitute a violation of state law should be referred to responsible local authorities having jurisdiction.

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(8) The interstate transportation of gambling devices statute (Public Law 906, 81st Congress), when mentioned in responding to press inquiries or in making press releases, should be described as the Johnson-Preston Act.

EFFECTIVE: 10/16/90

143-6 INVESTIGATIVE PROCEDURE

b2  
b7E  
(1) The development and utilization of adequate confidential informants and sources of information coverage is essential to the development of cases in this category. [REDACTED]

(2) The appearance of gambling devices in an area or any noticeable increase in the prevalence of these machines should be made the subject of an immediate investigation to determine if a violation of the act has occurred in connection with these devices.

(3) [REDACTED]

(4) Title 15, USC, Section 1172, specifies that it shall not be unlawful under this section to transport in interstate or foreign commerce any gambling device into any state in which the transported gambling device is specifically enumerated as lawful in a statute of that state. Each office must be fully aware of state statutes applicable to gambling as they relate to definitions of gambling devices which are lawful under the state law. The office having within its territory the state capital is responsible for following this matter and in those instances in which a state is covered by more than one field office coordinating the results with other offices having jurisdiction within the state. FBIHQ should also be advised of any changes in state statutes which would make specific gambling devices lawful under state statutes.

EFFECTIVE: 10/18/88

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143-7 VENUE

(1) The Department has advised that venue for failure to register would in all probability be in the District of Columbia. When omission to act constitutes a crime, the venue is the jurisdictional locality where the act should have been performed.

(2) Where the offense consists of the failure to file a document, it is committed in the place where the document should have been filed, and not elsewhere.

(3) The Department has further advised concerning venue that the failure to register may be prosecuted in any district in which the person required to be registered committed any act in violation of the statute, such as transported, delivered, shipped, manufactured, reconditioned, repaired, sold, disposed of, received, possessed, bought, leased, or used. Prosecution may be entertained for transporting gambling devices in any district from which the devices were transported, through which they were transported, or into which they were transported in violation of the statute.

EFFECTIVE: 10/18/88

143-8 REPORTING PROCEDURES

(1) In 143A cases involving LCN members and/or associates, or 143B cases involving other organized crime groups (i.e., Asian organized crime, Sicilian Mafia, etc.), submit an airtel to FBIHQ within 60 days of opening the case. This communication should include facts predicated the case and sufficient identification data on the subject(s) for indexing purposes.

(2) A progress letter should be submitted every 180 days restating the predication and summary of the investigation.

(3) The results and/or summary of investigation should be reported by airtel.

(4) In 143C cases, no reporting to FBIHQ is required.

EFFECTIVE: 10/18/88

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||143-9| CHARACTER - INTERSTATE TRANSPORTATION OF GAMBLING DEVICES

EFFECTIVE: 10/18/88

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SECTION 144. INTERSTATE TRANSPORTATION OF LOTTERY TICKETS

144-1 STATUTE

Title 18, USC, Section 1301

EFFECTIVE: 01/31/78

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144-1.1 Section 1301. Importing or Transporting Lottery Tickets

"Whoever brings into the United States for the purpose of disposing of the same, or knowingly deposits with any express company or other common carrier for carriage, or carries in interstate or foreign commerce any paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any advertisement of, or list of the prizes drawn or awarded by means of, any such lottery, gift enterprise, or similar scheme; or knowingly takes or receives any such paper, certificate, instrument, advertisement, or list so brought, deposited, or transported, shall be fined not more than \$1,000 or imprisoned not more than two years, or both."

Note: Punishment provision was rewritten to eliminate reference to punishment under the former section for a second offense.

EFFECTIVE: 01/31/78



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144-2 VIOLATIONS

(1) Bringing into or causing to be brought into the U.S. any lottery ticket, advertisement of, or list of prizes drawn or awarded by means of such lottery.

(2) Knowingly depositing or causing to be deposited with any express company or other common carrier any such lottery ticket, advertisement, or list of prizes for carriage in interstate or foreign commerce.

(3) Carrying any such lottery ticket, advertisement, or list of prizes in interstate or foreign commerce.

(4) Knowingly taking or receiving or causing to be taken or received any lottery ticket, advertisement, or list of prizes which have been so brought, deposited, or transported as outlined above.

The word "carries" contained in (Title 18, USC, Section 1301) in effect makes the interstate or foreign transportation of lottery tickets by any means whatsoever a criminal violation. The terms "interstate commerce" and "foreign commerce" are defined in Title 18, USC, Section 10.

EFFECTIVE: 01/31/78

144-3 JURISDICTION

(1) Title 18, USC, Section 1301, is within the investigative jurisdiction of the Bureau. Title 18, USC, Section 1302, is within the investigative jurisdiction of the U.S. Postal Service.

(2) Section 1305 of Title 19, USC, which is included in the Tariff Act of 1930, also prohibits the importation of lottery tickets into the U.S. Violations of Section 1305 are within the jurisdiction of Customs authorities.

EFFECTIVE: 01/31/78

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144-4 INVESTIGATIVE PROCEDURE

(1) Investigations should not be restricted to determining the activities of isolated individuals engaged in selling lottery tickets as prosecution of small-scale vendors does not disrupt the operations of a large lottery organization. Every effort should be expended to ascertain the identities of the promoters, printers, and main distributors who comprise the lottery "ring." In this connection, the possibility of obtaining prosecution on conspiracy charges should always be kept in mind.

(2) It is particularly important to determine the location of the lottery headquarters and the method and extent of distribution of the lottery tickets. It is essential that proof of interstate or foreign transportation be secured.

(3)



b2  
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The name of the official competent to present the documents in evidence should be ascertained.

(4)



(5)



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EFFECTIVE: 10/18/88

144-5 PULL BOARDS, TIP BOARDS, AND PUNCHBOARDS

(1) Numerous investigations conducted in the field have focused attention upon the problem of whether so-called pull boards, tip boards, punchboards, jackpot pools, baseball, football, bowling, and other types of chance boards which are capable of being used in a lottery come within the scope of the Federal lottery statute, Title 18, USC, Section 1301.

(2) The Department has furnished an opinion regarding such cases in which it is stated that manufacturers, salespeople, or users of such devices cannot be prosecuted for operating a lottery in violation of Section 1301. This ruling is predicated on two legal requirements stipulating:

(a) That at the time of transportation of such devices there must be actually in existence an active lottery. It is not sufficient that the device is capable of being used in a lottery or may, in fact, be so used after it moves in interstate commerce. The tickets do not become a part of, or represent, shares in a lottery until the individual pool-hall or beer-parlor operator, to whom such tickets are sold or delivered after interstate transportation, establishes his/her own lottery.

(b) The lottery devices do not in and of themselves purport to be or represent a ticket, chance, or share in a lottery. They can, like dice or playing cards, be used for gambling or other illegal purposes, but they may never be used at all or they could possibly be used innocently.

EFFECTIVE: 10/18/88

144-6 VENUE

In the judicial district from which the tickets are transported or any judicial district through or into which they are carried (Title 18, USC, Section 3237).

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EFFECTIVE: 10/18/88

| 144-7 | REPORTING PROCEDURES

(1) In 144A cases involving LCN members and/or associates or 144B cases involving other organized crime groups (i.e., Asian organized crime, Sicilian Mafia, etc.), submit an airtel to FBIHQ within 60 days of opening the case. This communication should include facts predicated the case and sufficient identification data on the subject(s) for indexing purposes.

(2) A progress letter should be submitted every 180 days restating the predication and a summary of the investigation.

(3) The results and/or summary of investigation should be reported by airtel.

(4) In 144C cases, no reporting to FBIHQ is required.

EFFECTIVE: 10/18/88

| |144-8| | CHARACTER - INTERSTATE TRANSPORTATION OF LOTTERY  
TICKETS

EFFECTIVE: 10/18/88

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SECTION 145. INTERSTATE TRANSPORTATION OF OBSCENE MATTER;  
SEXUAL EXPLOITATION OF CHILDREN; BROADCASTING  
OBSCENE LANGUAGE

145-1 STATUTE

Title 18, USC, Sections 1462, 1464, 1465, 1466, 1467,  
1468, 1469, 2251, 2252, 2253, 2254, 2256, and 2257.

EFFECTIVE: 07/26/89

145-1.1 Section 1462. Importation or Transportation of Obscene  
Matters

"Whoever brings into the United States, or any place  
subject to the jurisdiction thereof or knowingly uses any express  
company or other common carrier, for carriage in interstate or foreign  
commerce--

"(a) any obscene, lewd, lascivious, or filthy book,  
pamphlet, picture, motion-picture film, paper, letter, writing, print,  
or other matter of indecent character; or

"(b) any obscene, lewd, lascivious, or filthy phonograph  
recording, electrical transcription, or other article or thing capable  
of producing sound; or

"(c) any drug, medicine, article, or thing designed,  
adapted, or intended for producing abortion, or for any indecent or  
immoral use; or any written or printed card, letter, circular, book,  
pamphlet, advertisement, or notice of any kind giving information,  
directly or indirectly, where, how, or of whom, or by what means any  
of such mentioned articles, matters, or things may be obtained or  
made; or

"Whoever knowingly takes from such express company or  
common carrier any matter or thing the carriage of which is herein  
made unlawful--

"Shall be fined not more than \$5,000 or imprisoned not  
more than five years, or both, for the first such offense and shall be

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fined not more than \$10,000 or imprisoned not more than ten years, or both, for each such offense thereafter."

EFFECTIVE: 07/26/89

145-1.1.1 Elements

(1) Bringing or causing to be brought into the United States or any place subject to the jurisdiction thereof any obscene matter

(2) Knowingly using any express company or other common carrier for carriage of obscene matter in interstate or foreign commerce

(3) Knowingly taking or causing to be taken from an express company or other common carrier any matter or thing, the carriage of which is made unlawful by the act

In order to establish a violation of this section, it must be shown that an express company or other common carrier was used for the interstate transportation of obscene material. The interstate transportation of such material by privately owned motor truck or by automobile does not come within the purview of this section.

EFFECTIVE: 07/26/89

145-1.2 Section 1464. Broadcasting Obscene Language

"Whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined not more than \$10,000 or imprisoned not more than two years, or both."

EFFECTIVE: 07/26/89

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145-1.2.1 Elements

- (1) Whoever utters language
- (2) That is obscene, indecent or profane
- (3) By means of radio communication

EFFECTIVE: 07/26/89

145-1.3 Section 1465. Transportation of Obscene Matters for Sale or Distribution

"Whoever knowingly transports in interstate or foreign commerce for the purpose of sale or distribution, or knowingly travels in interstate commerce, or uses a facility or means of interstate commerce for the purpose of transporting obscene material in interstate or foreign commerce, any obscene, lewd, lascivious, or filthy book, pamphlet, picture, film, paper, letter, writing, print, silhouette, drawing, figure, image, cast, phonograph recording, electrical transcription or other article capable of producing sound or any other matter of indecent or immoral character, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

"The transportation as aforesaid of two or more copies of any publication or two or more of any article of the character described above, or a combined total of five such publications and articles, shall create a presumption that such publications or articles are intended for sale or distribution, but such presumption shall be rebuttable.

EFFECTIVE: 07/26/89



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145-1.3.1 Elements

(1) Whoever knowingly transports in interstate or foreign commerce or knowingly travels in interstate commerce of uses a facility or means of interstate commerce for the purpose of transporting any obscene matter

(2) Two or more copies of obscene publication or two or more of any article of obscene character or a combined total of five publications and articles create presumption obscene items are for sale or distribution, such presumption rebuttable

(3) The use of a "facility or means" of commerce includes interstate highway systems, federally financed highways, and interstate railroads. Interstate commerce now can take place using motor vehicles, boats and airplanes and

(4) It would not be necessary to demonstrate that obscene material actually traveled interstate but only that a "facility or means" of interstate commerce or foreign sale was used

EFFECTIVE: 07/26/89

145-1.4 Section 1466. Engaging in the Business of Selling or Transferring Obscene Matter

"(a) Whoever is engaged in the business of selling or transferring obscene matter, who knowingly receives or possesses with intent to distribute any obscene book, magazine, picture, paper, film, videotape, or phonograph or other audio recording, which has been shipped or transported in interstate or foreign commerce, shall be punished by imprisonment for not more than five years or by a fine under this title, or both.

"(b) As used in this subsection, the term 'engaged in the business' means that the person who sells or transfers or offers to sell or transfer obscene matter devotes time, attention, or labor to such activities, as a regular course of trade or business, with the objective of earning a profit, although it is not necessary that the person make a profit or that the selling or transferring or offering to sell or transfer such material be the person's sole or principal business or source of income. The offering for sale of or to transfer, at one time, two or more copies of any obscene publication, or two or more of any obscene article, or a combined total of five or

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more such publication and articles, shall create a rebuttable presumption that the person so offering them is 'engaged in the business' as defined in subsection (b)."

EFFECTIVE: 07/26/89

145-1.4.1 Elements

(1) Prohibits the receipt or possession with intent to sell obscene matter.

(2) The obscene matters has been shipped or transported in interstate or foreign commerce by any means by a person so engaged in the business.

EFFECTIVE: 07/26/89

145-1.5 Section 1467. Criminal Forfeiture

"(a) Property subject to criminal forfeiture. A person who is convicted of an offense involving obscene material under this chapter shall forfeit to the United States such person's interest in -

"(1) any obscene material produced, transported, mailed, shipped, or received in violation of this chapter;

"(2) any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from such offense; and

"(3) any property, real or personal, used or intended to be used to commit or to promote the commission of such offense, if the court in its discretion so determines, taking into consideration the nature, scope, and proportionality of the use of the property in the offense.

"(b) Third party transfers. All right, title and interest in property described in subsection (a) of this section vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered

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forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (m) of this section that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section."

(1) See the Federal Criminal Code and Rules, Title 18, USC, Section 1467, for further information concerning protection orders, warrant of seizure, order of forfeiture, execution, disposition of property, authority of Attorney General, bar on intervention, jurisdiction to enter orders, dispositions, third party interests, and substitute assets.

(2) Prior to proceeding with any criminal forfeiture, the case Agent should contact the respective division's Forfeiture Analyst for assistance. If needed, further help can be obtained from the Forfeiture and Seized Property Unit, Property Procurement and Management Section, Finance Division.

EFFECTIVE: 03/07/94

145-1.6 Section 1468. Distributing Obscene Material by Cable or Subscription Television

"(a) Whoever knowingly utters any obscene language or distributes any obscene matter by means of cable television or subscription services on television, shall be punished by imprisonment for not more than 2 years or by a fine in accordance with this title, or both.

"(b) As used in this section, the term 'distribute' means to send, transmit, retransmit, telecast, broadcast, or cablecast, including by wire, microwave, or satellite, or to produce or provide material for such distribution.

"(c) Nothing in this chapter, or the Cable Communications Policy Act of 1984, or any other provision of Federal law, is intended to interfere with or preempt the power of the States, including political subdivisions thereof, to regulate the uttering of language that is obscene or otherwise unprotected by the Constitution or the distribution of matter that is obscene or otherwise unprotected by the Constitution, of any sort, by means of cable television or

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| subscription services on television."

EFFECTIVE: 07/26/89

| 145-1.7 Section 1469. Presumptions

"(a) In any prosecution under this chapter in which an element of the offense is that the matter in question was transported, shipped, or carried in interstate commerce, proof, by either circumstantial or direct evidence, that such matter was produced or manufactured in one State and is subsequently located in another State shall raise a rebuttable presumption that such matter was transported, shipped, or carried in interstate commerce.

"(b) In any prosecution under this chapter in which an element of the offense is that the matter in question was transported, shipped, or carried in foreign commerce, proof, by either circumstantial or direct evidence, that such matter was produced or manufactured outside of the United States and is subsequently located in the United States shall raise a rebuttable presumption that such matter was transported, shipped, or carried in foreign commerce."

EFFECTIVE: 07/26/89

|| 145-1.8 | Section 2251. Sexual Exploitation of Children

| "(a) Any|person|who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other|person|to engage in, or who transports any minor in interstate or foreign commerce or in any Territory or Possession of the United States, with the intent that such minor engage in any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection (d), if such|person|knows or has reason to know that such visual depiction will be transported in interstate or foreign commerce or mailed, or if such visual depiction has actually been transported in interstate or foreign commerce or mailed.

| "(b) Any parent, legal guardian, or|person|having custody or control of a minor who knowingly permits such minor to engage in, or to assist any other|person|to engage in, sexually explicit conduct for the purpose of producing any visual depiction of such conduct

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shall be punished as provided under subsection (d) of this section, if such parent, legal guardian, or person knows or has reason to know that such visual depiction will be transported in interstate or foreign commerce or mailed or if such visual depiction has actually been transported in interstate or foreign commerce or mailed.

"(c) (1) Any person who, in a circumstance described in paragraph (2), knowingly makes, prints, or publishes, or causes to be made, printed, or published, any notice or advertisement seeking or offering-

"(A) to receive, exchange, buy, produce, display, distribute, or reproduce, any visual depiction, if the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct and such visual depiction is of such conduct; or

"(B) participation in any act of sexually explicit conduct by or with any minor for the purpose of producing a visual depiction of such conduct; shall be punished as provided under subsection (d).

"(2) The circumstance referred to in paragraph (1) is that-

"(A) such person knows or has reason to know that such notice or advertisement will be transported in interstate or foreign commerce by any means including by computer or mailed; or

"(B) such notice or advertisement is transported in interstate or foreign commerce by any means including by computer or mailed

"(d) Any individual who violates this section shall be fined not more than \$100,000, or imprisoned not more than 10 years, or both, but, if such individual has a prior conviction under this section, such individual shall be fined not more than \$200,000, or imprisoned not less than five years nor more than 15 years, or both.

"Any organization which violates this Section shall be fined not more than \$250,000."

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||145-1.8.1| Elements

(1) Any|person|or organization who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other|person|to engage in, or who transports any minor in interstate or foreign commerce or in any Territory or Possession of the United States, with the intent that such minor engage in any sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

(2) Any parent, legal guardian,|person,|or organization having custody or control of a minor who knowingly permits such minor to engage in, or assist any other|person|to engage in, sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

(3) Any person, who makes, prints, or publishes, or causes to be made, printed, or published any notice or advertisement seeking or offering to receive, exchange, buy, produce, display, distribute, reproduce or participate, in any visual depiction if the production of visual depiction is of and involves the use of a minor engaging in sexually explicit conduct.

(4) Knows or has reason to know that such visual depiction or notice or advertisement of such will be or had actually been transported in interstate or foreign commerce|by an means including by computer|or mailed, or knowingly reproduces any visual depiction or notice or advertisement for distribution in interstate or foreign commerce|by any means including by computer|or through the mails.

EFFECTIVE: 07/26/89

|145-1.9 |Section 2251A. Selling or Buying of Children

"(a) Any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor or offers to sell or otherwise transfer custody of such minor either

"(1) with knowledge that, as a consequence of the sale or transfer, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in sexually explicit conduct: or

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"(2) with intent to promote either

"(A) the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or

"(B) the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

shall be punished by imprisonment for not less than 20 years or for life and by a fine under this title, if any of the circumstances described in subsection (c) of this section exist.

"(b) Whoever purchases or otherwise obtains custody or control of a minor, or offers to purchase or otherwise obtain custody or control of a minor either

"(1) with knowledge that, as a consequence of the purchase or obtaining of custody, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in sexual explicit conduct; or

"(2) with intent to promote either

"(A) the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or

"(B) the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

shall be punished by imprisonment for not less than 20 years or for life and by a fine under this title, if any of the circumstances described in subsection (c) of this section exist.

"(c) The circumstances referred to in subsections (a) and (b) are that

"(1) in the course of the conduct described in such subsections, the minor or the actor traveled in or was transported in interstate or foreign commerce;

"(2) any offer described in such subsections was

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communicated or transported in interstate or foreign commerce by any means including by computer or mail; or

"(3) the conduct described in such subsections took place in any territory or possession of the United States."

EFFECTIVE: 07/26/89

145-1.9.1 Elements

(1) Prohibits the parent, legal guardian or other person having "custody or control" of a minor who sells or otherwise transfers custody or control of such minor

(a) with knowledge that the minor will be used in the production of child pornography or

(b) "with intent to promote" the minor's sexually explicit conduct in order to produce a visual depiction of the conduct.

(2) This section would also punish the person who "purchases or otherwise obtains custody of" the minor with such knowledge or intent.

(3) Federal jurisdiction is premised on travel or transportation in interstate or foreign commerce involving either the offer, minor or on conduct that takes place in a U.S. territory or possession.

(4) "Custody or control" includes temporary supervision over or responsibility for a minor, whether legally or illegally obtained. This would include persons such as teachers and day care center employees, as well as a kidnaper.

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145-1.10 Section 2252. Certain Activities Relating to Material  
Involving the Sexual Exploitation of Minors

"(a) Any person who-

"(1) knowingly transports or ships  
in interstate or foreign commerce by any means, including by  
computer or mails any visual depiction, if-

"(A) the producing of such visual depiction  
involves the use of a minor engaging in sexually explicit conduct; and  
"(B) such visual depiction is of such

conduct; and

"(2) knowingly receives, or distributes any  
visual depiction that has been mailed, or has been shipped or  
transported in interstate or foreign commerce, or which contains  
materials which have been mailed or so shipped or transported, by any  
means including by computer, or knowingly reproduces any visual  
depiction for distribution in interstate or foreign commerce by any  
means including by computer or through the mails, if-

"(A) the producing of such visual depiction  
involves the use of a minor engaging in sexually explicit conduct; and  
"(B) such visual depiction is of such conduct;

"(3) either -

"(A) in the special maritime and territorial  
jurisdiction of the United States, or on any land or building owned  
by, leased to, or otherwise used by or under the control of the  
Government of the United States, or in the Indian country as defined  
in section 1151 of this title, knowingly sells or possesses with  
intent to sell any visual depiction; or

"(B) knowingly sells or possesses with intent to  
sell any visual depiction that has been mailed, or has been shipped or  
transported in interstate or foreign commerce, or which was produced  
using materials which have been mailed or so shipped or transported,  
by any means, including by computer, if -

"(i) the producing of such visual depiction  
involves the use of a minor engaging in sexually explicit conduct; and  
"(ii) such visual depiction is of such

conduct; or

"(4) either -

"(A) in the special maritime and territorial  
jurisdiction of the United States, or on any land or building owned  
by, leased to, or otherwise used by or under the control of the  
Government of the United States, or in the Indian country as defined  
in section 1151 of this title, knowingly possesses 3 or more books,  
magazines, periodicals, films, video tapes, or other matter which

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contain any visual depiction; or

"(B) knowingly possesses 3 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction that has been mailed, or has been shipped or transported in interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported, by any means including by computer, if -

"(i) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

"(ii) such visual depiction is of such conduct; shall be punished as provided in subsection (b) of this section.

"(b)(1) Whoever violates paragraph (1), (2), or (3) of subsection (a) shall be fined under this title or imprisoned not more than ten years, or both, but, if such person has a prior conviction under this section, such person shall be fined under this title and imprisoned for not less than five years nor more than fifteen years.

"(2) Whoever violates paragraph (4) of subsection (a) shall be fined under this title or imprisoned for not more than five years, or both."

EFFECTIVE: 12/10/91

145-1.10.1 Elements

(1) Any person who knowingly transports, ships, receives, distributes, or knowingly reproduces any visual depiction for distribution, in interstate or foreign commerce by any means, including by computer or mails, of any visual depiction, if the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct, and such visual depiction is of such conduct.

(2) Title III of the Crime Control Act of 1990 known as the "Child Protection Restoration and Penalties Enhancement Act of 1990" effectively made possession of child pornography a Federal offense. Section 2252 was modified to allow prosecution when an individual knowingly possesses three or more items which were produced using materials which traveled in interstate commerce.

(a) The pornography does not have to travel in interstate commerce.

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(b) The material used to produce the pornography has an interstate character. This can be proven by showing the photographic paper, video tape material, camera utilized or any other item was manufactured outside the state. Alternatively, a showing that no such material is manufactured in the state is sufficient to show an interstate nexus.

(c) Three or more items of child pornography means three or more photographs, three or more videos, three or more computer disks, etc., or any combination of three.

EFFECTIVE: 12/10/91

145-1.11 Section 2253. Criminal Forfeiture

"(a) Property subject to criminal forfeiture. A person who is convicted of an offense under this chapter involving a visual depiction described in sections 2251, 2251A, or 2252 of this chapter shall forfeit to the United States such person's interest in

"(1) any visual depiction described in sections 2251, 2251A, or 2252 of this chapter, or any book, magazine, periodical, film, videotape, or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped or received in violation of this chapter;

"(2) any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from such offense; and

"(3) any property, real or personal, used or intended to be used to commit or to promote the commission of such offense."

(1) See the Federal Criminal Code and Rules, Title 18, USC, Section 2253, for further information concerning protective orders, warrant of seizure, order of forfeiture, execution, disposition of property, authority of Attorney General, bar on intervention, jurisdiction to enter orders, depositions, third party interests and substitute assets.

(2) Prior to proceeding with any criminal forfeiture, the case Agent should contact the respective division's Forfeiture Analyst

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for assistance. If needed, further help can be obtained from the Forfeiture and Seized Property Unit, Property Procurement and Management Section, Finance Division.

EFFECTIVE: 03/07/94

145-1.12 Section 2254. Civil Forfeiture

"(a) Property subject to civil forfeiture. The following property shall be subject to forfeiture by the United States:

"(1) any visual depiction described in sections 2251, 2251A, or 2252 or this chapter, or any book, magazine, periodical, film, videotape, or other matter which contains any visual depiction, which was produced, transported, mailed, shipped, or received in violation of this chapter.

"(2) any property, real or personal, used or intended to be used to commit or to promote the commission of an offense under this chapter involving a visual depiction described in sections 2251, 2251A, or 2252 of this chapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

"(3) any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from a violation of this chapter involving a visual depiction described in sections 2251, 2251A, or 2252 of this chapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

"(b) Seizure pursuant to supplemental rules for certain admiralty or maritime claims. Any property subject to forfeiture to the United States under this section may be seized by the Attorney General, the Secretary of the Treasury, or the U.S. Postal Service upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when the seizure is pursuant to a

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search under a search warrant or incident to an arrest. The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure.

"(c) Custody of Federal official. Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, Secretary of the Treasury, or the U.S. Postal Service, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under any of the provisions of this subchapter, the Attorney General, Secretary of the Treasury, or the U.S. Postal Service may

"(1) place the property under seal;

"(2) remove the property to a place designated by the official or agency; or

"(3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

"(d) Other laws and proceedings applicable. All provisions of the customs laws relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, the remission or mitigation of such forfeitures, and the compromise of claims, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, insofar as applicable and not inconsistent with the provisions of this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for the purpose by the Attorney General, the Secretary of the Treasury, or the U.S. Postal Service, except to the extent that such duties arise from seizures and forfeitures affected by any customs officer.

"(e) Sections 1606, 1613, 1614, 1617, and 1618 of title 19, United States Code, shall not apply with respect to any visual depiction or any matter containing a visual depiction subject to

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forfeiture under subsection (a)(1) of this section.

"(f) Disposition of forfeited property. Whenever property is forfeited under this section the Attorney General shall destroy or retain for official use any property described in paragraph (1) of subsection (a) and, with respect to property described in paragraph (2) or (3) of subsection (a), may

"(1) retain the property for official use or transfer the custody or ownership of any forfeited property to a Federal, state, or local agency pursuant to section 1616 of title 19;

"(2) sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public; or

"(3) require that the General Services Administration take custody of the property and dispose of it in accordance with law. The Attorney General, Secretary of the Treasury, or the U.S. Postal Service shall ensure the equitable transfer pursuant to paragraph (1) of any forfeited property to the appropriate State and local law enforcement agency, so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by an official or agency pursuant to paragraph (1) shall not be subject to judicial review. With respect to a forfeiture conducted by the Attorney General, the Attorney General shall forward to the Treasurer of the United States for deposit in accordance with Section 524(c) of title 28 the proceeds from any sale under paragraph (2) and any moneys forfeited under this subchapter. With respect to a forfeiture conducted by the Postal Service, the proceeds from any sale under paragraph (2) and any moneys forfeited under this subchapter shall be deposited in the Postal Service Fund as required by section 2003(b)(7) of title 39.

"(g) Title to property. All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

"(h) Stay of proceedings. The filing of an indictment or information alleging a violation of this chapter which is also related to a civil forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the civil forfeiture proceeding.

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"(i) Venue. In addition to the venue provided for in section 1395 of title 28 or any another provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought."

EFFECTIVE: 12/10/91

145-1.13 Section 2255. Civil Remedy for Personal Injuries

"(a) Any minor who is a victim of a violation of section 2251 or 2252 of this title and who suffers personal injury as a result of such violation may sue in any appropriate U.S. District Court and shall recover the actual damages such minor sustains and the cost of the suit, including a reasonable attorney's fee. Any minor as described in the preceding sentence shall be deemed to have sustained damages of no less than \$50,000 in value.

"(b) Any action commenced under this section shall be barred unless the complaint is filed within six years after the right of action first accrues or in the case of a person under a legal disability, not later than three years after the disability."

EFFECTIVE: 07/26/89

145-1.14 Section 2256. Definitions for Chapter

"For the purposes of this chapter, the term -

- "(1) 'minor' means any person under the age of 18 years;
- "(2) 'sexually explicit conduct' means actual or simulated

"(A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

"(B) bestiality;

"(C) masturbation;

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"(D) sadistic or masochistic abuse; or

"(E) lascivious exhibition of the genitals or pubic area of any person;

"(3) 'producing' means producing, directing, manufacturing, issuing, publishing, or advertising;

"(4) 'organization' means a person other than an individual;

"(5) 'visual depiction' includes undeveloped film and videotape;

"(6) 'computer' has the meaning given that term in Section 1030, of Title 18, USC; and

"(7) 'custody or control' includes temporary supervision over or responsibility for a minor whether legally or illegally obtained."

EFFECTIVE: 07/26/89

145-1.15 Section 2257. Record Keeping Requirements

"(a) Whoever produces any book, magazine, periodical, film, videotape, or other matter which

"(1) contains one or more visual depictions made after November 1, 1990 of actual sexually explicit conduct; and

"(2) is produced in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce, or is shipped or transported or is intended for shipment or transportation in interstate or foreign commerce shall create and maintain individually identifiable records pertaining to every performer portrayed in such visual depiction.

"(b) Any person to whom subsection (a) applies shall, with respect to every performer portrayed in a visual depiction of actual sexually explicit conduct -

"(1) ascertain, by examination of an identification



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document containing such information, the performer's name and date of birth, and require the performer to provide such other indicia of his or her identity as may be prescribed by regulations;

"(2) ascertain any name, other than the performer's present and correct name, ever used by the performer including maiden name, alias, nickname, stage, or professional name; and

"(3) record in the records required by subsection (a) the information required by paragraphs (1) and (2) of this subsection and such other identifying information as may be prescribed by regulation.

"(c) Any person to whom subsection (a) applies shall maintain the records required by this section at his business premises, or at such other place as the Attorney General may by regulation prescribe, and shall make such records available to the Attorney General for inspection at all reasonable times.

"(d) (1) No information or evidence obtained from records required to be created or maintained by this section shall, except as provided in this section, directly or indirectly, be used, as evidence against any person with respect to any violation of law.

"(2) Paragraph (1) of this subsection shall not preclude the use of such information or evidence in a prosecution or other action for a violation of this section or for a violation of any applicable provision of law with respect to the furnishing of false information.

"(e) (1) Any person to whom subsection (a) applies shall cause to be affixed to every copy of any matter described in paragraph (1) of subsection (a) of this section, in such manner and in such form as the Attorney General shall by regulations prescribe, a statement describing where the records required by this section with respect to all performers depicted in that copy of the matter may be located.

"(2) If the person to whom subsection (a) for this section applies is an organization, the statement required by this subsection shall include the name, title, and business address of the individual employed by such organization responsible for maintaining the records required by this section.

"(f) It shall be unlawful -

"(1) for any person to whom subsection (a) applies

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to fail to create or maintain the records as required by subsections (a) and (c) or by any regulation promulgated under this section;

"(2) for any person to whom subsection (a) applies knowingly to make any false entry in or knowingly to fail to make any false entry in or knowingly to fail to make an appropriate entry in any record required by subsection (b) of this section or any regulation promulgated under this section;

"(3) for any person to whom subsection (a) applies knowingly to fail to comply with the provisions of subsection (e) or any regulation promulgated pursuant to that subsection; and

"(4) for any person knowingly to sell or otherwise transfer, or offer for sale or transfer, any book, magazine, periodical, film, video, or other matter, produce in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce or which is intended for shipment in interstate or foreign commerce, which -

"(A) contains one or more visual depictions made after the effective date of this subsection of actual sexually explicit conduct; and

"(B) is produced in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce, or is shipped or transported or is intended for shipment or transportation in interstate or foreign commerce; which does not have affixed thereto, in a manner prescribed as set forth in subsection (e)(1), a statement describing where the records required by this section may be located, but such person shall have no duty to determine the accuracy of the contents of the statement or the records required to be kept.

"(g) The Attorney General shall issue appropriate regulations to carry out this section.

"(h) As used in this section -

"(1) the term 'actual sexually explicit conduct' means actual but not simulated conduct as defined in subparagraphs (A) through (D) of paragraph (2) of section 2256 of this title;

"(2) 'identification document' has the meaning given that term in section 1028(d) of this title;

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"(3) the term 'produces' means to produce, manufacture, or publish any book, magazine, periodical, film, video tape or other similar matter and includes the duplication, reproduction, or reissuing of any such matter, but does not include mere distribution or any other activity which does not involve hiring, contracting for managing, or otherwise arranging for the participation of the performers depicted; and

"(4) the term 'performer' includes any person portrayed in a visual depiction engaging in, or assisting another person to engage in, actual sexually explicit conduct.

"(i) Whoever violates this section shall be imprisoned for not more than 2 years, and fined in accordance with the provisions of this title, or both. Whoever violates this section after having been convicted of a violation punishable under this section shall be imprisoned for any period of years not more than 5 years but not less than 2 years, and fined in accordance with the provisions of this title, or both."

EFFECTIVE: 12/10/91

| 145-1.15.1 | Deleted |

EFFECTIVE: 12/10/91

145-1.16 Racketeer Influenced and Corrupt Organizations (RICO),  
Title 18, USC, Section 1961

(1) The Comprehensive Crime Control Act of 1984 amended Title 18, USC, Section 1961(1)(A) and (B) to include "Dealing in Obscene Matter" as part of the RICO Statute.

| (2) | Deleted |

(3) A detailed discussion of the RICO Statute can be found in Part I, Section 183 of this manual.

EFFECTIVE: 12/10/91

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145-2 POLICY

(1) Upon taking possession of evidence purported to be obscene, the local prosecuting jurisdiction should be immediately contacted for a prosecutive opinion. Personnel at FBIHQ, either in the investigative divisions or the Laboratory, are not to render an opinion as to whether an item is obscene.

(2) Deleted

(3) For instructions on submitting a case for latent fingerprint examination, see Part II, 15-2.1 of this manual.

(4) Obscene material is submitted to the Laboratory in order that it may be:

(a) Deleted

(b) forwarded to the Latent Fingerprint Section, Laboratory Division for latent fingerprint search/comparison

(c) Deleted

(5) All obscene material sent to FBIHQ should be forwarded under obscene cover and the address label on the outside of the package must be clearly marked for the attention of the FBI Laboratory. It should be accompanied by a cover|electronic communication|identifying the|evidence|and clearly stating the source of the material. If they are further needed by the submitting field office for use as evidence or as an investigative aid, such should be clearly indicated. In this instance, the|evidence|will be promptly returned to the field, together with a laboratory report. See MAOP, Part II,|2-4.4.11.)|

(6) Deleted

(7) Deleted

(8) Each obscene literature investigation possesses potential publicity value because of the very nature of the investigations. Every SAC should closely follow obscene matter investigations in order that consideration may be given to obtaining proper publicity in appropriate cases. Where it is contemplated that publicity will result from the Bureau's investigation of an obscene matter case, it is the responsibility of the SAC to make certain that FBIHQ is notified in advance of any contemplated arrest, arraignment,

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or other development prior to the time that any publicity is released.

(9) During the course of the investigation of most obscene matter cases, it becomes necessary to interview the subject and obtain obscene evidence from him/her. Such obscene material is generally obtained in Bureau cases through one of the following methods:

(a) Voluntarily surrendering the evidence by the subject in conjunction with an interview and the obtaining of a signed statement

(b) Through a search of the subject or his/her premises incidental to an arrest

(c) Through a written waiver consenting to a voluntary search of the subject's premises

(d) Through the authority of a formal search warrant obtained from the USA

(10) At the time possession of obscene material is acquired from any source, a complete release should be obtained, if possible, authorizing the Bureau to destroy the material or dispose of it in any other appropriate manner.

(11) Section 1464 applies to all audio transmissions by means of radio communication which will include commercialized radio broadcasts, such as utilized by utility companies, taxicab companies, and the like.

(12) In *ROADEN V. KENTUCKY*, 413 U.S. (1973) the Supreme Court held that a film may not be seized without a prior judicial determination of obscenity. The Department advised it appears that unless it can be shown that evidence will be unavailable without immediate action to preserve it, a warrant must be served to justify seizure.

EFFECTIVE: 10/16/96

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| 145-2.1 | Deleted |

EFFECTIVE: 03/21/95

145-3 JURISDICTION

(1) Since Title 18, USC, Sections 1462, 1465, 1466 or 1468, do not specifically designate the investigations of violations of these sections to any specific Federal investigative agency, such investigations properly come within the general investigative activity of this Bureau. The U.S. Postal Service investigates violations of Title 18, USC, Sections 1461 and 1463, which deal with the transmission of obscene matter through the mail. The jurisdiction of the U.S. Postal Service is derived from the fact that it has general investigative jurisdiction in all cases involving a use of the U.S. mails, and since these sections specifically deal with the transmission of obscene matter through the mails the U.S. Postal Service exercises jurisdiction. Title 19, USC, Section 1305, which is included in the Tariff Act of 1930, also prohibits the importation of obscene matter into the United States. Violations of Section 1305 are within the jurisdiction of Customs authorities.

(2) Although the Federal Communications Commission (FCC) has certain regulatory powers over its licensees, the Department has ruled that the investigative jurisdiction under Section 1464 was vested in the Bureau.

(3) FBI has primary investigative jurisdiction over Title 18, USC, Section 2251 (Sexual Exploitation of Children). The Department of Justice (DOJ) agreed with FBIHQ's observation regarding Title 18, USC, Section 2252 (Transportation of Child Pornography) in that investigative jurisdiction would be shared with the U.S. Postal Service depending upon whether the material in question is shipped in interstate or foreign commerce by computer or other means or is mailed. If the child pornography is transmitted in the U.S. mail, investigative jurisdiction would be with the Postal Service.

(4) If during the course of an investigation of a mailing offense by the Postal Service, pursuant to Title 18, USC, Section 2252 (Mailing of Child Pornography), evidence is developed of a violation of the Child Exploitation Statute (Title 18, USC, Section 2251), the

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Postal Service would acquire ancillary jurisdiction over Title 18, USC, Section 2251, provided the Postal Service keeps the FBI informed as to the status of the investigation.

EFFECTIVE: 12/10/91

145-4 INVESTIGATIVE PROCEDURE

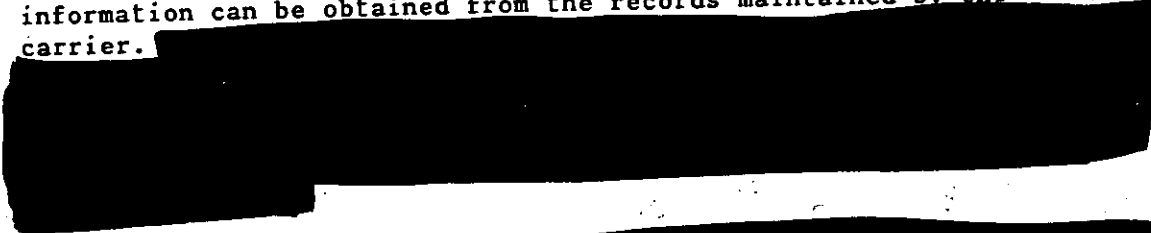
EFFECTIVE: 12/10/91

145-4.1 Section 1462. Importation or Transportation of Obscene Matters

(1) In order to prove an interstate transportation of the type prohibited by the statute, it is necessary to determine whether the transporting agency is an express company or other common carrier. Certain types of motor truck carriers are classed as common carriers. Accordingly, if the transportation occurs by this means, it is necessary to ascertain whether the trucking company is operating as a common carrier, thus bringing the transportation within the provisions of the statute.

(2) In addition to determining this factor, it is also necessary to ascertain the identity of all parties participating directly or indirectly in the transportation. This requires the identification of the consignor and consignee of the shipment. Such information can be obtained from the records maintained by the carrier.

b2  
b7E



(3)



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b2  
b7E

[REDACTED]

(4) Peddlers of obscene material who have been arrested by local police departments should be questioned by Bureau representatives whenever possible in order to determine the identities of the manufacturers and principal distributors of salacious literature from whom the itinerant vendors obtain their supplies. Previous investigation has revealed that several large "rings" are engaged in large-scale distribution of obscene matter and the Bureau is greatly desirous of curtailing the interstate operations of these combines.

b2  
b7E

(5) When an individual peddler of obscene material becomes known to the investigator in the field, consideration should be given to an endeavor to [REDACTED]

[REDACTED] every effort should be made to identify the manufacturers and printers of this material and no investigation should ever be concluded with the mere identification of a single peddler.

[REDACTED]

(6) To facilitate the identification of itinerant peddlers of obscene material, FBIHQ encourages the free exchange between field offices of photographs of peddlers and/or distributors of pornographic material who are known to operate on a rather extensive scale and are suspected of making deliveries or shipments interstate. Photographs of these individuals should be exhibited to witnesses and confidential informants where the identity of the purveyor of pornographic material has not been established.

(7) This section was amended, effective 8-28-58, in such a way that the violation is the use of an express company or other common carrier for transportation of the obscene material rather than the depositing of the matter for carriage. In this way the violation was made a continuing offense and prosecution can follow in any judicial district from, through, or into which the obscene matter is carried. The amendment to the statute did not affect investigative procedures set forth above but enhanced the possibilities for



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prosecutions under this statute to stem the flow of obscene matter in interstate commerce. It is apparent that the facts may be presented for prosecutive opinion not only at the point from where the obscene material was shipped but at the place of address or delivery, or in any judicial district through which such matter passes.

EFFECTIVE: 12/10/91

145-4.2 Section 1464. Broadcasting Obscene Language

(1) Appropriate liaison should be effected with FCC field representatives in each field office so that violations reported to that agency under this section will be promptly referred to this Bureau for appropriate investigation. All cases under this section should be immediately investigated and promptly submitted to the appropriate USA for his/her consideration as to prosecution.

(2) The FCC has instructed its personnel as to the proper method of handling complaints of violations of Title 18, USC, Section 1464. These are as follows:

(a) In all instances based solely on complaints received from third parties (as contrasted with FCC personnel), the complaint should be promptly turned over to the nearest office of the FBI, together with all pertinent information relative to the alleged violation, including any intercepts submitted by the complainant.

1. In the more serious complaints, the FCC engineer in charge, on his/her own initiative and if warranted, may monitor the activities of the alleged violator inasmuch as the FCC may have an interest in taking possible administrative action (asking the violator to show cause as to why its license should be continued or possible revocation of the license) against the violator.

2. In this connection, the FCC will monitor the broadcast activities of the more serious violators at the request of the FBI. However, such requests should be kept to an absolute minimum.

(b) FCC field offices will refer complaints obtained as a result of monitoring radio broadcasts directly to FBI field offices, if in the opinion of FCC the complaint would warrant criminal prosecution. In less serious cases, FCC will admonish station operators by letter or will take action to have FCC licenses suspended

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depending on the circumstances.

(c) If FCC field offices have knowledge that a local FBI office is investigating an alleged violation by a specific radio station and intercept a profane broadcast by the same station, regardless of its degree of seriousness, this information will be furnished to the interested local FBI office.

EFFECTIVE: 12/10/91

145-4.3 Section 1465. Transportation of Obscene Matters for Sale or Distribution

(1) The instructions set out above relating to Section 1462 generally apply to investigations under this section. It is to be noted that transportation under this section may be by any means.

b2  
b7E  
(2)



(3) In *Heller v. New York*, (413 U.S. (1973)), the Supreme Court held a seizure may be made pursuant to a warrant obtained ex parte after a determination of probable obscenity by a neutral magistrate. Following the seizure, however, a prompt judicial determination of the obscenity issued in an adversary proceeding is available at the request of any interested party. The case should be coordinated with the USA's Office to ensure prompt notification of all interested parties they have the right to request an adversary hearing of the court.

(4) The likelihood of the involvement of organized criminal elements should be considered when conducting investigations of these matters. Aggressive efforts should be made to determine the identity of those involved in such operations and the scope of their activities to develop prosecutable violations against these individuals.

(5) To prove a violation of Section 1465, it is no longer necessary to demonstrate that the obscene material travelled

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interstate but only that a facility or means of interstate commerce is used for the purpose of transporting obscene material in interstate or foreign commerce. Therefore, the use of a facility of interstate commerce, such as a Federal interstate highway, to transport obscene material from a place of publication or production in one state to a place of distribution in the same state would violate this section.

EFFECTIVE: 12/10/91

145-4.4 Section 1466. Engaging in the Business of Selling or Transferring Obscene Matter

This section makes it unlawful for any person who is engaged in the business of selling or transferring obscene matter to knowingly receive or possess with intent to distribute any obscene matter which has been shipped or transported in interstate or foreign commerce. This section also creates a rebuttable presumption that the person who offers for sale, at one time, two or more copies of any obscene publication is engaged in the business of selling or transferring obscene matter.

EFFECTIVE: 12/10/91

145-4.5 Section 1467. Criminal Forfeiture

(1) This section is patterned in part after a similar forfeiture section concerning controlled substances and requires a person convicted of an offense in Chapter 71 of Title 18 (pertaining to obscenity) to forfeit such person's interest in (1) any obscene material and (2) any property consisting or traceable to proceeds obtained from the offense. Property used to commit or promote commission of the offense is to be forfeited "if the court in its discretion so determines, taking into consideration the nature, scope, and proportionality of the use of the property in the offense." Section 1467 requires the Government to prove "beyond a reasonable doubt" that the relevant category of property is subject to forfeiture.

(2) This forfeiture section is a very powerful tool which can be utilized to seize the property of a producer/distributor of adult obscenity, if after conviction on a Federal obscenity charge, the Government can show that the property was constituted or traceable

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to proceeds of the offense.

(3) Every FBI ITOM investigation should not only focus on the elements of the criminal violation but also attempt to establish the property that the subject(s) have obtained from the proceeds of their obscenity trafficking. Upon conviction of an ITOM violation, the case Agent should ensure that the criminal forfeiture provisions of this section are instituted.

EFFECTIVE: 12/10/91

145-4.6 Section 1468. Distributing Obscene Material by Cable or Subscription Television

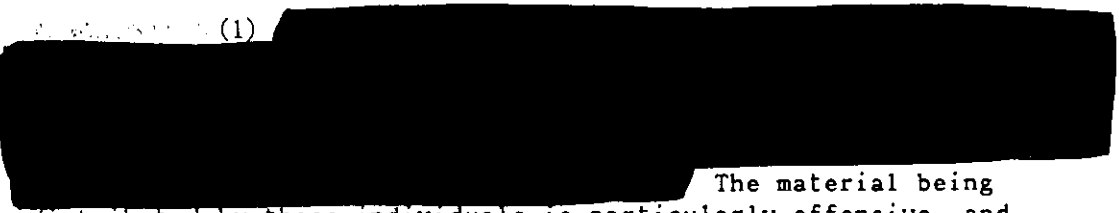
(1) This section supports the Cable Communications Policy Act of 1984, Section 639 of Title 47, which presently prohibits the transmission over any "cable system any matter which is obscene." This new section proscribes the utterance of obscene but not indecent matter by means of cable TV or subscription TV.

(2) Prior to proceeding with any investigation of this section, the material believed to be obscene should be presented to the appropriate Assistant United States Attorney for review and a preliminary opinion should be obtained as to whether the material meets the three-pronged obscenity test set forth in Miller vs. California.

EFFECTIVE: 12/10/91

145-4.7 Sections 2251, 2252, 2253, 2254, 2255, and 2257

Instructions set forth in Sections 1462, 1465, 1466, 1467 and 1468 generally apply to investigations under this section.

(1) 

*b2  
b7c*  
The material being distributed by these individuals is particularly offensive, and Congress, in enacting the Child Protection Act of 1984 (Public Law

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98-292), has evidenced, as noted above, a particular concern with this problem.

b2  
b7E  
(2) [REDACTED]

(a) [REDACTED]

(b) [REDACTED]

(3) Investigations have shown that many individuals who import or consensually exchange child pornography for their own collections do so repeatedly and with full knowledge that it is illegal to do so. In addition, many of these individuals regularly engage in sexual child abuse. Many of these same people are also involved in occupations which bring them into frequent contact with children. Extreme caution should be exercised in conducting an investigation against a suspected child molester, and at no time should a child be allowed to enter a location if it is believed that the child may be molested.

(4) Field offices are encouraged to coordinate all SEOC investigations with local law enforcement, U.S. Customs Service and the U.S. Postal Inspectors, as necessary and appropriate.

(5) Deleted

(6) Deleted

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EFFECTIVE: 12/10/91

145-4.8 Investigative and Prosecutive Priority of Sexual  
Exploitation of Children Statute

(1) The DOJ has advised the USA's Office that prosecutive priority should be given to matters involving violations of Title 18, USC, Sections 2251-2257. FBI priority should continue to be given to any investigative matters involving such use of children.

(2) If there are any indications that child abuse is present, the FBI should ensure that the matter is called to the attention of local investigators and prosecutors.

(3) Generally, the comments and guidelines furnished to the USA's Offices pertain to the below discussed areas and affect investigations conducted by the Federal agencies who have an investigative interest in these matters.

(4) Prosecutive priority should be given to cases involving large-scale distributors, multistate operations, and cases in which there is evidence of involvement by known organized crime figures. However, prosecution of cases involving relatively small distributors not meeting the above criteria, particularly distributors of especially offensive material or who are the subjects of numerous citizen complaints, can have a deterrent effect and should dispel any notion that distributors are insulated from prosecution if their operations fail to exceed a predetermined size, or if they fragment their activity into small-scale operations. Therefore, the occasional prosecution of such distributors may be appropriate.

(5) Special priority should be given to cases involving the use of minors engaging in sexually explicit conduct for the purpose of producing any visual depiction of such conduct or cases involving the mailing or interstate or foreign shipment of material depicting minors engaging in sexually explicit conduct (Title 18, USC, Sections 2251-2257).

(6) Because of the nature of the violators and the difficulties frequently encountered by local prosecutors, serious consideration should be given to Federal prosecution of a noncommercial child pornography case if one or a combination of the following factors exists:

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- at one time
- (a) More than three seizures over the past year;
  - (b) A large quantity of child pornography imported
  - (c) An arrest history of crimes against children;
  - (d) Known membership in a family sex group;
  - (e) Employment involving children;
  - (f) Photographs depicting the recipient involved in the sexual activity with children;
  - (g) Correspondence with other pedophiles or undercover Agents relating to sexual involvement with children;
  - (h) Distribution of material.

Each case should be examined individually by the USA's Office to see if prosecution is warranted.

EFFECTIVE: 12/10/91

145-4.9      Contacts with U.S. Customs Service Relative to Sexual Exploitation of Children Statute

(1) In addition to the FBI and U.S. Postal Inspection Service, the U.S. Customs Service has investigative interest and jurisdiction in the importation of pornographic material into the United States. The U.S. Customs Service is able to seek forfeiture of the pornographic materials that are exported or imported under Title 19, USC, Section 1305. The U.S. Customs Service Child Pornography and Protection Unit located at their Washington, D.C., Headquarters maintains a "seizure list" of suspected recipients of imported and prohibited pornographic material and of the foreign shippers of this material. In most instances, the materials seized by the U.S. Customs Service are held until forfeiture proceedings are completed and thereafter the materials are destroyed.

(2) Experience to date has revealed that a large portion of commercial child pornography is produced in either Europe or third world countries and is then exported to the United States where it is

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frequently duplicated. When materials seized by U.S. Customs Service are destroyed, valuable intelligence data for technical laboratory comparisons is lost. The U.S. Customs Service should be contacted periodically through liaison in your local field office to see if the material can be provided to the FBI and a court order obtained indicating that the FBI Laboratory will destroy the material after its usefulness is completed.

(3) Deleted

refer [REDACTED]

EFFECTIVE: 03/21/95

145-5

POSSIBLE APPLICATION OF INVOLUNTARY SERVITUDE AND SLAVERY  
STATUTES

When conducting Sexual Exploitation of Children investigations, Agents should be alert to facts indicating that the victims of such schemes may have been held or sold into conditions of involuntary servitude or slavery through use of force, threat of force, or coercion. Such situations may constitute violations of the Involuntary Servitude and Slavery and related statutes. Full details of these laws, as well as FBI policy and procedure, are set forth in Part I, Section 50 of this manual.

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145-6 VENUE

(1) Section 1462 - Under the statute as amended 8-28-58, where obscene matter is brought into the United States, or any place subject to the jurisdiction thereof, venue will lie for this offense not only at the port of entry but also in each successive state or territory into which the importer carried the obscene matter. Where an express company or other common carrier has been used for the transportation of the obscene matter in interstate or foreign commerce in violation of the statute, venue will lie at the place from which the prohibited matter is sent, at the place of address or delivery, or in any judicial district through which such matter passes.

(2) Section 1464 - In the judicial district in which the offense is committed

(3) Sections 1465 and 1466 - In any district from, through, or into which the obscene material has been transported (Title 18, USC, Section 3237)

(4) Section 1468 - In any district in which the obscene matter was broadcast from or in which it was received

(5) Sections 2251, 2252, 2253, 2254, 2255, and 2257 - With respect to venue in these matters, DOJ has indicated that cases under the obscenity statutes may be prosecuted in the district where the material is mailed or deposited with a facility of interstate commerce, the district of receipt or any intermediate district through which the material passes (see Title 18, USC, Section 3237). In cases where there are complaints by postal patrons about the unsolicited receipt of obscene material, the district of receipt would appear to be the appropriate choice of venue. On the other hand, in cases involving numerous mailings by a distributor into various districts, the district of origination may be the appropriate venue for the case. If a case is to be based solely upon test purchases by investigators, it will be venued in the district of origination of the obscene mailing rather than some other district, unless the Government has some information showing that there were prior mailings into the recipient district by the individual involved. Prosecutions will not be brought in jurisdictions through which obscene material passes in transit except with the concurrence of the General Litigation and Legal Advice Section, DOJ.

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EFFECTIVE: 12/10/91

145-7 CHILD EXPLOITATION AND OBSCENITY SECTION (CEOS),  
DEPARTMENT OF JUSTICE

(1) CEOS consists of Special Attorneys assigned to assist in the prosecution of adult obscenity and child pornography cases.

(2) The Violent Crimes/Fugitive Unit has primary liaison responsibilities with CEOS. The Violent Crimes/Fugitive Unit should be immediately advised if CEOS representatives directly contact a field office. All contacts with CEOS by FBI Agent personnel should be directed through the Violent Crimes/Fugitive Unit.

EFFECTIVE: 07/17/95

145-8 REPORTING PROCEDURES

(1) All offices should advise FBIHQ, CID, Violent Crimes/Fugitive Unit whenever a child pornography case is opened. Thereafter, the Office of Origin (OO) should submit a detailed summary Letterhead Memorandum (LHM) of investigation conducted every six months and when the case is closed.

(2) In all other ITOM cases the OO should submit a summary communication to the Violent Crimes/Fugitive Unit after the case has been opened a total of 120 days. Thereafter, a detailed summary LHM of investigation conducted should be submitted by the OO every six months and when the case is closed.

(3) Any office which seizes any child pornography or adult obscenity which is unique or might be of training value should contact the Critical Incident Response Group's Child Abduction and Serial Killer Unit, prior to destroying the material.

EFFECTIVE: 07/17/95

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145-9      CHARACTER - INTERSTATE TRANSPORTATION OF OBSCENE MATTER;  
             SEXUAL EXPLOITATION OF CHILDREN; BROADCASTING OBSCENE  
             LANGUAGE

EFFECTIVE: 12/10/91

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SECTION 146. INTERSTATE TRANSPORTATION OF PRISON-MADE GOODS

146-1 STATUTES

Title 18, USC, Sections 1761 and 1762.

EFFECTIVE: 10/23/86

146-1.1 Section 1761. Transportation or Importation

"(a) Whoever knowingly transports in interstate commerce or from any foreign country into the United States any goods, wares, or merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners, except convicts or prisoners on parole or probation, or in any penal or reformatory institution, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

"(b) This chapter shall not apply to agricultural commodities or parts or the repair of farm machinery, nor to commodities manufactured in a Federal, District of Columbia, or State institution or use by the Federal Government, or by the District of Columbia, or any State or Political subdivision of a State.

"(c) In addition to the exceptions set forth in subsection (b) of this section, this chapter shall also not apply to goods, wares, or merchandise manufactured, produced, or mined by convicts or prisoners participating in a program of not more than twenty pilot projects designated by the Director of the Bureau of Justice Assistance and who-

"(1) have, in connection with such work, received wages at a rate which is not less than that paid for work of a similar nature in the locality in which the work was performed, except that such wages may be subject to deductions which shall not, in the aggregate, exceed 80 per centum of gross wages, and shall be limited as follows:

"(A) taxes (Federal, State, local);

"(B) reasonable charges for room and board as

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determined by regulations which shall be issued by the Chief State correctional officer;

"(C) allocations for support of family pursuant to State statute, court order, or agreement by the offender;

"(D) contributions to any fund established by law to compensate the victims of crime of not more than 20 per centum but not less than 5 per centum of gross wages;

"(2) have not solely by their status as offenders, been deprived of the right to participate in benefits made available by the Federal or State Government to other individuals on the basis of their employment, such as workmen's compensation. However, such convicts or prisoners shall not be qualified to receive any payments for unemployment compensation while incarcerated, notwithstanding any other provision of the law to the contrary;

"(3) have participated in such employment voluntarily and have agreed in advance to the specific deductions made from gross wages pursuant to this section, and all other financial arrangements as a result of participation in such employment.

"(d) Notwithstanding any law to the contrary, materials produced by convict labor may be used in the construction of any highways or portion of highways located on Federal-aid systems, as described in section 103 of title 23, United States Code."

EFFECTIVE: 10/23/86

146-1.2 Section 1762. Marking Packages

"(a) All packages containing any goods, wares, or merchandise manufactured, produced, or mined wholly or in part by convicts or prisoners, except convicts or prisoners on parole or probation, or in any penal or reformatory institution, when shipped or transported in interstate or foreign commerce shall be plainly and clearly marked, so that the name and address of the shipper, the name and address of the consignee, the nature of the contents, and the name and location of the penal or reformatory institution where produced wholly or in part may be readily ascertained on an inspection of the

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outside of such package.

"(b) Whoever violates this section shall be fined not more than \$1,000, and any goods, wares, or merchandise transported in violation of this section or section 1761 of this title shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the seizure and forfeiture of property imported into the United States contrary to law."

EFFECTIVE: 06/18/87

146-2 POLICY

| (1) | Contact should be maintained with reliable prison authorities, wardens of individual prisons, interstate shippers, and other reliable sources in order that each field office will be currently advised of violations of the interstate transportation of prison-made goods statutes. Upon the receipt of complaints involving a violation, the appropriate investigation should be immediately undertaken. The USA should be contacted early during the investigation for an opinion as to prosecution and the extent and scope of the investigation desired.

| (2) | The FBI has been delegated authority to institute civil administrative forfeiture proceedings pursuant to Section 1762. The FORFEITURE AND ABANDONED PROPERTY MANUAL contains the step-by-step procedure to be followed for seizures and civil forfeiture proceedings (judicial and administrative) conducted in conjunction with this violation. |

EFFECTIVE: 06/18/87

146-3 VENUE

In the district from which the prison-made goods are transported or the district through or into which they are carried (Title 18, USC, Section 3237).

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EFFECTIVE: 06/18/87

146-4 CHARACTER - INTERSTATE TRANSPORTATION OF PRISON-MADE GOODS

EFFECTIVE: 06/18/87

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SECTION 147. FRAUD AGAINST THE GOVERNMENT - DEPARTMENT  
OF HOUSING AND URBAN DEVELOPMENT | (SEE MIOG,  
PART I, SECTION 46.) |

| 147-1 | BACKGROUND

| The 147 classification was eliminated and reclassified in  
Fiscal Year 1996 as 46B (Fraud Against the Government - Housing and  
Urban Development). See MIOG, Part I, Section 46. |

EFFECTIVE: 07/31/97

| 147-1.1 | Deleted |

EFFECTIVE: 07/31/97

| 147-2 | DELETED |

EFFECTIVE: 07/31/97

| 147-3 | DELETED |

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| 147-4 | DELETED |

EFFECTIVE: 07/31/97

| 147-5 | DELETED |

EFFECTIVE: 07/31/97

| 147-6 | DELETED |

EFFECTIVE: 07/31/97

| 147-7 | DELETED |

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| 147-8 | DELETED |

EFFECTIVE: 07/31/97

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| 147-9 | DELETED |

EFFECTIVE: 07/31/97

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SECTION 148. INTERSTATE TRANSPORTATION OF FIREWORKS

148-1 STATUTE

Title 18, USC, Section 836

EFFECTIVE: 11/08/78

148-1.1 Elements

"Whoever, otherwise than in the course of continuous interstate transportation through any State, transports fireworks into any State, or delivers them for transportation into any State, or attempts so to do, knowing that such fireworks are to be delivered, possessed, stored, transshipped, distributed, sold, or otherwise dealt with in a manner or for a use prohibited by the laws of such State specifically prohibiting or regulating the use of fireworks, shall ...."

EFFECTIVE: 11/08/78

148-1.1.1 Other Provisions

(1) "This section shall not apply to a common or contract carrier or to international or domestic water carriers engaged in interstate commerce or to the transportation of fireworks into a State for the use of Federal agencies in the carrying out or the furtherance of their operations.

(2) "In the enforcement of this section, the definitions of fireworks contained in the laws of the respective States shall be applied.

(3) "As used in this section, the term 'State' includes the several States, Territories, and possessions of the United States, and the District of Columbia."

(4) Section 3 of the act provides that Section 836 shall not be effective with respect to --

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(a) "(1) the transportation of fireworks into any State or Territory for use solely for agricultural purposes,

(b) "(2) the delivery of fireworks for transportation into any State or Territory for use solely for agricultural purposes, or

(c) "(3) any attempt to engage in any such transportation or delivery for use solely for agricultural purposes, until sixty days have elapsed after the commencement of the next regular session of the legislature of such State or Territory which begins after the date of enactment of this Act."

EFFECTIVE: 11/08/78

148-1.1.2 Policy

(1) Note that Title 18, USC, Section 836, states the laws dealing with fireworks of the respective states shall be applied in the enforcement of the statute. In each field office there is a digest of the state laws governing the sale, use, or prohibition of fireworks in the states covered by that division for use in evaluating complaints alleging violations of the ITF statute. Each field office is required to maintain liaison with the appropriate state attorney general's office to be advised of any change in the state law relative to fireworks since these state laws are an integral part of Title 18, USC, Section 836. Upon receipt of an allegation, immediately determine if the fireworks are such that are by state law prohibited or regulated in the state involved. If the complaint involves fireworks alleged to be used solely for agricultural purposes, determine whether the state law exempts fireworks used for such purposes. If an investigative report is submitted it should, in all instances, identify and cite the state statute prohibiting or regulating the use of fireworks that is the basis of this Bureau's investigation.

(2) Upon receipt of information indicating a violation of this statute, sufficient investigation should be conducted to establish the facts. The matter should then be referred to the appropriate USA for a prosecutive opinion prior to conducting extensive investigation. The opinion of the USA relative to interpretation of state laws governing use of fireworks as it applies to Title 18, USC, Section 836, should be secured in each instance.

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EFFECTIVE: 11/08/78

||148-2      VENUE|

Venue lies in the district from which or into which the interstate shipment is made. The Department has advised that, as a general rule, prosecution should be initiated in the state and district into which the shipment is made.

EFFECTIVE: 11/08/78

||148-3      REPORT WRITING RULES

(1) Forward to FBIHQ copy of any prosecutive summary report prepared in this classification of investigation for the USA's Office, utilizing current Bureau guidelines for the preparation of such reports.

(2) No report need be forwarded under any other circumstances unless it is determined to be the most logical means to disseminate the results of investigation accumulated, or when it is decided that a report is the best means to disseminate such results to other Federal agencies through FBIHQ rather than via an LHM.

EFFECTIVE: 11/08/78

||148-4|      PENALTY

A fine of not more than \$1,000 or imprisonment for not more than one year, or both.

EFFECTIVE: 11/08/78

||148-5|      CHARACTER - INTERSTATE TRANSPORTATION OF FIREWORKS

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EFFECTIVE: 11/08/78

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SECTION 149. DESTRUCTION OF AIRCRAFT OR MOTOR VEHICLES

| 149-1 STATUTES | (See MIOG, Part I, 160-1.1.1(1); II, 15-8.5.) |  
| Title 18, USC, Sections 31 through | 37 |

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EFFECTIVE: 01/08/96

149-1.1 Elements

EFFECTIVE: 07/11/85

149-1.1.1 Destruction of Aircraft or Aircraft Facilities (Section 32)

| "(a) Whoever willfully-

| "(1) sets fire to, damages, destroys, disables, or wrecks any aircraft in the special aircraft jurisdiction of the United States or any civil aircraft used, operated, or employed in interstate, overseas, or foreign air commerce;

| "(2) places or causes to be placed a destructive device or substance in, upon, or in proximity to, or otherwise makes or causes to be made unworkable or unusable or hazardous to work or use, any such aircraft, or any part or other materials used or intended to be used in connection with the operation of such aircraft, if such placing or causing to be placed or such making or causing to be made is likely to endanger the safety of any such aircraft;

| "(3) sets fire to, damages, destroys, or disables any air navigation facility, or interferes by force or violence with the operation of such facility, if such fire, damaging, destroying, disabling, or interfering is likely to endanger the safety of any such aircraft in flight;

| "(4) with the intent to damage, destroy, or disable

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any such aircraft, sets fire to, damages, destroys, or disables or places a destructive device or substance in, upon, or in proximity to, any appliance or structure, ramp, landing area, property, machine, or apparatus, or any facility or other material used, or intended to be used, in connection with the operation, maintenance loading, unloading, or storage of any such aircraft or any cargo carried or intended to be carried on any such aircraft;

"(5) performs an act of violence against or incapacitates any individual on any such aircraft, if such act of violence or incapacitation is likely to endanger the safety of such aircraft;

"(6) communicates information, knowing the information to be false and under circumstances in which such information may reasonably be believed, thereby endangering the safety of any such aircraft in flight; or

"(7) attempts to do anything prohibited under paragraphs (1) through (6) of this subsection;

"(b) Whoever willfully-

"(1) performs an act of violence against any individual on board any civil aircraft registered in a country other than the United States while such aircraft is in flight, if such act is likely to endanger the safety of that aircraft;

"(2) destroys a civil aircraft registered in a country other than the United States while such aircraft is in service or causes damage to such an aircraft which renders that aircraft incapable of flight or which is likely to endanger that aircraft's safety in flight;

"(3) places or causes to be placed on a civil aircraft registered in a country other than the United States while such aircraft is in service, a device or substance which is likely to destroy that aircraft, or to cause damage to that aircraft which renders that aircraft incapable of flight or which is likely to endanger that aircraft's safety in flight; or

"(4) attempts to commit an offense described in paragraphs (1) through (3) of this subsection;

"(c) Whoever willfully imparts or conveys any threat to



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do an act which would violate any of paragraphs (1) through (5) of subsection (a) or any paragraphs (1) through (3) of subsection (b) of this section, with an apparent determination and will to carry the threat into execution...."

EFFECTIVE: 07/11/85

149-1.1.2 Destruction of Motor Vehicles or Motor Vehicle Facilities  
(Section 33)

"Whoever willfully, with intent to endanger the safety of any person on board or anyone who he believes will board the same, or with a reckless disregard for the safety of human life, damages, disables, destroys, tampers with, or places or causes to be placed any explosive or other destructive substance in, upon, or in proximity to, any motor vehicle which is used, operated, or employed in interstate or foreign commerce, or its cargo or material used or intended to be used in connection with its operation; or

"Whoever willfully, with like intent, damages, disables, destroys, sets fire to, tampers with, or places or causes to be placed any explosive or other destructive substance in, upon, or in proximity to any garage, terminal, structure, supply, or facility used in the operation of, or in support of the operation of, motor vehicles engaged in interstate or foreign commerce or otherwise makes or causes such property to be made unworkable, unusable, or hazardous to work or use; or

"Whoever, with like intent, willfully disables or incapacitates any driver or person employed in connection with the operation or maintenance of the motor vehicle, or in any way lessens the ability of such person to perform his duties as such...."

EFFECTIVE: 07/11/85

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149-1.1.3 Imparting or Conveying False Information (Section 35)

"(a) Whoever imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a crime prohibited by this chapter or chapter 97 (Section 1991 - Entering Train to Commit Crime, and Section 1992, Federal Train Wreck Statute) or chapter 111 (Sections 2271 through 2279, relating to destruction of water-borne vessels including military vessels) of this title."

"(b) Whoever willfully and maliciously, or with reckless disregard for the safety of human life, imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a crime prohibited by this chapter or chapter 97 or chapter 111 of this title," specific sections as noted in (a) above.

EFFECTIVE: 07/11/85

149-1.1.4 Violence at International Airports (Section 37)

"(a) Offense. - A person who unlawfully and intentionally, using any device, substance, or weapon-

"(1) performs an act of violence against a person at an airport serving international civil aviation that causes or is likely to cause serious bodily injury (as defined in Section 1365 of the U.S.C.) or death; or

"(2) destroys or seriously damages the facilities of an airport serving international civil aviation or a civil aircraft not in service located thereon or disrupts the services of the airport,...."

"(b) Jurisdiction - There is jurisdiction over the prohibited activity in subsection (a) if-

"(1) the prohibited activity takes place in the United States; or

"(2) the prohibited activity takes place outside

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the United States and the offender is later found in the United States.

"(c) It is a bar to Federal prosecution under subsection (a) for conduct that occurred within the United States that the conduct involved was during or in relation to a labor dispute, and such conduct is prohibited as a felony under the law of the State in which it was committed. For purposes of this section, the term "labor dispute" has the meaning set forth in section 2(c) of the Norris-La Guardia Act, as amended (29 U.S.C. 113(c))."

EFFECTIVE: 01/08/96

||149-1.1.5| Definitions (Section 31) | (See MIOG, Part I, 15-4(10),

26-4.6(1).)|

"When used in this chapter the term 'aircraft engine,' 'air navigation facility,' 'appliance,' 'civil aircraft,' 'foreign air commerce,' 'interstate air commerce,' 'landing area,' 'overseas air commerce,' 'propeller,' 'spare part,' and 'special aircraft jurisdiction of the United States,' shall have the meaning ascribed to those terms in sections 40102(a) and 46501 of title 49."

"'Motor vehicle' means every description of carriage or other contrivance propelled or drawn by mechanical power and used for commercial purposes on the highways in the transportation of passengers, passengers and property; or property or cargo;

"'Destructive substance' means any explosive substance, flammable material, infernal machine, or other chemical, mechanical, or radioactive device or matter of a combustible, contaminative, corrosive, or explosive nature;

"'Used for commercial purposes' means the carriage of persons or property for any fare, fee, rate, charge or other consideration, or directly or indirectly in connection with any business, or other undertaking intended for profit.

"'In flight' means any time from the moment all the external doors of an aircraft are closed following embarkation until the moment when any such door is opened for disembarkation. In the

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case of a forced landing the flight shall be deemed to continue until competent authorities take over the responsibility for the aircraft and the persons and property on board; and

"In service' means any time from the beginning of preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing; the period of service shall, in any event, extend for the entire period during which the aircraft is in flight."

Paragraph one above makes reference to the Federal Aviation Act of 1958. Pertinent definitions set forth in the Federal Aviation Act are as follows:

"Aircraft engine' means an engine used, or intended to be used, for propulsion of aircraft and includes all parts, appurtenances, and accessories thereof other than propellers.

"Air navigation facility' means any facility used in, available for use in, or designed for use in, aid of air navigation, including landing areas, lights, any apparatus or equipment for disseminating weather information, for signaling, for radio-directional finding, or for radio or other electrical communication, and any other structure or mechanism having a similar purpose for guiding or controlling flight in the air or the landing and take-off of aircraft.

"Appliances' means instruments, equipment, apparatus, parts, appurtenances, or accessories, of whatever description, which are used, or are capable of being or intended to be used, in the navigation, operation, or control of aircraft in flight (including parachutes and including communication equipment and any other mechanism or mechanisms installed in or attached to aircraft during flight), and which are not a part or parts of aircraft, aircraft engines, or propellers.

"Civil aircraft' means any aircraft other than a public aircraft.

"Public aircraft' means an aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of any State, Territory, or possession of the United States, or the District of Columbia, but not including any government-owned aircraft engaged in carrying person or property for commercial purposes.

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"'Interstate air commerce,' 'overseas air commerce,' and 'foreign air commerce,' respectively, mean the carriage by aircraft of persons or property for compensation or hire, or the carriage of mail by aircraft, or the operation or navigation of aircraft in the conduct or furtherance of a business or vocation, in commerce between, respectively -

"(a) a place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the air space over any place outside thereof; or between places in the same Territory or possession of the United States, or the District of Columbia;

"(b) a place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States; or between a place in a Territory or possession of the United States, and a place in any other Territory or possession of the United States; and

"(c) a place in the United States and any place outside thereof, whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

"'Landing area' means any locality, either of land or water, including airports and intermediate landing fields, which is used, or intended to be used, for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo.

"'Propeller' includes all parts, appurtenances, and accessories thereof.

"'Spare parts' are all parts, other than aircraft engines or propellers, maintained for installation or use in an aircraft, engine, or propeller, but which, at the time, are not yet installed therein or attached thereto."

EFFECTIVE: 01/08/96

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149-2 OTHER PROVISIONS

Venue is in district where act committed or, in case of continuing transportation of a destructive device in interstate commerce, may be any district where transportation continued. Venue under Title 18, USC, Sections 32(b) and (c) shall be in the district in which the offender(s) is arrested or first brought; but if such offender(s) is not so arrested or brought into any district, an indictment or information may be filed in the district of the last known residence of the offender(s), or if no such residence is known, the indictment or information may be filed in the District of Columbia (Title 18, USC, Section 3238). Prosecution under Title 18, USC, Section 35(a), which contains civil penalties, should be initiated in the district of the offender's residence and not in the district in which the offense occurred. Prosecution under Section 35(b) will be in the district in which the offense occurred.

EFFECTIVE: 07/11/85

149-3 POLICY

(1) Accept for investigation all cases involving violations of Title 18, USC, Sections 32(a) (c), 33, 35, and 37 (the DAMV Statute). In conjunction with requests for investigations of violations of Section 32(b) (non-United States aircraft outside of the United States), Bureau authority must be obtained prior to instituting any inquiry. In this regard, any such requests received directly by a field office should be immediately submitted, with complete background and opinion/recommendation of an Assistant United States Attorney (AUSA), to FBI Headquarters.

(2) Technically, a bomb threat (or actual device) aboard an aircraft is a violation of Title 18, USC, Section 35 (DAMV) and Section 37 (Violence at International Airports), as well as Title 49, USC, Section 46507. However, as a matter of policy, all false reports (or actual instances) of a bomb aboard an aircraft unrelated to an aircraft hijacking incident should be investigated and reported under the DAMV (149) classification. Any incidents of this nature involving an aircraft hijacking incident should be carried under the Crime Aboard Aircraft (164) classification. The foregoing is to create uniformity in the Time Utilization and Recordkeeping (TURK) records, as well as to maintain program segregation.

(3) All violations relating to aircraft are to be

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reported as detailed below depending on the magnitude of the incident.

(a) Immediately advise FBIHQ by telephone or teletype, depending upon the exigency of the circumstances, of all cases where there is loss of life, danger to public safety, or widespread public interest. Each complaint should receive prompt and expeditious investigative attention.

(b) In all violations, a succinct LHM (original and four copies) should be submitted to FBIHQ by FD-365 within ten working days of receipt of initial complaint. (See MAOP, Part II, 10-4.3, & Correspondence Guide-Field, 2-5.5.11.) Upon receipt of the LHM, FBIHQ will disseminate to the following agencies:

1. Director Civil Aviation Security,  
ACS-1  
Federal Aviation Administration  
Room 319  
800 Independence Avenue, Southwest  
Washington, D.C. 20591
2. United States Secret Service  
Intelligence Division  
1800 G Street, Northwest  
Washington, D.C. 20223

(c) The appropriate regional office of FAA should be promptly advised upon receipt of all complaints with close liaison being maintained during the course of each investigation.

(d) In all cases, the field office is to disseminate additional copies of the LHM within ten working days to the nearest Civil Aviation Security Field Office (CASFO), FAA Regional Office, United States Secret Service Field Office, and to the FBI field office which covers the subject's residence. Other interested agencies, such as the National Transportation Safety Board (NTSB), Office of Special Investigations, etc., should likewise be advised locally when appropriate. Depending upon the exigency of the matter, immediate notification to the above agencies may be necessary.

(e) In those cases wherein the USA's office declines prosecution, defers prosecution to state or local authorities or refers the matter to FAA for civil enforcement; or wherein it is known that state or local prosecution is declined upon USA deferral, the initial LHM should so indicate. One copy of this LHM should be directed to the USA confirming the USA's opinion in lieu of a separate

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confirmation letter.

(f) In all cases, dissemination is to be indicated on the FD-365 which transmits the LHM to FBIHQ with the LHM identifying those individuals and agencies already notified of the violation.

(g) To assist in gathering the information, the optional administrative Form FD-653, Motor Vehicle Inspection Inventory Record, may be used and retained in the 1-A exhibit envelope (FD-340 and/or FD-340b). (See MIOG, Part I, 26-2.5(2)(c), 26-2.7(2).)

(h) When additional investigation is required, record results so they may be later incorporated into the prosecutive report. Four copies of these should be submitted to FBIHQ. In each instance, reports should set forth full facts including field office file numbers, complete descriptive and background data concerning each subject (best descriptive information available of an unknown subject should also be set forth), data concerning mental stability, the air carrier, flight number, origin and destination, time and place of offense, number of passengers and crew, weapons used, type of aircraft involved, and any injuries.

(i) In order that the FBIHQ substantive case file may reflect the final outcome of each violation, the following FBIHQ notification policy should be followed by the office of origin.

1. In those cases wherein the initial LHM submitted to FBIHQ by FD-365 reflects the final outcome, no further notification is necessary.

2. Deleted

3. In all other cases, including those cases in which a USA declination or deferral was rendered subsequent to the initial LHM/FD-365 submission and those unsolved cases closed under SAC authority, a closing|electronic communication|should be directed to FBIHQ which clearly sets forth the basis for closing.

(4) It is incumbent upon SAC to have appropriate arrangements with transportation facilities and law enforcement officials to make certain all incidents are promptly reported so that immediate investigation may be instituted and Bureau will have effective coverage over this violation.

(5) In case of report that a bomb has been placed on



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aircraft or vehicle, or that similar attempt will be made to destroy aircraft or vehicle, immediately notify Federal Aviation Administration and transportation facility involved in case of aircraft; local authorities and transportation facility involved in case of motor vehicle. Protection of aircraft or vehicle and passengers is responsibility of transportation company and local authorities. Decisions as to grounding aircraft or stopping vehicles and making searches will not be made by FBI. Agents, with the exception of Laboratory explosives specialists and active FBI bomb technicians, are not to participate in searches for suspected bombs on aircraft or vehicles. Render safe responsibilities for located bomb devices rest with the public safety bomb squad or military Explosive Ordnance Disposal (EOD) unit.

(6) Aircraft disasters involving commercial aircraft will be the subject of inquiry by NTSB. In view of the importance of major commercial aircraft disasters and their resultant tragic loss of life, it is necessary that the Bureau be in a position to investigate any violations arising from such disasters efficiently and aggressively. Therefore, the SAC should immediately proceed to disaster scene, establish liaison with NTSB, personally take command in relation to Bureau's interests, and develop any information indicating a federal violation within Bureau's jurisdiction. FBIHQ expects the SAC to personally take command in these instances; however, necessary action cannot be delayed due to SAC's absence.

(7) Department has stated that mere statement that an aircraft is going to crash, even if false, is not a violation in the absence of any false information regarding one of the specific acts enumerated in the law.

(8) Public Law 87-810 amended Section 1105 of Federal Aviation Act of 1958, as amended (Title 49, USC, Section 1505), to provide NTSB authority to avail itself of assistance of FBI or any investigatory or intelligence agency of the United States with respect to an investigation of the activities of any person in connection with a civil aircraft accident. Applicable even though no violation indicated. Requests from NTSB under Section 1105 should be referred to FBIHQ for approval prior to conducting any investigation.

EFFECTIVE: 12/23/96

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149-4 INVESTIGATIVE PROCEDURES

EFFECTIVE: 02/15/82

149-4.1 Aircraft Disasters

EFFECTIVE: 02/15/82

149-4.1.1 Major Commercial Aircraft Disaster - SAC Responsibility  
(See MIOG, Part II, 15-8.5.)

(1) Immediately advise FBIHQ by telephone and if appropriate request assistance of FBI Laboratory and/or FBI Disaster Squad.

(2) Immediately thereafter proceed to the scene of the disaster in order to develop any information indicating a federal violation within the Bureau's jurisdiction. To this end SAC will:

(a) Establish close liaison with local law enforcement officers and NTSB authorities in order to ensure that evidence is properly identified and protected. This will materially aid those responsible for examining the evidence among whom will be a representative of the Bureau Laboratory.

(b) Closely follow investigation by NTSB authorities to ensure that full scale Bureau investigation is initiated immediately upon receipt of indication that a violation has occurred.

(c) Arrange to obtain a passenger manifest and initiate whatever inquiries are necessary to determine sufficient background data concerning each passenger so that an immediate and efficient check may be made of FBIHQ indices and the indices of the field office covering the residence of the passenger. This action will assist the Bureau Disaster Squad in its efforts to positively identify passengers killed or injured in the crash, and develop at the earliest possible moment pertinent data in Bureau files indicating the possibility of an actual violation.

(d) Personally direct appropriate investigative activity of any matters within our jurisdiction to ensure same is handled expeditiously.

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(e) Afford on-the-spot direction to logical immediate investigative activity pertinent to determining whether a violation within Bureau's jurisdiction has occurred. Consideration should be given to preparation of appropriate photographs and sketches of the scene of the crash and photographs of pertinent portions of the aircraft and to interviews with survivors, eyewitnesses, and individuals who heard the plane before the crash.

(f) Media inquiries should be handled by the SAC by indicating that he/she has arrived at the scene to develop any information indicating a federal violation and that he/she is extending the cooperative facilities of the FBI Laboratory.

EFFECTIVE: 04/08/96

149-4.1.2 Major Commercial Aircraft Disaster - FBI Laboratory Action

- (1) Accompany Bureau's disaster squad to scene.
- (2) Effect technical liaison with interested Government representatives.
- (3) Render all possible assistance on the scene to such authorities and where desired arrange for the use of the facilities of the FBI Laboratory.
- (4) In relation to the Bureau's interests, evaluate technical problems associated with Laboratory matters and evidence at the scene.
- (5) Keep the SAC advised of pertinent developments in the technical investigation so that if a violation is indicated investigation may be initiated at the earliest possible moment.

EFFECTIVE: 01/31/78

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149-4.2 Investigation of a Commercial Aircraft Crash

The following full investigative procedure is to be utilized when a preliminary inquiry indicates a Federal violation in any commercial aircraft crash covered by the statute, including those not considered major disasters:

- (1) Thorough crime scene search.
- (2) Insure evidence properly identified and protected.
- (3) Make any necessary photographs and sketches showing:

various angles

- (a) Entire crash scene and close-up views from
- (b) Photographs of parts torn loose
- (c) Photographs of instruments and levers in cockpit
- (d) Photographs of marks made by aircraft on ground

interview: (4) In connection with establishing cause of crash,

- (a) crew members and other survivors
- (b) Eyewitnesses
- (c) Persons who heard the plane before the crash
- (d) NTSB or other radio operators in contact with plane before crash
- (e) Ground crew members and mechanics who serviced the plane

(5) In connection with establishing a possible motive, appropriate investigation should be conducted with regard to:

- (a) Crew members (complete background, including mental and physical condition)
- (b) Passengers (background, business connections, personal contacts, insurance data)

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(c) Source and content of all cargo (mail, express, freight, baggage)

(6) Liaison should be maintained with local authorities who would have concurrent jurisdiction where death or injury occurred.

(7) Liaison should be established with coroner who will certify cause of death and can testify as to cause of death in later court proceedings.

(8) Bear in mind that capital offense may be involved and that evidence will be subject to close scrutiny; therefore, chain of evidence must be carefully preserved.

(9) In investigating all types of incidents, be alert to possible use of FBI Laboratory facilities in establishing exact method and cause of explosions, fires, etc.

EFFECTIVE: 01/31/78

149-4.3 Motor Vehicle Incidents

(1) Complete, thorough crime scene search should be conducted immediately.

(2) Make photographs and sketches of scene.

(3) Interview local authorities who may have investigated incident.

(4) Conduct thorough neighborhood investigation where applicable.

(5) Consider possibility of disgruntled employees or labor disputes.

(6) In case of actual destruction through bomb or similar device of bus or other commercial passenger vehicle, check background of passengers for motive as outlined above.

EFFECTIVE: 01/31/78

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149-4.4 Incidents Involving False Reports (Title 18, USC, Section 35 (b))

(1) Many such reports are received through anonymous telephone calls. Each field office should consider opening a control file setting forth information concerning individuals who are known to have made "nuisance calls."

(2) [REDACTED]

b2  
b7E  
(3) When call is believed to have originated from juvenile, attempt to obtain information through cooperative school officials and other juvenile authorities.

(4) Immediately conduct investigation at the airport if caller alleges a bomb is on a plane, preferably while plane is still on ground; attempt to locate possible suspects who may have come to the airport to observe the confusion created by the call.

(5) Interview airport personnel concerning any person, particularly juveniles, loitering in the area for no apparent reason.

(6) Consider checking with police department and telephone company for person known to have made "crank" telephone calls.

(7) [REDACTED]

(8) When there is an indication that the caller may have been intoxicated, make an immediate check in bars and cafes near the airport.

(9) Immediately conduct any other logical investigation depending on the circumstances under which false report was received.

EFFECTIVE: 07/11/85

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PROSECUTION

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EFFECTIVE: 07/11/85

| 149-5.1 Title 18, U.S. Code, Sections 32(a) (b) | (c), 33 and 37 |

(1) In cases in which jurisdiction is questionable, present to USA early in investigation.

(2) Under Section 32(b), Bureau authority must be obtained before instituting an investigation. All requests for investigation under this subsection should be submitted to FBI Headquarters and this submission should contain the USA's opinion with respect to the prosecutive potential of the matter.

(3) Under Section 33, the phrase "property or cargo" was added to Title 18, USC, Section 31 to cover trucks. As a result, a person who destroys or damages a truck with intent to endanger the driver or another person on board, or with reckless disregard for their safety, can now be prosecuted under this section.

Previously, this section applied only to motor vehicles conveying passengers--typically buses.

(4) For policy considerations, DOJ has advised that the term "motor vehicle" is not intended to "federalize" every attack upon a truck which endangers persons on board. Damaging a truck with the intent of injuring the driver would violate a number of state laws, and it is the intent of the Congress that state authorities continue to play the principal role in this area. Offices should reach understandings with local and state authorities, through their law enforcement coordinating committees, reflecting the limited nature of the federal role. | (See MIOG, Part I, 15-4, 26-4.6.) |

EFFECTIVE: 01/08/96

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149-5.2 Title 18, U.S. Code, Section 35 (a) and (b)

| (1) | As soon as practicable, full facts should be presented to the USA in the district in which the offense occurs in order to determine if there exists a possible violation of Section 35 (b) (criminal). Should the USA determine that the offense does not constitute a violation punishable by criminal penalties, a prosecutive report should be submitted, a copy of which should be furnished the USA's Office covering the district in which the offense was committed and copies forwarded to the field office responsible for the area in which the offender resides with a copy designated for the USA in that area.

| (2) | The Department has advised that in those instances in which civil penalties are applicable, Section 35 (a), prosecution should be initiated in the district of the offender's residence, not in the district in which the offense occurred. Further, the Criminal Division has advised that civil complaints and summonses should be utilized in civil actions under Title 18, USC, Section 35 (a), rather than informations and warrants of arrests as employed in criminal cases. Should the USA in the district of residence decide civil sanctions are warranted, it will be his/her responsibility to initiate same under established Department procedures. No requests by USAs for investigation relative to civil offenses shall be accepted by field offices without prior FBIHQ authority.

EFFECTIVE: 07/11/85

149-5.3 Prosecution Under the Hobbs Act

Consideration should also be given to use of the Hobbs Act as a vehicle of prosecution where an extortionate demand is made directly or indirectly upon a commercial air carrier which would obstruct, delay, or affect commerce. The Department has instructed all USAs that when such an extortionate situation is encountered wherein it may be desirable to charge a violation under the Hobbs Act, the Department must be consulted.

EFFECTIVE: 07/11/85



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149-6 PENALTIES

(1) Section 32(a)(b) - not more than \$250,000 fine (see Title 18, USC, Section 3571) or imprisoned not more than 20 years, or both.

(2) Section 32(c) - not more than \$250,000 fine (see Title 18, USC, Section 3571) or imprisoned not more than 5 years, or both.

(3) Section 33 - not more than \$250,000 fine (see Title 18, USC, Section 3571) or imprisoned not more than 20 years, or both.

(4) Section 34 - Penalty when death results - "whoever is convicted of any crime prohibited by this chapter, which has resulted in the death of any person, shall be subject also to the death penalty or to imprisonment for life."

(5) Section 35(a) - Civil penalty of not more than \$1,000 recoverable in a civil action brought in the name of the United States.

(6) Section 35(b) - not more than \$250,000 fine (see Title 18, USC, Section 3571) or imprisoned not more than 5 years, or both.

(7) Section 37 - not more than \$250,000 fine (see Title 18, USC, Section 3571) or imprisoned not more than 20 years, or both; and if the death of any person results from conduct by section 37(a), shall be punished by death or imprisoned for any term of years or for life.

EFFECTIVE: 01/08/96

149-7 CHARACTER - DESTRUCTION OF AIRCRAFT OR MOTOR VEHICLES

Where incident is potential violation of Section 35, use above character followed by (False Report).

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SECTION 151. BACKGROUND INVESTIGATION - OFFICE OF PERSONNEL  
MANAGEMENT (OPM)

151-1 BACKGROUND INVESTIGATION - OFFICE OF PERSONNEL MANAGEMENT  
(OPM)

This classification was deleted in Fiscal Year 1990 due to the similarities between it and classification 140. Therefore, cases referred to the FBI from OPM regarding an applicant's loyalty to the Government should be handled under classification 140, "Office of Personnel Management - Referral; - Employees; - Other." See Part I, Section 140 of this manual, for appropriate instructions.

EFFECTIVE: 04/19/91

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SECTION 152. SWITCHBLADE KNIFE ACT

152-1 STATUTES

Title 15, USC, Sections 1241, 1242, 1243 and 1244.

EFFECTIVE: 01/31/78

152-1.1 Section 1241. Definitions

"The term 'interstate commerce' means commerce between any State, Territory, possession of the United States, or the District of Columbia, and any place outside thereof.

"The term 'switchblade knife' means any knife having a blade which opens automatically--

"by hand pressure applied to a button or other device in the handle of the knife, or

"by operation of inertia, gravity, or both."

EFFECTIVE: 01/31/78

152-1.2 Section 1242. Interstate Commerce Violations

"Whoever knowingly introduces, or manufactures for introduction, into interstate commerce, or transports or distributes in interstate commerce, any switchblade knife, shall be fined not more than \$2,000 or imprisoned not more than five years, or both."

EFFECTIVE: 01/31/78

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152-1.2.1 Elements - Section 1242

- (1) The person must have the specific criminal intent to
- (2) Introduce or manufacture for introduction into interstate commerce, or transport, or distribute in interstate commerce any switchblade knife
- (3) The knife itself must come within the specific definition of a switchblade as set out in Section 1241
- (4) That the violator not come within one of the four exceptions set forth in Section 1244.

EFFECTIVE: 01/31/78

152-1.3 Section 1243. Within Specific Jurisdiction

"Whoever, within any Territory or possession of the U.S., within Indian country (as defined in Section 1151 of Title 18, USC), or within the special maritime and territorial jurisdiction of the U.S. (as defined in Section 7 of Title 18, USC), manufactures, sells, or possesses any switchblade knife, shall be fined not more than \$2,000 or imprisoned not more than five years, or both."

EFFECTIVE: 01/31/78

152-1.3.1 Elements - Section 1243

- (1) Specific criminal intent to
- (2) Manufacture, sell, or possess any switchblade knife
- (3) Within any territory or possession of the U.S., within Indian country (as defined in Section 1151 of Title 18, USC), or within the special maritime and territorial jurisdiction of the U.S. (as defined in Section 7 of Title 18, USC)
- (4) The knife itself must come within the specific definition of a switchblade knife as set out in Section 1241
- (5) That the violator not come within one of the four

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exceptions set forth in Section 1244.

EFFECTIVE: 01/31/78

152-1.4 Section 1244. Exceptions to Sections 1242 and 1243

These sections shall not apply to--

"(1) any common carrier or contract carrier, with respect to any switchblade knife shipped, transported, or delivered for shipment in interstate commerce in the ordinary course of business;

"(2) the manufacture, sale, transportation, distribution, possession, or introduction into interstate commerce, of switchblade knives pursuant to contract with the Armed Forces;

"(3) the Armed Forces or any member or employee thereof acting in the performance of his duty; or

"(4) the possession, and transportation upon his person, of any switchblade knife with a blade three inches or less in length by any individual who has only one arm."

EFFECTIVE: 01/31/78

152-2 MISCELLANEOUS

This act also provides for an amendment to Section 1716 of Title 18, USC, which provides that switchblade knives are nonmailable items. Violations of this part of the act are subject to investigation by the Inspection Division of the U.S. Postal Service.

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152-3 POLICY

Upon receipt of a complaint where the facts are clear and definite, present the matter immediately to the appropriate USA for an expression of his views as to prosecution in the event the allegations can be successfully substantiated by further investigation. If necessary, conduct a preliminary inquiry to develop the allegations so that the view of the USA may be obtained at the earliest possible time. If the USA expresses the view that prosecution is not warranted, discontinue investigation and close administratively with a confirming letter to the USA. Where juvenile subjects are involved, the facts should be promptly discussed with the USA for his prosecutive opinion. The USA should be furnished with such background information on the juvenile as his prior arrest record, membership in antisocial juvenile gangs, aggravated circumstances of the instant offense, past and present juvenile status with local authorities, and other such special background data. The obtaining of the juvenile's background should not occasion any delay in the prompt and timely presentation of the case.

Complaints involving shipment of switchblade knives by mail only should be referred to the nearest office of a postal inspector.

FBIHQ should be promptly advised upon receipt of complaints and allegations indicating the possibility of large-scale manufacture, sale, or distribution of switchblade knives in interstate or foreign commerce, as well as on Government reservations.

When complaints are received alleging violations of Section 1243, refer to the Manual of Investigative Operations and Guidelines for general information and FBI policy pertaining to the special maritime and territorial jurisdiction of the U.S., and investigative procedure to be followed in these types of cases.

In all investigations be alert to the possibility of ascertaining the origin of the knife or knives involved and investigation should be conducted to identify the manufacturers, importers, distributors, and others engaged in traffic on a large scale.

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152-4 VENUE

In prosecutions against those who manufacture switchblade knives for the purpose of introducing them into interstate commerce, venue would lie in the district of manufacture, or, as in prosecutions against a shipper who "introduces" such articles into commerce, at the place of their delivery to the common or contract carrier for shipment.

The offenses involving transportation in interstate commerce being continuing offenses, they may be prosecuted pursuant to the provisions of Title 18, USC, Section 3237, "in any district from, through, or into which such commerce...moves." Offenses committed within the special maritime and territorial jurisdiction of the U.S., should be prosecuted, as provide in Title 18, USC, Section 3238, "in the district where the offender is found, or into which he is first brought."

EFFECTIVE: 01/31/78

152-5 CHARACTER - SWITCHBLADE KNIFE ACT

EFFECTIVE: 01/31/78



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SECTION 153. AUTOMOBILE INFORMATION DISCLOSURE ACT

153-1 STATUTES

Title 15, USC, Sections 1231, 1232 and 1233

EFFECTIVE: 11/12/80

153-1.1 Definitions (Title 15, USC, Section 1231)

"For the purposes of this Act --

"(a) The term 'manufacturer' shall mean any person engaged in the manufacturing or assembling of new automobiles, including any person importing new automobiles for resale and any person who acts for and is under the control of such manufacturer, assembler, or importer in connection with the distribution of new automobiles.

"(b) The term 'person' means an individual, partnership, corporation, business trust, or any organized group of persons.

"(c) The term 'automobile' includes any passenger car or station wagon (pickup trucks are exempt from Statute sticker requirement).

"(d) The term 'new automobile' means an automobile the equitable or legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.

"(e) The term 'dealer' shall mean any person resident or located in the United States or any Territory thereof or in the District of Columbia engaged in the sale or the distribution of new automobiles to the ultimate purchaser.

"(f) The term 'final assembly point' means --

"(1) in the case of a new automobile manufactured or assembled in the United States, or in any Territory of the United States, the plant, factory, or other place at which a new automobile is produced or assembled by a manufacturer and from which such

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automobile is delivered to a dealer in such a condition that all component parts necessary to the mechanical operation of such automobile are included with such automobile, whether or not such component parts are permanently installed in or on such automobile; and

"(2) in the case of a new automobile imported into the United States, the port of importation.

"(g) The term 'ultimate purchaser' means with respect to any new automobile, the first person, other than a dealer purchasing in his capacity as a dealer, who in good faith purchases such new automobile for purposes other than resale.

"(h) The term 'commerce' shall mean commerce among the several States of the United States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or among the Territories or between any Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation."

EFFECTIVE: 11/12/80

153-1.2 Label and Entries Required (Title 15, USC, Section 1232)

"Every manufacturer of new automobiles distributed in commerce shall, prior to the delivery of any new automobile to any dealer, or at or prior to the introduction date of new models delivered to a dealer prior to such introduction date, securely affix to the windshield, or side window of such automobile a label on which such manufacturer shall endorse clearly, distinctly and legibly true and correct entries disclosing the following information concerning such automobile --

"(a) the make, model, and serial or identification number or numbers;

"(b) the final assembly point;

"(c) the name, and the location of the place of business, of the dealer to whom it is to be delivered;

"(d) the name of the city or town at which it is to be delivered to such dealer;

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"(e) the method of transportation used in making delivery of such automobile, if driven or towed from final assembly point to place of delivery; and

"(f) the following information:

"(1) the retail price of such automobile suggested by the manufacturer;

"(2) the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment, physically attached to such automobile at the time of its delivery to such dealer, which is not included within the price of such automobile as stated pursuant to paragraph (1)

"(3) the amount charged, if any, to such dealer for the transportation of such automobile to the location at which it is delivered to such dealer;

"(4) the total of the amounts specified pursuant to paragraphs (1), (2), and (3)."

EFFECTIVE: 11/12/80

153-1.3 Elements

(1) Section 1232

(a) A manufacturer of any newly manufactured or imported automobile distributed in interstate or foreign commerce

(b) Prior to delivery of the automobile to a dealer, or at or prior to the introduction date

(c) Willfully fails to affix a label to the windshield or side window disclosing information as provided for in Section 1232, or

(d) Willfully fails to endorse clearly, distinctly, and legibly any label as required by Section 1232, or

(e) Makes a false endorsement of any such label.

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(2) Section 1233

(a) A person willfully removes, alters, or renders illegible any label fixed to a new automobile pursuant to Section 1232

(b) Prior to the time automobile is delivered to the actual custody and possession of the ultimate purchaser, except

(c) Where the manufacturer relabels the automobile in instances in which it is rerouted, repurchased, or reacquired by the manufacturer.

EFFECTIVE: 01/31/78

153-1.4 Other Provisions

Venue in offenses involving prosecution of a manufacturer would lie in the district of manufacture or in any district in which such offense was begun, continued, or completed.

In offenses involving the removal or alteration of the label by an individual, venue would lie in the district where the offense took place.

EFFECTIVE: 01/31/78

153-2 POLICY

(1) Upon receipt of a complaint involving a possible violation, promptly obtain the pertinent facts involved. In many cases this will consist of examining suspect cars and the interview of persons in custody of the automobiles. Photographs of the automobiles and Automobile Information Disclosure Act (AIDA) labels should be considered. Keep in mind that the offender is he who has altered the label or removed it and not he who is merely in possession of an automobile without a label or with an altered label. Be impartial and objective during investigation. Make clear our jurisdiction and responsibilities under the statute to those contacted.

(2) During the investigation of the case, any problems with regard to the physical examination of the automobiles and labels involved, particularly regarding the conducting of a legal search,

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should be promptly discussed with the USA for his views. In some cases in which there may be a refusal to execute a consent to search, the USA may desire to proceed on the basis of a search warrant.

The appropriate USA should be promptly contacted as soon as possible after sufficient facts have been developed upon which to base a prosecutive opinion. Bear in mind that prosecutive action in these cases can in all instances be initiated by the USA by filing an information in view of the fact that violations of this act are considered misdemeanors.

Be certain in each case, when discussing the facts with the USA for the purpose of obtaining a prosecutive opinion, to fully inform the USA with regard to prior AIDA violations on the part of the subject, particularly in those instances in which the USA may have declined on a particular subject because he was a first offender.

(3) The most common violation arises out of the so-called bootlegging operation. Bootlegging in the automobile trade involves the obtaining of a new model car by nonfranchised independent used-car or new car dealers. Keep in mind the fact that when a new car goes from a franchised to a nonfranchised dealer it is still a new car under the definition in the statute as the car has not yet reached an "ultimate purchaser." The used-car dealer will oftentimes alter or remove the AIDA label in an effort to protect the identity of the franchised dealer from whom he obtained the car and thus protect his source of supply. The franchised dealer too has an interest in having his identity concealed and he may be equally involved in the violation. The Department has held that willful tampering with the AIDA label for the purpose of concealing the identity of the original dealer to whom the automobile was sold and delivered constitutes a violation of this act and evidence that the alteration of labels is motivated by a desire to frustrate the disclosure of certain information on such labels would be sufficient from which to infer the element of willfulness. Be alert during investigations of this type of violation to any indication that a real or fictitious person or firm is being used as a "middle man" in the transaction between the new car and used-car dealer. Obtain evidence that such a "middle man" is not actually an "ultimate purchaser" and that his existence is merely to provide a cover for the transaction. One of the common techniques utilized is the automobile rental or leasing technique where in many cases it has been shown that there was no actual intent to lease or rent automobiles and the person or firm existed only to provide a vehicle between the new and used-car dealer for the sale of new automobiles.

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EFFECTIVE: 01/31/78

153-3 PENALTIES (Section 1233)

(1) Any manufacturer of automobiles distributed in commerce who willfully fails to affix to any new automobile manufactured or imported by him the label required shall be fined not more than \$1,000. Such failure with respect to each automobile shall constitute a separate offense.

(2) Any manufacturer of automobiles distributed in commerce who willfully fails to endorse clearly, distinctly and legibly any label as required or who makes a false endorsement of any such label, shall be fined not more than \$1,000. Such failure or false endorsement with respect to each automobile shall constitute a separate offense.

(3) Any person who willfully removes, alters, or renders illegible any label affixed to a new automobile, or any endorsement thereon, prior to the time that such automobile is delivered to the actual custody and possession of the ultimate purchaser of such new automobile, except where the manufacturer relabels the automobile in the event the same is rerouted, repurchased, or reacquired by the manufacturer of such automobile, shall be fined not more than \$1,000, or imprisoned not more than one year, or both. Such removal, alteration, or rendering illegible with respect to each automobile shall constitute a separate offense.

EFFECTIVE: 01/31/78

153-4 CHARACTER - AUTOMOBILE INFORMATION DISCLOSURE ACT

EFFECTIVE: 01/31/78

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SECTION 154. INTERSTATE TRANSPORTATION OF UNSAFE REFRIGERATORS

154-1 STATUTES

Title 15, USC, Sections 1211, 1212, 1213, 1214

EFFECTIVE: 01/31/78

154-1.1 Elements

Section 1211 makes it unlawful for any person to introduce or deliver for introduction into interstate commerce any household refrigerator manufactured on or after 10-30-58, unless it is equipped with a device, enabling the door thereof to be opened from the inside which conforms to the standards prescribed pursuant to Section 1213.

EFFECTIVE: 01/31/78

154-1.1.1 Other Provisions

Under Section 1213 the Secretary of Commerce shall prescribe and publish in the "Federal Register" commercial standards for devices which, when used in or on household refrigerators, will enable the doors thereof to be opened easily from the inside; and the standards first established under this Section shall be so prescribed and published not later than one year after August 2, 1956.

Note: These standards were published by the Secretary of Commerce in the "Federal Register" dated 8-1-57, Volume 22, Number 148.

Section 1214 defines "interstate commerce" as used in this chapter to include commerce between one State, Territory, possession, the District of Columbia or the Commonwealth of Puerto Rico and another State, Territory, possession, the District of Columbia or the Commonwealth of Puerto Rico.

Venue lies in any district from, through, or into which transportation occurs or in the District of Columbia, or Territory or

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possession of the U.S. wherein such transportation occurs.

EFFECTIVE: 01/31/78

154-1.1.2 Policy

(1) The Department of Commerce is specifically charged with the regulatory provisions of this act.

(2) The Bureau will not make inspections of manufacturing plants to insure compliance with the Department of Commerce regulations.

(3) Inquiries received relative to whether a device installed on a refrigerator complies with the standards set out by the Department of Commerce should immediately be referred to the Department of Commerce.

(4) Upon receipt of a complaint under Section 1211 of this act, said complaint should immediately be discussed with the appropriate USA to determine whether the complaint is sufficient to warrant investigation and prosecution.

EFFECTIVE: 01/31/78

154-2 PENALTY

Imprisonment for not more than one year or a fine of not more than \$1,000 or both. (Section 1212 - misdemeanor).

EFFECTIVE: 01/31/78

154-3 CHARACTER - INTERSTATE TRANSPORTATION OF UNSAFE REFRIGERATORS

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SECTION 155. NATIONAL AERONAUTICS AND SPACE ACT OF 1958

155-1 BACKGROUND

The National Aeronautics and Space Act of 1958 was approved by the President on July 29, 1958, known as Public Law 85-568. Section 304 (c) of this law amends Chapter 37 of Title 18, USC, entitled "Espionage and Censorship." A new Section, 799, has been added to this Chapter.

EFFECTIVE: 01/31/78

155-2 STATUTE

Title 18, USC, Section 799, reads as follows:

"Violation of regulations of National Aeronautics and Space Administration

"Whoever willfully shall violate, attempt to violate, or conspire to violate any regulation or order promulgated by the Administrator of the National Aeronautics and Space Administration for the protection or security of any laboratory, station, base, or other facility, or part thereof, or any aircraft, missile, spacecraft, or similar vehicle, or part thereof, or other property or equipment in the custody of the Administration, or any real or personal property or equipment in the custody of any contractor under any contract with the Administration or any subcontractor of any such contractor, shall be fined not more than \$5,000, or imprisoned not more than one year, or both."

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155-3

DEPARTMENTAL POLICY AND INVESTIGATIVE JURISDICTION

(1) The Department has advised that the responsibility for enforcement and prosecution for an offense arising under Title 18, USC, Section 799 is assigned to the Internal Security Section of the Criminal Division of the Department. Since Section 799 is part of Chapter 37 of Title 18, relating to espionage and the protection of defense installations, investigation of an alleged violation is within the FBI's investigative jurisdiction.

(2) The Department noted that although Section 799 prohibits the violation of any regulation or order promulgated by the Administrator of the National Aeronautics and Space Administration (NASA) where such regulation or order deals with the protection or security of its facilities, not every technical infringement should be investigated by the FBI. It is expected that the administrative enforcement of its own regulations would be handled in the first instance by NASA with only the more serious violations being referred to the FBI for its investigative attention.

(3) In pursuing any criminal investigation of an alleged violation of Section 799, the FBI should keep in mind that it would be necessary to establish that any transgression was not merely technical or inadvertent, but a willful or purposeful violation having prosecutive merit. Where any doubt exists, the matter should be discussed with the Department.

EFFECTIVE: 01/31/78

155-4

NASA INSTALLATIONS COVERED BY THIS REGULATION

Alabama

George C. Marshall Space Flight Center, Marshall Space  
Flight Center, Alabama 35812

California

Ames Research Center, Moffett Field, California 94035

Flight Research Center, P. O. Box 273, Edwards, California

93523

KSC Western Test Range Operation Division, P. O. Box 425,

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Lompoc, California 93436

NASA Pasadena Office, 4800 Oak Grove Drive, Pasadena,  
California 91103

Florida

John F. Kennedy Space Center, Kennedy Space Center,  
Florida 32899

Louisiana

Michoud Assembly Facility, P. O. Box 29300, New Orleans,  
Louisiana 70129

Maryland

Goddard Space Flight Center, Greenbelt, Maryland 20771

Mississippi

Mississippi Test Facility, Bay St. Louis, Mississippi  
39520

New Mexico

JSC White Sands Test Facility, P. O. Drawer MM, Las  
Cruces, New Mexico 88001

New York

Goddard Institute for Space Studies, 2880 Broadway, New  
York, New York 10025

Ohio

Lewis Research Center, 21000 Brookpark Road, Cleveland,  
Ohio 44135

Texas

Lyndon B. Johnson Space Center, Houston, Texas 77058

Virginia

Langley Research Center, Langley Station, Hampton,

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Virginia 23665

Wallops Flight Center, Wallops Island, Virginia 23337

EFFECTIVE: 01/31/78

155-5

INVESTIGATIVE PROCEDURES

(1) Upon receipt of any information from a NASA security officer concerning a possible violation of attempted violation of Title 18, USC, Section 799, promptly furnish available facts to FBIHQ in form suitable for dissemination, for referral to the Department for review. Should information indicating a violation be received from any other source, advise NASA security officer attached to appropriate NASA installation of information and, thereafter, submit same to FBIHQ as above.

(2) Conduct no active investigation unless instructed to do so by FBIHQ.

EFFECTIVE: 01/31/78

155-6

CHARACTER - NATIONAL AERONAUTICS AND SPACE ACT OF 1958

EFFECTIVE: 01/31/78

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SECTION 156. EMPLOYEE RETIREMENT INCOME SECURITY ACT

156-1 STATUTES

- | (1) | Title 29, USC, Sections 1021-1029, 1111, 1131, 1141
- | (2) | Title 18, USC, Sections 664, 1027, 1954

EFFECTIVE: 05/28/85

156-1.1 Title 29, USC, Section 1111

EFFECTIVE: 05/28/85

156-1.1.1 Elements

| Prohibition against holding position - Persons convicted of certain crimes prior to October 12, 1984, are prohibited from serving as any officer, fiduciary, trustee, custodian, counsel, agent, employee or representative of any employee benefit plan, or as any adviser, decision-maker, or compensated consultant for such benefit plan for five years after date of final conviction or end of imprisonment, whichever is the latter. The Comprehensive Crime Control Act of 1984 provides that for convictions after October 12, 1984, the disqualification extends to 13 years after conviction or end of imprisonment, whichever is later. Exceptions to this are when citizenship rights have been fully restored or when the U.S. Parole Commissioner gives approval to serve in the position. The Act also prohibits any person from knowingly permitting any other convicted person to serve in a prohibited position. |

EFFECTIVE: 05/28/85

156-1.2 Title 29, USC, Section 1131

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EFFECTIVE: 05/28/85

156-1.2.1 Elements

(1) Willful failure to prepare description of plan and annual financial report according to requirements in Act.

(2) Willful failure to publish description of plan and annual financial report by:

(a) Not making them available for examination of any participant or beneficiary at principal office of plan

(b) Not mailing them to any participant or beneficiary upon written request

(c) Not filing them with the Secretary of Labor (Title 29, USC, Sections 1021-1029)

EFFECTIVE: 05/28/85

156-1.3 Title 29, USC, Section 1141

EFFECTIVE: 05/28/85

156-1.3.1 Elements

Interference with rights - Use of fraud, force, or violence (or threat thereof) to interfere with or prevent exercise of any right to which participant or beneficiary may become entitled, under the benefit plan, Title III, Section 3001 of ERISA, or the former Welfare and Pension Plans Disclosure Act.

EFFECTIVE: 05/28/85

156-1.4 Title 18, USC, Section 664

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EFFECTIVE: 05/28/85

156-1.4.1 Elements

Embezzlement or theft - Any person who embezzles, steals, abstracts, or converts to his/her own use or to the use of another any of monies, funds, securities, premiums, credits, property, or other assets of any plan subject to the Act.

EFFECTIVE: 05/28/85

156-1.5 Title 18, USC, Section 1027

EFFECTIVE: 05/28/85

156-1.5.1 Elements

Any person who knowingly makes false statement or representation of fact, conceals, covers up, or fails to disclose any fact, in

| (1) | Any document required by the Act to be published by the plan

| (2) | Any records required by the Act to be kept by the plan which are necessary to verify or otherwise check for accuracy and completeness of any document required by the Act to be published by the plan

| (3) | Any information required by the Act to be certified to the administrator of the plan

EFFECTIVE: 05/28/85

156-1.6 Title 18, USC, Section 1954

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EFFECTIVE: 05/28/85

156-1.6.1 Elements

(1) Kickbacks - Any person listed below who receives or agrees to receive or solicits any fee, kickback, commission, gift, loan, money, or thing of value because of, or with intent to be influenced with respect to any of his/her actions, decisions, or other duties relating to any question or matter concerning a plan

(a) Administrator, officer, trustee, custodian, counsel, agent, or employee of any employee welfare benefit plan or employee pension benefit plan; or

(b) An officer, counsel, agent, or employee of an employer or an employer any of whose employees are covered by such plan; or

(c) An officer, counsel, agent, or employee of an employee organization any of whose members are covered by such plan; or

(d) A person who, or an officer, counsel, agent, or employee of an organization which, provides benefit plan services to such plan

(2) Any person who directly or indirectly gives or offers, or promises to give or offer, any fee, kickback, commission, gift, loan, money, or thing of value prohibited by this section

Exception: Bona fide salary, compensation, or other payments made for goods or facilities actually furnished, or for service actually performed in the regular course of duties of any person mentioned above.

EFFECTIVE: 05/28/85

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156-2 | SIGNIFICANT EXCLUSIONS IN COVERAGE (TITLE 29, USC,  
SECTION 1003)

(1) Governmental Plans

(a) Title I of ERISA excludes from coverage of any employee benefit plan which is established or maintained by any Government (Federal, state, or local) or any agency of Government.

(b) General Exceptions to (a)

1. If an employee benefit plan covers any participant who is employed by a private employer, it may be covered by ERISA.

2. A determination can be made as to whether or not a plan is covered by ERISA by contact with the U.S. Department of Labor (DOL) to ascertain if the plan files an annual report.

(2) Church Plans

(a) Benefit plans maintained and established for its employees, by a church which is exempt from Federal income tax, are excluded from coverage by ERISA.

(b) General Exception to (a) - Employees of churches who are employed in trades or businesses unrelated to the primary activities of the church may be covered (such as a situation where a church owns a business and the employee works for the business).

(3) Workmen's Compensation Funds - A plan that is maintained solely for the purpose of complying with workmen's compensation and unemployment laws is not covered by ERISA.

EFFECTIVE: 06/09/80

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||156-3| POLICY

(1) Memorandum of Understanding executed between Department of Justice and Labor provides as follows:

(a) Investigation of alleged failure to disclose information or improper reporting (Title 29, USC, Section 1131) by welfare or pension plans to plan members or to Department of Labor as required (Title 29, USC, Sections 1021-1029) will be conducted by Labor and matter will be referred to Department of Justice for consideration of criminal prosecution

(b) Investigations of following alleged violations will be conducted by FBI:

1. Prohibition against holding positions (Title 29, USC, Section 1111)
2. Interference with rights (Title 29, USC, Section 1141)
3. Embezzlement (Title 18, USC, Section 664)
4. False statements (Title 18, USC, Section 1027)
5. Kickbacks (Title 18, USC, Section 1954)

(2) Whenever allegations of violation handled by the Department of Labor are received, full information is to be furnished to that agency in writing.

(3) Complaints concerning violations as listed in (1) (b) above:

Discuss complaints immediately with USA to obtain opinion whether information received contains sufficient indication of violation to justify investigation.

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156-4

INVESTIGATIVE PROCEDURE

(1) Prohibition against holding positions (Title 29, USC, Section 1111) Document by Identification Record and certified copies of judgment of conviction and official record of release from imprisonment that person was convicted or imprisoned for violation cited in statute (robbery, bribery, extortion, embezzlement, fraud, etc.) and develop evidence to establish that the person is serving with the plan in a prohibited position (administrator, officer, trustee, custodian, etc.)

(2) Disclosure or reporting (Title 29, USC, Section 1131)  
No investigation to be conducted by FBI since Department of Labor has jurisdiction; however, information received should be forwarded FBIHQ promptly for dissemination in LHM under cover of airtel.

(3) Interference with rights (Title 29, USC, Section 1141) Ascertain specific rights of participant or beneficiary reportedly interfered with and develop evidence establishing means allegedly used to cause interference (fraud, force, violence, or threat thereof).

(4) Embezzlement (Title 18, Section 664)

(a) Embezzlement investigation should develop in detail shortages in funds of welfare or pension plan, and independent evidence should be secured to prove the person or persons responsible for shortage. Besides minute examination of accounting or other records of plans, persons who are indicated to have knowledge of shortages and who would be possible witnesses to establish the responsibility of certain persons for the shortages, should be interviewed. Funds involved in shortages should be traced wherever possible into the possession of the subject. Consideration should be afforded to checking records, such as bank and other business accounts, into or through which funds or other assets may have passed. Such action will be pertinent in those instances in which records of the plans are altered or destroyed or for some other reason are unavailable.

(b) Be alert to determine facts which specify alleged embezzlement pertains to funds of welfare or pension plans since embezzlement of other money or assets of company or labor union is not covered by act. Labor union welfare and pension plans are often established in the form of trusts, the funds of which are contributed by employer, and such funds are utilized for hospitalization, insurance, or pension benefits payable to union

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members or their beneficiaries. These funds are separate from monies in the treasury of a labor union or its locals. Embezzlement of labor union money is covered under the Labor Management Reporting and Disclosure Act of 1959 (Section 159 of this manual).

(5) False Statements (Title 18, USC, Section 1027) - False statements investigations should be handled similar to normal fraud against the Government matter in accordance with procedure outlined in Section 46 of this manual.

(6) Kickbacks (Title 18, USC, Section 1954)

(a) Investigations regarding kickbacks relate generally to any offer, payment, solicitation, or acceptance of a fee or commission in any form which is allegedly involved in transactions of a welfare or pension plan. Any indication of such irregularities in plan operation should be thoroughly explored in order to establish participation of each and every person involved. Particular attention should be afforded to detecting any means used to disguise kickbacks which may be manipulated through middlemen who act as go-betweens in the scheme of the principals involved.

(b) Allegations to be alert for involve fees, kickbacks, commissions, etc., being paid in order that funds of a plan will be loaned or invested. Investigation of such allegations regarding loans made by a plan for financing construction work requires accounting for all disbursement of proceeds of such loans and tracing any questionable items which may be considered subterfuge in order to conceal kickback. Likewise, investigation of investments made by a plan requires complete verification in order to uncover any portions of such investment which may be diverted into a kickback.

EFFECTIVE: 04/24/90

156-5

INTERVIEW WITH UNION OFFICIALS

These interviews may be conducted on the authority of the SAC, provided all of the following circumstances exist:

(1) Files of field office where interview to be conducted contain no information to indicate such interview would be inadvisable.

(2) Interview is not premature and other available

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sources of information desired from union official have been exhausted.

(3) Interview is absolutely necessary in interest of conducting complete and thorough investigation.

(4) The interview must be discussed with and approved by the USA.

(5) The field office must ensure that the interview will not interfere with any other investigation of the official or union.

(6) In the event an auxiliary office is to conduct the interview, that office must ensure their files contain no information to indicate the interview would be inadvisable.

(7) FBIHQ must be notified in advance in the event the interviewee is prominent, extremely controversial, or of such stature to focus national attention on the investigation.

EFFECTIVE: 10/18/88

156-6

REPORTING PROCEDURES

(1) |An initial airtel with accompanying LHM (original and three copies) should be submitted to FBIHQ within 60 days if the investigation involves LCN members or associates. The LHM should contain the preliminary opinion of the USA and sufficient identification data on the subject(s) for indexing purposes. |

(2) |A progress letter should be submitted to FBIHQ every 180 days containing a summary of investigation conducted to date and a statement regarding investigation contemplated during the next 180 days. |

(3) |A closing airtel should be submitted to FBIHQ with an LHM restating the predication for opening the investigation, summarizing the investigative findings and detailing the disposition of the investigation. The LHM should include the final opinion of the USA. |

(4) |If the investigation involves non-LCN groups (i.e., Asian organized crime, Sicilian Mafia, etc.), advise FBIHQ by airtel with accompanying LHM, as described above, within 60 days. The

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results and/or summary should be reported by LHM (original and three copies).|

EFFECTIVE: 10/18/88

156-7 PENALTIES

(1) Title 29, USC, Section 1111 - \$10,000 or not more than five years, or both

(2) Title 29, USC, Section 1141 - \$10,000 or not more than one year, or both

(3) Title 18, USC, Section 664 - \$10,000 or five years or both

(4) Title 18, USC, Section 1027 - \$10,000 or five years or both

(5) Title 18, USC, Section 1954 - \$10,000 or three years or both

EFFECTIVE: 10/18/88

156-8 CHARACTER - EMPLOYEE RETIREMENT INCOME SECURITY ACT

EFFECTIVE: 10/18/88

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SECTION 157. CIVIL UNREST

157-1 RESPONSIBILITY OF THE BUREAU

The responsibility of the Bureau under this section is based on the Attorney General's Guidelines for Reporting on Civil Disorders and Demonstrations Involving a Federal Interest, which became effective April 5, 1976.

EFFECTIVE: 01/31/78

157-1.1 Categories for Reporting

Under these guidelines, the FBI is responsible for reporting information on civil disturbances or demonstrations in four categories:

- (1) Investigating violations of Federal criminal law directed explicitly at civil disorders (e.g., Title 18, USC, Sections 231, 2101); and investigating violations of Federal criminal law of general applicability occurring during civil disorders.
- (2) Providing information and assistance, upon request of the Secret Service, to aid in carrying out its protective responsibilities under Title 18, USC, Sections 112, 970, 3056 and P. L. 90-331. Information relating to the protective responsibilities of the Secret Service which is acquired incidentally in the course of carrying out FBI responsibilities should be reported to the Secret Service. It should be noted, however, investigations for the purpose of assisting the Secret Service in its protective responsibilities should not be undertaken without a specific request from the Director of Secret Service or his designee made or confirmed in writing.
- (3) Providing information concerning actual or threatened civil disorders which may require the presence of Federal troops to enforce Federal law or Federal court orders (Title 10, USC, Sections 332, 333) or which may result in a request by state authorities to provide Federal troops in order to restore order (Title 10, USC, Section 331).
- (4) Providing information relating to demonstration

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activities which are likely to require the Federal Government to take action to facilitate the activities and provide public health and safety measures with respect to those activities.

EFFECTIVE: 01/31/78

157-2 POLICY REGARDING REPORTING OF CIVIL DISORDERS

The Bureau's responsibilities in reporting Civil Disorders are as follows:

(1) Information relating to actual or threatened civil disorders acquired by the FBI from public officials or other public sources or in the course of its other investigations, should be reported to the Department of Justice. In this connection it should be noted that under the Attorney General's guidelines for reporting on civil disorders and demonstrations there is no prohibition against alerting sources, including appropriate law enforcement officials and established informants, of the Bureau's continuing interest in civil disorders and demonstrations.

(2) Investigations should not be undertaken to collect information relating to actual or threatened civil disorders except upon specific request of the Attorney General or his designee. Investigations will be authorized only for a period of 30 days but the authorization may be renewed, in writing, for subsequent periods of 30 days.

(3) Information should be collected and reported pursuant to paragraphs (1) and (2) above, for the limited purpose of assisting the President in determining whether Federal troops are required and determining how a decision to commit troops shall be implemented. This information should be based on such factors as:

(a) The size of the actual or threatened disorder - both in number of people involved or affected and in geographic area;

(b) The potential for violence;

(c) The potential for expansion of the disorder in light of community conditions and underlying causes of the disorder;

(d) The relationship of the actual or threatened disorder to the enforcement of Federal laws or court orders and the

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likelihood that state or local authorities will assist in enforcing those laws or orders;

(e) The extent of state or local resources available to handle the disorder.

(4) Investigations undertaken, at the request of the Attorney General or his designee, to collect information relating to actual or threatened civil disorders should be limited to inquiries of:

(a) Field office and FBIHQ files and indices;

(b) Public records and other public sources of information;

(c) Federal, state, and local records and officials;

(d) Established informants or other established sources of information.

Interviews of individuals other than those listed above, and physical and photographic surveillance should not be undertaken as part of such an investigation except when expressly authorized by the Attorney General or his designee.

EFFECTIVE: 01/31/78

157-3 REPORTING OF DEMONSTRATIONS

The reporting of demonstrations should conform to and include the following:

(1) Information relating to demonstration activities which are likely to require the Federal Government to take action to facilitate the activities and provide public health and safety measures with respect to those activities, which is acquired incidentally by the Bureau in the course of carrying out its responsibilities, should be reported to the Department of Justice.

(2) Investigations should not be undertaken to collect information with respect to such demonstrations except upon specific request of the Attorney General or his designee.

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(3) Information collected and reported pursuant to (1) and (2) above, should be limited to that which is necessary to determine:

(a) The date, time, place, and type of activities planned;

(b) The number of persons expected to participate;

(c) The intended mode of transportation to the intended site or sites and the intended routes of travel;

(d) The date of arrival in the vicinity of the intended site and housing plans, if pertinent;

(e) Similar information necessary to provide an adequate Federal response to insure public health and safety and the protection of First Amendment rights. This is intended to encompass such additional facts affecting the Federal responsibility as unusual health needs of participants, counterdemonstrations planned which may increase safety needs, or possible inability of participants to arrange return transportation.

(4) Investigations undertaken to collect information relating to demonstrations pursuant to (2) above should be limited to determining the information described in (3) above. Such information should be collected only by a check of:

(a) Field office and FBIHQ files and indices;

(b) Public records and other public sources of information;

(c) Federal, state, and local records and officials;

(d) Persons involved in the planning of the demonstration, provided that in conducting interviews with such persons, they be initially advised of the authority to make the inquiry and the limited purpose for which it is made.

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157-4 PHOTOGRAPHIC SURVEILLANCES

Photographic Surveillances should not be conducted in carrying out Bureau responsibilities in collecting and reporting information on demonstrations.

EFFECTIVE: 01/31/78

157-5 DISSEMINATION OF DATA PERTAINING TO CIVIL DISORDERS AND DEMONSTRATIONS

Under the Attorney General's Guidelines for reporting on both civil disorders and demonstrations, information concerning criminal offenses within the investigative jurisdiction of another Federal agency which is acquired incidentally in the course of Guidelines' implementation, should be reported to the Federal agency having jurisdiction. Information concerning serious criminal offenses within the investigative jurisdiction of state or local agencies should be reported to the appropriate lawful authorities. In this regard, reference to serious offenses would exclude such matters as: drunkenness, vagrancy, loitering, disturbing the peace, disorderly conduct, adultery, fornication and consensual homosexual acts, false fire alarm, nonspecific charges of suspicion or investigation, traffic violations and juvenile delinquency.

Information obtained relating to both civil disorders and demonstrations, which comes within the purview of the Attorney General's Guidelines, should be furnished to the United States Attorney locally. Civil disorder information may also be reported to Federal, state, or local officials at the location of the actual or threatened disorder who have a need for the information in order to carry out their official responsibilities in connection with such a disorder.

By memorandum dated 7/26/76, the Attorney General set forth additional guidelines relating to the routine dissemination of information on both civil disorders and demonstrations to CIA and also dissemination of this type information to CIA and other Federal agencies on specific request. Routine dissemination to CIA is restricted to that which relates directly to the security or safety of CIA installations, personnel or operations. These additional guidelines also pointed out that on the other hand, it may be proper to furnish CIA or any other Federal agency upon its specific request, information concerning earlier civil disorders or demonstrations,

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whether or not they directly related to the agency, if that information will be useful in determining the extent to which present activities pose a threat to the security of the agency's facilities, personnel or operations. For example, if a Government facility is, or is about to be, the target of a demonstration by a particular group, information in FBI files concerning prior demonstrations by that group which resulted in violence or illustrated the group's ability to prevent violence would be relevant to a determination as to whether a security threat exists. Such information might properly be furnished upon request.

The Attorney General's memorandum of 7/26/76 further sets forth it is important that the very limited nature of the Federal Government's interest in both civil disorders and demonstrations be recognized not only in the acquisition of information but also in its dissemination to other departments and agencies and unless the information indicates that some action or response by the agency involved is likely to be required routine dissemination should not be made.

EFFECTIVE: 01/31/78

157-6      REPORTING PROCEDURES TO BE UTILIZED IN CIVIL DISORDERS AND  
DEMONSTRATIONS

Information obtained which comes within the purview of the Attorney General's Guidelines for gathering and reporting information on civil disorders and demonstrations should be furnished to FBIHQ and interested agencies, including the United States Attorney locally, by most timely means warranted under the circumstances. Actual or threatened riots, disturbances, or disorders should be reported to FBIHQ by teletype unless circumstances warrant telephone call, in which event call should be confirmed by teletype. Teletypes should be in form suitable for dissemination and where possible information relating to those items specifically referred to in 157-2 (3)(a) through (e) and 157-3 (3)(a) through (e) above should be included. All administrative data, including reference should be at end under "Administrative" heading; classify if warranted, etc. Teletypes need not be followed by LHMs unless investigation of the disorder or demonstration has been specifically requested by the Attorney General or his designee. Include in details of teletype identities of local and Federal agencies notified. Record in field file identities of persons who were contacted at the notified agencies, time and date and identities of FBI personnel making contacts.

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EFFECTIVE: 01/31/78

157-7 CHARACTER

The title of the case should be descriptive of activities involved followed by character "Civil Unrest."

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SECTION 159. LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF  
1959 (INVESTIGATIVE MATTER)

159-1 STATUTES

Title 29, USC, Sections 501 (c), 503 (b), (c), 504, 522,  
and 530.

EFFECTIVE: 05/28/85

159-1.1 Section 501 (c)

EFFECTIVE: 05/28/85

159-1.1.1 Elements

(1) "(c) any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use, or the use of another, any of the moneys, funds, securities, property, or other assets of a labor organization of which he is an officer, or by which he is employed, directly or indirectly, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both."

EFFECTIVE: 05/28/85

159-1.2 Sections 503 (b) & (c)

EFFECTIVE: 05/28/85

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159-1.2.1 Elements

(1) "(b) No...employer shall directly or indirectly pay the fine of any officer or employee convicted of any willful violation of this chapter.

(2) "(c) Any person who willfully violates this section shall be fined not more than \$5,000 or imprisoned for not more than one year, or both."

(3) Section 503(b) also prohibits the payment of a fine by a labor organization of any officer or employee convicted of any willful violation of this chapter. Such violations are investigated by the Department of Labor.

EFFECTIVE: 05/28/85

159-1.3 Section 504

EFFECTIVE: 05/28/85

159-1.3.1 Elements

(1) "(a) No person...who has been convicted of, or served any part of a prison term resulting from his conviction of, robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, or a violation of subchapter III or IV of this chapter, any felony involving abuse or misuse of such person's position or employment in a labor organization or employee benefit plan to seek or obtain an illegal gain at the expense of the members of the labor organization or the beneficiaries of the employee benefit plan, or conspiracy to commit any such crimes or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element, shall serve or be permitted to serve-

"(1) as a consultant or adviser to any labor organization,

"(2) as an officer, director, trustee, member of any executive board or similar governing body, business agent, manager, organizer, employee, or representative in any capacity of any



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labor organization,

"(3) as a labor relations consultant or adviser to a person engaged in an industry or activity affecting commerce, or as an officer, director, agent, or employee of any group or association of employers dealing with and labor organization, or in a position having specific collective bargaining authority or direct responsibility in the area of labor-management relations in any corporation or association engaged in an industry or activity affecting commerce, or

"(4) in a position which entitles its occupant to a share of the proceeds of, or as an officer or executive or administrative employee of, any entity whose activities are in whole or substantial part devoted to providing goods or services to any labor organization, or

"(5) in any capacity, other than in his capacity as a member of such labor organization, that involves decisionmaking authority concerning, or decisionmaking authority over, or custody of, or control of the monies, funds, assets, or property of any labor organization, during or for the period of thirteen years after such conviction or after the end of such imprisonment, whichever is later, unless the sentencing court on the motion of the person convicted sets a lesser period of at least three years after such conviction or after the end of such imprisonment, whichever is later, or unless prior to the end of such period, in the case of a person so convicted or imprisoned, (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) the United States Parole Commission determines that such person's service in any capacity referred to in clauses (1) through (5) would not be contrary to the purposes of this Act. Prior to making any such determination the Commission shall hold an administrative hearing and shall give notice of such proceeding by certified mail to the Secretary of Labor and to State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Commission's determination in any such proceeding shall be final. No person shall knowingly hire, retain, employ, or otherwise place any other person to serve in any capacity in violation of this subsection."

(2) "(b) Any person who willfully violates this section shall be fined not more than \$10,000 or imprisoned for not more than five years, or both."

(3) "(c) For the purpose of this section-

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"(1) A person shall be deemed to have been 'convicted' and under the disability of 'conviction' from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal.

"(2) A period of parole shall not be considered as part of a period of imprisonment."

(4) "(d) Whenever any person-

"(1) by operation of this section, has been barred from office or other position in a labor organization as a result of a conviction, and

"(2) has filed an appeal of that conviction, any salary which would be otherwise due such person by virtue of such office or position, shall be placed in escrow by the individual employer or organization responsible for payment of such salary. Payment of such salary into escrow shall continue for the duration of the appeal or for the period of time during which such salary would be otherwise due, whichever period is shorter. Upon the final reversal of such person's conviction on appeal, the amounts in escrow shall be paid to such person. Upon the final sustaining of such person's conviction on appeal, the amounts in escrow shall be returned to the individual employer or organization responsible for payments of those amounts. Upon final reversal of such person's conviction, such person shall no longer be barred by this statute from assuming any position from which such person was previously barred."

(5) Subchapter III of this chapter deals with reporting by labor organizations, officers and employees of labor organizations, and employers. Subchapter IV deals with trusteeships. Violations of these chapters are investigated by Department of Labor.

EFFECTIVE: 05/28/85

159-1.4 Section 522

EFFECTIVE: 05/28/85

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159-1.4.1 Elements

(1) "(a) It shall be unlawful to carry on picketing on or about the premises of any employer for the purpose of, or as part of any conspiracy or in furtherance of any plan or purpose for, the personal profit or enrichment of any individual (except bona fide increase in wages or other employee benefits) by taking or obtaining any money or other thing of value from such employer against his will or with his consent."

(2) "(b) Any person who willfully violates this section shall be fined not more than \$10,000 or imprisoned not more than twenty years or both."

EFFECTIVE: 05/28/85

159-1.5 Section 530

EFFECTIVE: 05/28/85

159-1.5.1 Elements

(1) "It shall be unlawful for any person through the use of force or violence, or threat of the use of force or violence, to restrain, coerce, or intimidate or attempt to restrain, coerce, or intimidate any member of a labor organization for the purpose of interfering with or preventing the exercise of any right to which he is entitled under the provisions of this chapter. Any person who willfully violates this section shall be fined not more than \$1,000 or imprisoned for not more than one year, or both."

EFFECTIVE: 05/28/85

159-2 BILL OF RIGHTS OF MEMBERS OF LABOR ORGANIZATIONS

The principal rights to which a member of a labor organization is entitled under the provisions of this act are set out in Title 29, USC, Sections 411, 412, 414, and 415.

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EFFECTIVE: 01/31/78

159-2.1 Section 411

EFFECTIVE: 01/31/78

159-2.1.1 Bill of Rights; Constitution and Bylaws of Labor  
Organizations

(1) "(a) (1) Equal rights - Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

"(2) Freedom of speech and assembly - Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: Provided, that nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

"(3) Dues, initiation fees, and assessments - Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization in effect on September 14, 1959 shall not be increased, and no general or special assessment shall be levied upon such members, except -

"(A) in the case of a local labor organization, (i) by majority vote by secret ballot of the members in good standing voting at a general or special membership meeting, after reasonable notice of the intention to vote upon such question, or (ii) by

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majority vote of the members in good standing voting in a membership referendum conducted by secret ballot; or

"(B) in the case of a labor organization, other than a local labor organization or a federation of national or international labor organizations, (i) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than thirty days' written notice to the principal office of each local or constituent labor organization entitled to such notice, or (ii) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot, or (iii) by majority vote of the members of the executive board or similar governing body of such labor organization, pursuant to express authority contained in the constitution and bylaws of such labor organization: Provided, that such action on the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization.

"(4) Protection of the right to sue - No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: Provided, that any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: And provided further, that no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

"(5) Safeguards against improper disciplinary action - No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

(2) "(b). Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect."

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EFFECTIVE: 01/31/78

159-2.2 Section 412

EFFECTIVE: 01/31/78

159-2.2.1 Civil Action for Infringement of Rights; Jurisdiction

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(1) "Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located."

EFFECTIVE: 01/31/78

159-2.3 Section 414

EFFECTIVE: 01/31/78

159-2.3.1 Right to Copies of Collective Bargaining Agreements

(1) "It shall be the duty of the secretary or corresponding principal officer of each labor organization, in the case of a local labor organization, to forward a copy of each collective bargaining agreement made by such labor organization with any employer to any employee who requests such a copy and whose rights as such employee are directly affected by such agreement, and in the case of a labor organization other than a local labor organization, to forward a copy of any such agreement to each constituent unit which has members directly affected by such agreement; and such officer shall maintain at the principal office of the labor organization of which he is an officer copies of any such agreement made or received by such labor organization, which copies shall be available for

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inspection by any member or by any employee whose rights are affected by such agreement. The provisions of Section 440 of this title shall be applicable in the enforcement of this section."

(2) Section 440 of Title 29, USC, deals with the authority of the Secretary of Labor to bring civil actions where appropriate.

EFFECTIVE: 01/31/78

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159-2.4 Section 415

EFFECTIVE: 01/31/78

159-2.4.1 Information to Members of Provisions of Chapter

(1) "Every labor organization shall inform its members concerning the provisions of this chapter."

EFFECTIVE: 01/31/78

159-3 OTHER RIGHTS TO WHICH A MEMBER OF A LABOR ORGANIZATION IS ENTITLED UNDER THE PROVISIONS OF THIS ACT

(1) Right to inspect reports - Title 29, USC, Sections 431 (c) and 461 (b)

Every labor organization required to submit a report under subchapters III and IV of this chapter shall make the information contained in such report available to all its members.

(2) Right to inspect books - Title 29, USC, Sections 431 (c) and 461 (b)

Any member may for just cause inspect books, records, and accounts in order to verify reports made under subchapters III and IV of this chapter.

(3) Right to have literature distributed - Title 29, USC, Section 481 (c)

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Every national or international labor organization (except a federation of national or international labor organizations) and every local labor organization shall have the duty to comply with any reasonable request to distribute campaign literature for any bona fide candidate at the candidate's expense, and to refrain from discrimination for or against any candidate with respect to the use of membership lists and with respect to the distribution of campaign literature of candidates.

(4) Right to inspect membership lists - Title 29, USC, Section 481 (c)

Any bona fide candidate may, once within 30 days before the election, inspect a list of members who are subject to union-security agreements, which list must be maintained and kept at principal office of the organization.

(5) Right to have an observer at the polls - Title 29, USC, Section 481 (c)

Any candidate shall have the right to have adequate safeguards to insure a fair election, including the right to have an observer at the polls of an election and at the counting of the ballots.

(6) Right to be a candidate - Title 29, USC, Section 481 (e)

Every member in good standing shall be eligible to be a candidate (subject to Title 29, USC, Section 504, and reasonable qualifications uniformly imposed).

(7) Right to choose candidates - Title 29, USC, Section 481 (e)

A reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall have the right to vote for or otherwise support candidates of his choice and to have the prescribed notice of election.

(8) Right with respect to removal of officers - Title 29, USC, Section 481 (h)

If the Secretary, upon application by any member of a local labor organization, finds the constitution and bylaws do not



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provide an adequate procedure to remove an elected officer guilty of serious misconduct, such officer may be removed by members in good standing voting in secret ballot.

(9) Right to recover damages to the union - Title 29, USC, Section 501 (b)

Any member may sue to recover damages or secure an accounting when an officer has violated his fiduciary duties and responsibilities and the labor organization refuses to bring such an action.

EFFECTIVE: 01/31/78

159-4 DEFINITIONS (TITLE 29, USC, SECTION 402)

"For the purposes of this chapter -

(1) "(a) 'Commerce' means trade, traffic, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(2) "(b) 'State' includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act." (Title 43, USC, Sections 1331-1343.)

(3) "(c) 'Industry affecting commerce' means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry 'affecting commerce' within the meaning of the Labor Management Relations Act, 1947, as amended, or in the Railway Labor Act, as amended.

(4) "(d) 'Person' includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, mutual companies, jointstock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.

(5) "(e) 'Employer' means any employer or any group or association of employers engaged in an industry affecting commerce (1) which is, with respect to employees engaged in an industry affecting

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commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or (2) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof.

(6) "(f) 'Employee' means any individual employed by an employer, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice or because of exclusion or expulsion from a labor organization in any manner or for any reason inconsistent with the requirements of this chapter.

(7) "(g) 'Labor dispute' includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(8) "(h) 'Trusteeship' means any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws.

(9) "(i) 'Labor organization' means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body.

(10) "(j) A labor organization shall be deemed to be engaged in an industry affecting commerce if it -

"(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended; or

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"(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

"(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

"(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

"(5) is a conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection; other than a State or local central body.

(11) "(k) 'Secret ballot' means the expression by ballot, voting machine, or otherwise, but in no event by proxy, of a choice with respect to any election or vote taken upon any matter, which is cast in such a manner that the person expressing such choice cannot be identified with the choice expressed.

(12) "(1) 'Trust in which a labor organization is interested' means a trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

(13) "(m) 'Labor relations consultant' means any person who, for compensation, advises or represents an employer, employer organization, or labor organization concerning employee organizing, concerted activities, or collective bargaining activities.

(14) "(n) 'Officer' means any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar

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governing body.

(15) "(o) 'Member' or 'member in good standing,' when used in reference to a labor organization, includes any person who has fulfilled the requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership from appropriate proceedings consistent with lawful provisions of the constitution and bylaws of such organization.

(16) "(p) 'Secretary' means the Secretary of Labor.

(17) "(q) 'Officer, agent, shop steward, or other representative,' when used with respect to a labor organization, includes elected officials and key administrative personnel, whether elected or appointed (such as business agents, heads of departments or major units, and organizers who exercise substantial independent authority), but does not include salaried nonsupervisory professional staff, stenographic, and service personnel.

(18) "(r) 'District court of the United States' means a United States district court and a United States court of any place subject to the jurisdiction of the United States."

EFFECTIVE: 01/31/78

159-5 JURISDICTION

Jurisdiction under the statute is assigned to the Secretary of Labor. On 2-16-60 the Attorney General and the Secretary of Labor signed a Memorandum of Understanding whereby the Secretary delegated jurisdiction with respect to the above-quoted portions of the act to the Department of Justice. Labor Department retained jurisdiction as regards civil enforcement actions and other criminal violations not quoted above. The pertinent portion of the text of the Memorandum of Understanding dealing with the investigation of criminal violations is as follows:

"2. Investigations of Matters made Criminal by the Act

"Subject to specific arrangements agreed upon by the Department of Justice and the Department of Labor on a case-by-case basis, investigation under the Act will be conducted as follows:

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"(a) The Department of Labor will through its own staff investigate those criminal matters arising under:

"1. Title II (Reporting by labor organizations, officers and employees of labor organizations and employers).

"2. Title III (Trusteeship).

"3. Section 502 (Bonding) of Title V.

"4. Section 503(a) (Making of loans by labor organizations to officers and employees of the labor organization) of Title V.

"5. That part of Section 503(b) of Title V which relates to the payment of a fine of a labor official or employee by a labor union.

"(b) The Department of Justice will, under delegation from the Secretary of Labor, investigate those criminal matters arising under:

"1. Section 501(c) (Embezzlement of union funds) of Title V.

"2. That part of Section 503(b) of Title V which refers to a payment of a fine of a labor official or employee by an employer.

"3. Section 504 (Prohibition against certain persons from holding office) of Title V.

"4. Section 505 (Containing an amendment to section 302, Labor Management Relations Act of 1947, as amended) of Title V." (See Part I, Section 122 of this manual.)

"5. Section 602 (extortionate picketing) of Title VI.

"6. Section 610 (deprivation of rights by force and violence) of Title VI."

EFFECTIVE: 05/10/82

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159-6 | SIGNIFICANT EXCLUSIONS IN COVERAGE

(1) Unions comprised solely of employees of the United States, or any corporation wholly owned by the United States.

(a) Exception - unions comprised of employees of the U.S. Postal Service are covered by the Labor-Management Reporting and Disclosure Act (LMRDA) of 1959 by virtue of the Postal Reorganization Act, Title 39, USC, Section 1209.

(b) Violations involving internal union affairs by Federal employee unions are investigated by the Department of Labor (DOL) by virtue of the Civil Service Reform Act, Title 5, USC, Section 1101, and Executive Order 11491, as amended in 1978.

(2) Unions comprised solely of employees of any state or political subdivision thereof.

Exception - DOL holds that a labor organization comprised of state or local government employees is covered by LMRDA if the local admits to membership at least one private-industry employee.

EFFECTIVE: 05/10/82

159-7 | POLICY

(1) Allegations, together with any pertinent information in field office files, should be discussed with USA immediately to determine whether violation is indicated, and if so, specific section involved. If violation is within Labor Department's jurisdiction, furnish USA sufficient information to enable him/her to refer complaint to Labor-Management Services Administration, and submit closing airtel and LHM. If violation is within our jurisdiction, obtain USA's opinion as to whether material furnished contains a sufficient indication of possible violation to justify investigation by the Bureau and prosecution in Federal court or whether he/she desires to refer the matter to local authorities.

(2) If USA requests matter be referred to local authorities, determine if violation is one that if conviction resulted would prohibit a person from holding a union office (Title 29, USC, Section 504). If conviction of the crime would bar subject from holding a union office, advise local authorities upon referral. Also, the name and mailing address of the local prosecutor to which

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the case was referred should be set forth in the closing LHM. When serious matters (i.e., deprivation of union member rights by force or violence) are referred to state or local authorities for prosecution, depending on availability of resources, the status of prosecution should be followed 120 days after referral. If state or local authorities decline prosecution or fail to commence prosecutive action within 120 days, rediscuss with USA and ascertain if investigation is desired. The discussion with USA should be confirmed by letter.

(3) Joint interviews may be conducted with DOL on authority of SAC and decided on a case-by-case basis. However, joint investigations with DOL may only be conducted with FBIHQ authority and will be decided on a case-by-case basis. Requests for joint investigations should be submitted by airtel, unless circumstances dictate otherwise, and the communication should contain sufficient justification for the request, the opinion of the USA, and a statement from the SAC reflecting his concurrence.

(4) FBI reports of LMRDA investigations may be disseminated to DOL subject to the provisions of Rule 6(e), Federal Rules of Criminal Procedure, on the authority of the SAC. However, dissemination should be decided on a case-by-case basis, and should be with the concurrence of the USA. Questions should be resolved by contact with FBIHQ.

EFFECTIVE: 05/10/82

159-8

INTERVIEW OF UNION OFFICIALS

These interviews may be conducted on the authority of the SAC, provided all the following circumstances exist:

(1) Files of field office where interview is to be conducted contain no information to indicate such interview would be inadvisable.

(2) Interview is not premature and other available sources of information desired from union official have been exhausted.

(3) Interview is absolutely necessary in interest of conducting complete and thorough investigation.

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(4) Interview will not interfere with any other investigation of the official or union.

(5) FBIHQ is notified in advance in the event the interviewee is prominent, extremely controversial, or of such stature as to focus national attention on the investigation.

EXCEPTION: Interviews with officials of national headquarters of a union are to be conducted on a UACB basis. The UACB communication should set forth sufficient identifying data on the union official as well as recommendation as to advisability of and necessity for the interview.

EFFECTIVE: 05/10/82

||159-9| INVESTIGATIVE PROCEDURE

EFFECTIVE: 05/10/82

||159-9.1| Embezzlement of Union Funds (Title 29, U.S. Code, Section 501(c))

(1) Embezzlement investigation should develop in detail shortages in funds of labor organization and independent evidence should be secured to prove the person or persons responsible for shortage. Besides minute examination of accounting or other records of the union, persons who are indicated to have knowledge of shortages and who would be possible witnesses to establish the responsibility of certain persons for the shortages should be interviewed. Consideration should be afforded to checking records, such as bank and other business accounts, into or through which funds or other assets may have passed. Such action will be pertinent in those instances in which records of the union are altered or destroyed or for some other reason are unavailable.

(2) Since funds of health, welfare, or pension plans are separate from funds of labor unions or their locals, alleged embezzlement of such welfare funds is not considered covered by prohibition in this statute which deals solely with funds or other assets of a union. A welfare fund is established in form of a trust, the funds of which are contributed by employers, and such funds are utilized for hospitalization, insurance, and pension benefits payable



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to members or their beneficiaries. As distinguished from funds of a welfare plan, funds of a union are derived from dues, initiation fees, assessments, etc., payable by employees who are union members, and union funds are disbursed to officials of the union, as well as for purchase of any material in connection with the official operation of the union. In complaints received and investigations conducted, be alert to determine facts which specify whether alleged embezzlement pertains to money or other assets considered as property of a labor union or money to be maintained in a welfare plan trust fund. (Possible violations concerning funds of a welfare plan are covered in Part I, Sections 122 and 156, of this manual.)

EFFECTIVE: 05/10/82

159-9.2 | Payment of Union Officer's Fine By Employer (Title  
29, |U.S. Code, |Section 503(b))

(1) The investigative jurisdiction of the Department of Justice is confined to that portion of this section dealing with the payment of a fine by an employer imposed on a labor union officer or employee convicted of a willful violation of this Act. It does not prohibit an employer from paying a fine imposed on such person convicted of violating another law.

(2) Investigations concerning indicated violations of this section will closely parallel and generally will involve similar items of proof necessary to establish a criminal violation of the Labor Management Relations Act of 1947. (See Part I, Section 122, of this manual.)

EFFECTIVE: 05/10/82

159-9.3 | Prohibition Against Certain Persons Holding Office (Title  
29, |U.S. Code, |Section 504(b))

(1) Verify from examination of court records that subject has been convicted of crime that falls within scope of this section and that conviction is not under consideration by higher court. If under appeal and final judgment not rendered, conduct no further investigation and submit closing airtel and LHM suitable for dissemination to the DOJ.

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(2) If conviction was under state and local statute, determine and report specific penal code citation.

(3) If the subject, prior to conviction, was active in a particular labor organization or one particular local, investigation should not be limited to determining whether he/she has continued his/her activities with respect to this particular organization or local alone; it should be determined whether he/she is active in any capacity prohibited under the Act including other labor organizations or as a labor relations consultant or officer, etc., of a group or association of employers dealing with any labor organization.

(4) Investigation should determine exactly what the subject's occupation has been since the date of his/her conviction.

(5) To determine subject's employment the following sources of information should be considered:

(a) Review the various DOL LM Reports.

(b) Contact subject's co-workers, neighbors, and associates. However, it should be noted that interviews of co-workers are prohibited during a preliminary inquiry.

(c) Contact informants and other reliable sources of information.

(d) Contact business firms from which subject has sought credit recently; however, note that contact with logical credit bureaus is subject to the provisions of the Fair Credit Reporting Act (see Part I, 62-5, of this manual).

(e) Subject to the provisions of the Right to Financial Privacy Act of 1978 (RFPA) (see Part II, 23-6, of this manual), ascertain employment by:

1. Contacting banks, credit unions, and credit card companies.

2. Determining sources of subject's income through examination of deposits to subject's bank accounts.

(6) In each case in which it is indicated the subject is employed other than by a labor organization or as a labor relations consultant, interview his/her employer to verify such employment and

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determine whether the subject has engaged in any prohibited activity during the period of his/her employment.

(7) If the subject is indicated to be employed by a labor organization or as a labor relations consultant, endeavor to verify such employment through independent sources, such as suggested above, rather than by direct contact with employer. This would include examination of bank records pertaining to labor organization or firm of labor relations consultants to show compensation being received by subject for services rendered. It should be noted that while access to bank records of labor organizations is not covered by the RFPA, in certain instances access to records of labor relations consulting firms may be covered by the RFPA (see Part II, 23-6, of this manual).

(8) The Department has advised that when investigation discloses a subject is presently serving a prison sentence it should be determined whether he/she is drawing a salary from a union or is carried on the records of a union as an officer. This should be developed through independent sources, such as mentioned above. In addition, a check should be made with prison officials where the subject is incarcerated to ascertain whether he/she has contacts with labor organizations or management concerning union business or labor matters.

EFFECTIVE: 05/10/82

||159-9.4| Extortionate Picketing (Title 29, U.S. Code, Section 522)

Investigation concerning indicated violations of this section will parallel to some extent and will involve items of proof which are similar to those necessary to establish a criminal violation of the Labor Management Relations Act of 1947 or the Hobbs Act.

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|159-9.5| Deprivation of Rights by Force or Violence (Title 29, |U.S.  
Code, |Section 530)

Complainants alleging violations of this section should be interviewed thoroughly; particular stress should be placed upon having the complainant identify witnesses to the alleged force or violence (or threat thereof) which deprived a union member of rights guaranteed under the Act; in addition, specific information should be obtained from the complainant as to which rights of the individual have been interfered with or denied.

EFFECTIVE: 05/10/82

159-10 REPORTING REQUIREMENTS

(1) |An initial airtel with accompanying LHM (original and three copies) should be submitted to FBIHQ within 60 days if the investigation involves LCN members or associates. The LHM should contain the preliminary opinion of the USA and sufficient identification data on the subject(s) for indexing purposes. |

(2) |A progress letter should be submitted to FBIHQ every 180 days containing a summary of investigation conducted to date and a statement regarding investigation contemplated during the next 180 days. |

(3) |A closing airtel should be submitted to FBIHQ with an LHM restating the predication for opening the investigation, summarizing the investigative findings and detailing the disposition of the investigation. The LHM should include the final opinion of the USA. |

(4) |If the investigation involves non-LCN groups (i.e., Asian organized crime, Sicilian Mafia, etc.), advise FBIHQ by airtel with accompanying LHM as described above within 60 days. The results and/or summary should be reported by LHM (original and three copies). |

EFFECTIVE: 10/18/88

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159-11 CHARACTER - LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT  
OF 1959 - INVESTIGATIVE MATTER

EFFECTIVE: 10/18/88

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SECTION 160. FEDERAL TRAIN WRECK STATUTE

160-1 STATUTE

Title 18, USC, Section 1992

EFFECTIVE: 11/08/78

160-1.1 Elements

(1) "Whoever willfully derails, disables, or wrecks any train, engine, motor unit, or car used, operated, or employed in interstate or foreign commerce by any railroad; or"

(2) "Whoever willfully sets fire to, or places any explosive substance on or near, or undermines any tunnel, bridge, viaduct, trestle, track, signal, station, depot, warehouse, terminal, or any other way, structure, property, or appurtenance used in the operation of any such railroad in interstate or foreign commerce, or otherwise makes any such tunnel, bridge, viaduct, trestle, track, signal, station, depot, warehouse, terminal, or any other way, structure, property, or appurtenance unworkable or unusable or hazardous to work or use, with intent to derail, disable, or wreck a train, engine, motor unit, or car used, operated, or employed in interstate or foreign commerce; or"

(3) "Whoever willfully attempts to do any of the aforesaid acts or things --"

EFFECTIVE: 11/08/78

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160-1.1.1 Other Provisions

(1) False Reports of violations of Title 18, USC, Section 1991 (Entering a Train to Commit Crime) and Section 1992 are covered by Title 18, USC, Section 35. Refer to Section 149 of this manual.

(2) Double Jeopardy - Subject cannot be tried in Federal court under this statute for same acts after being convicted or acquitted on the merits of the case in a state court.

(3) Venue lies in Federal judiciary district in which act was committed.

EFFECTIVE: 11/08/78

160-2 POLICY AND PROCEDURE

(1) Accept for investigation all cases involving violations of this act.

(2) In view of widespread public interest created by major train wreck, immediately advise FBIHQ by teletype of all such incidents.

(3) No teletype necessary regarding minor incidents in absence of some unusual circumstances which would make such action expedient.

(4) Incumbent upon the SAC to make arrangements to insure that information regarding actual or attempted train wrecks will be promptly reported to the field office so that Bureau will have effective coverage over this type of violation.

(5) The Bureau of Alcohol, Tobacco and Firearms (ATF), has jurisdiction over violations of Title 18, USC, Section 844(i), Federal Bombing Statute, which involve the malicious damaging or destruction, by means of an explosive, of property used in interstate or foreign commerce. According to Department of Justice investigative guidelines, ATF jurisdiction does not, however, apply to instances where the FBI had investigative jurisdiction in a separate substantive area prior to the enactment of the Federal Bombing Statute. This is the case insofar as explosives offenses are concerned under the Federal Train Wreck Statute (FTWS). Advise FBIHQ immediately by teletype of any attempts by the ATF to infringe upon FBI jurisdiction

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under FTWS.

(6) As investigations of this act may result in sentences of capital punishment (if the action results in the death of any person), Agents making such investigation should bear in mind that all evidence used in trial will be given strictest interpretation and will be subject to closest scrutiny by trial court. Every means should be taken to obtain and preserve pertinent evidence in such form that it will withstand scrutiny of court.

(7) Immediately following receipt of information regarding violation of this statute, painstaking investigation should be made at scene.

(8) Complete crime scene search should be immediately made in vicinity of wreck in effort to locate any evidence which might be of value to investigation. Search should not be confined to immediate vicinity as tools and other objects used to wreck a train have been located as much as a half mile away from place where wreck occurred.

(9) Photographs should be taken of general scene and of any physical evidence located at scene.

(10) A thorough neighborhood investigation should be conducted in area surrounding scene of wreck.

(11) Officials of railroad police department and other employees, particularly section foremen, should be questioned regarding possibility wreck was brought about by a former or disgruntled employee of railroad company.

(12) The use of facilities of the FBI Laboratory as investigative aid should be kept continuously in mind.

(13) In many instances train wrecks brought about as result of objects placed on railroad tracks by children. Where it is learned that children may have committed act which brought about the train wreck, consideration should be given to securing cooperation of officials of schools in vicinity in order that Agents may interview students for information which might lead to identity of children responsible for wreck.

(14) Time is of essence in initiating investigations. In order that securing of evidence through crime scene search may be enhanced, sufficient number of Agents should immediately be dispatched



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to scene upon receipt of information that wreck was brought about as result of violation of this statute.

EFFECTIVE: 11/08/78

||160-3 REPORT WRITING RULES

(1) Forward to FBIHQ copy of any prosecutive summary report prepared in this classification of investigation for the USA's Office, utilizing current Bureau guidelines for the preparation of such reports.

(2) No report need be forwarded under any other circumstances unless it is determined to be the most logical means to disseminate the results of investigation accumulated, or when it is decided that a report is the best means to disseminate such results to other Federal agencies through FBIHQ rather than via an LHM.

EFFECTIVE: 11/08/78

160-4 PENALTIES

Maximum - \$10,000 or 20 years, or both. When act results in death, the penalty is death or life imprisonment.

EFFECTIVE: 11/07/94

||160-5| CHARACTER - FEDERAL TRAIN WRECK STATUTE

EFFECTIVE: 11/08/78

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SECTION 161. SPECIAL INQUIRIES FOR WHITE HOUSE, CONGRESSIONAL  
COMMITTEES, AND OTHER GOVERNMENT AGENCIES

161-1 GENERAL INSTRUCTIONS

These instructions supplement those contained in Part II,  
Section 17, of this manual.

EFFECTIVE: 12/10/91

161-2 AUTHORITY

See Part II, Section 17-1, of this manual for the  
authority to conduct these investigations.

EFFECTIVE: 12/10/91

161-3 NATURE OF SPECIAL INQUIRIES

All Special Inquiries are personnel background investigations conducted pursuant to specific written request of the Office of the President or other government agencies for persons under consideration for Presidential appointments requiring Senate confirmation (PAS); other Presidential appointments (PA); staffs of the White House, National Security Council (NSC), and various congressional committees; and persons who require frequent access to the White House complex (telephone repair personnel, for example). Because of the sensitivity and/or the high level of positions involved, the highest priority consistent with the established Bureau deadline (BUDED) and absolute thoroughness are required in these investigations.

EFFECTIVE: 07/21/95

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161-4 TYPES OF SPECIAL INQUIRY CASES

The type of Special Inquiry investigation will be set out by the Special Inquiry Unit (SIU), FBIHQ, in the opening communication by subclassification (161A - 161L.) (MIOG, Part II, Section 17, defines the various 161 subclassifications.) The type of Special Inquiry investigation will fall within one of four different categories, which will also be set out in the opening communication.

Set forth below in (2) are the four categories of Special Inquiry investigations which are conducted based upon the client agency being served, the level of the position for which the candidate is being considered, and other considerations:

(1) Expanded Name Check (ENC) - Consists of a search of the candidate's name through FBIHQ records systems, including the Criminal Justice Information Services Division, National Crime Information Center (NCIC), Criminal Law Enforcement Application (CLEA), Intelligence Information System (IIS) and ELSUR index; checks of the field office general and any other specialized indices (except confidential and ELSUR) in field offices where the candidate works and resides; and checks of the civil and criminal files of the United States Attorneys' (USA) offices at these same locations. ENC's may be conducted in lieu of a full-field investigation or prior to the initiation of a full-field investigation. ENC's should not be confused with "regular name checks" which are handled by the Executive Agencies, Personnel, and Administrative Support Unit, Information Resources Division, for various client agencies. Regular name checks do not include checks of USAs' offices and FBI field office indices.

(2) Full-Field Investigation (FFI) - An FFI encompasses personal interviews and a wide range of record checks and is conducted in accordance with MIOG, Part II, Section 17. The scope of the investigation will depend upon the position involved and whether or not there has been a previous background investigation (BI) concerning the candidate. However, regardless of the scope of the investigation, field offices are expected to conduct whatever additional investigation that may be necessary to thoroughly and completely address any unfavorable information or issues developed. The scope of the various FFIs is set forth below, and will also be designated by the SIU in the opening communication:

Type of FFI Requested

Scope

Level I

Covers the extent of the

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Level II

candidate's adult life. Level I BIs are conducted primarily on all Cabinet-level, Inspector General and senior White House staff appointments.

Covers the past fifteen years of the candidate's life or since age 18, or at least the last two years. Level II BIs are conducted for all other full-time Presidential appointees not covered by Level I and White House, National Security Council and Congressional committee staff/access positions.

Level III

Covers the past ten years of the candidate's life or since age 18, or at least the last two years. Level III BIs are primarily conducted on support, access and maintenance positions at the White House and part-time Presidential appointments.

Update Investigation

Covers the period of the candidate's life since a previous BI conducted by the FBI and when candidate has had continuous employment or access at the White House since the last BI.

(a) If the SIU can determine that another United States government agency previously conducted a BI concerning the candidate, the SIU will attempt to obtain the results of those investigation(s) prior to opening an FBI BI. The entire scope of the candidate's BI will be addressed by the FBI, but the results of the other agencies' BI will be used to supplement the 161 investigation, and duplicative leads will not be set out. The SIU will mark off items indicated on the candidate's personal history statement (Standard Form (SF) 86) that have previously been verified by another

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agency and which do not need to be addressed in the FBI BI. The results of the prior BIs will also be used to identify issues that may have developed which may need to be further addressed by the FBI.

(b) If a field office develops information that a prior BI has been conducted by another agency and it appears that the |SIU| is not aware of this information, the field office is to immediately advise the |SIU| by telephone to determine if this information can be used to supplement the FBI BI.

(3) Limited Update Investigation (LUI) - Conducted at the request of the White House when an FFI has been completed within the last five years. The LUI is limited to an interview of the candidate; interviews of persons who are familiar with the candidate in a professional capacity; and appropriate records checks, i.e., FBI Headquarters and field office indices, law enforcement agencies, United States Attorneys' Offices, and appropriate state and/or federal agencies. Inquiries will also be conducted concerning any issue identified on the SF 86 or developed during the course of the LUI that has not been previously explored.

(4) Limited Inquiry (LI) - Conducted to resolve a particular issue or question usually arising from a regular name check or an ENC or after the completion of an FFI. It is not intended to be an FFI and only addresses the specific issue.

EFFECTIVE: 07/21/95

| 161-5 DEADLINES IN |SPECIAL INQUIRY|MATTERS

| Investigative deadlines set by the |SIU| (BUEDS--the date the completed results of the investigation are expected to be received at FBIHQ) will be set from the date of the opening communication according to the following schedule; however, deadlines may be set at shorter or longer intervals to meet the needs of the client agency. | The |SIU| will allocate as much time to the field to conduct these investigations as possible. In view of the fact that the maximum amount of available time is allotted to the field, field offices must assign sufficient personnel to assure that these cases are fully investigated, completed and reported to the |SIU| by the BUDED.

Subclassification or Category

BUDED Schedule

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of Investigation

161 A, B, C, and L	21 Calendar Days
161 D, E, G, and I	30 Calendar Days
161 F, H, J Five-year Reinvestigations	75 Calendar Days
161K	10 Calendar Days
LUI (Can be any 161 subclassification, except 161K)	Will be set based upon subclassification
LI (Can be any 161 subclassification, except 161K)	Will be set by SIU based upon the nature of the inquiries to be covered

Refer to MIOG, Part II, Section 17-3.5, for specific instructions regarding those situations in which circumstances preclude reporting the complete investigation of a case by the BUDED.

EFFECTIVE: 07/21/95

161-6 INTERVIEWS

(1) A sufficient number of interviews of persons knowledgeable about the candidate must be conducted to cover that portion of the candidate's life falling within the scope of the investigation. In most cases the principal office(s), that is, the office(s) which covers the candidate's past five years of residence and employments, will be expected to obtain the majority of these interviews. The SIU will indicate in the opening communication the number of interviews expected of the principal office(s). Various factors are taken into consideration when deciding if a sufficient number of interviews have been conducted during a BI. Some significant factors are the candidate's age, number of employments, length of employments and position(s) held. The following chart sets forth the general standards regarding the total number of interviews which could reasonably be expected to be conducted (including interviews in neighborhoods, at employments, of given references and associates, and of other persons developed in the investigation who

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are knowledgeable of the candidate); however, field offices should ensure that each aspect of the candidate's background is covered by interviewing individuals who would be in a position to comment concerning that person as opposed to merely obtaining "numbers."

(2) Should an office determine that it cannot locate sufficient persons to be interviewed, the SIU should be immediately notified by telephone. Prompt notification is essential so the SIU can provide guidance and coordination to the offices involved in the investigation. However, when conducting interviews, field offices are expected to determine from persons interviewed the names of other knowledgeable individuals and arrange to have those persons contacted, if necessary, to fulfill the interview requirements.

Type of BI	Interview Standards
ENC	None
FFI	
Level I	25 - 30
Level II	15 - 25
Level III	10 - 15
Five-Year Reinvestigation	5 - 7
LUI	5 - 10
LI	Interviews necessary only if specifically requested by the SIU

(3) Also, field offices are expected to conduct whatever investigation is required to thoroughly and completely address any unfavorable information or issues developed during an investigation to satisfy the FBI's obligation to ensure that full and complete information is developed regarding the candidate's suitability for federal office and/or employment.

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161-7 DESCRIBE NATURE OF EMPLOYING FIRM

Briefly describe the nature of the business of employing firms when reporting employment verifications if the nature of the firm is not readily apparent.

EFFECTIVE: 01/18/91

161-8 AGENCY CHECKS

In Presidential appointment cases, particular attention must be given to conducting logical and appropriate agency checks as set forth in Part II, 17-6.13, of this manual. While FBIHQ will set leads for many of these checks, the field offices are in a position to judge which additional local offices of Federal agencies, state, county or city government agencies or private sources (e.g., Better Business Bureau) also might logically have record of complaints or investigations concerning the candidate or the businesses with which the candidate is associated. Therefore, field offices should carefully analyze the candidate's background and conduct those additional checks which could develop information bearing on a candidate's character and fitness for holding a position with the Federal Government.

EFFECTIVE: 01/18/91

161-9 CHARACTER (See MIOG, Part II, 17-2, for character, classification and alpha designators.)

EFFECTIVE: 07/21/95



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SECTION 162. INTERSTATE GAMBLING ACTIVITIES

162-1 OBJECTIVES

(1) Investigations under the Interstate Gambling Activities (IGA) classification are directed toward ascertaining the nature and scope of gambling activities in each field office, including the amount of illegal participation, the identity and location of layoff and illegal horse race wire facilities, the source of "line" information and manner in which it is disseminated, the type of numbers game which is prevalent in certain areas and the extent of corruption facilitating such illegal activities.

(2) Investigations under this classification are "intelligence-type" inquiries concerning certain phases of gambling activities and for conducting gambling surveys primarily for the purpose of developing all information to be considered for violations of Federal gambling statutes under the FBI's jurisdiction.

EFFECTIVE: 01/31/78

162-2 INVESTIGATIVE PROCEDURES

(1) Use of this classification should be confined to the gathering of intelligence data with respect to gambling activities and should not be used for general criminal intelligence inquiries.

(2) New cases on individual gambling subjects, developed as a result of IGA investigations, should be handled as substantive matters under the appropriate substantive gambling statutes, depending on the nature of the violations.

(3) Leads to initiate investigations may result from information provided by informants, contacts with law enforcement agencies and from public sources.

(4) It is important that each field office develop a well-rounded picture of the integral functions of major gambling operations in their respective territories. This will require that all field offices are fully aware of the make up, operational detail and control of large-scale gambling operations within their areas and

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whether or not they are making use of interstate wire communication facilities for gambling purposes.

(5) [REDACTED]

EFFECTIVE: 01/31/78

162-3 REPORT WRITING PROCEDURES

Copies of these reports are disseminated and it is essential that information included in them as furnished by confidential informants be appropriately paraphrased to protect the identities of these sources. Form FD-302 should be used to record all information of an evidentiary nature including interviews of subjects and potential witnesses whenever deemed appropriate.

EFFECTIVE: 01/31/78

162-4 CHARACTER - INTERSTATE GAMBLING ACTIVITIES

EFFECTIVE: 01/31/78

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SECTION 163. FOREIGN POLICE COOPERATION

163-1 POLICY

As many Bureau cases require the investigative assistance of foreign police and intelligence agencies, the Bureau will reciprocate by conducting investigations for such agencies in the United States. FBIHQ will also arrange for investigations in the foreign countries covered by Legal Attaches on behalf of U.S. agencies and state or local police.

EFFECTIVE: 10/18/88

163-1.1 Investigative Request

Foreign Police Cooperation (FPC) requests are to be accepted in the following categories:

(1) Requests of foreign police and security agencies for coverage of investigative leads in our field offices in the United States arising out of foreign investigations.

(2) Requests for name checks of Bureau files and name or fingerprint searches of the Criminal Justice Information Services Division records.

(3) Requests by U.S. agencies abroad in matters handled by them provided they have no adequate facilities to handle such investigations themselves.

(a) Border offices should advise FBIHQ promptly upon receipt of requests for investigation and of any action taken pursuant thereto. FBIHQ need not be advised of routine requests on which individual cases are not opened.

(b) Requests received at FBIHQ from Legal Attaches and other sources will be referred to the field by FBIHQ. In the absence of additional instructions or information known to the field office which would make it inadvisable, the requested investigation should be conducted. The investigation should be limited to the request and to the coverage of logical leads growing out of the

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information developed. Recommendations for additional investigation outside the scope of the original request should be set forth in the cover letter transmitting the results of the investigation to FBIHQ and should await FBIHQ approval.

EFFECTIVE: 03/05/96

163-2 INVESTIGATIVE INSTRUCTIONS AND PROCEDURES

Since investigative requests are received by Legal Attaches or border offices (FBIHQ in some matters) the following should be secured:

- (1) Brief resume or background of case.
- (2) Descriptive data of subjects or suspects, including photographs, if available.
- (3) Pertinent information that will aid investigation.
- (4) A concise statement of what information or investigation is desired.

EFFECTIVE: 10/18/88

163-2.1 Opening Foreign Police Cooperation (FPC) - General Criminal Matters (GCM)

(1) The following guidelines should be adhered to in all 163A (FPC-GCM) investigations:

(a) When information received by the FBI from a foreign police agency contains no substantive U.S. statutory violation, but the submitting agency requires FBI assistance in investigating a criminal offense which occurred in the host country, the Legat should first assess the nature of the crime and open a 163 case in accordance with existing guidelines, i.e., 163A, 163B, etc.

(b) When a host government police agency has provided details which appear to warrant statutory investigative

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interest by the FBI, but are of no further interest to the host government, Legats should submit same in a detailed communication to the appropriate field office(s). If a field office opens a substantive case and assumes origin, the Legat providing the initial information should be so advised. To facilitate transmission of initial information, Legats should submit an initial communication under the zero (miscellaneous) classification of the alleged violation, e.g., 7-0, 196-0, 281-0, etc.; or if the violation is not well defined, the 163-0 classification.

(c) When a foreign police/security agency provides information requiring investigative lead coverage on their behalf which also discloses a potential/existing violation of U.S. federal statutes or investigative interest within FBI purview, Legats should submit same under the appropriate 163 classification, with the Legat assuming office of origin status to coordinate the FPC aspects of the investigation. This does not preclude a field office from initiating a separate spin-off case under the substantive violation, if circumstances warrant same; however, results of Legat's inquiries should be reported under the appropriate 163 classification.

(d) Noncompulsory Letter Rogatory and Mutual Legal Assistance Treaty requests facilitated through the Office of International Affairs (OIA), DOJ, from a respective Ministry of Justice/Interior in the host country and subsequently furnished to FBIHQ for investigation by the field will be managed by the International Relations Section (IRS), Criminal Investigative Division (CID), according to the above provisions.

EFFECTIVE: 03/08/96

163-2.1.1 Letter Rogatory Process

(1) OIA, DOJ, will send FBI-designated requests of a judicial nature, known as "letters rogatory" or "compulsory investigations/inquiries," directly to the AUSA with instructions for the AUSA to contact the appropriate federal law enforcement agency, which will include the FBI, to assist with the investigation. In the past, these requests were received in the International Relations Section (IRS), Criminal Investigative Division (CID), and sent to each field office with instructions to coordinate the request with the AUSA in the same district.

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(2) Upon receipt of the request from the AUSA, each office is instructed to conduct a global and HQ indices search before opening the case. If the search reveals a no record response, the field office should open the matter as a 163A and assume origin for the investigation. If the indices search reveals an office has already opened the matter, each office will then use the existing universal case file number with the originating office as office of origin. Also, if the indices search reveals an ongoing investigation under a different classification, the office of origin should contact the office where the investigation is being conducted to coordinate with the appropriate desk before opening a 163A case.

(3) Upon completion of the investigation, each field office will report the results to the AUSA in your district which provided the tasking, not the office of origin. The AUSA will be responsible for disseminating your final product, i.e., letterhead memorandum or FD-302 to OIA for the foreign government requesting the Letter Rogatory/Mutual Legal Assistance Treaty (MLAT) request.

(4) To ensure that foreign fugitive cases meet the requirements for issuance of a provisional arrest warrant and subsequent extradition, no field investigation in these matters is to be undertaken prior to receipt of FBIHQ authorization except in most urgent cases. Legats or offices with border liaison may set out such leads with appropriate background and descriptive information but with the caveat that no investigation is to be undertaken until FBIHQ, IRS, authorization is received. FBIHQ will coordinate the request with DOJ, OIA, to ensure that the treaty and other international considerations are met.

Additionally, FBIHQ will check with Interpol Washington to determine if a parallel request for a fugitive investigation had been received by the U.S. National Central Bureau (USNCB) of Interpol and is being handled by another agency. If another agency is already conducting the fugitive investigation, interested Legats and field offices will be advised to discontinue. Any office locating a foreign fugitive is to immediately advise FBIHQ, IRS, and the local USA's Office. The USA's Office should be requested to make immediate contact with DOJ and OIA. (See 163-5, 163-5.2.)

(5) For your information, requests for investigations that do NOT require compulsory process will still be directed to IRS, FBIHQ. IRS, CID, will remain as office of origin in matters which are conducted solely on a reciprocal basis pursuant to a request for assistance by the foreign government via OIA. FBIHQ will coordinate

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responses with the appropriate field office on behalf of OIA, and responses will be directed to IRS and subsequently furnished to OIA.

(6) All recipients are reminded that these changes pertain only to 163A FPC-GCM investigations/inquiries and do not change reporting procedures relevant to 163B (INTERPOL), 163C (DOMESTIC SECURITY/DOMESTIC TERRORISM), or 163E (NAME TRACE) cases.

EFFECTIVE: 03/08/96

163-3 REQUESTS FOR DOMESTIC SECURITY/TERRORISM INVESTIGATIONS

Requests for investigation by agencies of a foreign government concerning domestic security/terrorism matters are to be handled under the caption of "Foreign Police Cooperation." Bureau assistance will be limited to checks of Bureau files as well as records of state, local and Federal law enforcement agencies.

EFFECTIVE: 10/16/90

163-4 REQUESTS FOR NAME AND FINGERPRINT CHECKS

Requests received from a foreign police or intelligence agency for a search of Bureau files and/or a search of Bureau fingerprint records should be designated for the Executive Agencies Subunit, Information Resources Division (IRD). Requests for a search of Bureau fingerprint records should only be designated to the Criminal Justice Information Services Division. Requests for a search of Bureau files and/or a check of fingerprint records, which also includes a request for field office investigation, should be designated to the attention of the International Relations Section, CID.

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163-5 FOREIGN FUGITIVES

A foreign fugitive cannot be arrested in the United States based on the foreign warrant alone. So-called international arrest warrants are not valid in the United States. Current United States law requires that a foreign government must request the arrest of a fugitive from that country by formal diplomatic note and agree to extradite the fugitive. The fugitive must then be located in a particular Federal judicial district, and, thereafter, a United States provisional arrest warrant must be issued in that district for his/her arrest prior to the actual arrest.

EFFECTIVE: 10/16/90

| 163-5.1 Policy|- Moved to 163-2.1.1|

EFFECTIVE: 03/08/96

| 163-5.2 Case Captions|(See 163-2.1.1.)|

All communications in Foreign Police Cooperation matters involving foreign fugitives will contain the name of the subject and aliases, the character, and the words "Foreign Fugitive," followed by the name of the foreign country concerned. For example:

JOHN DOE, aka  
Sam Smith;  
FOREIGN POLICE COOPERATION  
FOREIGN FUGITIVE - FRANCE  
OO: FBIHQ

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163-6 REPORTING

The reputation of the Bureau within foreign agencies will be directly affected by the manner in which FPC cases are handled. The quality of the investigations, the promptness with which they are conducted, and the accuracy and completeness of the reporting of the results thereof will come directly under the scrutiny of officials of foreign police and security agencies. It is, therefore, incumbent upon each Agent to whom a case of this type is assigned to investigate it promptly and thoroughly and to report the results accurately and completely.

(1) All communications, except LHMs, transmitting a Foreign Police Cooperation matter should include "Foreign Police Cooperation" in the caption, along with the correct investigative program according to the alpha designator, and should be marked for the attention of the particular unit and division that is handling same.

The alpha designators and an explanation of each are as follows: (See MAOP, Part II, 3-1.1, 3-1.2, 10-23; Correspondence Guide-Field, 1-17.1.)

(a) 163A-Foreign Police Cooperation - General Criminal Matters should be marked to the attention of the International Relations Section (IRS), CID.

(b) 163B-Foreign Police Cooperation - International Criminal Police Organization (Interpol) should be marked to the attention of the IRS, CID.

(c) 163C-Foreign Police Cooperation - Terrorism, should be marked to the attention of the Domestic Terrorism Unit, National Security Division.

(d) 163E-Foreign Police Cooperation - Bureau Files and Criminal Justice Information Services Division - Information Requests should be marked to the attention of the Executive Agencies Subunit, Information Resources Division (IRD).

(2) FBIHQ has determined that several foreign police agencies prefer the use of an FD-302 or handwritten statement in lieu of the previously required LHMs when testimony of the investigating Agent/Officer is expected. The FD-302 and handwritten statements have been accepted in foreign courts without further testimony of the investigator, thus, precluding excessive costs associated with travel

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and lodging which must be borne by the FBI. Therefore, use of above communications are approved, noting that use of LHMs are still preferred in noncompulsory cases since they provide a reporting flexibility beyond that of an FD-302. All provisions surrounding the protection of sources and disclosure of third agency information furnished to the foreign governments still apply.

(a) Legats and field offices are advised that lead coverage for federal government executive agencies within the Washington, D.C., metropolitan area should be directed to the Washington Metropolitan Field Office.

(b) Legats should obtain all possible identifying information on subjects and witnesses from the foreign police agencies so that field offices are able to readily identify, locate, and interview same. Legats are to ensure that indexing of pertinent subjects, et al., is entered into FOIMs.

(3) Results of investigation should be submitted via LHM or FD-302 (original and five copies) to the office of origin.

(4) Do not use the character "Foreign Police Cooperation" in LHMs. The caption should be limited only to the subject(s) and aliases and substantive character (i.e., Financial Institution Fraud). (See Correspondence Guide-Field, 2-5.5.6; Correspondence Guide-HQ, 12-7(5).)

(5) Mark nondissemination copies of documents with proper classification level (Top Secret, Secret, Confidential) and authority and OADR or declassification information. Mark dissemination copies with the classification level only and omit authority and OADR or declassification information. (See Correspondence Guide-HQ, 12-1, 12-3, 12-7(7).)

(6) No classified information may be included when the LHM is submitted through Interpol channels. Dissemination of classified information generally is made to foreign governments when information disseminated may serve U.S. national security or policy interests.

(7) The property statement should appear on LHMs being disseminated to a foreign government. (See Correspondence Guide-FBIHQ, 12-2, 12-4; Correspondence Guide-Field, 2-5.3, 2-5.5.2.)

(8) Do not include the names of Agents and law enforcement officers in the LHM. Agents and law enforcement officers

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should be identified in the cover communication.

(9) Information from confidential sources and techniques must be paraphrased in such a way as to fully protect their identities. When reporting information from an informant, do not use "T" symbols or the words "source" or "informant." The phrase "investigation has disclosed" or similar wording should be used.

(10) Personal addresses in the United States and Social Security Numbers are to be omitted on LHMs unless they are pertinent to the inquiry.

(11) If the request concerns information from a local, state, or other federal government agency, include in the LHM only the information which that agency is willing to have furnished to the interested foreign government. A statement should be included in the cover communication indicating authority has been secured and the agency has agreed to such dissemination.

(12) In applicant-type investigations for foreign agencies, no reference should be made to the applicant's loyalty to the United States. In such cases, inquiries should be made as to whether the applicant is loyal to democratic principles.

(13) Signed statements in foreign countries should be taken only when specifically requested or when good judgment dictates. If feasible, secure a foreign police officer to witness the signing of the statement. (See Part II, Section 23-8.2 (8), (9), and (10) of this manual.)

(14) Results of routine investigation conducted by FBI field offices on behalf of a foreign government must reach FBI Headquarters within 60 days from the date of the Bureau communication which forwarded the request, unless a shorter deadline is specified. Legal Attaches are given 90 days to respond.

(15) Avoid using dual characters. If a foreign police cooperation request develops into a substantive Bureau case, the character "Foreign Police Cooperation" should be dropped and the proper character used.

(16) All Bureau instructions concerning investigations and report writing are applicable to this classification, unless specifically modified herein.

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EFFECTIVE: 03/08/96

163-7 RULE 6(E) MATERIAL

Grand Jury material should not be disclosed to representatives of foreign governments. If foreign government representatives cannot conduct the investigation without Grand Jury material disclosure, the field office from which the lead originated should have the attorney for the government in the district where the Grand Jury was convened petition the court for a court order directing disclosure pursuant to Rule 6(e) (3) (C) (i).|

EFFECTIVE: 10/18/88

163-8 PRIVACY ACT

(1) The Privacy Act of 1974 does not preclude dissemination of information to a foreign government. The act's coverage is limited to records in a system of records containing retrievable information about U.S. citizens or aliens lawfully admitted for permanent residence in the United States. The Privacy Act has no application if records sought to be reviewed do not contain personally identifiable and retrievable information. The FBI Central Records System encompasses all centralized records of not only FBI Headquarters, but our field and Legat offices.

(2) Dissemination of information from FBI Central Records Systems to a foreign government is proper when the following conditions have been met:

(a) Information is disclosed to a legitimate agency of a foreign government;

(b) The FBI determines the information is relevant to the agency's responsibilities;

(c) Dissemination serves the best interests of the U.S. Government;

(d) The purpose in making the disclosure is compatible with the purpose for which the information was collected.|

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163-9 RIGHT TO FINANCIAL PRIVACY ACT

(1) The Right to Financial Privacy Act controls the U.S. government's access to financial information in financial institutions. Foreign governments frequently request access to the financial records of individuals in the United States in connection with criminal inquiries. A request from a foreign government for financial records must emanate from a foreign adjudicative body

(foreign court) in the form of a letter of request. Upon receipt of such a request from a foreign government, the Department of Justice, Office of International Affairs, seeks a court order under Title 28, USC, Section 1782. The order directs a financial institution to deliver the information to the Department of Justice for transmittal to the foreign government.

(2) Accordingly, requests emanating from foreign governments for financial records maintained in U.S. financial institutions, should be submitted through diplomatic channels directly to the Department of Justice, Office of International Affairs, or may be forwarded to FBIHQ, Criminal Investigative Division, International Relations Section.

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163-10 INTERNATIONAL CRIMINAL POLICE ORGANIZATION (INTERPOL)

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| 163-10.1 Background | (See Legal Attache Manual, 6-9.) |

(1) Interpol has a membership composed of 147 countries. It exists for the purpose of facilitating international criminal investigations. By providing a communications channel among the member countries, Interpol provides a full range of law enforcement services from records checks to the accomplishing of complex criminal investigations. Interpol will, upon request, transmit a worldwide All Points Bulletin (APB) or issue an international wanted notice to locate and effect the arrest of international fugitives.

(2) Interpol member nations will only cooperate in criminal matters, which include acts of international terrorism. No classified, source sensitive, or foreign counterintelligence information will be accepted for investigation.

(3) The constitution of Interpol strictly prohibits involvement by the organization in political, religious, racial, or military matters.

(4) The U.S. National Central Bureau (USNCB) of Interpol is located within the Department of Justice and is operated jointly by the Departments of Justice and Treasury with a membership composed of representatives of the FBI; Bureau of Alcohol, Tobacco and Firearms (BATF); Drug Enforcement Administration (DEA); Internal Revenue Service (IRS); United States Marshals Service (USMS); Postal Inspection Service; Secret Service; Office of the Inspector General, Department of Agriculture; and the Department of State.

(5) The USNCB of Interpol has access to and is able to check many electronic indices and data bases through in-house terminals. These include: FBI National Crime Information Center (NCIC); FBI Criminal History Records (Interstate Identification Index); Drug Enforcement Administration (DEA) Narcotic and Dangerous Drug Information System (NADDIS); U.S. Treasury Enforcement Computer System (TECS); USNCB Interpol Case Tracking System (ICTS); Immigration and Naturalization Service (INS) records; all drivers' license and vehicle registration records of 50 states.

(6) | The | responsibility for Interpol matters | is handled by the International Relations Section (IRS), CID. The IRS is the Bureau's designated point of contact with the USNCB. |

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163-10.2 Policy (See Legal Attache Manual, 6-9.)

(1) FBI requests for foreign investigation of matters involving substantial FBI interest in all FBI Programs will be handled by our Legal Attaches (Legats) unless there is an excepted concurrence of FBI Headquarters (FBIHQ) and the appropriate Legat. All matters under our National Foreign Intelligence Program; sensitive matters, such as source protection; classified matters; and civil rights matters are to be handled by our Legats.

(2) Where the FBI is not formally accredited and where the FBI does not have formal representation, investigative requests from the FBI to a foreign country will be handled by Bureau representatives at Interpol or the Department of State.

(3) With the concurrence of the appropriate Legat, or at his/her request, simultaneous criminal FBI investigative leads in multiple countries, requiring expeditious handling, will be handled by Interpol.

(4) Foreign criminal record check requests involving auto registration, drivers' licenses, birth records, passports, outstanding warrants (wants), and criminal history (arrest records) in which the request requires no additional investigation will, for the most part, be handled by Bureau representatives at Interpol.

(5) The handling of all requests by foreign countries for criminal investigative assistance to the FBI will be left to the discretion of our Legats.

(6) Legats may wish to handle matters from foreign governments, which are insubstantial, through direct contact with the foreign Interpol channel.

(7) Frequently, situations arise whereby foreign police entities request Legat assistance and/or involvement on their investigations and simultaneously request assistance in the same investigations through Interpol, USNCB, Washington, D.C. In those situations where the Legat suspects that dual requests are likely to occur, Legats are requested to ensure that the foreign police entities indicate on Interpol communications that there has been previous coordination with the Legat and/or investigative action by the FBI in

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the U.S. This will ensure the matter is handled by the FBI representative to Interpol, as opposed to some other agency representative.

(8) FBI field offices on routine investigative matters are to communicate with Interpol, USNCB, via International Relations Section (IRS), Criminal Investigative Division (CID), FBIHQ. No direct communication to the USNCB by the National Law Enforcement Telecommunications Systems (NLETS) or other means is to be undertaken by Bureau field offices, except in urgent matters by telephone to the FBI representative at the USNCB. Telephonic inquiries in such instances must be confirmed by teletype to FBIHQ. State and local law enforcement agencies within the U.S. may contact the USNCB via NLETS or other available systems to request investigative assistance. Legats can directly access USNCB, Washington, D.C., via their Embassy's telecommunications system. The FBI representative at the USNCB will, upon receipt of a request by telex, set forth leads to any foreign NCB on behalf of the Legat. Legats may, at their discretion, utilize the Interpol NCBs in the various countries in their territories to assist them in covering criminal leads.

(9) All communications in reply to Interpol requests or from the FBI requesting Interpol assistance will be by LHM with a cover electronic communication, unless circumstances dictate the use of a teletype. Regardless of character, the titles of all communications concerning Interpol-related matters should contain the additional character "Interpol," and when directed to FBIHQ, should be to the attention of IRS, CID.

(10) Requests from field offices for Interpol record checks may be submitted to FBIHQ to the attention of IRS, CID, by LHM or, in urgent cases, by teletype. All available identifying data regarding the individual should be included in the LHM, along with a statement indicating the type of criminal activity under investigation. Such a statement is required to ensure that the request falls within the Interpol Constitutional guidelines. Such record checks will include Interpol files at USNCB, the General Secretariat in Lyon, France, and, when requested, specific Interpol member countries.

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163-10.3 International Notices

(1) International Notices are published by Interpol to provide the police services of all member countries, via their NCBs, with information about persons and property. The Interpol General Secretariat validates these notices every five years.

(2) The six types of International Notices are described as follows:

(a) RED NOTICE - Red Notices request the arrest of a subject with a view to extradition. These notices provide details of the charge against a subject, along with warrant information and prior criminal record. The USNCB requests the Interpol General Secretariat to issue Red Notices only after review and approval of the Department of Justice, Office of International Affairs.

(b) BLUE NOTICE - Blue Notices request information regarding a person, such as his/her criminal record or verification of his/her identity. They are also used to locate missing persons, locate a criminal who has not been fully identified, or to locate a wanted person whose extradition may be requested.

(c) GREEN NOTICE - Green Notices disseminate information about persons who have or are likely to commit crimes affecting several countries and who may be in those countries. Specific details are given regarding prior arrests and convictions. Green notices are issued concerning only important international criminals.

(d) BLACK NOTICE - Black Notices provide information about unidentified bodies of deceased persons who were probably using false identities. Photographs of the body, description, fingerprints, and dental charts, as well as other identifying information is included.

(e) STOLEN PROPERTY NOTICE - Stolen Property Notices provide information about stolen property or recovered property suspected of being stolen. In the case of works of art or cultural objects, a photograph or detailed description is included along with facts concerning the theft or recovery.

(f) MODUS OPERANDI NOTICE - Modus Operandi Notices provide information concerning the modus operandi, procedures and hiding places used by international criminals. These notices also serve to centralize such information at the Interpol General

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Secretariat to assist in analyzing worldwide criminal activity.

(3) All requests for the issuance of an Interpol International Notice will be forwarded to FBIHQ, Attention: International Relations Section, CID, in LHM form with a cover communication. The cover communication will set forth sufficient background and justification for such a request to permit FBIHQ to make a determination whether the request should be forwarded to Interpol, USNCB. Include in the cover communication the name of the Assistant United States Attorney handling the case and his/her opinion regarding extradition. In UFAP cases, list local warrant information first and list the name, address, and telephone number of the local prosecutor.

(4) LHMs requesting the issuance of a Red Notice will contain the usual case title, a brief summary of the investigation to date, and the following numbered and captioned paragraphs:

1. Present family (last) name
2. Family name at birth or previous family name
3. Forenames
4. Aliases and nicknames
5. Sex
6. Date of birth
7. Place of birth
8. Father's name
9. Mother's maiden name
10. Nationality (indicate confirmed or not confirmed)
11. Identity (indicate verified or not verified)
12. Occupation
13. Areas, places, or countries subject may visit
14. Date of photograph
15. Identity documents (type, number, date and place of issue)
16. Detailed physical description
17. Characteristics (habits, mannerisms, etc.)
18. Languages spoken
19. Warrant information (this information must be provided for each and every warrant outstanding for the subject)
  - a. Warrant number(s)
  - b. Date(s) of issue
  - c. Court(s) of issue
  - d. Federal or state criminal citation(s) (i.e., Title 18, USC, Section 659)
  - e. Type(s) of offense (i.e., Theft from

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Interstate Shipment)

f. Maximum penalty for each charge or sentence,  
if already convicted

g. Name of prosecuting attorney familiar with  
facts of the case and his/her official address and telephone number

20. Summary of the facts of the case (date, place,  
modus operandi)

21. Name(s) of accomplice(s)

22. Previous convictions (date, place, charge,  
sentence)

(5) Three clear copies of the subject's photograph must  
accompany the LHM. FBIHQ will automatically provide Interpol a copy  
of subject's fingerprints from Criminal Justice Information  
Services Division records.

(6) LHMs requesting Blue or Green Notices should follow  
the same format as for Red Notices with the omission of nonapplicable  
information.

(a) Blue or Green Notice requests concerning  
criminals who have not been fully identified or who are wanted and  
whose extradition may be requested should substitute the following  
paragraph information:

1. Family name
2. Forenames
3. Date and place of birth (indicate if  
verified)
4. Father's name
5. Mother's maiden name
6. Marital status
7. Spouse's name
8. Identity documents (type, number, date and  
place of issue)
9. Occupation
10. Nationality (indicate if verified or not  
verified)
11. Identity (indicate exact or uncertain)
12. Aliases and nicknames
13. Previous addresses with dates
14. Types of crimes committed and modus operandi
15. Detailed physical description
16. Languages spoken
17. Reason for and date of last arrest and date

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of release (Blue Notice requests concerning missing persons should contain a detailed account of the disappearance)

18. Previous convictions (date, place, charge, sentence)

19. Address to which subject intended to go after release

(b) Dental charts, if available, should accompany missing person Blue Notice requests in addition to photographs.

(c) Offices contemplating the submission of a request for a Stolen Property Notice involving works of art or cultural property should communicate with the IRS, CID, for details of the descriptive information required for such notices.

(7) The information contained in LHMs requesting the issuance of International Notices will be subjected to close scrutiny and verification at FBIHQ, and LHMs requiring changes will be returned to the field for resubmission.

(8) Upon issuance of an Interpol International Notice, a copy will be provided to the office of origin which will be responsible for the immediate notification of FBIHQ by LHM of any change in the notice information, including the apprehension of a fugitive or the recovery of all or part of any stolen property. All Legats will be provided a copy of Interpol International Notices issued at the request of the Bureau and will be notified by FBIHQ of modifications or cancellations thereto.

EFFECTIVE: 03/05/96

163-11 OFFICE OF ORIGIN (See MAOP, Part II, 10-16.2(7).)

(1) Legal Attaches will be the office of origin (00) in all 163 cases which do NOT require Bureau assistance/input.

(2) International Relations Section (IRS), CID, will continue to function as the originating office on Foreign Police Cooperation requests from the foreign law enforcement representatives based in Washington, D.C. (163A); on requests made by foreign law enforcement through Interpol (163B); and on foreign requests made through the Office of International Affairs (OIA/DOJ). IRS, CID, will continue to assist operational leads through the Interpol channel.

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(a) The Executive Agencies|Subunit|will handle all 163E record check requests to be conducted at FBIHQ. The originator of the request will be the OO.

(b) The Bureau Applicant|Investigations|Unit (BAIU) will handle (163E) applicant/background investigative requests in the United States on behalf of foreign governments. These applicant/background foreign government investigative requests are on United States and non-United States persons who are either themselves or are relatives of persons who are being considered for sensitive positions in the foreign government and require security clearances. The originator of the request will be the OO.

(c) The Domestic Terrorism Unit,|National Security|Division, will retain OO status in all 163C Domestic Security/Terrorism (DS/T) investigations.

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||163-12| CHARACTER - FOREIGN POLICE COOPERATION

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SECTION 164. CRIME ABOARD AIRCRAFT

164-1 BACKGROUND

(1) As a result of several aggravated incidents aboard commercial aircraft during 1961 which included the first actual hijacking of an aircraft in the United States, Congress on September 5, 1961, passed an amendment (Public Law 87-197) as embodied in the Federal Criminal Statutes as Title 49, USC, Section 1472. This statute specifically designated the FBI to investigate violations of aircraft piracy and related criminal acts as contained in subsections (i) through (n) of this statute. Title 49, U.S. Code, Chapter 465, addresses crimes committed aboard aircraft to include aircraft piracy, interference with flight crews, carrying weapons or explosives aboard aircraft and false information and threats. Chapter 465 replaces subsections (i), (j), (l), (m), and (n) of Title 49, USC, Section 1472 (Public Law 103-272), which also moved the section concerning the FBI's exclusive jurisdiction over those offenses from subsection 1472 (o) to Title 28, USC, Section 538.

(2) As a result of several incidents where accidents involving common carriers resulted from operators being impaired by alcohol or drugs, Title 18, USC, Sections 341, 342, and 343, were enacted to address the obvious concern for public safety.

(3) Executive Order 12564, dated 9/15/86, entitled "Drug Free Federal Workplace," facilitated drug screening of airline pilots.

EFFECTIVE: 12/23/96

164-2 STATUTES

Title 49, USC, Section 46314 or Chapter 465 and Title 28, USC, Section 538; Title 18, USC, Sections 341, 342, 343; and Executive Order 12564.

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EFFECTIVE: 12/23/96

164-2.1 Section 46502. Aircraft Piracy

"(a) IN SPECIAL AIRCRAFT JURISDICTION.--(1) In this subsection--

"(A) 'aircraft piracy' means seizing or exercising control of an aircraft in the special aircraft jurisdiction of the United States by force, violence, threat of force or violence, or any form of intimidation, and with wrongful intent.

"(B) an attempt to commit aircraft piracy is in the special aircraft jurisdiction of the United States although the aircraft is not in flight at the time of the attempt if the aircraft would have been in the special aircraft jurisdiction of the United States had the aircraft piracy been completed.

"(2) An individual committing or attempting to commit aircraft piracy--

"(A) shall be imprisoned for at least 20 years;  
or

"(B) notwithstanding section 3559(b) of title 18, if the death of another individual results from the commission or attempt, shall be put to death or imprisoned for life."

"(b) OUTSIDE SPECIAL AIRCRAFT JURISDICTION--(1) An individual committing or conspiring to commit an offense (as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft) on an aircraft in flight outside the special aircraft jurisdiction of the United States--

"(A) shall be imprisoned for at least 20 years;  
or

"(B) notwithstanding section 3559(b) of title 18, if the death of another individual results from the commission or attempt, shall be put to death or imprisoned for life.

"(2) There is jurisdiction over the offense in paragraph (1) if--

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"(A) a national of the United States was aboard the aircraft;

"(B) an offender is a national of the United States; or

"(C) an offender is afterwards found in the United States.

"(3) For purposes of this subsection, the term 'national of the United States' has the meaning prescribed in Section 101(a) (22) of the Immigration and Nationality Act (8 U.S.C. 1101(a) (22))."

EFFECTIVE: 12/23/96

164-2.2 Section 46504. Interference With Flight Crew Members and Flight Attendants

"An individual on an aircraft in the special aircraft jurisdiction of the United States who, by assaulting or intimidating a flight crew member or flight attendant of the aircraft, interferes with the performance of the duties of the member or attendant or lessens the ability of the member or attendant to perform those duties, shall be fined under title 18, imprisoned for not more than 20 years, or both. However, if a dangerous weapon is used in assaulting or intimidating the member or attendant, the individual shall be imprisoned for any term of years or for life."

Public Law 101-164, passed 11/21/89, amended Section 404 of the Federal Aviation Act of 1958 by prohibiting smoking on domestic airline flights scheduled for six hours or less. Violations of these restrictions are investigated and reported to the Flight Standards Group of the FAA and not the FBI. However, it is possible that a violation of Section 46504 (formerly 1472(j)) could occur, should an attempt to enforce the "No Smoking" restriction by a flight crew member, or attendant, evolve into an assault, intimidation or threat towards that crew member or attendant. Should such an incident occur, FBI investigation would be warranted.



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EFFECTIVE: 12/23/96

|164-2.3| Section|46505.| Carrying|a Weapon or Explosive on an  
Aircraft

"(a) DEFINITION.--In this section, 'loaded firearm' means a starter gun or a weapon designed or converted to expel a projectile through an explosive, that has a cartridge, a detonator, or powder in the chamber, magazine, cylinder, or clip.

"(b) GENERAL CRIMINAL PENALTY.--An individual shall be fined under title 18, imprisoned for not more than ten years, or both, if the individual--

"(1) when on, or attempting to get on, an aircraft in, or intended for operation in, air transportation or intrastate air transportation, has on or about the individual or the property of the individual a concealed dangerous weapon that is or would be accessible to the individual in flight;

"(2) has placed, attempted to place, or attempted to have placed a loaded firearm on that aircraft in property not accessible to passengers in flight; or

"(3) has on or about the individual, or has placed, attempted to place, or attempted to have placed on that aircraft, an explosive or incendiary device.

"(c) CRIMINAL PENALTY INVOLVING DISREGARD FOR HUMAN LIFE.  
--An individual who willfully and without regard for the safety of human life, or with reckless disregard for the safety of human life, violates subsection (b) of this section, shall be fined under title 18, imprisoned for not more than 15 years, or both.

"(d) NONAPPLICATION.--Subsection (b)(1) of this section does not apply to--

"(1) a law enforcement officer of a State or political subdivision of a State, or an officer or employee of the United States Government, authorized to carry arms in an official capacity;

"(2) another individual the Administrator of the

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Federal Aviation Administration by regulation authorizes to carry a dangerous weapon in air transportation or intrastate air transportation; or

"(3) an individual transporting a weapon (except a loaded firearm) in baggage not accessible to a passenger in flight if the air carrier was informed of the presence of the weapon."

EFFECTIVE: 12/23/96

|164-2.4| Section|46506. Application of Certain Criminal Laws to Acts on Aircraft

"An individual on an aircraft in the special aircraft jurisdiction of the United States who commits an act that--

"(1) if committed within the special maritime and territorial jurisdiction of the United States (as defined in Section 7 of Title 18) would violate section 113, 114, 661, 662, 1111, 1112, 1113, or 2111, or Chapter 109A of title 18, shall be fined under title 18, imprisoned under that section or chapter, or both; or

"(2) if committed in the District of Columbia would violate section 9 of the Act of July 29, 1892 (D.C. Code, sec. 22-1112), shall be fined under title 18, imprisoned under section 9 of the Act, or both."

(1) As enumerated in Title 49, USC, |46506, |Title 18, defines the following violations:

Section 113.	Assault
Section 114.	Maiming
Section 661.	Embezzlement and Theft
Section 662.	Receiving Stolen Property
Section 1111.	Murder
Section 1112.	Manslaughter
Section 1113.	Attempt to Commit Murder or Manslaughter
Section 2111.	Robbery
Section 2241.	Aggravated sexual abuse
Section 2242.	Sexual abuse
Section 2243.	Sexual abuse of a minor or ward

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Section 2244. Abusive sexual contact  
Section 2245. Sexual abuse resulting in death  
(See MIOG, Part I, 45-2 and 70-2.)

(2) As referred to in Title 49, USC, Section 46506,  
Section 22-1112, D.C. Code states:

"(a) It shall not be lawful for any person or persons to make any obscene or indecent exposure of his or her person, or to make any lewd, obscene, or indecent sexual proposal, or to commit any other lewd, obscene, or indecent act in the District of Columbia, under penalty of not more than \$300 fine, or imprisonment of not more than ninety days, or both, for each and every such offense.

"(b) Any person or persons who shall commit an offense described in subsection (a), knowing he or she or they are in the presence of a child under the age of sixteen years, shall be punished by imprisonment of not more than one year, or fined in an amount not to exceed \$1,000, or both, for each and every such offense."

EFFECTIVE: 12/23/96

164-2.5 Section 46507. False Information and Threats

"An individual shall be fined under title 18, imprisoned for not more than 5 years, or both, if the individual--

"(1) knowing the information to be false, willfully and maliciously or with reckless disregard for the safety of human life, gives, or causes to be given, under circumstances in which the information reasonably may be believed, false information about an alleged attempt being made or to be made to do an act that would violate section 46502(a), 46504, 46505, or 46506 of this title; or

"(2) (A) threatens to violate section 46502(a), 46504, 46505, or 46506 of this title, or causes a threat to violate any of those sections to be made; and

"(B) has the apparent determination and will to carry out the threat."

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EFFECTIVE: 12/23/96

| 164-2.6 | Moved to 164-2.1 |

EFFECTIVE: 12/23/96

| 164-2.7 | Title 28, USC, Section 538. Investigation of Aircraft  
Piracy and Related Violations

| "The Federal Bureau of Investigation shall investigate any  
violation of Section 46314 or Chapter 465 of Title 49." |

EFFECTIVE: 12/23/96

| 164-2.8 | Venue

| Venue provisions are contained in the Federal Rules of  
Criminal Procedure and Chapter 211 of Title 18, U.S. Code. |

EFFECTIVE: 12/23/96

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164-2.9 Title 18, U.S. Code, Sections 341, 342, and 343.  
Operation of a Common Carrier Under the Influence of  
Alcohol or Drugs

(1) Section 341 - defines a common carrier to include an  
air common carrier.

(2) Section 342 - states "whoever operates or directs  
operation of a common carrier while under the influence of alcohol or  
any controlled substance, as defined in Section 102 of the Controlled  
Substances Act (Title 21, U.S. Code, Section 802), shall be:"

(a) imprisoned not more than fifteen years

(b) or fined under this title

(c) or both

(3) Section 343 - states for the purposes of this  
statute:

(a) an individual with a blood alcohol content of  
.10 percent or more shall be presumed to be under the influence of  
alcohol; and

(b) an individual shall be presumed to be under the  
influence of drugs if the quantity of the drug in the system of the  
individual would be sufficient to impair the perception, mental  
processes, or motor functions of the average individual.

EFFECTIVE: 04/19/91

164-2.10 Executive Order 12564 - Drug-Free Workplace

(1) Executive Order 12564 facilitates the random drug  
screening of airline pilots.

(2) The Order specifically states "Drug testing shall not  
be conducted pursuant to this Order for the purpose of gathering  
evidence for use in criminal proceedings."

(3) Prosecution of a pilot or crew member cannot be based  
solely on the results of air-carrier drug-screening as mandated under  
Executive Order 12564.

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EFFECTIVE: 04/19/91

164-3 DEFINITIONS (Title 49, U.S. Code, Section 46501)

"(1) 'aircraft in flight' means an aircraft from the moment all external doors are closed following boarding--

"(A) through the moment when one external door is opened to allow passengers to leave the aircraft; or

"(B) until, if a forced landing, competent authorities take over responsibility for the aircraft and individuals and property on the aircraft.

"(2) 'special aircraft jurisdiction of the United States' includes any of the following aircraft in flight:

"(A) a civil aircraft of the United States.

"(B) an aircraft of the armed forces of the United States.

"(C) another aircraft in the United States.

"(D) another aircraft outside the United States

--  
"(i) that has its next scheduled destination or last place of departure in the United States, if the aircraft next lands in the United States;

"(ii) on which an individual commits an offense (as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft) if the aircraft lands in the United States with the individual still on the aircraft; or

"(iii) against which an individual commits an offense (as defined in subsection (d) or (e) of article I, section I of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation) if the aircraft lands in the United States with the individual still on the aircraft.

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"(E) any other aircraft leased without crew to a lessee whose principal place of business is in the United States or, if the lessee does not have a principal place of business, whose permanent residence is in the United States.

"(3) an individual commits an offense (as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft) when the individual, when on an aircraft in flight--

"(A) by any form of intimidation, unlawfully seizes, exercises control of, or attempts to seize or exercise control of, the aircraft; or

"(B) is an accomplice of an individual referred to in subclause (A) of this clause."

EFFECTIVE: 12/23/96

164-4

STATUTORY INTERPRETATION

(1) As used in the statute, the term "piracy" is to be distinguished from Title 18, USC, Section 1651, where it is referenced to the law of nations. The elements of aircraft piracy are specifically stated within the statute.

(2) Accordingly, acts which would be covered by Title 18, USC, Section 7 (5) (crimes within the special maritime and territorial jurisdiction of the United States) should such acts occur geographically within the special maritime and territorial jurisdiction of the United States, are by the present statute made criminal regardless of their geographical situs. It is conceivable that a single act could be in violation of both sections of the USC.

(3) In connection with the term "within the special aircraft jurisdiction of the United States" as set forth in Title 49, USC, Section 46502, 46504, 46506, and the term "special aircraft jurisdiction of the United States" as defined in Title 49, USC, Section 46501, the FBI has investigative jurisdiction insofar as violations in connection with the following aircraft are concerned:

(a) civil aircraft of the United States no matter where in the world they are in flight;

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- (b) aircraft of the armed forces of the United States no matter where in the world they are in flight;
- (c) foreign aircraft which actually land in the United States.

EFFECTIVE: 12/23/96

164-5      ROLE OF THE FEDERAL AVIATION ADMINISTRATION (FAA)

Title 49, USC, Section 44903 (e) provides that "The Administrator has the exclusive responsibility to direct law enforcement activity related to the safety of passengers on an aircraft involved in an offense under Section 46502 of this title from the moment all external doors of the aircraft are closed following boarding until those doors are opened to allow passengers to leave the aircraft. When requested by the Administrator, other departments, agencies, and instrumentalities of the Government shall provide assistance necessary to carry out this subsection."

EFFECTIVE: 12/23/96

164-6      MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL AVIATION ADMINISTRATION AND THE FEDERAL BUREAU OF INVESTIGATION

(1) Basic policy with regard to the FBI's handling of aircraft hijacking incidents centers on a memorandum of understanding between the FAA and FBI agreed upon officially on 2/26/75. The "Memorandum of Understanding Between the Federal Aviation Administration and the Federal Bureau of Investigation" (MOU) is contained in its entirety in Part II, Section 18, of this manual.

(2) Part II of the MOU, entitled "Designation of Authority" states:

"A. When the aircraft is in flight.

"1. When an aircraft is in flight, that is from the moment when all external doors are closed following embarkation, until the moment when one such door is opened for disembarkation, the



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pilot in command of the aircraft shall have normal operational control of the flight.

"2. The Administrator of the Federal Aviation Administration has exclusive responsibility for direction of any law enforcement activity involving an offense under 902 (i) or 902 (n) of the Federal Aviation Act of 1958, as amended.

"3. As appropriate, in each case involving such an offense, the designated official of the Federal Aviation Administration shall request the assistance of the designated official of the Federal Bureau of Investigation.

"4. After fully considering the expressed wishes of the pilot in command, the responsible official of the airline operating the aircraft and the designated official of the Federal Bureau of Investigation, the designated official of the Federal Aviation Administration shall determine if law enforcement action is appropriate. In those instances in which the designated official of the Federal Aviation Administration determines that law enforcement action is appropriate, he shall request the designated official of the Federal Bureau of Investigation to advise as to the appropriate methods to be used and, after approval of the designated official of the Federal Aviation Administration, take the law enforcement action that is required.

"5. Whenever such a request is made, the designated official of the Federal Bureau of Investigation shall provide such law enforcement assistance as is necessary.

"6. The designated official of the Federal Bureau of Investigation and the designated official of the Federal Aviation Administration shall maintain continuing coordination between their respective offices during the course of such law enforcement activity.

"B. When the aircraft is not in flight.

"1. When an aircraft is not in flight, that is prior to the moment when all external doors are closed after embarkation and after the moment when one such door is opened for disembarkation, the designated official of the Federal Bureau of Investigation shall make the decision to take law enforcement action with respect to a hijacking. The designated official of the Federal Bureau of Investigation shall give full consideration to the expressed wishes of the pilot in command, the responsible official of the airlines

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operating the aircraft, and the designated official of the Federal Aviation Administration prior to initiating action.

"C. The decision of the designated official of the Federal Aviation Administration shall prevail in those instances where a question arises as to whether an aircraft is in flight or is not in flight."

EFFECTIVE: 02/15/82

164-7

DEPARTMENTAL INSTRUCTIONS

(1) The Department of Justice (DOJ) continues to advocate severe penalties for aircraft hijackers as a deterrent to future acts of air piracy. Consequently, authorization from the Criminal Division, DOJ, must be obtained by the U.S. Attorney before he/she enters into any agreement to forego an air piracy prosecution under Title 18, USC, Section 46502, in favor of a guilty plea to a lesser offense or decides otherwise not to prosecute fully an act of air piracy.

(2) The Department of Justice has requested that when USAs decline prosecution in those unaggravated violations of Title 49, USC, Section 46504 and Title 49, USC, Section 46506, where a crew member is a victim, that the FBI, with the approval and recommendation of the USA, then refer the matter to the local FAA representative, together with the results of any investigation for their consideration of proceeding against the offender civilly for violation of Federal Aviation Regulations (FAR) as codified in Title 14, Code of Federal Regulations (CFR), Section 91.8, entitled "Prohibition against interference with crewmembers."

(3) FAA preboard screening procedures periodically result in nonpassengers being found in possession of concealed deadly or dangerous weapons. These individuals have no tickets to board any aircraft but for the most part are discovered to be armed during examination at sterile concourse areas while either meeting or bidding farewell to persons who are ticketed passengers. The Department of Justice has advised that since these weapon-carrying nonpassengers have no apparent intent to board or attempt to board an aircraft, there is no violation of Title 49, USC, Section 46505. In view of this, it is not necessary for the field to respond to these incidents or to submit LHM to FBIHQ. Specifically note that an indication of intent to board or attempt to board an aircraft on the part of these

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weapon-carrying nonpassengers requires the adherence to established investigative and reporting procedures. Each field division should ensure that local airline, airport, FAA and law enforcement officials are aware of these instructions.

(4) In those unaggravated violations of Title 49, USC, Section 46505, i.e., (firearms only) where state or local prosecution is declined upon USA deferral, it is current departmental policy to refer the matter to FAA for their consideration of proceeding against the offender civilly for violation of FAR as codified in Title 14, CFR, Section 107.21, entitled "Carriage of firearms, explosives, or incendiary devices." All offenses involving explosives or incendiary devices will continue to be prosecuted by the Department as criminal violations. (See MIOG, Part I, Section 174.)

(5) Prosecution under the Hobbs Act. Consideration should also be given to use of the Hobbs Act as a vehicle of prosecution where an extortionate demand is made directly or indirectly upon a commercial air carrier which would obstruct, delay, or affect commerce. The Department has instructed all USAs that when such an extortionate situation is encountered where it may be desirable to charge a violation under the Hobbs Act, the Department must be consulted.

EFFECTIVE: 12/23/96

164-8

REPORTING PROCEDURES

(1) Immediately advise FBIHQ by telephone or teletype, depending upon the exigency of the circumstances, of all cases involving aircraft piracy or where there is loss of life, danger to public safety, or widespread public interest. Each complaint should receive prompt and expeditious investigative attention.

(2) In all violations of Title 49, USC, Sections 46502 through 46507, a succinct LHM (original and one copy) should be submitted to FBIHQ by FD-365 within ten working days of receipt of initial complaint. Upon receipt of the LHM, FBIHQ will disseminate a copy to United States Secret Service, Intelligence Division, 1800 G Street, N.W., Washington, D.C. 20223. (See MAOP, Part II, 10-4.3; Correspondence Guide - Field, 2-5.5.11.)

(3) The appropriate regional office of FAA should be

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promptly advised upon receipt of all complaints with close liaison being maintained during the course of each investigation.

(4) In all cases, the field office is to disseminate additional copies of the LHM within ten working days to the nearest Civil Aviation Security Field Office (CASFO), FAA Regional Office, United States Secret Service Field Office, and to the FBI field office which covers the subject's residence. Other interested agencies, such as the National Transportation Safety Board, Office of Special Investigations, etc., should likewise be advised locally when appropriate. Depending upon the exigency of the matter, immediate notification to the above agencies may be necessary.

(5) In those cases wherein the USA's office declines prosecution, defers prosecution to state or local authorities, or refers the matter to FAA for civil enforcement, or wherein it is known that state or local prosecution is declined upon USA deferral, the initial LHM should so indicate. One copy of this LHM should be directed to the USA confirming the USA's opinion in lieu of a separate confirmation letter.

(6) In all cases, dissemination is to be indicated on the FD-365 which transmits the LHM to FBIHQ with the LHM identifying those individuals and agencies already notified of the violation.

(7) When additional investigation is required, record results so they may be later incorporated into the prosecutive report. Two copies of these reports should be submitted to FBIHQ. In each instance, reports should set forth full facts including field office file numbers, complete descriptive and background data concerning each subject (best descriptive information available of an unknown subject should also be set forth), data concerning mental stability, the air carrier, flight number, origin and destination, time and place of offense, number of passengers and crew, weapons used, type of aircraft involved and any injuries. In hijacking situations, indicate where flight diverted to, motive, and terrorist affiliation, if any, and demands made by hijacker or hijackers.

(8) In order that the FBIHQ substantive case file may reflect the final outcome of each violation, the following FBIHQ notification policy should be followed by the office of origin.

(a) In those cases wherein the initial LHM submitted to FBIHQ by FD-365 reflects the final outcome, no further notification is necessary.

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(b) In those cases wherein the Accomplishment Report, FD-515, reflects the final outcome, no further notification is necessary.

(9) Technically, a bomb threat (or actual device) aboard an aircraft is a violation of Title 18, USC, Section 35, Destruction of Aircraft or Motor Vehicles (DAMV), as well as Title 49, USC, Section 46507. However, as a matter of policy, all fake reports (or actual instances) of a bomb aboard an aircraft unrelated to an aircraft hijacking incident should be investigated and reported under the DAMV (149) classification. Any incidents of this nature involving an aircraft hijacking incident should be carried under the Crime Aboard Aircraft (164) classification. The foregoing is to create uniformity in the Time Utilization and Recordkeeping (TURK) records, as well as to maintain program segregation.

(c) In all other cases, including those cases in which a USA declination or deferral was rendered subsequent to the initial LHM/FD-365 submission and those unsolved cases closed under SAC authority, a closing electronic communication should be directed to FBIHQ which clearly sets forth the basis for closing.

EFFECTIVE: 12/23/96

164-9

OBTAINING FEDERAL PROCESS

(1) Federal process should be obtained as soon as possible after the subject is identified and it is determined that the subject will be prosecuted federally.

(2) In those instances wherein an aircraft hijacking occurs, the subject is successful in avoiding apprehension and the subject's identity remains unknown, the field division should discuss with the USA's office the obtaining of a "John Doe" indictment of the unknown subject in order to toll the Statute of Limitations, Title 18, USC, Section 3282, prior to its expiration.

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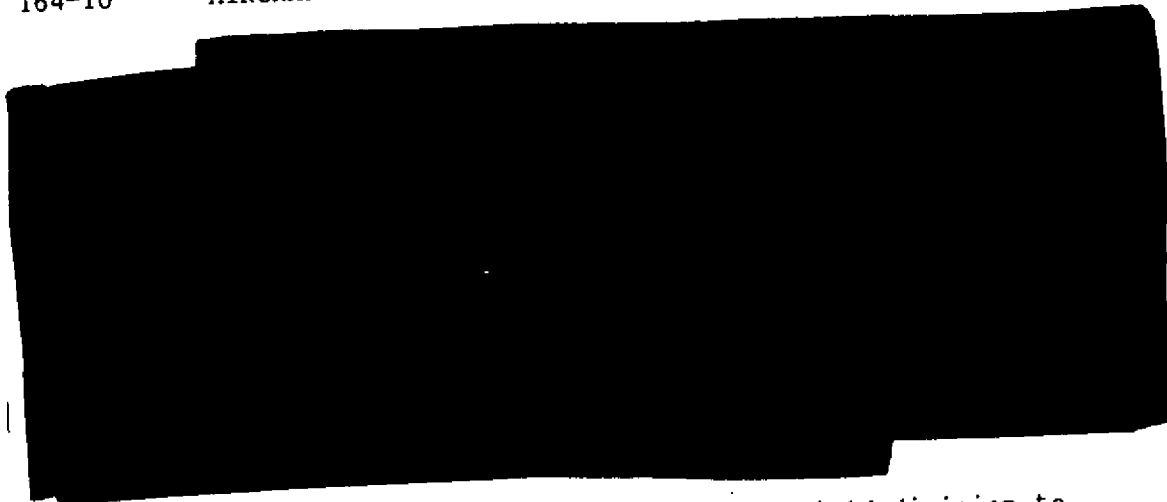
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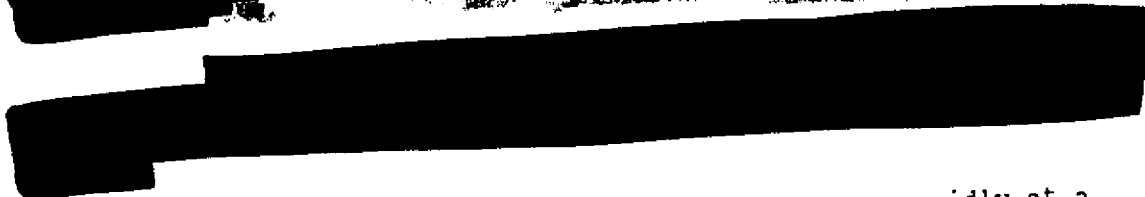
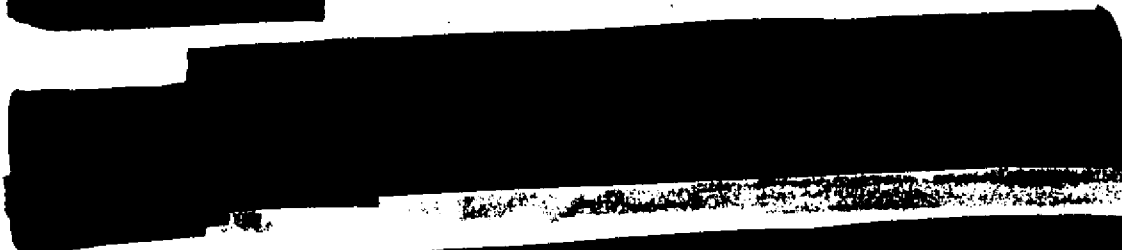
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164-10 AIRCRAFT HIJACKING INCIDENT MANAGEMENT

b2  
b7E



(2) It will be incumbent upon each field division to ensure that FBIHQ is advised on a current basis as to on-the-scene developments in each aircraft hijacking incident.



(6) A hijacked aircraft may change course rapidly at a hijacker's request and proceed to a foreign country. Upon receipt of

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such information, FBIHQ should be immediately notified by telephone. FBIHQ will notify the appropriate governmental agencies through established liaison channels.

b2  
b7E  
[REDACTED]

[REDACTED]

EFFECTIVE: 02/20/90

164-11 CONTINGENCY PLANNING

(1) The FBI's prime concern in all Crime Aboard Aircraft incidents is for the safety of the passengers and crew.

(2) The FBI and FAA have established an effective, coordinated effort on a Headquarters level concerning Crime Aboard Aircraft incident management. Practical incident management requires the continuation of that spirit of cooperation through to the field. Accordingly, each field office should maintain liaison with the appropriate FAA Security Office in order to ensure a mutual effort in the event of an incident where our joint responsibilities must be exercised.

[REDACTED]

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[REDACTED]

(a) Inasmuch as it will be incumbent upon each field office to ensure that FBIHQ is advised on a current basis as to on-the-scene developments in each aircraft hijacking incident, direct and instantaneous communications between Agents in the vicinity of the hijacked aircraft, control tower, field office, and the FBIHQ is absolutely

essential.

b2  
b7E  
( [REDACTED]

(c) It is suggested that sufficient telephone communications within the primary command post would consist, under ideal conditions, of at least five telephone lines available for exclusive FBI utilization. Those lines, as an example, might be utilized for communication with the following:

[REDACTED]

[REDACTED]

[REDACTED]

3. Secondary Command Post, [REDACTED]

4. Field Office

5. Miscellaneous

[REDACTED]

(e) Appropriate facilities should be available for the interviews of the subject(s) and witnesses.

(f) Preplanning for the prompt dispatch of

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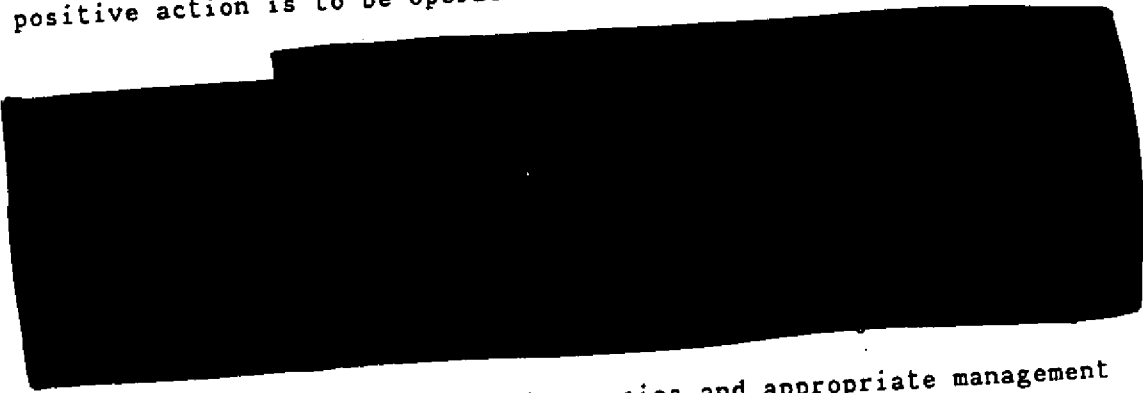
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sufficient personnel and equipment to major air terminals and military airfields within the division is essential.

(g) All equipment necessary for Agents to carry out positive action is to be operative and readily available.

b2  
b7E



(4) All enforcement agencies and appropriate management personnel at air terminals should be fully aware of the FBI's responsibilities in aircraft hijackings in order to ensure maximum cooperation in an actual hijacking situation and the continuance of a "common strategy."

(5) Each field division is to remain prepared to conduct thorough crime scene examinations in regard to Crime Aboard Aircraft incidents. Physical evidence collected should be submitted to FBIHQ for examination by the FBI Laboratory and/or Latent Fingerprint Section when it appears that such an examination is desirable. Thorough crime scene examination becomes most critical in those instances wherein a successful aircraft hijacking occurs, the subject(s) avoids apprehension, and the subject's identity remains unknown, e.g., flights diverted to Cuba.

(6) FBIHQ is to be notified by airtel of instances wherein a field division is planning a Command Post Exercise (CPX) or Field Training Exercise (FTX) regarding aircraft hijacking contingency training. The airtel should be directed, Attention: Violent Crimes/Fugitive Unit, Criminal Investigative Division, with an information copy designated for the Critical Incident Response Group's Crisis Management Unit. The caption should indicate the type of exercise, i.e., CPX and/or FTX; the type of training, i.e., aircraft hijacking contingency training; the divisional name; the exercise date and the Crime Aboard Aircraft character, with pertinent details synopsized in the text of the communication.

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XXXXXXFEDERAL BUREAU OF INVESTIGATION  
FOIPA  
DELETED PAGE INFORMATION SHEET

3 Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

- ☐ Deletions were made pursuant to the exemptions indicated below with no segregable material available for release to you.

Section 552Section 552a☐ (b)(1)☐ (b)(7)(A)☐ (d)(5)☒ (b)(2)☐ (b)(7)(B)☐ (j)(2)☐ (b)(3)☐ (b)(7)(C)☐ (k)(1)☐ (b)(7)(D)☐ (k)(2)☒ (b)(7)(E)☐ (k)(3)☐ (b)(7)(F)☐ (k)(4)☐ (b)(4)☐ (b)(8)☐ (k)(5)☐ (b)(5)☐ (b)(9)☐ (k)(6)☐ (b)(6)☐ (k)(7)

- ☐ Information pertained only to a third party with no reference to the subject of your request or the subject of your request is listed in the title only.
- ☐ Documents originated with another Government agency(ies). These documents were referred to that agency(ies) for review and direct response to you.

Pages contain information furnished by another Government agency(ies). You will be advised by the FBI as to the releasability of this information following our consultation with the other agency(ies).

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Pages were not considered for release as they are duplicative of \_\_\_\_\_

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- ☐ The following number is to be used for reference regarding these pages:

11106; pages 164-21 - 164-22, 164-23

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The following is prescribed by ARINC:

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[REDACTED]

(3)

[REDACTED]

EFFECTIVE: 02/15/82

164-14 NEWS MEDIA INQUIRIES POLICY

(1) In many cases, violations of this statute generate intense public and media interest. The FBI's news media inquiries policy is in strict compliance with instructions issued by the Department of Justice concerning the release of information in criminal and civil matters. These instructions are contained in Title 28, CFR, Section 50.2.

(2) For complete details regarding this topic, including a restatement of the above CFR instructions, see Manual of Administrative Operations and Procedures, Part II, Section 5-1, entitled "Policy and Guidelines for Relations with News Media," and Section 5-2, entitled "Contacts with News Media."

(3) Utmost discretion should be exercised in releasing to the news media any information concerning a modus operandi utilized by a subject in a violation of this statute.

EFFECTIVE: 02/15/82

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164-15 CARRIAGE OF WEAPONS

(1) Title 49, USC, Section 46505, grants the FAA Administrator authority to except other such persons as the Administrator may deem necessary from prohibition of carrying deadly or dangerous weapons in air transportation or intrastate air transportation.

(2) FAR as codified in Title 14, CFR, Section 108.11, addresses the carriage of weapons aboard aircraft and is considerably broader than Title 49, USC, Section 46505, since it covers both concealed and unconcealed weapons. FBI jurisdiction, however, is limited to violations specifically enumerated in Section 46505 of Title 49.

b7  
b7E  
(3) [REDACTED]

(4) [REDACTED]

EFFECTIVE: 04/07/97

|| 164-16 CHARACTER - CRIME ABOARD AIRCRAFT (CAA) - FOLLOWED BY  
DESCRIPTION OF CRIME; E.G., CAA - AIRCRAFT PIRACY |

EFFECTIVE: 02/15/82

|| 164-17 CLASSIFICATION - 164 |

EFFECTIVE: 02/15/82

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PRINTED: 02/18/98

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| 164-18 SUBCLASSIFICATIONS

For details concerning this topic, see the Manual of Administrative Operations and Procedures, Part II, Section 3-1.1, entitled "FBI Classifications and Subdivided Classifications."

EFFECTIVE: 10/18/95

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PRINTED: 02/18/98

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SECTION 165. INTERSTATE TRANSMISSION OF WAGERING INFORMATION

165-1 STATUTE

Title 18, USC, Section 1084

"(a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined not more than \$10,000 or imprisoned not more than two years, or both.

"(b) Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State where betting on that sporting event or contest is legal into a State in which such betting is legal.

"(c) Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State, Commonwealth of Puerto Rico, territory, possession, or the District of Columbia.

"(d) When any common carrier, subject to the jurisdiction of the Federal Communications Commission, is notified in writing by a Federal, State, or local law enforcement agency, acting within its jurisdiction, that any facility furnished by it is being used or will be used for the purpose of transmitting or receiving gambling information in interstate or foreign commerce in violation of Federal, State or local law, it shall discontinue or refuse, the leasing, furnishing, or maintaining of such facility, after reasonable notice to the subscriber, but no damages, penalty or forfeiture, civil or criminal, shall be found against any common carrier for any act done in compliance with any notice received from a law enforcement agency. Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, in a Federal court or in a State or local

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tribunal or agency, that such facility should not be discontinued or removed, or should be restored."

EFFECTIVE: 01/31/78

165-1.1 Definition of Term "Wire Communication Facility"

Title 18, USC, Section 1081. "The term 'wire communication facility' means any and all instrumentalities, personnel, and services (among other things, the receipt, forwarding, or delivery of communications) used or useful in the transmission of writings, signs, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission."

EFFECTIVE: 01/31/78

165-2 POLICY

(1) In regard to (d) of section 1084, dissemination of information to the carrier regarding those individuals utilizing their facilities in interstate or foreign commerce will be made by the Department upon receipt of evidence of such utilization.

(2) In those instances in which allegations of violations of this type are received, it is not necessary to show that the operator is engaged in the business of betting, etc., but merely that he is transmitting or receiving wagering information through a wire facility.

(3) Forward such a complaint with corroborative evidence to FBIHQ for dissemination to the Department in the form of letterhead memorandum containing:

(a) The name and address of the telephone company furnishing service.

(b) The name, address, and telephone number, if available, of the subscriber known to be in violation of this section.

(c) A short statement of facts with names of witnesses and a brief summary of their potential testimony.

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(d) A statement as to whether it is known if subscriber moves from place to place or if it is the general practice to operate from a specific location.

(4) Local violations should be disseminated with any evidence available to the appropriate local or state authority in writing after Bureau's interest secured. When disseminating without accompanying evidence, state in letter of dissemination that the information being furnished not substantiated through investigation by this Bureau.

(5) When information is received from local or state authorities that notification has been given by them to a carrier, such information should be forwarded to FBIHQ in the form of a letterhead memorandum.

(6) In connection with investigations of wire services, bear in mind the possibility of prosecution as principals under Title 18, USC, Section 2, the aiding and abetting section.

EFFECTIVE: 01/31/78

165-3 INVESTIGATIVE PROCEDURE

(1) When information developed that an individual engaged in the business of betting or wagering is using a wire communication facility in violation of this law:

(a) Develop information relative to wire communication facility utilized; that is, whether telephone, telegraph, etc.

(b) Identify individuals contacting or contacted by subject.

(c) Determine what service they furnish to or receive from subject.

(d) Interview these individuals and subject when investigation has progressed to point where interview logical.

(e) Obtain all documentary evidence of violation available, such as toll tickets, copies of communications, etc.



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- (f) Utilize informants.
- (g) Consider surveillances when applicable.
- (2) Upon developing information as to the existence of a wire service:
  - (a) Identify the phone utilized by the wire service.
  - (b) Check toll tickets and identify subscribers to the numbers called and calling.
  - (c) Interview a representative number of subscribers receiving the wire service, even though in some instances a subscriber may be a social better inasmuch as the purpose of the interview is to establish the use of the service by the subscriber.
  - (d) Interview owners and employees of wire service, examine bank accounts, and utilize informants.

EFFECTIVE: 01/31/78

165-4 VENUE

In any district from, through, or into which such information transmitted. (Title 18, USC, Section 3237)

EFFECTIVE: 01/31/78

165-5 CHARACTER - INTERSTATE TRANSMISSION OF WAGERING INFORMATION

EFFECTIVE: 01/31/78

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SECTION 166. INTERSTATE TRANSPORTATION IN AID OF RACKETEERING

166-1 STATUTE

Title 18, USC, Sections 1952, 1958, and 1959.

EFFECTIVE: 08/30/93

166-1.1 Section 1952 - Interstate and Foreign Travel or  
Transportation in Aid of Racketeering Enterprises (See  
MIOG, Part I, 50-4.2.)

"(a) Whoever travels in interstate or foreign  
commerce or uses any facility in interstate or foreign commerce,  
including the mail, with intent to--

"(1) distribute the proceeds of any unlawful  
activity; or

"(2) commit any crime of violence to further  
any unlawful activity, or

"(3) otherwise promote, manage, establish,  
carry on, or facilitate the promotion, management, establishment, or  
carrying on, of any unlawful activity, and thereafter performs or  
attempts to perform any of the acts specified in subparagraph (1),  
(2), and (3), shall be fined not more than \$10,000 or imprisoned for  
not more than five years, or both.

"(b) As used in this section (i), 'unlawful  
activity' means, (1) any business enterprise involving gambling,  
liquor on which the Federal excise tax has not been paid, narcotics,  
or controlled substances (as defined in section 102(6) of the  
Controlled Substances Act, or prostitution offenses in violation of  
the laws of the State in which they are committed or of the United  
States; or, (2) extortion, bribery, or arson in violation of the laws  
of the United States, or (3) any act which is indictable under  
subchapter II of chapter 53 of title 31, United States Code, or under  
section 1956 or 1957 of this title, and (ii) the term 'State' includes

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a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

"(c) Investigations of violations under this section involving liquor shall be conducted under the supervision of the Secretary of the Treasury."

EFFECTIVE: 08/30/93

166-1.2 Section 1958 - Use of Interstate Commerce Facilities in the Commission of Murder-for-Hire

"(a) Whoever travels in or causes another (including the intended victim) to travel in interstate or foreign commerce, or uses or causes another (including the intended victim) to use the mail or any facility in interstate or foreign commerce, with intent that a murder be committed in violation of laws of any State or the United States as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value, shall be fined not more than \$10,000 or imprisoned for not more than ten years, or both; and if personal injury results, shall be fined not more than \$20,000 and imprisoned for not more than twenty years, or both; and if death results, shall be subject to imprisonment for any term of years or for life, or shall be fined not more than \$50,000, or both.

"(b) As used in this section and section 1959 -

"(1) 'anything of pecuniary value' means anything of value in the form of money, a negotiable instrument, a commercial interest, or anything else the primary significance of which is economic advantage;

"(2) 'facility of interstate commerce' includes means of transportation and communication; and

"(3) 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

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EFFECTIVE: 08/30/93

166-1.3 Section 1959 - Violent Crimes in Aid of Racketeering Activity

"(a) Whoever, as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value from an enterprise engaged in racketeering activity, or for the purpose of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity, murders, kidnaps, maims, assaults with dangerous weapon, commits assault resulting in serious bodily injury upon, or threatens to commit a crime of violence against any individual in violation of the laws of any State or the United States, or attempts or conspires so to do, shall be punished-

"(1) for murders or kidnaping, by imprisonment for any term of years or for life or a fine of not more than \$50,000, or both;

"(2) for maiming, by imprisonment for not more than thirty years or a fine of not more than \$30,000, or both;

"(3) for assault with a dangerous weapon or assault resulting in serious bodily injury, by imprisonment for not more than twenty years or a fine of not more than \$20,000, or both;

"(4) for threatening to commit a crime of violence, by imprisonment for not more than five years or a fine of not more than \$5,000, or both;

"(5) for attempting or conspiring to commit murder or kidnaping, by imprisonment for not more than ten years or a fine of not more than \$10,000, or both; and

"(6) for attempting or conspiring to commit a crime involving maiming, assault with a dangerous weapon, or assault resulting in serious bodily injury, by imprisonment for not more than three years or a fine of not more than \$3,000, or both.

"(b) As used in this section-

"(1) 'racketeering activity' has the meaning set

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forth in section 1961 of this title; and

"(2) 'enterprise' includes any partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity, which is engaged in, or the activities of which affect, interstate or foreign commerce."

EFFECTIVE: 08/30/93

166-2 POLICY

(1) At the time these cases are presented to the USA for prosecutive opinion, he/she should be advised whether forcible entry is foreseen in the service of arrest or search warrants.

(2) Furnish copies of all reports to the appropriate USA.

(3) Extortion violations which involve threats to injure reputation or to accuse another of a crime through the use of the mails are to be handled by the postal inspectors.

(4) The Department has advised that Title 18, USC, Section 1084(d) (ITWI), is sufficiently broad in scope to cover violations of Title 18, USC, Section 1952, where "facility" is being used for gambling purposes. Appropriate consideration should be given to termination of telephone or telegraph facilities which are utilized for gambling purposes, as provided in Title 18, USC, Section 1084(d).

(See Section 165-2, of this manual concerning submission of notice to the Department.)

(5) The amendment adding arson as a violation to the statute, by its terms, applies to any arson, where facilities of interstate commerce are used; however, the FBI will concentrate its efforts on violations involving organized crime figures, arson-for-profit, arson-for-hire, and/or cases where the complexity of the investigation warrants Federal interest. Investigations should be conducted with organized crime and arson-for-profit as the focus. That is, where property owned by organized crime figures is deliberately set afire, or where property is set afire by a known professional torch, with intent to defraud an insurance company, or where property is destroyed by fire as a strong-arm tactic by

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organized crime, and facilities of interstate commerce are used to effectuate the arson, investigation should be conducted.

(6) ITAR - Arson (non-LCN) - ITAR - Arson investigations in which no known organized crime members or associates are involved should be investigated, when appropriate, within the Interstate Theft Subprogram. All ITAR - Arson investigations involving LCN members or LCN associates are to be referred to the Organized Crime/Drug Operations Section #2, Criminal Investigative Division, at FBIHQ.

(7) The FBI's statutory authority for conducting arson investigations is under the Racketeer Influenced and Corrupt Organizations (RICO) Statute, Interstate Transportation in Aid of Racketeering (ITAR) Statute and Crime on a Government Reservation (CGR) Statute. The RICO and ITAR Statutes are most frequently used. Under the RICO Statute there are several arson-related unlawful acts known as "predicate offenses" (Federal violations covered are Mail Fraud, Fraud by Wire, Obstruction of Justice and Bank Fraud), (violations of state law covered are arson, extortion, murder and bribery), which form a pattern of racketeering.

(8) Inner-city arson is a scheme designed to defraud insurance companies and is frequently investigated under the ITAR Statute. Inner-city arson has a direct impact on the daily lives of citizens, whereby people are killed or injured, property destroyed, insurance premiums raised and the very quality of community life drastically lowered. To assist the investigator in the recognition of inner-city arson, the following are sources of arson information:

- (a) Police/fire department records (obtain a list of arson suspicion fires)
- (b) Local newspapers (look for articles on arson)
- (c) State fire marshals
- (d) Insurance Crime Prevention Institute (ICPI)
- (e) Insurance adjustors
- (f) Informants

(9) The following are clues which indicate positive circumstantial evidence that a fire was set for an insurance fraud:

- (a) Presence of incendiary material

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(b) Multiple origins of fire (arson must be a total loss to be profitable)

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6  
(c) Location of the fire in a building (look for fire started near the roof as many insurance adjustors will declare a fire a total loss once the roof is destroyed)

(d) Suspicious hours (no witnesses)

(e) Holiday fires

(f) Vacant building

(g) Renovation of building

(h) Recent departure of occupants

(i) Removal of objects (woodwork, plumbing, etc.)

(j) Property for sale

(k) Previous fire

(l) Building overinsured

(m) Habitual claimants

(n) Fires occurring shortly before the insurance policy expires

(o) Fires where insurance has recently been obtained

(p) Recent sale of building

(10) Investigative techniques that are most frequently used and have proven to be effective in arson investigations are as follows:

(a) Informants

(b) Surveillance

(c) Reviewing records

(d) Consensual monitoring

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(e) Court-ordered Title III electronic surveillance

(f) Grand Jury and/or grants of immunity

(11) Field offices should not open cases on the mere fact that a fire is of a suspicious origin, rather they should concentrate their efforts on violations involving organized crime figures, arson-for-profit, arson-for-hire, and/or where the complexity of the cases warrants Federal interest. All investigations being conducted under this statute should be closely coordinated with FBIHQ and the appropriate USA.

(12) |Deleted|

(13) |Deleted|

(14) |Deleted|

(15) Violent crime is defined as any crime which has as an element any use, attempted use, or threatened use of physical force against the person or property of another. Violent crime is also defined as any other offense that is a felony and involves a "substantial risk" against the person or property of another.

EFFECTIVE: 08/30/93

166-3      REPORTING PROCEDURES (See MAOP, Part II, 10-9(17).)

(1) ITAR violations in support of or related to organized criminal enterprises are handled by the Organized Crime/Drug Sections and will be reported accordingly.

(2) ITAR - Murder and other ITAR offenses in support of other violent crimes, committed by subjects who are not connected to an organized criminal enterprise, are handled by the Violent Crimes and Major Offenders Section (VCMOS), FBIHQ. All offices should advise FBIHQ, CID, Violent Crimes/Fugitive Unit (VCFU), by teletype whenever an ITAR - Violent Crimes case is initiated. The initial communication should set forth the following:

(a) A characterization of the target investigation;

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(b) A brief summary of the violent crime activity in which the target of the investigation is involved;

(c) Basis for federal jurisdiction; and

(d) Proposed investigative approach.

(3) Deleted

(4) Each FBI office will advise FBIHQ, CID, VCFU, of all pending ITAR - Violent Crimes investigations that involve the purchase of drugs by submitting a quarterly airtel by the fifth of each January, April, July, and October. The airtel should include the case caption, office file number, and a brief summary of all drug transactions that took place during the previous quarter in that investigation.

(5) In the event an ITAR - Violent Crimes investigation, which involves the purchase of drugs, contemplates the use of any of the following sophisticated techniques, prior approval must be obtained and the respective field office must refer to and comply with the Part I, Section 281 of the Manual of Investigative Operations and Guidelines (MIOG).

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(6) Each field office should advise FBIHQ, VCMOS, VCFU, by teletype whenever an ITAR-Violent Crimes investigation is prosecuted and/or closed.

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EFFECTIVE: 07/20/95

166-4 | THREAT TO LIFE - DISSEMINATION OF INFORMATION (See  
MAOP, Part II, 9-7; MIOG, Part I, 89-6, 175-22.1,  
and 179-7.)

The following guidelines cover the FBI's responsibility to warn persons of threats to their life or threats that may result in serious bodily injury and policy regarding notification to other law enforcement agencies of such threats. (Extracted from Resolution 20 dated 12/16/96. See footnotes at the end of this citation.) In all instances, manner depending upon exigencies of situation, FBIHQ should be advised of details of such threats together with a notification of action taken or a recommendation as to action to be initiated UACB.

"III. Guidelines

"A. Warning to the Person.

"(1) Expeditious Warnings to Identifiable Persons.  
Except as provided below in paragraph IIIA(3), when a Federal Law Enforcement Agency has information that a person who is identified or can be identified through reasonable means is subject to credible threat to his/her life or of serious bodily injury, the Agency should attempt expeditiously to warn that person of the nature and extent of the threat.

"(2) Manner, Means, and Documentation of Warning.

"a. The Agency may determine the means and manner of the warning, using the method most likely to provide direct notice to the intended victim. In some cases, this may require the assistance of a third party. The Agency must document in writing in its files the content of the warning, and when and where, and by whom it was delivered to the intended victim.

"b. An Agency may seek the assistance of another law enforcement agency to provide the warning. If this is done, the Agency must document in writing in its files the notification of the threat, and when, where, and the name of the other agency's representative to whom it was delivered, along with the other agency's agreement to provide a timely warning.

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"(3) Exceptions.

"a. A Federal Law Enforcement Agency need not attempt to warn an intended victim of a threat to his/her life or of serious bodily injury in the following circumstances:

"(i) when providing the warning to the intended victim is likely to cause equal or greater physical harm to one or more persons; 1

"(ii) when the intended victim knows the nature and extent of the specific threat against him/her; or

"(iii) when the intended victim is: (a) a public official who, because of his/her official position, is provided a protective detail; (b) a participant in the Witness Security Program that is administered by the United States Marshals Service; or (c) detained or incarcerated. See paragraph IIIB(1).

"b. Whenever time and circumstances permit, an Agency's decision not to provide a warning in the foregoing circumstances must be approved, at a minimum, by a Senior Field Manager. 2 In all cases, the reasons for an Agency's decision not to provide a warning must be documented in writing in the Agency's files.

"NOTE: This paragraph does not apply to the agencies directly responsible for providing the security for the individuals referred to in paragraph IIIA(3)a(iii), above, when the threat is to the referenced individual. In such cases, documentation, if any, should be created in accordance with the agency procedures.

"B. Notification to Law Enforcement Agencies With Protective or Custodial Jurisdiction.

"(1) Expeditious Notification. When a Federal Law Enforcement Agency has information that a person described above in paragraph IIIA(3)a(iii) is subject to any threat to his/her life or of serious bodily injury, the Agency must expeditiously notify other law enforcement agencies that have protective or custodial jurisdiction.

"(2) Means, Manner, and Documentation of Notification. The notifying Agency may determine the means and manner of the notification. When providing notification, the notifying Agency shall

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provide as much information as possible regarding the threat and the credibility of the threat. The notifying Agency must document in writing in its files the content of the notification, and when, where, and to whom it was delivered.

"C. Notification to Law Enforcement Agencies That Have Investigative Jurisdiction.

"(1) Expeditious Notification. Except as provided below in paragraph IIIC(4), when a Federal Law Enforcement Agency has information that a person (other than a person described above in paragraph IIIA(3)a(iii)) who is identified or can be identified through reasonable means is subject to a credible threat to his/her life or of serious bodily injury, the Agency should attempt expeditiously to notify other law enforcement agencies that have investigative jurisdiction concerning the threat.

"(2) Threats to Occupied Structures or Conveyances. When a Federal Law Enforcement Agency has information that a structure or conveyance which can be identified through reasonable means is subject to a credible threat which could cause loss of life or serious bodily injury to its occupants, the Agency should provide expeditious notification to other law enforcement agencies that have jurisdiction concerning the threat.

"(3) Means, Manner, and Documentation of Notification. The Agency may determine the means and manner of the notification. The Agency must document in writing in its files the content of the notification, and when, where, and to whom it was delivered.

"(4) Exceptions.

"a. A Federal Law Enforcement Agency need not attempt to notify another law enforcement agency that has investigative jurisdiction concerning a threat:

"(i) when providing the notification to the other law enforcement agency is likely to cause equal or greater physical harm to one or more persons; or

"(ii) when the other law enforcement agency knows the nature and extent of the specific threat to the intended victim.

"b. Whenever time and circumstances permit, an Agency's decision not to provide notification to another law

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enforcement agency in the foregoing circumstances must be approved, at a minimum, by a Senior Field Manager. In all cases, the reasons for an agency's decision not to provide notification should be documented in writing in the Agency's files.

"IV. Rights of Third Parties.

"Nothing in these guidelines is intended to create, or does create, an enforceable legal right or private right of action.

Footnotes:

"1 If the equal or greater harm would occur to a Government informant or Agent as a result of his/her participation in an investigation, consideration should be given to extricating that individual from the investigation or taking other appropriate measures in order to minimize the risk.

"2 As used in these guidelines, 'Senior Field Manager' refers to a Federal Law Enforcement Agency operational field manager of the GS-15 rank or higher, or the person serving in that capacity in his or her absence."

EFFECTIVE: 03/14/97

||166-5| POSSIBLE APPLICATION OF INVOLUNTARY SERVITUDE AND SLAVERY  
STATUTES IN INTERSTATE TRANSPORTATION IN AID OF  
RACKETEERING (ITAR)-PROSTITUTION CASES

When conducting ITAR-Prostitution investigations, Agents should be alert to facts which indicate that prostitutes were held or sold into conditions of involuntary servitude or slavery through use of force, threat of force, or coercion. Such situations may constitute violations of the Involuntary Servitude and Slavery and related statutes. Full details of these laws, as well as FBI policy and procedure, are set forth in Part I, Section 50 of this manual.

EFFECTIVE: 03/14/97

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||166-6| VENUE

In any district from, through, or into which travel or transportation in violation of statute has occurred (Title 18, USC, Section 3237).

EFFECTIVE: 03/14/97

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||166-7| CHARACTER - INTERSTATE TRANSPORTATION IN AID OF  
RACKETEERING - EXTORTION, BRIBERY, GAMBLING, PROSTITUTION,  
ARSON, MURDER, AND VIOLENT CRIMES

EFFECTIVE: 03/14/97

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SECTION 167. DESTRUCTION OF INTERSTATE PROPERTY

||167-1| STATUTE

Title 15, USC, Sections 1281 and 1282

This statute prohibits the willful destruction or injury to property moving in interstate or foreign commerce while such property is in the control of common or contract carriers. This law is limited to rail, motor vehicle, and aircraft carriers.

EFFECTIVE: 01/21/86

||167-1.1| Section 1281

Prohibition against destruction of property in possession of carriers; penalty; prima facie evidence of commerce

"(a) It shall be unlawful for any person willfully to destroy or injure any property moving in interstate or foreign commerce in the possession of a common or contract carrier by railroad, motor vehicle or aircraft, or willfully to attempt to destroy or injure any such property.

"(b) Whoever violates subsection (a) of this section shall be fined not more than \$5,000 or imprisoned not more than ten years, or both.

"(c) To establish the interstate or foreign commerce character of any property involved in any prosecution under this section, the waybill or similar shipping document of such property shall be prima facie evidence of the place from which and to which such property was moving."

EFFECTIVE: 01/21/86

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||167-1.2| Section 1282. State Prosecutions

"A judgment of conviction or acquittal on the merits under the laws of any State or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico, shall be a bar to any prosecution under this chapter for the same act or acts."

EFFECTIVE: 01/21/86

||167-1.3| Elements

- (1) Property is moving in interstate or foreign commerce in the possession of a common or contract carrier.
- (2) The property is being shipped by rail, motor vehicle, or aircraft.
- (3) The property is willfully destroyed or injured.
- (4) An attempt is made to willfully destroy or injure such property.

EFFECTIVE: 01/21/86

||167-2| POLICY

- (1) Upon receipt of a complaint indicating a possible violation of this statute, FBIHQ must be advised by the most expeditious means depending upon the exigencies of the case involved setting out briefly the facts and the action being taken.
- (2) If any questionable complaints are received, the facts should be immediately discussed with the appropriate USA for a determination as to whether a violation exists and whether he/she will authorize prosecution in the event the subjects are identified.
- (3) This statute does not limit in scope the type of property covered, mode of carriage (excepting water transport) nor does it distinguish between a common or contract carrier.
- (4) Unintentional acts are excluded. The element of willful intent is specifically required to constitute a violation.

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(5) Those cases wherein the willfulness of the act is not obvious or where circumstances do not strongly indicate concerted efforts should be brought to the attention of the USA before initiating any investigation so that he/she may discuss the matter with state or local law enforcement officials and render a prosecutive opinion.

(6) Once it has been determined either from the facts of a case or upon receipt of the opinion of the USA that there has been a violation of the statute, an immediate, continuous, and exhaustive investigation must be conducted.

EFFECTIVE: 01/21/86

||167-3| INVESTIGATIVE PROCEDURE

(1) Waybill must be obtained to determine the interstate or foreign character of the property involved, together with the identity of the individual competent to introduce it into evidence.

(2) An examination must be made of the damaged goods. Foreign substances, bullets, tool marks, and any other items of evidence located must be submitted to the Laboratory for examination.

(3) Photographs should be taken when the damage is extensive or when deemed warranted.

(4) The location of the violation should be determined in the early stages of the investigation.

(5) A thorough and meticulous crime scene search should be conducted once the place of violation has been established.

(6) Thorough interviews must be conducted of all persons connected with the shipment of the damaged property. Signed statements should be taken from any witnesses furnishing information of value.

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||167-4| DESTRUCTION OF INTERSTATE PROPERTY IN CONNECTION WITH  
UNION ACTIVITY

(1) If information is developed indicating the damage was caused as a result of a strike or union activity, advise FBIHQ immediately.

(2) FBIHQ authority is not needed to interview union members in connection with these investigations; however, FBIHQ should be advised prior to conducting an interview of union officials.

(3) In connection with these interviews, each union member or union official should be specifically and unequivocally advised that this Bureau is not interested in the demands or merits of the strike; that this Bureau is charged with protecting goods moving in interstate and foreign commerce and the investigation is to determine whether there has been a violation of Federal law and, if there has been, to determine the identity of those persons responsible.

(4) All major developments must be furnished to FBIHQ by appropriate communication, and all leads to other offices must be set forth by teletype.

(5) In connection with these investigations the Department has stated:

(a) "Where explosives are used or where an attempt is made to injure the driver of a vehicle moving on the roadways the actor has violated the statute; in the first case because he obviously intends to destroy the entire vehicle and any cargo it may be carrying; in the second instance one who commits such an act so directly dangerous to the life and safety of the driver of a moving vehicle must be presumed to intend all of the natural consequences of his reckless act which would inevitably include the wrecking of the vehicle and the destruction of whatever cargo it may be carrying. Acts short of shooting whose clear intent would also be to force the truck into a wrecked situation would likewise be fit occasions for prosecutions for the same ultimate objective of destruction of truck and cargo is a presumptive conclusion."

(b) "While the cases might be more difficult of proof and less obvious, it cannot be said that damage (not of an explosive nature) to a vehicle at rest is invariably outside the statute. Where damage is done to a vehicle at rest which might reasonably cause harm to that vehicle at a later time and while in

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motion would fall within the same category as previously mentioned e.g., the weakening of an air brake system or of the running gear the intended effect of which is to occur at a later time. These cases would depend upon the specific kind of damage occurring and the probable intended results."

(c) "Attempts at damage to cargoes difficult or incapable of damage are to be considered as covered unless the attempt could not conceivably have been successful."

EFFECTIVE: 01/21/86

||167-5| VENUE

In the district in which the damage or destruction occurred. If the location of the act is unknown, prosecutive jurisdiction will lie either in the district of origin or the district of terminus of the shipment.

EFFECTIVE: 01/21/86

||167-6| DOUBLE JEOPARDY

A judgment of conviction or acquittal on the merits under the laws of any state or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico shall be a bar to any prosecution under this act for the same act or acts.

EFFECTIVE: 01/21/86

||167-7| CHARACTER - DESTRUCTION OF INTERSTATE PROPERTY

EFFECTIVE: 01/21/86

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SECTION 168. INTERSTATE TRANSPORTATION OF WAGERING PARAPHERNALIA

168-1 STATUTE

Title 18, USC, Section 1953

"(a) Whoever, except a common carrier in the usual course of its business, knowingly carries or sends in interstate or foreign commerce any record, paraphernalia, ticket, certificate, bills, slip, token, paper, writing, or other device used, or to be used, or adapted, devised or designed for use in (a) bookmaking; or (b) wagering pools with respect to a sporting event; or (c) in a numbers, policy, bolita, or similar game shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

"(b) This section shall not apply to (1) parimutuel betting equipment, parimutuel tickets where legally acquired, or parimutuel materials used or designed for use at racetracks or other sporting events in connection with which betting is legal under applicable State law, or (2) the transportation of betting materials to be used in the placing of bets or wagers on a sporting event into a State in which such betting is legal under the statutes of that State, or (3) the carriage or transportation in interstate or foreign commerce of any newspaper or similar publication, or (4) equipment, tickets, or materials used or designed for use within a State in a lottery conducted by that State acting under authority of State law.

"(c) Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State, Commonwealth of Puerto Rico, territory, possession, or the District of Columbia."

Note: In regard to the use of the mail as a vehicle of transportation, violations are investigated by the U.S. Postal Service under Title 18, Section 1302.

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168-2 DEPARTMENTAL POLICY

(1) With respect to bookmaking, Section 1953 would prohibit transportation of items, such as flash paper intended for recording of bets, pads of paper, adding machines, and similar material, where it can be shown that the material used was intended or adapted for such use.

(2) Regarding wagering pools with respect to sporting events, the section would prohibit transportation of sweepstakes tickets, football, basketball, and baseball pool cards, and similar material, as well as any other objects which may be used in carrying on such activities.

(3) Material used in numbers, policy, bolita, and similar games that is prohibited from transportation would include slips on which numbers are recorded, tally slips, adding machine paper, printing plates, presses, and the like. The Department does not construe the language of the law to extend to lotteries of all kinds, but rather it should be confined to the types enumerated and variations thereof. Games, such as bingo or punchboards, are not included in the statute. The Department interprets the work "knowingly" to require a conscious act on the part of the person carrying or sending the material, which act would require a knowledge of the nature of the material and a knowledge and intent that the material be transported. It does not require a knowledge of the specific prohibition of the statute or even of the existence of the statute.

EFFECTIVE: 10/18/88

168-3 INVESTIGATIVE PROCEDURE

(1) The records of the carrier should be examined to determine the name of the shipper, consignee, route, and date of shipment.

(2) Any material used by the carrier or other documentary evidence that would establish the interstate character of the shipment should be obtained.

(3) When transportation is accomplished by means other than the use of a common carrier, consider the advisability of surveillances to establish the interstate transportation of the items.

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(4) The development and utilization of confidential informants, other investigative techniques, and the use of the FBI Laboratory should be considered.

(5) Violations of the Interstate Transmission of Wagering Information and Interstate Transportation in Aid of Racketeering statutes may accompany violations of Interstate Transportation of Wagering Paraphernalia.

EFFECTIVE: 10/18/88

168-4 VENUE

In any district from, through, or into which such paraphernalia transported. (Title 18, USC, Section 3237)

EFFECTIVE: 10/18/88

168-5 REPORTING PROCEDURES

(1) In 168A cases involving LCN members and/or associates or 168B cases involving other organized crime groups (i.e., Asian organized crime, Sicilian Mafia, etc.), submit an airtel to FBIHQ within 60 days of opening the case. This communication should include facts predicated the case and sufficient identification data on the subject(s) for indexing purposes.

(2) A progress letter should be submitted every 180 days restating the predication and a summary of the investigation.

(3) The results and/or summary of investigation should be reported by airtel.

(4) In 168C cases, no reporting to FBIHQ is required.

EFFECTIVE: 10/18/88

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||168-6|

CHARACTER - INTERSTATE TRANSPORTATION OF WAGERING  
PARAPHERNALIA

EFFECTIVE: 10/18/88

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SECTION 172. SPORTS BRIBERY

172-1 STATUTE

Title 18, USC, Section 224, effective 6-6-64

Section 224. Bribery in Sporting Contests

"(a) Whoever carries into effect, attempts to carry into effect, or conspires with any other person to carry into effect any scheme in commerce to influence, in any way, by bribery any sporting contest, with knowledge that the purpose of such scheme is to influence by bribery that contest, shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both.

"(b) This section shall not be construed as indicating an intent on the part of Congress to occupy the field in which this section operates to the exclusion of a law of any State, territory, Commonwealth, or possession of the United States, which would be valid in the absence of the section shall be declared invalid, and no local authorities shall be deprived of any jurisdiction over any offense over which they would have jurisdiction in the absence of this section.

"(c) As used in this section -

"(1) The term 'scheme in commerce' means any scheme effectuated in whole or in part through the use in interstate or foreign commerce of any facility for transportation or communication;

"(2) The term 'sporting contest' means any contest in any sport, between individual contestants or teams of contestants (without regard to the amateur or professional status of the contestants therein), the occurrence of which is publicly announced before its occurrence;

"(3) The term 'person' means any individual and any partnership, corporation, association, or other entity."

EFFECTIVE: 01/31/78



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172-1.1 Elements

- (1) A "scheme in commerce"
- (2) Designed to influence a sporting contest by bribery
- (3) An attempt to carry into effect the scheme or actual carrying into effect of the scheme (or alternately, a conspiracy to do this, noting that this section contains its own conspiracy provision)
- (4) With knowledge of the purpose of the scheme

EFFECTIVE: 01/31/78

172-1.2 Exceptions

Nothing in this section shall pre-empt the laws of any state, territory, commonwealth, or possession of the U.S. or deprive local authorities of jurisdiction over existing statutes in this field.

EFFECTIVE: 01/31/78

172-1.3 Analysis of Statute

(1) This section makes it a Federal offense to attempt to or to influence, in any way, a sporting contest by bribery. From the legislative history it is clear that Congress intended this statute to cover not only outright "throwing" of contest but also more subtle practices, such as "point-shaving." The section covers both the briber and the recipient, be he participant, coach, trainer, referee, or anyone else who could in fact "influence" the outcome of the contest.

(2) It is also evident from the legislative history of the section that Congress intended to extend Federal jurisdiction only to those schemes which involve interstate use of interstate facilities in carrying the scheme into effect.

(3) "Bribery" is not defined by the statute, and at common law referred only to the misconduct of public officials. The Department has advised, however, that it is apparent the congressional

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intent was to use the word in its generally accepted context, such that it includes the offering of any reward to any one who could influence the contest by acting (or not acting) in a manner other than he would have but for the bribe.

(4) When investigation under this section encompasses a possible violation of the Federal Communications Act, the provisions of Title 47, USC, Section 409 (1) (referred to as the FCC immunity statute), are applicable to the grand jury investigation. Consideration of such action should be suggested to the USA where grand jury presentment is warranted.

EFFECTIVE: 01/31/78

172-2 POLICY

(1) FBIHQ must be immediately informed by expeditious means, depending upon the urgency of circumstances, of all allegations of violations of this statute. Seeking prosecutive opinion of appropriate USAs in the field is authorized. However, FBIHQ, because of expected widespread public interest in cases investigated and prosecuted under this statute, must be kept fully and currently advised of all developments.

(2) Every effort must be made to avoid charges of illegal arrest without a warrant at the scene of a bribery payoff. Where facts of a substantive offense, such as offer or solicitation, are learned prior to actual payoff, consult the USA as to the desirability of obtaining a warrant of arrest, based on such offense already committed, to be served at time of payoff. Opinions of the USA in this regard must be clearly indicated in reports.

(3) The USA must be consulted prior to taking any action with regard to renewal of offer, solicitation, or payoff which might involve entrapment. Any indication of entrapment must be brought immediately to the attention of the USA and FBIHQ.

EFFECTIVE: 01/31/78

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172-3 INVESTIGATIVE PROCEDURE

(1) Information concerning bribery attempts may be received from established sources, such as school officials, coaches, game officials, or the players themselves. When information is received from informants or sources that attempts are being made to rig a contest or large wagers are being made that would indicate a contest has been rigged, appropriate investigation should be conducted.

(2) Identify sports contest involved.

(3) Immediately make discreet efforts through reliable informants and sources to identify the conspirators and their targets, whether they be players or officials.

(4) Identify proposed method of communication or liaison between conspirators and targets.

(5) Attempt to effect coverage when contact is made.

(6) Cover contest and identify subjects as spectators and record their actions by appropriate observations or means.

EFFECTIVE: 10/18/88

172-4 VENUE

In any district from, through, or into which travel, transportation, or communication in violation of statute has occurred (Title 18, USC, Section 3237)

EFFECTIVE: 10/18/88

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172-5 | REPORTING PROCEDURES

(1) Immediately inform FBIHQ of all allegations of violations of this statute.

(2) In 172A cases involving LCN members and/or associates or 172B cases involving other organized crime groups (i.e., Asian organized crime, Sicilian Mafia, etc.), submit an airtel to FBIHQ within 60 days of opening the case. This communication should include facts predicated the case and sufficient identification data on the subject(s) for indexing purposes.

(3) A progress letter should be submitted every 180 days restating the predication and a summary of the investigation.

(4) The results and/or summary of investigation should be reported by airtel.

(5) In 172C cases, no reporting is required, other than the initial advisement to FBIHQ as in (1) above.

EFFECTIVE: 10/18/88

||172-6| CHARACTER - SPORTS BRIBERY

EFFECTIVE: 10/18/88

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SECTION 173. CIVIL RIGHTS ACT OF 1964

173-1 BACKGROUND

The Civil Rights Act of 1964 was enacted into law on 7-2-64 and became effective that date with the exception of the employment provisions which became effective 7-2-65. The principal items which affect the Bureau's work are the titles dealing with public accommodations, public education, public facilities, and employment.

EFFECTIVE: 08/08/78

173-2 STATUTES

Public Law 88-352 - Civil Rights Act of 1964 (Title 42, Section 2000) Title 18, USC, Section 245, Public Law 92-261 - Equal Employment Opportunity Act of 1972, effective 3-24-72.

EFFECTIVE: 08/08/78

173-3 POLICY

(1) Do not advise persons interviewed of their rights except when interference by force or threat of force, interference with witnesses, or other obstruction of justice is present. Be guided by Section 7-3.2, of the Legal Handbook for Special Agents concerning confessions and interrogations.

(2) Interview may be conducted in the presence of attorney if requested by interviewee. Two Agents should be present at all interviews of subjects and witnesses when the presence of an attorney is anticipated. SAC approval should be obtained in such instances. If circumstances indicate that the interview should not be conducted in the presence of the interviewee's attorney, furnish full details to FBIHQ with your recommendations. Any other interviews should be conducted by two Agents where good judgment so dictates.

(3) Do not identify source of complaint to any person

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interviewed or contacted during the course of an investigation. If necessary to effect identification of specific incident involved, it is sufficient to state to the effect that a Civil Rights Act of 1964 investigation is being conducted of allegation that victim (identifying victim by name) has been discriminated against.

(4) Field offices may communicate directly with the Department of Justice (DOJ), Civil Rights Division (CRD) attorney who generates a written or verbal request for investigation, the latter of which will also be documented by DOJ and subsequently transmitted to the field by airtel from FBIHQ. In the event field offices strongly disagree with the requirements of the DOJ investigative requests and/or taskings, and cannot resolve these issues with DOJ, field offices should contact the Civil Rights Unit, FBIHQ.

EFFECTIVE: 08/10/94

173-3.1 Privacy Act - Requirements

(1) When interviewing the subject, agent or representative performing management functions, in order to solicit information about subject or subject's activities, the interviewing Agent must follow the procedure described in Section 190-5, subparagraphs (2) and (3) of this manual. In all civil rights-type (noncriminal) investigations, the interviewee is to be provided with form FD-496. The FD-302 used to report results of these interviews should clearly state that the interviewee was furnished a copy of this statement.

(2) When interviewing an individual to solicit information concerning someone other than the interviewee (thereby classifying that individual as a source of information), the interviewing Agent must follow the procedure relating to promises of confidentiality as described in Section 190-7 of this manual.

EFFECTIVE: 08/08/78

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173-4 PUBLIC ACCOMMODATIONS

Section 201. Provides injunctive relief against discrimination because of race, color, religion, or national origin in places of public accommodations; i.e., establishment offering lodging or food for consumption on the premises, gasoline station, and place of entertainment if its operation affects commerce or if discrimination or segregation by it is supported by state laws.

EFFECTIVE: 12/08/78

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173-4.1 Establishments Covered

(1) Inn, hotel, motel, or other establishment which provides lodging to transient guest, other than an establishment within a building which contains not more than five rooms for rent or hire and a portion of such establishment is actually occupied by the proprietor. (Category 1)

(2) Restaurant, cafeteria, lunchroom, lunch counter, soda fountain; or any gasoline station. (Category 2)

(3) Motion-picture house, theater, concert hall, sports arena, stadium, or other places of exhibition or entertainment. (Category 3)

(4) Any establishment which is physically located in any covered establishment; e.g., a barbershop in a motel or hotel. (Category 4)

(5) Private clubs are exempt except to the extent to which they open their facilities to an establishment covered by the act. (See instructions below for "Private Clubs" and "Private Facilities" under Category 4.)

EFFECTIVE: 12/08/78

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173-4.2 Preliminary Investigations

(1) By memorandum dated 10/25/78, the Civil Rights Division (CRD) advised that responsibility for enforcement of Public Accommodations Statutes (Title II, Civil Rights Act of 1964) has been transferred from the Department of Justice to the respective USAs in districts where alleged violations occur. The CRD instructs that all new public accommodation complaints received by the FBI and all LHMs and/or investigative reports be sent directly to the USA in the district where violation occurred. Any request for investigation of alleged Title II violations received from the USA's Office should be conducted without prior approval of the CRD. The CRD will retain review authority over public accommodations matters consistent with its general supervisory responsibility for civil rights matters (USA Manual 8-1.000) and desires copy of LHM or report; submit two copies of reports and three copies of LHM to FBIHQ for dissemination.

(2) The CRD also directed the FBI conduct preliminary investigation of alleged violations upon receipt of a complaint from a citizen. When conducting a preliminary investigation, follow instructions set out below for the particular category of establishment involved. Notify FBIHQ and appropriate USA in writing when instituting investigation in these matters.

(3) A CRD memorandum of 6/22/78, to the Director, FBI set forth guidelines for conducting preliminary investigations relating to public accommodations. The Department notes these instructions will supersede and replace all prior memoranda covering "standard" preliminary investigations under Title II of the Civil Rights Act of 1964. The standard preliminary investigation is normally to be completed in full. Throughout the guidelines below the words "blacks and Hispanics" are used and where appropriate these words should be read to refer to whatever race, color, religion, or national origin is alleged to be the basis of the discrimination.

(4) The Department's instructions for investigation are as follows:

"The ownership of any establishment or facility should always be established although not specifically requested under each category. Where the complaint originates with the FBI, and statements are obtained from the victims of the details of the incident, the victims need not be reinterviewed unless a specific request is made to do so. The following investigation will comprise the standard preliminary investigation applicable to all types of facilities.



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"Section 201(b) of the Act sets forth four categories of establishments which are subject to coverage under Title II. The investigation requested for each category will be listed separately.

"Category (1) Any inn, hotel, motel, or other establishment which provides lodging to transient guests.

"a. If it is initially determined that the establishment has no more than five rooms and a portion of the establishment is actually occupied by the proprietor, it is not covered under the Act. However, prior to terminating the investigation, determine whether Category (4) applies and, if so, follow the instructions listed under that category. Otherwise proceed as follows:

"b. If the complaint alleges a refusal of accommodations because of race, color, religion, or national origin.

- "i) Interview the victim or victims and any witnesses for specific details.
- "ii) Interview the manager or proprietor concerning the present policy of renting rooms to blacks, Hispanics, etc., and ascertain the number and type of accommodations, if any, which were available at the approximate time of the victim's arrival. Note the type of records used to record and retrieve this information and, if permitted, personally check the records for confirmation. (It is a common practice to hold non-guaranteed reservations only until 6:00 p.m. or shortly thereafter. Accordingly, rooms may be available after 6:00 p.m.) Determine if it is a policy to notify prospective guests of this information and whether the victim was so notified.
- "iii) If it is determined that vacancies were available, interview the desk clerk who was on duty at the time and ascertain the reason the victim was not given accommodations.
- "iv) Determine whether the subject establishment

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has ever followed, for any reason, a custom or policy of refusing accommodations to blacks, Hispanics, etc. If so, ascertain the approximate period of such custom or policy and the reasons therefor.

- "v) Interview a representative number of non-management employees, minority and non-minority, preferably away from the establishment as to their knowledge of a practice of refusing accommodations to blacks, Hispanics, etc.
- "vi) Note the presence and location of any discriminatory signs and photograph same.
- "vii) Ascertain the name and address of the owner or owners of establishment. If the owner is a corporation, ascertain the name and registered address of the corporation and the names and addresses of the officers and directors.

"c. If the complainant alleges discriminatory practices by the establishment, such as charging higher rates to blacks, Hispanics or other minorities, setting aside certain rooms or sections for the accommodation of blacks, Hispanics, etc., or discourteous treatment or service by employees,

- "i) Interview the victim and any witnesses for specific details.
- "ii) Interview the employee or employees involved.
- "iii) Interview the proprietor or manager as to his knowledge of the incident of discourteous treatment or service. Also, determine his knowledge of any other discriminatory practices and ascertain who is responsible for the existence of such discriminatory practices.
- "iv) Interview a representative number of employees, particularly room maids and bell hops, preferably away from the

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establishment, as to their knowledge of such discriminatory practices, whether the management is aware of such practices, how long they have been occurring, and whether they occur frequently.

"Category (2) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of a retail establishment. (Upon receipt of complaints regarding gasoline stations, the Department should be solicited, through FBIHQ, for specific guidelines.)

"a. Determination of Discrimination or Segregation

- "i) Interview the victim or victims and any witnesses for specific details.
- "ii) Identify and interview the employee or other person involved in the particular incident as to his or her version of what occurred. Ascertain if the employee is under any instructions as to providing service to blacks, Hispanics, etc., or whether it is a custom or practice of the establishment to refuse service to blacks, Hispanics, etc., or to provide discriminatory service such as maintaining separate areas for blacks, Hispanics, etc., or providing carry out service only.
- "iii) Interview other employees of the establishment as to the custom or practice of providing service to blacks, Hispanics, etc., and what instructions they are under regarding same.
- "iv) Interview the owner, manager or proprietor regarding his or her knowledge of the incident. Ascertain what the present policy of the establishment is with respect to serving blacks, Hispanics, etc. Determine how long the policy has been in effect and the details of any previous policy different from the present.

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- "v) Determine whether the establishment maintains separate serving areas customarily used by minorities. If so, prepare a simple diagram of the establishment showing the location of the separate area with respect to the main area, the location of any separate entrance, separate washroom facilities, and any signs designating the area for use by minorities. Photograph the exterior and interior of both the main and separate area and any signs.
- "vi) Interview a representative number of minority patrons who utilize the separate area and ascertain (a) How long have they patronized the establishment. (b) Have they at any time sought or received service in the main area. (c) Have they ever sought and been refused service in the main area. (d) Have they ever observed or know of other minorities who have either requested or have been denied service in the main area. (e) What is their understanding of the establishment's policy with respect to serving minorities in the main area. (f) What is their reason for utilizing the separate area, i.e., do they feel they would be refused service in the main area, treated discourteously, or charged different prices for the same services and (g) if the utilization of the separate area is a carry over from past segregated laws or customs which existed prior to the passage of the Civil Rights Act of 1964, have they at any time since 1964 been notified by the establishment that they could be served in the main area.
- "vii) Where there are no dual facilities and the only witness is the victim, if the owner or proprietor denies any policy of discrimination, interview a representative number of black residents in the community and other minorities, if appropriate, as to their knowledge of a discriminatory policy

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at the establishment.

"b. Coverage:

- "i) Any establishment under this category located on an Interstate of United States Highway is automatically covered and no further investigation on coverage is required.
- "ii) Any establishment which is adjacent to an airport, bus terminal or train station is automatically covered.
- "iii) Any establishment which is in the immediate vicinity of an airport, bus terminal, or train station is, in most cases, automatically covered. However, it is necessary to show that these establishments serve or offer to serve travelers who use these facilities. Coverage would be established if the establishment acknowledges that they serve or offer to serve travelers using these facilities. The management of such establishment should be questioned concerning their policy. If the response is negative or equivocal, then complete the following investigation on coverage which applies to all establishments in this category not mentioned above.
- "iv) Obtain from the owner or manager, a dollar amount of his expenditures for food and non-alcoholic beverages for each of three months preceding the investigation. From this statement, identify the most costly items purchased, such as meats, poultry, seafoods, dairy products and produce. Obtain the names and addresses of the suppliers of these products and interview them as to the source (in-state or out of state) of these products. In most instances, the immediate supplier will be able to furnish this information. If not it will be necessary to follow through on the immediate suppliers source until it can definitely be

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established whether the goods moved in interstate commerce. Copies of records of purchases from suppliers should be made if it appears that the records will not be maintained for at least six months from the date of the investigation.

- "v) If any facility under this category claims to be a private club, unless otherwise indicated, it will be sufficient to obtain information to show whether membership is open to the general public, except blacks, Hispanics, etc., whether members have any voice in the operation of the facility including passing on new members and whether the facility is actually owned by others than the members. If there is a membership requirement, how are members selected.

"Category (3) Any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment:

"a. Determination of Discrimination or Segregation

- "i) Interview the victim or victims and any witnesses for specific details.
- "ii) Interview the owner, manager, or proprietor regarding his or her knowledge of the incident. Ascertain the facility's present policy with respect to admitting blacks, Hispanics, etc., or permitting blacks, Hispanics, etc., to participate in any functions conducted by or held within the premises of the facility.
- "iii) Identify and interview the employee or other person involved in the incident as to his or her version of what occurred. Ascertain if the employee is under any instructions as to admitting blacks, Hispanics, etc., or permitting blacks, Hispanics, etc., to participate in functions conducted by or held within the premises of the facility, or whether to the knowledge of the employee, it is a policy, practice, or custom to refuse

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equal service to blacks, Hispanics, etc.

- "iv) Interview other employees of the facility as to the practice, policy or custom of admitting blacks, Hispanics, etc., to the facility or permitting blacks, Hispanics, etc., to participate in any functions conducted by or held within the premises of the facility, or to refuse equal service to blacks, Hispanics, etc.

"c. Coverage:

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- "i) With respect to theaters which commonly present motion picture films, determine the name of the distributor of the films presented. Interview the distributor and ascertain the out of state source of all films shown within the past six months.
- "ii) With respect to theaters and concert halls which commonly present entertainment other than motion picture films, determine the type of entertainment which is commonly presented. Ascertain the particular event which was being presented at the time of the incident and the name of the person or group who was performing and whether they were from out of state. Also, ascertain a description of all performances which were presented within the past six months, the name of the person or group and whether they were from out of state. As to all performances presented within the past six months, obtain the name and address of the agency which booked the performance.
- "iii) With respect to bars, lounges, or other similar facilities;
  - "1) Ascertain if any live entertainment is presented and, if so, obtain the information requested in ii) above.
  - "2) Identify any mechanical sources of entertainment (e.g., pool tables and

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related equipment, pin ball machines, juke boxes or other devices providing music).

"3) Determine the name and address of the manufacturer and supplier of such sources of entertainment. If readily ascertainable, determine the manufacturer's serial number of any source of entertainment.

"4) If any facility under this category serves food, ascertain the dollar amount of purchases from all sources for the past three months. From this amount, determine the dollar amount which represents food purchases. Obtain the names and addresses of the principle suppliers of food products and interview the suppliers to determine the dollar amount of such purchases which originated from out of state.

"iv) With respect to all other places of exhibition or entertainment, such as athletic fields, parks, playgrounds, swimming pools, beaches or lakes;

"1) Ascertain whether such facilities present events which are engaged in, utilized by, or available to persons from out of state.

"2) Ascertain whether the facility utilizes equipment of any kind, (e.g., golf carts or equipment roller or ice skates, automatic bowling pin setters or bowling pins, boats, ramps, boating equipment, diving boards or other swimming equipment) or any other type of recreational devices or equipment which originated from out of state.

"3) Determine the name and address of the manufacturer and supplier of all such

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entertainment devices or equipment.

"4) Determine what facilities (e.g., benches, seats or other designated areas) exist for patrons either to watch any entertainment presented or to observe any other patrons entertaining themselves by use of such recreational devices or equipment.

"5) If any facility under this category serves food, ascertain the dollar amount of purchases from all sources for the past three months. From this amount, determine the dollar amount which represents food purchases. Obtain the names and addresses of the principle suppliers of food products and interview the suppliers to determine the dollar amount of such purchases which originated from out of state.

"v) In many instances, athletic and sporting events are provided for local groups such as Little League, Babe Ruth and other such groups or teams, youth and adult. In these circumstances, it will be necessary to identify and interview the sponsors of the teams and ascertain their policy with respect to participation by blacks, Hispanics, etc.

"vi) In the event any of the above facilities under this category or groups, teams, etc., utilizing such facilities claim to be private clubs, conduct the additional investigation listed below under "private clubs," unless otherwise requested.

"Category (4) Any establishment which is physically located within the premises of any establishment otherwise covered by this statute or within the premises of which is physically located any such covered establishment and which holds itself out as serving patrons of such covered establishment.

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"a. In most cases, this category will involve covered establishments such as hotels and motels, which have located on or within their premises other establishments which would not otherwise be covered, such as barbershops, beauty parlors, and bars. In such circumstances, the principal establishment is automatically covered. As to the other facilities it is only necessary to show that they serve or offer to serve patrons of the covered establishment. Some facilities such as bars or lounges will maintain that they are private clubs. However, if patrons or guests of the principal establishment are freely offered membership or service in the other establishment, it may be assumed without further investigation, that such facilities are covered.

"b. Private Clubs:

- "i) Obtain, if available, a copy of the club's bylaws or charter;
- "ii) Determine the legal entities involved in the ownership of the property and management of the club (e.g., corporation, partnership, unincorporated association, sole proprietorship) and the names, addresses, and race of persons involved (e.g., partners); determine the present club officers and methods by which they were selected;
- "iii) Determine whether any numerical limit is set upon membership in the club;
- "iv) Determine whether payment of any dues, annual or lifetime, is required in connection with membership in the club, and, if so, in what amount;
- "v) Obtain a copy of any membership list that is maintained;

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- "vi) Ascertain the number of members of the club and whether there are any non-white members; if there are, obtain their names and addresses;
- "vii) Determine all details of the procedures by which a person or family makes application for membership in, and is admitted to, the club;
- "viii) Ascertain what qualifications, if any, a prospective member must meet to be eligible for membership and what items, if any, disqualify him;
- "ix) Determine whether the recommendations of existing members are required from prospective members;
- "x) Determine what control, if any, existing members have over the admission of applicants for membership, (e.g., whether there is a membership committee selected by the members to represent them), if such a membership committee exists, obtain the names and addresses of its members, whether there is a blackball system by which one or more individual members can reject an applicant even though he might have been recommended by another member or members, whether notice of pending applications is given to existing members, whether existing members are notified after an applicant has been admitted;
- "xi) Ascertain whether the members exercise control over the financial operations of the establishment and to what extent (e.g., do they own any of the property, do they determine how the revenues from the establishment's operations are used, are these revenues retained by the establishment's manager);
- "xii) Ascertain whether the club advertises in any

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manner and, if possible, obtain copies of all advertisements. If copies cannot be obtained, please describe the advertisements, including whether such advertising indicates in any way that the subject establishment is a private club not open to the general public;

- "xiii) If the subject establishment is listed in the local telephone directory, determine whether its listing can be distinguished from any other restaurant or other place of public accommodation and whether it is designated as a private club;
- "xiv) Determine the established procedures, if any, for permitting non-members or guests of members to use the subject establishment's facilities (e.g., whether non-members can rent the facilities of the club); and
- "xv) Determine whether the establishment has ever been operated on some basis other than a private club. If so, please obtain all details, including date of, and reasons for, the purported change to a private club.

"b. (1) Private Club Facilities

"This group will involve bona fide private clubs which operate facilities which may be open to the public. Such groups will include organizations which are clearly private, such as fraternal or military organizations (e.g., Elks and Moose Lodges, the VFW and the American Legion). In order to determine whether the facilities they operate are open to the public and therefore within the coverage of Title II, conduct the following investigation:

- "i) Ascertain what precise policy is followed in admitting guests to the facility.
- "ii) May non-members of the club be admitted who are not invited by members.
- "iii) What procedure is followed in determining whether a non-member is authorized to be

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admitted.

- "iv) If any customers are present on the premises, interview a representative number and ascertain if they are members or guests of members. If they are neither, ascertain under what circumstances they were permitted to enter, whether and how often they have patronized the establishment in the past, and whether they were ever asked to show whether they were guests of members. If they claim to be guests of members, determine the procedure they are required to follow in order to be admitted (e.g., required to sign a guest book or required to be accompanied by the member, etc.)."

EFFECTIVE: 12/08/78

173-4.3 Copies of Communications and Deadlines

Submit two copies of a report to FBIHQ within  
| 21 | workdays | of receipt of a complaint.

EFFECTIVE: 04/08/80

173-4.4 Repeated Complaints - Same Establishment

Where the same accommodation is involved in numerous refusals of service, one case may be opened and victims and dates added to the title as complaints are received. When logical investigation has been completed, case may be closed, subject to reopening when additional complaints are received.

EFFECTIVE: 04/08/80

173-5 PUBLIC EDUCATION

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EFFECTIVE: 04/08/80

173-5.1 Definition

A place of public education is any education institution operated by a state, any subdivision of a state, any Government agency within a state, or operated wholly or predominantly from or through the use of governmental funds or property derived from a governmental source.

EFFECTIVE: 04/08/80

173-5.2 Basis of Complaint

Take the following action upon receipt of a complaint alleging discrimination because of race, color, sex, religion, or national origin in a place of public education.

(1) Interview complainant and take signed statement to include:

(a) Pertinent personal history and background information.

(b) Full details of the alleged discrimination.

(c) All information the complainant has regarding the operation of the public school or public school system on a discriminatory basis and the identities of any other persons who have sought the use of the school on a nondiscriminatory basis.

(d) Full details of any other efforts made by the complainant or others on complainant's behalf to rectify the alleged discrimination and the ability or inability of the complainant to bring legal action on his/her own behalf or through some interested organization. In this connection the complainant should not be asked whether, in his/her opinion, he/she is able or unable to sue, inasmuch as this would be a legal conclusion. Complainant should, however, be asked for general information regarding his/her employment, whether he/she owns home and automobile; if so, to furnish description of the house and automobile. Also how many dependents the complainant supports and whether he/she is a member of any civil rights

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organization that provides legal counsel in this type of case.

(2) If the complainant refuses to submit a signed statement, take no further action and submit an LHM setting forth facts of complaint and details of the interview.

EFFECTIVE: 04/08/80

173-5.3 Preliminary Investigation

(1) Interview a representative number of other victims named by the complainant.

(2) Interview the superintendent or other appropriate person or persons responsible for operation of the school to determine:

(a) Full details of situation described by complainant.

(b) What policy and practice have been followed with respect to operating in a nondiscriminatory manner.

(c) Whether any change in such policy or practice is contemplated.

EFFECTIVE: 04/08/80

173-5.4 Reporting Deadline

Submit report within 21 workdays of receipt of the complaint.

EFFECTIVE: 04/08/80

173-6 PUBLIC FACILITIES

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EFFECTIVE: 04/08/80

173-6.1 Definition

A public facility is one other than a place of education which is owned, operated or managed by or on behalf of any state or subdivision thereof.

EFFECTIVE: 04/08/80

173-6.2 Basis of Complaint

Take the following action upon receipt of a complaint alleging discrimination because of race, color, religion, or national origin in a place of public facility.

(1) Interview complainant and take signed statement to include:

(a) Pertinent personal history and background information.

(b) Full details of the alleged discrimination.

(c) All information the complainant has regarding the operation of the public facility on a discriminatory basis and the identities of any other persons who have sought the use of the facility on a nondiscriminatory basis.

(d) Full details of any other efforts made by the complainant or other on his/her behalf to rectify the alleged discrimination and the ability or inability of the complainant to bring legal action on his/her own behalf or through some interested organization. In this connection the complainant should not be asked whether, in his/her opinion, he/she is able or unable to sue, inasmuch as this would be a legal conclusion. Complainant should, however, be asked for general information regarding employment, whether he/she owns home and automobile; if so, to furnish description of the house and automobile. Also how many dependents the complainant supports and whether he/she is a member of any civil rights organization that provides legal counsel in this type of case.



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(2) If the complainant refuses to submit a signed statement, take no further action and submit an LHM setting forth facts of complaint and details of the interview.

EFFECTIVE: 04/08/80

173-6.3 Preliminary Investigation

(1) Interview a representative number of other victims named by the complainant.

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(2) Interview the manager or other appropriate person or persons responsible for operation of the facility to determine:

(a) Full details of situation described by complainant.

(b) What policy and practice have been followed with respect to operating in a nondiscriminatory manner.

(c) Whether any change in such policy or practice is contemplated.

EFFECTIVE: 04/08/80

173-6.4 Reporting Deadline

Submit report within 21 workdays of receipt of the complaint.

EFFECTIVE: 04/08/80

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173-7 EMPLOYMENT

Section 703. Prohibits discrimination in employment because of race, color, religion, sex, or national origin. Prohibited acts extend to hiring, firing, promotions, wage scales, and all other conditions of employment, including discrimination on the basis of pregnancy, childbirth, and related medical conditions. Exemptions are granted for legitimate occupational qualifications based upon religion, sex, or national origin only. Discrimination is not punishable as a crime but the aggrieved person, Equal Employment Opportunity Commission (EEOC), or under certain conditions, the Attorney General may file civil suit. ~~EEOC was established to receive and adjudicate complaints.~~

EFFECTIVE: 04/08/80

173-7.1 Establishments Covered

- (1) Business establishments affecting commerce and having 15 or more employees
- (2) Employment agencies procuring employees for the above firms
- (3) Labor unions in industries affecting commerce
- (4) State and local governments, agencies, political subdivisions and the District of Columbia departments and agencies which are not subject by law to the Federal Competitive Services.
- (5) Federal Government employment (handled by EEOC)
- (6) Exceptions: The Act does not apply to state or local elected officials, persons chosen by such officials to be on their personal staffs, policy-making level appointees and immediate advisors of such elected officials, or to religious educational institutions. Preferential treatment may be given to Indians on or near an Indian reservation.

EFFECTIVE: 04/08/80

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173-7.2 Investigation - Private Employer or Labor Union

Investigation to be conducted upon receipt of a complaint:

(1) Complaint against private employer or labor union representing employees of private employer or private employment agency

(a) Advise complainant such violations are handled by EEOC

(b) Advise complainant if he/she wishes to pursue matter with EEOC, he/she should do so within 180 days of the alleged discrimination

(c) Furnish complainant with location of nearest EEOC office

(2) Complaint against state or local government and educational institution or unions representing government employees or public employment agencies, such as state employment services. Conduct preliminary investigation under each category as set forth.

EFFECTIVE: 10/09/79

173-7.3 Preliminary Investigation

EFFECTIVE: 10/09/79

173-7.3.1 Employer

Where complaint involves any actions or practices of the employing governmental entity, interview complainant, preferably at some place other than place of employment, and obtain following information:

(1) Full background of complainant for all details that might bear on his/her qualifications or eligibility for employment or promotion by the subject employer, including age, sex, race, education, previous employment experience and length of time, if any, he/she has worked for subject employer.

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(2) Nature of subject employer (e.g., city, county, irrigation district), approximate number of employees, and approximate percentage of female and minority employees employed by the jurisdiction or unit involved. Ascertain whether office or installation where complainant works is located near or in a minority neighborhood.

(3) Full details of complaint.

(4) If complainant is or has been working for subject employer, as would be true if complainant complains of discriminatory promotion or discharge policies:

(a) Complainant's present job category and department and any previous jobs and departments indicating length of time in each.

(b) Complainant's wage category and its position relative to other wage categories of the employer.

(c) Complainant's duties, and whether any white persons, in the case of a race complaint, or males or females as appropriate, in the case of a sex complaint, perform or have performed similar duties.

(d) Number of minority and female employees in complainant's job category or department; and in other job categories and departments of which complainant is aware.

(e) Names of other minority or female employees who work for employer and departments and job categories to which they are assigned, if known.

(f) Complainant's understanding of the operation of the promotion, recall and layoff systems, if any.

(g) Total number of departments, seniority lines, production areas and any other information known about structure of employer or employing agency.

(5) If complainant is not and has never worked for the employer, but instead is alleging discrimination in hiring:

(a) Date on which he or she applied for the job

(b) Method by which he or she found out about

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availability of the job or decided to apply for a job

(c) Whether he or she was required to take any test and, if so, nature of the test

(d) Name of person, if any, who interviewed him or her

(e) Whether he or she submitted written application

(f) Any other steps he or she was required to take to complete employment and application process

(g) When and by what means notification or rejection for employment given

(6) If employing agency is unionized, ascertain name of union, how many members it has, percentage of minority or female members, whether complainant in question was brought to attention of the union and what action, if any, was taken by the union on complaint.

(7) Determine whether similar complaint has been filed with any other Federal or state or local agency and, if so, details including date on which it was filed, and disposition, if any, which that agency has made.

(8) Determine whether complainant knows any other minority group persons or females who have been similarly affected by subject employer, and, if so, their names and dates of alleged discriminatory conduct.

(9) Obtain copies of any pertinent written material or documents that complainant may have in his/her possession, such as copies of applications to employer and correspondence from it.

EFFECTIVE: 06/08/78

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173-7.3.2 Unions

When complainant appears to involve any actions or practices of union which represent or seeks to represent employees of a governmental employer, interview complainant, preferably away from place of employment and obtain following information:

(1) Full background of complainant including all details that might bear on qualifications for membership in subject union or for referrals by subject union, such as age, sex, race, education, previous employment, experience, and any municipal licenses  
complainant may possess qualifying him/her to work in the trade.

(2) Nature of subject union, that is whether it is an industrial union representing employees in a plant or craft (or building trade) union. If it is a craft union, ascertain from complainant whether union operates a hiring hall and, if so, details about operation of the hiring hall.

(3) Full details of complaint

(4) If complainant was seeking membership in the union:

(a) Type of membership complainant was seeking, i.e., whether complainant was seeking apprentice status or journeyman status

(b) Whether complainant made any written applications to the union and if so, dates of those applications

(c) How complainant came to make application to the union, i.e., whether referred by friend or relative, interested organization, or employment service

(d) Whether complainant was required to take any examination and nature of examinations

(e) Whether there was an interview and, if so, person who conducted interview

(f) Whether complainant was notified of acceptance and, if so, when and how, and whether complainant has had any further contact with the union

(5) If complainant was claiming discrimination in some practice of subject union other than that relating to admission to

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membership in the union, determine whether it related to operation of grievance procedures, work referral system, a work permit system, or some other union function and ascertain details of alleged discriminatory practice.

(6) If on any previous occasion complainant sought membership, to be referred for work, utilize grievance procedure or other service benefit from subject union, ascertain all dates upon which such occurred and full details about each of these contacts with the union.

(7) Whether there are black or other ethnic minority members, or female members of the union or who are working under auspices of the union. If so, ascertain the names of those persons from interviewee.

(8) Whether similar complaint was filed with any state or local agency or any other Federal agency and, if so, details including date on which it was filed, and disposition made of it, if known.

(9) Obtain copies of any written material or documents that complainant may have in his/her possession pertaining to complaint or to complainant's contact or connection with subject union.

EFFECTIVE: 06/08/78

173-7.3.3 Employment Agencies

When complaint appears to question practices of any public employment agency, such as a state employment service, interview complainant at some place other than place of employment, and obtain following information:

(1) Full background of complainant including all details regarding qualifications for employment, such as age, sex, race, education, previous employment experience.

(2) Nature of employment agency, and types of jobs to which it generally refers persons. Ascertain whether employment agency's office is in minority neighborhood.

(3) Full details of complaint

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(4) Type of job for which complainant sought employment. Ascertain whether complainant had any previous experience in such jobs.

(5) Type of job to which complainant was referred, indicating nature of work and level of pay, whether any other minority or female person held similar jobs.

(6) If complainant was not referred to job, what reasons complainant was given for the failure or inability for referral. Ascertain whether complainant was refused referral on any previous occasion and, if so, details.

(7) Previous experience with employment agency, including whether complainant was ever referred to any other job and, if so, nature of those jobs and dates of referrals.

(8) Full details about contact with employment agency including applications and other forms filled out, the name of person who interviewed complainant, what jobs possibilities were mentioned, and whether complainant was advised formally or informally that certain jobs about which complainant had expressed interest would not be available to complainant.

(9) Whether complainant knows any other minority group persons or females who have been similarly affected by subject employment agency and, if so, their names and dates of alleged discriminatory conduct.

(10) Obtain copies of any written documents that complainant may have in possession relating to contact or dealings with employment agency.

EFFECTIVE: 06/08/78

173-7.4 Advise All Complainants

EFFECTIVE: 04/19/91



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173-7.4.1 Information

Advise complainant that information furnished will be forwarded to the U.S. Department of Justice.

EFFECTIVE: 04/19/91

173-7.4.2 Existence

Advise complainant of existence of any appropriate state law or local ordinance and refer complainant to appropriate state or local agency. Also, that in order to obtain relief on his/her individual grievance, he/she should file complaint with EEOC, and this must be done within 180 days after the alleged discrimination occurs. Include fact that complainant has been so advised in investigative report.

EFFECTIVE: 04/19/91

173-7.5 Copies of Communications and Deadlines

Submit two copies of a report to FBIHQ within 21 days of receipt of complaint.

EFFECTIVE: 04/19/91

173-8 INTERFERENCE WITH FEDERALLY PROTECTED ACTIVITIES RELATING TO PUBLIC ACCOMMODATIONS, PUBLIC FACILITIES, PUBLIC EDUCATION, AND EMPLOYMENT

(1) Where interference consisting of force or threat of force prohibited by Title 18, USC, Section 245, is involved, handle in accordance with provisions of Section 44-4 of this manual using appropriate Civil Rights Act of 1964 character and submitting two copies of report to FBIHQ.

(2) Where other interference is alleged, such as by coercion, intimidation, and economic pressure, submit LHM to FBIHQ and take no further action.

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(3) The employment provisions of this act require a specified minimum number of employees to establish jurisdiction. No such minimum number is required under provisions of Title 18, USC, Section 245, relating to interference with employment.

(4) Title 18, USC, Section 245, covers all public accommodations as defined by Civil Rights Act of 1964 and also covers an establishment which serves the public and which is principally engaged in selling beverages for consumption on the premises, e.g., a bar.

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EFFECTIVE: 04/19/91

173-9 ANNOUNCED TESTING OF ACCOMMODATIONS OR FACILITIES

(1) When information is received that persons are planning to test the practices of a facility or accommodation in a community in which the free use of such facilities or accommodations has previously been interfered with by force or threats, submit teletype to FBIHQ. Do not assign personnel to observe such testing and/or photograph acts of interference or obstruction in the absence of specific prior FBIHQ authority.

(2) If there is interference involving personal injury, threat of serious injury, or substantial damage to property, or if a complaint is received concerning refusal of service, initiate a preliminary investigation and submit a report within 21 days.

(3) If there is no interference or refusal of service, submit an LHM (original and two copies) setting forth the details of the testing.

(4) Where your office receives advance notice of testing of public accommodations or public facilities and there is no indication there will be any interference, obtain details concerning the testing and promptly furnish an LHM (original and two copies).

(5) No commitments are to be made to groups which advise your office of plans to test accommodations or facilities that Agents will or will not be present to observe and photograph such demonstrations.

(6) Furnish copy of LHM in both of the above instances to the local office of military intelligence if within scope of present

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requirements to do so, and advise appropriate local authorities orally.

EFFECTIVE: 04/19/91

173-10 PENALTIES

There are no substantive criminal penalties attached to discrimination prohibited by the act. The aggrieved person, or in some instances the Attorney General, may seek relief through civil action. Written complaints with regard to public facilities and public education are subject to the provisions of Title 18, USC, Section 1001. A \$100 fine is provided for failure on the part of an employer, employment agency, or labor union to post notices required by the Equal Employment Opportunity Commission; however, this violation will be handled by the Commission.

EFFECTIVE: 04/19/91

173-11 MISCELLANEOUS

(1) All deadlines are counted by commencing on the first day following receipt of complaint, i.e., complaint received 8-1-82 - Sunday, submit 8-22-82.

(2) The first paragraph of the details of the report should so indicate if the investigation is limited or preliminary. A limited investigation is one other than a preliminary, or mere receipt of a complaint.

(3) Furnish a copy of all reports and LHMs to the USA.

(4) Retain one copy in the field office file.

(5) Note that a business, such as a department store, which would not normally be covered by the act is completely covered if it has a lunch counter or some other subsidiary unit which would be covered by the act. A barbershop is not normally covered, but a barbershop in a hotel or any other place subject to the provisions of the act would likewise be covered.

(6) Discrimination is not limited to refusal to admit or

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serve but includes any indifference in the nature or extent of services or prices charged.

(7) Information concerning discrimination obtained solely from legitimate news media, personal observation by Bureau personnel, or from any other source not known to be unreliable should immediately be submitted to FBIHQ in a form suitable for dissemination. If the information is obtained from published material, it will be sufficient to submit two copies of the clipping by cover airtel. No other action should be taken in the absence of a complaint with the exception of information indicating interference which should be handled in accordance with 173-7.2 above.

(8) Any instance of interference or violence or potential interference or violence in connection with the desegregation of public schools, public accommodations, public facilities, and employment under the provisions of the Civil Rights Act of 1964 is to be brought to the immediate attention of appropriate state and local officials. Also advise military intelligence and Secret Service if within scope of present requirements to do so. The initial communication to FBIHQ should show that this has been done.

(9) Upon receipt of a complaint, a request for investigation by the USA or a request for investigation by the U.S. Department of Justice, the field division must promptly submit Form FD-610 within five (5) workdays of receipt of complaint). All items on the form are to be completed on the initial submission or later by supplemental submission. This action is to be taken prior to the close of each case in all Civil Rights matters. Along these lines, the field division should make an effort to provide the maximum amount of information if all data is not immediately available. Submit a supplemental form when additional information necessary to complete the form is secured. In those instances where FBIHQ is advised by telephone or teletype of a new case, the FD-610 should be submitted at the earliest possible moment. Specific instructions regarding the completion of the FD-610 are set forth in Part I, 282-8.1 of this manual.

EFFECTIVE: 01/31/94

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173-12 CHARACTER

- (1) PUBLIC ACCOMMODATIONS - CIVIL RIGHTS ACT OF 1964
- (2) PUBLIC FACILITIES - CIVIL RIGHTS ACT OF 1964
- (3) PUBLIC EDUCATION - CIVIL RIGHTS ACT OF 1964
- (4) EMPLOYMENT - CIVIL RIGHTS ACT OF 1964

In cases of interference involving attempted or actual use of force or the threat of force, add INTERFERENCE WITH FEDERALLY PROTECTED ACTIVITIES to character.

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SECTION 174. BOMB THREATS  
EXPLOSIVES AND INCENDIARY DEVICES

174-1 STATUTES

Title 18, USC, Section 844(d) - (j), effective 10/15/70,  
amended 10/12/82, amended 10/12/84 by Public Law 98-473.

(1) Section 844(d) - Interstate transportation or receipt of explosives or incendiary devices with knowledge or intent to kill, injure or intimidate a person or damage property.

(2) Section 844(e) - Use of telephone, mail, telegraph, or other instrument of commerce to transmit a fire or bomb threat, or maliciously conveys false information knowing the same to be false.

(3) Section 844(f) - Use of explosives, fire or incendiary devices to damage or destroy, or attempt to damage or destroy, any property owned, used by, or leased to, the U.S. Government, or any department or agency thereof, or any institution or organization receiving Federal financial assistance.

(4) Section 844(g) - Unauthorized possession of explosives or incendiary devices in a building owned, used by, or leased to, the U.S. Government or any department or agency thereof.

(5) Section 844(h) - Carrying explosives or incendiary devices during the commission of any Federal felony, or use of fire during the commission of a felony.

(6) Section 844(i) - Use of explosives, fire or incendiary devices to damage, or attempt to damage, any property used in an activity affecting interstate or foreign commerce.

(7) Section 844(j) - For the purposes of subsections (d), (e), (f), (g), (h), and (i) of this section, the term "explosive" means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuzes (other than electric circuit breakers), detonators, and other detonating agents, smokeless powders, other explosive or incendiary devices within the meaning of paragraph (5) of Section 232 of this title, and any chemical compounds, mechanical mixture, or device that contains any oxidizing and

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combustible units or other ingredients, in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, mixture, or device or any part thereof may cause an explosion.

EFFECTIVE: 08/21/87

174-2 DEPARTMENTAL GUIDELINES

EFFECTIVE: 08/21/87

174-2.1 Jurisdiction

Statutory jurisdiction concerning above violations lies concurrently with FBI and Secretary of Treasury. Bureau of Alcohol, Tobacco and Firearms (ATF) handles Treasury's investigative responsibilities under above statute. Guidelines issued by Department effective 3/1/73 provide for jurisdiction as follows:

(1) General

(a) Section 844(e), (f), and (g) - FBI.

(b) Section 844(d) and (i) - ATF.

(c) Section 844(h) - Agency having jurisdiction over underlying felony.

(2) Exceptions

(a) Violations directed against diplomatic or quasi-diplomatic functions - FBI.

(b) Violations which appear at outset to have been perpetrated by terrorist or revolutionary groups or individuals - FBI. (For the purpose of this section, the Department of Justice has defined terrorist or revolutionary groups or individuals as "Those groups or individuals whose motivation for violating the explosives statutes is political in nature rather than the desire for personal or organizational gain...")

(c) Violations directed against Treasury Department

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functions - ATF.

(d) Violations directed against Postal Service functions or involving explosives sent through the mail - Postal Inspection Service.

EFFECTIVE: 08/21/87

174-2.2 Other Provisions

(1) Guidelines provide that no investigation is to be conducted unless prior authorization is obtained from the Department except in those instances noted below. In these instances the Guidelines provide authorization for immediate, full investigation by the FBI without prior consultation with the Department.

(a) Any violation which appears at outset to have been perpetrated by terrorist or revolutionary groups or individuals.

(b) Explosive (as distinguished from incendiary) bombing or attempted bombing of college or university facilities.

(c) Bombing or attempted bombing of property owned, possessed, used or leased by Federal Government, or by a Federal function such as National Guard or ROTC.

(d) Any violation of Section 844(g), except those involving Treasury or Postal Service buildings.

(e) Any violation against diplomats or quasi-diplomatic functions.

(2) Regarding 174-2.1 (2) (b) above, guidelines provide that if ATF or Postal Inspection Service has properly initiated investigation and information is subsequently developed indicating apparent involvement of terrorist or revolutionary groups or individuals, jurisdiction shall be relinquished to FBI unless Department determines that such a transfer would unduly impair further investigative efforts.

(3) Guidelines require prompt notification to the Department by the agency having investigative jurisdiction in each instance wherein an investigation is instituted under Section 844. In cases where FBI has investigative jurisdiction notification is also to



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be made to ATF and/or Postal Inspection Service if those agencies have a logical interest. Follow-up liaison and dissemination is to be made as necessary to avoid duplication of investigation. Also to be disseminated, in a manner not to interfere with active investigations, is information regarding types, sources, movement, and storage of explosives involved in such investigations.

EFFECTIVE: 08/21/87

174-3 POLICY

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EFFECTIVE: 09/22/87

174-3.1 Bombings and Attempted Bombings

(1) Each office is to arrange, through appropriate liaison, to be advised of all bombing and attempted bombing incidents within its respective territory.

(2) Immediately advise FBIHQ by teletype of all actual and attempted bombing incidents within the investigative jurisdiction of FBI, whether explosive or incendiary. Initial communication should fully describe the nature and function of the target of the bombing and cover the following points:

- (a) Basis for FBI investigative jurisdiction.
- (b) Whether or not investigation instituted.
- (c) If investigation not instituted, identify investigating authorities.
- (d) Specific comment regarding indicated or probable motive. Include occupation and general reputation of victim if bombing directed against an individual.
- (e) Applicability of state and local laws and likelihood of state or local investigative and prosecutive action.
- (f) Whether or not there is any information indicating the bombing is part of a pattern or plan by a particular subject or against a particular victim.

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(g) Specific comment that Secret Service, ATF, USA and appropriate law enforcement and other logical agencies have been advised; also, that ATF advised as to whether or not FBI instituting investigation. Notice to military intelligence agencies is not required unless they have a specific interest in the incident or unless dissemination otherwise required by the "Agreement Governing the Conduct of Defense Department Counterintelligence Activities in Conjunction with Federal Bureau of Investigation" (see Appendix 3 of the FCI Manual) or the Memorandum of Understanding between Justice and Defense Departments.

(3) In those explosive incidents which are likely to receive nationwide publicity and wherein it is not immediately known if an actual bombing has occurred or if the incident is within FBI jurisdiction, furnish FBIHQ with background and details by teletype.

EFFECTIVE: 09/22/87

174-3.2 Bomb Threats

(1) Immediately advise appropriate law enforcement agencies and Secret Service. Refer to 174-3.1 (2) (g) above regarding notice to military intelligence agencies.

(2) If a bomb threat is directed against Bureau facilities or personnel, all logical leads to identify subject are to be covered immediately. Bureau space, if involved, should be searched by Bureau personnel familiar with the specific area. An assessment of any suspicious item should be made by an FBI bomb technician, bomb squad personnel, or military Explosive Ordnance Disposal (EOD) unit. Render safe responsibilities for located bomb devices rest with the bomb squad personnel or military EOD unit. Each field division should have a bomb threat plan.

(3) Notify FBIHQ in the following instances:

(a) By teletype, if threat concerns a diplomatic establishment or a situation which may result in widespread publicity.

(b) By teletype, if threat results in request by local authorities or private citizen for FBI investigation.

(c) By teletype, if threat is directed against

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Bureau facilities or personnel. If Bureau space involved, indicate same searched by Bureau personnel.

(d) By airtel (FD-365) and LHM, to be submitted same day, or following workday if threat received after regular working hours, if: threat concerns a military or U.S. Government installation; identity of subject is known, alleged, or readily available; or threat appears to be part of a pattern or plan by a particular subject or against a particular victim. (See MIOG, Part I, 174-6.)

(4) Notification to Secret Service and other agencies must be confirmed in writing the same day the information regarding the threat is received. If information is received after normal working hours, written confirmation should be made the following workday. Include in confirmation the time and date of oral notifications and identify, by name, persons notified. (See MAOP, Part II, 10-4.3 & Correspondence Guide-Field, 2-5.5.11 & 3-41.)

(5) All written bomb threats are to be submitted to the Laboratory for document examination and for latent fingerprint examination, whether or not active investigation is being conducted by the FBI.

EFFECTIVE: 09/24/93

174-3.3 General Instructions

- (1) Submit 4 copies of reports and 7 copies of LHMs.
- (2) When active investigation is instituted, notify FBIHQ by teletype, submit initial report within 30 days and submit subsequent reports every 30 days thereafter. (See MIOG, Part I, 174-6, and MAOP, Part II, 10-4.3.)
- (3) Disseminate all reports and LHMs to the USA.
- (4) In those instances wherein this section requires submission of LHM to FBIHQ, a copy of the LHM should be disseminated locally to Secret Service by FD-376. Original and one copy of FD-376 should be submitted to FBIHQ with LHM.
- (5) In those instances where notification to FBIHQ by

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teletype is required, submission should not be delayed if all necessary information is not immediately available. Such additional information should be submitted by supplemental teletype as soon as it is available.

(6) Advise the USA telephonically of all incidents or threats reported to FBIHQ, within FBI jurisdiction. Unless circumstances dictate otherwise, such notification should be made during business hours.

(7) Bombings, attempted bombings and bomb threats constituting other substantive violations within FBI jurisdiction, such as Federal Train Wreck Statute, Destruction of Aircraft or Motor Vehicles, Civil Rights, Extortion, etc., should be handled in accordance with existing instructions pertaining to the particular violation involved. FBIHQ should be advised of the incident under appropriate substantive caption. Exceptions: Situations involving bombings or attempted bombings of Government property, and sabotage by use of explosive, are handled as 174 matters.

(8) Advise FBIHQ by teletype or telephone if ATF attempts to exercise any jurisdiction in a matter being investigated by the FBI or if any other problem is encountered with ATF.

(9) All offices should maintain liaison with military Explosive Ordnance Disposal (EOD) units and/or local law enforcement bomb squads in order that assistance can be promptly obtained if bombs or live explosives are encountered in connection with official investigations.

(10) The U.S. Army has EOD units stationed throughout the United States, including Alaska and Hawaii. These units, which have assisted the FBI in the past, have personnel qualified to disarm bombs and handle and dispose of live explosives. Due to emergency conditions, requests for assistance from Army EOD units are usually verbal. All such oral requests are to be confirmed in writing by letter addressed to the Commanding Officer of the EOD unit involved. The Army has no EOD unit in Puerto Rico. Therefore, the San Juan Office should maintain liaison with the appropriate U.S. Navy facility for the purpose of obtaining any necessary assistance.

(11) Bombs are to be rendered safe by qualified bomb disposal personnel. Render safe is the responsibility of public safety bomb squads and military EOD units. Bureau bomb technicians and Laboratory explosives specialists are available at all times for on-site consultation concerning bombs and explosives.

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(12) The cooperative facilities of the FBI which are made available to local authorities in bombing matters are the services of the Laboratory Division.

EFFECTIVE: 09/24/93

174-4 OTHER VIOLATIONS

The following are within the primary jurisdiction of ATF but Agents should be alert for such violations and investigative jurisdiction should be assumed by the FBI if they arise during any substantive FBI investigation.

(1) Title 26, Section 5861(d) - (f) - Unlawful manufacture, possession or transfer of a destructive device.

(2) Title 18, Sections 841-843 - Unlawful importation, manufacture, distribution or storage of explosives.

EFFECTIVE: 09/22/87

174-5 PLAN OF ACTION FOR MAJOR CASES

(1) Each office is to have a proposed plan of action which can become operative automatically whenever there is a bombing or attempted bombing which will be the subject of a major investigation.

(2) These investigations are to receive top priority under the personal supervision of the SAC and should cover all investigative steps to ensure that evidence is preserved and logical investigation instituted immediately.

(3) Immediate consideration should be given to the advisability of requesting Laboratory Division personnel to proceed to the scene.

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EFFECTIVE: 09/24/93

174-6 REPORTING REQUIREMENTS

(1) When active investigation is instituted, notify FBIHQ by teletype; submit initial report within 30 days; and submit subsequent reports every 30 days or as soon thereafter as possible.

(2) Submit four copies of reports to FBIHQ to allow for dissemination at the Headquarters level to U.S. Department of Justice and other appropriate agencies.

(3) Disseminate all reports to the USA.

(4) In those instances wherein this section requires submission of LHM to FBIHQ, submit seven copies of LHMs to allow for dissemination at the Headquarters level to U.S. Department of Justice; U.S. Secret Service; Bureau of Alcohol, Tobacco and Firearms and other appropriate agencies. A copy of the LHM should be disseminated locally to Secret Service by FD-376. Original and one copy of FD-376 should be submitted to FBIHQ with LHM. FD-376 should also be used when disseminating information to Secret Service in other matters concerning individuals involved in illegal bombing or bomb making.

EFFECTIVE: 09/22/87

174-7 STATISTICAL DATA

Form FD-436 is to be submitted for every incident involving the use, attempted use, or recovery of an explosive, incendiary, or "hoax" bomb device, regardless of jurisdiction.

EFFECTIVE: 09/22/87

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174-8 PENALTIES

(1) Section 844(d), (f), and (i).

(a) \$10,000 fine and/or 10 years' imprisonment.

(b) \$20,000 fine and/or 20 years' imprisonment if personal injury results, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection.

(c) ~~Any terms of years or death penalty or life imprisonment if death results.~~

(2) Section 844(e) - \$5,000 fine and/or 5 years' imprisonment.

(3) Section 844(g) - \$1,000 fine and/or 1 year imprisonment.

(4) Section 844(h)

(a) Not less than 1 nor more than 10 years' imprisonment.

(b) For second and subsequent convictions, not less than 5 nor more than 25 years' imprisonment and there shall be no suspended or probationary sentences.

EFFECTIVE: 09/22/87

174-9 CHARACTER - "BOMB THREATS" OR "EXPLOSIVES AND INCENDIARY DEVICES"

EFFECTIVE: 09/22/87

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SECTION 259. SECURITY CLEARANCE INVESTIGATIONS

259-1 PURPOSE (See MIOG, Part I, 67-18 (3); II, 35-9.2.)

(1) All individuals who require access to National Security Information (NSI) must undergo a security clearance background investigation (BI). Individuals who are under contract to the FBI are discussed under Part I, Section 260 of the MIOG. This section deals with individuals who are not FBI contractors and require access to NSI.

(2) Deleted

(3) The other classifications in the FBI Security Program are 67E, 260, and 261 and are explained in those sections of the MIOG, Part I.

EFFECTIVE: 10/18/95

259-2 259A - CLASSIFIED INFORMATION PROCEDURES ACT (CIPA)  
(See MIOG, Part II, 17-2 (6) & 23-9; MAOP, Part II, 3-1.1 & 3-1.2.)

(1) The CIPA legislation was enacted in 1980 by Congress to provide for the introduction of NSI within the context of a federal CRIMINAL proceeding in order to prevent a defendant from claiming an inability to provide adequate defense because of a need to have access to NSI. Prior to CIPA, this claim could result in the government requesting a dismissal of the criminal charges rather than compromise national security.

(2) Persons needing a security clearance are identified by the court, e.g., attorneys and their staffs and court personnel. The request for a BI originates with the court and is coordinated with the Department of Justice (DOJ). Subsequently, DOJ directs FBIHQ Security Programs Manager to conduct a BI and provide the results to DOJ for clearance adjudication.

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(3) Procedurally, at FBIHQ the cases are managed by the Industrial/Facility Security Unit (I/FSU), Security Countermeasures Section (SCMS), National Security Division (NSD), and any questions and/or consultation may be directed accordingly. I/FSU sets out investigation for the field under the subclassification 259A. The BI is to be conducted by the field in accordance with the guidelines set out in MIOG, Part II, 17.

(4) IMPORTANT THINGS TO REMEMBER:

(a) Deadlines in CIPA cases are driven by the trial date established by the U.S. District Court judge hearing the criminal case. Invariably, the time frames for conducting the BIs are extremely short, as is the tolerance of the judges for missed deadlines. More importantly, failure to meet the deadline could result in dismissal of the government's case with prejudice. Therefore, field supervisors managing these cases must be extremely sensitive to the time constraints.

(b) The FBI conducts the BI and the results are provided to DOJ for clearance adjudication. Only DOJ, Office of Security, can authorize discontinuance of these investigations.

(c) In some special cases, DOJ may ask the FBI to provide a security briefing to individuals who are cleared pursuant to the CIPA.

(d) CIPA applies only to CRIMINAL proceedings.

(e) When individuals must be cleared for access to NSI in the context of a civil judicial proceeding wherein the U.S. government is a party, the BIs are handled under the 259D classification.

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259-3      259B - FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978  
(FISA) (See MIOG, Part II, 17-2 (6); MAOP, Part II, 3-1.1  
& 3-1.2.)

(1) This Act was passed by Congress to ensure that all electronic surveillance targeted against foreign individuals or establishments in the United States were reviewed and approved by a special FISA Court. Orders issued by the FISA Court are classified because of the nature of the information contained therein. Further, this Act authorized the Attorney General (AG) and the Director of Central Intelligence (DCI) to set the guidelines for the security procedures to be followed for all FISA electronic surveillance.

(2) The security requirements as determined by the AG and the DCI are contained in a document entitled SECURITY PROCEDURES FOR SAFEGUARDING RECORDS PERTAINING TO ELECTRONIC SURVEILLANCE WITHIN THE UNITED STATES AUTHORIZED UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978 which was signed March 13, 1980, and endorsed by the FBI. A copy of this document is to be maintained by the field office (FO) Security Countermeasures Programs Manager. These security procedures hold the FBI responsible for the security of the classified court orders, to include those orders which the communications carrier chooses to store in its own facility. Further, it is incumbent upon the FBI to ensure that any individual who has access to these classified court orders has the proper security clearance. Most often these individuals are cleared for "Top Secret."

The above-referenced security procedures provide for the use of a Trust Receipt which gives the communications carrier full access to the information contained in the classified court order, while the FBI physically maintains the order in the FO. The communications carrier receives a Trust Receipt signed by the SAC which guarantees the communications carrier access to the order at any time during business hours, during nonbusiness hours upon prior notification, and further guarantees that the court order will not be altered or destroyed. Each FO should encourage the communications carrier to utilize the Trust Receipt. The use of the Trust Receipt can be demonstrated as a savings for the communications carrier, since fewer people must be cleared. In addition, communications carriers will not incur the costs normally associated with the storage of classified information. The FBI will benefit since fewer of the communications carrier employees must have a security clearance. The FBI will not have the additional responsibility of periodically inspecting the communications carrier's facilities as mandated by the security procedures.

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In the event the communications carrier elects to store the classified FISA order in its space, it is incumbent upon the FO Security Countermeasures Programs Manager to ensure that the classified material is being protected as outlined in Section 2, "Carrier Storage," of the above-referenced Security Procedures.

(3) Procedurally, FISA security clearance background investigations are managed by I/FSU, SCMS, NSD, and any questions and/or consultations may be directed accordingly. The investigations will be reported under the 259B subclassification.

(4) When the field Security Countermeasures Programs Manager identifies communications carrier personnel who need a security clearance, the following procedures are to be followed:

(a) Candidate completes an SF-86, "Questionnaire for Sensitive Positions," and is fingerprinted. The SF-86 and two FD-258s (applicant fingerprint cards) are forwarded to the FO Security Countermeasures Programs Manager.

(b) The field Security Countermeasures Programs Manager opens a 259B case, initiates indices, ALL available automated data base checks, and local criminal checks.

(c) After reviewing the SF-86 and the results of the FO checks, the field Security Countermeasures Programs Manager or designee interviews the candidate and reports same on an FD-302. The interview need not reflect the specific questions asked of the candidate. A question-and-answer format is not desired as it tends to result in a "checklist" style of interview. This interview is intended to obtain information to facilitate our investigative efforts. If a candidate provides information which could become an issue affecting trustworthiness for his/her access to classified information, this should be fully explored at the interview.

The narrative of the FD-302 should be sufficiently detailed to reflect, at a minimum, each of the following points:

1. Completeness and accuracy of the SF-86.
2. Personal and business credit issues, including, but not limited to, repossessions, delinquent student loans, debts placed for collection, and bankruptcy.
3. Civil suits as plaintiff or defendant, including divorces. Identify issues litigated.

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4. Any involvement in criminal matters as a suspect or subject or any criminal charge, arrest, and/or conviction.

5. Any denials of employment and/or dismissals.  
Include reasons.

6. Any contact with representatives of foreign countries.

7. Details of candidate's personal life that could be used to coerce or unduly influence the candidate.

8. Details of professional complaints or any nonjudicial disciplinary action, e.g., bar association grievances, better business complaints, student or military disciplinary proceedings, Equal Employment Opportunity complaints, etc.

9. Business/investment circumstances that could or have involved conflict of interest allegations.

10. Details of any psychological counseling with psychiatrists, psychologists, or other qualified counselors.

11. Any abuse of prescription drugs or alcohol, illegal drug use, to include marijuana, and participation in drug/alcohol counseling/rehabilitation programs, during candidate's entire adult life (since age 18). Identify all drugs used, when used, duration of usage, amount of drug used, place where used (public or private setting), how the drug was obtained, whether or not candidate has provided drugs to anyone, if candidate has purchased or sold drugs, others having knowledge of candidate's drug use.

12. Any involvement in any organization which advocates the use of force to overthrow the U.S. government; or any involvement in any organization involved in the commission of sabotage, espionage, or assisting others in terrorism.

13. Any current or past circumstances known to the candidate that could have a bearing on his/her trustworthiness for access to classified information.

(d) The candidate should be recontacted to resolve, if necessary, any issues developed during the investigation.

(e) THE FIELD SECURITY COUNTERMEASURES PROGRAMS

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MANAGER SPONSORING THE CANDIDATE HAS THE AUTHORITY TO DISCONTINUE THE INVESTIGATION AT ANY TIME BASED ON INFORMATION DEVELOPED.

(f) If the candidate is still viable for clearance, the field submits the original SF-86, two FD-258s (applicant fingerprint cards), results of the FO checks, and candidate interview with a cover communication to I/FSU AND auxiliary FOs, as appropriate, setting out type of investigation, 259B file number, and 30-day Buded. FBI Headquarters' Personnel Security Specialist reviews Headquarters checks and, if necessary, advises field of unfavorable information.

(g) FO continues BI consistent with guidelines set out in Part II, Section 17, MIOG. Submit completed investigation to I/FSU with copies to office processing the candidate.

(h) The I/FSU adjudicates trustworthiness and notifies the sponsoring FO of the clearance decision.

(5) The field Security Countermeasures Programs Manager provides a comprehensive briefing covering the handling of classified information.

(a) The ORIGINAL signed SF-312, "Classified Information Nondisclosure Agreement," is forwarded to the I/FSU.

(b) When the candidate's security clearance is terminated for any reason, the field provides a debriefing and forwards the signed SF-312 to the I/FSU for the mandatory 50-year retention requirement.

(6) The FISA security procedures provide for EMERGENCY SITUATIONS when it is necessary to grant uncleared individuals access to the classified court order. The SAC or designee must make the determination that the time required to obtain a personnel security clearance in a particular circumstance would cause failure or unreasonable delay in conducting the surveillance. Such emergency authorization must be confirmed in writing to the communications carrier, and the person being served with the classified order must execute the security agreement form required by the FISA security procedures (supra). The emergency procedures are not to be utilized to bypass the clearance process. Subsequent contacts with the same communications carrier for the purpose of serving a classified court order should be anticipated and the appropriate individual(s) submitted for a security clearance.

The FO Security Countermeasures Programs Manager must work closely

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with the FO Technical Advisor in an effort to identify key individuals with the communications carriers who will need clearances for FISA orders.

(7) IMPORTANT THINGS TO REMEMBER:

(a) Classified FISA orders should only be served on individuals who possess the required DOJ security clearance.

(b) The communications carrier should be encouraged to utilize the Trust Receipt exclusively.

(c) The FO is responsible for inspecting the facilities of communications carriers which store the classified FISA orders to ensure proper security procedures are in place.

(d) The FO Security Countermeasures Programs Manager is responsible for identifying all communications carriers which are or could be used for a FISA. Appropriate personnel with those carriers are to be cleared. The FO should be aware of the communications carriers' pending retirements or transfers so that a pool of cleared individuals can be maintained.

(e) Emergency procedures exist for those limited situations when an uncleared individual must be served with a FISA order. The SAC or designee must determine an emergency exists and confirm authorization for emergency access in writing to the communications carrier. The uncleared individual must sign the security agreement form. This individual must undergo a security clearance investigation and receive a clearance before he/she can be served with any subsequent FISA order.

(f) The FBI component in the NSD managing the FISA program will, from time to time, identify key communications carrier personnel at the Headquarters level who will require a Top Secret security clearance. In those instances, the I/FSU, SCMS, NSD, will initiate the BI and set out leads to the field accordingly.

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259-4      259C - FBI JOINT TASK FORCES (JTFs) (See MIOG, Part II,  
17-2|(6); MAOP, Part II, 3-1.1 & 3-1.2.)|

(1) A Joint Task Force (JTF) for purposes of this sub-section is the combination of FBI personnel and other resources with STATE AND LOCAL law enforcement agencies to address common crime problems within their respective jurisdictions.

(2) Generally speaking, a JTF is designed so the FBI and state and local participants are on an equal footing as to the sharing of information, personnel, and/or facilities to which access is necessary to accomplish the objectives of the JTF. Very often, the JTF personnel become one force whose participants become indistinguishable. Heretofore, security countermeasures required a ten-year BI and a Top Secret security clearance for ALL state and local JTF participants.

In the late 1980s and early 1990s, there was a proliferation of FBI JTFs across the nation occasioned by the expansion of the FBI's investigative responsibilities, such as Violent Crime/Major Offenders initiative, Domestic and International Terrorism, etc. The traditional task force concept began to lose its identity in that the new JTFs had significant variances in the degree of access to FBI information, personnel, and/or facilities afforded to state and local personnel. As a consequence, the ten-year BI was thought to be excessive when the access was, at times, measurably less than in the traditional task force of the late 1970s and early 1980s.

(3) The entire security countermeasures program as applicable to JTFs was revisited by experienced SAs in the field and representatives of both investigative divisions at FBIHQ. The objective was to make the program more effective in terms of streamlining procedures without sacrificing the security of our information, personnel, and/or facilities.

(a) A threshold decision was made to place responsibility on FO managers to assess JTF security vulnerabilities by utilizing the concept of "RISK FACTOR."

1. "RISK FACTOR" is ascertained by the FO examining and quantifying the access to FBI information, personnel, and/or facilities being afforded to the JTF state and local law enforcement personnel. Thereafter, the FO managers must project the damage to the FBI if the state and/or local law enforcement personnel betray the access afforded them. In other words, if there is compromise, what is the potential damage? For example, will

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compromise jeopardize an investigation?; endanger life of an undercover agent?; an informant?; surface covert facility or operation?, etc. When you can estimate the probable impact of compromise, you have established the "RISK FACTOR."

2. The "RISK FACTOR" drives the scope of your security countermeasures program as it applies to a particular JTF.

(b) The group (supra) studying the JTF security countermeasures policy and procedures took the position that, under all circumstances, every FO MUST HAVE a record of ALL state and local participants in FBI JTFs.

(c) The guesswork, as to the scope of the security countermeasures, has been eliminated by establishing two ALL INCLUSIVE categories of JTFs for purposes of security countermeasures, i.e., CATEGORY I and CATEGORY II.

(d) The new JTF security countermeasures policy and procedures were sent out to ALL SACs by airtel dated 11/22/93, captioned "SECURITY PROCEDURES REGARDING JOINT TASK FORCES (JTFs), FBI AND OTHER LAW ENFORCEMENT AGENCIES, FCI - SECURITY COUNTERMEASURES."

(4) These cases will be reported under the 259C subclassification.

The FBI Security Program is managed in each office by the National Foreign Intelligence Program Manager, WHO MUST FAMILIARIZE OTHER FO SUPERVISORY PERSONNEL WITH SECURITY COUNTERMEASURES POLICY AND PROCEDURES.

This facet of the FBI Security Program is being managed at FBIHQ by the I/FSU, SCMS, NSD, and any questions and/or consultation may be directed accordingly.

(5) All state and local JTF participants will be investigated in either CATEGORY I OR II, depending on FIELD OFFICE assessment of the RISK FACTOR.

EFFECTIVE: 10/18/95

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259-4.1 Category I JTFs Consist of State and Local Candidates Participating in FBI Joint Task Forces Who Need Department of Justice Top Secret Security Clearances Based on a Ten-Year Background Investigation (BI)

(1) Specifically, this category applies to state and local candidates who will have:

(2) Access to national security information in order to participate in joint task forces; OR

(3) Long-term unrestricted access to FBI information, personnel, and/or facilities.

EFFECTIVE: 04/12/94

259-4.1.1 Procedures for Conducting a Ten-Year Background Investigation on State and Local Candidates Participating in FBI Joint Task Forces Who Need Top Secret Security Clearances

(1) Candidate completes an SF-86, "Questionnaire for Sensitive Positions," and is fingerprinted. The SF-86 and two FD-258s (applicant fingerprint cards) are forwarded to the field Security Countermeasures Programs Manager.

(2) The field Security Countermeasures Programs Manager opens a 259C case, initiates indices, ALL available automated data base checks, local criminal checks, and police department Internal Affairs check.

(3) After reviewing the SF-86 and the results of the FO checks, the field Security Countermeasures Programs Manager or designee interviews the candidate and reports same on an FD-302. The interview need not reflect the specific questions asked of the candidate. A question-and-answer format is not desired as it tends to result in a "checklist" style of interview. This interview is intended to obtain information to facilitate our investigative efforts. If a candidate provides information which could become an issue affecting suitability for participation in an FBI JTF or his/her access to sensitive or classified information, this should be fully

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explored at the interview.

The narrative of the FD-302 should be sufficiently detailed to reflect, at a minimum, each of the following points:

(a) Completeness and accuracy of the SF-86.

(b) Personal and business credit issues, including, but not limited to, repossessions, delinquent student loans, debts placed for collection and bankruptcy.

(c) Civil suits as plaintiff or defendant, including divorces. Identify issues litigated.

(d) Any involvement in criminal matters as a suspect or subject or any criminal charge, arrest, and/or conviction.

(e) Any denials of employment and/or dismissals. Include reasons.

(f) Any contact with representatives of foreign countries.

(g) Details of candidate's personal life that could be used to coerce or unduly influence the candidate.

(h) Details of professional complaints or any nonjudicial disciplinary action, e.g., bar association grievances, better business complaints, student or military disciplinary proceedings, Equal Employment Opportunity complaints, etc.

(i) Business/investment circumstances that could or have involved conflict of interest allegations.

(j) Details of any psychological counseling with psychiatrists, psychologists, or other qualified counselors.

(k) Any abuse of prescription drugs or alcohol, illegal drug use, to include marijuana, and participation in drug/alcohol counseling/rehabilitation programs, during candidate's entire adult life (since age 18). Identify all drugs used, when used, duration of usage, amount of drug used, place where used (public or private setting), how the drug was obtained, whether or not candidate has provided drugs to anyone, if candidate has purchased or sold drugs, others having knowledge of candidate's drug use.

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(l) Memberships in organizations whose policies restrict membership on the basis of sex, race, color, religion, or national origin.

(m) Any involvement in any organization which advocates the use of force to overthrow the U.S. Government; or any involvement in any organization involved in the commission of sabotage, espionage, or assisting others in terrorism.

(n) Any current or past circumstances known to the candidate that could have a bearing on his/her suitability for FBI JTF participation and/or access to sensitive and/or classified information.

(4) If necessary, the candidate should be recontacted to resolve any issues developed during the investigation.

(5) THE FIELD SECURITY COUNTERMEASURES PROGRAMS MANAGER SPONSORING THE CANDIDATE HAS THE AUTHORITY TO DISCONTINUE THE INVESTIGATION AT ANY TIME BASED ON INFORMATION DEVELOPED.

(6) If the candidate is still viable for clearance, the field submits original of the SF-86, two FD-258s (applicant fingerprint cards), results of the FO checks, and candidate interview with a cover communication to ISU AND auxiliary field offices, as appropriate, setting out type of investigation, 259C file number and 30-day Buded. FBIHQ Personnel Security Specialist reviews Headquarters' checks and, if necessary, advises field of unfavorable information.

(7) Field offices continue BI consistent with guidelines set out in Part II, Section 17, MIOG. However, this investigation must include ARREST CHECKS ON RELATIVES. Submit completed investigation to ISU with copies to office sponsoring the candidate.

(8) The ISU adjudicates trustworthiness and notifies the sponsoring FO of the clearance decision.

(9) The field Security Countermeasures Programs Manager provides a comprehensive briefing covering the handling of national security information and security policy and procedures of the FO.

(a) A COPY of the signed SF-312, "Classified Information Nondisclosure Agreement," is forwarded to the ISU.

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(b) When the candidate terminates the task force, the field provides a debriefing and forwards the ORIGINAL signed SF-312 to the ISU for the mandatory 50-year retention requirement.

EFFECTIVE: 04/12/94

259-4.2 Category II JTFs Consist of State and Local Candidates Participating in FBI Joint Task Forces Who Have NO NEED FOR A SECURITY CLEARANCE But Must Be Subjected to a Limited Security Investigation

(1) Specifically, this category applies to state and local candidates who will NOT have:

(2) Access to national security information in order to participate in joint task forces; OR

(3) Long-term unrestricted access to FBI information, personnel, and/or facilities.

EFFECTIVE: 04/12/94

259-4.2.1 Procedures for Conducting a Limited Investigation on State and Local Candidates Participating in FBI Joint Task Forces Who Have NO NEED FOR A SECURITY CLEARANCE

(1) Candidate completes pages 1, 2, 3, 9 (Certification only), and 10 of the SF-86, "Questionnaire for Sensitive Positions." The SF-86 is forwarded to the field Security Countermeasures Programs Manager.

(2) The field Security Countermeasures Programs Manager opens a 259C case, initiates indices, ALL available automated data base checks, local criminal checks, and police department Internal Affairs check.

(3) After reviewing the SF-86 and the results of the FO checks, the field Security Countermeasures Programs Manager or

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designee interviews the candidate and reports same on an FD-302. The interview should cover the following:

- (a) Completeness and accuracy of the SF-86.
- (b) Any involvement by the candidate in criminal matters as suspect or subject or any criminal charge, arrest, and/or conviction.
- (c) Any current or past circumstances known to the candidate that could have a bearing on his/her suitability for participation in an FBI JTF and its investigative mission.
- (4) The above items are not all inclusive and may be expanded depending upon the nature of the task force, degree of access, Risk Factor, and other information developed which may adversely affect the candidate's participation in an FBI JTF.
- (5) THE FIELD SECURITY COUNTERMEASURES PROGRAMS MANAGER HAS THE AUTHORITY TO DISCONTINUE THE INVESTIGATION AT ANY TIME BASED ON INFORMATION DEVELOPED.
- (6) If the field Security Countermeasures Programs Manager determines candidate is acceptable for participation in the FBI JTF, the candidate must be provided a comprehensive briefing covering the security policy and procedures of the FO.
- (7) All records regarding the above must be maintained in the FO 259C file. No reporting to FBIHQ is required in Category II cases.

EFFECTIVE: 04/12/94

259-5 SECURITY CLAUSES FOR JOINT TASK FORCE MEMORANDUM OF UNDERSTANDING

- (1) An integral part of the JTF process is a Memorandum of Understanding (MOU) to ensure clarity as to the responsibilities for each of the participating agencies.
- (2) An MOU is an agreement which is voluntarily entered into between the FBI and a cooperating state or local law enforcement

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agency which sets out the objectives of a joint investigation, the method of conducting the investigation, and the responsibilities of all parties.

(3) Depending upon the Category of the JTF (I or II), different security clauses will be necessary.

(a) CATEGORY I task forces require a DOJ Top Secret security clearance for state and local candidates who will have:

1. Access to national security information in order to participate in joint task forces; OR

2. Long-term unrestricted access to FBI information, personnel, and/or facilities.

(b) The CATEGORY I FBI JTF security clauses are as follows:

"Personnel of the (insert agency name) participating in this FBI Joint Task Force will be required to undergo a full background investigation for a Department of Justice Top Secret security clearance. If, for any reason, a candidate is not selected, (name of participating agency) will be so advised and a request will be made for another candidate.

"Sixty days prior to being assigned to this task force, each candidate will be required to furnish a completed "Questionnaire for Sensitive Positions" (SF-86) and two "Applicant Fingerprint Cards" (FD-258s) to the FBI. Sometime thereafter, an interview of each candidate will be conducted by an FBI representative.

"At the completion of the background investigation, each candidate selected will be granted a Department of Justice Top Secret security clearance and will receive a comprehensive briefing on the security policy and procedures of the FBI field office, to include the handling and protection of national security information. During the briefing, each candidate will execute a nondisclosure agreement (SF-312).

"Upon departure from the task force, each candidate will execute a nondisclosure agreement (SF-312) and will be given a security debriefing."

(c) CATEGORY II task forces require a limited

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background investigation for all state and local personnel who will NOT have:

1. Access to national security information in order to participate in joint task forces; OR

2. Long-term unrestricted access to FBI information, personnel, and/or facilities.

(d) The CATEGORY II FBI JTF security clauses are as follows:

"Personnel of the (insert agency name) participating in this FBI Joint Task Force will be required to undergo a limited background investigation. If, for any reason, a candidate is not selected, (name of participating agency) will be so advised and a request will be made for another candidate.

"Thirty days prior to being assigned to the task force, each candidate will be required to furnish pages 1, 2, 3, 9 (Certification only), and 10, of the "Questionnaire for Sensitive Positions" (SF-86). Sometime thereafter, an interview of each candidate will be conducted by a representative of the FBI.

"Upon being selected, each candidate will receive a comprehensive briefing covering the security policy and procedures of the FBI field office."

(4) Procedures regarding preparation of MOUs are outlined in the revised "FIELD GUIDE FOR UNDERCOVER AND SENSITIVE OPERATIONS," under the caption "CONTRACTS/AGREEMENTS, MEMORANDUM OF UNDERSTANDING." A sample of an MOU with the Security Clauses for Category I and CATEGORY II JTFs are located in the Appendix of the "Guide." This "Guide" was published by the Undercover and Sensitive Operations Unit, Corruption/Civil Rights Section, Criminal Investigative Division, FBIHQ.

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259-6 259D - OTHERS - ACCESS TO NATIONAL SECURITY INFORMATION  
(SEE MIOG, PART II, 17-2 (6).)

This category applies to individuals other than those in 259A, B, and C (supra), who must have access to NSI. This miscellaneous category has grown significantly in recent years and the following list is illustrative:

(1) Attorneys representing FBI employees in personnel actions requiring access to NSI;

(2) Federal civil judicial proceedings wherein the U.S. Government is a party and litigants must have access to NSI;

(3) Staff of Federal Independent Counsel, Special Counsel, etc.;

(4) Special Consultants (e.g., security professionals, administrators);

(5) Selected Federal Legislative and Judicial Branch personnel;

(6) Military personnel supporting FBI initiatives (see All SAC airtel, captioned "DEPARTMENT OF DEFENSE (DOD) SUPPORT FOR FBI COUNTERDRUG OPERATIONS SECURITY COUNTERMEASURES POLICY AND PROCEDURES, FCI - SECURITY COUNTERMEASURES," dated 1/10/94);

(7) Chaplains promoting health and welfare of FBI personnel (see All SACs airtel, captioned "FBI CHAPLAINS PROGRAM SECURITY COUNTERMEASURES POLICY AND PROCEDURES, FCI - SECURITY COUNTERMEASURES," dated 3/4/94);

(8) Other Federal personnel supporting FBI initiatives;

(9) Individuals needing access to NSI and, to do so, will need a DOJ security clearance.

If the Field Security Countermeasures Programs Manager receives a request for a security clearance in this miscellaneous category for which there are no existing policy and procedures, it must be coordinated with the ISU, SCMS, NSD, FBIHQ.

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259-7 | 259E - PERIODIC REINVESTIGATIONS/SECURITY CLEARANCES  
(See MIOG, Part II, 17-2; MAOP, Part II, 3-1.1 and  
3-1.2.)

All FBI noncontractor personnel possessing current and active security clearances five years old or older are to be reinvestigated to ensure trustworthiness for continued access to National Security Information.

(1) Individuals due for the five-year reinvestigation, both at the "Secret" and "Top Secret" levels, will be identified by field offices or divisions within FBIHQ. The reinvestigation will be initiated via electronic communication from field offices or divisions within FBIHQ and include the original Standard Form 86- (SF-86) to FBIHQ and set forth the required investigation.

(2) The reinvestigation for a "Secret" security clearance will include a candidate interview, a check of FBI indices (field and FBIHQ), automated data bases (FBIHQ), national agency checks (FBIHQ), local agency checks/arrest checks (field), and credit bureau checks (FBIHQ).

(3) The "Top Secret" reinvestigation will encompass the same areas as the "Secret" level and, in addition, will include verification of residence, interview of two neighbors, review of employment records, two employment references, and two character references developed by the investigator and not provided by the candidate.

(4) In all instances the investigation must be expanded to resolve any derogatory or adverse information. Newly listed information within the scope of the investigation, such as education, recent divorce, roommate, part-time military service and foreign travel must be addressed.

(5) Conduct investigation in accordance with the policy and procedures set out in MIOG, Part II, 17-6, entitled "Scope of Full Field Investigation."

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EFFECTIVE: 01/03/97

| 259-8 | CHARACTER - SECURITY CLEARANCE INVESTIGATIONS - CIPA; -  
FISA; - JTF; - OTHER; - PERSONNEL REINVESTIGATIONS/  
SECURITY CLEARANCES (See MIOG, Part II, 17-2; MAOP, Part  
II, 3-1.1 and 3-1.2.) |

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SECTION 260. INDUSTRIAL SECURITY PROGRAM

260-1 BACKGROUND AND PURPOSE (See MIOG, Part I, 67-18 (3) & 259-1; II, 35-9.2.)

(1) The Industrial Security Program (ISP) is designed to manage, control, and safeguard FBI information entrusted to contractors and thereby prevent damage to national security. In order to perform this task, the ISP cannot merely address the threat of espionage posed by contractor personnel who have access to National Security Information (NSI). It must also focus on those situations where there is potential risk to the national security by virtue of access by non-FBI personnel to sensitive unclassified FBI information, personnel, and facilities. The following are illustrative of major concerns the ISP must address: (See MIOG, Part I, 261-2 (6) & MAOP, Part II, 2-4.3.1 (1) (p).)

(a) All contracts which include new construction or modification of existing FBI facilities;

(b) All contractual arrangements with the private sector for the installation and/or service of any manufactured item essential to Bureau operations, i.e., computers, typewriters, building maintenance, automobiles, etc.;

(c) Any or all non-FBI individuals who are granted access to FBI facilities for whatever reason, to include but not limited to vendors, consultants, service people, etc.; and

(d) Traditional contractual arrangements involving the release of NSI to a contractor.

(2) The ISP is one segment of the FBI's Security Program which is included within the National Foreign Intelligence Program. The following classification and alpha designators have been approved for capturing field time expended on this aspect of the ISP. (See MIOG, Part II, 17-2 (7) & MAOP, Part II, 3-1.1 & 3-1.2.)

260A ISP - Personnel Clearance  
260B ISP - Facility Clearance  
260C ISP - Nonclassified Personnel/Access  
260D ISP - Other  
260E ISP - Personnel Clearance - Reinvestigations

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(3) The ISP is managed by the FBI Security Programs Manager (SPM) and the staffs of the Industrial/Facility Security Unit (I/FSU), Security Countermeasures Section, National Security Division.

(4) The guidelines in this section of the MIOG apply to all FBI components, both at FBIHQ and in the field. The policy and procedures set forth in this section apply to obtaining personnel and facility security clearances for contractors and their employees who require access to and/or storage of NSI. These guidelines also apply to personnel facility access approvals to FBI facilities for a contractor, its employees, and/or others accessing sensitive information, FBI personnel, or facilities, including equipment, not requiring access to NSI.

(5) General reporting procedures for 260 matters are contained in Part II, Section 17-6 of the MIOG.

EFFECTIVE: 03/07/96

260-2 PERSONNEL CLEARANCE 260A (See MIOG, Part I, 260-2.1(1) & 260-3.2(3).)

(1) |I/FSU| manages the investigation and clearance of those contractor personnel who will need access to NSI in order to fulfill the terms of their contract. Pursuant to Department of Justice Order 2640.2B, "Automated Information Systems Security," individuals who must also be investigated and cleared include contractor personnel who will require access to FBI computer systems (hardware and software) containing NSI or unescorted access to Bureau automated data processing (ADP) facilities where NSI is processed. Level of clearance required for those individuals involved in ADP or ADP facility maintenance is set forth in 260-4.3.2. Contractor personnel not requiring access to NSI, as set forth in this paragraph, are not subject to regulations promulgated by the |I/FSU|; however, they may be subject to guidelines set forth in |MIOG, Part I, |260-4. | (See MIOG, Part I, 260-2.5(3).)

| (2) | Cognizant Security Officer

The Cognizant Security Officer (CSO) is the FBI employee given the responsibility by the contracting component of the FBI to oversee security issues, e.g., Contracting Officer's Technical

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Representative, Division Security Officer, etc. The CSO will act as liaison between the FBI and the contractor on all matters relating to security.

EFFECTIVE: 07/11/94

260-2.1 FBI National Security Clearance Adjudicative Process

(1) Pursuant to a Letter of Agreement between the Department of Justice and the Department of Defense, dated March 19, 1976, and amended December 11, 1989, the FBI is a User Agency of the Defense Investigative Security Program as administered by the Defense Investigative Service (DIS). Therefore, except as set forth in 260-2.3, FBI contractors meeting the criteria in 260-2 (1) will require FBI background investigations and thereafter be granted clearances issued by the Defense Industrial Security Clearance Office (DISCO) and authority granted by the SPM to participate in Bureau projects involving NSI.

(2) The 1989 amendment to the 1976 Letter of Agreement permits the FBI considerable flexibility in the administration of its ISP. Notwithstanding the fact that a prospective contract employee has the requisite DISCO clearance, the SPM can conduct such investigation as is deemed necessary to make a determination of trustworthiness prior to placement of that contract employee into a Bureau project. Further, if during the course of the security clearance background investigation or at any other time information is developed indicating that the contract employee's continued participation in a Bureau project is not clearly in the best interests of national security, he/she may be removed by the SPM pending resolution of the trustworthiness issue by the DIS.

(3) Participation Authorization

Participation authorization is a determination by the SPM that a contract employee's involvement in a Bureau project is consistent with the best interests of national security. No contract employee may participate in a Bureau project involving NSI without SPM authorization.

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EFFECTIVE: 02/12/92

260-2.2 Interim Clearance/Participation Authorization

(1) Definition - DISCO "interim" clearance and SPM "interim" participation authorization are determinations based upon the completion of minimum investigative requirements and are granted on a temporary basis, pending completion of the full investigative requirements.

(2) Upon certification of an immediate need for a contract employee's participation in a Bureau project by the CSO, the I/FSU will seek an "interim" clearance from DISCO and the SPM can authorize "interim" participation by the contract employee to the requesting Bureau component. In those cases where the contract employee has the requisite DISCO clearance, I/FSU will, after meeting the minimum investigative requirements, request the SPM authorize "interim" participation.

(3) Requests for "interim" clearance/participation authorization must be justified by exigent circumstances and not submitted on a routine basis.

EFFECTIVE: 07/11/94

260-2.3 Department of Justice Clearances Issued to Contractors

The SPM may, from time to time, determine that a clearance for a contractor be sought from the Department of Justice (DOJ) rather than DISCO. In these cases, the field will be so informed by the airtel initiating the investigation. The completed investigation (or results of the preliminary investigation where an "interim" clearance is being sought) will be presented to the Department Security Officer, DOJ, for an adjudicative determination. An example of a contractor clearance issued by the DOJ is that provided to Special Investigators involved in the Background Investigation Contract Services program.

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EFFECTIVE: 02/12/92

||260-2.3.1 |Moved To 260-5.1|

EFFECTIVE: 03/07/96

260-2.4 Forms

(1) All contracting components within the FBI (FBIHQ or field) seeking a national security clearance or participation authorization on behalf of a contract employee should submit to the|I/FSU|an original and four copies of Standard Form (SF) 86, "Questionnaire for Sensitive Positions" (Revised date October 19, 1987), and two copies of an FD-258 "Applicant Fingerprint Card." It is the responsibility of the CSO to ensure that all submitted documentation is typewritten, complete, and accurate. All applications not meeting these criteria will be returned unprocessed.

(2) The above forms must be attached to a communication stating:

(a) the identity of the CSO;

(b) whether the candidate will require access (escorted or unescorted) to FBIHQ or field office facilities;

(c) the Corporate and Government Entity (CAGE) code of the contractor indicating that it is a DIS-cleared facility (see 260-3). CSOs must ensure that the contractor facility has the appropriate level of clearance (see 260-3 infra);| (See MIOG, Part I, 260-3.2(2).)|

(d) the level of clearance required;

(e) if applicable, justification for "interim" clearance/participation authorization.

(3) It is incumbent upon the CSO to advise the|I/FSU|expeditiously when a contract employee's participation in a



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Bureau project is no longer required.

(4) |I/FSU| will audit, on a semiannual basis, the continued need for contract employees to retain their clearance/participation authorizations.

EFFECTIVE: 07/11/94

260-2.5 Level of Clearance/Types of Investigations

(1) A determination of trustworthiness will be made in accordance with the standards set forth in Department of Defense Personnel Security Program Regulation, 5200.2R, Appendix I, entitled "Adjudication Policy-General." The scope of the FBI security clearance background investigation (BI) to be conducted is determined by the level of clearance sought. In any case, the SPM may expand the scope of the investigation in order to arrive at a determination of trustworthiness.

(a) "Top Secret" - A security clearance BI covering the past |10| years of an individual's life or from age 18 to the present, whichever is shorter. However, in no case may the BI cover less than a scope of two years.

(b) "Secret" - A security clearance BI covering the past five years of an individual's life or from age 18 to the present, whichever is shorter. However, in no case may the BI cover less than a scope of two years.

(c) "Confidential" - An investigation composed of various records checks conducted by FBIHQ and the field, as directed by |I/FSU|.

(d) Sensitive Compartmented Information (SCI) - FBI contractor access to SCI will be determined in accordance with the guidelines set forth in Part II, Section 26-10, of the MIOG.

(2) Investigative procedures for 260A are contained in Part II, Section 17, of the MIOG. Deviation from investigative procedures set forth in Part II, Section 17, may be requested by FBIHQ and will be detailed in the communication directing the investigation.

(3) The procedures set forth above must be adhered to by

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Bureau components involved in the use of contractors falling within the parameters set out in 260-2 (1) (supra). Certain CSOs may wish to impose additional security procedures in connection with projects they administer. In such cases, the CSO may institute changes with the prior approval of the I/FSU. (See (4) below.)

(4) Security Awareness Briefings for contractors granted clearances issued by the Department of Justice will be afforded by division Security Officers, as directed by the I/FSU. Briefings for those individuals cleared by DISCO will be conducted by their respective corporate Security Officers in accordance with the INDUSTRIAL SECURITY MANUAL or by the CSO as provided in 260-2.5 (3). Briefings for consultants cleared by DISCO is addressed in 260-3.2 (5) (infra).

EFFECTIVE: 07/11/94

260-3 FACILITY CLEARANCE 260B (See MIOG, Part I,  
260-2.4(2)(c).)

(1) Definition - A facility clearance (FCL) is an administrative determination that a facility is eligible from a security viewpoint for access to NSI of the same or lower classification level as the clearance being granted.

(2) An FCL is required of all firms with which the FBI engages in NSI contractual matters. DISCO will only issue personnel clearances for contract employees employed by a cleared facility (except as set forth in 260-3.2). An FCL is required, notwithstanding the fact that the contractor may not be required to possess NSI at its facility.

(3) Components of an FCL investigation are: personnel security clearances of designated owners, officers, directors, executive personnel (OODEPs); a determination of the foreign ownership, control, or influence to which the contractor may be subject; and the adequacy of safeguards to store NSI (if applicable).

(4) The FBI will rely upon the DIS to conduct the appropriate inspection and issue the requisite FCL. All CSOs will ensure that firms with which the FBI contracts to do classified work have an FCL at the requisite level of clearance or must submit a request for issuance or upgrade of FCL to the I/FSU.

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(5) The request for issuance or upgrading of an FCL must include:

- (a) the identity of the CSO;
- (b) the name, address, and telephone number of the contractor facility;
- (c) a point of contact at the facility who must be an OODEP;
- (d) a brief description of the work to be performed pursuant to the contract;
- (e) the level of clearance required;
- (f) whether NSI will be stored at the contractor facility.

(6) DIS industrial security representatives will advise the I/FSU of the identity of those individuals who will require personnel clearance investigations in connection with the FCL. The I/FSU will manage these background investigations and coordinate the results with the DIS and the CSO.

EFFECTIVE: 07/11/94

260-3.1 Contract Security Classification Specification Department of Defense Form 254

(1) The completed DD 254 is the basic document by which classification, regrading, and declassification specifications are documented and provided to contractors. It is designed to identify the specific items of NSI involved in the contract that require security classification protection.

(2) For those programs where the DIS will exercise total or partial control over the facility inspection of a Bureau contractor, the CSO will prepare a DD 254 and provide it to I/FSU. The DD 254 advises the DIS that a User Agency has a classified contract at a facility. It also assists the DIS industrial security representatives in determining whether NSI is being handled in

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accordance with established DIS policy and specific instructions as set forth on the DD 254.

(3) There may be circumstances when a CSO wishes to exclude a project or a portion thereof from the purview of DIS inspection. This is known as a "carve out." In such a case, the CSO should prepare a communication to the SPM setting forth a security plan containing the following:

- (a) justification for this request;
- (b) the exact location of the NSI retained at the contractor facility;
- (c) documentation that the CSO has the expertise to conduct facility inspections in lieu of the DIS;
- (d) a copy of the security guidance to be provided to the contractor.

(4) The I/FSU will coordinate notification of this "carve out" request with the Special Actions Branch at DIS Headquarters in Washington, D.C.

(5) In the event a project is removed from DIS inspection responsibilities, the CSO must certify to the SPM at least once per year that a facility inspection has been conducted consistent with the security plan approved by the SPM, as set forth above, and the results thereof.

EFFECTIVE: 07/11/94

260-3.2 Consultant Agreements

(1) An individual may qualify for a personnel security clearance despite the fact that he/she is not employed by a cleared facility if his/her contractual obligation to the Bureau meets the following guidelines: (See MIOG, Part I, 260-3 (2).)

- (a) NSI shall not be possessed by the consultant away from the premises of the FBI;
- (b) The FBI shall not furnish NSI to the consultant

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at any location other than the premises of the FBI;

(c) Performance of the consulting services by the consultant shall be accomplished in FBI office space and classification guidance will be provided by the FBI.

(2) The CSO will be provided a Consultant/User Agency Certification by the I/FSU which must be executed by the CSO and consultant. The executed Consultant/User Agency Certification should be attached to the memorandum requesting clearance action in lieu of the CAGE code as set forth in 260-2.4 (2).

(3) The scope of the security clearance background investigation and reporting requirements for consultants are identical to those outlined in 260-2 (supra).

(4) Upon issuance of the security clearance to a consultant by the DIS, the Security Officer for the field office covering the location of the consultant's employment or FBIHQ divisional Security Officer will be instructed by I/FSU to brief him/her pursuant to guidelines set out in Part I, Section 261, of the MIOG. The executed SF-312, "Classified Information Nondisclosure Agreement," must be returned to the I/FSU where it will be maintained.

(5) It is the responsibility of the CSO to advise the I/FSU when a consultant's participation in the Bureau project is no longer required. The I/FSU will thereafter direct the appropriate field office or FBIHQ Security Officer to debrief him/her, utilizing an SF-312. It is not necessary to debrief the individual on the same form used during the initial briefing. (See MIOG, Part I, 260-2.5(4).)

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260-4 NONCLASSIFIED PERSONNEL/ACCESS 260C (See MIOG, Part I,  
260-2 (1).)

(1) Definition

The FBI is concerned with any non-Bureau employee having access to our facilities, information, equipment or employees. Due to our investigative responsibilities in criminal and FCI matters, all contract and subcontract individuals have the opportunity to be compromised and directed by outside elements to seek sensitive criminal information or NSI in the course of their employment. This access creates a potential risk to national security, sensitive information, our facilities, equipment and employees' safety. Therefore, a consistent personnel facility access approval program for such a person must be made.

(2) Facility Access Determinations

Determinations of eligibility for personnel facility access will be made by the SPM and shall be made taking into consideration criteria set forth in EO 10450 and Director of Central Intelligence Directive 1-14 (copies maintained with each Security Officer). All contract individuals who require access to an FBI facility or information, but don't require clearance, shall be processed for either escorted or unescorted access.

EFFECTIVE: 07/11/94

260-4.1 Types of Personnel/Facility Access Background  
Investigations (See MIOG, Part I, 260-4.1.1(2)  
& 260-4.3.2(3).)

The basis for facility access eligibility approvals shall be adjudicated upon information concerning contract individuals acquired through investigative procedures or otherwise made available to the SPM. See 260-4.2 for details as to processing requirements. There are two types of background investigations which are used to approve individuals for escorted or unescorted access:

(1) Ten-Year Scope

(a) A ten-year background investigation covers the last ten-year period of the person's life or from age 18 to present,

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whichever is shorter.

(b) Part II, Section 17-6, of this manual should be used as a guideline for processing ten-year scope investigations.

(c) Twenty working days shall be allowed for I/FSU to conduct the initial processing (credit check, Criminal Justice Information Services (CJIS) Division checks, etc.) for a determination regarding "restricted" access which might allow the candidate limited access to his/her work area while the BI is being completed.

(2) Limited

(a) A limited background investigation consists of FBIHQ and/or field office indices checks, CJIS Division checks, National Crime Information Center (NCIC) wanted files, criminal history records through the NCIC Interstate Identification Index (III), local police agency checks, and, where applicable verification of citizenship or alien status.

(b) Five working days shall be allowed for I/FSU to conduct the above processing prior to the granting of escorted access.

EFFECTIVE: 07/11/94

260-4.1.1 Types of Access (See MIOG, Part II, 35-9.2.)

(1) ESCORTED

(a) Approvals of ESCORTED ACCESS eligibility shall relate to the short-term, intermittent, or infrequent basis to provide some service, product, or perform some other official function of interest to the FBI. Individuals who fall within this category shall be escorted at all times.

(b) Normally a limited background investigation is required, except in the subsections noted in (c) and (d), below.

(c) Some examples of people within this category include repair service persons for electrical and plumbing equipment, vending machines, etc.

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The maintenance and cleaning workers (char force) who provide daily cleaning services in resident agency (RA) offices may also fall in this category. (See paragraph (2)(c) below.)

(d) Individual(s) working on computers, telephones, and radio equipment may require a ten-year background investigation at the discretion and instruction of the SPM, FBIHQ (see Sections 260-4.3.2 and 260-4.3.3). Depending on the location of the worksite, the SAC or other designated official may require an escort for a contract individual in addition to the ten-year background investigation.

(e) A credit check is not required for a limited background investigation; however, it may be conducted at the requestor's discretion. In this instance, an FD-406 (Authority to Release Information) must be completed and forwarded to FBIHQ for processing. Credit checks will then be conducted by contractor personnel at FBIHQ.

(f) The limited background investigation should not be AUTOMATICALLY selected simply because a particular individual is going to have escorted access on a short-term or intermittent basis. (See Section 260-4.3.3 (Telephones) and (2) below (Unescorted).)

(2) UNESCORTED

(a) Approvals of UNESCORTED ACCESS eligibility shall relate to the frequency and/or recurrence of the person's access to the facility (e.g., persons performing daily maintenance or daily contracting duties generally consisting of more than 90 days). Other areas of consideration may include individuals on emergency or 24-hour call status, or an individual being exposed to equipment containing sensitive information. Unescorted access allows the contractor to go to and from his/her work area without an FBI escort. In other words, the contractor employee granted unescorted access may only access these components of the FBI facility consistent with performance of his/her contract duties.

(b) A ten-year background investigation is required. (See MIOG, Part I, 260-4.1.)

(c) The SAC may waive the ten-year background requirement for char force individuals who perform daily janitorial duties within an RA or overt off-site facility, providing that an FBI employee is present in the room while the person is cleaning. This



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waiver applies only to RAs and off-site facilities. (See (1)(c).)

(d) A security briefing should be provided to any contract individual who has been granted unescorted access privileges to FBI space. At the completion of the briefing, the contract individual should execute "Security Acknowledgement Form," FD-835, by reading the form and signing and dating the bottom of page two. The FBI employee who conducts the briefing should be identified as the Witness. The original FD-835 should be maintained in the individual's investigative file located in the field office or at FBI Headquarters (FBIHQ), depending upon where the individual is working.

EFFECTIVE: 03/07/96

260-4.2 Forms (See MIOG, Part I, 260-4.1 & 260-4.3.2.)

(1) Processing requirements depend on the work to be performed and the type of access (escorted vs. unescorted) needed for a contract individual to perform his/her duty.

(2) Generally, a limited background investigation will be conducted on escorted individuals, whereas a ten-year background investigation will be conducted on unescorted individuals. There are exceptions to this guideline, as noted in Sections 260-4.3.2 and 260-4.3.3.

(3) The below-listed forms must be completed where applicable:

(a) STANDARD FORM (SF)-86 - QUESTIONNAIRE FOR  
SENSITIVE POSITIONS

The SF-86 must be completed when UNESCORTED access for contract individuals is required to FBI facilities on a daily basis, where the security clause of the contract requires it, or where exposure to sensitive material may be likely due to the type of equipment, location of work area, etc. (See MIOG, Part I, 259-2(1).) When using this form, candidates must be interviewed, to ensure all questions have been answered and information required to conduct the background investigation has been furnished. The results of the interview shall be furnished on an FD-302 and accompany the FD-316, SF-86, and other required forms, upon submission to FBIHQ. Refer to Part II, Section 17-6 of this manual for guidance.

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NOTE: An FD-484 and FD-406 are NOT used in conjunction with an SF-86. All SF-86 forms dated prior to December, 1990, are obsolete and should be destroyed. Obsolete forms will not be processed by the Industrial/Facility Security Unit.

(b) Form FD-816, "Access of Non-FBI Personnel to FBI Facilities, Background Data Information Form."

The FD-816 must be completed for all contract individuals who require escorted access to any FBI facility (i.e., Quantico, field office, resident agency, etc.).

(c) FORM FD-258 - FBI FINGERPRINT CARD

Two sets of fingerprint cards (only one card required if fingerprinted at FBIHQ) must be completed for all contract individuals who require access, whether escorted or not, to FBI facilities on two or more occasions. This requirement for contract individuals for access not to exceed five days, on a one-time basis only, may be waived.

(d) FORM FD-316 - "ISP, ACCESS OF NON-FBI PERSONNEL TO FBI FACILITIES"

The FD-316 is the form used to request access to an FBI facility by non-FBI individual(s) contracted to perform a service for the Bureau. The FD-316 is to be completed by the Bureau employee who is requesting the access for the non-FBI contract individual(s).

(e) FORM FD-406 - "AUTHORITY TO RELEASE INFORMATION"

The FD-406 must be completed for obtaining sensitive information, i.e., credit checks, medical records, etc., when an SF-86 is not necessary. This form should not be submitted in conjunction with an SF-86. Credit checks will be processed by contractor personnel at FBIHQ once the FD-406 is completed and forwarded to FBIHQ.

(f) FORM FD-484 - "PRIVACY ACT ACKNOWLEDGEMENT"

A Form FD-484, signed and dated by the contract individual, must be attached to each FD-316 when an SF-86 is not required. A copy should be given to the individual requiring access.

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(g) FORM FD-835 - "SECURITY ACKNOWLEDGEMENT FORM"

The Form FD-835 is to be signed and dated by the contract individual, who has been granted unescorted access privileges to FBI space. The FBI employee who conducts the briefing should be identified as the Witness. By use of this form, in the event of a security violation, the FBI will have a record that the information was provided to the contractor. The original FD-835 should be maintained in the individual's investigative file located in the field office or at FBIHQ, depending upon where the individual is working.

The below-listed examples should be used as a guideline for processing purposes:

ESCORTED ACCESS

(Field Office or FBIHQ)

FD-316

FD-816

FD-484

FD-258 (Two copies) (One copy if  
if taken at FBIHQ)

UNESCORTED ACCESS

(Field Office or FBIHQ)

FD-316

SF-86

FD-258 (Two copies) (One copy  
if taken at FBIHQ)

FD-835

EFFECTIVE: 03/07/96

||260-4.3| Special Cases

EFFECTIVE: 04/19/91

||260-4.3.1| Aliens

Immigrant aliens and foreign nationals who contract with or are employed by the United States Government are not eligible for the same type of access eligibility approval that may be granted to United States citizens, but may only be provided with limited access authorizations which shall authorize access only for specific programs, projects, or contracts. Long-term contracts requiring daily access to FBI facilities (i.e., maintenance workers) should be reserved for U.S. citizens.

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EFFECTIVE: 04/19/91

260-4.3.2 Computers (See MIOG, Part I, 260-2(1), 260-4.1.1(1)(d) & 260-4.2(2).)

(1) A microcomputer is classified at the highest level of information that has been entered into, stored on, or processed by the system unless the COMPUTER SYSTEM can be appropriately declassified. Automated Data Processing STORAGE MEDIA (operative and inoperative, removable and nonremovable) and NONVOLATILE MEMORY DEVICES may NEVER be downgraded or declassified in the field.

(2) Hardware and/or software maintenance on classified computer devices may only be performed by individuals possessing a clearance commensurate with the classification levels of the computer equipment..

(3) Individuals performing hardware and/or software maintenance on unclassified computer devices must, at a minimum, be subject to a limited background investigation consisting of those checks identified in Section 260-4.1, "Types of Personnel/Facility Access Background Investigations," and 260-4.2, "Forms."

(4) Because hardware and software maintenance activity may affect the integrity of existing protection measures or permit the introduction of security exposures into a system (e.g., computer viruses, trojan horses, logic bombs, implant devices, etc.), all maintenance work must be supervised by FBI personnel knowledgeable in the operation of microcomputers, regardless of the classification of the microcomputer or its associated media.

See MIOG, Part I, 261-2(1), "Federal Bureau of Investigation, ADPT Security Policy," for more information.

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260-4.3.3 Telephones (See MIOG, Part I, 260-4.1.1(1)(d) & (f),  
260-4.2(2).)

(1) As all new contracts with telephone companies will contain an updated security clause, the scope of the background investigation will not coincide Bureauwide until all contracts have been renewed.

(2) The field office|Supervisory Administrative Specialist (SAS)|should be contacted to determine the scope of the background investigation of a telephone company employee in coordination with FBIHQ.

(3) All telephone company employees who require access to FBI facilities to perform installations within or service to the telephone switch shall be afforded a ten-year background investigation.

EFFECTIVE: 07/11/94

260-4.3.4 Photocopiers

All photocopier technicians who require access to FBI facilities to service photocopying machines must be processed for a ten-year background investigation. This policy applies to all FBI facilities, including resident agencies.

EFFECTIVE: 07/11/94

260-4.3.5 Contract Physicians

To assist the FBI in conducting the required periodic and/or fitness-for-duty evaluations for on-board employees and applicants, the Health Care Programs Unit (HCPU), Personnel Division, FBI Headquarters (FBIHQ), grants contracts to physicians within each FBI field office territory, as well as Clarksburg, West Virginia; the FBI Academy, Quantico, Virginia; and FBIHQ. The majority of the fitness-for-duty physicals occur within the office space of the

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contract physician, as opposed to the actual FBI facility.

(1) SECURITY REQUIREMENTS

(a) Prior to granting the contract to a medical group or local physician, the HCPU, Personnel Division, FBIHQ, may require the field office to conduct an on-site inspection of the physician's office. The inspection will determine the level of security which will be afforded to the FBI information provided to contract physicians, whether medical, personal, or administrative data.

1. If within regular Bureau space, security of documentary materials shall be no less than a locking file-type or similar cabinet in a restricted access location. If the volume of data requires the open storage of such materials, a dedicated closet, room, or facility shall be provided to which there is restricted access by only medical and other authorized personnel. The door(s) to this location shall be equipped with security locking hardware, uniquely keyed to maintain access to only medical or other authorized personnel.

2. If within contractor space and Bureau material is identifiable as such, security of documentary materials shall be no less than a locking file-type or similar cabinet maintained in a location to which only Bureau-approved personnel have access. If the volume of the materials is such that open storage is required, it shall be maintained in a restricted-access area, the doors to which are equipped with security locking hardware, uniquely keyed to restrict access to only Bureau-approved personnel to have access. The general office space shall have typical business-type facility protections. Although an intrusion detection system is preferred, one is not required. No classified material may be maintained in this facility, unless approved in writing by the Security Programs Manager, FBIHQ, and both the facility and the appropriate employees have been cleared at the appropriate level for handling or maintenance of classified materials.

(2) REQUIRED FORMS

All physicians being considered as potential contractors will be required to complete either an SF-85p, "Questionnaire for Public Trust Positions," or an SF-86, "Questionnaire for National Security Positions." The appropriate form to be completed will be determined based on the location of where the physicals will be performed.

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(a) If the physicals will be conducted in the physician's office, then the physician would be required to complete the SF-85p. If the physicals will be performed within the field office space, the physician would be required to complete the SF-86. Regardless of which form is executed, it should be completed in its entirety, and ALL release forms and certification statements must be signed and dated.

(b) Each physician will be required to submit two FD-258 (blue) fingerprint cards.

(3) FIELD OFFICE PRELIMINARY INVESTIGATIVE  
RESPONSIBILITIES

(a) Appropriate field office checks must be conducted on the contract physician prior to submitting the security forms to FBIHQ for processing. The appropriate checks should include field office indices, local law enforcement checks, and a review of computerized National Crime Information Center (NCIC) Wanted File records and Interstate Identification Index (III) criminal history checks. When conducting the III checks, both "QH" and "QR" checks should be conducted, if possible.

(b) The physician should be provided with a standard candidate interview consisting of a review of information provided by the individual on his/her appropriate background form to ensure the accuracy of the information. Issues of concern or security-related matters should be addressed, if identified. During the interview, the physician should be asked the question, "Have you ever had your medical privileges suspended or revoked?" The results of the candidate interview should be provided on an FD-302.

(c) The requesting field office will be responsible for assigning the 260 file number. Each physician should be assigned an individual file number.

(4) SUBMISSION OF THE REQUEST

Although the physicians will be processed under the 260 classification, the method of requesting the background investigation is different than outlined in Part I, Section 260, MIOG. Requests for conducting a BI on a contract physician shall be submitted using the Electronic Communication (EC) format marked to the attention of the I/FSU, NSD, Room 4362, and the HCPU, Personnel Division, Room 6344, each with leads "For appropriate action."

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The same EC shall also set forth field office leads to verify the proposed physician's status with the American Medical Association (AMA) and State Licensing Bureau (SLB). Determine if the candidate physician is currently licensed to practice medicine, certified by the AMA, and if there have been any claims of malpractice filed against the physician. When obtaining this information, the following questions should be used:

QUESTIONS TO THE AMA:

"Is the candidate a person of good standing with the AMA?"

"Has the candidate ever had any medical claims against him/her?" If yes, what are they, when did they occur, and what was the outcome of the claim.

QUESTIONS FOR THE SLB:

"Does the candidate have a current license to practice medicine in this state?"

"Has the candidate ever had his/her license suspended or revoked?" If so, when and for what reason.

LEADS TO CONDUCT THE REMAINING INVESTIGATION SHOULD BE HELD IN ABEYANCE UNTIL FURTHER NOTICE FROM THE I/FSU.

For contractual reasons, the results of the above investigation shall be received at FBIHQ within ten working days from the date of the requesting EC. Copies of the investigative results should be directed to the attention of both the I/FSU and HCPU.

(5) CONDUCTING THE REMAINING INVESTIGATION

The I/FSU will adjudicate the results of all preliminary investigation to determine if the remaining BI should be initiated. If the remaining investigation is to be conducted, the I/FSU will promptly initiate the appropriate leads. At the same time, the EC setting forth the remaining investigation will advise the initiating division if the physician has been approved for access to FBI information or facilities pending completion of his/her BI. This office will be responsible for notifying the appropriate field office personnel of this information. Separate notification may also come from the HCPU.

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(6) SUBMISSION OF FINAL BACKGROUND INVESTIGATION RESULTS

(a) Results of the additional BI conducted shall be provided only to the I/FSU, NSD. THE HCPU WILL RECEIVE ONLY THE RESULTS OF THE PRELIMINARY INVESTIGATION QUESTIONS.

(b) Upon review of the completed investigative results, the Security Programs Manager, NSD, will provide the final adjudication concerning the continual access of the physician to FBI information and facilities.

(7) SUBMISSION BY FBIHQ AND FBIHQ FACILITIES

(a) The medical staff assigned to Clarksburg, West Virginia, or Quantico, Virginia, will be responsible for conducting a preliminary review of the application to determine if all of the requested information has been provided. The HCPU will handle this function for FBIHQ.

(b) Once the BI questionnaires are determined to be acceptable, the medical staff or HCPU should contact the AMA and SLB to determine the answers to the questions previously set forth. Upon receipt of this information, the security forms should be furnished to the I/FSU, NSD, by an EC. The results of the questions should be provided. Requests from Clarksburg, West Virginia, and Quantico, Virginia, should send a copy of the requesting EC to the attention of the HCPU, Personnel Division, with the original coming to I/FSU, NSD.

(c) Following the adjudicative review of the initial background checks, the I/FSU will set forth instructions to the appropriate field office or Background Investigative Contract Services (BICS) territory to conduct the initial candidate interview, obtain the file number for each submission, and, when appropriate, initiate the BI, as outlined above.

(8) FBI FIELD OFFICE PROCESSING OF THE PHYSICIAN'S OFFICE STAFF

(a) Each member of the physician's office staff who will have access to the records and administrative information pertaining to FBI referrals will require a limited BI. Noting that these individuals will be responsible for the security of sensitive medical and related data pertaining to Bureau personnel and applicants (through the initial candidate interview, office security visit or other appropriate means), it will be the responsibility of the handling office to identify the applicable staff members. Each

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individual will be required to complete Form FD-816, "Access of Non-FBI Personnel to FBI Facilities Background Data Information"; Form FD-484, "Privacy Act Acknowledgement"; and two FD-258 (blue) fingerprint cards. The field office shall conduct appropriate local record checks and submit the results to FBIHQ using the same procedures for processing escorted access requests as set forth in the MIOG, Part I, Section 260.

(b) Upon favorable adjudication of local record checks, the SAC of the requesting office may grant the equivalent of escorted access UACB. Requests which contain derogatory information which cannot be mitigated according to Bureau guidelines will be adjudicated on a case-by-case basis by the Security Programs Manager (SPM).

(9) FBIHQ AND FBIHQ FACILITIES - PROCESSING OF THE  
PHYSICIAN'S OFFICE STAFF

The security forms outlined above will be required for FBIHQ facilities contracts as well. Once the forms are obtained, they should be forwarded to the I/FSU for processing.

EFFECTIVE: 11/12/96

260-5 | PERSONNEL CLEARANCE REINVESTIGATIONS 260E |

EFFECTIVE: 03/07/96

260-5.1 Personnel Clearance Reinvestigations - Annual  
Reinvestigations of Contract Linguists (See MIOG, Part II,  
17-2.)

All FBI Contract Linguists on-board in excess of one year will be subject annually to a personnel security interview (PSI) to determine their continued "trustworthiness" to NSI. The PSI will cover, but not be limited to, the following:

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- (1) Changes in any information provided in the original application.
- (2) Foreign travel, if any, during the past year.
- (3) Contact, if any, with a foreign national not previously identified in the original SF-86.
- (4) Any other employment or source of income not reported to the FBI.

EFFECTIVE: 03/07/96

260-5.2 Personnel Clearance Reinvestigations - Contractors Other Than Contract Linguists (See MIOG, Part II, 17-2.)

All FBI contractor personnel possessing current and active security clearances five years old or more are to be reinvestigated to ensure trustworthiness for continued access to NSI.

(1) Individuals due for the five-year reinvestigation, both at the "Secret" and "Top Secret" levels, will be identified by FBIHQ. The reinvestigation will be initiated via communication from FBIHQ which will enclose the Standard Form 86 (SF-86) and set forth the required investigation.

(2) The reinvestigation for a "Secret" security clearance will include a candidate interview, a check of FBI indices (field and FBIHQ), automated data bases (FBIHQ), national agency checks (FBIHQ), local agency checks/arrest checks (field), and credit bureau checks (FBIHQ).

(3) The "Top Secret" reinvestigation will encompass the same areas as the "Secret" level and, in addition, will include verification of residence, interview of two neighbors, review of employment records, two employment references, and two character references developed by the investigator and not provided by the candidate.

(4) In all instances the investigation must be expanded to resolve any derogatory or adverse information. Newly listed information within the scope of the investigation, such as

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education, recent divorce, roommate, part-time military service, and foreign travel must be addressed.

(5) Conduct investigation in accordance with the policy and procedures set out in MIOG, Part II, 17-6, entitled "Scope of Full Field Investigations."

EFFECTIVE: 03/07/96

||260-6| CHARACTER - INDUSTRIAL SECURITY PROGRAM - PERSONNEL  
CLEARANCE; - FACILITY CLEARANCE; - NONCLASSIFIED  
PERSONNEL/ACCESS; -|OTHER; PERSONNEL CLEARANCE  
REINVESTIGATIONS (See MAOP, Part II, 3-1.1 & 3-1.2.)|

EFFECTIVE: 03/07/96

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Section 552Section 552a☐ (b)(1)☐ (b)(7)(A)☐ (d)(5)☐ (b)(2)☐ (b)(7)(B)☐ (j)(2)☐ (b)(3)☐ (b)(7)(C)☐ (k)(1)☐ (b)(7)(D)☐ (k)(2)☐ (b)(7)(E)☐ (k)(3)☐ (b)(7)(F)☐ (k)(4)☐ (b)(4)☐ (b)(8)☐ (k)(5)☐ (b)(5)☐ (b)(9)☐ (k)(6)☐ (b)(6)☐ (k)(7)

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- ☐ Documents originated with another Government agency(ies). These documents were referred to that agency(ies) for review and direct response to you.

Pages contain information furnished by another Government agency(ies). You will be advised by the FBI as to the releasability of this information following our consultation with the other agency(ies).

8 Page(s) withheld inasmuch as a final release determination has not been made. You will be advised as to the disposition at a later date.

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- ☐ The following number is to be used for reference regarding these pages: \_\_\_\_\_

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SECTION 261. SECURITY OFFICER MATTERS (SOM)

261-1 BACKGROUND AND PURPOSE (See MIOG, Part I, 67-18 (3),  
259-2 (6), & 260-3.2(4); MAOP, Part I, 15-3.4(1).)

Each FBI Headquarters division and office, field office and Legal Attache will designate a Supervisory Special Agent (GM-14 or above) as the Security Countermeasures Program Manager (SCMPM). This individual is responsible for the management of all FBI Security Program activities, including specific Security Officer responsibilities in their division/office. A Security Officer and as many Alternate Security Officers as necessary should be employed to administer the Security Program. Wherever possible, Special Agents should be designated to serve as Security Officers and Alternate Security Officers. The Security Programs Manager (SPM), National Security Division, FBIHQ, should be kept advised of the identities of designees. To avoid potential conflicts of interest, the Employee Assistance Program (EAP) Coordinator (or counselor) or anyone administering the EAP should not also be assigned the responsibilities of SCMPM and/or Security Officer. (See FCI Manual, Part II, 1-1.)

EFFECTIVE: 11/15/93

261-2 PROGRAM FUNCTIONS (See MAOP, Part II, 3-1.1 & 3-1.2; and National Foreign Intelligence Program Manual (NFIPM), Part I, 8-1.1.)

Under the above caption, the functions of these programs are as follows:

(1) 261A - SOM - AUTOMATED DATA PROCESSING/  
TELECOMMUNICATIONS SECURITY (ADP/T)

The ADP/T security will consist of those activities involved in the protection of information while being stored, processed, handled, or transmitted by ADP/T systems. The ADP/T security operates under the guidelines set forth in the FBI's Automated Data Processing and Telecommunications Security Policy, MIOG, Part II, Section 35. The responsibilities of the Security Officer are to ensure compliance with FBIHQ security policy for FBI

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c. Private contractor personnel in connection with the Industrial Security Program.

d. If so designated, may conduct or participate in security debriefings of certain Bureau applicants who are the subjects of specific reviews or inquiries directed by the SPM or SPM's designee.

e. If so designated, other non-Bureau personnel, as circumstances may require.

5. Conduct periodic security awareness updates at scheduled SAC, support, and SA conferences, and on other occasions, as appropriate.

6. As designated, special individualized security awareness briefings or debriefings of current Bureau employees who are the subjects of specific reviews or inquiries directed by the SPM or SPM's designee.

7. Briefing FBI personnel involved in the management, operation, programming, maintenance, or use of FBI ADPT systems to make them aware of the threats to and vulnerabilities of those systems, and appropriate security countermeasures.

8. Under the Personnel Security Interview (PSI), the time expended on this interview is to be captured for TURK purposes under the FBI Security Program, entitled "Security Officer Matters," by utilization of classification 261B. Additionally, for TURK purposes a record of the interview is to be maintained in the field office in a control file under the 261B classification. (For complete details see MIOG, Part I, 67-7.9, 67-7.9.1, 67-7.9.2 & 67-7.9.2(11).)

(d) Each field office is to establish a control file under the 261B classification. A record of each briefing/debriefing conducted is to be maintained in this control file, in addition to a copy which is to be maintained in the individual substantive file to which the matter relates. The time expended on any of the above briefings/debriefings is to be captured for TURK purposes under the 261B classification. (See MIOG, Part I, 67-7.9.2 (11).)

(e) All specialized training on the topics of security awareness and Security Awareness Briefings provided to FBI employees shall be documented and placed on record in the security/investigative section of the employee's personnel file.

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(3) 261C - SOM - INFORMATION SECURITY

The Executive Order 12958; Department of Justice Implementation Order 28; Code of Federal Regulations, Part 17; and Part II, Section 26, of this manual, set forth procedures for classifying and safeguarding NSI, and investigating security violations involving NSI. The activities of the Security Officer would be as follows:

(a) Ensure procedures are followed for the classification, storage, transmission and destruction of NSI. (See Part II, Section 26, of this manual.)

(b) Ensure procedures are followed in the conduct of a damage assessment concerning the loss or possible compromise of classified information. See Part II, Section 26-13.1, of this manual, and Memorandum to all SACs 22-85, dated July 23, 1985, entitled "Loss or Possible Compromise of Classified Information."

(c) Act as "Top Secret" and Sensitive Compartmented Information (SCI) Control Officer. See Part II, Sections 26-6 and 26-10, of this manual.

(d) Other activities expended on the protection of NSI are not specifically enumerated.

(4) 261D - SOM - PHYSICAL SECURITY

The goal of Physical Security is to help ensure the safety and integrity of Bureau facilities, information, and personnel through the use of physical barriers designed to prevent unauthorized access by any individual or group whose interests may be inimical to those of the Bureau or the United States. FBIHQ and field divisions should direct any inquiries to the Facility Security Unit, Security Countermeasures Section, National Security Division, FBIHQ.

(a) The General Services Administration (GSA) tests and provides the minimum standards for storage equipment used to protect classified materials and information. The Department of Justice (DOJ) provides implementing guidelines in Title 28, Code of Federal Regulations, Part 17, or in the form of Orders, Security Bulletins, or letters to the heads of agencies and bureaus. Guidelines for the protection of storage of classified materials and information are set forth in Part II, Section 26-5 of this manual.

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(b) For the administrative responsibilities of a Security Officer with regard to the proper use and changing of lock combinations and the maintenance of lock combination records, refer to Part II, Sections 16-7.2.6(9) and 26-5.4, of this manual. (See National Foreign Intelligence Program Manual, Part I, 8-5.4.)

(c) Electronic Technicians have installation and maintenance responsibilities for Hirsch Access Control Systems.

(5) 261E - SOM - OPERATIONS SECURITY

Operations Security (OPSEC) is an analytical process which denies potential adversaries information concerning operations and intentions by identifying and protecting generally unclassified indications of sensitive operations and activities. Overall management of this program is the responsibility of the Security Programs Manager (SPM). Local management of OPSEC is the responsibility of the Security Countermeasures Program Manager (SCMPM) in each division or office. Inquiries should be directed to the Information Systems Security Unit, Security Countermeasures Section, National Security Division, FBIHQ.

(a) OPSEC addresses five areas:

1. Identification of critical information
2. Threat analysis
3. Vulnerability analysis
4. Risk assessment
5. Applicable countermeasures

(b) OPSEC should be actively practiced in all facets of FBI operations, programs, and administrative procedures.

(c) An OPSEC control file is to be established by each field and FBIHQ division and office, Legat, Regional Computer Center, and, as applicable, other off-site locations. Any time the OPSEC process is formally applied to any investigative or administrative matter, this fact is to be documented in the affected file, with a copy designated to the control file.

(6) 261F - SOM - EMERGENCY PLANS

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Executive Order 12656, and various Department of Justice Orders direct the FBI to prepare Emergency Plans (EP) to protect life and property and to ensure the continuity of essential operations in any emergency. Overall management of EP activities is the responsibility of the Security Programs Manager. Local management of EP is the responsibility of the SAC and the Security Officer (SO) in each field and FBIHQ division. Inquiries should be directed to the Information Systems Security Unit, Security Countermeasures Section, National Security Division, FBIHQ.

(a) Emergency Plans address the following areas:

1. Preparation of an Occupant Emergency Plan (OEP) for FBI facilities to minimize risk to life and property during fire, bombing, earthquake, civil disturbance or other emergency. The OEP is a document that sets forth procedures and assigns responsibility for an orderly and systematic response to emergencies in order to protect people, property and information.

In buildings or facilities where the FBI is the prime tenant, the Senior Official in Charge (SOIC) of the FBI resident component, with the assistance of the Division Security Officer and the Collateral Duty Safety Officer, shall be responsible for development of the OEP. Where the FBI is not the prime tenant, the SOIC shall cooperate with the prime tenant to develop an OEP. If the prime tenant fails to develop an adequate OEP, the SOIC shall develop an independent plan to ensure the safety of FBI personnel and the protection of FBI property. The term "prime tenant" is defined as the organization with the largest number of employees in a building or facility.

The OEP shall include a written memorandum to occupants addressing evacuation procedures in the event of fire or other emergency. The plan shall also designate handicap, stairway and floor monitors, where necessary, to assist personnel during an evacuation. Additionally, procedures for the protection of classified and sensitive information during an evacuation should be incorporated into the OEP. To facilitate development of a plan, the NSD, SCMS, ISSU, has available a booklet titled "OCCUPANT EMERGENCY PROGRAM GUIDE," published by the General Services Administration. This booklet outlines a step-by-step approach to development of an OEP.

The OEP shall be reviewed annually and updated as necessary. Prime tenants should also conduct and document an annual evacuation drill. Whenever the FBI occupies a new or modified facility, an OEP shall be developed within 30 days of occupancy.

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2. Preparation of tactical security plans for each FBI-controlled facility, whether covert or overt, to manage, contain, and neutralize hostile actions directed at or in those facilities. Plans shall document procedures, outline authorities, and assign responsibilities for an orderly and systematic response. Each facility housing more than 50 personnel shall have its own plan. At the discretion of the preparing office, multiple locations with less than 50 personnel each may be addressed in one plan or contained as an appendix to the headquarters city plan.

Where FBI employees are located in facilities not controlled by the FBI, every effort should be made to afford them the same protections they enjoy in FBI space. If security is deemed inadequate at these facilities, appropriate action should be taken to include removal of employees from the space.

Preparation of tactical security plans should be a cooperative effort between the SAC, the Security Officer, the SOIC of the facility, and the SWAT Team Leader. Additional guidance is available in the Manual of Investigative Operations and Guidelines (MIOG), Part II, 30-1, titled "Crisis Management Program," and FBIHQ airtel to all offices dated February 10, 1995, captioned "Physical Security; Tactical Plans for Field Office, Resident Agency, and Off-Site FBI Space," or from the SAC, Critical Incident Response Group (CIRG), Quantico. Plans shall be reviewed annually and updated as necessary.

3. Identification of critical FBI functions and the resources necessary to carry out those functions in time of emergency.

4. Identification of relocation sites, development and maintenance of plans to relocate critical functions to those sites in time of emergency. (Note that MIOG, Part II, 26-3.4, directs that the identity, location and other factors concerning FBI relocation sites be classified "Secret" until the activation of those sites during a national security emergency.)

5. Promotion of individual and family preparedness among FBI employees to ensure their safety, speedy recovery, and return to duty following an emergency. A variety of preparedness materials are available from local emergency management agencies, the Federal Emergency Management Agency (FEMA), and the NSD, SCMS, ISSU, FBIHQ.

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6. Cooperation with certain other government agencies, as directed by the SPM, in the development and maintenance of plans to ensure continuity of government in national security emergencies.

(7) 261G - SOM - ALL OTHER

This category will encompass the duties Security Officers perform which are not specifically addressed in A through F above.

The other classifications in the FBI Security Program are 67E, 259, and 260 and are explained in those sections of the MIOG, Part I.

EFFECTIVE: 09/09/97

261-3 CHARACTER - SECURITY OFFICER MATTERS

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SECTION 262. OVERSEAS HOMICIDE/ATTEMPTED HOMICIDE -  
INTERNATIONAL TERRORISM (OHAHT)

262-1 OVERSEAS HOMICIDE/ATTEMPTED HOMICIDE - INTERNATIONAL  
TERRORISM

(1) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (ODSAA), Public Law 99-399, created Section 2331 in Title 18 of the United States Code (USC), entitled, "Terrorist Acts Abroad Against United States Nationals," which became effective August 27, 1986.

(2) This section makes it unlawful for any person to assault, attempt to kill or kill a United States national while that person is outside the United States or its territories. To enter into a conspiracy to commit an assault, attempt to kill or murder is also considered unlawful under this statute.

EFFECTIVE: 07/14/88

262-2 BACKGROUND

In an effort to protect United States nationals abroad from acts of terrorism, as part of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (ODSAA), Congress enacted a provision regarding assaults and murder of United States nationals. Prior to this legislation only Government officials and diplomatic persons were protected from such attacks under Federal law. These steps were taken as there are no international agreements to protect individuals from such attacks. An important feature of this statute is that before any prosecution of this offense is initiated it requires written certification from the Attorney General or the highest subordinate of the Attorney General with responsibility for criminal prosecutions to state that the offense committed was to coerce or influence a government or civilian population.

EFFECTIVE: 07/14/88

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262-3 STATUTE, PENALTY AND DEFINITIONS

Title 18, USC, Section 2331, reads as follows:

"2331. Terrorist acts abroad against United States nationals

"(a) HOMICIDE.-- Whoever kills a national of the United States, while such national is outside the United States, shall--

"(1) if the killing is a murder as defined in section 1111(a) of this title, be fined under this title or imprisoned for any term of years or for life, or both so fined and so imprisoned;

"(2) if the killing is a voluntary manslaughter as defined in section 1112(a) of this title, be fined under this title or imprisoned not more than ten years, or both; and

"(3) if the killing is an involuntary manslaughter as defined in section 1112(a) of this title, be fined under this title or imprisoned not more than three years, or both.

"(b) ATTEMPT OR CONSPIRACY WITH RESPECT TO HOMICIDE.-- Whoever outside the United States attempts to kill, or engages in a conspiracy to kill, a national of the United States shall--

"(1) in the case of an attempt to commit a killing that is a murder as defined in this chapter, be fined under this title or imprisoned not more than 20 years, or both; and

"(2) in the case of a conspiracy by two or more persons to commit killing that is a murder as defined in section 1111(a) of this title, if one or more of such persons do any overt act to effect the object of the conspiracy, be fined under this title or imprisoned for any term of years or for life, or both so fined and so imprisoned.

"(c) OTHER CONDUCT.-- Whoever outside the United States engages in physical violence--

"(1) with intent to cause serious bodily injury to a national of the United States; or

"(2) with the result that serious bodily injury is caused to a national of the United States; shall be fined under this title or imprisoned not more than five years, or both.

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"(d) DEFINITION.-- As used in this section the term 'national of the United States' has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

"(e) LIMITATION ON PROSECUTION.-- No prosecution for any offense described in this section shall be undertaken by the United States except on written certification of the Attorney General or the highest ranking subordinate of the Attorney General with responsibility for criminal prosecutions that, in the judgment of the certifying official, such offense was intended to coerce, intimidate, or retaliate against a government or a civilian population."

As used in this section United States nationals are defined pursuant to Section 101(a)(22) of the Immigration and Nationality Act (codified at Title 8, USC, Section 1101(a)(22)) as set forth below:

"The Term 'national of the United States' means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States."

EFFECTIVE: 07/14/88

262-3.1 Extension of Statute of Limitations for Certain Terrorism Offenses (Title 18, USC, Section 3286) (Also see MIOG Part II, 1-4.)

"Notwithstanding section 3282, no person shall be prosecuted, tried or punished for any offense involving a violation of section 32 (aircraft destruction), section 36 (airport violence), section 112 (assaults upon diplomats), section 351 (crimes against Congressmen or Cabinet officers), section 1116 (crimes against diplomats), section 1203 (hostage taking), section 1361 (willful injury to government property), section 1751 (crimes against the President), section 2280 (maritime violence), section 2281 (maritime platform violence), section 2331 (terrorist acts abroad against United States nationals), section 2339 (use of weapons of mass destruction), or section 2340A (torture) of this title or section 46502, 46504, 46505 or 46506 of title 49, unless the indictment is found or the information is instituted within eight years after the offense was

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committed."

(1) The above shall not apply to any offense committed MORE than five years prior to the date of the enactment of this act (September 13, 1994).

(2) For clarification regarding the statute of limitations pertaining to FBI counterterrorism extraterritorial investigations PRIOR to the passage of this legislation, the Department of Justice (DOJ) has advised the following:

(a) MURDER - The statute of limitations will expire EIGHT years from the occurrence of the offense in cases in which U.S. nationals were MURDERED abroad IF the murder occurred five years PRIOR to September 13, 1994 AND DOJ has determined that the specific case is a violation of Title 18, USC, Section 2331. There is NO statute of limitations in cases where a U.S. national was murdered abroad ON THE DATE OF THE PASSAGE OF THIS ACT (September 13, 1994).

(b) ATTEMPTED MURDER OR CONSPIRACY TO MURDER -- DOJ advised that the statute of limitations will expire FIVE years from the anniversary of the offense in cases of ATTEMPTED murder of a U.S. national outside the United States if the attempted murder occurred FIVE years prior to September 13, 1994.

EFFECTIVE: 11/24/95

262-4 ELEMENTS OF THE OFFENSE

(1) HOMICIDE.-- This provision of the statute makes it an offense to kill a United States national, while such is outside the territorial limits of the United States by means of murder, voluntary manslaughter or involuntary manslaughter. It is important to note the commission of the homicide must take place outside of the United States.

(a) MURDER for this section is defined as the unlawful killing of a human being with malice aforethought.

(b) VOLUNTARY MANSLAUGHTER for purposes of this section is defined as the unlawful killing of a human being without malice as the result of a sudden quarrel or heat of passion.

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(c) INVOLUNTARY MANSLAUGHTER for purposes of this section is defined as the unlawful killing of a human being without malice during the commission of an unlawful act not amounting to a felony, or in the commission in an unlawful manner, or without due caution and circumspection, of a lawful act which might produce death.

(2) ATTEMPT OR CONSPIRACY WITH RESPECT TO HOMICIDE.-- This provision makes it unlawful for any person outside the United States to attempt to kill or engage in a conspiracy to kill a United States National. Note here that it is the attempt or conspiracy which must take place outside of the United States irrespective of the location of the United States national at the time of the conspiracy. An attempt to kill ordinarily means a person has the intent to kill combined with an act which falls short of actually killing the person.

The conspiratorial aspect of this offense makes it unlawful for two or more persons outside the United States to conspire to commit a killing that is a murder, if one or more members of the conspiracy do any overt act to effect the objective of the conspiracy. It is the conspiracy which must take place outside the United States irrespective of the location at that time of the United States national.

(3) OTHER CONDUCT.-- The statute makes it unlawful for any person outside the United States to engage in any act of physical violence which is intended to cause or actually causes serious bodily injury to a United States national.

(4) LIMITATION ON PROSECUTION.-- Before any suspected violations of this section can be prosecuted, it is required that the Attorney General or the highest ranking subordinate of the Attorney General with responsibility for criminal prosecutions certify in writing that in his judgment the violation of this statute was intended to coerce, intimidate, or retaliate against a government or a civilian population. Therefore, not only is the intent element necessary with respect to the type of offense committed, i.e., homicide or conspiracy, but an additional element of intent must be demonstrated, that is, it must be for the purpose to coerce, intimidate or retaliate against a government or civilian population. These actions are not restricted to the United States Government but to any government.

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262-5 PENALTIES UNDER SECTION 2331

This statute prescribes the imposition of penalties for the various offenses contained therein as follows:

- (1) MURDER -- to be fined in accordance with provisions of Title 18 of USC and/or imprisoned for any term of years or for life;
- (2) VOLUNTARY MANSLAUGHTER -- to be fined in accordance with provisions of Title 18 of USC and/or imprisoned for not more than ten years;
- (3) INVOLUNTARY MANSLAUGHTER -- to be fined in accordance with provisions of Title 18 of USC and/or imprisoned for not more than three years;
- (4) ATTEMPTED MURDER -- to be fined in accordance with provisions of Title 18 of USC and/or imprisoned for not more than 20 years;
- (5) CONSPIRACY TO COMMIT MURDER -- to be fined in accordance with provisions of Title 18 of USC and/or imprisoned for any term of years or for life;
- (6) SERIOUS BODILY INJURY -- to be fined in accordance with provisions of Title 18 of USC and/or imprisoned for not more than five years.

EFFECTIVE: 07/14/88

262-6 INVESTIGATIVE OBJECTIVES

An effective investigative activity must be taken in order to identify and eventually apprehend and prosecute the subject(s) involved.

EFFECTIVE: 07/14/88

262-7 REPORTING PROCEDURES

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EFFECTIVE: 07/14/88

262-7.1 Initial Notifications

(1) Immediately advise FBIHQ, Counterterrorism Section, Criminal Investigative Division, by telephone, followed by teletype, of every preliminary inquiry and investigation instituted under the ODSAA of 1986.

(2) Those field offices and Legal Attaches deemed appropriate should be included as recipients of the initial teletype to FBIHQ.

EFFECTIVE: 07/14/88

262-7.2 Notification to FBIHQ regarding Final Outcome

(1) In order that the FBIHQ substantive case file may indicate the final outcome of each investigation of a possible violation, the following FBIHQ notification policy should be adhered to by the office of origin.

(2) In all cases, including those cases in which the United States Attorney declines or defers prosecution and those cases determined not to be a violation of OSDAA of 1986, a closing communication should be directed to FBIHQ clearly setting forth the basis for closing. Legal Attaches should report to FBIHQ information regarding prosecutions or declinations of these cases in foreign countries.

EFFECTIVE: 07/14/88

262-8 LIAISON AND COORDINATING RESPONSIBILITIES

EFFECTIVE: 07/14/88

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262-8.1 Legal Attache Responsibilities

(1) Legal Attaches must establish close liaison with affected foreign law enforcement agencies, as well as appropriate U.S. Embassy personnel, to ensure that the FBI is apprised of any terrorist incidents which may fall under our investigative jurisdiction.

(2) Upon the receipt of information that a United States national(s) has been a victim of a homicide/attempted homicide outside United States territorial boundaries and this investigation could fall within the jurisdiction of the FBI under the ODSAA of 1986 (Title 18, USC, Section 2331), the Legal Attache should contact the foreign law enforcement agency handling the investigation and obtain all facts pertinent to the homicide/attempted homicide after coordinating with the appropriate embassy personnel. Particular attention should be paid to whether any demands have been made of the United States Government or any United States corporation.

(3) The Legal Attache should immediately advise the Counterterrorism Section, Criminal Investigative Division, FBIHQ, and the office of origin of an overseas homicide/attempted homicide situation. (See 262-9.)

(4) The Legal Attache, in consultation with FBIHQ and the United States Department of State (USDS), will ascertain if the case is of such magnitude as to warrant the deployment of Special Agent personnel from the office of origin to assist in conducting the investigation in concert with the appropriate foreign law enforcement agencies and whether the host country is in agreement and will allow such personnel in the country.

(5) In those cases where FBIHQ and USDS concur, the Legal Attache should provide an offer of FBI assistance, both investigative and technical, to the principal investigative law enforcement agency.

(6) The Legal Attache is to ensure that immediately after the host government has given permission for FBI investigative involvement that steps are taken to ensure protection of the crime scene and that appropriate FBI personnel (i.e., FBI forensic team, etc.) to the extent possible, are the first investigative group to have access to the crime scene before any other U.S. Government representatives. These procedures are necessary to avoid contamination of the crime scene by noninvestigative personnel.

(7) Because autopsy reports are an integral part of any prosecution, in the event a U.S. citizen is killed, the Legal Attache

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is to initiate arrangements with the appropriate USDS representatives for transportation of the victim's body to the United States for autopsy.

(8) The Legal Attache should ensure, to the degree possible, that when investigations are conducted by foreign law enforcement personnel, copies of such investigations are made available to the FBI. In the event the host country does not intend to prosecute the perpetrators, the Legal Attache should, if possible, obtain any evidence available through the investigating foreign law enforcement agency or other authority. In the event foreign prosecution is conducted, the Legal Attache should follow the prosecution and attempt to secure trial transcripts.

(9) The Legal Attache, in consultation with the USDS, should obtain any objections to extradition to the United States should the host government indicate an unwillingness to prosecute identified subjects. This development, should it occur, must be immediately reported to FBIHQ.

EFFECTIVE: 01/18/91

262-8.2 | Office of Origin | Responsibilities

(1) Upon receipt of information from Legal Attache involving violations of aforementioned statute, the office of origin will immediately establish contact with Counterterrorism Section (CTS), Criminal Investigative Division (CID), FBIHQ.

(2) In cases where U.S. nationals have been murdered, the office of origin should obtain all background information regarding each victim and alert the appropriate FBI field office once an address is determined for the next of kin. (While the USDS has the responsibility for notifying the next of kin, a release in order to do the autopsy must be obtained from the next of kin.) The appropriate FBI field office, through contact with CTS, CID, FBIHQ, is to ensure the next of kin has been notified by USDS of circumstances surrounding death before attempting to obtain such release. If the next of kin refuses to authorize an autopsy, FBIHQ must be notified immediately. The field office is to exercise the utmost sensitivity in requesting an autopsy.

(3) The office of origin will furnish FBIHQ a summary of available facts concerning the incident as soon as possible to ensure

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that appropriate coordination is made by FBIHQ with other affected agencies.

EFFECTIVE: 01/18/91

262-8.3 FBIHQ Responsibilities

(1) FBIHQ, will determine from DOJ whether the Attorney General has certified that the offense was intended to coerce, intimidate, or retaliate against a government or civilian population in accordance with ODSAA.

(2) Upon certification by the Attorney General, FBIHQ will ensure that the USDS is notified of the above and request that the appropriate U.S. Ambassador be advised of FBI jurisdiction and determine whether host country is willing to permit an FBI investigative team in the country.

(3) FBIHQ will consider activating the Strategic Information Operations Center (SIOC) and advise all field offices and Legats by teletype of the opening of the SIOC.

(4) FBIHQ will obtain background information from Legat concerned, set the number of FBI personnel who will participate in the debriefing of hostages, coordinate FBI Forensic Team responsibilities and ensure appropriate travel orders are issued.

(5) FBIHQ Laboratory Division will maintain a list of language proficient Special Agents/support personnel and will determine whether this terrorist event requires particular language skills, placing such personnel on standby for possible overseas travel. In addition, FBIHQ is to ensure that appropriate passports, visas, shots, etc., are ready so that deployment of such personnel can be done rapidly.

(6) In a case when property of a U.S. corporation is involved, FBIHQ will ensure, through appropriate FBI field offices, that the corporate owners of the property are to be personally notified of the incident relating to their property. Further, corporate officials will be advised that their cooperation in the investigation is expected.

(7) FBIHQ will contact Office of International Affairs (OIA), DOJ, in order to review the United States/country of incident

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| extradition treaty. |

EFFECTIVE: 07/14/88

| 262-9 | OFFICE OF ORIGIN

Office of origin (OO) will be divided among the Washington Metropolitan Field Office (WMFO), the Honolulu Office and the Miami Office for all OHAHT investigations. WMFO will assume OO when the offense occurs in Europe, including Turkey, the Middle East, Africa or Canada. The Honolulu Office will assume OO when the offense occurs in Asia (excluding the Middle East) or Australia and Oceania. The Miami Office will assume OO when the offense occurs in North America (excluding Canada) or South America. |

EFFECTIVE: 01/18/91

| 262-10 | CHARACTER

The character of this violation is Overseas Homicide/Attempted Homicide - International Terrorism (OHAHT).

EFFECTIVE: 01/18/91

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SECTION 263. OFFICE OF PROFESSIONAL RESPONSIBILITY MATTER

263-1 BACKGROUND (See MIOG, Part I, 62-1.5.)

(1) The Office of Professional Responsibility (OPR) was established in the Inspection Division in October, 1976, in order to bring about a greater awareness of professional responsibility throughout the FBI and to seek a more definitive and uniform policy in our administration of disciplinary personnel matters. OPR has three basic functions: (1) supervise and/or investigate all allegations of criminality and serious misconduct on the part of FBI employees; (2) maintain liaison with the Office of Professional Responsibility, Department of Justice (OPR/DOJ); and, (3) monitor disciplinary action taken concerning all employees of the FBI.

(2) It is OPR's goal to ensure that all such allegations against FBI employees are promptly, objectively, and thoroughly investigated and reported to the Personnel Division (PD) in a timely fashion for their consideration and appropriate action. The maintaining of the integrity of the FBI as an institution is paramount while conducting these mandated responsibilities. The rights of our employees, however, are to be similarly guarded.

EFFECTIVE: 04/21/94

263-2 NOTIFICATION OF FBIHQ UPON RECEIPT OF ALLEGATIONS OF  
CRIMINALITY OR SERIOUS MISCONDUCT

(1) As is set forth in Part I, Section 13 of the Manual of Administrative Operations and Procedures (MAOP), all allegations of employee misconduct must be reported to the Administrative Summary Unit (ASU), PD. Allegations of criminality or serious misconduct, however, must be reported simultaneously to the FBI's OPR. OPR supervises and/or investigates all allegations of criminality or serious misconduct on the part of FBI employees. Judicial criticism of an Agent's conduct in findings of fact, opinions, or court orders, whether oral or written, is to be considered an allegation of serious misconduct and reported to OPR as set forth below.

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(2) When an allegation is received concerning criminality or serious misconduct, the appropriate Assistant Director, SAC, or Legal Attache, must advise OPR of the allegation, preferably by telephone. OPR will, in turn, advise ASU/PD. A confirming airtel, with a copy designated for the ASU/PD, should be directed in a sealed envelope to FBIHQ, Attention: OPR. OPR will determine and advise who will conduct the investigation. In those matters involving nonserious misconduct or performance-related deficiencies, in all likelihood, the SAC will be advised to handle those matters directly with the ASU/PD. In most cases, the Assistant Directors, SACs, or Legal Attaches will personally conduct the necessary investigation of OPR matters under the supervision and monitoring of OPR. Representatives of OPR normally investigate only those allegations involving FBIHQ officials, SACs, ASACs, and Legal Attaches, and sometimes FBIHQ and Field Supervisors, or when circumstances of a particular matter dictate.

(3) Timeliness of reporting and resolution of OPR matters are extremely important. It is imperative that upon receipt of an allegation of criminality or serious misconduct against an FBI employee, that OPR be advised promptly in order that appropriate instructions may be given. There should be no delay in contacting OPR while attempting to "round out" an allegation of possible criminality or serious misconduct.

(4) If an allegation of misconduct within the responsibility of OPR arises out of a substantive case (pending or closed), the matter will be coordinated closely between OPR and the FBIHQ Division which has overall responsibility for the substantive matter. FBIHQ Divisions should immediately inform OPR of allegations of possible criminality or serious misconduct which come to their attention and forward that portion of the investigation to OPR for further processing. The allegations arising from a substantive case will be carried separately under the Office of Professional Responsibility Matter caption and handled as a separate "263" classification investigation so that the substantive investigation and/or prosecution is not hindered.

(5) The following is a list of items which for the most part are considered OPR matters. They are furnished for information and are not considered all inclusive. Any question of whether the matter should be handled by OPR should be resolved by contact with OPR:

Abuse of authority  
Arrest by local authorities (or subject of investigation by local authorities)

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Civil rights violations  
Conflict of interest  
Driving While Intoxicated (both Bureau cars and personally owned automobiles)  
Failure to advise the Bureau of contacts with law enforcement agencies  
False statements during applicant processing  
Falsification of documents  
False reporting  
Franking privilege violations  
Fraud Against the Government  
Improper association/relationship with criminal element  
Improper association with informants  
Judicial criticism  
Narcotics matters  
Outside employment  
Retaliation matters  
Sexual offenses  
Subject of a Federal criminal investigation  
Theft  
Unauthorized disclosure of information  
Unauthorized use of a Bureau vehicle  
Unauthorized passenger in a Bureau vehicle  
Unprofessional conduct  
Whistleblower matters

(6) Other infractions, such as lost badges or minor personal misconduct, will continue to be handled by the PD. These matters are well defined and should continue to be handled as in the past. Any question as to whether a matter is or is not within the responsibility of OPR must be referred to OPR for a determination in this regard.

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| 263-3 INVESTIGATION | (See MAOP, Part I, 13-3.) |

(1) Investigation necessary to develop complete, essential facts regarding any allegation against Bureau employees must be instituted promptly and every logical lead which will establish the true facts should be completely investigated unless such action might prejudice pending investigations or prosecutions, in which event FBIHQ will weigh the facts along with the recommendation of the Division Head.

(2) The record of the inquiry shall include the initial allegation; the investigative results; aggravating or mitigating circumstances; statement of specific charge(s); and the employee's answer(s) including defenses to the specific charge(s), if any.

(3) SACs should ensure the objectivity in personnel investigations conducted by field offices by not assigning supervisory personnel to them who have a direct working relationship with the employee(s) under investigation. OPR is likewise alert to this possible conflict of interest and will discuss this with the SACs when cases are initially reported to OPR.

(4) Requests to conduct audits of the computer systems activities of employees who are suspected of misconduct or improper performance of duty will be handled only with prior notification to FBIHQ. The term audit refers both to review and/or evaluation of prior transactions or activities of a user and procedures designed to monitor the ongoing activities of a user. The proper form for such a request is a formal written communication to FBIHQ with a request directed to the Information Resources Division's (IRD), Investigative Automation Support Section (IASS), to conduct the audit. In exigent circumstances, which dictate the need for immediate institution of an audit, requests may be made telephonically to OPR and subsequently confirmed in writing. In instances where telephonic requests are authorized, the level of authority is at the ASAC level or above in the field offices and at the Section Chief level or above at FBIHQ, with the exception of requests emanating from OPR. Telephonic requests for user activities audits made by OPR will be authorized at the Supervisory Special Agent level. | (See MAOP, Part I, 13-3 (3).) |

(5) Approval to conduct the audits will be made at the Section Chief level in IASS, based on the technical feasibility and resource constraints. If the audit cannot be conducted or if additional information is needed to formulate the audit, IASS will contact the requestor. The results of each audit conducted will be

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reported on an FD-302 and disseminated to OPR and the requestor, should it be different from OPR. The original FD-302 will be forwarded to the office of origin. In those instances where exigent circumstances dictate that the results of the audit be telephonically disseminated, the results will be disseminated by IRD to OPR and to the requestor, should it be different from OPR, and the telephonic response subsequently confirmed in writing to OPR and the requestor. (See MAOP, Part I, 13-3 (4).)

EFFECTIVE: 06/01/94

263-4 INTERVIEWS OF EMPLOYEES

(1) Interviews of employees involved in allegations of criminality or serious misconduct should be conducted at the earliest logical time and in a forthright manner following coordination with OPR. There should be no evasiveness on the part of the Bureau official conducting the interview.

(2) The employee should be fully and specifically advised of the allegations which have been made against him/her in order that he/she may have an opportunity to fully answer and respond to them. The employee must be entirely frank and cooperative in answering inquiries of an administrative nature. If allegations are possibly criminal in nature, the employee has the right to seek counsel in the same vein as any other individual.

(3) Such interviews must be complete and thorough with all pertinent information obtained and recorded so that all phases of the allegations may be resolved. The interviews must not be unduly protracted and should be held to a reasonable length by proper preparation and recognition of the purpose of the interviews.

(4) The inquiry shall not be complete until the specific allegations which may justify disciplinary action are made known to the employee who may be disciplined and the employee is afforded reasonable time to answer the specific allegations. The employee's answers, explanations, defenses, etc., should be recorded in the form of a signed, sworn statement which should specifically include the allegations made against the employee in an introductory paragraph. The statement is to be prepared following an in-depth interview under oath of the employee by the Division Head or designated supervisory representative. The employee is not merely to be asked to give a

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written response to the allegations, but is to be interviewed in an interrogatory fashion, and a signed, sworn statement prepared from the results by the interviewing official. Since the statement represents that which the employee is willing to sign and swear to, he/she retains the right to make corrections or changes before doing so. If those changes or corrections differ materially from what the employee stated during the interview, that fact and the nature of the statements should be separately recorded. The employee should be sworn prior to the interview in order that the information furnished during the interview will have been under oath. Should there be any question on the part of the interviewing official as to whether a particular allegation (set of facts) might justify disciplinary action, he/she should contact OPR in order to resolve this prior to the interview so the employee will be ensured of an opportunity to appropriately respond.

(5) The results of interviews of nonsubject, "witness" FBI employees in OPR matters should also be recorded in the form of signed, sworn statements. If there is some reason for not doing so, this should be coordinated with OPR/Inspection Division.

(6) When interviewing employees during administrative inquiries to solicit information about themselves or about their own activities, the employee should be provided the Privacy Act notice described in MIOG, Part I, 190-5(2), explaining the purpose of the inquiry and how the information will be used.

(7) When interviewing employees, or others, to solicit information about the subject of an administrative inquiry, the person interviewed as a source should be provided, if appropriate and necessary, the opportunity to request an express promise of confidentiality, as described in MIOG, Part I, 190-7, and SAC Memorandum 51-77(C), dated 11/15/77, in order to protect the source's identity should the subject of the inquiry submit a Privacy Act request for access to records of the inquiry. The source should be cautioned that if a formal adverse personnel action is taken against the subject of the inquiry pursuant to Chapter 75 of the Civil Service Reform Act, the information furnished, along with the source's identity, must, by law, be provided to the subject, if any information provided in that statement is used in whole or in part to support that personnel action. In addition, pursuant to certain administrative inquiries and possible judicial proceedings, it may be necessary to furnish the source's identity if any information provided in the source's statement is used in whole or in part to support a personnel action. The principles discussed in 263-5, *infra*, are also applicable to an interview of an employee regarding the actions of others, to the

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extent such answers might reveal criminal misconduct on the part of the employee being interviewed.

EFFECTIVE: 03/26/90

263-5 ADMINISTRATIVE OR CRIMINAL PROCEEDINGS - USE OF INTERVIEW  
FORMS (See MIOG, Part I, 263-4 (7); MAOP, Part I, 13-6.)

(1) Prior to the interview of an employee against whom allegations of criminal misconduct have been leveled, a decision must be made as to whether the goal of the interview is to obtain a statement admissible in subsequent criminal proceedings or whether the goal is to compel the employee to make a full statement of the facts in order to ascertain what administrative action, if any, is appropriate. This decision is to be made by OPR in coordination with the OPR, DOJ.

(2) To ensure that employees being interviewed are fully and consistently aware of their rights and obligations, two forms have been adopted for use in such interviews. The Office of Professional Responsibility, DOJ, has endorsed the use of these forms. These forms are only to be utilized during OFFICIAL inquiries and only when authorized by OPR.

(3) Neither of these two forms (FD-644 nor FD-645) which are described below are to be routinely used during the investigation of a shooting incident. They will be used only in those shooting inquiries when instructed to do so by FBIHQ as set forth in MIOG, Part II, Section 12-11.7.

The decision as to which form will be used in a particular inquiry will be made by OPR, FBIHQ, on a case-by-case basis, in accordance with the principles set forth below. For your information, there are certain prosecutive guidelines which have been agreed to by OPR, DOJ. The factual situation of any particular allegation will be considered by OPR in line with those prosecutive guidelines.

EFFECTIVE: 10/17/95

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263-5.1 Criminal Proceeding Contemplated or Possible

(1) Form FD-644 captioned "Warning and Assurance to Employee Requested to Provide Information on a Voluntary Basis," is to be utilized in situations where an employee is provided an opportunity to voluntarily respond to questions concerning allegations of job-related misconduct which have the potential for criminal prosecution, but wherein the employee is not being compelled to answer questions or provide a statement. Use of this form should assure that any statements obtained will be freely and voluntarily given and, hence, admissible in any future criminal proceeding.

(2) Full Miranda warnings will be given to employees only in situations where the employee to be interviewed is in custody or is significantly deprived of his/her freedom of action, an arrest is clearly intended at the conclusion of the interview, or whether in custody or not, the employee being interviewed has previously been arrested or formally charged and prosecution is pending on a Federal offense and the questioning concerns that offense or a related Federal offense.

(3) Whenever Form FD-644 is utilized, an interview log should be prepared in accordance with the Legal Handbook for Special Agents, Section 7-9.

EFFECTIVE: 10/18/88

263-5.2 Inquiry Solely for Administrative Purposes

(1) In a situation where the allegation, if true, has the potential for criminal prosecution, but a decision has been made not to seek an admissible statement (but rather, to compel the employee to fully and candidly answer all questions concerning the alleged incident), Form FD-645, captioned "Warning and Assurance to Employee Required to Provide Information," should be used. However, prior to the use of this form in any instance where the allegation, if true, would have potential for Federal criminal prosecution of the employee to be interviewed, OPR/Inspection Division must present the facts of the case to OPR/DOJ and obtain an initial opinion that the matter in question should be handled administratively rather than criminally. This is necessary because any incriminating statement obtained after use of Form FD-645 will not be admissible in a criminal prosecution of the employee.

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(2) In a situation where the allegation, if true, has potential for non-Federal prosecution, and a decision has been made by FBIHQ to compel full answers from the employee regarding the matter under investigation, Form FD-645 should be used.

(3) In all other instances where an employee is being interviewed in connection with an official administrative inquiry, Form FD-645 should be used.

(4) There is no Sixth Amendment right to counsel in purely administrative interviews. Therefore, even if the employee specifically requests to have an attorney present during the course of the interview, the Bureau is not legally obliged to agree to this condition. Any administrative decision to allow the presence of counsel during an administrative interview is to be made by OPR, FBIHQ.

(5) An interview log is not required when Form FD-645 is utilized. Those conducting such administrative interviews of employees should be alert, however, to circumstances where good judgment might warrant preparation of an interview log; for example, in those interviews of a particularly sensitive nature or in those concerning serious misconduct involving veterans which may ultimately be heard before a Merit Systems Protection Board.

EFFECTIVE: 10/18/88

263-6 POLYGRAPH EXAMINATIONS OF BUREAU EMPLOYEES (See MAOP, Part I, 13-4.1.)

(1) All polygraph examinations of FBI employees and those who have made allegations against FBI employees must be approved by the Assistant Director, Inspection Division, or another person designated by the Director. In the case of polygraph examinations requested pursuant to a security clearance adjudication, the Director has delegated approval authority to the Assistant Director, National Security Division.

(2) Polygraph examinations of employees will be administered away from their own office of assignment. This procedure will help protect the confidentiality of the investigation/inquiry and lessen the outside pressure on the employee which could be associated with an examination conducted with knowledge of an employee's friends



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and associates.

(3) Polygraph examinations of Bureau employees are to be administered by an FBIHQ examiner. In the event an FBIHQ examiner is not available, the examination will be conducted by an examiner designated by the Polygraph Unit, FBIHQ.

See MIOG, Part II, 13-22.13.1, 13-22.13.2, 13-22.13.3, and 13-22.14 for additional instructions and information regarding polygraph examinations of employees who are subjects of a criminal investigation or administrative inquiry.

EFFECTIVE: 07/19/95

263-7 REPORTING (See MAOP, Part I, 13-7 & II, 2-3.3 (1).)

(1) In most instances, after OPR has been initially notified of the allegation, it will be satisfactory for the responsible division head to report the facts pertaining to the serious misconduct or criminality by airtel setting forth a concise statement of the situation together with supporting documentation and statements. In all cases, whether or not it is believed administrative action is necessary, a statement that administrative action is, or is not, recommended must be made.

(2) These cases should not be opened in the Field Office Information Management System (FOIMS) prior to obtaining Bureau approval to open the investigation. A separate file should be opened and indexed under a "263" classification for each OPR investigation and the file should be maintained in the SAC's safe. This file number should be included on all communications between field offices and OPR. Such communications, when directed to the SAC, should be to his/her personal attention and should be enclosed in sealed envelopes when submitted to FBIHQ, Attention: OPR. Proper names of individuals in OPR cases should not be entered in the title field in the case management system of FOIMS. The title field should contain the words "SEE SAC" only. The Index Driven Case Title (IDCT) software will automatically insert the words "SEE SAC" during the data input of the index record. Keystroking the letter "S" in the "Special" field on the index record will generate "SEE SAC" on the first line of the title in the case application. (It should be noted that the file number will not be displayed in the general indices of the field

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office. OPR cases are to be opened in FOIMS as auxiliary office (AO) cases utilizing the FBIHQ file number as the Universal Case File Number. These cases should be opened with a pending status, not as "DEAD" or "ADM" status. Upon completion of the investigation, the status should be modified to RUC.

(3) Copies of the allegations and subsequent investigation should not be placed in the employee's field office or FBIHQ personnel file. Only if some form of administrative action is taken will there be any need to address the allegation in the employee's personnel file. This is satisfactorily handled by a designated copy of the approved justification memorandum and/or addendum(s) being placed in the employee's personnel file at FBIHQ as well as copies of the outgoing communication to the employee being placed in both the field office and FBIHQ personnel files.

(4) OPR will advise SACs and Assistant Directors when the results of OPR investigations have been reviewed by OPR and referred to ASU/PD for appropriate action.

EFFECTIVE: 04/21/94

263-7.1 Investigative Reports

(1) The results of most OPR investigations may be submitted by cover airtel to OPR. In those matters, however, involving more complicated situations or matters involving criminality which may need to be discussed further with the Department of Justice, they should be submitted to FBIHQ by investigative report which should be thorough, precise, and to the point. Any question concerning whether or not to submit an investigative report should be resolved by consulting with OPR.

(2) Synopses of OPR matter investigative reports should be complete to include all allegations, the results of the investigation, and the subject employee's responses to these allegations. Consideration should be given to including a table of contents in these investigative reports.

(3) Three copies of the investigative report (four copies if the matter involves a substantive case) should be submitted by cover airtel in a sealed envelope to FBIHQ, Attention: OPR/Inspection Division. The cover airtel should contain the SAC's observations and

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comments, mitigating or aggravating circumstances, as well as the SAC's recommendations for administrative action.

(4) FBIHQ is the office of origin in OPR matter investigations. Upon completion of an investigation, originals of signed, sworn statements, Forms FD-644 and FD-645, etc., should be furnished to OPR.

EFFECTIVE: 04/19/91

263-8 CIVIL RIGHTS ALLEGATIONS AGAINST FBI PERSONNEL

Upon receipt of a complaint involving civil rights allegations against FBI personnel, the following procedures are to be followed:

(1) Advise the Civil Rights Unit (CRU), CID, and OPR by telephone followed by appropriate communications so that FBIHQ may furnish appropriate guidance. The CRU will coordinate with OPR and other FBIHQ components and advise the SAC concerning the proper handling of the matter.

(2) If a civil rights complaint arises during an administrative inquiry, the pertinent administrative inquiry relating only to the civil rights allegation must stop in order to resolve any criminal violations. That portion of the administrative inquiry may not resume until authorized by FBIHQ.

(3) OPR and CRU/CID will coordinate the presentation of the facts of the allegation to OPR/DOJ and the Civil Rights Division (CRD), DOJ, to determine if a criminal investigation is warranted. If no criminal investigation is warranted, the matter will be administratively handled by OPR. If the CRD/DOJ requests a criminal civil rights investigation, the CRU/CID will advise the SAC to initiate an investigation which should be reported to FBIHQ pursuant to Part I, Section 282-3.1 of the MIOG, unless advised to the contrary by FBIHQ.

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263-9

DEPARTMENT OF JUSTICE OFFICE OF PROFESSIONAL  
RESPONSIBILITY

See MAOP, Part I, Section 1-23.

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SECTION 264. COMPUTER FRAUD AND ABUSE

264-1 BACKGROUND

(1) On October 12, 1984, the President signed into law the "Comprehensive Crime Control Act of 1984." Included in the passage of this Act was "Fraud and Related Activity in Connection with Computers," Title 18, USC, Section 1030. The creation of this statute was an attempt by Congress to address unauthorized access or use of computers. Jurisdiction for investigating violations of this statute has been governed by Memoranda of Understanding (MOU) between the Department of the Treasury and the Department of Justice. An MOU dated August 23, 1989, supersedes an MOU dated August 29, 1985, and outlines the jurisdiction of the FBI and the U.S. Secret Service (USSS) in these matters.

(2) On October 16, 1986, the "Computer Fraud and Abuse Act of 1986" (Public Law 99-474) and on October 21, 1986, the "Electronic Communications Privacy Act of 1986" (Public Law 99-508) were signed into law by the President. The Computer Fraud and Abuse Act of 1986 expanded Title 18, USC, Section 1030, unauthorized access or use of "Federal interest" computers (with intent to harm the U.S. Government, by obtaining classified or private financial information; modifying, destroying, or disclosing information; preventing use of the computer by others; and affecting computer operations), by adding fraudulent access to obtain property of value, trafficking in passwords with intent to defraud, and damage to certain stored information. Jurisdiction for investigating these violations is set out in the 8/23/89 MOU (see 264-3).

(3) Congress also enhanced individual and corporate protection against computer crime by enacting the Electronic Communications Privacy Act of 1986. Title II of this act amended Title 18 of the USC by adding Section 2701. This statute makes it a Federal offense to, without authorization, access or disclose the contents of a "stored electronic communication."

(4) On October 1, 1990, the Economic Crimes Subprogram (ECS) of the White Collar Crimes (WCC) Program was formed to address all economic crimes except financial institution fraud. Computer Fraud and Abuse (CFA) matters are within the ECS and are managed at FBIHQ by the Economics Crime Unit (ECU), White Collar Crimes Section (WCCS), Criminal Investigative Division (CID).

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EFFECTIVE: 12/10/91

|| 264-2 || STATUTES, PENALTIES AND DEFINITIONS ||

EFFECTIVE: 12/10/91

|| 264-2.1 || Section 1030. Fraud and Related Activity in Connection  
with Computers ||

|| (1) || Whoever knowingly accesses a computer without authorization or exceeds authorized access, and by means of such conduct obtains information that has been determined by the United States Government pursuant to an Executive order or statute to require protection against unauthorized disclosure for reasons of national defense or foreign relations, or any restricted data, as defined in paragraph r. of section 11 of the Atomic Energy Act of 1954, with the intent or reason to believe that such information so obtained is to be used to the injury of the United States, or to the advantage of any foreign nation.

|| The punishment for an offense of this section is a fine or imprisonment for not more than ten years, or both, for the first offense under this section. The punishment for multiple offenses of this section is a fine or punishment for not more than 20 years, or both. ||

|| (2) || Whoever intentionally accesses a computer without authorization, or exceeds authorized access, and thereby obtains information contained in a financial record of a financial institution, or card issuer as defined in section 1602 (n) of Title 15, or contained in a file of a consumer reporting agency on a consumer, as such terms are defined in the Fair Credit Reporting Act (Title 15, USC, Section 1681, et seq.).

|| The punishment for an offense of this section is a fine or imprisonment for not more than one year, or both, for the first offense or attempted offense under this section. The punishment for multiple offenses of this section is a fine or imprisonment for not more than ten years, or both. ||

|| (3) || Whoever intentionally, without authorization to

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access any computer of a department or agency of the United States, accesses such a computer of that department or agency that is exclusively for the use of the Government of the United States or, in the case of a computer not exclusively for such use, is used by or for the Government of the United States and such conduct affects the use of the Government's operation of such computer.

The punishment for an offense of this section is a fine or imprisonment for not more than one year, or both, for the first offense or attempted offense under this section. The punishment for multiple offenses of this section is a fine or imprisonment for not more than ten years, or both.

(4) Whoever knowingly and with intent to defraud, accesses a Federal Interest computer without authorization, or exceeds authorized access, and by means of such conduct furthers the intended fraud and obtains anything of value, unless the object of the fraud and the thing obtained consists only of the use of the computer.

The punishment for an offense of this section is a fine or imprisonment for not more than five years, or both, for the first offense or attempted offense under this section. The punishment for multiple offenses of this section is a fine or imprisonment for not more than ten years, or both.

(5) Whoever intentionally accesses a Federal Interest computer without authorization, and by means of one or more instances of such conduct alters, damages, or destroys information in any such Federal Interest computer, or prevents authorized use of any such computer or information, and thereby-

(a) causes loss to one or more others of a value aggregating \$1,000 or more during any one-year period; or

(b) modifies or impairs, or potentially modifies or impairs, the medical examination, medical diagnosis, medical treatment, or medical care of one or more individuals.

The punishment for an offense of this section is a fine or imprisonment for not more than five years, or both, for the first offense or attempted offense under this section. The punishment for multiple offenses of this section is a fine or imprisonment for not more than ten years, or both.

(6) Whoever knowingly and with intent to defraud traffics (as defined in Section 1029) in any password or similar information

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through which a computer may be accessed without authorization, if-

| (a) | such trafficking affects interstate or foreign commerce; or

| (b) | such computer is used by or for the Government of the United States.

| The punishment for an offense of this section is a fine or imprisonment for not more than one year, or both, for the first offense or attempted offense under this section. The punishment for multiple offenses of this section is a fine or imprisonment for not more than ten years, or both. |

EFFECTIVE: 12/10/91

| 264-2.2 | Definitions | as used in Section 1030 |

| (1) | The term "access" refers to storing data on and retrieving data from a disk or other peripheral device. |

| (2) | The term "computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, but such term does not include an automated typewriter or typesetter, a portable hand-held calculator, or other similar device.

| (3) | The term "Federal interest computer" means a computer-

| (a) | exclusively for the use of a financial institution or the United States Government, or, in the case of a computer not exclusively for such use, used by or for a financial institution or the United States Government and the conduct constituting the offense affects the use of the financial institution's operation or the Government's operation of such computer; or

| (b) | which is one of two or more computers used in committing the offense, not all of which are located in the same State.



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| (4) | The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States.

| (5) | The term "financial institution" means-

| (a) | an institution with deposits insured by the Federal Deposit Insurance Corporation;

| (b) | the Federal Reserve or a member of the Federal Reserve including any Federal Reserve Bank;

| (c) | a credit union with accounts insured by the National Credit Union Administration;

| (d) | a member of the Federal home loan bank system and any home loan bank;

| (e) | any institution of the Farm Credit System under the Farm Credit Act of 1971;

| (f) | a broker-dealer registered with the Securities and Exchange Commission pursuant to section 15 of the Securities Exchange Act of 1934; and

| (g) | the Securities Investor Protection Corporation.

| (6) | The term "financial record" means information derived from any record held by a financial institution pertaining to a customer's relationship with the financial institution.

| (7) | The term "exceeds authorized access" means to access a computer with authorization and to use such access to obtain or alter information in the computer that the accessor is not entitled so to obtain or alter.

| (8) | The term "department of the United States" means the legislative or judicial branch of the Government or one of the executive departments enumerated in section 101 of title 5.

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| 264-2.3      Section 2701. | Unlawful Access to Stored Communications

| (1) Whoever intentionally accesses, without authorization, a facility through which an electronic communication is provided.

| The punishment for an offense of this section is a fine of not more than \$250,000 or imprisonment for not more than one year, or both in the case of a first offense under this subparagraph. The punishment for subsequent offenses of this section is a fine or imprisonment for not more than two years, or both.

| (2) Whoever intentionally exceeds an authorization to access that facility, and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system.

| The punishment for an offense of this section is a fine of not more than \$5,000 or imprisonment for not more than six months, or both, in any other cases.

| (3) This section does not apply with respect to conduct authorized-

| (a) by the person or entity providing a wire or electronic communications service;

| (b) by a user of that service with respect to a communication of, or intended for, that user; or

| (c) in section 2703 (Requests for Governmental Access), 2704 (Backup Presentation), or 2518 (Procedure for Interception of Electronic Communications) of Title 18.

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264-2.4 Definitions for Section 2701 are found in Title 18, USC,  
Section 2510 (See MIOG, Part I, 139-1.1.)

(1) "Electronic communication" means any transfer of signs, signals, writings, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does not include--

(a) any wire or oral communication;

(b) any communication made through a tone-only paging device;

(c) any communication from a tracking device (as defined in section 3117 of Title 18);

(2) "User" means any person or entity who--

(a) uses an electronic communication service; and

(b) is duly authorized by the provider of such service to engage in such use;

(3) "Electronic communication system" means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications;

(4) "Electronic communication service" means any service which provides to users thereof the ability to send or receive wire or electronic communications;

(5) "Electronic storage" means--

(a) any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

(b) any storage of such communication by an electronic communication service for purposes of backup protection of such communication.

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EFFECTIVE: 12/21/94

264-2.5 Other Statutes which may be used in CFA investigations

EFFECTIVE: 12/10/91

264-2.5.1 Title 18, USC, Section 641 (Theft of Government Property)

This statute covers the theft of any record, voucher money, or thing of value of the United States. This statute has been used to prosecute Government officials, who use their position to obtain computerized information to sell.

"Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, ... or

"Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted...shall be fined not more than \$10,000 or imprisoned not more than ten years, or both...." (See MIOG, Part I, Section 52.)

EFFECTIVE: 12/10/91

264-2.5.2 Title 18, USC, Sections 793, 794 and 798 (Espionage)

(1) These statutes deal with gathering, transmitting, or losing defense information for the purpose of injuring the United States or helping any foreign nation. These statutes also deal with delivering defense information to aid foreign government and disclosure of classified information.

(2) Violators of these statutes should be fined not more than \$10,000 or imprisoned not more than ten years, or both. (See FCI Manual, Part I, Section 65.)

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EFFECTIVE: 12/10/91

264-2.5.3 Title 18, USC, Section 1343 (Wire Fraud) and Section 1341  
(Mail Fraud)

The wire fraud statute and mail fraud statute have occasionally been used to prosecute computer criminals. To establish a violation of the wire fraud statute, the Government has to establish three elements beyond a reasonable doubt: i.e., a defendant (1) devised a scheme to defraud either the various networks or the computers on those networks, (2) intended to obtain money or property from them by false pretenses, representations, or promises; and, (3) that to execute the scheme, the defendant used or caused the use of interstate or international wire communication facilities in furtherance of the scheme. In the case of the mail fraud statute, the Government would have to show elements (1) and (2) and the use of the U.S. Postal Service in furtherance of the scheme.

The punishment for offenses under the fraud by wire and mail fraud statutes are a fine of not more than \$1,000 or imprisonment not more than five years, or both. (See MIOG, Part I, Section 196 and MIOG, Part I, Section 36, respectively.)

EFFECTIVE: 12/10/91

264-2.5.4 Title 18, USC, Section 1362 (Malicious Mischief)

This statute punishes the willful interference with military communications systems.

The punishment for an offense of this statute is a fine of not more than \$10,000 or imprisonment not more than ten years, or both.

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264-2.5.5 Title 18, USC, Section 2314 (Interstate Transportation of Stolen Property)

This statute has been used with varying success to prosecute computer criminals. The Government has to show the interstate transportation of stolen property with a value in excess of \$5,000.

The punishment for an offense of this statute is a fine of not more than \$10,000 or imprisonment not more than ten years, or both. (See MIOG, Part I, Section 87.)

EFFECTIVE: 12/10/91

264-2.5.6 Title 17, USC, Section 506; Title 18, Sections 2318 and 2319 (Copyright Matters)

Generally, investigations in all copyright cases should be directed toward locating and identifying the producers, principal distributors, and publishers of unauthorized duplications of copyright products in order to eliminate the source of illicit productions.

The punishment for violations of these statutes is a maximum penalty of \$250,000 and/or five years' imprisonment. (See MIOG, Part I, Section 28.)

EFFECTIVE: 12/10/91

264-2.5.7 State and Local Legislation as an Additional Tool

A number of the states in the United States have enacted specific legislation to address computer crimes. These violations should not be overlooked when investigating computer crimes.

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| 264-3 | JURISDICTION

| (1) | Title 18, USC, Section 1030(d) provides: "The United States Secret Service (USSS) shall, in addition to any other agency having such authority, have the authority to investigate offenses under this Section. Such authority of the United States Secret Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury and the Attorney General."

On August 23, 1989, an amended agreement was entered into and it provides the following:

"4.a. The FBI shall have primary jurisdiction:

"(1) For matters which have traditionally been within its authority. These areas include such matters as organized crime, terrorism, and foreign counterintelligence.

"(2) For violations of Title 18, U.S. Code, Section 1030(a)(1) and (a)(3) which address the unauthorized access of computers used in national defense, foreign relations or any restricted data which may be used to the injury of the United States. However, when allegations involve unauthorized access of the White House complex computer systems or attempts at unauthorized access the USSS will maintain a presence and assist in the investigation.

"(3) For those criminal acts using a Federal-interest computer (as defined in Title 18, U.S. Code, Section 1030(e)(2)), that may be construed as violations of the Bank Fraud and Embezzlement, Fraud by Wire, or Bank Bribery Statutes where the FBI has traditionally had jurisdiction. The term bank is defined in various statutes as it relates to the specific offense (e.g., Title 18, U.S. Code, Sections 215, 1344, and 2113).

"(4) Except as noted in 4.b.(2) below, when a significant fraud against the Government has been committed by an employee of any Government agency. This is a matter that falls within the substantive jurisdiction of the FBI (Title 28, Section 535, U.S. Code), and has been articulated in Memoranda of Understanding between the FBI and Inspectors General of various agencies.

"b. The USSS shall have primary jurisdiction:

"(1) Except as noted in 4.a. (1), (2), (3), (4) above, for violations as outlined in Title 18, Section 1030 (a) (2),

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occurring in a consumer reporting agency, as defined in the Fair Credit Reporting Act of 1978 (Title 15, Section 1681, U.S. Code), or a card issuer as defined in Title 15, Section 1602, U.S. Code, and as outlined in Title 18, Sections 1030(a)(3) and (a)(6), U.S. Code.

"(2) When the computer systems of the U.S. Treasury Department are the direct object of the violation and the allegations do not meet the criteria for referral to the Department of Justice set forth in the purpose section of this memorandum.

"c. The FBI and the USSS shall have concurrent jurisdiction:

"(1) Except as noted in 4.a. (1), (2), (3), (4) above, for fraudulent schemes as outlined in Title 18, Sections 1030 (a) (2), (a) (4), and (a) (5), U.S. Code, when such violations are perpetrated against a computer system of a financial institution as defined in Title 18, Sections 1030 (e) (4) (G) and (e) (4) (H).

"(2) Except as noted in 4.a. (1), (2), (3), (4) and 4.b. (1) and (2), above for violations as outlined in Title 18, U.S. Code, Section 1030 (a) (4), and (a) (5) when such violations involve other Federal-Interest computers (as defined in Title 18, U.S. Code, Section 1030 (e) (2) (B))."

|(2) Title 18, USC, Section 2701, provides that the Federal Bureau of Investigation shall have investigative authority for any violations of this statute. |

EFFECTIVE: 12/10/91

||264-4| POLICY

EFFECTIVE: 12/10/91



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||264-4.1| Investigative Policy

|(1)| Based on the legislative history and the apparent intent of Congress to address instances of computer trespass, fraud and malicious damage, the FBI's primary investigative role will be those cases which have traditionally formed the basis for our investigative authority and wherein the criminal activity is sizeable and/or widespread. Matters involving national security, crimes directed at financial institutions, United States Government computers, Federal Interest computers, and interstate frauds or malicious damage will be the primary thrust of FBI investigations. Other matters within the statute, but not covered above, may be referred to the USSS or any law enforcement agency of a state, or political subdivision thereof having jurisdiction.

|(2)| FBIHQ should be promptly notified, by telephone and/or teletype, of the initiation of major or otherwise significant CFA cases which may prompt news media (or other) inquiries to be directed to FBIHQ.

|(3)| Because of the broad scope of computer-related cases, the FBI is able to apply the substantive violations to the appropriate investigative situation. In instances where the primary direction of work pertains to violations other than CFA, field offices are directed to use the appropriate classification for those violations. The use of other statutes, in addition to CFA statutes, would create a more expansive and effective attack against violators of statutes. The use of other classifications in these situations will more appropriately identify the investigative program within which these individual cases will be managed.

EFFECTIVE: 12/10/91

||264-4.2| Prosecutive Policy

EFFECTIVE: 12/10/91

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||264-4.2.1 Title 18, USC, Section 1030|

(1) The focus of Federal criminal prosecutions will be against those who demonstrate a clear intent to enter, without authorization, computer files belonging to another. The unauthorized access must be the person's conscious objective; however, an unintentional initial contact coupled with access deliberately maintained may not be exempt from prosecution. Section 1030 deals with an "unauthorized access" concept of computer fraud rather than the use of a computer. The conduct prohibited is analogous to that of a trespass (breaking and entering) rather than using a computer in committing the offense.

(2) Allegations of criminal acts involving Federal Government computers require proof that the unauthorized access to, and the use or destruction of, the information affects the operation of the Government. A computer used part time by the Government may become the victim of a Federal crime if it can be shown that the unauthorized access was made at any time when the Federal Government was authorized to use it, or if the unauthorized use left some sort of message, etc., that impacted on the Federal Government when it resumed use of the computer. The phrase "obtain information" is broadly defined.

(3) Thefts of property through computer trespass which occur as part of the fraud scheme require that the use of the computer be directly related to the intended fraud and not merely related to it.

(4) The statute exempts from prosecution under Title 18, USC, Section 1030(a)(4), persons who exceed authorized use of a computer simply to use the computer for purposes to which the authorization does not extend (e.g., to do homework, play video games or if the only thing of value obtained was the use of the computer's time).

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||264-4.2.2 Title 18, USC, Section 2701|

(1) Congressional intent in legislating Title 18, USC, Section 2701, was to protect the privacy of an electronic communication which is transmitted to a communications service, its storage on the behalf of the subscriber, and to ensure that such communication service be available only to the subscriber and others who may have authorized or legal access to it. Thus, privacy is protected either before the communication is transmitted to the recipient, or, if a copy of the message is kept, after it is delivered. The statute was designed to protect electronic communication through such methods as electronic mail and computer transmissions. It was generally recognized that the interruption of communications during the transmission stage is intrusive, and these communications are given protection by making it a Federal felony to unlawfully access.

(2) Electronic services covered by this statute include electronic mail service, voice mail, remote computing service, and other like communicating systems.

(3) This provision is intended to address unauthorized "computer hackers" and corporate spies who deliberately gain access to, and sometimes tamper with, electronic communications that are not available to the public. The provision is not intended to criminalize access to "electronic bulletin boards," which are generally open to the public so that interested persons may communicate on specific topics. Where communications are readily accessible to the public, the sender has (for purposes of Title 18, USC, Section 2701 (a)) extended an "authorization" to the public to access those communications. A communication is readily accessible if the telephone number of the system and other means of access are widely known, and if the person does not, in the course of gaining access, encounter any warnings, encryptions, password requests, or other indications of intended privacy. To access a communication on such a system is not a violation of the law.

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264-5 INVESTIGATIVE PROCEDURES

In general, computer-related crimes are not unique, in many cases the facts and circumstances parallel the traditionally criminal mental and physical acts found in such crimes as trespass, embezzlement, theft, fraud, malicious damage, sabotage, and espionage. The investigative approach should comply with traditional case management techniques, while giving appropriate consideration to the unique vocabulary found in the computer industry. Once the language hurdle is overcome, the investigator has the ability to understand what has occurred. The following investigative procedures are suggested for consideration in the investigation of 264 matters and are not considered an all-inclusive list:

(1) All CFA evidence examinations are to be submitted to the FBI Laboratory for examination and data retrieval. All requests for FBIHQ on-site examination and data retrieval will be coordinated through the ECU, WCCS, CID.

(2) When the criminal complaint is from the owner/user of the equipment/data, those who are directly familiar with the victim computer's operation and/or equipment should be called upon, if appropriate, to provide the facts to prove the elements of the offense; explain the modus operandi; aid in gathering the evidence; identify the suspect(s); and assist in simplifying the facts and circumstances for an effective presentation to the jury.

(3) The common investigative steps in any computer-related criminal investigation should be: the initial, preliminary investigation; contact the United States Attorney for a prosecutive opinion; investigative planning; information gathering and analysis; interviewing and interrogation; appropriate technical review, if necessary; and computer examination and documentation for prosecution and court presentation(s).

(4) The preliminary investigative phase should ascertain as much about the allegation as possible. It should determine the nature of the allegation, the probable degree of technicality involved and potential subjects and witnesses. Additionally, Agents investigating those matters should become familiar with the area, people, procedures, processes, security, and equipment involved.

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(10) Upon proper predication, surveillance of computer facilities should be used to determine users of the facilities.

(11)

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(14) Liaison contacts should be developed with local and state agencies investigating similar violations under state statutes. Should a preliminary inquiry not fall within the investigative policy of the FBI and/or the U.S. Attorney declines prosecution, the complainant should be directed to any other state or local law enforcement agency which has authority to conduct such investigations.

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(15) Absent sensitive circumstances, instances of computer-related crimes in other Federal Government agencies should be coordinated with the appropriate investigative unit of that agency.

(16) Search warrants are often used in CFA matters. In executing a search warrant, care must be taken to limit the scope of the warrant to seize only evidence pertinent to the crimes under investigation.

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264-6 REPORTING REQUIREMENTS

(1) All complaints involving CFA, regardless of classification or whether a case is opened, will be submitted to ECU, WCCS, CID, FBIHQ, by the Computer Fraud and Abuse Data Transmittal Form (FD-801). The submission of the CFA Data Transmittal Form for all complaints will allow FBIHQ to monitor the instances of CFA; fully identify the scope of the crime problem and crime trends; and seek resources as necessary to address these matters. If an investigation is opened as a CFA matter, a letterhead memorandum (LHM) (original and five copies) is to be submitted to FBIHQ and any affected auxiliary offices within 20 calendar days. The transmittal form will replace the transmittal airtel previously utilized in submission of LHMs to FBIHQ. The LHM is to include the field office, field office file number, date the investigation was opened, identified subject(s), predication, estimated loss, investigation conducted to date, the U.S. Attorney's initial prosecutive opinion, and contemplated investigation. The 20-day reporting requirement facilitates the coordination of multijurisdictional matters in a timely manner.

(2) Any investigation which is of a national interest or involves prominent individuals should be initially reported by priority communication, to include telephone, if necessary, followed by the LHM and CFA Data Transmittal Form (FD-801). Any major developments, use of innovative or sensitive investigative techniques, or unusual problems should also be promptly reported to FBIHQ.

(3) FBIHQ will disseminate information regarding the initiation of CFA investigations to the USSS. FBIHQ may also have reason to disseminate information regarding these matters to other

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Federal agencies. Sensitive information (i.e., informant/cooperating witness identities, personnel information, undercover Agent identities) should be set forth in the administrative section of the CFA Data Transmittal Form (FD-801). If the need exists not to disseminate, field offices should advise FBIHQ.

(4) Two copies of prosecutive reports prepared in CFA matters should be furnished to FBIHQ.

EFFECTIVE: 12/10/91

| 264-7 | VENUE

Where the offense is committed, begun or completed.

EFFECTIVE: 12/10/91

264-8 CHARACTER - COMPUTER FRAUD AND ABUSE (CFA)

EFFECTIVE: 12/10/91

| 264-9 CLASSIFICATION | (See MAOP, Part II, 3-1.1 & 3-1.2.) |

The CFA classification is subdivided into three types of cases that are characterized by alpha designator. Alpha designators are as follows:

| 264A COMPUTER FRAUD AND ABUSE - IMPAIRMENT

This includes the modification of existing software on a computer or placing harmful software on a computer which then affects its normal operation.

| 264B COMPUTER FRAUD AND ABUSE - THEFT OF INFORMATION

Theft of information matters involve the taking of information that is protected for reasons of national defense; the taking or trafficking in passwords; the taking of financial records of a financial institution;

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and taking anything of value.

264C COMPUTER FRAUD AND ABUSE - INTRUSION

Intrusion matters involve unauthorized use when it has not yet been determined that an impairment or theft has occurred.

EFFECTIVE: 10/18/95

264-10 | CASE TITLE

Set forth below is an example of a case title for use in the CFA Data Transmittal Form (FD-801):

JOHN H. SMITH;  
XYZ AGENCY - VICTIM;  
COMPUTER FRAUD AND ABUSE - IMPAIRMENT;  
OO: NEW YORK  
(264A-NY-12345) |

EFFECTIVE: 12/10/91

|| 264-11 | OFFICE OF ORIGIN

Office of Origin will be established in the manner set forth in MAOP, Part II, Section 10-16.2.

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DATE: 9/23/98

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SECTION 265. ACTS OF TERRORISM - INTERNATIONAL TERRORISTS

265-1 ACTS OF TERRORISM - INTERNATIONAL TERRORISTS

(1) This classification will include any investigation of a criminal act which involves an international terrorist. The investigative procedures will follow the same procedures detailed in the substantive offense under which the investigation is predicated. Alpha designators have been created to identify the investigative program under which the investigation should be classified.

(2) This classification was developed in order to focus on the criminal activity of the international terrorist. This effort does not diminish the importance of intelligence investigations or collection, but emphasizes the criminal nature of terrorism. Therefore, once information is developed in an investigation conducted under the Foreign Counterintelligence Guidelines that evidence exists of criminal activity, the criminal investigation under this classification, with appropriate alpha designator, is to be opened.

EFFECTIVE: 04/26/94

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED EXCEPT  
WHERE SHOWN OTHERWISE

265-2 ALPHA DESIGNATORS (See MIOG, Part I, 265-3.)

Set forth below are the alpha designators which are applicable to the 265 classification. A case shall be identified with an alpha designator in accordance with the investigative program or subprogram to which the substantive offense would generally belong.

265A - Violent Crimes - Predicate Offense (i.e., kidnapping, bank robbery, etc.)

265B - Organized Crime - Predicate Offense (i.e., racketeering enterprise investigation, etc.)

265C - White-Collar Crime - Predicate Offense (i.e., FIF, etc.)

265D - Government Reservation Crimes - Predicate Offense

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(i.e., CGR, TGP, etc.)

265E - Fugitive - Predicate Offense (i.e., bond default,  
etc.)

265F - Interstate Theft - Predicate Offense (i.e., TFIS,  
etc.)

265G - Drug Trafficking

EFFECTIVE: 04/26/94

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INVESTIGATIVE POLICY AND PROCEDURES

(2) It is most likely that the 265 classification will  
be applied to one of two possible scenarios.

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XXXXXXFEDERAL BUREAU OF INVESTIGATION  
FOIPA  
DELETED PAGE INFORMATION SHEET

1 Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

- ☒ Deletions were made pursuant to the exemptions indicated below with no segregable material available for release to you.

Section 552Section 552a☐ (b)(1)☐ (b)(7)(A)☐ (d)(5)☒ (b)(2)☐ (b)(7)(B)☐ (j)(2)☐ (b)(3)☐ (b)(7)(C)☐ (k)(1)☐ (b)(7)(D)☐ (k)(2)☒ (b)(7)(E)☐ (k)(3)☐ (b)(7)(F)☐ (k)(4)☐ (b)(4)☐ (b)(8)☐ (k)(5)☐ (b)(5)☐ (b)(9)☐ (k)(6)☐ (b)(6)☐ (k)(7)

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2. The policy guidance set forth under (a) above applies to this situation also.

(3) Upon initiation of a 265 investigation, a teletype must be expeditiously prepared and forwarded to the attention of the CTS, NSD.

(a) This communication must contain the predication for the criminal investigation including the specific facts which clearly establish the terrorism nexus.

EFFECTIVE: 04/26/94

265-4

CHARACTER - ACTS OF TERRORISM - INTERNATIONAL TERRORISTS  
(AOTIT)

EFFECTIVE: 04/26/94

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SECTION 266. ACTS OF TERRORISM - DOMESTIC TERRORISTS

266-1 ACTS OF TERRORISM - DOMESTIC TERRORISTS (See Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigations, Part II, Contained in MIOG, Introduction, 1-3.)

(1) This classification shall include any investigation of a criminal act which involves an individual or individuals affiliated with a domestic terrorist group. The investigative procedures shall follow the same procedures detailed in the substantive offense under which the investigation is predicated. Alpha designators have been created to identify the investigative program under which the investigation should be classified.

(2) The Act of Terrorism (AOT) classification was developed in order to focus upon the specific criminal activity of the domestic terrorist. If a specific, articulable criminal violation on the part of a person or persons affiliated with a domestic terrorist group is determined to have occurred, is occurring, or is about to occur, then a criminal investigation should be opened under this classification with appropriate alpha designator (see Section 266-2). An AOT investigation (266 case) may be initiated in conjunction with, or independent of, a criminal intelligence investigation (100 case).

(3) Section II of the Attorney General Guidelines (AGG) permits field offices to open general crimes investigations when facts or circumstances reasonably indicate that a federal crime has been, is being, or will be committed. Section III of the AGG permits the initiation of criminal investigations of Domestic Security/Terrorism (DS/T) groups when facts or circumstances reasonably indicate that "two or more persons are engaged in an enterprise for the purpose of furthering political or social goals wholly or in part through activities that involve force or violence and a violation of the criminal laws of the United States." (See MIOG, Introduction, 1-3.)

(4) Preliminary Inquiries

(a) Preliminary inquiries are not authorized under Section III of the AGG (criminal intelligence investigations/100 classification). Section I of the AGG states that preliminary inquiries shall be conducted pursuant to the General Crimes Guidelines

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(Section II). There is no separate provision for the conduct of preliminary inquiries under the Criminal Intelligence Guidelines described by Section III.

(b) Preliminary inquiries authorized in the General Crimes Section are more limited in scope and purpose than the preliminary investigation formerly authorized under the 1976 Domestic Security Guidelines. However, they permit greater latitude in the use of certain investigative techniques, particularly where informants are involved. The only investigative techniques that are specifically prohibited during a preliminary inquiry are:

b7E [REDACTED] At the same time, the Guidelines caution that Agents should consider whether the information sought could be obtained by means which involve less intrusion into the subject's privacy. As an example, if a discreet inquiry to local law enforcement officials would produce the necessary information, it might be inappropriate to question neighbors.

b7E (c) Subject to this general guidance on intrusiveness pertaining to preliminary inquiries, Agents require no special authorization to check FBI files, public records or sources, government records, utilize established informants or confidential sources, interview subjects, complainants or others having knowledge of the facts, or to conduct surveillance. Prior authorization of a Supervisory Agent is required before employers or co-workers may be interviewed, pretext interviews are conducted, or new informants are developed. Other more intrusive techniques, [REDACTED] may be employed only in compelling circumstances and when other investigative means are not likely to be successful. An informant would also fall in that category if he/she is used in a manner that involves a significant intrusion into one's private affairs. "Compelling circumstances" are circumstances requiring the use of techniques to determine the validity of information or allegations concerning possible serious criminal activities such as a threat to life or substantial property interest, the destruction or alteration of evidence, or the serious impairment or hindrance of an investigation.

(d) Preliminary inquiries may be authorized by field supervisors, but in all situations, the inquiry must be completed within 90 days after initiation of the first investigative steps, unless authorized by the Bureau. Subsequent authorizations for extensions are limited to 30-day periods, and will be based upon a written request from the field divisions, including a statement of reasons justifying further "inquiry" when there is no "reasonable

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indication" which would allow a full investigation under this classification.

(e) In order to ensure compliance with the Attorney General Guidelines and to avoid duplication of investigative effort, each field office shall advise FBIHQ, in writing, within 10 work days of the opening of a preliminary inquiry, as well as within 10 work days of the closing of a preliminary inquiry.

(5) Criminal intelligence investigations of DS/T enterprises should be initiated and carried as 100 matters. Criminal intelligence information developed during the course of a 266, or other investigation, may be placed in a 100 file to which it relates. Conversely, criminal acts detected in a 100 criminal intelligence investigation may be "spun off" to a 266 general investigation or a PI. DS/T criminal intelligence investigations are similar in nature to a racketeering enterprise investigation (REI).

(a) During the course of a DS/T criminal intelligence investigation, specific articulable criminal violations may be identified which would reasonably indicate enforcement activity or court proceedings (e.g., arrest, discovery hearings, etc.) will occur. At that time, a general criminal investigation (266 case) should be opened to focus upon the specific criminal activity. The criminal intelligence investigation (100 case) would continue to focus on the entire enterprise, as the scope of the AOT case may be limited to a relatively small portion of the total activity of that enterprise.

(b) While it may be appropriate for all investigative results generated from an AOT (266) case to be placed in the corresponding 100 file, the converse is not true. Only those details in the 100 case which specifically pertain to the subjects of the AOT case should be placed in the 266 file.

(6) The correct identification of a criminal intelligence investigation in the 100 classification or a General Crimes Investigation as a 266 is important because it establishes the FBI's investigative focus.

(7) When a general crimes investigation is classified as a 266 matter, it focuses on an individual and his or her criminal conduct which may be incidentally related to that person's affiliation with a DS/T group. These 266 Act of Terrorism-Domestic Terrorism investigations may not necessarily involve the sensitive circumstances which are likely to be involved in an intelligence investigation of

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the group itself. Criminal intelligence investigation of DS/T groups are conducted in order to obtain information regarding the nature and structure of the enterprises.

(8) In the past, general crimes investigations and preliminary inquiries have been conducted out of 100 (DS/T) classification files or subfiles. Because preliminary inquiries can only be conducted in general crimes investigations, they should be handled as 266 matters (Acts of Terrorism - Domestic Terrorism), not 100 matters.

EFFECTIVE: 06/23/97

| 266-2 ALPHA DESIGNATORS | (See MIOG, Part I, 266-1.) |

Set forth below are the alpha designators which are applicable to the 266 classification. A case shall be identified with an alpha designator in accordance with the investigative program or subprogram to which the substantive offense would generally belong.

266A - Violent Crimes - Predicate Offense (i.e.,  
| kidnapping, | bank robbery, etc.)

266B - Organized Crime - Predicate Offense (i.e.,  
racketeering enterprise investigation, etc.)

266C - White-Collar Crime - Predicate Offense (i.e., FIF,  
etc.)

266D - Government Reservation Crimes - Predicate Offense  
(i.e., CGR, TGP, etc.)

266E - Fugitive - Predicate Offense (i.e., bond default,  
etc.)

266F - Interstate Theft - Predicate Offense (i.e., TFIS,  
etc.)

266G - Drug Trafficking



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EFFECTIVE: 06/23/97

266-3 INVESTIGATIVE OBJECTIVES AND PROCEDURES

(1) The objective of this classification is to direct investigative resources toward detection and prevention of a terrorist incident and the prosecution of individuals committing specific criminal acts.

(2) The investigative procedures utilized for a case conducted under these alpha designators will be in accordance with established guidelines for the substantive offense of that alpha designator, except that coordination of the investigation and results thereof will be reported to the Domestic Terrorism/Counterterrorism Planning Section, National Security Division (NSD). For example, an investigation conducted as a 266A case would follow procedures set forth under the Violent Crimes Subprogram except for the coordination and reporting aspects.

(3) In accordance with the AGG, preliminary inquiries (PI) may be initiated by FBI field offices without FBIHQ authority to determine the scope of a terrorist group's criminal activities. Initiation of a PI allows the FBI to conduct a measured review, contact, or observe individuals to determine if there is a "reasonable indication" of criminal activity, warranting a full DS/T investigation.

(4) PIs are to be completed within 90 days after the initiation of the first investigative step. Extension of a PI requires FBIHQ authority. Written requests for PI extensions should arrive at FBIHQ seven work days prior to the expiration date.

(5) During the course of a PI, investigation may determine there is a reasonable indication that criminal activity has been, is being, or will be committed. At that time, the field supervisor is authorized to convert the 266 PI to a full 266 investigation. Upon doing so, a communication is to be sent to FBIHQ providing notification and predication for the conversion.

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266-4 REPORTING REQUIREMENTS

Upon initiation of a 266 investigation, an electronic communication must be immediately forwarded to the Domestic Terrorism Operations Unit (DTOU), FBIHQ, providing the date the investigation was initiated and the predication for its initiation. Upon closing the investigation, in addition to immediately notifying DTOU, field offices should update records in the FBINET Automated Case System (ACS) to reflect this fact.

EFFECTIVE: 06/23/97

||266-5| CHARACTER - ACTS OF TERRORISM - DOMESTIC TERRORISTS  
(AOTDT)

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SECTION 267. DRUG-RELATED HOMICIDE

267-1 BACKGROUND

(1) On 11/18/88, the President signed into law the Anti-Drug Abuse Act of 1988, which became Public Law 100-690. This Act, in part, amended Title 21, USC, by adding Subsection 848(e), entitled "Death Penalty."

(2) Under Subsection 848(e), the death penalty or lesser penalties may be imposed on:

(a) any person in or working in furtherance of a continuing enterprise, or any person engaged in an offense punishable under Title 21, USC, Section 841(b)(1)(A) or Section 960(b)(1) who intentionally kills or counsels, commands, induces, procures, or causes the intentional killing of an individual; or

(b) any person during the commission of, in furtherance of, or while attempting to avoid apprehension, prosecution or service of a prison sentence for, a felony violation under Title 21, USC, who intentionally kills, or counsels, commands, induces, procures, or causes the intentional killing of any Federal, state or local law enforcement officer engaged in, or on account of, the performance of such officer's official duties.

(3) Because of the addition of the act of homicide to Title 21, this amendment therefore created new jurisdiction for the FBI and Drug Enforcement Administration (DEA).

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267-2 FBI/DEA Memorandum of Understanding (MOU)

"POLICY:

"1. The FBI and DEA recognize and agree that each agency has concurrent jurisdiction to investigate offenses under Section 7001 (of the Anti-Drug Abuse Act of 1988).

"2. The DEA will have investigative responsibility for drug-related slayings of nonlaw enforcement officers where DEA is the investigative agency in the predicate Title 21 investigation. In joint FBI/DEA investigations in which a nonlaw enforcement officer is killed, lead agency responsibility will be determined by the status of the individual killed. If the individual killed is an FBI informant or witness, the FBI will have lead investigative responsibility.

"3. The DEA will have investigative responsibility for the drug-related slayings of DEA Special Agents and employees, except as noted below. Informants, as well as deputized and nondeputized task force officers, are not considered to be employees for purposes of this MOU.

"a. If at any time during the investigation, facts or circumstances are developed which reasonably indicate that the slaying was an 'act of terrorism' as that term is defined in (Title) 18, U.S. Code, (Subsection) 3077(1), the investigation of the slaying will proceed as a joint investigation with the FBI being the lead agency.

"b. If there are simultaneous multiple slayings in the same predicate investigation resulting in the deaths of a DEA Special Agent and a deputized or nondeputized task force officer or the deaths of a DEA Special Agent and an FBI Special Agent, the investigation will be conducted as a joint investigation with the FBI being the lead agency.

"4. The FBI will have investigative responsibility for all other drug-related slayings.

"5. All investigations of this section of the Anti-Drug Abuse Act of 1988 are to be given top priority by the DEA and the FBI. It is agreed that any and all cooperation between the DEA and the FBI will be coordinated at the Special Agent in Charge level or the level designated by the Special Agent in Charge. Each agency will provide all available support and cooperation as requested and necessary to these investigations. Information will be exchanged as expeditiously

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as possible and appropriate resources will be made available in all drug-related homicides investigated by the FBI and/or DEA.

"6. This MOU acknowledges the need to preserve the integrity of the DEA's ongoing drug investigations while also preserving the traditional investigative jurisdiction of the FBI and also its authority to investigate the felonious killings of state and local law enforcement officers as provided for by Section 7331 of the Anti-Drug Abuse Act of 1988.

"DISPUTE RESOLUTION

"In any situation in which this MOU proves to be ambiguous as to which agency has investigative responsibility for a drug-related slaying, any issues concerning the respective responsibilities of the FBI and the DEA for the conduct of the investigation will be promptly resolved between the DEA Assistant Administrator for Operations and the Assistant Director of the Criminal Investigative Division of the FBI.

"DEFINITIONS

"1. 'Lead Agency': The agency ultimately responsible for the management and direction of investigative activity.

"2. 'Law Enforcement Officer': A public servant authorized by law or by a Government agency or Congress to conduct or engage in the prevention, investigation, prosecution or adjudication of an offense, and includes those engaged in corrections, probation or parole functions. (See Title 21, U.S. Code, Subsection 848(e)(2)).

"AMENDMENT

"This MOU may be amended by deletion or modification of any provision contained herein, or by addition of new provisions, after written concurrence of the parties."

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267-3 EXCLUSIVE FBI JURISDICTION

The FBI has investigative jurisdiction in all other DRH cases with the exception of DEA-related cases (see Section 267-2 "Policy") and drug-related slayings of Department of Treasury (DOT) personnel. Pursuant to a 10/2/56 agreement, the DOT has investigative jurisdiction over the assault and killing of its Federal officers. Therefore, the DOT could handle its own drug-related homicide investigations if the homicide did not pertain to any ongoing FBI/DEA investigation. For further information concerning DOT or U.S. Postal Service jurisdiction, refer to Part I, Sections 89-2.13 and 89-2.14 of this manual.

EFFECTIVE: 08/28/91

267-4 INVESTIGATIVE FBI POLICY

(1) FBIHQ is aware that a large percentage of homicides, particularly in the larger urban areas, are drug-related and/or gang-related. Therefore, highly selective criteria must be established in order to maximize the efforts of the limited resources of the Violent Crimes and Major Offenders Program. Furthermore, since the underlying statute of the DRH classification is one of the few federal statutes that provides the death penalty, cases opened under this classification should be significant enough to warrant imposition of the death penalty.

(2) Criteria to be used in opening DRH investigations:

(a) The drug-related "felonious" killing of a federal, state, or local law enforcement officer warrants the imposition of the death penalty. If the underlying provisions of Title 21, Section 848 (e)(1), are satisfied, cases can be opened without FBIHQ authority.

(b) Cases can be opened on murders of FBI, DEA, U.S. Customs, Internal Revenue Service or other federal agency informants, cooperating witnesses, grand jury or trial cases witnesses who currently are, or in the past have assisted the U.S. Government in investigations of violations of Title 21, USC, Section 848 (e)(1). FBIHQ authority is required to open these cases. (See (5) below.)

(c) FBIHQ will consider authorizing investigations involving drug-related homicides of nonlaw enforcement officers or

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noninformant(s)/witness(es) if the murders are perpetrated to maintain, expand, consolidate, and/or defend drug trafficking enterprises. These cases should be limited to persons or organizations that are conducting a "Continuing Criminal Enterprise" as defined in Title 21, Section 848 (c). FBIHQ authority is required to open these cases. [(See (5) below.)]

(3) In the event the United States Attorney (USA) is not willing to seek prosecution under this statute and the victim is a Federal law enforcement officer, a "Killing of a Federal Officer" investigation (see Part I, Section 89, of this manual) under Title 18, USC, Section 1114, should be promptly instituted. If the victim is a state or local police officer, consideration should be given to instituting a "Police Killing" investigation (see Part I, Section 184, of this manual) under Title 28, USC, Section 540.

(4) For information of field offices, DOJ requires all federal prosecutors who intend to seek the death penalty to provide the DOJ with the written summary of the completed DRH investigation in order to obtain the personal approval of the Attorney General. Therefore, a final determination of federal prosecution, with the death penalty, will not be known until the investigation is completed and the Attorney General's approval is obtained.

(5) It is not the intention of the FBI to interject itself into matters which can be or should be investigated, prosecuted or otherwise resolved by other state and local law enforcement entities. The intent of this legislation is to assist local and state law enforcement in a united front against drug traffickers and drug trafficking organizations who commit murder(s) to facilitate their drug trafficking activities. Therefore, local homicides which are drug-related, but do not involve victims who are members of federal, state or local law enforcement, or do not involve victims specified in Sections 267-4(2)(b) and (c), supra, should not be used as a basis for instituting a 267 investigation.

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267-5 REPORTING REQUIREMENTS

(1) Within five days of opening a 267A or 267B case, field offices will provide the Violent Crimes/Fugitive Unit, Criminal Investigative Division (CID), with the following:

(a) A summary of facts surrounding the killing and the facts which support the Title 21, USC, Section 848 (e)(1) violation.

(b) The name of the commanding officer of the local or state police department where the killing occurred and verification of his/her request for the FBI to enter the investigation.

(c) The name of the district attorney or state prosecutor who has agreed that the FBI/DOJ should pursue federal death penalty prosecution for those individuals involved in the killing.

(d) The name of the USA who has agreed to prosecute those individuals who violated the DRH statutes.

(2) Prior to opening a 267C case, field offices will send a teletype to the Violent Crimes/Fugitive Unit, CID, under the 267-0 file, requesting authority. The teletype should contain:

(a) Background of murder and circumstances relating to DRH violation.

(b) Facts supporting Title 21, Section 848 (e)(1) violation.

(c) Name of USA/AUSA who has agreed to prosecute DRH violation and a statement that his/her opinion has been/will be confirmed in writing.

(d) If the victim(s) was an FBI informant or cooperating witness, designate a copy to the Criminal Informant Unit, Intelligence Section, CID.

EFFECTIVE: 11/25/94

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CHARACTER - DRUG-RELATED HOMICIDE

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EFFECTIVE: 08/28/91

267-7 CLASSIFICATION AND SUBCLASSIFICATIONS (See MAOP, Part II,  
3-1.1, 3-1.2.)

(1) The classification is 267.

(2) Subclassifications are:

(FO) (a) 267A - Drug-Related Homicide - Federal Officers

(b) 267B - Drug-Related Homicide - State/Local  
Officers (S/LO)

(c) 267C - Drug-Related Homicide - Nonlaw  
Enforcement Victims

(3) Deleted

EFFECTIVE: 10/18/95

267-8 CASE TITLE

(1) The case title should include each subject(s)' name,  
the name of the victim(s), and the name of the drug trafficking  
organization, if known.

(2) Example:

JOHN DOE;  
JOHN DOE DRUG TRAFFICKING ORGANIZATION;  
IAM A. GOODFELLOW - VICTIM;  
DRH - S/LO;  
OO: LOS ANGELES  
(267B-LA-0001)

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EFFECTIVE: 08/28/91

267-9 VENUE

Generally, venue in DRH matters is governed by Title 18, U.S. Code, Subsection 3237. This section states that venue lies in any district in which the offense was begun, continued or completed. Logically, in single homicide cases involving law enforcement officers, venue will lie in the district where the homicide occurred. In multiple homicide cases, involving a major drug trafficking organization, venue will usually lie in the district where the organization is headquartered.

EFFECTIVE: 08/28/91

267-10 OFFICE OF ORIGIN

In DRH violations, office of origin will be determined by the place where the homicide(s) occurred or where the drug trafficking organization is headquartered.

EFFECTIVE: 08/28/91

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|SECTION 268. ENGINEERING TECHNICAL MATTERS - FCI

| 268-1 ENGINEERING TECHNICAL MATTERS - FCI

The classification for "Engineering Technical Matters - FCI" was established for FBIHQ's use in capturing official correspondence related to classified engineering projects. The Technical Services Division (TSD), Engineering Section (ES) oversees these projects and generates most of the related documentation. Because it is strictly an administrative classification for recordkeeping purposes, the 268 classification is not intended for Time Utilization Recordkeeping (TURK) usage and will not be found in the FOIMS tables since it is mainly for FBIHQ's use. Field time expended on technical matters will continue to be recorded within the appropriate investigative program.

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SECTION 269. ENGINEERING TECHNICAL MATTERS - NON-FCI

269-1 ENGINEERING TECHNICAL MATTERS - NON-FCI

The classification for "Engineering Technical Matters - Non-FCI" was established for FBIHQ's use in capturing official correspondence related to unclassified engineering projects. The Technical Services Division (TSD), Engineering Section (ES) oversees these projects and generates most of the related documentation. Because it is strictly an administrative classification for recordkeeping purposes, the 269 classification is not intended for Time Utilization Recordkeeping (TURK) usage and will not be found in the FOIMS tables since it is mainly for FBIHQ's use. Field time expended on technical matters will continue to be recorded within the appropriate investigative program.

EFFECTIVE: 02/20/90

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SECTION 270. COOPERATIVE WITNESSES

270-1 BACKGROUND

(1) Historically, the policy and procedures have not been established for the use of cooperative witnesses in criminal investigations. Interim guidelines on the use of cooperative witnesses have been established in this section until the new Attorney General Guidelines on the use of informants and cooperative witnesses are published.

(2) The policy and procedures for cooperative witnesses have been patterned after the Criminal Informant Program as closely as possible to help minimize differences in the administration of both programs.

(3) For details of the policy and procedures relative to the operation of cooperative witnesses, see the Memorandum to all Special Agents in Charge, number 8-90, entitled "Cooperative Witness (CW) Program - Interim Guidelines (IG)," dated 4/10/90.

EFFECTIVE: 02/12/92

270-2 DEFINITION

A cooperative witness is an individual whose relationship with the Government is concealed until testimony is required at trial and who, on a continuing basis and under the direction of an Agent, contributes substantial operational assistance to the resolution and/or direction of a case through active participation in the investigation.

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SECTION 271. ARMS CONTROL TREATY MATTERS

271-1 ARMS CONTROL TREATY MATTERS

Information concerning classification 271, Arms Control Treaty Matters, is set forth in a separate FBI manual, the NATIONAL FOREIGN INTELLIGENCE PROGRAM MANUAL (NFIPM).

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SECTION 272. MONEY LAUNDERING (SEE MIOG, PART I, 281-15.)

272-1 INTRODUCTION

(1) The laundering of money, with its wide range of criminal applications, plays an integral role in concealing, enhancing and expanding crime. The money laundering statutes (Title 18, U.S. Code, Sections 1956 and 1957) proscribe virtually any transaction which involves the proceeds of a wide range of criminal activity. Consequently, the use of the money laundering statutes should be thoroughly explored in ALL Bureau cases.

(2) The money laundering statutes should be used in conjunction with the Bank Secrecy Act (BSA), Title 31, U.S. Code, Sections 5311 - 5322.

[REDACTED] b2 b7E

(3) Title 18, U.S. Code, Section 1956 prohibits virtually any dealings with the proceeds of a wide range of "specified unlawful activities" (SUA) when those dealings are aimed at furthering or promoting the SUA or at concealing or disguising the nature, location, source, ownership, or control of the proceeds. (See Subsection 272-4(10) for a list of these SUAs.) Title 18, U.S. Code, Section 1956 also criminalizes money laundering transactions made with undercover law enforcement officers.

(4) Title 18, U.S. Code, Section 1957 effectively criminalizes any knowing monetary transaction or attempted monetary transaction in criminally derived property when three factors exist: (1) over \$10,000 is involved, (2) a financial institution is utilized as defined in Title 31, U.S. Code, Section 5312, and (3) the property is derived from an SUA. The statute does not require that the property be used for any additional criminal purpose.

(5) The major impact of the money laundering statutes is that although the Government must prove that the proceeds were IN FACT derived from a "specified unlawful activity," e.g., drugs, it need only prove that the defendant knew, by direct or circumstantial proof, that the property involved in the financial transaction was the proceeds of SOME state or Federal FELONY crime.

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272-2 MONEY LAUNDERING STATUTES

(1) Included in the Anti-Drug Abuse Act of 1986 and its amendments of 1988 are money laundering statutes that have a wide range of applications for many FBI cases. Violations of the money laundering laws are usually tied to other criminal activities, which range from the various RICO predicates and drugs, to bank fraud, espionage, etc.

(2) These money laundering laws are contained in Title 18, U.S. Code, Sections 1956 and 1957, with companion forfeiture provisions in Sections 981 (Civil) and 982 (Criminal).

(3) The following citations, 272-2.1 through 272-2.4 will assist the Agent in identifying these statutory areas.

EFFECTIVE: 10/26/93

272-2.1 Title 18, U.S. Code, Section 1956 (a)(1) - (Domestic Financial Transactions) (See MIOG, Part I, 272-2.)

(A)(i) is directed toward situations where the financial transaction involves illegal proceeds which are used to promote criminal activity (e.g., illegal proceeds are used to purchase drugs, storage facilities, vehicles, etc., in order to continue drug trafficking activity.)

(A)(ii) is directed toward situations where the financial transaction involves an intent to commit tax fraud or evasion.

(B)(i) is directed towards situations where the financial transaction involves illegal proceeds which are used to conceal the nature, location, source, ownership or control of the proceeds (e.g., the subject places the illegal proceeds into a "legitimate" business



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in order to make the subject's wealth appear legitimate).

(B)(ii) is directed towards situations where the financial transaction is designed to avoid or attempt to avoid State or Federal reporting requirements (e.g., subject directs others (smurfs) to buy cashiers checks with illegal proceeds in amounts less than \$10,000 to avoid Currency Transaction Reporting requirements).

EFFECTIVE: 10/26/93

272-2.2 Title 18, U.S. Code, Section 1956(a)(2) -  
International Financial Transactions (Transport,  
Transmit or Transfer Funds) (See MIOG, Part I, 272-2.)

(A) is directed toward situations where funds or monetary instruments are being moved into or out of the U.S. with the intent to promote an illegal activity (e.g., the proceeds are moved out of the United States to buy drugs).

(B)(i) is directed toward situations where illegal funds or monetary instruments are moved into or out of the U.S. in order to conceal the nature, source, etc., of the illegal proceeds (e.g., the subject moves or transmits an "illegal" monetary instrument to an offshore account or business in order to conceal or legitimize the money).

(B)(ii) is directed toward situations where illegal funds are moved into or out of the U.S. in order to avoid a State or Federal transaction reporting requirement (e.g., subject moves the "illegal" funds out of the U.S. in amounts greater than \$10,000 and does not file the appropriate Currency and Monetary Instrument Report).

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272-2.3 Title 18, U.S. Code, Section 1956(a)(3) -  
Undercover Money Laundering Transactions (See MIOG, Part  
I, 272-2.)

(A) is directed toward situations where a financial transaction involving government undercover (UC) funds or property is used to promote an illegal activity (e.g., a subject uses money provided by a UCA to purchase a stash house).

(B) is directed toward situations where a financial transaction involving UC funds is used to conceal the fact that the funds are (believed to be) illegal (e.g., a subject uses property provided by a UCA to conceal the nature or control of the so-called illegal proceeds by purchasing a vehicle with hidden compartments for drugs or drug proceeds).

(C) is directed toward situations where a State or Federal financial transaction involving UC funds is used to avoid a transaction reporting requirement (e.g., a subject using property provided by a UCA buys several cashiers checks in amounts less than \$10,000).

EFFECTIVE: 10/26/93

272-2.4 Title 18, U.S. Code, Section 1957 -  
Monetary Transactions in Criminally Derived  
Property Over \$10,000 (See MIOG, Part I, 272-2.)

This section is generally designed to address a subject who "knowingly" engages in a monetary transaction involving criminally derived proceeds greater than \$10,000 (e.g., an automobile dealer sells a \$20,000 car to a drug dealer for cash, and then deposits those funds to his/her bank account, "knowing" that these funds were derived from illegal drug sales).

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272-3 PENALTIES

EFFECTIVE: 10/26/93

272-3.1 Title 18, U.S. Code, Section 1956 (a) (1) and (2)

(1) The criminal penalty for a violation of either Subsection (a) (1) or (a) (2) of Section 1956 is a maximum sentence of 20 years' incarceration for each offense and/or a maximum fine of \$500,000, or twice the value of the monetary instruments or funds involved, whichever is greater.

(2) Violators of Subsections 1956(a) (1) and (a) (2) are also liable to the United States for a civil penalty of not more than the greater of the value of the property, funds or monetary instruments involved in the transaction or \$10,000. Such civil penalty is intended to be imposed in addition to any fine imposed for the criminal offense.

(3) It should also be noted that the forfeiture provisions of this act (See Title 18, U.S. Code, Sections 981 and 982) may be applied in addition to civil and criminal penalties. (See FORFEITURE AND ABANDONED PROPERTY MANUAL for additional information regarding civil and criminal forfeiture.) Thus, a person who violates Section 1956 by laundering \$250,000 might have the funds civilly forfeited, be subject to a fine of up to \$500,000 if convicted of the criminal offense, and pay a civil penalty of another \$250,000. For payment of the criminal fine and civil penalty, the Government may look to other assets of the defendant not involved in the offense.

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272-3.2 Title 18, U.S. Code, Section 1956(a) (3)

Maximum of 20 years' imprisonment; or a fine under Title 18; or both.

EFFECTIVE: 10/26/93

272-3.3 Title 18, U.S. Code, Section 1957

Maximum of 10 years' imprisonment; or a fine under Title 18 or twice the amount of the criminally derived property involved in the transaction; or both.

EFFECTIVE: 10/26/93

272-4 DEFINITIONS

(1) "Knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" (as in Title 18, U.S. Code, Section 1956 (c) (1)) means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State or Federal law, regardless of whether or not such activity is specifically defined as an SUA.

(2) The term "conducts" (as in Title 18, U.S. Code, Section 1956 (c) (2)) includes initiating, concluding, or participating in initiating, or concluding a transaction;

(3) The term "transaction" (as in Title 18, U.S. Code, Section 1956 (c) (3)) includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

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(4) "Financial transaction" (as in Title 18, U.S. Code, Section 1956 (c) (4)) means a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments, which in any way or degree affects interstate or foreign commerce, or a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

(5) "Monetary instruments" (as in Title 18, U.S. Code, Section 1956 (c) (5)) means coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery;

(6) The term "financial institution" (as in Title 18, U.S. Code, Section 1956 (c) (6)) includes the following:

- Act;
- United States;
- Act;
- Securities and Exchange Commission;
- checks, checks, money orders, or similar instruments;
- automobile, airplane, and boat sales;
- "(A) an insured bank of the Federal Deposit Insurance
  - (B) a commercial bank or trust company;
  - (C) a private banker;
  - (D) an agency or branch of a foreign bank in the
  - (E) an insured institution of the National Housing
  - (F) a thrift institution;
  - (G) a broker or dealer registered with the
  - (H) a broker or dealer in securities or commodities;
  - (I) an investment banker or investment company;
  - (J) a currency exchange;
  - (K) an issuer, redeemer, or cashier of travelers'
  - (L) an operator of a credit card system;
  - (M) an insurance company;
  - (N) a dealer in precious metals, stones or jewels;
  - (O) a pawnbroker;
  - (P) a loan or finance company;
  - (Q) a travel agency;
  - (R) a licensed sender of money;
  - (S) a telegraph company;
  - (T) a business engaged in vehicle sales, including
  - (U) persons involved in real estate closings and

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settlements;

(V) the United States Postal Service;  
(W) an agency of the United States Government or of a state or local government carrying out a duty or power of a business (described in this paragraph);

(X) any business or agency which engages in any activity which the Secretary of the Treasury determines, by regulation, to be an activity which is similar to, related to, or a substitute for any activity in which any business (described in this paragraph) is authorized to engage; or

(Y) any other business (designated by the Secretary of Treasury) whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters."

(7) "Represented" (as in Title 18, U.S. Code, Section 1956(a)(3)) means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a federal official authorized to investigate or prosecute violations of Title 18, U.S. Code, Section 1956 (a) (3).

(8) "Monetary transaction" (as in Title 18, U.S. Code, Section 1957 (f) (1)) means the deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument by, through, or to a financial institution, but such term does not include any transaction necessary to preserve a person's right to representation as guaranteed by the sixth amendment to the Constitution;

(9) "Criminally derived property" (as in Title 18, U.S. Code, Section 1957 (f) (2)) means any property constituting, or derived from, proceeds obtained from a criminal offense;

(10) "Specified Unlawful Activity" (SUA) (as in Title 18, U.S. Code, Section 1956) means: (See MIOG, Part I, 272-1(3).)

(a) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving the manufacture, importation, sale or distribution of a controlled substance (as in Title 21, U.S. Code, drug-type offenses;

(b) any act or acts constituting a continuing criminal enterprise (21, USC, 848);

(c) an offense under the following: (See 272-9, 272-13.)

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- 18 USC 152 (relating to concealment of assets; false oaths and claims; bribery),
- 18 USC 215 (relating to commissions or gifts for procuring loans),
- 18 USC 500 through 503 (relating to certain counterfeiting offenses),
- 18 USC 513 (relating to securities of States and private entities),
- 18 USC 542 (relating to entry of goods by means of false statements),
- 18 USC 545 (relating to smuggling goods into the United States),
- 18 USC 549 (relating to removing goods from Customs Custody),
- 18 USC 641 (relating to public money, property, or records),
- 18 USC 656 (relating to theft, embezzlement, or misapplication by bank officer or employee),
- 18 USC 657 (relating to lending, credit and insurance institutions),
- 18 USC 658 (relating to property mortgaged or pledged to farm credit agencies),
- 18 USC 666 (relating to theft or bribery concerning programs receiving Federal funds),
- 18 USC 793, 794 or 798 (relating to espionage),
- 18 USC 875 (relating to interstate communications),
- 18 USC 1005 (relating to bank fraud and embezzlement),
- 18 USC 1006 (relating to fraudulent credit institution entries),
- 18 USC 1007 (relating to bank fraud and embezzlement),
- 18 USC 1014 (relating to fraudulent loan or credit applications),
- 18 USC 1032 (relating to concealment of assets from a financial institution),
- 18 USC 1201 (relating to kidnapping),
- 18 USC 1203 (relating to hostage taking),
- 18 USC 1341 (relating to frauds and swindles against financial institutions involving mail),
- 18 USC 1343 (relating to wire fraud affecting a financial institution),
- 18 USC 1344 (relating to bank fraud),
- 18 USC 2113 or 2114 (relating to bank and postal robbery and theft),

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- 18 USC 2251, 2251A, 2252, and 2258 (relating to sexual exploitation of children) (FBI) (USCS) (The jurisdiction of USCS under this SUA involves the importation or exportation of material involving the sexual exploitation of children.)
- 18 USC 2319 (relating to copyright infringement),
- 18 USC 2320 (relating to trafficking in counterfeit goods or services) (FBI),
- 19 USC 1590 (relating to aviation smuggling),
- 21 USC 830 (relating to precursor and essential chemicals),
- 21 USC 857 (relating to transportation of drug paraphernalia),
- Section 15 of the Food Stamp Act of 1977 (relating to Food Stamp Fraud) involving a quantity of coupons having a value of not less than \$5,000 (FBI),
- Section 38(C) (relating to criminal violations), of the Arms Export Control Act (22 USC 2778),
- Section 11 (relating to violations) of the Export Administration Act of 1979 (50 USC App. 2410),
- Section 206 (relating to penalties) of the International Emergency Economic Powers Act (50 USC 1702), or
- Section 16 (relating to offenses and punishment) of the Trading with the Enemy Act (50 USC App. 3);
- 33 USC 1251 et seq. (felony offenses relating to the discharge of pollutants into the Nation's waters),
- 33 USC 1401 et seq. (felony offenses relating to the dumping of materials into ocean waters),
- 33 USC 1901 et seq. (felony offenses relating to the discharge of pollutants from ships),
- 42 USC 300f et seq. (felony offenses related to the safety of public water systems),
- 42 USC 6901 et seq. (felony offenses relating to resource conservation and recovery); or

(d) Any act or activity constituting one of the predicate offenses to the Racketeer Influenced and Corrupt Organizations (RICO) Statute (Title 18, U.S. Code, Section 1961(1)) except an act which is indictable under the Currency and Foreign Transactions Reporting Act. (See MIOG, Part I, 183-1.2.) These offenses are as follows:

1. Any act or threat involving:

Murder  
Kidnapping  
Gambling

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Arson  
Robbery  
Bribery  
Extortion

Dealing in obscene matter, or

Dealing in a controlled substance or listed  
chemical (as defined in Section 102 of the Controlled Substances Act) |  
which is chargeable as a state felony;

2. Any act which is indictable under any of the  
following:

- 18 USC 201 (relating to bribery),
- 18 USC 224 (relating to sports bribery),
- 18 USC 471-473 (relating to counterfeiting),
- 18 USC 659 (relating to theft from interstate  
shipment) if the act indictable under section 659 is felonious,
- 18 USC 664 (relating to embezzlement from pension and  
welfare funds),
- 18 USC 891-894 (relating to extortionate credit  
transactions),
- 18 USC 1028 (related to fraud and related activity in  
connection with identification documents) if the act indictable under  
Section 1028 was committed for the purpose of financial gain,
- 18 USC 1029 (relating to fraud and related activity  
in connection with access devices),
- 18 USC 1084 (relating to the transmission of gambling  
information),
- 18 USC 1341 (relating to mail fraud),
- 18 USC 1343 (relating to wire fraud),
- 18 USC 1344 (relating to bank fraud),
- 18 USC 1461-1465 (relating to obscene matter),
- 18 USC 1503 (relating to obstruction of justice),
- 18 USC 1510 (relating to obstruction of criminal  
investigations),
- 18 USC 1511 (relating to the obstruction of state or  
local law enforcement),
- 18 USC 1512 (relating to tampering with a witness,  
victim, or an informant),
- 18 USC 1513 (relating to retaliating against a  
witness, victim, or an informant),
- 18 USC 1542 (relating to false statement in  
application and use of passport) if the act indictable under Section  
1542 was committed for the purpose of financial gain,
- 18 USC 1543 (relating to forgery or false use of  
passport) if the act indictable under Section 1543 was committed for

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- the purpose of financial gain,
  - 18 USC 1544 (relating to misuse of passport) if the act indictable under Section 1544 was committed for the purpose of financial gain,
  - 18 USC 1546 (relating to fraud and misuse of visas, permits, and other documents) if the act indictable under Section 1545 was committed for the purpose of financial gain,
  - 18 USC 1581-1588 (relating to peonage and slavery),
  - 18 USC 1951 (relating to interference with commerce, robbery, or extortion),
  - 18 USC 1952 (relating to racketeering),
  - 18 USC 1953 (relating to interstate transportation of wagering paraphernalia),
  - 18 USC 1954 (relating to unlawful welfare fund payments),
  - 18 USC 1955 (relating to the prohibition of illegal gambling business),
  - 18 USC 1956 (relating to the laundering of monetary instruments),
  - 18 USC 1957\* (relating to engaging in monetary transactions in property derived from SUA),
  - 18 USC 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire),
  - 18 USC 2251, 2251A, 2252 and 2258 (relating to sexual exploitation of children),
  - 18 USC 2312 and 2313 (relating to interstate transportation of stolen motor vehicles),
  - 18 USC 2314 and 2315 (relating to interstate transportation of stolen property),
  - 18 USC 2321 (relating to trafficking in certain motor vehicles or vehicle parts),
  - 18 USC 2341-2346 (relating to trafficking in contraband cigarettes),
  - 18 USC 2421-2424 (relating to white slave traffic);

3. Any act which is indictable under:

- 29 USC 186 (dealing with restrictions on payments and loans to labor organizations) or,
- 29 USC 501(c) (relating to embezzlement from union funds);

4. Any offense involving:

fraud connected with a case under Title 11 (except a case under Section 157 of this title), fraud in the sale of securities, or the

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felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in Section 102 of the Controlled Substances Act), punishable under any law of the United States;

5. Any act which is indictable under the Immigration and Naturalization Act, Section 274 (relating to bringing in or harboring certain aliens), Section 277 (relating to aiding or assisting certain aliens to enter the United States), or Section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain.

NOTE: The investigatory jurisdiction for money laundering violations is shared by numerous federal law enforcement agencies and is set forth in a Memorandum of Understanding (MOU) among the Department of Justice, Treasury Department and the Postal Service. (See MIOG, Part I, 272-13.) Generally, this jurisdiction is determined by the particular SUA(s) involved. For further information regarding money laundering jurisdiction, see MIOG, Part I, 272-9.

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(USSS), Bureau of Alcohol, Tobacco and Firearms (ATF), and the Postal Inspection Service (USPS). The FBI has investigatory jurisdiction, in general, over SUAs relating to its existing jurisdiction, i.e., drugs, white-collar crime, violent crimes, foreign counterintelligence, etc.

(2) The investigatory jurisdiction of the FBI, DEA, USCS, USSS, ATF, and the USPS is determined by the specific SUAs involved. A list of these SUAs is set forth below followed by the abbreviated name of the agency or agencies having money laundering jurisdiction for that SUA:

(a) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (FBI, DEA);

(b) any act or acts constituting a continuing criminal enterprise (21, USC, 848) (FBI, DEA, USPS);

(c) an offense under the following:

- 18 USC 152 (relating to concealment of assets; false oaths and claims; bribery) (FBI),
- 18 USC 215 (relating to commissions or gifts for procuring loans) (FBI),
- 18 USC 500 through 503 (relating to certain counterfeiting offenses) (USSS, USPS) (The jurisdiction of USPS under this SUA involves counterfeiting of money orders, postcards, indicia of postage and postmarking stamps.)
- 18 USC 513 (relating to securities of states and private entities) (FBI),
- 18 USC 542 (relating to entry of goods by means of false statements) (USCS),
- 18 USC 545 (relating to smuggling goods into the United States) (USCS),
- 18 USC 549 (relating to removing goods from Customs Custody) (USCS),
- 18 USC 641 (relating to public money, property, or records) (FBI, USPS),
- 18 USC 656 (relating to theft, embezzlement, or misapplication by bank officer or employee) (FBI),
- 18 USC 657 (relating to lending, credit and insurance institutions) (FBI, USSS) (The jurisdiction of USSS under this SUA involves theft, embezzlement or misapplication by employees of the Federal Deposit Insurance Corporation.)
- 18 USC 658 (relating to property mortgaged or

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pledged to farm credit agencies) (FBI),  
- 18 USC 666 (relating to theft or bribery concerning programs receiving federal funds) (FBI),  
- 18 USC 793, 794 or 798 (relating to espionage) (FBI),  
- 18 USC 875 (relating to interstate communications) (FBI),  
- 18 USC 1005 (relating to bank fraud and embezzlement) (FBI),  
- 18 USC 1006 (relating to fraudulent credit institution entries) (FBI),  
- 18 USC 1007 (relating to bank fraud and embezzlement) (FBI),  
- 18 USC 1014 (relating to fraudulent loan or credit applications) (FBI),  
- 18 USC 1032 (relating to concealment of assets from a financial institution) (FBI),  
- 18 USC 1201 (relating to kidnapping) (FBI),  
- 18 USC 1203 (relating to hostage taking) (FBI),  
- 18 USC 1341 (relating to frauds and swindles against financial institutions involving mail) (FBI),  
- 18 USC 1343 (relating to wire fraud affecting a financial institution) (FBI),  
- 18 USC 1344 (relating to bank fraud) (FBI),  
- 18 USC 2113 or 2114 (relating to bank and postal robbery and theft) (FBI, USPS) (FBI and USPS share money laundering jurisdiction regarding the Section 2114 SUA.),  
- 18 USC 2251, 2251A, 2252, and 2258 (relating to sexual exploitation of children) (FBI) (USCS) (The jurisdiction of USCS under this SUA involves the importation or exportation of material involving the sexual exploitation of children.)  
- 18 USC 2319 (relating to copyright infringement) (FBI),  
- 18 USC 2320 (relating to trafficking in counterfeit goods or services) (FBI),  
- 19 USC 1590 (relating to aviation smuggling) (USCS),  
- 21 USC 830 (relating to precursor and essential chemicals) (FBI, DEA),  
- 21 USC 857 (relating to transportation of drug paraphernalia) (FBI, DEA, USCS, USPS) (The jurisdiction of USCS under this SUA involves the illegal importation or exportation of drug paraphernalia.),  
- Section 15 of the Food Stamp Act of 1977 (relating to Food Stamp Fraud) involving a quantity of coupons having a value of not less than \$5,000 (FBI),

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- Section 38(c) (relating to criminal violations), of the Arms Export Control Act (22 USC 2778) (USCS, ATF) (The jurisdiction of USCS under this SUA involves exportation, intransit, temporary import, or temporary export transactions. The jurisdiction of ATF under this SUA involves the importation of items on the U.S. Munitions Import List, except those relating to exportation, intransit, temporary import, or temporary export transactions.)

- Section 11 (relating to violations) of the Export Administration Act of 1979 (50 USC App. 2410) (USCS)

- Section 206 (relating to penalties) of the International Emergency Economic Powers Act (50 USC 1702) (USCS) or

- Section 16 (relating to offenses and punishment) of the Trading with the Enemy Act (50 USC App. 3) (USCS),

- 33 USC 1251 et seq. (felony offenses relating to the discharge of pollutants into the Nation's waters) (FBI, EPA),

- 33 USC 1401 et seq. (felony offenses relating to the dumping of materials into ocean waters) (FBI, EPA),

- 33 USC 1901 et seq. (felony offenses relating to the discharge of pollutants from ships) (FBI, EPA),

- 42 USC 300f et seq. (felony offenses relating to the safety of public water systems) (FBI, EPA),

- 42 USC 6901 (felony offenses relating to resource conservation and recovery) (FBI, EPA);

(d) Any act or activity constituting one of the predicate offenses to the Racketeer Influenced and Corrupt Organizations (RICO) Statute (Title 18, U.S. Code, Section 1961(1)) except an act which is indictable under the Currency and Foreign Transactions Reporting Act. These offenses are as follows:

1. Any act or threat involving:

Murder (FBI)  
Kidnapping (FBI)  
Gambling (FBI)  
Arson (FBI, ATF)  
Robbery (FBI)  
Bribery (FBI)  
Extortion (FBI)  
Dealing in obscene matter (FBI), or  
Dealing in narcotic or other dangerous drugs

(FBI, DEA, USPS),

which is chargeable as a state felony;

2. Any act which is indictable under any of the following:

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- USPS),
  - 18 USC 201 (relating to bribery) (FBI,
- (FBI),
  - 18 USC 224 (relating to sports bribery)
- counterfeiting) (USSS),
  - 18 USC 471, 472, and 473 (relating to
- interstate shipment) if the act indictable under section 659 is felonious (FBI, USCS) (The jurisdiction of USCS under this SUA involves theft from foreign shipment.),
  - 18 USC 659 (relating to theft from
- pension and welfare funds) (FBI),
  - 18 USC 664 (relating to embezzlement from
- credit transactions) (FBI),
  - 18 USC 891-894 (relating to extortionate
- activity in connection with identification documents) if the act indictable under Section 1028 was committed for the purpose of financial gain (FBI, USSS),
  - 18 USC 1028 (relating to fraud and related
- activity in connection with access devices) (FBI, USSS, USPS),
  - 18 USC 1029 (relating to fraud and related
- gambling information) (FBI),
  - 18 USC 1084 (relating to the transmission of
- USPS),
  - 18 USC 1341 (relating to mail fraud) (FBI,
- USPS) (The USPS shares this wire-fraud money laundering jurisdiction with the FBI when the primary focus of the offense is mail fraud.),
  - 18 USC 1343 (relating to wire fraud) (FBI,
- 18 USC 1344 (relating to bank fraud) (FBI),
  - 18 USC 1461-1465 (relating to obscene
- matter) (FBI, USCS, USPS) (The jurisdiction of USCS under this SUA involves Sections 1461-63 and 1465 relating to illegal importation or exportation of obscene matter. The jurisdiction of USPS under this SUA involves Sections 1461 and 1463 regarding mailing of obscene matter.),
  - 18 USC 1503 (relating to obstruction of
- justice) (FBI, USPS),
  - 18 USC 1510 (relating to obstruction of
- criminal investigations) (FBI, USPS),
  - 18 USC 1511 (relating to obstruction of
- state or local law enforcement) (FBI, USPS),
  - 18 USC 1512 (relating to tampering with a
- witness, victim, or an informant) (FBI, USPS),
  - 18 USC 1513 (relating to retaliating against
- a witness, victim, or an informant) (FBI, USPS),
  - 18 USC 1542 (relating to false statement in

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application and use of passport) if the act indictable under Section 1542 was committed for the purpose of financial gain (FBI),  
- 18 USC 1543 (relating to forgery or false use of passport) if the act indictable under Section 1543 was committed for the purpose of financial gain (FBI),  
- 18 USC 1544 (relating to misuse of passport) if the act indictable under Section 1544 was committed for the purpose of financial gain (FBI),  
- 18 USC 1546 (relating to fraud and misuse of visas, permits, and other documents) if the act indictable under Section 1545 was committed for the purpose of financial gain (FBI),  
- 18 USC 1581-1588 (relating to peonage and slavery) (FBI),  
- 18 USC 1951 (relating to interference with commerce, robbery, or extortion) (FBI),  
- 18 USC 1952 (relating to racketeering) (FBI, ATF) (The jurisdiction of ATF under this SUA involves traveling in interstate commerce with respect to arson and to liquor on which federal excise tax has not been paid. The jurisdiction of USPS under this SUA involves mailing in aid of racketeering enterprises.),  
- 18 USC 1953 (relating to interstate transportation of wagering paraphernalia) (FBI),  
- 18 USC 1954 (relating to unlawful welfare fund payments) (FBI),  
- 18 USC 1955 (relating to the prohibition of illegal gambling business) (FBI),  
- 18 USC 1956 (relating to laundering of monetary instruments) (FBI),  
- 18 USC 1957 (relating to engaging in monetary transactions in property derived from SUA) (FBI),  
- 18 USC 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire) (FBI),  
- 18 USC 2251, 2251A, 2252, and 2258 (relating to sexual exploitation of children) (FBI, USCS) (The jurisdiction of USCS under this SUA involves the importation or exportation of material involving the sexual exploitation of children.),  
- 18 USC 2312 and 2313 (relating to interstate transportation of stolen motor vehicles) (FBI),  
- 18 USC 2314 and 2315 (relating to interstate transportation of stolen property) (FBI, USCS) (The jurisdiction of USCS under this SUA involves foreign transportation of stolen property.),  
- 18 USC 2321 (relating to trafficking in certain motor vehicles or vehicle parts) (FBI, USCS) (The jurisdiction of USCS under this SUA involves importation or exportation of certain motor vehicles or vehicle parts.),

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- 18 USC 2341-2346 (relating to trafficking in  
contraband cigarettes) (ATF),  
- 18 USC 2421-2424 (relating to white slave  
traffic) (FBI);

3. Any act which is indictable under

- 29 USC 186 (dealing with restrictions on  
payments and loans to labor organizations) or (FBI),  
- 29 USC 501(c) (relating to embezzlement from  
union funds) (FBI);

4. Any offense involving fraud connected with a  
case under Title 11, fraud in the sale of securities, or the felonious  
manufacture, importation, receiving, concealment, buying, selling, or  
otherwise dealing in a controlled substance or listed chemical (as  
defined in Section 102 of the Controlled Substances Act) (FBI),  
punishable under any law of the United States.

5. Any act which is indictable under the  
Immigration and Naturalization Act, Section 274 (relating to bringing  
in or harboring certain aliens), Section 277 (relating to aiding or  
assisting certain aliens to enter the United States), or Section 278  
(relating to importation of alien for immoral purpose) if the act  
indictable under such section of such Act was committed for the  
purpose of financial gain.

EFFECTIVE: 10/02/96

272-10 INTERRELATED STATUTES

EFFECTIVE: 10/26/93

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272-10.1 Interstate Transportation In Aid of Racketeering (ITAR)  
Statute

The money laundering violations (Title 18, USC, Sections 1956 and 1957) and Title 31 violations dealing with reporting of currency transactions (acts indictable under subchapter II of Chapter 53 of Title 31, United States Code) have been added as predicate offenses ("unlawful activities") for the ITAR Statute (Title 18, USC, Section 1952).

EFFECTIVE: 10/26/93

272-10.2 Racketeer Influenced and Corrupt Organizations (RICO)  
Statute

The money laundering violations (Title 18, USC, Sections 1956 and 1957) have been added as predicate offenses ("racketeering activities") for the RICO Statute (Title 18, USC, Section 1961).

EFFECTIVE: 10/26/93

272-10.3 Interception of Wire, Oral, or Electronic  
Communications

Section 2516 of Title 18 of the USC, also referred to as "Title III," includes the money laundering violations (Title 18, USC, Sections 1956 and 1957) within the enumerated offenses which authorize the interception of communications.

EFFECTIVE: 10/26/93

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272-11 INTERNATIONAL LEADS

In ALL CASES, including drug matters, money laundering leads to be conducted in foreign countries will be covered by the appropriate FBI Legal Attache.

EFFECTIVE: 10/26/93

272-12 THE BANK SECRECY ACT (See MIOG, Part I, 272-5.1(1).)

(1) On October 26, 1970, the President signed the "Bank Records and Foreign Transaction Act" into law. Titles I and II of this Act constitute what is commonly known as the Bank Secrecy Act (BSA). The BSA is codified under Title 31, U.S. Code, Sections 5311 - 5322 and should not be confused with the "Money Laundering Statutes." The intent behind the BSA is to enhance law enforcement investigations of criminal enterprises dealing in large sums of currency, whether the underlying criminal activity involves drugs, organized crime or white collar crime. The primary purpose of the reporting requirements of the BSA is to identify the sources and movements of United States currency being transported into or out of the country or being deposited into financial institutions.

(2) The BSA has not been well understood since its passage. However, it is now being realized that the currency reporting statutes can be used to attack criminal enterprises by focusing on the profits they reap. The BSA is specifically designed to aid in this attack by creating a "paper trail" to trace those proceeds back to their illegal source.

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272-12.1 BSA Reporting Requirements and IRS Form 8300

(1) Under the BSA requirements, individuals, banks, and financial institutions must report cash transactions which involve the payment, receipt, or transfer of cash of \$10,000 or more. The report is made on Internal Revenue Service (IRS) Form 4789, Currency Transaction Report (CTR).

(2) Casinos are required to report cash transactions of \$10,000 or more. Casinos file a Currency Transaction Report by Casino (CTRC), which is IRS Form 8362.

(3) The BSA requires two types of foreign financial reports.

(a) Individuals who transport "monetary instruments" into or out of the United States or receive such instruments in the United States from abroad must report the transaction. This report is made on United States Customs Service (USCS) Form 4790, International Transportation of Currency or Monetary Instrument Report (CMIR).

(b) Any person of the United States who has a financial interest in bank securities or other financial accounts in a foreign country must report certain information. This report is made on Department of Treasury Form 90-22.1, Foreign Bank and Financial Accounts Report (FBAR).

(4) In addition, under the authority of the Secretary of the Treasury, the IRS requires that businesses or other entities file a report when a product or service is paid for with United States currency of \$10,000 or more. That report is made on IRS Form 8300.

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272-12.2 Access to BSA Report Information

(1) Under the BSA, the Department of Treasury is responsible for collection, administration, and dissemination of BSA report information. United States Customs Service and Internal Revenue Service officials at their respective headquarters and field offices may disseminate BSA report information to Federal, state, and local law enforcement agencies.

(2) Because BSA report information consists of personal and sensitive financial data, strict guidelines have been adopted for disseminating BSA report information. Under these guidelines, BSA report information includes all data reported to the Department of Treasury on the following forms:

(a) Currency Transaction Report (CTR), IRS Form 4789;

(b) Currency Transaction Report by Casinos (CTRC), IRS Form 8362;

(c) International Transportation of Currency or Monetary Instrument Report (CMIR), USCS Form 4790;

(d) Foreign Bank and Financial Accounts Report (FBAR), Department of Treasury Form 90-22.1;

(e) IRS Form 8300.

EFFECTIVE: 10/26/93

272-12.3 Procedures for Requesting BSA Report Information (See MIOG, Part I, 272-12.5.)

All requests for BSA report information should be made to the appropriate USCS or IRS field office. Requests must be made in writing unless exigent circumstances exist. Requests should be made by letter, on letterhead, and signed by the SAC. The letter should state the intended purpose for the information, specific violations or potential violations of law involved, and identifying data for the individuals or businesses being checked. If a verbal request for BSA

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report information is made under exigent circumstances, a written confirmation of the verbal request must be made.

EFFECTIVE: 10/26/93

272-12.4 Requesting Statistical BSA Report Information

Field offices may request statistical BSA report information where no specific personal or financial information is involved. For example, a request can be made for a list of all companies and individuals who have CTRs with a cumulative amount of \$1,000,000 filed by banks within a certain area. As almost 17 million CTRs were filed between 1987 and 1989, caution should be used when framing such a request. Investigative personnel may wish to contact IRS or USCS representatives regarding requests for statistical information in order to ensure a comprehensive and manageable work product.

EFFECTIVE: 10/26/93

272-12.5 Unsolicited Disclosure of BSA Report Information

The IRS or USCS may disclose BSA report information to the FBI or other Federal, state, or local law enforcement agencies when it is determined that such information may be useful in a particular investigation or procedure. Follow-up requests for additional BSA report information must be made according to MIOG, Part I, 272-12.3, above.

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272-12.6 Disclosure of BSA Report Information Within Task  
Force or Joint Investigations

Representatives of IRS or USCS may disclose BSA report information to other members of a joint or task force investigation, for use in that particular investigation. In such instances, no written request is necessary.

EFFECTIVE: 10/26/93

272-12.7 Direct Access to BSA Report Information by FBI Analysts

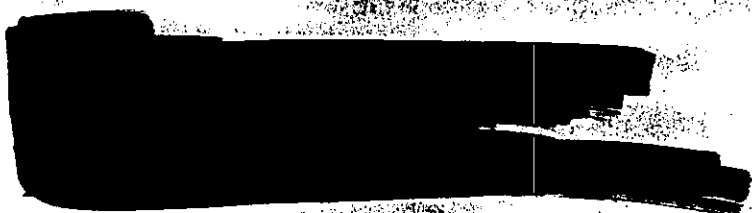
The Assistant Secretary of the Treasury has approved direct access to BSA report information by FBI analysts through the IRS or USCS. Prior to initial access to BSA report information the analyst will be required to acknowledge a statement reflecting that he/she understands the restrictions on disclosure outside the FBI.

EFFECTIVE: 10/26/93

272-12.8 Access to BSA Report Information Through the Financial  
Crimes Enforcement Network (FinCEN)

(1) In those selective, high priority investigations where it would be beneficial to have additional information from FinCEN's criminal, commercial, and financial data bases, to include BSA report information, a letter should be forwarded to FinCEN requesting analytical assistance. The letter, on FBI letterhead, should be directed to:

b7C



(2) If exigent circumstances exist which would preclude a

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written request, it is possible to telephonically contact the FinCEN Operations Center at telephone number 1 (800) 707-2825. It should be noted that FinCEN is an agency of the Department of Treasury which functions, in part, to support Federal, state, and local law enforcement agencies.

(3) It should be noted that under the operating procedures of FinCEN, records are maintained on each request received. The law enforcement agency which submitted the first request will be notified of all subsequent inquiries without exception.

EFFECTIVE: 10/26/93

272-13 "Memorandum of Understanding Among the Secretary of the Treasury, the Attorney General and the Postmaster General Regarding Money Laundering Investigations" (See MIOG, Part I, 183-1.2, 272-4(10)(d)4. & 272-9.)

"This Memorandum of Understanding (MOU) constitutes an agreement among the Secretary of the Treasury ("the Secretary"), the Attorney General and the Postmaster General as to the investigatory authority and procedures of Treasury and Justice bureaus and the Postal Service under 18 U.S.C sections 1956 and 1957, as amended by the Anti-Drug Abuse Act of 1988, Pub. L. 100-690 (Nov. 18, 1988). This replaces a previous MOU on this subject between the Secretary and the Attorney General effective May 20, 1987.

"Section I. Purpose

"The Attorney General, the Secretary and the Postmaster General have entered into this MOU in order to encourage effective and harmonious cooperation by Treasury and Justice bureaus and the Postal Service in the development of cases by bureaus with appropriate experience, to reduce the possibility of duplicative investigations, to minimize the potential for dangerous situations which might arise from uncoordinated multi-bureau efforts, and to enhance the potential for successful prosecution in cases presented to the various United States Attorneys.

"As clearly stated in the legislative history of the Act, this MOU does not confer any rights on any third party, including a defendant or other party in litigation with the United States. The fact that a bureau investigates a violation of section 1956 or section 1957 that

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should have been investigated by another bureau under the terms of this MOU, or that any agency not a party to this MOU investigates a violation of section 1956 or section 1957, confers no rights and provides no defense to any party.

"While this MOU allocates jurisdiction to investigate violations of sections 1956 and 1957, nothing in this MOU is intended to augment or diminish the investigatory authority of any Justice or Treasury bureau or the Postal Service over violations of any Federal criminal law, independent of the money laundering statute, or to alter the existing allocation or delegation of such authority. This MOU governs all investigations involving 18 U.S.C. 1956 and 1957 and is intended to be used together with MOU's presently existing between the bureaus. This MOU does not supersede the provision of 26 U.S.C. 6103 (confidentiality and disclosure of returns and return information).

"Section II. Definitions

"1. 'Bureau' includes the Postal Inspection Service.

"2. 'Treasury bureaus' mean the Internal Revenue Service (IRS), the United States Customs Service, the Bureau of Alcohol, Tobacco, and Firearms (ATF), and the United States Secret Service.

"3. 'Justice bureaus' means the Drug Enforcement Administration (DEA) and the Federal Bureau of Investigation (FBI).

"4. 'Violations of section 1956' refers to both civil and criminal violations.

"5. 'Specified unlawful activities' has the definition set forth in 18 U.S.C. section 1956 (c) (7).

"6. 'Justice Department attorney' means the appropriate Assistant United States Attorney or designated Justice Department attorney assigned to the prosecution of the case.

"Section III. Investigatory Jurisdiction

"A bureau's investigatory actions in pursuit of a section 1956 or 1957 violation shall be conducted only in those areas in which the investigating bureau has existing jurisdiction, independent of the money laundering statutes, as set forth in this Section.

"A. Treasury Bureaus

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"1. Internal Revenue Service

"The Internal Revenue Service will have investigative jurisdiction over all violations of Section 1956 and 1957 where the underlying conduct is subject to investigation under Title 26 or the Bank Secrecy Act.

"2. United States Customs Service

"a. The United States Customs Service will have investigatory jurisdiction over violations of section 1956 or section 1957 involving the following specified unlawful activities: criminal offenses under 18 U.S.C. section 542, (relating to entry of goods by means of false statements), section 545 (relating to the smuggling of goods into the United States), section 549 (relating to removing goods from Customs custody), section 659 (relating to theft from foreign shipment), sections 1461-63 and 1465 (relating to illegal import or export of obscene matter), sections 2251-52 (relating to imports or exports of material involving sexual exploitation of children), section 2314 (relating to foreign transportation of stolen property), and section 2321 (relating to the import or export of certain motor vehicles or vehicle parts); 19 U.S.C. section 1590 (relating to aviation smuggling); 21 U.S.C. section 857 (relating to the illegal import or export of drug paraphernalia); criminal offenses under section 11 of the Export Administration Act of 1979 (50 U.S.C. App. section 2410); criminal offenses under section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705); criminal offenses under section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16); and criminal offenses under section 38(c) of the Arms Export Control Act (22 U.S.C. section 2778) (relating to exportation, intransit, temporary import, or temporary export transactions).

"b. The United States Customs Service will have investigatory jurisdiction over violations of section 1956(a)(2)(B)(ii), involving the international transportation of monetary instruments or funds which are proceeds of some form of unlawful activity and where the defendant knew that the transportation was designed in whole or in part to avoid a transaction reporting requirement under 31 U.S.C. 5316 (Reports on exporting and importing monetary instruments).

"3. United States Secret Service

"The United States Secret Service will have investigatory jurisdiction over violations of section 1956 or section 1957 involving the specified unlawful activity of an offense under 18 U.S.C. sections

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471-473 (counterfeiting of obligations or securities of the United States), sections 500-503 (counterfeiting of blank or postal money orders, postage stamps, foreign governments postage and revenue stamps, and postmarking stamps), section 657 (involving theft, embezzlement or misapplication by employees of the FDIC), and section 1029 (fraud and related activity in connection with access devices).

"4. Bureau of Alcohol, Tobacco and Firearms

"The Bureau of Alcohol, Tobacco and Firearms will have investigatory jurisdiction over violations of section 1956 or section 1957 involving the specified unlawful activity of an offense under 18 U.S.C. sections 2341-2346 (trafficking in contraband cigarettes); section 38(c) of the Arms Export Control Act, 22 U.S.C. section 2778 (relating to the importation of items on the U.S. Munitions Import List, except those relating to exportation, intransit, temporary import, or temporary export transactions); and 18 U.S.C. 1952 (relating to travelling in interstate commerce, with respect to liquor on which federal excise tax has not been paid and arson); or any act or activity constituting an offense listed in 18 U.S.C. 1961(1), with respect to any act or threat involving arson, which is chargeable under State law and punishable for more than one year.

"B. Justice Bureaus

"1. Federal Bureau of Investigation

"The Federal Bureau of Investigation will have investigatory jurisdiction over violations of section 1956 or section 1957 involving the specified unlawful activities of an offense under 18 U.S.C. section 152 (relating to concealment of assets; false oaths and claims; bribery), section 215 (relating to commissions or gifts for procuring loans), section 513 (relating to securities of States and private entities), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 657 (relating to lending, credit, and insurance institutions), 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving Federal funds), sections 793, 794, or 798 (relating to espionage), section 875 (relating to interstate communications), section 1201 (relating to kidnapping), section 1203 (relating to hostage taking), section 1344 (relating to bank fraud), or section 2113 or 2114 (relating to bank and postal robbery and theft), sections 2251, 2251A, 2252, and 2258 (relating to sexual exploitation of children); section 2319 (relating to copyright infringement); or section 2320 (relating to trafficking

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in counterfeit goods and services); or 7 U.S.C. section 2024 (relating to food stamp fraud); 21 U.S.C. section 830 (relating to precursor chemicals), section 857 (relating to transportation of drug paraphernalia) and, with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act); and any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848); or any act or activity constituting an offense listed in 18 U.S.C. 1961(1), with respect to any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or in dealing in narcotics or other dangerous drugs which is chargeable under State law and punishable for more than one year; 18 U.S.C. 201 (bribery); 18 U.S.C. 224 (sports bribery); 18 U.S.C. 659 (theft from interstate shipment); 18 U.S.C. 664 (embezzlement from pension and welfare funds); 18 U.S.C. 891-894 (extortionate credit transactions); 18 U.S.C. 1029 (fraud and related activity in connection with access devices); 18 U.S.C. 1084 (the transmission of gambling information); 18 U.S.C. 1341 (mail fraud); 18 U.S.C. 1343 (wire fraud); 18 U.S.C. 1461-1465 (obscene matter); 18 U.S.C. 1503 (obstruction of justice); 18 U.S.C. 1510 (obstruction of criminal investigation); 18 U.S.C. 1511 (the obstruction of State or local law enforcement); 18 U.S.C. 1512 (tampering with a witness, victim or informant); 18 U.S.C. 1513 (retaliating against a witness, victim or informant); 18 U.S.C. 1951 (interference with commerce, robbery or extortion); 18 U.S.C. 1952 (racketeering, except with respect to untaxed paid liquor and arson); 18 U.S.C. 1953 (interstate transportation of wagering paraphernalia); 18 U.S.C. 1954 (unlawful welfare fund payments); 18 U.S.C. 1955 (the prohibition of illegal gambling businesses); 18 U.S.C. 1958 (use of interstate commerce facilities in the commission of murder-for-hire); 18 U.S.C. 2251, 2251A, 2252, and 2258 (sexual exploitation of children); 18 U.S.C. 2321 (trafficking in certain motor vehicles or motor vehicle parts); 18 U.S.C. 2312 and 2313 (interstate transportation of stolen motor vehicles); 18 U.S.C. 2314 and 2315 (interstate transportation of stolen property); 18 U.S.C. 2421-24 (white slave traffic); any act which is indictable under 29 U.S.C. 186 (restrictions on payments and loans to labor organizations) or 29 U.S.C. 501(c) (embezzlement from union funds); any offense involving fraud connected with a case under title 11, fraud in the sale of securities, and the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States."

|| (The above SUAs in Section 1956 and violations specified in Section

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1961 are changed occasionally. See MIOG, Part I, 183-1.2 (for current RICO predicate offenses), 272-4, and 272-9 (for current SUAs).)

"2. Drug Enforcement Administration

"The Drug Enforcement Administration shall have investigatory jurisdiction over violations of sections 1956 or 1957 involving the specified unlawful activities of, with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purpose of the Controlled Substances Act) including 21 U.S.C. 830 (relating to precursor and essential chemicals) and 857 (relating to transportation of drug paraphernalia); or any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848); or any of the predicate offenses enumerated in 18 U.S.C. 1961(1) dealing in narcotics or other dangerous drugs which are chargeable under State law and punishable for more than one year, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotics or other dangerous drugs, punishable under any law of the United States.

"C. United States Postal Service

"The investigative jurisdiction of the Postal Inspection Service is limited by 18 U.S.C. 3061 to offenses regarding property in the custody of the Postal Service, property of the Postal Service, use of the mails; other postal offenses, and offenses for which the Postal Service has been delegated investigative authority pursuant to 18 U.S.C. 3061 (b)(2). Subject to these limitations, the Postal Inspection Service shall have investigative jurisdiction over violations of sections 1956 and 1957 involving the specified unlawful activities of 18 U.S.C. 201 (bribery of public officials and witnesses); 18 U.S.C. 500-503 (counterfeiting of money orders, post cards, indicia of postage and postmarking stamps); 18 U.S.C. 641 (theft of public money, property or records); 18 U.S.C. 1029 (fraudulent activity in connection with access devices) with respect to violations involving postal employees, fraud against the Postal Service or where the primary focus of the offense is mail fraud or a violation of 18 U.S.C. 2114 (postal robbery); 18 U.S.C. 1341 (mail fraud); 18 U.S.C. 1343 (wire fraud) where the primary focus of the offense is mail fraud; 18 U.S.C. 1461 and 1463 (mailing of obscene matter); 18 U.S.C. 1503, 1510-1513 (obstruction of justice); 18 U.S.C. 1952 (mailing in aid of racketeering enterprises); 18 U.S.C. 1961

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(1)(A) (organized crime); 18 U.S.C. 2114 (robbery of mail, other property); 18 U.S.C. 2251, 2252 (sexual exploitation of minors); any 18 U.S.C. 1961 (1) offense dealing in narcotics and other dangerous drugs which are chargeable under state law and punishable for more than one year, or by the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotics or other dangerous drugs punishable under any law of the United States, or any act or acts constituting criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848); 21 U.S.C. 843 (b) (use of mails to violate Controlled Substances Act); and, Section 1822 of the Mail Order Drug Paraphernalia Control Act (21 U.S.C. 857) (transportation of drug paraphernalia).

"Section IV. Undercover Operations

"This MOU will govern the conduct of all money laundering investigations under sections 1956 and 1957 in that all parties hereto agree that all undercover operations will be reviewed using each bureau's internal guidelines, the objectives of which are consistent with existing Attorney General Guidelines on undercover operations.

"Section V. Seizure and Forfeiture

"Any property involved in a violation of section 1956 or 1957 that a Treasury or Justice bureau or the Postal Service has authority to investigate under Section III of this MOU may be seized by that bureau or the Postal Service, if that property is subject to forfeiture to the United States under 18 U.S.C. 981(a)(1)(A) or 981(a)(1)(B).

"Where a Treasury or Justice bureau or the Postal Service would have authority to seize property under the authority stated in the preceding paragraph is not present to make the seizure, any Treasury or Justice bureau or the Postal Service that is present may seize the property and shall immediately turn over that property to the bureau having Section III investigatory jurisdiction, where the forfeiture processing shall occur.

"Any property seized under this Section shall, upon forfeiture under 18 U.S.C. 981 or 982, be apportioned among the appropriate Treasury or Justice bureaus or the Postal Service in accordance with their respective contribution to the overall efforts expended in the investigation, seizure, or forfeiture.

"Pursuant to 18 U.S.C. 981(e) and, where appropriate, the Justice Department, the Treasury Department or the Postal Service forfeiture

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guidelines, apportionment may include equitable transfers to any other Federal agency or State or local authorities, which participated directly in any of the acts which led to the seizure or forfeiture.

"Any dispute regarding the seizure, forfeiture, apportionment, or disposition of property under this section shall be governed by the disputes resolution procedure in Section IX of this MOU.

"This MOU does not affect Treasury or Justice bureaus' or the Postal Service's authority to seize property or the disposition of such property under statutory seizure and forfeiture provisions not based on section 1956 and 1957 violations.

"A. Seizure of Attorney Fees: Treasury and Justice bureaus and the Postal Service will follow DOJ guidelines in reference to the seizure and forfeiture of any money or property that is held by an attorney for payment for the defense of a client. See United States Attorneys Manual 9-111.000, et seq.

"Section VI. Prosecution

"A bureau that conducts an investigation under the authority of this MOU shall coordinate with Justice Department attorneys.

"Section VII. Notice, Coordination, and Lead Bureau

"A. Notice

"1. If, during the investigation of a section 1956 or 1957 violation, a bureau discovers a specified unlawful activity or a transaction reporting violation over which another bureau has investigatory jurisdiction, that bureau shall give notice to the bureau which has investigatory jurisdiction over the specified unlawful activity or to the Internal Revenue Service or Customs, as appropriate, in the case of a transaction reporting violation, and to consult prior to taking any investigative actions impacting on the other bureau's jurisdiction.

"2. If a bureau discovers transactions involving the proceeds of a specified unlawful activity conducted with intent to engage in a violation of section 7201 or 7206 of the Internal Revenue Code, that bureau shall give notice to the Internal Revenue Service and coordinate the subsequent investigation with the IRS. To the extent that any IRS money laundering investigation requires the acquisition of evidence concerning an underlying specified unlawful activity, the IRS shall notify the bureau having jurisdiction over the specified

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unlawful activity and coordinate the subsequent investigation with that bureau.

"3. Notice under this section will ordinarily be made at supervisory field level and will, at a minimum, require a complete summary of the facts and circumstances of the investigation. However, in those instances where a bureau undertakes an investigation in which it determines that field level disclosure would be detrimental to the investigation, the required notice will be made at the headquarters level and dissemination restricted to selected individuals consistent with the need to maintain security of the investigations.

"B. Coordination and Determination of Lead Bureau

"Investigatory actions which involve areas outside the investigating bureau's existing jurisdiction, independent of the money laundering statute, shall be conducted only in coordination with the bureau(s) which do have existing jurisdiction independent of the money laundering statute. Coordination requires, at a minimum, a determination of the degree of cooperation necessary between the coordinating bureau(s) and includes continuing dialogue as the case develops. At the request of any coordinating bureau, at any time as the case develops, there shall be a determination of the lead bureau for the Section 1956 or 1957 investigation. The determination of lead bureau does not preclude a subsequent request by a coordinating bureau for redetermination of the lead as compelling facts and circumstances warrant.

"The determination of the lead bureau will be made at the supervisory field level by the bureaus involved and will be governed by which bureau has the paramount investigatory interest. In determining which bureau has the paramount investigatory interest, the factors to be considered shall include, but not be limited to:

- . Likely impact on major criminal enterprises;
- . Likelihood of successful prosecution;
- . Existence of a specified unlawful activity, as defined in section 1956(c) (7);
- . Jeopardy to informants, undercover agents, or third parties;
- . Commitment of investigatory resources; and

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- . Any other matter of substantive investigative interest.

"Section VIII. Jointly Conducted Investigations

"Treasury and Justice bureaus and the Postal Service are encouraged to enter into joint investigatory endeavors in circumstances that may necessitate or justify the use of skills and resources of more than one bureau. The specific details of each joint investigation, including the role of each bureau in the endeavor, will be formulated at the onset of the investigation and will be provided to each bureau's headquarters by each bureau's established procedures. While differing circumstances will result in varied arrangements from project to project, certain conditions will always apply:

- . Participating personnel will be supervised by their respective bureaus. This does not alter any other concerning supervision of investigatory personnel.
- . Only one evidentiary document, such as a record of interview will be prepared, and a copy will be furnished to the other bureau at the time the document is prepared.
- . Resources and investigatory expertise will be provided to the requesting bureau when the investigatory matter meets the criteria of the requested bureau and when available resources allow.
- . Any contact with the news media, such as press releases, will be coordinated and agreed to in advance by the bureaus involved.

"Section IX. Dispute Resolution

"The Secretary, the Attorney General and the Postmaster General contemplate that in cases of overlapping jurisdiction, the appropriate bureaus will work in concert to the extent authorized by law. Any disputes between bureaus should be resolved at the field level. When this cannot be accomplished, the matter will be referred to the respective headquarters' point of contact. In the event that disputes cannot be resolved by the bureau headquarters, the matter will be expeditiously referred to the Assistant Attorney General, Criminal Division, Department of Justice, and the Assistant Secretary for Enforcement, Department of the Treasury, and in disputes involving the Postal Service, to the Chief Postal Inspector, whose decisions shall

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be final.

"Section X. Extraterritorial Jurisdiction

"Treasury and Justice bureaus and the Postal Service must immediately notify the appropriate prosecuting attorney or other designated Department of Justice official if, in the course of a section 1956 or section 1957 investigation, it becomes likely that extraterritorial jurisdiction under section 1956(f) or section 1957(d) will be invoked. See United States Attorneys Manual 9-105.100.

"Section XI. Amendment

"This MOU may be amended by deletion or modification of any provision contained herein, or by addition of new provisions, after written concurrence of all the parties to the MOU.

"Section XII. Termination

"This MOU will remain in effect until terminated by the Attorney General or the Secretary or the Postmaster General upon 30 days' written notice.

"Section XIII. Approval

"This MOU becomes effective when approved by the parties identified below.

\_\_\_\_\_  
Peter K. Nunez  
Assistant Secretary (Enforcement)  
U.S. Department of Treasury

\_\_\_\_\_  
William P. Barr  
Deputy Attorney General  
U.S. Department of Justice

\_\_\_\_\_  
JUL 31 1990  
Date

\_\_\_\_\_  
8/11/90  
Date

\_\_\_\_\_  
Charles R. Clauson  
Charles R. Clauson  
Chief Postal Inspector

\_\_\_\_\_  
8/16/90  
Date

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Date"

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SECTION 273. ADOPTIVE FORFEITURE MATTERS - DRUGS

273-1 ADOPTIVE FORFEITURE MATTERS - DRUGS

(1) BACKGROUND AND PURPOSE

(a) The FBI's Forfeiture Program usually involves either seizures of property made by FBI Agents in their substantive investigations or seizures made exclusively by state and local agencies and referred to the FBI. These latter-type seizures are to be referred to as Adoptive Forfeiture Matters (AFMs). A typical AFM would emanate from a state or local law enforcement agency seizing property as a result of their investigation and contacting the FBI to process the seizure for federal forfeiture. The accompanying criminal prosecution would remain with the local authorities; however, the seized property would be referred to the FBI for forfeiture pursuant to one of the federal forfeiture provisions under the jurisdiction of the FBI. Seized property accepted in this manner has the same effect as if the property had originally been seized by the FBI.

(b) At the same time the local agency refers the matter to the FBI, it will submit a request for an equitable share of the property based on a percentage of its participation in the investigation. Since the local agency did the entire investigation, all of the property is usually shared, less expenses to sell the property and administrative costs to federal agencies associated with processing the forfeiture request. The percentages that are withheld by federal agencies for processing AFMs are governed by the Attorney General Guidelines on Seized and Forfeited Property and amended in "A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies." In adoptive seizures that are forfeited, the determining official will allocate 80 percent to the local agency and 20 percent to the Department of Justice Assets Forfeiture Fund of the total net proceeds realized through the disposition of the forfeited property.

(c) The 20 percent that is withheld represents the federal equitable share based upon the government's effort in forfeiting the property. This sharing percentage is applicable to property seized on or after March 1, 1994.

(d) The intent of adoptive seizures and equitable sharing is to promote cooperative law enforcement.

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(e) Classifications 273 through 277 were established to provide a mechanism for tracking work hours spent on AFMs regardless of the substantive classification (i.e., Copyright Matters, which is classification 28; Illegal Gambling Business, which is classification 182) covering the violation under which items were seized. Having a method of monitoring the resources necessary to support the adoptive forfeiture program should also assist in obtaining additional Funded Work Years for the FBI.

(2) ALPHA DESIGNATORS

Whenever a matter is referred to the FBI by state or local authorities requesting federal forfeiture, an adoptive forfeiture case is to be opened under the appropriate below-listed classifications. The classification is to be determined by what federal violation will be used in requesting federal forfeiture. As an example, a gambling seizure referred to the FBI as a forfeiture under federal gambling laws would be opened as an AFM-Organized Crime. After the AFM is opened for investigation, in most instances, the forfeiture matter will be assigned to the Paralegal Specialist who will give the identified property an FBI seizure number.

Set forth below are the classifications and alpha designators to be used within each of the classifications.

CLASSIFICATION

NUMBER/ALPHA

DESIGNATOR

CLASSIFICATION TITLE

PROGRAM/  
SUBPROGRAM

273A	ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE \$25,000+	OC/DP-OC/DP
273B	ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE \$5,000 - \$24,999	OC/DP-OC/DP
273C	ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE UNDER \$5,000	OC/DP-OC/DP
274A	ADOPTIVE FORFEITURE MATTER - ORGANIZED CRIME (OC) - APPRAISED VALUE \$25,000+	OC/DP-OC/DP
274B	ADOPTIVE FORFEITURE MATTER -	OC/DP-OC/DP

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- OC - APPRAISED VALUE \$5,000  
- \$24,999
- 274C ADOPTIVE FORFEITURE MATTER - OC/DP-OC/DP  
OC - APPRAISED VALUE UNDER  
\$5,000
- 275A ADOPTIVE FORFEITURE MATTER - WCC/  
WHITE COLLAR CRIME (WCC) - ECONOMIC  
APPRAISED VALUE \$25,000+ CRIME (EC)
- 275B ADOPTIVE FORFEITURE MATTER - WCC/EC  
WCC - APPRAISED VALUE \$5,000  
- \$24,999
- 275C ADOPTIVE FORFEITURE MATTER - WCC/EC  
WCC - APPRAISED VALUE UNDER  
\$5,000
- 276A ADOPTIVE FORFEITURE MATTER - VCMO/  
VIOLENT CRIMES AND MAJOR INTERSTATE  
OFFENDERS (VCMO) - APPRAISED THEFT (IT)  
VALUE \$25,000+
- 276B ADOPTIVE FORFEITURE MATTER - VCMO/IT  
VCMO - APPRAISED VALUE \$5,000  
- \$24,999
- 276C ADOPTIVE FORFEITURE MATTER - VCMO/IT  
VCMO - APPRAISED VALUE  
UNDER \$5,000
- 277A ADOPTIVE FORFEITURE MATTER - CT/DOMESTIC  
COUNTERTERRORISM (CT) - TERRORISM  
APPRAISED VALUE \$25,000+ (DT)
- 277B ADOPTIVE FORFEITURE MATTER - CT/DT  
CT - APPRAISED VALUE \$5,000  
- \$24,999
- 277C ADOPTIVE FORFEITURE MATTER - CT/DT  
CT - APPRAISED VALUE UNDER  
\$5,000

(3) INVESTIGATIVE OBJECTIVES AND PROCEDURES

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(a) The objective of these classifications is to direct and track investigative resources committed to seized property matters referred to the FBI for forfeiture from state and local agencies.

(b) The investigative procedures for AFMs shall be in accordance with established guidelines, rules and regulations set forth in the FBI's Forfeiture and Seized Property Manual and the Attorney General's Guidelines on Seized and Forfeited Property.

(4) CHARACTER - ADOPTIVE FORFEITURE MATTERS - NAME OF  
PROGRAM

EFFECTIVE: 11/13/96



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SECTION 274. ADOPTIVE FORFEITURE MATTERS - ORGANIZED CRIME

274-1 ADOPTIVE FORFEITURE MATTERS - ORGANIZED CRIME

(1) BACKGROUND AND PURPOSE

(a) The FBI's Forfeiture Program usually involves either seizures of property made by FBI Agents in their substantive investigations or seizures made exclusively by state and local agencies and referred to the FBI. These latter-type seizures are to be referred to as Adoptive Forfeiture Matters (AFMs). A typical AFM would emanate from a state or local law enforcement agency seizing property as a result of their investigation and contacting the FBI to process the seizure for federal forfeiture. The accompanying criminal prosecution would remain with the local authorities; however, the seized property would be referred to the FBI for forfeiture pursuant to one of the federal forfeiture provisions under the jurisdiction of the FBI. Seized property accepted in this manner has the same effect as if the property had originally been seized by the FBI.

(b) At the same time the local agency refers the matter to the FBI, it will submit a request for an equitable share of the property based on a percentage of its participation in the investigation. Since the local agency did the entire investigation, all of the property is usually shared, less expenses to sell the property and administrative costs to federal agencies associated with processing the forfeiture request. The percentages that are withheld by federal agencies for processing AFMs are governed by the Attorney General Guidelines on Seized and Forfeited Property and amended in "A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies." In adoptive seizures that are forfeited, the determining official will allocate 80 percent to the local agency and 20 percent to the Department of Justice Assets Forfeiture Fund of the total net proceeds realized through the disposition of the forfeited property.

(c) The 20 percent that is withheld represents the federal equitable share based upon the United States government's effort in forfeiting the property. This sharing percentages is applicable to property seized on or after March 1, 1994.

(d) The intent of adoptive seizures and equitable sharing is to promote cooperative law enforcement.

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(e) Classifications 273 through 277 were established to provide a mechanism for tracking work hours spent on AFMs regardless of the substantive classification (i.e., Copyright Matters, which is classification 28; Illegal Gambling Business, which is classification 182) covering the violation under which items were seized. Having a method of monitoring the resources necessary to support the adoptive forfeiture program should also assist in obtaining additional Funded Work Years for the FBI.

(2) ALPHA DESIGNATORS

Whenever a matter is referred to the FBI by state or local authorities requesting federal forfeiture, an adoptive forfeiture case is to be opened under the appropriate below-listed classifications. The classification is to be determined by what federal violation will be used in requesting federal forfeiture. As an example, a gambling seizure referred to the FBI as a forfeiture under federal gambling laws would be opened as an AFM-Organized Crime. After the AFM is opened for investigation, in most instances, the forfeiture matter will be assigned to the Paralegal Specialist who will give the identified property an FBI seizure number.

Set forth below are the classifications and alpha designators to be used within each of the classifications.

CLASSIFICATION  
NUMBER/ALPHA  
DESIGNATOR

CLASSIFICATION TITLE

PROGRAM/  
SUBPROGRAM

273A	ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE \$25,000+	OC/DP-OC/DP
273B	ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE \$5,000 - \$24,999	OC/DP-OC/DP
273C	ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE UNDER \$5,000	OC/DP-OC/DP
274A	ADOPTIVE FORFEITURE MATTER - ORGANIZED CRIME (OC) - APPRAISED VALUE \$25,000+	OC/DP-OC/DP

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|------|-----------------------------------------------------------------------------------------------------------------------------------------|
| 274B | ADOPTIVE FORFEITURE MATTER -  OC/DP-OC/DP <br>OC - APPRAISED VALUE \$5,000<br>- \$24,999                                                |
| 274C | ADOPTIVE FORFEITURE MATTER -  OC/DP-OC/DP <br>OC - APPRAISED VALUE UNDER<br>\$5,000                                                     |
| 275A | ADOPTIVE FORFEITURE MATTER -  WCC/<br>WHITE COLLAR CRIME (WCC) - ECONOMIC <br>APPRAISED VALUE \$25,000+ CRIME  (EC)                     |
| 275B | ADOPTIVE FORFEITURE MATTER -  WCC/EC <br>WCC - APPRAISED VALUE \$5,000<br>- \$24,999                                                    |
| 275C | ADOPTIVE FORFEITURE MATTER -  WCC/EC <br>WCC - APPRAISED VALUE UNDER<br>\$5,000                                                         |
| 276A | ADOPTIVE FORFEITURE MATTER - VCMO/<br>VIOLENT CRIMES AND MAJOR INTERSTATE<br>OFFENDERS (VCMO) - APPRAISED THEFT (IT)<br>VALUE \$25,000+ |
| 276B | ADOPTIVE FORFEITURE MATTER - VCMO/IT<br>VCMO - APPRAISED VALUE \$5,000<br>- \$24,999                                                    |
| 276C | ADOPTIVE FORFEITURE MATTER - VCMO/IT<br>VCMO - APPRAISED VALUE UNDER<br>\$5,000                                                         |
| 277A | ADOPTIVE FORFEITURE MATTER - CT/DOMESTIC<br>COUNTERTERRORISM (CT) - TERRORISM<br>APPRAISED VALUE \$25,000+ (DT)                         |
| 277B | ADOPTIVE FORFEITURE MATTER - CT/DT<br>CT - APPRAISED VALUE \$5,000 -<br>\$24,999                                                        |
| 277C | ADOPTIVE FORFEITURE MATTER - CT/DT<br>CT - APPRAISED VALUE UNDER<br>\$5,000                                                             |

(3) INVESTIGATIVE OBJECTIVES AND PROCEDURES

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(a) The objective of these classifications is to direct and track investigative resources committed to seized property matters referred to the FBI for forfeiture from state and local agencies.

(b) The investigative procedures for AFMs shall be in accordance with established guidelines, rules and regulations set forth in the FBI's Forfeiture and Seized Property Manual and the Attorney General's Guidelines on Seized and Forfeited Property.

(4) CHARACTER - ADOPTIVE FORFEITURE MATTERS - NAME OF PROGRAM

EFFECTIVE: 11/28/95

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SECTION 275. ADOPTIVE FORFEITURE MATTERS - WHITE COLLAR CRIME

275-1 ADOPTIVE FORFEITURE MATTERS - WHITE COLLAR CRIME

(1) BACKGROUND AND PURPOSE

(a) The FBI's Forfeiture Program usually involves either seizures of property made by FBI Agents in their substantive investigations or seizures made exclusively by state and local agencies and referred to the FBI. These latter-type seizures are to be referred to as Adoptive Forfeiture Matters (AFMs). A typical AFM would emanate from a state or local law enforcement agency seizing property as a result of their investigation and contacting the FBI to process the seizure for federal forfeiture. The accompanying criminal prosecution would remain with the local authorities; however, the seized property would be referred to the FBI for forfeiture pursuant to one of the federal forfeiture provisions under the jurisdiction of the FBI. Seized property accepted in this manner has the same effect as if the property had originally been seized by the FBI.

(b) At the same time the local agency refers the matter to the FBI, it will submit a request for an equitable share of the property based on a percentage of its participation in the investigation. Since the local agency did the entire investigation, all of the property is usually shared, less expenses to sell the property and administrative costs to federal agencies associated with processing the forfeiture request. The percentages that are withheld by federal agencies for processing AFMs are governed by the Attorney General Guidelines on Seized and Forfeited Property and amended in "A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies." In adoptive seizures that are forfeited, the determining official will allocate 80 percent to the local agency and 20 percent to the Department of Justice Assets Forfeiture Fund of the total net proceeds realized through the disposition of the forfeited property.

(c) The 20 percent that is withheld represents the federal equitable share based upon the United States government's effort in forfeiting the property. This sharing percentage is applicable to property seized on or after March 1, 1994.

(d) The intent of adoptive seizures and equitable sharing is to promote cooperative law enforcement.

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(e) Classifications 273 through 277 were established to provide a mechanism for tracking work hours spent on AFMs regardless of the substantive classification (i.e., Copyright Matters, which is classification 28; Illegal Gambling Business, which is classification 182) covering the violation under which items were seized. Having a method of monitoring the resources necessary to support the adoptive forfeiture program should also assist in obtaining additional Funded Work Years for the FBI.

(2) ALPHA DESIGNATORS

Whenever a matter is referred to the FBI by state or local authorities requesting federal forfeiture, an adoptive forfeiture case is to be opened under the appropriate below-listed classifications. The classification is to be determined by what federal violation will be used in requesting federal forfeiture. As an example, a gambling seizure referred to the FBI as a forfeiture under federal gambling laws would be opened as an AFM-Organized Crime. After the AFM is opened for investigation, in most instances, the forfeiture matter will be assigned to the Paralegal Specialist who will give the identified property an FBI seizure number.

Set forth below are the classifications and alpha designators to be used within each of the classifications.

CLASSIFICATION  
NUMBER/ALPHA  
DESIGNATOR

CLASSIFICATION TITLE

PROGRAM/  
SUBPROGRAM

273A	ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE \$25,000+	OC/DP-OC/DP
273B	ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE \$5,000 - \$24,999	OC/DP-OC/DP
273C	ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE UNDER \$5,000	OC/DP-OC/DP
274A	ADOPTIVE FORFEITURE MATTER - ORGANIZED CRIME (OC) - APPRAISED VALUE \$25,000+	OC/DP-OC/DP

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|------|-----------------------------------------------------------------------------------------------------------------------------------------|
| 274B | ADOPTIVE FORFEITURE MATTER -  OC/DP-OC/DP <br>OC - APPRAISED VALUE \$5,000<br>- \$24,999                                                |
| 274C | ADOPTIVE FORFEITURE MATTER -  OC/DP-OC/DP <br>OC - APPRAISED VALUE UNDER<br>\$5,000                                                     |
| 275A | ADOPTIVE FORFEITURE MATTER -  WCC/<br>WHITE COLLAR CRIME (WCC) - ECONOMIC <br>APPRAISED VALUE \$25,000+ CRIME  (EC)                     |
| 275B | ADOPTIVE FORFEITURE MATTER -  WCC/EC <br>WCC - APPRAISED VALUE \$5,000<br>- \$24,999                                                    |
| 275C | ADOPTIVE FORFEITURE MATTER -  WCC/EC <br>WCC - APPRAISED VALUE UNDER<br>\$5,000                                                         |
| 276A | ADOPTIVE FORFEITURE MATTER - VCMO/<br>VIOLENT CRIMES AND MAJOR INTERSTATE<br>OFFENDERS (VCMO) - APPRAISED THEFT (IT)<br>VALUE \$25,000+ |
| 276B | ADOPTIVE FORFEITURE MATTER - VCMO/IT<br>VCMO - APPRAISED VALUE \$5,000<br>- \$24,999                                                    |
| 276C | ADOPTIVE FORFEITURE MATTER - VCMO/IT<br>VCMO - APPRAISED VALUE UNDER<br>\$5,000                                                         |
| 277A | ADOPTIVE FORFEITURE MATTER - CT/DOMESTIC<br>COUNTERTERRORISM (CT) - TERRORISM<br>APPRAISED VALUE \$25,000+ (DT)                         |
| 277B | ADOPTIVE FORFEITURE MATTER - CT/DT<br>CT - APPRAISED VALUE \$5,000 -<br>\$24,999                                                        |
| 277C | ADOPTIVE FORFEITURE MATTER - CT/DT<br>CT - APPRAISED VALUE UNDER<br>\$5,000                                                             |

(3) INVESTIGATIVE OBJECTIVES AND PROCEDURES

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(a) The objective of these classifications is to direct and track investigative resources committed to seized property matters referred to the FBI for forfeiture from state and local agencies.

(b) The investigative procedures for AFMs shall be in accordance with established guidelines, rules and regulations set forth in the FBI's Forfeiture and Seized Property Manual and the Attorney General's Guidelines on Seized and Forfeited Property.

(4) CHARACTER - ADOPTIVE FORFEITURE MATTERS - NAME OF  
PROGRAM

EFFECTIVE: 11/28/95



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SECTION 276. ADOPTIVE FORFEITURE MATTERS -  
VIOLENT CRIMES AND MAJOR OFFENDERS

276-1 ADOPTIVE FORFEITURE MATTERS - VIOLENT CRIMES AND MAJOR  
OFFENDERS

(1) BACKGROUND AND PURPOSE

(a) The FBI's Forfeiture Program usually involves either seizures of property made by FBI Agents in their substantive investigations or seizures made exclusively by state and local agencies and referred to the FBI. These latter-type seizures are to be referred to as Adoptive Forfeiture Matters (AFMs). A typical AFM would emanate from a state or local law enforcement agency seizing property as a result of their investigation and contacting the FBI to process the seizure for federal forfeiture. The accompanying criminal prosecution would remain with the local authorities; however, the seized property would be referred to the FBI for forfeiture pursuant to one of the federal forfeiture provisions under the jurisdiction of the FBI. Seized property accepted in this manner has the same effect as if the property had originally been seized by the FBI.

(b) At the same time the local agency refers the matter to the FBI, it will submit a request for an equitable share of the property based on a percentage of its participation in the investigation. Since the local agency did the entire investigation, all of the property is usually shared, less expenses to sell the property and administrative costs to federal agencies associated with processing the forfeiture request. The percentages that are withheld by federal agencies for processing AFMs are governed by the Attorney General Guidelines on Seized and Forfeited Property and amended in "A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies." In adoptive seizures that are forfeited, the determining official will allocate 80 percent to the local agency and 20 percent to the Department of Justice Assets Forfeiture Fund of the total net proceeds realized through the disposition of the forfeited property.

(c) The 20 percent that is withheld represents the federal equitable share based upon the United States government's effort in forfeiting the property. This sharing percentage is applicable to property seized on or after March 1, 1994.

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(d) The intent of adoptive seizures and equitable sharing is to promote cooperative law enforcement.

(e) Classifications 273 through 277 were established to provide a mechanism for tracking work hours spent on AFMs regardless of the substantive classification (i.e., Copyright Matters, which is classification 28; Illegal Gambling Business, which is classification 182) covering the violation under which items were seized. Having a method of monitoring the resources necessary to support the adoptive forfeiture program should also assist in obtaining additional Funded Work Years for the FBI.

(2) ALPHA DESIGNATORS

Whenever a matter is referred to the FBI by state or local authorities requesting federal forfeiture, an adoptive forfeiture case is to be opened under the appropriate below-listed classifications. The classification is to be determined by what federal violation will be used in requesting federal forfeiture. As an example, a gambling seizure referred to the FBI as a forfeiture under federal gambling laws would be opened as an AFM-Organized Crime. After the AFM is opened for investigation, in most instances, the forfeiture matter will be assigned to the Paralegal Specialist who will give the identified property an FBI seizure number.

Set forth below are the classifications and alpha designators to be used within each of the classifications.

CLASSIFICATION NUMBER/ALPHA DESIGNATOR	CLASSIFICATION TITLE	PROGRAM/ SUBPROGRAM
273A	ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE \$25,000+	OC/DP-OC/DP
273B	ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE \$5,000 - \$24,999	OC/DP-OC/DP
273C	ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE UNDER \$5,000	OC/DP-OC/DP
274A	ADOPTIVE FORFEITURE MATTER - ORGANIZED CRIME (OC) -	OC/DP-OC/DP

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APPRAISED VALUE \$25,000+

274B ADOPTIVE FORFEITURE MATTER - |OC/DP-OC/DP|  
OC - APPRAISED VALUE \$5,000  
- \$24,999

274C ADOPTIVE FORFEITURE MATTER - |OC/DP-OC/DP|  
OC - APPRAISED VALUE UNDER  
\$5,000

275A ADOPTIVE FORFEITURE MATTER - |WCC/  
WHITE COLLAR CRIME (WCC) - ECONOMIC|  
APPRAISED VALUE \$25,000+ CRIME| (EC) |

275B ADOPTIVE FORFEITURE MATTER - |WCC/EC|  
WCC - APPRAISED VALUE \$5,000  
- \$24,999

275C ADOPTIVE FORFEITURE MATTER - |WCC/EC|  
WCC - APPRAISED VALUE UNDER  
\$5,000

276A ADOPTIVE FORFEITURE MATTER - VCMO/  
VIOLENT CRIMES AND MAJOR INTERSTATE  
OFFENDERS (VCMO) - APPRAISED THEFT (IT)  
VALUE \$25,000+

276B ADOPTIVE FORFEITURE MATTER - VCMO/IT  
VCMO - APPRAISED VALUE \$5,000  
- \$24,999

276C ADOPTIVE FORFEITURE MATTER - VCMO/IT  
VCMO - APPRAISED VALUE UNDER  
\$5,000

277A ADOPTIVE FORFEITURE MATTER - CT/DOMESTIC  
COUNTERTERRORISM (CT) - TERRORISM  
APPRAISED VALUE \$25,000+ (DT)

277B ADOPTIVE FORFEITURE MATTER - CT/DT  
CT - APPRAISED VALUE \$5,000 -  
\$24,999

277C ADOPTIVE FORFEITURE MATTER - CT/DT  
CT - APPRAISED VALUE UNDER  
\$5,000

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(3) INVESTIGATIVE OBJECTIVES AND PROCEDURES

(a) The objective of these classifications is to direct and track investigative resources committed to seized property matters referred to the FBI for forfeiture from state and local agencies.

(b) The investigative procedures for AFMs shall be in accordance with established guidelines, rules and regulations set forth in the FBI's Forfeiture and Seized Property Manual and the Attorney General's Guidelines on Seized and Forfeited Property.

(4) CHARACTER - ADOPTIVE FORFEITURE MATTERS - NAME OF  
PROGRAM

EFFECTIVE: 11/28/95

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SECTION 277. ADOPTIVE FORFEITURE MATTERS - COUNTERTERRORISM

277-1 ADOPTIVE FORFEITURE MATTERS - COUNTERTERRORISM

(1) BACKGROUND AND PURPOSE

(a) The FBI's Forfeiture Program usually involves either seizures of property made by FBI Agents in their substantive investigations or seizures made exclusively by state and local agencies and referred to the FBI. These latter-type seizures are to be referred to as Adoptive Forfeiture Matters (AFMs). A typical AFM would emanate from a state or local law enforcement agency seizing property as a result of their investigation and contacting the FBI to process the seizure for federal forfeiture. The accompanying criminal prosecution would remain with the local authorities; however, the seized property would be referred to the FBI for forfeiture pursuant to one of the federal forfeiture provisions under the jurisdiction of the FBI. Seized property accepted in this manner has the same effect as if the property had originally been seized by the FBI.

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(c) The 20 percent that is withheld represents the federal equitable share based upon the United States government's effort in forfeiting the property. This sharing percentage is applicable to property seized on or after March 1, 1994.

(d) The intent of adoptive seizures and equitable sharing is to promote cooperative law enforcement.

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(e) Classifications 273 through 277 were established to provide a mechanism for tracking work hours spent on AFMs regardless of the substantive classification (i.e., Copyright Matters, which is classification 28; Illegal Gambling Business, which is classification 182) covering the violation under which items were seized. Having a method of monitoring the resources necessary to support the adoptive forfeiture program should also assist in obtaining additional Funded Work Years for the FBI.

(2) ALPHA DESIGNATORS

Whenever a matter is referred to the FBI by state or local authorities requesting federal forfeiture, an adoptive forfeiture case is to be opened under the appropriate below-listed classifications. The classification is to be determined by what federal violation will be used in requesting federal forfeiture. As an example, a gambling seizure referred to the FBI as a forfeiture under federal gambling laws would be opened as an AFM-Organized Crime. After the AFM is opened for investigation, in most instances, the forfeiture matter will be assigned to the Paralegal Specialist who will give the identified property an FBI seizure number.

Set forth below are the classifications and alpha designators to be used within each of the classifications.

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273A	ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE \$25,000+	OC/DP-OC/DP
273B	ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE \$5,000 - \$24,999	OC/DP-OC/DP
273C	ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE UNDER \$5,000	OC/DP-OC/DP
274A	ADOPTIVE FORFEITURE MATTER - ORGANIZED CRIME (OC) - APPRAISED VALUE \$25,000+	OC/DP-OC/DP

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|------|-----------------------------------------------------------------------------------------------------------------------------------------|
| 274B | ADOPTIVE FORFEITURE MATTER -  OC/DP-OC/DP <br>OC - APPRAISED VALUE \$5,000<br>- \$24,999                                                |
| 274C | ADOPTIVE FORFEITURE MATTER -  OC/DP-OC/DP <br>OC - APPRAISED VALUE UNDER<br>\$5,000                                                     |
| 275A | ADOPTIVE FORFEITURE MATTER -  WCC/<br>WHITE COLLAR CRIME (WCC) - ECONOMIC <br>APPRAISED VALUE \$25,000+ CRIME  (EC)                     |
| 275B | ADOPTIVE FORFEITURE MATTER -  WCC/EC <br>WCC - APPRAISED VALUE \$5,000<br>- \$24,999                                                    |
| 275C | ADOPTIVE FORFEITURE MATTER -  WCC/EC <br>WCC - APPRAISED VALUE UNDER<br>\$5,000                                                         |
| 276A | ADOPTIVE FORFEITURE MATTER - VCMO/<br>VIOLENT CRIMES AND MAJOR INTERSTATE<br>OFFENDERS (VCMO) - APPRAISED THEFT (IT)<br>VALUE \$25,000+ |
| 276B | ADOPTIVE FORFEITURE MATTER - VCMO/IT<br>VCMO - APPRAISED VALUE \$5,000<br>- \$24,999                                                    |
| 276C | ADOPTIVE FORFEITURE MATTER - VCMO/IT<br>VCMO - APPRAISED VALUE UNDER<br>\$5,000                                                         |
| 277A | ADOPTIVE FORFEITURE MATTER - CT/DOMESTIC<br>COUNTERTERRORISM (CT) - TERRORISM<br>APPRAISED VALUE \$25,000+ (DT)                         |
| 277B | ADOPTIVE FORFEITURE MATTER - CT/DT<br>CT - APPRAISED VALUE \$5,000 -<br>\$24,999                                                        |
| 277C | ADOPTIVE FORFEITURE MATTER - CT/DT<br>CT - APPRAISED VALUE UNDER<br>\$5,000                                                             |

(3) INVESTIGATIVE OBJECTIVES AND PROCEDURES

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(a) The objective of these classifications is to direct and track investigative resources committed to seized property matters referred to the FBI for forfeiture from state and local agencies.

(b) The investigative procedures for AFMs shall be in accordance with established guidelines, rules and regulations set forth in the FBI's Forfeiture and Seized Property Manual and the Attorney General's Guidelines on Seized and Forfeited Property.

(4) CHARACTER - ADOPTIVE FORFEITURE MATTERS - NAME OF PROGRAM

EFFECTIVE: 11/28/95



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SECTION 278. PRESIDENT'S INTELLIGENCE OVERSIGHT BOARD MATTERS

278-1 PRESIDENT'S INTELLIGENCE OVERSIGHT BOARD MATTERS POLICY

Information concerning the 278 classification is set forth  
in a separate FBI manual, the NATIONAL FOREIGN INTELLIGENCE PROGRAM  
MANUAL (NFIPM).

EFFECTIVE: 02/14/97

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SECTION 279. WEAPONS OF MASS DESTRUCTION

279-1 STATUTES

WEAPONS OF MASS DESTRUCTION

Title 18, USC, Sections 175-178; Title 18, USC, Sections 2332a and 2332c; Title 18, USC, Section 921; and Title 18, USC, Section 831.

EFFECTIVE: 06/18/97

279-2 JURISDICTION

The FBI shall investigate all alleged or suspected criminal violations of the Weapons of Mass Destruction (WMD) statute and the Biological Weapons Anti-Terrorism (BWAT) Act.

EFFECTIVE: 06/18/97

279-3 DEFINITIONS

(1) WEAPONS OF MASS DESTRUCTION DEFINITIONS:

(a) "Weapons of Mass Destruction" (Section 2332a, Title 18, USC)- means:

1. any destructive device as defined in Title 18, Section 921;

2. any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;

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3. any weapon involving a disease organism; or

4. any weapon that is designed to release radiation or radioactivity at a level dangerous to human life. Note: Violations involving nuclear and radiological WMDs will be investigated under Bureau classification 117, "The Atomic Energy Act."

(b) The term "destructive device" means any explosive, incendiary, or poison gas -

1. bomb,

2. grenade,

3. rocket having an explosive or incendiary charge of more than four ounces,

4. missile having an explosive or incendiary charge of more than one-quarter ounce,

5. mine, or

6. device similar to any of the devices described in the preceding clauses.

(c) "Chemical Weapon," as defined in Title 18, USC, Section 2332c, means any weapon that is designed or intended to cause widespread death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals or precursors of toxic or poisonous chemicals.

(d) "Nuclear Material" - means material containing any

1. plutonium with an isotopic concentration not in excess of 80 percent plutonium 238;

2. uranium not in the form of ore or ore residue that contains the mixture of isotopes as occurring in nature;

3. uranium that contains the isotope 233 or 235 or both in such amounts that the abundance ratio of the sum of those isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature; or

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4. uranium

Refer to the MIOG, Part I, Section 117 (Atomic Energy Act).

(2) BIOLOGICAL WEAPONS ANTI-TERRORISM ACT DEFINITIONS

(a) "Biological agent" (Title 18, USC, Sections 175-178) - means any microorganism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, as capable of causing:

1. death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;
2. deterioration of food, water, equipment, supplies, or material of any kind; or
3. deleterious alteration of the environment.

(b) "Toxin" - means the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances, or a recombinant molecule, whatever its origin or method of production, including -

1. any poisonous substance or biological product that may be engineered as a result of biotechnology produced by a living organism; or
2. any poisonous isomer or biological product, homolog, or derivative of such a substance.

(c) "Delivery system" - means:

1. any apparatus, equipment, device, or means of delivery specifically designed to deliver or disseminate a biological agent, toxin, or vector; or
2. any vector.

(d) "Vector" - means a living organism, or molecule, including a recombinant molecule, or biological product that may be engineered as a result of biotechnology, capable of carrying a biological agent or toxin to a host.

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(e) "For use as a weapon" - does not include the development, production, transfer, acquisition, retention or possession of any biological agent, toxin, or delivery system for prophylactic, protective or other peaceful purposes.

EFFECTIVE: 06/18/97

279-4 VIOLATIONS

(1) Title 18, USC, Section 2332a (Use of Weapons of Mass Destruction) includes the following:

"(1) Offense against a national of the United States or within the United States. - A person who, without lawful authority, uses, threatens, or attempts or conspires to use, a weapon of mass destruction, including any biological agent, toxin, or vector (as those terms are defined in section 178) --

- "(a) against a national of the United States while such national is outside of the United States;
- "(b) against any person within the United States, and the results of such use affect interstate or foreign commerce or, in the case of the threat, attempt or conspiracy, would have affected interstate or foreign commerce; or
- "(c) against any property that is owned, leased or used by the United States or by any department or agency of the United States, whether the property is within or outside the United States;

shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisoned for any term of years or for life."

"(2) Offense by national of the United States outside of the United States. - Any national of the United States, who, without lawful authority, uses, or threatens, attempts, or conspires to use, a weapon of mass destruction outside of the United States shall be imprisoned for any term of years or for life, and if death results, shall be punished by death, or by imprisonment for any term of years

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or for life."

(2) Title 18, USC, Section 2332c (Use of Chemical Weapons) includes the following:

"(1) A person shall be punished under paragraph (2) if that person, without lawful authority, uses, or attempts or conspires to use, a chemical weapon against--

"(A) a national of the United States while such national is outside of the United States;

"(B) any person within the United States; or

"(C) any property that is owned, leased, or used by the United States or any department or agency of the United States, whether the property is within or outside of the United States."

"(2) Penalties.--A person who violates paragraph (1)--

"(A) shall be imprisoned for any term of years or for life; or

"(B) if death results from that violation, shall be punished by death or imprisoned for any term of years or for life."

(3) Title 18, USC, Sections 175-178 (BWAT Act of 1989) includes the following:

(a) Section 175 (Prohibitions with respect to biological weapons):

"In General - Whoever knowingly develops, produces, stockpiles, transfers, acquires, retains, or possesses any biological agent, toxin, or delivery system for use as a weapon, or knowingly assists a foreign state or any organization to do so, or attempts, threatens, or conspires to do the same, shall be fined under this title or imprisoned for life or any term of years, or both. There is extraterritorial Federal jurisdiction over an offense under this section committed by or against a national of the United States."

(b) Section 176 (Seizure, forfeiture, and destruction):

"(a) In General - (1) Except as provided in paragraph (2), the Attorney General may request the issuance, in the same manner as provided for a search warrant, of a warrant authorizing the seizure of any biological agent, toxin, or delivery system that -

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- (A) exists by reason of conduct prohibited under Section 175 of this Title; or
- (B) is of a type or in a quantity that under the circumstances has no apparent justification for prophylactic, protective, or other peaceful purposes.
- (2) In exigent circumstances, seizure and destruction of any biological agent, toxin, or delivery system described in subparagraphs (A) and (B) of paragraph (1) may be made upon probable cause without the necessity for a warrant."

"(b) Procedure - Property seized pursuant to subsection (a) shall be forfeited to the United States after notice to potential claimants and an opportunity for a hearing. At such hearing, the Government shall bear the burden of persuasion by a preponderance of the evidence. Except as inconsistent herewith, the same procedures and provisions of law relating to a forfeiture under the customs laws shall extend to a seizure and forfeiture under this section. The Attorney General may provide for the destruction or other appropriate disposition of any biological agent, toxin, or delivery system seized and forfeited pursuant to this section."

(c) Section 177 (Injunctions):

"In General - The United States may obtain in a civil action an injunction against -

- "(1) the conduct prohibited under Section 175 of this Title;
- "(2) the preparation, solicitation, attempt, threat, or conspiracy to engage in conduct prohibited under Section 175 of this Title; or
- "(3) the development, production, stockpiling, transferring, acquisition, retention or possession, or the attempted development, production, stockpiling, transferring, acquisition, retention or possession of any biological agent, toxin, or delivery system of a type or in a quantity that under the circumstances has no apparent justification for

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prophylactic, protective, or other peaceful purposes."

(d) Section 178 (Definitions):"

All definitions relating to the BWAT Act are set forth in Section 279-3, above.

EFFECTIVE: 06/18/97

279-5 RELATED VIOLATIONS

(1) Title 15, USC, Section 2615 (Toxic Substances Control Act).

Refer to the MIOG, Part I, Section 249-2.2.

(2) Title 18, USC, Section 371 (Conspiracy).

Refer to the MIOG, Part I, Section 62-16.

(3) Title 18, USC, Section 876 (Extortion).

Refer to the MIOG, Part I, Section 9.

(4) Title 18, USC, Section 1365 (Tampering with Consumer Products).

Refer to the MIOG, Part I, Section 250-2.

(5) Title 18, USC, Section 2153 and Section (Biological Warfare).

Refer to the MIOG, Part I, Section 98-3.5.

(6) Title 33, USC, Section 1319 (Clean Water Act).

Refer to the MIOG, Part I, Section 249-2.4.

XXXXXX  
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XXXXXXFEDERAL BUREAU OF INVESTIGATION  
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EFFECTIVE: 06/18/97

279-12 REPORTING PROCEDURES

(1) Follow procedures set out above in Sections 279-9 through 279-11.

(2) Prosecutive reports should be submitted to FBIHQ, when applicable.

EFFECTIVE: 06/18/97

279-13 DISSEMINATION OF REPORTS

Do not disseminate FBI communications to the USA, or other agencies locally without FBIHQ approval. Bureau communications will be disseminated to other appropriate federal agencies by FBIHQ, when appropriate.

EFFECTIVE: 06/18/97

279-14 CHARACTER - WEAPONS OF MASS DESTRUCTION (WMD)

279A - Weapons of Mass Destruction - Use,  
Possession, Transfer, Production, Transport  
- Domestic Terrorism

279B - Weapons of Mass Destruction - Attempt to Use,  
Possess, Obtain, Manufacture or Transport -  
Domestic Terrorism

279C - Weapons of Mass Destruction - Threats and All Other  
Cases Relating to Weapons of Mass Destruction -  
Domestic Terrorism

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- 279D - Weapons of Mass Destruction - Use, Possession,  
Transfer, Production, Transport - International  
Terrorism - (Group or Country)
- 279E - Weapons of Mass Destruction - Attempt to Use,  
Possess, Obtain, Manufacture or Transport -  
International Terrorism - (Group or Country)
- 279F - Weapons of Mass Destruction - Threats and All Other  
Cases Relating to Weapons of Mass Destruction -  
International Terrorism - (Group or Country)

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SECTION 280. EQUAL EMPLOYMENT OPPORTUNITY MATTERS

280-1 | BACKGROUND | (See MAOP, Part I, 4-5.3; Part II, 3-1.1,  
3-1.2, 3-3.2, 3-4.5.) |

(1) Effective 6/14/95, all records pertaining to EEO matters, whether of an administrative or investigative nature, became part of the FBI's Central Records System under the 280 classification. Investigations of complaints of discrimination are handled under the 280A subclassification, while EEO administrative matters are handled under the 280D subclassification. The 280B and 280C subclassifications are NOT to be used for record retention, however, and should ONLY be utilized for TURK purposes.

(2) By way of background, since the establishment of the Office of Equal Employment Opportunity Affairs (OEEOA) in 1989, all EEO documentation had been maintained within the OEEOA, to include any and all documents produced by the Office of the General Counsel (OGC) during the appeal, hearing or discovery phases of EEO complaints. The 280 classification was originally established by the OEEOA and subdivided into 280A (EEO Complaint Investigations), 280B (EEO Counseling), and 280C (EEO Conferences). However, as set forth in an ALL SAC Memorandum dated 2/27/92, these subclassifications WERE FOR THE SOLE PURPOSE OF TRACKING TIME FOR TURK; therefore, no 280 classification files were to have been opened.

(3) With respect to investigations of complaints of discrimination, all related documents, even though generated by the FBI, are the property of the Equal Employment Opportunity Commission (EEOC) which, by federal statute, is the governmental entity responsible for the coordination of all federal EEO matters. As such, the proper handling of EEO records has been and continues to be subject to the recording requirements of the EEOC and to the published notice of availability of records pursuant to the Freedom of Information/Privacy Act (FOIPA) published by the EEOC (Title 29, Code of Federal Regulations (CFR), Part 1610, et seq.; 40 Federal Register (FR) 8171, February 26, 1975, as amended at 56 FR 10087, at 10900, March 14, 1991). The regulations make it clear that agencies act merely as custodians of the records for the EEOC.

(4) Following a study of the OEEOA in 1994, it was recommended to and approved by the Director that OEEOA convert its

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present filing system to a classified and serialized system that meets the needs of the OEEOA, EEOC, and the OGC. The OEEOA was in complete agreement with this position, provided that certain restrictions/limitations could be placed on the system to maintain the confidentiality of the information and ensure that appropriate FOIPA requests and file destruction policies adhered to EEOC regulations.

EFFECTIVE: 12/11/95

280-2 INVESTIGATIONS OF COMPLAINTS OF DISCRIMINATION

(1) Investigations of complaints of discrimination are required pursuant to Title 29, CFR, Part 1614.108 and are handled by Relief Supervisory Special Agents (hereinafter referred to as EEO Investigators) in the field who have been trained specifically in EEO matters (see MAOP, Part I, 4-5.2).

(2) Following the acceptance of all or part of a complaint of discrimination received by the OEEOA, an EEO Investigator will be assigned to fully address, in a fair and neutral manner, the ACCEPTED bases and issues for investigation. All information relative to the complaint will be transmitted by the OEEOA directly to the Investigator for review and initiation of the investigation. The Investigator's Division Head will also be notified of his/her assignment; however, no information relative to the complaint itself will be provided. The Investigator is NOT to discuss any aspect of the investigation with his/her division management.

(3) In all complaint investigations, the OEEOA is shown as the Office of Origin (OO) with a corresponding 280A file number. All records relative to the complaint that are produced by the investigation and/or obtained during the investigation, are to be maintained within the OEEOA. NO records are to be maintained within a field office or FBIHQ division, unless specific approval is granted by the OEEOA.

(4) It is absolutely essential during any stage of a complaint investigation, that information relative to the complaint be kept confidential to the extent possible. At no time are individuals to be made aware of the complaint or facts of the investigation, unless they are directly involved in the complaint investigation.

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EFFECTIVE: 12/11/95

280-2.1 Authority and Role of EEO Investigator

(1) EEO Investigators are authorized to administer oaths and require that statements of witnesses shall be under oath or affirmation. Investigators are authorized to investigate all aspects of complaints of discrimination, require all employees of the agency to cooperate with them in the conduct of the investigation, and require employees of the agency having any knowledge of the subject matter regarding the complaint to furnish testimony under oath or affirmation without a pledge of confidence.

(2) A complaint that is not successfully resolved in the initial stages and meets requirements for processing under prescribed EEO guidelines is assigned to an EEO Investigator. As neutral fact finders, EEO Investigators will conduct a fair, impartial and objective investigation of the facts relevant to the complaint issue(s) so that a determination can be made as to whether the action complained of was related or unrelated to any of the prohibited discriminatory factors (race, age, sex, sexual orientation, etc.). The investigation of allegations of discrimination in matters pertaining to sexual orientation is an entitlement derived from DOJ policy and not from EEOC regulations. In this regard, complainants are not entitled to a hearing before an Administrative Judge of the EEOC or an appeal to the EEOC. Upon completion of an investigation concerning a basis of discrimination based on sexual orientation, a Departmental Adjudication Officer will conduct a review and issue a final decision. Complaints accepted on a basis of sexual orientation will be investigated in the same manner as any other allegation of discrimination accepted by the Department. In the event a complaint is received which contains an allegation of discrimination based on sexual orientation and additional bases covered by EEOC regulations, all allegations will be investigated concurrently; however, following the investigation, those allegations not based on sexual orientation will be processed according to existing procedures outlined in 29 C.F.R. Part 1614. Investigators have no vested interest in the outcome of the investigation. They are not advocates of management or the complainant. Investigators draw no conclusions, make no findings of discrimination or recommendations relative to such findings. The factual record compiled by the investigator is submitted to the OEEOA in the form of a Report of Investigation (ROI).

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(3) Reports of Investigations are to be compiled in accordance with instructions and format contained in the most current edition of the "EEO Investigator's Training Guide," and guidance received in periodic issues of the "Helpful Hints" newsletter published by the OEEOA.

EFFECTIVE: 03/07/97

280-2.2 Files Available to Investigator (See MAOP, Part I, 4-5.1.2.)

(1) The Investigator is authorized to review all relevant files in connection with the investigation of the complaint. This includes relevant personnel files in the field offices as well as the Official Personnel File (OPF) at FBIHQ. Relevant OPFs include only the files of those persons logically connected to, or having some bearing on, the allegations of discrimination. In addition, the Investigator is authorized to review pertinent administrative records in field offices and FBIHQ which have a direct bearing on the issues being investigated. Such records include, but are not limited to, control files, medical records, administrative inquiry files of the Office of Professional Responsibility and Administrative Summary Unit, as well as written documentation and taped recordings of Career Board deliberations, to the extent such records have a bearing on the allegations raised by the complainant.

(2) With regard to field office and FBIHQ Career Board records, and/or field office or FBIHQ OPR records, Investigators should discuss the matter with the OEEOA and follow the established procedures set forth in the "EEO Investigator's Training Guide." Access to OPR documents is currently limited to the predication only for pending matters, or the investigative file on closed matters.

(3) It should be noted, however, that an Investigator seeking access to relevant Employee Assistance Program files must obtain the prior written authorization, or a statement evidencing such a waiver of confidentiality, from the subject of such files.

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EFFECTIVE: 12/11/95

280-2.3 EEO Investigation and Documentation

(1) The investigation will address a thorough review of:  
(a) the circumstances under which the alleged discrimination occurred;  
(b) the treatment of the complainant as compared with the treatment of other employees in the organizational segment in which the alleged discrimination occurred (i.e., those similarly situated); and (c) any policies and practices related to the work situation which may constitute, or appear to constitute, discrimination even though they have not been expressly cited by the complainant.

(2) When preparing the signed sworn statements reflecting the interview of each witness involved in an investigation, the Investigator will ensure that information regarding a person's membership or nonmembership in the complainant's group (i.e., the complainant's race, sex, etc.), needed to assist the fact-finder or other government official in any adjustment of the complaint or to make an informed decision on the complaint, shall be recorded in the investigative file. The term "investigative file" refers to the various documents and information acquired during the investigation, including signed sworn statements of the complainant and witnesses, and copies of, or extracts from records, policy statements, or regulations of the agency organized to show their relevance to the complaint or the general environment out of which the complaint arose.

EFFECTIVE: 12/11/95

280-2.4 Investigative Report/Review by the Office of the General Counsel

Upon completion of the investigation, the EEO Investigator will prepare a written investigative record, which will include all appropriate documents gathered during the investigation. These documents will be placed in a bound encasement and thereafter provided to the complainant through the Office of Equal Employment Opportunity Affairs (OEEOA). Inasmuch as a copy of the investigative record may

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eventually be provided to the Equal Employment Opportunity Commission, no classified documentation or any information the disclosure of which would violate any statute (as examples, the Privacy Act, Title 5, United States Code (USC), Section 552a, or the Freedom of Information Act, Title 5, USC, Section 552, as amended), may be placed in the file. To that end, it is essential that all material intended to be released to the complainant be referred for review by the OEEOA to Office of the General Counsel's (OGC) Civil Discovery Review Unit prior to such release. After OGC's CDRU completes its review, the OEEOA will release the investigative record to the complainant.

EFFECTIVE: 12/11/95

280-2.5 Theories of Discrimination

There are five recognized theories of discrimination, each requiring different investigative approaches and evidentiary standards. The five theories are: Disparate Treatment; Disparate or Adverse Impact; Perpetuation of Past Discrimination; Failure to Accommodate; and Retaliation.

(1) Disparate Treatment

(a) Definition and Description

Disparate Treatment is the most commonly alleged complaint. It occurs whenever "similarly situated" individuals of a different race, color, religion, sex, sexual orientation, national origin group, disabling condition or age, are accorded disparate treatment, or are treated differently, in the context of a similar employment situation.

(b) Investigation and Evidence

1. A PRIMA FACIE case of discrimination under this theory, as it relates to hiring or promotions, requires that the complainant: (a) be a member of a protected class (race, color, religion, sex, sexual orientation, national origin group, disabling condition or age); (b) be qualified for and have applied for a position for which applicants were sought (minimum qualifications are sufficient); and, (c) despite being qualified, was rejected.

Alternatively, element (b), above, may consist of the member of a

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protected group receiving disparate treatment in some term or condition of employment, e.g., disciplinary treatment, transfers, assignments, etc.

2. In pursuit of evidence regarding claims of discrimination under this theory, the investigator looks for a discriminatory motive which can be inferred from uncontroverted facts indicating difference in treatment.

3. To make a valid comparison of treatment, the investigator should determine who would be expected to receive the same treatment, and locate or identify other individuals who are situated in similar, or if possible, identical employment situations. Thereafter, the treatment afforded each is compared to support or refute the allegation that such factors as race, color, religion, sex, sexual orientation, or national origin group were considered in the employment decision at issue.

4. In response to the complainant's claim, management officials must have an opportunity to rebut the complainant's claims. In age cases, for example, the manager may be able to cite a "reasonable factor other than age" to account for the difference in treatment.

5. The investigator may then afford the complainant an opportunity to provide evidence showing that the management official's explanations are false or "pretextual" or in some way concealing discriminatory behavior.

(2) Adverse or Disparate Impact

(a) Definition and Description

Adverse impact results from an employment practice that, although applied equally to all applicants or employees, has the effect of excluding or adversely impacting upon persons in protected classes, in significant numbers. This most often occurs when a testing device or screening technique has an adverse impact on hiring or promotion of protected classes. For example, a hiring standard of 6 feet, 200 pounds, for Hawaiian police officers, would automatically exclude a disproportionate number of Asian applicants.

(b) Investigation and Evidence

1. Any policy or practice that, as an example,

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results in a proportionately lower selection rate for a protected class, and is not justified by a business necessity, constitutes a discriminatory policy. It is the consequences of the policy or practice, not the motivation, that is the key. Therefore, the complainant is not required to show proof of intent; instead, a statistically significant imbalance is relied upon to show the discriminatory impact of the challenged practice.

2. It is difficult in individual cases to prove a motive of discrimination. In the absence of direct evidence of motive, statistical data showing a pattern of nonselection or underutilization of the group in question may be sufficient to establish that motive. Adverse impact cases are generally "class action" cases, as opposed to investigations of allegations brought by individuals.

(3) Perpetuation of Past Discrimination

(a) Definition and Description

This situation occurs when the effect of past discrimination is being continued by the present operation of a neutral employment system. The employment system is neutral when it applies evenly to all applicants or employees.

(b) Investigation and Evidence

1. The theory is similar to the adverse impact theory in that there is no requirement that the complainant prove present discriminatory motive. Past discriminatory motive must be shown, along with evidence that a facially neutral employment policy perpetuates past discrimination. If such a circumstance is shown by plaintiff, the agency's response must justify the continued use of the policy as a business necessity.

2. In such instances, we are usually looking at the consequences of specific employment practices, along with evidence of a causal relationship between the past discrimination and the current policy's adverse effects.

(4) Failure to Accommodate

(a) Definition and Description

This situation occurs when an employer refuses to make reasonable accommodation for the religious practices or

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physical handicaps of employees and prospective employees unless to do so would create an undue hardship on the conduct of the employer's business.

(b) Investigation and Evidence

Accommodation is different from other theories of discrimination because proof of a failure to accommodate does not involve comparisons between the treatment accorded the complainant and other similarly situated employees, or a determination of whether neutral employment practices have an adverse impact on the employment opportunities of women and minorities. A PRIMA FACIE case of discrimination is established if a complainant shows that he or she informed the agency of the need for an accommodation, and there was a failure to do so. The agency is then given the opportunity to establish that accommodation would have created an undue hardship on the conduct of its normal course of business.

(5) Retaliation

(a) Definition and Description

This situation occurs when there is any act of discrimination, restraint, interference, coercion, or reprisal against any person because he or she has opposed the practices made unlawful by Title VII, the Rehabilitation Act or the Age Discrimination in Employment Act (ADEA), or because he or she participated in any stage of the administrative or judicial proceedings concerning a complaint. This section requires an investigator to thoroughly investigate allegations of mistreatment brought by previous complainants as well as any witnesses who have provided testimony in EEO proceedings or otherwise engaged in any EEO protected activity. As examples, a complaining party may raise allegations that, as a result of his or her participation in an EEO protected activity, some Bureau employee has assigned him or her to undesirable duties routinely assigned to others. One other example might be the failure of Bureau official(s) to select for promotion or assignment an eminently and obviously qualified candidate who happens to have been involved recently in EEO protected activity.

(b) Investigation and Evidence

The analysis of evidence in a retaliation case is similar to that in other disparate treatment cases. The investigator should first establish that the agency knew of a complainant's opposition to unlawful employment practices or his or

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her participation in the processing of a complaint, and the date when the agency became so aware. If the evidence indicates that the complainant was subsequently treated differently, it raises the inference of retaliation for the complainant's actions in opposing such employment practices. The agency must then show that the treatment was not related to the complainant's protected activity. The complainant could still prevail if the agency's explanation was, in fact, a pretext for discrimination.

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|SECTION 281. ORGANIZED CRIME/DRUG INVESTIGATIONS

| 281-1 JURISDICTION

(1) Title 18, United States Code, Sections 1961-1968; and Title 21, USC, Section 801 et seq.

(2) Attorney General Order Number 968-82, dated January 28, 1982 (See, Title 28, Code of Federal Regulations (CFR), Section 0.85) authorizes the Director of the FBI concurrently with the Administrator of the Drug Enforcement Administration (DEA), to investigate violations of the criminal drug laws of the United States. These violations are located in the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended, also referred to as the Controlled Substances Act (Title 21, USC, Section 801 et seq.)

(3) In passing the Organized Crime Control Act of 1970, Public Law 91-452, Congress made a "Statement of Findings and Purpose," a portion of which details how organized crime derives power and wealth from illegal activities. The "Statement" appears in Part I, Section 182-1.1 of this manual.

EFFECTIVE: 11/01/93

| 281-2 COMMONLY USED STATUTES/PENALTIES (See MIOG, Part I, 245-1(2).)

The following are only the most commonly used statutes in prosecuting these crimes.

EFFECTIVE: 11/01/93

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281-2.1 Drug Statutes, Penalties, and Venue

EFFECTIVE: 11/01/93

281-2.1.1 Manufacture and Distribution of a Controlled  
Substance; Title 21, U.S. Code, Section 841

To manufacture, distribute, dispense, or possess with  
intent to manufacture, distribute, or dispense, a controlled  
substance; or to create, distribute, or dispense, or possess with  
intent to distribute or dispense, a counterfeit substance.

EFFECTIVE: 11/01/93

281-2.1.2 Use of a Communication Facility; Title 21, U.S.  
Code, Section 843(b)

To knowingly or intentionally use any communication  
facility in committing, causing, or facilitating the commission of any  
felony act under subchapters I and II of Title 21. Each separate use  
of a communication is a separate offense under this subsection.

EFFECTIVE: 11/01/93

281-2.1.3 Simple Possession, Title 21, U.S. Code, Section 844

To knowingly or intentionally possess a controlled  
substance.

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EFFECTIVE: 11/01/93

281-2.1.4 Distribution To Persons Under Age Twenty-One, Title  
21, U.S. Code, Section 845

Any person at least 18 years of age who distributes a  
controlled substance to a person under 21 years of age.

EFFECTIVE: 11/01/93

281-2.1.5 Distribution or Manufacture In or Near Schools or  
Colleges; Title 21, U.S. Code, Section 845a

Any person who distributes or manufactures a controlled  
substance within 1,000 feet of a public or private school or college.

EFFECTIVE: 11/01/93

281-2.1.6 Employment or Use of Persons Under 18 Years of Age  
in Drug Operations; Title 21, U.S. Code, Section  
845b(a)

Any person at least 18 years of age who employs, hires,  
uses, persuades, induces, entices, or coerces a person under 18 years  
of age to violate the Controlled Substance Act or the Controlled  
Substances Import and Export Act or assist in avoiding detection or  
apprehension by any law enforcement official under those Acts. (See  
281-2.1.7.)

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281-2.1.7 Employment or Use of Persons Under 15 Years of Age;  
and Distribution of Controlled Substance to Employee  
Under 18 Years of Age; Title 21, U.S. Code, Section  
845b(d)

Any person who violates Title 21, USC, Section 845b(a)  
(see 281-2.1.6 above) by providing or distributing a controlled  
substance to any person under 18 years of age; or any person who  
violates Title 21, USC, Section 845b(a) if the person employed or used  
is 14 years of age or younger.

EFFECTIVE: 11/01/93

281-2.1.8 Distribution of Controlled Substance to Pregnant  
Individual; Title 21, U.S. Code, Section 845b(f)

Any person who distributes any controlled substance to a  
pregnant individual.

EFFECTIVE: 11/01/93

281-2.1.9 Attempt and Conspiracy; Title 21, U.S. Code, Section  
846

Any person who attempts or conspires to commit any offense  
defined in subchapter I (Title 21, USC, Sections 801 through 904).

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281-2.1.10 Continuing Criminal Enterprise (CCE); Title 21, U.S.  
Code, Section 848(a)

(1) Any person, acting in a supervisory position involving five or more other persons, who commits a felony act under subchapters I and II of Title 21, and commits a continuing series of related violations, from which such person obtains substantial income and resources.

(2) Criminal Forfeiture - Any person convicted of engaging in a continuing criminal enterprise shall forfeit to the United States, in addition to any other forfeiture-

(a) the profits obtained by him/her in such enterprise, and

(b) any of his/her interest in, claims against, and property or contractual rights affording a source of influence over, the continuing criminal enterprise.

NOTE: Criminal forfeiture is under the exclusive direction of the court. In most instances the Agent's role is limited to supplying evidence to the court through indictment, testimony, investigation, etc., while the actual seizure and disposition of the property is carried out by the U.S. Marshal's Service.

EFFECTIVE: 11/01/93

281-2.1.11 Continuing Criminal Enterprise - Principal  
Administrator; Title 21, USC, Section 848(b)

Title 21, USC, Section 848(b) requires the imposition of a life sentence for any person who engages in a continuing criminal enterprise (Title 21, USC, Section 848(a)) and is the principal (or one of several principal) administrators, organizers or leaders, and

(1) the violation involved at least: 30 kg. of heroin; 150 kg. of cocaine; 1.5 kg. of cocaine base; 3 kg. of PCP or 30 kg. of PCP mixture; 300 gm. of LSD; 12 kg. of n-phenyl-n propanamide or 3 kg. of a mixture of n-phenyl-n propanamide; 30,000 kg. or more of a mixture or substance containing marijuana or 30,000 or more marijuana

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plants regardless of weight; or 3 kg. or more of methamphetamine or 30 kgs. or more of a mixture or substance containing a detectable amount of methamphetamine; or

(2) the enterprise or any other enterprise in which the person was the principal (or one of several principals), administrator, organizer or leader, received \$10 million in gross receipts during any twelve-month period of its existence for the manufacture, importation or distribution of heroin, cocaine, PCP, LSD, fentanyl or fentanyl analogue.

EFFECTIVE: 11/01/93

281-2.1.12 Continuing Criminal Enterprise - Intentional Killing; Title 21, U.S. Code, Section 848(e)

(1) Any person engaging in or working in furtherance of a continuing criminal enterprise or engaging in an offense punishable under Title 21, USC, Sections 841(b)(1)(A) or 960(b)(1) "who intentionally kills or counsels, commands, induces, procures, or causes the intentional killing of an individual and such killing results, violates Title 21, USC, Section 848(e)(1)(a).

(2) Any person who, during the commission of, in furtherance of, or while attempting to avoid apprehension, prosecution or service of a prison sentence for a felony violation of the Controlled Substance Act (Title 21, USC, Sections 801-960), who intentionally kills or counsels, commands, induces, procures, or causes the intentional killing of any Federal, state or local law enforcement officer engaged in, or on account of, such officer's official duties and such killing results, violates Title 21, USC, Section 848(e)(1)(b).

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281-2.1.13 Importation of Controlled Substances; Title 21, U.S.  
Code, Section 952

To illegally import any controlled substance into the  
United States from any place outside the United States.

EFFECTIVE: 11/01/93

281-2.1.14 Exportation of Controlled Substances; Title 21, U.S.  
Code, Section 953

To illegally export any controlled substance from the  
United States.

EFFECTIVE: 11/01/93

281-2.1.15 Possession on Board Vessels, etc., Arriving In Or  
Departing From the United States; Title 21, U.S.  
Code, Section 955

To unlawfully possess, on board any vessel, aircraft or  
vehicle arriving in or departing from the United States, or the  
customs territory of the United States, a controlled substance in  
Schedule I or II or a narcotic drug in Schedule III or IV.

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281-2.1.16 Possession, Manufacture, Distribution For Purposes  
Of Unlawful Importation; Title 21, U.S. Code,  
Section 959

It is unlawful for any person to manufacture or distribute a controlled substance in Schedule I or II intending or knowing that such substance will be unlawfully imported into the United States. This section is intended to reach acts of manufacture or distribution committed outside the territorial jurisdiction of the United States. Any person who violates this section shall be tried in the U.S. District Court at the point of entry where such person enters the United States, or in the U.S. District Court for the District of Columbia.

EFFECTIVE: 11/01/93

281-2.1.17 Attempt and Conspiracy; Title 21, U.S. Code, Section  
963

Any person who attempts or conspires to commit any offense defined in subchapter II (Title 21, USC, Sections 951 through 970).

EFFECTIVE: 11/01/93

281-2.1.18 Use of a Firearm During a Crime of Violence or Drug  
Trafficking Crime; Title 18, U.S. Code, Section 924 (c) (1)  
(See MIOG, Part I, 4-1.1.)

"Whoever, during and in relation to any crime of violence or drug trafficking crime . . . uses or carries a firearm, shall, in addition to the punishment provided for such crime . . . , be sentenced to imprisonment for five years . . . ."

NOTE: In BAILEY V. UNITED STATES (U.S. Supreme Court, 12/6/95), the Court held that 924(c) (1) requires an "active" use of the firearm during the crime. Therefore, the nearby possession of a firearm, e.g., in the trunk of a car, during a drug trafficking or

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violent crime, does not qualify as a "use" under the statute. However, a person who "carries" a firearm, on or about his/her person during such a crime, could be properly charged under this statute.

EFFECTIVE: 05/10/96

|| 281-2.1.19 | Penalties

(1) Title 21, USC, Sections 841, 952, 953, 955, and 959: There are three levels of penalties according to the quantity of the controlled substance involved in the offense.

(a) A mandatory 10 years, maximum life, maximum \$4 million fine for offenses involving certain quantities of Schedule I and II controlled substances, including:

1 kilogram or more of heroin;  
5 kilograms or more of cocaine;  
1,000 kilograms or more of marijuana.

(b) A mandatory 5 years, maximum of 40 years, maximum \$2 million fine for offenses involving other quantities of the same controlled substances, including:

100 grams or more of heroin;  
500 grams or more of cocaine;  
100 kilograms or more of marijuana.

(c) Nonmandatory jail terms are to be imposed for offenses involving lesser quantities of the same controlled substances and all other Schedule I and II substances. Maximum penalties are 20 years' imprisonment and a \$1 million fine.

(d) Offenses involving less than 50 kilograms of marijuana, or less than 10 kilograms of hashish or less than 1 kilogram of hashish oil and all Schedule III Controlled Substances are subject to a maximum of 5 years' imprisonment and a \$250,000 fine.

(e) Offenses involving Schedule IV Controlled Substances are subject to a maximum of 3 years' imprisonment and a \$250,000 fine.

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(f) Offenses involving Schedule V Controlled Substances are subject to a maximum of 1-year imprisonment and a \$100,000 fine.

(g) Increased penalties are provided for persons having prior drug-related convictions, and when death or serious bodily injury results from the use of the substance in question. Increased fines are established if the defendant is other than an individual. Mandatory minimum jail terms may not be suspended or the defendant placed on probation or released on parole during the term of imprisonment. Mandatory terms of supervised release are imposed after the term of imprisonment. Defendants who provide substantial assistance in the investigation and/or prosecution of another criminal offender may be sentenced to less than the mandatory minimum jail term.

(2) Title 21, USC, Section 843(b): Maximum of 4 years and a \$30,000 fine for offenses involving the use of a communications facility.

(3) Title 21, USC, Section 844(a): Maximum of 1 year and a \$5,000 fine for the first offense involving simple possession.

(4) Title 21, USC, Section 845: Up to twice the penalty authorized by Title 21, USC, Section 841(b) for the first offense involving distribution to persons under age 21.

(5) Title 21, USC, Section 845(a): Up to twice the penalty authorized by Title 21, USC, Section 841(b) for the first offense involving distribution or manufacture in or near schools or colleges or within 100 feet of a playground, public or private youth center, public swimming pool or video arcade.

(6) Title 21, USC, Section 845b(a): Up to twice the penalty authorized by Title 21, USC, Section 841(b) for the first offense involving employment of persons under age 18.

(7) Title 21, USC, Section 845b(d): Maximum of 5 years and a \$50,000 fine in addition to up to twice the penalty authorized by Title 21, USC, Section 841(b) for the first offense involving employment of persons under age 15 or distribution to persons under age 18.

(8) Title 21, USC, Section 845(f): Up to twice the penalty authorized by Title 21, USC, Section 841(b) for the first offense involving distribution to a pregnant individual.

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(9) Title 21, USC, Section 846: Same penalty for attempt and conspiracy as for the substantive offense of the Controlled Substances Act.

(10) Title 21, USC, Section 848(a): Not less than 20 years' to life imprisonment and a fine not exceeding \$2 million for the offense of engaging in a Continuing Criminal Enterprise (CCE).

(11) Title 21, USC, Section 848(b): Life imprisonment and a fine not exceeding \$2 million for the offense of engaging in a CCE as the principal administrator.

(12) Title 21, USC, Section 848(e) (1) (a) and (b); up to life imprisonment or death penalty.

(13) Title 21, USC, Section 963: Same penalty for attempt and conspiracy as for the substantive offense of the Controlled Substances Import and Export Act.

EFFECTIVE: 05/10/96

|| 281-2.1.20 | Venue

Any district in which the offense was begun, continued or completed.

EFFECTIVE: 05/10/96

281-2.2 Racketeer Influenced and Corrupt Organizations  
Statutes, Penalties, and Venue

(See MIOG, Part I, Sections 183-1.2 through 183-1.10.)

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EFFECTIVE: 11/01/93

281-2.2.1 Title 18, U.S. Code, Section 1961 (Definitions) (See MIOG, Part I, 183-1.2.)

(1) "Racketeering activity" was expanded under the "Motor Vehicle Theft Law Enforcement Act of 1984" to include interstate transportation of stolen motor vehicles and trafficking in certain motor vehicles or motor vehicle parts. State offenses are included by generic designation. Federal offenses are included by specific reference. The term "racketeering activity" is a key statutory term. Under Section 1962, racketeering activity is one of three prerequisites to commission of an offense. If there is no racketeering activity or no collection of an "unlawful debt," there can be no violation of the provisions of this title.

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency or instrumentality thereof;

(3) "Person" broadly includes any individual or organization that may hold any property interest. Any such "person" who violates the prohibitions of Section 1962 is subject to the sanctions of Sections 1963 and 1964, including forfeiture, divestiture, dissolution, and prohibition of future holding of interest.

(4) "Enterprise" includes associations in fact, as well as legally recognized associative entities. Thus, infiltration of any associative group by an individual or group capable of holding a property interest can be reached.

(5) "Pattern of racketeering activity" requires at least two acts of racketeering activity. One act in the pattern must be engaged in after the effective date of the legislation. The two acts necessary to establish the pattern must occur within a period of ten years, excluding any period the perpetrator was in confinement.

(6) "Unlawful debt" includes debts that are incurred either in connection with an illegal gambling business or an illegal usury business where the rate is at least twice the enforceable rate. This includes "loansharking" as a racketeering activity in connection

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with the acquisition or conduct of a legitimate business.

(7) "Racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect these sections.

(8) "Racketeering investigation" means any inquiry conducted by a racketeering investigator to determine if there has been any violation of these sections or any final order, judgment, or other decree of any court duly entered in any case or proceeding arising under these sections.

(9) "Documentary material" includes any books, papers, records, recordings, and other materials.

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General, or any department or agency employee designated by the Attorney General or Deputy Attorney General to carry out the powers conferred upon the Attorney General under these sections.

EFFECTIVE: 11/01/93

281-2.2.2 Title 18, U.S. Code, Section 1962 (Prohibited Racketeering Activities) (See MIOG, Part 1, 183-1.3)

(1) Section 1962 establishes a threefold prohibition aimed at stopping the infiltration of racketeers into legitimate organizations.

(2) Subsection (a) makes it unlawful to invest funds derived from a pattern of racketeering activity, as defined in Section 1961 (1) and (5), or collection of unlawful debt as defined in Section 1961(6) in any enterprise engaged in interstate or foreign commerce. The funds must have been derived by the investing party from activity in which he/she participated as a principal. An exception has been provided for the purchase on the open market of less than 1 percent of a company as securities where there is no degree of control in law or in fact to the investor.

(3) Subsection (b) prohibits acquisition or maintenance of an enterprise through the proscribed pattern of racketeering

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activity or collection of unlawful debt. There is no 1 percent limitation here as in subsection (a) because (a) focuses on legitimate acquisition with illegitimate funds. Subsection (b) focuses on illegitimate acquisition with illegitimate funds. Subsection (b) focuses on illegitimate acquisition through the proscribed pattern of activity or collection of debt. Consequently, any acquisition meeting the test of subsection (b) is prohibited without exception.

(4) Subsection (c) prohibits the conduct of the enterprise through the prohibited pattern of activity or collection of debt. Again, the prohibition is without exception.

(5) Subsection (d) makes conspiracy to violate (a), (b), or (c) equally subject to the sanctions of Sections 1963 and 1964.

EFFECTIVE: 11/01/93

281-2.2.3 Title 18, U.S. Code, Section 1963 (Criminal Penalties) (See MIOG, Part I, 183-1.4.)

(1) Section 1963 provides criminal penalties--including criminal forfeitures--for violation of Section 1962.

(2) Subsection (a) The maximum penalty authorized under subsection (a) is a \$25,000 fine and imprisonment for 20 years. But, in addition, violations shall be punished by forfeiture to the United States of all property and interests, as broadly described, which are related to the violations. Interests in an enterprise include profits and proceeds derived from a violation of Section 1962.

(3) Subsection (b) provides for the entering of restraining orders and prohibitions and the requiring of performance bonds to prevent preconviction transfers of property to defeat the purposes of the new statutes.

(4) Subsection (c) provides rules governing the forfeited property. In general, it incorporates by reference the long-tested customs law provisions. It adds a provision that those rights which are not exercisable or usable by the United States shall expire. The United States is required to dispose of property as promptly as is practical, making due provision for the rights of innocent persons.

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281-2.2.4 Title 18, U.S. Code, Section 1964 (Civil Remedies) (See MIOG, Part I, 183-1.5.)

(1) Section 1964 provides civil remedies for the violation of Section 1962.

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EFFECTIVE: 11/01/93

281-2.2.5 Title 18, U.S. Code, Section 1965 (Venue and Process for RICO Statutes) (See MIOG, Part I, 183-1.6.)

The broad venue provisions of this legislation are set out at length in Section 1965. Any question of venue should be resolved with the United States Attorney with the concurrence of the Department.

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281-3 POLICY (See MIOG, Part I, 92-9, 245-4(2) & MAOP, Part II, 3-1.1 & 3-1.2.)

(1) To maximize the impact on the organized crime/drug problem, investigations conducted under the restructured Organized Crime/Drug Program (OC/DP) will concentrate on the major international and domestic criminal organizations and important regional groups controlling significant segments of the illegal activities in the United States.

(2) OC/DP CLASSIFICATIONS/ALPHA DESIGNATORS:

Investigations conducted under the OC/DP will concentrate on the criminal organizations, notwithstanding the statutory violations committed by the group. The following alpha designators apply to cases classified under the OC/DP as 92, 245, and 281 matters. Case titles should be carried as: Organized Crime/Drug Investigations (OC/DI) - Criminal Organization - Organizational Identity ( [REDACTED] )

(See MIOG, Part I, 281-3.1(1).)

281A - LCN and Italian Organizations - [REDACTED]

281B - Central/South American Organizations - [REDACTED]

281C - Mexican Organizations - [REDACTED]

281E - Asian Organizations - [REDACTED]

281F - Other Major Criminal Organizations - [REDACTED]

281G - African Organizations - [REDACTED]

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b2  
281H - Russian/Eastern European/Eurasian  
Organizations - [REDACTED]

281I - Caribbean Organizations [REDACTED]

281J - Alien Smuggling Organizations - [REDACTED]

NOTE: OC/Drug Racketeering Enterprise Investigations (REIs), which have as their goal the acquisition of information concerning the composition, structure, and activities of major organizations, will be conducted under the 92 classification and will bear the character "REI." The Intelligence Section will manage all OC/Drug REI matters with appropriate input by OC/Drug Operations Sections 1 and 2.

(3) All OC/DP investigations in the 245, 272 and 281 classifications may be opened on SAC authority. Furthermore, the SAC may wish to delegate this authority to the appropriate ASAC and/or SSA designated OC/DP manager or coordinator. Any such delegation, however, must be in writing.

(4) All OC/DP investigations of criminal groups or organizations will be conducted under the 281 classification.

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XXXXXXFEDERAL BUREAU OF INVESTIGATION  
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EFFECTIVE: 10/01/97

281-3.1 Investigations Regarding Sports Teams

(1) Personal use and/or distribution cases concerning players of professional or amateur sports teams do not warrant FBI investigation unless the player's involvement in the operation would meet the criteria set forth in MIOG, Part I, 281-3(2).

(2) If an investigation is not warranted by the FBI, information regarding the use and/or distribution by particular players should be indexed for future retrieval and, if appropriate, referred to DEA or local/state authorities. Field divisions should advise FBIHQ, Organized Crime/Drug Branch (OC/DB), by airtel of the facts in these matters.

(3) If an investigation is warranted, in addition to the drug trafficking violation, Agents should be cognizant of potential

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sports bribery and illegal gambling violations. The involved players/trainers/coaches should be interviewed regarding these additional matters at the appropriate time.

EFFECTIVE: 11/01/93

281-4 INVESTIGATIVE/REPORTING PROCEDURES

OC/Drug Investigations will generally be complex investigations and should be closely coordinated with FBIHQ and with the appropriate United States Attorney.

EFFECTIVE: 11/01/93

[REDACTED]

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re-cr  
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EFFECTIVE: 07/20/95

281-4.1.1 Clandestine Laboratories (See MIOG, Part I, 281-8.1.5.)

62  
(1) Investigations involving clandestine laboratories should be initiated as set forth in MIOG, Part I, 281-4.1 with a particular note that DEA has an [REDACTED]

(2) Special caution must be taken relative to the seizure of clandestine laboratories by Agent personnel. The common presence of explosive chemicals and the delicate nature of closing down an in-process operation presents acute dangers.

(a) FBI personnel will not KNOWINGLY attempt the seizure of a laboratory without the presence of an experienced DEA chemist.

(b) The initial entry into the laboratory will be limited to the arrest team whose immediate objective is to secure the subjects present. Once this is accomplished the DEA chemist will enter the site, conduct an overall survey of the operation, and then shut down any ongoing chemical process.

(c) Law enforcement personnel should not attempt to shut down any ongoing chemical process or tamper with laboratory equipment unless under the direct supervision of the DEA chemist.

(d) Under no circumstances will there be any smoking, eating or drinking on the laboratory site. Agents should avoid placing their hands on or near their mouths or breathing strong vapors.

(e) Dry-type fire extinguisher, neoprene gloves, safety glasses and suitable air filtration masks should be on hand to assure the safety of the personnel involved.

(f) Photographs of the facility should be taken with

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(except b1b2-den)

4.1.1 Info prev. rel. - see

Pt 1 Sec. 12-7.1 (p 58.05 & 58.06)

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an electronic flash, NOT flash bulbs.

(g) Personnel not engaged in the dismantling and inventorying of the evidence must stay away from the processing area.

(h) The case Agent, together with the chemist, will determine the appropriate means of processing the evidence.

(i) Drug evidence (finished product) should be processed in accordance with instructions set forth in MIOG, Part I, 281-8 through 281-8.1.11.

(j) Laboratory equipment: process as nondrug evidence, or, if it is to be submitted to the DEA laboratory for trace analysis, process as drug evidence.

(k) Miscellaneous items instrumental to the laboratory operation, but not needed as evidence (e.g., bulk quantities of glassware, nonhazardous chemicals, etc.): photograph and seize for forfeiture under Title 21, USC, Section 881.

(3) Hazardous Chemicals

(See MIOG, Part I, 281-8.2 & 281-8.2.1.)

EFFECTIVE: 11/01/93

281-4.1.2 Funding Drug Cases and Purchase of Drug Evidence

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[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

*See old Sec 12*

[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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Justification for employing this technique must be documented in the field office file, if approved by the SAC, or included in the communication requesting FBIHQ authority for its use.

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EFFECTIVE: 07/05/94

281-4.1.3 Fronting of Funds for Drug Purchases

(1) As a matter of general policy, Government funds should not be "fronted" (advanced on the promise of a subsequent delivery of drugs). When this technique is deemed necessary, prior FBIHQ authority must be obtained. In requesting authority, an appropriate communication should be submitted to FBIHQ detailing the circumstances, plans for minimizing the risk of loss and justification for the use of this technique.

b2  
b7E  
(2) Prior FBIHQ authority is not required to advance funds for purchases of [REDACTED] on the promise of a subsequent delivery of drugs. SACs are authorized to approve the fronting of drug purchase money in those instances which, in the judgment of the SAC, justify utilizing this technique. The circumstances and justification for employing this technique must be documented in the field office file.

EFFECTIVE: 11/01/93

281-4.1.4 Reverse Undercover Operations (RUO)

(1) An RUO involves an undercover (UC) technique in which the UCA, CW, or informant poses as a drug seller or trafficker rather than a drug buyer. RUOs and the tactics employed in their execution [REDACTED] present unique circumstances and involve certain risks and dangers which can be minimized only through close managerial control, careful planning, and discreet coordination with other federal, state, and local law enforcement agencies. [REDACTED]

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(2) Authority to participate in a domestic RUO rests with the SAC in situations involving [REDACTED]

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EFFECTIVE: 07/24/96

281-4.1.5 Furnishing Controlled Substances and Allowing Drugs  
to Enter Traffic

(1) There are certain circumstances in which it is advantageous to a priority investigation to furnish a controlled substance to a subject through a UCA, CW, or informant. In these instances the Government, after having prior possession, makes a conscious decision to put them into traffic. This highly sensitive technique, [REDACTED] requires the approval of the CID Section Chief responsible for the criminal investigative program, in unilateral FBI investigations or joint investigations with other law enforcement agencies. While the concurrence of the DEA Administrator is not necessary in these scenarios, DEAHO will be notified of the intended drug walk by FBIHQ. In requesting authority to allow drugs to enter traffic, a priority secure teletype should be submitted to FBIHQ, summarizing:

- (a) The facts of the case;
- (b) Source of drugs (whether Government is the source or acting as a broker);
- (c) The importance of the investigation or significance of the trafficker;
- (d) Amount, purity, and type of substance to be released;
- (e) Objectives of furnishing controlled substances and allowing drugs to enter traffic;
- (f) Statement as to any incriminating conversations which have been recorded or source information which establishes the subjects' prior involvement or predisposition to engage in drug trafficking;

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281-4-1.5 pur. ml in old  
Sec 12-9.1

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(g) A statement reflecting that appropriate law enforcement agencies have been contacted to preclude their inadvertent involvement in this sensitive investigative technique;

(h) Statement detailing security procedures to be utilized;

(i) Concurrence of the prosecuting attorney for the utilization of the technique;

(j) Where a DEA Laboratory is the source for the drugs, a statement that the DEA Laboratory has been contacted and advised as to the type of drug needed, purity, packaging, amount, and date when required;

(k) Name of the Agent(s) authorized to receive the drugs and name of supervisor handling the case.



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281- 4.1.6 p.w. rel. 12-9.1.1

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[REDACTED]

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EFFECTIVE: 11/01/93

281-4.1.10 Drug Show Scenarios

(1) In some instances, in order to develop evidence of a subject's involvement in a major drug conspiracy, CWs, informants, or UCAs may pose as drug manufacturers or distributors which may require the display of quantities of controlled substances.

(2) |Deleted|

(3) Each field office will ensure coordination with the appropriate agencies in order to avoid a confrontation situation.

[REDACTED]

EFFECTIVE: 07/17/95

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EFFECTIVE: 07/24/96

281-4.1.13 [REDACTED]

[REDACTED]

NOTE: 14 C.F.R. 91.12 permits common carriers to cooperate with law enforcement in transporting shipments of controlled substances.

[REDACTED]

(3) |Deleted|

(4) |Deleted|

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EFFECTIVE: 06/10/94

281-4.2 Civil Investigative Procedures for OC/DP Cases (See MIOG,  
Part I, 183-3.1.)

(1) These investigations are conducted pursuant to Title 18, USC, Section 1964(a) (equitable relief) and/or 1964(c) (treble damages) and provide the Government with powerful tools, in the form of permanent injunctions and organizational reformation, to eradicate entrenched criminal influence by disassociating the criminal enterprise from its economic base. The general investigative procedures of MIOG, Part I, 183-3 are applicable to civil investigations. Civil investigative target selection and vigorous enforcement of injunctive orders by the FBI provide program managers and squad supervisors with new opportunities to achieve success in their respective investigative areas. Examples of these injunctive orders and remedial actions range from the lifetime bar of individuals from their profession or craft to restoration of democratic processes (union election reform) and competitive business practices (removal of extortionate payments.)

(2) Investigative experience has demonstrated that the composition of the civil complaint contributes significantly to the success of the litigation and the protection of Bureau interests. The complaint must be structured to protect the integrity of ongoing criminal investigations and programs, e.g., informants, from inadvertent disclosure. Government attorneys litigating a civil investigative matter must adhere to the strict provisions of the Federal Rules of Civil Procedure (FRCP) which prohibit their access to, or use of, certain privileged information derived from the criminal investigative process. To satisfy the FRCP and to assure Bureau interests, a segregation process for this information has been developed and successfully employed in prior civil investigations of both national and local targets. The process requires that all documentation or other supporting evidence used in the case be reviewed and coordinated by personnel from the Office of the General Counsel, Civil Discovery Review Unit (CDRU). The CDRU will conduct comprehensive fieldwide file reviews and indices searches for all subjects prior to complaint filing. Subsequently, the CDRU will conduct similar reviews and searches to satisfy court-ordered discovery motions after the complaint is filed. This review process permits the CDRU to excise protected information by asserting various constitutional, statutory, and governmental privileges, prior to disclosure to Government attorneys for complaint and/or trial

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preparation.

(3) In view of the complexity of this investigative technique, the demands made on both field and FBIHQ resources, and its impact upon criminal investigations nationwide, all civil investigations will require approval from the FBIHQ substantive section prior to case initiation. The field division will forward to FBIHQ a copy of the draft complaint coincidental to the United States Attorney's submission of the draft complaint to the Department of Justice (DOJ). The draft complaint will be reviewed by the CDRU and substantive section and assessed for discovery impact on FBI files and informant sources as well as potential resource dedication for processing.

EFFECTIVE: 09/09/94

281-4.3 Department Policy Concerning RICO Investigations  
(See MIOG, Part I, 183-6.)

(1) In its guidelines concerning Title IX of the "Organized Crime Control Act of 1970," the Department has issued instructions that no criminal or civil prosecutions or grand jury investigations are to be pursued without the initial clearance of the Department.

(2) In addition, the Department has indicated that the Attorney General may designate any department or agency to conduct investigations and, in the absence of such designation, jurisdiction to conduct investigations for violations lies with the Agency having jurisdiction over the violations constituting the pattern of racketeering activity listed in Title IX of the "Organized Crime Control Act of 1970."

EFFECTIVE: 11/01/93

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281-5 REPORTING REQUIREMENTS

EFFECTIVE: 07/20/95

281-5.1 Criminal Investigations (See MIOG, Part I, 183-8.1, 245-5  
& 281-4.1; MAOP, Part II, 10-9(20).)

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(6) Deleted

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EFFECTIVE: 07/20/95

| 281-5.2 Civil Investigations (See MIOG, Part I, 183-8.2.)

EFFECTIVE: 11/01/93

| 281-6 INTERNATIONAL INVESTIGATIONS

EFFECTIVE: 11/01/93

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281-6.1 Conduct of Foreign Investigations

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[REDACTED]

(2) In FBI drug investigations where there is minimum DEA participation, the request for foreign drug investigations will be transmitted by teletype to FBIHQ.

EFFECTIVE: 11/01/93

281-6.2 International Travel by FBI Personnel, Cooperative Witnesses (CWs) or Informants (See MIOG, Part II, 23-8.2.)

(1) Certain investigations may require FBI personnel, CWs, or informants, to travel to foreign countries in furtherance of an OC/Drug investigation. In all foreign countries the American Ambassador is the personal representative of the President of the United States and represents the highest U.S. authority in that country. Therefore, no foreign activity may occur without prior notification to FBIHQ, where the necessary liaison and notification procedures will be effected.

(2) FBI personnel, CWs or informants will not be allowed to travel internationally in connection with matters involving criminal investigative programs without approval of the appropriate CID Section Chief.

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| 281-7 ADMINISTRATIVE SUBPOENAS

EFFECTIVE: 11/01/93

| 281-7.1 Authorization

(1) Title 21, USC, Section 876, authorizes the Attorney General to subpoena witnesses, compel attendance and testimony of witnesses, and require the production of records relevant to a controlled substance investigation. This authority has been redelegated through the Director of the FBI to SACs, ASACs, and SSRAs.

(2) This subpoena may compel the witness to attend, testify, or produce records from any place within the jurisdiction of the United States; however, a witness may not be required to travel more than 500 miles from the place he/she was served in order to attend the hearing. Witnesses will be paid the same fees and mileage that are paid witnesses in United States courts.

EFFECTIVE: 11/01/93

| 281-7.2 Service of Administrative Subpoenas

Administrative subpoenas (FD-617) may be served by any person designated in the subpoena to serve it. Proof of service affidavit will consist of the party who served the subpoena completing the "certification of service" section on the reverse side of the original copy of the FD-617.

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281-7.3 Enforcement

The United States court in the jurisdiction of the investigation or residence of the subject may order compliance with the subpoena. Failure to comply with this court order may be punished by contempt of court proceedings.

EFFECTIVE: 11/01/93

281-7.4 Instructions

(1) Administrative subpoenas are to be used only in investigations involving violations of the Controlled Substances Act (Title 21, USC, Section 801 et seq.).

(2) Restraint should be exercised in the use of the administrative subpoena as it is not a substitute for a search warrant.

(3) Primary use of the administrative subpoena will be in obtaining record information from telephone and telegraph companies, hotels, utilities, banks, and other business institutions. When obtaining bank records, Agents must comply with the Right to Financial Privacy Act.

(4) The subpoena (FD-617) is printed in two copies, original and attested copy.

(5) The service return is located on the reverse side of the original copy. The original with executed return of service will be kept in the case file. A photocopy of the original should be maintained in a control file for administrative subpoenas in each field division.

(6) The attested copy of the subpoena should be delivered to the person named therein.

(7) FBIHQ, Office of the General Counsel, must be contacted prior to any administrative subpoena for records not in the hands of a third party (i.e., subjects and associates).

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NOTE: Administratively subpoenaed information is not rule 6(e) material.

(8) In instances where an office of origin is requesting information to be subpoenaed by an auxiliary office, either the office of origin or the auxiliary office may issue the administrative subpoena(s). In either case the original subpoena should be forwarded to the office of origin along with the subpoenaed information.

EFFECTIVE: 07/20/95

281-8 EVIDENCE HANDLING (CONTROLLED SUBSTANCES) (See MIOG, Part I, 281-4.1.1(2) (i).)

EFFECTIVE: 11/01/93

281-8.1 Drug Evidence (See MIOG, Part I, 281-4.1.1(2) (i).)

(1) Two Agents/officers (not support employees), one designated the sealing Agent/officer and one the witnessing Agent/officer are responsible for ensuring that drug evidence is sealed, transmitted for laboratory analysis, or placed in storage. Opening and resealing of drug evidence must be conducted in the presence of at least two Agents/officers.

(2) Laboratory analyses of seized drugs will be conducted by the DEA laboratories. Whenever the package of drug evidence is not prohibitively large, the entire package should be heat sealed in plastic bags at the earliest opportunity. DEA Form 7 is to be utilized when transmitting drug evidence to the DEA laboratory.

(3) Certain procedures should be followed when filling out DEA Form 7. Failure to do so can create problems for DEA laboratories. (See also MAOP, Part II, Section 2-4.4.7 re execution of DEA Form 7.)

(a) The form should be typed. Handwriting does not print through to all copies.

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(b) There is a limit of three exhibits per each form. DEA laboratories use the top page of the form as the original report and there is not sufficient space for the results of analyses of more than three exhibits.

refer [REDACTED]

(e) Each exhibit accompanying DEA Form 7 should be placed in a heat-sealed pouch.

(f) File and exhibit numbers should be placed on all pouches so they can be matched with the accompanying correspondence.

[REDACTED]

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EFFECTIVE: 05/17/94

281-8.1.1 Weight Determinations (See MIOG, Part I, 281-4.1.1(2)(i) & 281-8.1.9.)

(1) Investigative personnel will weigh and record all drug evidence at time of seizure or as soon thereafter as practicable. This initial weight will be prefaced by the word "approximate" in recording the weight on an FD-302 or memorandum. The DEA laboratory weight will continue to be the official weight for prosecutive and statistical accomplishment purposes.

(2) This initial weighing should be accomplished in sealed KAPAK containers on a scale capable of weighing in gram increments. If the field-reported gross weight varies by 1 percent or more from the gross laboratory weight, the appropriate squad supervisor will prepare a memorandum of explanation for the SAC or SAC's designee. Variations will be reported to field offices by the DEA laboratory upon completion of the analysis.

(3) If the drug seizure involves tablets or capsules, the number of tablets or capsules can be determined by either of two methods:

(a) By actual count if the quantity is small; or

(b) If too voluminous to count, by computation based on relative weights, i.e., count and weigh 100 units to determine a unit weight and then divide this weight into the net weight of the entire exhibit to determine the total number of units.

(4) If liquids are involved, the gross quantity will be reported by volume. Estimates will be based on the known or apparent size of the container.

EFFECTIVE: 11/01/93

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281-8.1.2 Laboratory Reports (See MIOG, Part I, 281-4.1.1(2)(i).)

On completion of laboratory analyses the DEA Laboratory Report (copy 1 of DEA Form 7) will be returned to the submitting field division. DEA Laboratory Reports should be filed in the 1A exhibit section of the case file.

EFFECTIVE: 11/01/93

281-8.1.3 Nondrug Forensic Examinations (See MIOG, Part I, 281-4.1.1(2)(i).)

(1) All other forensic laboratory examinations, such as firearms, documents, biological materials, etc., will continue to be performed by the FBI Laboratory.

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(2)

[REDACTED]

(3)

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EFFECTIVE: 10/16/96

281-8.1.4 Storage of Drug Evidence (See MIOG, Part I,  
281-4.1.1(2)(i).)

(1) Upon completion of the analysis of DEA Laboratory and/or FBI Laboratory, all evidence will be returned to the submitting field division for retention and eventual destruction. The DEA Laboratory and FBI Laboratory will not accept the responsibility for storage of drug evidence.

(2) The retention of drug evidence should be in accordance with instructions set forth in MAOP, Part II, 2-4.4.7. The intrinsic value of drug evidence requires the establishment of strict, documented accountability.

EFFECTIVE: 11/01/93

281-8.1.5 Storage of Bulk Drug Evidence (See MIOG, Part I,  
281-4.1.1, 281-8.2.2; MAOP, Part II, 2-4.4.7.)

(1) Whenever feasible, store bulk quantities of drug evidence in the field office evidence room except in the case of hazardous chemicals.

(2) If the quantity of drug evidence is of such volume that it cannot be secured in the field office evidence room, it may be stored in a bonded warehouse and must be afforded appropriate security.

(3) Any other alternative deemed appropriate by the SAC, after consultation with FBIHQ, and after careful consideration of the safety of employees, possible contamination of evidence, chain of custody restrictions, security of evidence, and other pertinent factors, will be acceptable.

(4) From a safety point of view, normal office space building codes are considered adequate for storage of drugs. However, the manner in which drugs of abuse are packaged is more significant than the location where they are kept. Large quantities of drugs can

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be sealed in any type container available such as heat seal pouches, heavy plastic sheets or paint cans so long as the drug cannot leak from its package and contaminate the storage area. The seals should be airtight since spilled drugs can inadvertently be picked up on the hands or temporarily be made airborne by a sudden burst of air.

(5) Wet or freshly harvested marijuana will mildew if not thoroughly dried before being permanently stored. It is also advisable to fumigate marijuana to curb insect growth within the bundles. Additionally, marijuana and crude preparations of some other drugs, such as cocaine, PCP and methamphetamine, are highly odoriferous and will require more than normal ventilation for odor control. It is noted that these odors are not caused by the active drug substance itself, but rather by impurities in the preparation.

(6) Drugs should be stored in a reasonably controlled environment as elevated temperatures or humidity may result in some drug decomposition. Thus, with some additional ventilation, along with adequately sealed packaging, an area, such as the Bulky Evidence Room of most field offices, is suitable for drug storage.

EFFECTIVE: 10/16/96

281-8.1.6 Destruction of Drug Evidence (See MIOG, Part I, 281-4.1.1(2)(i); MAOP, Part II, 2-4.4.7.)

(1) Controlled substances will not be destroyed prior to indictment, except for those routinely destroyed under the bulk destruction policy set forth in MIOG, Part I, 281-8.1.7. The following, therefore, applies only to NON-BULK drug evidence.

(2) Postindictment Destruction. The U.S. Attorney's Manual, Chapter 101, page 22, provides in part that "After the return of an indictment, at the arraignment and plea, the U.S. Attorney shall file a 'Notice of Intent to Destroy Controlled Substances' (hereinafter 'Notice') in all cases unless he/she believes unusual circumstances justify maintaining all seized evidence for use at trial. The U.S. Attorney has the sole and exclusive authority to make such a decision and when such circumstances are present, said 'Notice' will not be filed with the court and the controlled substances shall not be destroyed.... At the time the 'Notice' is filed with the court at the arraignment and plea, a copy shall be immediately served upon the defendant, or his/her attorney." Seized evidence will not be

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destroyed until the field office receives a copy of the "Notice" and has complied with the procedures set forth therein.

(3) Posttrial Destruction. If "Notice" is not filed, seized evidence will be held until the conclusion of the judicial proceedings, to include the appellate process. Disposition of controlled substances in such cases should be approved in writing by the U.S. Attorney and follow the forfeiture procedure set forth in the FORFEITURE AND ABANDONED PROPERTY MANUAL.

(4) Seizure Without Trial. In those instances where there is no identifiable defendant involved and a decision is made not to pursue the investigation, seized controlled substances will be disposed of in accordance with the forfeiture procedure set forth in the FORFEITURE AND ABANDONED PROPERTY MANUAL. Final destruction should follow the provisions of MIOG, Part I, 281-8.1.6(5) below.

(5) Following either a determination by the U.S. Attorney that seized controlled substances need no longer be retained for evidence and proper notice is given or a decision is made to discontinue an investigation involving seized controlled substances, the forfeiture provisions of the FORFEITURE AND ABANDONED PROPERTY MANUAL should be followed. Prior to destruction, the Supervisor or Relief Supervisor and the case Agent will withdraw the drugs from storage and ensure that all evidence seals are intact. Actual destruction of the drugs is to be accomplished by burning in the presence of the case Agent, his/her Supervisor or Relief Supervisor, and one other witness. [See 281-8.1.10 for documentation of evidence destruction.] (See MIOG, Part I, 281-8.1.8(3)(a).)

EFFECTIVE: 12/23/96

281-8.1.7 Destruction of Bulk Drug Evidence (See MIOG, Part I, 281-4.1.1(2)(i) & 281-8.1.6.)

(1) The Bulk Drug Evidence Destruction Rule became effective 4/14/88 and applies to both the FBI and DEA. It is not retroactive and cannot be used to authorize destruction of bulk drug evidence seized prior to that date. The rule requires that threshold amounts of seized Schedule I or II drugs be retained and stored as evidence pending conclusion of trials and appeals. The bulk of the drug evidence in excess of the threshold amount may be destroyed at the direction of the FBI SAC after 60 days from the date that the

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FBI's written notice of the seizure is provided to the appropriate United States Attorney's (USA) Office. Upon receipt of the written notice of the seizure, the USA, or his/her designee, may provide written concurrence for destruction of the seized bulk drug evidence, or the USA may submit a written request that an exception be granted by the SAC. Should the SAC deny the exception request, the USA may appeal the denial to the Assistant Attorney General (AAG) of the Criminal Division. The appeal must be filed with the AAG within 30 days of the SAC's denial. Destruction is stayed pending the final decision of the AAG.

(a) Field offices are not required to report bulk drug seizures to FBIHQ. The only exception to this policy will occur when an SAC's decision to retain or destroy bulk drug evidence is appealed by a USA to the Department of Justice. In the unlikely event that such a dispute arises and cannot be resolved between the SAC and USA, FBIHQ must be notified.

(b) The authority to request an exception, and the authority to grant or deny an exception request rests solely with the USA and the SAC, respectively, and cannot be delegated. Since the bulk of the drug evidence will be destroyed prior to trial, it is imperative that high-quality, large-format photographs of the total seizure be made and properly documented. It is possible that some Judicial Districts or Circuit Courts of Appeal may have established legal precedent prohibiting the destruction of bulk drug evidence seizures prior to trial. Such precedent is controlling, but the SAC should urge the USA's Office to file immediate appeals to such orders.

(2) Exceptions to the destruction rule should be extremely limited. Exceptions should not be granted by an SAC based on rationales such as: "jury appeal," "to forestall legal challenges," or as a matter of "prior practice," as opposed to legal precedent in the district of seizure.

(3) The rule defines a bulk seizure as any one seizure from a single source, equal to or greater than the quantity specified as the threshold amount. With the exception of marijuana, the rule sets out the threshold amounts of specific Schedule I and II Controlled Substances. The threshold amounts should be exceeded by 10 percent of this amount to offset the weight of packaging materials. For example, the threshold amount for heroin is 1 kilogram; however, 1.1 kilograms should be retained as a threshold amount to ensure that mandatory minimum sentencing requirements can be met. The threshold amounts of Schedule I and II Controlled Substances are as follows:

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- (a) Two kilograms of a mixture or substance containing a detectable amount of heroin;
- (b) Ten kilograms of a mixture or substance containing a detectable amount of--
  - 1. coca leaves, except leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
  - 2. cocaine, its salts, optical and geometric isomers, and salts of isomers;
  - 3. ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
  - 4. any compound, mixture, or preparation which contains any quantity of any of the substances referred to in the subclauses above;
- (c) Ten kilograms of a mixture or substance which contains cocaine base;
- (d) 200 hundred grams of phencyclidine (PCP) or two kilograms of a mixture or substance containing a detectable amount of PCP;
- (e) 20 grams of mixture or substance containing a detectable amount of Lysergic Acid Diethylamide (LSD);
- (f) 800 hundred grams of a mixture or substance containing a detectable amount of N-phenyl-N(1-(2-phenylethyl)-4-piperidinyl) propanamide (commonly known as fentanyl) or 200 grams of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N(1-(2-phenylethyl)-4-piperidinyl) propanamide; or
- (g) Two kilograms or 2,000 dosage units (tablets, capsules, or as determined by the regional DEA laboratory) of a mixture or substance containing a detectable amount of any Schedule I or II Controlled Substance in the Controlled Substances Act for which no threshold amount has been specified.
- (h) There is no threshold amount defined for marijuana. Instead, a representative sample will be retained. Procedures regarding marijuana sampling will be set out under the Bulk

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Marijuana Seizures Section. (See MIOG, Part I, 281-8.1.8(4).)

(4) An explanation of the relationship between threshold amounts and bulk amounts is best illustrated by an example. A shipment consisting of 50 kilograms of cocaine is seized. The rule defines the threshold amount for cocaine as ten kilograms. The total seizure must be weighed and photographed. Thereafter, the threshold amount, ten kilograms, plus one kilogram to offset packaging materials included in the weighing process, will be retained and stored in a secure vault pending conclusion of trial. The 39-kilogram bulk amount will be stored in a secure facility for the 60-day holding period. If an exception request to destruction is not filed by the USA, the 39 kilograms will be destroyed on the authority of the SAC as soon as possible after the 60-day period has expired. It should be noted that in the above example, any seizure over ten kilograms of cocaine, or over the threshold amount of any specified drug, qualifies as a bulk drug seizure and the destruction procedures of this rule will apply.

(5) Notice and Appeal

(a) Verbal Notice: The case Agent or Supervisory Special Agent will telephonically advise the AUSA assigned to the case or the district duty AUSA that a bulk drug evidence seizure has been made. The notifying Agent will provide to the AUSA specific details regarding the subject(s) identity, the FBI case file number, the identity of case Agent and Supervisor, the date, time and place of the seizure, the type of drug seized and an estimate of the quantity seized. Verbal notice must be given to the appropriate AUSA no later than the business day following the date of actual seizure.

(b) Written Confirmation: A letter confirming the verbal notice will be forwarded to the USA with a copy directed to the AUSA receiving verbal notice no later than five workdays after the date of the actual drug seizure. In addition to the file copy of this letter, two additional copies should be prepared. One copy will be routed to the SAC who will retain this copy in a control file specifically designated for Bulk Drug Evidence Seizures. The second copy will be retained by the squad supervisor as a tickler copy available for ready reference. Other control mechanisms are left to the discretion of the SAC.

(c) Letter Format: Confirmation form letters may be devised by individual field offices. The letter of confirmation will contain the phrase, "BULK DRUG EVIDENCE SEIZURE," in capital letters on the first reference line of the letter, followed by the full case title and file number. The letter should contain, at a minimum, the

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place, date, and time of seizure; the names of all subjects associated with the seizure; the names and telephone numbers of the case Agent and his/her supervisor; the type of drug seized; and the estimated weight of the total seizure. The final paragraph of the letter must provide the date after which the bulk of the evidence may be destroyed. This date will be calculated as 60 CALENDAR days from the date of the letter giving the USA notice of the seizure. This paragraph will also inform the USA that a request for an exception to the destruction procedure must be in writing directed to the personal attention of the SAC.

(6) Exception Requests: The USA may request an exception to the destruction process at any time during the 60-day holding period. The SAC must personally review and either approve or deny the USA's written request for an exception. Granting of an exception is left to the sole discretion of the SAC; however, the extended storage of large-volume bulk drug seizures is clearly contrary to the spirit and intent of this policy. A USA should provide compelling reasons in support of an exception to destruction request. Copies of this request will be filed in the same manner as notice of seizure letters.

(7) SAC Response: The SAC will personally review and sign the letter either granting or denying the USA's request for an exception. Responses should be provided within ten calendar days of the date of the request. An expeditious response is of particular importance when a USA's request for an exception is being denied. The SAC's letter of denial will inform the USA that written appeals should be directed to the AAG of the Criminal Division within 30 days from the date of the denial letter. The USA must also direct a copy of this AAG appeal letter to the personal attention of the SAC in order to stay the destruction procedure. A failure to appeal the denial, or to provide a copy of the letter of appeal to the SAC, will result in the destruction of the bulk drug evidence as soon as practical after the 60-day holding period or the subsequent 30-day appeal period has expired. It should be noted that bulk evidence destructions cannot be conducted prior to the expiration of the 60-day holding period.

281-8.1.10. (8) Documentation of Destruction: See MIOG, Part I,

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281-8.1.10 Documenting Bulk Drug Destruction (See MIOG, Part I,  
281-4.1.1(2)(i), 281-8.1.6 and 281-8.1.7(8).)

(1) Upon completion of the evidence destruction, the case Agent will prepare an electronic communication (EC) to the file setting forth the date, method, and location of the destruction and a complete description of items destroyed and the names of the Agents who participated in or witnessed the removal of the evidence from storage and its destruction. This EC will be initialed by all participants and serialized in the file. Appropriate destruction notation will be made on the FD-192 in file with a cross-reference to the destruction EC. The evidence copy of the FD-192 will be placed in the 1A section of the file.

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281-8.1.11 Drug Evidence Destruction Coordinators (DEDCs) (See MIOG,  
Part I, 281-4.1.1(2)(i).)

(1) Each SAC will appoint a DEDC to provide assistance in the coordination of field office procedures for the handling, documentation, and disposition of bulk drug seizures.

(2) Deleted

EFFECTIVE: 10/31/94

281-8.2 Hazardous Chemicals (See MIOG, Part I, 281-4.1.1(3).)

EFFECTIVE: 11/01/93

281-8.2.1 Exposure

While drugs themselves do not represent safety or health hazards unless they are injected, some of the chemicals used to manufacture them are extremely dangerous as flammable, explosive, corrosive or toxic substances. Advice on safety considerations may be obtained from the nearest DEA Laboratory prior to conducting raids where exposure to such substances may occur. Upon request, DEA chemists will be available to participate in closing down a clandestine laboratory and should enter the premises IMMEDIATELY after Special Agents have secured the area. (See MIOG, Part I, 281-4.1.1(3).)

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281-8.2.2 Storage and Destruction (See MIOG, Part I, 281-8.1.5.)

(1) The chemist will categorize chemical substances according to their evidentiary and/or hazardous nature; however, he/she cannot dispose of the substance on site due to safety and environmental contamination considerations.

(2) It is the responsibility of each field division involved in drug investigations to make contingency plans for storage and eventual destruction of hazardous chemicals which may be seized as evidence. Such chemicals may be handled, stored and disposed by Environmental Protection Agency-(EPA) approved contractors. A list of EPA-approved contractors can be obtained from DEA field laboratories. Under no circumstances should hazardous chemicals be stored within FBI office space.

(3) Chemicals deemed hazardous will be seized for forfeiture. Although all such property has theoretical value as evidence, in practice not all of it will be physically introduced as such in court. Through prior coordination with the U.S. Attorney, it can be decided that the Government's interest in preserving these chemicals as evidence does not equate to the danger involved in doing so. In fact, most chemicals routinely deemed "hazardous" are common organic solvents, which are of minimal value as evidence.

(4) Chemicals deemed hazardous will not be retained for evidentiary purposes, but will be disposed of forthwith. The search warrant inventory should distinguish the difference between property handled in this manner and that retained as evidence and/or pending completion of forfeiture proceedings. Furthermore, a separate forfeiture action should be brought against this property as distinguished from property held in custody pending completion of forfeiture proceedings.

(5) Disposal of property prior to completing forfeiture proceedings against it is an approach commonly used by the Government for property which is perishable or which presents an imminent danger to public health. Although the approach allows for prompt disposal, it has the potential disadvantage that, should the subsequent forfeiture proceeding be successfully contested, the Government may be required to recompense the owner to the extent of the property's fair market value.

(6) On occasion, a situation may arise where a chemical deemed hazardous is also a critical item of evidence (e.g., a

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controlled substance dissolved in a hazardous solvent), and the amount is too large to safely submit as a whole to the DEA Laboratory. In this situation, the chemical should be photographed and sampled (samples should be of sufficient size to permit subsequent examination by the defense), and then disposed of.

To assure the admissibility of this evidence, the prosecutor may wish to routinely seek advance court approval to cover any such situation, or he/she may prefer to seek it after-the-fact.

EFFECTIVE: 11/01/93

281-9 CIVIL FORFEITURE

See FORFEITURE AND ABANDONED PROPERTY MANUAL.

EFFECTIVE: 11/01/93

281-10 IMPORTATION INTERDICTION

The U.S. Customs Service (USCS) enforces smuggling violations and is responsible for interdicting and seizing contraband, including narcotics and dangerous drugs. Information disseminated to the USCS will be maintained in a control file in each field office.

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281-11 DIVERSION CONTROL

(1) DEA's Diversion Operations Program is responsible for policing the legitimate pharmaceutical industry that handles the domestic manufacture and distribution of controlled substances. It is the program's function to:

(a) ensure that all individuals and firms dispensing, manufacturing or distributing controlled substances are properly registered under the provisions of the Controlled Substances Act of 1970 and

(b) prevent and detect diversion; develop intelligence and by means of its cyclic investigation program, ensure that all registrants comply with the security and recordkeeping provisions of the Act.

(2) Any inquiries or information relative to this program should be referred to the local DEA representative.

EFFECTIVE: 11/01/93

281-12 ALLEGATIONS CONCERNING FOREIGN GOVERNMENTS AND  
FOREIGN GOVERNMENT OFFICIALS' INVOLVEMENT IN DRUG  
SMUGGLING INTO THE UNITED STATES

Allegations concerning foreign governments and foreign government officials' involvement in drug smuggling into the United States will receive priority attention.

(1) Agents will vigorously pursue any allegations of this nature utilizing all available investigative techniques, including consensual monitoring and polygraph, to substantiate these allegations.

(2) If allegations of this nature are made to other law enforcement or Government agencies, determine to what extent these allegations have been substantiated.

(3) After obtaining all available information concerning these allegations, immediately submit a summary teletype to FBIHQ.

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Attention: OC/Drug Branch, captioned "Drug Matters - Allegations Concerning Foreign Government or Foreign Government Officials Involved in Drug Smuggling into the United States" - identify country against which allegation has been made.

(4) FBIHQ will advise if further investigation is warranted.

(5) In order to obtain all available information concerning these matters, SACs should ensure that appropriate liaison is established with other Government agencies within their division so that they will be aware of FBI interest in this matter.

(6) FBIHQ will coordinate closely with DEA and other Government agencies to ensure coordination in these investigations.

EFFECTIVE: 11/01/93

281-13 DISSEMINATION OF THIRD PARTY INFORMATION

(1) Drug investigations MAY involve joint investigations between FBI, DEA, and other Federal, state, and local law enforcement agencies. As a result, valuable and sensitive intelligence information is constantly being passed from one agency to another. It is imperative that the sanctity of third party intelligence information be maintained; therefore, before the FBI or DEA can disseminate information received from one agency to another agency, it must have the approval of the originating agency.

(2) Relative to dissemination by DEA or FBI of information which impacts on the other agency's jurisdiction, such information should be disseminated at the local level on a timely basis. If, however, some legitimate reason exists why the information cannot or should not be disseminated to the interested agency at the local level, the information will be expeditiously referred for review by DEA to DEAHQ or by the FBI to FBIHQ, whichever is appropriate.

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281-14 CORRUPTION OF PUBLIC AND LAW ENFORCEMENT OFFICIALS  
IN DRUG INVESTIGATIONS

(1) Although not a distinct classification, allegations of official or police corruption should be thoroughly pursued in relation to the particular drug trafficking organization under investigation. The identification of official or police corruption, which is directly facilitating drug trafficking activity, will become an integral part of all drug investigations.

(2) When allegations of official or police corruption arise in relation to drug trafficking activity, such cases will be addressed under the appropriate 281 or 245 classification describing the type of drug trafficking group which the corrupt activity supports.

EFFECTIVE: 11/01/93-

281-15 FINANCIAL FLOW INVESTIGATIONS (SEE MIOG, PART I,  
SECTION 272, MONEY LAUNDERING.)

EFFECTIVE: 11/01/93

281-16 CROSS-DESIGNATION OF NON-TITLE 21 FEDERAL AGENTS

(1) Pursuant to Title 21, USC, Sections 873(b) and 965, the AG has the authority to request another Federal agency to assist in the enforcement of the Controlled Substances Act, Title 21, USC, Sections 801-904, and the Controlled Substances Import and Export Act, Title 21, USC, Sections 951-971. The process of requesting assistance is commonly referred to as cross-designation.

(2) The AG has delegated authority to cross-designate to the Director of the FBI and the Administrator of DEA, pursuant to the provisions of Title 28, CFR, Sections 0.85(a) and 0.100, respectively. In turn, the Director has delegated his authority to

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cross-designate Federal Agents to the Deputy Assistant Director of the CID.

EFFECTIVE: 11/01/93

281-16.1 General Policies

(1) The FBI cross-designation program envisions authorizing non-Title 21 law enforcement officers of the GS 1811 series to actively conduct drug investigations under the supervision of an FBI Supervisory Special Agent (SSA).

(2) Although the cross-designation process will most commonly be requested in the course of an OCDETF investigation, the OCDETF designation is not required for cross-designation, nor is the fact that non-Title 21 Federal Agents are participating in an OCDETF investigation sufficient cause to request cross-designation.

(3) Cross-designation is required only when non-Title 21 Federal Agents are to actively engage in investigations of Title 21 violations.

(4) Cross-designation is not required in a multiagency investigation in which the FBI is investigating violations of Title 21 and other participating Federal agencies are contemporaneously investigating violations within their own statutory jurisdiction.

(5) The FBI will cross-designate non-Title 21 Federal Agents only in Title 21 investigations in which the FBI is able to provide direct supervision of the cross-designee by an FBI SSA.

(6) Cross-designation will be provided by the FBI in Title 21 investigations in which the FBI is the lead or sponsoring agency, irrespective of DEA's participation.

(7) Although the authority to cross-designate rests with the DAD, CID, a request to cross-designate must originate from the SAC of the FBI field office requiring the assistance of non-Title 21 Federal Agents. Direct requests to cross-designate from other agency SACs, their respective headquarters or departments will not be granted.

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281-16.2 Scope of Cross-Designation Authority

(1) Cross-designated Federal Agents (designees) are authorized to assist the FBI in the investigation of Title 21 violations only. The statute does not authorize a grant of general FBI jurisdiction to designees.

(2) The scope of authority conferred by cross-designation is further limited by the FBI requirement of direct supervision of the designees.

(3) The authority of an FBI SSA to supervise case management and to control case direction as they relate to a designee's investigative actions is coextensive with that SSA's authority to supervise and direct the investigative actions of FBI Agents during the course of the same investigation.

(4) Sound management requires the FBI SSA to provide the necessary training and orientation to FBI policies, procedures, rules and regulations relating to Title 21 investigations to all designees and to take into account the total experience and training of those designees in determining the nature and extent of supervision required.

(5) Under no circumstances is unilateral action by a designee Agent in a Title 21 investigation contemplated or authorized by the cross-designation process.

(6) The rights and duties of a designated Agent to his/her parent agency are not affected by cross-designation. Pay and promotion status remain the exclusive responsibility of the designee's parent agency.

(7) Designees will abide by the investigative rules and regulations of the FBI when assisting the FBI in a Title 21 investigation.

(8) Cross-designation will be granted on a case-specific basis only. The FBI's cross-designation program does not contemplate standing multiagency task forces that require blanket cross-

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designations for an indeterminate period.

EFFECTIVE: 11/01/93

281-16.3 Civil Liability

(1) The FBI and DEA share primary jurisdiction to conduct Federal drug investigations. The U.S. Forest Service has the authority to investigate violations of Section 841 of Title 21 relating to controlled substances manufactured, distributed or dispensed on National Forest System lands. The USCS has customs enforcement jurisdiction under Title 19. Such authority does not, however, constitute drug enforcement authority generally.

(2) The grant of generally exclusive jurisdiction for drug enforcement to both the FBI and DEA, coupled with the explicit authority under Title 21 to request the assistance of other agencies in conducting drug enforcement investigations, impliedly requires the FBI to exercise the same type of supervision, guidance, training, oversight and managerial controls over the designee as is provided to FBI personnel.

(3) The Federal Tort Claims Act (FTCA), as amended, provides, in pertinent part, that the exclusive remedy for common-law torts committed within the scope of a Federal employee's employment is an action against the United States under the FTCA. Therefore, FBI personnel involved in the act or process of cross-designation would not be sued in their individual capacities for the alleged common-law torts committed by designees acting within the scope of their employment.

(4) It is unlikely that Government liability will result under the FTCA for FBI policy decisions relating to the conduct of drug investigations, to include the decision to request and cross-designate non-Title 21 Federal Agents. The issue of supervision of these designees, however, may directly impact on the potential Government liability that may arise under the FTCA.

(5) Negligent or grossly negligent supervision or non-supervision of designees increases the Government's exposure to liability under the FTCA.

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(6) Constitutionally based civil actions filed against Federal officers (Bivens actions), grounded in simple negligence or negligent supervision, will not succeed. The general rule appears to be that for liability to be imposed under Bivens or under Title 42, USC, Section 1983, a supervisory official must exhibit conduct amounting to deliberate indifference or tacit authorization to commit constitutional violations about which he/she knew or should have known. The process of cross-designation does not create independent drug enforcement jurisdiction for those requested to assist the FBI in drug enforcement investigations such that drug investigations could be conducted without FBI supervision and training.

(7) FBI personnel involved in the cross-designation and supervision process should be sufficiently protected from civil liability, provided that appropriate orientation and supervision have been afforded. The designated Federal Agent should be advised that he/she may nevertheless be liable in Bivens-type actions based on activities which violate a person's constitutional rights.

EFFECTIVE: 11/01/93

281-16.4 Training of Designees

(1) Given the concept of cross-designation, it is not feasible or practical for the FBI to develop a curriculum and institute formal, FBI Academy-based instruction for designees. Field training on an ad hoc basis is the only feasible method of training. The nature of the assistance requested and the duties to be performed by the designee will be a principal factor in determining the extent and nature of training required. Each designated Agent must be evaluated individually. In addition to the tasking of the designated Agent, the following factors are among those to be considered:

- (a) Prior cross-designation;
- (b) Prior cross-training in drug enforcement by either DEA or the FBI;
- (c) Prior drug enforcement training provided by the non-Title 21 parent agency;
- (d) Experience in a joint drug investigation with



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either the FBI or DEA, without cross-designation;

(e) Extent of investigative experience in parent agency non-Title 21 cases.

(2) The above list provides a general, but not inflexible, guide to assessing the training needs of the designee. Historically, non-Title 21 agencies will nominate only their most experienced and accomplished Agents for cross-designation and any particular nominee may have all of the above qualifications. Conversely, nominees with none of the above experience or training should not be considered for cross-designation unless mitigating circumstances exist, such as substantial police drug enforcement experience prior to entry on duty with the parent Federal agency.

(3) At a minimum, all nominees should be provided the opportunity to review the MIOG, Part I, Sections 245 and 281, and to review the "Activities and Standards of Conduct" section of the MAOP, Part I, Section 1. Thereafter, SAC memoranda that update relevant sections of the MIOG and MAOP should be provided to the cross-designees for their review.

(4) It is expected that designees who have been cross-designated or cross-trained in the recent past will require no more formal training than the minimum suggested. Thereafter, such designees should be assigned to work closely with an FBI Special Agent (SA) experienced in drug investigations. Other options for designees with less drug investigative experience or training may include a block of instruction on Title 21 provided by the field office's Principal Legal Advisor or assignment to work directly with an FBI SA for an appropriate orientation period.

(5) In addition to the above, SACs should certify that the designee has been afforded firearms training in accordance with the parent agency's standards and ensure that the designee has qualified under those standards within the past year.

(6) The range and extent of training necessary and provided will be made on an individual basis and will support the certification of the FBI SAC that the designee meets the FBI's standards for cross-designation in the requesting teletype. Documentation to support the SAC's certification will be maintained by the field office in an appropriate control file.

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281-16.5 Duration of Cross-Designation Authority

(1) Cross-designation authority runs from the date of approval by the DAD, CID, not from the date of notice to the designee. Each SAC will ensure that appropriate controls are established to track the duration of a designee's authority. FBIHQ will NOT notify field offices of authority expiration.

(2) Cross-designation authority will terminate or expire under any of the following conditions:

(a) The reassignment, transfer, retirement or other administrative action by the parent agency that affects the availability of the designees. FBIHQ must be advised.

(b) Automatically, at the end of the requested period for cross-designation. Any reasonable period of one year or less may be requested; however, a minimum of six months is suggested.

(c) Automatically, after one year from the last day of the month in which cross-designation was authorized by FBIHQ. The one-year maximum applies to all cross-designations.

(d) The investigation under which authorization was granted has been concluded and the assistance of the designee(s) is no longer required. FBIHQ must be notified in those instances in which investigative activity ceases prior to the expiration of the requested period of cross-designation.

(e) The SAC terminates for "cause," defined as: (1) any action by the parent agency that affects the designation suitability of the Agent; (2) any investigative action by the designated Agent that is unilateral, uncoordinated, or unsupervised relating to the Title 21 phase of the investigation; or (3) any other objectionable designation. FBIHQ must be advised.

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281-16.6 Notice of Termination

In all instances, the designee must be formally advised that his/her cross-designation authority has expired or has been terminated.

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281-16.7 Procedures to Request Cross-Designation (See MIOG, Part I, 281-16.8(2).)

(1) The decision to request the cross-designation of a non-Title 21 Federal Agent rests with the FBI SAC of the appropriate field office. The authority to cross-designate rests with the Director of the FBI, and has been delegated to the DAD, CID, to improve the efficiency of the process. Formal notice to the designee upon authorization of cross-designation is required; however, a formal swearing-in ceremony or credential cards are not required.

(2) In order for the FBI SAC to properly assess the suitability of each designee candidate, the parent agency SAC or other appropriate management official will be required to provide a written recommendation for cross-designation, directed to the appropriate FBI SAC, containing the required background information for each designee candidate. The letter of recommendation will be retained in a field office control file specifically designated for cross-designation requests.

(3) The background information on each candidate, listed below, will thereafter be incorporated into a teletype to FBIHQ, Attention: Administrative Unit, Operational Support Section, CID, and will be captioned: CROSS-DESIGNATION PROGRAM. Since many cases later become OCDETF matters, one copy of this teletype must be designated to the OCDETF regional coordinator in the OCDETF core-city field office whether or not the case is initially designated an OCDETF matter. The following information must be provided for each designee candidate:

- (a) Full Name
- (b) Title and GS Series

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- (c) Parent Agency
  - (d) Post of Duty
  - (e) Social Security Account Number
  - (f) Date of Birth
  - (g) EOD Parent Agency
  - (h) FBI Case (file number only) to which designee will be assigned
  - (i) Anticipated duration of cross-designation
  - (j) Identity of the FBI supervisor designated by the SAC for supervision and training of the designee
  - (k) Date of designee's last firearms qualification
  - (l) SAC certification or recitation of FBI's needs and that the designee meets the qualifications for cross-designation.
- (4) For multiple cross-designations requested at the same time in the same case, a single teletype would suffice as long as elements (a) through (l) listed above are covered for each designee.
- (5) Upon receipt of the requesting teletype, FBIHQ will prepare an individual notice memorandum for each designee. The notice memorandum will be completed, except for the designee's signature, by FBIHQ based only on the information provided in the requesting teletype. Field offices should allow at least 15 workdays for processing by FBIHQ during the initial phase of implementation of the Cross-Designation Program.
- (6) An original of the partially completed notice memorandum will be approved by the DAD, CID, and will be forwarded to the requesting field office as an enclosure to the authorization airtel. The authorization airtel will contain the name(s), parent agency and SSAN of all approved designees.
- (7) Upon receipt of the authorizing airtel, the FBI supervisor charged with supervising the designee(s) will present the notice memorandum to the designee for his/her signature and date of notice. The original signed notice memorandum will be retained by the

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field office for filing in the cross-designation control file, matched with the appropriate letter(s) of recommendation from the parent agency official. Three copies of the signed original notice memorandum will be made and disseminated as follows: one copy will be presented to the designee; one copy will be directed to the regional OCDETF coordinator; and one copy will be directed to FBIHQ, Attention: Operational Support Section, CID, under a cover airtel.

(8) It is expected that most cross-designation requests will arise from OCDETF investigations. The OCDETF regional coordinator is being provided with a copy of the requesting teletype and the signed notice memorandum for statistical and compliance purposes only. As opposed to OCDETF deputation requests, approval by the OCDETF regional coordinator or AUSA coordinator is not required in the cross-designation process.

(9) Upon approval of the designee for cross-designation, FBIHQ will direct a letter to the appropriate parent agency or department head notifying that official that the named Agent(s) have been cross-designated by the FBI. The specific FBI case file number and duration of cross-designation authority will be included in this letter. It should be noted that, as a matter of current policy, the Internal Revenue Service (IRS) will not request cross-designation of IRS agents.

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281-16.8 Renewals of Cross Designations

(1) To minimize the administrative requirements, every effort should be made to accurately estimate the duration of cross-designation authority requested in the initial teletype. In those instances in which the designee's assistance is required beyond the requested period, or one year, renewals will be granted only for the same investigation for which authority was originally approved.

(2) To streamline the renewal process, the renewal teletype will be directed to FBIHQ as set out under MIOG, Part I, 281-16.7 with the word "Renewal" included in the caption. The renewal teletype need only include the designee's full name, parent agency, SSAN, date of original cross-designation, file number, and the duration of cross-designation renewal authority required.

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(3) Renewal authority will be granted by a return teletype from FBIHQ to the requesting field office. This renewal teletype will reiterate the name(s) of the designees and will be approved by the DAD, CID. A second notice memorandum will not be enclosed. The designee will be provided with the original of his/her notice memorandum and will be requested to re-sign and redate the memorandum. The original notice memorandum will be matched with the renewal authority teletype from FBIHQ and refiled in the field office control file. Copies of the re-signed notice memorandum will be disseminated as above.

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281-17 CHARACTER - ORGANIZED CRIME/DRUG INVESTIGATIONS  
(OC/DI)

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SECTION 282. COLOR OF LAW

282-1 STATUTES

The statutes covered under Section 282 of this manual are as follows:

(1) Title 18, Section 241, USC, Conspiracy Against Rights (See MIOG, Part I, 50-1.5, 56-3.1 & 177-2 (6).)

(2) Title 18, Section 242, USC, Deprivation of Rights Under Color of Law (See MIOG, Part I, 50-1.6, 56-3.2.)

EFFECTIVE: 01/31/94

282-1.1 Title 18, U.S. Code, Section 241 - Conspiracy Against Rights (See MIOG, Part I, 44-1, 44-1.1, 50-1.5, 50-2.4, 56-3.1, 56-3.1, 177-2 (6) & 177-2.6.)

This statute makes it unlawful for two or more persons to conspire to injure, oppress, threaten, or intimidate any inhabitant of any State, Territory or District in the free exercise or enjoyment of any right or privilege secured to him/her by the Constitution or the laws of the United States, or because of his/her having exercised the same. It further makes it unlawful for two or more persons to go in disguise on the highway or on the premises of another with the intent to prevent or hinder his/her free exercise or enjoyment of any rights so secured. Among the rights secured from interference by private individuals over the years by the courts which have described them as basic substantive rights of Federal citizenship are the following:

- (1) The rights enumerated under the Homestead laws
- (2) The right to vote in a Federal election
- (3) The right of a voter in Federal elections to have his/her ballot fairly counted

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(4) The right to be free from violence while in Federal custody

(5) The right to assemble and petition the Federal Government

(6) The right to testify in Federal courts

(7) The right to inform a Federal officer of a violation of Federal law

(8) The right to furnish military supplies to the Federal Government for defense purposes

(9) The right to enforce a decree of a Federal court by contempt proceedings

(10) The right of a Federal officer not to be interfered with in the performance of his/her duties (See MIOG, Part I, 89-2.2.)

(11) The right to be free to perform a duty imposed by the Federal Constitution

(12) The right to travel freely from one state to another

In addition to the above rights, the United States Supreme Court in UNITED STATES V. PRICE, 383 US 787 (1966), held that where state participation was involved in the conspiracy, Section 241 covers those rights secured under the 14th Amendment to the U.S. Constitution, which include protection against state action depriving any person of life, liberty, and property without due process of law.

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282-1.2 Title 18, U.S. Code, Section 242 - Deprivation of Rights  
Under Color of Law (See MIOG, Part I, 282-3.1 (6).)

This statute makes it a crime for any person acting under color of law, statute, ordinance, regulation, or custom to willfully deprive or cause to be deprived from any inhabitant those rights, privileges, or immunities secured or protected by the Constitution and laws of the United States. This law further prohibits a person acting under color of law, statute, ordinance, regulation or custom to willfully subject or cause to be subjected any inhabitant to different punishments, pains, or penalties, than those prescribed for punishment of citizens on account of such inhabitant being an alien or by reason of his/her color or his/her race. These are two separate violations within this statute. The Department of Justice (DOJ) has advised that case law defines inhabitant as a person whose mere transitory or momentary presence within the United States, its possessions or territories, either legally or illegally, is sufficient to bring that person within the jurisdiction of this section. Acts under "color of any law" include acts not only done by Federal, state, or local officials within the bounds or limits of their lawful authority (law, statute, ordinance, regulation, or custom), but also acts done without and beyond the bounds of their lawful authority; provided that, in order for unlawful acts of any official to be done under "color of any law," the unlawful acts must be done while such official is purporting or pretending to act in the performance of his/her official duties. This definition includes, in addition to law enforcement officials, any officials, such as Mayor, Councilman, Judge, nursing home proprietor, security guard, etc. and who are bound by laws, statutes, ordinances, or customs. A private citizen, who is a willful participant with Federal, state or local officials in the commission of "color of law" violations, may also be charged with violation of Title 18, USC, Section 242.

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282-2 TIME UTILIZATION RECORDKEEPING (TURK) DESIGNATION IN 282  
MATTERS (SEE MAOP, PART II, 3-1.1 & 3-1.2.)

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282-2.1 282A Investigations

Any allegation of a violation of Title 18, USC, Sections 241 or 242, involving the use of force and/or violence by INDIVIDUAL(S) ACTING UNDER COLOR OF LAW is to be handled as a 282A matter.

EFFECTIVE: 01/31/94

282-2.2 282B Investigations

Any allegation of a violation of Title 18, USC, Sections 241 or 242, which does NOT involve the use of force or violence by INDIVIDUAL(S) ACTING UNDER COLOR OF LAW is to be handled as a 282B matter.

EFFECTIVE: 01/31/94

282-3 HANDLING OF COMPLAINTS - INITIATION OF INVESTIGATIONS

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282-3.1 Initiation of Investigation

The following circumstances represent examples of situations in which an investigation should be initiated:

(1) Upon receipt of an allegation from a complainant or victim not known to be unreliable.

(2) Upon receipt of either a written or verbal request from the Civil Rights Division (CRD), Department of Justice (DOJ), the latter of which will also be documented by CRD, DOJ and transmitted to the field by airtel from FBIHQ. If a field office strongly disagrees with the requirements of the DOJ investigative request(s) and taskings, the field office should contact the DOJ attorney generating the investigative request and attempt to resolve any issues. If the field office cannot resolve the matter with DOJ, contact the CRU. The United States Attorney (USA) does not have the authority to advise a field office to discontinue investigation specifically requested by the DOJ. Any questions regarding the deletion of any portion of a DOJ request must be promptly referred and discussed with the DOJ. If no resolution is obtained, contact the CRU.

(3) Upon receipt of a request from a USA. If the field office believes the USA's request is not warranted and cannot resolve this with the USA, promptly advise the Civil Rights Unit (CRU), Criminal Investigative Division (CID), FBIHQ. (See MIOG, Part I, 282-4.2 (7).)

(4) Upon receipt of specific information appearing in the legitimate news media reporting apparent violation(s) of color of law (Title 18, USC, Section 242) or conspiracy against rights (Title 18, USC, Section 241).

(5) From any source not known to be unreliable.

(6) Federal Law Enforcement Officials

The FBI has investigative jurisdiction for any color of law complaint against any FEDERAL, state, or local law enforcement officials. Upon receipt of a complaint involving allegations against personnel of a Federal law enforcement agency, obtain initial facts of the complaint from complainant, victim or other original source and advise FBIHQ. Conduct no further investigation unless specifically instructed to do so by FBIHQ. The complaint will then be discussed by FBIHQ with the CRD, DOJ, for a determination as to whether the

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Department will request a criminal civil rights investigation by the FBI or whether the CRD, DOJ, will decline criminal prosecution in favor of an administrative inquiry. You may assume that complaints against Federal law enforcement officials which have been made directly to CRD, DOJ, and which resulted in CRD, DOJ requesting FBI investigation, transmitted to the field by airtel, have been previously coordinated between CRU, FBIHQ, and CRD, DOJ, and do not require further consultation with CRU to initiate an investigation. Color of Law allegations against any Federal law enforcement agency official should be promptly brought to the attention of the CRU, FBIHQ. "Color of Law" can also apply to nonlaw enforcement officials who have lawful authority due to their position, such as mayor, councilman, tax collector, proprietor of a nursing home, security guard, etc., and who are likewise bound by laws, statutes, ordinances, regulations or customs. Law enforcement personnel are therefore only a few of the "officials" who act under color of law. "Color of Law," is further defined in Section 282-1.2.

(7) Upon receipt of a complaint involving color of law allegations against FBI PERSONNEL, the following procedures are to be followed: (See MIOG, Part I, 263-8.)

(a) Advise the CRU, CID, and the Office of Professional Responsibility (OPR), Inspection Division (INSD), by telephone, followed by appropriate communications so that FBIHQ may furnish appropriate guidance. The CRU will coordinate with OPR and other FBIHQ components and advise the SAC concerning the proper handling of the matter;

(b) If a civil rights complaint arises during an administrative inquiry, the pertinent administrative inquiry relating only to the civil rights allegation must stop in order to resolve any criminal violations. That portion of the administrative inquiry may not resume until authorized by FBIHQ.

(c) OPR, INSD, and CRU, CID, will coordinate the presentation of the facts of the allegations to OPR, DOJ, and the CRD, DOJ, to determine if a criminal investigation is warranted. If no criminal investigation is warranted, the matter will be administratively handled by OPR, INSD. If CRD, DOJ requests a criminal civil rights investigation, the CRU, FBIHQ, will advise the SAC to initiate an investigation which should be reported to FBIHQ pursuant to the existing provisions of this section of the MIOG unless advised to the contrary by FBIHQ.

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282-3.2 Special Circumstances in Which Investigation May Not Be Required

The following circumstances, not all inclusive, represent examples of situations where investigation should not be initiated:

(1) Upon receipt of information involving mass demonstrations, such as riots, marches, parades, student demonstrations, and major confrontations between local law enforcement officers and groups of persons, immediately advise FBIHQ of the details pursuant to instructions set forth in Part I, Section 157 of this manual entitled "Civil Unrest." Furnish the CRU, FBIHQ with a copy of any "Civil Unrest" communications which contain information indicating possible color of law violations.

(2) It is not necessary to initiate a color of law investigation upon receipt of a letter from a Federal or state prison inmate unless specific criteria are met. Pursuant to an agreement between FBIHQ and DOJ, the following specific criteria have been established and must be met prior to initiation of a civil rights investigation based on an inmate letter alleging brutality:

(a) The complainant is the victim or someone with first-hand knowledge of the incident;

(b) The complainant indicates the kind of injuries sustained as well as whether the injuries required medical treatment; and

(c) Names of witnesses provided.

These criteria do not include death cases and only apply to written complaints from inmates of Federal and state prisons. This policy does not apply to prison inmate letters from lesser facilities (i.e., city or county jails). If all of the above criteria are not satisfied, a letter should be directed to the writer requesting the necessary information. If the writer does not respond or the information furnished still does not meet the criteria, conduct no further investigation. The letter(s) should be indexed and filed in the field office 282-0 file, or a control file.

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(3) Each field office is also authorized to place letters in an appropriate zero or control file if the writer is obviously mentally deranged and makes no legitimate or specific color of law complaint. Letters which contain a questionable or borderline complaint should continue to be resolved by sending a letter to the writer requesting additional specific information. If the information thereafter does not indicate a possible color of law violation, there is no need to forward the letter(s) to FBIHQ; however, they must be properly indexed and filed in the field office. Letters which allege a pattern of violations, or which are submitted by a legitimate civil rights organization but do not contain sufficient predicate information, should be referred to FBIHQ.

EFFECTIVE: 01/31/94

282-4 INVESTIGATIVE PROCEDURE - 282A MATTERS - FORCE AND/OR VIOLENCE

EFFECTIVE: 01/31/94

282-4.1 Initial Investigation (See MAOP, Part II, 2-5.2.4.)

(1) Interview the victim(s) and/or complainant(s) for full details of allegation(s). As a part of each interview, secure the identity of subject(s) and witness(s) to the incident. Have victim execute a medical release form (FD-465) if injuries sustained were treated by a physician or if victim required hospitalization. Advise victim that information furnished may be used in court of law. See Section 282-8.6(9) regarding the need for signed statements. (See MIOG, Part I, 282-6 (1).)

(2) Observe, describe, and photograph, in color, any complaint-related injuries visible on body(ies) of victim(s) at the time of interview. If victim's wounds are bandaged, determine whether the bandages can be removed so that the victim's wounds can be photographed. If the bandages can safely be removed, photograph the

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unbandaged wounds. If the bandages cannot be safely removed, photograph the bandaged wounds. Photographs made available from other sources may be used if the authenticity of the photographs can be established and used for court purposes.

(3) At the outset of any investigation involving a possible "Color of Law" violation (Title 18, USC, Section 242), the responsible head or appropriate official of the agency or institution involved is to be notified of the initiation of the investigation. This includes all local, state and Federal agencies and institutions. DUE TO POSSIBLE RETALIATION AGAINST THE COMPLAINANT, DO NOT FURNISH THE IDENTITY OF THE COMPLAINANT TO THIS OFFICIAL OR ANY PERSON OUTSIDE OF THE FBI OR DOJ.

(4) Obtain copies of all police reports relevant to the incident under investigation with the exception of Internal Affairs reports. Internal Affairs reports are only collected as part of a "Substantial Case" (see Section 282-4.2(4)) and are not collected as part of the "Initial Investigation." A cover FD-302 should be prepared identifying the source of these records and date obtained. Ensure copies of records are readable. Determine what criminal and judicial action has been taken or is contemplated by authorities against victim(s) and subject(s). Conduct appropriate criminal record checks for each victim and subject. An inquiry with the state computerized law enforcement system is normally sufficient. In death cases, obtain a copy of the report of the autopsy if conducted, or coroner's report. Do not delay completion of investigation awaiting these reports but show in your report what steps have been taken to obtain relevant records.

(5) Obtain copies of any medical records relating to treatment received by each victim for injuries allegedly sustained at the hands of subject(s). Most hospitals and doctors will require a release (FD-465) signed by victim or a subpoena before making records available. If a subpoena is necessary, obtain the name of the person for whom a SUBPOENA DUCES TECUM should be issued. An FD-302 should be prepared identifying the source of these records and date obtained. Ensure copies of these records are readable.

(6) Conduct field office indices search and set out information regarding other civil rights allegation(s) made against each subject. Also, conduct an indices search regarding victim(s) and summarize information contained in field office file(s).

At this point, a 282A case may be closed when, in the opinion of the SAC, the investigation establishes that the totality of the

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circumstances indicates that the case is not of a serious or substantial nature and therefore does not warrant further investigation. Minimal injury to the alleged victim, by itself, is not sufficient justification to terminate any investigation. Furnish results of investigation to FBIHQ for transmittal to the DOJ. (See Section 282-5 for reporting guidelines.)

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282-4.2 Additional Investigation Required - Substantial Case

If the case is determined to be serious and substantial in nature, conduct the following additional investigation:

(1) Interview all or a sufficient number of witnesses to fully develop the facts of the case. Identity of witnesses may be obtained from subject(s), victim(s), or police reports. Obtain and document the names and addresses of all witnesses who were not interviewed during the investigation. As a part of the interview with each witness, obtain full name, address, telephone number, employment, race, sex, date of birth and social security number. Advise witnesses that information furnished may be used in a court of law.

(2) Identify and interview all physicians and other medical and paramedical personnel who treated victim(s) for injuries allegedly sustained at the hands of subject(s), including the ambulance attendants who transported victim(s) to the hospital, the hospital admission clerks, orderlies, and the nurses involved in the treatment of victim(s). In the interviews with the doctors and other medical personnel, also determine the following information: the severity of victim's injuries, whether victim's injuries could have been caused the way he/she or subject(s) claim, whether victim appeared intoxicated (especially if subject(s) claim the victim was), and whether victim was belligerent and/or unruly (especially if subject(s) claims he/she was). In death cases, interview the pathologist or medical examiner who performed the autopsy.

(3) Interview each subject for full details of the incident. Obtain a complete physical description and background for each subject during interview or from police records. (See Section 282-8.6(9) regarding the need for signed statements.) Be aware of GARRITY considerations as noted in Section 282-4.2(4), below.

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(4) Contact appropriate officials at the subject officer's agency to obtain pertinent records, i.e., Internal Affairs Report, personnel file, etc., and any other complaint(s) against subject. It should be noted that the Supreme Court has held that a statement given by a public employee under an express threat of dismissal for failure to answer cannot constitutionally be used against the employee in a subsequent criminal proceeding (GARRITY v. NEW JERSEY, 385 US 493 (1967)). Furthermore, subsequent case law has held that the fruits of these statements are likewise not admissible. Accordingly, do not review any of these compelled subject statements but instead forward them to FBIHQ in a sealed envelope marked "potential GARRITY statements enclosed." Upon receipt, CRU, FBIHQ will transmit the GARRITY material to the DOJ where the report will be reviewed and any compelled subject statements will be removed before the entire investigative report is reviewed by the case Attorney at CRD, DOJ. The cover communication should also note that an Internal Affairs Report is enclosed and it may contain GARRITY statements. If the subject officer consents to make such statements available, that fact should be recorded on an FD-302 and it should also be noted in the administrative section of the report. (See MIOG, Part I, 282-4.1 (4).)

(5) Where there are conflicts as to the facts, attempt to resolve same. For example, if there is a conflict in the sequence of events, inspect and copy records, such as police logs, tape-recorded radio transmissions, or hospital admission records, that would help resolve the conflict.

(6) Describe the scene of the incident; where appropriate, supplement description with photographs or a diagram.

(7) After completion of the investigation, advise the USA of the results and ask USA if further investigation is warranted. Regardless of the USA's answer, submit report of investigation completed. If USA requests further investigation, conduct whatever investigation USA requests as long as such requests are reasonable and pertinent to the case. If a problem arises with a request of this nature, handle pursuant to instructions set forth in 282-3.1(3) of this manual. The results of this investigation should be furnished in an investigative report supplementing the initial report. When the USA states that the investigation is adequate, request the USA to furnish an opinion as to the prosecutive merit of the matter. Do not delay the submission of any report pending a prosecutive opinion by the USA. USA's prosecutive opinion can be furnished in a supplementary report.

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282-5      REPORTING GUIDELINES - 282A MATTERS (SEE MIOG, PART I,  
            282-4.1.)

EFFECTIVE: 01/31/94

282-5.1    Submission of FD-610

The FD-610 is to be submitted to FBIHQ within five workdays of the receipt of the complaint pursuant to instructions set forth under Section 282-8.1.

EFFECTIVE: 01/31/94

282-5.2    Format of 282A Investigative Report

(1) All investigative activity is to be reported utilizing the FD-263 cover page, the FD-204 synopsis page, FD-302s and investigative inserts. Do not use an LHM unless specifically authorized by FBIHQ. All investigative activity is to be completed and reported within 21 workdays of receipt of complaint. (See Section 282-8.2 and 282-8.4 for exceptions to this rule.) These cases are to be given prompt, preferred, and continuous attention and handled in an impartial manner by mature Agent(s). (See MIOG, Part I, 282-7.2 (1).)

(2) Reports are to be organized in a logical progression. A table of contents should be utilized in order to assist review of the investigation by the case Agent, field supervisor, CRU, FBIHQ, and DOJ Attorneys. Civil Rights reports should be organized as follows:

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(See MIOG, Part I, 282-7.2 (1).)

(a) Complete the FD-263 and set forth the identity of the responsible head or appropriate official of the agency or institution involved who was advised of the initiation of a Civil Rights investigation under the Administrative Section of the form. Ensure date of this notification is included. See Section 282-5.2 (2) (m) below, for instructions regarding CRD, DOJ notification to this individual of its decision to close the case after its review of the FBI report(s).

(b) Complete the FD-204 including a DETAILED synopsis which succinctly sets forth the investigative content of the report. Do not use phrases such as "interview set forth" or "details set forth" in the synopsis.

(c) Predication paragraph is to follow as the first item under "Details" of the report. The predication must contain a brief statement as to the basis for the case being opened.

(d) Interview(s) of victim(s) is to be set forth on an FD-302(s).

(e) Photographs of victim's injuries not submitted to FBIHQ for developing are to be made part of the report and should be handled as enclosures to the report. Observations relative to injuries, photographed or not photographed, are to be recorded on an FD-302.

(f) When necessary, a diagram of the scene where the incident occurred should be made a part of the report.

(g) Interview(s) of witness(s) is to be set forth on FD-302(s) or investigative insert(s). See also Section 282-8.6(9).

(h) Interview(s) of subject(s) is to be set forth on FD-302(s). See also Section 282-8.6(9).

(i) Police records of less than ten (10) pages are to be included as pages in the report. Records of ten (10) or more pages are to be made enclosures to the report. An FD-302 is to be prepared containing the source of these records and date obtained. Ensure these records are readable. Summarize contents of police records in an FD-302 if they are not readable.

(j) Medical records of less than ten (10) pages are

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to be included as pages in the report. Records of ten (10) or more pages are to be made enclosures to the report. An FD-302 is to be prepared containing the source of these records and date obtained. Ensure these records are readable. Summarize contents of medical records in an FD-302 if they are not readable.

(k) Interviews of medical personnel are to be set forth on FD-302s.

(l) Prior arrest records of subject(s) and/or victim(s) are to be made pages in the report and/or set forth on an investigative insert. The source(s) of these records and date obtained are to be set forth on an investigative insert.

(m) Results of the field office file review; USA's opinion; SAC's authority to close the case; and list of subject(s) and victim(s) addresses are to be set forth on investigative insert(s). With respect to the notification list, which normally appears at the end of the report, the CRD, DOJ has established a procedure by which subject law enforcement agency officers, victims and complainants are notified by letter of the DOJ's decision to close Civil Rights cases after reviewing FBI reports. To assist the DOJ in notifying subject(s), victim(s), and complainant(s), a list of the subject(s), victim(s), and complainant(s), along with addresses where they may be notified is to be clearly set forth on the last page of a report. If during the course of the investigation, the head or other appropriate official of the subject officer's department or agency SPECIFICALLY requests to be notified, that specific request should be noted in the details of your report on the last page. Clearly state that this official SPECIFICALLY desires departmental notification. Without this statement the DOJ will not advise the official. Set forth the name and title of the appropriate official and the address to which notification may be sent. (See (a) above.)

(n) The original and two (2) copies of each report and three copies of report enclosures are to be submitted to FBIHQ. One copy of report and enclosures is to be forwarded to the USA.

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282-6 INVESTIGATIVE PROCEDURE - 282B MATTERS - NONBRUTALITY

(1) Interview complainant and/or victim(s) if readily available. Secure same information as set forth under 282-4.1(1) during interview.

(2) Where appropriate to round out the investigation, check police records, office indices, court records, institution records and any other records pertinent to the case.

(3) Examples of nonbrutality allegations are as follows:

(a) Unlawful arrest or detention

(b) Unlawful search or seizure

(c) Police harassment or abuse of power

(d) Failure of any public official to take official action. This involves cases in which a public official, who is a witness to, or cognizant of, a deprivation of civil rights of an individual, such as an assault upon that individual, fails to take appropriate action to protect that individual's person or rights.

(e) Deprivation of civil rights in connection with trial, conviction, or sentence. Includes allegations of improper extradition procedures.

(f) Deprivations relating to or growing out of treatment of incarcerated persons or concerning administration of prisons or jails.

(g) Alleged unlawful deprivation of property by purported action of any public agency. Involves cases relative to imposition of zoning restrictions on property, exercise of eminent domain without due process of law, and like situations.

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282-7 REPORTING OF INVESTIGATION - 282B MATTERS

EFFECTIVE: 01/31/94

282-7.1 Submission of FD-610

The FD-610 is to be submitted to FBIHQ within five workdays of the receipt of the complaint pursuant to instructions set forth in Section 282-8.1.

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282-7.2 Format of 282B Investigative Report

(1) Any matter which contains extensive investigation is to be reported in the same manner as a 282A case. Instructions relating to 282A case reports are set forth under 282-5.2(1) and (2).

(2) All other investigation may be reported by LHM. The LHM must contain a comprehensive description of the investigation conducted. Any FD-302s, investigative inserts, and records of less than ten (10) pages should be appropriately designated as pages in the LHM. Large numbers (over 10 pages) of reproduced records are to be forwarded as enclosures to the LHM.

(3) When an LHM is submitted in a 282B matter, furnish FBIHQ with the original and two (2) copies of the LHM. Furnish local USA with one (1) copy of the LHM.

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282-8 ADMINISTRATIVE INSTRUCTIONS

EFFECTIVE: 01/31/94

282-8.1 Submission of the FD-610 (See MIOG, Part I, 44-7.1, 44-8.1, 50-4, 173-1, 177-6.1, 177-8.1, 189-4, 204-4, 214-2, 282-5.1, 282-7.1, & 282-8.6 (6).)

(1) The purpose of the FD-610 is to promptly provide FBIHQ with a complete set of pertinent facts for each "color of law" case investigated by the FBI. "Purpose" and "Instructions" are also listed on the reverse side of the FD-610. Data contained on the form is entered by the CRU, FBIHQ, directly into the Civil Rights Information System (CRIS) which assists in a more effective, efficient, and economical management of the Civil Rights program by FBIHQ and the field. Field divisions may request that FBIHQ provide information/analysis based on data from the FD-610.

(2) INITIAL SUBMISSION. Instructions are set forth on the reverse of the FD-610. Upon receipt of a complaint or request for investigation which requires the initiation of a color of law case, the initial FD-610 must be submitted within five (5) workdays. Every effort should be made to complete items (1-9) on the FD-610. If the complaint is received by an auxiliary office, the auxiliary office should obtain sufficient facts regarding the matter; advise the potential office of origin in an expeditious manner (preferably by facsimile) about the complaint; and file the complaint in the 282-0 file. The office of origin should then submit the FD-610 to FBIHQ within five (5) workdays of receipt of the complaint from the auxiliary office.

(3) SUPPLEMENTAL SUBMISSION. Instructions are set forth on the reverse of the FD-610. A supplemental FD-610 should be submitted whenever the field office determines the additional information should be submitted to FBIHQ. This may include information which was not known previously, was previously omitted, or was previously incorrectly reported. When submitting a supplemental FD-610, provide data only for those items requiring a change from the initial FD-610.

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(4) The following sets forth specific instructions regarding completion of items 1 through 9 of the FD-610:

Item 1 - Title: Provide the full case title to include name of subject(s), victim(s), and complainant. Fully identify the rank/position of the subject and agency including city and state. If the victim is deceased, write "deceased" behind victim's name and place in parentheses. Thereafter, the classification and office of origin should be listed. The following is an example:

CAPTAIN JOHN DOE,  
HUNT POLICE DEPARTMENT,  
HUNT, NEW JERSEY;  
MICHAEL SMITH (DECEASED) - VICTIM;  
MARY SMITH - COMPLAINANT;  
COLOR OF LAW  
OO: NEWARK

Ensure any previous communications are referenced.

Item 2 - Office of Origin File Number: Self-explanatory.

Item 3 - Auxiliary Office File Number: Obsolete.

Item 4 - Initial/Supplemental Submission:  
Self-explanatory.

Item 5 - Matter Type: Check appropriate block(s) to best describe the type of case initiated. The type of matter is self-explanatory and has been set forth in such a manner as to best describe separate civil rights subprogram priorities. This format is also used to describe civil rights cases submitted to the CRD, DOJ.

Item 6 - Date of Incident: Self-explanatory. If the date of the alleged violation is unknown or ongoing (harassment, failure to take action, etc.), use the latest incident date.

Item 7 - Date of Complaint: This is the date that the complaint is received in the field office/resident agency.

Item 8 - Synopsis of Case: The synopsis should provide a concise summary of the allegation(s). Do not use such phrases as "See LHM" or "Details set forth."

Item 9 - Significant Case: Instructions are on the reverse of the FD-610. If the case is of such a nature that FBIHQ

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should expedite handling of this case, the "yes" block should be checked. Significant cases are those receiving extensive media attention, involving a prominent individual or extensive media attention, or involving an FBI employee as the subject or victim. Significant cases are also those wherein FBI investigation has determined the allegations to be serious and substantial thus warranting a full investigation. When prosecution becomes imminent, FBIHQ should be advised promptly and a supplemental FD-610 would be submitted designating the case "significant if not so designated on the initial FD-610." If there is a question as to whether a case is "significant," contact the CRU, FBIHQ, to resolve the issue.

A "Remarks/Administrative" Section is provided at the bottom of the FD-610 and should be utilized to advise FBIHQ of unusual or administrative matters.

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282-8.2 Deadlines (See MIOG, Part I, 282-5.2 (1).)

Investigations are to be given prompt, preferred, and continuous attention and handled in an impartial manner by mature Agents. Deadlines have been established primarily to limit the time period that an allegation against a police officer remains unresolved. INVESTIGATIONS ARE NOT TO BE CONDUCTED WITH LOCAL LAW ENFORCEMENT OFFICERS AND ARE TO BE INDEPENDENTLY CONDUCTED BY THE FBI. Investigations of all color of law cases are to be reported to FBIHQ in accordance with the following deadlines:

(1) FD-610 - Upon receipt of a complaint, the receiving office must submit the FD-610 within five (5) workdays. In those instances where FBIHQ is advised by telephone or teletype of a new case, the FD-610 still must be submitted within five (5) workdays of the receipt of the complaint.

(2) 282A - Substantial Case - Upon receipt of a complaint that initiates a 282A case, and the investigation has determined the matter is substantial, complete investigation and mail the report to FBIHQ within twenty-one (21) workdays. If the investigation cannot be completed and a "Closing" report mailed on or before the expiration of 21 workdays, then mail an initial "Pending" report within the 21-workday deadline and follow with subsequent reports within 21

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workdays of the prior report. For further instructions regarding complex investigations, see the last paragraph in this section.

(3) 282A - Nonsubstantial Case - Upon receipt of a complaint that initiates a 282A case and investigation determined the matter was NOT substantial, submit completed investigation by report mailed within 21 workdays.

(4) Upon receipt of a complaint that initiates a 282B case, submit completed investigation by report/LHM mailed within 21 workdays.

Initial deadlines are established utilizing the date of receipt of the complaint which should be noted on the FD-610. Deadlines for subsequent reports are based on the date of the previous communication. Under normal conditions, 282B matters should be completely resolved and reported within 21 workdays. In 282A cases, every effort should be made to complete the investigation and submit the report within 21 workdays. If the investigation is not completed within that time frame, a pending report should be submitted and contain at a minimum, the complainant and/or the victim interview(s), and the police incident report. In a case in which investigation will be extensive and cannot be completed and mailed within 21 workdays, the field office should advise FBIHQ of the investigative steps to be pursued and, UACB, the date the results will be furnished to FBIHQ. (See (2).)

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282-8.3 Procedures when Local, State, or Federal Agencies are Investigating Same Incident

From time to time questions have arisen concerning the procedures to be followed by the FBI in conducting investigations of alleged violations of criminal Civil Rights statutes when local or state agencies are simultaneously conducting an investigation of the same incident. Departmental policy in such circumstances is as follows:

(1) Upon receipt of information by the FBI sufficient to justify initiation of a color of law investigation, an investigation should be conducted regardless of the fact that a local or state

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investigation of the same incident is also being conducted. If, during the course of the FBI's investigation, state or local criminal charges arising out of the incident are filed against the subject(s), the FBI's investigation should be suspended and the USA and FBIHQ should be notified of the nature of the criminal charges and the likely timetable for prosecution of such charges. In all other situations, the investigation should continue to completion.

(2) Exceptions to this procedure may be necessary on infrequent occasions. Authority should be sought from FBIHQ, on such occasions before suspending the investigation in the absence of filing of state or local criminal charges against the subject(s). FBIHQ, CRU will consult with DOJ, CRD on such requests.

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282-8.4 Subpoena Matters (See MIOG, Part I, 282-5.2 (1).)

Upon receipt of a subpoena for Agent's testimony, production of material or disclosure of information pertaining to a pending or closed color of law investigation, the following procedures must be followed:

(1) Promptly notify the USA for the district in which the demand arose. The USA is under obligation to immediately contact the Deputy Assistant Attorney General, CRD, DOJ, for referral to the appropriate Section Chief for review of the information for which disclosure is sought.

(2) Notify FBIHQ, Attention: CRU, CID, by appropriate communication (i.e., teletype, facsimile, telephone, or airtel) of receipt of the subpoena, the results of your contact with the USA and all pertinent factors you believe appropriate for consideration in reaching a resolution to the demand. The above information will be forwarded to the CRD, DOJ for its final determination of action to be taken in response to the demand. CRD, DOJ will generally notify the concerned USA directly of its decision concerning the subpoena and advise FBIHQ of its instructions to the USA. FBIHQ will then advise the concerned field office of this information. The original and one copy of the airtel with three copies of the subpoena must be provided to FBIHQ.

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(3) In all instances, keep FBIHQ advised of all developments concerning each subpoena.

(4) No release of information should be made without FBIHQ and DOJ authority.

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282-8.5 Assignment of Special Agents to Color of Law Investigations

Situations may dictate that certain FBI Agents not be assigned color of law cases. Those situations are as follows:

(1) Special Agents who are former police officers, when the subject(s) is a law enforcement officer; (See (5).)

(2) Special Agents who have close relatives in the agency involved; (See (5).)

(3) Special Agents who have close working or personal relationships with the officers who are the subjects of a color of law investigation; (See (5).)

(4) Special Agents who have a close working relationship with the specific law enforcement agency involved and a question of propriety may be involved; and, (See (5).)

(5) Special Agents assigned to a Resident Agency who fall into categories (1), (2), (3), or (4). Resident Agents may conduct the initial interview of the victim(s) and/or complainant(s) and obtain records for any 282 case in their territory. Unless unusual circumstances exist, Resident Agents may be assigned to 282B cases involving agencies in their territory.

(6) Special Agents falling into the above categories can be assigned to investigate all other matters within the Civil Rights Program. They can also assist in noninterview assignments in police misconduct cases by conducting police record checks, obtaining medical records, and/or court documents.

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282-8.6 Miscellaneous

(1) Promptly advise FBIHQ of any imminent prosecution, criticism, controversy, or extensive publicity arising in connection with color of law cases.

(2) If victim or complainant indicated he/she is in fear for his/her life or safety, ensure that the appropriate local authorities are advised without revealing the source of the complaint. This notification should be documented in the field office file and should be provided to FBIHQ only when a civil rights case is initiated.

(3) If victim(s) or witnesses are confined to hospitals or institutions and cannot be interviewed except in the presence of those charged with their custody, interviews should not be conducted and FBIHQ should be advised of such information.

(4) A subject, victim, or other witness may refuse to be interviewed except in the presence of his/her attorney. The SAC may authorize an interview of this nature if, in the opinion of the SAC, such an interview is necessary.

(5) Obtain FBIHQ authority prior to contacting a judge or a judicial officer in a civil or criminal action to determine disposition of a matter which may be pending before the court. Advise FBIHQ precisely why such information cannot be obtained from sources other than the court or judicial officer and furnish recommendation of SAC as to whether or not a particular judge should be interviewed. This information will be conveyed to the DOJ for review. Upon receipt of DOJ approval, the field division will be notified by FBIHQ. This course of action is necessary inasmuch as the CRD, DOJ, prosecutes the majority of color of law cases and has supervisory responsibility for almost all such prosecutions. Therefore, the DOJ must be made aware of such contacts.

(6) In certain urgent situations the auxiliary office receiving a color of law complaint should notify FBIHQ and the office of origin by teletype and/or telephone prior to submission of the FD-610. The auxiliary office should forward the victim/complainant interview, FD-302s, inserts, or other pertinent information to the

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office of origin within ten (10) workdays. If the investigation in the auxiliary office is extensive and such that the information cannot be furnished to the office of origin in ten workdays, mail the details of the original complaint (victim/complainant interview) within 10 workdays and mail the remainder within 21 workdays. In those instances where the office of origin has a color of law case initiated by an auxiliary office, the office of origin should still mail an FD-610 to FBIHQ within 5 (five) workdays of receipt of the complaint (See MIOG, Section 282-8.1 above) and a complete investigative report to FBIHQ within 21 workdays.

(7) No arrests are to be made or complaints filed without prior CRU, FBIHQ notification.

(8) When exhibits, including photographs, are obtained, furnish one copy to the USA and three copies to FBIHQ. Field offices should keep one copy of the exhibit for their files, including photograph negatives.

(9) Interviews of victims, subjects, and witnesses should be reduced to a signed statement only in the following instances: (See MIOG, Part I, 282-4.1 (1), 282-4.2 (3), 282-5.2 (2) (g) & (h).)

(a) Upon specific instructions from FBIHQ.

(b) Upon specific request of USA.

(c) Upon specific request of DOJ.

(d) When deemed appropriate by the Special Agent during the course of the interview.

Interviews should be conducted even though a person declines to furnish a signed statement. If the interviewee is requested to provide a signed statement and declines, note this in the FD-302.

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282-9 PENALTIES

(1) Title 18, USC, Section 241 - maximum of \$10,000 and/or imprisoned not more than 10 years. If death results, any term of years or for life. (See MIOG, Part I, 44-10, 50-1.5 (3), 50-2.4.)

(2) Title 18, USC, Section 242 - maximum of \$1,000 and/or imprisoned not more than 1 year; if bodily injury results, fined under this title and/or imprisoned not more than 10 years or both. If death results, imprisonment for any term of years or for life. (See MIOG, Part I, 50-1.6, 50-2.5.)

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282-10 CHARACTER - COLOR OF LAW

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SECTION 283. FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

283-1 FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

Information concerning the 283 classification is set forth  
in a separate FBI manual, the NATIONAL FOREIGN INTELLIGENCE PROGRAM  
MANUAL (NFIPM).

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|SECTION 284. ECONOMIC COUNTERINTELLIGENCE

| 284-1 ECONOMIC COUNTERINTELLIGENCE

| Information concerning the 284 classification is set forth  
| in a separate manual, the NATIONAL FOREIGN INTELLIGENCE PROGRAM  
| MANUAL (NFIPM).|

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|SECTION 285. ACTS OF ECONOMIC ESPIONAGE

| 285-1 ACTS OF ECONOMIC ESPIONAGE

| Information concerning the 285 classification is set forth  
| in a separate manual, the NATIONAL FOREIGN INTELLIGENCE PROGRAM  
| MANUAL (NFIPM).|

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| SECTION 291. ANIMAL ENTERPRISE PROTECTION (AEP)

| 291-1 STATUTES

| Title 18, USC, Section 43 (AEP Act of 1992).

EFFECTIVE: 01/10/97

| 291-2 JURISDICTION

| In accordance with 28, Code of Federal Regulations,  
Section 0.85(a), the FBI shall investigate all alleged or suspected  
criminal violations of the AEP Act of 1992.

EFFECTIVE: 01/10/97

| 291-3 VIOLATIONS

| Title 18, USC, Section 43 (AEP Act of 1992) includes the  
following:

| Section 43. Animal enterprise terrorism

| "(a) OFFENSE. - Whoever -

| "(1) travels in interstate or foreign commerce, or  
uses or causes to be used the mail or any facility in interstate or  
foreign commerce, for the purpose of causing physical disruption to  
the functioning of an animal enterprise; and

| "(2) intentionally causes physical disruption to the  
functioning of an animal enterprise by intentionally stealing,  
damaging, or causing the loss of, any property (including animals or  
records) used by the animal enterprise, and thereby causes economic  
damage exceeding \$10,000 to that enterprise, or conspires to do so;  
shall be fined under this title or imprisoned not more than one year,

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or both.

"(b) AGGRAVATED OFFENSE.

"(1) SERIOUS BODILY INJURY. - Whoever in the course of a violation of subsection (a) causes serious bodily injury to another individual shall be fined under this title or imprisoned not more than 10 years, or both.

"(2) DEATH. - Whoever in the course of a violation of subsection (a) causes the death of an individual shall be fined under this title and imprisoned for life or for any term of years.

"(c) RESTITUTION. - An order of restitution under section 3663 of this title with respect to a violation of this section may also include restitution -

"(1) for the reasonable cost of repeating any experimentation that was interrupted or invalidated as a result of the offense; and

"(2) the loss of food production or farm income reasonably attributable to the offense.

"(d) DEFINITIONS. - As used in this section -

"(1) the term 'animal enterprise' - means

"(A) a commercial or academic enterprise that uses animals for food or fiber production, agriculture, research, or testing;

"(B) a zoo, aquarium, circus, rodeo, or lawful competitive animal event; or

"(C) any fair or similar event intended to advance agricultural arts and sciences;

"(2) the term 'physical disruption' does not include any lawful disruption that results from lawful public, governmental, or animal enterprise employee reaction to the disclosure of information about an animal enterprise;

"(3) the term 'economic damage' means the replacement costs of lost or damaged property or records, the costs of repeating an interrupted or invalidated experiment, or the loss of profits; and

"(4) the term 'serious bodily injury' has the meaning given that term in section 1365 of this title."

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| 291-4 INVESTIGATIVE/PROSECUTIVE/REPORTING PROCEDURES

In handling complaints involving the AEP Act, immediately present facts to the United States Attorney (USA) for a prosecutive opinion. If the USA will not consider federal prosecution, conduct no investigation, advise complainant, and confirm conversation to USA and complainant in writing. Where appropriate, refer matter to law enforcement agency having jurisdiction over violation and also furnish this information to USA and complainant. Upon initiation of a 291 investigation, an electronic communication must be immediately forwarded to the Domestic Terrorism Operations Unit (DTOU), FBIHQ, providing the date the investigation was initiated and the predication for its initiation. Upon closing, a communication with summary of the incident should be forwarded to DTOU, FBIHQ. In addition, should the USA render a favorable prosecutive opinion, DTOU, FBIHQ, should be advised.

EFFECTIVE: 01/10/97

| 291-5 CHARACTER AND CLASSIFICATION

The character for these violations is "Animal Enterprise Protection (AEP)." The classification for AEP cases is 291.

EFFECTIVE: 01/10/97