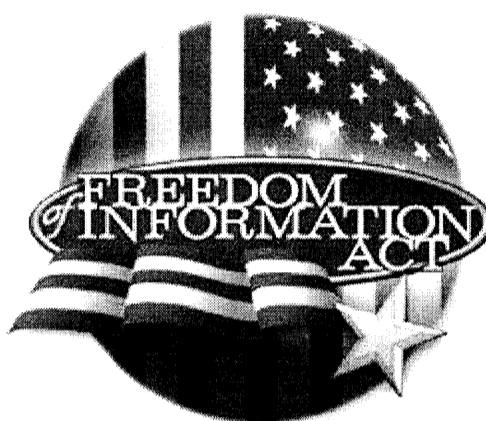


**FREEDOM OF INFORMATION  
AND  
PRIVACY ACTS**

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

**Volume: 2 PART 2**



**FEDERAL BUREAU OF INVESTIGATION**

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# **VOLUME II**

# **PART II**

*Manual of  
Investigative  
Operations  
and Guidelines*

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SECTION 175. PRESIDENTIAL AND PRESIDENTIAL STAFF ASSASSINATION,  
KIDNAPING AND ASSAULT (PPSAKA)

175-1 BACKGROUND

(1) The original Presidential Assassination, Kidnaping and Assault Statute, Title 18, USC, Section 1751, was enacted into law on 8/28/65.

(2) This statute provides protection to the President, President-elect, Vice President, Vice President-elect, the officer next in the order of succession to the Office of President if there is no Vice President, or any individual who is acting as President under the Constitution and laws of the United States.

(3) On 10/6/82, Sections 351 and 1751 of Title 18 of the U.S. Code were amended to provide penalties for crimes against Cabinet officers, Supreme Court Justices, and Presidential staff members. (See Part I, Section 89 of this manual for details regarding crimes against Cabinet officers and Supreme Court Justices.) Section 1751, as amended, makes it a Federal offense to assassinate, kidnap, assault, attempt to kill or kidnap, or conspire to kill or kidnap certain Presidential and Vice Presidential staff members. The Presidential Assassination, Kidnaping and Assault Statute is entitled the "Presidential and Presidential Staff Assassination, Kidnaping and Assault Statute."

(4) Section 1751 provides a penalty for simple assault against a protected staff member of one year's confinement and/or a \$5,000 fine. (The penalty for such offenses against the President and others previously covered was not changed and remains ten years' confinement and/or a \$10,000 fine.) If bodily injury results from an assault against a protected staff member, the maximum penalty is ten years' confinement and/or a \$10,000 fine.

(5) Section 1751 was also amended to provide that the Government need not prove the subject knew the victim was protected under this statute and for extraterritorial jurisdiction.

(6) On 10/12/84, Title 18, USC, Section 115, was enacted which makes it a Federal crime to influence, impede, or retaliate against certain Federal officials by threatening or injuring a family member. Family members of the President, President-elect, Vice

President and Vice President-elect are covered by Section 115. (See MIOG, Part I, Section 89-5, "Crimes Against Family Members of Federal Officials....")

EFFECTIVE: 12/19/86

175-2 STATUTE AND PENALTIES

(1) Set forth below in its entirety is the Presidential and Presidential Staff Assassination, Kidnaping and Assault Statute, Title 18, USC, Section 1751:

"(a) Whoever kills (1) any individual who is the President of the United States, the President-elect, the Vice President, or, if there is no Vice President, the officer next in the order of succession to the Office of the President of the United States, the Vice President-elect, or any person who is acting as President under the Constitution and laws of the United States, or (2) any person appointed under section 105(a)(2)(A) of title 3 employed in the Executive Office of the President or appointed under section 106(a)(1)(A) of title 3 employed in the Office of the Vice President, shall be punished as provided by sections 1111 and 1112 of this title.

"(b) Whoever kidnaps an individual designated in subsection (a) of this section shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual.

"(c) Whoever attempts to kill or kidnap any individual designated in subsection (a) of this section shall be punished by imprisonment for any term of years or for life.

"(d) If two or more persons conspire to kill or kidnap any individual designated in subsection (a) of this section and one or more of such persons do any act to effect the object of the conspiracy, each shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual.

"(e) Whoever assaults any person designated in subsection (a)(1) shall be fined not more than \$10,000 or imprisoned not more than ten years, or both. Whoever assaults any person designated in subsection (a)(2) shall be fined not more than \$5,000 or imprisoned not more than one year, or both; and if personal injury results, shall

be fined not more than \$10,000, or imprisoned not more than ten years, or both.

"(f) The terms 'President-elect' and 'Vice President-elect' as used in this section shall mean such persons as are the apparent successful candidates for the offices of President and Vice President, respectively, as ascertained from the results of the general elections held to determine the electors of President and Vice President in accordance with title 3, United States Code, sections 1 and 2.

"(g) The Attorney General of the United States, in his discretion is authorized to pay an amount not to exceed \$100 000 for information and services concerning a violation of subsection (a)(1). Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this subsection.

"(h) If Federal investigative or prosecutive jurisdiction is asserted for a violation of this section, such assertion shall suspend the exercise of jurisdiction by a State or local authority, under any applicable State or local law, until Federal action is terminated.

"(i) Violations of this section shall be investigated by the Federal Bureau of Investigation. Assistance may be requested from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

"(j) In a prosecution for an offense under this section the Government need not prove that the defendant knew that the victim of the offense was an official protected by this section.

"(k) There is extraterritorial jurisdiction over the conduct prohibited by this section."

(2) Section 1751(a) provides for punishment as provided by Sections 1111 and 1112. Title 18, USC, Section 1111, is the Murder Statute and Title 18, USC, Section 1112, is the Manslaughter Statute. See Part I, 89-2.2 of this manual for their text, definitions, and penalties.

(3) Title 18, USC, Section 115 (See MIOG, Part I, Section 89-5), makes it a Federal crime to assault, kidnap, or murder or to

attempt to kidnap or murder, or to threaten to assault, kidnap or murder a member of the immediate family of the President, President-elect, Vice President, Vice President-elect and other designated Federal Officials.

EFFECTIVE: 12/19/86

175-3 ELEMENTS

(1) The elements of the PPSAKA Statute are basic in nature and are as follows:

(a) That the defendant(s) killed or kidnaped any individual(s) designated in Section 1751(a).

(b) That the defendant(s) attempted to kill or kidnap any individual(s) designated in Section 1751(a).

(c) That two or more individuals conspired to kill or kidnap any individual(s) designated in Section 1751(a) and one or more of them performed an act to effect the object of the conspiracy.

(d) That the defendant(s) assaulted any person(s) designated in Section 1751(a).

(2) It should be noted that Section 1751(j) does not require that the subject(s) knew the victim(s) was an individual(s) protected under this statute.

(3) The PPSAKA Statute does not require that the criminal act occur while the protected individual is engaged in or on account of the performance of his/her official duties.

(4) In regard to element (b) above, the Department of Justice (DOJ) has ruled that when an individual acting alone threatens to kill or kidnap a protected individual(s) and commits a sufficient overt act to carry out the threat, such as purchasing a weapon, such actions constitute an attempt to kill or kidnap within the meaning of the PPSAKA Statute.

(5) In regard to element (c) above, the DOJ has ruled that the FBI has the authority to investigate a creditable allegation of a conspiracy to kill or kidnap a protected individual even though the allegation does not include any information regarding an overt

| act in furtherance of the conspiracy. |

EFFECTIVE: 01/09/84

| 175-4 COMMENTS AND CLARIFICATION REGARDING THE PRESIDENTIAL AND  
PRESIDENTIAL STAFF ASSASSINATION, KIDNAPING AND ASSAULT  
STATUTE

(1) It should be noted that while statute covers assassinating, kidnaping, assaulting, attempts to kill or kidnap and conspiracies to kill or kidnap, it does not include mere threats made against those individuals protected under Section 1751(a). See 175-3 and 175-9 (regarding what action on the part of the subject constitutes an attempt to kill or kidnap as opposed to a mere threat) and see 175-9 regarding FBI authority to investigate a conspiracy allegation without evidence of an overt act.

(2) The term "kidnap" as used in this statute means "carrying away" the victim(s) and interstate transportation is not required. Investigation can be instituted immediately since the "24-hour presumption rule" utilized in the Federal Kidnaping Statute does not apply under Section 1751(b).

(3) Section 1751(e) distinguishes assaults against Presidential and Vice Presidential staff members as opposed to those individuals previously covered (President, President-elect, Vice President, Vice President-elect, etc.) by providing for a lesser penalty for staff members who are assaulted but not personally injured. Section 1751(e) makes no provisions for an aggravated assault in which a deadly or dangerous weapon is utilized. In such situations consideration should be given to prosecution under Section 1751(c), an attempt to kill, which has a severe penalty when a deadly or dangerous weapon is involved in an assault against a staff member and no injury to the victim results. This prosecutive possibility also applies in assault cases against both staff members and individuals previously protected when a deadly or dangerous weapon is utilized and injury to the victim occurs.

(4) In regard to personal injury, under Section 1751(e) the personal injury suffered must occur to an individual listed in this statute and not an independent third party in order to apply.

(5) Section 1751(e) does not define the term assault. See Part I, 89-2.3 of this manual entitled "Elements" for the

definition of assault under the Assaulting a Federal Officer Statute. This definition is also utilized under the PPSAKA Statute.

(6) The conspiracy provisions of Section 1751(d) are limited to two objectives, killing and kidnaping, and do not include the objective of assault. Section 1751(d) does not preclude prosecution under the Federal Conspiracy Statute, Title 18, USC, Section 371; however, it provides a penalty of confinement for any term of years or for life. In a conspiracy situation involving an assault objective, prosecution must be under Section 371, with Section 1751(e) as the underlying charge.

(7) If Federal investigative or prosecutive jurisdiction is asserted, Section 1751(h) suspends local jurisdiction for the same offense until Federal action is terminated. However, it does not prevent local authorities from cooperating with the Bureau during an FBI investigation. Conflicts of jurisdiction resulting from the commission of an independent local offense, such as assaulting a state official(s) incidental to a PPSAKA violation, are to be resolved on a case-by-case basis.

(8) The death penalty provisions of Sections 1751(b)(2) and 1751(d)(2) are invalid based on a 1972 Supreme Court decision, *Furman v. Georgia*, which requires strict statutory standards for the death penalty application.

(9) The reward provisions of Section 1751(g) authorize the Attorney General to pay an amount not exceeding \$100,000 for information and services concerning a violation of Section 1751(a)(1). This contrasts favorably with the General Rewards Statute, Title 18, USC, Section 3059, which limits the amount payable to \$25,000 in other matters. The reward provisions of Section 1751(g) apply only to offenses committed against individuals described in Section 1751(a)(1), and do not apply to Presidential and Vice Presidential staff members. Authorized rewards under Section 1751(g) can be paid immediately and during the investigative stages of the case. Any request for consideration or payment of a reward should be referred to FBIHQ immediately by teletype setting forth complete details.

(10) Section 1751(i) vests investigative jurisdiction over PPSAKA violations with the FBI and permits the FBI to request assistance from military authorities as an exception to the Posse Comitatus Statute. See Part I, 89-3.4(5) of this manual entitled "Posse Comitatus" for additional information.

(11) Section 1751(k) provides for extraterritorial jurisdiction in PPSAKA violations. See Part I, 89-3.4(6) of this manual entitled "Extraterritorial Jurisdiction" for additional information and DOJ policy.

EFFECTIVE: 01/09/84

175-5 STAFF MEMBERS COVERED UNDER THE PRESIDENTIAL AND PRESIDENTIAL STAFF ASSASSINATION, KIDNAPING AND ASSAULT STATUTE

(1) As noted in 175-1, Title 18, USC, Section 1751, was amended on 10/6/82, to include assassinating, kidnaping, assaulting, attempting to kill or kidnap and conspiring to kill or kidnap certain Presidential and Vice Presidential staff members.

(2) This amendment resulted in extending protection to an additional 30 individuals: the 25 staff members who can be employed in the Executive Office of the President by appointment by the President under Title 3, USC, Section 105(a)(2)(A), and the 5 staff members who can be employed in the Office of the Vice President by appointment by the Vice President under Title 3, USC, Section 106(a)(1)(A).

(3) A review of the above Title 3 sections discloses that the 30 staff members are not identified by job title or description. Title 3, USC, Section 105(a)(2)(A), pertaining to Presidential staff members, states, in essence, 25 employees at rates not to exceed the rate of basic pay then currently paid for level II of the Executive Schedule of Section 5313 of Title 5. Title 3, USC, Section 106(a)(1)(A), pertaining to Vice Presidential staff members, states, in essence, 5 employees at rates not to exceed the rate of basic pay then currently paid for level II of the Executive Schedule of Section 5313 of Title 5. Based on the above sections, FBI jurisdiction under Title 18, USC, Section 1751, will extend to the above 30 Presidential and Vice Presidential staff members who are salaried at level II of the Executive Schedule.

(4) It should be noted that new protected Staff members may be appointed during a given administration, and some may resign or be replaced. These individuals have titles such as Counselor to the President, Chief of Staff, Assistant to the President (for a particular expertise) and certain deputies of these officials. It is not practical to identify these protected individuals by name or title



as the list may change periodically in accord with personnel actions of the President or Vice President. Furthermore, during a change of administration, the number of protected staff members may increase or decrease and their job titles may differ from the previous administration.

(5) If a question should arise as to whether or not a particular staff member is covered under the PPSAKA Statute, telephonically contact the Violent Crimes Unit, Criminal Investigative Division, FBIHQ, for assistance.

EFFECTIVE: 02/16/89

175-6 PRESIDENT-ELECT AND VICE PRESIDENT-ELECT

(1) When a nonincumbent Presidential candidate and his/her Vice Presidential candidate win the general election and become the President-elect and the Vice President-elect, they are protected from threats under the United States Secret Service's (USSS) Threats Against President and Successors to the Presidency (TAPSP) Statute, Title 18, USC, Section 871, and from violations under the FBI's PPSAKA Statute, Title 18, USC, Section 1751.

(2) It should be noted that certain threats under the TAPSP Statute will also constitute a PPSAKA violation. See 175-9 for complete details.

(3) All violations of the PPSAKA Statute involving captioned individuals should be investigated by the FBI.

EFFECTIVE: 06/18/87

175-7 VICE PRESIDENT DESIGNATE

(1) By letter dated 9/11/74, the Assistant Attorney General, Criminal Division, DOJ, advised FBIHQ as follows:

(2) Although there is not an express statute relating to threats upon a Vice President designate, the USSS has, in the discharge of its protective responsibilities, a basis for investigating such threats to the same extent that they would investigate a threat within the purview of Title 18, USC, Section 871.

(3) Similarly, although a Vice President designate is not listed under the PPSAKA Statute, any such violation directed against him/her should be investigated by the FBI as though he/she were, in fact, a Vice President.

EFFECTIVE: 06/18/87

175-8 PRESIDENTIAL AND VICE PRESIDENTIAL CANDIDATES | (See MIOG,  
Part I, 89-3.19 (2) (d).) |

(1) Under Public Law 90-331 enacted 6/6/68, and entitled "Personal Protection of Major Presidential or Vice Presidential Candidates and Spouses," the USSS is authorized to furnish protection to persons who are determined by the Secretary of the Treasury, after consultation with the Congressional Advisory Committee, to be major Presidential or Vice Presidential candidates who should receive such protection (unless declined).

(2) USSS protective responsibilities in this area and its investigative jurisdiction involving threats apply only to major candidates.

(3) The PPSAKA Statute does not apply to Presidential and Vice Presidential candidates, and FBI investigative jurisdiction, if present, must be developed from the following statutes under the Bureau's jurisdiction:

(a) The Federal Extortion Statute, Title 18, USC, Sections 875 and 876, if a threat is conveyed by interstate telephone call or the U.S. mail. See Part I, Section 9 of this manual entitled "Extortion" for complete details.

(b) On 11/10/86, the "Criminal Law and Procedure Technical Amendments Act of 1986" extended to major Presidential and Vice Presidential candidates the protection of Title 18, USC, Section 351, the Congressional, Cabinet, and Supreme Court Assassination, Kidnaping, and Assault (CCSCAKA) Statute. See Part I, 89-3 of this manual for complete details.

(c) Civil Rights/Election Laws, Title 18, USC, Section 245(b)(1)(A). This statute entitled "Federally Protected Activities" applies to all candidates and prohibits injury,

intimidation, interference, or attempts to do so by force or threat of force against any person because of his/her activities as a candidate for elective office.

1. In accordance with this manual, if the threat/assault is perceived as racially motivated, the matter should be handled under the 44 classification with a preliminary investigation conducted prior to presentation to the USA for a prosecutive opinion. See Part I, Section 44-1.5 of this manual for complete details.

2. If the threat/assault is nonracially motivated, the matter should be handled under the 56 classification and the USA notified of the offense as soon after its occurrence as possible. See Part I, Section 56 of this manual entitled "Election Laws" for complete details.

(3) The foregoing is not a complete list of all violations which may be applicable, but should provide an adequate basis for possible FBI jurisdiction in most cases involving threats/assaults against Presidential and Vice Presidential candidates. If a questionable situation arises which does not fall within the purview of the above statutes, promptly contact the appropriate Assistant USA (AUSA) for a legal opinion.

(4) Because of the USSS's protective responsibilities in this and related areas, it must be promptly notified at both local and headquarters levels. See 175-14 for the methods of notification and dissemination to be followed.

(5) Any violation within the Bureau's jurisdiction, regardless of classification, which involves a Presidential or Vice Presidential candidate should receive immediate investigative attention and be closely coordinated with the USSS.

EFFECTIVE: 01/31/94

175-9 FBI VERSUS UNITED STATES SECRET SERVICE JURISDICTION

(1) In order to clearly understand the FBI's investigative jurisdiction as compared to the USSS's protective duties and investigative jurisdiction in this area, it is necessary to review several pertinent statutes.

(2) In essence, prior to the passage of the Presidential Assassination, Kidnaping and Assault (PAKA) Statute on 8/28/65, the FBI did not have statutory investigative jurisdiction in this area; however, USSS had protective responsibilities under the Secret Service Powers (SSP) Statute, Title 18, USC, Section 3056, and investigative jurisdiction over certain types of threats under the TAPSP Statute, Title 18, USC, Section 871.

(3) Under the SSP Statute, the USSS is responsible for the protection of the President, the President-elect, the Vice President or other officer next in order of succession to the Office of President, the Vice President-elect, the members of their immediate families, former Presidents and their spouses during their lifetimes, widows or widowers of former Presidents until their death or remarriage, minor children of former Presidents until they reach 16 years of age, the visiting heads of foreign states or foreign governments and, at the direction of the President, other distinguished foreign visitors to the United States and official representatives of the United States performing special missions abroad.

(4) Under the TAPSP Statute, the USSS has investigative jurisdiction over all threats to assault or kill the President, the President-elect, and the Vice President, or other officer next in the order of succession to the Office of the President. On 10/12/82, Public Law 97-297 amended Section 871 to include threats to kidnap the above individuals.

(5) The original PAKA Statute was enacted on 8/28/65, to make killing the President a Federal offense. Language in the statute gave investigative jurisdiction for such an offense to the FBI. The USSS retained protective duties under the SSP Statute and investigative jurisdiction over threats covered by the TAPSP Statute. Shortly afterward, it was noted that there appeared to be overlapping jurisdiction between the Bureau's PAKA Statute and the USSS's TAPSP Statute in the area of attempts and conspiracies to kill or kidnap designated individuals. DOJ was consulted for clarification, and by letter dated 1/4/66, the Attorney General advised that FBI jurisdiction under the PAKA Statute is as follows:

- (a) Actual assassinations, kidnaping or assaults.
  - (b) Conspiracies to kill or kidnap when two or more persons involved are in agreement as well as the presence of some overt act toward the execution of said conspiracy.
  - (c) Actual attempts to kill or kidnap, even on the part of an individual acting alone, should there be any activity indicating an effort to consummate the attempt.
  - (d) Attempted assaults whenever there is clear-cut physical action on the part of an individual sufficient to cause apprehension of personal injury to the victim(s).
  - (e) Oral threats or threats not coming within the above definition of attempted assault would continue to be investigated by the USSS under its TAPSP Statute.
- (6) As a consequence of the above Attorney General guidelines, the FBI was given investigative jurisdiction over attempts and conspiracies to kill or kidnap designated individuals, as set forth in 5(b) and 5(c) above, which were formerly investigated by the USSS as threats under its TAPSP Statute. When formulating the above guidelines, the Attorney General held that when an individual is acting alone, activity such as obtaining the instruments, means or other necessities to kill or kidnap an individual(s) protected by the PAKA Statute can constitute a violation. For example, if a subject in California threatens to kill or kidnap a protected individual(s) located in Washington, D.C., and purchases a gun in California or elsewhere in an effort to consummate the attempt, he/she has committed a violation of Section 1751(c). Investigation of the offense is within the FBI's jurisdiction.
- (7) On 3/18/66, representatives of the USSS and the Department of the Treasury met with the DOJ in regard to the above guidelines and advised that, in their opinion, the Attorney General's definition of an attempt to kill or kidnap was too broad and could conceivably give rise to jurisdictional difficulties between the FBI and the USSS. The DOJ took the position that its guidelines in regard to FBI jurisdiction under Section 1751 were correct and would remain in effect without change.
- (8) Based on the above DOJ guidelines, the then entitle "Agreement Between the FBI/USSS Concerning Presidential Protection," entered into on 2/3/65, was revised on 7/27/66, to incorporate the

FBI's jurisdiction under the PAKA Statute as defined by the DOJ.

(9) In regard to a conspiracy to kill or kidnap a designated individual(s), by letter dated 3/3/78, the Assistant Attorney General, Criminal Division, DOJ, advised FBIHQ that the FBI has the authority to investigate a credible allegation of a conspiracy to kill or kidnap a protected individual(s) even though the allegation does not include any information regarding an overt act in furtherance of said conspiracy. The DOJ held that the overt act is merely an element of the offense which investigation must establish before prosecution is possible. Therefore, the FBI has jurisdiction to investigate such an allegation in an effort to develop an overt act and establish a violation of Title 18, USC, Section 1751(d).

(10) On 10/6/82, the PAKA Statute was amended to include protection to certain Presidential and Vice Presidential staff members and was retitled as the PPSAKA Statute.

(11) It should be noted that while USSS had protective responsibilities for numerous individuals set forth in the SSP Statute prior to 10/12/82, Federal prosecution was limited only to those cases involving protectees listed in the TAPSP Statute. As a consequence, USSS had to rely on local prosecution to deal with individuals who threatened USSS protectees under Section 3056 that were not covered under Section 871.

(12) In order to correct this situation, a statute, Title 18, USC, Section 879, entitled "Threats Against Former Presidents and Certain Other Persons Protected by the Secret Service," was enacted into law on 10/12/82, under Public Law 97-297. The SSP Statute was also amended to include USSS investigative jurisdiction over Title 18, USC, Section 879.

(13) Section 879, in essence, makes it a Federal crime with a penalty of not more than three years' imprisonment and/or not more than \$1,000 fine to threaten to kill, kidnap, or injure a former President(s) or a member(s) of his/her immediate family; a member(s) of the immediate family of the President, the President-elect, the Vice President or Vice President-elect; or a major candidate for the Office of President or Vice President, or the spouse of such candidate who is protected by the USSS as provided by law.

(14) Section 871 (as amended 10/12/82) does not affect FBI jurisdiction since a threat violation, if it does not constitute a violation of the PPSAKA Statute, has historically come under the USSS's investigative jurisdiction. Furthermore, Section 879 (see (12))

above) provides USSS with a means to secure Federal prosecution in lieu of local prosecution for certain threats made against those individuals who were USSS protectees and not listed under Section 871. It should also be noted that the individuals protected under Section 879 are not protected under Section 1751.

(15) Prior to 10/6/82, all individuals listed under Section 1751 were also USSS protectees under Section 3056 and protected from threats under Section 871. The 10/6/82 amendment to Section 1751 pertaining to Presidential and Vice Presidential staff members (see (10) above) has created a void regarding USSS statutory protection and prosecution. In essence, Presidential and Vice Presidential staff members are not protected under the USSS's SSP Statute and not listed under its prosecutable statutes, Sections 871 and 879. The FBI has investigative jurisdiction involving violations of Section 1751 pertaining to Presidential and Vice Presidential staff members. In regard to threats made against these individuals that do not constitute a PPSAKA violation, see |175-11. |

(16) It must be noted that the FBI's jurisdiction over a PPSAKA violation does not supersede the USSS's protective responsibilities in this area. The USSS will continue to exercise its protective functions over the victim(s) or intended victim(s). However, it must be clearly established with the USSS that investigative jurisdiction lies with the FBI and USSS protective functions should not take the form of an investigation which would infringe upon the FBI's jurisdiction.

EFFECTIVE: 07/18/86

|175-10 PROVISIONS OF THE "AGREEMENT BETWEEN THE FBI AND THE UNITED STATES SECRET SERVICE CONCERNING PROTECTIVE RESPONSIBILITIES" DEALING WITH JURISDICTION

In addition to setting forth the respective FBI dissemination and USSS protective functions in this area, Section III of the above agreement sets forth the following FBI/USSS jurisdictional responsibilities.

(1) "The USSS agrees that it will conduct no investigation of individuals or groups identified or suspected of being threats to the internal security of the United States without notifying the FBI. However, when time for consultation is not available, and an indication of immediate danger exists, the USSS may

take such action as is necessary with respect to carrying out its protective responsibilities. Any information obtained by the USSS during such action will be furnished to the FBI as expeditiously as possible."

(2) "It will be the responsibility of the USSS to furnish the FBI any information in its possession or which may come to its attention which reasonably indicates that a violation of Title 18, U.S. Code, Section 1751, has been or is being committed."

(3) "This USSS also agrees to furnish the FBI any information in its possession or which may come to its attention indicating a violation of any other statutes over which the FBI has investigative jurisdiction."

(4) "The FBI will not conduct investigations of individuals or groups solely for the purpose of establishing whether they constitute a threat to the safety of the President and certain other persons unless there is an indication of a violation of Title 18, U.S. Code, Section 1751, or other statute over which the FBI has jurisdiction."

(5) "It will be the responsibility of the FBI to advise the USSS when investigation is being initiated under Title 18, U.S. Code, section 1751, and thereafter to furnish the USSS with copies of the FBI investigative reports as they are prepared."

(6) "The FBI, under its responsibility for investigation of violations of Title 18, U.S. Code, Sections 112, 970, 1116, 1117, 1201 and 1751, will take cognizance of the protective responsibilities of the Department of the Treasury under Title 3, U.S. Code, Section 202, and Title 18, U.S. Code, Section 3056, and thus will not limit or interfere with the authority of the Secretary of the Treasury in the discharge of his/her statutory protective responsibilities. This is not to be construed as vesting concurrent investigative jurisdiction with the Department of the Treasury with respect to investigations of individuals or organizations engaged in activities affecting the national security, including terrorism, treason, sabotage, espionage, counter espionage, rebellion or insurrection, sedition, seditious conspiracy, neutrality matters, the Foreign Agents Registration Act, or any other statute or Executive order relating to national security. Any investigations of such groups or individuals for any reason other than in connection with protective responsibilities must be closely coordinated with and have the concurrence of the FBI in order to minimize interference with the national security responsibilities of the FBI."



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EFFECTIVE: 01/09/84

175-11 INVESTIGATIVE POLICY REGARDING THREATS NOT CONSTITUTING A  
PRESIDENTIAL AND PRESIDENTIAL STAFF ASSASSINATION,  
KIDNAPING AND ASSAULT VIOLATION (See MIOG, Part I, 175-9  
(15).)

(1) Cases involving mere threats not constituting a PPSAKA violation made against those individuals listed under Section 1751(a)(1) (President, President-elect, Vice President, Vice President-elect etc.) should be immediately referred to the nearest office of the USSS for investigation by its agents. This policy is based on the fact that the FBI in these instances does not have jurisdiction under the PPSAKA Statute and USSS has protection responsibilities for such individuals under Title 18, USC, Section 3056, and investigative jurisdiction under Title 18, USC, Section 871.

(2) Cases involving mere threats against the above individuals listed under Section 1751(a)(1), coupled with a Federal violation under the FBI's jurisdiction other than a PPSAKA violation growing out of the above threats, such as a violation of the Federal Extortion Statute, should also be immediately referred to the nearest office of the USSS for investigation by that agency. This policy is based on the USSS's protective responsibilities for these individuals under Section 3056 and investigative jurisdiction under Section 871 which are considered to be paramount and override the FBI's jurisdiction under the Federal Extortion Statute. In addition, this policy will ensure that the FBI and USSS do not duplicate investigative efforts. Upon referral to USSS locally, that agency should be requested to advise the FBI when its investigation is completed and the case is entering the prosecutive state in order to ensure that the violation under the FBI's jurisdiction may be presented by the FBI to the appropriate USA to determine if he/she desires to prosecute the FBI offense in addition to the USSS violation. If the USSS desires the FBI's joint investigative assistance in cases meeting this criteria, such requests should be made by USSS Headquarters to FBIHQ.

(3) Information received under categories (1) and (2) above should be promptly forwarded to FBIHQ by teletype suitable for dissemination to USSS Headquarters. The teletype should set forth the proper case title and character, the complete fact situation, the identity of the USSS employee notified, the time and date of

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notification, and the identity of the FBI employee who made the dissemination. Since investigative jurisdiction lies wholly or primarily with USSS in the above instances, the USSS should be advised locally that based on the presently known existing facts, no further investigation will be conducted by the FBI unless requested by USSS Headquarters, as set forth in (2) above.

(4) If the above-referred threat cases develop into an actual violation of the PPSAKA Statute, investigative jurisdiction transfers from the USSS to the FBI based on Section 1751(i). This Section specifically vests jurisdiction with the FBI. The provisions of the "Agreement Between the FBI and the USSS Concerning Protective Responsibilities" require the USSS to report such violations to the FBI. See 175-10(3) for complete details.

(5) Investigative policy in cases involving mere threats not constituting a PPSAKA violation made against those individuals listed under Section 1751(a)(2) (Presidential and Vice Presidential staff members) will differ from the above cases for the following reasons:

(a) Since staff members are not USSS protectees under Title 18, USC, Section 3056, and are not protected from threats made against them under the USSS prosecutive statutes, Title 18, USC, Sections 871 and 879, an FBI referral to the USSS for investigative handling would be without a statutory basis. These threats must be analyzed to determine if they constitute another Federal or local violation upon which FBI investigative or referral action can be taken. However, since staff members are so closely associated with USSS protectees, any information developed concerning threats against staff members and all subsequent FBI investigative developments should be promptly disseminated to the USSS on a local and headquarters level to assist it in its protective responsibilities.

(b) While mere threats do not constitute an actual assault violation under the PPSAKA Statute, a threat of force uttered with the apparent present ability to execute it (such as the subject displaying a weapon or making a threatening gesture which places the staff member in fear of bodily harm) legally constitutes an assault and a violation of Section 1751(e).

(c) If threats involve or possibly involve a threat to kill or kidnap a staff member, an investigation should be immediately instituted to determine if a conspiracy coupled with an overt act exists which would constitute a violation of Section 1751(d).

(d) If threats by an individual acting alone involve or possibly involve a threat to kill or kidnap, an investigation should be immediately instituted to determine if the individual has committed a sufficient overt act in furtherance of the threat, such as purchasing a gun, which would constitute an attempt to kill or kidnap under Section 1751(c).

(e) If the appropriate threats are conveyed by the U.S. mail or by an interstate telephone call, an investigation should be immediately instituted under the corresponding Federal Extortion Statute. See Part I, Section 9 of this manual entitled "Extortion" for complete details.

(f) If the investigation involving (b) and (d) above determines the subject was acting alone, Title 18, USC, Section 245(b)(1), entitled "Federally Protected Activities" should be considered as a basis for a Federal violation and FBI jurisdiction. See Part I, Section 44-1.5 of this manual for complete details.

(g) If the threats are made by telephone and do not meet the criteria of the Federal Extortion Statute, Title 18, USC, Section 875, they may constitute a violation of the Interstate Obscene or Harassing Telephone Calls Statute, Title 47, USC, Section 223. See Part I, Section 178 of this manual entitled "Interstate Obscene or Harassing Telephone Calls" for complete details.

(6) If the office of origin (OO) is in doubt whether captioned threats constitute a Federal violation under the FBI's jurisdiction, the fact situation should be promptly presented to an appropriate AUSA for a legal opinion and whether an investigation or "preliminary inquiry" should be conducted.

(7) In the absence of FBI jurisdiction, if it is determined that a Federal violation under the investigative jurisdiction of another Federal agency exists, the case should be promptly referred to that agency.

(8) In the absence of a Federal violation, information received regarding threats should be promptly referred to local authorities.

(9) Details regarding presentation to an AUSA for a legal opinion or referral to another Federal agency or local authorities for their handling should be set forth in the notification teletype to FBIHQ.

(10) The office receiving information regarding these types of threats must promptly notify the intended victim of the threat, if he/she is located within its territory, or request the appropriate office to make the notification. The intended victim(s) should also be advised of what investigative or referral action is being taken regarding the threat. The fact that dissemination was made or was requested should be set forth in the notification teletype to FBIHQ.

EFFECTIVE: 01/31/94

175-12 INVESTIGATIVE PROCEDURES

(1) Upon receipt of information indicating a violation of the PPSAKA Statute, investigation should be immediately initiated utilizing sufficient personnel to promptly address and resolve the situation.

(2) In those instances where there is a question whether the FBI has investigative jurisdiction, it should be resolved in favor of initiating an immediate investigation. As soon as sufficient facts are developed, consult with the USA's Office in order to determine if the facts constitute a PPSAKA violation.

(3) The nearest office of the USSS should be advised promptly by telephone of the facts and informed that the FBI is assuming investigative jurisdiction. Notification should also be made to any other local, state, or Federal agency having a legitimate interest.

(4) Depending on the urgency of the situation, leads for auxiliary offices should be set forth telephonically or by teletype. Telephonic leads must be promptly confirmed by teletype.

(5) Offices receiving leads must promptly conduct the required investigation and furnish the results to FBIHQ by teletype.

(6) The OO must promptly advise the USA's Office of the facts and ensure that Federal process is obtained as soon as possible for the subject's arrest.

(7) In regard to the requirements of USSS notification

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and dissemination, see 175-14 for complete details.

(8) In regard to the requirements of FBIHQ notification, see 175-13 for complete details.

EFFECTIVE: 01/09/84

175-13 NOTIFICATION TO FBIHQ IN PRESIDENTIAL AND PRESIDENTIAL STAFF ASSASSINATION, KIDNAPING AND ASSAULT CASES

(1) In PPSAKA cases, depending on the urgency of the situation, FBIHQ shall be promptly notified of the complete details by telephone and/or teletype. Telephone notification to FBIHQ must be promptly confirmed by teletype.

(2) FBIHQ should also be advised of all subsequent major investigative developments by summary teletype.

(3) Furnish FBIHQ copies of all subsequent communications prepared by the OO and auxiliary offices.

(4) The teletype reporting a subject's apprehension should include a statement as to whether or not the subject admitted the violation.

EFFECTIVE: 01/09/84

175-14 DISSEMINATION TO UNITED STATES SECRET SERVICE (See MIOG, Part I, 89-5.5(4), 175-8(4), 175-12(7), 175-14.1(1), 175-15(3) & MAOP, Part II, Section 9.)

(1) FBI PPSAKA Violations and USSS Threat Violations:

(a) Information developed concerning any FBI PPSAKA violation or USSS threat violation must be promptly disseminated to the USSS on a local and headquarters level.

(b) Dissemination on the local level should be made telephonically to the nearest office of the USSS by the office receiving the information.

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(c) The notification teletype to FBIHQ should set forth the proper case title and character, the complete fact situation, the identity of the USSS employee notified, the time and date of notification, and the identity of the FBI employee who made the dissemination.

(d) Based on guidelines set forth in 175-9, USSS must be locally advised whether or not investigation is being instituted by the FBI. This fact should be clearly set forth in the notification teletype to FBIHQ.

(e) When the threat is in the form of a written communication in the possession of the FBI and investigative jurisdiction lies with the USSS, the original should be furnished to the nearest local USSS office. The above disposition should be reported in the notification teletype to FBIHQ with a lead to furnish FBIHQ two copies of the document by cover airtel. Designate one copy for FBI laboratory examination and comparison purposes and the other for dissemination to USSS Headquarters.

(f) If investigative jurisdiction lies with the FBI, a copy of the threatening communication should be disseminated to USSS locally for information purposes. This dissemination should be reported in the notification teletype to FBIHQ with a follow-up lead to submit the original document by cover airtel to FBIHQ for examination by the FBI Laboratory Division and one copy for dissemination to USSS Headquarters, Washington, D.C.

(2) FBI/USSS Agreement Concerning Protective Responsibilities: (See MIOG, Part I, 89-2.19(3), 89-4.8(2), 89-5.4 & 175-10.)

(a) Refer to Part II, 18-6 entitled "Agreement Between the FBI and USSS Concerning Protective Responsibilities" wherein the formal agreement is set out in its entirety.

(b) In addition to the required dissemination to USSS in PPSAKA violations and USSS threat violations, the FBI, under the above agreement, has additional dissemination responsibilities to USSS concerning information falling within the following categories which pertain to their protection duties in general:

pe fer [REDACTED]

[REDACTED]

*Refer*

[REDACTED]

*refer  
USSS*

(3) USSS Protectees in a Travel Status: [(See MIOG, Part I, 89-2.19(3), 89-4.8(2) & 175-16(3).)]

(a) The formal FBI/USSS agreement concerning protective responsibilities referred to in (2) above identifies the categories of information to be disseminated by the FBI to the USSS locally and on a headquarters level.

(b) In 1981, USSS requested FBIHQ to also furnish information concerning persons or groups whose current or past behavior, associations, or activities are indicative of a reasonable possibility that they might be a source of danger to USSS protectees, to other public officials, or to facilities visited by USSS protectees.

(c) Based on the above request, FBIHQ and USSS Headquarters agreed that the FBI should disseminate the following types of information to the USSS locally when a USSS protectee is in its territory:

[REDACTED]

*refer  
USSS*



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

*refer  
USSS*

(d) The above agreement does not require the FBI to actively seek out this information, but if it is developed during the normal course of an investigation, it should be disseminated.

(e) USSS will notify the local FBI office when a

USSS protectee is to be present in its territory. USSS Headquarters will also advise FBIHQ of the travel plans of its protectees by teletype which will be relayed to the appropriate FBI office or offices with appropriate leads.



*refer  
USSS*

(g) The SAC should ensure that all SAs are familiar with the required dissemination and, to the extent possible, the travel plans of the USSS protectee in order that they can immediately recognize the significance of any pertinent information that comes to their attention.

EFFECTIVE: 09/24/93

175-14.1 Methods of Dissemination to United States Secret Service  
FBI PPSAKA Violations and USSS Threat Violations.

(1) As set forth in 175-14(1), prompt dissemination of information to USSS in these categories must be made on a local and headquarters level.

(2) Initial dissemination to USSS locally is to be made telephonically to the nearest office of the USSS by the office developing the information.

(3) The notification teletype to FBIHQ must include the proper case title and character, the complete fact situation, the identity of the USSS employee notified, the time and date of notification, and the identity of the FBI employee who made the dissemination.

(4) A copy of the above teletype should be provided to the local USSS office which will serve as confirmation of the previous telephonic notification. This method will eliminate preparing an FD-376 (Transmittal Letter to USSS) and LHM in this

instance since all pertinent information and notification details will be a matter of record in the teletype. See 175-15 for details regarding the utilization of the FD-376.

(5) If the above fact situation falls under USSS investigative jurisdiction and no further action will, therefore, be taken by the FBI, the above method of dissemination will complete the FBI's dissemination requirements.

(6) If the above fact situation falls under the FBI's investigative jurisdiction, the above method of dissemination will meet our initial dissemination requirements. In regard to further investigation conducted by the FBI, dissemination should be made to USSS locally and on a headquarters level in the following manner:

(a) If a report is prepared, a copy should be disseminated to USSS locally and an extra copy designated for FBIHQ for dissemination to USSS Headquarters.

(b) If a report is not prepared, one copy of a detailed LHM setting forth the results of the investigation should be designated for USSS locally by FD-376. The original FD-376 and two copies, along with the original LHM and two copies, should be transmitted to FBIHQ by cover airtel for dissemination to USSS Headquarters.

(c) Reports reflecting a prior investigation of a subject who is now of current interest to the USSS should not be disseminated to USSS. An LHM setting forth the pertinent facts of the investigation previously conducted should be prepared and disseminated locally and on a headquarters level.

EFFECTIVE: 01/09/84

175-14.2 Changes of Residence and/or Employment

(1) In those instances where dissemination was previously made to USSS concerning an individual and information regarding a change in his/her residence and/or employment subsequently comes to your attention, the new information should be promptly disseminated to USSS locally and on a headquarters level.

(2) Form FD-366, which is self-explanatory and specifically designed for this purpose, should be utilized for this

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8/28/65, vested certain investigative jurisdiction with the FBI that was formerly handled by the USSS. On 7/27/66, the above agreement was revised to incorporate the FBI's jurisdiction. On 11/26/71, the agreement was revised to include the new USSS protective responsibilities involving visiting heads of state, certain additional types of information desired from the FBI, the authority to request the Director of the FBI for SAs to augment USSS protective duties; and it was retitled the "Agreement Between the FBI/USSS Concerning Protective Responsibilities." For further details regarding this agreement, see 175-14(2).

(2) "Agreement of Procedures." - On 12/11/78, this agreement was adopted to confirm the procedures to be followed by the USSS and FBI when a USSS protectee suffers a violation of Title 18, USC, Section 1751. See 175-17 for complete details.

(3) USSS Protectees in a Travel Status. - On 9/14/81, the FBI and USSS adopted this agreement concerning the dissemination of certain types of information to USSS by an FBI office when a USSS protectee travels within its territory. See 175-14(3) for complete details.

REFER

(5) USSS NCIC Protective File. - This NCIC file, effective 4/27/83, was designed to assist the USSS in its protective functions by entering certain individuals that USSS considers may pose a threat to its protectees. See MAOP, Part II, 7-2.10.

EFFECTIVE: 08/18/94

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175-17 FBI/UNITED STATES SECRET SERVICE "AGREEMENT OF PROCEDURES"  
REGARDING VIOLATIONS INVOLVING UNITED STATES SECRET  
SERVICE PROTECTEES THAT FALL WITHIN FBI JURISDICTION

On 12/11/78, the following "Agreement of Procedures" was adopted by the FBI and USSS:

"This agreement between the U.S. Secret Service and the Federal Bureau of Investigation is to confirm our procedures to be followed in the event that a violation of law occurs involving a person or persons protected by the U.S. Secret Service pursuant to law and which falls within the investigative jurisdiction of the FBI.

"I. In the event of the killing of a protectee of the U.S. Secret Service for which the FBI has investigative jurisdiction:

"A. The U.S. Secret Service during the immediate period thereafter will exercise control as an interim Federal presence until such time as the Director of the Secret Service and the Director of the FBI, or their designees, agree to an orderly transfer of responsibilities. In most instances, this should occur before or no later than the time of the autopsy. It is understood that concurrent with the transfer of responsibilities the Secret Service will release custody and control of the deceased protectee to the FBI, but may maintain a presence as deemed necessary by the Secret Service. During this period of time the FBI shall have presence in all situations to fully carry out their investigative responsibilities pursuant to law.

"B. During the immediate period following the killing of a protectee, the U.S. Secret Service will maintain and preserve any suspects, witnesses, and evidence under its control until such time as the FBI assumes its investigative responsibilities.

"C. The Secret Service and the FBI will coordinate all phases of the subsequent investigation or investigations into the killing of a protectee, and the Secret Service will have presence in all phases of the investigation, pursuant to the responsibilities of the Secret Service under law. This shall include mutual presence in a Command Post or Coordinating Center established by the FBI or Secret Service.

"II. In the event of any other violation of law involving a protectee of the Secret Service for which the FBI has investigative jurisdiction:

"A. The same procedures shall be followed concerning control and presence as outlined above. The Directors of the Secret Service and

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the FBI, or their designees, shall agree to an orderly transfer of responsibilities.

"B. The Secret Service during the immediate period following the violation will maintain and preserve any suspects, witnesses, and evidence under its control until such time as the FBI assumes its investigative responsibilities.

"C. The FBI and the Secret Service will coordinate the subsequent investigation or investigations and the Secret Service will have presence in all phases of the investigations pursuant to its responsibilities under law.

"III. Internal Procedures

The FBI and the Secret Service will create internal directives to fully effect this agreement of procedures.

"In order to provide for an orderly and systematic investigation of the above described violations of law involving a Secret Service protectee where the FBI has investigative jurisdiction, the FBI and the Secret Service will construe the terms of this agreement liberally and will take such action as is necessary to insure a coordinated and complete Federal effort at every level.

"This agreement shall be reviewed annually by representatives of the FBI and the Secret Service, or at such other times as the FBI or the Secret Service may request, to insure that the agreement is both practical and productive. Revisions may be made with the mutual concurrence of the Directors of the FBI and the Secret Service.

BY /s/ William H. Webster  
Director  
Federal Bureau of Investigation

BY /s/ H.S. Knight  
Director  
U.S. Secret Service

DATE December 11, 1978

DATE December 8, 1978

EFFECTIVE: 02/19/85

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[REDACTED]

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[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

*Refer  
USSS*

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[REDACTED]

*Refer  
USSS*

EFFECTIVE: 10/16/90

175-19 FBI PRESENCE IN UNITED STATES SECRET SERVICE COMMAND POST  
DURING UNITED STATES SECRET SERVICE PROTECTEE VISIT

(1) FBIHQ has conferred with USSS Headquarters in regard to having a Bureau Agent in a local USSS command post during the President's visit to a particular city. The purpose of the Bureau Agent's presence in the USSS command post was to have an FBI representative on hand for liaison and coordination in the event a violation of Title 18, USC, Section 1751, occurred. It was understood that an FBI presence would be entirely at the pleasure of the USSS and could apply to other protectee visits.

(2) USSS Headquarters advised that its Special Agents in Charge would consider and request an FBI presence if necessary. FBI field offices should continue to coordinate such arrangements with local USSS counterparts as individual matters may require.

(3) It should be noted, however, that Section (I)(C) of the "Agreement of Procedures" entered into by the FBI and USSS on 12/11/78 provides for mutual presence in any command post or coordinating center established by the FBI or USSS once an actual violation of Title 18, USC, Section 1751, occurs. See 175-17 for complete details.

EFFECTIVE: 01/09/84



| 175-20 UNITED STATES SECRET SERVICE REQUESTS FOR FBI PERSONNEL TO  
PROTECT THE PRESIDENT

(1) Section V of the "Agreement Between the FBI and the USSS Concerning Protective Responsibilities" provides that the USSS may, in accordance with Title 18, USC, Section 3056, request that FBI Agents be detailed to the USSS in order to augment the capacity of the USSS to perform its protective duties.

(2) All such requests should be forwarded to the Director of the FBI by USSS Headquarters.

(3) The FBI Agents who are detailed to the USSS are under the direction and exclusive operational control of the Director of the USSS for the period of their assignment.

(4) The FBI Agents so detailed may perform an armed or other protective function.

EFFECTIVE: 01/09/84

| 175-21 AGREEMENT BETWEEN THE FBI AND THE ARMED FORCES INSTITUTE  
OF PATHOLOGY (AFIP)

| See Part I, 89-3.12, of this manual for complete details. |

EFFECTIVE: 01/09/84

| 175-22 RESPONSIBILITY OF FBI PERSONNEL REGARDING JURISDICTION,  
INVESTIGATION AND DISSEMINATION

(1) It is imperative that field and FBIHQ Agent and support personnel in a position to receive complaints be fully aware of the FBI's investigative jurisdiction under the PPSAKA Statute, Title 18, USC, Section 1751, as distinguished from the USSS's investigative jurisdiction under the TAPSP Statute, Title 18, USC, Section 871, and be cognizant of the FBI's dissemination responsibilities to the USSS in this area.

(2) Each SAC will be held personally responsible to ensure that complaints involving a violation of the PPSAKA Statute are afforded immediate investigative action utilizing sufficient

personnel to promptly address and resolve the situation.

(3) All field and FBIHQ Agent personnel must constantly be alert to any information of interest to the USSS in this area and ensure that appropriate action is taken to promptly disseminate such information to the USSS in accordance with existing policy and procedures. Resolve any doubt in favor of the most liberal dissemination policy as practical.

(4) SACs and FBIHQ division heads should regularly review captioned area for proper handling and remind Agent personnel of FBI policy and procedures at appropriate intervals.

EFFECTIVE: 01/09/84

175-22.1 Threats to Life - Dissemination of Information (See MAOP, Part II, 9-7; MIOG, Part I, 89-6, 166-4, and 179-7.)

The following guidelines cover the FBI's responsibility to warn persons of threats to their life or threats that may result in serious bodily injury and policy regarding notification to other law enforcement agencies of such threats. (Extracted from Resolution 20 dated 12/16/96. See footnotes at the end of this citation.) In all instances, manner depending upon exigencies of situation, FBIHQ should be advised of details of such threats together with a notification of action taken or a recommendation as to action to be initiated UACB.

"III. Guidelines

"A. Warning to the Person.

"(1) Expeditious Warnings to Identifiable Persons.  
Except as provided below in paragraph IIIA(3), when a Federal Law Enforcement Agency has information that a person who is identified or can be identified through reasonable means is subject to credible threat to his/her life or of serious bodily injury, the Agency should attempt expeditiously to warn that person of the nature and extent of the threat.

"(2) Manner, Means, and Documentation of Warning.

"a. The Agency may determine the means and manner of the warning, using the method most likely to provide direct notice to

the intended victim. In some cases, this may require the assistance of a third party. The Agency must document in writing in its files the content of the warning, and when and where, and by whom it was delivered to the intended victim.

"b. An Agency may seek the assistance of another law enforcement agency to provide the warning. If this is done, the Agency must document in writing in its files the notification of the threat, and when, where, and the name of the other agency's representative to whom it was delivered, along with the other agency's agreement to provide a timely warning.

"(3) Exceptions.

"a. A Federal Law Enforcement Agency need not attempt to warn an intended victim of a threat to his/her life or of serious bodily injury in the following circumstances:

"(i) when providing the warning to the intended victim is likely to cause equal or greater physical harm to one or more persons; 1

"(ii) when the intended victim knows the nature and extent of the specific threat against him/her; or

"(iii) when the intended victim is: (a) a public official who, because of his/her official position, is provided a protective detail; (b) a participant in the Witness Security Program that is administered by the United States Marshals Service; or (c) detained or incarcerated. See paragraph IIIB(1).

"b. Whenever time and circumstances permit, an Agency's decision not to provide a warning in the foregoing circumstances must be approved, at a minimum, by a Senior Field Manager. 2 In all cases, the reasons for an Agency's decision not to provide a warning must be documented in writing in the Agency's files.

"NOTE: This paragraph does not apply to the agencies directly responsible for providing the security for the individuals referred to in paragraph IIIA(3)a(iii), above, when the threat is to the referenced individual. In such cases, documentation, if any, should be created in accordance with the agency procedures.

"B. Notification to Law Enforcement Agencies With Protective or Custodial Jurisdiction.

"(1) Expeditious Notification. When a Federal Law Enforcement Agency has information that a person described above in paragraph IIIA(3)a(iii) is subject to any threat to his/her life or of serious bodily injury, the Agency must expeditiously notify other law enforcement agencies that have protective or custodial jurisdiction.

"(2) Means, Manner, and Documentation of Notification. The notifying Agency may determine the means and manner of the notification. When providing notification, the notifying Agency shall provide as much information as possible regarding the threat and the credibility of the threat. The notifying Agency must document in writing in its files the content of the notification, and when, where, and to whom it was delivered.

"C. Notification to Law Enforcement Agencies That Have Investigative Jurisdiction.

"(1) Expeditious Notification. Except as provided below in paragraph IIIC(4), when a Federal Law Enforcement Agency has information that a person (other than a person described above in paragraph IIIA(3)a(iii)) who is identified or can be identified through reasonable means is subject to a credible threat to his/her life or of serious bodily injury, the Agency should attempt expeditiously to notify other law enforcement agencies that have investigative jurisdiction concerning the threat.

"(2) Threats to Occupied Structures or Conveyances. When a Federal Law Enforcement Agency has information that a structure or conveyance which can be identified through reasonable means is subject to a credible threat which could cause loss of life or serious bodily injury to its occupants, the Agency should provide expeditious notification to other law enforcement agencies that have jurisdiction concerning the threat.

"(3) Means, Manner, and Documentation of Notification. The Agency may determine the means and manner of the notification. The Agency must document in writing in its files the content of the notification, and when, where, and to whom it was delivered.

"(4) Exceptions.

"a. A Federal Law Enforcement Agency need not attempt to notify another law enforcement agency that has investigative jurisdiction concerning a threat:

"(i) when providing the notification to the other law enforcement agency is likely to cause equal or greater physical harm to one or more persons; or

"(ii) when the other law enforcement agency knows the nature and extent of the specific threat to the intended victim.

"b. Whenever time and circumstances permit, an Agency's decision not to provide notification to another law enforcement agency in the foregoing circumstances must be approved, at a minimum, by a Senior Field Manager. In all cases, the reasons for an agency's decision not to provide notification should be documented in writing in the Agency's files.

"IV. Rights of Third Parties.

"Nothing in these guidelines is intended to create, or does create, an enforceable legal right or private right of action.

Footnotes:

"1 If the equal or greater harm would occur to a Government informant or Agent as a result of his/her participation in an investigation, consideration should be given to extricating that individual from the investigation or taking other appropriate measures in order to minimize the risk.

"2 As used in these guidelines, 'Senior Field Manager' refers to a Federal Law Enforcement Agency operational field manager of the GS-15 rank or higher, or the person serving in that capacity in his or her absence."

EFFECTIVE: 03/14/97

175-23 CHARACTER

(1) Since PPSAKA Statute protects four classes of executive branch officers and covers seven types of crimes committed against them, the possible characters involved are numerous.

(2) Section 1751(a) subdivides certain of the above executive branch officers into President-elect, Vice President-elect, the officer next in the order of succession to the Office of the President if there is no Vice President, and any person who is acting as President under the Constitution and laws of the United States. For FBI character and management purposes, the classes of individuals protected are grouped as follows regardless of their above-subdivided status:

- (a) President or Vice President
- (b) Presidential or Vice Presidential staff member

(3) The types of crimes prohibited are as follows:

- (a) Assassination
- (b) Kidnap
- (c) Attempt to Assassinate
- (d) Attempt to Kidnap
- (e) Conspiracy to Assassinate
- (f) Conspiracy to Kidnap
- (g) Assault

(4) In order to readily identify the character, class of protected officer, and type of prohibited crime involved, all violations within the 175 classification are designated as PPSAKA and are further identified, in parentheses, by class of victim and type of crime involved as in the following examples:

- (a) PPSAKA (Presidential-Assault)
- (b) PPSAKA (Vice Presidential-Assassination)
- (c) PPSAKA (Presidential Staff Member-Conspiracy to

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| Kidnap)

| (d) PPSAKA (Vice Presidential Staff  
Member-Conspiracy to Assassinate)

| (5) Based on the above examples, the proper character for  
any given PPSAKA fact situation can be logically determined and  
should be set forth accordingly. |

EFFECTIVE: 01/09/84

| 175-23.1 Threats Against the President and Protection of the  
President (Character)

| (1) Threats Against the President - The threats under the  
USSS's TAPSP Statute, Title 18, USC, Section 871, that do not  
constitute a PPSAKA violation should not be carried under the PPSAKA  
character or assigned a 175 substantive case file number. Such  
matters when referred to the USSS should utilize a character of  
"Threats Against the President" regardless of the identity of the  
USSS protectee involved and should be filed in a 175-0 control file.  
All communications disseminated to the USSS locally and transmitted  
to FBIHQ for dissemination to USSS Headquarters should set forth the  
above character in the title.

| (2) Protection of the President - Information developed  
concerning USSS protective duties under its SSP Statute, Title 18,  
USC, Section 3056, and not constituting a PPSAKA violation or a  
threat under the TAPSP Statute should not be carried under the PPSAKA  
character or assigned a 175 substantive case tile number. Such  
matters when disseminated to the USSS should utilize a character of  
"Protection of the President" regardless of the identity of the USSS  
protectee involved and be filed in a 175-0 control file. All  
communications disseminated to the USSS locally and transmitted to  
FBIHQ for dissemination to USSS Headquarters should set forth the  
above character in the title. |

EFFECTIVE: 01/09/84

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| 175-24 175 SUBCLASSIFICATIONS

| See MAOP, Part II, 3-1.1, "FBI Classifications and  
| Subdivided Classifications."

EFFECTIVE: 10/18/95

175-25 CASE TITLE

(1) In addition to the subject's name and aliases, if known, or an unknown subject(s) designation and aliases, a PPSAKA case title should include the victim's full name, his/her job title, and the initial date of the violation.

(2) Example:

JOHN SMITH, aka John Smithe;  
JAMES E. JONES, COUNSELOR TO THE  
PRESIDENT - VICTIM  
9/30/83  
PPSAKA  
(PRESIDENTIAL STAFF  
MEMBER - ASSAULT)  
OO: |WMFO|

(3) In regard to Threats Against the President and Protection of the President matters, the case titles should correspond to the following examples:

- (a) JOHN SMITH, aka John Smithe;  
THREATS AGAINST THE PRESIDENT
- (b) PLANNED DEMONSTRATION BY THE BLACK  
RATS MOTORCYCLE GANG DURING THE  
PRESIDENT'S VISIT TO CLEVELAND,  
OHIO, ON 9/30/83;  
PROTECTION OF THE PRESIDENT  
OO: CLEVELAND



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EFFECTIVE: 10/16/90

175-26 VENUE

Venue will be in the judicial district where the violation occurred. Title 18, USC, Section 3236, provides that the crime of murder is committed at the place where the injury was inflicted, the poison administered, or other means employed which caused the death of the victim, without regard to the place where the death occurred. For offenses committed outside the jurisdiction of any particular state or district, see Title 18, USC, Section 3238, entitled "Offenses not Committed in any District."

EFFECTIVE: 10/16/90

175-27 OFFICE OF ORIGIN

In PPSAKA violations, the OO shall be the office in whose territory the violation occurred. See 175-26 for the definition of the place where a murder occurs and in regard to offenses not committed in any district.

EFFECTIVE: 10/16/90

175-28 COPIES OF PROSECUTIVE REPORTS TO FBIHQ

Submit four copies to FBIHQ. Indicate one copy each to be disseminated to DOJ and USSS Headquarters.

EFFECTIVE: 10/16/90

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SECTION 176. ANTIRIOT LAWS

176-1 STATUTES

Title 18, USC, Section 245 (b) (3), Chapter 102 (Sections 2101-2102) and Chapter 12 (Sections 231-233), effective 4/11/68.

EFFECTIVE: 01/31/78

176-1.1 Section 245 (b) (3)

EFFECTIVE: 01/31/78

176-1.1.1 Elements

- (1) During or incident to a riot or civil disorder
- (2) Use of force, or threat of force, to
- (3) Willfully injure, intimidate, or interfere with
- (4) Any person engaged in a business affecting interstate  
commerce
- (5) Or attempting to perform the above acts.

EFFECTIVE: 01/31/78

176-1.1.2 Other Provisions

Section 245 (a) (1) states the above provisions do not relieve state and local authorities of their responsibility for prosecuting under state and local laws; no Federal prosecution can be undertaken unless the Attorney General or the Deputy Attorney General certifies prosecution is in the public interest and is necessary to secure substantial justice.

EFFECTIVE: 01/31/78

176-1.2 Chapter 102-Section 2101

EFFECTIVE: 01/31/78

176-1.2.1 Elements

- (1) Interstate or foreign travel or
- (2) Use of the mail, telegraph, telephone, radio, television, or any other facility of interstate or foreign commerce with intent to:
  - (a) Incite a riot; or
  - (b) Organize, promote, encourage, participate in, or carry on a riot; or
  - (c) Commit any act of violence in furtherance of a riot;
  - (d) Aid or abet any person in inciting or participating in a riot and
- (3) Either during the course of such travel or use of such facility or thereafter performs or attempts to perform any overt act to incite or participate in a riot.

EFFECTIVE: 01/31/78

176-1.2.2 Definitions of a Riot

Title 18, USC, Section 2102 defines a riot as a public disturbance involving an act of violence by one or more persons who are part of an assemblage of three or more persons. The requisite act of violence includes a threat coupled with the ability to immediately execute the threat provided that the threatened act would constitute a clear and present danger of property damage or personal injury.

EFFECTIVE: 01/31/78

176-1.2.3 Other Provisions

(1) Local prosecution is a bar to any Federal prosecution based upon the same act or acts.

(2) State and local authorities are not relieved of their responsibility to prosecute violations of state and local statutes.

(3) When, in the opinion of the Attorney General, this chapter has been violated, prosecution shall proceed as speedily as possible or Congress shall be advised in writing of the reasons for not proceeding.

EFFECTIVE: 01/31/78

176-1.3 Chapter 12 - Section 231

EFFECTIVE: 01/31/78

176-1.3.1 Elements

(1) Teaching or demonstrating the use, application, or making of any firearm or explosive or incendiary device, or technique capable of causing personal injury or death, having reason to know or intending that the same will be unlawfully used in connection with a civil disorder which may in any way interfere with commerce or with any federally protected function; or

(2) Transporting or manufacturing for transportation in commerce any firearm or explosive or incendiary device, having reason to know or intending it will be used unlawfully in furtherance of a civil disorder; or

(3) Committing or attempting to commit any act to interfere with any firearm or law enforcement officer engaged in performance of his official duties in connection with and during a civil disorder which in any way interferes with commerce or with any federally protected function.

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EFFECTIVE: 01/31/78

176-1.3.2 Definitions of "Civil Disorder" and "Commerce."

(1) Title 18, USC, Section 232, defines a civil disorder as any public disturbance involving acts of violence by assemblages of three or more persons which causes immediate danger of or results in property damage or personal injury.

(2) Section 232 also states that commerce means interstate or foreign commerce or commerce wholly within the District of Columbia.

EFFECTIVE: 01/31/78

176-1.3.3 Other Provisions

(1) An act performed by a law enforcement officer in the lawful performance of his official duties is specifically excluded.

(2) Federal jurisdiction shall not operate to the exclusion of state or local jurisdiction.

EFFECTIVE: 01/31/78

176-2 POLICY

(1) Upon receipt of a complaint or information from any source not known to be unreliable, a preliminary investigation is to be instituted immediately, consisting of the following:

(a) Interviews of complainant and up to three available witnesses who are reported to have firsthand information bearing on the alleged violation. Obtain signed statements.

(b) Where a possible violation of state or local law is indicated, advise appropriate state or local authorities of the complaint and offer the cooperative facilities of the FBI, including the Laboratory Division, and coverage of out-of-state leads.

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Ascertain what action has been taken or is contemplated by those authorities; if they indicate an unwillingness or an inability to investigate and/or prosecute, obtain full details of reasons for their inaction.

(c) Discuss the matter with the USA to obtain his opinion as to what further Federal action, if any, is warranted; however, no further investigation is to be conducted without FBIHQ authority.

(d) Submit report (three copies) within five days of the receipt of the complaint.

(2) Advise FBIHQ immediately by teletype of receipt of all complaints and of the action being taken thereon. Also, submit teletype summary of results of preliminary investigation promptly upon completion.

(3) Copies of all communications prepared for dissemination should be furnished to the USA.

(4) Advise all persons interviewed the investigation is being conducted at the specific request of the U. S. Department of Justice.

EFFECTIVE: 09/24/93

176-3 MISCELLANEOUS

(1) Interstate commerce as referred to in Section 245 (b) (3) and Section 2101 does not include commerce wholly within the District of Columbia.

(2) The act of violence required to bring a public disturbance within the definition of a riot under Section 2101 need only be committed by one person who is part of an assemblage of three or more persons. However, violence necessary to bring a public disturbance within the definition of a civil disorder under Section 231 must consist of such act or acts by more than one person.

(3) Section 245 (b) (3) does not apply to acts or omissions on the part of law enforcement officers, National Guardsmen, or members of the U. S. Armed Forces engaged in suppressing a riot or

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civil disturbance or restoring law and order during a riot or civil disturbance. However, this does not preclude the possible presence of a violation of some other Federal statute (such as Title 18, USC, Section 242) or a state or local law.

EFFECTIVE: 01/31/78

||176-4 REPORTING REQUIREMENTS

In those cases when investigation is instituted, submit report (three copies) within five days and subsequent reports every 45 days thereafter.

EFFECTIVE: 11/08/78

||176-5| PENALTIES

(1) Section 245 (b) (3) - \$1,000 fine and/or one year imprisonment; \$10,000 fine and/or ten years' imprisonment if personal injury results; imprisonment for any term of years or for life if death results.

(2) Section 2101 - \$10,000 fine and/or five years' imprisonment.

(3) Section 231 - \$10,000 fine and/or five years' imprisonment.

EFFECTIVE: 11/08/78

||176-6| CHARACTER - ANTIRIOT LAWS

EFFECTIVE: 11/08/78

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SECTION 177. DISCRIMINATION IN HOUSING

177-1 BACKGROUND

The Fair Housing provisions of Title VIII and Title IX of the Civil Rights Act of 1968 (amended in 1989) are designed to assure freedom from discrimination in the sale, rental, and financing of housing on the basis of race, color, religion, sex, handicap, familial status or national origin.

EFFECTIVE: 09/26/90

177-2 STATUTES

The Discrimination in Housing statutes covered under Section 177 of this manual are as follows:

(1) Title 42, United States Code (USC), Section 3631, Criminal Interference - Violations, Bodily Injury; Death; Penalties.

(2) Title 42, USC, Section 3617, Interference, Coercion or Intimidation; Enforcement by Civil Action.

(3) Title 42, USC, Section 3604, Discrimination in the Sale or Rental of Housing.

(4) Title 42, USC, Section 3605, Discrimination in Residential Real Estate-Related Transactions.

(5) Title 42, USC, Section 3606, Discrimination in Provision of Brokerage Services.

(6) Title 18, USC, Section 241, Conspiracy Against Rights.

(7) Title 18, USC, Section 245, Federally Protected Activities.

(8) Title 42, USC, Section 3607, Religious Organization or Private Club Exemption.



EFFECTIVE: 09/26/90

177-2.1 | Title 42, USC, Section 3631 - Criminal Interference  
Violations; Bodily Injury; Death; Penalties

This statute makes it unlawful for any individual(s), by the use of force or threatened use of force, to injure, intimidate, or interfere with (or attempt to injure, intimidate, or interfere with), any person's housing rights because of that person's race, color, religion, sex, handicap, familial status or national origin. Among those housing rights enumerated in the statute are:

- (1) The sale of a dwelling.
- (2) The purchase of a dwelling.
- (3) The renting of a dwelling.
- (4) The financing of a dwelling.
- (5) The occupation of a dwelling.
- (6) Contracting or negotiating for any of the rights enumerated above (1) - (5).
- (7) Applying for or participating in any service, organization, or facility relating to the sale or rental of dwellings.

The statute also makes it unlawful by the use of force or threatened use of force, to injure, intimidate, or interfere with any person who is assisting an individual or class of persons in the exercise of their housing rights. Finally, the statute makes it unlawful by the use of force or the threatened use of force to injure, intimidate, or interfere with any citizen who is participating lawfully in speech or peaceful assembly opposing any denial of an individual's opportunity to participate in any of the activities enumerated above. An individual convicted of violating this section shall be fined not more than \$1,000, or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than \$10,000, or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life. The important factor in applying this statute is that the defendant must have either used force or threatened to use force.

EFFECTIVE: 09/26/90

177-2.2 | Title 42, USC, Section 3617 - Interference, Coercion, or  
Intimidation; Enforcement by Civil Action

(1) This statute makes it unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his/her having exercised or having aided or encouraged any other person in the exercise or enjoyment of any housing rights enumerated in Title 42, USC, Sections 3604-3606.

(2) This statute does not require the use of force or threat of force to find the conduct to be unlawful. However, enforcement of the statute is by civil action initiated by the Department of Justice or the Department of Housing and Urban Development (HUD), rather than criminal action.

EFFECTIVE: 09/26/90

177-2.3 | Title 42, USC, Section 3604 - Discrimination in the Sale  
or Rental of Housing

(1) This statute prohibits the following activity where the rationale for the actor's conduct is the alleged victim's race, color, religion, sex, familial status or national origin: (Note that handicap status is not covered under these two sections.)

(a) Refusal to sell or rent a dwelling after a bona fide offer has been made; refusal to negotiate to sell or rent a dwelling; or otherwise make unavailable or deny a dwelling to any person.

(b) Discrimination against any person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services (i.e., use of a real estate broker) in connection therewith.

(2) The following conduct is prohibited by the statute if the rationale for the actor's conduct is the alleged victim's race, color, religion, sex, familial status, handicap, or national origin: (Note that handicap status is covered by these sections.)

(a) Marking, painting, publishing, or causing to be made, printed or published any notice, statements, or advertisement, regarding the sale or rental of a dwelling that indicates any preference, limitation, or discrimination, or an intention to make any such preference, limitation or discrimination.

(b) Representing to any person that a dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(c) Inducing or attempting to induce, for profit, any person to sell or rent any dwelling by representation regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin. This is also known as the practice of "blockbusting."

Finally, the statute prohibits discrimination in sale or rental (and conditions thereof) to any buyer or renter because of the buyer/renter's handicap; the handicap of a person residing or intending to reside with the buyer/renter; and the handicap of an associate of the buyer/renter.

EFFECTIVE: 09/26/90

177-2.4 | Title 42, USC, Section 3605 - Discrimination in Residential Real Estate-Related Transactions

(1) This statute makes it unlawful for any person or entity who is involved in a "residential real estate-related transaction" to discriminate in making available such a transaction, or requiring terms or conditions of such a transaction, on the basis of race, color, religion, sex, handicap, familial status or national origin.

(2) "Residential real estate-related transaction" is defined as one of the following:

(a) Making or purchasing of loans or providing other financial assistance for:

1. purchasing, constructing, improving, repairing or maintaining a dwelling; or

2. a financial transaction secured by residential real estate.

(b) Selling, brokering, or appraisal of residential real property.

EFFECTIVE: 09/26/90

177-2.5 | Title 42, USC, Section 3606 - Discrimination in the Provision of Brokerage Services

This statute makes it unlawful to deny any person access to membership in, or participation in any multiple-listing service, real estate brokers' organization, or any other service, organization, or facility relating to the business of selling or renting dwellings, on account of that person's race, color, sex, religion, familial status, or national origin.

EFFECTIVE: 09/26/90

177-2.6 | Title 18, USC, Section 241 - Conspiracy Against Rights of Citizens (See MIOG, Part I, Section 44-1.1)

This statute is applicable to discrimination in housing cases involving two or more persons who conspire to injure, oppress, threaten, or intimidate any inhabitant of any state, territory or district in the free exercise of the federally protected right to housing (see Section 177-2.3, above).

EFFECTIVE: 09/26/90

177-2.7 Title 18, USC, Section 245 - Federally Protected  
Activities (See MIOG, Part I, Section 44-1.5)

This statute is applicable in discrimination in housing cases whenever the victim is participating in any federally protected activity and is also exercising his/her Federal rights to housing free from any discrimination on the basis of race, color, sex, religion, handicap, familial status, or national origin. Those federally protected activities which would be applicable would be those enumerated in MIOG, Part I, Section 44-1.5:

"(1)(b) A participant in, or a person enjoying, any benefit, service, privilege, program, facility, or activity provided or administered by the United States;"

"(1)(e) A participant in, or a person enjoying the benefits of, any program or activity receiving Federal financial assistance;"

"(2)(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."

EFFECTIVE: 09/26/90

177-2.8 Exemptions From Coverage

(1) The provisions of the Fair Housing Act do not apply to any single-family house sold or rented by an owner (with the exception of Title 42, USC, Section 3604(c)) provided that:

(a) the private individual owner does not own or have an equitable interest in more than three such single-family houses at one time.

(b) in the case of a sale of any such single-family house by a private individual owner not residing in such house at the time of the sale shall only be able to claim the exemption from coverage once within a twenty-four month period; and

(c) there is not use of any broker or brokerage service in the sale of such single-family house.

(2) The provisions of the Fair Housing Act also do not

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prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by a religious organization from limiting the sale, rental, or occupancy of dwellings which it owns or operates, or giving preference to its members, as long as the church's membership is not restricted on account of race, color, or national origin. The same exemption applies to private clubs not in fact open to the public which provide lodging for their members for other than a commercial purpose.

EFFECTIVE: 09/26/90

177-3 TIME UTILIZATION RECORDKEEPING (TURK) DESIGNATION IN 177 MATTERS

EFFECTIVE: 09/26/90

177-3.1 177A Investigations

Any allegation of a violation of Title 42, USC, Section 3631 involving the use of or threat of use of force and/or violence is to be handled as a 177A matter. This includes cross burnings, fire bombings of residences, vandalism to residence, and any other acts of violence or threatened violence.

EFFECTIVE: 09/26/90

177-3.2 177B Investigations

Any allegation of a violation of Title 42, USC, Sections 3617, 3604, 3605, and 3606, which does not involve the use of force and/or violence is to be handled as a 177B matter.

EFFECTIVE: 09/26/90

177-4 HANDLING OF DISCRIMINATION IN HOUSING (DIH) COMPLAINTS - INITIATION OF DIH INVESTIGATIONS

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EFFECTIVE: 09/26/90

177-4.1 Initiation of DIH - Criminal Interference Investigations

The following circumstances represent examples of situations in which a DIH - Criminal Interference investigation should be initiated: (See MIOG, Part I, 177-7.3.)

(1) Upon the receipt of information of a DIH - Criminal Interference allegation from a complainant or victim not known to be unreliable, to include local Fair Housing Groups. (See MIOG, Part I, 177-4.2(1).)

(2) Upon receipt of either a written or verbal request for investigation from the Civil Rights Division (CRD), Department of Justice (DOJ), the latter of which will also be documented by CRD, DOJ and transmitted to the field by airtel from FBIHQ. This information comes to the attention of DOJ from various sources and sometimes does not include the name of the victim or any potential subject(s). Every effort is made to ascertain the identities of such individuals prior to transmittal to the field office. If the field office is unable to determine the identities of either the subject(s) or victim(s), the field office should advise the DOJ and 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 Civil Rights Unit (CRU), FBIHQ.

(3) Upon receipt of a request from the United States Attorney's Office or the local Department of Housing and Urban Development (HUD) Office. If the field office believes the USA's or HUD's request is not warranted and cannot resolve this with the USA or HUD, promptly advise the CRU, FBIHQ. (See MIOG, Part I, 177-4.2(1).)

(4) Upon receipt of specific information appearing in the legitimate news media reporting apparent violations of the DIH statutes. (See MIOG, Part I, 177-4.2(1).)

EFFECTIVE: 08/10/94

177-4.2 Initiation of DIH - Civil Investigations

(1) The same sources enumerated in subsections (1), (3), and (4) of the previous section (177-4.1) are sources for investigation of DIH - Civil violations.

(2) Investigative requests for these violations (Title 42, USC, Sections 3604, 3605, 3606, and 3617) are received from the DOJ, CRD, Housing and Civil Enforcement Section (HCES), rather than the DOJ, CRD, Criminal Section. Requests for investigation originating from this section are generally quite detailed, requiring certain specific tasks to be completed by the field office. These requests are normally made in conjunction with a civil lawsuit filed by DOJ, CRD, HCES, and are necessary for success of the lawsuit. If any portion of such a request cannot be completed, the field office should promptly contact the DOJ to discuss the matter and, thereafter, notify the CRU if a final resolution with DOJ cannot be obtained.

EFFECTIVE: 08/10/94

177-5 INVESTIGATIVE PROCEDURE - 177A MATTERS - CRIMINAL INTERFERENCE

EFFECTIVE: 09/26/90

177-5.1 Initial Investigation (See MIOG, Part I, 177-6.2(5), 177-7.4(1).)

(1) Interview the victim(s) and/or complainants for full details of allegations. As a part of each interview, secure the identity of potential subject(s) and/or witness(es). In interviewing a victim/complainant in a 177A matter, it is important that the interviewing Agent ascertain the nature of any threats, intimidation, and physical violence perpetrated against the victim or the victim's residence. THE BURNING OF A CROSS IN THE VICTIM'S YARD IS CONSIDERED A THREAT AND AN ACT OF VIOLENCE AGAINST THE VICTIM AND SHOULD BE THE BASIS FOR OPENING A 177A INVESTIGATION. 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:



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- (a) Upon specific instructions from FBIHQ.
- (b) Upon specific request of USA.
- (c) Upon specific request of DOJ.
- (d) When deemed appropriate by the Special Agent during the course of the interview.

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. It is particularly important to conduct a thorough neighborhood investigation in a 177A matter because the perpetrators in these types of incidents are frequently residents of the same neighborhood as the victim. It is also important to interview as many people as possible in the neighborhood and vicinity of the victim because those individuals are in the best position to comment on the character and climate of the particular neighborhood. Additionally, those people are likely to identify perpetrators because they do not want criminal acts of racial violence to become the norm for their neighborhood. For those situations where it is necessary to obtain a signed statement from a witness, see above, Section 177-5.1(1).

(4) Although physical evidence located at the scene of the crime should be obtained and preserved, because individual case circumstances and prosecutorial goals will differ in such a way as to affect what forensic examinations are suitable, it is suggested that the Laboratory Division, Chemistry Unit be contacted prior to submission of any evidence and accompanying transmittal letter. This technical advice would include information suggesting what forensic examinations should be requested, what evidence should be submitted, and in what form that evidence should be sealed, packaged, and mailed to the Laboratory. Such case-relevant circumstances as whether a subject and materials and tools for constructing the cross have been identified, whether or not a defendant will be charged with arson as

well as federal civil rights violations, etc., will determine the nature of this advice.

(a) Deleted

(b) Deleted

(c) Deleted

(d) Deleted

(e) In cases of fire bombings, it is important that local arson investigators' reports be obtained. If there is resistance to making this report available, contact a local Assistant United States Attorney (AUSA) for a subpoena to obtain the report. If still unsuccessful in this regard, contact FBIHQ or the DOJ, CRD, for assistance.

(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 177-5.1(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 177-6 for reporting guidelines.) A copy of this report should also be sent to the USA's office.

EFFECTIVE: 07/25/97

177-5.2 Additional Investigation Requested by DOJ, CRD

(1) | In some instances, the DOJ, CRD will request additional investigation in a case previously submitted as closed by a particular field office. In this situation, the field office should review the DOJ request and complete the additional investigation within 21 workdays from receipt of the request. |

(2) | If a field office objects to the requirements of the additional request(s) and taskings, the field office should contact the DOJ attorney generating the request and attempt to resolve any issues. If the field office cannot resolve the matter with DOJ, contact the Civil Rights Unit, FBIHQ. |

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EFFECTIVE: 08/10/94

177-6 REPORTING GUIDELINES - 177A MATTERS - CRIMINAL  
INTERFERENCE

EFFECTIVE: 09/26/90

177-6.1 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

177-6.2 Format of 177A Investigative Report

(1) All investigative activity is to be reported utilizing the FD-263 cover page, the FD-204 synopsis page, FD-302s, and investigative inserts. Do not 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 in 177A cases 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

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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 SAs; 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 forth in FD-302s which are part of the report. As noted above (see MIOG, 177-5.1), 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: 09/26/90

177-7 INVESTIGATIVE PROCEDURE - 177B MATTERS - CIVIL DIH

EFFECTIVE: 09/26/90

177-7.1 Pattern or Practice Cases

The FBI investigates those civil DIH matters in which it is alleged that the discriminating individual or organization, i.e., - the subject, is engaged in a pattern or practice of discrimination in any of those activities discussed in MIOG, Section 177-2.2 through 177-2.5, above.

EFFECTIVE: 09/26/90

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177-7.2 Referral to Department of Housing and Urban Development of  
Individual Cases of Discrimination in Housing

Title 42, USC, Sections 3610, et seq., provide that any person who believes that he/she has been, or will be, subjected to a discriminatory housing practice because of race, color, religion, sex, handicap, familial status, or national origin may file a complaint with the Secretary of Housing and Urban Development (HUD). HUD is required to make an investigation of the alleged discriminatory housing practice and complete its investigation within 100 days of receipt of the complaint. Therefore, it is necessary to determine if a housing discrimination complaint is individual in nature or is part of a pattern or practice of DIH by the alleged subject. If, in interviewing the complainant, it is determined the complaint is part of a pattern or practice of DIH, conduct all necessary investigation and report the results in accord with the provisions of MIOG, Section 177-7.4 and 177-8 (see below). If the initial interview determines that the complaint involves only a single act of discrimination, conduct no further investigation. Supply the complainant with HUD Form 903 which he/she is to execute and forward to the local HUD regional office or field office. In addition, the results of the complainant's interview are to be submitted to FBIHQ, CRU in accord with the provisions of MIOG, Section 177-8 (see below). It will then be forwarded to the DOJ, CRD, HCES for its review to determine if any further investigation by the FBI is warranted.

EFFECTIVE: 09/26/90

177-7.3 Types of Cases to be Investigated

The following are examples of those types of cases which should be investigated by the FBI if an allegation is made or is brought to the attention of the FBI by any of the sources in MIOG, Section 177-4.1.

(1) Discrimination in the sale or rental of housing; (See MIOG, Section 177-2.3)

(2) Discriminatory advertising; (See MIOG, Section 177-2.3)

(3) Discrimination in the Financing of Housing; (See MIOG, Section 177-2.4). In this particular area, it is necessary to be familiar with the term "REDLINING." "REDLINING" is the practice by

an individual or entity engaged in the making of loans or in the provision of other financial assistance relating to the purchase, construction, improvement, or repair or maintenance of dwellings or which are secured by residential real estate, to impose different terms or conditions for the availability of such loans or other assistance because of race, color, religion, sex, handicap, familial status, or national origin. A "red line" can be drawn around a particular geographic area which would indicate a pattern or practice of discrimination in approving mortgages.

(4) Discrimination in the provision of brokerage services; (See MIOG, Section 177-2.5).

(5) "Blockbusting" which consists of any effort, for profit to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry into a neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin, or with a handicap.

(6) "Steering" which is defined as restricting or attempting to restrict the housing choices of persons, or engaging in any conduct relating to the sale or rental of a dwelling that otherwise makes unavailable or denies dwellings because of race, sex, handicap, familial status, or national origin.

EFFECTIVE: 09/26/90

177-7.4 Specific Investigative Steps to be Taken

(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, Section 177-5.1)

(2) Obtain all necessary documentation from the alleged victim which supports his/her claim. This should include, but not be limited to rental contracts, sales contracts, financing applications, rental applications, leases, brochures, etc. 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.

(3) Interview any other individuals identified by the victim as potential victims or witnesses. Obtain any appropriate and necessary documentation from those individuals.

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(4) Interview the subject of the alleged discriminatory practice. (NOTE: If the subject of the complaint is a business entity such as a corporation or partnership, obtain those documents which would identify and explain the organization's ownership, organization and structure.)

(5) Interview former employees of the alleged discriminatory organization for details about the victim's complaint or any other allegations of discrimination against the organization which would establish a pattern or practice of discriminatory activity.

(6) Obtain any local police reports which might exist concerning the alleged discriminatory incident.

(7) Obtain copies of any reports concerning the alleged discriminatory activity which may have been compiled by state and/or local housing authorities.

(8) Conduct all logical investigation.

EFFECTIVE: 09/26/90

177-8      REPORTING GUIDELINES - 177B MATTERS - CIVIL DISCRIMINATION  
            IN HOUSING

EFFECTIVE: 09/26/90

177-8.1      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

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177-8.2 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, Section 177-6.2). In all other cases, the results of a 177B 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 177B matters, three (3) copies of the report or LHM should be submitted to FBIHQ, CRU, and one copy should be sent to the local USA's office.

EFFECTIVE: 09/26/90

177-9 MISCELLANEOUS

(1) If allegations are brought to the attention of the FBI of a potential DIH - Criminal Interference violation on a United States military reservation, a Memorandum of Understanding between the Department of Defense (DOD) and DOJ mandates that the investigation be conducted by the appropriate military investigative agency, i.e., - the Army's Criminal Investigation Division (CID); Naval Investigative Service (NIS); or the Air Force Office of Special Investigations (OSI). Once that investigative agency's investigation is complete, a copy of the agency's investigative report should be obtained and an appropriate number of copies should be sent to the FBIHQ, CRU and disseminated to the local USA. Appropriate liaison efforts during the course of the military agency's investigation should be maintained.

(2) In many Criminal Interference 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 perpetrator(s) is/are juveniles. Juveniles will be prosecuted under the terms of Title 18, United States Code, Section 5001, et seq., for acts of criminal interference which constitute discrimination in housing. Any local prosecution of juveniles may be claimed as an accomplishment on an FD-515 in accord with applicable standards used in other state/local prosecutions.

(3) Privacy Act - Requirements



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(a) In a civil discrimination investigation (177B matters), the subject, agent, or representative performing management functions on behalf of the subject must be interviewed in accordance with MIOG, Part I, Section 190-5, (2) and (3) in order to solicit information about the subject or the subject's own activities. In all noncriminal civil rights investigations, the interviewee is to be provided with Form FD-496 and this should be clearly stated in the FD-302 of the interview.

(b) The provisions of MIOG, Part I, Section 190-7 relating to promises of confidentiality must be followed when interviewing an individual to solicit information concerning someone other than the interviewee.

EFFECTIVE: 09/26/90

177-10 CHARACTER - DISCRIMINATION IN HOUSING - CRIMINAL  
INTERFERENCE; - CIVIL

EFFECTIVE: 09/26/90

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SECTION 178. INTERSTATE OBSCENE OR HARASSING TELEPHONE CALLS

178-1 STATUTE

Title 47, USC, Section 223

EFFECTIVE: 05/25/90

178-1.1 Elements

(1) A person makes a telephone call within the District of Columbia or in interstate or foreign commerce:

(a) During which any comment, request, or proposal which is obscene, lewd, lascivious, filthy, or indecent is made; or

(b) Without disclosing identity with intent to annoy, abuse, threaten, or harass any person at the called number; or

(c) Causes the telephone of another repeatedly or continuously to ring with intent to harass any person at the called number; or

(d) Makes repeated telephone calls during which conversation ensues solely to harass any person at the called number.

(2) A person knowingly permits any telephone under his/her control to be used for any purposes prohibited by this section.

EFFECTIVE: 05/25/90

178-1.1.1 Penalty

A fine of not more than \$500 or imprisonment for not more than six months or both.

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EFFECTIVE: 05/25/90

178-2 DEPARTMENTAL INSTRUCTIONS

(1) The Department has advised all USAs that procedures have been formulated under which citizens complaining of violations of this statute will be referred to the telephone company. The telephone company will attempt to identify and verify the telephone number of the calling party and will endeavor to resolve the matter through internal administrative action. Where administrative measures prove unsuccessful and where the call applies under the Federal statute (not state or local statutes), the matter will be referred for investigation.

(2) Departmental guides to USAs state that if USAs receive complaints from citizens who have received annoying and harassing telephone calls the citizen should be informed of the jurisdictional requirements of this statute, referred to the telephone company which will attempt to verify the location of the calling number and will contact Federal authorities if a violation exists, and advised that the telephone company may protect him/her from receiving future harassing calls by changing his/her telephone number or by intercepting and identifying all persons attempting calls to the citizen's present number.

(3) If the call is interstate and if the receiver of the call desires to initiate legal action, a telephone company representative will instruct that local police officials in the community be contacted with regard to possible prosecution. If local authorities decline to prosecute because the applicable statutes do not reach interstate telephone calls, the matter will then be referred to the FBI.

EFFECTIVE: 05/25/90

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178-3 POLICY

Complaints concerning violation of this statute should be investigated only if the alleged obscene or harassing telephone calls have been established to be of an interstate nature by the telephone company and the telephone company has exhausted all administrative remedies available, including local prosecution if particular statutes apply. Otherwise no investigation is to be conducted. Advise FBIHQ promptly if prominent person involved or other circumstances warrant.

EFFECTIVE: 05/25/90

178-4 INVESTIGATIVE PROCEDURE

(1) Jurisdictional responsibilities with regard to calls made within the District of Columbia lie with local District of Columbia authorities.

(2) Upon receipt of a complaint not previously addressed by the telephone company, the complainant should be referred to the telephone company for resolution of his/her complaint under policy stated above (178-3), unless unusual circumstances dictate otherwise.

Upon receipt of a complaint from a telephone company wherein policy requirements under 178-3 are met, promptly contact the USA concerning the alleged violation to determine if a prosecutable violation exists.

(3) If investigation is instituted, the interstate character of the telephone call or calls should be verified through the appropriate telephone company and the identity of the caller established if possible.

EFFECTIVE: 05/25/90

178-5 VENUE

In any district from, through, or into which the telephone call moves (Title 18, USC, Section 3237).

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EFFECTIVE: 05/25/90

178-6 CHARACTER - INTERSTATE OBSCENE or HARASSING TELEPHONE  
CALLS

EFFECTIVE: 05/25/90

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SECTION 179. EXTORTIONATE CREDIT TRANSACTIONS

179-1 STATUTE

Title 18, USC, Chapter 42, Section 891-896, effective  
5/29/68

EFFECTIVE: 01/31/78

179-1.1 Findings and Purpose

In passing this statute, Congress made the following  
findings:

"(1) Organized crime is interstate and international in character. Its activities involve many billions of dollars each year. It is directly responsible for murders, willful injuries to person and property, corruption of officials, and terrorization of countless citizens. A substantial part of the income of organized crime is generated by extortionate credit transactions.

"(2) Extortionate credit transactions are characterized by the use, or the express or implicit threat of the use, of violence or other criminal means to cause harm to person, reputation, or property as a means of enforcing repayment. Among the factors which have rendered past efforts at prosecution almost wholly ineffective has been the existence of exclusionary rules of evidence stricter than necessary for the protection of constitutional rights.

"(3) Extortionate credit transactions are carried on to a substantial extent in interstate and foreign commerce and through the means and instrumentalities of such commerce. Even where extortionate credit transactions are purely intrastate in character, they nevertheless directly affect interstate and foreign commerce.

"(4) Extortionate credit transactions directly impair the effectiveness and frustrate the purpose of the laws enacted by the Congress on the subject of bankruptcies."

On the basis of the above findings Congress determined that the provisions of this chapter of Title 18 of the United States

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Code "are necessary and proper for the purpose of carrying into execution the powers of Congress to regulate commerce and to establish the uniform and effective laws on the subject of bankruptcy."

EFFECTIVE: 01/31/78

179-1.2 Section 891. Definitions and Rules

"For the purposes of this chapter:

"(1) To extend credit means to make or renew any loan, or to enter into any agreement, tacit or express, whereby the repayment or satisfaction of any debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or will be deferred.

"(2) The term 'creditor,' with reference to any given extension of credit, refers to any person making that extension of credit, or to any person claiming by, under, or through any person making that extension of credit.

"(3) The term 'debtor,' with reference to any given extension or credit, refers to any person to whom that extension of credit is made, or to any person who guarantees the repayment of that extension of credit, or in any manner undertakes to indemnify the creditor against loss resulting from the failure of any person to whom that extension of credit is made to repay the same.

"(4) The repayment of any extension of credit includes the repayment, satisfaction, or discharge in whole or in part of any debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

"(5) To collect an extension of credit means to induce in any way any person to make repayment thereof.

"(6) An extortionate extension of credit is any extension of credit with respect to which it is the understanding of the creditor and the debtor at the time it is made the delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

"(7) An extortionate means is any means which involves

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the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property of any person.

"(8) The term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and territories and possessions of the United States.

"(9) State law, including conflict of laws rules, governing the enforceability through civil judicial processes of repayment of any extension of credit or the performance of any promise given in consideration thereof shall be judicially noticed. This paragraph does not impair any authority which any court would otherwise have to take judicial notice of any matter of State law."

EFFECTIVE: 01/31/78

179-1.3 Section 892. Making Extortionate Extensions of Credit

"(a) Whoever makes any extortionate extension of credit, or conspires to do so, shall be fined not more than \$10,000 or imprisoned not more than 20 years, or both.

"(b) In any prosecution under this section if it is shown that all of the following factors were present in connection with the extension of credit in question, there is prima facie evidence that the extension of credit was extortionate, but this subsection is nonexclusive and in no way limits the effect or applicability of subsection:

"(1) The repayment of the extension of credit, or the performance of any promise given in consideration thereof, would be unenforceable, through civil judicial processes against the debtor

"(A) in the jurisdiction within which the debtor, if a natural person, resided or

"(B) in the jurisdiction within which the debtor, if other than a natural person, was incorporated or qualified to do business 'at the time the extension of credit was made.'

"(2) The extension of credit was made at a rate of interest in excess of an annual rate of 45 per centum calculated

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according to the actuarial method of allocating payments made on a debt between principal and interest, pursuant to which a payment is applied first to the accumulated interest and the balance is applied to the unpaid principal.

"(3) At the time the extension of credit was made, the debtor reasonably believed that either

"(A) one or more extensions of credit by the creditor had been collected or attempted to be collected by extortionate means, or the nonrepayment thereof had been punished by extortionate means; or

"(B) the creditor had a reputation for the use of extortionate means to collect extensions of credit or to punish the non-repayment thereof.

"(4) Upon the making of the extension of credit, the total of the extensions of credit by the creditor to the debtor then out-standing, including any unpaid interest or similar charges, exceeded \$100.

"(c) In any prosecution under this section if evidence has been introduced tending to show the existence of any of the circumstances described in subsection (b) (1) or (b) (2), and direct evidence of the actual belief of the debtor as to the creditor's collection practices is not available, then for the purpose of showing the understanding of the debtor and the creditor at the time the extension of credit was made, the court may in its discretion allow evidence to be introduced tending to show the reputation as to collection practices of the creditor in any community of which the debtor was a member at the time of the extension."

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179-1.4 Section 893. Financing Extortionate Credit Extensions

"Whoever willfully advances money or property, whether as a gift, as a loan, as an investment, pursuant to a partnership or profit-sharing agreement, or otherwise, to any person, with reasonable grounds to believe that it is the intention of that person to use the money or property so advanced directly or indirectly for the purpose of making extortionate extensions of credit, shall be fined not more than \$10,000 or an amount not exceeding twice the value of the money or property so advanced, whichever is greater, or shall be imprisoned not more than 20 years or both."

EFFECTIVE: 01/31/78

179-1.5 Section 894. Collection of Extensions of Credit by Extortionate Means

"(a) Whoever knowingly participates in any way, or conspire to do so, in the use of any extortionate means

"(1) to collect or attempt to collect any extension of credit, or

"(2) to punish any person for the nonrepayment thereof, "shall be fined not more than \$10,000 or imprisoned not more than 20 years, or both.

"(b) In any prosecution under this section, for the purpose of showing an implicit threat as a means of collection, evidence may be introduced tending to show that one or more extensions of credit by the creditor were, to the knowledge of the person against whom the implicit threat was alleged to have been made, collected or attempted to be collected by extortionate means or that the nonrepayment thereof was punished by extortionate means.

"(c) In any prosecution under this section, if evidence has been introduced tending to show the existence, at the time the extension of credit in question was made, of the circumstances described in Section 892 (b) (1) or the circumstances described in Section 892 (b) (2), and direct evidence of the actual belief of the debtor as to the creditor's collection practices is not available, then for the purpose of showing that words or other means of communication, shown to have been employed as a means of collection, in fact carried an express or implicit threat, the court

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may in its discretion allow evidence to be introduced tending to show the reputation of the defendant in any community of which the person against whom the alleged threat was made was a member at the time of collection or attempt at collection."

EFFECTIVE: 01/31/78

179-1.6 Section 896. Effect on State Laws

"This chapter does not pre-empt any field of law with respect to which State legislation would be permissible in the absence of this chapter. No law of any State which would be valid in the absence of this chapter may be held invalid or inapplicable by virtue of the existence of this chapter, and no officer, agency, or instrumentality of any State may be deprived by virtue of this chapter of any jurisdiction over any offense over which it would have jurisdiction in the absence of this chapter."

EFFECTIVE: 01/31/78

179-2 ANALYSIS OF STATUTE

EFFECTIVE: 01/31/78

179-2.1 Purpose of Statute

(1) This statute is aimed directly at the activities of organized crime. It makes it a Federal offense to make extortionate extensions of credit, to finance the making of extortionate extensions of credit, or to collect any extensions of credit by extortionate means.

(2) An extortionate extension of credit is any extension of credit with respect to which it is the understanding of the creditor and the debtor at the time it is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

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EFFECTIVE: 01/31/78

179-2.2 Constitutional Basis

Article I, Section 8, of the Constitution expressly empowers Congress to make "uniform laws on the subject of bankruptcies." In the exercise of this power, Congress has enacted the Bankruptcy Act, which confers on any debtor the statutory right, with certain qualifications, to be discharged of his debts by applying substantially all of his property toward their repayment. It is obvious, however, that obligations as to which there is an understanding that they may be collected, are not susceptible of being "discharged" in bankruptcy. Such transactions thus deprive the debtor of a Federal statutory right, and at the same time defeat one of the principal purposes of the Bankruptcy Act, which is to afford insolvent persons the opportunity to make a fresh start. There is also ample evidence that such transactions are being carried on on a large scale and that they have a substantial impact on interstate commerce.

EFFECTIVE: 01/31/78

179-2.3 Section 891

Section 891 sets forth definitions and rules of construction, the most important of which are the definitions of extortionate extensions of credit and extortionate means which are set out above.

EFFECTIVE: 01/31/78

179-2.4 Section 892

(1) Section 892 (a) provides: that whoever makes any extortionate extension of credit, or conspires to do so, shall be fined not more than \$10,000 or imprisoned not more than 20 years, or both.

The major difficulty which confronts the prosecution of offenses of this type is the reluctance of the victims to testify. If they are in genuine fear of the consequences of nonpayment, they are

apt to be equally or even more in fear of the consequences of testifying as complaining witnesses.

(2) Section 892 (b) provides: that if certain factors are present in connection with an extension of credit, there is prima facie evidence that the extension of credit is extortionate. The factors are (a) the inability of the creditor to obtain a personal judgment against the debtor for the full obligation; (b) a rate of interest in excess of 45 percent per annum; (c) a reasonable belief on the part of the debtor that the creditor either had used extortionate means in the collection of one or more other extensions of credit, or that he had a reputation for the use of such means; and (d) that the total amount involved between the debtor and the creditor was more than \$100.

(3) In the light of common experience, Congress has held in passing this statute that the inference of the use of extortionate means from the foregoing factors seems strong enough to make it constitutionally permissible to put the burden on the defendant to come forth with evidence to show the innocent nature of the transaction, if such was the case. Congress has observed that in arms-length transactions, people simply do not lend sums of money at exorbitant rates of interest under circumstances where they cannot enforce the obligation to repay. Where the prosecution has shown the absence of legal means to enforce the obligation, it is a reasonable inference, in the absence of evidence to the contrary, that illegal means were contemplated. Any debtor who deals with a creditor under these circumstances, knowing or reasonably believing that the creditor has used extortionate means in the past, may be fairly surmised to know what he is getting into.

(4) The debtor, of course, may be unavailable or, for reasons discussed above, unwilling to testify. Section 892 (c) permits the court, in its discretion, where evidence has already been introduced tending to show either uncollectibility or a rate of interest in excess of 45 percent, to allow evidence to be introduced tending to show the reputation as to collection practices of the creditor in any community of which the debtor was a member at the time of the extension of credit. Congress has held that the trial court is in the best possible position to appraise the probative value of such evidence and to weigh that against its possible prejudicial effects. The ban on reputation evidence as part of the prosecution's cases in chief has never been absolute, and where, as here, it is directly relevant to the state of mind of the parties in entering into the transactions, there will undoubtedly arise cases where it should very properly be before the trier of facts.

(5) Congress, in passing this statute, specifically stated that it is intended that the inference created by the presence of the facts set forth in Section 892 (b) may be weighed by the jury as evidence. It is not a mere rebuttable presumption, and is not to be treated under the rule adopted in some jurisdictions with respect to such presumptions, which are said to be wholly dispelled by the introduction of any direct evidence.

(6) The offense under Section 892, and the only offense, is the making of an extension of credit with the understanding of the debtor and the creditor at the time it is made that criminal means may be used to enforce repayment, or conspiracy to make such an extension. Where this offense can be proved by direct evidence, it may be unnecessary for the prosecution to make use of Section 892 (b) and 892 (c).

(7) Section 892 is not a Federal usury law. The charging of a rate in excess of 45 percent per annum is merely one of a set of factors which, where there is inadequate evidence to explain them, are deemed sufficiently indicative of the existence of criminal means of collection to justify a statutory inference that such means were, in fact, contemplated by the parties.

EFFECTIVE: 01/31/78

179-2.5 Section 893

(1) In organized crime, loansharking is normally carried out as a multilevel operation. Section 893 makes possible the prosecution of the upper levels of the criminal hierarchy. There will still be immense practical difficulties attending any effort to prosecute the top levels of organized crime. However, in those instances in which legally admissible evidence can be gathered to trace the flow of funds from the upper levels, the legal capability to prosecute the organizers and financiers of the underworld, as well as loan sharks at the operating level, is provided by this section.

(2) This section has been carefully drawn to preclude the possibility of creating difficulties for legitimate lenders or those who furnish financing to them. It should be noted that no case is made out where it is shown that funds were advanced to a lender who subsequently collected an indebtedness by criminal means. To come within the provisions of Section 893, the financier must have had

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reasonable grounds to believe that it was the intention of the lender to use the funds for extortionate extensions of credit.

EFFECTIVE: 01/31/78

179-2.6 Section 894

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

EFFECTIVE: 01/31/78

179-2.7 Section 895

This section authorizes the Government, in any case or proceeding before any grand jury or court involving a violation of this statute, to compel the testimony of witnesses claiming the fifth amendment privilege against self-incrimination. This may be done, however, only when, in the judgment of the USA, the testimony or evidence involved is necessary to the public interest, and then only by order of the court on the application of the USA with the approval of the Attorney General or his designated representative. Any witness so compelled to testify or produce evidence is, of course, granted immunity from prosecution on account of the matters as to which he has been compelled to give evidence. If, notwithstanding such grant of immunity, the witness refuses to testify, he may be prosecuted for contempt of court. If he agrees to testify, but testifies falsely, he can be prosecuted for perjury.

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EFFECTIVE: 01/31/78

179-2.8 Section 896

This section makes clear the congressional intention not to pre-empt any field in which state law would be valid in the absence of this statute.

EFFECTIVE: 01/31/78

179-2.9 General Applicability

This statute is not, and is not intended to be, a Federal usury law, nor does it have anything to do with interest rates as such. Congress has declared it to be "a deliberate legislative attack on the economic foundations of organized crime," stating that "most of the business of the underworld, whether in loansharking, gambling, drugs, 'protection,' or other activities, involves extensions of credit as defined in Section 891 at one or more stages." Thus Congress is of the opinion that "it may well develop that this" statute "will find as much usefulness in the investigation and prosecution of transactions entirely within the world of organized crime as it does in connection with transactions between those within that world and those who are otherwise outside it" and wished "to leave no doubt of the Congressional intention that" this statute "is a weapon to be used with vigor and imagination against every activity of organized crime that falls within its terms."

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179-3 DEPARTMENTAL POLICY

That statute is intended to extend Federal jurisdiction to the three component parts of the loansharking business: the loan shark himself, the collector, and the man providing the operating capital. However, the Department has advised the USAs that, since this statute is neither intended to preempt the field of loansharking to the exclusion of state law nor to create a Federal crime of usury, each potential investigation or prosecution must be judged in terms of the propriety of Federal intervention. The Department has, therefore, suggested the following criteria as relevant:

- (1) Is the extension of credit at issue part of a commercialized loansharking enterprise or is it merely a single incident.
- (2) What is the creditor's reputation and does he have affiliations with the organized criminal element.
- (3) Was the debtor in a position to obtain credit readily from legitimate sources or was his credit rating such that he would have turned to a loan shark.
- (4) Has there been violence or actual threat of violence as opposed to the mere belief of the debtor that he would be injured if he failed to repay.
- (5) Has an effort been made (perhaps by recent incorporation) to avoid the usury laws of the state or has the state failed to take action on a matter appropriately within its jurisdiction.

The Department has suggested that in determining whether investigation is warranted in a particular case, close contact should be maintained with the USA's Office. The Department has pointed out that although the standards listed above should be matters of primary concern, their existence or nonexistence alone should not be decisive. Consideration must be given to the amount of the loan involved, the excessiveness of the interest rate, and the willingness of the victim to testify, among other factors.

The Department requires that any prosecution under the statute be submitted to the Organized Crime and Racketeering Section prior to the seeking of an indictment.

EFFECTIVE: 01/31/78

179-4 INVESTIGATIVE PROCEDURE

(1) Violations will rarely be gratuitously reported by victims. Therefore, it will be necessary to develop the violations through informants and in conjunction with other investigations. Initially, prospective subjects can be identified by review of the pool of information already received from productive top echelon and other criminal informants knowledgeable in this field.

(2) As extortionate credit transactions constitute an important and extensive operation of those engaged in organized crime, the existence of violations should be developed in connection with other organized crime investigations, particularly those involving gambling. Past experience has shown that many extortionate loans are sought or offered as a result of the ultimate victims having suffered heavy gambling losses.

(3) A most serious impediment to successful development of prosecutable cases will be the natural reluctance of victims to testify because of fear of reprisal. This factor will require considerable ingenuity and persuasiveness on the part of Agents.

In the course of investigation, the identification and development of such individuals should be kept uppermost in the consciousness of the Agent.

EFFECTIVE: 10/18/88

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179-5 VENUE

Questions of venue should be resolved by consultation with the USA.

EFFECTIVE: 10/18/88

179-6 | REPORTING PROCEDURES

(1) In 179A cases involving LCN members and/or associates or 179B cases involving other organized crime groups (i.e., Asian organized crime, Sicilian Mafia, etc.), submit an airtel to FBIHQ within 60 days of opening the case. This communication should include facts predicated the case and sufficient identification data on the subject(s) for indexing purposes.

(2) A progress letter should be submitted every 180 days restating the predication and summary of the investigation.

(3) The results and/or summary of investigation should be reported by airtel.

(4) In 179C cases, no reporting to FBIHQ is required.

EFFECTIVE: 10/18/88

179-7 | THREAT TO LIFE - DISSEMINATION OF INFORMATION (See MAOP, Part II, 9-7; MIOG, Part I, 89-6, 166-4, and 175-22.1.)

The following guidelines cover the FBI's responsibility to warn persons of threats to their life or threats that may result in serious bodily injury and policy regarding notification to other law enforcement agencies of such threats. (Extracted from Resolution 20 dated 12/16/96. See footnotes at the end of this citation.) In all instances, manner depending upon exigencies of situation, FBIHQ should be advised of details of such threats together with a notification of action taken or a recommendation as to action to be initiated UACB.

"III. Guidelines

"A. Warning to the Person.

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"(1) Expeditious Warnings to Identifiable Persons.  
Except as provided below in paragraph IIIA(3), when a Federal Law Enforcement Agency has information that a person who is identified or can be identified through reasonable means is subject to credible threat to his/her life or of serious bodily injury, the Agency should attempt expeditiously to warn that person of the nature and extent of the threat.

"(2) Manner, Means, and Documentation of Warning.

"a. The Agency may determine the means and manner of the warning, using the method most likely to provide direct notice to the intended victim. In some cases, this may require the assistance of a third party. The Agency must document in writing in its files the content of the warning, and when and where, and by whom it was delivered to the intended victim.

"b. An Agency may seek the assistance of another law enforcement agency to provide the warning. If this is done, the Agency must document in writing in its files the notification of the threat, and when, where, and the name of the other agency's representative to whom it was delivered, along with the other agency's agreement to provide a timely warning.

"(3) Exceptions.

"a. A Federal Law Enforcement Agency need not attempt to warn an intended victim of a threat to his/her life or of serious bodily injury in the following circumstances:

"(i) when providing the warning to the intended victim is likely to cause equal or greater physical harm to one or more persons; 1

"(ii) when the intended victim knows the nature and extent of the specific threat against him/her; or

"(iii) when the intended victim is: (a) a public official who, because of his/her official position, is provided a protective detail; (b) a participant in the Witness Security Program that is administered by the United States Marshals Service; or (c) detained or incarcerated. See paragraph IIIB(1).

"b. Whenever time and circumstances permit, an Agency's decision not to provide a warning in the foregoing

circumstances must be approved, at a minimum, by a Senior Field Manager. 2 In all cases, the reasons for an Agency's decision not to provide a warning must be documented in writing in the Agency's files.

"NOTE: This paragraph does not apply to the agencies directly responsible for providing the security for the individuals referred to in paragraph IIIA(3)a(iii), above, when the threat is to the referenced individual. In such cases, documentation, if any, should be created in accordance with the agency procedures.

"B. Notification to Law Enforcement Agencies With Protective or Custodial Jurisdiction.

"(1) Expeditious Notification. When a Federal Law Enforcement Agency has information that a person described above in paragraph IIIA(3)a(iii) is subject to any threat to his/her life or of serious bodily injury, the Agency must expeditiously notify other law enforcement agencies that have protective or custodial jurisdiction.

"(2) Means, Manner, and Documentation of Notification. The notifying Agency may determine the means and manner of the notification. When providing notification, the notifying Agency shall provide as much information as possible regarding the threat and the credibility of the threat. The notifying Agency must document in writing in its files the content of the notification, and when, where, and to whom it was delivered.

"C. Notification to Law Enforcement Agencies That Have Investigative Jurisdiction.

"(1) Expeditious Notification. Except as provided below in paragraph IIIC(4), when a Federal Law Enforcement Agency has information that a person (other than a person described above in paragraph IIIA(3)a(iii)) who is identified or can be identified through reasonable means is subject to a credible threat to his/her life or of serious bodily injury, the Agency should attempt expeditiously to notify other law enforcement agencies that have investigative jurisdiction concerning the threat.

"(2) Threats to Occupied Structures or Conveyances. When a Federal Law Enforcement Agency has information that a structure or conveyance which can be identified through reasonable means is subject to a credible threat which could cause loss of life or serious bodily injury to its occupants, the Agency should provide

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expeditious notification to other law enforcement agencies that have jurisdiction concerning the threat.

"(3) Means, Manner, and Documentation of Notification.  
The Agency may determine the means and manner of the notification. The Agency must document in writing in its files the content of the notification, and when, where, and to whom it was delivered.

"(4) Exceptions.

"a. A Federal Law Enforcement Agency need not attempt to notify another law enforcement agency that has investigative jurisdiction concerning a threat:

"(i) when providing the notification to the other law enforcement agency is likely to cause equal or greater physical harm to one or more persons; or

"(ii) when the other law enforcement agency knows the nature and extent of the specific threat to the intended victim.

"b. Whenever time and circumstances permit, an Agency's decision not to provide notification to another law enforcement agency in the foregoing circumstances must be approved, at a minimum, by a Senior Field Manager. In all cases, the reasons for an agency's decision not to provide notification should be documented in writing in the Agency's files.

"IV. Rights of Third Parties.

"Nothing in these guidelines is intended to create, or does create, an enforceable legal right or private right of action.

Footnotes:

"1 If the equal or greater harm would occur to a Government informant or Agent as a result of his/her participation in an investigation, consideration should be given to extricating that individual from the investigation or taking other appropriate measures in order to minimize the risk.

"2 As used in these guidelines, 'Senior Field Manager' refers to a Federal Law Enforcement Agency operational field manager of the GS-15 rank or higher, or the person serving in that capacity in his or her absence."

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EFFECTIVE: 03/14/97

||179-8| CHARACTER - EXTORTIONATE CREDIT TRANSACTIONS

EFFECTIVE: 03/14/97

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SECTION 180. DESECRATION OF THE FLAG

180-1 DESECRATION OF THE FLAG

|On 6/11/90, the United States Supreme Court held that the  
Flag Protection Act of 1989, Title 18, U.S. Code, Section 700, was  
unconstitutional, as applied to desecration of the flag as a form of  
political protest. Henceforth, classification 180 is unenforceable  
and declared a nonviolation. |

EFFECTIVE: 01/18/91

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SECTION 181. CONSUMER CREDIT PROTECTION ACT

181-1 STATUTE

Title 15, USC, Section 1611.

Title I of act, requires financial institutions and other firms engaged in extending credit to disclose to borrowers the dollar amount and annual percentage relating to cost of credit transactions. Law also provides for administrative enforcement by various Federal regulatory agencies.

EFFECTIVE: 01/31/78

181-1.1 Section 1611. Criminal Liability For Willful and Knowing Violations

"Whoever willfully and knowingly:

"(1) gives false or inaccurate information or fails to provide information which he is required to disclose under the provisions of this subchapter or any regulations issued thereunder,

"(2) uses any chart or table authorized by the Board under Section 1606 of this title in such a manner as to consistently understate the annual percentage rate determined under Section 1606(a) (1) (A) of this title, or

"(3) otherwise fails to comply with any requirement imposed under this subchapter,

"shall be fined not more than \$5,000 or imprisoned not more than one year, or both."

EFFECTIVE: 01/31/78

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181-2 POLICY

(1) FBI's investigative jurisdiction with regard to violations of Title I of Consumer Credit Protection Act concerns only those violations involving banking institutions, including savings and loan associations and Federal credit unions. Various Federal regulatory agencies have jurisdiction over investigations of criminal aspects of any matter under Title I of this act within their administrative jurisdiction apart from criminal aspects involving banking institutions.

(2) Complaints received in Bureau field offices should be transmitted by the office directly to regulatory agencies having administrative jurisdiction over lenders involved. Any determination by a banking regulatory agency as to a possible criminal violation will be referred directly by that agency to appropriate USA. If a criminal investigation involving a banking institution is to be conducted, USA will request Bureau to conduct it.

(3) Complaints received under Title I of this act are to be transmitted directly to regulatory agencies having administrative jurisdiction over creditors involved.

EFFECTIVE: 01/31/78

181-3 MISCELLANEOUS

The following are institutions affected by Title I of Consumer Credit Protection Act as well as the Federal regulatory agency having administrative jurisdiction:

(1) National banks - Comptroller of the Currency, United States Treasury Department, Washington D.C. 20220

(2) State-chartered banks which are members of Federal Reserve System - Federal Reserve bank serving area in which state member bank is located.

(3) State-chartered banks which are not members of Federal Reserve System but deposits are insured by Federal Deposit Insurance Corporation - Federal Deposit Insurance Corporation supervising examiner for district in which nonmember insured bank is located.

(4) Savings institutions insured by Federal Deposit Insurance Corporation's Savings Association Insurance

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| Fund - Office of Thrift Supervision. |

(5) Federal credit unions - regional office of National Credit Union administration serving area in which Federal credit union is located.

(6) Creditors subject to Civil Aeronautics Board - Director, Bureau of Enforcement, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

(7) Creditors subject to Interstate Commerce Commission - Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20523.

(8) Creditors subject to Packers and Stockyards Act - nearest Packers and Stockyards Administration area supervisor.

(9) Retail, department stores, consumer finance companies, and all other creditors - Truth in Lending, Federal Trade Commission, Washington, D.C. 20580.

EFFECTIVE: 02/20/90

181-4 CHARACTER - CONSUMER CREDIT PROTECTION ACT

EFFECTIVE: 02/20/90

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SECTION 182. ILLEGAL GAMBLING BUSINESS  
ILLEGAL GAMBLING BUSINESS - FORFEITURE  
ILLEGAL GAMBLING BUSINESS - OBSTRUCTION

182-1 STATUTE

Title 18, Section 1955, effective 10-15-70 Title 18,  
Section 1511, effective 10-15-70

EFFECTIVE: 01/31/78

182-1.1 Purpose of Congress in Enacting Legislation

In passing the "Organized Crime Control Act of 1970,"  
Public Law 91-452, Congress made the following "Statement of Findings  
and Purpose":

"The Congress finds that (1) organized crime in the United States is a highly sophisticated, diversified, and widespread activity that annually drains billions of dollars from America's economy by unlawful conduct and the illegal use of force, fraud, and corruption; (2) organized crime derives a major portion of its power through money obtained from such illegal endeavors as syndicated gambling, loan sharking, the theft and fencing of property, the importation and distribution of narcotics and other dangerous drugs, and other forms of social exploitation; (3) this money and power are increasingly used to infiltrate and corrupt our legitimate business and labor unions and to subvert and corrupt our democratic processes; (4) organized crime activities in the United States weaken the stability of the Nation's economic system, harm innocent investors and competing organizations, interfere with free competition, seriously burden interstate and foreign commerce, threaten the domestic security, and undermine the general welfare of the Nation and its citizens; and (5) organized crime continues to grow because of defects in the evidence-gathering process of the law inhibiting the development of the legally admissible evidence necessary to bring criminal and other sanctions or remedies to bear on the unlawful activities of those engaged in organized crime and because the sanctions and remedies available to the Government are unnecessarily limited in scope and impact. 'It is the purpose of this Act to seek the eradication of organized crime in the United States by strengthening the legal tools in the

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evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime."

EFFECTIVE: 01/31/78

182-2 DEFINITION AND ELEMENTS OF ILLEGAL GAMBLING BUSINESSES  
(Section 1955)

"Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined not more than \$20,000 or imprisoned not more than five years, or both.

"(1) 'illegal gambling business' means a gambling business which--(i) is a violation of the law of a State or political subdivision in which it is conducted; "(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; "(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of \$2,000 in any single day.

"(2) 'gambling' includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels, or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.

"(3) 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

"If five or more persons conduct, finance, manage, supervise, direct, or own all or part of a gambling business and such business operates for two or more successive days, then, for the purpose of obtaining warrants for arrests, interceptions, and other searches and seizures, probable cause that the business receives gross revenue in excess of \$2,000 in any single day shall be deemed to have been established.

"Any property, including money, used in violation of the provision of this section may be seized and forfeited to the United States. All provisions of law relating to the seizure, summary, and judicial forfeiture procedures, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the

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proceeds from such sale, the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section, insofar as applicable and not inconsistent with such provisions. Such duties as are imposed upon the collector of customs or any other person in respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of property used or intended for use in violation of this section by such officers, agents, or other persons as may be designated for that purpose by the Attorney General.

"This section shall not apply to any bingo game, lottery, or similar game of chance conducted by an organization exempt from tax under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954, as amended, if no part of the gross receipts derived from such activity inures to the benefit of any private shareholder, member, or employee of such organization except as compensation for actual expenses incurred by him in the conduct of such activity."

EFFECTIVE: 01/31/78

182-3            DEFINITION AND ELEMENTS OF OBSTRUCTION OF STATE OR LOCAL  
LAW ENFORCEMENT (Section 1511)

"(a) It shall be unlawful for two or more persons to conspire to obstruct the enforcement of the criminal laws of a State or political subdivision thereof, with the intent to facilitate an illegal gambling business if-- "(1) one or more of such persons does any act to effect the object of such a conspiracy; "(2) one or more of such persons is an official or employee, elected, appointed, or otherwise, of such State or political subdivision; and "(3) one or more of such persons conducts, finances, manages, supervises, directs, or owns all or part of an illegal business.

"(b) As used in this section--

"(1) 'illegal gambling business' means a gambling business which-- "(i) is a violation of the law of a State or political subdivision in which it is conducted; "(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and "(iii) has been or remains in

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substantially continuous operation for a period in excess of thirty days or has a gross revenue of \$2,000 in any single day.

"(2) 'gambling' includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels, or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.

"(3) 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

"(c) This section shall not apply to any bingo game, lottery, or similar game of chance conducted by an organization exempt from tax under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954, as amended, if no part of the gross receipts derived from such activity inures to the benefit of any private shareholder, member, or employee of such organization, except as compensation for actual expenses incurred by him in the conduct of such activity.

"(d) Whoever violates this section shall be punished by a fine of not more than \$20,000 or imprisonment for not more than five years, or both."

With respect to both Sections 1955 and 1511, the legislation by which these sections were included in Title 18, USC amends Section 2516, Title 18, USC, by including violations of both sections within the list of specific offenses for which the interception of wire or oral communications under court order is permitted.

The legislation also makes explicit the intent of Congress that "no provision of this legislation shall be understood to preempt the field of gambling regulation or to relieve any person of any obligation imposed by any law of any State or possession or a political subdivision."

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182-4 ANALYSIS OF STATUTES

Section 1955 provides that whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined not more than \$20,000 or imprisoned not more than five years or both. This statute contains definitions of the terms used in the section. An "illegal gambling business" is defined as a gambling business which: is a violation of the law of a state or political subdivision in which it is conducted; involves five or more persons who conduct, finance, manage, supervise, direct or own all or part of the business; and has been or remains in substantially continuous operation for a period in excess of 30 days or has a gross revenue of \$2,000 in any single day.

"Gambling" is defined so that it includes, but is not limited to, pool-selling, bookmaking, maintaining slot machines, roulette wheels, or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.

"State" is defined to include the District of Columbia, the Commonwealth of Puerto Rico, the U.S. territories and possessions. The above provisions parallel the provisions of Section 1511.

Section 1955 provides that if five or more persons conduct, finance, manage, supervise, direct, or own all or part of a gambling business, and the business operates for two or more successive days, then for the purpose of obtaining warrants for arrests, interceptions; and other searches and seizures, probable cause that the business receives gross revenue in excess of \$2,000 in any single day shall be deemed to have been established. This provision establishes a "probable cause" finding to facilitate the enforcement of the provisions of the title. The finding goes solely to probable cause for warrants for arrests, interceptions or searches and seizures. It does not establish a legal presumption that may be used at trial to prove that the business received gross revenues in excess of \$2,000 in a single day.

Section 1955 provides that any property, including money, used in violation of the provisions of this section may be seized and forfeited to the United States.

Section 1955 excludes from the operation of the provision games of chance conducted by tax-exempt organizations where no part of the gross receipts inures to the benefit of any individual.

Section 1511 provides that it shall be unlawful for two or



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more persons to conspire to obstruct the enforcement of the criminal laws of a State or political subdivision thereof with the intent to facilitate an illegal gambling business if: (1) one or more of such persons does any act to effect the object of such a conspiracy; (2) one or more of such persons is an official or employee of such State or political subdivision; and (3) one or more of such persons conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business. The officials covered by the provisions are not limited to officials responsible for the enforcement of the criminal laws of a State or political subdivision--since officials acting in a wide variety of capacities may participate in conspiracies to obstruct State and local gambling laws. The section applies generally to persons who participate in the ownership, management, or conduct of an illegal gambling business. The term "conducts" refers both to high-level bosses and street-level employees. It does not include the player in an illegal game of chance, nor the person who participates in an illegal gambling activity by placing a bet.

Section 1511 contains definitions of the terms used in this section: An "illegal gambling business" is defined as a gambling business which: is a violation of the law of a State or political subdivision in which it is conducted; involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of the business; and has been or remains in substantially continuous operation for a period in excess of 30 days or has a gross revenue of \$2,000 in any single day.

"Gambling" is defined so that it includes, but is not limited to, pool-selling, bookmaking, maintaining slot machines, roulette wheels, or dice tables, and conducting lotteries, policy, bolita or numbers games or selling chances therein.

"State" is defined to include the District of Columbia, the Commonwealth of Puerto Rico, and U. S. territories and possessions. The intent of Sections 1511 and 1955 is not to bring all illegal gambling activity within the control of the Federal Government, but to deal only with illegal gambling activities of major proportions. In passing this legislation Congress stated that it was "anticipated that cases in which their standard can be met will ordinarily involve business-type gambling operations of considerably greater magnitude than simply meet the minimum definitions. The provisions of this title do not apply to gambling that is sporadic or of insignificant monetary proportions. It is intended to reach only those persons who prey systematically upon our citizens and whose syndicated operations are so continuous and so substantial as to be of

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national concern, and those corrupt State and local officials who make it possible for them to function."

Section 1511 excludes from the operation of the section games of chance conducted by tax-exempt organizations where no part of the gross receipts inures to the benefit of an individual.

Section 1511 provides for a fine of not more than \$20,000 or imprisonment of not more than five years, or both, for a violation of the section.

EFFECTIVE: 01/31/78

182-5 INVESTIGATIVE PROCEDURES

(1) The development and utilization of confidential informants and sources of information is essential to the development of cases in this category.

(2) It is also essential for each office to become increasingly aware of the provisions of all the pertinent state and local antigambling statutes.

Those offices having within their territories the state capital are responsible for alertness to the existence or change in local antigambling laws, and in those instances in which a state is covered by more than one office, coordinating the results with the other offices having jurisdiction within the state.

(3) The intent of Congress in passing Section 1955 was to provide the Federal Government with a new substantive weapon which could be more easily used in striking at the principal source of revenue of organized crime: illegal gambling. At the same time, in passing its companion statute, Section 1511, Congress set up investigative and prosecutive jurisdiction in the Federal Government over corruption of local officials by gamblers.

These statutory provisions are tailored to provide ease of operation and saving of manpower requirements. Therefore, every advantage should be taken of the provision which establishes presumptive probable cause after two days of gambling operation by five individuals for the purpose of obtaining warrants for arrests, interceptions, and other searches and seizures.

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(4) The establishment of evidence that five or more individuals are engaged in a gambling operation may be accomplished by normal investigative procedures, such as receipt of information from complainants, informants and witnesses and by interrogation and surveillances. The proof that five individuals, whether they are completely identified or not, are participating in a gambling business is the first and essential element in establishing a violation of this statute. Such proof operates to set up the probability that if these five individuals operate a gambling business for two successive days, their daily gross revenue is \$2,000 or more.

Therefore, it will now usually be a more simple matter to establish probable cause to obtain warrants on which gambling raids and arrests can be based. The results of the raid must still be the obtaining of admissible evidence that the daily gross revenue was over \$2,000 or more.

If five or more individuals can by admissible evidence be proven to have participated in a gambling operation for a period in excess of 30 days, the establishment of such facts will be sufficient to prove a violation of this statute.

(5) In the investigation of gambling cases where it appears that conventional investigative techniques, in the light of investigative experience, would probably fail to produce sufficient evidence to sustain a conviction, interception of wire or oral communications should be considered. If conventional investigative techniques would reasonably appear unlikely to succeed, factors leading to such reasonable belief should be set out in an affidavit requesting wiretap authority to satisfy the requirements of Section 2518(1)(c), Title 18, USC.

Use of intercept opportunity and authority should be judiciously employed. Properly used, this technique should result in the gathering of evidence leading to prosecutive action of gambling subjects. Loss of confidence by gamblers in the security of their wire communications should cause serious disruption in major gambling operations.

(6) In any wiretap operation, of paramount importance is the immediate review of tapes for leads and evidence which may supply the basis of probable cause for use in drawing up additional affidavits requesting wiretap authorization to intercept additional communications in the chain of odds and line information and layoff operations. Properly exploited, the breach of the first link in such chains of communication can lead to uncovering the prosecution of

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whole segments of gambling operations.

(7) The implementation of Sections 1955 and 1511 should be vigorously pursued in conjunction with each other. Any indication of local corruption should be intensively investigated. Gambling of any substantial importance usually cannot be maintained without corruption of some official or employee, elected, appointed, or otherwise, of a state or local subdivision. A few examples of prosecutive vulnerability arising from any coalition between corrupt State or local officials and illegal gamblers should suffice to discourage other such alliances.

EFFECTIVE: 01/31/78

182-6 DEPARTMENTAL POLICY AND SEIZURE POWER

(1) Section 1955(d), as set out above, provides that any property, including money, used in violation of the provisions of this section may be seized and forfeited to the United States. This provision of the statute is meant to be used to strip from those participating in illegal gambling businesses any property, including money, used in carrying out such operations.

(2) This provision is a most important facet of antigambling operations and it should be vigorously exploited. During the course of investigation into specific gambling operations all available proof should be gathered regarding the property and funds being used by gamblers in their operations so that at the culmination of the investigation such property may be seized in conformity with law for forfeiture to the United States.

(3) Since the wording of Section 1955(d) permits any property, including money, used in violation of this section to be seized and forfeited to the United States, the facts of any case where seizure of property or money is to be expected should be discussed with the United States Attorney for his/her opinion regarding such seizure.

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182-6.1 Forfeiture

(1) The FBI has been delegated authority to institute civil administrative forfeiture proceedings pursuant to Section 1955(d). 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) When interviewing an individual in a forfeiture investigation for the purpose of soliciting information about the interviewee, the interviewing Agent must follow the procedures described in MIOG, Part I, 190-5, subparagraphs (2) and (3).

(3) When interviewing an individual to solicit information concerning someone other than the interviewee (thereby classifying that individual as a source of information), the interviewing Agent must follow the procedure relating to promises of confidentiality as described in MIOG, Part I, 190-7.

EFFECTIVE: 06/18/87

182-7 VENUE

Venue will lie in the district where the illegal gambling business is conducted or the obstruction of state or local law has occurred. Any question of venue should be resolved with the United States Attorney.

EFFECTIVE: 10/18/88

182-8 PENALTIES

(1) Section 1955. Imprisonment for not more than five years and a fine not more than \$20,000, or both, and forfeiture of any property, including money, used in violation of this section.

(2) Section 1511. Imprisonment for not more than five years and a fine of not more than \$20,000, or both.

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EFFECTIVE: 10/18/88

| 182-9 | REPORTING PROCEDURES

(1) In 182A cases involving LCN members and/or associates or 182B cases involving other organized crime groups (i.e., Asian organized crime, Sicilian Mafia, etc.), submit an airtel to FBIHQ within 60 days of opening the case. This communication should include facts predicating the case and sufficient identification data on the subject(s) for indexing purposes.

(2) A progress letter should be submitted every 180 days restating the predication and a summary of the investigation.

(3) The results and/or summary of investigation should be reported by airtel.

(4) In 182C cases, no reporting is required.

EFFECTIVE: 10/18/88

||182-10| CHARACTER - ILLEGAL GAMBLING BUSINESS;  
ILLEGAL GAMBLING BUSINESS - FORFEITURE;  
ILLEGAL GAMBLING BUSINESS - OBSTRUCTION

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SECTION 183. RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

183-1 STATUTE

Title 18, Chapter 96, Sections 1961-1968

EFFECTIVE: 02/20/90

183-1.1 Congressional Intent

In passing the "Organized Crime Control Act of 1970," Public Law 91-452, Congress made a "Statement of Findings and Purpose," which appears in Part I, Section 182 of this manual.

EFFECTIVE: 02/20/90

183-1.2 Section 1961. Definitions (See MIOG, Part I, 145-1.16, 183-2.1(1), 272-4 (10)(d), 272-9, 272-13, 281-2.2, 281-2.2.1.)

"As used in this chapter--

"(1) 'racketeering activity' means

"(A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter or dealing in a controlled substance or listed chemical (as defined in Section 102 of the Controlled Substance Act), which is chargeable under State law and punishable by imprisonment for more than one year;

"(B) any act which is indictable under any of the following provisions of Title 18, USC: Section 201 (relating to bribery), Section 224 (relating to sports bribery), Sections 471, 472, and 473 (relating to counterfeiting), Section 659 (relating to theft from interstate shipment) if the act indictable under Section 659 is felonious, Section 664 (relating to embezzlement from pension and welfare funds), Sections 891-894 (relating to extortionate credit transactions), Section 1028 (relating to fraud and related activity in

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connection with identification documents) if the act indictable under Section 1028 was committed for the purpose of financial gain, Section 1029 (relating to fraud and related activity in connection with access devices), Section 1084 (relating to the transmission of gambling information), Section 1341 (relating to mail fraud), Section 1343 (relating to wire fraud), Section 1344 (relating to bank fraud), Sections 1461-1465 (relating to obscene matter), Section 1503 (relating to obstruction of justice), Section 1510 (relating to obstruction of criminal investigations), Section 1511 (relating to the obstruction of State or local law enforcement), Section 1512 (relating to tampering with a witness, victim or an informant), Section 1513 (relating to retaliating against a witness, victim or informant), Section 1542 (relating to false statement in application and use of passport) if the act indictable under Section 1542 was committed for the purpose of financial gain, Section 1543 (relating to forgery or false use of passport) if the act indictable under Section 1543 was committed for the purpose of financial gain, Section 1544 (relating to misuse of passport) if the act indictable under Section 1544 was committed for the purpose of financial gain, Section 1546 (relating to fraud and misuse of visas, permits, and other documents) if the act indictable under Section 1546 was committed for the purpose of financial gain, Sections 1581-1588 (relating to peonage and slavery), Section 1951 (relating to interference with commerce, robbery, or extortion), Section 1952 (relating to racketeering), Section 1953 (relating to interstate transportation of wagering paraphernalia), Section 1954 (relating to unlawful welfare fund payments), Section 1955 (relating to the prohibition of illegal gambling businesses), Section 1956 (relating to the laundering of monetary instruments), Section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), Section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), Sections 2251, 2251A, 2252, and 2258 (relating to sexual exploitation of children), Sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles,) Sections 2314 and 2315 (relating to interstate transportation of stolen property), Section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), Sections 2341-2346 (relating to trafficking in contraband cigarettes), Sections 2421-24 (relating to white slave traffic),"

"(C) any act which is indictable under Title 29, USC, Section 186 (dealing with restrictions on payments and loans to labor organizations) or Section 501(c) (relating to embezzlement from union funds),

"(D) any offense involving fraud connected with a



case under title 11 (except a case under Section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in Section 102 of the Controlled Substance Act), punishable under any law of the United States,

"(E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, or

"(F) any act which is indictable under the Immigration and Naturalization Act, Section 274 (relating to bringing in or harboring certain aliens), Section 277 (relating to aiding or assisting certain aliens to enter the United States), or Section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain;

"(2) 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency or instrumentality thereof;

"(3) 'person' includes any individual or entity capable of holding a legal or beneficial interest in property;

"(4) '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;

"(5) 'pattern of racketeering activity' requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

"(6) 'unlawful debt' means a debt

"(A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and

"(B) which was incurred in connection with the business of gambling in violation of the law of the United States, a

State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

"(7) 'racketeering investigator' means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

"(8) 'racketeering investigation' means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

"(9) 'documentary material' includes any book, paper, document, record, recording, or other material; and

"(10) 'Attorney General' includes the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law."

EFFECTIVE: 07/31/97

183-1.3 Section 1962. Prohibited Racketeering Activities

"(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of Section 2, Title 18, USC, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open

market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity of (sic) the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

"(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect interstate or foreign commerce.

"(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

"(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b), or (c) of this section."

EFFECTIVE: 01/31/78

183-1.4 Section 1963. Criminal Penalties

"(a) Whoever violates any provision of Section 1962 of this chapter shall be fined not more than \$25,000 or imprisoned not more than twenty years, or both, and shall forfeit to the United States

(1) any interest he has acquired or maintained in violation of Section 1962, and

(2) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise which he has established, operated, controlled, conducted, or participated in the conduct of, in violation

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of Section 1962.

"(b) In any action brought by the United States under this section, the district courts of the United States shall have jurisdiction to enter such restraining order or prohibitions, or to take such other actions, including, but not limited to, the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under this section, as it shall deem proper.

"(c) Upon conviction of a person under this section, the court shall authorize the Attorney General to seize all property or other interest declared forfeited under this section upon such terms and conditions as the court shall deem proper. If a property right or other interest is not exercisable or transferable for value by the United States, it shall expire, and shall not revert to the convicted person. All provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the collector of customs or any other person with respect to the disposition of property under the customs laws shall be performed under this chapter by the Attorney General. The United States shall dispose of all such property as soon as commercially feasible, making due provisions for the rights of innocent persons."

EFFECTIVE: 01/31/78

183-1.5 Section 1964. Civil Remedies

"(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of Section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights

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of innocent persons.

"(b) The Attorney General may institute proceedings under this section. In any action brought by the United States under this section, the court shall proceed as soon as practicable to the hearing and determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

"(c) Any person injured in his business or property by reason of a violation of Section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

"(d) A final judgment or decree rendered in favor of the U.S. in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the U.S."

EFFECTIVE: 01/31/78

183-1.6 Section 1965. Venue and Process

"(a) Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.

"(b) In any action under Section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.

"(c) In any civil or criminal action or proceeding instituted by the United States under this chapter in the district court of the United States for any judicial district, subpoenas issued by such court to compel the attendance of witnesses may be served in any other judicial district, except that in any civil action or proceeding no such subpoena shall be issued for service upon any

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individual who resides in another district at a place more than one hundred miles from the place at which such court is held without approval given by a judge of such court upon a showing of good cause.

"(d) All other process in any action or proceeding under this chapter may be served on any person in any judicial district in which such person resides, is found, has an agent, or transacts his affairs."

EFFECTIVE: 01/31/78

183-1.7 Section 1966. Expedition of actions

"In any civil action instituted under this chapter by the U.S. in any district court of the United States, the Attorney General may file with the clerk of such court a certificate stating that in his opinion the case is of general public importance. A copy of that certificate shall be furnished immediately by such clerk to the chief judge or in his absence to the presiding district judge of the district in which such action is pending. Upon receipt of such copy, such judge shall designate immediately a judge of that district to hear and determine action. The judge so designated shall assign such action for hearing as soon as practicable, participate in the hearings and determination thereof, and cause such action to be expedited in every way."

EFFECTIVE: 01/31/78

183-1.8 Section 1967. Evidence

"In any proceeding ancillary to or in any civil action instituted by the United States under this chapter the proceedings may be open or closed to the public at the discretion of the court after consideration of the rights of affected persons."

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183-1.9 Section 1968. Civil Investigative Demand

"(a) Whenever the Attorney General has reason to believe that any person or enterprise may be in possession, custody, or control of any documentary materials relevant to a racketeering investigation, he may, prior to the institution of a civil or criminal proceeding thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such material for examination.

"(b) Each such demand shall-

"(1) state the nature of the conduct constituting the alleged racketeering violation which is under investigation and the provision of law applicable thereto;

"(2) describe the class or classes of documentary material produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

"(3) state that the demand is returnable forthwith or prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

"(4) identify the custodian to whom such material shall be made available.

"(c) No such demand shall-

"(1) contain any requirement which would be held to be unreasonable if contained in a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation; or

"(2) require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation.

"(d) Service of any such demand or any petition filed under this section may be made upon a person by

"(1) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive

service of process on behalf of such person, or upon any individual person;

"(2) delivering a duly executed copy thereof to the principal office or place of business of the person to be served; or

"(3) depositing such copy in the United States mail, by registered or certified mail duly addressed to such person at its principal office or place of business.

"(e) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be prima facie proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

"(f)

"(1) The Attorney General shall designate a racketeering investigator to serve as racketeer document custodian, and such additional racketeering investigators as he shall determine from time to time to be necessary to serve as deputies to such officer.

"(2) Any person upon whom any demand issued under this section has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of business of such person, or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct, pursuant to this section on the return date specified in such demand, or on such later date as such custodian may prescribe in writing. Such person may upon written agreement between such person and the custodian substitute for copies of all or any part of such material originals thereof.

"(3) The custodian to whom any documentary material is so delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return thereof pursuant to this chapter. The custodian may cause the preparation of such copies of such documentary material as may be required for official use under regulations which shall be promulgated by the Attorney General. While in the possession of the custodian, no material so produced shall be available for examination, without the consent of the person who produced such material, by any individual other than the Attorney General. Under such reasonable terms and conditions as the Attorney General shall prescribe, documentary



material while in the possession of the custodian shall be available for examination by the person who produced such material or any duly authorized representatives of such person.

"(4) Whenever any attorney has been designated to appear on behalf of the United States before any court or grand jury in any case or proceeding involving any alleged violation of this chapter, the custodian may deliver to such attorney such documentary material in the possession of the custodian as such attorney determines to be required for use in the presentation of such case or proceeding on behalf of the United States. Upon the conclusion of any such case or proceeding, such attorney shall return to the custodian any documentary material so withdrawn which has not passed into the control of such court or grand jury through the introduction thereof into the record of such case or proceeding.

"(5) Upon the completion of

"(i) the racketeering investigation for which any documentary material was produced under this chapter, and

"(ii) any case or proceeding arising from such investigation, the custodian shall return to the person who produced such material all such material other than copies thereof made by the Attorney General pursuant to this subsection which has not passed into the control of any court or grand jury through the introduction thereof into the record of such case or proceeding.

"(6) When any documentary material has been produced by any person under this section for use in any racketeering investigation, and no such case or proceeding arising therefrom has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, such person shall be entitled, upon written demand made upon the Attorney General, to the return of all documentary material other than copies thereof made pursuant to this subsection so produced by such person.

"(7) In the event of the death, disability, or separation from service of the custodian of any documentary material produced under any demand issued under this section or the official relief of such custodian from responsibility for the custody and control of such material, the Attorney General shall promptly--

"(i) designate another racketeering investigator to serve as custodian thereof, and

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"(ii) transmit notice in writing to the person who produced such material as to the identity and address of the successor so designated.

Any successor so designated shall have with regard to such materials all duties and responsibilities imposed by this section upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred before his designation as custodian.

"(g) Whenever any person fails to comply with any civil investigative demand duly served upon him under this section or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one such district such petition shall be filed in the district in which such person maintains his principal place of business, or in such other district in which such person transacts business as may be agreed upon by the parties to such petition.

"(h) Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, such person may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon such custodian a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person.

"(i) At any time during which any custodian is in custody or control of any documentary material delivered by any person in compliance with any such demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian a petition for an order of such court requiring the performance by such

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custodian of any duty imposed upon him by this section.

"(j) Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section."

EFFECTIVE: 01/31/78

183-1.10 Further Provisions of Legislation

This legislation amended Title 18, USC, Section 2516, by including activities penalized by Section 1963 within the list of specific offenses for which the interception of wire or oral communications under court order is permitted. It also amends Title 18, USC, Section 2517, to permit evidence obtained through the interception of wire or oral communications under court order to be employed in civil actions. It also amends Title 18, USC, Section 1505, to make obstructions of a civil investigative demand under Section 1968 a crime.

This legislation also provides that the provisions of this title shall be liberally construed to effectuate its remedial purposes, and that nothing in this title shall supersede any provision of Federal or state law imposing criminal penalties or affording civil remedies in addition to those provided for in this title. It also provides that the title shall not limit certain authority of attorneys representing the United States to "lay before any grand jury impaneled by any district court of the United States any evidence concerning any alleged racketeering violation of law; invoke the power of any such court to compel the production of any evidence before any such grand jury; or institute any proceeding to enforce any order or process issued in execution of such power or to punish disobedience of any such order or process by any person."

EFFECTIVE: 04/24/90

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183-2 ANALYSIS OF STATUTE

These sections amended Title 18, USC, by adding a chapter, entitled "Chapter 96--Racketeer Influenced and Corrupt Organizations" containing Section 1961 through Section 1968. Section numbers that follow refer to sections as they appear in Chapter 96, Title 18, USC.

EFFECTIVE: 04/24/90

183-2.1 Explanation of Section 1961

(1) Subsection (1) "racketeering activity" (see 183-1.2 "(1)(A)-(E)" for definition) was expanded under the "Motor Vehicle Theft Law Enforcement Act of 1984" to include interstate transportation of stolen motor vehicles and trafficking in certain motor vehicles or motor vehicle parts. State offenses are included by generic designation. Federal offenses are included by specific reference. The term "racketeering activity" is a key statutory term. Under Section 1962, racketeering activity is one of three prerequisites to commission of an offense. If there is no racketeering activity or no collection of an "unlawful debt," there can be no violation of the provisions of this title.

(2) Subsection (2) defines "State" comprehensively.

(3) Subsection (3) defines "person" broadly to include any individual or organization that may hold any property interest. Any such "person" who violates the prohibitions of Section 1962 is subject to the sanctions of Sections 1963 and 1964, including forfeiture, divestiture, dissolution, and prohibition of future holding of interest.

(4) Subsection (4) defines "enterprise" to include associations in fact, as well as legally recognized associative entities. Thus, infiltration of any associative group by an individual or group capable of holding a property interest can be reached.

(5) Subsection (5) defines "pattern of racketeering activity" to require at least two acts of racketeering activity. One act in the pattern must be engaged in after the effective date of the legislation. The two acts necessary to establish the pattern must occur within a period of ten years, excluding any period the perpetrator was in confinement.

(6) Subsection (6) defines "unlawful debt" to include debts that are incurred either in connection with an illegal gambling business or an illegal usury business where the rate is at least twice the enforceable rate. This includes "loansharking" as a racketeering activity in connection with the acquisition or conduct of a legitimate business.

(7) Subsection (7) defines "racketeering investigator" to mean any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect these sections.

(8) Subsection (8) defines "racketeering investigation" to mean any inquiry conducted by a racketeering investigator to determine if there has been any violation of these sections or any final order, judgment, or other decree of any court duly entered in any case or proceeding arising under these sections.

(9) Subsection (9) defines "documentary material" to include any books, papers, records, recordings, and other materials.

(10) Subsection (10) defines "Attorney General" to include the Attorney General of the United States, the Deputy Attorney General, or any department or agency employee designated by the Attorney General or Deputy Attorney General to carry out the powers conferred upon the Attorney General under these sections.

EFFECTIVE: 04/24/90

| 183-2.2 Explanation of |Section|1962

| (1) | Section 1962 establishes a threefold prohibition aimed at stopping the infiltration of racketeers into legitimate organizations.

| (2) | Subsection (a) makes it unlawful to invest funds derived from a pattern of racketeering activity, as defined in |Section|1961 (1) and (5), or collection of unlawful debt as defined in |Section|1961(6) in any enterprise engaged in interstate or foreign commerce. The funds must have been derived by the investing party from activity in which |he/she| participated as a principal. An exception has been provided for the purchase on the open market of less than |1| percent of a company as securities where there is no

degree of control in law or in fact to the investor.

| (3) | Subsection (b) prohibits acquisition or maintenance of an enterprise through the proscribed pattern of racketeering activity or collection of unlawful debt. There is no |1| percent limitation here as in subsection (a) because (a) focuses on legitimate acquisition with illegitimate funds. Subsection (b) focuses on illegitimate acquisition with illegitimate funds. Subsection (b) focuses on illegitimate acquisition through the proscribed pattern of activity or collection of debt. Consequently, any acquisition meeting the test of subsection (b) is prohibited without exception.

| (4) | Subsection (c) prohibits the conduct of the enterprise through the prohibited pattern of activity or collection of debt. Again, the prohibition is without exception.

| (5) | Subsection (d) makes conspiracy to violate (a), (b), or (c) equally subject to the sanctions of |Sections| 1963 and 1964.

EFFECTIVE: 05/28/85

183-2.3 Explanation of Section 1963

Section 1963 provides criminal penalties--including criminal forfeitures--for violation of Section 1962.

Subsection (a) The maximum penalty authorized under subsection (a) is a \$25,000 fine and imprisonment for 20 years. But, in addition, violations shall be punished by forfeiture to the United States of all property and interests, as broadly described, which are related to the violations. Interests in an enterprise include profits and proceeds derived from a violation of Section 1962.

Subsection (b) provides for the entering of restraining orders and prohibitions and the requiring of performance bonds to prevent preconviction transfers of property to defeat the purposes of the new statutes.

Subsection (c) provides rules governing the forfeited property. In general, it incorporates by reference the long-tested customs law provisions. It adds a provision that those rights which are not exercisable or usable by the United States shall expire. The United States is required to dispose of property as promptly as is practical, making due provision for the rights of innocent persons.

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183-2.4 Explanation of Section 1964

Section 1964 provides civil remedies for the violation of Section 1962.

Subsection (a) contains broad provisions to allow for reform of corrupted organizations. Although certain remedies are set out, the list is not meant to be exhaustive, and the only limit on remedies is that they accomplish the aim set out of removing the corrupting influence and make due provision for the rights of innocent persons.

Subsection (b) allows courts to require performance bonds and to enter restraining orders to prevent frustration of the aims of these sections. Actions are to be brought by the Attorney General, as defined in Section 1961(10). The court is directed to expedite actions hereunder.

Subsection (c) provides for the recovery of treble damages by any person injured in his/her business or property by reason of the violation of Section 1962.

Subsection (d) provides specifically for collateral estoppel between final judgments or decrees rendered in criminal proceedings brought by the United States under the chapter and subsequent civil actions instituted by the United States.

EFFECTIVE: 04/24/90

183-2.5 Explanation of Section 1965

Section 1965 contains broad provisions regarding venue and process, which are modeled on present antitrust legislation.

Subsection (a) establishes venue for civil proceedings under these statutes wherever the defendant resides, is found, has an agent, or transacts his/her affairs without regard to the amount in controversy.

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Subsection (b) provides nationwide service of process on parties, if the ends of justice require it, in actions under Section 1964.

Subsection (c) provides nationwide subpoena power for witnesses in civil or criminal proceedings instituted under the chapter. A court order on good cause shown is required for issuance if the witness in a civil action resides in another district and at a place more than 100 miles from the court.

Subsection (d) provides that all other process in actions under these sections may be served wherever the person resides, is found, has an agent, or transacts his affairs.

EFFECTIVE: 04/24/90

183-2.6 Explanation of Section 1966

Section 1966 allows the Attorney General, as defined in Section 1961 (10), to obtain the maximum practical expedition of those cases of general public importance.

EFFECTIVE: 01/31/78

183-2.7 Explanation of Section 1967

Section 1967 provides that ancillary proceedings and civil actions under these sections may be open or closed to the public at the discretion of the courts.

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183-2.8 Explanation of Section 1968

Section 1968 provides for civil investigative demands as a civil counterpart of grand jury process. The provisions of this section are adapted from the Antitrust Civil Process Act, 76 Stat, 548, 15 USC, 1311 et seq., with certain variations. A principal variation is that "person" is defined (in Section 1961(3)) to include natural persons. "Attorney General" also has a broader meaning than in antitrust law (see Section 1961(10) above).

Subsection (a) authorizes the Attorney General, in the course of a racketeering investigation and prior to the institution of any civil or criminal process, to serve a civil investigative demand upon any person or enterprise believed to have material relevant to such investigation. Unlike the comparable situation in the antitrust laws, the person served need not himself be under investigation before documents relevant to the investigation may be obtained from him.

Subsection (b) requires that the demand describe the nature of the conduct and the violation being investigated, fairly identify the documents being demanded, set an immediate or reasonable future date for compliance, and identify the custodian to whom the material is to be made available.

Subsection (c) specifies that the demand may not set forth requirements which would be unreasonable, or seek information which would be privileged from disclosure, if contained in a subpoena duces tecum before a grand jury.

Subsection (d) permits service of the demand by delivery to the person specified or to an authorized business agent, by delivery to the person's principal place of business, or by registered or certified mail to the person's principal place of business.

Subsection (e) makes a verified return prima facie proof of service.

Subsection (f) (1) provides that the Attorney General may appoint a racketeering investigator to serve as a racketeer document custodian, and may appoint such deputies as are necessary.

Subsection (f) (2) requires that the person served make the designated material available for inspection, copying, and reproduction by the custodian at the person's principal place of business and at the time specified, or at such other place and time as may be agreed upon.

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Subsection (f)(3) charges the custodian with responsibility for the produced material, permits him to copy it for official use, and precludes him from making the material available to anyone other than the Attorney General, the person providing the material, or the person's authorized representative.

Subsection (f)(4) provides that the custodian may make produced material available to any attorney for the Government for use in a court or grand jury proceeding involving racketeering activities.

Subsection (f)(5) provides that, upon the completion of the racketeering investigation and any case or proceeding arising therefrom, the custodian shall return all material, other than that in control of a court or grand jury, to the person producing it.

Subsection (f)(6) provides that if after a reasonable time no case or proceeding is instituted as a result of the racketeering investigation, the material produced shall be returned upon written demand.

Subsection (g) provides that when any person fails to comply with a civil investigative demand, the Attorney General may petition for a court order for the enforcement of the demand.

Subsection (h) permits a person served with a demand to petition for a court order modifying or setting aside the demand. The time for complying with the demand will not run during pendency of the petition.

Subsection (i) permits a person served with a demand to petition for a court order compelling the custodian to perform the duties imposed upon him by this section.

Subsection (j) authorizes appropriate district courts to hear and determine matters presented them under this section. The comparable provision in the antitrust laws (Title 15, USC, 1314(d)) provides that any disobedience of a final order entered under the section shall be punished as a contempt of court, and further provides that any final order shall be subject to appeal.

EFFECTIVE: 01/31/78

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183-3 INVESTIGATIVE PROCEDURES

Cases in this category will generally be complex and important investigations. All such investigations being conducted under these new statutes should be closely coordinated with FBIHQ and with the appropriate United States Attorney.

| (1) | For a violation of these statutes to occur there must first be either a pattern of racketeering activity, as defined, or a collection of an unlawful debt in connection with the acquisition of or conduct of a legitimate business affecting interstate or foreign commerce.

| (2) | The use of the word "indirectly" in the statute prescribing (direct or indirect) investment of funds derived (directly or indirectly) from a pattern of racketeering activity or from the collection of an unlawful debt, provides a broad basis for investigation and prosecution.

| (3) | It is to be noted the tracing of funds from a pattern of racketeering activity will require imagination and ingenuity.

| (4) | During the investigation of any case involving hoodlum activity, keep in mind that the acquisition or maintenance of any interest or control in a business enterprise through a pattern of racketeering activity or the collection of an unlawful debt, or to conduct the affairs of an enterprise through a pattern of racketeering activity or the collection of an unlawful debt also violates the provisions of these statutes, even though no proof of investment is present. A case may therefore be prosecuted under one of these subsections or any combination thereof.

| (5) | Note also that an "enterprise" (Section 1961(4)) could be interpreted to include "shylocking" and bookmaking operations. The collection of any unlawful debt in relation to any such enterprise would be in violation of the provisions of these statutes, if the bookmaking operation is in violation of Section 1084, 1952, or 1955, Title 18, USC.

EFFECTIVE: 10/25/89

183-3.1 Civil Investigative Procedures (See MIOG, Part I,  
281-4.2.)

(1) These investigations are conducted pursuant to Title 18, USC, Section 1964(a) (equitable relief) and/or 1964(c) (treble damages) and provide the Government with powerful tools, in the form of permanent injunctions and organizational reformation, to eradicate entrenched criminal influence by disassociating the criminal enterprise from its economic base. The general investigative procedures of Section 183-3 are applicable to civil investigations. Civil investigative target selection and vigorous enforcement of injunctive orders by the FBI provide program managers and squad supervisors with new opportunities to achieve success in their respective investigative areas. Examples of these injunctive orders and remedial actions range from the lifetime bar of individuals from their profession or craft to restoration of democratic processes (union election reform) and competitive business practices (removal of extortionate payments.)

(2) Investigative experience has demonstrated that the composition of the civil complaint contributes significantly to the success of the litigation and the protection of Bureau interests. The complaint must be structured to protect the integrity of ongoing criminal investigations and programs, e.g., informants, from inadvertent disclosure. Government attorneys litigating a civil investigative matter must adhere to the strict provisions of the Federal Rules of Civil Procedure (FRCP) which prohibit their access to, or use of, certain privileged information derived from the criminal investigative process. To satisfy the FRCP and to assure Bureau interests, a segregation process for this information has been developed and successfully employed in prior civil investigations of both national and local targets. The process requires that all documentation or other supporting evidence used in the case be reviewed and coordinated by personnel from the Office of the General Counsel, Civil Discovery Review Unit (CDRU). The CDRU will conduct comprehensive fieldwide file reviews and indices searches for all subjects prior to complaint filing. Subsequently, the CDRU will conduct similar reviews and searches to satisfy court-ordered discovery motions after the complaint is filed. This review process permits the CDRU to excise protected information by asserting various constitutional, statutory, and governmental privileges, prior to disclosure to Government attorneys for complaint and/or trial preparation.

(3) In view of the complexity of this investigative

technique, the demands made on both field and FBIHQ resources, and its impact upon criminal investigations nationwide, ALL CIVIL INVESTIGATIONS WILL REQUIRE APPROVAL FROM THE FBIHQ SUBSTANTIVE SECTION PRIOR TO CASE INITIATION. The field division will forward to FBIHQ a copy of the draft complaint coincidental to the United State's Attorney's submission of the draft complaint to the Department of Justice (DOJ). The draft complaint will be reviewed by the CDRU and substantive section and assessed for discovery impact on FBI files and informant sources as well as potential resource dedication for processing.

EFFECTIVE: 09/09/94

183-4 VENUE

The broad venue provisions of this legislation are set out at length in Section 1965. Any question of venue should be resolved with the United States Attorney with the concurrence of the Department.

EFFECTIVE: 10/25/89

183-5 PENALTIES

These sections provide both criminal and civil penalties.

EFFECTIVE: 10/25/89

183-5.1 Criminal Penalties

For violation of Section 1962 a fine of not more than \$25,000, or imprisonment for not more than 20 years, or both, are provided. Also provided is forfeiture to the United States of any interest acquired or maintained in violation of Section 1962 and any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise established, operated, controlled, conducted or the conduct of which was participated in, in violation of Section 1962.

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EFFECTIVE: 10/25/89

183-5.2 Civil Penalties

Civil remedies are set out in Section 1964, enabling the Government or civilians injured by violations of these sections to proceed in civil actions against violators, along the lines of antitrust remedies.

EFFECTIVE: 10/25/89

183-6 POLICY (See MIOG, Part I, 281-4.3.)

(1) The following alpha designators apply to cases classified as 183 matters.

183A - Civil RICO - Civil investigations of criminal enterprises;

183B - Labor Racketeering - Cases directed against criminal organizations principally involved in labor racketeering matters;

183C - RICO - Terrorism;

183E - RICO - Property Crimes of Violence (VCMO-IT)

(2) In its guidelines concerning Title IX of the "Organized Crime Control Act of 1970," the Department has issued instructions that no criminal or civil prosecutions or grand jury investigations are to be pursued without the initial clearance of the Department.

(3) In addition, the Department has indicated that the Attorney General may designate any department or agency to conduct investigations and, in the absence of such designation, jurisdiction to conduct investigations for violations lies with the agency having jurisdiction over the violations constituting the pattern of racketeering activity listed in Title IX of the "Organized Crime Control Act of 1970."

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EFFECTIVE: 10/18/95

183-7 PRIVACY ACT - REQUIREMENTS

(1) When interviewing anyone pursuant to the civil provisions of this statute in order to solicit information about the interviewee's 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: 10/25/89

183-8 REPORTING REQUIREMENTS

EFFECTIVE: 02/12/92

183-8.1 Criminal Investigations (See MIOG, Part I, 281-4.1, 281-5.1.)

The reporting requirements for RICO investigations are set forth below. (See also MAOP, Part II, 10-9(20).)

(1) Advise FBIHQ by airtel within 60 days of opening an investigation. The summary communication should include the investigative predication; a summary of investigation conducted to date; the identity and pertinent background information on each known member or associate of the organization; the amount of drugs allegedly imported/distributed by the organization, if any; any additional information concerning the structure and/or operation of the organization; a summary of any drug purchases made to date, including the date and amount of drugs purchased, the price paid, the identity of the subject(s) from whom drugs were purchased, and a brief explanation of the investigative and/or prosecutive objectives

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furthered by purchasing the drugs; and the proposed investigative plan and objectives for the next 180 days.

(2) |Deleted|

(3) |Deleted|

(4) FBIHQ may have reason to disseminate information regarding investigations to other federal agencies at the Headquarters level in Washington, D.C. Therefore, sensitive information (e.g., informant identity, personnel information, undercover Agent (UCA) identities, informant and witness security measures) should be set forth in the administrative section of communications to FBIHQ.

(5) A progress airtel should be submitted to FBIHQ every 180 days containing a summary of investigation conducted to date; any additional subjects or organizational hierarchy developed; and the proposed investigative plan and objectives for the next 180 days. (See 183-8.2 (2).)

(6) Deleted

(7) A closing airtel should be submitted to FBIHQ within 60 days of closing an investigation, restating the predication for opening the investigation; summarizing the investigation conducted, including the use of sophisticated investigative techniques, such as electronic surveillance or undercover operations; and detailing the accomplishments attained, including an assessment of whether the organization was dismantled or significantly disrupted. (See 183-8.2 (2).)

(8) The case initiation airtel and all subsequent progress or closing communications must be disseminated to all offices and/or Legats with an investigative interest. Communications directed to Legat(s) must designate copies for the appropriate OC/Drug Operations Section and the Liaison and International Affairs Section, CID. (See 183-8.2 (2).)

(9) If prosecutive reports are prepared in OC/Drug Program classifications, furnish two copies to FBIHQ, Attention: Criminal Investigative Division.

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EFFECTIVE: 07/20/95

| 183-8.2 Civil Investigations | (See MIOG, Part I, 281-5.2.) |

(1) An airtel to FBIHQ (Attention: Civil RICO Unit and the Substantive Unit) should be submitted by the office of origin within 60 days of the opening of the case. This communication should specifically identify the case title, file number, subjects, predicate acts, investigation predication, case Agent and squad supervisor, attorney assigned, anticipated complaint filing date, date investigation opened, commentary on discovery (scope, problems, other agency involvement), a description of any agreement with other agencies regarding discovery assistance and personnel or resource dedication, identification and definition of the enterprise, La Cosa Nostra (LCN) affiliation of subjects or enterprise, a statement describing the crime problem to be addressed, identification of cases to be used as predicates within the complaint, any FBI investigative association with other law enforcement agencies or prosecutor's office, an assessment of informant disclosure, identification of any potential conflict with pending criminal cases, a description of relief to be obtained from the court, the opinion of the United States Attorney regarding the efficacy of the civil action, and the effect upon and involvement of other FBI field divisions with the proposed complaint.

(2) Progress airtels and a closing airtel should be submitted and disseminated in accordance with reporting requirements set forth under Section 183-8.1, paragraphs (5), (7) and (8).

(3) A copy of the investigation's proposed civil complaint should be forwarded by airtel to FBIHQ (Attention: Civil RICO Unit and the Substantive Unit) by the office of origin coincidental to the United States Attorney's submission of the proposed civil complaint to the Department of Justice.

(4) A priority teletype to FBIHQ (Attention: Civil RICO Unit and the Substantive Unit) should be submitted by the office of origin when a proposed civil RICO settlement agreement has been formulated. This communication should provide sufficient details to allow the Civil RICO Unit to evaluate, coordinate and disseminate the information to other interested field divisions and to coordinate the proposed settlements with the Department of Justice.

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| (5) For reporting requirements in contempt of court cases  
emanating from civil RICO cases, see MIOG, Part I, Section 69-6. |

EFFECTIVE: 12/23/93

183-9 CHARACTER - RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

EFFECTIVE: 02/12/92

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SECTION 184. POLICE KILLINGS

184-1 INVESTIGATIVE AUTHORITY

(1) Effective 6/23/89, pursuant to Congressional mandate, the FBI was expressly authorized to resume its practice of assisting local agencies in investigating felonious killings of law enforcement officials. The Anti-Drug Abuse Act of 1988 amends Title 28, United States Code (USC) by enacting newly created Section 540, which provides that:

"The Attorney General and the FBI may investigate felonious killings of officials and employees of a State or political subdivision thereof while engaged in or on account of performance of official duties relating to the prevention, detection, investigation, or prosecution of an offense against the criminal laws of a State or political subdivision, when such investigation is requested by the head of the agency employing the official or employee killed, and under such guidelines as the Attorney General or his designee may establish."

(2) Under DOJ guidelines, the FBI's role in Domestic Police Cooperation, see this manual, Part I, Section 62, entitled "Domestic Police Cooperation," is limited to: (1) FBI record checks; (2) record checks of other governmental agencies, nongovernmental organizations and concerns; (3) record checks of criminal files of local or state law enforcement agencies; (4) verifying the location of an individual whose interview is desired by local authorities; and (5) acting in a liaison capacity between local law enforcement agencies to facilitate one agency handling the investigative requests of another. No interviews with subjects, suspects, or witnesses should be conducted by Bureau personnel.

EFFECTIVE: 02/20/90

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184-2 ELEMENTS OF A POLICE KILLING

(1) For the purposes of this classification, police killings shall pertain to officers assigned to perform police functions of state or local law enforcement agencies such as police departments, sheriff's offices or state police, who are feloniously killed in the line of duty.

(2) State or local law enforcement officer means any officer of a state or political subdivision thereof who is empowered to conduct investigations of or to make arrests for offenses against the criminal laws of a state or political subdivision, and any attorney authorized by law to prosecute or participate in the prosecution of such offenses.

(3) Those individuals employed in a local or state criminal justice system but involved in protective or confinement activities are not included.

EFFECTIVE: 02/20/90

184-3 DEFINITION OF A LINE-OF-DUTY POLICE KILLING

(1) Line of Duty is defined as an officer who is feloniously killed while on duty and while acting in an official capacity; or

(2) An officer who is feloniously killed while officially off duty but on account of the performance of his/her duties or while reacting to a crime in progress, i.e., robbery or burglary.

EFFECTIVE: 02/20/90

184-4 DEFINITION OF A FELONIOUS OR ACCIDENTAL POLICE KILLING

(1) Felonious killing means any killing of a state or local law enforcement officer while engaged in or on account of the performance of official duties which would be punishable as a felony under the criminal laws of the appropriate state or political subdivision thereof.

(2) For purposes of this classification, if an officer dies as a result of an accident while performing his/her official duties, that death will be considered an accidental police killing. Examples of this are being struck by a vehicle while directing traffic, vehicle or aircraft crash while on patrol or drowning while involved in a rescue attempt.

(3) An accidental police killing should not be confused with a felonious police killing. Moreover, accidental police killings are not to be considered predication for instituting a police killing investigation under Title 28, USC, Section 540.

(4) The assistance provided prior to the enactment of Section 540 may continue to be provided by the FBI if requested by local or state law enforcement agencies in connection with an accidental police killing. That assistance included the examination of evidence submitted to the FBI's Laboratory Division, furnishing related expert testimony, and providing the FBI's Domestic Police Cooperation resources on their behalf.

EFFECTIVE: 09/24/93

184-5 NOTIFICATION TO FBIHQ

(1) FBIHQ must be promptly advised by teletype of all felonious or accidental police killings, including those cases where FBI assistance has not been requested. This information is required for accurate police killing statistics which are published by the FBI Uniform Crime Reporting Section; for preparation of letters of condolence from the Director to victims' families; for analysis by the Firearms Unit, Training Division, FBI Academy; and for providing "survivors benefits" information to the victims' agencies.

(2) The above teletype should include the following data:

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- | (a) | The name of the officer's Department |
- | (b) | The name of the Chief of that Department |
- | (c) | The telephone number of the Chief |
- | (d) | Victim's full name, sex, date of birth, rank,  
length of service, and organization
- | (e) | Date, time, and location of the incident
- | (f) | Type of weapon, if any, used
- | (g) | Detailed circumstances surrounding the victim's  
death and whether felonious or accidental. If an extremist or racial  
element is present, this fact should be included.
- | (h) | Description of the subject and local charges  
filed
- | (i) | Whether FBI assistance has been requested and  
the specific nature of the requested assistance
- | (j) | Name and address of victim's next of kin and  
names and ages of victim's children
- | (k) | Recommendation as to whether or not the Director  
should write a personal letter of condolence to the family of the  
officer killed and furnish any information which would preclude such a  
letter.

EFFECTIVE: 11/03/94

184-6 ORAL AND WRITTEN REQUESTS FOR PERMISSIBLE FBI ASSISTANCE

(1) A request for the assistance of the FBI in investigating the felonious killing of a state or local law enforcement officer shall be made in writing by the head of the agency employing the slain officer.

(2) All requests for FBI investigative assistance in investigating the felonious killings of state or local law enforcement officers shall be directed to the Special Agent in Charge of the

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appropriate FBI field office. For purposes of these guidelines, the appropriate FBI field office is the field office for the state or region in which the killing occurred.

(3) Requests for FBI investigative assistance in cases involving felonious killings of state or local law enforcement officers shall be made in writing. The request should identify the officer killed. The request should also state that the officer was killed while engaged in or on account of the performance of official duties and describe briefly the facts on which this conclusion is based. (See (4) below.)

(4) In exigent circumstances, the Bureau may honor an oral request by the head of a state or local law enforcement agency for investigative assistance in cases involving felonious killings of state or local law enforcement officers. However, any oral request for FBI's assistance submitted by a state or local law enforcement agency must be promptly followed by a written request which meets the requirements established by the paragraph above (184-6(3)).

(5) Requests by local law enforcement agencies for FBI assistance in connection with accidental police killings or for Domestic Police Cooperation assistance may be orally made by local authorities by an appropriate official.

(6) In regard to evidence being submitted by local authorities to the FBI Laboratory Division for examination, the evidence and examinations desired must, of course, be conveyed by a proper written communication.

EFFECTIVE: 09/24/93

184-7 PRIORITY INVESTIGATION REQUIRED

If permissible FBI services and functions are requested by local authorities, priority investigative attention should be given and all leads should be covered expeditiously.

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| 184-8 SURVIVOR'S BENEFITS | (See MAOP, Part I, 16-14.) |

(1) There are two federal programs, U.S. Department of Labor and the Public Safety Officers' Benefits Program administered by the U.S. Department of Justice, that provide benefits to survivors of federal and nonfederal law enforcement officers killed in the line of duty.

(2) Upon receipt of the notifying police killing teletype from the field, FBIHQ will promptly forward brochures, which set forth survivor's benefits available from the above two agencies, to the appropriate FBI Office.

(3) The case Agent should provide the above brochures to an appropriate representative of the victim officer's agency.

(4) It is the responsibility of the victim's agency or his/her survivors to contact the above agencies administering the federal programs and file the benefits claims.

EFFECTIVE: 06/26/97

184-9 OFFICE OF ORIGIN

The office of origin shall be the office covering the location of the victim officer's felonious or accidental killing.

EFFECTIVE: 02/20/90

| 184-10 CHARACTER AND CLASSIFICATION | (See MIOG, Introduction, 2-1.6.4.) |

(1) In the event the FBI is requested to investigate a felonious police killing, the initial notification teletype to FBIHQ should indicate that a full investigation has been instituted. These investigations will be classified as 184A. | (See MAOP, Part II, 3-1.1, 3-1.2.) |

(2) The reporting of a felonious police killing where no

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SECTION 185. PROTECTION OF FOREIGN OFFICIALS AND OFFICIAL  
GUESTS OF THE UNITED STATES

185-1 GENERAL PROVISIONS

EFFECTIVE: 06/08/79

185-1.1 Investigative Jurisdiction

The Act for the Protection of Foreign Officials and Official Guests of the United States which was signed into law on October 24, 1972, provides for the concurrent jurisdiction of the Federal Government in the investigation of certain acts committed against foreign officials and official guests as well as property occupied by foreign governments in this country. In enacting this legislation, Congress recognized and reaffirmed that police power to investigate, prosecute and punish common crimes such as murder, kidnaping and assault should remain with the states, but also noted that at times the commission of such crimes against foreign officials or official guests may adversely affect or interfere with the conduct of U.S. foreign affairs. Therefore, Congress felt that the Federal Government must have jurisdiction in situations where international repercussions may be felt or where the incident may have some effect on U.S. foreign relations. The Department of Justice assigned investigative jurisdiction for this Act in those cases in which the Federal Government has an interest to the FBI.

EFFECTIVE: 06/08/79

185-1.2 Definitions

(1) Foreign Official

(a) A Chief of State or political equivalent, President, Vice President, Prime Minister, Ambassador, Foreign Minister, or other officer of cabinet rank or above of a foreign government or the chief executive officer of an international organization, or any other person who has previously served in such capacity, and any member of his/her family while in the United States;

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and

(b) Any person of a foreign nationality who is duly notified to the United States as an officer or employee of a foreign government or international organization (i.e., the United States has been officially informed of his/her position and same is on record with the Department of State) and who is in the United States on official business, and any member of his/her family whose presence in the United States is in connection with the presence of such officer or employee.

(2) Foreign Government - The government of a foreign country irrespective of recognition by the United States.

(3) International Organization - A public international organization designated as such pursuant to Section 1 of the International Organizations Immunities Act (Title 22, USC, Section 288).

(4) Family

(a) A spouse, parent, brother or sister, child or person to whom the foreign official or internationally protected person stands in loco parentis (in place of parent), or

(b) Any other person living in official's household and related to the foreign official or internationally protected person by blood or marriage.

(5) Official Guest - A citizen or national of a foreign country present in the United States as an official guest of the U.S. Government and so designated by the Secretary of State.

EFFECTIVE: 06/08/79

185-2 STATUTES

EFFECTIVE: 06/08/79

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185-2.1 Sections 1116 and 1117, Title 18, USC - Murder or  
Manslaughter of Foreign Officials, Official Guests or  
Internationally Protected Persons and Conspiracy to Murder

(1) Section 1116 - Whoever kills a foreign official, official guest, or internationally protected person shall be punished as provided under Title 18, USC, Sections 1111, 1112, and 1113, except that such person who is found guilty of murder in the first degree should be sentenced to imprisonment for life and any such person who is found guilty of attempted murder shall be imprisoned for not more than twenty years.

(2) Section 1117 - If two or more persons conspire to violate Sections 1111, 1114, or 1116 of Title 18, and one or more 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.

EFFECTIVE: 06/08/79

185-2.2 Section 1201, Title 18, USC - Kidnaping

(1) 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, shall be punished by imprisonment for any term of years or for life, when the person is a foreign official or official guest within those definitions as stated in the Act.

(2) 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.

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185-2.3 Section 112, Title 18, USC - Protection of Foreign  
Officials and Official Guests, and Internationally  
Protected Persons

(1) Whoever assaults, strikes, wounds, imprisons or offers violence to a foreign official, official guest or internationally protected person or makes any other violent attack upon the person or liberty of such person or, if likely to endanger his/her person or liberty, makes a violent attack upon his/her official premises, private accommodation, or means of transport or attempts to commit any of the foregoing shall be fined not more than \$5,000, or imprisoned not more than three years, or both. Whoever in the commission of any such act uses a deadly or dangerous weapon shall be fined not more than \$10,000, or imprisoned not more than ten years, or both.

(2) Whoever willfully intimidates, coerces, threatens, or harasses a foreign official or official guest, or willfully obstructs a foreign official in the performance of his/her duties, shall be fined not more than \$500, or imprisoned not more than six months, or both.

(3) Whoever within the United States, but outside the District of Columbia and within 100 feet of any building or premises in whole or in part belonging to or used or occupied by a foreign government or by a foreign official for diplomatic or consular purposes, or as a mission to an international organization, or as a residence of foreign official, or belonging to or used or occupied by an international organization for official business or residential purposes, publicly parades, pickets, displays any flag, banner, sign, placard, or device, or utters any word, phrase, sound, or noise, for the purpose of intimidating, coercing, threatening, or harassing any foreign official or obstructing him/her in the performance of his/her duties, or congregates with two or more other persons with the intent to perform any of the aforesaid acts or to violate (1) or (2) above, shall be fined not more than \$500, or imprisoned not more than six months, or both. Nothing contained in this section shall be construed or applied so as to abridge the exercise of rights guaranteed under the First Amendment to the Constitution.

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185-2.4 Section 970, Title 18, USC - Protection of Property  
Occupied by Foreign Governments

(1) Whoever willfully injures, damages, or destroys or attempts to injure, damage, or destroy, any property, real or personal, located within the United States and belonging to or utilized or occupied by any foreign government or international organization by a foreign official or official guest, shall be fined not more than \$10,000, or imprisoned not more than five years, or both.

(2) Whoever willfully with intent to intimidate, coerce, threaten or harass--

(a) Forcibly thrusts any part of himself/herself or any object within or upon that portion of any building or premises located within the United States, which portion is used or occupied for official business or for diplomatic, consular or residential purposes by a foreign government, (including such use as a mission to an international organization); an international organization; a foreign official; or an official guest; or

(b) Refuses to depart from such portion of such building or premises after a request by an employee of a foreign government or of an international organization, if such employee is authorized to make such request by the senior official of the unit of such government or organization which occupies such portion of such building or premises; by a foreign official or any member of the foreign official's staff who is authorized by the foreign official to make such request; by an official guest or any member of the official guest's staff who is authorized by the official guest to make such request; or by any person present having law enforcement powers; shall be fined not more than \$500, or imprisoned not more than six months, or both.

EFFECTIVE: 06/08/79

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PRINTED: 02/18/98

185-2.5 Section 878, Title 18, USC - Threats and Extortion Against Foreign Officials, Official Guests and Internationally Protected Persons

(1) Whoever knowingly and willfully threatens to violate Sections 112, 1116 or 1201 by killing, kidnaping or assaulting a foreign official, official guest or internationally protected person shall be fined not more than \$5,000, or imprisoned not more than five years, or both, except that imprisonment for a threatened assault shall not exceed three years.

(2) Whoever in connection with any violation of Subsection (1) or actual violation of Section 112, 1116 or 1201 makes any extortionate demand shall be fined not more than \$20,000, or imprisoned not more than 20 years, or both.

(3) If the victim of an offense under Subsection (1) 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 alleged offender.

EFFECTIVE: 06/08/79

185-3 DEPARTMENTAL INTERPRETATION OF STATUTES

EFFECTIVE: 06/08/79

185-3.1 Section 1116

(1) Following the precedent of USC, Section 1114 (Protection of Officers and Employees of the United States), the Act adds to Title 18 a new Section 1116 relying on the definitions and penalties in Title 18, USC, Sections 1111, 1112, and 1113, except that punishment of first degree is mandatory life in prison.

(2) The term "foreign official" includes two distinct categories. With regard to the first group, such as Chiefs of State, the purpose of the foreign official's presence in the United States is immaterial.

(3) With regard to the second group, that is "officials

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or employees of a foreign government or international organization duly notified to the United States," their coverage under the Act requires they be foreign nationals and in the United States on official business. Such persons include officials and employees of foreign governments at embassies, consulates, missions and those employed at trade or commercial offices of foreign governments.

(4) The family of a foreign official in this second category is included, but unlike the first category, a family member's presence in the United States must be in connection with the presence in the United States of the related foreign official.

(5) Coverage does not extend to the families of official guests unless the family members are so designated in their own right by the Secretary of State.

(6) "Internationally Protected Person" means -

(a) A Chief of State or the political equivalent, head of government, or Foreign Minister whenever such person is in a country other than his/her own and any member of his/her family accompanying him/her; or

(b) Any other representative, officer, employee, or agent of the United States government, a foreign government, or international organization, who at the time and place concerned is entitled pursuant to international law to special protection against attack upon his/her person, freedom, or dignity, and any member of his/her family then forming part of his/her household.

(7) If the victim of an offense under Section 1116(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 Title 49, USC, 46501.

EFFECTIVE: 12/23/96

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185-3.2 Section 1201

The act of kidnaping a foreign official or official guest is punishable without regard to interstate transportation of the victim. The permissible punishment was reduced to imprisonment for any term of years or for life, but no statutory proof of harm to the victim is required to support any sentence which may be adjudged.

EFFECTIVE: 04/19/91

185-3.3 Section 112

(1) As amended by the Act, Section 112 now includes assaulting, striking, wounding, imprisoning or offering violence to, foreign officials or official guests. In addition to broadening the classes of persons covered, Section 112 (185-2.3 (2)) makes it a misdemeanor to willfully intimidate, coerce, threaten or harass a foreign official or official guest or willfully obstruct a foreign official in the performance of his/her duties. Protection against obstruction extends only to foreign officials who are actually engaged in the performance of their duties at the time of the violation.

(2) Although not all-inclusive, examples of violations would be:

(a) Following the foreign official or official guest about in a public place after being requested not to do so;

(b) Engaging in a course of conduct, including the use of abusive language, or repeatedly committing acts which alarm, intimidate, or persecute the foreign official or official guest and serves no legitimate purpose; or

(c) Communicating with the foreign official or official guest by anonymous telephone calls, or otherwise, in a manner likely to cause annoyance or alarm with no purpose of legitimate communication.

(3) Section 112 (3) is intended to protect the peace, dignity and security of foreign officials in their embassies, consulates, missions, residences, and offices.

(4) Section 112 (185-2.3 (3)) does not apply at all to the District of Columbia wherein the protected zone for both persons and premises begins at 500 feet.



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(5) Section 112 (185-2.3 (3)) applies only to acts done publicly, and specifically applies to a person who parades, pickets, displays any flag, banner, sign, placard, or device, or utters any word, phrase, sound, or noise, but only if the purpose of the conduct is to intimidate, coerce, or harass a foreign official or to obstruct him/her in the performance of his/her duties.

(6) The terms used in Section 112 (185-2.3 (3)) "purpose" and "intent" require proof that the person or persons allegedly violating this section were knowledgeable that the person or premises against which the alleged violation occurred were covered under the Act. Requirement for proof of knowledge ordinarily would be by putting violators on notice of the provisions of the Act.

(7) This is in sharp contrast to all other punitive provisions in the Act, where such knowledge by the person or persons perpetrating the crime is immaterial. The fact that the person or premises is covered under the Act, however, must be alleged and proved in order to show FBI jurisdiction.

EFFECTIVE: 04/19/91

185-3.4 Section 970

In addition to covering embassies, consulates, missions to international organizations and places of residence of foreign officials and official guests, trade and commercial offices of foreign governments, and premises and property of international organizations, this section also covers automobiles and other vehicles and personal property, under requisite ownership, use or possession. Whether the property is used for official or unofficial purposes is immaterial. Only property located within the United States is covered.

EFFECTIVE: 04/19/91

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185-4 PROTECTIVE RESPONSIBILITIES OF TREASURY DEPARTMENT

The Act does not limit or interfere with the power of the Secretary of Treasury in the discharge of his/her statutory protective responsibilities. Secret Service may take such action as may be necessary to implement these responsibilities. However, the Secret Service shall advise the FBI of the initiation of such action as soon as possible and the results thereof.

EFFECTIVE: 04/19/91

185-5 DEPARTMENTAL POLICY

Subsequent to an alleged violation of the Act, USAs or AUSAs will determine whether FBI investigation is warranted. If investigation is warranted, conduct same. Upon completion of the investigation, present the facts to the USA or an AUSA for a prosecutive opinion.

EFFECTIVE: 04/19/91

185-6 INVESTIGATIVE PROCEDURES

(1) Upon receipt of information indicating a violation or attempted violation of the Act, promptly present facts to USA or an AUSA to determine if investigation is warranted.

(2) Advise FBIHQ by telephone or teletype details of alleged violation or attempted violation together with USA's or AUSA's opinion and specific investigative action being taken. Teletype should be in form suitable for dissemination.

(3) FBIHQ authorization is not necessary prior to contacting a foreign official, member of foreign official's family, official guest or persons connected with diplomatic establishment or international organization when time is of the essence and good judgment dictates that such a contact is essential to the investigation or to determine if a possible violation of the Act exists. In the event time is not a factor expeditiously advise FBIHQ to facilitate notification to the Department of State and hold contact in abeyance until authorized by FBIHQ.

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(4) Notify United States Secret Service and United States Department of State locally.

(5) If victim is not known to be covered under the Act, immediately furnish sufficient descriptive information regarding victim to FBIHQ to enable such determination.

(6) If violation or potential violation of the Act is discovered through special coverage, advise FBIHQ, by whatever means necessary commensurate with the seriousness of the crime, for a determination as to further action. Do not present to USA or AUSA.

(7) If foreign official, member of official's family, official guest, or person connected with diplomatic or international organization is uncooperative, furnish details to FBIHQ by teletype and advise USA or AUSA that details being furnished the Department.

(8) Honorary Consuls to be covered under the Act must be foreign nationals duly notified to the United States and engaged in official business for the government they represent at the time the alleged violation occurred.

(9) Property used or occupied by Honorary Consuls may or may not be covered under Section 970. Determination will be made by USA or Department of Justice on a case-by-case basis. Basis for determination would be governed by such things as: primary purpose and use of office space, extent of foreign government business conducted from the office, and proprietary interest in office by foreign government, if any.

EFFECTIVE: 04/19/91

185-7 REPORTING PROCEDURES

(1) Title - Set forth subject's name or description of activities involved.

(2) Reporting procedures - Initial notification to FBIHQ by telephone or teletype including the fact that local authorities, U.S. Secret Service and U.S. Department of State have been advised. If investigation is initiated, keep FBIHQ advised by telephone or teletype of significant developments followed by report within 14 days. Seven copies of report should be submitted.

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EFFECTIVE: 04/19/91

185-8 FBIHQ SUPERVISION

(1) Criminal Investigative Division will supervise all violations of the Act for the Protection of Foreign Officials.

(2) In the event of a serious violation of the Act, information must be telephoned to the Assistant Director of the Criminal Investigative Division during normal working hours. If during nonworking hours, the information should be telephoned to the Supervisor on duty in the Criminal Investigative Division.

(3) If a serious violation of the Act occurs and requires use of office contingency plan, FBIHQ will maintain a command center in the Criminal Investigative Division, telephone number 324-3000, extension [REDACTED]

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EFFECTIVE: 04/19/91

185-9 CHARACTER - PROTECTION OF FOREIGN OFFICIALS (PFO)

PFO can be followed by a term describing the crime involved, or by the word "Subversive" if there are indications of political considerations, subversive or terrorist activity (except airplane hijacking). In the absence of such indications, the word "Criminal" should be used. Examples: PFO - Kidnaping - Subversive; PFO - Assault - Criminal.

EFFECTIVE: 04/19/91

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SECTION 186. REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974

186-1 STATUTES

Title 12, USC, Section 2602

Title 12, USC, Section 2606 and Title 12, USC, Section  
2607 effective 6-20-75

EFFECTIVE: 01/31/78

186-1.1 Purpose of the Act

It is the purpose of this Act to effect certain changes in the settlement process for residential real estate that will result in the following:

- (1) In more effective advance disclosure to home buyers and sellers of settlement costs;
- (2) In the elimination of kickbacks or referral fees that tend to increase unnecessarily the costs of certain settlement services;
- (3) In a reduction in the amounts home buyers are required to place in escrow accounts established to insure the payment of real estate taxes and insurance; and
- (4) In significant reform and modernization of local recordkeeping of land title information.

EFFECTIVE: 01/31/78

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PRINTED: 02/18/98

186-1.2 Definition of a Federally Related Mortgage Loan

Title 12, USC, Section 2602, defines a federally related mortgage loan as any loan secured by residential real property made by a lender whose deposits are insured or regulated by any agency of the Federal Government, or any loan which is insured, guaranteed, supplemented or assisted in any way by any agency of the Federal Government, and is secured by residential real property.

EFFECTIVE: 01/31/78

186-1.3 Section 2606

EFFECTIVE: 01/31/78

186-1.3.1 Elements

(1) No lender shall make any commitment for a federally related mortgage loan

(2) On a residence on which construction has been completed more than 12 months prior

(3) Unless it has confirmed that the following information has been disclosed in writing by the seller to the buyer

(a) Name and address of present owner

(b) Date property was acquired by present owner

(c) If seller has not owned property for at least two years and has not used it as a residence then the date and purchase price of the last arm's length transfer, a list of subsequent improvements and their costs

(4) Knowing and willful furnishing of false information or willful failure to comply with above requirements

EFFECTIVE: 11/20/90

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186-1.4 Section 2607

EFFECTIVE: 11/20/90

186-1.4.1 Elements

- (1) Give or accept a fee, kickback or thing of value
- (2) In a transaction involving a federally related mortgage loan
- (3) For referring business incident to a real estate settlement service
- (4) Or splitting any fee for rendering a real estate settlement service when no service was actually performed

EFFECTIVE: 11/20/90

186-2 POLICY

- (1) Upon receipt of a complaint conduct no investigation.
- (2) Prepare an LHM setting out the facts of the complaint in a form suitable for dissemination. Submit original and three copies to the Economic Crimes Unit, White-Collar Crimes Section, FBIHQ.
- (3) Status reflected on communication transmitting LHM should be "closed" or "RUC".
- (4) No contact with the USA for a preliminary prosecutive opinion is necessary.

EFFECTIVE: 11/20/90

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186-3 PENALTIES

(1) Title 12, USC, Section 2606 - \$10,000 fine and/or one year imprisonment

(2) Title 12, USC, Section 2607 - \$10,000 fine and/or one year imprisonment

EFFECTIVE: 11/20/90

186-4 CHARACTER - REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974

EFFECTIVE: 11/20/90

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SECTION 187. PRIVACY ACT OF 1974 - CRIMINAL

187-1 STATUTES

Title 5, USC, Section 552a(i) (1), (2), and (3), as codified  
from Public Law 93-579 dated December 31, 1974.

EFFECTIVE: 01/25/88

187-1.1 Elements

(1) Prohibits willful disclosure of material in any manner to any person or agency not entitled to receive it by an officer or employee, who by virtue of employment or official position, has possession of, or access to, agency records, which contain individually identifiable information the disclosure of which is prohibited by this statute and, who knowing that the disclosure of specific material is so prohibited.

(2) Prohibits any officer or employee of an agency willfully maintaining a system of records without meeting the notice requirements of publication and the Federal Register. (subsection (e) (4))

(3) Prohibits any person from knowingly and willfully requesting or obtaining any record concerning an individual from an agency under false pretenses.

EFFECTIVE: 01/25/88

187-2 POLICY

The Federal Bureau of Investigation has been designated by the Attorney General in accordance with 28 CFR 0.85(a) to investigate criminal violations of the Privacy Act of 1974 since no other agency was specifically designated in the Act to investigate criminal violations of the Act. The Department advised that due to the absence of defined policy, sparse legislative history and case law in this area, it desired that allegations or violations of the Privacy Act of 1974 be brought to the attention of the Public Integrity Section of

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the Criminal Division for advice on the desirability and direction of further investigation. Copies of all LHMs and reports, if subsequent investigation is requested, should be sent to the office of the appropriate USA. The Privacy Act of 1974 - Criminal is handled at FBIHQ by the Governmental Fraud Unit.

EFFECTIVE: 01/25/88

187-3 HANDLING OF COMPLAINTS

Upon the receipt of a complaint of a possible criminal violation of the Privacy Act of 1974, obtain full details from the complainant and submit to FBIHQ by LHM for dissemination to the Department for its determination as to whether any investigation should be initiated. A complaint referred by the USA should also be forwarded to FBIHQ for referral to the Department prior to the initiation of any investigation. Furnish a copy of the LHM to the USA; however, it is not necessary to discuss the merits of the complaint with USA, as the Criminal Division of the Department of Justice has retained the prerogative of determining the desirability and direction of any further investigation to be conducted which may lead to Federal prosecution. Upon submission of the LHM the field office should close its files and conduct no further investigation until specifically advised to do so by FBIHQ. The initial LHM should, at a minimum, indicate the source and nature of the complaint, date of the complaint's receipt, and contain a full description of any identifiable subject(s). In the event the Department of Justice authorizes an investigation, upon completion of the case submit a final LHM which restates the case predication, summarizes investigative findings, and details the investigation's disposition. Any prosecutive action should be summarized to include pertinent details of the complaint, indictment or information, trial proceedings, and conviction and sentencing, if appropriate. Date all significant events, and ensure a complete description of all subjects is included.

EFFECTIVE: 01/25/88

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187-4 DEFINITIONS

(1) The term "agency" means a Federal agency as defined in Section 552a of the Privacy Act of 1974 and consists of those agencies which shall publish in the Federal Register at least annually a notice of existence and character of any system of records kept by that agency to include-

- (a) the name and location of the record system;
- (b) the category of individual on whom records are maintained;
- (c) the category of records maintained in the system;
- (d) each routine use of the records contained in the system, including the categories of users and the purpose of such use;
- (e) the policies and practices of the agency regarding storage, retrievability, access controls, retentions, and disposal of the records;
- (f) the title and business address of the agency official who is responsible for the system of records;
- (g) the agency procedures whereby an individual can be notified at his/her request if the system of records contains a record pertaining to him/her;
- (h) the agency procedures whereby an individual can be notified at his/her request how he/she can gain access to any record pertaining to him/her contained in the system of records, and how he/she can contest its content; and
- (i) the categories of sources of records in the system.

(2) The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

(3) The term "maintain" includes maintain, use, or disseminate.

(4) The term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including but not limited to, his/her education, financial transactions, medical history, and criminal or employment history, and that contains his/her name, or the identifying number, symbol, or other identifying

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particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(5) The term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or the identifying particular assigned to the individual.

EFFECTIVE: 01/25/88

187-5 COPIES OF COMMUNICATIONS

LHM, submit three copies. Reports, submit two copies.

EFFECTIVE: 06/08/78

187-6 CRIMINAL PENALTIES

Misdemeanor - Fine not more than \$5,000.

EFFECTIVE: 06/08/78

| 187-7 CHARACTER - PRIVACY ACT OF 1974 - |CRIMINAL|

EFFECTIVE: 06/08/78

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SECTION 188. CRIME RESISTANCE

188-1 STATUTES

EFFECTIVE: 11/23/87

188-1.1 Public Law 90-351 (Omnibus Crime Control and Safe Streets Act of 1968)

"The Director of the FBI is authorized to develop new or improved approaches, techniques, systems, equipment and devices to improve and strengthen law enforcement." FBI crime resistance activities are designed to fulfill the mandate contained in this Statute.

EFFECTIVE: 11/23/87

188-1.2 Title 28, United States Code, Chapter 33

Title 28 provides fundamental authority for FBI activities and inherently requires public accountability and responsiveness. Implicit within the mission of the FBI is a responsibility to provide guidance to the public with regard to measures which may be used to achieve reductions in crime.

EFFECTIVE: 11/23/87

188-2 DEFINITION

Crime resistance is an attitude which manifests itself when citizens employ crime safety measures to avoid becoming victims of crime and when citizens work responsibly with law enforcement officials. The term "citizens" includes government agencies, businesses, social and religious organizations, etc. Crime resistance does not attempt to prevent people from becoming criminals, rather it is directed toward preventing people from becoming victims of crime.

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EFFECTIVE: 11/23/87

188-3 CRIME RESISTANCE OBJECTIVES

(1) To apply preventive approaches, to achieve reductions in crimes investigated by the FBI.

(2) To develop and improve crime resistance techniques which can be used by law enforcement to involve citizens in crime reduction activities.

(3) To provide crime resistance training to other law enforcement agencies.

(4) To support and, where possible, participate in the crime resistance activities of local law enforcement agencies and associations.

(5) To help foster a national attitude of crime resistance.

(6) To promote a greater awareness in the general public of the dangers of illegal drugs through the Drug Awareness Program, a part of the Crime Resistance Program.

EFFECTIVE: 11/23/87

188-4 POLICY

EFFECTIVE: 07/09/79

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188-4.1 PERSONNEL

| Certain legal factors should be considered in utilizing personnel to perform crime resistance functions. Under the Federal Tort Claims Act (Title 28, USC, Sections 2671-2680), where negligence exists, the United States may be held liable for the acts or omissions of its employees if a private person would be held liable under the law of the place where the wrong occurred. Thus, personnel furnishing crime resistance advice should exercise reasonable care to protect the interest of the recipient of that advice. Because Agents who have received specialized crime resistance training are less likely to give improper guidance than those who have not received such training, where possible the former should be called upon to give and/or review crime resistance advice offered to crime victims. It should be noted, however, the fact an individual has not received specialized crime resistance training does not constitute, in itself, a cause of action for negligence.

EFFECTIVE: 07/09/79

188-4.2 PREVENTIVE GUIDANCE

| Special Agents on assigned cases should give crime resistance counselling to victims and/or potential victims of crimes within the investigative jurisdiction of the FBI. In some instances it may be considered necessary for an Agent to conduct a physical or procedural survey of an organization or facility in order to identify weaknesses which may have been or are contributing to the crime problem being experienced. Such a survey can be employed, when necessary, as a basis for developing crime resistance guidance. Only those Agents who have attended crime resistance in-service training are considered qualified to conduct such surveys. Whenever crime resistance guidance is afforded to a victim(s) of crime, the predication for giving such advice, as well as the recommendations made, should be incorporated in an LHM. A copy of that LHM should subsequently be furnished to the victim. No property stamp should appear on the LHM in view of its content. Copies of the LHM need not be furnished to FBIHQ unless the crime problem or advice given are particularly noteworthy.

EFFECTIVE: 07/09/79

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188-4.3 Preparation of a Crime Resistance LHM

(1) An LHM should be prepared for every instance in which crime resistance guidance is afforded to a crime victim(s) or a potential crime victim(s).

(2) The LHM should be written in clear and concise terms and be self-explanatory. It should contain information which addresses each of the following areas.

(a) The identity of the crime victim or potential victim.

(b) The identity of the individual who has requested and/or received crime resistance guidance.

(c) A description of the crime problem being experienced.

(d) An identification and/or explanation of factors contributing to the crime problem which may be addressed through preventive approaches.

(e) Observations made during a survey (if one has been conducted) of the physical or procedural weaknesses which may have or can contribute to the crime problem being experienced.

(f) Recommendations made, including the basis for the recommendations. In that regard, emphasis should be placed upon recommendations which are low-cost and self-help in nature.

(g) The confidentiality, if any, of the information provided by the crime victim as an aid to help formulate crime resistance recommendations, or the confidentiality of the results of a security survey based upon a request of the crime victim.

(3) The LHM should include the following statement as its closing:

"Implementation of the recommendations contained in this memorandum will not, of course, guarantee that no further crime will be experienced by (name of crime victim or individual/firm receiving guidance). However, these recommendations should be considered as a means of reducing the vulnerabilities of (name of crime victim or recipient of advice) to the crime problems described



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herein."

IMPORTANT: When preventive recommendations are made verbally, a similar caveat should be conveyed to the recipient so it is understood that implementation of recommendations will not absolutely guarantee prevention of crimes.

(4) No recommendations will be made either orally or in writing concerning the following:

(a) The utilization of a specific retailer, a specific product, or the products of any specific manufacturer.

(b) The utilization of a polygraph as a preemployment or postemployment screening technique.

EFFECTIVE: 07/12/84

188-4.4 FBIHQ Coordination

Responsibility for supervision and coordination of FBI crime resistance activities rests with the Drug Demand Reduction Unit, Office of Public Affairs, FBIHQ. Any policy questions concerning FBI crime resistance activities not covered in this manual should be referred to the Office of Public Affairs for resolution prior to the initiation of such activities.

EFFECTIVE: 11/20/90

| 188-4.5 Reporting Requirements | (See MIOG, Part I, 12-1(8).) |

Crime Resistance Program activities of note may be incorporated as a separate paragraph in the field office's semiannual Drug Demand Reduction Program Report.

EFFECTIVE: 12/01/93

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188-5 CHARACTER - CRIME RESISTANCE

EFFECTIVE: 11/20/90

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SECTION 189. EQUAL CREDIT OPPORTUNITY ACT

189-1 STATUTES

(1) The Equal Credit Opportunity Act (ECOA), Title 15, USC, Section 1691, as codified from Title VII, of Public Law 93-495, Section 701, effective 10-28-75, passed as an amendment to the Consumer Credit Protection Act, prohibits discrimination in credit transactions on the basis of sex and marital status. On 3-23-76, Public Law 94-239 amended the ECOA to include prohibition of discrimination on account of race, color, religion, national origin, age, participation in public assistance programs, and because an applicant for credit has exercised his/her rights under the Consumer Credit Protection Act.

(2) Public Law 94-239 amended Section 706 of the Act to provide that the agency having responsibility for administrative enforcement, after failure to obtain compliance, is authorized to refer the matter to the Attorney General with recommendations that appropriate civil action be instituted. When a matter is referred to the Attorney General, or whenever he has reason to believe that one or more creditors are engaged in a pattern or practice in violation of this Act, the Attorney General may bring a civil action in any appropriate U.S. District Court for such relief as may be appropriate, including injunctive relief.

EFFECTIVE: 08/24/83

189-2 DEFINITIONS

(1) Section 702(d) of the Act defines "credit" to be the "right granted by a creditor...to defer payment of a debt or to incur debts and defer its payments or to purchase property or services and defer payment therefor."

(2) The term "Privacy Act" concerns the Privacy Act of 1974 (refer to Part I, Section 190 of this manual).

EFFECTIVE: 08/24/83

189-3 POLICY

(1) The FBI has been designated by the Attorney General to conduct investigations under the ECOA.

(2) The Department advised that the Civil Rights Division will retain the prerogative of initiating any action in the U.S. District Court. Upon completion of the preliminary investigation, no further investigation will be conducted unless specifically requested by the Civil Rights Division.

(3) Furnish copies of reports or LHMs to the USA; however, it will not be necessary to contact USA for an opinion as to the merits of the complaint or recommendation for court action. Any dissemination to other interested Federal agencies will be made by the Civil Rights Division only.

(4) Field offices should communicate directly with the Department of Justice (DOJ), Civil Rights Division attorney who generates a written or verbal request for investigation, the latter of which will also be documented by DOJ and, thereafter, transmitted to the field by airtel. In the event field offices strongly disagree with the requirements of the DOJ investigative requests and/or taskings, and cannot resolve these issues with DOJ, contact the Civil Rights Unit, FBIHQ.

EFFECTIVE: 08/10/94

189-4 HANDLING OF COMPLAINTS

(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, alleging violation of the following sections, 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 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.

(2) When field office directly receives a complaint alleging a violation of the Act, after explaining to the complainant his or her rights under the Privacy Act, conduct a preliminary investigation by interviewing the complainant to obtain the following information:

EFFECTIVE: 01/31/94

189-4.1 Credit Discrimination Generally

(1) Full background of the complainant, including his or her address; telephone number (home and work); race; national origin; age; marital status (e.g., single, married, separated, divorced, widowed); occupation, place of employment; length of time employed there; occupation, income and place of employment of spouse; educational background; military status (including dates of past service); and record of arrests or convictions; size of family living at home (indicating age of children); types and amounts of income received on a regular basis (e.g., hourly wages, salary, alimony, child support, interest on bank accounts); major financial assets (e.g., house, investments); companies with whom he or she has credit (e.g., retail credit cards); current debts and monthly payments (including mortgage, credit cards, child support, alimony, etc.).

(2) Determine why the complainant believes he or she is a victim of credit discrimination, and obtain full details, including name of the subject and office address; type of credit applied for (e.g., personal loan, installment account from a retailer, revolving bank account, car loan); amount of credit applied for; appropriate dates and locations of all dealings that he or she had with the subject or any of its agents, including all oral or written communications with these persons (indicating whether oral communications were in person or by telephone); the nature of the alleged discriminatory act; the names and addresses of the persons who

were involved, and the complainant's description of what was said or done.

(a) Ascertain where the complainant acquired his or her credit application (e.g., at the subject's credit office) and determine, with as much detail as possible, the information requested on the application, and the information the complainant provided on the application, noting any information that was requested but not provided by the applicant (e.g., name of spouse).

(b) Determine what, if any reason(s) the subject or its agents gave for refusing to extend credit to the complainant. If credit was refused, how was the refusal communicated to the complainant (orally or in writing). The complainant may not have been refused credit, but may have been otherwise treated less favorably than other applicants (e.g., spouse's signature required of women but not men). If this was the case, obtain full details.

(c) If the complainant's existing credit canceled, or the terms changed, also ascertain if and how the reason(s) is communicated to the complainant.

(3) Obtain copies of any pertinent written materials or documents that the complainant may have in his or her possession, such as copies of a credit application form, or correspondence between the subject and the complainant.

(4) Determine the details of any complaint which the complainant made with any local, state, or Federal agency concerning the same incident of credit discrimination, including the date of such complaint, and the response received to date. If possible, obtain copies of any relevant correspondence.

(5) Determine whether there has been any other occasion when the complainant or his or her spouse has been rejected for credit. If there have been such other occasions, obtain the name and address of the creditor, the date of the application for credit, the date of the rejection, and the reason(s) given for rejection.

(6) Obtain complainant's written permission to secure the complainant's credit report and the creditor's file on the complainant. If the complainant's credit rejection (or unfavorable treatment) by the subject appears to have been related to the complainant's credit status, obtain a copy of the complainant's credit report and submit along with a copy of the document providing the complainant's written permission.

(7) If a secured loan is involved (such as for a car purchase), ascertain the purchase price, the amount of any downpayment, the time in which the loan is to be repaid, the interest rate, and the amount of the monthly payment, and the kind of security that was required. Ascertain whose, if any other, signature was required on the note and security agreement.

(8) Determine if credit insurance was available (or required) through the subject at the time the complainant applied for credit. If so, obtain the details of the terms of the policy, and ascertain what information the complainant was (or would have been) required to provide if he or she applied for such insurance. If credit insurance was required, ascertain what, if any, reason was given to the complainant for that requirement. Ascertain whether the subject gave the complainant any reason to believe that the complainant might not be eligible to obtain credit insurance. Ascertain the name of the company that was to provide the credit insurance, if known.

(9) Determine the identity of any other persons who may have had contact with the subject for a loan and were rejected. Interview all such persons for pertinent details as set forth in 189-4.1 or 189-4.2 based on information furnished by complainant.

THIS PRELIMINARY INVESTIGATION DOES NOT INCLUDE AN INTERVIEW OF THE SUBJECT OR ITS AGENTS

EFFECTIVE: 11/21/89

189-4.2 Credit Discrimination Specifically Relating to Mortgage or Home Improvement Loans

While allegations of this nature may also constitute possible violations of the lending provisions of the Discrimination in Housing Statute, the Civil Rights Division of the Department has specifically instructed that such allegations are to be investigated as ECOA matters. Alleged violations of both the ECOA and the DIH Statutes are handled by the same section in the Department, the Housing Section of the Civil Rights Division. Upon receipt of this type of complaint, complainant should be interviewed and advised of the purpose of the interview. All personal or financial information will be communicated only to attorneys in the Civil Rights Division of the Department of Justice and will not be disclosed by the Department

except as necessary in connection with court proceedings. The following information should be obtained from the complainant:

- (1) Obtain full background information, including name, address, race (as ascertained by visual observation), sex, spouse's name and address, and places of employment and telephone numbers.
- (2) Details concerning the complainant's dealing with the subject prior to filing an application including:
  - (a) Why the complainant contacted the subject.
  - (b) The approximate date of the initial contact and the method of contact (telephone, mail, in person).
  - (c) The identity of the person contacted. If the complainant does not know the person's name, ascertain his or her title and obtain a description if possible.
  - (d) What, if any, information was initially requested by the subject (location of property, age, employment characteristics, etc., of the complainant).
  - (e) What information was provided by the complainant, either voluntarily or as a result of a specific request.
  - (f) All details of the subject's response. Were additional questions asked? Were any comments made about any area or neighborhood or community? If so, obtain all details. Were there any indications that not all of the wife's income would be considered, or that the wife's income would be considered only in certain circumstances? If so, what were the indications?
  - (g) Determine the nature of the complainant's loan request; the location of the property; the purchase price; the downpayment available; the loan amount requested, the interest rate requested; the terms of years requested (length of loan); was a conventional loan or FHA or VA or privately insured loan requested.
  - (h) All details of the subject's response including whether the complainant believes that he or she was discouraged from seeking a loan at the institution or discouraged from obtaining a loan on the terms required, or discouraged from obtaining a loan in the area where the property was located. Ascertain whether there were any witnesses to any of the dealings with the subject and obtain the name, address, and telephone number of such persons, if possible.



(3) If the loan request was rejected because of insufficient income or credit reasons, determine the following information from the complainants (both spouses):

(a) Full income at time of application (both spouses);

(b) Sources of income (including child support and alimony, part-time jobs, etc.);

(c) Total amounts of their debts (including child support and alimony);

(d) Total monthly debt payments;

(e) Any bankruptcies, delinquencies or other credit history which might have been cause for declination;

(f) Marital status of applicants, age of applicants, number of children and ages. Advise interviewee that the Department has requested this information to determine whether a loan denial was discriminatory.

(g) Obtain written permission to obtain a credit report, and a copy of the complainant's file from the lender.

(h) If the complainant's credit rejection (or unfavorable treatment) by the subject appears to have been related to the complainant's credit status, obtain a copy of the complainant's credit report and submit along with a copy of the document providing complainant's written permission.

(4) Ascertain whether the complainant ultimately submitted a written loan application to the subject. If not, ascertain the reason no application was submitted, whether one was subsequently submitted to another institution and its disposition, and full details of any subsequent dealings with the subject. If the complainant did submit a written loan application to the subject, obtain the following information:

(a) Obtain full details of the type, amount and terms of loan requested.

(b) Ascertain when the application was filed and with whom the complainant dealt in making the application. Determine

whether the complainant had a personal interview with a representative of the subject, and, if so, ascertain the identity of that representative, or of all such representatives with whom the complainant dealt.

(c) Ascertain whether the loan was approved, declined, offered on other terms or withdrawn. Obtain all details including why withdrawn, other terms offered or all reasons given, in writing or orally, for denying the loan.

(d) If the complainant tried to obtain additional information or had other contact with the subject after the above action, obtain all details.

(e) Obtain copies of all correspondence with the subject in the complainant's possession, and of all documents (e.g., application) relating to the loan application, which the complainant can provide.

(f) If the application was not accepted, ascertain whether the complainant sought financing for the purpose from any other institution, and, if so, what other institution(s) did he or she apply to and was application successful.

(g) Determine whether the complainant believes that the reason given by the subject for rejecting the application was the actual reason, and, if not, what he or she believes the actual reason was, and why.

(5) If this investigation includes aspects related to alleged discrimination on the basis of sex, determine the following:

(a) (If the application was a joint one) Were both prospective borrowers (husband and wife) present and/or did both participate in providing information to the subject?

(b) Who filled out the application form?

(c) Was it assumed by the subject that the husband was to be the "borrower" and the wife "co-borrower"?

(d) Was there any difference between the subject's questions concerning the employment of the husband and those concerning the employment of the wife? What were the subject's questions concerning this?

(e) Did either husband or wife have any plans to change employment in the future? Was the husband asked about his plans for future employment? Was the wife asked about her plans for future employment? Was more information requested concerning the wife's plans than the husband's? Was it suggested that the wife would be likely to stop working in the future?

(f) Did the complainant have children at the time of the application? If so, how many and what were their ages? Did the subject ask any questions about their plans to have children in the future? Did the subject require assurances that the complainants were not planning to have children as a prerequisite to counting the wife's income? If so, what assurances were required?

(g) Did anyone ever indicate to the complainant that there was a possibility that not all of the wife's income would be counted in determining their eligibility for the loan? If so, what was said and who said it? Was there any indication that the husband's income would be considered first and the wife's would be considered only if his was insufficient to qualify alone? If so, obtain details.

(h) To the complainant's knowledge, did the subject contact both the husband's and wife's employers to verify their employment? When were these contacts made?

(i) When was the complainant notified of the subject's action on their application? How was the notification made?

(6) Determine the name, address, and telephone number of any other persons whom the complainant believes may have contacted the subject for a loan and been rejected either formally or informally (interview such persons based on information furnished as set forth under 189-4.1 and 189-4.2). Upon submission of the report, the field office should close its files and conduct no further investigation until specifically told to do so by FBIHQ.

EFFECTIVE: 06/08/78

189-5 PRIVACY ACT - REQUIREMENTS

When interviewing the subject, agent or representative performing management functions, in order to solicit information about this individual's own activities, the interviewing Agent must follow the procedure described in MIOG: Part I, Section 190-5, subparagraphs (2) and (3). In all civil rights-type (noncriminal) investigations, the interviewee is to be provided with Form FD-496. The FD-302 used to report results of these interviews should clearly state that the interviewee was furnished a copy of this statement.

When interviewing an individual to solicit information concerning someone other than the interviewee (thereby classifying that individual as a source of information), the interviewing Agent must follow the procedure relating to promises of confidentiality as described in Section 190-7 of this manual.

EFFECTIVE: 04/19/91

189-6 COPIES OF COMMUNICATIONS AND DEADLINES

Submit original and two copies of LHMs and reports.  
Twenty-one workday deadline for a preliminary investigation.

EFFECTIVE: 04/19/91

189-7 PENALTY - Civil remedies only.

EFFECTIVE: 04/19/91

189-8 CHARACTER - EQUAL CREDIT OPPORTUNITY ACT

EFFECTIVE: 04/19/91

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SECTION 190. FREEDOM OF INFORMATION-PRIVACY ACTS (FOIPA)

190-1 STATUTES

(1) The Freedom of Information Act (FOIA) should be cited as Title 5, USC, Section 552.

(2) The Privacy Act of 1974 should be cited as Title 5, USC, Section 552a.

EFFECTIVE: 10/18/88

190-2 ACCESS TO GOVERNMENT RECORDS

(1) The Privacy Act permits a U.S. citizen or permanent resident alien to access records maintained in a system of records by an agency of the Executive Branch of the Federal Government. Under the Act, only records about the person making the request can be accessed. A system of records is any procedure whereby information is maintained in a manner permitting retrieval by name or other personal identifier, e.g., records maintained alphabetically, rather than chronologically.

(2) The FOIA provides for access by any person to all information maintained by a Federal agency, e.g., information relating to individuals other than the requester, and information relating to some phase or phases of the agency's work.

(3) FBI files containing information compiled for a criminal investigation, including determining possible violations of the espionage and related statutes, are exempt from the access provisions of the Privacy Act; however, a release of such records may be required under the FOIA. This includes FBI criminal, counterintelligence, and terrorism investigations.

EFFECTIVE: 10/18/88

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PRINTED: 02/18/98

190-2.1 Exclusions From the FOIA

(1) "Tip-off" provisions in the FOIA allow the Government to treat certain records as not subject to the requirements of the FOIA. The provisions may be applied to a request which involves:

(a) interference with a pending criminal investigation when the subject of the investigation is not aware of its pendency;

(b) a request for records about an informant whose status as an informant has not been officially confirmed when the request is from someone other than the informant; or

(c) a foreign intelligence, foreign counterintelligence, or international terrorism investigation when the existence of the records is classified information.

(2) If the only records about the subject of the request are within the tip-off provisions, the response will be the same as if no record identifiable with the subject of the request was found. The response to the requester in both situations will be: "There are no records responsive to your FOIA request."

[REDACTED]

b2

(3) FBIHQ approval is required prior to the use of the tip-off provisions. Approval is obtained by sending a teletype to FBIHQ, Attention: FOIPA Section Front Office, containing:

(a) sufficient information about each of the essential elements of the recommended exclusion;

(b) any additional information known about the subject matter of the request or the requester that might affect the decision;

(c) the caption and a brief description of the investigation to be protected, along with its current status, field office file number, and Bufile number if known; and

(d) the identity of the field office official recommending the use of the "tip off" and the person in the office to contact about the request.

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A copy of the teletype should be sent to the office of origin and any other interested offices. If approval is given, the field office will notify the requester as indicated above in 190-2.1(2).

EFFECTIVE: 10/18/88

190-2.2 Time Deadlines

(1) A first-party request (an individual asking for records concerning himself/herself) requires that a determination concerning disposition of the request be made under both the Privacy Act and the FOIA. While the Privacy Act contains no time deadlines concerning access to records, the time limits for responding to FOIA requests, as set out below in 190-2.2(2), should be followed.

(2) The time limits dictated by the FOIA are as follows:

(a) Within ten working days upon receipt of a valid request, i.e., one that contains sufficient descriptive information, and the authorization of living third party when necessary, provided no unusual circumstances exist; or

(b) Within no more than ten additional working days, upon written notice of extension to requester, where there exists a need to collect records from offices other than the one receiving the request, the need to collate voluminous records for a single request exists, or consultation with another agency is required.

(3) While it is recognized that these time limits may be difficult to meet in all instances, acknowledgment of the request and some indication of whether records exist that will be reviewed for possible disclosure should be made within ten working days after receipt of the request.

(4) Should the request involve a highly sensitive covert investigation, contact the Training, Research, and Field Coordination Unit, FOIPA Section, FBIHQ, by secure telephone or teletype for direction before acknowledgment.

EFFECTIVE: 10/18/88

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190-2.3 Searching Procedures (See MIOG, Part I, 190-10.4(2).)

(1) An FOIPA request sent to a field office should be considered to be a request for records in the Central Records System, unless another system of records is specifically mentioned in the request. The fact that the requester directed the request to a specific field office raises the presumption that only records of that office are of interest to the requester. Thus, while a computer search might indicate that another field office or FBIHQ has information about the subject of the request, only information entered into the computer by the field office to which the FOIPA request was directed should be considered. Also, there is normally no processing of the computer printout for an FOIPA requester, unless it contains information in addition to that maintained in the source document or unless there is no source document.

(2) In response to FOIPA requests for records in the Central Records System, a field office must search the indices and other means by which it retrieves information from this system of records, including:

(a) the general indices, both manual and automated;

(b) automated investigative support systems, such as the Criminal Law Enforcement Application (CLEA), the Investigative Support Information System (ISIS), and the Intelligence Information System (IIS); and

(c) a microcomputer data base currently being operated by the field division must be searched if a comparison of the specific FOIPA request with the list of microcomputer data bases indicates that a specific data base could reasonably be expected to contain responsive information. (See (4).)

(3) The Computer Specialist (CS) will furnish a list of microcomputer data bases (see Part II, Section 16-18.4 (3)(a)) to the Field Privacy Control Officer (FPCO) and inform the FPCO whenever a microcomputer data base is to be added to or removed from the list. The CS is responsible for providing the FPCO with a list of microcomputer data bases which shall be current, have a revision date, include the case caption and/or an indication of the subject matter and type of investigation being conducted, and indicate whenever full-text retrieval capabilities have been or are being used.

(4) The FPCO will identify the system of records with which the microcomputer data base is associated and will ensure that



the appropriate microcomputers are searched in response to FOIPA requests. When full-text retrieval capabilities are being used on the data base to be searched, in accordance with section (2)(c) above, the FPCO must determine if a full-text retrieval search of the data base is required for the FOIPA request. Full-text retrieval is used in a limited number of cases as an investigative technique to collate, analyze, and retrieve information. It is not part of the normal search process and is not used as a substitute for the general indices or the automated investigative support systems. However, if, at the time an FOIPA request is received, full-text retrieval capabilities are being used to retrieve information about individuals by name or personal identifier, a full-text retrieval search of that data base should be considered. In such cases, it may be appropriate to contact the requester before the search is conducted to determine if the requester is willing to pay the actual direct costs of conducting the search (see 28 CFR 16.10 and 16.47).

(5) A microcomputer data base used exclusively in connection with a system of records other than the Central Records System, such as the Elsur Index or the National Center for the Analysis of Violent Crime, need be searched only in response to a request involving the other system of records. 1.2

EFFECTIVE: 08/04/97

190-2.4 Filing Procedures, Classification 190

(1) In order to preserve and maintain accurate records concerning the handling of a request submitted pursuant to the FOIPA, a separate correspondence-type file in the 190 classification is to be initiated at such time as it is determined that records are being maintained which pertain to the requester or to the subject matter which has been requested; however, a separate 190 file should not be opened if an exclusion (one of the tip-off provisions) is being used and no records are being released. Such a file can be opened when searching procedures determine the existence of records under the requester's name, even though it might be determined at a later time that those records are not identical with the requester.

(2) Where the initial search fails to locate the existence of possibly identifiable information or when a tip-off provision is used to exclude all the information about the subject of the request, the incoming request letter and the response are to be

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maintained in the 190-0 or in a 190 control file, rather than in a separate, substantive file. This 190 file can also be utilized to maintain copies of correspondence where the only action by the field office is to forward the request to FBIHQ.

(3) The handling of all documents concerning the use of the tip-off provisions should be in accordance with procedures for the maintenance of the classified and informant information these documents often contain.

EFFECTIVE: 10/16/90

#### 190-2.5 Field Office Records Referral Procedures

(1) The field office receiving a request for access to FBI records must determine what records (files) are responsive to the request. Existing Bureau instructions will determine where the records are processed, i.e., at FBIHQ, at the office receiving the request, or at the office of origin (OO).

(2) All main files which show the investigation was reported to FBIHQ will be processed at FBIHQ. Unreported main files will be processed by the OO. All "see" references normally are processed by the office receiving the request. Where the request is referred to FBIHQ, the FOIPA Section, IMD, will process the main file records, not only in the FBIHQ file, but also in the files of the office receiving the request and/or the OO, which are responsive to the request.

EFFECTIVE: 10/16/90

#### 190-2.6 Seeking Access in Person

When a Privacy Act request is presented to a field office in person, the requester should be advised to put the request in writing or to complete an FD-706, after which the field office will process the request pursuant to the same time limits pertaining to requests received by mail. Should the individual wish to return to the field office to personally review processed documents, when available, it should be permitted. In addition, the requester is permitted to have one other person accompany him/her, providing the requester furnishes a statement authorizing a discussion of his/her

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personal records in the presence of this other individual. An FBI employee is to be present at all times during the requester's review of copies of FBI records in FBI space. (For instructions on FBI employees' access to their own personnel files, see MAOP, Part I, 20-4.2.)

EFFECTIVE: 06/09/95

190-2.7 Consultation and Referral to Other Agency

(1) Where material to be released includes information previously obtained from another Federal agency, that agency is to be consulted prior to release of the information.

(2) Where the material being considered for release includes copies of the original documents obtained from another Federal agency, said documents will be referred to that agency whether on local or headquarters level. The field office should inquire at the local office of the Federal agency as to the proper disposition of the referral.

EFFECTIVE: 10/16/90

190-3 CONDITIONS OF DISCLOSURE

EFFECTIVE: 10/16/90

190-3.1 Written Authorization By Subject

The Privacy Act prohibits disclosure of personal information, with certain exceptions, to any person or other agency unless specifically authorized in writing by the person to whom the record pertains.

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190-3.2 Exceptions

The Act provides for twelve exceptions to this disclosure prohibition. The exceptions used most often by the FBI in disseminating information from the central records system are:

(1) Information from FBI files may be disseminated as a proper "routine use" without the subject's authorization to any Federal Executive Branch agency to the extent the information is relevant to an authorized function of such agency. Information also may be disclosed as a routine use to a member of the Federal Judiciary if considered relevant to an authorized function of the recipient. In addition, information may be disclosed to a state or local criminal justice agency for any legitimate law enforcement purpose. ("Routine Use" is defined in the Privacy Act as the use of such record for a purpose which is compatible with the purpose for which it was collected.) Such a routine use dissemination does not constitute any change in past policy or procedures as the FBI always has been authorized to disseminate its records to other Government agencies for official business only. Such dissemination will continue under this new routine use procedure.

(2) Background and descriptive information on Federal fugitives is disseminated as a routine use to the general public and the news media to assist in the apprehension of the fugitives.

(3) News releases are disseminated as a routine use to the general public and the news media concerning apprehensions and other accomplishments.

(4) Public source information is similarly disseminated as a routine use on a continuing basis.

(5) Information is disclosed to private individuals and/or organizations when necessary to solicit information or cooperation for an authorized purpose, i.e., when it is necessary during the course of an official investigation to seek information from private individuals such as their observations, descriptions, or account of events which transpired. In such instances it might be necessary to disclose the nature of the crime of which the subject was suspect or similar personal information about the subject. Also, information may be disclosed to the private sector to the extent necessary to protect life or property.

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EFFECTIVE: 10/18/88

190-3.3 Accounting of Disclosures

(1) Each time a record pertaining to an individual is disseminated to a person or other Federal, state, local, or foreign agency, whether orally or by any type of communication, written or electronic, an accounting of such dissemination, consisting of the date, nature, and purpose of each disclosure as well as the name and address of the person or agency to whom the disclosure is made, must be maintained for at least six years or the life of the record, whichever is longer, following the disclosure.

(2) The Act provides for access by the individual subject-requester to the accounting of disclosure made of records pertaining to him/her. Normally, the FBI will release this accounting to the individual at his/her request; however, the FBI is exempt from this particular statutory requirement and, where circumstances so dictate, the FBI will deny such a request, e.g., where dissemination was of a sensitive nature to an agency such as National Security Agency, Central Intelligence Agency or Drug Enforcement Administration.

EFFECTIVE: 04/24/90

190-4 INFORMATION COMPILED FOR CIVIL LITIGATION

(1) The Privacy Act does not permit an individual access to any information compiled in reasonable anticipation of a civil action or proceeding brought either by the Government or against the Government.

(2) In order for information to be denied a requester based on this provision, Office of Management and Budget (OMB) has indicated the civil action actually must have been filed so that the agency is on notice, as the original intent of this provision is to protect information collected by or at the request of the Office of the USA in preparation for civil litigation brought by or against the Government.

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EFFECTIVE: 04/24/90

190-5 REQUIREMENTS IMPOSED BY THE PRIVACY ACT

(1) Only that information about an individual which is relevant and necessary to accomplish a purpose authorized by statute, Executive order of the President, or by the Constitution is to be recorded in FBI files.

(2) When interviewing an individual in an applicant- or civil-type investigation to solicit information about that individual, himself/herself, and not about someone else, the individual must be apprised in writing, of:

(a) The authority, whether by statute or Executive Order, which authorizes solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(b) The principal purpose for which the information is intended to be used;

(c) The routine use which may be made of the information;

(d) The effects on the interviewee, if any, of not providing all or any part of the requested information.

(3) Written forms containing the above information in all of the suitability- and civil-type classifications are maintained in each field office. At the termination of the interview, the form should be left with the interviewee. Note: This requirement is not necessary in those applicant matters which are referred to the FBI by another agency or department, including the Department of Justice. The FBI conducts the interviews in these instances with the understanding that the referral agency or department notifies each person it solicits information from of the Privacy Act requirements described in subparagraph (2).

(4) All information about an individual is to be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness in any determination made concerning the individual based on such information. Only information meeting these four standards should be disseminated to other agencies.

EFFECTIVE: 04/24/90

190-5.1 Restrictions on Information Relating to First Amendment Rights

(1) The FBI is prohibited from maintaining records describing how any individual exercises rights guaranteed by the First Amendment unless authorized by statute or by the individual, or unless the particular record is pertinent to and within the scope of an authorized law enforcement activity.

(2) This restriction prohibits the collection, maintenance, use or dissemination of information concerning an individual's religious or political beliefs or activities, or membership in associations or organizations, unless:

(a) The individual has volunteered such information for his/her own benefit;

(b) The information is expressly authorized by statute to be collected, maintained, used, or disseminated; or

(c) The activities involved are pertinent to and within the scope of an authorized investigation, adjudication, or correctional activity.

EFFECTIVE: 07/09/79

190-6 CRIMINAL PENALTIES

EFFECTIVE: 07/09/79

190-6.1 Unauthorized Disclosure

Any officer or employee of any agency, who by virtue of his/her employment or official position, has possession of, or access to, agency records which contain individually identifiable information, the disclosure of which is prohibited by this Section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

EFFECTIVE: 01/21/86

190-6.2 Unpublished Records System

Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of the Act shall be guilty of a misdemeanor and fined not more than \$5,000.

EFFECTIVE: 01/21/86

190-6.3 Use of False Pretenses

Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

EFFECTIVE: 01/21/86

190-6.4 FBI Jurisdiction

The FBI has been designated by the Department of Justice as the agency having jurisdiction to investigate violations of the Privacy Act, described above. The classification is 187, Privacy Act of 1974 - Criminal.



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EFFECTIVE: 01/21/86

190-7 PROMISE OF CONFIDENTIALITY

EFFECTIVE: 01/21/86

190-7.1 When Applicable

(1) In applicant, background-type investigations and investigations involving civil matters, as well as administrative inquiries, individuals interviewed in order to solicit information about someone other than the interviewee have a right to request from the FBI an express promise that the identity of the interviewee will be held in confidence. Such a promise is not to be encouraged, but granted on a selective basis when it is the only means to secure the information from the individual being interviewed.

(2) All individuals from whom information is sought in applicant- and civil-type cases must be apprised not only of the purpose for which the information is sought, as well as the uses to be made of the information, but also of the provisions of the Privacy Act regarding access to records and the allowance for confidentiality.

(3) At what point in the interview process the person interviewed should be told of the Privacy Act and given the opportunity to request confidentiality is left to the best judgment of the interviewing Agent. However, in almost every case, the logical time is at the beginning of the interview to avoid the appearance of intentionally misleading or misinforming the person interviewed. Where confidentiality is requested, the person being interviewed should be assured any information he or she provides, which could identify them as the source, will be withheld from anyone requesting access to the records under the Privacy Act or the Freedom of Information Act.

EFFECTIVE: 01/21/86

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190-7.2 Recording of Promise of Confidentiality

Where such an express promise has been requested and granted, it is absolutely imperative this fact be clearly recorded along with the results of the interview. Failure to note the interviewee was granted an express promise of confidentiality will result in the disclosure of the interviewee's identity to the subject of the investigation upon the latter's request to review the results of the investigation in accordance with the Privacy Act.

EFFECTIVE: 01/21/86

190-7.3 Types of Confidentiality (See MIOG, Part II, 17-5.4.)

A promise of confidentiality, when furnished to a source of information, may pertain to any one of three areas:

(1) Source's identity to be concealed only from the subject of the investigation.

(2) Source's identity not to be unnecessarily revealed until such time as the information is required in a judicial proceeding or administrative hearing.

(3) Source's identity is to be concealed from anyone outside the FBI, in which case the use of "T" symbols should be employed in all communications prepared for dissemination.

Refer to MIOG, Part II, Section 17-5.4, for specific instructions for granting confidentiality to individuals interviewed during background investigations and for providing the results to FBIHQ.

Refer to Correspondence Guide-Field, Section 2, for specific instructions and additional guidance for reporting results of interviews to FBIHQ wherein confidentiality has been granted to interviewees during background investigations.

EFFECTIVE: 07/15/93

190-7.4 Custodian of Records

The express promise of confidentiality may also be furnished on request to a state or local custodian of records, e.g., police department, private corporation, credit bureau, in applicant- and civil-type investigations. The custodian must be made aware that this is the only procedure which will afford adequate confidentiality to his/her agency.

EFFECTIVE: 01/21/86

190-8 USE OF SOCIAL SECURITY ACCOUNT NUMBER (SSAN)

EFFECTIVE: 01/21/86

190-8.1 Restrictions

(1) No Federal, state or local agency shall deny an individual any right, benefit or privilege provided by law because of the individual's refusal to disclose his/her SSAN except:

(a) A disclosure required by Federal statute, or

(b) A disclosure to a Federal, state or local agency maintaining a system of records in existence prior to 1/1/75, if such disclosure was required under statute or regulation adopted prior to that date to verify the identity of the individual.

(2) When requesting an individual to furnish SSAN, ensure that the individual be apprised of whether such disclosure is voluntary or mandatory, the statutory or other authority for its solicitation, and what uses will be made of it.

(3) There is no statutory provision for enforcement of this requirement; therefore, the FBI is not authorized to conduct an investigation of alleged violations by Federal, state or local agency personnel.

EFFECTIVE: 01/21/86

190-9 EMPLOYEE STANDARDS OF CONDUCT

| Except to the extent permitted pursuant to the Privacy Act, employees of the FBI shall:

| (1) | Collect no information of a personal nature unless authorized to collect it to achieve a function or carry out a responsibility of the FBI;

| (2) | Collect only that information which is necessary to FBI functions or responsibilities;

| (3) | Collect information, wherever practicable, directly from the individual to whom it relates;

| (4) | Inform individuals from whom information (about themselves) is collected, of the authority for collection, the purposes thereof, the uses that will be made of the information, and the effects both legal and practical, of not furnishing the information;

| (5) | Neither collect, maintain, use, nor disseminate information concerning an individual's religious or political beliefs or activities or his/her membership in associations or organizations, unless, (i) the individual has volunteered such information for his/her own benefit; (ii) the information is expressly authorized by statute to be collected, maintained, used, or disseminated; or (iii) the activities involved are pertinent to and within the scope of an authorized investigation, adjudication or correctional activity;

| (6) | Advise their supervisors of the existence or contemplated development of any record system which retrieves information about individuals by individual identifier;

| (7) | Wherever required by the Act, maintain an accounting, in the prescribed form, of all dissemination of personal information outside the Department, whether made orally or in writing;

| (8) | Disseminate no information concerning individuals outside the Department except when authorized by Title 5, USC, Section 552a, or pursuant to a routine use published in the Federal Register;

| (9) | Maintain and process information concerning individuals with care in order to ensure that no inadvertent disclosure of the information is made either within or without the Department; and

(10) Call to the attention of the field office Privacy Control Officer any information in a system maintained by the FBI which is not authorized to be maintained under the provisions of the Privacy Act of 1974, including information on First Amendment activities and information that is inaccurate, irrelevant or so incomplete as to risk unfairness to the individual concerned. The field office Privacy Control Officer should then consider the appropriate action to be taken after consultation with FBIHQ where necessary.

EFFECTIVE: 01/21/86

190-10 SYSTEMS OF RECORDS-NOTICE REQUIREMENTS

EFFECTIVE: 01/21/86

190-10.1 Definitions

(1) Record - a documentary or computer record containing personal information identifiable with a U.S. citizen or permanent resident alien.

(2) System of records - a group of "records," under the control of the FBI, from which information is retrieved by name or other personal identifier.

EFFECTIVE: 01/21/86

190-10.2 Notice Requirements

(1) The Department of Justice, like every Executive Branch agency, must publish in the Federal Register a complete description of each system of records maintained by each component of the Department (system notice).

(2) For the FBI, the Department has published notices of several records systems, including National Crime Information Center (NCIC), Criminal Justice Information Services Division Records System, and the Central Records System.

(3) The FBI Central Records System is comprised of the over 200 classifications of investigative, administrative and correspondence files maintained at FBIHQ, all FBI field divisions, and the Legal Attache offices abroad. Information is retrieved from the Central Records System by means of manual and/or automated indices in each location at which the records are stored.

EFFECTIVE: 04/08/96

190-10.3 Noncompliance

Maintaining a system of records, as described above, independent of published FBI systems, without meeting the notice requirements, can subject the FBI to civil liability and the responsible FBI official or employee to criminal prosecution (see 190-6.2).

EFFECTIVE: 10/18/88

190-10.4 Special Indices Relating to Individual Major Investigations

(1) The FBI can maintain a separate index or listing, containing individually retrievable personal information, only by publishing a system notice in the Federal Register, or making the information also retrievable through a search of the Central Records System (GAO Report to the Comptroller General, 12/26/77).

(2) Making information about an individual retrievable through a search of the Central Records System is accomplished by making the individual's name or personal identifier retrievable in the general indices, in an automated investigative support system, or in a microcomputer searched under the procedures described in 190-2.3.

(3) If the information to be maintained separately (e.g., in a microcomputer) is only duplicative of that which was previously made equally retrievable through the Central Records System, the information is already part of the Central Records System and no additional action need be taken.

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SECTION 191. FALSE IDENTITY MATTER

191-1 INVESTIGATIVE GUIDELINES

Absent specific statutory authority, there will be no investigation conducted under the False Identity Program to identify persons who may have fraudulently obtained state birth certificates, drivers' licenses, or similar identification, unless this is undertaken in connection with the investigation of some matter within the FBI's investigative jurisdiction. This is not to say that the checking of public state records pertaining to the issuance of birth certificates, drivers' licenses, or similar identification is in any way improper. Such investigative activity may be a valuable investigative tool and should be pursued wherever germane to and likely to be productive in FBI criminal investigations. Without some nexus to established FBI investigative jurisdiction, however, the maintenance of an independent False Identity Program is not warranted. (See Part I, Section 253, of this manual, regarding "Fraud and Related Activity in Connection with Identification Documents; Mailing Private Identification Documents Without a Disclaimer.")

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SECTION 192. HOBBS ACT - COMMERCIAL INSTITUTIONS;  
HOBBS ACT - ARMORED CARRIERS

192-1 BACKGROUND

(1) This manual section deals only with Hobbs Act - Commercial Institutions (HA-CI) and Hobbs Act - Armored Carriers (HA-AC). Hobbs Act matters involving corruption of public officials and labor-related violations are explained in Part I, Section 194 of this manual entitled, "Corruption of State and Local Public Officials," and Part I, Section 195 of this manual entitled, "Hobbs Act - Labor Related."

(2) The Hobbs Act (HA) was enacted on 7/3/46, and the investigative jurisdiction was assigned to the FBI. The HA was drafted to protect interstate and foreign commerce from obstruction by robbery and extortion committed by any person involving labor-related matters, financial institutions (FI), commercial institutions (CI) and corruption of public officials.

(3) Upon its enactment, HA violations were designated a 92 classification and entitled, "Anti-Racketeering - Hobbs Act." On 6/25/48, the HA was amended and codified into Title 18, USC, Section 1951.

(4) On 6/21/77, all HA violations were removed from the 92 classification. The HA-FI was given a 192 classification and HA-CI matters were given the 193 classification. On 9/21/80, the 193 classification was discontinued and the HA-CI was incorporated into the 192 classification.

(5) On 5/1/85, a new subclassification entitled, "Hobbs Act - Armored Carriers" (192C) was created to more effectively investigate and prosecute matters involving robberies or extortions of armored carriers.

(6) On 11/10/86, the "Criminal Law and Procedure Technical Amendments Act of 1986" amended Title 18, USC, Section 2113(a), to explicitly include bank robberies committed by extortion. All Hobbs Act - Financial Institutions (HA-FI) violations were removed from the 192 classification, renamed "Bank Extortion," and reclassified as 91F cases.

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EFFECTIVE: 10/18/88

192-2 HOBBS ACT STATUTE AND PENALTIES, TITLE 18, USC, SECTION  
1951

"(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than \$10,000 or imprisoned not more than twenty years, or both.

"(b) As used in this section--

"(1) The term 'robbery' means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

"(2) The term 'extortion' means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

"(3) The term 'commerce' means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

"(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101-115, 151-166 of Title 29 or sections 151-188 of Title 45."

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192-3 HOBBS ACT ELEMENTS

- (1) The accused
  - (a) Obstructed, delayed, or affected commerce or the movement of any article or commodity in commerce.
  - (b) Conspired or attempted to do the above.
  - (c) Committed or threatened physical violence to any person or property in furtherance of a plan or purpose to do the above.

- (2) By
  - (a) Robbery.
  - (b) Extortion.

EFFECTIVE: 10/26/87

192-4 COMMENTS AND CLARIFICATIONS REGARDING THE HOBBS ACT

(1) The FBI and the DOJ, for purposes of logical management, under the Hobbs Act, have placed business enterprises engaged in, or involved in interstate commerce into the categories: Commercial Institutions (CI) and Armored Carriers (AC).

(2) In cases wherein extortionate demands are made against Federal agencies where the elements of the Federal Extortion Statute are not present or cannot be established, investigation should be instituted under the HA-CI classification. In situations where a Federal Extortion violation is also present a dual character of Extortion and HA-CI should be utilized.

(3) Federal jurisdiction under the HA depends on whether the subject's actions might in any way obstruct, delay, or affect interstate commerce. A minimal effect to interstate commerce is sufficient to establish violation of the HA.

(4) In cases wherein extortionate demands are made against banks that are not federally chartered and/or insured, an investigation should be instituted under the HA-CI classification.

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EFFECTIVE: 10/26/87

192-5 DEPARTMENT OF JUSTICE (DOJ) GUIDELINES

(1) The DOJ has restricted the application of the robbery provisions of the HA to cases which involve organized crime or gang activities or which are part of a wide-ranging scheme, such as multiple robberies, interstate travel, etc. The reason for these restrictions, with the exceptions of those involving armored carriers (see (2) below), is that the DOJ has determined that the majority of local armed robbery matters are best investigated and prosecuted by local agencies.

(2) The DOJ poses no objection to use of the HA pursuant to robberies of armored carriers since such robberies generally require organization, a certain degree of sophistication and are often accompanied by violence.

(3) Thefts, larcenies, burglaries and/or mysterious disappearance of monies transported by armored carrier wherein robbery elements are not present are not considered violations of the HA-AC. Such violations may constitute violations of other Federal statutes (i.e., Theft from Interstate Shipment, Financial Institution Fraud or Bank Larceny, Interstate Transportation of Stolen Property). (See Part I, Sections 15, 29, 87, and 91, of this manual, for complete details.)

(4) DOJ approval is required only if a United States Attorney believes that a local prosecutor with responsibility for prosecuting a state robbery charge for the same basic offense objects to a Federal prosecution of a defendant for HA robbery because of a pending or imminent state prosecution. There is no requirement to initiate contact with the local prosecutor and his/her views need not be solicited.

EFFECTIVE: 06/26/91

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EFFECTIVE: 06/26/91

192-7 HOBBS ACT - COMMERCIAL INSTITUTIONS (HA-CI) JURISDICTION

The FBI will have HA-CI jurisdiction when a commercial institution receives an extortionate demand by any means which may affect interstate commerce (see 192-4 (3), for further clarification).

EFFECTIVE: 06/26/91

192-8 HOBBS ACT - ARMORED CARRIERS (HA-AC)

FBIHQ and DOJ have taken the position that all robberies of armored carriers and related facilities constitute violations of the Hobbs Act. This decision is based on the fact that generally such robberies by their very nature require organization, some degree of sophistication, a wide-ranging scheme, and frequently involve violence.

EFFECTIVE: 06/26/91

192-9 HOBBS ACT VIOLATIONS INVOLVING BOMB THREATS

In HA violations involving bomb threats, only properly trained explosives experts are to search for the alleged bomb and attempt to disarm it if located. It is the responsibility of each SAC to be aware of bomb search and disposal teams within each division and ensure that arrangements are made for their use in such instances. Ensure the local U.S. Secret Service office is informed of any case involving bombs or explosives.

EFFECTIVE: 06/26/91

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192-10 CONTACTING THE UNITED STATES ATTORNEY (USA) REGARDING  
HOBBS ACT COMPLAINTS

Upon receipt of a questionable HA complaint, the facts should be promptly presented to an appropriate Assistant United States Attorney (AUSA) to verify that an HA violation does exist. (If the AUSA's opinion appears controversial, contact the Violent Crimes Unit, Criminal Investigative Division, for consideration of that unit conferring with DOJ for a clarifying opinion.)

EFFECTIVE: 06/26/91

192-11 REPORTING REQUIREMENTS

EFFECTIVE: 10/26/87

192-11.1 Notification to FBIHQ (See MIOG, Part I, 15-4(9),  
87-5.3.2, 91-12.1, & 192-11.2; MAOP, Part II, 9-6.)

(1) Depending on the urgency of the situation, FBIHQ should be promptly notified of HA-CI and HA-AC violations by telephone and/or teletype. The initial teletype should include a succinct summary of the offense, the modus operandi utilized, available descriptive data of the subject, leads and any other information essential to the case. If an arrest is made, the subject's admission, if any, should be included.

(2) Subsequent developments pertaining to these cases should be furnished to FBIHQ by summary teletype.

(3) Office of Origin (OO) should submit an FD-430 to FBIHQ within 30 workdays in all HA-AC cases.

(4) A supplemental FD-430 must be submitted to FBIHQ when a subject is identified and/or recovery made subsequent to the initial submission.

OO shall determine if regional or other field office notification is necessary.

(5) One copy of an HA prosecutive report should be

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designated for FBIHQ. If dissemination from FBIHQ is necessary, sufficient copies of the report are to be furnished at time of submission.

(6) An FD-515 should be promptly submitted when appropriate as instructed in Manual of Administrative Operations and Procedures, Part II, Section 3-5 and its subtopics.

EFFECTIVE: 11/30/93

192-11.2 Notification To Surrounding and/or Auxiliary Offices (See MIOG, Part I, 15-4(9), 87-5.3.2, & 91-12.2; MAOP, Part II, 9-6.)

(1) In addition to prompt notification of FBIHQ, OO shall determine if regional or other field office notification is necessary.

(2) Copies of an FD-430 and any supplemental FD-430's should be directed to other offices if OO determines it is necessary.

(3) Depending on the urgency of the case, all leads should be set out by telephone, teletype or airtel.

(4) Upon apprehension of an HA subject, in addition to routine FBIHQ notification, all logical offices should be furnished with appropriate descriptive data and pertinent facts so that he/she may be considered as a suspect in any unsolved HA cases within their territories.

EFFECTIVE: 11/30/93

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192-12 DECISION TO MAKE THE PAYOFF

(1) The most important consideration regarding a payoff in an extortionate situation is the safety of the victim employee and/or his/her family.

(2) The decision whether or not to pay the subject's demand must be made by an official of the victim company and not the FBI.

EFFECTIVE: 10/26/87

192-13

[REDACTED]

b2/b7E

EFFECTIVE: 05/26/89

192-14

[REDACTED]



EFFECTIVE: 05/26/89

192-15

[REDACTED]

ba/b7E

EFFECTIVE: 05/26/89

192-16 SCIENTIFIC EXAMINATIONS OF HOBBS ACT DEMAND NOTES AND  
OTHER MESSAGES

The OO should request the following examinations to be conducted of all HA demand notes. For purposes of this citation and enumerated examinations, demand notes include both hand-delivered notes and letters received through the United States mails.

EFFECTIVE: 05/26/89

192-16.1 Examinations by Laboratory, Latent Fingerprint Section and  
Information Resources Division

(1) The original extortion demand note or letter is to be promptly forwarded by airtel to FBIHQ, Attention: Laboratory Division for examination. A copy of the note or letter should also be designated for the Violent Crimes/Fugitive Unit, Criminal Investigative Division (CID). The cover airtel should briefly set forth the facts of the case, describe any enclosures, and specifically request the types of Laboratory Division examinations desired. Refer to Part II, Section 13, of this manual, entitled "Laboratory Division Aids to Investigations," and Part II, Section 15, of this manual, entitled "Latent Fingerprint Identification," for the types of analyses available through the Laboratory Division.

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EFFECTIVE: 07/23/90

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

(3) Anonymous Letter File (ALF) - All extortionate letters or notes received in HA cases should be searched through the ALF. As noted in (1) above, HA extortionate letters or notes are to be transmitted by airtel to FBIHQ for laboratory and latent fingerprint exams. This airtel should include a request to search the note or letter through the ALF.

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

EFFECTIVE: 07/21/95

192-16.2 Automated Latent Fingerprint Search (ALFS) and National Unidentified Latent File (NULF) (See MIOG, Part I, 91-18.1; Part II, 15-2.1.)

(1) For details regarding the ALFS and the NULF, refer to Part II, Section 15, of this manual.

(2) Consideration will be given by the Latent Fingerprint Section, Laboratory Division, to conduct ALFS's in unsub cases in which there is at least one classifiable unidentified latent fingerprint for which the finger position can be determined and providing a physical description of the unsub is available. The ALFS result will be set forth in an LFPS report. The NULF does not contain an HA crime category; however, the NULF contains bank robbery and extortion crime categories which can be closely related in modus operandi to HA violations. Therefore, a subject who commits an HA violation utilizing a demand note may have also previously

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committed a bank robbery or an extortion violation using a demand note, and the Laboratory Division should be requested to make appropriate examinations and comparisons. As mentioned above, an ALFS will be performed by the LFPS upon evaluation of submitted evidence so a specific request for a search is not necessary.

EFFECTIVE: 07/21/95

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192-16.3 Deleted

EFFECTIVE: 03/21/95

192-17 BANK CRIME STATISTICS (BCS) REPORT IN REGARD TO HOBBS ACT  
- ARMORED CARRIERS VIOLATIONS

(1) The BCS report deals with bank robbery, bank burglary, bank larceny, bank extortion, financial institution fraud, and HA-AC violations.

(2) The BCS report provides a wealth of specific information such as, but not limited to, number of violations, MOs utilized, loot taken, loot recovered, violence employed, injuries suffered, deaths incurred, and hostages taken.

(3) The BCS report may be used as source material in press releases, speeches, and bank conferences, clinics, and seminars.

(4) For the details concerning the BCS report, see Part I, 91-29, of this manual, entitled "Bank Crime Statistics (BCS) Report."

EFFECTIVE: 06/26/91

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SECTION 194. |CORRUPTION OF STATE AND LOCAL PUBLIC OFFICIALS|

|194-1 BACKGROUND

(1) The FBI defines a public corruption case as a criminal investigation wherein it is alleged that a public official has abused his/her position of trust in violation of 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 several criminal laws which may be applicable to corruption cases. Although there is some overlap, there generally are separate Federal criminal laws applicable to corruption of Federal, as opposed to state and local officials.

(3) This manual section deals with White-Collar Crime state and local public corruption matters. Sections 194-4, 194-5, 194-6, 194-7 and 194-8 are applicable to all public corruption cases, regardless of classification.

EFFECTIVE: 10/18/88

|194-2 SCOPE

The following criteria should be utilized in the classification of a corruption matter as a Corruption of State and Local Public Official matter (194) within the White-Collar Crime Program:

(1) The public official involved is an individual elected or appointed to a position of trust in a state or local governmental entity or political subdivision thereof.

(2) The corrupt activity of the state or local official requires the use of his/her official position and is in violation of Federal law.

(3) The focus of the investigation is on the abuse of the

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| position of trust by the state or local public official in violation  
| of Federal law, as opposed to Federal crimes being committed by a  
| person who happens to be a state or local public official. |

EFFECTIVE: 10/18/88

| 194-3 FEDERAL STATUTES FREQUENTLY APPLIED TO STATE AND LOCAL  
| PUBLIC CORRUPTION INVESTIGATIONS

| There is a variety of Federal criminal statutes which can  
| be applied in state or local public corruption investigations. The  
| following is meant only to highlight the elements of the most  
| frequently used statutes. The opinion of the respective USA's Office  
| should be sought for further clarification of judicial interpretations  
| and the distinctions among the various Federal judicial circuits. It  
| is also important to note that the following overview of the statutes  
| is limited to their use in the public corruption context. |

EFFECTIVE: 10/18/88

| 194-3.1 Hobbs Act (Title 18, USC, Section 1951)

| The traditional corruption statute over the years has been  
| the Hobbs Act.

| (1) The pertinent portion of the statute primarily  
| utilized in the prosecution of public officials provides: "Whoever in  
| any way or degree obstructs, delays, or affects commerce or the  
| movement of any article or commodity in commerce, by extortion or  
| attempts or conspires so to do..." is in violation of the Act. The  
| statute defines the term "extortion" as meaning "...the obtaining of  
| property from another, with his consent, induced by wrongful use of  
| actual or threatened force, violence, or fear, or under color of  
| official right."

| (2) The term "extortion" is a relevant consideration in  
| Hobbs Act prosecutions where it is alleged that payments were induced  
| "under color of official right." There need not be force or duress.  
| Courts have consistently held that any element of coercion that may be  
| required to establish extortion under the Hobbs Act is supplied by the  
| misuse of the public official's duties and responsibilities of office.  
| In cases where it is alleged that payments to the public official were

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induced by "fear" of economic loss, the Government has the burden of showing that the loss is significant. This is usually accomplished either by showing that the money involved in the payment is substantial or that the loss of existing revenue is substantial. The extortion element is satisfied by the misuse of the public official's duties and responsibilities of his/her office.

(3) The conduct of the public official must affect interstate commerce. Almost all courts have applied the "de minimus" rule indicating that the effect need only be minimal. In many cases the fact that the business of the victim has some interstate character is sufficient. For example, the payment of money by a victim "depleted his assets" and, therefore, affected interstate commerce because he/she could not purchase items made out of state for resale with the money used to pay the demanded payment. Also, in one case, it was sufficient that the business had on its premises items manufactured out of state, i.e., juke boxes and cigarette machines.

(4) It is possible for individuals not holding public office to be charged as a participant in a conspiracy to violate the Hobbs Act, with a public official being one of the conspirators. There has been a very small number of prosecutions of individuals, who have not been public officials, who have attempted to extort or did extort payments from victims by threatening to cause economic harm to the victims' businesses through relationships with public officials.

(5) Under the Hobbs Act, if an individual misuses the public trust, it matters not whether the public official induces payment to perform his/her duties, or not to perform his/her duties, or even induces payments to perform acts which are not his/her duties, but can be undertaken only because of his/her official position. In instances where a public official has secured payment for acts which he/she is not able to accomplish, it is covered by the Hobbs Act only if the Government can establish that the victim paying the money (or something of value) or asked to pay money had a reasonable belief that the official had the power to perform. It is the exploitation of this belief that constitutes the criminal conduct.

(6) Hobbs Act carries a penalty of a maximum fine of \$10,000, or imprisonment for not more than 20 years, or both.

EFFECTIVE: 10/18/88

194-3.2 Theft or Bribery Concerning Programs Receiving Federal Funds (Title 18, USC, Section 666)

(1) In the context of corruption investigations, any Agent or employee of an organization, an Indian tribal government or of a state or local government or any agency thereof which receives, in any one-year period, in excess of \$10,000 in the form of Federal assistance, who steals, embezzles, obtains by fraud, or knowingly converts to the use of another property in the care, custody, or control of the organization, or who solicits, demands, accepts or agrees to accept anything of value in excess of \$5,000 to influence or being influenced in connection with any business, transaction, or series of transactions of the organization has violated this section. "Organization" means a person other than an individual.

(2) Section 666 is a most effective statute to be used in state or local public corruption cases. It was designed to augment the ability of the Government to prosecute theft, fraud, and bribery in those agencies receiving Federal monies. While there has not been extensive litigation surrounding the statute and there remains a number of issues to be clarified, it appears that it is not necessary to trace the illegal transaction itself to Federal monies, but only prove that the agency did in fact receive the Federal funds.

(3) It is important to note that the statute also makes the contractor or vendor who pays the local official culpable. This provides effective leverage against these individuals in gaining their cooperation against the corrupt state or local official.

(4) The penalty for violating Section 666 shall be a fine, or imprisonment of not more than ten years, or both.

EFFECTIVE: 07/26/89

194-3.3 Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises Act (ITAR) (Title 18, USC, Section 1952)

(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) promote 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 is no series of predicate offenses as required under the RICO statute.

(4) The penalty for violating Section 1952 shall be a fine of not more than \$10,000 or imprisonment for not more than five years, or both.

EFFECTIVE: 07/26/89

194-3.4 Mail Fraud (Title 18, USC, Section 1341)

(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 contracts for local government services or construction 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 should have had knowledge that the mails would be used in furtherance of the scheme.

(2) Mail Fraud Statute has been used in a most effective manner in public corruption prosecutions under the theory that a fraudulent scheme extended to an official's acts that 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. It must be shown that the citizens were defrauded of

actual money or property.

(3) Violating the Mail Fraud statute carries a penalty of a fine of not more than \$1,000, or maximum imprisonment of five years, or both.

EFFECTIVE: 10/18/88

194-3.5 Wire Fraud (Title 18, USC, Section 1343)

(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 Wire Fraud is a fine of not more than \$1,000, or a maximum imprisonment of 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 local governmental contracts.

EFFECTIVE: 10/18/88

194-3.6 Racketeer Influenced and Corrupt Organizations (RICO)  
(Title 18, USC, Sections 1961-1963)

(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, such as a police department, city inspection department, or court system.

(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.

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(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 offenses such as bribery, extortion, mail fraud, wire fraud, obstruction of Federal criminal investigations, tampering with Federal witnesses, victims or informants, and violating currency transaction reporting requirements.

(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) RICO carries a penalty of a maximum fine of \$25,000, or 20 years' imprisonment or both, as well as significant criminal and civil forfeiture provisions.

EFFECTIVE: 10/18/88

194-3.7 Attorney General Guidelines on Racketeering Enterprise Investigations

In addition to the above statutes, the Attorney General Guidelines concerning Racketeering Enterprise Investigations (REI) may apply to public corruption matters, should an SAC, with FBIHQ concurrence, determine the need for an intelligence-type investigation, wherein a governmental organization is believed to be engaged in systemic public corruption. (See Part I, Section 0-3, III.A., of this manual.)

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## 194-4 PREDICATION (See MIOG, Part I, 58-5.)

(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 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. Pretext telephone calls, physical surveillances, polygraph examinations, and previous intelligence data 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.

(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 basis.

EFFECTIVE: 09/16/94

||194-5 POLICY|

EFFECTIVE: 10/18/88

||194-5.1 Case Initiation

A corruption of public official investigation may be opened upon the personal authority of the SAC, or in SAC's absence, the ASAC, when there are facts or circumstances that reasonably indicate a Federal criminal violation has occurred, is occurring, or will occur.

(1) In general, each corruption of public official investigation initiated should contribute to the goals and priorities of a field office, taking into consideration crime problems particular to the territory as determined by the SAC in consultation with the USA's Office.

(2) FBI field offices should not intrude into state or local corruption investigations which are being independently addressed in a competent manner with sufficient local/county/state law enforcement resources, coupled with aggressive prosecutive support. Even when these factors are not present, only serious offenses having a significant impact upon the community should be addressed. Investigations of state and local officials in managerial or executive positions should be considered a higher priority than officials such as local government regulatory inspectors or law enforcement officers of patrolman or equivalent rank. Where lower-ranking state and local officials are subjects of investigations, it should be demonstrated that the corruption is widespread and that the low-ranking official is not the ultimate focus of the investigation.

(3) Strong consideration should always be given to referral of lesser state and local corruption allegations involving low-ranking officials to the appropriate local/state authorities. Circumstances under which FBI investigation of these lesser corruption allegations could be appropriate are among the following:

(a) Historically, the problem has not been addressed despite previous referrals.

(b) The state or local corruption is interrelated to, or arises out of, a significant investigation involving a priority matter within a particular FBI program.

(c) The appropriate law enforcement referral agency/prosecutor is directly or indirectly involved in the state or local corruption.

(d) The appropriate law enforcement referral agency/prosecutor does not have the appropriate resources to address the matter.

(e) Political considerations prevent proper handling by local authorities.

(f) The necessity to protect the identity/testimony of an FBI informant/witness exists.

Cases should be initiated only if the allegation received or developed is sufficient to support specific leads.

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194-5.2 Preliminary Inquiry Versus Full Investigations (See MIOG, Part I, 58-6.2.)

(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 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, mail covers and nonconsensual oral or wire interceptions are not authorized, nor are interviews of a subject's employer or co-workers, except those individuals who were complainants.

EFFECTIVE: 09/16/94

194-5.3 Initial Contact with the Prosecutor | (See MIOG, Part I, 58-6.3.) |

(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 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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194-5.4 Use of Undercover Agents and Informants/Cooperating  
Witnesses (CW) in Covert Operations (See MIOG, Part I,  
58-6.4.)

(1) Due to the secretive nature of corruption, one of the most successful methods of investigation in public corruption matters has been found to be the undercover operation (UCO). A UCO can be defined as any investigation wherein an employee of the FBI or other law enforcement agency uses a concealed identity in conducting a series of related investigative activities over a period of time. DEPENDENT ON THE SENSITIVE ISSUES INVOLVED, THE UTILIZATION OF CWS (WITHOUT UNDERCOVER AGENT (UCA) INVOLVEMENT) IN PUBLIC CORRUPTION INVESTIGATIONS MAY CAUSE THE OPERATION TO BE DEFINED AS A GROUP I UCO IN TERMS OF THE ATTORNEY GENERAL'S (AG) GUIDELINES ON UCOS. The PCU should be consulted as to this determination.

(2) [REDACTED] technique is a valuable investigative tool. [REDACTED] may result in the development of incontrovertible evidence. Such is extremely difficult to argue by the defense and often leads to pleas and cooperation agreements. This technique is widely used in corruption investigations in various scenarios. For specific requirements concerning [REDACTED]

[REDACTED] Currently, [REDACTED] can be approved by the SAC. FBIHQ AND DOJ AUTHORITY IS REQUIRED.

[REDACTED] IF THE MATTER RELATES TO AN INVESTIGATION OF A PUBLIC OFFICIAL AND ABUSE OF OFFICE IS INVOLVED, DOJ APPROVAL IS REQUIRED.

(3) In situations where emergency authority is necessary, such requests may be granted by the SAC, for an initial 30-day period. This approval should be documented and confirmed to FBIHQ through the use of an FD-759 form signed by the SAC. In order to receive emergency authority, the field office should clearly demonstrate the existence of exigent circumstances which preclude routine approval. IT IS IMPORTANT TO NOTE THAT [REDACTED] REQUESTS, WHETHER APPROVED BY THE SAC (EMERGENCY) OR DOJ, THE REQUEST MUST BE APPROVED BY THE DIVISION PRINCIPAL LEGAL ADVISOR PRIOR TO SUBMISSION AND NOTED ON THE REQUESTING COMMUNICATION.

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(4) [REDACTED] CWS AND UCAs ARE TO [REDACTED] AVOID MEETING WITH NONPREDICATED PUBLIC OFFICIALS IN FURTHERANCE OF AN FBI INVESTIGATION. Although it is necessary and appropriate, this policy is often difficult to deal with in long-term UCOS.

[REDACTED] Although it should be avoided if at all possible, there are occasions when it is necessary for a CW or UCA to meet with a nonpredicated public official or candidate [REDACTED]

[REDACTED] These meetings fall into three categories: 1) necessary, nonsubstantive meetings with nonpredicated public officials to obtain forms, have plans reviewed, etc. [REDACTED]

[REDACTED] 2) meetings with nonpredicated public officials or groups of public officials arranged or suggested by subjects [REDACTED]

[REDACTED] and 3) meetings with nonpredicated public officials arranged or suggested by subjects [REDACTED]

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(5) Authority for meeting with nonpredicated public officials, except as articulated in 1) above or under exigent circumstances must be approved at FBIHQ. The necessity and purpose of the meeting, coupled with the UCA's ability to avoid the meeting, should be evaluated in terms of potential damage to the public official's/candidate's reputation compared to the impact that a refusal to meet will have on the investigation and the ability to obtain evidence of criminality. If the decision is made to authorize the meet, the basis for this decision should be documented. [REDACTED]

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[REDACTED]

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(6)

[REDACTED]

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194-5.5 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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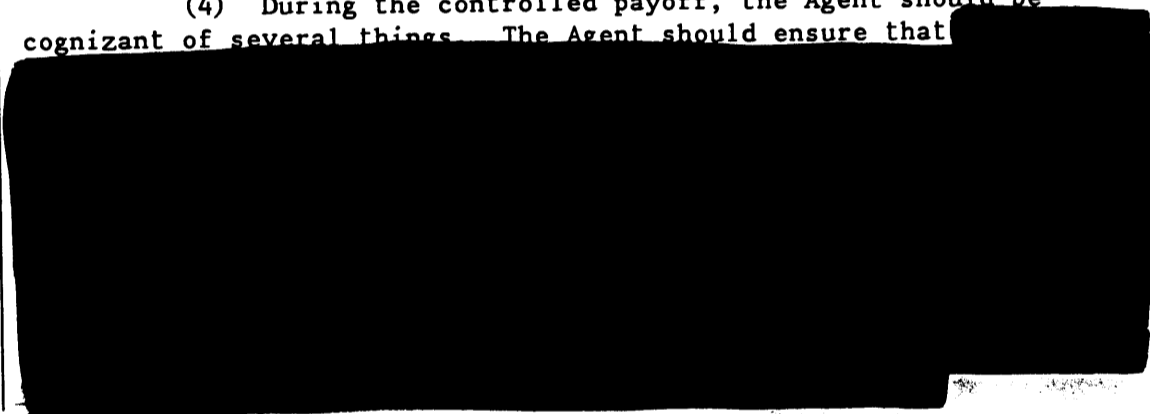
194-5.6 Bribe Payments (See MIOG, Part I, 58-6.6; & Part II, 10-14.1.4.)

(1) Clearly, the controlled payoff of a public official offers far more compelling evidence for the jury than the historical testimony of witnesses of past events. In the latter situation, the jury must rely on the recollection of observations of others. The controlled payoff through an audio and/or video recording places the juror right at the scene, and as it has been said before, "tapes don't lie." Agents should always be alert for the possibility of making controlled bribe payments.

(2) Bribe payments to all public officials must be authorized in advance by an appropriate FBI official, either SAC or FBIHQ. The level of authority required depends on the amount of the payoff and the level of official being bribed. Bribes to officials of a managerial or executive-level or higher require FBIHQ approval. FBIHQ authority is also required for bribe payments to an official in less than a managerial/executive level, if the amount of the bribe exceeds \$20,000 (\$10,000 per recipient). These approval levels apply as well to UCOs. Approval of a Group I UCO does not automatically include bribe payment authority.

(3) FBIHQ authority to pay a bribe requires a teletype setting forth the circumstances, particularly the details of the official's solicitation or demand, the anticipated scenario, the identity of the public official, the amount of the payoff, and an AUSA's prosecutive opinion that the controlled payoff will provide evidence of a Federal violation and he/she is committed to prosecution.

(4) During the controlled payoff, the Agent should be cognizant of several things. The Agent should ensure that



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(5) FBIHQ generally will not approve payments to a middleman in the absence of recorded conversations with the public official indicating that the public official is aware that money is being paid and what the money is being paid for and a commitment by a prosecutor to prosecute the middleman. Payment authorization for middlemen is based on the level of the public official the middleman allegedly represents. If payments are authorized to a middleman, appropriate measures should be made to follow the money to the public official.

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#### 194-5.7 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 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

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full investigation, there must be written confirmation of the closing with the prosecutor within 30 days following closing. This may be accomplished by furnishing the prosecutor a copy of the closing LHM that is being forwarded to FBIHQ or by separate letter.

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194-6 CATEGORIES OF STATE AND LOCAL PUBLIC CORRUPTION CASES

State and local public corruption investigations can be separated into five categories which serve only to make the nature of the criminal activity and related policy clearer. The categories are not all inclusive. These categories often overlap and a subject may be engaged in activities found in more than one category.

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194-6.1 Judicial Corruption

(1) State and local judicial corruption consists of the corrupt influencing of judges, attorneys, or court personnel with respect to matters pending before a court. An area of concern in judicial corruption matters is that of favors. That is, an official can affect the disposition of a case as a favor to another. While performing such a favor may be unethical conduct on the part of the official and sufficient to having him/her removed from office, this and even more egregious ethical conduct does not necessarily amount to a violation of the Federal law.

(2) Every effort must be made during the planning and execution of these cases to minimize the intrusion and impact on the state or local judicial system to only that which is absolutely necessary.

(3) When an FBI investigation of judicial corruption intrudes upon a state or local government, notification of an appropriate high-level official in the respective state or local judicial system will be required. The notification in judicial corruption cases consists of providing a general briefing about the investigation to a supervising judge of the court involved, chief judge or state supreme court justice. If the investigation intrudes

only on a prosecutor's office, then notification may be limited to the prosecutor, State Attorney General or Governor, where appropriate. FBIHQ must be consulted in all matters involving investigative intrusion into judicial systems, as such intrusions may involve "sensitive circumstances" requiring Group I approvals.

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194-6.2 State and Local Contract Corruption

(1) The state or local public officials normally involved in this type of corruption are those having contracting and/or purchasing authority for local, county or state governments. The officials may have a variety of titles and may work in any number of areas within the government entity. The common denominator is that the officials have the power to do business on behalf of the government agency with a vendor who is trying to market a product or service to the government agency. The corruption involves the payment of a bribe or kickback to the official to acquire business with the government entity, the amount of which is often based on a specific percentage of the contract amount.

(2) An area of concern in contract corruption matters is the potential negative effect that certain investigative activity may have on an individual's or business's ability to be fairly considered for the awarding of contracts. Great care must be taken to ensure that investigative activity does not unjustly and/or unnecessarily influence the contract awarding processes of state and local governments. There is potential for "sensitive circumstances" emanating from investigative activity relating to state and local contract corruption.

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194-6.3 State or Local Regulatory Agency Corruption

(1) Regulatory corruption consists of the payments of bribes to city, county, and state officials in exchange for licenses or zoning of various types or for the regulator not reporting violations of state and local regulatory codes and laws.

(2) Investigative intrusion into the local licensing and zoning process is a major concern in these investigations. When covert investigative techniques are being utilized to address regulatory corruption, a strong possibility exists that "sensitive circumstances" relating to potential innocent third-party liability issues will be involved. These matters must be constantly analyzed and evaluated for these sensitive circumstances. There is also a potential for required notification of appropriate state and/or local officials if intrusion into the local licensing and zoning processes takes place.

EFFECTIVE: 10/18/88

194-6.4 State and Local Legislative Corruption

(1) Legislative corruption involves payoffs to legislators, legislative aides, or other public officials in exchange for official acts with respect to a piece of legislation or other matters which the legislative body can effect. These official acts may range from the introduction of a bill, to a vote in favor of or against a measure, to simply refraining from vigorously supporting or opposing a bill. These legislative officials may also utilize their official positions to influence other state/local governmental activities. Payoffs often take the form of cash, campaign contributions, promises of future employment or promises of future business opportunities. Generally, two elements are present in this type of corruption. First, the specific legislation which is at the center of the corrupt activity normally has either a positive or negative impact on some specific interest; and second, the payoffs are made by persons whose interests are affected one way or the other by the bill.

(2) Intrusion into the legislative process is a major concern in these investigations. No contrived or actual piece of legislation, concerning a bribe payment which the FBI has authorized, can be allowed to be signed into law without proper notification about the investigation to the Governor or other appropriate official of the

state, county, city or territory involved. The official then has the option to assess the impact of the legislation and take appropriate measure to neutralize the effect of the legislation, if necessary.

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194-6.5 State and Local Law Enforcement Corruption

The key factors in the decision as to the classification of matters that relate to law enforcement's involvement in criminal activity are: (1) the focus of the investigation; and (2) the role and activity of the law enforcement officer.

(1) The following criteria must be met to consider an investigation involving state or local law enforcement officials as a public corruption matter under this classification.

(a) The corrupt activity of the law enforcement officer requires the use of his/her official position and is a violation of Federal law.

(b) The focus of the investigation is on the abuse of office by the law enforcement officer as opposed to other crimes being committed by a person who happens to be a law enforcement officer.

(c) In return for something of value, the law enforcement officer is utilizing his/her official duties to protect criminal activity through the surreptitious providing of law enforcement information to the criminal elements, purposely directing law enforcement away from the criminal activity of others, or otherwise purposely thwarting legitimate law enforcement.

(d) In drug trafficking protection matters, the law enforcement officer's role generally does not involve the law enforcement officer having physical contact with the drugs.

(2) In making the decision to initiate a corruption investigation involving law enforcement protection of criminal activity, SACs should take into consideration the impact of the particular crime problem and its level of priority, as it relates to other criminal matters. The SAC should also consider the involved law enforcement agency's ability to investigate and successfully prosecute the corrupt activity prior to committing FBI resources. Law

enforcement officers who have violated Federal laws in a manner other than which is described above should be investigated under the appropriate criminal program and classification applicable to the Federal violation involved.

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194-7 INVESTIGATIONS

(1) Careful planning and close coordination with the substantive unit at FBIHQ can help to maximize the utilization of investigative techniques. Before selecting the appropriate investigative techniques for an investigation, an understanding must be developed of the crime problem, the inner workings of the system in question, and the legal and policy issues that are relevant. Once the crime problem has been identified and understood, a comprehensive investigative plan should be designed which best addresses the issues, demands, and problems of the particular crime activity.

(2) Due to the sensitivity of these investigations, it is important to resolve allegations which have resulted in full investigations by proving or disproving those allegations. It is also important that once the investigation has been initiated, sufficient manpower and other investigative resources must be employed in a manner to bring the investigation to a timely conclusion.

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194-8 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

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reporting and administrative procedures have been established.

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194-8.1 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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194-8.2 Cover Airtel/LHM

(1) 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 predicating the case, the initial

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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

194-8.3 Case Conversion to Full Investigation

An airtel and LHM should also be submitted to FBIHQ at the time a public corruption case is converted from a preliminary inquiry to a full investigation, with justification for the conversion. It is possible that preliminary inquiries opened on multiple subjects may result in sufficient evidence being developed to convert the investigation to a full investigation on some, but not all, of the subjects originally named in the title of the case. If any subject is being eliminated as a subject of the case at the time of the conversion to a full investigation, that subject must be fully identified in the LHM converting the case to a full investigation, with complete justification for eliminating that individual as a subject of the case. A copy of that LHM must be sent to the appropriate AUSA.

EFFECTIVE: 09/16/94

194-8.4 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

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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

194-8.5 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.

EFFECTIVE: 09/16/94

194-9 CHARACTER - CORRUPTION OF STATE AND LOCAL PUBLIC OFFICIALS

EFFECTIVE: 10/18/88

Sensitive  
PRINTED: 02/18/98

SECTION 195. HOBBS ACT - LABOR RELATED

195-1 STATUTES

Title 18, USC, Section 1951

Hobbs Act - Labor Related

EFFECTIVE: 03/10/80

195-1.1 Elements

(1) That accused:

(a) Obstructed, delayed, or affected commerce or movement of any article or commodity in commerce.

(b) Conspired or attempted to do above.

(c) Committed or threatened physical violence to any person or property in furtherance of plan or purpose in violation of the Act.

(2) By:

(a) Robbery (unlawful taking or obtaining of personal property, from the person or in the presence of another, against his/her will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his/her person or property of a relative or member of his/her family or of anyone in his/her company at time of taking or obtaining.)

(b) Extortion (obtaining of property from another, with his/her consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.)

EFFECTIVE: 03/10/80

195-2 | APPLICABILITY OF THE HOBBS ACT IN LABOR CASES

(1) In the past, Hobbs Act prosecutions in the labor context have typically arisen out of two basic situations:

(a) Where the objective is a legitimate labor goal, e.g., a wage increase, but the use of violence, the threat of violence, or the fear of economic loss, is the means of attaining the goal; and

(b) Where the means employed are apparently legitimate, e.g., a peaceful strike, but the ultimate objective sought is wrongful (usually the personal enrichment of a union representative rather than the benefit of the workers he/she represents).

1. The applicability of the Hobbs Act to the first situation has been eliminated by the U.S. Supreme Court in U.S. v. Enmons, 410 U.S. 396 (1973). There the Court concluded that the act does not apply to instances where force is used to achieve legitimate labor goals. It would appear from this decision, according to the interpretation of the Department of Justice, that no matter how forceful or economically injurious the means are of obtaining a legitimate labor goal, no violation of the extortion provision of the Hobbs Act exists.

2. The Enmons decision has no affect on the second category into which the great bulk of Hobbs Act prosecutions fall. The typical case involves a union official threatening an employer or contractor with "labor trouble," usually in the form of a work slowdown or a ruinous strike, for the purpose of exacting the payment of tribute. Thus, a union official can make use of his/her power and control over labor to prey upon the vulnerability of an employer's business. The employer or contractor engaged in work involving contract deadlines or perishable commodities will often accede to the union leader's demand for tribute rather than brave the potentially disastrous consequences of a strike or work slowdown.

(2) Cases will no doubt arise where there may be some question of the legitimacy of the union official's demands on an employer. In these instances the facts of the complaint should be presented to the USA for review and/or discussion with the Department of Justice.

(3) Employer in these situations does not have to be engaged in business of interstate transportation. If it can be shown that interference with employer's business would obstruct, delay or



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affect commerce as defined in the Act, in any way or degree, interstate commerce is sufficiently involved to bring the case within this element of the offense.

(4) In cases where drivers of interstate trucks are compelled to hire unwanted and unnecessary helpers, commonly referred to as "lumpers," to unload cargo, it is necessary to show that the demand for wages to be paid such helpers is enforced by the wrongful use or threatened use of force, violence, or fear of economic injury. In order that the demand be wrongful, the labor to be performed must be unnecessary on the basis of all the surrounding circumstances and that the subject understand the unnecessary nature of the work he/she demands be performed. The investigation should focus on the precise nature of the demands, the employer's response, and any contractual or bargaining relationships governing the situation.

(5) While use of fear of economic loss brought about by peaceful picketing or secondary boycotts by bona fide labor unions to obtain a legitimate labor union objective would not be a wrongful use of such fear so as to constitute extortion, this would not be true if the union were not bona fide. So-called unions made up largely of employers rather than employees organized usually to enforce trade restrictions, such as some organizations of vending machine operators, may be considered as nothing more than trade associations masquerading as labor unions and are not entitled to the rights guaranteed by statute to bona fide labor unions to use such methods to enforce their demands. Such actions by them in seeking to enforce demands for property, therefore, constitute extortion and, if interstate commerce is affected thereby, violations of the statute occur. Reports concerning such violations should carry "Antitrust" as dual character.

EFFECTIVE: 03/10/80

195-3       PROCEDURE

EFFECTIVE: 03/10/80

Sensitive  
PRINTED: 02/18/98

195-3.1 Complaints or Information

Complaints or information should be discussed immediately with USA to obtain USA's opinion as to whether information received contains sufficient indication of violation to justify investigation.

EFFECTIVE: 03/10/80

195-3.2 Reporting Procedures

(1) |An initial airtel with accompanying LHM (original and three copies) should be submitted to FBIHQ within 60 days if the investigation involves LCN members or associates. The LHM should contain the preliminary opinion of the USA and sufficient identification data on the subject(s) for indexing purposes. |

(2) |A progress letter should be submitted to FBIHQ every 180 days containing a summary of investigation conducted to date and a statement regarding investigation contemplated during the next 180 days. |

(3) |A closing airtel should be submitted to FBIHQ with an LHM restating the predication for opening the investigation, summarizing the investigative findings and detailing the disposition of the investigation. The LHM should include the final opinion of the USA. |

(4) |If the investigation involves non-LCN groups (i.e., Asian organized crime, Sicilian Mafia, etc.), advise FBIHQ by airtel with accompanying LHM as described above within 60 days. The results and/or summary should be reported by LHM (original and three copies). |

EFFECTIVE: 10/18/88

195-3.3 Complaints Involving Labor Union Strikes

In complaints involving labor union strikes in which force, violence or threats reported, obtain from sources following information relative to essential elements in order that proper opinion can be rendered by USA as to whether allegation justifies FBI investigation.

(1) Extortion: Ascertain objective of union in strike, particularly whether any demand made by union for property which could involve extortion as defined in Hobbs Act. Specific information should be secured as to whether objective of union may be considered by USA as legitimate union demand not constituting extortion as defined in Hobbs Act, or illegitimate union demand which indicates extortion prescribed by Hobbs Act, such as following examples:

(a) Legitimate union demands: When business nonunion and objective of union involves attempt to force employees to be represented by union by organization activities involving violence. When business represented by union and objective of strike is to obtain increase of wages for existing employees by violence.

(b) Illegitimate union demands: When objective of violence in strike is to enforce union demands that business make payments for total wages of additional employees who are unwanted and unneeded. When union representative or other individual demands or obtains lump sum payoff from business in connection with actual or threatened violence in strike, regardless of whether employees are union member or nonunion.

(2) Robbery: Ascertain whether possession was taken of any property by subject in committing violence which may be considered by USA to involve robbery as defined in Hobbs Act.

(3) Violence: Ascertain whether violence spontaneous or sporadic in nature, or whether it was allegedly planned to accomplish objective of union strike. Also ascertain action taken by local authorities as to reported violence, including any injunctions filed by victim.

(4) Interstate commerce: While not necessary to prove alleged illegal activity took place interstate, determine whether victim business affects commerce in any way or degree, such as materials or supplies used in business moved interstate.

EFFECTIVE: 10/18/88

195-3.4 Cases Involving Allegations of Payments or Agreements to  
Pay by Employers to Representatives of Their Employees

Employers have possibly violated Title 29, USC, Section 186 (LMRA). For this reason, employers interviewed in regard to such allegations, whether to obtain evidence of violation under this section or under LMRA, should be advised of their rights in same manner as any potential subject and signed statements and reports must clearly show this. Do not discuss provisions of LMRA with employers or make any statement as to their possible guilt. Refer employers who raise questions in this regard to their own lawyers or to USA. Do not promise them immunity or that information furnished by them will be kept confidential.

EFFECTIVE: 03/10/80

195-3.5 Interview with Union Officials

These interviews may be conducted on the authority of the SAC, provided all of the following circumstances exist:

(1) Files of field office where interview to be conducted contain no information to indicate such interview would be inadvisable.

(2) Interview is not premature and other available sources of information desired from union official have been exhausted.

(3) Interview is absolutely necessary in interest of conducting complete and thorough investigation.

(4) Interview is discussed with and approved by the USA.

(5) Interview will not interfere with any other investigation of the official or union.

(6) If interview to be conducted by an auxiliary office, that office must ensure their files contain no information to indicate the interview would be inadvisable.

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(7) FBIHQ is notified in advance in the event the interviewee is prominent, extremely controversial, or of such stature to focus national attention on the investigation.

EFFECTIVE: 03/10/80

195-3.6 Hobbs Act in Terms of Conspiracy

Since the Hobbs Act is drafted also in terms of conspiracy, it is necessary to prove only that the natural effect of any conspiracy which would violate the act would be to obstruct, delay, or affect commerce in any way or degree. Federal jurisdiction under the robbery-conspiracy provisions of the Hobbs Act will be considered when the persons involved are known organized crime subjects suspected of engaging in such activities. On the basis of this type information received, determination will be made by the Criminal Division of the Department of Justice at Washington, D.C., as to whether investigation is warranted by the Bureau under the Hobbs Act. (For further information see Organized Crime Investigations.)

EFFECTIVE: 03/10/80

195-3.7 Extortion Attempts Directed at Banks and Airlines

Possible applicability of the Hobbs Act concerning incidents of extortion attempts directed at banks and airlines is set forth under Sections 91, 9, 149, and 164 relating to certain circumstances arising in allegations of Bank Robbery, Extortion, Destruction of Aircraft or Motor Vehicles, and Crime Aboard Aircraft. The Department has instructed all USAs that when such an extortionate situation is encountered where it may be desirable to charge a violation under the Hobbs Act, the Department must be consulted.

EFFECTIVE: 03/10/80

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PRINTED: 02/18/98

195-3.8 Organized Crime Subjects Involved in Hobbs Act Cases

When organized crime subjects are involved in Hobbs Act cases relating to financial institutions, commercial institutions, corruption of public officials, or labor matters, all communications to FBIHQ should be directed to the attention of the Organized Crime Section.

EFFECTIVE: 03/10/80

195-4 INVESTIGATIVE GUIDANCE

EFFECTIVE: 03/10/80

195-4.1 Proof of Payments

- (1) [REDACTED]
- (2) [REDACTED]
- (3) [REDACTED]
- (4) [REDACTED]
- (5) [REDACTED]
- (a) [REDACTED]

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- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]
- (e) [REDACTED]

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(6) Do not overlook fact that attempts and conspiracies are violations of (the Hobbs Act) statute when investigation develops that demand was made but no payment resulted.

EFFECTIVE: 03/10/80

195-4.2 Proof of Inducement For Payment

(1) Develop fully all force or violence or actual or implied threats used by subject to induce payment by victim. Typical inducements used:

- (a) Threats of strikes and jurisdictional disputes
- (b) Threats to overload project with unnecessary workers
- (c) Refusal to supply qualified or sufficient number of workers
- (d) "Goon squads" harassing workers

(2) When drivers of interstate trucks are compelled to hire unnecessary helpers to unload their cargo, develop all circumstances surrounding demand, including:

- (a) Number of persons in group making demand
- (b) Threatening attitudes and measures used
- (c) Isolation of location where demand made

All other facts to establish not only whether actual or threatened

force or violence was used, but also whether driver may have been intimidated and hired helper because of fear of physical injury to person or property.

(3) To prove payment was induced by fear, obtain evidence to establish victim's state of mind prior to and at time of payment. Testimony as to following has been admitted in trials not to prove truth of the events discussed, but to show what victim feared would occur if he/she did not comply with extortion demand:

(a) Testimony by subordinates of victim employer as to labor difficulties encountered provided they had been told to victim

(b) Testimony of fellow officers of firm as to conferences regarding labor difficulties

(c) Testimony by persons with whom victim had discussed demands and his/her fears

(d) Testimony of victim as to all events known to him/her and information from others, including subjects, upon which victim relied and which induced him/her through fear to make payments

(4) In interviewing victim and victim's associates as to previous experiences of themselves and others which affected victim's state of mind, obtain full details of these experiences as possible violations in themselves upon which new cases should be opened.

EFFECTIVE: 03/10/80

195-4.3 Proof That Interstate Commerce Has Been Affected

(1) The act does not require that commerce be materially or substantially obstructed but forbids obstruction, delaying, or affecting "in any way or degree," and applies to all commerce over which U.S. has jurisdiction.

(2) Evidence to establish following facts has been used to prove that interference with victim's business would affect interstate commerce:

(a)  b2/b7E



[REDACTED]

(b) [REDACTED]

[REDACTED]

(c) [REDACTED]

[REDACTED]

(d) [REDACTED]

[REDACTED]

b2/b7E

EFFECTIVE: 01/31/78

195-5 CASE SUPERVISION

(1) Separate cases should be opened for investigations of payoffs from each victim or group of victims to each subject or group of subjects when group is involved in same payoffs or attempted payoffs.

(2) Cases cannot be closed on authority of SAC or otherwise administratively. Results of all investigation as well as original and final opinion of USA must be submitted in form suitable for dissemination. If USA declines prosecution, include his reasons and his statement that no further investigation warranted.

(3) Teletype or telephone should be utilized to report initial occurrence of Hobbs Act violation involving banking institutions when warranted in case of unusual interest such as when hostage taken, firearms or explosive device used, arrest made at payoff site, sizeable amount of money involved in payoff or where good judgment dictates. When initial teletype to whether subject made admission of violation. If initial communication reports subject unknown, surrounding and other offices possibly having interest in similar types of cases should be furnished summary of modus operandi as well as other pertinent data requesting positive information of assistance be supplied by other offices.

EFFECTIVE: 01/31/78

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195-6 PENALTY

(1) Hobbs Act - maximum - \$10,000 or 20 years or both.

EFFECTIVE: 01/31/78

195-7 CHARACTER - HOBBS ACT - LABOR RELATED

EFFECTIVE: 01/31/78

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SECTION 196. | TELEMARKETING FRAUD;  
INSURANCE FRAUD;  
SECURITIES/COMMODITIES FRAUD;  
OTHER WIRE AND MAIL FRAUD SCHEMES |

| 196-1 | 196A - TELEMARKETING FRAUD (See MIOG, Part I, 29-2.1.21,  
87-4.8.)

EFFECTIVE: 10/01/97

| 196-1.1 | Description of Crime Problem

(1) Telemarketing fraud is defined as those crimes which rely on the use of the telephone to contact the victim during which the products or services offered are materially misrepresented. Telemarketing fraud continues to grow; annual losses were estimated to be \$40 billion in 1996.

(2) Telemarketing fraud can be one of the more difficult white collar crimes to investigate. The typical owner/operator of a telemarketing firm uses multiple aliases, telephones, mail drops, and at times, different business locations. They can change their method of solicitation, product line, and other recognizable traits overnight. Their operations are mobile and their schemes complex. To complicate the matter further, because of the embarrassment and complacency on the part of the victims, telemarketing fraud is a highly underreported crime problem.

EFFECTIVE: 10/01/97

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PRINTED: 02/18/98

196-1.2 Types of Schemes

(1) The typical telemarketer operates by exploiting the trust of individuals who are usually offered a deal that is "too-good-to-be-true." These offers typically include exciting trips, expensive jewelry, household products, expensive land, or financial investments. Many times the items ordered or promised are never delivered or the merchandise received is not of the value stated in the original offer, leaving the deal to be just what it seemed to be: "too-good-to-be-true."

(2) Illegal telemarketers typically contact their victims either by telephone or through the mail. Once direct contact has been made, the telemarketers will provide false or misleading information to the victim in order to entice that individual to send monies. The amount of money requested by the telemarketers ranges from the low hundreds of dollars to thousands of dollars. Some victims have lost in excess of \$100,000 to illegal telemarketers.

(3) After defrauding a victim of the initial funds, some illegal telemarketers contact previous victims of telemarketing scams and advise the callers that they are U.S. government officials, FBI Agents, prosecutors, etc., and advise the victims that for a fee the monies lost to the telemarketers in the past can now be recovered and refunded. This money is also lost by the victim, creating a wariness to cooperate with law enforcement.

(4) Telemarketers are exploiting the international borders to distance themselves from prosecution relating to their criminal activity. International boiler rooms are being successfully utilized to disguise the true calling location of the telemarketer. Also, international rooms are utilized because the host countries often do not perceive the boiler rooms as criminal problems. This is often due to the fact that there are no victims in the host country.

EFFECTIVE: 10/01/97

196-1.3 Statutes Typically Utilized

- (1) Title 18, USC, Section 371, Conspiracy to Commit Wire and/or Mail Fraud
- (2) Title 18, USC, Section 1343, Wire Fraud
- (3) Title 18, USC, Section 1341, Mail Fraud
- (4) Title 18, USC, Sections 1962 and 1963, RICO
- (5) Title 18, USC, Sections 1956 and 1957, Money Laundering
- (6) Title 18, USC, Section 1344, Bank Fraud

EFFECTIVE: 10/01/97

196-1.4 Possible Investigative Techniques

(1) Undercover techniques have been utilized with great success in the telemarketing arena. This method of investigation has identified numerous large boiler room operations.

(2) [REDACTED]

(3) [REDACTED]

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EFFECTIVE: 10/01/97

| 196-1.5 Character - 196A Telemarketing Fraud|

EFFECTIVE: 10/01/97

| 196-2 |196B - INSURANCE FRAUD

EFFECTIVE: 10/01/97

| 196-2.1 Description of Crime Problem Area

The insurance industry is uniquely suited to fraudulent abuse since the very nature of insurance, involves the payment of money in the present in exchange for a promise to pay costs associated with some future event which may not occur. The U.S. has over 5,000 insurance companies, holding in excess of \$700 billion in assets and employing approximately 1.9 million people. The FBI addresses fraud that is perpetrated from within the insurance industry (internal fraud) and fraudulent activity that is committed by applicants for insurance (external). Many of the schemes that are being addressed and identified within the arena of insurance fraud are insurance company insolvencies, unlicensed insurance companies operating in licensed marketplaces, premium diversion schemes, and utilizing fraudulent assets in computing an insurance carrier's net worth. Major emphasis has been placed on addressing emerging insurance fraud problems especially those which have been identified as contributing to the insolvency of an insurance company.

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PRINTED: 02/18/98

EFFECTIVE: 10/01/97

196-2.2 Types of Schemes

(1) According to a 1991 analysis of open and pending FBI insurance insolvency investigations, premium diversion was the most prevalent fraudulent scheme identified. Premium Diversion is the embezzlement of premiums received by an insurance company which may or may not be fraudulently capitalized.

(2) One type of premium diversion is the failure of an insurance agent, broker, or managing general agent to remit premiums to the underwriter. Another type of premium diversion involves selling insurance without being licensed and collecting as much premium income as possible in a short period of time without any intention of ever paying the majority of claims. In these types of cases the con artist will frequently pick a line of insurance for which there is significant demand and limited legitimate capacity.

(3) Another common insurance fraud trend identified is the use of foreign corporations and entities to move stolen funds offshore to hinder regulators and law enforcement. This problem is not unique to the insurance industry and is found in almost every type of economic fraud scheme.

(4) The use of fraudulent assets toward computed surplus is also a common scheme being utilized in the insurance fraud arena. In order to divert premium income with a licensed company it is first necessary to establish a recognized surplus against which policies can be written. This recognized surplus is accomplished by utilizing fraudulent or bogus assets to capitalize an insurance company. In many cases, this fraudulent capitalization provides insurance companies the ability to write additional insurance coverage and divert the received premiums. Oftentimes a subject will admit to committing the mentioned act and rationalize the activity by claiming to misrepresent his/her surplus in the short run for the sole purpose of generating cash flow in order for the business to work through difficult economic times. Under the Violent Crime Control and Law Enforcement Act of 1994, there is a provision that prohibits the making of false representations about the financial condition of an insurance company by insurance company insiders.

(5) Fee Churning

[REDACTED] involves a series of brokers and intermediaries taking commissions through a reinsurance agreement followed by subsequent retrocession. What occurs is the initial premium is reduced by repeated commissions taken until there is no longer sufficient premium dollars left to pay claims. The company often responsible for the payment of claims is a company the conspirators have set up to fail. Each transaction viewed alone appears to be a legitimate transaction. Only after the cumulative effect of the transaction is considered does the specter of fraud emerge.

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(6) Asset diversion frauds involve the theft of insurance company assets. Although it can involve the outright theft of the accumulated assets held as reserves, it more often involves the substitution of assets. This type of fraud occurs almost exclusively in the context of an acquisition or merger of an existing insurance company. The most widely identified type of asset diversion involves acquiring control of an insurance company by purchasing a controlling interest of the stock in the company with borrowed funds. The subject will then use the existing assets of the acquired company to pay off the debt incurred in gaining control. The balance of the assets can be subsequently diverted to the personal use of the subject who is also left with control of the company. The company can then be used as a vehicle to generate premiums which can be subsequently diverted.

EFFECTIVE: 10/01/97

196-2.3 Statutes Typically Utilized

(1) Title 18, USC, Section 371, Conspiracy to Commit Wire and/or Mail Fraud

(2) Title 18, USC, Section 1343, Wire Fraud

(3) Title 18, USC, Section 1341, Mail Fraud

(4) Title 18, USC, Sections 1956 and 1957, Money Laundering



(5) On September 13, 1994, the omnibus anticrime bill entitled the "Violent Crime Control and Law Enforcement Act of 1994" was enacted. The act included new federal criminal and civil enforcement provisions aimed directly at white-collar insurance fraud. The insurance fraud provisions of the act are contained within two new sections to Title 18, U.S. Code, Sections 1033 and 1034.

EFFECTIVE: 10/01/97

196-2.3.1 Section 1033

(1) Section 1033 is captioned "Crimes By or Affecting Persons Engaged in the Business of Insurance Whose Activities Affect Interstate Commerce." Section 1033 enumerates certain activities as crimes if they are carried out by individuals, their agents and employees engaged in the business of insurance and whose activities affect interstate commerce. Prohibited activities include:

(a) Knowingly, with the intent to deceive, making any false material statement or report or willfully and materially overvaluing any land, property or security in connection with any financial reports or documents presented to any insurance regulatory official or agency for the purpose of influencing the actions of the official or agency;

(b) Willfully embezzling, abstracting, purloining or misappropriating any moneys, funds, premiums, credits or other property of any person engaged in the business of insurance;

(c) Knowingly making false entry of material fact in any book, report or statement of the person engaged in the business of insurance with the intent to deceive any person about the financial condition or solvency of such business;

(d) By threats or force or by any threatening letter or communication, corruptly influences, obstructs, or impedes or endeavors corruptly to influence, obstruct, or impede the proper administration of the law under which any proceeding is pending before any insurance regulatory official or agency; and

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196-2.4 Possible Investigative Techniques



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EFFECTIVE: 10/01/97

196-2.5 Character - 196B Insurance Fraud - (Nonhealth Care)

EFFECTIVE: 10/01/97

196-3 |196C - SECURITIES/COMMODITIES FRAUD|

EFFECTIVE: 10/01/97

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196-3.1 | Description of Crime Problem Area

(1) The U.S. securities and commodities markets have grown dramatically over the last decade. Traditional equity securities, government and agency securities trading have experienced geometric increases. Growth in the securities markets has also lead to increased opportunities for fraud and misconduct. Securities regulators have estimated that securities fraud has grown to a \$40-billion-a-year business in the U.S. These same regulators have observed that fraudulent securities operators are expanding their scope by looking abroad for new markets and investors to defraud.

(2) Securities and Commodities Fraud may be committed by investors, employees of brokerage houses, by corporate executives or shareholders, and by other financial market participants. As with any fraud case, a misrepresentation is the quintessence of the crime.

(3) The U.S. Department of Justice (DOJ) and the FBI have adopted the position that the efficiency and effectiveness of the securities markets is substantially enhanced by consistent and successful prosecution of criminal offenses. The FBI, working closely with the Securities and Exchange Commission (SEC), Commodities Futures Trading Commission, and other state and federal regulatory entities, has placed a greater emphasis on the criminal investigation and prosecution of securities law violators.

EFFECTIVE: 10/01/97

196-3.2 Types of Schemes

(1) Historically, a number of securities investigations have been initiated and successfully prosecuted utilizing various securities and commodities laws as applicable charging instruments. Today, the most pervasive schemes being identified within the securities arena are, stock manipulation schemes, and fraud occurring during the initial public offering process.

(2) Stock manipulation schemes can occur on any of the financial exchanges, but is more common in the over-the-counter (OTC) marketplace. OTC stocks can be thin issues without much trading volume. The price can be artificially manipulated through various means for benefit of insiders and/or brokerage houses that make a

market in the stock. Methods of artificially raising the price for stock includes making purchases through schemes to inflate sales volume and demand. Another item to focus on in a manipulation investigation is the disposition of restricted stock. Stock issued to insiders prior to a public offering is restricted under SEC regulations and cannot be sold in the public market until a set period of time has passed. This stock may be laundered through nominees in an attempt to dump it on the market. Specific schemes in the stock manipulation arena are insider trading, delinquent reporting, and misappropriation of investor funds.

(3) Fraud occurring during the initial public offering (IPO) surfaces in a number of different but distinct ways. Fraud in the IPO may occur when, in order to meet the minimum number of shares sold for a best efforts underwriting to be effective, the issuer will buy some of its own stock through nominee accounts. In addition, if there is initial misuse of the proceeds, subsequent financial statements and annual reports may also be false.

EFFECTIVE: 02/10/98

196-3.3 Statutes Typically Utilized

- (1) Title 18, USC, Section 371, Conspiracy to Commit offense or to defraud U.S.
- (2) Title 18, USC, Section 1343, Fraud by Wire, Radio, or Television
- (3) Title 18, USC, Section 1341, Mail Frauds and Swindles
- (4) Title 15, USC, Section 78, Securities Fraud
- (5) Title 18, USC, Section 1956, Money Laundering
- (6) Title 18, USC, Section 513, Securities of the State and Private Entities

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EFFECTIVE: 10/01/97

196-3.4 Jurisdiction/Venue

(1) The FBI is the law enforcement agency primarily responsible for investigating criminal securities frauds.

(2) In addition to the FBI, the Postal Inspection Service and the Internal Revenue Service also conduct investigations relating to securities as they arise in the course of mail and tax frauds.

EFFECTIVE: 10/01/97

196-3.5 Possible Investigative Techniques

The undercover technique has been widely effective in investigating securities and commodities violations. FBI investigations utilizing these techniques have led to successful prosecutions involving penny stocks, insider trading, market manipulations as well as unregistered securities cases. In most cases ██████████ techniques were also used in an effort to enhance the undercover operation. The FBI has developed an acute expertise in proactive investigations in the area of securities and commodities fraud.

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EFFECTIVE: 10/01/97

196-3.6 Character - 196C Securities/Commodities Fraud

EFFECTIVE: 10/01/97

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| 196-4 | 196D - OTHER WIRE AND MAIL FRAUD SCHEMES |

EFFECTIVE: 10/01/97

| 196-4.1 | Description of Crime Problem Area

Other types of wire fraud matters, not associated with telemarketing fraud, insurance fraud, or securities/commodities fraud are to be investigated under the 196D classification. These type of frauds include advance fee schemes and other domestic and international schemes to defraud. Whether these type frauds are simple or extremely complicated, they all contain interstate communication utilizing a wire or mail communication.

EFFECTIVE: 10/01/97

| 196-4.1.1 | Deleted |

EFFECTIVE: 07/18/86

| 196-4.2 | Types of Schemes

(1) "Advance fee" schemes involve the proposal of a "too-good-to-be-true" financial opportunity to the victim, promising a high yield of return within a short period of time. The victim usually has to provide fees in advance in order to defray costs involved with the process. The subjects utilize mail drops, assumed names, and answering services. By the time the victim realizes the scheme, the subjects have usually moved on to another location and to other victims.

(2) The fraudulent use of telephone credit cards or other access devices to obtain service without charge should be investigated under this classification. Access devices, including

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personal identification numbers, plates and electronic serial numbers  
are defined in Title 18, USC, Section 1029.

EFFECTIVE: 10/01/97

196-4.3 Statutes

(1) Title 18, USC, Section 1343, "Fraud by Wire"

(2) Conspiracy to violate Title 18, USC, Section 1343,  
must be prosecuted under the general conspiracy section (Title 18,  
USC, Section 371)

(3) Title 18, USC, Section 1343, is a specified unlawful  
act violation that can be utilized in the prosecution of Title 18,  
USC, Sections 1956 and 1957, Money Laundering.

(4) Since the Fraud by Wire Statute, enacted July 16,  
1952, was patterned after the Mail Fraud Statute (Title 18, USC,  
Section 1341), mail fraud principles have been applied to fraud by  
wire prosecutions. As in the former it is not necessary that the  
victim of the scheme be actually deceived or suffer a loss. Moreover,  
while it is necessary to show that the subject caused the use of a  
wire it is not necessary to establish that he/she directly  
participated in the use of the wire. It is sufficient if some  
communications were the foreseeable result of his/her act.

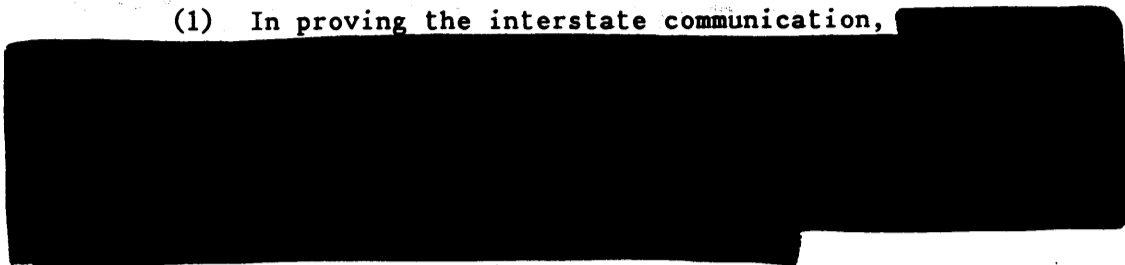
(5) Title 18, USC, Section 1029, "Fraud and related  
activity in connection with access devices."

EFFECTIVE: 10/01/97

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196-4.4 | Investigative Techniques

(1) In proving the interstate communication,



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(2) The scheme or artifice to defraud through a series of false representations to the victim by the subject can be shown most directly by proving that the latter was neither capable of fulfilling his/her promises nor so inclined.

(3) Often the subject uses someone else's financial statement, possibly obtaining a loan commitment from another broker or letter of credit from bankers who are collaborators in the scheme. In fraud situations, the subjects seldom, if ever, make admissions of illegal acts or fraudulent intent. Moreover, there is seldom one specific act that, standing alone, is illegal. The essence of the fraud by wire case is to establish the fabric of circumstantial evidence by comparing the representations and promises on the one hand and the actual facts on the other hand.

EFFECTIVE: 10/01/97

196-4.5 | Investigative Policy

(1) International fraud matters should be worked in cooperation with the Legal Attache (Legat). A copy of all communications to the Legat office should also be directed to the International Relations Section and the substantive desk at FBIHQ.

(2) Requests for information through Mutual Legal Assistance Treaties used to obtain records from a foreign country should be coordinated by the U.S. Attorney's Office and the Office of International Affairs (OIA), DOJ.

(3) All foreign travel must be approved by the section



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| chief of the substantive desk. The section chief must be assured  
| that host country clearance has been obtained through the appropriate  
| Legat and the OIA, DOJ, concurs with the proposed travel. |

EFFECTIVE: 10/01/97

| 196-4.6 | Character - 196D Other Wire and Mail Fraud Schemes |

EFFECTIVE: 10/01/97

| 196-4.7 | Deleted |

EFFECTIVE: 10/01/97

| 196-5 | DELETED |

EFFECTIVE: 10/01/97

| 196-6 | DELETED |

EFFECTIVE: 10/01/97

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196-7 DELETED

EFFECTIVE: 07/18/86

196-8 DELETED

EFFECTIVE: 07/18/86

196-9 DELETED

EFFECTIVE: 07/18/86

196-10 DELETED

EFFECTIVE: 07/18/86

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SECTION 197. CIVIL ACTIONS, CLAIMS AGAINST THE GOVERNMENT OR  
SUBPOENA MATTERS (RELATING TO FBI INVESTIGATIVE  
ACTIVITIES)

197-1 SCOPE

Classification 197 has been assigned for all civil suits involving FBI matters and all Administrative Claims arising from FBI activities. This classification includes all civil actions involving FBI personnel whether filed against present employees, former employees, fictitious employees, the FBI, or the U.S. Government, and Subpoena Matters calling for production of FBI documents. It also includes all civil actions filed in a Federal Court arising out of the Freedom of Information Act or the Privacy Act. It does include Administrative Claims against the Government under the FTCA as a result of an automobile accident involving a Bureau employee and a Bureau automobile. The classification 120 will continue to be used for FTCA cases not involving FBI personnel.

EFFECTIVE: 09/20/82

197-2 INITIAL HANDLING

EFFECTIVE: 09/20/82

197-2.1 Title of Case

The title of the case will be composed of the title of the civil action, (plaintiffs and defendants), the court where filed, and the civil action file number assigned by the court.

EFFECTIVE: 09/20/82

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197-2.2 Responsibility of Legal Advisor as Case Agent (See MAOP,  
Part I, 12-2.4.4; II, 4-8(5).)

(1) When a field office or personnel of a field office receives a copy of the summons and complaint in a new civil action involving FBI personnel, a new 197 case should be opened and immediately assigned to a Legal Advisor who will be responsible for providing Office of the General Counsel (OGC) at FBIHQ with one copy of the various documents (described in 197-2.3, infra); the Legal Advisor will follow the case until its ultimate disposition. Legal Advisor should coordinate the civil action with the AUSA handling the case to ensure the protection of FBI interests and Legal Advisor should advise OGC of the status of the civil action every 45 days unless significant developments warrant an earlier or immediate communication.

(2) Cases which become dormant for lengthy periods of time may be placed in a pending-inactive status and at that time FBIHQ should be advised that the case has been made pending-inactive. Also, FBIHQ should be informed of the date when the next status report from the field office can be expected.

(3) Legal Advisors assigned civil actions should resolve any questions not covered by the instructions herein by communicating with OGC. All requests by a local AUSA to review FBI documents or files in connection with a civil action must be cleared through OGC prior to such requests being granted.

EFFECTIVE: 12/02/94

197-2.3 Transmittal of Documents to FBIHQ (Initial Airtel) and USA  
(See MIOG, Part I, 197-2.2.)

(1) The Legal Advisor will expeditiously furnish one copy of the summons and complaint served on FBI personnel to FBIHQ by airtel marked to the attention of OGC and by letter to the USA in the District where the suit was filed. This airtel should be submitted within two workdays following receipt of service. The complaint should be reviewed to ensure that all exhibits or attachments thereto are included. If any pages are missing, they should be obtained from the clerk of the appropriate court.

(2) The initial airtel to FBIHQ and the letter to the USA

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should state the date of service, manner of service, and upon whom served and state that any named defendant FBI personnel who desire departmental representation will submit to FBIHQ individual letters addressed to the Attorney General of the United States requesting such representation. (See also 197-4, infra.)

EFFECTIVE: 12/02/94

197-3 SECONDARY HANDLING

EFFECTIVE: 09/20/82

197-3.1 Preparation of Second Airtel (See 197-4.2.)

(1) After submitting the initial airtel enclosing copies of the summons and complaint, the Legal Advisor will analyze the complaint and compare the allegations with information on file in the office. In many instances it will be necessary to obtain additional information from individual employees in order to completely answer each and every allegation. The Legal Advisor should detect these factual gaps and ascertain the answers without the necessity for direct inquiry from FBIHQ. The LHM described in 197-3.2, infra, should be submitted by airtel to FBIHQ, Attention: Litigation Section, Office of the General Counsel (OGC).

(2) The second airtel and the LHM should be submitted within two weeks of service of the summons and complaint.

EFFECTIVE: 09/09/94

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197-3.2 Background LHM (See MIOG, Part I, 197-3.1, 197-8.5; MAOP, Part II, 10-23; and Correspondence Guide-Field, 1-17.1.)

(1) An LHM containing factual information responsive to all allegations in the complaint, as well as factual data describing the background on which the suit was predicated, should be prepared under the guidance of the Legal Advisor. It is usually preferable to arrange events in the LHM in order of occurrence. Unless a unique situation exists, do not number or letter the information to conform to the paragraphs in the complaint. Ensure, however, that all allegations have been fully and accurately treated. The information contained in this LHM should be drawn from both a review of files and from information furnished by personnel involved. It is extremely important that FBIHQ be furnished with complete information relating to the allegations and that such information be accurate and responsive.

If the civil action arises from an automobile accident which has been investigated and reported separately, the report may be submitted in lieu of a background LHM. A copy of the accident report and all enclosures, including an original set of any photographs, should be enclosed with the second airtel unless previously submitted to OGC as part of an administrative claim. When incidents other than automobile accidents have been investigated and reported separately, e.g., a shooting incident or Office of Professional Responsibility inquiry, that fact should be noted in the second airtel and no background LHM is required. FBIHQ may require additional background information or investigation at a later date.

(2) The Legal Advisor should supervise and coordinate the preparation of the LHM. Legal Advisor should be assisted by personnel who are most familiar with the subject matter of the lawsuit. Those knowledgeable employees should bear the responsibility for conducting appropriate file reviews and they should prepare the LHM under the supervision of the Legal Advisor. Such knowledgeable employees may be required to testify concerning the activities alleged in the complaint and to testify concerning the file reviews which were performed. Since it is the responsibility of OGC at FBIHQ to prepare a litigation report for the Department of Justice (DOJ), it is imperative that information furnished by knowledgeable personnel be both complete and accurate. Both the FBI and the Department could suffer unnecessary embarrassment if incomplete information is furnished by employees, and such incomplete reporting could adversely affect the defense of FBI personnel. Additionally, the Department may request individual employees to furnish affidavits confirming information reported by the field office based upon file reviews and interviews of employees.

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Unless there is some reason not to do so, a copy of the LHM should be furnished to the local USA by cover letter. The cover letter should explain the circumstances of service and, if the USA has not been served, transmit a copy of the summons and complaint. This practice will provide basic information concerning the civil action to the USA at the earliest possible time. The cover communication should also contain the following information:

- (a) Name(s) of the author(s) of the LHM; and
- (b) Sources of information used in the LHM,

including:

1. Names of interviewees and their relationship to the matter and the name of the interviewing Agent; and

2. Titles and file numbers, including Bureau file numbers, of all files reviewed, and the name of the reviewing Agent.

(3) A copy of the litigation report, prepared by OGC, will be provided to each field office concerned.

EFFECTIVE: 09/09/94

| 197-3.3 | Deleted |

EFFECTIVE: 05/14/93

197-4 REQUESTS FOR REPRESENTATION

EFFECTIVE: 09/20/82

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197-4.1 Departmental Authorization for Representation

While it is proper to notify the local office of the USA of any civil action and to provide copies of the summons and complaint to that office, it should be noted that the USA has no personal authority to commit the Government to defending individual employees until the USA is delegated that authority by the Attorney General in each case. This is due to the fact that, in each case, a determination must be made as to whether the individual employee was acting within the scope of his/her employment.

EFFECTIVE: 09/20/82

197-4.1.1 Civil Division Requirements

The Civil Division, Department of Justice, requires that the employing agency express its opinion whether or not an individual employee was acting within the scope of his/her employment, and the Civil Division further requires that a recommendation be made by FBIHQ that the DOJ afford representation to a particular individual. The Civil Division also requires that each defendant request such representation in writing by an individual letter addressed to the Attorney General. This letter is evidence of a personal decision by the individual to authorize the DOJ to act on his/her behalf and that he/she has decided to entrust his/her defense to the DOJ. It also precludes any inference or claim that such representation was forced upon the individual or that he/she did not understand that he/she had the right to engage private counsel to represent him/her. The Civil Division then recommends to the Attorney General whether such representation should be granted. In most cases, there is no question but that the employees involved were acting within the scope of their employment and representation is approved by the Attorney General.

EFFECTIVE: 09/20/82



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197-4.1.2 Civil Division Notification to USA

When the Attorney General has authorized representation, the Civil Division notifies the local USA for the District wherein a civil action was filed that USA has the authority to represent the individual employee defendant. It is only at this time that the local USA can categorically assure FBI personnel that they will be represented by USA. It is prudent from the employee's viewpoint that the letter requesting representation by the Department be sent at the earliest possible time after the employee has decided to entrust his/her defense to the DOJ. The USA usually has only 60 days to respond to a complaint.

EFFECTIVE: 09/20/82

197-4.2 Preparation of Letter by Employee

The individual employee defendant who has been served with a copy of the summons and complaint and who desires departmental representation should address his/her letter requesting representation to the Attorney General of the United States. The letter should identify the suit by title, civil action number, and the court where filed, state that he/she has been named as a defendant therein, and has been served with a copy of the summons and complaint. Thereafter, if correct, employee should state that he/she has not retained private counsel to defend him/her in the suit and request representation by the DOJ. The letter should conclude with a statement that all actions taken by employee in regard to the subject matter of the suit were done within the scope of his/her employment by the FBI. The original and two copies of this letter should be submitted to FBIHQ as enclosures, if possible, to the airtel required in 197-3.1, supra. The original will be transmitted to the Department with the recommendation of FBIHQ. Copies of letters requesting representation should be furnished to the local USA by the field office.

EFFECTIVE: 09/20/82

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197-4.3 Responsibility for Advising Employees of Case Status

(1) The identity of the Office of the General Counsel Attorney handling the suit will be furnished to the defendant when that defendant's request for representation is first sent to the DOJ and a letter is sent to the defendant by OGC telling him/her that the request has been referred to the Department.

(2) Upon notifying a defendant that his/her request for representation has been approved, OGC will advise the defendant further that the matter is being handled by a specific USA's office (in most instances in the same city) in which the employee is assigned. OGC will provide the defendant with the name of the AUSA assigned to the case, if known at the time, and will also advise the defendant of any changes in representation responsibilities (such as transfer of representation authority back to the DOJ or from the DOJ to a USA's office). He/She will also be again provided the name and FTS number of the OGC Attorney handling the case.

(3) The defendant will be advised of the general status of the case at the time that representation is approved and the defendant will be advised that he/she may periodically contact the OGC Attorney for information on the status of the case. The Principal Legal Advisor (PLA) may be called upon to assist in notification of employees. See paragraph (5).

(4) The PLA will not only check the docket at the court regarding the case, but will also maintain monthly, or more frequent, contact with the AUSA and obtain copies of all pleadings filed in the action.

(5) The OGC Attorney assigned to the case will be responsible for advising the PLA telephonically or in writing of pertinent developments which might affect the employee-defendant's status in the case, such as settlement offers, administrative claims filed subsequent to the filing of the civil action, notification of depositions to be scheduled, etc. The PLA will also be responsible for furnishing the items in this paragraph and (4), supra, to OGC.

(6) OGC will advise Bureau employees who are not named defendants in a civil action when discovery procedures may disclose their identity in circumstances likely to cause the employee to be deposed, called as a witness or named as a defendant.

(7) OGC Attorneys will personally coordinate with Information Resources Division (IRD) when it appears that there

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may be Freedom of Information-Privacy Acts inquiries by a plaintiff. In addition, any material which is the subject of litigation or is involved in any Office of Professional Responsibility (OPR) inquiry will be routed by IRD through OGC and/or OPR for their comments and possible objections.

EFFECTIVE: 09/09/94

197-4.4 Attorney-Client Privilege

(1) Confidential communications by an individual defendant to, or in the presence of, a PLA or Legal Advisor in the field, or an OGC Attorney assigned to the case are protected by the attorney-client privilege. Information adverse to the interests of the client communicated to the attorneys cannot be divulged by those attorneys to prosecutorial or administrative authorities for use in investigations or prosecutions for criminal violations or inquiries leading to administrative or disciplinary action. At the same time, however, such information could impact upon the scope of employment and the interest of the United States criteria which must be satisfied in DOJ representation to be initiated or continued. Such information must be communicated to the Department official responsible for the representation decision, and if the criteria are not met, representation may have to be withdrawn pursuant to Title 28, Code of Federal Regulations, Section 50.15(a) (11).

(2) The confidentiality of privileged communications must be maintained to prevent an inadvertent loss or waiver of the attorney-client privilege. To ensure the confidentiality of such communications, PLAs and/or OGC Attorneys are responsible for identifying and segregating notes, FD-302s, and other documents containing privileged communications. These documents are to be placed inside an FD-715 envelope. A cover memorandum which generally describes the contents, including the date of the conversation, the identities of the provider and recipient of the information, as well as the fact that the information falls within the protection of the attorney-client privilege must be prepared and placed in the file with the FD-715 attached. As stated on the FD-715 envelope, access to the privileged information is restricted to those attorneys requiring the information in furtherance of the representation of the employee who furnished the information. Notation of the time, date, and identity of persons viewing the documents must be made on the access log of the FD-715 each time the contents of the envelope are accessed. Should

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transmittal of the privileged documents to FBIHQ be necessary, as in the case of letterhead memoranda containing privileged information, the documents should be transmitted in the FD-715 envelope accompanied by an appropriate cover communication.

EFFECTIVE: 09/09/94

197-4.5 Right of Bureau Employee-Defendants to Select Their Attorney

Once DOJ representation is authorized pursuant to the provisions and procedures of Title 28, Code of Federal Regulations, Section 50.15, et seq., the assignment of a specific attorney is a matter committed solely to the discretion of the responsible Department officials, including Assistant Attorneys General, USAs and their subordinate supervisors. While client and agency preferences or dissatisfactions may be communicated to supervisory personnel, the final decision as to the appropriate allocation of Department resources must be made by Department authorities and not the client.

EFFECTIVE: 07/28/87

197-5 PAYMENT OF JUDGMENTS AGAINST FBI EMPLOYEES

(1) Pursuant to Title 28, Code of Federal Regulations (C.F.R.), Section 50.15 et seq., the Department of Justice may indemnify any employee who is held personally liable for damages as a result of actions taken within the scope of employment and when the Attorney General or Attorney General's designee conclude that indemnification is in the interest of the United States. Indemnification is available to present and former FBI employees who satisfy the scope and interest standard. Any payment or settlement, however, is contingent upon the availability of appropriated FBI funds.

(2) Since indemnification is discretionary, the Principal Legal Advisor should continue to discuss the areas of potential vulnerability for money judgments with each employee who is an individually named defendant in a civil action. It should be stressed that indemnification is fully discretionary with the Attorney General and contingent upon the availability of appropriated FBI funds. For

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these reasons, the indemnification policy is not a substitute for personal liability insurance.

EFFECTIVE: 07/28/87

| 197-5.1 Request for Indemnification | (See LHBSA, 9-5(4).) |

To obtain indemnification under the regulations, an employee who suffers a final judgment for monetary damages must submit a written request with full supporting documentation to the Director, Attention: Office of the General Counsel. The request should include the following:

(1) A description of the case, including the title of the action, the civil action number, and the court where the action was filed.

(2) Specify whether representation was provided by DOJ, private counsel retained at Government expense or private counsel retained at the expense of the employee. Where representation was provided by a private attorney, include the name and address of the attorney.

(3) A copy of the final judgment and order issued by the court.

Upon receipt of this documentation, a recommendation regarding indemnification will be formulated by FBIHQ in accordance with the regulations. This recommendation and the written request from the employee will then be forwarded to the appropriate Assistant Attorney General for further consideration before a determination is made by the Attorney General or Attorney General's designee. It should be noted that the Assistant Attorney General may contact the appropriate United States Attorney's Office for consultation.

EFFECTIVE: 09/09/94

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197-5.2 Settlement of Claims Prior to Final Judgment

(1) In addition to the payment of adverse judgments, Section 50.15(c)(2) permits DOJ to settle or compromise a personal damages claim against a Department of Justice employee by the payment of available funds at any time pursuant to the same scope and interest standard described above. However, absent exceptional circumstances as determined by the Attorney General or Attorney General's designee, DOJ will not agree to indemnify and settle a claim prior to the entry of a final judgment.

(2) Settlement will generally only be considered under the following circumstances:

(a) where there is a substantial risk of an unfavorable judgment

(b) where settlement is warranted for economic reasons, or

(c) where there is a substantial risk that unfavorable caselaw will result

EFFECTIVE: 07/28/87

197-5.3 Meaning of Final Judgment

A judgment will be considered final for the purposes of indemnification when all avenues of appeal have been exhausted or a decision has been made by DOJ not to pursue an appeal.

EFFECTIVE: 07/28/87

197-6           DECLARATIONS IN CIVIL SUITS

(1) The successful defense of civil suits against the Government and FBI personnel named as defendants, who will be represented by the Department of Justice, frequently may require the preparation of declarations (previously affidavits) pursuant to Title 28, USC, Section 1746, by the personnel concerned. However, declarations and/or affidavits should not be routinely prepared by individual defendants for use in a civil suit until OGC or a departmental employee or an employee of the USA's office has reviewed factual data and has instructed that such declarations are required.

(2) Unsolicited declarations are not only unnecessary but may in fact be detrimental since their existence and contents may become the subject of discovery by plaintiffs. Declarations may not be required until the DOJ has reviewed the litigation report submitted by OGC. This procedure applies only when a civil suit against FBI personnel is involved and does not alter other FBIHQ requirements for declarations or affidavits regarding allegations of misconduct.

EFFECTIVE: 09/09/94

197-6.1       Preparation of Declaration by Employee

(1) When declarations are requested, instructions will be issued as to particular points which should be covered based upon the individual requirements of the specific civil action. Certain general rules, set forth below, will apply to the preparation of declarations by FBI personnel named as defendants.

(2) Prepare the declaration on legal-sized bond paper. The declaration should bear the heading of the court where the suit was filed, the title of the action, and its civil action number. The declaration should include the following information:

(a) A recital of the fact that the declarer has read and is familiar with the allegations in the plaintiff's complaint;

(b) A description of the position held by the declarer during the time and events which allegedly gave rise to plaintiff's action;

(c) A narrative description of the particular

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circumstance which gave rise to the allegations of the complaint or describes the involvement, if any, of the declarer with plaintiff;

(d) If appropriate, a denial of any of plaintiff's allegations which the declarer believes to be false or misleading;

(e) If correct, a statement to the effect that the declarer's conduct with respect to plaintiff occurred entirely in the course of his/her official duties as previously described in the declarer's declaration; and

(f) If correct, a statement to the effect that the declarer's actions were based upon reasonable grounds and taken in good faith as to their lawfulness.

EFFECTIVE: 09/20/82

197-6.2 Preparation of Declaration by Supervisor

Frequently, the Department also requests a declaration be prepared by the immediate supervisor of the personnel involved. This declaration should also be on legal-sized bond paper, and bear the same heading as those executed by the personnel supervised. The supervisor's declaration should state his/her position, that he/she has read and is familiar with the complaint and the declarations of the FBI personnel, and if correct, declare that the acts of FBI personnel described in those declarations were in the discharge of their official duties and within the scope of their employment.

EFFECTIVE: 09/20/82

197-7 CIVIL ACTIONS BROUGHT UNDER THE FREEDOM OF INFORMATION  
AND/OR PRIVACY ACTS

(1) Civil suits brought under the Freedom of Information and/or Privacy Acts (FOIPA) are usually brought against the FBI, the DOJ, or individual officials named in their official capacity. Service is usually made on the USA, DOJ, or FBI directly. In the event service is made on the field office, all documents served should be forwarded to FBIHQ, Attention: Office of the General Counsel, within two workdays after receipt. Unlike other civil actions, Freedom of Information Act complaints require an answer within thirty

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days of service. The initial airtel should state the date of service, manner of service, and upon whom served. OGC will assign FOIPA lawsuits to Principal Legal Advisors (PLAs) in the field office covering the federal judicial district where the lawsuit is filed. The PLA will be responsible for coordination with the U.S. Attorney's office/DOJ and the preparation of litigation reports and coordinating the preparation of necessary declarations. OGC reserves the option of retaining litigation responsibility for sensitive or complicated FOIPA lawsuits.

(2) The Legal Advisor should review the complaint to determine whether named individuals are so named in their official or individual capacity. If the latter is the case, letters requesting representation should be forwarded promptly.

(3) The Legal Advisor should conduct an indices check and appropriate file reviews to determine if the field office was in receipt of a Freedom of Information Act or Privacy Act request and advise FBIHQ of the disposition of same. Include one copy of all correspondence with plaintiff in the initial airtel to FBIHQ.

(4) FBIHQ will notify the field office where the civil action is pending in all instances where the field office is not served. A new 197 case should be opened and assigned to a Legal Advisor. Should a FOIPA lawsuit be retained by OGC for litigation purposes, the PLA should monitor it with the USA or conduct monthly docket checks and submit the results to OGC.

EFFECTIVE: 12/02/94

197-8 ADMINISTRATIVE CLAIMS INVOLVING NEGLIGENT OR WRONGFUL ACTS

EFFECTIVE: 09/20/82

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197-8.1 Claim for Damage, Injury, or Death

Any claim for money damages against the Bureau for injury to or loss of property, personal injury or death caused by the negligent or wrongful act or omission of any employee while acting within the scope of his/her office or employment, under such circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred, is properly presented to the FBI in the form of an executed SF-95 or other written notification of an incident, accompanied by a claim for money damages in a sum certain.

EFFECTIVE: 09/20/82

197-8.2 Presentation of Claim - Notice

A claim shall be deemed to have been presented when the FBI receives from a claimant or claimant's duly authorized agent or legal representative an executed SF-95 or other written notification of an incident, accompanied by a claim for money damages in a sum certain.

EFFECTIVE: 09/20/82

197-8.3 Settlement of Tort Claims

On November 29, 1991, an order was issued by the Department of Justice which permits the Director of the FBI to adjust, determine, compromise, and settle a claim involving the FBI under Title 28, USC, Section 2672, relating to the administrative settlement of Federal tort claims, if the amount of a proposed adjustment, compromise, settlement, or award does not exceed \$10,000.00. This delegation of authority is contained in Chapter I, Subpart P, Section 0.89a, Paragraph (a), Title 28, Code of Federal Regulations.

EFFECTIVE: 05/14/93

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197-8.4 Responsibility of Principal Legal Advisor as Case Agent (See MAOP, Part II, 4-8(5).)

(1) All administrative claims, including those involving automobile accidents, should be opened as a 197 case and assigned to the PLA or a Legal Advisor. If the claim arises out of an automobile accident, the title should reflect the claimant's name and the fact that an administrative claim has been filed. The original SF-95 or other notice of a claim should be enclosed with the airtel to FBIHQ under the caption of the 197 case and should not be sent as an enclosure to or as a part of the report of the accident investigation. The airtel should also reference all claims previously submitted to FBIHQ that arise out of the same accident. Reference should be made to the 66 "Automobile Accident" file. If the 66 file is not closed, every effort should be made to accelerate any outstanding investigation to bring it to a conclusion. The 66 file should not be consolidated into the new 197 file.

(2) Upon receipt of an original SF-95 or other notice of a claim, the PLA should ensure that it is promptly forwarded to FBIHQ, Attention: OGC, irrespective of its state of completion. OGC will then assume responsibility for obtaining a completed SF-95 or other notice of a claim, or for demanding additional documentation from the claimant.

(3) The PLA should send a letter to the claimant acknowledging receipt of the claim and advising that the claim has been sent to FBIHQ for handling, unless the claim was referred to the field office by FBIHQ.

EFFECTIVE: 09/09/94

197-8.5 Background LHM (See MAOP, Part II, 10-23, and Correspondence Guide Field, 1-17.1.)

A background LHM should be prepared as outlined in Section 197-3.2 and submitted to FBIHQ. For an administrative claim arising from an automobile accident, a copy of the accident report may be forwarded to OGC in lieu of the LHM. See Section 197-3.2(1) for exceptions pertaining to automobile accidents, shooting incidents, and other instances in which an incident giving rise to a claim has been previously investigated and reported.

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EFFECTIVE: 09/09/94

| 197-8.5.1 | Scope of Employment

The United States may be liable for the negligent or wrongful acts of its employee only if the employee was acting in the scope of his or her employment at the time of the incident out of which the claim arose. (Title 28, USC, Section 2672.) Consequently, the duties being performed by the employee at the time of the incident giving rise to the claim must be clearly set forth in the LHM or report submitted in lieu of an LHM. In the case of accidents involving Bureau vehicles driven by FBI employees commuting to or from work, the LHM or report must state whether the employee was authorized to use the vehicle for commuting and why that authorization served the FBI mission. The LHM or report must also describe the accident location in relation to the most direct route between the employee's residence and place of work. Where practicable, the reporting office should include a copy of a street map with the employee's residence, place of work, and the site of the accident clearly labeled.

EFFECTIVE: 05/14/93

| 197-8.5.2 | Recommendation Regarding Settlement

The cover airtel should also include a statement recommending approval, denial, or compromise, as well as the basis for that recommendation.

EFFECTIVE: 05/14/93

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| 197-8.5.3 | Deleted |

EFFECTIVE: 05/14/93

197-8.6 Cover Airtel

(1) The PLA should transmit to FBIHQ, Attention: |Office of the General Counsel, |the completed claim together with all of the above enclosures in five working days. These documents will be reviewed by the Civil Litigation Unit for final decision.

(2) Any employees involved in Bureau automobile accidents questioned by potential claimants are instructed to notify them that claims should be submitted directly to the field and not FBIHQ. All claims initially submitted to FBIHQ will be referred to the field to comply with the above instructions. This should not be taken as an invitation to suit, but rather as a statement of policy to ensure standardized procedures. Therefore, administrative claim procedures should not be discussed with a potential claimant unless initiated by that person.

EFFECTIVE: 09/09/94

197-8.7 Settlement Decision

The Unit Chiefs of the Civil Litigation Units, |Office of the General Counsel (OGC), |will make all final decisions relating to the settlement of tort claims arising from automobile accidents where the amount of the award does not exceed \$10,000. Settlement authority regarding nonautomobile tort claims where the amount of the award does not exceed \$10,000 will be vested in the Section Chief, Litigation Section, |OGC. | The field will be kept apprised of all settlement offers and related matters. Upon payment of the claim, the field will be advised and at that time, the 197 should be closed. If the claim is denied, the 197 should be placed in a pending inactive status. After seven months, the case should be closed unless suit is filed. Should the claimant file suit, the title should be changed to reflect a civil action and handled accordingly.

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EFFECTIVE: 09/09/94

197-9 DEPARTMENT OF JUSTICE RESPONSE

The claimant will be notified by the DOJ regarding all claims referred to it by OGC. If a claimant does not receive a response from the Department within six months from the date of the presentation to the FBI, this can be deemed a final denial. All claims are barred if not presented to the Federal agency within two years after the loss or damage occurs.

EFFECTIVE: 09/09/94

197-10 AMENDING CLAIM

Claimant has option of amending administrative claim if done in writing prior to final agency action or prior to instituting suit. Claimant may likewise request reconsideration of a final denial if submitted in writing prior to commencement of suit or expiration of six-month period (see 197-9, supra). Either action on part of the claimant will permit agency another six months after filing amendment or requesting reconsideration of final denial in which to adjudicate matter. All PLAs should become extremely familiar with Title 28, Code of Federal Regulations, Part 14, Sections 14.1 through 14.11, entitled, "Administrative Claims under the FTCA."

EFFECTIVE: 08/27/90

197-11 ADMINISTRATIVE CLAIMS NOT INVOLVING NEGLIGENT OR WRONGFUL ACTS

EFFECTIVE: 08/27/90

197-11.1 Administrative Claims (See Legal Handbook for Special Agents, 9-2.2.)

(1) A claim may also arise against the FBI wherein damage or injury is a result of intentional actions by FBI personnel and these actions were not the result of negligent or wrongful acts; e.g., Special Agents may have to break a lock to properly execute a search warrant, and the property damaged is owned by an uninvolved third party. Under these circumstances, the owner of the property may be reimbursed for damage.

(2) Title 31, USC, Section 3724, provides for payment of claims accruing on account of damages to any person or property caused by FBI employees acting within the scope of their employment. On 5/16/90, the Director (or the General Counsel, Office of the General Counsel, or the General Counsel's designee within the division) was granted authority to settle claims where the amount of the award does not exceed \$50,000. This delegation of authority is contained in Title 28, Code of Federal Regulations, Section 0.89a(b) and (c).

EFFECTIVE: 09/09/94

197-11.2 Processing of Administrative Claims Under Title 31, USC, Section 3724

The processing of administrative claims arising under Title 31, USC, Section 3724, is the same as the processing of administrative claims under the Federal Tort Claims Act (as set out in 197-8) with the following exceptions:

(1) Claimants wishing to file a claim under this section should not be advised to use an SF-95. That form is reserved for claims under the Federal Tort Claims Act. Claims under Title 31, USC, Section 3724, should be filed by letter.

(2) Settlement is limited to \$50,000 and this authority rests within the FBI. No claims under this section are forwarded to the DOJ.

(3) By statute, all claims are barred if not presented to the FBI within one year after the loss or damage occurs.

EFFECTIVE: 05/14/93

197-12 DELEGATED CLAIMS AND CIVIL ACTIONS

The Attorney General has authorized the Director to redelegate to Chief Division Counsels (CDCs) the Director's authority for determining Federal Tort Claims Act (FTCA) and Title 31, USC, Section 3724 administrative claims. Modification of 28 CFR Section 0.89a was published at 59 Fed. Reg. 41241 (1994). The Director has redelegated to CDCs the following functions for claims and civil actions arising within the geographical territory of their respective field offices:

(1) For FTCA administrative claims arising from vehicle accidents, the authority to consider, ascertain, adjust, determine, and settle such claims, in amounts not exceeding \$10,000.00 in any one case, caused by the negligent or wrongful act or omission of an FBI employee acting within the scope of his or her employment;

(2) For all other FTCA administrative claims, when assigned to the CDC by the Office of the General Counsel (OGC), the authority to consider, ascertain, adjust, determine, and settle such claims, in amounts not exceeding \$10,000.00 in any one case, caused by the negligent or wrongful act or omission of an FBI employee acting within the scope of his or her employment;

(3) Responsibility for providing FTCA litigation support to DOJ attorneys and AUSAs in civil actions arising out of vehicle accidents, or other civil actions assigned to the CDC by OGC;

(4) Authority to settle administrative claims pursuant to Title 31, USC, Section 3724 for not more than \$50,000.00 in any one case.

FTCA administrative claims for amounts in excess of \$10,000.00 which arise out of vehicle accidents or are assigned for handling to the CDC by OGC shall be (1) denied by the CDC where there is no reasonable exposure to liability, or (2) forwarded to Civil Litigation Unit I (CLU I), OGC, for referral to DOJ where there is reasonable exposure to liability in excess of \$10,000.00.

It is noted that the Attorney General has authorized the Director to redelegate authority to settle FTCA and Title 31 administrative claims to OGC personnel and CDCs only, and has expressly prohibited further



redelegation.

EFFECTIVE: 05/06/96

197-12.1 Exceptions

(1) The following types of cases may be excepted from the foregoing delegations at the discretion of OGC:

(a) Claims or civil actions involving significant legal or policy issues;

(b) Claims or civil actions arising out of the conduct of the CDC or the CDC's rating or reviewing official.

(2) CDCs must advise OGC, Attention: Litigation Section, when any of the foregoing exceptions arise or may reasonably be expected to arise in delegated claims or civil actions. OGC will determine whether the claim or action will continue to be handled by the CDC, will be reassigned to another field office CDC, will be handled by OGC, or whether some other disposition is appropriate.

EFFECTIVE: 05/06/96

197-12.2 Field Office Documentation

Field offices will open a 197 classification case for each administrative claim or civil action, except that multiple claims arising out of the same incident should be assigned the same 197 field number. The field 197 file shall include a copy of all pertinent documents including, but not limited to:

(1) FTCA/Title 31 administrative claim with supporting documentation;

(2) Completed "FTCA Administrative Claim Evaluation Form (Vehicle Accident)" for FTCA vehicle accident claims;

(3) Memorandum of analysis for claims other than FTCA vehicle accident claims. Memorandum must include:

- (a) Summary of all relevant facts surrounding the accident/incident;
- (b) Legal analysis of whether alleged tortfeasor is a government employee, unless alleged tortfeasor is an FBI agent or support employee;
- (c) Legal analysis of whether employee was acting in the scope of his or her employment;
- (d) Legal analysis of liability; and
- (e) Where an offer is to be made, an explanation of how the amount to be offered was determined;

An "FTCA Administrative Claim Evaluation Form (Vehicle Accident)" or memorandum of analysis must be prepared for each FTCA and Title 31 administrative claim prior to issuance of an offer/denial letter.

(4) Claims that are forwarded to CLU I, OGC, for referral to DOJ;

(5) Fully executed "Voucher for Payment Under Federal Tort Claims Act" (SF 1145), or "Acceptance Form" for Title 31 claims;

(6) Summonses and complaints;

(7) Litigation reports, pleadings, motions, briefs, and orders; and

(8) Docket checks.

(9) Claims that are forwarded to CLU I, OGC, for referral to DOJ should include the following:

(a) the FTCA administrative claim with supporting documentation;

(b) the completed "FTCA Administrative Claim Evaluation Form (Vehicle Accident)" for FTCA vehicle accident claims;

(c) a copy of the accident report;

(d) copies of all communications between the field office and the claimant or his/her representative; and

(e) a summary of all attempts to resolve the claim, including an explanation of how the potential settlement offer was determined.

EFFECTIVE: 05/06/96

197-12.3 Opening and Closing Communications

To facilitate monitoring and compilation of statistical data, opening and closing communications must be forwarded to OGC for each administrative claim and civil action.

EFFECTIVE: 12/07/94

197-12.3.1 Opening Communications

Opening communications must be forwarded to OGC within seven days of receipt of a delegated administrative claim or civil action. Opening communications must include:

- (1) Complete caption including name of each claimant/plaintiff and defendant;
- (2) Assigned 197 universal file number;
- (3) Complete captions and file numbers of all other claims arising out of the same incident;
- (4) Date presented/filed;
- (5) Amount claimed;
- (6) A brief summary of the facts and alleged damages; and
- (7) Statement as to whether any factors identified under "Exceptions" above are present.

EFFECTIVE: 12/07/94

197-12.3.2 Closing Communications

(1) Closing communications must be forwarded to OGC within seven days of the following events:

(a) For denied administrative claims, date of denial letter to claimant;

(b) For paid administrative claims, date of routing slip from Finance Division indicating disbursement to claimant for payments of \$2500 or less, or date of communication to General Accounting Office requesting payment to claimant for payments over \$2500; and

(c) For civil actions, date of final order or, where applicable, date of running of period for plaintiff to file notice of appeal, whichever is later. For appeals, see Adverse Rulings and Appeals, below.

(2) Closing communications must include:

(a) Any change to information reported in opening communication which was not subsequently brought to the attention of OGC;

(b) Disposition of administrative claim (if applicable)

1. Whether denied or granted
2. Date offer/denial letter mailed
3. Amount claimed
4. Amount paid

5. For paid Title 31 claims only, a summary of the facts and damages (if unchanged from opening communication, so state in lieu of summary);

(c) Disposition of civil actions (if applicable).  
Indicate whether case was disposed of upon:

1. Motion
  - a. Granted for plaintiff or defendant
  - b. Order date (enclose copy of order)
  - c. Grounds for dismissal (enclose copy of opinion)
2. Trial
  - a. Verdict for plaintiff or defendant
  - b. Relief awarded
  - c. Enclose copy of order
3. Settlement
  - a. Amount
  - b. Other significant terms
  - c. Enclose fully executed copy of settlement agreement and final order dismissing case;

(d) Final docket check. For civil actions, closing communication should include a statement that the time for filing a notice of appeal/petition for rehearing has run, and a final docket check determined that a notice of appeal/petition for rehearing has not been filed.

EFFECTIVE: 12/07/94

| 197-12.4 Adverse Rulings and Appeals

| (1) OGC must be advised within 24 hours of any adverse ruling. For purposes of this reporting requirement, an adverse ruling includes any ruling by any court which assigns liability or fault to the United States or an FBI employee, affects FBI policy or procedures, or contains language critical of the FBI or its employees.

| (2) OGC must be advised within three days of the filing of a notice of appeal/petition for rehearing.

EFFECTIVE: 12/07/94

| 197-12.5 Nonapplicability of Other Manual Provisions

| The provisions of MIOG, Part I, Sections 197-2, 197-3, 197-8.4, 197-8.5, 197-8.6, 197-8.7, and 197-11 through 197-11.2 do not apply to delegated claims and civil actions insofar as they are inconsistent with the provisions of Section 197-12. |

EFFECTIVE: 12/07/94

SECTION 198. CRIMES ON INDIAN RESERVATIONS, ET AL;  
OTHER CRIMES INVOLVING INDIANS, ET AL;  
MISREPRESENTATION IN SALE OF INDIAN PRODUCTS;  
GAMBLING ACTIVITIES ON INDIAN RESERVATIONS;  
ILLEGAL TRAFFICKING IN NATIVE AMERICAN HUMAN  
REMAINS AND CULTURAL ITEMS;  
REPORTING INCIDENTS OF CHILD ABUSE IN INDIAN  
COUNTRY; INTERSTATE DOMESTIC VIOLENCE;  
INTERSTATE VIOLATION OF A PROTECTION ORDER

198-1 STATUTE

Title 18, USC, Sections 1151, 1152, and 1153.

EFFECTIVE: 08/22/89

198-1.1 Section 1151. Indian Country Defined

Title 18, USC, Section 1151, defines the term "Indian Country" as used in Title 18, USC, Chapter 53, pertaining to Indians as:

"(a) all land within the limits of any Indian reservation under the jurisdiction of the United States government notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation,

"(b) all dependent Indian communities within the border of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state,

"(c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."

EFFECTIVE: 08/22/89

198-1.2 Section 1152. Laws Governing

"Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.

"This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively.

EFFECTIVE: 08/22/89

198-1.3 Section 1153. Offenses Committed Within Indian Country

"(a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnaping, maiming, a felony under chapter 109A, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury (as defined in Section 1365 of this Title), an assault against an individual who has not attained the age of 16 years, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

"(b) Any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense."

EFFECTIVE: 11/03/94



198-1.4 Jurisdiction

FBI has exclusive jurisdiction over offenses listed in Title 18, USC, Section 1153, within the Indian country as defined in Title 18, USC, Section 1151.

EFFECTIVE: 10/23/86

198-1.5 Policy

(1) By virtue of the fact that the FBI is charged with the duty of investigating violations of all Federal statutes not specifically assigned by Congress to any other Government agency, it is duty bound to investigate the violations specified in this section when they occur in Indian country with the exception of violations relating to liquor laws, the Department of the Interior being specifically authorized by congressional enactments to investigate the latter offense.

(2) The special officers, deputy special officers, and Indian police of the Bureau of Indian Affairs, Department of the Interior, and/or tribal police have the duty of maintaining order in Indian country in addition to handling liquor violations. Agents of the FBI are to maintain cooperative contact with these representatives since they are in a position to report to the FBI offices immediately following their occurrence offenses committed in Indian country to which they are assigned. Bear in mind, however, that theirs is an assisting function; and since the FBI is primarily charged with investigating the more serious type of offenses in Indian country, it is the duty of the law enforcement officers of the Department of the Interior to refer such cases to the attention of FBI representatives.

(3) CIR cases are to be promptly and thoroughly investigated and each case is to be presented to the USA's office for prosecutive opinion in a completely impartial and factual manner. Thereafter, when USAs or AUSAs decline prosecution against Indian subjects in CIR cases, the chief law enforcement officer of the tribe where the crime occurred is to be orally advised immediately of this declination. A letter to the USA confirming this declination is to be forwarded to USA within fifteen calendar days after the declination with a copy designated for the Bureau of Indian Affairs Reservation Superintendent responsible for the reservation where the offense occurred, as well as the Bureau of Indian Affairs Special Officers there, in the event one is assigned to that reservation. No copy,

however, is to be directed to the tribal authorities. The confirmation letter to the USA is to contain the identity of the chief law enforcement officer of the tribe that was advised of the declination by the USA, as well as the date USA was advised.

(4) If an origin case is closed administratively by the authority of the SAC, the chief law enforcement officer of the tribe should be orally notified and a letter directed to the Bureau of Indian Affairs (BIA) superintendent and the BIA Special Officer as above to advise that no further FBI investigation is being conducted in that specific case. If field management is of the opinion that such a letter in a specific case should not be sent, the substantive investigative file should document the reasons supporting that opinion.

(5) In the event of a civil disorder on an Indian reservation, the primary responsibility for law enforcement necessary to restore order will rest exclusively with the chief law enforcement officer of the reservation. In most cases this will be the chief of the tribal police force, a Bureau of Indian Affairs (BIA) official or designee, or someone designated by the tribal council, except certain Indian country reservations on which states have been given or accepted jurisdiction pursuant to PL 83-280 or similar statutes. Where local forces are inadequate to deal with a major civil disorder, existing specially trained BIA law enforcement forces should be utilized to restore order. In the event the tribal police or the BIA police of the DOI are unable to restore order to the reservation, the DOI may request assistance from the Attorney General. The Attorney General will then decide whether to restore order either through Federal civilian or military forces. In all likelihood, Federal civilian forces designated by the Attorney General will be the Special Operations Group of the U.S. Marshals Service. The FBI will not enter the reservation to conduct criminal and/or civil rights investigations until order has been restored. See Part II, Section 18, of this manual pertaining to the Memorandum of Understanding presently in effect between the Department of the Interior and the Department of Justice.

(6) Any drug activity originating on an Indian reservation will be directed and managed under the Government Reservation Crimes Subprogram in coordination with the Drug Section of the Criminal Investigative Division.

(a) Bureau investigations should be concentrated on and directed at major drug trafficking organizations and specific individual situations to determine the flow of money derived from

these activities. Investigative strategy should include discussion with the appropriate prosecuting attorney in an effort to seize assets realized from these drug transactions.

(b) A broad intelligence base should be established to develop high-level, quality informants and cooperating witnesses who can identify major drug violators on Indian reservations.

(c) To ensure that there is no conflict between the FBI and Drug Enforcement Administration (DEA), prior to the initiation of any drug or primarily drug-related investigation, each field office is required to contact the local DEA office in order to determine:

1. If DEA currently has an ongoing investigation with regard to the subject(s) of the proposed FBI investigation;

2. Any intelligence information which DEA has regarding the subject(s), such as class violator or known drug associates; and

3. Any interest on the part of DEA to enter into a joint investigation with the FBI regarding the targeted subject(s) of the FBI investigation.

If DEA currently has an ongoing investigation regarding any of the proposed FBI subjects, FBI assistance should be offered to DEA and specific policy should be established regarding the specific role of the FBI in the investigation.

(d) Following contact with the DEA office, a teletype should be forwarded to FBIHQ, Attention: Fugitive/Government Reservation Crimes Unit, Criminal Investigative Division, setting forth the identities of all subjects and/or their organizational base, intelligence data from FBI and DEA records, realistic aims and objectives of the investigation, the nature of the investigation contemplated within the next 90 days and the fact that DEA has been contacted for not only intelligence information but for a decision as to what involvement or role it will have in the investigation. The purpose of this communication will be to seek, on a UACB basis, FBIHQ authority to initiate an investigation regarding the subject matter. Through this quality control, FBIHQ will be able to determine proper allocation of manpower, the quality of cases initiated by FBI field offices and that proper coordination and communication have been initiated with DEA.

(7) In the event of information sufficient to initiate an investigation under the Assault or Killing of a Federal Officer (AFO/KFO) classification and when the violation has occurred on Indian Lands, a new Crime on Indian Reservation (198G classification) case should be promptly opened. These investigations will follow appropriate instructions set forth in the MIOG, Part I, Section 89, and will be managed at FBIHQ by the Fugitive/Government Reservation Crimes Unit, Violent Crimes and Major Offenders Section. In all cases, depending on the seriousness and urgency of the situation, FBIHQ should be promptly advised by telephone, teletype or airtel as circumstances dictate. It will not be necessary to open an 89 classification matter since all investigation will be conducted and reported under the 198G classification. Indian Lands include those enumerated under Title 18, U.S. Code, Section 1151, including those lands where criminal and civil jurisdiction has been retroceded to the states (i.e., Public Law 280 states, etc.).

EFFECTIVE: 02/25/91

198-1.6 Venue

Title 18, USC, Section 3242. (Indians committing certain offenses; acts in Indian country.)

All Indians committing any offense listed in the first paragraph of and punishable under Section 1153 (relating to offenses committed within Indian country) of this title shall be tried in the same courts and in the same manner as are all other persons committing such offense within the exclusive jurisdiction of the United States.

EFFECTIVE: 02/25/91

198-1.7 Investigative Procedure

(1) The original information obtained in such cases is generally supplied by Indian officers assigned to the particular Indian country. They should be contacted for all preliminary details relative to the case at the time an Agent of the FBI arrives at the scene of the crime. In many cases it will be found that some preliminary inquiry has been conducted by these officers and the information acquired thereby may prove extremely helpful to the FBI's investigation. However, Indian officers should be encouraged to

report the incidence of crimes occurring on their particular reservations to an FBI representative at the earliest possible moment after it has happened and they should be discouraged from attempting to conduct a complete investigation in these cases before notifying the FBI's office.

(2) In many instances it may be necessary to use interpreters in conducting interviews. In such instances when signed statements are taken by this means, care should be exercised in using the exact phraseology of the interpreter and not the Agent's own wording.

(3) Fingerprints and descriptions of subjects should be obtained by the investigating Agent, and it is particularly important that every item of evidentiary value which is susceptible to laboratory examination be obtained and forwarded to FBIHQ. Evidence, such as weapons, items of clothing, blood specimens, fingernail scrapings, and footprints, is usually available at the scene of crimes of violence and should be secured at the first opportunity and preserved for subsequent transmittal to the FBI Laboratory. Accurate measurements should be made of the sites of the crime and sketches and photographs of the scene should be obtained.

(4) Agency representatives can usually supply all necessary information relative to the boundaries of the Indian country and the registration of Indians involved in the specific case. It is essential in the conduct of such investigations that the nature of the Indians and their local customs be constantly borne in mind. All statements made by them should be very carefully checked. Likewise, in taking statements from Indians, it is desirable that phraseology be used which the subject can understand. In any instance in which an offense is reported to the FBI as having allegedly occurred in Indian country and a doubt exists as to whether the offense is within the jurisdiction of the Federal Government, the facts of the case should be discussed with the USA before any extensive investigation is conducted.

(5) Very frequently crimes in the Indian country involve homicides; therefore, Agents handling this investigation should be thoroughly familiar with the procedure in arranging for autopsies. Valuable evidence may be discovered or possibly destroyed during an autopsy examination. If at all possible a Special Agent completely familiar with the circumstances surrounding the homicide should be present during the autopsy to provide pertinent facts to the coroner or pathologist.

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EFFECTIVE: 02/25/91

198-1.8 Character

Crime on Indian Reservation followed by a description of  
the offense; as, Crime on Indian Reservation - Murder.

EFFECTIVE: 01/21/86

198-2 STATUTES

Title 18, USC, Sections 1163, 1164, 1165, Title 25, USC,  
Section 202.

EFFECTIVE: 01/31/78

198-2.1 Title 25, Section 202. Inducing Conveyances by Indians of  
Trust Interests in Lands

EFFECTIVE: 01/31/78

198-2.2 Elements

(1) That some person induced an Indian to execute a  
contract, deed, mortgage, or another instrument purporting to convey  
any land or any interest therein.

(2) That the land in question was being held in trust by  
the Federal Government for the Indian who was induced to execute such  
an instrument; or

(3) After inducing an Indian to execute such an  
instrument, some person offered it for record in the office of any  
recorder of deeds.

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EFFECTIVE: 01/31/78

198-2.3 Jurisdiction

This violation is different from other violations involving Indians which are investigated by the FBI in that it is not necessary that this violation occur on an Indian reservation. The statute can be violated by any person in any judicial district as long as it involved inducing an Indian to execute an instrument purporting to convey an interest in land held in trust for the Indian by the Federal Government. A second violation provided for in the statute concerns the offering for record of any such instrument purporting to convey an interest in land held in trust for an Indian.

The basis for jurisdiction of the Federal Government over violations of this statute is the status of Indians as wards of the Government and the status of the land as property held in trust by the Government.

EFFECTIVE: 01/31/78

198-2.4 Penalty

Any person violating this provision shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding \$500 for the first offense, and if convicted for a second offense may be punished by a fine not exceeding \$500 or imprisonment not exceeding one year, or by other such fine and imprisonment, in the discretion of the court. This section shall not apply to any lease or other contract authorized by law to be made.

EFFECTIVE: 01/31/78

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198-2.5 Investigative Procedure

The status of the Indian can be determined from records available at the reservation as is done in other violations involving Indians. The status of the land as being trust land can be determined from Bureau of Indian Affairs records or through the Department of the Interior. The Indian who has been induced to execute an instrument purporting to convey the land should be thoroughly interviewed at the start of the investigation as in other Indian cases. It may be necessary to use the services of an interpreter in questioning the Indian. It is desirable to obtain a signed statement from the Indian as to all of the facts surrounding his inducement to sign the instrument, the payment of money and related facts.

Although violations of this statute may be called to your attention by the USA in many instances, complaints of violations may come from any source. The USA should be consulted as soon as the essential facts are developed to determine whether prosecution will be authorized.

EFFECTIVE: 01/31/78

198-2.6 Character

Inducing Conveyance of Indian Trust Land

EFFECTIVE: 01/31/78

198-2.7 Section 1163. Embezzlement and Theft of Property of  
Indian Tribal Organizations

EFFECTIVE: 01/31/78



198-2.8 Elements

(1) The accused embezzles, steals, knowingly converts to his/her use or the use of another, willfully misapplies, or willfully permits to be misapplied

(2) Moneys, funds, credits, goods, assets, or other property belonging to any Indian tribal organization or entrusted to the custody or care of any officer, employee, or agent of an Indian tribal organization; or

(3) The accused knowing any such moneys, funds, credits, goods, assets, or other property to have been so embezzled, stolen, converted, misapplied, or permitted to be misapplied, receives, conceals, or retains the same with intent to convert it to his/her use or the use of another. Pursuant to Title 18, USC, Section 21, the element of guilty knowledge may also be established by proof that the accused believed such moneys, funds, credits, goods, assets, or other property to have been so embezzled, stolen, converted, etc., after or as a result of an official representation as to the nature of the property (see MIOG, Part II, 1-1.12).

EFFECTIVE: 10/23/95

198-2.9 Jurisdiction

This violation is also different from other violations involving Indians which are investigated by the Bureau in that it is not necessary that the violation occur on an Indian reservation. The statute can be violated by any person in any judicial district so long as it involves the theft, embezzlement, etc., of the funds of an Indian tribal organization.

EFFECTIVE: 01/31/78

198-2.10 Penalty

(1) A fine of not more than \$5,000 or imprisonment for not more than five years, or both.

(2) If the value of the property does not exceed the sum of \$100, a fine of not more than \$1,000 or imprisonment for not more than one year, or both.

EFFECTIVE: 01/31/78

198-2.11 Investigative Procedure

In view of the definition of an Indian tribal organization, as defined in this section, it is necessary that funds, assets, etc., which have been embezzled or stolen be actually the funds of such an organization.

If the theft or embezzlement is committed by an officer, employee, or agency of an Indian tribal organization, proof of such affiliation should be obtained.

Agents qualified to conduct accounting investigations should be assigned to investigate violations of this section when audits or analyses of the books and records of a tribal organization are necessary.

Each alleged irregularity must be investigated separately and in detail. In instances in which a subject admits irregularities in a signed statement, sufficient investigation must be conducted to substantiate the irregularities independent of the signed statement.

EFFECTIVE: 01/31/78

198-2.12 Character

Embezzlement or Theft of Indian Property

EFFECTIVE: 01/31/78

198-2.13 Section 1164. Destruction of Boundary and Warning Signs  
on Indian Reservation

EFFECTIVE: 01/31/78

198-2.14 Elements

- (1) The accused willfully destroys, defaces or removes any sign erected by an Indian tribe or a Government agency
- (2) To indicate the boundary of an Indian reservation or any Indian country or
- (3) To give notice that hunting, fishing, or trapping is not permitted thereon without lawful authority or permission

EFFECTIVE: 01/31/78

198-2.15 Penalty

A fine of not more than \$250 or imprisonment of not more than six months, or both.

EFFECTIVE: 01/31/78

198-2.16 Investigative Procedure and Jurisdiction

Violations of this statute may usually be termed petty offenses constituting policing problems within the investigative jurisdiction of the Bureau of Indian Affairs, Department of the Interior. However, the Bureau of Indian Affairs, Department of the Interior, maintains no investigative facilities or personnel in the States of Alaska, California, Florida, Nebraska, and Wisconsin which have assumed jurisdiction over Indian reservations pursuant to Public Law 280, 83rd Congress. All complaints received by field offices covering these states are to be investigated.

All other field offices, upon receipt of complaints regarding violations of this statute, should immediately transmit the full facts to the Bureau of Indian Affairs on a local level unless

they constitute aggravated circumstances thereby justifying investigations by the FBI.

EFFECTIVE: 01/31/78

198-2.17 Character

Destruction of Boundary and Warning Signs on Indian Reservation

EFFECTIVE: 01/31/78

198-2.18 Section 1165. Illegal Hunting, Trapping, or Fishing on Indian Land

EFFECTIVE: 01/31/78

198-2.19 Elements

(1) The accused without lawful authority or permission willfully and knowingly goes upon any lands that belong to any Indian or Indian tribe, band, or group and

(2) Are held by the U.S. in trust or are subject to a restriction against alienation imposed by the U.S. or

(3) Upon only lands of the U.S. that are reserved for Indian use

(4) For the purpose of hunting, trapping, or fishing thereon or for the removal of game, peltries, or fish therefrom.

EFFECTIVE: 01/31/78

198-2.20 Investigative Procedure and Jurisdiction

Violations of this statute may usually be termed petty offenses instituting policing problems within the investigative jurisdiction of the Bureau of Indian Affairs, Department of the Interior. However, the Bureau of Indian Affairs, Department of the Interior, maintains no investigative facilities or personnel in the States of Alaska, California, Florida, Nebraska, and Wisconsin which have assumed jurisdiction over Indian reservations pursuant to Public Law 280, 83rd Congress. All complaints received by the field offices covering these states are to be investigated.

All other field offices, upon receipt of complaints regarding violations of this statute, should immediately transmit the full facts to the Bureau of Indian Affairs on a local level unless they constitute aggravated circumstances thereby justifying investigation by the FBI.

198-2.13 also applies to this section.

EFFECTIVE: 01/31/78

198-2.21 Character

Illegal Hunting, Trapping, or Fishing on Indian Land

EFFECTIVE: 01/31/78

198-3 MISREPRESENTATION IN SALE OF INDIAN PRODUCTS - STATUTE

Title 18, USC, Section 1159.

EFFECTIVE: 08/22/89

198-3.1 Section 1159. Misrepresentation in Sale of Indian  
Products

Whoever willfully offers or displays for sale any goods, with or without any Government trademark, as Indian products or Indian products of a particular Indian tribe or group, resident within the United States, when such person knows such goods are not Indian products or are not Indian products of the particular Indian tribe or group, shall be fined not more than \$500 or imprisoned not more than six months, or both.

EFFECTIVE: 08/22/89

198-3.2 Investigative Procedure

Violations of this statute may be deemed petty offenses. All complaints received by field offices should be discussed with the USA for prosecutive merit before conducting investigation.

EFFECTIVE: 08/22/89

198-3.3 Character

Misrepresentation in Sale of Indian Products

EFFECTIVE: 08/22/89

|| 198-4 GAMBLING ACTIVITIES ON INDIAN RESERVATIONS - STATUTES  
| Title 18, USC, Sections 1166, 1167 and 1168. |

EFFECTIVE: 08/22/89

||198-4.1 Background

(1) On October 17, 1988, the Indian Gaming Regulatory Act became Public Law 100-497. The purpose of this Act is to provide a statutory basis for the operation and regulation of gaming by Indian tribes adequate to shield them from organized crime and other corrupting influences. Additionally, the gaming operations are to be conducted fairly and honestly by both operators and players. In passing the Act, Congress specifically found that Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a state which does not, as a matter of criminal law and public policy, prohibit such gaming activity.

(2) The Act establishes within the Department of the Interior, the National Indian Gaming Commission. This Commission has been conferred powers that include: developing regulations to implement the Act; monitoring gaming on Indian lands; and, levying and collecting civil fines.

EFFECTIVE: 08/22/89

||198-4.2 Section 1166. Gambling in Indian Country|

EFFECTIVE: 08/22/89

||198-4.3 Elements

(1) That the accused commits any act or omission involving gambling.

(2) That the act or omission is committed in Indian country.

(3) That the act or omission is in violation of state law.

(4) That the act is either Class II gambling conducted without being regulated by the Indian Gaming Regulatory Act or Class III gambling conducted without approval under a Tribal-State compact approved by the Secretary of the Interior.

EFFECTIVE: 08/22/89

198-4.4 Definitions

(1) The term "Class I gaming" means social games solely for prizes of minimal value, or traditional forms of Indian gaming engaged in by individuals as part of, or in connection with tribal ceremonies or celebrations. Class I gaming is within the exclusive jurisdictions of the Indian tribes and is not subject to the provisions of the Indian Gaming Regulatory Act.

(2) The term "Class II gaming" means:

(a) The game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith) -

1. which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,

2. in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and

3. in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and

(b) card games that -

1. are explicitly authorized by the laws of the State, or

2. are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games, or

3. are played in the State of Michigan, the State of North Dakota, the State of South Dakota, or the State of



Washington, that were actually operated in such states by an Indian tribe on or before May 1, 1988, but only to the extent of the nature and scope of the card games that were actually operated by an Indian tribe in such State on, or before such date, as determined by the Chairman of the National Indian Gaming Commission.

(c) during the one-year period beginning on the date of enactment of this Act, any electronic or electromechanical facsimiles of any game of chance or slot machines that were legally operated on Indian lands on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which the gaming was operated requests the state, by no later than the date that is 30 days after the date of enactment of this Act, to negotiate a Tribal-State compact.

(3) The term "Class II gaming" does not include -

(a) any banking card games, including baccarat, chemin de fer, or blackjack (21), or

(b) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

(4) The term "Class III gaming" means all forms of gaming that are not Class I or Class II.

EFFECTIVE: 08/22/89

198-4.5 Jurisdiction

The United States has exclusive jurisdiction over criminal prosecutions of violations of State gambling laws that are made applicable under this section to Indian country, unless an Indian tribe pursuant to a Tribal-State compact approved by the Secretary of the Interior, or under any other provision of Federal law, has consented to the transfer to the state of criminal jurisdiction with respect to gambling on Indian lands.

EFFECTIVE: 08/22/89

||198-4.6 Penalty

| Punishment for violation of this section shall be the same  
| as the appropriate state punishment. |

EFFECTIVE: 08/22/89

||198-4.7 Investigative Procedure

| Since many violations of this statute are petty offenses,  
| all complaints received by field offices should be discussed with the  
| U.S. Attorney for prosecutive merit before conducting an  
| investigation. |

EFFECTIVE: 08/22/89

( ||198-4.8 Character

| Crimes on Indian Reservations - Gambling |

EFFECTIVE: 08/22/89

|198-4.9 Section 1167. Theft from Gaming Establishments on Indian  
Lands |

EFFECTIVE: 08/22/89

||198-4.10 Elements

| (1) That the accused abstracts, purloins, willfully  
| misapplies, or takes and carries away with intent to steal

| (2) Moneys, funds of other property

| (3) Belonging to an establishment operated by or for or  
| licensed by an Indian tribe pursuant to an ordinance or resolution  
| approved by the National Indian Gaming Commission |

EFFECTIVE: 08/22/89

||198-4.11 Jurisdiction

It is not necessary that the violation occur on an Indian reservation. The statute can be violated by any person in any judicial district so long as it involves the theft of property belonging to a licensed Indian gaming establishment.

EFFECTIVE: 08/22/89

||198-4.12 Penalty

(1) If the value of the money, funds or other property does not exceed the sum of \$1,000, a fine of not more than \$100,000 or imprisonment for not more than one year or both.

(2) If the value of the money, funds or other property exceeds \$1,000, a fine of not more than \$250,000 or imprisonment for not more than 10 years or both.

EFFECTIVE: 08/22/89

||198-4.13 Character

Crimes on Indian Reservations - Theft from Gaming Establishments

EFFECTIVE: 08/22/89

||198-4.14 Section 1168. Theft by Officers or Employees of Gaming Establishments on Indian Lands

EFFECTIVE: 08/22/89

||198-4.15 Elements

(1) That the accused being an officer, employee, or individual licensee of a gaming establishment

(2) That the gaming establishment is operated by, for, or licensed by an Indian tribe pursuant to an ordinance or resolution approved by the National Indian Gaming Commission

(3) That the accused embezzles, abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal

(4) Moneys, funds, assets or other property of the gaming establishment

EFFECTIVE: 08/22/89

||198-4.16 Jurisdiction

It is not necessary that the violation occur on an Indian reservation. The statute can be violated in any judicial district so long as it involves the theft of property belonging to a licensed Indian gaming establishment by an officer or an employee.

EFFECTIVE: 08/22/89

||198-4.17 Penalty

(1) If the value of the money, funds or other property does not exceed the sum of \$1,000, a fine of not more than \$250,000 or imprisonment for not more than five years or both.

(2) If the value of the money, funds or other property exceeds \$1,000, a fine of not more than \$1 million or imprisonment for not more than 20 years or both.

EFFECTIVE: 08/22/89

||198-4.18 Character

| Crimes on Indian Reservations - Theft from Gaming  
| Establishments by Officer (Employees)|

EFFECTIVE: 08/22/89

||198-5 STATUTES

| Title 18, U.S. Code, Section 1170. |

EFFECTIVE: 12/10/91

||198-5.1 Background

(1) On November 16, 1990, the Native American Graves Protection and Repatriation Act was signed into law as Public Law 101-601. The law requires that within five years, each Federal agency and each museum which has possession or control over holdings or collections of Native American human remains and associated funerary objects shall compile an inventory of such items and, to the extent possible, based on information possessed by such museum or Federal agency, identify the geographical and cultural affiliations of such items. Additionally, within three years, each Federal agency or museum which has possession or control over holdings or collections of Native American unassociated funerary objects, sacred objects or objects of cultural patrimony shall maintain a list of such objects.

(2) The law also requires the Secretary of Interior to establish a committee to monitor and review implementation of the inventory and identification process and repatriation activities required under the law.

(3) This law created Title 18, U.S. Code, Section 1170 which makes it unlawful for any individual to illegally traffick in Native American human remains and cultural items. The FBI has investigative responsibility for the enforcement of this law. |

EFFECTIVE: 12/10/91

|198-5.2 Section 1170. Illegal Trafficking in Native  
American Human Remains and Cultural Items|

EFFECTIVE: 12/10/91

||198-5.3 Elements

(1) That a person knowingly sells, purchases, uses for profit, or transports for sale or profit, the human remains of a Native American without the right of possession to those remains as provided in the Native American Graves Protection and Repatriation Act, or

(2) That a person knowingly sells, purchases, uses for profit, or transports for sale or profit any Native American cultural items obtained in violation of the Native American Graves Protection and Repatriation Act.|

EFFECTIVE: 12/10/91

||198-5.4 Definitions

(1) The term "Native American" means of, or relating to, a tribe, people, or culture that is indigenous to the United States.

(2) The term "cultural items" means human remains and --

(a) "associated funerary objects" which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a Federal agency or museum, except that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary objects.

(b) "unassociated funerary objects" which shall mean objects that, as a part of the death rite or ceremony of a culture,

are reasonably believed to have been placed with individual human remains either at the time of death or later, where the remains are not in the possession or control of the Federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe.

(c) "sacred objects" which shall mean specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents, and

(d) "cultural patrimony" which shall mean an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group.

(3) The term "Native Hawaiian" means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(4) The term "right of possession" means possession obtained with the voluntary consent of an individual or group that had authority of alienation.

EFFECTIVE: 12/10/91

||198-5.5 Jurisdiction

It is not necessary that this violation occur on an Indian reservation. The statute can be violated by any person in any judicial district who sells, purchases, uses for profit, or transports for sale or profit Native American human remains or cultural items without the right of possession or obtained in violation of the Native American Graves Protection and Repatriation Act.

EFFECTIVE: 12/10/91

||198-5.6 Penalty

Punishment for violation of this section shall be a fine in accordance with this title, or imprisonment for not more than 12 months or both, and in the case of a second or subsequent violation, a fine in accordance with this title, or imprisonment for not more than five years, or both.

EFFECTIVE: 12/10/91

||198-5.7 Policy

Since an initial violation of this statute constitutes a petty offense, all complaints received by field offices should be discussed with the U.S. Attorney for prosecutive merit before conducting an investigation.

EFFECTIVE: 12/10/91

||198-5.8 Character

Crime on Indian Reservation - Trafficking in Native American Human Remains (Cultural Items).



EFFECTIVE: 12/10/91

|| 198-6        STATUTES

|                Title 18, U.S. Code, Section 1169.

EFFECTIVE: 02/12/92

| 198-6.1      Background

|                (1) On November 28, 1990, the Indian Child Protection and Family Violence Act was signed into law as Title IV of Public Law 101 630. Prior to enacting this legislation, Congress found that incidents of child abuse on Indian reservations are grossly underreported and this underreporting is often the result of the lack of a mandatory Federal reporting law.

|                (2) Therefore, a major function of this Act is to require that reports of abused Indian children be made to both the appropriate local child protective service and law enforcement agencies. Failure to file such a report or inhibiting or preventing someone from filing a report results in criminal penalties.

EFFECTIVE: 02/12/92

| 198-6.2      Section 1169. Reporting of Child Abuse

EFFECTIVE: 02/12/92

198-6.3 Elements

- (1) That a specifically identified person
  - (a) knows or has reasonable suspicion that a child in Indian country was abused or
  - (b) actions are being taken, or are going to be taken, that would reasonably be expected to result in abuse of a child in Indian country; and
  - (c) fails to immediately report such abuse or actions to the local child protective services agency or local law enforcement agency or
- (2) That an individual who supervises or has authority over any specifically identified person inhibits or prevents that person from making the report described above.

EFFECTIVE: 02/12/92

198-6.4 Definitions

- (1) The term "abuse" means any case in which
  - (a) a child is dead or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling; and
  - (b) such condition is not justifiably explained or may not be the product of an accidental occurrence; and
  - (c) any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution.
- (2) The term "child" means any individual who is not married and has not attained 18 years of age.
- (3) The term "local child protective services agency" means that agency of the Federal Government, of a state, or of an Indian tribe that has the primary responsibility for child protection on any Indian reservation or within any community in Indian country.

(4) The term "local law enforcement agency" means that Federal, tribal, or state law enforcement agency that has the primary responsibility for the investigation of an instance of alleged child abuse within the portion of Indian country involved.

(5) The term "Indian country" has the meaning given by Title 18, U.S. Code, Section 1151.

(6) The term "specifically identified person" is defined as a

(a) physician, surgeon, dentist, podiatrist, chiropractor, nurse, dental hygienist, optometrist, medical examiner, emergency medical technician, paramedic, or health care provider,

(b) teacher, school counselor, instructional aide, teacher's aide, teacher's assistant, or bus driver employed by any tribal, Federal, public or private school,

(c) administrative officer, supervisor of child welfare and attendance, or truancy officer of any tribal, Federal, public or private school,

(d) child day care worker, headstart teacher, public assistance worker, worker in a group home or residential or day care facility, or social worker,

(e) psychiatrist, psychologist, or psychological assistant,

(f) licensed or unlicensed marriage, family, or child counselor,

(g) person employed in the mental health profession,  
or

(h) law enforcement officer, probation officer, worker in a juvenile rehabilitation or detention facility, or person employed in a public agency who is responsible for enforcing statutes and judicial orders.

EFFECTIVE: 02/12/92

198-6.5 Penalty

Punishment for violation of this section shall be a fine of not more than \$5,000, imprisonment for six months or both.

EFFECTIVE: 02/12/92

198-6.6 Reporting and Investigative Requirements Under Title 18, U.S. Code, Section 1169

(1) Any specifically identified person who knows or has reasonable suspicion that a child in Indian country has been or is going to be abused, must immediately notify the local child protective services or the local law enforcement agency of that knowledge or suspicion.

(2) Any local law enforcement agency or local child protective services agency that receives notification of child abuse in Indian country must immediately initiate an investigation and take immediate steps to secure the safety and well being of the child (children) involved. This includes the FBI when it has primary investigative responsibility.

(3) When a local law enforcement agency or local child protective services agency receives notification from any person alleging child abuse in Indian country, the receiving agency must immediately notify the other agency and submit a written report to that agency, within 36 hours, as set forth below.

(4) Within 36 hours after receiving notification described above, the receiving agency will prepare a written report that shall include, if available:

(a) the name, address, age and sex of child that is the subject of the report;

(b) the grade and the school in which the child is currently enrolled;

(c) the name and address of the child's parents or other person responsible for the child's care;

(d) the name and address of the alleged offender;

(e) the name and address of the person who made the report to the agency;

(f) a brief narrative as to the nature and extent of the child's injuries, including any previously known or suspected abuse of the child or the child's siblings and the suspected date of the abuse; and

(g) any other information the agency or the person who made the report to the agency believes to be important to the investigation and disposition of the alleged abuse.

(5) Where the alleged abuse involves an Indian child or where the alleged abuser is an Indian and where a preliminary inquiry indicates a criminal violation has occurred, the local law enforcement agency, if other than the FBI, shall immediately report such occurrence to the FBI.

(6) Upon completion of their investigation of any allegation of abuse made to a local law enforcement agency or local child protective services agency, such agency shall prepare a final written report on such allegation.

(7) The identity of any person making an initial notification described above shall not be disclosed without consent of that individual to any person other than a court of competent jurisdiction or an employee of an Indian tribe, a state or the Federal Government who needs to know the information in the performance of such employee's duties.

EFFECTIVE: 02/12/92

198-6.7 Policy

This Act places the FBI in the unique position of having three separate and distinct obligations.

(1) First, as law enforcement officers, FBI Agents are one of the "specifically identified persons" as defined in the law. Therefore, when an Agent has knowledge or reasonable suspicion that a child in Indian country has been or might reasonably be the victim of abuse, the Agent must notify the appropriate local child protective services agency or local law enforcement agency that, as defined by law, has primary investigative responsibility. The law does not

require that this notification be confirmed in writing. However, to guard against criticism of Bureau personnel, these notifications should be recorded in either a "198-0" file or a field office control file. Compliance with this law is a responsibility placed upon each Agent individually and not on the FBI as an agency. Failure to comply with Title 18, U.S. Code, Section 1169, results in criminal penalties. Therefore, each Agent must ensure adherence to the statute. For your additional guidance, the law states in part that the "specifically identified person" who makes a report based upon his/her reasonable belief and which is made in good faith, will be immune from civil or criminal liability for making the report.

(2) Second, the FBI is defined as a "local law enforcement agency" only when it has "primary responsibility for the investigation of an instance of alleged child abuse" in Indian country. When the FBI is the "local law enforcement agency" and receives a report of "abuse," immediate steps must be taken to secure the well being of the victim child (children). An investigation should be initiated under the "198F classification (CIR-Child Abuse)" concerning possible violations of Federal law, including Title 18, U.S. Code, Sections 1152, 1153, and 2241-2245. Within 36 hours after receiving the initial notification of abuse, a written report must be prepared, as set forth above, in Letterhead Memorandum (LHM) format, and provided to the appropriate local child protective services agency. Care should be taken to ensure that the identity of the complainant is not disclosed without his/her permission, as set forth in the law. Upon completion of the investigation, a final report concerning the allegation shall be prepared in LHM format with two copies designated for FBIHQ, Fugitive/Government Reservation Crimes Unit. There are no dissemination requirements under the law for this final report; therefore, current dissemination guidelines should be followed. No criminal penalties attach for failure to comply with the reporting requirement of the law.

(3) Third, the FBI has responsibility for investigating violations of Title 18, U.S. Code, Section 1169. Therefore, if an allegation is received that a "specifically identified person" has failed to report the abuse of a child in Indian country or supervisor or someone having authority over a "specifically identified person" has inhibited or prevented that person from making a report, an investigation should be initiated under the "198H" classification (CIR-Failure to Report Child Abuse). Since violation of this statute is a misdemeanor, field offices should discuss the prosecutive merit of each case with the U.S. Attorney prior to conducting an active investigation of the complaint.

EFFECTIVE: 02/12/92

| 198-6.8 Jurisdiction

The FBI will continue to investigate incidents of child abuse in Indian country where criminal jurisdiction has not been conveyed to the state. These investigations will be conducted under the 198F, CIR Child Abuse classification. However, failure to make proper notifications under Title 18, U.S. Code, Section 1169, is a violation of Federal law regardless of whether or not criminal jurisdiction may have been conveyed to the state (as in Title 18, U.S. Code, Section 1162). Since the FBI has primary investigative jurisdiction in these matters, all alleged violations should be investigated under the 198H CIR-Failure to Report Child Abuse classification.

EFFECTIVE: 02/12/92

| 198-6.9 Character - Crime on Indian Reservation - Failure to Report Child Abuse|

EFFECTIVE: 02/12/92

| 198-7 INTERSTATE DOMESTIC VIOLENCE; INTERSTATE VIOLATION OF A PROTECTION ORDER

Title 18, U.S. Code, Sections 2261 and 2262 are the statutes covering these violations. See MIOG, Part I, 9-2.5, 9-2.5.1, 9-2.6, 9-2.6.1, 9-5.5, and 9-12 for instructions. When crimes involving these statutes occur in INDIAN COUNTRY, classify them as 198I, Crime on Indian Reservation - Interstate Domestic Violence, or 198J, Crime on Indian Reservation - Interstate Violation of a Protective Order. The Interstate Theft/Government Reservation Crimes Unit, Criminal Investigative Division, is responsible for the 198I and 198J classifications.

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SECTION 199. INTERNATIONAL TERRORISM - COUNTRY

199-1 INTERNATIONAL TERRORISM - COUNTRY

Information concerning the 199 classification is set forth  
in a separate FBI manual, the NATIONAL FOREIGN INTELLIGENCE PROGRAM  
MANUAL (NFIPM).

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PRINTED: 02/18/98

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SECTION 200. FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

200-1 FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

Information concerning the 200 classification is set forth  
in a separate FBI manual, the NATIONAL FOREIGN INTELLIGENCE PROGRAM  
MANUAL (NFIP).

EFFECTIVE: 02/14/97

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SECTION 201. FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

201-1 FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

| The 201 classification was deleted in Fiscal Year 1996. |

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SECTION 202. FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

202-1 FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

Information concerning the 202 classification is set forth  
in a separate FBI manual, the NATIONAL FOREIGN INTELLIGENCE PROGRAM  
MANUAL (NFIPM).

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SECTION 203. FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

203-1 FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

Information concerning the 203 classification is set forth  
in a separate FBI manual, the NATIONAL FOREIGN INTELLIGENCE PROGRAM  
MANUAL (NFIPM).

EFFECTIVE: 02/14/97

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PRINTED: 02/18/98

SECTION 204. FEDERAL REVENUE SHARING

204-1 BACKGROUND

The Federal Revenue Sharing Statutes and related special revenue sharing acts, beginning in 1972, assigned to the Attorney General the responsibility for enforcement that includes authority of the Attorney General to bring civil action whenever Attorney General has reason to believe that a pattern or practice of discrimination in disbursement of funds under these statutes exists. The Attorney General, by letter dated 9/13/77, instructed the FBI to accept investigative jurisdiction under these statutes.

EFFECTIVE: 08/24/83

204-2 STATUTES - FEDERAL REVENUE SHARING

EFFECTIVE: 08/24/83

204-2.1 State and Local Fiscal Assistance Act

(1) Section 8(a) of the State and Local Fiscal Assistance Amendments of 1976, Title 31, USC, Section 1242, amending Section 122, State and Local Fiscal Assistance Act of 1972, Title 31, USC, Section 1242, provides that no person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available through revenue sharing.

(2) Section 8(a) also provides that any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to any otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 shall apply to any program or activity funded under the State and Local Fiscal Assistance Act. Any prohibition against discrimination on the basis of religion, or any exemption from such prohibition, as provided in the Civil Rights Act of 1964, (Section 173 of this manual), or Title VIII of the Civil

Rights Act of 1968, (Discrimination in Housing, Section 177 of this manual), similarly applies.

(3) Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against otherwise qualified handicapped persons by the recipients of Federal financial assistance. The agencies administering Federal programs have primary responsibility to ensure that recipients are complying with Section 504. The Secretary of Health and Human Services is given authority to coordinate enforcement of Section 504 by Executive Order 11914. The Executive order requires Federal departments and agencies to furnish such information and reports as the Secretary shall request and to cooperate with the Secretary. The reports and information to which the Executive order refers could take the form of an FBI investigation. The Civil Rights Division (CRD) of the Department advised it intends to increase its enforcement role in the area of Section 504 of the Rehabilitation Act of 1973, and intends to request FBI investigations in the future. Office of the General Counsel, FBIHQ, has advised that the FBI does have jurisdiction to conduct these investigations upon request of the Assistant Attorney General, CRD. Any requests will be made by CRD to FBIHQ and field offices instructed as required.

EFFECTIVE: 09/09/94

204-2.2 Crime Control Act

Section 122(b) of the Crime Control Act of 1976, Title 42, USC, Section 3766(c), amending Section 518(c) of the Crime Control Act of 1973, Title 42, USC, Section 3766(c), provides that no person in any state shall on the grounds of race, color, national origin, or sex be excluded from participation in, denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under the Crime Control Act.

EFFECTIVE: 08/24/83

204-2.3 Comprehensive Employment and Training Act

Section 612 of the Comprehensive Employment and Training Act of 1973, Title 29, USC, Section 991, as amended by Public Law No. 93-567, Section 712 (December 31, 1974), provides that no person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available through Special Revenue Sharing for the Comprehensive Employment and Training Act.

EFFECTIVE: 08/24/83

204-2.4 Housing and Community Development Act

Section 109, Housing and Community Development Act of 1974, Title 42, USC, Section 5309, provides that no person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available through the Community Development Grant program.

EFFECTIVE: 08/24/83

204-2.5 Railroad Revitalization and Regulatory Reform Act

Section 905 of the Railroad Revitalization and Regulatory Reform Act of 1976, Title 45, USC, Section 803, provides that no person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, denied the benefits of or subjected to discrimination under any project, program or activity funded in whole or in part with funds made available through the Railroad Revitalization Act.

EFFECTIVE: 08/24/83



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204-3 POLICY

Do not identify source of complaint to any person interviewed or contacted during the course of an investigation.

EFFECTIVE: 08/24/83

204-3.1 Privacy Act of 1974 - Requirements

(1) In all interviews with the subject, agent or representative performing management functions, the Privacy Act requires the FBI furnish each individual with a statement that describes certain provisions of the Privacy Act of 1974 (set forth in FD-496).

(2) Form FD-496 should be the only format used in civil rights type 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 interviews (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, 190-5, (2) and (3) of this manual, for details regarding express promise of confidentiality made to third party source.

EFFECTIVE: 08/24/83

204-4 HANDLING OF COMPLAINTS

Upon receipt of a complaint of discrimination under the above related statutes, interview the complainant to determine the specifics of his/her complaint including the sources of his/her information and obtain copies of any available documents relating to the substance of his/her complaint. Submit the results of this interview to FBIHQ for dissemination to the Civil Rights Division (CRD), U.S. Department of Justice, by LHM and conduct no further investigation. Also, 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

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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 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, 44-10.1 of this manual.

EFFECTIVE: 04/19/91

204-5 PRELIMINARY INVESTIGATION

Upon receipt of a request for a standard preliminary investigation from the CRD, conduct the following investigation. Interview the complainant as set forth above. When the request relates to a specific Act or section of the Act, obtain additional information as set forth below.

EFFECTIVE: 04/19/91

204-5.1 State and Local Fiscal Assistance Act

(1) Obtain the last annual statistical report of the recipient agency, its policy and procedures manual and/or current directives.

(2) Determine the amount of Federal monies received by the recipient agency under either the State and Local Fiscal Assistance Act of 1972, as amended, or the Crime Control Act of 1973, as amended, including source, dates of approval and expiration, and grant number(s).

(3) If the state or local recipient agency has received monies under either of the Acts identified in paragraph (2), directly above, obtain a roster of all commissioned personnel, showing date hired, race, sex, rank or job classification, and a separate roster showing the same information for noncommissioned personnel.

(4) Obtain from the recipient agency copies of available documents that set forth recruitment, hiring, and/or promotion

policies and procedures including copies of any tests used.

(5) Determine the nature of data stored in computer readable form and the kinds of printouts the particular recipient law enforcement agency used on a regular basis, including personnel information, data on crime by districts, data on citizen complaints, and internal disciplinary action, and data on response to calls for police service.

(6) Obtain a copy of the Equal Employment Opportunity Program required by 28, CFR, 42.302 and 43.304.

EFFECTIVE: 04/19/91

204-5.2 Crime Control Act

Same as 204-5.1.

EFFECTIVE: 04/19/91

204-5.3 Comprehensive Employment and Training Act

(1) Obtain from the recipient vendor a copy of all records pertaining to the complainant including any applications for public service employment or training filed by complainant. If complainant applied for a specific job, obtain a copy of the job description and advertisement of same. Also obtain copies of all tests administered and all other written procedures used by recipient to rank applicants.

(2) Determine from the subject recipient vendor whether it has received any similar complaints or whether similar complaints have been filed with any other Federal, state or local agency against it, and if so, the details if known, including the date on which such complaint was filed, and the disposition, if any, which that agency has made.

EFFECTIVE: 04/19/91

204-5.4 Housing and Community Development Act

Ascertain from the subject recipient state or local government agency whether it has received any other complaints of discrimination concerning its programs which are funded with Housing and Community Development Act funds. If such complaints have been received, obtain the name of the complainant, the nature of the complaint, and the disposition of the complaint, if available.

EFFECTIVE: 04/19/91

204-5.5 Railroad Revitalization and Regulatory Reform Act

(1) Obtain from the recipient a copy of the affirmative action program it is required to prepare and maintain under the Federal Railroad Administration Regulations 49, CFR, 265.9.

(2) Obtain a copy of any civil rights complaint reports and/or records kept by recipient pursuant to the requirement of the Federal Railroad Administration set out in 49, CFR, 265.19.

EFFECTIVE: 04/19/91

204-6 REPORTING REQUIREMENTS

(1) Deadline. Submit a report within 21 workdays, beginning the day following receipt of complaint or request for investigation.

(2) Furnish copies of all reports and LHMs setting forth investigation in these matters to the local USA; however, it is not necessary to discuss the merits of the complaint with USA.

EFFECTIVE: 04/19/91

204-7 PENALTIES

Civil remedies only.

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EFFECTIVE: 04/19/91

204-8 COPIES OF COMMUNICATIONS

Submit the original and two copies of all reports and LHMs  
to FBIHQ.

EFFECTIVE: 04/19/91

204-9 CHARACTER - FEDERAL REVENUE SHARING

(Title of the statute under which the investigation is  
being conducted as specified in the above caption, 204-2.)

EFFECTIVE: 04/19/91

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SECTION 205. FOREIGN CORRUPT PRACTICES ACT OF 1977

| 205-1 STATUTES

| Title 15, USC, Sections 78m, 78dd-1, 78ff, and 78dd-2.

EFFECTIVE: 02/15/82

| 205-1.1 Foreign Corrupt Practices Act - Generally

| (1) An amendment to the Securities Exchange Act of 1934 makes it unlawful for an issuer of securities registered pursuant to Section 78"l" (lower case L) of the Act or an issuer required to file reports pursuant to Section 78o(d) of the Act to make certain payments to foreign officials and other foreign persons. The amendment also requires such issuers to maintain accurate records and internal accounting controls.

| (2) It is also unlawful for any domestic concern, other than an issuer which is subject to the Securities Exchange Act of 1934, to make certain payments to foreign officials and other foreign persons.

EFFECTIVE: 02/15/82

| 205-1.2 Section 78m - Maintenance of Records and Establishment of Internal Accounting Controls by Issuers - Required Practice

| "(2) Every issuer which has a class of securities registered pursuant to Section 78"l" (lower case L) of this title and every issuer which is required to file reports pursuant to Section 78o(d) of this title shall--

| "(A) make and keep books, records, and accounts, which in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and

| "(B) devise and maintain a system of internal

| accounting controls sufficient to provide reasonable assurances that--

| "(i) transactions are executed in accordance  
| with management's general or specific authorization;

| "(ii) transactions are recorded as necessary  
| (I) to permit preparation of financial statements in conformity with  
| generally accepted accounting principles or any other criteria  
| applicable to such statements, and (II) to maintain accountability for  
| assets;

| "(iii) access to assets is permitted only in  
| accordance with management's general or specific authorization; and

| "(iv) the recorded accountability for assets is  
| compared with the existing assets at reasonable intervals and  
| appropriate action is taken with respect to any differences."

EFFECTIVE: 02/15/82

| 205-1.2.1 Section 78m - Exemption from Recordkeeping Provisions

| "(3) (A) With respect to matters concerning the national  
| security of the United States, no duty or liability under paragraph  
| (2) of this subsection shall be imposed upon any person acting in  
| cooperation with the head of any Federal department or agency  
| responsible for such matters if such act in cooperation with such head  
| of a department or agency was done upon the specific, written  
| directive of the head of such department or agency pursuant to  
| Presidential authority to issue such directives. Each directive  
| issued under this paragraph shall set forth the specific facts and  
| circumstances with respect to which the provisions of this paragraph  
| are to be invoked. Each such directive shall, unless renewed in  
| writing, expire one year after the date of issuance.

| "(B) Each head of a Federal department or agency of  
| the United States who issues a directive pursuant to this paragraph  
| shall maintain a complete file of all such directives and shall, on  
| October 1 of each year, transmit a summary of matters covered by such  
| directives in force at any time during the previous year to the  
| Permanent Select Committee on Intelligence of the House of  
| Representatives and the Select Committee on Intelligence of the  
| Senate."

EFFECTIVE: 02/15/82

205-1.3 Section 78dd-1 - Foreign Corrupt Practices by Issuers

"(a) - It shall be unlawful for any issuer which has a class of securities registered pursuant to Section 78"1" (lower case L) of this title or which is required to file reports under Section 78o(d) of this title, or for any officer, director, employee, or agent of such issuer or any stock holder thereof acting on behalf of such issuer, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of any offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to -

"(1) any foreign official for purposes of -

"(A) influencing any act or decisions of such foreign official in his official capacity, including a decision to fail to perform his official functions; or

"(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

"in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person;

"(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of -

"(A) influencing any act or decision of such party, official, or candidate in its or his official capacity, including a decision to fail to perform its or his official functions; or

"(B) inducing such party official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

"in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person; or



"(3) any person, while knowing or having reason to know that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of -

"(A) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, including a decision to fail to perform his or its official functions; or

"(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

"in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person."

EFFECTIVE: 02/15/82

205-1.3.1 Section 78dd-1(b) - Definition

"(b) As used in this section, the term 'foreign official' means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or any person acting in an official capacity for or on behalf of such government or department, agency or instrumentality. Such term does not include any employee of a foreign government or any department, agency, or instrumentality thereof whose duties are essentially ministerial or clerical."

EFFECTIVE: 02/15/82

205-1.3.2 Section 78ff - Penalties

"(c) (1) Any issuer which violates Section 78dd-1(a) of this title shall, upon conviction, be fined not more than \$1,000,000.

"(2) Any officer or director of an issuer, or any stockholder acting on behalf of such issuer, who willfully violates Section 78dd-1(a) of this title shall, upon conviction, be fined not more than \$10,000, or imprisoned not more than five years, or both.

"(3) Whenever an issuer is found to have violated Section 78dd- 1(a) of this title, any employee or agent of such issuer who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stock holder of such issuer), and who willfully carried out the act or practice constituting such violation shall, upon conviction, be fined not more than \$10,000 or imprisoned not more than five years, or both.

"(4) Whenever a fine is imposed under paragraph (2) or (3) of this subsection upon any officer, director, stockholder, employee, or agent of an issuer, such fine shall not be paid, directly or indirectly, by such issuer."

EFFECTIVE: 02/15/82

205-1.4 Section 78dd-2 - Foreign Corrupt Practices by Domestic Concerns

"(a) It shall be unlawful for any domestic concern, other than an issuer which is subject to Section 78dd-1 of this title, or any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to make use of the mails or any means of instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to -

"(1) any foreign official for purposes of -

"(A) influencing any act or decision of such foreign official in his official capacity, including a decision to fail to perform his official functions; or

"(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

"in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person;

"(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of -

"(A) influencing any act or decision of such party, official, or candidate in its or his official capacity, including a decision to fail to perform its or his official functions; or

"(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

"in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person; or

"(3) any person, while knowing or having reason to know that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of --

"(A) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, including a decision to fail to perform his or its official functions; or

"(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

"in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person."

EFFECTIVE: 02/15/82

205-1.4.1 Section 78dd-2 - Civil Action by Attorney General to Prevent Violations

"(c) Whenever it appears to the Attorney General that any domestic concern, or officer, director, employee, agent, or stockholder thereof, is engaged, or is about to engage, in any act or practice constituting a violation of subsection (a) of this section, the Attorney General may, in his discretion, bring a civil action in an appropriate district court of the United States to enjoin such act or practice, and upon a proper showing a permanent or temporary injunction or a temporary restraining order shall be granted without bond."

EFFECTIVE: 02/15/82

205-1.4.2 Section 78dd-2 - Definition

"(d) As used in this section:

"(1) The term 'domestic concern' means (A) any individual who is a citizen, national, or resident of the United States; or (B) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States, or which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States.

"(2) The term 'foreign official' means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality. Such term does not include any employee of a foreign government or any department, agency, or instrumentality thereof whose duties are essentially ministerial or clerical.

"(3) The term 'interstate commerce' means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State or between any State and any place or ship outside thereof. Such term includes the intrastate use of (A) a telephone or other interstate means of communication or

| (B) any other interstate instrumentality."

EFFECTIVE: 02/15/82

| 205-1.4.3 Section 78dd-2 - Penalties

| "(b) (1) (A) Except as provided in subparagraph (B) any domestic concern which violates subsection (a) of this section shall, upon conviction, be fined not more than \$1,000,000.

| "(B) An individual who is a domestic concern and who willfully violates subsection (a) of this section shall, upon conviction, be fined not more than \$10,000, or imprisoned not more than five years, or both.

| "(2) Any officer or director of a domestic concern, or stockholder acting on behalf of such domestic concern, who willfully violates subsection (a) of this section shall, upon conviction, be fined not more than \$10,000, or imprisoned not more than five years, or both.

| "(3) Whenever a domestic concern is found to have violated subsection (a) of this section, any employee or agent of such domestic concern who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder acting on behalf of such domestic concern), and who willfully carried out the act or practice constituting such violation shall, upon conviction, be fined not more than \$10,000, or imprisoned not more than five years, or both.

| "(4) Whenever a fine is imposed under paragraph (2) or (3) of this subsection upon any officer, director, stockholder, employee, or agent of a domestic concern, such fine shall not be paid, directly or indirectly, by such domestic concern."

EFFECTIVE: 02/15/82

| 205-2 POLICY AND PROCEDURES

EFFECTIVE: 02/15/82

205-2.1 Departmental Authority

(1) Investigation and prosecution of violations raise complex enforcement problems abroad and also demand coordination with the Department of State, the Central Intelligence Agency, the Securities and Exchange Commission (SEC), and other interested agencies. For these reasons, unless otherwise agreed upon by the AAG, Criminal Division, grand jury investigations and prosecutions of alleged violations of Sections 78dd-1, 78ff, and 78dd-2 (the antibribery provisions) of the Statute are to be conducted by attorneys from the Department's Criminal Division. Grand jury investigations and prosecutions of alleged violations of Section 78m (the recordkeeping provisions) of the Statute, when such violations are related to a violation of Sections 78dd-1, 78ff, and 78dd-2 are conducted by Criminal Division Attorneys, unless otherwise directed by the AAG.

(2) Pursuant to Presidential directive, the Criminal Division of the Department has established a FCPA Review Procedure which is administered by the Fraud Section of the Department's Criminal Division. The Review Procedure provides a mechanism for businessmen and attorneys to seek guidance about the meaning and application of the antibribery provisions of the Act. Thus a company concerned about a possible violation of the Statute may give to the Department the details of a prospective transaction in a foreign country. After a review of these facts, the Department will advise in advance whether it will take enforcement action under the Act if the transaction proceeds further. The Review Procedure is not available for the recordkeeping provisions of the Statute. Currently the Criminal Division must submit its binding review decision to a company within 30 days.

EFFECTIVE: 02/15/82

205-2.2 Jurisdiction

(1) The FBI has criminal investigative jurisdiction for Sections 78m, 78dd-1, 78ff, and 78dd-2 of the Act, as well as civil investigative jurisdiction of Section 78dd-2 of the USC.

(2) The SEC has civil investigative jurisdiction for Sections 78m, 78dd-1, and 78ff of the USC.

EFFECTIVE: 02/15/82

205-2.3 Office of Origin

Because the bulk of such investigations will be assigned to departmental attorneys for presentation before grand juries in the District of Columbia, Washington Metropolitan Field Office (WMFO) will be considered office of origin in these matters until the Department makes a decision to venue the case elsewhere.

EFFECTIVE: 10/16/90

205-2.4 Commencing Investigation

Investigations are conducted only at the request of the Fraud Section of the Department's Criminal Division. In submitting letter requesting investigation, Department will identify the attorney assigned and request that case Agent contact the attorney expeditiously in order to devise investigative strategy. FBIHQ will forward copies of Criminal Division letter to interested field divisions, usually WMFO.

EFFECTIVE: 10/16/90

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205-2.5 Requests from USAs for Investigation of a New Case

If USA requests investigation of alleged violations under the FCPA not previously authorized by the AAG and FBIHQ, his/her attention should be invited to the departmental policy as outlined in USA's Manual, which requires prior authorization by the AAG, Criminal Division.

EFFECTIVE: 10/16/90

205-2.6 Receipt of Complaints

(1) Upon receipt of an allegation in the field, thoroughly interview complainant and conduct no further investigation. Notify FBIHQ of allegation by teletype within 24 hours to permit FBIHQ to immediately apprise Fraud Section of Department's Criminal Division. Within five working days submit original and 3 copies of LHM containing details of allegation. Last paragraph of LHM should include statement that FBI will take no further action regarding the allegation unless specifically requested by the U.S. Department of Justice.

(2) If information concerning a potential violation is encountered during the course of another Bureau investigation, follow same teletype and LHM reporting procedures as in receipt of complaints. No contact should be made with the SEC, the suspect individual or company, or a foreign law enforcement authority without prior authorization from FBIHQ.

EFFECTIVE: 07/11/85

205-3 CHARACTER - FOREIGN CORRUPT PRACTICES ACT OF 1977

EFFECTIVE: 07/11/85

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SECTION 206. FRAUD AGAINST THE GOVERNMENT -  
DEPARTMENT OF DEFENSE;  
DEPARTMENT OF AGRICULTURE;  
DEPARTMENT OF COMMERCE;  
DEPARTMENT OF INTERIOR  
|(SEE MIOG, PART I, SECTION 46.)|

| 206-1 |BACKGROUND

|The 206 classification was eliminated and reclassified as  
46A (Fraud Against the Government - Department of Defense) and 46H  
(Fraud Against the Government - Other). See MIOG, Part I, Section  
46. |

EFFECTIVE: 07/31/97

| 206-2 |DELETED|

EFFECTIVE: 07/31/97

| 206-3 |DELETED|

EFFECTIVE: 07/31/97

| 206-4 |DELETED|

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| 206-5 | DELETED |

EFFECTIVE: 07/31/97

| 206-6 | DELETED |

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SECTION 207. FRAUD AGAINST THE GOVERNMENT -  
ENVIRONMENTAL PROTECTION AGENCY;  
NATIONAL AERONAUTICS AND SPACE  
ADMINISTRATION;  
DEPARTMENT OF ENERGY;  
DEPARTMENT OF TRANSPORTATION  
|(SEE MIOG, PART I, SECTION 46.)|

| 207-1 |BACKGROUND

|The 207 classification was eliminated and reclassified in  
Fiscal Year 1996 as 46E (Fraud Against the Government - Department of  
Transportation) and 46H (Fraud Against the Government - Other). See  
MIOG, Part I, Section 46.|

EFFECTIVE: 07/31/97

| 207-2 |DELETED|

EFFECTIVE: 07/31/97

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SECTION 208. FRAUD AGAINST THE GOVERNMENT -  
GENERAL SERVICES ADMINISTRATION  
(SEE MIOG, PART I, SECTION 46.)

| 208-1 | BACKGROUND

| The 208 classification was eliminated and reclassified in  
Fiscal Year 1996 as 46H (Fraud Against the Government - Other). See  
MIOG, Part I, Section 46. |

EFFECTIVE: 07/31/97

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SECTION 209. |HEALTH CARE FRAUD|

209-1 POLICY

This classification has been established for management purposes as a method of designating Health Care Fraud as a separate classification. The instructions for this classification are the same as those contained in Part I, Section 46 of this manual.

EFFECTIVE: 11/12/93

209-2 REPORTING REQUIREMENTS

Part I, Section 46 of this manual sets forth general reporting requirements applicable to all Fraud Against the Government investigations. In addition, specific reporting requirements pertain to completed Health and Human Services (HHS) investigations involving Health Care Provider Fraud. Pursuant to the Civil Monetary Penalties Law of 1981, the HHS Office of Inspector General (HHS-OIG) is authorized to seek civil monetary penalties against Health Care Providers guilty of defrauding HHS. This law is codified in Title 42, USC, Section 1320a-7a, and Section 1128A of the Social Security Act. To assist the HHS-OIG in this regard, field offices should send one copy of pertinent FD-302s concerning Health Care Provider Fraud to FBIHQ for dissemination to HHS. Attach and identify the FD-302s as enclosures for dissemination to the case closing LHM. List each FD-302 by date and name on the cover airtel to the LHM. Field divisions must ensure that each FD-302 is devoid of grand jury information protected pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure, or information that would compromise the identity of an informant or confidential witness. FBIHQ will notify field offices of any civil recoveries obtained by HHS in order that the field division may report a recovery pursuant to the Manual of Administrative Operations and Procedures, Part II, 3-5.2.7, (2)(b), "Joint Investigation Recoveries." All other Health Care Fraud investigations should be reported to FBIHQ by LHM.

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PRINTED: 02/18/98

EFFECTIVE: 11/12/93

## 209-3 STATUTES

The statutes most commonly used in prosecuting fraud cases are: Title 18, USC, Section 286 (Conspiracy to Submit False Claims); Title 18, USC, Section 287 (False, Fictitious or Fraudulent Claims); Title 18, USC, Section 371 (Conspiracy to Commit Offense or Defraud the United States); and Title 18, USC, Section 1001 (False Statements). These are further detailed in Part I, Section 46 of this manual. There are, however, additional statutes applicable to Medicare/Medicaid fraud, and illegal pharmaceutical diversion.

(1) Title 42, USC, Sections 1395nn and 1396h provide criminal penalties for:

- (a) making or causing to be made false statements or representations;
- (b) illegal remunerations (kickbacks, bribes, or rebates);
- (c) false statements or representations with respect to condition or operation of institutions; and,
- (d) illegal patient admittance and retention practices.

These statutes address not only false statement violations in connection with Medicare and Medicaid claims, but also kickback violations which do not result in loss to the Federal Government. Field divisions are encouraged to aggressively investigate fraud and kickback allegations with an eye towards prosecution through these statutes.

(2) Title 21, USC, Sections 841(a)(1), 846, and 848 provide criminal penalties for the unlawful manufacture, distribution, dispensation, or possession of controlled substances with intent to manufacture, distribute, or dispense. Provided certain criteria are met, a diversion of pharmaceuticals (controlled substances) and prescriptions for controlled substances by Health Care Providers is criminal activity investigated under this classification. Pharmaceutical diversion, and the illegal dispensation of prescriptions for the same pharmaceuticals, should be investigated

whenever the primary prosecutive focus is a Health Care Provider whose criminal activity may result in a potential loss to insurance carriers. Investigations of this nature should be coordinated with the Drug Enforcement Administration (DEA).

EFFECTIVE: 02/22/88

209-4 | ACCESS TO MEDICARE RECORDS AND INFORMATION

An agreement was executed between the Health Care Financing Administration (HCFA) Administrator, the HHS Inspector General, and DOJ, allowing FBI and DOJ personnel to make direct requests to Medicare contractors for information and documents relating to ongoing Health Care Fraud cases. The agreement also sets forth certain requirements associated with the availability of direct access.

(1) FBI and DOJ personnel can make DIRECT requests to Medicare contractors for information and documents relating to an ONGOING Health Care Fraud (HCF) case.

(2) These requests are to be made in WRITING to the Medicare contractor with a notification copy to the HHS/OIG's Regional Office. Notification to HHS/OIG is only intended to prevent duplication in investigative efforts, not as an approval mechanism.

(3) Neither HHS/OIG nor HCFA approval is necessary before the contractor can respond to such requests.

(4) FBI requests must relate to ongoing cases.

(5) The Fraud Units of the contractors are responsible for proactively reviewing claims data and other information to identify emerging fraud schemes and potential targets. It is NOT the FBI's role to direct the Fraud Units in this regard. The FBI can request "data analysis" in addition to specific records; the FBI must have an independent, preexisting reason for suspecting fraud before it requests data analysis.

(6) There will be cross training among HCFA, HHS/OIG, DOJ and FBI personnel. FBI Agents should become knowledgeable about the Medicare system so that requests to the contractors can be specific

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and well constructed.

(7) Periodic meetings will be held at the local level between DOJ, HHS/OIG, HCFA, FBI and Medicare contractor personnel. These meetings should contribute to the expansion of the HCF intelligence base and the predication of new investigations.

Comments and questions should be directed to the HCF Unit, Financial Crimes Section, Criminal Investigative Division, Extension [REDACTED] b2  
Copies of the booklet entitled "Guidelines for Access to Data: HCFA" are available through the HCF Unit, FBIHQ.

EFFECTIVE: 05/20/96

||209-5| CHARACTER

The character for the 209 classification is "Health Care Fraud." (See MAOP, Part II, 3-1.1 & 3-1.2 for subclassifications.)

EFFECTIVE: 05/20/96

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SECTION 210. FRAUD AGAINST THE GOVERNMENT -  
DEPARTMENT OF LABOR  
| (SEE MIOG, PART I, SECTION 46.) |

| 210-1 | BACKGROUND

| The 210 classification was eliminated and reclassified in  
Fiscal Year 1996 as 46D (Fraud Against the Government - Department of  
Labor). See MIOG, Part I, Section 46. |

EFFECTIVE: 07/31/97

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## SECTION 211. ETHICS IN GOVERNMENT ACT OF 1978

## 211-1 STATUTES

Title 28, USC, Sections 591-598

EFFECTIVE: 03/23/89

## 211-2 BACKGROUND

The Independent Counsel provisions of the Ethics in Government Act of 1978, as amended by the Ethics in Government Act Amendments of 1982, the Independent Counsel Reauthorization Act of 1987, and as set forth in the above statutes, require the Attorney General to conduct a preliminary investigation, not to exceed 90 days, whenever information sufficient to constitute grounds to investigate is received that one of a designated group, listed in 211-4, has committed a violation of Federal criminal law, other than certain misdemeanors. The purpose of the preliminary investigation is to determine whether there are reasonable grounds to believe that further investigation of the allegations or prosecution by an Independent Counsel is warranted. Within 90 days after receipt of specific information, the Attorney General is required to file a summary of the allegation and investigation with a Special Panel of Appeals Court Judges. This filing is for the purpose of notifying the Special Panel of the Attorney General's determination of whether or not the facts known at the conclusion of the preliminary investigation warrant appointment of an Independent Counsel to pursue the matter. Upon a showing of good cause by the Attorney General, the Special Panel may grant a single extension of the preliminary investigation for a period not to exceed 60 days. If the Attorney General determines that there are no reasonable grounds to believe that further investigation or prosecution is warranted, the Special Panel has no power to appoint an Independent Counsel. If the Attorney General determines that there are reasonable grounds to believe that further investigation or prosecution is warranted, or if 90 days pass without the Attorney General making a determination, the Attorney General must make application to the Special Panel for an Independent Counsel. After appointment of an Independent Counsel, the Department of Justice must cease all activity in the matter within the Independent Counsel's jurisdiction, except where the Independent

Counsel requests assistance of the Department of Justice in writing. The Special Panel has the responsibility of appointing the Independent Counsel and defining the Independent Counsel's jurisdiction. The Independent Counsel has all the powers of the Attorney General except those relating to the approval of Title III applications for electronic surveillance, including the authority to employ any attorneys or investigators deemed necessary. The Department of Justice must, on request, provide whatever assistance the Independent Counsel requires to include investigative personnel and information from FBI files.

EFFECTIVE: 03/23/89

211-3 SPECIFIC INFORMATION

(1) The legislative history of the Act reveals the term "specific information" is subject to some interpretation. Generally, the standard of specificity requires that the information presented, and reasonable inferences arising therefrom, if true, would constitute a Federal offense other than petty offenses. Specific information does not require independent corroboration.

(2) FBIHQ has advised the Department of Justice that allegations will be reported to the Department of Justice when the following is determined:

(a) An allegation is received or developed concerning a person subject to the Act.

(b) The allegation indicates a specific violation of Federal criminal law.

(c) Facts available or ascertained within 24 hours do not render it wholly incredible.

(3) In determining whether grounds to investigate exist, the Department of Justice shall consider:

(a) the degree of specificity of the information received, and

(b) the credibility of the source of the information.

(4) In conducting preliminary investigations, the Attorney General shall have no authority to convene grand juries, plea bargain, grant immunity, or issue subpoenas.

(5) In some instances, the information received by the Attorney General is not readily discernible as specific information that constitutes grounds to investigate a violation of the Federal criminal law and thereby initiate a preliminary investigation. Perhaps there is insufficient information to assess the credibility of the source or the information does not clearly demonstrate a violation of any law. In this case, the Act permits the Attorney General a period of time not to exceed 15 days from the time the information is received to conduct a further inquiry, referred to by the Department as a "threshold inquiry," in order to make such a determination.

(a) If within that 15-day period, the Attorney General determines that the information is not specific or from a credible source, then the Attorney General shall close the inquiry. Under the Act, the Attorney General may not base such a determination that the subject of the inquiry lacked the requisite state of mind to commit the offense.

(b) If within the 15-day period, the Attorney General determines that the information is specific and from a credible source, then the Attorney General shall commence a preliminary investigation.

(c) If after the 15-day threshold inquiry, the Attorney General is unable to make the necessary determination, then the Attorney General must commence the preliminary investigation.

(d) The 15-day period of the threshold inquiry commences upon receipt of the information by the Department which would include receipt by the FBI. Thus, for example, if a relevant allegation arises during the course of an unrelated FBI interview, the period commences.

EFFECTIVE: 03/23/89

211-4 PERSONS COVERED BY THE ACT

(1) By statute:

- (a) The President and Vice-President
- (b) Cabinet officers
- (c) Employees of the Executive Office of the President paid at the rate of Executive Level II or above
- (d) Justice Department employees paid at the rate of Executive Level III or above, and all Assistant Attorneys General
- (e) The Director and Deputy Director of the Central Intelligence Agency
- (f) The Commissioner of Internal Revenue
- (g) Any person who held one of the above offices during the incumbency of the President such individual serves, plus one year after such incumbency, but no longer than three years after the individual leaves office
- (h) Any person who held one of the above offices, who continues to hold office for not more than 90 days into the term of the next President, during the period such individual serves plus one year after such individual leaves office
- (i) The Chairman and Treasurer of the Principal National Campaign Committee seeking the election or reelection of the President, and any officer of the campaign exercising authority at the national level, such as the Campaign Manager or Director, during the incumbency of the President

Any person, not described above, who commits a violation of any Federal criminal law other than a petty offense, where the Attorney General determines that investigation of such person by the Attorney General or other officer of the Department of Justice may result in a personal, financial, or political conflict of interest, e.g., a family member of the President.

- (2) FBIHQ will periodically furnish field divisions a list of officials, by name, who are subject to the above for inclusion in field office indices.

EFFECTIVE: 03/23/89

211-5 POLICY

(1) Preliminary investigation prior to appointment of Independent Counsel:

(a) Department of Justice policy requires that the Deputy Attorney General be notified within 24 hours following receipt of specific information that a covered person may have committed a violation of Federal criminal law.

(b) The Department of Justice has advised that responsibility for the preliminary investigation will generally rest with the FBI even if investigative jurisdiction normally lies within another Federal investigative agency.

(c) The Department of Justice has interpreted the Act to mean that the 90-day deadline to submit results of preliminary investigation to the court begins with the day the specific information is received or developed by the FBI.

(d) The statute explicitly prohibits the granting of immunity, plea bargaining, or conducting grand jury proceedings during the preliminary investigation.

(2) Following appointment of an Independent Counsel:

(a) Specific policy of the Independent Counsel as coordinated with FBIHQ will be communicated to the field on a case-by-case basis.

(b) No portion of the investigation conducted for the Independent Counsel will be communicated to the Department of Justice or any U.S. Attorney without written permission of the Independent Counsel. Specifically, no FBI personnel, detailed to assist Independent Counsel, either during or after the assignment are authorized to discuss any aspect of the investigation with anyone outside the Independent Counsel, to include FBI or Department of Justice personnel without the written concurrence of the Independent Counsel and the permission of the Director.

(c) Any contacts with the Independent Counsel concerning problems in policy or procedural matters should be referred

to FBIHQ.

EFFECTIVE: 03/23/89

211-6 INVESTIGATIVE PROCEDURE

(1) Upon receipt or development of an allegation, immediately notify FBIHQ to verify subject is holding a position covered by the statute.

(2) Immediately ascertain facts surrounding the allegation.

(3) Conduct no further investigation until advised by FBIHQ unless exigent circumstances exist.

EFFECTIVE: 03/23/89

211-7 REPORTING REQUIREMENTS

(1) As soon as possible, not to exceed 24 hours, advise FBIHQ by immediate teletype suitable for dissemination to the Department of Justice upon determination that allegation meets criteria as set forth in 211-3.

(a) If the allegation arises against a covered person as a result of an ongoing investigation, the field office should report the allegation under the caption of that investigation with a copy designated to the White-Collar Crimes Section.

(b) If the allegation did not arise from an ongoing investigation, the field office should report same directly to the White-Collar Crimes Section as follows:

Unsubstantiated Allegations  
(Name of Covered Person)  
(Title of Covered Person)  
Possible Ethics in Government Act (EIGA) Matter  
Request for Opinion

(2) Upon receipt of instructions from FBIHQ to initiate a preliminary investigation, the investigation must be handled

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expeditiously in order to provide the Department of Justice an investigative report within 45 days of receipt of the specific information.

(3) Upon appointment of an Independent Counsel following a preliminary investigation, specific reporting requirements will be provided by FBIHQ on a case-by-case basis.

EFFECTIVE: 03/23/89

211-8 FBIHQ SUPERVISION

Supervisory responsibility for this classification at FBIHQ is vested within the White-Collar Crimes Section, Criminal Investigative Division.

EFFECTIVE: 03/23/89

211-9 FINANCIAL DISCLOSURE PROVISIONS

| The annual filing requirement of financial disclosure reports is detailed in the MAOP, Part I, 1-14. |

EFFECTIVE: 04/11/94

| 211-10 | 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, Attn: 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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EFFECTIVE: 03/23/89

||211-11| CHARACTER - ETHICS IN GOVERNMENT ACT OF 1978|(EIGA)|-  
(Followed by substantive violation)

EFFECTIVE: 03/23/89

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SECTION 212. FOREIGN COUNTERINTELLIGENCE - INTELLIGENCE COMMUNITY  
SUPPORT

212-1 FOREIGN COUNTERINTELLIGENCE - INTELLIGENCE COMMUNITY  
SUPPORT

Information concerning the 212 classification is set forth  
in a separate FBI manual, the NATIONAL FOREIGN INTELLIGENCE PROGRAM  
MANUAL (NFIPM).

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SECTION 213. FRAUD AGAINST THE GOVERNMENT - DEPARTMENT OF EDUCATION  
| (SEE MIOG, PART I, SECTION 46.) |

| 213-1 | BACKGROUND

| The 213 classification was eliminated and reclassified in  
Fiscal Year 1996 as 46F (Fraud Against the Government - Department of  
Education). See MIOG, Part I, Section 46. |

EFFECTIVE: 07/31/97

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SECTION 214. CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS ACT

214-1 STATUTE

(1) In May, 1980, the Civil Rights of Institutionalized Persons Act, Public Law 96-247, Title 42, USC, Section 1997, was signed into law. The statute grants to the Attorney General explicit authority to initiate civil actions designed to redress systematic deprivations of the constitutional rights of institutionalized persons. Included within the definition of "institutions" are mental hospitals, retardation facilities, jails, prisons, certain types of nursing homes and juvenile detention centers.

(2) In order for the Attorney General to initiate suits under the Act, the Attorney General must have "reasonable cause" to believe that there exists a "pattern or practice" of "egregious or flagrant" legal violations which deprive residents of institutions basic rights guaranteed by the Constitution or laws of the United States. Implementation of this Act is the responsibility of the Civil Rights Division of the Department.

(3) Of particular relevance to the FBI is Section 4(a)(2) of the Act. That provision authorizes the Attorney General to commence investigations of institutions for the purpose of determining whether legal violations have occurred. The law also requires the Attorney General to provide pertinent state officials with seven days' notice of the Attorney General's intent to commence such an investigation.

EFFECTIVE: 04/19/91

214-2 INITIATION OF INVESTIGATION

(1) An investigation is initiated only upon receipt of a written request from the Assistant Attorney General, Civil Rights Division. This request will describe the nature of the complaints received and the institution(s) involved. It will, where feasible, specify any special instructions. Unless instructed otherwise, the investigation is to begin not earlier than seven days after date of departmental request.

(2) Upon receipt of a complaint 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 the form is secured. In those instances where FBIHQ is advised by telephone or teletype of a new case, the FD-610 should be submitted at the earliest possible moment. Specific instructions regarding the completion of the FD-610 are set forth in Part I, 282-8.1 of this manual.

EFFECTIVE: 01/31/94

214-3 PRELIMINARY INVESTIGATION

A preliminary investigation shall ordinarily consist of the following elements and procedures; NOTE, however, that a particular request for an investigation may specify certain additional instructions or may limit an investigation to certain portions of these standards:

(1) Interviews with all named complainants and such other persons as the request may specify.

(2) Interviews with all persons identified by the interviewed or complaining residents as being individuals who might have pertinent information about conditions in the institution. If there are more than ten such persons, interview a representative number and obtain the names, addresses and phone numbers of the remainder. As part of each interview, obtain observable information such as age, sex, race and physical handicaps.

(3) Reasonable attempts to identify and interview representatives of local citizens' or advocacy groups, if any, (such as a Legal Assistant Program, Parents Association, Mental Health Association or Protection and Advocacy Service) with regard to information they may have concerning conditions and practices in the institution. Obtain the names, addresses and phone numbers for all such groups.

(4) Photograph (in color) a representative number of rooms and sleeping areas in the residential, recreational, educational and medical areas. Obtain photographs of a representative number of toilets, wash basins, urinals, bathtubs and food preparation areas. Maintain detailed photographic logs in order that photographs may be identified.

(5) Ascertain from local authorities information regarding complaints made against the subject institution. This information should include the date, source and results of any action taken by such authority in response to the complaint.

(6) Obtain copies of all reports, evaluations, surveys, accreditation or certification applications (and the results thereof) conducted within the preceding three years by or for the institution by local, state, Federal or private agencies concerning any facet or aspect of the institution. If the institution prepares annual reports, obtain a copy.

(7) Obtain the two most recent inspection reports from state and/or local fire, health and safety authorities. If such reports do not exist, ascertain the reason.

(8) Determine the present population of the facility, the population, on the same date one year earlier, and the designed population capacity of the facility. Find out whether, and how many, persons under 18 are housed in the institution.

(9) Determine whether the facility has made application for, and/or been awarded funds pursuant to any Federal program of grants or other financial assistance within the past three years. If so, ascertain how much money was awarded, what the money was to be used for, and obtain copies of all such grant applications and awards.

(10) Obtain copies of budgetary requests made to the pertinent legislative body for the two most recent fiscal years.

EFFECTIVE: 04/19/91

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214-4 WITNESSES REFUSING INTERVIEWS

A resident, witness or employee of a subject institution may refuse to be interviewed, or may refuse to be interviewed except in the presence of his or her attorney. In either event, contact the Civil Rights Unit, FBIHQ, which will consult with the Civil Rights Division to determine how to proceed. If the person to be interviewed desires the presence of his or her attorney, obtain the name, address and phone number of the attorney.

EFFECTIVE: 09/20/82

214-5 INSTITUTIONS REFUSING ACCESS

(1) Where the subject institution refuses access for purposes of conducting the investigation requested pursuant to these instructions, obtain information in item (2) and immediately contact Civil Rights Unit, FBIHQ, which will consult with the Civil Rights Division to determine how to proceed.

(2) In any instance where access is denied, obtain the name, title and address of the person who refuses such access. Request that individual to provide the reasons and source of authority for the refusal.

(3) Continue to conduct as much of the investigation as possible without access to the institution (e.g., identify and interview local citizens' groups, ascertain whether local authorities have received complaints, obtain copies of available reports, studies, etc.).

EFFECTIVE: 09/20/82

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214-6 FULL FIELD INVESTIGATION

(1) Upon completion and submission of the report of the preliminary investigation, personnel in the Civil Rights Division will determine whether a full field investigation of the subject institution is warranted on the basis of the information available. The Division will not routinely request full investigations, but will evaluate each situation on its own merit.

(2) Where further investigation is justified, a supplementary request for a full field investigation will be made.

(3) Such requests will require a more detailed and comprehensive review of the facility's population, staff, programs and physical plant. They will be accompanied by explicit instructions tailored to the Civil Rights Division's informational needs for the particular facility.

EFFECTIVE: 09/20/82

214-7 PRIVACY ACT - REQUIREMENTS

(1) When interviewing the subject, agent or representative performing management functions, in order to solicit information about subject or subject's own activities, the interviewing Agent must follow the procedure described in Part I, 190-5, (2) and (3) of this manual. In all civil rights-type (noncriminal) investigations, the interviewee is to be provided with Form FD-495. The FD-302 used to report results of these interviews should clearly state that the interviewee was furnished a copy of this statement.

(2) When interviewing an individual to solicit information concerning someone other than the interviewee (thereby classifying that individual as a source of information), the interviewing Agent must follow the procedure relating to the promises of confidentiality as described in Part I, 190-7 of this manual.

EFFECTIVE: 09/20/82



## 214-8 HANDLING OF COMPLAINTS RECEIVED BY FIELD OFFICE

Upon receipt of a complaint alleging possible violation of the Civil Rights of Institutionalized Persons Act, obtain full details from the complainant and submit to FBIHQ by LHM for dissemination to the Department for its determination as to whether any further investigation should be initiated. A complaint referred by the USA should also be forwarded to FBIHQ for referral to the Department prior to the initiation of any investigation. Furnish a copy of the LHM to USA; however, it is not necessary to discuss the merits of the complaint with USA, as the Civil Rights Division of the Department has retained the prerogative of determining the desirability and direction of any further investigation to be conducted which may lead to Federal prosecution. Upon submission of LHM, the field office should close its file and conduct no further investigation until specifically directed to do so by FBIHQ.

EFFECTIVE: 04/19/91

## 214-9 REPORTING REQUIREMENTS BY FIELD OFFICE

(1) Deadline. Submit a report within 21 workdays beginning the day following receipt of a request for investigation from FBIHQ.

(2) Upon receipt of a complaint, submit LHM within seven workdays unless circumstances indicate a teletype or telephone call to FBIHQ is warranted.

(3) Field offices should communicate directly with the Department of Justice (DOJ), Civil Rights Division attorney who generates a written or verbal request for investigation, the latter of which will also be documented by DOJ and, thereafter, transmitted to the field by airtel. In the event field offices strongly disagree with the requirements of the DOJ investigative requests and/or taskings and cannot resolve these issues with DOJ, contact the Civil Rights Unit, FBIHQ.

EFFECTIVE: 08/10/94

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214-10 SUBMISSION OF REPORTS BY FBIHQ TO THE DEPARTMENT

(1) The results of the preliminary investigation will be submitted to the Assistant Attorney General initiating the request or to the person designated in Assistant Attorney General's request to receive such information.

(2) In the reference paragraph of the memorandum transmitting the report (Form 6-94), set forth the date the investigation was requested, the date it was initiated and the date it was completed.

EFFECTIVE: 04/19/91

214-11 PENALTIES

Civil remedies only.

EFFECTIVE: 04/19/91

214-12 COPIES OF COMMUNICATIONS

Submit the original and two copies of all reports and LHMs to FBIHQ.

EFFECTIVE: 04/19/91

214-13 CHARACTER - CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS ACT (CRIPA)

EFFECTIVE: 04/19/91

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SECTION 215. FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

215-1 FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

| The 215 classification was deleted in Fiscal Year 1996. |

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SECTION 216. FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

216-1 FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

| The 216 classification was deleted in Fiscal Year 1996. |

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SECTION 217. FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

217-1 FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

| The 217 classification was deleted in Fiscal Year 1996. |

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SECTION 218. FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

218-1 FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

| The 218 classification was deleted in Fiscal Year 1996. |

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SECTION 219. FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

219-1 FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

| The 219 classification was deleted in Fiscal Year 1996. |

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SECTION 220. FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

220-1 FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

Information concerning the 220 classification is set forth  
in a separate FBI manual, the NATIONAL FOREIGN INTELLIGENCE PROGRAM  
MANUAL (NFIPM).

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SECTION 221. FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

221-1 FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

Information concerning the 221 classification is set forth  
in a separate FBI manual, the NATIONAL FOREIGN INTELLIGENCE PROGRAM  
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SECTION 222. FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

222-1 FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

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SECTION 223. FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

223-1 FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

Information concerning the 223 classification is set forth  
in a separate FBI manual, the NATIONAL FOREIGN INTELLIGENCE PROGRAM  
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SECTION 224. FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

224-1 FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

Information concerning the 224 classification is set forth  
in a separate FBI manual, the NATIONAL FOREIGN INTELLIGENCE PROGRAM  
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SECTION 225. FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

225-1 FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

Information concerning the 225 classification is set forth  
in a separate FBI manual, the NATIONAL FOREIGN INTELLIGENCE PROGRAM  
MANUAL (NFIPM).

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SECTION 226. FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

226-1 FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

| The 226 classification was deleted in Fiscal Year 1996. |

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SECTION 227. FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

227-1 FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

Information concerning the 227 classification is set forth  
in a separate FBI manual, the NATIONAL FOREIGN INTELLIGENCE PROGRAM  
MANUAL (NFIPM).

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SECTION 228. FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

228-1 FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

| The 228 classification was deleted in Fiscal Year 1996. |

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SECTION 229. FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

229-1 FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

| The 229 classification was deleted in Fiscal Year 1996. |

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SECTION 230. TRAINING RECEIVED - FOREIGN COUNTERINTELLIGENCE

230-1 POLICY

This classification has been established for management purposes as a method of separating the time spent in receipt of training in Foreign Counterintelligence matters from the other investigative programs.

EFFECTIVE: 03/28/84

Sensitive  
PRINTED: 02/18/98

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SECTION 231. TRAINING RECEIVED - ORGANIZED CRIME;  
TRAINING RECEIVED - DRUG MATTERS

231-1 TRAINING RECEIVED - ORGANIZED CRIME (231A)

This classification has been established for management purposes as a method of separating the time spent in receipt of training in Organized Crime matters from the other investigative programs. Time spent in training for these matters should be listed under the 231A subclassification for TURK purposes.

EFFECTIVE: 01/25/88

231-2 TRAINING RECEIVED - DRUG MATTERS (231B)

This classification has been established for management purposes as a method of separating the time spent in receipt of training in Drug matters from the other investigative programs. Time spent in training for these matters should be listed under the 231B subclassification for TURK purposes.

EFFECTIVE: 01/25/88

Sensitive  
PRINTED: 02/18/98

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SECTION 232. TRAINING RECEIVED - WHITE-COLLAR CRIME

232-1 POLICY

This classification has been established for management purposes as a method of separating the time spent in receipt of training in White-Collar Crime matters from the other investigative programs.

EFFECTIVE: 03/28/84

Sensitive  
PRINTED: 02/18/98

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SECTION 233. |DELETED|

| 233-1 |DELETED|

EFFECTIVE: 03/23/89

Sensitive  
PRINTED: 02/18/98

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SECTION 234. TRAINING RECEIVED - CIVIL RIGHTS

234-1 POLICY

This classification has been established for management purposes as a method of separating the time spent in receipt of training in Civil Rights matters from the other investigative programs.

EFFECTIVE: 03/28/84

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PRINTED: 02/18/98

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SECTION 235. TRAINING RECEIVED - FUGITIVES

235-1 POLICY

This classification has been established for management purposes as a method of separating the time spent in receipt of training in Fugitive matters from the other investigative programs.

EFFECTIVE: 03/28/84

Sensitive  
PRINTED: 02/18/98

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SECTION 236. TRAINING RECEIVED - |GOVERNMENT RESERVATION|CRIMES

236-1 POLICY

This classification has been established for management purposes as a method of separating the time spent in receipt of training in |Government Reservation Crimes| matters from the other investigative programs.

EFFECTIVE: 02/16/89

Sensitive  
PRINTED: 02/18/98



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SECTION 237. TRAINING RECEIVED -|INTERSTATE THEFT|

237-1 POLICY

This classification has been established for management purposes as a method of separating the time spent in receipt of training in|Interstate Theft|matters from the other investigative programs.

EFFECTIVE: 02/16/89

Sensitive  
PRINTED: 02/18/98

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SECTION 238. TRAINING RECEIVED - |VIOLENT|CRIMES

238-1 POLICY

This classification has been established for management purposes as a method of separating the time spent in receipt of training in |Violent|Crimes matters from the other investigative programs.

EFFECTIVE: 02/16/89

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PRINTED: 02/18/98

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SECTION 239. TRAINING RECEIVED - TERRORISM

239-1 POLICY

This classification has been established for management purposes as a method of separating the time spent in receipt of training in Terrorism matters from the other investigative programs.

EFFECTIVE: 03/28/84

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PRINTED: 02/18/98

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SECTION 240. TRAINING RECEIVED - OTHER

240-1 POLICY

This classification has been established for management purposes as a method of separating the time spent in receipt of training in those areas which are not directly attributable to the established investigative programs. Examples would include: SWAT, Firearms, Hostage Negotiation, Management Training, etc.

EFFECTIVE: 03/28/84

Sensitive  
PRINTED: 02/18/98

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SECTION 241. DRUG ENFORCEMENT ADMINISTRATION  
(DEA) APPLICANTS

241-1 DRUG ENFORCEMENT ADMINISTRATION (DEA) APPLICANTS

|The DEA Applicant classification was originated in 1982 when the Director of the FBI was considering a merger of the DEA and FBI and agreed to conduct background investigations on DEA applicants. Subsequently, it was decided that the merger would not take place. As a result, in December, 1990, by mutual agreement between FBI and DEA, DEA agreed to seek an independent contractor to conduct their background investigations with a complete FBI phase-out by July 31, 1991. The phase-out was completed, and, as of July 31, 1991, the FBI no longer conducted background investigations for DEA. |

EFFECTIVE: 09/25/91

||241-2 DELETED|

EFFECTIVE: 09/25/91

||241-3 DELETED|

EFFECTIVE: 09/25/91

||241-4 DELETED|

EFFECTIVE: 09/25/91

||241-5 DELETED|

EFFECTIVE: 09/25/91

||241-6 DELETED|

EFFECTIVE: 09/25/91

||241-7 DELETED|

EFFECTIVE: 09/25/91

||241-8 DELETED|

EFFECTIVE: 09/25/91

||241-9 DELETED|

EFFECTIVE: 09/25/91

||241-10 DELETED|

EFFECTIVE: 09/25/91

||241-11 DELETED|

EFFECTIVE: 09/25/91

||241-12 DELETED|

EFFECTIVE: 09/25/91

||241-13 DELETED|

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EFFECTIVE: 09/25/91

|| 241-14 DELETED |

EFFECTIVE: 09/25/91

|| 241-15 DELETED |

EFFECTIVE: 09/25/91

Sensitive  
PRINTED: 02/18/98

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|SECTION 242. AUTOMATION MATTERS

||242-1 AUTOMATION MATTERS

The classification for "Automation Matters" was established for FBIHQ's use in capturing official correspondence related to automated systems or automation projects. Because it is strictly an administrative classification for recordkeeping purposes, the 242 classification should not be used for Time Utilization Recordkeeping (TURK).|

EFFECTIVE: 02/20/90

Sensitive  
PRINTED: 02/18/98



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SECTION 243. INTELLIGENCE IDENTITIES PROTECTION ACT

243-1 INTELLIGENCE IDENTITIES PROTECTION ACT

Information concerning the 243 classification is set forth  
in a separate FBI manual, the NATIONAL FOREIGN INTELLIGENCE PROGRAM  
MANUAL (NFIPM).

EFFECTIVE: 02/14/97

Sensitive  
PRINTED: 02/18/98

SECTION 244. HOSTAGE RESCUE TEAM (HRT)

244-1

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b2/b7E

EFFECTIVE: 12/06/96

244-2

[REDACTED]

(1)

(2)

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FOIPA  
DELETED PAGE INFORMATION SHEET

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

Section 552

Section 552a

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| <input checked="" type="checkbox"/> (b)(2) | <input type="checkbox"/> (b)(7)(B)            | <input type="checkbox"/> (j)(2) |
| <input type="checkbox"/> (b)(3)            | <input type="checkbox"/> (b)(7)(C)            | <input type="checkbox"/> (k)(1) |
| _____                                      | <input type="checkbox"/> (b)(7)(D)            | <input type="checkbox"/> (k)(2) |
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| <input type="checkbox"/> (b)(6)            |   | <input type="checkbox"/> (k)(7) |

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\_\_\_\_\_ Page(s) withheld for the following reason(s): \_\_\_\_\_

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MI06 Sections 244-2 and 244-3

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(7)

[REDACTED]

b2/b7E

(8)

[REDACTED]

EFFECTIVE: 12/06/96

244-3.1 Restricted Dissemination of HRT Information

Due to the confidential nature of the HRT's mission and abilities, specialized techniques mentioned within this MIOG section should be utilized for law enforcement use only and should not be disseminated to the public.

EFFECTIVE: 12/06/96

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FOIPA  
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Section 552

Section 552a

(b)(1)

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(j)(2)

(b)(3)

(b)(7)(C)

(k)(1)

(b)(7)(D)

(k)(2)

(b)(7)(E)

(k)(3)

(b)(7)(F)

(k)(4)

(b)(4)

(b)(8)

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(k)(7)

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The following number is to be used for reference regarding these pages:

MIOG Section 244-4 thru 8

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EFFECTIVE: 12/06/96

244-9 CHARACTER - HOSTAGE RESCUE TEAM

EFFECTIVE: 12/06/96

Sensitive  
PRINTED: 02/18/98

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SECTION 245. ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCE

245-1 JURISDICTION

(1) The President of the United States on October 14, 1982, established the Drug Enforcement Task Forces in which the FBI is to participate along with other Federal investigative agencies.

(2) The investigative jurisdiction in Task Force matters is through the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Title 21, USC, Section 801 et seq.). The most commonly used statutes in prosecuting these crimes are set forth in Part I, Section ||281-2| of this manual.

EFFECTIVE: 11/01/93

245-2 GOALS

The Drug Task Force program's overall goal is to identify, investigate, and prosecute members of high-level drug trafficking enterprises, and to destroy the operations of those organizations. The program is designed to achieve this goal by two means:

(1) Adding new Federal resources for the investigation and prosecution of major drug trafficking organizations

(2) Fostering improved interagency coordination and cooperation in the investigation and prosecution of major drug cases.

EFFECTIVE: 01/25/88

Sensitive  
PRINTED: 02/18/98

245-3 POLICY

(1) The Drug Task Forces will not operate as separate law enforcement agencies. Rather, they will coordinate the investigative and prosecutorial efforts of agents and attorneys handling Task Force drug cases while remaining under the command of their own offices.

(2) Task Force agents will remain under the line authority of their own Special Agents in Charge. However, they may work out of common space according to the needs of individual cases.

(3) Personnel designated as full-time Task Force personnel may work only on cases that have been approved as Task Force cases, recognizing that extraordinary circumstances may require temporary diversion of these resources.

(4) Non-Task Force personnel may work on Task Force cases at the discretion of the responsible Special Agent in Charge.

EFFECTIVE: 01/25/88

245-4 STANDARDS FOR TASK FORCE CASES

(1) In each district the Task Force investigators will be assigned significant investigations of major drug trafficking organizations that warrant the involvement of more than one investigative agency.

(2) The 245 classification is subdivided by alpha designators which are identical to the existing OC/Drug classifications as set forth in Part I, Section 281-3 of this manual. (Also see MIOG, Part I, 92-9.) The alpha designators are as follows. Case titles should be carried as: OCDETF - (Criminal Organization, e.g., LCN) - (Organizational identity, e.g., Genovese Family.) (See MAOP, Part II, 3-1.1 & 3-1.2.)

245A - LCN and Italian Organizations - Cases directed against the LCN, Sicilian Mafia, La Camorra, and 'Ndrangheta criminal organizations;

245B - Central/South American Organizations - Cases directed against Central American and South American criminal organizations;



- 245C - Mexican Organizations - Cases directed against Mexican criminal groups;
  - 245D - Gangs - Cases directed against major violent drug gangs and violent street gangs such as the Bloods, Crips and Black Gangster Disciple Nation; outlaw motorcycle gangs such as the Hells Angels, Outlaws and Bandidos; or other significant emerging gangs whose principal criminal activities involve drug trafficking and related violence;
  - 245E - Asian Organizations - Cases directed against Asian criminal organizations;
  - 245F - Other Major Criminal Organizations - Cases directed against other major criminal organizations. These organizations must be well-organized, multijurisdictional in operational scope, and of national significance and influence. The characterization of these organizations must be fully documented and corroborated;
  - 245G - African Organizations - Cases directed against African criminal groups;
  - 245H - Russian/Eastern European/Eurasian Organizations - Cases directed against Russian, Eastern European, and Eurasian criminal organizations;
  - 245I - Caribbean Organizations - Cases directed against Caribbean criminal organizations; and
  - 245J - Alien Smuggling Organizations - Cases directed against major alien smuggling organizations.
- (3) Deleted

EFFECTIVE: 10/01/97

| 245-5 COMMUNICATIONS TO FBIHQ (See MIOG, Part I, |281-5.1.) |

(1) An existing drug case in the 281 classification may not be reclassified as a 245 matter until it has been presented and accepted by the Organized Crime Drug Enforcement Task Force (OCDEF) Core-City Coordinator Group as set forth in the Guidelines for the Drug Enforcement Task Forces dated December, 1990.

(2) When an existing case has been accepted as a Task Force case, FBIHQ, OC/Drug Branch, Criminal Investigative Division, must be notified by teletype. 281 classification matters must be administratively closed and reopened under the appropriate 245 subclassification as set forth in 245-4 (2). In addition, however, non-281 classification matters may be presented to the Core City Coordination Group on the recommendation of the OCDEF Coordinator, and if accepted, may be carried under the original subprogram classification at the discretion of the field office. Non-281 matters not converted to the 245 classification may not access OCDEF confidential case funding, but may utilize OCDEF prosecutors and access overtime for state and local police officers.

(3) When a case is reclassified to a 245 matter, the office of origin must immediately notify, by teletype, all auxiliary offices of the reclassification.

| (4) |Deleted|

(5) If prosecutive reports are prepared in the 245 classification, furnish one copy to FBIHQ.

(6) In order to monitor and control the assignment of OCDEF resources which are managed by the OC/Drug Branch, CID, concurrence of the OC/Drug Branch is required before converting any case outside of the OC/DP to an OCDEF case.

EFFECTIVE: 07/20/95

245-6 INVESTIGATIVE PROCEDURE

(1) Investigative procedures and guidelines for the 245 classification are identical to those set forth for Organized Crime/Drug investigations (Part I, Section 281 of this manual).

(2) Deleted

EFFECTIVE: 07/20/95

245-7 OCDETF COORDINATOR

(1) The OCDETF Coordinator is the Organized Crime/Drug (OC/D) Program Coordinator for the OCDETF Region. Responsibilities of the OCDETF Coordinator include:

(a) Conduct at least two on-site reviews each fiscal year of the OC/D Program within their respective regions. At least one of these on-sites, the "Primary," must include a comprehensive review of the division's OC/D Program pursuant to the format and guidelines set forth in recommendation (c) below. The second or "Supplemental" on-site, should be less structured and should address issues and/or items identified by the OCDETF Coordinators or FBIHQ. The Supplemental on-site should determine whether a field division's program priorities are consistent with the Organized Crime/Drug National Strategy (OC/DNS). The coordinator should evaluate the current OC/D Program caseload and allocation of resources in the context of the division's stated program priorities. Significant shifts in priorities, investigative strategy, and/or staffing levels should be reported, along with the rationale for these changes. Recent successes or problems with particular investigative techniques, new initiatives undertaken since the last on-site, and progress made and/or accomplishments in significant cases should also be reported. The results of the Supplemental on-site should be presented in a short and concise narrative format. Both on-sites should be reported to FBIHQ, OC/D Branch within 30 calendar days of the conducted on-site via teletype or airtel.

(b) File reviews of all drug investigations during on-site evaluation. File reviews coordinated by the OCDETF Coordinator are for determining compliance with objectives of the OC/DNS, for ensuring coordination with DEA and to ensure proper indexing into FOIMS; not for reviewing investigative approaches,

techniques or compliance with other administrative procedures.

(c) To ensure uniformity in reporting the Primary on-site, submit the airtel in the following format:

I. INVESTIGATIVE PRIORITIES

(List the top five investigative program priorities and comment on any changes since the last on-site)

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

II. ORGANIZED CRIME/DRUG PROGRAM ORGANIZATIONAL STRUCTURE

(Identify the Organized Crime/Drug Program Manager(s), Coordinator, and all Supervisory Special Agents with Organized Crime/Drug Program substantive responsibilities. If the subject field division has more than one Organized Crime/Drug squad, identify the relative Organized Crime/Drug Program responsibilities for each supervisor.)

III. ISSUES

(Set forth all issues identified by FBIHQ and/or the field division.)

IV. ORGANIZED CRIME/DRUG PROGRAM ANALYSIS

A. Organized Crime/Drug Problem

(This subsection should provide a short and concise assessment of the organized crime/drug problem within the field division. Determine if the caseload is consistent with stated Organized Crime/Drug Program priorities and the National Strategy for Organized Crime/Drug Enterprises.

The pertinent issues that should be considered, where appropriate, include the following:)

\* The demographics of the region which impact on the organized crime/drug problem. Significant demographic changes or contemplated changes should be noted.

\* Types of organizations - core, secondary or

local, if applicable.

\* The principal criminal activities of these organizations and associated criminal activities (e.g., money laundering extortion, gambling, production, warehousing, distribution, transportation, violence, public corruption).

\* Subprogram priorities (if applicable).

B. Program Resource Analysis

Direct Agent Work Year (DAWY) Analysis

ORGANIZED CRIME/DRUG TSL:

	FSL	DAWYs	Whole Entity
FY (last)			

FY (current) through \_\_\_\_

OCDEF TSL:

	FSL	DAWYs	Whole Entity
FY (last)			

FY (current) through \_\_\_\_

TOTAL ORGANIZED CRIME/DRUG PROGRAM:

	FSL	DAWYs	Whole Entity
FY (last)			

FY (current) through \_\_\_\_

Significant over/under burnrates in the total should be explained.

The Organized Crime/Drug Program in the \_\_\_\_\_ Division represents \_\_\_\_\_ percent of the division's total \_\_\_\_\_ criminal DAWYs for FY \_\_\_\_\_ and \_\_\_\_\_ percent for the current FY through \_\_\_\_.

(If the subject field division has a Special Operations Group (SOG) team, then the following paragraph should be utilized.)

It is estimated that approximately \_\_\_\_\_ percent of the DAWYs expended in FY \_\_\_\_\_, and \_\_\_\_\_ percent of the DAWYs expended for the current FY through \_\_\_\_\_, are attributable to SOG support of the Organized Crime/Drug Program.

C. Subprogram Analysis

Office of Origin (OO) Case Analysis

CLASSIFICATION	ACTIVE	FUGITIVE	PROSECUTIVE	OTHER
	92			
	183			
	281			
	267			
	272			
	245			
	OTHER			

TOTAL

(The Coordinator should conduct a general review of the open OO cases, provide a subprogram analysis, and an approximate percentage breakdown of the current principal focus (i.e., investigative, prosecutive, fugitive, etc.) of the caseload. Coordinator should assess, individually and as a whole, whether the caseload is consistent with the priorities of the National Organized Crime/Drug Strategy. In addition, the report should address the AO caseload, assessing the adequacy of the support provided other divisions.)

Investigative Technique Utilization and Accomplishments

FY (last) \_\_\_\_\_ FY \_\_\_\_\_ through \_\_\_\_\_

GROUP I UCOs (initiated)

GROUP I UCOs (existing)

GROUP II UCOs (initiated)

GROUP II UCOs (existing)

TITLE IIIs (initiated)

| TITLE IIIs (existing)

| ARRESTS

| INDICTMENTS

| CONVICTIONS

| DRUG PURCHASES (Expenditures)

| FORFEITURES

| SEIZURES

| (State if the office is making judicious use of [redacted] technique,  
designed to lead to Title III.)

b2

| V. INTELLIGENCE BASE

| A. Racketeering Enterprise Investigations (REIs)

| (Identify all REIs by title and file number. Include synopses  
identifying organization(s) addressed; cases and confidential  
informants (CI)/cooperating witnesses (CW) generated by the REI(s)  
during the survey period.)

| B. Informants/Cooperating Witnesses

| (Identify the number of existing Organized Crime/Drug Program CIs/CWs  
and CIs/CWs opened during the pertinent period; number of organized  
crime/drug investigations initiated based on CI/CW information during  
the applicable period and any other significant contributions by  
CIs/CWs). Review for increases/decreases in the numbers of these  
sources.

| C. Liaison

| (Discuss the subject Organized Crime/Drug Program's efforts to develop  
its intelligence base through liaison efforts with other law  
enforcement agencies.)

| D. Regional Drug Intelligence Squad (RDIS)

| (If the division is not a core city, report what if any  
contact/support the office has received from the core city. If the

office is a core city, report any support provided to other offices within the region.)

E. Automation

(Comment on existing and requested Organized Crime/Drug Program automation.)

F. Analytical Support

(Comment on existing analytical complement (DIA/OCIS/ISIS) and allocation of these resources.)

VI. SEIZURE/FORFEITURE

(Discuss existence of, or need for, a FAST team, staffing requirements, and notable accomplishments. Has the seizure/forfeiture potential throughout the Organized Crime/Drug Program been exploited?)

VII. TRAINING

(Summarize the participation of the Organized Crime/Drug Program complement (Agent and Analyst) in organized crime/drug-related training. Provide suggestions for future Organized Crime/Drug Program training needs.)

VIII. CASE SUMMARIES/INITIATIVES

(Provide concise summaries of the current major investigations. Address the following:

\* How was the investigation developed (organizational intelligence/information, etc.)? Is the investigation multijurisdictional?

\* Does the investigation focus on a criminal organization(s)? If so, is the organization core, secondary or local?

\* Is the investigation consistent with the priorities of the National Strategy for Organized Crime/Drug Enterprises?

\* Is the division utilizing sophisticated investigative techniques to attack the organization?

\* How is the division handling its budgets: confidential case and drug purchase? Are the drug purchase



| expenditures intended to lead to techniques like the Title III?

| \* Fully address money laundering aspects (if any) of  
| the investigation.)

| IX. RESOURCE REQUIREMENTS/RECOMMENDATIONS

| \* Evaluate need for resource enhancements.

| \* Request for enhancements should be followed by a  
| formal request, from the field division, to the appropriate program  
| manager.

| \* Make recommendations on the issues identified in  
| Section III.

(d) Assist the OC/D Program Manager of the  
respective field offices in the OCDETF region in the development of a  
viable and effective intelligence base that directly relates to the  
| OC/DNS. | This intelligence base should be developed in coordination  
with the non-Core city drug supervisors, FBIHQ Program Managers, and  
Field Division Program Managers. It shall be the responsibility of  
the OCDETF Coordinator to evaluate each field division's intelligence  
base during the regularly scheduled on-site reviews and submit the  
evaluation to FBIHQ.

(e) Identify administrative, training, technical, or  
policy problems in a field office within the OCDETF region that  
inhibits the office from addressing the identified drug problem.  
Notify FBIHQ of recommendations that would assist the field office in  
solving the problem.

(f) Meet with OCDETF supervisors from other agencies  
during on-site reviews and discuss program and ongoing investigations.  
Identify any existing problems. The contacts should be documented.

(g) Contact USA in field offices within OCDETF  
region during reviews. Review existing cases and progress of  
investigations and prosecutions. The contacts should be documented  
and incorporated within your report. These contacts with the United  
States Attorneys should be coordinated with the Core city or non-Core  
city SAC. Results of these contacts should be discussed with the SAC  
responsible for the judicial district.

(h) All duties set forth in the OCDETF Guidelines.

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(2) OCDETF Coordinators are intended to be a resource for the field divisions within their respective regions to draw upon. Increasing their responsibilities allows FBIHQ and the field divisions to benefit from their expertise and knowledge of the drug problem in their respective regions.

EFFECTIVE: 07/20/95

245-7.1 Qualifications, Role, and Evaluation of the OCDE Task Force Coordinator (TFC)

(1) The OCDE TFC is a highly visible OC/Drug Program manager providing assistance to all field offices within their respective OCDETF region. The TFC should act as a single point of contact for all OCDETF matters, including but not limited to deputation and state and local overtime agreements.

(2) Written and oral communication skills and an ability to administer OCDETF Programs and articulate policy changes are requisites for any candidate for the TFC position. A commitment minimum of two years in the OCDE TFC position is required.

(3) Candidates for the TFC position must provide OCDETF Program oversight to the respective region, ensure compliance with the mandate of the FBI's OC/Drug National Strategy (OC/DNS) within the OCDETF region, provide training at OCDETF Regional Conferences, effectively interact with all levels of drug law enforcement, conduct studies and on-site evaluations as directed by the OC/Drug Intelligence Section, provide continuity to the OCDETF Program and possess the experience and credibility necessary to fulfill these objectives.

(4) All OCDE TFC positions will be nonstationary positions and will be advertised as such. This standard classification of the position will broaden the pool of candidates applying for the TFC and clearly define the position as requiring a mandatory term of service.

(5) A formal, written recommendation from the Organized Crime/Drug Intelligence Section (OCDIS), CID will be required regarding every OCDE TFC vacancy before the FBIHQ Special Agent Mid-Level Management Board will act on nominees.

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(6) Once appointed as an OCDE TFC, the incumbent cannot be reassigned to other duties by a core-city SAC for a minimum of two years unless the reassignment has been coordinated with the OC/DIS, is supported by written documentation justifying the reassignment and has been given final approval by the Assistant Director, CID. This requirement is designed to preserve continuity in the TFC position and prohibit the reassignment of a TFC to a substantive desk or other line or coordinator position in less than two years of appointment unless the above requirements have been met.

(7) The OCDE TFC position is recognized as a career development position within the FBI's Executive Development and Selection Program. Satisfaction of the two-year minimum service as an OCDE TFC fulfills the requirement of field desk service. The OC/DIS continues to require drug law enforcement experience in a TFC candidate and the above policy should not be construed to discourage the candidacy of any person with prior substantive drug supervisory experience. In fact, successful line drug squad supervisors are considered to be highly qualified candidates for the TFC position.

(8) The OCDE TFC will not be assigned duties not directly resulting from OCDETF matters without prior written approval by the OC/DIS, CID. Such requests will be carefully reviewed. To avoid confusion regarding the duties of the OCDE TFC, requests to assign responsibility to a TFC that do not directly benefit all OCDETF regional field offices' OC/Drug Programs will not be approved. Examples of duties that do not benefit the OCDETF region include assignments in core-city field offices such as: Principal Legal Advisor; Forfeiture and Asset Seizure Team Supervisor or Agent; Technically Trained Agent; or any other coordination position serving the core-city field office, such as Informant Coordinator, Language Specialist Coordinator, or OC/Drug Program Coordinator. It should also be noted that OCDETF support positions, notably the OCDETF Technical Information Specialist (TIS) assigned to each region, will also serve all field offices within the OCDETF region. The temporary or permanent assignment of an OCDETF TIS to a core-city drug squad is inconsistent with OCDETF regional service.

(9) The OCDE TFC's performance appraisal will be conducted jointly by the OC/DIS, CID, and the core-city SAC. Awards made to the OCDE TFC will be drawn from the core-city merit pay awards pool. This procedure has been approved by the Performance Standards Review Board.

(10) Core-city SACs will present the performance plan to

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their respective OCDE TFC for review and signature. Of the three Critical Elements (CE), CE 1, Program Oversight, will be rated, in writing, exclusively by the OC/DIS, CID, and thereafter provided to the core-city SAC for inclusion in the TFC's Performance Appraisal. This rating on CE 1 will be based, in large part, on the mandatory semiannual on-site reviews of regional field offices' OC/Drug Programs. The OC/DIS, CID, rating on CE 1 is not subject to review by the core-city SAC.

(11) CEs 2 (Field Office Assistance) and 3 (Liaison) will be rated by the core-city SAC after receiving written evaluations from all regional field office SACs and the OC/DIS, CID. At a minimum, the written evaluations on CEs 2 and 3 will include an adjective rating supported by written evaluations from all regional field offices. The written evaluations will be factored by the core-city SAC into CEs 2 and 3 for a final rating on those two elements. The Overall Adjective Rating will be computed based on the individual CE Adjective Rating on CEs 1, 2, and 3 is common practice. The DAD, CID will be the reviewing official for OCDE TFC Performance Appraisals.

EFFECTIVE: 11/01/93

245-8 CHARACTER - ORGANIZED CRIME DRUG ENFORCEMENT | TASK FORCE |  
(OCDETF)

EFFECTIVE: 11/01/93

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SECTION 246. FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

246-1 FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

| The 246 classification was deleted. |

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SECTION 247. FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

247-1 FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

| The 247 classification was deleted. |

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SECTION 248. FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

248-1 FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

Information concerning the 248 classification is set forth  
in a separate FBI manual, the NATIONAL FOREIGN INTELLIGENCE PROGRAM  
MANUAL (NFIPM).

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SECTION 249. ENVIRONMENTAL CRIMES

249-1 DESCRIPTION OF CLASSIFICATION

Environmental Crimes - all investigations involving violations of Environmental Crimes statutes, with the exception of the mishandling of special nuclear materials and waste products which is provided for under the Atomic Energy Act. (See Part I, Sections 117-1 and 117-12, of this manual.) (Note: This classification, previously entitled "Toxic Waste Matters," was renamed "Environmental Crimes," effective 6/9/87.)

EFFECTIVE: 05/25/93

249-2 STATUTES

EFFECTIVE: 10/26/87

249-2.1 Resource Conservation and Recovery Act (RCRA) (Title 42, U.S. Code, Section 6928)

Section 3008(d) of the RCRA provides for criminal penalties as follows:

"(d) Criminal penalties

"Any person who--

"(1) knowingly transports or causes to be transported any hazardous waste identified or listed under this subchapter to a facility which does not have a permit under this subchapter or pursuant to Title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) 33 U.S.C.A. Section 1411 et seq.,

"(2) knowingly treats, stores, or disposes of any hazardous waste identified or listed under this subchapter--

"(A) without a permit under this subchapter or pursuant to



Title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) 33 U.S.C.A. Section 1411 et seq.; or

"(B) in knowing violation of any material condition or requirement of such permit; or

"(C) in knowing violation of any material condition or requirement of any applicable interim status regulations or standards;

"(3) knowingly omits material information or makes any false material statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with regulations promulgated by the Administrator (or by a State in the case of an authorized State program) under this subchapter;

"(4) knowingly generates, stores, treats, transports, disposes of, exports, or otherwise handles any hazardous waste (whether such activity took place before or takes place after the date of the enactment of this paragraph) and who knowingly destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed for purposes of compliance with regulations promulgated by the Administrator (or by a State in the case of an authorized State program) under this subchapter;

"(5) knowingly transports without a manifest, or causes to be transported without a manifest, any hazardous waste required by regulations promulgated under this subchapter (or by a State in the case of a State program authorized under this subchapter) to be accompanied by a manifest; or

"(6) knowingly exports a hazardous waste identified or listed under this subchapter (A) without the consent of the receiving country or, (B) where there exists an international agreement between the United States and the government of the receiving country establishing notice, export, and enforcement procedures for the transportation, treatment, storage, and disposal of hazardous wastes, in a manner which is not in conformance with such agreement

"shall, upon conviction, be subject to a fine of not more than \$50,000 for each day of violation, or imprisonment not to exceed two years (five years in the case of a violation of paragraph (1) or (2)), or both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment under the respective paragraph shall be doubled with respect to both

fine and imprisonment.

"(e) Knowing endangerment

"Any person who knowingly transports, treats, stores, disposes of, or exports any hazardous waste identified or listed under this subchapter in violation of paragraph (1), (2), (3), (4), (5), or (6) of subsection (d) of this section who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment for not more than fifteen years, or both. A defendant that is an organization shall, upon conviction of violating this subsection, be subject to a fine of not more than \$1,000,000.

"(f) Special rules

"For the purposes of subsection (e) of this section--

"(1) A person's state of mind is knowing with respect to--

"(A) his conduct, if he is aware of the nature of his conduct;

"(B) an existing circumstance, if he is aware or believes that the circumstance exists; or

"(C) a result of his conduct, if he is aware or believes that his conduct is substantially certain to cause danger of death or serious bodily injury.

"(2) In determining whether a defendant who is a natural person knew that his conduct placed another person in imminent danger of death or serious bodily injury--

"(A) the person is responsible only for actual awareness or actual belief that he possessed; and

"(B) knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant;

"Provided, That in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information.

"(3) It is an affirmative defense to a prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of--

"(A) an occupation, a business, or a profession; or

"(B) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

"The defendant may establish an affirmative defense under this subsection by preponderance of the evidence.

"(4) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other Federal criminal offenses may apply under subsection (e) of this section and shall be determined by the courts of the United States according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

"(5) The term 'organization' means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

"(6) The term 'serious bodily injury' means--

"(A) bodily injury which involves a substantial risk of death;

"(B) unconsciousness;

"(C) extreme physical pain;

"(D) protracted and obvious disfigurement; or

"(E) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

"(g) Civil penalty

"Any person who violates any requirement of this subchapter shall be

liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation. Each day of such violation shall, for purposes of this subsection, constitute a separate violation."

EFFECTIVE: 10/26/87

249-2.2 Toxic Substances Control Act (TSCA) (Title 15, U.S. Code, Section 2615(b))

(1) Section 2615(b) of the TSCA provides for criminal penalties as follows:

"(b) Criminal--Any person who knowingly or willfully violates any provision of Section 2614 of this title, shall, in addition to or in lieu of any civil penalty which may be imposed under subsection (a) of this section for such violation, be subject, upon conviction to a fine of not more than \$25,000 for each day of violation, or to imprisonment for not more than one year, or both."

(2) The TSCA regulates the manufacture, processing, distributing in commerce, and disposal of polychlorinated biphenyls.

EFFECTIVE: 10/26/87

249-2.3 Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or SUPERFUND) (Title 42, U.S. Code, Section 9603)

Section 9603 of the CERCLA provides for criminal penalties as follows:

"(b) Penalties for failure to notify; use of notice or information pursuant to notice in criminal case

"Any person--

"(1) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or

"(2) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States including resources under the Magnuson Fishery Conservation and Management Act (16 U.S.C.A. Section 1801 et seq.), and who is otherwise subject to the jurisdiction of the United States at the time of the release, or

"(3) in charge of a facility from which a hazardous substance is released, other than a federally permitted release, in a quantity equal to or greater than that determined pursuant to section 102 of this title (42 U.S.C. 9602) who fails to notify immediately the appropriate agency of the United States Government as soon as he has knowledge of such release or who submits in such notification any information which he knows to be false or misleading shall, upon conviction, be fined in accordance with the applicable provisions of title 18 of the United States Code or imprisoned for not more than three years (or not more than five years in the case of a second or subsequent conviction or both). Notification received pursuant to this paragraph or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement."

EFFECTIVE: 07/26/89

249-2.4 Clean Water Act (CWA) (Title 33, U.S. Code, Section 1319)

Section 1319 of the CWA provides for criminal penalties as follows:

"(c) Criminal Penalties.---

"(1) Negligent violations.---Any person who---

"(A) negligently violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State; or

"(B) negligently introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable Federal, state, or local requirements or permits, which causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State; shall be punished by a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$50,000 per day of violation, or by imprisonment of not more than 2 years, or by both.

"(2) Knowing violations.---Any person who---

"(A) knowingly violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State; or

"(B) knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable Federal, state, or local requirements or permits, which causes such treatment works to violate any effluent limitation or condition in a permit issued to the treatment works under section 402 of this Act by the Administrator or a State; shall be punished by a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$100,000 per day of violation, or by imprisonment of not more than 6 years, or by both."

It is unlawful under the Clean Water Act (CWA) to knowingly or negligently discharge a pollutant into navigable waters without a permit. A 'pollutant' is broadly defined under the statute to include solid waste; incinerator residue; sewage; garbage; sewer sludge; munitions; biological materials; radioactive materials; wrecked or discarded equipment; rock; sand; cellar dirt; and industrial,

municipal, and agricultural wastes. Biological waste, blood bags, and used syringes meet the definition of a pollutant.

As amended in November, 1988, by the Ocean Dumping Reform Act of 1988, the CWA expressly prohibits the discharge of medical wastes into navigable waters. Medical wastes are defined as isolation wastes, infectious agents; human blood and blood products; pathological waste; sharps; body parts; contaminated bedding, surgical wastes and potentially contaminated laboratory wastes; dialysis waste; and such additional medical items as the Administrator of the Environmental Protection Agency (EPA) shall prescribe by regulation.

The discharge of medical wastes into navigable waters is punishable by felony-level criminal sanctions (\$150,000 and/or 5 years' imprisonment) and forfeiture for knowing violations. Whether or not a discharge of pollutants into ocean waters constitutes a violation of the statute depends upon where the discharge occurred. The discharge must be proven to have occurred within three miles of shore (the definition of territorial seas).

"(3) Knowing endangerment.---

"(A) General rule.---Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both. A person which is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than \$1,000,000. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both fine and imprisonment.

"(B) Additional provisions.---For the purpose of subparagraph (A) of this paragraph---

"(i) in determining whether a defendant who is an individual knew that his conduct placed another person in imminent danger of death or serious bodily injury--

"(I) the person is responsible only for actual

awareness or actual belief that he possessed; and

"(II) knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant; except that in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information;

"(ii) it is an affirmative defense to prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of---

"(I) an occupation, a business, or a profession;  
or

"(II) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent; and such defense may be established under this subparagraph by a preponderance of the evidence;

"(iii) the term 'organization' means a legal entity other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons; and

"(iv) the term 'serious bodily injury' means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

"(4) False statements.---Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or by



both."

EFFECTIVE: 07/26/89

249-2.5 | Marine Protection, Research and Sanctuaries Act (MPRSA),  
as amended by the Ocean Dumping Reform Act of 1988 (PL  
100-688)

(1) The MPRSA, or Ocean Dumping Act, Title 33, USC, Section 1401, et seq., fills a gap left by the CWA by prohibiting the dumping of sewage sludge and industrial waste and/or transportation of "material" for dumping into "ocean waters" without restriction as to mile limit, except as allowed by a permit issued by EPA. "Material" is very broadly defined, including, but not limited to, dredged material; solid waste; garbage; sewage; sewage sludge; munitions; radiological; chemical; and biological warfare agents; chemicals; wrecked or discarded equipment; rock; excavation debris; and industrial, municipal, agricultural, and other wastes.

(2) The dumping of sewage sludge and industrial waste and/or transportation of material for the purpose of dumping into ocean waters is a misdemeanor violation of this statute. Outright dumping of medical wastes, however, is punishable by civil/administrative penalties of up to \$125,000 per violation, and felony-level criminal sanctions.

(3) Title I of the statute, Ocean Dumping of Sewage, Sludge, and Industrial Waste, effective July 31, 1989, prohibits any dumping or transportation for dumping of sewage sludge or industrial waste into ocean waters. There are nine public entities and one corporation, located in New York and New Jersey, expressly permitted to continue dumping through December 31, 1991. They must, however, enter into an enforcement agreement with EPA to phase out their ocean dumping by 1991.

(4) Title III of this statute, Dumping of Medical Wastes, prohibits the dumping of "potentially infectious medical waste" from public vessels. Such waste is defined as isolation wastes; infectious agents; human blood and blood products; pathological wastes; sharps; body parts; contaminated bedding; surgical waste; and other medical equipment or material that may pose a risk to public health, welfare, or the marine environment.

Public vessels are defined as those owned or chartered and operated by

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| the U.S. |

EFFECTIVE: 07/26/89

| 249-2.6 | Safe Drinking Water Act (SDWA) (Title 42, U.S. Code,  
Section 300i)

Section 300i of the SDWA provides for criminal penalties  
as follows:

"(a) Tampering.---any person who tampers with a public water system shall be imprisoned for not more than 5 years, or fined in accordance with title 18 of the United States Code, or both.

"(b) Attempt or Threat.---any person who attempts to tamper, or makes a threat to tamper, with a public drinking water system be imprisoned for not more than 3 years, or fined in accordance with title 18 of the United States Code, or both.

"(c) Civil Penalty.---The Administrator may bring a civil action in the appropriate United States district court (as determined under the provisions of title 28 of the United States Code) against any person who tampers, attempts to tamper, or makes a threat to tamper with a public water system. The court may impose on such person a civil penalty of not more than \$50,000 for such tampering or not more than \$20,000 for such attempt or threat.

"(d) Definition of 'Tamper'.---For purposes of this section, the term 'tamper' means---

"(1) to introduce a contaminant into a public water system with the intention of harming persons; or

"(2) to otherwise interfere with the operation of a public water system with the intention of harming persons."

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249-2.7 Medical Waste Tracking Act of 1988 (MWTA) (PL 100-582)

(1) The MWTA amends the Resource Conservation and Recovery Act (RCRA) to establish a "cradle-to-grave" system to track, segregate, handle and label infectious medical waste generated in New York, New Jersey, Connecticut, Pennsylvania, Ohio, Michigan, Indiana, Illinois, Wisconsin, and Minnesota. Although initially restricted to these ten states, the Act allowed additional states to "opt-in," and some covered states to "opt-out," of the program within thirty days of implementation. The states of Rhode Island, Louisiana, Puerto Rico, and the District of Columbia, opted-into the program. Those states contiguous to the Great Lakes withdrew, leaving seven states covered by the statute: New York, New Jersey, Connecticut, Rhode Island, Louisiana, Puerto Rico, and the District of Columbia. The demonstration program will expire two years after EPA promulgates implementing regulations, at which time EPA must prepare a comprehensive report for Congress on the success of the program and the need for further regulation.

(2) Under the Act, effective 6/22/89, EPA is authorized to inspect the place where medical wastes are generated, treated, stored, disposed or transported, and to conduct monitoring, testing, and sampling. Felony-level criminal sanctions similar to RCRA are available for knowing violations of the Statute. Also similar to RCRA and the CWA, this Act has a criminal "knowing endangerment" provision, setting forth felony-level sanctions for certain life threatening conduct.

(3) The Act will expire 6/22/91 for all waste generated in the covered states. Enforcement actions, however, may be initiated after the expiration date to address violations occurring during the demonstration program. See Volume 54, Number 56, of the Federal Register, dated 3/24/89, for additional details regarding the Act's regulations.

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249-2.8 Other Commonly Used Statutes (See Part I, 46-1, of this Manual for Complete Descriptions of these Statutes)

(1) Conspiracy to Commit Offense or Defraud the United States, Title 18, USC, Section 371

(2) False Statements, Title 18, USC, Section 1001

(3) Mail Fraud, Title 18, USC, Section 1341

EFFECTIVE: 12/10/91

249-3 DEFINITION OF HAZARDOUS WASTE

The definition of a hazardous waste is contained in 40, Code of Federal Regulations (CFR), Section 261.3. Note that if the waste can be recycled, the regulations for generators, transporters and treatment, storage, and disposal facilities do not apply.

EFFECTIVE: 12/10/91

249-4 POLICY

(1) The FBI and the United States Environmental Protection Agency (EPA), on March 11, 1982, executed a Memorandum of Understanding (MOU) with regard to the referral and investigation of Federal Environmental Crimes violations. A revised MOU was executed and became effective on December 3, 1991. EPA retains primary investigative jurisdiction in these matters. Under the terms of the MOU, the FBI has agreed to investigate cases referred from the EPA or cases predicated on other than EPA referral. Environmental Crimes may also be investigated in conjunction with Special Agents from the EPA's regional Criminal Investigative Division (CID) offices or in conjunction with state and/or local authorities. To ensure coordination of investigations between the FBI and the EPA, the revised MOU provides for the mutual exchange of case initiation reports at the local field office level. The revised MOU also addresses joint investigations; matters referred to the FBI by the EPA; discovery of existing criminal investigations; investigations concerning Federal facilities and organized crime; and the FBI's responsibility for the notification of discharges, emissions and releases of hazardous/toxic substances. A copy of the revised MOU has

been sent to all FBI field offices and is also on file in the Governmental Fraud Unit, White-Collar Crimes Section, FBIHQ. (See 249-5(4).)

The EPA has the primary responsibility for protecting the health and safety of the public in environmental matters. Accordingly, when the FBI becomes aware of any actual or planned illegal discharge, emission, or release of a substance regulated by EPA, or other potential environmental hazard (e.g., illegal waste storage, transportation, etc.), the FBI will expeditiously notify the regional office of EPA's CID, so that EPA can assess the need to abate such situations. Specific reporting requirements have been set out in Section 249-5.

(2) When the FBI initiates an Environmental Crimes investigation involving a Department of Defense (DOD) facility, the FBI Special Agent in Charge (SAC), or his/her representative, shall expeditiously notify the regional SAC for the Defense Criminal Investigative Service (DCIS). The DCIS will be invited to join the FBI in the investigation. Likewise, when the DCIS obtains information concerning allegations of criminal violations of environmental statutes involving a DOD facility, the DCIS SAC, or his/her representative, shall immediately notify the appropriate regional Special Agent in Charge of EPA's CID and provide the details of the allegations. Immediately thereafter, the DCIS SAC shall notify the FBI SAC in the appropriate FBI field office and provide the details of the allegations. The FBI will be given the option of joining the DCIS in conducting the investigation. Specific reporting requirements have been set out in Section 249-5.

(3) In addition to the requirements concerning DOD facilities and the DCIS set forth in the above paragraph, when the FBI initiates an environmental crimes investigation involving a DOD facility, the FBI Special Agent in Charge (SAC), or his/her representative, shall expeditiously notify the regional SAC for the appropriate DOD Military Criminal Investigative Organization (MCIO). MCIOs are the investigative entities of the various military branches such as the Naval Investigative Service, the Air Force Office of Special Investigations, and the Army Criminal Investigative Division. Notification may be delayed in those rare instances where notification might endanger investigative personnel or adversely affect the investigation. While it is noted that this notification does not require that the MCIOs be invited to join in an investigation, as is the policy concerning the DCIS, the decision whether or not to conduct a joint investigation with the MCIOs is being left to the discretion of the field office. Specific reporting requirements have been set

| out in Section 249-5. |

| (4) | The Occupational Safety and Health Administration (OSHA) has published regulations set forth in Title 29, CFR, part 1910, which provide standards for employees involved in hazardous waste operations and emergency responses. Under Section 1910.120(a)(3), a "hazardous waste operation" means any operation involving employee exposure to hazardous wastes, hazardous substances, or any combination of hazardous wastes and substances. The regulation provides that an employer whose employees are involved in hazardous waste operations implement a health and safety program for its employees.

(a) At a minimum, the health and safety program is to incorporate the requirements of Section 1910.120 and would include providing employees with:

1. Forty hours of initial or refresher training in the use of personal protective equipment (PPE) and safety, health, and other hazard issues;

2. PPE to protect employees from the hazards and potential hazards likely to be encountered as identified during hazardous waste site characterization; and,

3. A medical surveillance program for all employees who are or may be exposed to hazardous substances or health hazards at or above established permissible exposure limits, without regard to the use of respirators, for 30 days or more a year.

(b) Given the fact that FBIHQ has not implemented such a health and safety program, in all investigations involving the execution of a search warrant by the FBI, any and all hazardous waste site analyses, sampling/seizing of potentially hazardous wastes or substances, and laboratory analyses of potentially hazardous substances or waste must be coordinated with the EPA, state, or local environmental authorities. Upon request, EPA technicians from either its Denver-based National Enforcement Investigations Center or regional offices can provide technical and logistical support to FBI Special Agents in the field. These technicians are technically trained to safely and properly conduct sampling/seizing of hazardous waste, including chain of custody. Should EPA, state, or local OSHA certified environmental technicians not be available, field divisions should contact the White-Collar Crimes Section, FBIHQ, for procedures in contracting with accredited private laboratories for searching/seizing.

(c) Accordingly, while FBI field Agents may secure a search location and establish and maintain search perimeters, they are not authorized to enter zones within those perimeters which have been identified by EPA, state, or local technicians as potentially containing hazardous wastes. Entry into such zones would constitute a violation of OSHA regulations. Nonetheless, FBI Agents are authorized to conduct all other logical investigation related to a search warrant's execution (e.g., search for particular documents, interviews of employees and subjects, etc.)

(5) One investigative technique that can be used in Environmental Crimes investigations is the

[REDACTED]

FBIHQ will consider the following elements of the field division's investigative plan during approval process:

b2/b7E

(a) The general background of the investigation, including the nature of the subject (i.e., individual or organization), the severity of the offense, and the investigative results previously obtained.

(b) The opinion and concurrence of the U.S. Attorney or Department of Justice Attorney that [REDACTED] is necessary to sustain a successful prosecution.

(c) [REDACTED]

(d) [REDACTED]

- (e) [REDACTED]
- (f) [REDACTED]
- (g) [REDACTED]
- (h) [REDACTED]
- (i) [REDACTED]
- (i) [REDACTED]

b2/b7E

Even if FBIHQ has approved [REDACTED] the SAC's decision to continue such operation must be balanced by the inevitable changing circumstances of an ongoing operation. Such an analysis may require that the operation be terminated prior to its intended or expected end.

(6) The Environmental Crimes Section, Environment and Natural Resources Division, Department of Justice, Washington, D.C., has a staff of attorneys available to assist United States Attorneys and Strike Force Attorneys in prosecutions involving Environmental Crimes.

EFFECTIVE: 05/26/93



## | 249-5 REPORTING REQUIREMENTS | (See 249-4 (1), (2) &amp; (3).) |

(1) Upon initiating an Environmental Crimes investigation considered high profile, or which is surrounded by substantial media attention, submit a priority teletype to FBIHQ, Attention: White-Collar Crimes Section (WCCS), Governmental Fraud Unit (GFU), detailing the predication for initiating the case; the name of the Special Agent from the EPA's CID who was notified of the case opening; in those cases involving a DOD facility, the name of the Special Agent from the regional office of the DCIS and the MCIO who was notified of the case opening or who provided the information leading to the opening of the case; the names of other agencies (if any) involved in the investigation; and the preliminary prosecutive opinion obtained. In other than high-profile investigations, follow the reporting requirements set forth in the following paragraphs.

(2) Submit to FBIHQ, Attention: WCCS, GFU, a letterhead memorandum (LHM) (original and five copies) within 30 days of the initiation of an Environmental Crimes investigation. The LHM should be suitable for dissemination to the Department of Justice (DOJ), EPA, DCIS, and other outside agencies as appropriate.

The initial LHM should, at a minimum, detail the predication for initiating the investigation; the name of the Special Agent from the EPA's CID who was notified of the case opening; in those cases involving a DOD facility, the name of the Special Agent from the regional office of the DCIS and MCIO who was notified of the case opening or who provided the information leading to the opening of the case; whether the investigation is being conducted jointly with the EPA's CID, DCIS, or other state or local agencies; a summary of any investigation conducted to "round out" the allegation(s); and a preliminary prosecutive opinion that has been obtained. All significant events discussed in the LHM should be dated. A copy of the LHM is to be sent directly to the SAIC of the appropriate EPA CID regional office. Additionally, if the investigation involves a DOD facility, a copy of the LHM should also be sent to the attention of the SAC of the appropriate regional DCIS and MCIO office.

(3) The LHM is the main vehicle utilized to notify the DOJ and the EPA of the initiation, status, and disposition of FBI investigations. The inclusion of Rule 6(e) Federal grand jury 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. Any requests for the withholding of LHM dissemination must be substantiated and

documented in the "Administrative" section of the cover airtel.

(4) The preparation of interim, advisory LHMs, or summary teletypes may be warranted in high-profile investigations, or in those investigations which are being followed closely by FBIHQ, the DOJ or the EPA. Additionally, in Environmental Crimes investigations in which the FBI becomes aware of any illegal discharge, emission, etc., as described in Section 249-4 (1), an LHM must be submitted to FBIHQ and the appropriate regional office of EPA's CID within 30 days of the discovery of the illegal discharge or the verbal notification to the EPA (whichever is earlier). The submission may be delayed, however, if the disclosure may jeopardize a sensitive investigation or the safety of investigative personnel. Significant events, such as the execution of a search warrant, indictment, or conviction, which are likely to produce substantial media attention, should be reported to FBIHQ by teletype.

(5) Prosecutive reports should be prepared in accordance with the provisions of the Manual of Administrative Operations and Procedures, Part II, Section 10-15. A request from a United States Attorney for a prosecutive report should be honored in all instances. Prosecutive reports are not routinely disseminated outside of the DOJ.

(6) Title changes should be noted in the opening paragraph of LHMs in order to assist the recipient in referencing prior LHMs or correspondence regarding the investigative subject.

(7) A closing LHM must be prepared for each investigation that has been concluded. The closing LHM must restate the predication for initiating 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 complete description of the subject(s) is included and that all significant events are dated in the closing LHM.

EFFECTIVE: 05/26/93

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249-6 CHARACTER - ENVIRONMENTAL CRIMES

Include following the character the initials of the  
environmental statute violated, i.e., RCRA, TSCA, CWA, MPRSA, SDWA,  
CERCLA, or MMTA.

EFFECTIVE: 09/25/91

Sensitive  
PRINTED: 02/18/98

SECTION 250. TAMPERING WITH CONSUMER PRODUCTS

250-1 BACKGROUND

On October 13, 1983, the President signed the Federal Anti-Tampering Act which became Public Law 98-127. This Act amends Title 18 of the United States Code by creating Section 1365 entitled "Tampering with Consumer Products" (TCP).

EFFECTIVE: 05/28/85

250-2 STATUTE AND PENALTIES

Set forth below in its entirety is the Tampering with Consumer Products Statute, Title 18, USC, Section 1365:

"(a) Whoever, with reckless disregard for the risk that another person will be placed in danger of death or bodily injury and under circumstances manifesting extreme indifference to such risk, tampers with any consumer product that affects interstate or foreign commerce, or the labeling of, or container for, any such product, or attempts to do so, shall...

"(1) in the case of an attempt, be fined not more than \$25,000 or imprisoned not more than ten years, or both;

"(2) if death of an individual results, be fined not more than \$100,000 or imprisoned for any term of years or for life, or both;

"(3) if serious bodily injury to any individual results, be fined not more than \$100,000 or imprisoned not more than twenty years, or both; and

"(4) in any other case, be fined not more than \$50,000 or imprisoned not more than ten years, or both.

"(b) Whoever, with intent to cause serious injury to the business of any person, taints any consumer product or renders materially false or misleading the labeling of, or container for, a consumer product, if such consumer product affects interstate or

foreign commerce, shall be fined not more than \$10,000 or imprisoned not more than three years, or both.

"(c)(i) Whoever knowingly communicates false information that a consumer product has been tainted, if such product or the results of such communication affect interstate or foreign commerce, and if such tainting, had it occurred, would create a risk of death or bodily injury to another person, shall be fined not more than \$25,000 or imprisoned not more than five years, or both.

"(2) As used in paragraph (1) of this subsection, the term 'communicates false information' means communicates information that is false and that the communicator knows is false, under circumstances in which the information may reasonably be expected to be believed.

"(d) Whoever knowingly threatens, under circumstances in which the threat may reasonably be expected to be believed, that conduct that, if it occurred, would violate subsection (a) of this section will occur, shall be fined not more than \$25,000 or imprisoned not more than five years, or both.

"(e) Whoever is a party to a conspiracy of two or more persons to commit an offense under subsection (a) of this section, if any of the parties intentionally engages in any conduct in furtherance of such offense, shall be fined not more than \$25,000 or imprisoned not more than ten years, or both.

"(f) In addition to any other agency which has authority to investigate violations of this section, the Food and Drug Administration and the Department of Agriculture, respectively, have authority to investigate violations of this section involving a consumer product that is regulated by a provision of law such Administration or Department, as the case may be, administers.

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

"(1) the term 'consumer product' means---

"(A) any 'food,' 'drug,' 'device,' or 'cosmetic,' as those terms are respectively defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321); or

"(B) any article, product, or commodity which is customarily produced or distributed for consumption by individuals, or use by individuals for purposes of personal care or in the

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performance of services ordinarily rendered within the household, and which is designed to be consumed or expended in the course of such consumption or use;

"(2) the term 'labeling' has the meaning given such term in section 201(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(m));

"(3) the term 'serious bodily injury' means bodily injury which involves---

"(A) a substantial risk of death;

"(B) extreme physical pain;

"(C) protracted and obvious disfigurement; or

"(D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty; and

"(4) the term 'bodily injury' means---

"(A) a cut, abrasion, bruise, burn, or disfigurement;

"(B) physical pain;

"(C) illness;

"(D) impairment of the function of a bodily member, organ, or mental faculty; or

"(E) any other injury to the body, no matter how temporary."

EFFECTIVE: 05/28/85

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PRINTED: 02/18/98

250-3 JURISDICTION

It should be noted that Subsection 1365(f) authorizes the Food and Drug Administration (FDA) and U.S. Department of Agriculture (USDA), respectively, to investigate violations of this section that involve consumer products regulated by those agencies. This means that the FDA has regulatory and investigative responsibilities pertaining to food, drug, device and cosmetic products. The USDA has regulatory and investigative responsibilities pertaining to meat, poultry and egg products. The FBI has exclusive jurisdiction in all other consumer products not regulated by the FDA or USDA.

EFFECTIVE: 05/28/85

250-4 POLICY

EFFECTIVE: 05/28/85

250-4.1 Investigative Responsibilities

(1) Based on the legislative history of Public Law 98-127, the FBI's primary responsibility in TCP matters will be to investigate those cases that involve serious threat to human life. Complaints involving a death should be immediately investigated by the FBI to determine if a violation of Title 18, USC, Section 1365, exists. The FBI will also investigate TCP matters involving threatened tamperings and actual or threatened tamperings coupled with an extortionate demand.

(2) The USDA will investigate tamperings of products regulated by its agency. Similar tampering cases coupled with an extortionate demand will be referred to the FBI for appropriate handling.

(3) The FDA will investigate all consumer complaints concerning possible tampering, tainting or adulteration of products regulated by its agency. If its investigation determines that the tampering is not an isolated incident and additional contaminated products are located on the shelves of retail stores, the matter will be referred to the FBI for appropriate handling.

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EFFECTIVE: 02/16/89

250-5 INVESTIGATIVE PROCEDURES

(1) Upon receipt of information indicating a violation of the TCP Statute in which the FBI has primary investigative jurisdiction, investigation should be immediately initiated utilizing sufficient manpower to promptly address and resolve the situation.

(2) As soon as sufficient facts are developed, the U.S. Attorney's Office should be contacted for a prosecutive opinion.

(3) Immediately notify the Violent Crimes Unit, Criminal Investigative Division, by telephone of all complaints received regarding actual instances of tampering with consumer products that resulted in death or serious bodily injury. Telephonic notification to FBIHQ must be promptly confirmed by teletype. In all other TCP cases, depending on the urgency of the situation, FBIHQ should be promptly furnished the details by teletype, airtel or submission of an FD-749.

(4) In the event an extortionate demand is made with an actual or threatened act of tampering, either Extortion or Hobbs Act - Commercial Institutions should be added as a secondary character in the title of the TCP case. Refer to Part I, Section 9, and Section 192, of this manual, for additional instructions concerning proper handling.

(5) It shall be the responsibility of the FBI to ensure an appropriate official of the victim company is promptly notified of all actual or threatened TCP incidents in which the FBI has assumed investigative responsibility.

(6) Decisions to withdraw or recall products which are the object of a TCP complaint should be made by FDA or USDA in concert with the victim company. The FBI's responsibility in such situations is to furnish factual data about the incident to the appropriate officials to enable them to make an informed decision.

EFFECTIVE: 02/16/89

Sensitive  
PRINTED: 02/18/98



250-6 DISSEMINATION TO OTHER FEDERAL AGENCIES

(1) Upon receipt of a TCP complaint, promptly notify the local office of the FDA or USDA. If there is any question as to which agency has regulatory responsibilities concerning the product, resolve the matter by contacting both agencies.

(2) Ensure the local U.S. Secret Service Office is notified of all TCP complaints to enable that agency to meet its protective responsibilities.

(3) The name of the Bureau employee who made the notification to FDA, USDA, and USSS and the name of the person who was contacted, as well as the date, time and method of notification, should be set forth in the communication to FBIHQ.

EFFECTIVE: 07/14/88

250-7 REPORTING REQUIREMENTS

(1) In all TCP cases an FD-749 must be submitted to FBIHQ within 14 working days of the initiation of an investigation whether or not FBIHQ was notified on the incident in a separate communication.

(2) In all matters in which preliminary inquiry results in a full investigation being conducted, and the U.S. Attorney's Office contemplates prosecution of the subject(s), a prosecutive report must be prepared. See Manual of Administrative Operations and Procedures (MAOP), Part II, Sections 10-14 and 10-15, for reporting formats.

(3) No prosecutive report is necessary if the U.S. Attorney's Office declines prosecution or defers prosecution to local or state authorities.

(4) If dissemination is necessary to another Federal agency, extra copies of the prosecutive report should be so marked and furnished to FBIHQ. If headquarters level dissemination is not necessary, submit only one copy of the prosecutive report to FBIHQ.

(5) In all cases, the field must notify FBIHQ by FD-749 of investigations being closed to ensure FBIHQ files are complete.

EFFECTIVE: 07/14/88

250-8 CHARACTER - TAMPERING WITH CONSUMER PRODUCTS (TCP)

EFFECTIVE: 07/14/88

250-9 CLASSIFICATION

For details concerning this topic, refer to the MAOP, Part II, 3-1.1, entitled "FBI Classifications and Subdivided Classifications."

EFFECTIVE: 10/18/95

250-10 CASE TITLE

(1) In addition to the subject's name and alias, or an unknown subject(s) designation, a TCP case title should also include the victim product, and/or victim company.

(2) Example

UNSUB;  
ABC EYE DROPS  
ABC PHARMACEUTICAL CO., INC.,  
NEW YORK, NEW YORK - VICTIM  
TCP  
OO: NY

EFFECTIVE: 05/28/85

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250-11 VENUE

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

EFFECTIVE: 05/28/85

250-12 OFFICE OF ORIGIN

In TCP violations, the OO will be determined by the place where the product tampering occurred, will occur, or the place from which the threat was made to tamper with a product.

EFFECTIVE: 05/28/85

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PRINTED: 02/18/98

SECTION 251. CONTROLLED SUBSTANCE - ROBBERY; CONTROLLED SUBSTANCE -  
BURGLARY

251-1 BACKGROUND

On May 31, 1984, the President signed the Controlled Substance Registrant Protection Act of 1984, which became Public Law 98-305. This Act amends Title 18 of the U.S. Code by creating Section 2118 entitled "Controlled Substance Registrant Protection Act of 1984."

EFFECTIVE: 07/23/90

251-2 STATUTE AND PENALTIES

EFFECTIVE: 07/23/90

||251-2.1| Section 2118. Robberies and burglaries involving  
controlled substances

"(a) Whoever takes or attempts to take from the person or presence of another by force or violence or by intimidation any material or compound containing any quantity of a controlled substance belonging to or in the care, custody, control, or possession of a person registered with the Drug Enforcement Administration under section 302 of the Controlled Substances Act (21 U.S.C. 822) shall, except as provided in subsection (c), be fined not more than \$25,000 or imprisoned not more than twenty years, or both, if

"(1) the replacement cost of the material or compound to the registrant was not less than \$500,

"(2) the person who engaged in such taking or attempted such taking traveled in interstate or foreign commerce or used any facility in interstate or foreign commerce to facilitate such taking or attempt, or

"(3) another person was killed or suffered significant bodily injury as a result of such taking or attempt.

"(b) Whoever, without authority, enters or attempts to enter, or remains in, the business premises or property of a person registered with the Drug Enforcement Administration under section 302 of the Controlled Substances Act (21 U.S.C. 822) with the intent to steal any material or compound containing any quantity of a controlled substance shall, except as provided in subsection (c), be fined not more than \$25,000 or imprisoned not more than twenty years, or both, if

"(1) the replacement cost of the controlled substance to the registrant was not less than \$500,

"(2) the person who engaged in such entry or attempted such entry or who remained in such premises or property traveled in interstate or foreign commerce or used any facility in interstate or foreign commerce to facilitate such entry or attempt or to facilitate remaining in such premises or property, or

"(3) another person was killed or suffered significant bodily injury as a result of such entry or attempt.

"(c) (1) Whoever in committing any offense under subsection (a) or (b) assaults any person, or puts in jeopardy the life of any person, by use of a dangerous weapon or device shall be fined not more than \$35,000 and imprisoned for not more than twenty-five years.

"(2) Whoever in committing any offense under subsection (a) or (b) kills any person shall be fined not more than \$50,000 or imprisoned for any term of years or life, or both.

"(d) If two or more persons conspire to violate subsection (a) or (b) of this section and one or more of these persons do any overt act to effect the object of the conspiracy, each shall be fined not more than \$25,000 or imprisoned not more than ten years or both.

"(e) For purposes of this section-

"(1) the term 'controlled substance' has the meaning prescribed for that term by section 102 of the Controlled Substances Act;

"(2) the term 'business premises or property' includes conveyances and storage facilities; and

"(3) the term 'significant bodily injury' means bodily injury which involves a risk of death, significant physical pain, protracted and obvious disfigurement, or a protracted loss or impairment of the function of a bodily member, organ, or mental or sensory faculty."

EFFECTIVE: 07/23/90

251-2.2 Controlled Substance Definition, Title 21, USC, Section 802 (6)

"The term 'controlled substance' means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV or V of Part B of this subchapter. The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1986."

EFFECTIVE: 07/23/90

251-3 JURISDICTION

(1) When Congress enacted the "Controlled Substance Registrant Protection Act of 1984," no investigative jurisdiction was specified. In accordance with 28 CFR 0.85, for any law enacted under Title 18, U.S. Code, for which Congress fails to designate an investigative agency, jurisdiction will automatically become the responsibility of the FBI.

(2) The Drug Enforcement Administration (DEA) is responsible for ensuring that all registrants comply with security requirements that extend from the Controlled Substances Act (Title 21, USC, Section 822). This DEA requirement may involve investigation by DEA following any robbery/burglary of a registrant covered by Title 18, USC, Section 2118.

(3) In the event that a DEA Class 1 or 2 violator should be identified as the subject of an investigation under Section 2118,

investigation will involve DEA participation.

(4) It is anticipated that, in the majority of cases, the FBI will have concurrent jurisdiction with state and local law enforcement agencies. Exceptions to this may occur on Government reservations, territories of the United States and possessions thereof.

EFFECTIVE: 07/23/90

251-4 POLICY

EFFECTIVE: 01/21/86

251-4.1 Investigative Responsibilities

(1) Examination of the legislative history of Public Law 98-305 and conferences with DOJ officials have determined that the FBI's primary responsibilities in Controlled Substance (CS) matters will be to investigate cases that involve:

(a) When death or significant bodily injury occurs, or there is a significant possibility that death or serious bodily injury could occur, regardless of loss;

(b) When large quantities of controlled substances are involved, in accordance with local quantity or monetary criteria for Federal investigation of other controlled substance offenses.

(c) When the suspect is a Class 1 or 2 DEA violator or other Federal target;

(d) When the facility burglarized or robbed is a manufacturing or distribution center (e.g., a warehouse); or

(e) When interstate activity is involved.

(2) In most instances, especially where manufacturers and distributors are the victims, DEA will have an investigative interest. FBI offices are to coordinate all investigative matters with DEA in order to ensure that the CS responsibilities of both agencies are adequately met.

(3) In the majority of CS matters, the FBI will have concurrent jurisdiction with state and local law enforcement agencies. The Attorney General of the United States has allowed that the immediate response to crimes committed under this Act will be the responsibility of local law enforcement and they will notify the FBI should a Federal violation exist. FBI field offices must ensure their liaison with other agencies is sufficient to meet the responsibilities of the FBI with respect to this Act.

EFFECTIVE: 07/23/90

251-5 INVESTIGATIVE PROCEDURES

(1) Whenever notification is received which indicates a violation of the CS statute, investigation should be in compliance with MIOG guidelines as stated in 251-4.1 entitled "Investigative Responsibilities" and in accordance with local United States Attorney (USA) prosecutive guidelines.

(2) Once sufficient facts have been developed, the USA's office should be contacted for a prosecutive opinion.

(3) Should the theft or attempted theft of a controlled substance be coupled with a kidnaping, extortion or theft from an interstate shipment, the appropriate portions of the MIOG should be consulted (MIOG, Part I, Sections 7, 9, 15 and/or 192).

EFFECTIVE: 07/23/90

251-6 DISSEMINATION TO OTHER FEDERAL AGENCIES

(1) Whenever a field office receives information which is covered by this Act, they should coordinate their investigation with local DEA office as expeditiously as is warranted by the circumstances.

(2) Submission of the FD-668 will satisfy most reporting requirements for outside dissemination. In the event of a major violation of this Act (i.e., death or serious injury, large quantity of substance or DEA subject) notification should be by more



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expeditious means than the FD-668.

EFFECTIVE: 07/23/90

251-7 REPORTING REQUIREMENTS

(1) The office of origin should submit Form FD-668 within five (5) working days after a case is opened and assigned for all violations of the Controlled Substance Registrant Protection Act. A narrative summary of the facts should be attached and set out in letterhead memorandum form, suitable for dissemination. In the event a violation of this act involves a death or serious injury, a large quantity of a controlled substance or a Drug Enforcement Agency subject, FBIHQ should be notified by more expeditious means (teletype or telephone) and thereafter followed with an FD-668.

(2) In all matters where a preliminary inquiry results in a full investigation, and the USA's office contemplates prosecution of the subject(s), a prosecutive report must be prepared. See Manual of Administrative Operations and Procedures (MAOP), Part II, Sections 10-14 and 10-15, for reporting formats.

(3) No prosecutive report is necessary if the USA declines prosecution or defers prosecution to local or state authorities.

(4) If dissemination is necessary to another Federal agency, extra copies should be so marked and furnished to FBIHQ. If headquarters-level dissemination is not necessary, the field office should submit only one copy of the prosecutive report to FBIHQ.

(5) In all situations in which cases have been opened and assigned, office of origin should ensure that FBIHQ is promptly advised when an investigation has been closed administratively or due to U.S. Attorney declination.

(6) In the event the identity of a subject is developed and whose name is added to the title, a supplemental FD-668 must be promptly submitted to FBIHQ reflecting the changed title.

EFFECTIVE: 04/18/88

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PRINTED: 02/18/98

251-8 CHARACTER

- (1) CONTROLLED SUBSTANCE - ROBBERY (CS-R)
- (2) CONTROLLED SUBSTANCE - BURGLARY (CS-B)

EFFECTIVE: 04/18/88

| 251-9 CLASSIFICATION

For details concerning this topic, refer to the MAOP, Part II, 3-1.1, entitled "FBI Classifications and Subdivided Classifications."

EFFECTIVE: 10/18/95

251-10 CASE TITLE

(1) The case title should include the subject's name and alias, or an unknown subject(s) designation, the name and address of the DEA registrant, and the date of the occurrence.

(2) Examples:

Robbery	Burglary
UNSUB(S); ABC PHARMACEUTICAL 123 FIFTH AVENUE NEW YORK, NEW YORK 1/4/85 CS-R OO: NY (NYfile 251A-0000)	UNSUB(S); ABC PHARMACEUTICAL 123 FIFTH AVENUE NEW YORK, NEW YORK 1/4-5/85 CS-B OO: NY (NYfile 251B-0000)

(3) In the event of a death or serious bodily injury during the commission of a crime covered by this Act, the title should reflect the name of the victim. In the event of death, the title should so reflect the condition of the victim.

(4) Example:

UNSUB(S);  
JOHN A. SMITH - VICTIM (DECEASED)  
ABC PHARMACEUTICAL  
123 FIFTH AVENUE  
NEW YORK, NEW YORK  
1/4/85  
CS-R  
OO: NY  
(NYfile 251A-0000)

(5) Should the theft or attempted theft of a controlled substance be coupled with a kidnaping or extortion demand, then Kidnaping, Extortion or Hobbs Act should be added as a secondary character in the title. In the event the theft occurs while the controlled substance is in transit, Theft from Interstate Shipment should be added as a secondary character. Refer to MIOG, Part I, Sections 7, 9, 15 and 192, for additional instructions regarding proper handling.

EFFECTIVE: 04/18/88

251-11 VENUE

General - Venue is, generally, governed in CS matters by Title 18, USC, Section 3237. This section states that venue lies in any district from, through, or into which the substance and/or criminal activity moves.

EFFECTIVE: 05/28/85

251-12 OFFICE OF ORIGIN

In CS violations, the OO will be determined by the place where the theft occurred, will occur, or the place from which the threat to steal a controlled substance occurred.

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EFFECTIVE: 05/28/85

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SECTION 252. NATIONAL CENTER FOR THE ANALYSIS OF VIOLENT  
CRIME (NCAVC)

252-1 BACKGROUND (See MIOG, Part I, 7-14.9(3).)

(1) On June 1, 1985, the Training Division's Behavioral Science Unit (BSU) initiated full operation of the National Center for the Analysis of Violent Crime (NCAVC) at the FBI Academy, Quantico, Virginia. The NCAVC is a law enforcement-oriented behavioral science and data processing center, the direct mission of which is to consolidate research, training, and operational support functions to provide assistance to law enforcement agencies confronted with unusual, high-risk, vicious, or repetitive violent crimes.

(2) In November, 1985, the BSU reorganized to form the Behavioral Science Services Units, which consisted of the Behavioral Science Instruction and Research (BSIR) Unit and the Behavioral Science Investigative Support Unit (BSISU).

(3) In 1991, the NCAVC reorganized again, creating three component units: the Behavioral Science Services Unit (BSSU), the Investigative Support Unit (ISU), and the Special Operations and Research Unit (SOARU).

(4) In June, 1994, the NCAVC, which includes the Investigative Support Unit (ISU), the Arson and Bombing Investigative Services (ABIS) and the Violent Criminal Apprehension Program (VICAP), became a part of the new Critical Incident Response Group.

EFFECTIVE: 07/17/95

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252-1.1 Mission

To accomplish this mission the NCAVC operates six program areas which facilitate the support functions necessary for implementation of a viable program. The mission of the NCAVC is to:

(1) Provide contemporary behavioral science and crisis management training to the law enforcement community;

(2) Provide behavioral science and crisis management assistance/consultation in the investigation of violent crimes and those situations which may require crisis response.

(3) Provide a national data information center designed to collect, collate, and analyze all aspects of the investigation of violent crimes; and,

(4) Conduct research in support of the NCAVC, NCAVC Units, and other Bureau interests.

Discussed below in detail are the six NCAVC programs.

EFFECTIVE: 06/04/93

252-1.2 Violent Criminal Apprehension Program

Presently, the NCAVC's Violent Criminal Apprehension Program (VICAP) provides a national clearinghouse for unsolved homicides. It identifies and charts the patterns of these violent crimes across the United States, using a sophisticated data processing and analytical system. A staff of VICAP major case specialists, crime analysts, and investigative case specialists review unsolved violent crimes, primarily homicides, which are submitted on VICAP report forms by law enforcement agencies. Through this process, suspects can be identified, and cases can be linked to focus widespread resources. Cases where additional analysis and consultation may assist the investigation are referred to criminal investigative analysts of the ISU. Submitting agencies are personally contacted by VICAP staff when violent offenders and/or their crimes are linked by computer and when other exceptional characteristics are identified.

EFFECTIVE: 06/04/93

252-1.3 |Criminal Investigative Analysis Program|

(1) The NCAVC's |Criminal Investigative Analysis|Program  
|(CIAP)|provides|expert|consultation and opinion|to the criminal  
justice system. Criminal Investigative Analysts conduct detailed  
analyses of violent crimes and other exceptional cases on a case-by-  
case basis, for the purpose of providing the following services:

(a) Construction of Unknown Offender Profiles.  
Offender characteristics and traits are provided to help narrow the  
scope of an investigation, to more readily focus on the most likely  
suspect(s).

(b) Investigative Strategies. Recommendations  
for innovative investigative techniques are tailored to the specific  
needs of the case, based on behavioral characteristics identified  
through Criminal Investigative Analysis.

(c) Interview Strategies. Behavioral-based  
interview methods are recommended to gather information and to obtain  
offender admissions relating to a specific crime.

(d) Communication Analysis.

1. Threat Assessments. Assess written and  
verbal threats to provide an opinion regarding the level of  
seriousness of the threat and offender characteristics and traits.

2. Content Analysis. Assessment of written or  
verbal communications to determine deception or deliberate omission of  
information.

(e) Personality Assessments. The assessment of an  
individual's behavioral characteristics and traits to assist in  
developing strategies and techniques for investigative considerations,  
interview situations, and prosecutive assistance.

(f) Equivocal Death Evaluations. To provide  
assessment and opinion in certain cases relating to the manner of  
death, e.g., homicide, suicide, accidental, natural causes.

EFFECTIVE: 06/04/93

252-1.5 Training Program

The Training Program acquaints the criminal justice community with the resources of the NCAVC. It provides innovative and up-to-date training for Federal, state, and local law enforcement agencies, selected behavioral scientists, and others who must deal with violent crime matters. Crime prevention and citizen awareness information is developed and made available to criminal justice and ancillary organizations.

EFFECTIVE: 06/04/93

252-1.6

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(g) Prosecutive/Trial Strategy. Provide assistance to prosecutors to develop trial strategies based on identified behavioral characteristics of defendants and witnesses.

(h) Support for Search Warrant Affidavit. Provide information based on research and experience at the NCAVC to establish that violent offenders take and maintain certain items of evidentiary value. This research- and experience-based information can help to overcome staleness issues.

(i) Expert Testimony. Members of the NCAVC are available to testify in certain cases where Criminal Investigative Analysis has determined certain significant behavioral characteristics are present.

(2) The services of the NCAVC have been used in the following types of cases: serial rapes, homicides, extortions, kidnappings, child molestation and abuse, infant kidnappings, arson, bombings, assassinations, public corruption, white collar crimes, foreign counterintelligence, domestic terrorism, Government reservation crimes, fugitives, and organized crime.

EFFECTIVE: 06/04/93

#### 252-1.4 Research and Development Program

(1) The NCAVC's Research and Development Program studies VICAP Crime Reports, violent criminals, their victims, and respective crime scenes from the law enforcement perspective in order to gain insight into the criminal personalities, to understand the motivation for their behavior, and to examine how they have been able to evade law enforcement efforts to identify, locate, apprehend, prosecute, and incarcerate them.

(2) The program personnel review the interviews of serial and exceptional violent criminals such as murderers, rapists, child molesters, arsonists, and bombers. Where necessary, the program personnel perform ongoing scholarly probes into specific questions on violent crime and recommend innovative investigative techniques and potential solutions.

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252-2 STATUTORY AUTHORITY

(1) The National Center for the Analysis of Violent Crime (NCAVC) is established, maintained, and used under the authority granted by Title 44, USC, Section 3101; Title 41, Code of Federal Regulations (CFR), Subpart 101-11.2; and Title 28, USC, Section 534.

(2) Pursuant to the Privacy Act of 1974, the FBI published in the Federal Register on February 26, 1985, a notice on the NCAVC system of records, JUSTICE/FBI-015, AAG/A Order No. 22-84. A second notice was published in the Federal Register on November 29, 1990. The NCAVC system of records is exempt from Title 5, USC, Section 552a (c) (3), (d), (e) (1), (e) (4), (G) and (H), (f) and (g). The purpose of these exemptions is to maintain the confidentiality and security of information compiled for law enforcement purposes.

(3) Pursuant to Title 42, USC, Section 3744, the FBI is authorized to establish, conduct, and develop innovative law enforcement training; to develop approaches, techniques, systems, equipment, and devices to improve and strengthen law enforcement and criminal justice; and to respond to requests from state and local units of government for new training programs.

EFFECTIVE: 06/04/93

252-3 VICAP CRIME REPORT

The primary purpose of the VICAP Crime Report (FD-676) is to gather data for analyses which will lead to the identification of similar violent crime patterns which exist in any part of the country. Completing the report is voluntary, although the importance of submitting the report cannot be overemphasized. A single report received and analyzed by the NCAVC could trigger a coordinated effort between law enforcement agencies which could expedite the apprehension of an otherwise unidentified violent offender.

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252-4 CATEGORIES OF RECORDS AND INDIVIDUALS COVERED BY THIS  
SYSTEM

The NCAVC will maintain in both manual and automated formats case investigative reports on all forms of solved and unsolved violent crimes. These violent crimes include, but are not limited to, acts or attempted acts of murder, kidnaping, incendiary arson or bombing, rape, physical torture, sexual trauma, child molestation and abuse, or evidence of violent forms of death. Less than 10 percent of the records which are analyzed may not be directly related to violent activities. The following categories of records and individuals exist in the NCAVC system:

EFFECTIVE: 06/04/93

252-4.1 Categories of Records in the System

(1) Violent Criminal Apprehension Program (VICAP) Crime Reports (FD-676) are submitted to the FBI by a duly constituted Federal, state, county, or municipal law enforcement agency in any violent criminal matter. VICAP Crime Reports include, but are not limited to, crime scene descriptions, victim and offender descriptive data, laboratory reports, criminal history records, court records, news media references, crime scene photographs, and statements.

(2) Violent crime case reports submitted by FBIHQ or field offices.

(3) Violent crime research studies, scholarly journal articles, textbooks, training materials, and news media references of interest to NCAVC personnel.

(4) An index of all detected trends, patterns, profiles, and methods of operation of known and unknown violent criminals whose records are maintained in the system.

(5) An index of the names, addresses and contact telephone numbers of professional individuals and organizations who are in a position to furnish assistance to the FBI's NCAVC operation.

(6) An index of public record sources for historical, statistical, and demographic data collected by the U.S. Bureau of the Census.

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(7) An alphabetical name index pertaining to all individuals whose records are maintained in the system.

EFFECTIVE: 06/04/93

252-4.2 Categories of Individuals in the System

(1) Individuals who relate in any manner to official FBI investigations into violent crimes including, but not limited to, suspects, victims, witnesses, close relatives, medical personnel, and associates who are relevant to an investigation.

(2) Individuals who are the subjects of unsolicited information or who offer unsolicited information, and law enforcement personnel who request assistance and/or make inquiries concerning records.

(3) Individuals who are the subjects of violent crime research studies including, but not limited to, criminal investigative analyses, scholarly journals, and news media references.

EFFECTIVE: 06/04/93

252-5 JURISDICTION

Department of Justice has advised that pursuant to the provisions of the statutes noted above, in any violent criminal matter the FBI is authorized to acquire, locate, or pass on various records to a duly constituted Federal, state, county, or municipal law enforcement agency; effect cooperation among these agencies; or verify the location of a person whose interview is desired for a law enforcement agency.

EFFECTIVE: 03/24/87

252-6 AVAILABILITY AND USE OF NCAVC SERVICES

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EFFECTIVE: 03/24/87

252-6.1 Availability of the NCAVC

Services of the NCAVC are available to Federal, military, state, county, and local law enforcement, United States Attorneys, state and local prosecutors, as well as foreign law enforcement agencies.

EFFECTIVE: 03/24/87

252-6.2 Stipulations

NCAVC services are provided free of cost to the requesting agency. NCAVC services will not be provided in cases where similar services have been rendered by outside consultants. Law enforcement agencies submitting cases must have investigative jurisdiction.

EFFECTIVE: 06/04/93

252-6.3 Priority of Cases

Cases will be prioritized based on the potential for continued violence. Cases involving imminent threat to life or extreme violence, as well as ongoing cases such as kidnaping, extortion, or hostage situations will be given top priority. Bureau cases not meeting the top priority criteria will be afforded the next highest priority, when appropriate.

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252-7 INVESTIGATIVE RESPONSIBILITIES

(1) Upon receipt of requests for investigation from duly constituted foreign, Federal, state, county, or municipal law enforcement agencies involving violent crime matters in which there is no FBI jurisdictional interest, the FBI's cooperative role will be limited to the guidelines set forth under MIOG, Part I, Section 62, "Domestic Police Cooperation," and Section 163, "Foreign Police Cooperation."

(2) In those cases in which the FBI has investigative jurisdiction, such as Kidnaping, Extortion, Crime on a Government Reservation, etc., cases will be submitted under substantive case caption and classification.

(3) In cases in which the Bureau is investigating a homicide, such as Crime on an Indian Reservation, a VICAP Crime Report (FD-676) will be submitted to the NCAVC by the office of origin.

(4) Violent crime matters received in the field should be opened on an individual case basis, under the appropriate 252 classification, the subject of the record indexed to the general indices, resulting disclosures recorded in accordance with Privacy Act requirements and maintained in accordance with existing instructions pertaining to the destruction of field office files and records, MAOP, Part II, 2-4.5.

EFFECTIVE: 06/04/93

252-8 REPORTING REQUIREMENTS FOR VICAP

EFFECTIVE: 03/24/87

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252-8.1 VICAP Crime Reports

(1) Violent crime matters in the following categories should be submitted using the VICAP Crime Report, Bureau Form FD-676, supplied to the requesting agency:

- (a) Any unsolved homicide.
- (b) Missing person with evidence of foul play, and death is suspected.
- (c) Unidentified dead body when the manner of death is classified as a homicide.

(2) The VICAP Crime Report (FD-676) is supplied to the requesting law enforcement agency and may be returned to the NCAVC by:

- (a) Airtel
- (b) Directly mailed to the NCAVC at the following

address:

National Center for the Analysis of Violent  
Crime  
Attention: Violent Criminal Apprehension  
Program  
FBI Academy  
Quantico, Virginia 22135

(3) Other violent crimes not referenced above should not be sent to the NCAVC without consultation with the NCAVC Coordinator for the respective field office.

EFFECTIVE: 03/04/94

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252-8.2 Notification of NCAVC Receipt of VICAP Reports

(1) In cases where VICAP Crime Reports (FD-676) are mailed directly to the NCAVC from the submitting law enforcement agency, a computer-generated letter of receipt will be prepared by the NCAVC to provide the appropriate field office and FBI Headquarters with the information required for their indexing purposes.

(2) Receiving offices should file this communication in their 252-0 file, and an investigative (252B classification) file should be opened when a criminal investigative analysis or other NCAVC services are requested.

(3) Inasmuch as the investigation is the responsibility of the submitting law enforcement agency, the NCAVC strongly recommends that no responses be made to media inquiries concerning the case. Any such inquiries should be referred to the investigating agency.

EFFECTIVE: 03/04/94

252-9 PRIVACY ACT

EFFECTIVE: 03/24/87

252-9.1 Requirements Imposed by the Privacy Act

(1) When interviewing anyone in the above classification, except during the criminal phases of the investigation, in order to solicit information about himself or herself or his/her own activities, the interviewer must follow the procedures described in Part I, 190-5, of this manual, 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), except during the criminal phases of the investigation, the interviewing Agent must follow the procedure relating to promises of confidentiality as described in Part I, 190-7, of this manual.

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EFFECTIVE: 03/24/87

252-9.2 Interviews in NCAVC Studies

(1) As stated in Part I, 190-5, of this manual, a written consent should be obtained when interviewing an individual to solicit information from that individual. Case examples include the voluntary participation of known convicted violent criminal offenders in NCAVC studies. The appropriate consent and Privacy Act forms necessary to conduct the interview are available through the NCAVC. At the termination of the interview, a copy of both forms should be left with the interviewee.

(2) Research interviews under this program are not to be conducted without prior approval of the appropriate NCAVC program manager.

EFFECTIVE: 06/04/93

252-10 POLICY

EFFECTIVE: 03/24/87

252-10.1 Attention Lines for Communication

The following guidelines should be adhered to as closely as possible to avoid any unnecessary delay in the routing of mail at FBIHQ:

(1) Requests for training should be handled in accordance with Bureau policy as set forth in MAOP, Part II, Section 8.

(2) Communications relating to criminal investigative analysis should be marked: "Attention: Critical Incident Response Group, National Center for the Analysis of Violent Crime, Criminal Investigative Analysis Program."

(3) Communications relating to the Violent Criminal Apprehension Program should be marked: "Attention: Critical Incident

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| Response Group, | National Center for the Analysis of Violent Crime,  
Violent Criminal Apprehension Program."

(4) Communications regarding research should be marked:  
| "Attention: | Critical Incident Response Group, | National Center for the  
Analysis of Violent Crime, Research and Development Program."

(5) Communications relating to arson and bombing should  
| be marked: "Attention: | Critical Incident Response Group, | National  
Center for the Analysis of Violent Crime, Arson and Bombing  
Investigative Services Subunit."

| (6) | Deleted |

EFFECTIVE: 07/17/95

#### 252-10.2 Dissemination of NCAVC Reports

The results of services requested of the NCAVC will be  
forwarded to the requesting field division by airtel unless  
circumstances require more expeditious means. In non-Bureau cases,  
two copies of any written report will be provided by airtel to the  
| attention of the appropriate | NCAVC | Coordinator, | and one copy is to be  
delivered promptly to the requesting agency. |

EFFECTIVE: 06/04/93

#### 252-10.3 Disposition of Submitted Case Material

(1) All materials submitted by the requesting field  
| office or non-Bureau agency to be used for | crime | analysis and/or  
assessment must remain in the NCAVC. Agencies requesting assistance  
should be apprised of this fact.

(2) Material submitted with those cases which are  
| determined to be unsuitable for analysis and/or assessment will be  
returned to the requesting party through the | NCAVC | Coordinator.

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EFFECTIVE: 06/04/93

252-10.4 Confidentiality of NCAVC Reports

NCAVC crime analyses, assessments, and VICAP Crime Reports (FD-676) contain information of a confidential and sensitive nature regarding victims and suspects, as well as sensitive investigative techniques. They are provided exclusively for the investigative assistance of the requesting agency and should not be disseminated except to other criminal justice agencies with a legitimate investigative or prosecutive interest in the case.

EFFECTIVE: 06/04/93

252-10.5 Role and Responsibility of the Special Agent in Charge

(1) The Special Agent in Charge (SAC) in his/her division is responsible for the oversight of this program and will ensure that the guidelines and requirements set forth in this section are met.

(2) The SAC should also ensure that an appropriate control file on 252 classification matters is maintained.

(3) NCAVC criminal investigative analyses and other reports will be forwarded to the SAC to the attention of the NCAVC Coordinator. It is the responsibility of the SAC to ensure that these reports are disseminated to the appropriate law enforcement agency on a timely basis by the NCAVC Coordinator.

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252-10.5.1 Selection and Training of the NCAVC Coordinator

(1) NCAVC Coordinators have been designated in each field office. The NCAVC Coordinator serves as a behavioral science resource to the SAC and as a facilitator for requests to the NCAVC from federal, state, and local agencies and as a coordinator between the field division and the NCAVC.

(2) Each field division will be staffed with one or more NCAVC Coordinators who will be selected by the SAC with the concurrence of the NCAVC. Selection will be based upon criteria established by the NCAVC. Each NCAVC Coordinator will be afforded training by the Critical Incident Response Group's (CIRG's), Investigative Support Unit (ISU), FBI Academy, Quantico, Virginia.

EFFECTIVE: 07/17/95

252-10.5.2 The Role of the NCAVC Coordinator

(1) All requests for services of the NCAVC, with the exception of VICAP Crime Report submissions, both from within and outside the Bureau, will be processed through the NCAVC Coordinator. Exceptions to this policy must be approved by the NCAVC.

(2) In those cases where a field division has multiple NCAVC Coordinators, one will be designated the principal coordinator. The principal NCAVC Coordinator should be aware of all requests and/or correspondence for the purpose of ensuring uniformity and control.

(3) NCAVC trained Coordinators are the only field personnel approved to prepare preliminary drafts of criminal investigative analyses. PRIOR to the dissemination of any analysis or other NCAVC services prepared by the NCAVC Coordinator, that analysis or service recommendation must be submitted to the NCAVC with its case materials for review and approval.

(4) No verbal criminal investigative analyses or investigative techniques should be disseminated without the prior discussion and approval by the NCAVC.

(5) It is the responsibility of the NCAVC Coordinator to ensure that any case submitted is complete and submitted on a timely

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basis. Each case should contain the following material for submission to the NCAVC: case background to include a synopsis of the crime; description (demographics) of the area(s) in which the crime(s) occurred; complete victimology; crime scene photographs; an area map marked to indicate all pertinent locations; and investigative reports. In cases of homicide, submissions will also include a complete autopsy report, autopsy photographs, and toxicology/serology reports. Sexual assault cases must also include reports of victim interviews and laboratory results of evidence examinations including serological examinations.

(6) No cases should be forwarded to the NCAVC until all necessary materials are collected and reviewed by the NCAVC Coordinator to ensure the case is complete. Certain cases may require more expedient submission and should be coordinated through the NCAVC. Incomplete cases may be returned to the NCAVC Coordinator.

(7) Case submissions are to be accompanied by a cover communication which contains a synopsis of the crime(s), specific requests for services, and the name, mailing address, and telephone number of the requesting investigator.

(8) Cases forwarded directly to the NCAVC by a law enforcement agency may be returned to the appropriate field division, to the attention of the NCAVC Coordinator, for proper review and submission. In such cases, the submitting investigator is to be contacted by the NCAVC Coordinator and advised of the proper procedures for transmittal of cases to the NCAVC.

(9) The NCAVC Coordinator will maintain contact with personnel and/or agencies to which the NCAVC has provided a service and will furnish any information reflecting on the accuracy and benefit of that service. This information should include whether a suspect is developed by the requesting agency.

(10) The NCAVC Coordinator should ensure that the submitting agency is advised that the submitted cases are prioritized in accordance with existing caseload and propensity for continued violence.

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| 252-10.6 Notification of NCAVC Receipt of Request for Services

| Upon receipt of a case|by the NCAVC,|a letter will be prepared advising the requesting investigator of the title under which the case is indexed and the NCAVC|analyst|to whom it is assigned. One copy of this letter will be forwarded to the appropriate|NCAVC Coordinator.|

EFFECTIVE: 06/04/93

252-11 CHARACTER - NATIONAL CENTER FOR THE ANALYSIS OF VIOLENT CRIME (NCAVC)

| (1) Since the NCAVC consists of|six|active program areas and the various substantive violent crimes, the possible character combinations are numerous.

(2) In order to readily identify the character, the type of violent crime involved, and the specific NCAVC program activity or function, all titles are designated as NCAVC followed by the substantive violent crime with the program in parentheses.

EFFECTIVE: 06/04/93

| 252-12 CLASSIFICATION

For details concerning this topic, refer to the MAOP, Part II, 3-1.1 entitled "FBI Classifications and Subdivided Classifications."

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252-13 CASE TITLE (See MAOP, Part II, 3-1.1 and 3-1.2; MIOG,  
Introduction, 2-1.6.4(3).)

(1) The case title should include the subject's name and aliases, or an unknown subject(s) designation, the victim's name, the submitting law enforcement agency's name, city and state, date of occurrence, and case character.

(2) The "252" classification is subdivided by alpha designators which identify the particular program matters and cases. The alpha designators are as follows:

252A - Violent Criminal Apprehension Program

252B - Criminal Investigative Analysis Program

252C - Research and Development Program

252D - Training Program

252E - Arson and Bombing Investigative Services

Program

252F - Crisis Management Program

(3) Set forth below are examples of case titles for reference purposes detailing each of the six NCAVC program areas:

(a) Violent Criminal Apprehension Program

JOHN H. SMITH;  
JANE B. DOE - VICTIM (DECEASED)  
NEW YORK POLICE DEPARTMENT  
NEW YORK, NEW YORK  
6/2/92  
NCAVC - HOMICIDE (VICAP)  
OO: |HQ|

(b) Criminal Investigative Analysis Program

UNSUB;  
JOHN A. SMITH - VICTIM (DECEASED)  
NEW YORK POLICE DEPARTMENT  
NEW YORK, NEW YORK  
6/2/92  
NCAVC - HOMICIDE (CRIMINAL INVESTIGATIVE

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ANALYSIS)

OO: |HQ|

(c) Research and Development Program

JOHN A. SMITH  
NCAVC - HOMICIDE (RESEARCH)

OO: |HQ|

(d) Training Program

CLEVELAND POLICE DEPARTMENT  
CLEVELAND, OHIO  
6/2/92

NCAVC - HOMICIDE (TRAINING)

OO: |HQ|

(e) Arson and Bombing Investigative Services

JOHN E. SMITH  
JOHN A. SMITH - VICTIM (DECEASED)  
NEW YORK POLICE DEPARTMENT  
NEW YORK, NEW YORK

6/2/92

NCAVC - BOMBING (BOMB INCIDENT REPORT)

OO: |HQ|

(f) Crisis Management Program

JOHN E. SMITH  
JOHN A. SMITH - VICTIM (DECEASED)  
NEW YORK POLICE DEPARTMENT  
NEW YORK, NEW YORK

6/2/92

NCAVC - HOSTAGE INCIDENT (CRISIS MANAGEMENT)

OO: |HQ|

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252-14 CLAIMING ACCOMPLISHMENTS IN VIOLENT CRIMES CASES BY THE  
ACCOMPLISHMENT REPORT, FD-515

(1) When services of one or more of the NCAVC programs significantly contribute to the identification, arrest, or prosecution of violent criminals in Federal, state, or local jurisdictions, this should be reported using the Accomplishment Report (Form FD-515) with a copy designated for the NCAVC.

(2) For details on claiming accomplishments and on the submission of the Accomplishment Report, see the instructions appearing on the reverse side of the FD-515 and MAOP, Part II, 3-5.1 through 3-5.3.

EFFECTIVE: 03/24/87

252-15 OFFICE OF ORIGIN

(1) FBIHQ will be the office of origin in all NCAVC 252 classification matters. Any office opening a 252 file must contact the NCAVC Rotor to obtain a file number. A copy of the opening communication will then be forwarded to the NCAVC, Critical Incident Response Group.

(2) The NCAVC Rotor is in operation between the hours of 8:00 a.m. and 5:30 p.m., Eastern Standard Time, Monday through Friday, and can be reached at Quantico, extension [REDACTED]. Requests may also be submitted by facsimile to [REDACTED].

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SECTION 253. FRAUD AND RELATED ACTIVITY IN CONNECTION WITH  
IDENTIFICATION DOCUMENTS; MAILING PRIVATE  
IDENTIFICATION DOCUMENTS WITHOUT A DISCLAIMER

253-1 BREAKDOWN OF THE 253 CLASSIFICATION

The 253 classification is made up of two separate and distinct violations which are Fraud and Related Activity In Connection With Identification Documents (FRAID) and Mailing Private Identification Documents Without a Disclaimer (PIDWD). The FRAID and PIDWD Statutes were enacted into law on December 31, 1982, under the False Identification Crime Control Act of 1982 (FICCA of 82). For purposes of clarity and reference, this section will set forth these violations individually in a two-part format.

EFFECTIVE: 06/06/86

253-1.1 Background Regarding the False Identification Crime Control Act of 1982 (FICCA of 1982), False Identification Matters (FIM) and the False Identity Program (FIP)

(1) The FICCA of 82 was enacted into law on December 31, 1982, under Public Law 97-398 in an effort to improve Federal criminal statutes relating to criminal activity involving false identification.

(2) The FICCA of 82 does not supplant or replace any existing criminal statutes which may be applicable to a particular identification document. However, because of its broad coverage and realistic penalties, it should be utilized whenever possible as a means of prosecution in cases involving false identification.

(3) The FBI's initial involvement in the criminal use of false identification documents was in 1973 under the FIM Program which occurred as an outgrowth of investigations into New Left violence by the Weathermen and other terrorist groups and the discovery of their widespread and sophisticated use of false identification to avoid detection prior to committing crimes and afterward to avoid apprehension.

(4) On January 1, 1977, the FIP was created with a

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specific 191 classification designed to better coordinate and supervise the mounting investigative matters connected with the subversive and criminal use of false identification.

(5) On November 1, 1978, the FIP was terminated based on a Department of Justice (DOJ) ruling that the FBI should not continue the FIP to identify persons who may have fraudulently obtained birth certificates, driver's licenses or similar state identification unless it is undertaken in connection with the investigation of some other matter within the FBI's investigative jurisdiction.

EFFECTIVE: 06/06/86

|253-2 FRAUD AND RELATED ACTIVITY IN CONNECTION WITH IDENTIFICATION DOCUMENTS (FRAID)|

EFFECTIVE: 06/06/86

|253-2.1 Statute and Penalties

(1) The FRAID Statute, Title 18, USC, Section 1028, reads as follows:

"(a) Whoever, in a circumstance described in subsection (c) of this section-

"(1) knowingly and without lawful authority produces an identification document or a false identification document;

"(2) knowingly transfers an identification document or a false identification document knowing that such document was stolen or produced without lawful authority;

"(3) knowingly possesses with intent to use unlawfully or transfer unlawfully five or more identification documents (other than those issued lawfully for the use of the possessor) or false identification documents;

"(4) knowingly possesses an identification document (other than one issued lawfully for the use of the possessor) or a false identification document, with the intent such

document be used to defraud the United States; or

"(5) knowingly produces, transfers, or possesses a document-making implement with the intent such document-making implement will be used in the production of a false identification document or another document-making implement which will so be used;

"(6) possesses an identification document that is or appears to be an identification document of the United States which is stolen or produced without authority knowing that such document was stolen or produced without authority;

"or attempts to do so, shall be punished as provided in subsection (b) of this section.

"(b) The punishment for an offense under subsection (a) of this section is-

"(1) a fine of not more than \$25,000 or imprisonment for not more than five years, or both, if the offense is-

"(A) the production or transfer of an identification document or false identification document that is or appears to be-

"(i) an identification document issued by or under the authority of the United States; or

"(ii) a birth certificate, or a driver's license or personal identification card;

"(B) the production or transfer of more than five identification documents or false identification documents; or

"(C) an offense under paragraph (5) of such subsection;

"(2) a fine of not more than \$15,000 or imprisonment for not more than three years, or both, if the offense is-

"(A) any other production or transfer of an identification document or false identification document; or

"(B) an offense under paragraph (3) of such subsection; and

"(3) a fine of not more than \$5,000 or imprisonment for not more than one year, or both, in any other case.

"(c) The circumstance referred to in subsection (a) of this section is that-

"(1) the identification document or false identification document is or appears to be issued by or under the authority of the United States or the document-making implement is designed or suited for making such an identification document or false identification document;

"(2) the offense is an offense under subsection (a)(4) of this section; or

"(3) the production, transfer or possession prohibited by this section is in or affects interstate or foreign commerce, or the identification document, false identification document, or document-making implement is transported in the mail in the course of the production, transfer, or possession prohibited by this section.

"(d) As used in this section-

"(1) the term 'identification document' means a document made or issued by or under the authority of the United States Government, a State, political subdivision of a State, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals;

"(2) the term 'produce' includes alter, authenticate, or assemble;

"(3) the term 'document-making implement' means any implement or impression specially designed or primarily used for making an identification document, a false identification document, or another document-making implement;

"(4) the term 'personal identification card' means an identification document issued by a state or local government solely for the purpose of identification; and

"(5) the term 'State' includes any State of the

United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States.

"(e) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under Title V of the Organized Crime Control Act of 1970."

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253-2.2 Comments and Clarification Regarding the FRAID Statute

(1) This statute applies to all government identification documents (GIDs) issued by Federal, state, local, foreign, international and quasi-international governmental entities and certain implements used in manufacturing these documents. It also covers identification documents (IDs) for employees of government contractors if such IDs were issued by or under the authority of a governmental agency. IDs issued by the governments of the District of Columbia, Puerto Rico or other territories or possessions of the United States, while covered under this statute, are state rather than U.S. Government IDs.

(2) Criminal jurisdiction over violations involving U.S. Government IDs clearly lies with the Federal Government. However, it should be noted that this statute has created a major area of Federal violations pertaining to local, state and foreign GIDs. In regard to these non-Federal GIDs, the basis for Federal jurisdiction is either:

(a) The possession with intent to defraud the U.S. Government;

(b) The unlawful production, transfer or possession of the GIDs or document-making implement is in or affects interstate or foreign commerce;

(c) The GIDs or document-making implement is transported in the U.S. mails in the course of the unlawful production, transfer or possession;

(d) Only a minimal nexus with interstate or foreign commerce is required. For instance, a showing that the GIDs in the

possession of the subject traveled with him/her at the same time in interstate or foreign commerce is sufficient. Furthermore, the term "affects" includes "will affect"; therefore, a production or transfer of GIDs which are intended to be distributed in interstate or foreign commerce is covered.

(3) In essence, this statute prohibits three general basic types of criminal action: the unlawful production, transfer, or possession of GIDs involving the following ten specific illegal acts:

- (a) Producing without lawful authority a GID or a false GID;
- (b) Transferring a GID or a false GID knowing that such GID was stolen or produced without lawful authority;
- (c) Possessing with intent to use unlawfully five or more GIDs (other than those issued lawfully for the use of the possessor) or false GIDs;
- (d) Possessing with intent to transfer unlawfully five or more GIDs (other than those issued lawfully for the use of the possessor) or false GIDs;
- (e) Possessing a GID (other than one issued lawfully for the use of the possessor) or a false GID with the intent such GID be used to defraud the United States;
- (f) Possessing a U.S. GID which is stolen and knowing that such document was stolen;
- (g) Possessing a GID that appears to be an ID of the United States which was produced without authority and knowing that such document was produced without authority;
- (h) Producing, transferring, or possessing a document-making implement with the intent that such document-making implement will be used in the production of a false GID;
- (i) Producing, transferring, or possessing a document-making supplement with the intent that such document-making implement will be used in the production of another document-making implement which will be used in the production of a false GID; or
- (j) Attempting to do any of the above.



(4) It should be noted that five or more GIDs in the possession of the subject (other than those issued lawfully for the use of the possessor--see Sections 253-2.2(3)(c) and (d))--are required if the subject's intent is to utilize or transfer the GIDs unlawfully. The remaining three possible unlawful possession violations (see Sections 253-2.2(3)(e)(f) and (g)) require only a single GID (other than a GID issued lawfully for the use of the possessor) in the subject's possession. The distinction is based on whether or not the GID in the possession of the subject is a U.S. GID or if his/her intent is to defraud the United States.

(5) The penalty provisions for an attempted offense under this statute are unclear; however, the DOJ has advised that the legislative history of this statute conclusively indicates that Congress intended attempts to be punished at the same level as the same completed offense rather than a misdemeanor under Section 1028(b)(3).

(6) GIDs fall into two categories, genuine or false. "Genuine" refers to those authentic GIDs actually made or issued under the authority of a governmental entity. "False" refers to counterfeit, forged, or altered GIDs, as well as apparent GIDs which appear to have been issued by a governmental authority, even though that authority may not issue an ID of that particular type.

(7) The GID must be "intended" to identify a particular person or be "commonly accepted" as identification for a particular person. Therefore, certificates of title or registrations for motor vehicles, which identify vehicles and not persons, are not covered.

(8) Whether a GID is intended to identify an individual is determined by looking at the purpose for which the governmental agency issued it. Examples of GIDs intended to identify individuals are passports, alien registration cards and FBI credentials. The statutory term "commonly accepted" is intended to cover GIDs which may not have been intended to serve as an identification document when originally issued, but have been commonly accepted as identification. Examples are birth certificates, driver's licenses and social security cards.

(9) This statute also covers criminal activity involving blank GIDs; therefore, said documents need not be filled out in order to constitute a violation.

(10) This statute singles out three specific non-Federal

identification documents, the birth certificate, driver's license, and personal identification cards, and, for their unlawful use, provides the maximum penalty since they are the prime means by which an individual establishes his/her identity in the United States.

(11) The "personal identification card" mentioned in this statute is normally issued by state departments of motor vehicles to provide an identification document for those persons who, for some reason, do not obtain a driver's license. A number of state jurisdictions issue these cards and in some states they are issued by the department of motor vehicles.

(12) A GID is normally made of paper or plastic; however, the term may also include a badge for a law enforcement officer if the badge has a unique number on it which is assigned to a particular officer for the purpose of identifying the officer.

(13) The statutory terms "international governmental" and "quasi-governmental organizations" are not defined but include such bodies as the United Nations, North Atlantic Treaty Organization, European Economic Community, Organization of American States, the World Bank and the Inter-American Development Bank.

(14) The statutory term "stolen" covers GIDs obtained by fraudulent means as well as theft.

(15) The statutory term "transfer" covers the acts of selling, pledging, distributing, giving, or loaning GIDs and does not require receiving a thing of value for the transfer.

(16) The statutory term "document-making implement" obviously includes plates, dies, stamps, molds and other tools used to make GIDs. The term also includes specialized paper, ink, or other materials used in the production of GIDs and any official seal, signature, or text in a distinctive typeface and layout that are part of a GID.

(17) With the exception of simple possession of a U.S. GID or an ID that appears to be a U.S. GID knowing it to be stolen or produced without lawful authority that is prohibited by Section 1028 (a)(6), possession of a GID is always coupled with the intent to either "use unlawfully," "transfer unlawfully" or "use to defraud the United States." Defrauding the United States is not limited to financial fraud and includes the misrepresentative use of a false GID to obstruct the functions of the U.S. Government, such as displaying a false driver's license as identification to a Special Agent of the

| FBI. |

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## | 253-2.3 FBI Jurisdiction

(1) Under the FRAID Statute, jurisdiction has been divided by the DOJ between the FBI, U.S. Secret Service (USSS) or the defrauded or investigating Federal agency, if said agency has civilian criminal investigative authority (CCIA) or a Statutory Inspector General (SIG). See number (13) below for the definitions of CCIA and SIG and the Federal agencies having a SIG. In essence, the above jurisdiction, except in cases of terrorism involvement (FBI jurisdiction), is dependent on whether the offense committed is the unlawful production, unlawful transfer or unlawful possession of an ID that was issued by an agency of the U.S. Government that either has or does not have CCIA or an SIG or was issued by a government other than that of the United States. Based on the above factors, the respective investigative jurisdictions as established by the DOJ are as follows:

(2) The FBI will have primary jurisdiction over any situation (unlawful production, transfer or possession) where a governmental ID (U.S. Government or a government other than the United States) is being used in terrorist activity.

(3) A Federal agency with CCIA will have jurisdiction over the production and/or transfer of any ID issued by that agency. It will also have jurisdiction over the possession of such document insofar as such jurisdiction is not assigned to another Federal investigative agency as set forth in number (1) above and numbers (6), (7) and (8) below.

(4) The USSS will have jurisdiction over the production and/or transfer of any ID issued by a Federal agency that does not have CCIA. The USSS will also have jurisdiction over the possession of such documents insofar as such jurisdiction is not assigned to another Federal investigative agency as set forth in number (1) above and numbers (6), (7) or (8) below. In addition, the USSS, in the course of investigating a matter properly within its investigative jurisdiction, will have ancillary jurisdiction over the production and/or transfer of an ID (other than an ID issued by or under the authority of such agency to its employees or contractors) issued by a Federal agency with CCIA, provided that the USSS notifies the issuing

agency of the production/transfer of such ID and such agency does not request the USSS to terminate its investigation pertaining to such document.

(5) The USSS will have jurisdiction over the production and/or transfer of a non-Federal Government ID. The USSS will also have jurisdiction over the possession of such documents insofar as such jurisdiction is not assigned to another Federal investigative agency as set forth in number (1) above and numbers (6), (7) and (8) below.

(6) Any Federal agency with CCIA or with an SIG will have jurisdiction over the possession of any governmental ID which is being used to defraud that agency in its operations, functions or programs. Such agency must notify the issuing agency of the document's misuse.

(7) The FBI will have jurisdiction over the possession of any governmental ID which is being used to defraud the operations, functions or programs of a Federal agency which does not have CCIA or an SIG.

(8) Any Federal agency with CCIA or with an SIG will have ancillary jurisdiction over possession of any governmental ID that relates to a matter properly within the investigative responsibility of such agency. Said agency must notify the issuing agency of the document's misuse and, in the case of a non-Federal ID, the agency must also notify the USSS of the document's misuse.

(9) In order to support the above jurisdiction granted the USSS under this Act pertaining to the FRAID Statute, the Powers, Authorities and Duties of the USSS Statute, Title 18, USC, Section 3056, was amended under subsection (b)(3), giving the USSS authority to detect and arrest any person who violates any laws of the United States relating to false identification documents or devices; except said authority shall be exercised subject to the agreement of the Attorney General and the Secretary of the Treasury and shall not affect the authority of any other Federal law enforcement agency with respect to those laws.

(10) Based on the above-mentioned amendment to Title 18, USC, Section 3056, on 10/10/85 the Attorney General and the Secretary of the Treasury entered in a written agreement regarding the above statutory authority granted the USSS.

(11) It should be noted that when the DOJ divided the

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above jurisdiction under the FRAID Statute between the FBI, USSS or the defrauded or investigating Federal agency, if said agency has CCIA or an SIG, it advised that it would be permissible for Federal agencies with jurisdiction to enter into a memorandum of understanding (MOU) to further clarify their respective jurisdictions between themselves.

(12) In August, 1985, the Directors of the FBI and the USSS, the Attorney General and the Secretary of the Treasury entered into an MOU regarding the FBI's and USSS' respective jurisdictions under several criminal statutes, including the FRAID Statute. In regard to the FRAID Statute, the FBI and USSS have agreed that investigative jurisdiction shall be as specified in the above-mentioned DOJ guidelines. See Bureau airtel to All SACs and All Legats dated 9/18/85, entitled "Memorandum of Understanding Between the FBI And USSS Pursuant To The Comprehensive Crime Control Act Of 1984," for complete details and an enclosed copy of the executed MOU.

(13) The above-mentioned SIG is an agency official authorized by Federal statute to conduct audits and investigations of a civil or criminal nature relating to the programs and operations of such agency. There are 17 SIGs who are officials of the Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, Interior, Labor, State and Transportation, the Agency for International Development, Environmental Protection Agency, General Services Administration, National Aeronautics and Space Administration, and the Veterans Administration. The term CCIA means a civilian Federal agency that has a component which is empowered to investigate violations of Federal law by means of personnel authorized by Federal law to carry firearms, make arrests and execute warrants. This term also includes the Office of Security of the Department of State and the Office of the Inspector General of the Department of Health and Human Services.

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## 253-2.4 Comments and Clarification Regarding FBI Jurisdiction

(1) In an effort to further clarify the respective jurisdictions delegated by the DOJ to the FBI, USSS and Federal agencies with SIGs or CCIA, as set forth in Section 253-2.3, entitled "FBI Jurisdiction," the following points of clarification are set forth.

(2) Under Section 253-2.3(2) and 253-2.3(7), the DOJ has specifically designated jurisdiction to the FBI by utilizing this Bureau's title.

(3) Under Section 253-2.3(2) (terrorist activity), the FBI's jurisdiction is all inclusive since it covers all GIDs (U.S. and non-U.S.) and all related criminal activity, the unlawful production, transfer and possession of the GIDs.

(4) However, under Section 253-2.3(7), the FBI's jurisdiction is not all inclusive since it covers only the unlawful possession (not production and/or transfer) of any GID that is used to defraud a Federal agency which does not have an SIG or CCIA. If the defrauded Federal agency has an SIG or CCIA, jurisdiction lies with such agency. The reason that the DOJ guidelines do not cover the unlawful production and/or transfer of GIDs involving defrauding a Federal agency is that fraud can only be committed via possession.

(5) It should be noted that the FBI, while not specifically designated by its Bureau title in the DOJ guidelines, has additional jurisdiction under Sections 253-2.3(3), 253-2.3(6) and 253-2.3(8). In these sections, the DOJ has granted certain jurisdiction to "A Federal agency with civilian criminal investigative authority..." Since the FBI is one of the Federal agencies with CCIA, under Section 253-2.3(3), the FBI has jurisdiction over the unlawful production and/or transfer of any ID issued by the FBI. The FBI also has jurisdiction over the unlawful possession of an FBI ID as specified in said section. Under Section 253-2.3(6), the FBI has jurisdiction over the possession of any GID that is being used to defraud the FBI in its operations, functions, or programs, with the requirement that the FBI notify the issuing agency of the ID misuse. As set out in Section 253-2.3(8), the FBI has ancillary jurisdiction over the unlawful possession of any GID that relates to a matter properly within the investigative responsibility of the FBI. See Section 253-2.6, entitled "Investigative Policy Involving FRAID Cases Developed as a Spin-Off Violation," for complete details.

(6) Under Section 253-2.3(4), the USSS is designated by the DOJ as the agency with investigative jurisdiction. However, as set forth in said section, since the FBI has CCIA status, the FBI, and not the USSS, has jurisdiction over the unlawful production and/or transfer of GIDs issued by the FBI. In addition, the FBI, and not the USSS, has jurisdiction over the unlawful possession of FBI GIDs.

(7) Under Section 253-2.3(4), in regard to the DOJ position that the USSS, in the course of investigating a matter properly within its investigative jurisdiction (for example, counterfeiting) will have ancillary jurisdiction over the production and/or transfer of an ID (other than an ID issued by or under the authority of such agency to its own employees or contractors) issued by a Federal agency with CCIA (FBI), the following exceptions and FBI investigative policy shall be noted and followed. Under the above section, the USSS is granted ancillary jurisdiction provided it notifies the issuing agency (FBI) of the unlawful production/transfer of the FBI IDs and the FBI does not request the USSS to terminate its investigation pertaining to the FBI IDs. As a matter of policy, the FBI will request the USSS to terminate its investigation pertaining to the FBI IDs and will conduct that portion of the investigation itself. As a practical matter, since the USSS in the above example will continue the investigation of its counterfeiting violation, these separate investigations may be mutually coordinated by the FBI and USSS in an effort to reach the desired results of prosecution of the subject for both counterfeiting and FRAID.

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253-2.5 Contacting the USA's Office in FRAID Matters

(1) The FRAID Statute and the DOJ guidelines regarding investigative jurisdiction are complicated in both theory and application.

(2) In any fact situation where a possible FRAID violation and/or the FBI's jurisdiction is in doubt, the appropriate AUSA should be promptly contacted for a legal and/or prosecutive opinion.

(3) See Sections 253-2.6 and 253-2.7 regarding FBI investigative policy involving FRAID "spin-off" and "nonspin-off" cases for the required contacts with the USA's Office in these

| matters. |

EFFECTIVE: 06/06/86

| 253-2.6 Investigative Policy Involving FRAID Cases Developed as a  
"Spin-Off" Violation

(1) As a practical matter, a substantial percentage of FRAID violations will be uncovered or originate as a "spin-off" or ancillary violation during the course of another ongoing FBI investigation. The vast majority of "spin-off" cases uncovered will constitute unlawful possession rather than unlawful production or transfer violations. For example, an FBI bank robbery fugitive, who, when arrested by the FBI, is determined to be in the unlawful possession of five or more GIDs. See Section 253-2.2(4), entitled "Comments and Clarifications Regarding the FRAID Statute," for complete details regarding the various types of possession violations and the corresponding number of GIDs needed in the subject's possession.

(2) In the above "spin-off" example, the FBI has ancillary jurisdiction over the unlawful possession violation based on the DOJ jurisdiction guidelines as set forth in Section 253-2.3(8), entitled "FBI Jurisdiction," and should conduct the appropriate FRAID investigation with the required agency notification.

(3) It should be noted that FBI ancillary jurisdiction in "spin-off" cases does not apply to the unlawful production or transfer of GIDs unless the document is an FBI ID or an ID issued by an agency of the DOJ other than the U.S. Marshals Service (USMS), Drug Enforcement Administration (DEA), or Immigration and Naturalization Service (INS), since they are DOJ agencies with CCIA. "Spin-Off" cases involving the unlawful production or transfer of FBI IDs or IDs issued by agencies of the DOJ, other than the USMS, DEA, and INS, should be investigated by the FBI. All other "spin-off" unlawful production or transfer violations should be referred as follows. Cases involving non-Federal GIDs or Federal GIDs issued by a Federal agency without CCIA should be referred to the USSS for investigation. Cases involving GIDs issued by a Federal agency having CCIA should be referred to said Federal agency for investigation.

(4) In those instances where the FBI has jurisdiction



over the "spin-off" FRAID violation, in order to ensure the proper collection, retrieval and reporting of Resource Management Information Systems (RMIS) data consisting of the Monthly Administrative Report (FD-29 and FD-29a), Time Utilization Recordkeeping (TURK) System and the Statistical Accomplishment Report (FD-515), a new 253 classification FRAID case should be opened and all subsequent investigation and prosecution should be reported under the FRAID case rather than the prior case classification and character that developed the FRAID violation.

(5) In those instances where the FBI does not have ancillary jurisdiction over the "spin-off" FRAID violation, the following referral and notification policy should be followed.

(a) Violations involving USSS jurisdiction should be referred to the nearest local office of the USSS for investigation. The USA's Office handling the prosecution of the subject in the original FBI case that developed the FRAID violation should be advised of the USSS referral in order to ensure coordination of prosecuting of the subject for both violations.

(b) Violations involving Federal agencies with CCIA jurisdiction should be referred to that agency's nearest local office. The above-mentioned USA's Office should be notified for the above reason.

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253-2.7 Investigative Policy Involving "Nonspin-Off" FRAID Violations

(1) A "nonspin-off" FRAID violation is one that is reported or referred to the FBI by any source as opposed to a FRAID violation uncovered by the FBI during the course of another FBI investigation ("spin-off").

(2) As noted in Section 253-2.3, entitled "FBI Jurisdiction," the USSS, 17 other Federal agencies with SIGs and numerous other Federal agencies with CCIA also have FRAID jurisdiction under the DOJ jurisdictional guidelines.

(3) As permitted under DOJ guidelines, the FBI and the USSS, on a headquarters level, have entered into a status quo MOU regarding their respective DOJ-granted investigative jurisdictions.

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However, FBIHQ, because of the numerous agencies involved, has not entered into MOUs on a headquarters level to further mutually define our respective jurisdictions with the above-mentioned other Federal agencies having FRAID jurisdiction.

(4) As a consequence, it shall be permissible for an FBI Office to enter into a local blanket or case-by-case mutual agreement with another Federal agency in your territory with an SIG or CCIA, other than the USSS, whereby your office will investigate solely or jointly with said Federal agency a FRAID violation not within the FBI's DOJ-granted jurisdiction, if conducting said investigation would be in the best interests of the Federal Government and would be beneficial to the FBI. Examples of such a situation are where the FRAID subject is currently under investigation by the FBI for another FBI violation or is in FBI fugitive status. If the other Federal agency and/or the USA's Office is not agreeable to the FBI investigation, FRAID investigation in these situations should not be instituted.

(5) If investigation is instituted in these mutual agreement situations, any auxiliary offices should be so advised and an agreement statement should be included in the "Prosecutive Status" section of any prosecutive report prepared.

(6) In the absence of a local mutual agreement between your office and the Federal agencies within your territory with SIGs or CCIA, the FBI's investigative policy involving "nonspin-off" FRAID violations will be in strict compliance with the existing DOJ investigative guidelines. FRAID complaints received that do not fall within the FBI's jurisdiction under the DOJ guidelines or a local mutual agreement with the involved Federal agency should be promptly referred to said Federal agency. Said referrals should be documented in an appropriate administrative control file as a matter of record.

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| 253-2.8 Liaison With the USSS and Other Federal Agencies

(1) Since investigative jurisdiction under the FRAID Statute is divided between numerous Federal agencies and the DOJ jurisdictional guidelines require certain notification or referrals to be made by the FBI to the other agencies involved, each FBI Office should establish appropriate local liaison channels with the USSS and Federal agencies with SIGs or CCIA within its field territory.

(2) This liaison should ensure that FRAID matters within the FBI's jurisdiction are promptly referred to your office by the USSS and the above-mentioned Federal agencies.

(3) This liaison should develop proper dissemination channels to the Federal agencies having jurisdiction in FRAID matters received or developed by your office.

(4) As set forth in Sections 253-2.6 and 253-2.7, pertaining to FBI investigative policy in "spin-off" and "nonspin-off" FRAID matters, this liaison should also be directed toward facilitating the FBI's investigation of "spin-off" FRAID matters, and the investigation and development of local blanket or case-by-case mutual agreements with Federal agencies, other than the USSS, in "nonspin-off" FRAID matters.

EFFECTIVE: 06/06/86

| 253-2.9 Character - Fraud and Related Activity in Connection With Identification Documents (FRAID)

EFFECTIVE: 06/06/86

| 253-2.10 Case Title

(1) In addition to the subject's name and aliases, the case title should contain the criminal act or acts involved (unlawful production, transfer or possession) and the Government agency or agencies represented by the GID or GIDs utilized by the subject.

(2) Example:

JOSEPH SMITH, aka

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JOHN WILLIAMS  
UNLAWFUL PRODUCTION AND POSSESSION OF FBI  
IDENTIFICATION DOCUMENTS,  
FRAID  
OO: CLEVELAND

(3) The above example covers a situation where a bank robbery subject is arrested by our Cleveland Office and, when searched, is found to have several IDs in his possession in the name of John Williams identifying him as an employee of the FBI. When interviewed, he admits having produced the above IDs at his residence and a search warrant executed at his residence results in the recovery of the document-making implements.

EFFECTIVE: 06/06/86

253-2.11 Classification, Subclassifications, and Program Designations (See MAOP, Part II, 3-1.1, 3-1.2.)

- (1) FRAID matters are assigned a 253 classification.
- (2) FRAID matters involving terrorist fugitives and/or terrorist involvement have been assigned a 253A subclassification and are assigned to the Domestic Terrorism Program.
- (3) FRAID matters involving fugitives have been assigned a 253B subclassification and are assigned to the Fugitive Subprogram.
- (4) All other FRAID matters have been assigned a 253C subclassification and are assigned to the Government Reservation Crimes Subprogram.
- (5) Deleted

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| 253-2.12 Extraterritorial Jurisdiction

| There is extraterritorial jurisdiction over offenses involving U.S. GIDs under the generally recognized "protective principal" of international law. See Section 253-2.13(3), entitled "Venue," for prosecutive venue involving extraterritorial violations. |

EFFECTIVE: 06/06/86

| 253-2.13 Venue

| (1) Venue lies in whatever judicial district the prohibited act of unlawful production, transfer or possession was performed.

| (2) Violations beginning in one district and completed in another, or committed in more than one district, may be tried in any district in which the offense was begun, continued or completed.

| (3) The venue for extraterritorial offenses involving U.S. identification documents outside of the United States shall be governed by Title 18, USC, Section 3238, entitled "Offenses Not Committed In Any District." |

EFFECTIVE: 06/06/86

| 253-2.14 Office of Origin (OO)

| The OO shall be the office in whose territory the unlawful production, transfer or possession of the GIDs occurred. |

EFFECTIVE: 06/06/86

| 253-2.15 Copies of Prosecutive Reports to FBIHQ

Submit one copy for FBIHQ use plus one copy for dissemination purposes on a headquarters level for each U.S. Government agency involved as either an issuing or defrauded agency. Each of the above dissemination copies should be appropriately identified to assist FBIHQ in the desired dissemination.

EFFECTIVE: 06/06/86

| 253-3 MAILING PRIVATE IDENTIFICATION DOCUMENTS WITHOUT A  
DISCLAIMER (PIDWD)

EFFECTIVE: 06/06/86

| 253-3.1 Statute and Penalty

The PIDWD Statute, Title 18, USC, Section 1738, reads as follows:

"(a) Whoever, being in the business of furnishing identification documents for valuable consideration, and in the furtherance of that business, uses the mails for the mailing, carriage in the mails, or delivery of, or causes to be transported in interstate or foreign commerce, any identification document-

"(1) which bears a birth date or age purported to be that of the person named in such identification document; and

"(2) knowing that such document fails to carry diagonally printed clearly and indelibly on both the front and back "NOT A GOVERNMENT DOCUMENT" in capital letters in not less than twelve point type; shall be fined not more than \$1,000, imprisoned not more than one year, or both.

"(b) For purposes of this section the term 'identification document' means a document which is of a type intended or commonly accepted for the purpose of identification of individuals and which is not issued by or under the authority of a government."

EFFECTIVE: 06/06/86

253-3.2 Comments and Clarification Regarding the PIDWD Statute

(1) This statute covers only private identification documents (PIDs) issued by a private entity as opposed to GIDs issued by a Government agency which are covered under the FRAID Statute. However, when a private entity issues IDs that appear to be "governmental," the application of the FRAID Statute should be considered, since Congress clearly intended to include apparent GIDs under the FRAID Statute.

(2) This statute does not apply to PIDs sold and picked up at walk-in photographic studios since the studio does not utilize the U.S. mails or transport the PIDs in interstate or foreign commerce to cause delivery to the purchasers.

(3) Prosecution under this statute applies only to those entities which are in the business of producing and selling PIDs for money or other valuable consideration and does not apply to the individuals who purchase the PIDs.

(4) The required twelve-point type size disclaimer on the PID, "NOT A GOVERNMENT DOCUMENT," is equal to approximately one-sixth of an inch high.

(5) The vast majority of entities producing and selling PIDs will be legitimate business establishments operating openly and utilizing advertising in newspapers and magazines as a means of attracting customers. This type of business establishment will not normally manufacture and sell counterfeit GIDs, which are covered under the FRAID Statute, since it is a flagrant and obvious illegal act. It should be noted, however, that the consumer demand for PIDs is for IDs that appear to have "official status"; therefore, the private entity supplier will attempt to produce and sell a PID that may appear to be some type of GID in order to meet the consumer demand. This intent is the basis for the required statutory disclaimer.

(6) In certain instances, an individual who is clandestinely and illegally manufacturing and transferring GIDs may also manufacture and provide PIDs to the criminal element via the U.S. mails or by other means involving interstate or foreign commerce. Since manufacturing and providing PIDs is not illegal per

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se, if the subject fails to include the required PIDWD Statute disclaimer, "NOT A GOVERNMENT DOCUMENT," on the PIDs, he/she is in violation of both the FRAID and PIDWD Statutes.

EFFECTIVE: 06/06/86

253-3.3 FBI Jurisdiction

(1) The PIDWD Statute does not designate investigative jurisdiction to a specific Federal agency; however, the DOJ has ruled that such jurisdiction will be divided between the U.S. Postal Service (USPS) and the FBI.

(2) The USPS will have investigative jurisdiction when the PIDs are transported through the U.S. mails.

(3) The FBI will have investigative jurisdiction if some means other than the U.S. mail, such as Federal Express, United Parcel Service, or a delivery service, are used by the maker to transport the PIDs in interstate or foreign commerce.

EFFECTIVE: 06/06/86

253-3.4 Investigative Procedures and Prosecutive Policy

(1) In essence, the intent of Congress in passing the PIDWD Statute was to allow the Federal Government to assist local authorities regarding PIDs utilized by underage individuals as identification for drinking purposes and who, being of lawful driving age, subsequently drive under the influence of alcohol.

(2) The DOJ has advised the U.S. Attorneys (USAs) that this statute should be viewed primarily as a preventive or compliance-type statute in order to compel providers of PIDs to include the required disclaimer, "NOT A GOVERNMENT DOCUMENT," on the PIDs or face the possibility of Federal prosecution.

(3) The DOJ has advised the USAs that a subject who habitually violates or continues to violate this statute should be vigorously prosecuted.

(4) In regard to first offenders, the DOJ has advised

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FBIHQ that prosecution will be discretionary in nature among the USAs. As a practical matter, since this statute carries a misdemeanor penalty and is viewed by the DOJ as a preventive or compliance-type statute, it is anticipated that certain USAs will decline prosecution if the first offender voluntarily agrees to comply henceforth with the required statutory disclaimer statement on PIDs produced and sold.

(5) In order to determine the prosecutive policy regarding both the habitual and first offender violators, each SAC should ensure that contact is made with their respective USA's Office. Said prosecutive policy should be documented in the appropriate administrative control file for future reference.

(6) Once the USA's prosecutive policy is determined, each office should establish compatible investigative procedures.

EFFECTIVE: 06/06/86

253-3.5 Liaison and Coordination of Investigation With the USPS

(1) PIDWD complaints received alleging the use of the U.S. mails only should be referred to the nearest office of the Postal Inspector, USPS, for investigation. The complainant should be advised of the USPS jurisdiction and furnished its location. In addition, the above Postal Inspector should be notified of the complainant's identity and location in order that he/she may initiate contact with the complainant. These referrals should be made an appropriate matter of record by your office.

(2) PIDWD complaints received alleging both the use of the U.S. mails and some other means to transport the PIDs in interstate or foreign commerce should be coordinated with the nearest local office of the Postal Inspector, USPS, for investigative and prosecutive purposes.

(3) PIDWD complaints received alleging only means other than the U.S. mails to transport the PIDs in interstate or foreign commerce should be investigated by your office. In order to determine if the subject is a repeat offender, contact should be promptly made with the nearest local office of the Postal Inspector, USPS, to determine if it has conducted a previous PIDWD investigation or if it is conducting a current PIDWD investigation involving the subject.

(4) Appropriate liaison should be established with the local Postal Inspector, USPS, to ensure that PIDWD complaints received by it involving FBI jurisdiction are promptly referred to your office.

EFFECTIVE: 06/06/86

253-3.6 Character - Mailing Private Identification Documents Without a Disclaimer (PIDWD)

EFFECTIVE: 06/06/86

253-3.7 Case Title

(1) In addition to the subject's name and aliases, the case title, if appropriate, should contain the name of the company and its address at the subject is doing business in connection with the PIDs.

(2) EXAMPLE:

JOHN SMITH, aka  
JOHN SMITHSON, DBA  
SMITHSON'S IDENTIFICATION SERVICE, 100 KING STREET,  
CLEVELAND, OHIO  
PIDWD  
OO: CLEVELAND

EFFECTIVE: 06/06/86

| 253-3.8 Classification, Subclassification and Program  
Designation | (See MAOP, Part II, 3-1.1, 3-1.2.) |

| (1) All PIDWD matters are assigned a 253 classification  
and a 253D subclassification.

| (2) The 253D subclassification is assigned to the  
Fugitive Subprogram.

EFFECTIVE: 10/18/95

| 253-3.9 Venue

| Venue lies in any judicial district where the mailing or  
transportation in interstate or foreign commerce of the PIDs was  
initiated, continued or concluded. |

EFFECTIVE: 06/06/86

| 253-3.10 Office of Origin (OO)

| The OO shall be the office in which the subject is located  
and doing business involving the PIDs. |

EFFECTIVE: 06/06/86

| 253-3.11 Copies of Prosecutive Reports to FBIHQ

| Submit one copy to FBIHQ. |

EFFECTIVE: 06/06/86

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SECTION 254. DESTRUCTION OF ENERGY FACILITIES (DEF);  
THE HAZARDOUS LIQUID PIPELINE SAFETY ACT OF 1979  
(HLPISA)

254-1 DESTRUCTION OF ENERGY FACILITIES - STATUTES

EFFECTIVE: 05/11/87

| 254-1.1 Title 18, U.S. Code, Section|1366 (in part)

| (1) Section|1366(a)|

"Whoever knowingly and willfully damages the property of an energy facility in an amount that exceeds \$100,000, or damages the property of an energy facility in any amount and causes a significant interruption or impairment of a function of an energy facility,...."

| (2) Section|1366(b)|

"Whoever knowingly and willfully damages the property of an energy facility in any amount that in fact exceeds \$5,000...."

| (3) Section|1366(c)|

"... 'Energy facility' means a facility that is involved in the production, storage, transmission, or distribution of electricity, fuel, or another form or source of energy, or research, development, or demonstration facilities relating thereto, regardless of whether such facility is still under construction or is otherwise not functioning, except a facility subject to the jurisdiction, administration, or in the custody of the Nuclear Regulatory Commission or interstate transmission facilities, as defined in 49 USC 1671." (Pipeline facilities used in the transportation of natural gas.)

EFFECTIVE: 05/11/87

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254-2 ELEMENTS

(1) Intent

Both subsection (a) and (b) require that the destructive act be "knowing" and "willful." It is the Department of Justice's (DOJ) view that the requirements of knowledge and willfulness apply only to the destructive act, and that the perpetrator need not also know that the property being damaged belongs to an energy facility.

(2) Significant Interruption or Impairment

No definition is provided, either in the statute or its legislative history, for the term "significant interruption or impairment of a function of an energy facility." Congress obviously intended, however, as evidenced by the severity of the penalty, that the term only include major disruptions of service to consumers in an extended area for several hours.

EFFECTIVE: 05/11/87

254-3 POLICY

(1) Section 1366 (in part) provides Federal jurisdiction over crimes involving serious damage to energy facilities not subject to the jurisdiction of the Nuclear Regulatory Commission, but the new jurisdiction is concurrent with existing state jurisdiction. The section was added to Federal law because, although damage to utility facilities has historically been a matter of state and local concern, acts of violence and sabotage have strained state and local law enforcement capacities. The intent of Congress is to provide Federal resources to assist in the investigation and prosecution of particularly serious crimes against energy facilities.

(2) Since Federal action under Section 1366 is intended not as a substitute for state and local law enforcement, but rather as a supplement to state and local efforts, when those efforts are hampered due to the extent of the damage to the facility, Federal involvement should be on a selective case-by-case basis. In this regard, all offices are encouraged to develop through their respective United States Attorney's Office, prosecutive guidelines with state and local authorities through their law enforcement coordinating committees.

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(3) Since the DEF Statute is to be utilized on a very selective basis, all personnel should be aware of other Federal statutes that should be considered in conjunction with damage to the property of an energy facility (nonnuclear).

EFFECTIVE: 05/11/87

254-3.1 Hobbs Act/Extortion

(1) If damage to an energy facility is accompanied by an extortionate demand, it may be a violation of Hobbs Act - Commercial Institutions (HA-CI), as well as the extortion statute. Any damage to a facility accompanied by an extortionate demand conveyed by mail or by interstate communication would be a violation of both extortion and HA-CI statutes. If an extortionate demand is conveyed by interstate telephone call, note, or in person, it is an HA-CI violation and not a violation of the Federal extortion statute. (For further information see Part I, Section 192, of this manual.)

(2) In addition to the foregoing, there may be instances, such as a strike involving an energy facility, that Destruction of an Energy Facility may fall within Hobbs Act - Labor Related matters. (For further information see Part I, Section 195, of this manual.)

EFFECTIVE: 05/11/87

254-3.2 Explosives/Bomb Threats

A bomb threat directed against an energy facility would be a violation of Title 18, USC, Section 844 (e). Moreover, the use of explosives or incendiary devices to damage or attempt to damage any property used in an activity affecting interstate commerce is a violation of Title 18, USC, Section 844 (i). (The Bureau of Alcohol, Tobacco and Firearms, Department of Treasury, has investigative jurisdiction.) (For additional information see Part I, Section 174, of this manual.)

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254-3.3 Acts of Terrorism

As in other substantive violations, acts against energy facilities that are perpetrated by terrorist or revolutionary groups or individuals will be handled as Domestic/International Terrorism matters. Determinations as to substantive versus terrorism category will be made as in other Bureau investigative matters, i.e., on a case-by-case evaluation.

EFFECTIVE: 05/11/87

254-4 NOTIFICATION TO FBIHQ

(1) FBIHQ is to be notified in each instance when an investigation is initiated within the classification. In cases involving loss of life, danger to public safety, or widespread public interest, immediately advise FBIHQ by telephone or teletype depending on the exigency of the circumstances. In addition, each initial communication should set forth the name of the local or state entity requesting FBI assistance and the reasons therefor, as well as the name and district of the United States Attorney's Office authorizing the investigation.

(2) In order that the FBIHQ substantive case file may reflect the final outcome of each violation, an LHM (original and one) should be submitted by the office of origin upon the completion of each investigation.

EFFECTIVE: 05/11/87

254-5 VENUE

Venue shall be in the district in which the offense was committed.

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254-6 PENALTIES

(1) Destruction of Energy Facilities, Title 18,  
USC, Section 1366(a).

A fine of up to \$50,000 and imprisonment for up to ten  
years.

(2) Destruction of Energy Facilities, Title 18,  
USC, Section 1366(b).

A fine of up to \$25,000 and imprisonment for up to five  
years.

EFFECTIVE: 05/11/87

254-7 CHARACTER - DESTRUCTION OF ENERGY FACILITIES

EFFECTIVE: 05/11/87

254-8 THE HAZARDOUS LIQUID PIPELINE SAFETY ACT OF 1979 - STATUTE

Title 49, USC, Section 2007 (c) (2)

"Any person who willfully and knowingly injures or  
destroys or attempts to injure or destroy any interstate pipeline  
facility shall, upon conviction, be subject, for each offense, to a  
fine of not more than \$25,000, imprisonment for a term not to exceed  
15 years, or both."

EFFECTIVE: 01/21/86

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254-8.1 Definitions

(1) "Person" means any individual, firm, joint venture, partnership, corporation, association, state, municipality, cooperative association, or joint stock association and includes any trustee, receiver, assignee, or personal representative thereof.

(2) "Hazardous liquid" means (a) petroleum or any petroleum product; and (b) any substance or material which is in liquid state (excluding liquefied natural gas) when transported by pipeline facilities which may pose an unreasonable risk of life or property.

(3) "Transportation of hazardous liquids" means the movement of hazardous liquids by pipeline, or their storage incidental to such movement, in or affecting interstate or foreign commerce; except that it shall not include any such movement through gathering lines in rural locations or on-shore production, refining, or manufacturing facilities or storage or in-plant piping systems associated with any such facilities.

(4) "Piping facilities" includes without limitation new and existing pipe, rights-of-way, and any equipment, facility, or building used or intended for use in the transportation of hazardous liquids.

(5) "Interstate pipeline facilities" means the pipeline facilities used in the transportation of hazardous liquids in an interstate or foreign commerce.

EFFECTIVE: 01/21/86

254-9 POLICY

(1) Based upon an agreement between the Departments of Justice and Transportation, investigative jurisdiction for Section 2007 (c) (2) of the Hazardous Liquid Pipeline Safety Act of 1979 is delegated to the FBI.

Jurisdiction regarding the other sections of the Act, including the regulatory provisions, is delegated to the Department of Transportation.

(2) The Department of Justice has advised that minor acts

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of vandalism should be investigated by local authorities. Upon receipt of a complaint, the FBI will apprise the USA in whose district the possible violation occurred of the circumstances of the incident. The USA shall determine whether a Federal investigation is warranted, or whether the matter should be deferred to local investigative authorities. FBIHQ must be advised by the most expeditious means of those matters in which FBI investigation is instituted.

(3) Liaison should be instituted with the local offices of the Department of Transportation in order to ensure concurrence regarding jurisdiction and to solicit the technical assistance of the Department of Transportation in conducting the investigations.

EFFECTIVE: 01/21/86

| 254-10 VENUE

| In the district in which the damage or destruction occurred. |

EFFECTIVE: 01/21/86

| 254-11 CHARACTER - THE HAZARDOUS LIQUID PIPELINE SAFETY ACT OF 1979 (HLPSA) |

EFFECTIVE: 01/21/86

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SECTION 255. COUNTERFEITING OF STATE AND CORPORATE SECURITIES  
| (SEE MIOG, PART I, SECTION 196.) |

255-1 BACKGROUND

| The 255 classification was eliminated and reclassified in  
Fiscal Year 1996 as 196C (Securities/Commodities Fraud). See MIOG,  
Part I, Section 196. |

EFFECTIVE: 07/31/97

| 255-2 | DELETED |

EFFECTIVE: 07/31/97

| 255-2.1 | Deleted |

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| 255-2.2 | Deleted |

EFFECTIVE: 07/31/97

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| 255-3 | DELETED |

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| 255-4 | DELETED |

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| 255-4.1 | Deleted |

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| 255-5 | DELETED |

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| 255-6 | DELETED |

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EFFECTIVE: 07/31/97

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| 255-10 | DELETED |

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| 255-11 | DELETED |

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SECTION 256. |HOSTAGE TAKING|

| 256-1 |HOSTAGE TAKING (HT)|

(1) The Comprehensive Crime Control Act of 1984, Public Law 98-473, October 12, 1984, created Section 1203 in Title 18, United States Code (USC), entitled, "Hostage Taking," which became effective January 6, 1985.

(2) This section makes it a Federal offense to take hostages in an attempt to compel a third person or governmental organization to do or abstain from doing any act. It covers acts in the United States as well as those abroad, providing that acts abroad involve victims or perpetrators who are United States nationals, or the perpetrator is found in the United States, or the governmental organization sought to be compelled is the United States Government. Acts occurring inside the United States must involve an offender or victim who is not a national of the United States, an alleged offender found outside the United States or an attempt to compel the United States Government.

EFFECTIVE: 08/22/89

256-2 BACKGROUND

The Hostage Taking Statute is intended to implement fully the International Convention Against the Taking of Hostages. Under the Convention, hostage taking is the seizing or detaining of an individual coupled with a threat to kill, injure, or continue to detain that individual in order to compel a third person or a governmental organization to do, or abstain from doing, any act as an explicit or implicit condition for the release of the detained individual.

EFFECTIVE: 08/22/89

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256-3 STATUTE, PENALTY AND DEFINITIONS

(1) Title 18, USC, Section 1203 reads as follows:

"(a) Except as provided in subsection (b) of this section, whoever, whether inside or outside the United States, seizes or detains and threatens to kill, to injure, or to continue to detain another person in order to compel a third person or a governmental organization to do or abstain from doing any act as an explicit or implicit condition for the release of the person detained, or attempts to do so, shall be punished by imprisonment for any term of years or for life.

"(b) (1) It is not an offense under this section if the conduct required for the offense occurred outside the United States unless -

"(A) the offender or the person seized or detained is a national of the United States;

"(B) the offender is found in the United States; or

"(C) the governmental organization sought to be compelled is the Government of the United States.

"(2) It is not an offense under this section if the conduct required for the offense occurred inside the United States, each alleged offender and each person seized or detained are nationals of the United States, and each alleged offender is found in the United States, unless the governmental organization sought to be compelled is the Government of the United States.

"(c) As used in this section, the term 'national of the United States' has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))." (That statute defines the term to include citizens of the United States and other persons who owe permanent allegiance to the United States.)

(2) As used in this section, the statutory phrase "third person or a governmental organization" includes everything covered by the term "third party" used in the Convention. Article 1 of the Convention defines a third party as a state (nation), an international intergovernmental organization, a national or juridical (by law) person, or a group of persons.

(3) In addition, the Department of Justice has advised

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that the terms should be read in light of existing law. For example, Title 18, USC, 831(f)(2) states that the term "government organization" covers national, state and local governments as well as international governmental organizations. Title 1, USC, Section 1, indicates that the term "person" covers "corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals."

EFFECTIVE: 08/22/89

256-4 JURISDICTIONAL CONDITIONS - TITLE 18, USC, SECTION 1203  
(b)

(1) Subsection 1203(b) sets forth the statutory limits on Federal jurisdiction over the crime of hostage taking.

(2) Under international law, there are five general principles of criminal jurisdiction upon which states have relied for extraterritorial assertions. These five principles are: (1) the territorial principle (jurisdiction based on the location of the offense); (2) the nationality principle (jurisdiction based on the nationality of the offender); (3) the protective principle (jurisdiction based on protection of national interests); (4) the passive personality principle (jurisdiction based on the nationality of the victim); and (5) the universality principle (jurisdiction based upon custody of an offender who has committed a crime of such a nature as to be universally condemned). All of these principles were considered to some extent by the Congress in enacting Section 1203.

EFFECTIVE: 08/22/89

256-4.1 Offenses Committed Outside the United States

If the hostage taking occurs outside the territorial jurisdiction of the United States, subsection 1203(b)(1) provides for Federal jurisdiction in three circumstances:

(1) If the perpetrator or one of the hostage victims is a national of the United States;

(2) If the perpetrator, regardless of his/her nationality or the nationality of the hostage victim, is subsequently found in the

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United States; or

(3) If the United States Government is the governmental organization which the hostage taker is attempting to compel to take certain action.

Under the Convention, the United States is obligated to make hostage taking a Federal crime in all of these situations, except when the victim is an American, in which case the Convention "permits," rather than requires, coverage. The Congress chose to provide such protection for Americans by utilizing the permissive authority of the Convention and the "passive personality" (i.e., nationality of the victim) basis for extraterritorial jurisdiction under international law.

EFFECTIVE: 08/22/89

#### 256-4.2 Offenses Committed Within the United States

Article 13 of the Convention states that the Convention ". . . shall not apply where the offense is committed within a single state (i.e., country), the hostage and the alleged offender are nationals of that state, and the alleged offender is found in the territory of the state." Subsection 1203(b)(2) reflects the treaty limitations contained in Article 13 by stating that it is not an offense if the crime occurred in the United States, all participants and victims are United States nationals, and all alleged offenders are found in the United States, unless the hostage taking is to compel action by the United States Government. In practical terms, this means that an American robber who seizes an American cashier at a convenience store in a city in the United States, and who makes a demand upon a third party or a governmental organization other than the United States Government, and who is caught in the United States, cannot be prosecuted federally under Title 18, USC, Section 1203(a).

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256-5 INVESTIGATIVE OBJECTIVES

(1) The Bureau's primary objective is to effect the safe return of the victim who has been taken hostage.

(2) At the same time, effective investigative activity must commence in order to identify and eventually apprehend and prosecute the subject(s) involved.

EFFECTIVE: 08/22/89

256-6 REPORTING PROCEDURES

EFFECTIVE: 08/22/89

256-6.1 Initial Notifications

(1) Immediately advise FBIHQ, Counterterrorism Section or Violent Crimes Unit, as appropriate, by telephone, followed by teletype, of every preliminary inquiry and investigation instituted under the Federal Hostage Taking Statute.

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

EFFECTIVE: 08/22/89

256-6.2 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:

In all cases, including those cases in which a USA declination or deferral was rendered and those cases determined not to be a violation of the Federal Hostage Taking Statute, a closing communication should be directed to FBIHQ clearly setting forth the basis for closing. Legal Attaches should report to FBIHQ information regarding prosecutions or denials in foreign countries.

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EFFECTIVE: 01/18/91

256-7 LIAISON AND COORDINATING RESPONSIBILITIES

(1) It is incumbent upon each Legal Attache and field division to ensure that local, and, where appropriate, international law enforcement authorities fully understand the Bureau's jurisdiction and national policy, as viewed by the Department of Justice, for instituting a preliminary inquiry and an investigation under the Federal Hostage Taking Statute.

(2) The national policy states that most hostage-taking matters that arise within the United States can best be handled by state and local authorities. However, there may at times be situations in which Federal involvement is appropriate (e.g., the hostage is a Federal official or an international guest, the demands are made of the United States, or the perpetrators are international terrorists).

EFFECTIVE: 01/18/91

256-7.1 Legat Responsibilities

(1) Legal Attaches must establish close liaison with affected foreign law enforcement agencies, as well as appropriate U.S. Embassy personnel, to ensure that the FBI is apprised of any terrorist incidents which may come within the FBI's investigative jurisdiction pursuant to the Hostage Taking Statute.

(2) Upon receipt of information that a United States citizen(s) has been a victim of a hostage-taking situation outside United States boundaries and this investigation could fall within the jurisdiction of the FBI under the Hostage Taking Statute (Title 18, USC, Section 1203) the Legal Attache should contact the foreign law enforcement agency handling the investigation and obtain all facts pertinent to the hostage taking after coordinating with the appropriate Embassy personnel. Particular attention should be paid to whether any demands have been made of the United States Government or any United States corporation.

(3) The Legal Attache should immediately advise

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Counterterrorism Section, Criminal Investigative Division, FBIHQ  
and the office of origin of the hostage-taking situation. (See  
256-12.)

(4) The Legal Attache, in consultation with FBIHQ and the United States Department of State (USDS), will ascertain if the case is of such magnitude as to warrant the sending of Special Agent personnel from the office of origin to assist in conducting the investigation in concert with the appropriate foreign law enforcement agencies and whether the host country is in agreement and will allow such personnel in the country.

(5) In those cases where FBIHQ and USDS concur, the Legal Attache should provide the offer of FBI assistance, both investigative and technical, to the principal investigative law enforcement agency.

(6) The Legal Attache should attempt to determine at the onset whether the victim is employed by a United States corporation and whether the corporation intends to negotiate with the kidnapers in order to pay ransom, should such a demand be made. If a United States corporation is involved regarding a demand for ransom for the release of a corporate employee, Legal Attache should attempt to determine if kidnaping insurance is applicable and whether a third party will be hired as an intermediary for negotiation relative to the ransom payment. The Legal Attache will advise Counterterrorism Section, Criminal Investigative Division, FBIHQ, of such circumstances as soon as possible.

(7) The Legal Attache is to ensure that immediately after the host government has given permission, steps are taken to ensure protection of the crime scene and that appropriate FBI personnel (i.e., FBI forensic team) are, to the extent possible, the first investigative group to have access to the crime scene before any other U.S. Government representatives. These procedures are necessary to avoid contamination of the crime scene by noninvestigative personnel.

(8) Because autopsy reports are such an integral part of any prosecution, in the event a U.S. citizen is killed, the Legal Attache is to initiate arrangements with appropriate USDS representatives for transportation of victims' bodies to the United States for an autopsy.

(9) The Legal Attache should ensure, to the degree possible, that when foreign investigations are conducted, copies of such investigations are made available to the FBI. In the event the host country does not wish to prosecute the perpetrators, the Legal

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Attache should, if possible, obtain any evidence available through the investigating foreign law enforcement agency or other authority. In the event foreign prosecution is conducted, Legal Attache should follow the prosecution and attempt to secure trial transcripts.

(10) The Legal Attache, in consultation with USDS, should obtain any objections to extradition to the United States, should the host government indicate an unwillingness to prosecute identified subjects. This development, should it occur, must be immediately reported to FBIHQ.

(11) The Legal Attache may request the assistance of the Regional Security Officer to conduct leads in exigent circumstances or as the Legal Attache deems necessary.

EFFECTIVE: 01/18/91

256-7.2 | Office of Origin | Responsibilities

(1) Upon receipt of information from the Legal Attache involving violations of aforementioned statute, the office of origin will immediately establish contact with the Counterterrorism Section, Criminal Investigative Division, FBIHQ.

(2) In cases where U.S. personnel have been murdered, the office of origin should obtain all background information regarding the victim and alert the appropriate FBI field office once an address is determined for the next of kin. (While the USDS has the responsibility of notifying the next of kin, a release for the autopsy must be obtained from the next of kin.) FBI field office, through contact with FBIHQ, is to ensure the next of kin has been notified by USDS of circumstances surrounding death before attempting to obtain such release. If the next of kin refuses to authorize autopsy, FBIHQ will be notified immediately. Field office is to exercise the utmost sensitivity in requesting an autopsy.

(3) The office of origin will furnish FBIHQ a summary of available facts on the incident as soon as possible to ensure appropriate coordination can be made by FBIHQ with other affected agencies.

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256-7.3 FBIHQ Responsibilities

(1) FBIHQ will maintain contact with appropriate personnel at CIA and USDS to determine whether the FBI support teams will be deployed.

(2) FBIHQ will ensure USDS is notified of FBI investigation and request that the appropriate U.S. Ambassador be advised of the FBI investigation and determine whether the host country is willing to permit an FBI investigative team in the country.

(3) FBIHQ will consider activating the Strategic Information Operations Center (SIOC) and advise all field offices and Legats by teletype of the opening and closing of SIOC.

(4) The Counterterrorism Section, FBIHQ, will obtain background information from the Legal Attache concerned, set the number of FBI personnel who will participate in the debriefing of hostages, coordinate the FBI Forensic Team responsibilities and ensure appropriate travel orders are issued.

(5) FBIHQ will maintain a list of language-proficient Special Agents/support personnel and will determine whether this terrorist event requires particular language skills, placing such personnel on standby for possible overseas travel. In addition, FBIHQ is to ensure that appropriate passports, visas, immunizations, etc., are ready so that deployment of such personnel can be done rapidly.

(6) In a case when property of a U.S. corporation is involved, FBIHQ will ensure, through appropriate FBI field offices, that the corporate owner of the property is personally notified of the incident relating to their property. Further, corporate officials will be advised that their cooperation in the investigation is expected.

(7) FBIHQ will contact Office of International Affairs, DOJ, in order to review the United States/country of incident extradition treaty.

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EFFECTIVE: 01/18/91

256-8 DISSEMINATION TO INTERNATIONAL, OTHER FEDERAL, STATE AND  
LOCAL AGENCIES

(1) Ensure that local United States Secret Service office is notified of all HT complaints to enable that agency to meet its protective responsibilities.

(2) The name of the Bureau employee who made the notification to United States Secret Service and the name of the person who was contacted, as well as the date, time and method of notification, should be set forth in the communication to FBIHQ.

(3) Where concurrent jurisdiction with other domestic or foreign agencies exists, immediate guidance regarding dissemination will be provided by FBIHQ when notification is received.

EFFECTIVE: 01/18/91

256-9 NEWS MEDIA INQUIRIES POLICY

(1) Violations of the Federal Hostage Taking Statute can be expected to generate intense public and media interest. The FBI's news media inquiries policy is in strict compliance with instructions issued by the U.S. Department of Justice (DOJ) concerning the release of information in criminal and civil matters. These instructions are contained in the MAOP, Part II, 5-1, entitled "Policy and Guidelines for Relations with News Media," and 5-2, entitled "Contacts with News Media."

(2) Utmost discretion should be exercised in releasing to the news media any information concerning a Hostage Taking investigation in order not to jeopardize the safety of the victim(s) or any eventual prosecution.

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256-10 ALPHA DESIGNATORS

Set forth are the alpha designators which are applicable to the 256 classification. The alpha designators are created to distinguish between the Domestic Counterterrorism and the International Counterterrorism Subprograms of the Counterterrorism Program and the Violent Crimes Subprogram of the Violent Crimes and Major Offenders Program.

256A - Hostage Taking by International Terrorists  
(United States or abroad)

256B - Hostage Taking by Domestic Terrorists

256C - Hostage Taking - Nonterrorism Related

EFFECTIVE: 01/18/91

256-11 REPORTING REQUIREMENTS

(1) Those hostage-taking situations which involve International or Domestic Terrorists will be coordinated by the appropriate unit in the Counterterrorism Section, FBIHQ.

(2) Those hostage-taking situations which do not involve terrorists but which otherwise fall within the parameters of Title 18, USC, Section 1203(b)(2) will be coordinated by the Violent Crimes Unit, Violent Crimes and Major Offenders Section, FBIHQ.

EFFECTIVE: 01/18/91

256-12 OFFICE OF ORIGIN

Office of origin (OO) will be divided among the Washington Metropolitan Field Office (WMFO), the Honolulu Office and the Miami Office for all extraterritorial hostage-taking investigations. WMFO will assume OO when the offense occurs in Europe, including Turkey, the Middle East, Africa or Canada. The Honolulu Office will assume OO when the offense occurs in Asia (excluding the Middle East) or Australia and Oceania. The Miami Office will assume OO when the offense occurs in North America (excluding Canada) or South America.

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EFFECTIVE: 01/18/91

||256-13| CHARACTER - HOSTAGE TAKING

EFFECTIVE: 01/18/91

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SECTION 257. TRADEMARK COUNTERFEITING ACT

||257-1 STATUTE

| Title 18, USC, Section 2320|

EFFECTIVE: 01/21/86

||257-2 ELEMENTS

| "(a) Whoever intentionally traffics or attempts to  
| traffic in goods or services and knowingly uses a counterfeit mark on  
| or in connection with such goods or services....

| "(b) Upon a determination by a preponderance of the  
| evidence that any articles in the possession of a defendant in a  
| prosecution under this section bear counterfeit marks, the United  
| States may obtain an order for the destruction of such articles."|

EFFECTIVE: 01/21/86

||257-3 DEFINITIONS

| "(1) the term 'counterfeit mark' means--

| "(A) a spurious mark -

| "(i) that is used in connection with trafficking in  
| goods or services;

| "(ii) that is identical with, or substantially  
| indistinguishable from, a mark registered for those goods or services  
| on the principal register in the United States Patent and Trademark  
| Office and in use, whether or not the defendant knew such mark was so  
| registered; and

| "(iii) the use of which is likely to cause confusion,  
| to cause mistake, or to deceive; or

"(B) a spurious designation that is identical with, or substantially indistinguishable from, a designation as to which remedies of the Lanham Act are made available by reason of Section 110 of the Olympic Charter Act; but such term does not include any mark or designation used in connection with goods or services of which the manufacturer or producer was, at the time of the manufacture or production in question authorized to use the mark or designation for the type of goods or services so manufactured or produced, by the holder of the right to use such mark or designation;

"(2) the term 'traffic' means transport, transfer, or otherwise dispose of, to another, as consideration for anything of value, or make or obtain control of with intent so to transport, transfer, or dispose of;

"(3) the term 'Lanham Act' means the Act entitled 'An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes', approved July 5, 1946 (15 U.S.C. 1051 et seq.); and

"(4) the term 'Olympic Charter Act' means the Act entitled 'An Act to incorporate the United States Olympic Association', approved September 21, 1950 (36 U.S.C. 371 et seq.)."

EFFECTIVE: 01/21/86

||257-4 JURISDICTION

The Federal Bureau of Investigation has investigative jurisdiction for any violation of this statute.

EFFECTIVE: 01/21/86

||257-5 POLICY|

EFFECTIVE: 01/21/86

| 257-5.1 Investigative Policy

Based on the legislative history and discussions with the Department of Justice, the FBI's primary investigative role will be in those cases wherein the extent of the criminal activity is sizable and/or widespread and/or where the product has the potential of deceiving the public. When cases not meeting these criteria are brought to the attention of the FBI, if prosecution is declined by the U.S. Attorney, it should be suggested that the matter be pursued by the legitimate owner of the trademark through civil means.

EFFECTIVE: 01/21/86

| 257-5.2 Prosecutive Policy

The Department of Justice policy regarding this statute includes the following:

"This provision is not intended to criminalize every trademark infringement for which remedies may exist under the Lanham Act. It is intended to deal only with those who would seek to 'palm off' counterfeits which a person of average intelligence could reasonably believe were made or produced by the registered trademark holder. Thus, the use of the same trademark name, for example, but in a manner and configuration which patently distinguished the allegedly infringing articles from those of the registered trademark holder so that a person would not reasonably be deceived, would be more appropriately dealt with by civil remedies under the Lanham Act.

"Appropriate factors to be considered in deciding whether to initiate a prosecution under this section include (a) the degree of injury to the trademark owner, in terms of both economic loss and reputation, (b) the scope of the criminal activity, (c) the potential for deception of the public, (d) the effectiveness of available civil remedies, and (e) the potential deterrent value of the prosecution. Defendants who persist in their activities despite prior resort to civil remedies may be particularly good candidates for prosecution, as may defendants who deal in counterfeit goods which pose a danger to the public's health or safety. It is preferable that prosecutions include culpable defendants from as far up the manufacturing and distribution chain as is feasible.

"In evaluating a prospective prosecution under 18 U.S.C., Section 2320, no single factor should be regarded as a prerequisite

to prosecution. All appropriate discretionary factors should be considered in light of the merits of the case as a whole."

EFFECTIVE: 01/21/86

257-6 INVESTIGATION

EFFECTIVE: 10/16/90

257-6.1 Investigation to Determine Trademark

(1) Office receiving complaint should promptly determine if the trademark is registered with the United States Patent and Trademark Office, and if so, the identity of the Trademark holder. This can be achieved through contact with an appropriate company representative or through the Washington Metropolitan Field Office.

(2) The office receiving the complaint should take appropriate steps to ensure the person utilizing the trademark does not, in fact, have authorization from the legal holder of the trademark to utilize it. For later prosecutive use, a formal letter to that effect should be obtained by the office conducting the investigation.

(3) A preliminary review of the facts should be conducted to determine if the magnitude of the criminal activity is sufficient to warrant an investigation or prosecution. Should such a review fail to substantiate that the violation falls within the investigative policy of the FBI, and the U.S. Attorney's Office declines prosecution, the office receiving the complaint should direct the complaint to the legal holder of the trademark.

(4) Should the review of the facts indicate the magnitude of the criminal activity warrants investigation, a preliminary criminal investigation should be conducted to verify the criminal allegation and identify the suspects and the scope of the criminal activity. The facts should then be discussed with an Assistant United States Attorney (AUSA), to determine prosecutive intent prior to extensive investigative efforts being undertaken.

(5) Consider obtaining search warrants for search of premises utilized by distributor, wholesaler, retailer or others and

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subsequent seizure of contraband located therein. In searching,

[REDACTED] If located, obtain through  
search warrant or consent to search.

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(6) If evidence collected indicates the counterfeit items have been imported into the United States, and the source of the items is known, that information should be disseminated to the U.S. Customs Service.

EFFECTIVE: 10/16/90

257-7 DESTRUCTION OF SEIZED ITEMS

This Statute provides under Section 2320(b) the provision that,

"Upon a determination by a preponderance of the evidence that any articles in the possession of a defendant in the prosecution under this section bear counterfeit marks, the United States may obtain an order for the destruction of such articles."

EFFECTIVE: 10/16/90

257-8 VENUE

Where offense is committed, begun or completed.

EFFECTIVE: 10/16/90

257-9 REPORTING REQUIREMENTS

No specific reporting requirements are being established, however, any investigation which is of a national interest or generates a great deal of local interest should be reported by appropriate communication (teletype or airtel) to the Economic Crimes Unit, White-Collar Crimes Section, FBIHQ. Any major developments or innovative investigative techniques should also be reported.

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EFFECTIVE: 11/20/90

257-10 CHARACTER - TRADEMARK COUNTERFEITING ACT (TCA)

EFFECTIVE: 11/20/90

257-11 CLASSIFICATION

For details concerning this topic, refer to the MAOP, Part II, 3-1.1, entitled "FBI Classification and Subdivided Classifications."

EFFECTIVE: 10/18/95

257-12 CASE TITLE

(1) In addition to the full name of subject(s) and all known aliases, or an unknown subject(s) designation, a TCA case title should include the type of items which bear the counterfeit trademark.

(2) Example:

UNSUB, aka  
John Brown;  
Sale of Counterfeit  
Motorola Televisions;  
TCA  
OO: LA

EFFECTIVE: 11/20/90

257-13 OFFICE OF ORIGIN

Office of origin will be established in the manner set forth in MAOP, Part II, Section 10-16.2.



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EFFECTIVE: 11/20/90

257-14 DISCLOSURE TO THE PRIVATE SECTOR

(1) The published routine uses of information maintained in the FBI central records system have been amended to authorize the disclosure of certain information, relative to a Trademark Counterfeiting investigation, to the legal holder of the trademark injured by the counterfeiting of the trademark, in order to assist him/her in the initiation or maintenance of a civil trademark counterfeiting action against the person charged with the violation.

(2) It is preferable for the trademark holder 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 departmental approval is necessary.

(3) Where the trademark holder claims he/she has insufficient information to institute a suit, he/she must be able to demonstrate a specific need for FBI information, the release of which is always discretionary. Where disclosure appears warranted, it must be restricted to only that which is needed for the initiation of the suit. Usually a list of counterfeited goods and the identity and location of the person charged with the trademark counterfeiting will suffice for this purpose. No unverified or unsubstantiated information can be disseminated.

(4) Requests for information relative to suspects or others not actually charged with a violation of Title 18, USC, Section 2320, should ordinarily be denied, as disclosure could constitute an unwarranted invasion of individual privacy under current, applicable standards.

EFFECTIVE: 01/21/86

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257-15 PENALTIES

Title 18, Section 2320(a) Trafficking in counterfeit goods or services and knowingly uses a counterfeit mark - Penalties for violation are set forth as follows:

(1) "...if an individual, (shall) be fined not more than \$250,000 or imprisoned not more than five years, or both.."

(2) "...if other than an individual, be fined not more than \$1,000,000."

(3) "...if an individual, (who has previously been convicted of another offense under this section) shall be fined not more than \$1,000,000 or imprisoned not more than fifteen years, or both..."

(4) "...if other than an individual, (and has previously been convicted of another offense under this section) shall be fined not more than \$5,000,000."

EFFECTIVE: 01/21/86

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## SECTION 258. CREDIT AND/OR DEBIT CARD FRAUDS

## 258-1 BACKGROUND

(1) On October 12, 1984, the President signed the Comprehensive Crime Control Act of 1984 which became Public Law 98-473. This Act amends Title 18 of the United States Code by creating, among other things, Section 1029 entitled "Fraud and Related Activity in Connection with Access Devices." This statute, by definition, incorporates and expands Title 15, USC, Section 1644 (Fraudulent Use of Credit Cards) and Title 15, USC, Section 1693n (Fraudulent Use of a Debit Instrument-Electronic Funds Transfer Act). However, although Title 18, USC, Section 1029 replaces both these statutes, Congress has not repealed these earlier sections of Title 15, USC.

(2) The Comprehensive Crime Control Act also expanded the jurisdiction contained in Title 18, USC, Section 3056, "Powers, Authorities, and Duties of the United States Secret Service," by directing that "The Secret Service is authorized to detect and arrest any person who violates...any of the laws of the United States relating to...credit and debit card frauds..." This broad power was limited by Title 18, USC, Section 1029(d) which indicates that "such authority of the United States Secret Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury and the Attorney General." On September 15, 1989, the Secretary of the Treasury and the Attorney General signed an agreement which established investigative jurisdiction between the FBI and the United States Secret Service (USSS) with regard to violations of Title 18, USC, Section 1029 (Fraud and Related Activity in Connection With Access Devices).

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258-2 JURISDICTIONAL POLICY

(1) The FBI shall exercise primary jurisdiction when a violation of Title 18, USC, Section 1029 pertains to the

(a) Traditional programmatic responsibilities such as Organized Crime, Counterterrorism and Foreign Counterintelligence, or

(b) When those criminal acts are also construed as violations of the Fraud by Wire, Bank Bribery, or Financial Institution Fraud Statutes and where the internal fraud has resulted in a violation of the fiduciary relationship of the bank employee, officers, etc., and where the FBI has traditionally had jurisdiction.

(2) Except as noted above, the United States Secret Service shall have primary jurisdiction when the fraudulent scheme is:

(a) Initiated outside of the bank, thus the counterfeiting, transportation, or misuse of the credit or debit card and/or access code of major credit card companies, banks, telephone companies, department stores, etc., or the production, use, trafficking, possession of the fraudulent or misused access device or related equipment is the result of a fraudulent scheme initiated outside the financial institution.

(b) A violation of consumer Electronic Funds Transfers, such as pay by phone, home banking, direct deposits, automatic payments, and automatic teller machines.

(c) A violation which involves an electronic funds transfer emanating from the Treasury Department's electronic funds transfer system and concluding at the point of first destination and falls within/meets the following restriction:

Allegations of crimes by personnel of any Government agency or managerial employees of the U.S. Treasury are to be referred to the Criminal Division, Department of Justice, for a determination as to which agency will conduct the investigation.

(3) The Memorandum of Understanding between the Federal Bureau of Investigation and the United States Secret Service states, in part, that:

"It may be anticipated that the complexities of any investigation will cause a certain amount of unavoidable overlapping

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of information, allegations and potential violations of various laws. In the event such a situation occurs, a cooperative attitude between the agencies is expected and, thus, information, data and results of investigations may be shared to the benefit of both agencies. A principal tenet of this policy is the recognition of the traditional investigative responsibility of each agency."

(4) Other Agencies - This law does not limit other law enforcement agencies from exercising the authority to investigate offenses. Therefore, it is possible that the appropriate Postal Inspectors' Offices may have an investigative interest in certain allegations, i.e., those which use the mails as the primary means to defraud.

EFFECTIVE: 06/26/91

| 258-3 DEFINITIONS | (TITLE 18, USC, SECTION 1029 (e)) |

(1) The term "access device" means any card, plate, code, account number, electronic serial number, mobile identification number, personal identification number, or other telecommunications service, equipment, or instrument identifier, or other means of account access that can be used, alone or in conjunction with another access device, to obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds (other than a transfer originated solely by paper instrument);

(2) The term "counterfeit access device" means any access device that is counterfeit, fictitious, altered, or forged, or an identifiable component of an access device or a counterfeit access device;

(3) The term "unauthorized access device" means any access device that is lost, stolen, expired, revoked, canceled, or obtained with intent to defraud;

(4) The term "produce" includes design, alter, authenticate, duplicate, or assemble;

(5) The term "traffic" means transfer, or otherwise dispose of, to another, or obtain control of with intent to transfer or dispose of;

(6) The term "device-making equipment" means any equipment, mechanism, or impression designed or primarily used for making an access device or a counterfeit access device;

(7) The term "credit card system member" means a financial institution or other entity that is a member of a credit card system, including an entity, whether affiliated with or identical to the credit card issuer, that is the sole member of a credit card system; and

(8) The term "scanning receiver" means a device or apparatus that can be used to intercept a wire or electronic communication in violation of chapter 119.

EFFECTIVE: 11/19/96

258-4 ELEMENTS (TITLE 18, USC, SECTION 1029 (a))

"(a) Whoever--

"(1) knowingly and with intent to defraud produces, uses, or traffics in one or more counterfeit access devices;

"(2) knowingly and with intent to defraud traffics in or uses one or more unauthorized access devices during any one-year period, and by such conduct obtains anything of value aggregating \$1,000 or more during that period;

"(3) knowingly and with intent to defraud possesses fifteen or more devices which are counterfeit or unauthorized access devices; or

"(4) knowingly, and with intent to defraud, produces, traffics in, has control or custody of, or possesses device-making equipment;

"(5) knowingly and with intent to defraud uses, produces, traffics in, has control or custody of, or possesses a telecommunications instrument that has been modified or altered to obtain unauthorized use of telecommunications services; or

"(6) knowingly and with intent to defraud uses, produces, traffics in, has control or custody of, or possesses--

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"(A) a scanning receiver; or

"(B) hardware or software used in altering or modifying telecommunications instruments to obtain unauthorized access to telecommunications services,

"(5) knowingly and with intent to defraud effects transactions, with 1 or more access devices issued to another person or persons, to receive payment or any other thing of value during any 1-year period and aggregate value of which is equal to or greater than \$1,000;

"(6) without the authorization of the issuer of the access device, knowingly and with intent to defraud solicits a person for the purpose of--

"(A) offering an access device; or

"(B) selling information regarding or an application to obtain an access device; or

"(7) without the authorization of the credit card system member or its agent, knowingly and with the intent to defraud causes or arranges for another person to present to the member or its agent, for payment, 1 or more evidences or records of transactions made by an access device;

shall, if the offense affects interstate or foreign commerce, be punished as provided in subsection (c) of this section."

TWO SUBSECTIONS (a) (5) AND (6) WERE ENACTED IN 1994. TECHNICAL AMENDMENT BY CONGRESS IS REQUIRED TO RENUMBER THESE SUBSECTIONS.

"(b) (1) Whoever attempts to commit an offense under subsection (a) of this section shall be punished as provided in subsection (c) of this section.

"(2) Whoever is a party to a conspiracy of two or more persons to commit an offense under subsection (a) of this section, if any of the parties engages in any conduct in furtherance of such offense, shall be fined an amount not greater than the amount provided as the maximum fine for such offense under subsection (c) of this section or imprisonment not longer than one-half the period provided as the maximum imprisonment for such offense under subsection (c) of this section, or both."

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EFFECTIVE: 11/19/96

| 258-5 PENALTIES | (TITLE 18, USC, SECTION 1029 (c)) |

"(c) The punishment for an offense under subsection (a) or (b)(1) of this section is--

"(1) | a fine under this title or twice the value obtained by the offense, whichever is greater, or imprisonment for not more than ten years, or both, in the case of an offense under subsection (a)(2), (3), (5), (6), or (7) of this section which does not occur after a conviction for another offense under either such subsection, or an attempt to commit an offense punishable under this paragraph; |

"(2) | a fine under this title or twice the value obtained by the offense, whichever is greater, or imprisonment for not more than fifteen years, or both, in the case of an offense under subsection (a)(1), (4), (5), or (6) of this section which does not occur after a conviction for another offense under either such subsection, or an attempt to commit an offense punishable under this paragraph; and |

"(3) | a fine under this title or twice the value obtained by the offense, whichever is greater, or imprisonment for not more than twenty years, or both, in the case of an offense under subsection (a) of this section which occurs after a conviction for another offense under such subsection, or an attempt to commit an offense punishable under this paragraph." |

EFFECTIVE: 11/19/96



| 258-6 POLICY AND INVESTIGATIVE PROCEDURE

(1) If it is determined that the complaint does not involve large losses and/or widespread ring-type activity (Organized Crime, Foreign Counterintelligence, and/or Terrorism), care should be exercised in expending investigative resources. Routine cases should be quickly resolved or referred.

(2) Close liaison should be maintained with the United States Attorney (USA) to determine the Federal prosecutive merit of any allegation received.

(3) Resolve any doubts concerning prosecutive merit in favor of contacting the USA at an early date.

(4) Refer appropriate allegations to United States Secret Service, Postal Inspectors, and/or local law enforcement.

(5) Upon receipt of a complaint within the above-stated jurisdictional policy, the following investigative steps should be taken in corroborating the allegation:

(a) Interview the complainant and obtain full details of the allegation.

(b) Review and obtain appropriate transaction records, application forms, or other agreements for investigative leads, development of subjects and/or to facilitate necessary scientific analysis,

(c) Obtain correlative oral evidence to support the documentary evidence obtained from complainants, victims, witnesses or financial institutions.

EFFECTIVE: 04/28/86

| 258-7 REPORTING REQUIREMENTS

Prosecutive reports will be required only when prosecutive proceedings are being initiated. Two copies of the prosecutive report are to be submitted to the Economic Crimes Unit, White-Collar Crimes Section, FBIHQ.

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EFFECTIVE: 11/20/90

| 258-8 INVESTIGATIVE SUBCLASSIFICATIONS

See MAOP, Part II, 3-1.1.

EFFECTIVE: 10/18/95

258-9 VENUE

Any district in which the offense was begun, continued,  
and completed (Title 18, USC, Section 3237).

EFFECTIVE: 11/20/90

258-10 CHARACTER - CREDIT/DEBIT CARDS FRAUD (CDF)

EFFECTIVE: 11/20/90

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