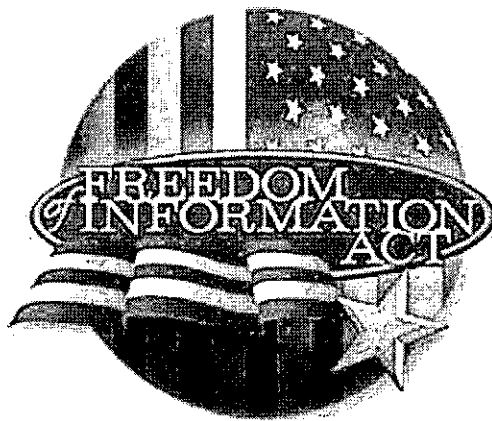


**FREEDOM OF INFORMATION  
AND  
PRIVACY ACTS**

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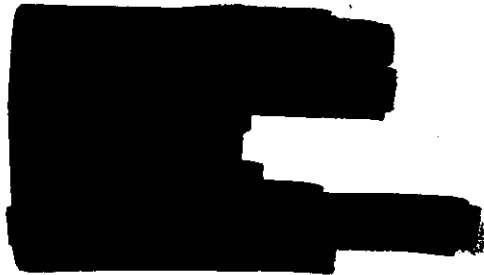
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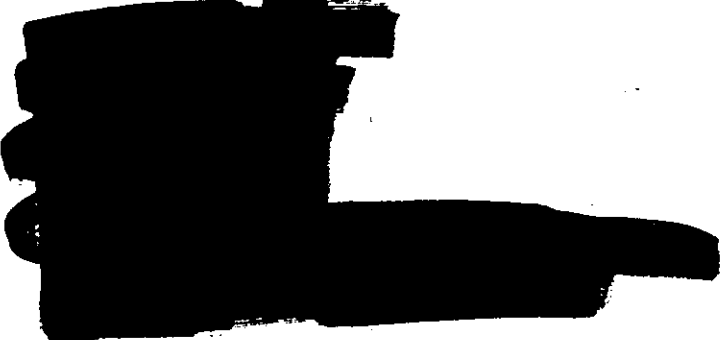
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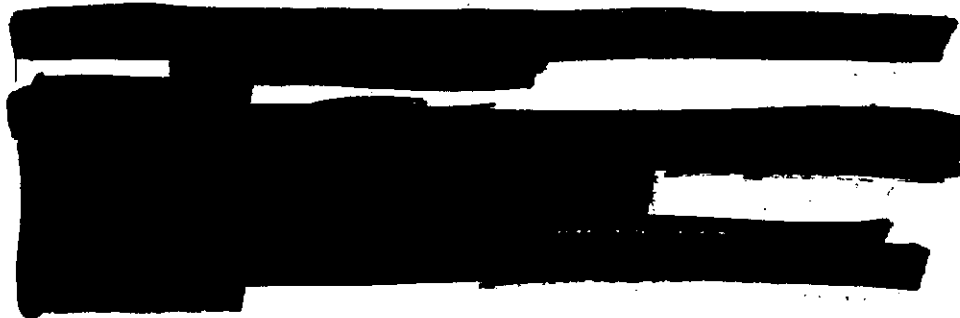
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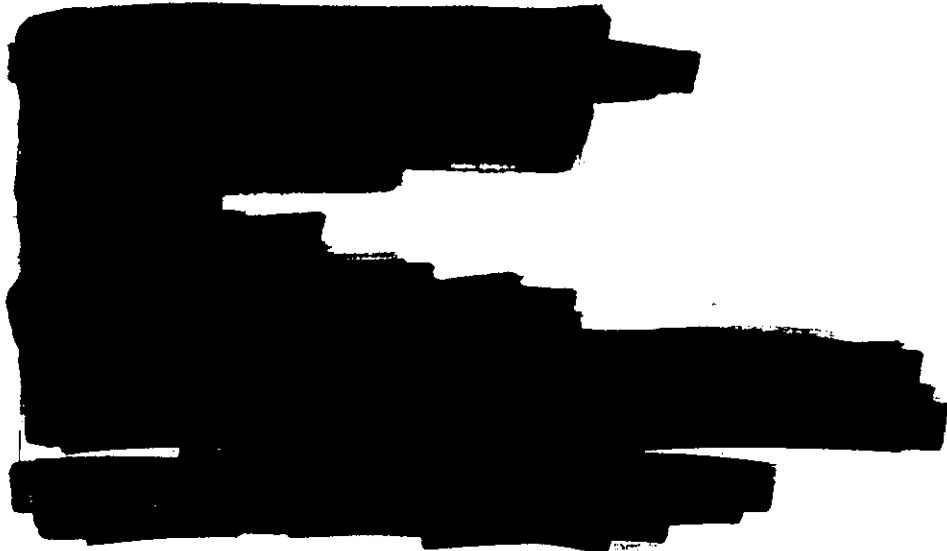
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(1) Investigate violations of the laws, including the criminal drug laws, of the United States (Title 21, USC, Section 871; Title 28, USC, Sections 533, 534, and 535; Title 28, CFR, Section 0.85).

(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."

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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

- (l) 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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||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|

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

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

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||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|

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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.

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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.

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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 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, courtmartial, 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 re delegated 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 re delegation 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] b2 [REDACTED] 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.

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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 (OO).

(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 OO 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 OO 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)

b2/b7E

(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.

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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.

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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.

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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

7-14.4

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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

(1) [REDACTED]

(a) [REDACTED]

(b) [REDACTED]

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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.

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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 county.

(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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FEDERAL BUREAU OF INVESTIGATION  
FOIPA  
DELETED PAGE INFORMATION SHEET

7 Page(s) withheld entirely at this location in the file. One or more of the following statements, where in-  
explain this deletion.

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

Section 552

Section 552a

(b)(1)

(b)(7)(A)

(d)(5)

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(j)(2)

(b)(3)

(b)(7)(C)

(k)(1)

(b)(7)(D)

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(b)(4)

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(b)(6)

(k)(7)

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MIOG 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

[REDACTED]  
(1) [REDACTED]  
[REDACTED]

(2) [REDACTED]  
[REDACTED]

(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  
[REDACTED]

(b) [REDACTED]  
[REDACTED]

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

(d) [REDACTED]  
[REDACTED]

(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

(1)

(2)

(3)

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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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.

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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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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.

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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)



(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

[REDACTED]

(1)

[REDACTED]

(2)

[REDACTED]

EFFECTIVE: 02/27/95

9-7.2

[REDACTED]

(1)

[REDACTED]

(2)

[REDACTED]

(a)

[REDACTED]

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XXXXX  
XXXXX  
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FEDERAL BUREAU OF INVESTIGATION  
FOIPA  
DELETED PAGE INFORMATION SHEET

2 Page(s) withheld entirely at this location in the file. One or more of the following statements, where in explain this deletion.

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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(k)(4)

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(b)(8)

(k)(5)

(b)(5)

(b)(9)

(k)(6)

(b)(6)

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The following number is to be used for reference regarding these pages:  
MFOG Manual Section 9-7. 2 pages 9-15 and 9-16

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(5) [REDACTED]

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.

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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. *ba*

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.

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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]

}  
b2/b7E  
}

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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.

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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

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EFFECTIVE: 07/31/97

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EFFECTIVE: 07/31/97

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EFFECTIVE: 07/31/97

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EFFECTIVE: 07/31/97

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EFFECTIVE: 07/31/97

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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.

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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 reinstatement 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 McCarran-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."

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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 'tampers 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. |

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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)



b2 per DEA

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b2 per DEA

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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

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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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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

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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 I-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,  

- (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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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 sues 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] 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.

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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."

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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."

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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."

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||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."

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|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.

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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.

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||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."

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||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."

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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.

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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

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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.

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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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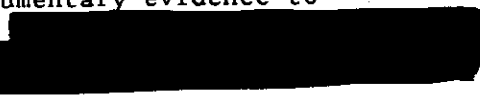
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31-4 INVESTIGATIVE PROCEDURES

(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. 

b2/b7E

(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.

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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)

b2 | b7E

EFFECTIVE: 06/18/87

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31-4.3 As to Purposes Involved in the Transportation:

(1)

(2)

(3)

(4)

(5)

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)

(3)

(4)

(5)

(6)

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.

EFFECTIVE: 10/16/90

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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.

EFFECTIVE: 10/16/90

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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.

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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."

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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

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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.

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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).)|

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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.)

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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.

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| 44-10.1 | Deleted |

EFFECTIVE: 01/31/94

| 44-10.2 | Deleted |

EFFECTIVE: 01/31/94

| 44-10.3 | Deleted |

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| 44-10.4 | Deleted |

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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 |

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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."

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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.)

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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.

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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.

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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.

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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."

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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.

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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."

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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."

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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.

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[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]

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(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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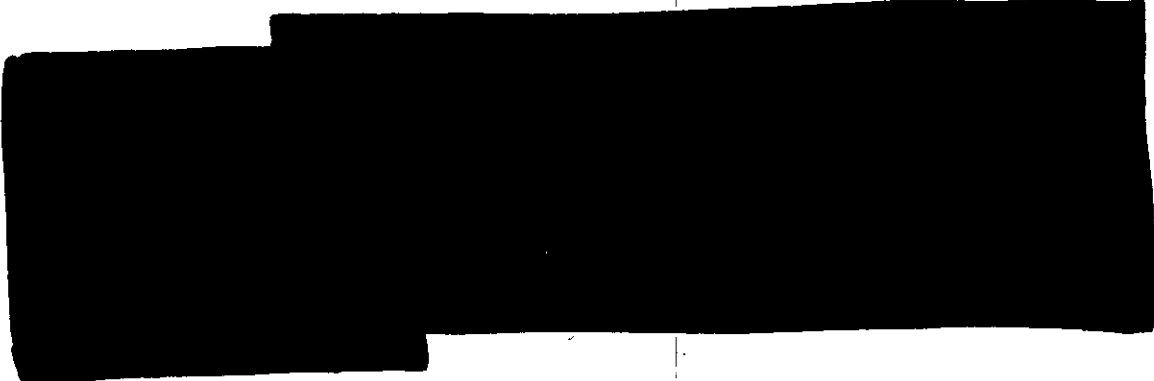
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promptly and discreetly to develop evidence before the operator has terminated his/her scheme and destroyed any records evidence which may exist. Other violations which may be present in a "bustout" include fraud by wire (Title 18, USC, Section 1343), 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 -



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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)

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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.

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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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PRINTED: 02/18/98

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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

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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

b2/b7E

[REDACTED] 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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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

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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.

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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.

EFFECTIVE: 01/08/82



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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.

EFFECTIVE: 01/08/82

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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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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.

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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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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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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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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.

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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.

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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).

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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.

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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.

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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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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.

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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.

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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.

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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

| 58-3.2 | Deleted |

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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, 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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EFFECTIVE: 01/22/90

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] are not all [REDACTED] 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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Section 552

Section 552a

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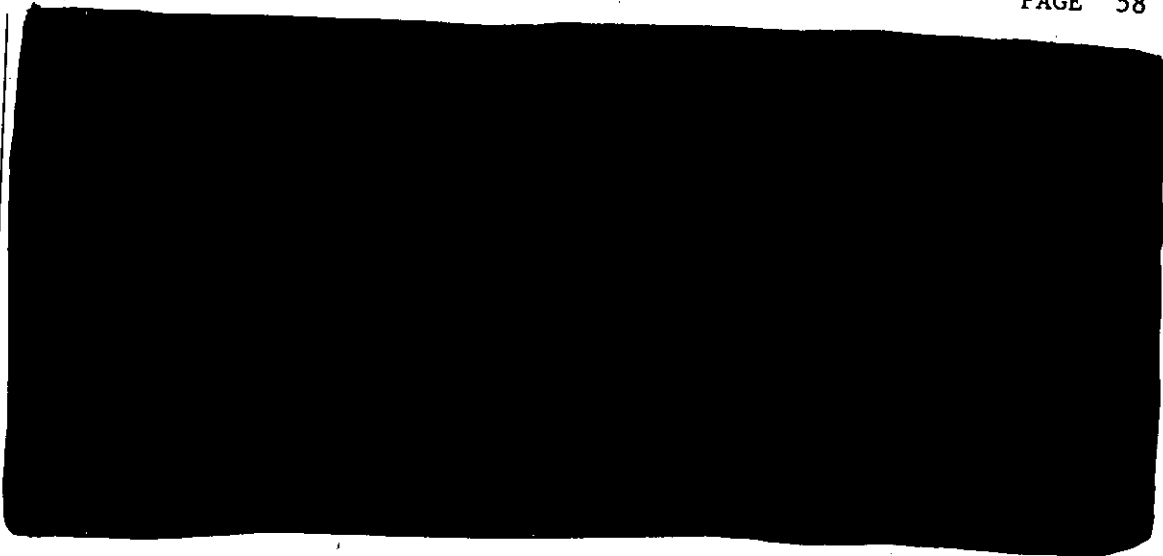
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58-6.5 Arrest of Public Officials

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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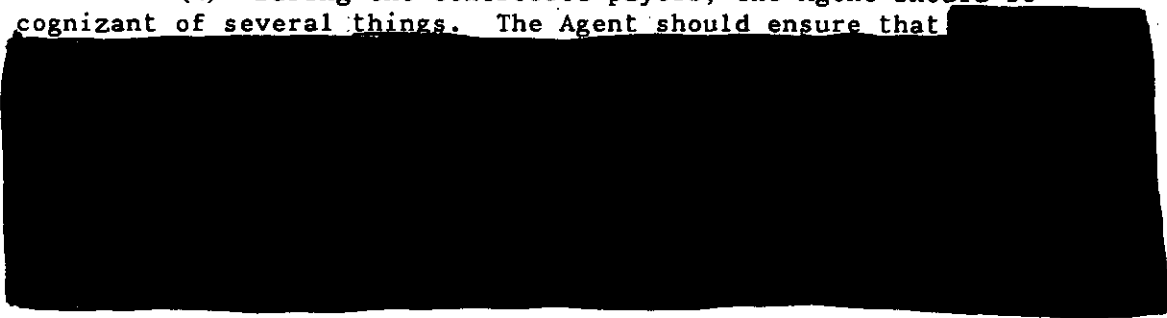
58-6.6 Bribe Payments (See MIOG, Part I, 194-5.6; Part II,  
10-14.1.4.)

(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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[REDACTED]

(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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EFFECTIVE: 09/16/94

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.

EFFECTIVE: 09/16/94

58-7 | INVESTIGATIONS |

EFFECTIVE: 01/22/90

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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EFFECTIVE: 01/22/90

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.

EFFECTIVE: 01/22/90

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.

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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.

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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.

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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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| 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.

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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.

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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."

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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 of 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.

(2) Robinson-Patman Act of 1936 (Section 13 a-c, Title 15)

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