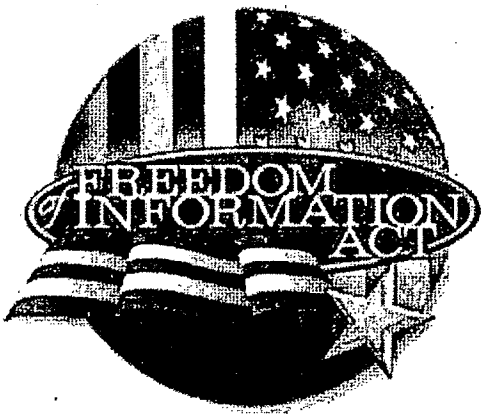
FOIPA COVER SHEET

FREEDOM OF INFORMATION AND PRIVACY ACTS

SUBJECT: MANUAL OF INVESTIGATIVE OPERATIONS AND GUIDELINES (MIOG)

VOLUME 3

SECTIONS 1-13



FEDERAL BUREAU OF INVESTIGATION

VOLUME III

SECTION 1-13

Manual of Investigative Operations and Guidelines

U.S. Department of Justice
Federal Bureau of Investigation

MANUAL OF INVESTIGATIVE OPERATIONS AND GUIDELINES

SECTION 1. FEDERAL CRIMINAL LAW

1-1 GENERAL DEFINITIONS

EFFECTIVE: 10/24/85

1-1.1 United States

The term, "United States," as used in Title 18 in a territorial sense, includes all places and waters, continental or insular, subject to the jurisdiction of the United States, except the Canal Zone. (18 U.S.C. 5)

EFFECTIVE: 10/24/85

1-1.2 Department

"Department" means one of the executive departments enumerated in Section 1 of Title 5, unless the context shows that such term was intended to describe the executive, legislative, or judicial branches of the Government. (18 U.S.C. 6)

EFFECTIVE: 10/24/85

1-1.3 Agency

"Agency" includes any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary interest, unless the context shows that such term was intended to be used in a more limited sense. (18 U.S.C. 6)

EFFECTIVE: 10/24/85

1-1.4 Special Maritime and Territorial Jurisdiction of the United States (See MIOG, Part I, 7-3, 45-1.1 and 45-5; Part II, 1-1.10.)

As used in Title 18, this phrase includes the following:

"(1) The high seas, any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, and any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or any corporation created by or under the laws of the United States, or of any State, Territory, District, or possession thereof, when such vessel is within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.

"(2) Any vessel registered, licensed, or enrolled under the laws of the United States, and being on a voyage upon the waters of any of the Great Lakes, or any of the waters connecting them, or upon the Saint Lawrence River where the same constitutes the International Boundary Line.

"(3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

"(4) Any island, rock, or key containing deposits of guano, which may, at the discretion of the President, be considered as appertaining to the United States.

"(5) Any aircraft belonging in whole or in part to the United States, or any citizen thereof, or to any corporation created by or under the laws of the United States, or any State, Territory, District, or possession thereof, while such aircraft is in flight over the high seas, or over any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.

"(6) Any vehicle used or designed for flight or navigation in space and on the registry of the United States pursuant to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies and the Convention on Registration of Objects Launched into Outer Space, while that vehicle is in flight, which is

from the moment when all external doors are closed on Earth following embarkation until the moment when one such door is opened on Earth for disembarkation or in the case of a forced landing, until the competent authorities take over the responsibility for the vehicle and for persons and property aboard.

"(7) Any place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States.

"(8) To the extent permitted by international law, any foreign vessel during a voyage having a scheduled departure from or arrival in the United States with respect to an offense committed by or against a national of the United States." (18 U.S.C. 7)

EFFECTIVE: 02/11/97

1-1.5 Obligation or Other Security of the United States

The term, "obligation or other security of the United States," includes all bonds, certificates of indebtedness, national bank currency, Federal Reserve notes, Federal Reserve bank notes, coupons, United States notes, Treasury notes, gold certificates, silver certificates, fractional notes, certificates of deposit, bills, checks, or drafts for money, drawn by or upon authorized officers of the United States, stamps and other representatives of value, of whatever denomination, issued under any Act of Congress, and cancelled United States stamps. (18 U.S.C. 8)

EFFECTIVE: 10/24/85

1-1.6 Vessel of the United States

The term, "vessel of the United States," as used in Title 18 means a vessel belonging in whole or in part to the United States, or any citizen thereof, or any corporation created by or under the laws of the United States, or of any State, Territory, District, or possession thereof. (18 U.S.C. 9)

EFFECTIVE: 10/24/85

1-1.7 Interstate Commerce

The term, "interstate commerce," as used in Title 18 includes commerce between one State, Territory, Possession, or the District of Columbia and another State, Territory, Possession, or the District of Columbia. (18 U.S.C. 10)

EFFECTIVE: 10/24/85

1-1.8 Foreign Commerce

The term, "foreign commerce," as used in Title 18 includes commerce with a foreign country. (18 U.S.C. 10)

EFFECTIVE: 10/24/85

1-1.9 Foreign Government

The term, "foreign government," as used in Title 18, includes any government, faction, or body of insurgents within a country with which the United States is at peace, irrespective of recognition by the United States. (18 U.S.C. 11)

EFFECTIVE: 10/24/85

1-1.10 Assimilative Crimes Statute

Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in 18 U.S.C. 7 (see paragraph 1-1.4 above), is guilty of any act of omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment. (18 U.S.C. 13)

EFFECTIVE: 10/24/85

1-1.11 Citation of Code Section

Complaints filed before U.S. Magistrates for violations of Title 18, U.S.C., should refer to the revised section of the code as follows: "Title 18, U.S.C., Section (no.)_____."

EFFECTIVE: 10/24/85

1-1.12 Definition of Stolen or Counterfeit Nature of Property for Certain Crimes (See MIOG, Part I, 15-1.1.1, 15-3.1, 15-3.2, 26-1.9, 26-4.5, 52-1.5, 87-2.1.1, 87-2.1.3, 87-2.2.1, 87-2.2.2, 87-2.3.1, 87-2.3.2, 87-4.4, 91-3.10, 103-1.5, 198-2.8, and 1-1.12.1 through 1-1.12.5 below.)

Whenever it is an element of an offense in Title 18 that:

"(1) any property was embezzled, robbed, stolen, converted, taken, altered, counterfeited, falsely made, forged, or obliterated; and

"(2) the defendant knew that the property was of such character;

such element may be established by proof that the defendant, after or as a result of an official representation as to the nature of the property, believed the property to be embezzled, robbed, stolen, converted, taken, altered, counterfeited, falsely made, forged, or obliterated. . . . For purposes of this section, the term 'official representation' means any representation made by a Federal law enforcement officer (as defined in section 115) or by another person at the direction or with the approval of such an officer." (Title 18, U.S.C., Section 21).

EFFECTIVE: 10/23/95

OPCA-20 (12-3-96)

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FEDERAL BUREAU OF INVESTIGATION
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3 Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

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

Section 552		Section 552a
☐ (b)(1)	☐ (b)(7)(A)	☐ (d)(5)
☑ (b)(2)	☐ (b)(7)(B)	☐ (j)(2)
☐ (b)(3)	☐ (b)(7)(C)	☐ (k)(1)
_____	☐ (b)(7)(D)	☐ (k)(2)
_____	☑ (b)(7)(E)	☐ (k)(3)
_____	☐ (b)(7)(F)	☐ (k)(4)
☐ (b)(4)	☐ (b)(8)	☐ (k)(5)
☐ (b)(5)	☐ (b)(9)	☐ (k)(6)
☐ (b)(6)		☐ (k)(7)

☐ Information pertained only to a third party with no reference to the subject of your request or the subject of your request is listed in the title only.

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FBI/DOJ

1-1.12.4 Establishing other Elements of Federal Offenses with Title 18, USC, Section 21 (See MIOG, Part II, 1-1.12.)

(1) The scope of section 21 casts a broad net, encompassing a number of Title 18 offenses, many of which require proof of interstate or foreign travel. Others require, for example, a showing that property belongs to the government (Title 18, USC, Section 641) or was part of an interstate shipment (Title 18, USC, Section 659). Prior to the enactment of section 21, if the government had charged a defendant with the substantive offense of receiving stolen goods, it had to prove that the defendant knew the goods were stolen and that the goods crossed a state or United States boundary. (Title 18, USC, Section 2315.) Under the new statute, it is clear that proof of the first element (knowledge that the property is stolen) can be accomplished by undercover representation that the property was "stolen." But there is no provision in the text of the statute for satisfying the interstate or foreign travel requirement merely through representation.

(2) Since Congress expressly provided for representation of only one element, it seems clear that it intended to retain the status quo with respect to the other elements of proof. This interpretation requires proof that the goods actually cross a state or United States boundary after being stolen or represented as such.

EFFECTIVE: 10/23/95

1-1.12.5 Conspiracy and Title 18, USC, Section 21 (See MIOG, Part II, 1-1.12.)

(1) With respect to inchoate crimes and conspiracy, section 21 appears to have no impact, because a conspiracy charge can be maintained regardless of whether the property was stolen or merely represented as stolen. It is possible then that a conspiracy charge could be maintained where property which is represented as stolen is also represented as having traveled in interstate commerce under circumstances where two or more of the targets agree to commit the illegal act, i.e., if the jurisdictional nexus can be supplied by evidence that the defendants had agreed to receive goods that they believed were both stolen and transported interstate. SEE UNITED STATES V. ROSE, 590 F.2d 232, 235-36 (7th Cir. 1978) (jurisdictional nexus established where defendants plotted to steal property in Arizona and have it transported

to Illinois, but unwittingly recruited undercover Agents to commit the robbery and transport the property, so neither theft nor interstate transport occurred), CERT. DENIED, 442 U.S.929 (1979); cf. UNITED STATES V. ROSA, 17 F.3d 1531, 1544-46 (2d Cir.) (jurisdictional nexus supplied because goods defendants purchased, believing they were stolen, had in fact traveled across state lines, and alternatively because at least one member of the conspiracy believed that the goods had traveled interstate), CERT. DENIED, 115 S. Ct. 221 (1994).

(2) Given the various circumstances which may suffice to supply the federal jurisdictional predicate for a conspiracy, charging a conspiracy as well as the substantive violation can enhance the potential for obtaining a conviction. Of course, the Chief Division Counsel and the appropriate United States Attorney's office should be consulted in each case when developing undercover scenarios and evaluating prosecutorial strategies. In addition, FBIHQ approval should be obtained pursuant to the Attorney General's Guidelines on FBI Undercover Operations when circumstances so require.

EFFECTIVE: 10/23/95

1-2 FEDERAL CRIMES

All federal crimes are statutory; there are no federal common law crimes.

(1) Felony

A felony is any offense punishable by death or imprisonment for a term exceeding one year. Additionally, felonies have been divided into five classifications:

(a) Class A - maximum penalty of death or life imprisonment;

(b) Class B - maximum penalty of 25 years or more in prison;

(c) Class C - maximum term of imprisonment of 10 or more years, but less than 25 years;

(d) Class D - maximum term of imprisonment of five years or more, but less than 10 years;

(e) Class E - maximum term of imprisonment of more than one year, but less than five years.

A person or an organization convicted of a felony offense may also be fined the greatest of (1) the amount specified in the law setting forth the offense; (2) twice the pecuniary gain or loss caused by the offense or $250,000 ($500,000 in case of a corporation).

(2) Misdemeanor

Any other offense is a misdemeanor. However, misdemeanor offenses have also been classified as follows:

(a) Class A - maximum term of imprisonment of more than six months, but not exceeding one year;

(b) Class B - maximum term of imprisonment of six months, but more than 30 days;

(c) Class C - maximum term of imprisonment of 30 days, but more than five days;

(d) Infraction - five days or less, or if no imprisonment is authorized.

A person convicted of a misdemeanor that resulted in the loss of human life may be fined up to $250,000, or in the case of an organization, $500,000. The maximum fine for persons convicted of other misdemeanors is $100,000 ($200,000 for organizations). The penalty for an infraction may include a fine of up to $5,000 for individuals and $10,000 for an organization.

(3) Under Title 18, USC, Section 3401, a U.S. Magistrate, under certain circumstances, may try persons accused of, and sentence persons convicted of, misdemeanors committed within the district in which the U.S. Magistrate presides.

EFFECTIVE: 02/11/97

1-3 PARTIES TO CRIME

(1) Principal

A person who commits an offense against the United States or aids, abets, counsels, commands, induces, or procures its commission, is punishable as a principal. Likewise, a person who willfully causes an act to be done which if directly performed by him/her or another would be an offense against the United States, is punishable as a principal. (Title 18, USC, Section 2) This section makes clear the intent of Congress to punish as a principal one who puts in motion or assists in the illegal enterprise or causes the commission of an indispensable element of the offense by an innocent agent or instrumentality, even though he/she intentionally refrained from the direct act constituting the completed offense.

(2) Accessory After the Fact

Any person, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his/her apprehension, trial or punishment is an accessory after the fact. Punishment for an accessory is less severe than that of a principal. (Title 18, USC, Section 3)

(a) Classification of an offense involving an accessory is the same as the substantive offense.

(b) Character of offense should be shown as: "(Substantive Offense) - Accessory After the Fact."

(c) Copies of reports to FBIHQ should be the same as in the case of the substantive offense.

EFFECTIVE: 02/22/88

1-4 STATUTE OF LIMITATIONS

The statute of limitations operates from the time a crime is actually committed until the time an indictment is returned or an information is instituted. An indictment or information stops the running of the statute of limitations although the accused may not be in custody or tried for some time thereafter.

(1) Capital Offense

An indictment for any offense punishable by death may be found at any time without limitation. (Title 18, USC, Section 3281)

(2) Noncapital Offense

Unless otherwise expressly provided by law, no person shall be prosecuted, tried or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed. (Title 18, USC, Section 3282)

(3) Fugitive

No statute of limitations shall extend to any person fleeing from justice. (Title 18, USC, Section 3290)

(4) In all investigations, particularly if the defendant is a fugitive, employees should give due regard to the statute of limitations and request U.S. Attorneys to secure indictments or file informations within the five-year period in order to avoid this plea as a bar to prosecution of the defendant.

(5) Extension of Statute of Limitations for Certain Terrorism Offenses (Title 18, USC, Section 3286):

"Notwithstanding section 3282, no person shall be prosecuted, tried or punished for any offense involving a violation of section 32 (aircraft destruction), section 36 (airport violence), section 112 (assaults upon diplomats), section 351 (crimes against Congressmen or Cabinet officers), section 1116 (crimes against diplomats), section 1203 (hostage taking), section 1361 (willful injury to government property), section 1751 (crimes against the President), section 2280 (maritime violence), section 2281 (maritime platform violence), section 2331 (terrorist acts abroad against United States nationals), section 2339 (use of weapons of mass destruction),

or section 2340A (torture) of this title or section 46502, 46504, 46505 or 46506 of title 49, unless the indictment is found or the information is instituted within eight years after the offense was committed."

(a) The above shall not apply to any offense committed MORE than five years prior to the date of the enactment of this act (September 13, 1994).

(b) For clarification regarding the statute of limitations pertaining to FBI counterterrorism extraterritorial investigations PRIOR to the passage of this legislation, the DOJ has advised the following:

1. MURDER - The statute of limitations will expire EIGHT years from the occurrence of the offense in cases in which U.S. nationals were MURDERED abroad IF the murder occurred five years PRIOR to September 13, 1994, AND DOJ has determined that the specific case is a violation of Title 18, USC, Section 2331. There is NO statute of limitations in cases where a U.S. national was murdered ON THE DATE OF THE PASSAGE OF THIS ACT (September 13, 1994).

2. ATTEMPTED MURDER OR CONSPIRACY TO MURDER - DOJ advised that the statute of limitations will expire FIVE years from the anniversary of the offense in cases of ATTEMPTED murder of a U.S. national outside the United States if the attempted murder occurred FIVE years prior to September 13, 1994.

EFFECTIVE: 02/14/97

1-5 MISPRISION OF A FELONY

It is a federal offense punishable by a fine or imprisonment of not more than three years, or both, for a person, having knowledge of the actual commission of a felony cognizable by a court of the United States, to conceal and not make known as soon as possible this fact to a judge or other person in civil or military authority under the United States. (Title 18, USC, Section 4)

(1) Classification of a misprision violation is the same as the substantive offense.

(2) Character of offense should be shown as:

"(Substantive Offense) - Misprision of Felony."

(3) Copies of reports to FBIHQ should be the same as in the case of the substantive offense.

EFFECTIVE: 02/11/97

SECTION 2. FEDERAL RULES OF CRIMINAL PROCEDURE

2-1 IN GENERAL

The Federal Rules of Criminal Procedure (FED.R.CRIM.P.) govern the procedure in all criminal proceedings in the Federal courts; and, whenever specifically provided in one of the rules, to preliminary, supplementary, and special proceedings before United States Magistrates and at proceedings before state and local judicial officers.

EFFECTIVE: 08/21/87

2-2 VENUE (RULE 18)

Except as otherwise permitted by statute or by the FED.R.CRIM.P., prosecution shall be had in a district in which the offense was committed. The court shall fix the place of trial within the district with due regard to the convenience of the defendant and the witnesses.

EFFECTIVE: 08/21/87

2-3 UNITED STATES MAGISTRATE (USMAGIS)

USMAGIS's are appointed by the judges of each Federal district court in such numbers and at such locations as the Judicial Conference of the United States may determine.

EFFECTIVE: 08/21/87

2-3.1 Duties

The chief duties of the USMAGIS's are to:

(1) Receive complaints concerning crimes against the United States.

(2) Issue warrants of arrest, search warrants, summonses, and subpoenas.

(3) Conduct proceedings at the initial appearance and preliminary examination of an arrested or summoned person to determine whether there is probable cause to hold him/her for further criminal process, and conduct removal hearings under Rule 40.

(4) Appoint counsel under the Criminal Justice Act of 1964 for arrested persons who are unable to retain counsel of their own; admit arrested persons to bail under the Bail Reform Act of|1984 (Title 18, USC, Sections 3141-3156);|and commit to jail those who fail to make bail.

(5) Try|misdemeanor|cases pursuant to Title 18, USC, Section 3401 when specially designated by the district court and|if the accused files a written consent to be tried by the magistrate that specifically waives trial, judgment and sentencing by a judge of the district court. In all cases resulting in conviction, an appeal may be taken to a judge of the district court of the district in which the offense was committed.|

EFFECTIVE: 08/21/87

2-4 STATE MAGISTRATES

Title 18, USC, Section 3041 provides that "for any offense against the United States, the offender may, by any justice or judge of the United States, or by any United States magistrate, or by any chancellor, judge of a supreme or superior court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any state where the offender may be found, and at the expense of the United States, be arrested and imprisoned or released . . . as the case may be, for trial before such court of the United States as by law has cognizance of the offense." Thus, for purposes of Rules 3, 4, and 5,|FED.R.CRIM.P.,|state officials included in the |foregoing statute have the same authority as a|USMAGIS.| State

officials, however, may not conduct preliminary proceedings under Rule 40, |FED.R.CRIM.P.|

EFFECTIVE: 08/16/82

2-5 COMPLAINTS (RULE 3)

The complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before a magistrate. The latter term, "magistrate," as noted, includes a |USMAGIS,| a judge of the United States, and a state or local judicial officer, authorized by Title 18, USC, Section 3041 to perform the functions prescribed in Rules 3, 4, and 5. Probable cause must be shown in the complaint or in an affidavit to be filed with the complaint. References to "complaint" used in this and related paragraphs should be understood to embrace the affidavit filed with the complaint.

EFFECTIVE: 08/16/82

2-5.1 Authorization of U.S. Attorney (USA)

Special Agents shall obtain prior authority from the USA or an Assistant USA (AUSA) before filing a criminal complaint. If Agents are uncertain as to the Bureau's investigative jurisdiction, they should confer with the SAC before filing a complaint. Agents shall not urge prosecution or suggest that no prosecution be undertaken; nor shall they express an opinion as to the advisability of entering a nolle prosequi in any case investigated by the Bureau. The determination as to whether the case will be prosecuted is a function of the USA or an official of the Department of Justice when such decisions are reserved by the Department. The function of SAs of the FBI is to conduct thorough investigations of cases in a legal and ethical manner and carry through to a logical conclusion. Generally, any information desired by the USA in connection with a case investigated by SAs of this Bureau should be furnished upon his/her request. If in doubt, request FBIHQ advice.

EFFECTIVE: 08/16/82

2-5.2 Re-presentation of Cases

Special Agents shall not re-present cases to the USAs when they once have declined prosecution unless new evidence has been developed. In the event the Department instructs or if other reasons exist justifying a re-presentation of a case to the USA, only the SAC or the designated Assistant SAC (ASAC) will be authorized to make such a re-presentation of the case to the USA. This rule shall not be interpreted so as to interfere with full and complete discussions between SAs and the USAs concerning cases over which the latter has jurisdiction.

EFFECTIVE: 08/16/82

2-5.3 State Prosecutions

Criminal investigations conducted by the FBI are designed to obtain evidence for prosecution in Federal court and not in state or local courts. When Agents discuss cases with the USA or his/her assistant, it is expected that such will be done with sufficient aggressiveness to ensure the Bureau's interests are fully protected. The FBI does not have the manpower to investigate violations which are later prosecuted in other than Federal courts. During presentations of cases to USAs, it is expected that the amount of time and effort expended by FBI personnel will be made known in its proper perspective. Consideration can then be given to this factor by the USA prior to deciding whether he/she will decline prosecution in favor of handling by local authorities. Be aware that if a case is investigated by the FBI and prosecuted in local court, additional Agent time and expense may well be lost if Bureau personnel are called on to testify in state court.

EFFECTIVE: 08/16/82

2-5.4 Authority for Issuance of Warrant

The |USMAGIS's| have authority to issue warrants or summonses for any person charged with a felony or misdemeanor if: (a) a complaint under oath is filed containing sufficient facts, (b) to constitute a Federal offense, and (c) to satisfy the |USMAGIS| that probable cause exists for the issuance of a warrant. Any citizen may act as complainant, but in such cases, |USMAGIS's| will rarely issue a warrant without first securing the approval of the USA.

EFFECTIVE: 08/16/82

2-5.5 Notification to Special Agent in Charge (SAC)

The SAC shall be notified immediately when complaints are filed. This notification should be set forth by memorandum in the usual case. A copy of every complaint and of any affidavit filed with the complaint by an Agent is to be obtained and filed as serials in the field office case file. Where efforts to have process issued are unsuccessful, for any reason, this fact should be reported.

EFFECTIVE: 08/16/82

2-6 WARRANT OF ARREST OR SUMMONS (RULE 4)

EFFECTIVE: 08/16/82

2-6.1 Forms of Warrant

There are two forms of warrants for the arrest of Federal law violators. The Magistrate's Warrant is issued by the |USMAGIS| based upon a complaint. A Bench Warrant is issued by the clerk of the U.S. District Court following the return of an indictment or the filing of an information on order of the district judge.

EFFECTIVE: 08/16/82

2-6.2 Issuance of Warrant or Summons

If it appears from the complaint, or an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officer authorized by law to execute it. The finding of probable cause may be based upon hearsay evidence in whole or in part. Warrants should be addressed to "Any United States Marshal or any other authorized officer." Upon the request of the attorney for the Government, a summons instead of a warrant shall issue. More than one warrant or summons may issue on the same complaint. If a defendant fails to appear in response to a summons, a warrant shall issue. If an indictment is returned by the grand jury or an information, supported by oath and establishing probable cause, is filed, the court shall issue a warrant for each defendant named upon the request of the USA. The court or the USA may request the issuance of a summons instead of a warrant.

EFFECTIVE: 08/28/91

2-6.3 Execution

(1) Arrest warrants shall be executed by a marshal or by some other officer authorized by law. The warrant may be executed at any place within the jurisdiction of the United States. Therefore, when a warrant has been issued and is still outstanding, it is not necessary to file another complaint and obtain another warrant in another jurisdiction for the same offense. The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his/her possession at the time of the arrest but, upon request, he/she shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his/her possession at the time of arrest, he/she shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. When time will permit and the successful arrest of subject will in no way be jeopardized, the arresting Agent should have the warrant of arrest in his/her possession in order that the same may be exhibited to the subject upon request.

(2) A summons may be served at any place within the jurisdiction of the United States. The summons shall be served upon a defendant by delivering a copy to him/her personally, or by leaving it at his/her dwelling house or usual place of abode with some person of

suitable age and discretion then residing therein, and by mailing it to the defendant's last known address. Summonses should not be served by Bureau Agents except upon FBIHQ authority.

EFFECTIVE: 08/28/91

2-7 PROCEEDINGS BEFORE THE MAGISTRATE (RULE 5)

EFFECTIVE: 08/28/91

2-7.1 Initial Appearance (See MIOG, Part I, 88-5.2; Part II, 2-11.4.1, 11-1.4; and Legal Handbook for Special Agents, 3-5.)

Except as provided below, the arrested person shall be taken without unnecessary delay before the nearest available federal magistrate or, in the event that a federal magistrate is not reasonably available, before a state or local judicial officer authorized by Title 18, USC, Section 3041. That procedure need not be followed if the person is arrested under a warrant issued upon a complaint that charges only a violation of Title 18, USC, Section 1073 (UFAP), the arrested person is transferred without unnecessary delay to the custody of appropriate state or local authorities in the district of arrest, and the government attorney in the originating district moves promptly for the dismissal of the UFAP complaint. (The Department of Justice Criminal Division has advised FBIHQ that it is not necessary to wait until the UFAP warrant has actually been dismissed before releasing the subject to state or local authorities, but it is important that efficient procedures be implemented and followed to make sure that UFAP warrants are promptly dismissed after notification of an arrest is given.) If a person arrested without a warrant is brought before a magistrate, a complaint shall be filed forthwith which shall comply with the requirements of Rule 4(a) with respect to the showing of probable cause. A personal, telephone, or electronic presentation of the complaint setting forth probable cause for the magistrate must occur within 48 hours following a warrantless arrest if the arrestee is detained and an initial appearance cannot be held within that 48-hour period.

EFFECTIVE: 05/10/96

2-7.2 Misdemeanors

If the charge against the defendant is a misdemeanor triable by a USMAGIS under Title 18, USC, Section 3401, the USMAGIS shall proceed in accordance with the Rules of Procedure for the Trial of Misdemeanors Before U.S. Magistrates. If the charge against the defendant is not triable by the USMAGIS, the defendant shall not be called upon to plead.

EFFECTIVE: 08/28/91

2-7.3 Statement by Magistrate

The magistrate shall inform the defendant:

(1) Of the complaint against him/her and of any affidavit filed therewith.

(2) Of his/her right to retain counsel and of his/her right to request the assignment of counsel if he/she is unable to obtain counsel (followed by appointment of counsel where the arrested person requests counsel and has been unable to obtain counsel - Criminal Justice Act of 1964). The magistrate shall allow the defendant reasonable time and opportunity to consult counsel.

(3) Of the general circumstances under which he/she may secure pretrial release - Bail Reform Act of|1984|(Title 18, USC, Sections|3141-3156). The magistrate may set such conditions as are appropriate to assure the defendant's presence at subsequent judicial proceedings and to assure the safety of any other person or the community. If no condition or combination of conditions would reasonably assure the appearance of the defendant as required and the safety of any other person and the community, after a hearing the magistrate may order the detention of the person prior to trial. To assist in determining eligibility for pretrial release, the magistrate may receive information provided by or through the chief pretrial services officer of the district. Agents contacted by pretrial services officers for information relative to the defendant's pretrial release should record in the investigative file all such information provided.|

(4) That defendant is not required to make a statement and that any statement made by defendant may be used against him/her.

(5) Of defendant's right to a preliminary examination.

EFFECTIVE: 08/21/87

2-7.4 Waiver of Preliminary Examination

A defendant is entitled to a preliminary examination, unless waived, when charged with any offense other than a petty offense, which is to be tried by a judge of the district court. If the defendant waives preliminary examination, the magistrate shall forthwith hold defendant to answer in the district court. If the defendant does not waive the preliminary examination, the magistrate shall schedule a preliminary examination. Such examination shall be held within a reasonable time but, in any event, not later than 10 days following the initial appearance if the defendant is in custody and no later than 20 days if defendant is not in custody, provided, however, that the preliminary examination shall not be held if the defendant is indicted or if an information against the defendant is filed in district court before the date set for the preliminary examination. With the consent of the defendant and upon a showing of good cause, taking into consideration the public interest in the prompt disposition of criminal cases, time limits specified in this rule may be extended one or more times by a Federal magistrate. In the absence of such consent by the defendant, time limits may be extended by a judge of the United States only upon a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice.

EFFECTIVE: 08/21/87

2-7.5 Custody Pending Hearing

If the arrested person is to be held for a preliminary examination or for the district court and he/she cannot furnish bond, he/she is incarcerated until presented before the |USMAGIS| or the U.S. District Court.

EFFECTIVE: 08/16/82

2-8 PRELIMINARY EXAMINATION (RULE 5.1)

The preliminary examination is an adversary hearing, the purpose of which is to determine if there is probable cause for holding the accused to await the action of the U.S. District Court. Witnesses testify under oath and are subject to cross-examination. The hearing is usually before a |USMAGIS.|

EFFECTIVE: 08/16/82

2-8.1 Role of Special Agent

Special Agents of the Bureau in practice are frequently present at such preliminary examinations before |USMAGIS's| in cases which they have investigated. It sometimes occurs they are requested by the |USMAGIS| to put on the Government's witnesses and to cross-examine the defendants. However, the USA or his/her assistant is the proper person to represent the Government at such preliminary examinations. Under no circumstances shall such Agents examine witnesses at these hearings. When it is impossible for the USA or his/her assistant to be present, the |USMAGIS| will usually conduct the hearing or arrange to question the witnesses himself/herself in order to ascertain the facts in the case.

EFFECTIVE: 08/16/82

2-8.2 Discharge

If from the evidence it appears that there is no probable cause to believe that an offense has been committed or that the defendant committed it, the |USMAGIS| shall dismiss the complaint and discharge the defendant. The discharge of the defendant shall not preclude the Government from instituting a subsequent prosecution for the same offense. If a |USMAGIS| discharges a defendant, this is not, is noted, a bar to further prosecution. A hearing before a |USMAGIS| does not constitute jeopardy.

EFFECTIVE: 08/16/82

2-8.3 Finding of Probable Cause

If from the evidence it appears that there is probable cause to believe that an offense has been committed and that the defendant committed it, the USMAGIS shall forthwith hold him/her to answer in district court. The finding of probable cause may be based upon hearsay evidence in whole or in part. The defendant may cross-examine witnesses against him/her and may introduce evidence in his/her own behalf.

EFFECTIVE: 02/11/97

2-8.4 Objections to Evidence

Objections to evidence on the ground that it was acquired by unlawful means are not properly made at the preliminary examination. Motions to suppress must be made to the trial court as provided in Rule 12.

EFFECTIVE: 08/16/82

2-9 GRAND JURY (RULE 6)

EFFECTIVE: 08/21/87

2-9.1 Purpose

The function of the grand jury is to decide if there is sufficient and probable cause for trying the defendant in court. It makes this determination based on evidence presented by the USA or AUSA in an ex parte proceeding. The grand jury operates under the direction and guidance of the U.S. District Court. Generally, only witnesses for the prosecution testify before the grand jury.

EFFECTIVE: 08/21/87

2-9.2 Persons Present

Only the USA or an assistant, the witness under examination, interpreters when needed, and, for the purpose of taking the evidence, a stenographer or operator of a recording device may be present while the grand jury is in session. No person other than the jurors may be present while the grand jury is deliberating or voting.

EFFECTIVE: 08/21/87

2-9.3 Disclosure

A grand juror, interpreter, stenographer, operator of a recording device, typist, attorney for the Government, or other Government personnel designated by the attorney for the Government shall not disclose matters occurring before the grand jury.

EFFECTIVE: 08/21/87

2-9.4 Exceptions (See MIOG, Part II, 2-9.5, 2-9.5.1, 2-9.7; MAOP, Part II, 9-9.)

Exceptions to the foregoing rule are where disclosure:

(1) is ordered by the court preliminarily to or in connection with a judicial proceeding;

(2) is permitted by the court at the request of defendant upon showing that grounds may exist to dismiss the indictment because of matters occurring before the grand jury;

(3) is made to an attorney for the government for use in the performance of his/her duty;

(4) is made to such government personnel (including personnel of a state or subdivision of a state) as are deemed necessary by an attorney for the government to assist an attorney for

the government in the performance of his/her duty to enforce federal criminal law;

(5) is made by an attorney for the government to another federal grand jury; and

(6) is permitted by a court at the request of an attorney for the government, upon a showing that such matters may disclose a violation of state criminal law, to an appropriate official of a state or subdivision of a state for the purpose of enforcing such law.

EFFECTIVE: 07/12/95

2-9.5 Limitation of Use (See MIOG, Part II, 2-9.5.1, 2-9.7, 23-6.6.5; MAOP, Part II, 2-4.4.16, 9-9.)

Pursuant to Federal Rule of Criminal Procedure 6 (e) (3) (A) (ii) (the Rule), FBI and other government personnel to whom disclosure is made under MIOG, Part II, 2-9.4 above may not use grand jury material thus disclosed for any purpose other than assisting the attorney for the government in the performance of his/her duty to enforce federal criminal law. Grand jury secrecy continues indefinitely, regardless of whether there is an indictment, unless the material becomes a matter of public record, such as by being introduced at trial. Because of the severe limitations on the use of information that is obtained by the use of a grand jury subpoena, whenever possible, alternatives to the grand jury subpoena, such as administrative subpoenas, search warrants, witness interviews, and electronic surveillance should be considered as a method of obtaining evidence, especially if future civil sanctions are likely. The following requirements are necessary because of the Rule's mandate of secrecy.

(1) Disclosure of grand jury material cannot be made within the FBI for unrelated investigations unless a government attorney has determined that such disclosure to a particular investigator is needed to assist that attorney in a specific criminal investigation. The ability of government attorneys to freely share grand jury material with other government attorneys for related or unrelated criminal investigations does not extend to investigators without case specific authorization from the government attorney. Therefore, grand jury material cannot be entrusted to a general system of records, freely accessible to individual Agents acting on

| their own. (See MAOP, Part II, 2-4.4.4 and 2-4.4.16.)|

(2) In the event that a government attorney authorizes the disclosure of grand jury material in the possession of the FBI for use in an unrelated federal criminal matter, such approval should be documented in the appropriate grand jury subfile(s). That documentation will, of course, be in addition to any necessary supplementation to the government attorney's Rule 6(e) disclosure letter and/or to the internal disclosure list.

(3) Grand jury information cannot be used for civil cases or noncriminal investigations without a court order. The U.S. Attorney's Office (USAO) should be consulted immediately for precautionary instructions if the possibility arises that grand jury material will have application in civil law enforcement functions (e.g., civil RICO or civil forfeiture). There are very limited exceptions that allow government attorneys to use grand jury materials or information in civil matters (e.g., civil penalty proceedings concerning banking law violations). However, these exceptions do not automatically apply to investigative personnel. Therefore, any similar use of grand jury information by the FBI must be approved by the government attorney.

(4) Disclosure cannot be made without a court order for use in noncriminal investigations such as background, applicant, or foreign counterintelligence (unless in the prosecutive stage and the use is authorized as outlined above).

(5) The Rule allows a government attorney to disclose grand jury material to state and local authorities so that they can provide assistance to that attorney in enforcing federal criminal law. The same rules apply as with disclosure to federal officers. A court order is required in order for a government attorney to make a disclosure of grand jury material relative to a state law violation. The Rule contains no specific provision concerning disclosure to foreign officials. The USAO should be consulted with regard to the possibility of such a disclosure pursuant to a treaty, or with a court order upon a showing of particularized need preliminary to a judicial proceeding. (See MAOP, Part II, 9-3.1.3.)

(6) Personnel of the government who are preparing a response to a Freedom of Information Act or Privacy Act request may properly access grand jury material under the Rule because they are considered to be assisting the grand jury attorney by ensuring against any improper disclosure.

EFFECTIVE: 10/16/96

2-9.5.1 Matters Occurring Before the Grand Jury

|(1)|There can be no routine dissemination of|matters occurring before the grand jury, unless such dissemination comes within the exceptions enumerated in MIOG, Part II, 2-9.4 and detailed further in MIOG, Part II, 2-9.5 above (see MAOP, Part II, 9-9). There is no uniform legal definition of what constitutes matters occurring before the grand jury except for what is generally referred to as "core" grand jury material. The two other categories of matters occurring before the grand jury are documents created independent of the grand jury but obtained by grand jury subpoena, and data extracted from records obtained by grand jury subpoena.

(2) Core grand jury material includes the following:

(a) Names of targets and witnesses

(b) Grand jury testimony

(c) Grand jury subpoenas

(d) Documents with references to grand jury testimony (including summaries and analyses)

(e) Documents that clearly reveal their connection to the grand jury process

(f) Other material that reveals the strategy, direction, testimony, or other proceedings of a grand jury

(3) The need for secrecy with regard to documents created independently, and later obtained by grand jury subpoena, has been viewed in several ways by federal courts. Because of the lack of uniformity of interpretation by the courts concerning subpoenaed business records and Rule 6(e), all such grand jury subpoenaed documents should be treated as 6(e) material.

(4) Information extracted from business records that were obtained by grand jury subpoena is often used to facilitate investigations. Some of that type of data is, by a statute or case law, subject to the Rule. In other cases, the determination of

whether data must be considered subject to the Rule depends on the case law and local practice in the federal districts.

(a) Information extracted from grand jury subpoenaed financial records subject to the Right to Financial Privacy Act of 1978 (Title 12, USC, Section 3420) must be treated as grand jury material "unless such record has been used in the prosecution of a crime for which the grand jury issued an indictment or presentment ...." (See MIOG, Part II, 23-6.6.5.)

(b) With the approval of the U.S. Attorney's Office (USAO), information from subpoenaed telephone records may be disclosed for use in unrelated federal criminal investigations in those districts where such material is not considered a "matter occurring before a grand jury." If the USAO approves generally of this procedure, such information may be used in unrelated CRIMINAL investigations without authorization from a government attorney in each instance. However, to prevent disclosures (such as in the civil context) which might constitute an abuse of the grand jury's coercive powers, subpoenaed telephone records should be memorialized only in a database or other system of records dedicated exclusively for use in federal criminal investigations. Therefore, any system of records, such as general indices or the Criminal Law Enforcement Application (CLEA), which is accessible by the general FBI population for civil or other noncriminal purposes, is not a suitable repository for business records or information, including telephone data, subpoenaed by a federal grand jury. (See 2-9.7.)

(c) Except for the information described in (b) above, both grand jury subpoenaed documents and the information extracted from them may be memorialized only in databases or other systems of records that are accessible only by those assisting the attorney for the government in the specific criminal investigation to which the documents or information relate.

EFFECTIVE: 07/12/95

2-9.5.2 Physical Evidence and Statements

Physical evidence and statements of witnesses may be matters occurring before the grand jury:

(1) Physical evidence provided pursuant to or as a result of grand jury process is a matter occurring before the grand jury whether or not such evidence is presented to the grand jury. Physical evidence provided voluntarily (not pursuant to or in lieu of a grand jury subpoena) is not a grand jury matter irrespective of whether such evidence was previously or is thereafter presented to the grand jury.

(2) Statements of witnesses obtained pursuant to, or as a result of, grand jury process are matters occurring before the grand jury irrespective of whether such witnesses testified before the grand jury or are not required to testify. Voluntary statements of witnesses made outside of the grand jury context (not pursuant to or in lieu of a grand jury subpoena) are not grand jury matters irrespective of whether the witness previously testified or will thereafter testify before the grand jury.

EFFECTIVE: 07/12/95

2-9.6 Documentation of Disclosures of Grand Jury Material

Rule 6 (e) (3) (B) requires that when a federal prosecutor makes a disclosure of grand jury material to government investigators and other persons supporting the grand jury investigation, he/she must promptly provide the district court, before whom was impaneled the grand jury whose material has been so disclosed, with the names of the persons to whom such disclosure has been made, and certify that he/she has advised such persons of their obligation of secrecy under the Rule. In order to document the certification required by the Rule, government attorneys often execute and deliver to the court a form, normally referred to as a "Certification" or "Rule 6(e) letter." A copy of this document should accompany grand jury material in the FBI's custody.

EFFECTIVE: 07/12/95

2-9.6.1 Documentation of Internal Disclosures of Grand Jury Material

Practical considerations often require Agents assisting government attorneys to seek additional assistance in the SAME investigation from others within the FBI. In many districts, support personnel and supervisors of case Agents need not be routinely included in the list provided to the court. In lieu of a Rule 6(e) letter from the U.S. Attorney's Office (USAO) containing an exhaustive list of names of FBI personnel, an FBI record of additional internal disclosures is to be maintained by the case Agent in order to establish accountability. Use of this "internal certification" procedure should be authorized by the appropriate USAO. The internal form should record the date of disclosure as well as the identity and position of the recipient. Such internal disclosures, of course, may be made only in support of the same investigation in which a federal prosecutor has previously issued a Rule 6(e) letter. In addition, the internal record should reflect that all recipients of grand jury materials were advised of the secrecy requirements of Rule 6(e). Whenever practicable, recipients should be listed prior to disclosure.

EFFECTIVE: 07/12/95

2-9.7 Storage of Grand Jury Material (See MIOG, Part II, 23-6.6.5; MAOP, Part II, 9-9.)

As detailed above in MIOG, Part II, 2-9.3 through 2-9.5, the grand jury rule of secrecy requires that the FBI cannot make or allow unauthorized disclosure of grand jury material. Material and records obtained pursuant to the grand jury process frequently are stored in FBI space. Unauthorized disclosures of grand jury material entrusted to FBI personnel should be reported to the appropriate government attorney, who must, in turn, notify the court. In order to protect against unauthorized disclosure, grand jury material must be secured in the following manner:

(1) It must be marked with the following warning: "GRAND

JURY MATERIAL - DISSEMINATE ONLY PURSUANT TO RULE 6(e)."

(2) Access to grand jury material must be limited to authorized persons, i.e., those assisting an attorney for the government in a specific criminal investigation (see MIOG, Part II, 2-9.5), and when not in use must be placed in a subfile which is locked in a container with a combination lock, the combination of which is known only by such authorized persons. The combinations are to be changed annually. Absent chain-of-custody considerations, subfiles need not be kept in an evidence or bulky exhibit room, and may be entrusted to an Information Management Assistant or Evidence Control Technician if their names are placed on the internal certification list. (See MAOP, Part II, 2-4.4.4, 2-4.4.16, and 2-5.1.)

(3) FD-302s and other internal documents that contain grand jury information must be prepared on removable diskettes that are placed in secure storage when not in use. The hard copies must be kept in the grand jury subfile. (See MAOP, Part II, 10-13.8; Correspondence Guide-Field, 2-11.4.10.)

(4) Documents containing grand jury information cannot be placed in manual or automated record systems that can be accessed by persons who are not on the disclosure list. A nondisclosure warning on the documents, or an electronic tagging warning, is not sufficient protection for grand jury information. Such information must be kept only in files to which access is properly restricted. (See MIOG, Part II, 2-9.5.1.)

(5) Transmittal to other field offices of documents containing grand jury material must be by registered mail (or other traceable courier such as Federal Express approved by the Security Programs Manager). Couriers and other personnel employed in these services will be unaware of the contents of the material transmitted due to the wrapping procedures specified below; and therefore, do not require a background investigation for this purpose. The names of persons who transport the material need not be placed on a disclosure list, but the lead office must provide the case Agent in the originating office with a list of the names of personnel in the lead office to whom disclosure is made. Those names are to be added to the internal certification list at the originating office.

(6) Grand jury material which is to be transmitted outside a facility shall be enclosed in opaque inner and outer covers. The inner cover shall be a sealed wrapper or envelope which contains the addresses of the sender and the addressee authorized

access to the grand jury material. The inner cover shall be conspicuously marked "Grand Jury Information To Be Opened By Addressee Only." The outer cover shall be sealed, addressed, return addressed and bear no indication that the envelope contains grand jury material. When the size, weight or nature of the grand jury material precludes the use of envelopes or standard packaging, the material used for packaging or covering shall be of sufficient strength and durability to protect the information from unauthorized disclosure or accidental exposure.

(7) When the government attorney, in consultation with the Security Programs Manager (SPM), determines the greater sensitivity of, or threats to, grand jury material necessitate a more secure transmission method, the material may be transmitted by: U.S. Postal Service registered mail, return receipt requested; an express mail service, approved for the transmission of national security information; or hand carried by the cognizant government attorney or his or her designated representative.

(8) Grand jury material containing classified national security information must be handled, processed and stored in accordance with Title 28, Code of Federal Regulations, Part 17. Grand jury material containing other types of sensitive information such as federal tax return information, witness security information and other types of highly sensitive information that have more stringent security requirements shall be stored and protected pursuant to the security regulations governing such information and special security instructions provided by the organization originating the information.

|(9)| Original documents that were obtained through the grand jury process should be returned to the attorney for the government or, with the government attorney's permission, to the owner if there is no indictment or the prosecution has concluded (see MAOP, Part II, 2-4.4.4 and 2-4.4.16).

EFFECTIVE: 04/29/97

2-9.8 Requests for Subpoenas in Fugitive Investigations

The Department of Justice has advised that it is a misuse of the grand jury to utilize the grand jury as an investigative aid in the search for a fugitive in whose testimony the grand jury has no interest. Therefore, grand jury subpoenas for witnesses or records should not be requested in FBI fugitive investigations. There are, however, limited situations in which courts have recognized that grand jury efforts to locate a fugitive are proper. These situations are described below.

(1) The use of grand jury process to locate a fugitive is proper when the grand jury is interested in hearing the fugitive's testimony. Thus if the grand jury seeks the testimony of the fugitive in the investigation of Federal criminal violations before it, it may subpoena other witnesses and records in an effort to locate the fugitive witness. However, interest in the fugitive's testimony must not be a pretext. The sole motive for inquiring into the fugitive's location must be the potential value of fugitive's testimony. A subpoena for the fugitive witness must be approved by the grand jury before seeking to subpoena witnesses or records to locate the fugitive. Further, it is not proper to seek to obtain grand jury testimony from any witness, including a fugitive, concerning an already returned indictment. Thus it would not be proper to seek to locate a fugitive for the purpose of having fugitive testify about matters for which an indictment has already been returned, unless there are additional unindicted defendants to be discovered or additional criminal acts to be investigated through the testimony of the fugitive. Current policy on "target" witnesses must be observed. Grand jury subpoenas for witnesses and records aimed at locating a fugitive witness who is a target of the grand jury investigation will be approved only where a target subpoena already has been approved by the responsible Assistant Attorney General.

(2) Use of the grand jury to learn the present location of a fugitive is proper when present location is an element of the offense under investigation. On adequate facts, the present location of a fugitive might tend to establish that another person is harboring fugitive, or has committed misprision, or is an accessory after the fact in the present concealment of the fugitive. However, this justification could be viewed as a subterfuge if the suspected harborer or the person potentially guilty of misprision or as an accessory were given immunity in the grand jury in order to compel his/her testimony about the location of the fugitive. In order to ensure the proper use of investigations for harboring, misprision, and accessory after the fact based on acts of concealment, the U.S.

Attorneys must consult with the Department of Justice prior to initiating grand jury investigations for these offenses. With regard to escaped Federal prisoner and bond default matters, the present location of a fugitive is not relevant evidence in a grand jury investigation as these offenses address the circumstances of a prior departure from a known location. The fugitive's present location is not a relevant factor as it is in harboring or misprision investigations. Inasmuch as unlawful flight to avoid prosecution cases are, as a rule, not prosecuted and cannot be prosecuted without written authorization from the Attorney General or an Assistant Attorney General, any effort to use the grand jury in the investigation of such cases shall be preceded by consultation with the Department of Justice and by written authorization to prosecute from the Assistant Attorney General in charge of the Criminal Division.

EFFECTIVE: 08/21/87

2-10 INDICTMENT AND INFORMATION (RULE 7)

EFFECTIVE: 08/21/87

2-10.1 Definitions

An indictment is a written accusation against one or more persons of a crime presented to and|proferred|upon oath or examination by a grand jury legally convoked. An information is an accusation, in the nature of an indictment, filed by a USA supported by oath or affirmation showing probable cause.

EFFECTIVE: 02/11/97

2-10.2 Nature of Crime

Any capital offense must be prosecuted by indictment. A felony is also prosecuted by indictment unless indictment is waived in which case it may be prosecuted by information. Any other offense may be prosecuted by indictment or by information.

EFFECTIVE: 08/21/87

2-10.3 Waiver of Indictment

A felony may be prosecuted by information if the defendant, after he/she has been advised of the nature of the charge and of his/her rights, waives in open court prosecution by indictment.

EFFECTIVE: 10/22/84

2-10.4 Advice by Agents

All Agents should advise persons whom they arrest of the provisions of the preceding paragraph (Rule 7b, FED.R.CRIM.P.), after the defendant has indicated his/her guilt and has signed a confession. If a defendant indicates a desire to waive an indictment, that desire should be promptly brought to the attention of the responsible Assistant United States Attorney (AUSA). The Agent should record both the defendant's intent to waive indictment and the fact the AUSA was advised in a memorandum to the investigative file and in the prosecutive status portion of the prosecutive report.

EFFECTIVE: 10/22/84

2-10.5 Deleted

EFFECTIVE: 10/22/84

2-11 ARREST IN DISTRICT OTHER THAN DISTRICT OF PROSECUTION (RULE 20; RULE 40)

EFFECTIVE: 10/22/84

2-11.1 Place of Arrest

An offender who has committed a Federal violation in one judicial district (district of prosecution) may be located and arrested in a different judicial district (district of asylum).

EFFECTIVE: 10/22/84

2-11.2 Disposition in District Asylum

Under certain conditions, the prosecution may proceed in the district of asylum. (Rule 20).

EFFECTIVE: 10/22/84

2-11.2.1 Where Indictment or Information Pending

A defendant arrested, held, or present in a district other than that in which an indictment or information is pending against him/her may state in writing that he/she wishes to plead guilty or nolo contendere, to waive trial in the district in which the indictment or information is pending, and to consent to disposition of the case in the district in which he/she was arrested, held, or present, subject to the approval of the USA for each district. Upon receipt of the defendant's statement and of written approval of the USAs the clerk of the court in which the indictment or information is pending shall transmit the papers in the proceeding or certified copies thereof to the clerk of the court for the district in which the defendant was arrested, held, or present, and the prosecution shall continue in that district.

EFFECTIVE: 10/22/84

2-11.2.2 Where Indictment or Information Not Pending

A defendant arrested, held, or present in a district other than the district in which a complaint is pending against him/her may state in writing that he/she wishes to plead guilty or nolo contendere, to waive trial in the district in which the warrant was issued, and to consent to disposition of the case in the district in which he/she was arrested, held, or present, subject to the approval of the USA for each district. Upon receipt of the defendant's statement and of written approval of the USAs and upon the filing of an information or the return of an indictment, the clerk of the court for district in which the warrant was issued shall transmit the papers in the proceeding or certified copies thereof to the clerk of the court for the district in which the defendant was arrested, held, or present, and the prosecution shall continue in that district. When the defendant is brought before the court to plead to an information filed in the district where the warrant was issued, he/she may at that time waive indictment as provided in Rule 7, and the prosecution may continue based upon the information originally filed.

EFFECTIVE: 10/22/84

2-11.3 Commitment to Another District (Rule 40)

The following procedures apply as to a person arrested in a district other than that in which the prosecution is pending, when the prosecution is to proceed in the district where the prosecution is pending.

(1) Prompt Appearance - A person arrested in a district other than the district of prosecution shall be taken without unnecessary delay before the nearest available federal magistrate.

(2) Preliminary Proceedings - Preliminary proceedings shall be conducted in accordance with Rules 5 and 5.1, FED.R.CRIM.P. The magistrate shall advise the accused of those rights specified in Rule 5 (see paragraph 2-7.3, supra) and of the provisions of Rule 20 (see paragraph 2-11.2, supra).

(3) Accused Held to Answer - The accused shall be held to answer if, from the evidence produced during the preliminary examination, the magistrate determines there is probable cause; or, if no preliminary examination is held, because an indictment has been returned or an information filed (see paragraph 2-7.4, supra) or

because the accused elects to have the preliminary examination conducted in the district of prosecution, the accused shall be held to answer upon a finding that he/she is the person named in the information, indictment, or warrant.

(4) Production of Warrant - If the accused is held to answer, he/she shall be held to answer in the district court in which prosecution is pending, upon production of a warrant or a certified copy thereof.

(5) Transmittal of Papers - In connection with the above proceedings, Agents in the district of prosecution should immediately request the United States Marshal to forward certified copies of the necessary papers to the USA in the district where the arrest occurred and should so notify the USA in the district of prosecution. These documents, however, should not be transmitted through Bureau field offices.

(6) Notification - When the papers described in the preceding paragraph have been forwarded, the SAC in the district of prosecution will immediately notify the office covering the district of asylum.

EFFECTIVE: 02/14/97

||2-11.3.1 Arrest of Probationer

If a person is arrested for a probation violation in a district other than the district of supervision, he/she shall be taken without unnecessary delay before the nearest available Federal magistrate. The magistrate shall order the probationer held to answer in the district court of the district having probation supervision upon production of certified copies of the probation order, the warrant, and the application for the warrant, and upon a finding that the person arrested is the person named in the warrant.|

EFFECTIVE: 02/08/80

2-11.3.2 Failure to Appear

Whenever a warrant is issued because of the failure of the person named therein to appear as required pursuant to a subpoena or the terms of release, and the person is arrested in a district other than that in which the warrant was issued, the person arrested shall be taken before the nearest available Federal magistrate without unnecessary delay. Upon production of the warrant or a certified copy thereof, and upon a finding that the person arrested is the person named in the warrant, the magistrate shall hold the person to answer in the district in which the warrant issued.

EFFECTIVE: 02/08/80

2-11.4 Custody of Prisoners in a District of Asylum

EFFECTIVE: 10/25/89

2-11.4.1 Custody by U.S. Marshal

Upon written request of an SA, the U.S. Marshal in the district of asylum is authorized to take custody of a prisoner even though U.S. Marshal has not received the warrant or other court papers from the district of prosecution. U.S. Marshal is likewise authorized to take the accused before the nearest available Federal magistrate for commitment to jail, pending receipt of the necessary papers. The written request to the Marshal is to be signed by the SA, and will include the name of the person arrested, the Federal charge upon which subject is being held, the district in which prosecution is pending, and a statement as to whether or not directions have been given for the forwarding of the warrant to the Marshal having custody of the prisoner.

EFFECTIVE: 10/25/89

2-11.4.2 Use of Form FD-351

Form FD-351 may be used to request the Marshal to assume custody of a prisoner. Since the form also provides space for details of the process issued, a copy of the FD-351 may be sent to the USA and the USM for information and necessary action.

EFFECTIVE: 10/25/89

2-11.4.3 Marshal Unable to Assume Custody

If, due to emergency circumstances, the Marshal is unable to comply with a request to assume custody, the SA should maintain custody and if circumstances dictate, provide the necessary transportation and ensure initial appearance of the prisoner before the magistrate.

EFFECTIVE: 10/25/89

2-12 FUGITIVES LOCATED IN FOREIGN COUNTRIES; EXTRADITION

EFFECTIVE: 10/25/89

2-12.1 Notification to USA

As soon as it appears likely that a fugitive may be located in a foreign country, you should notify the prosecutor, either the U.S. Attorney or the local prosecutor in unlawful flight cases, that he or she should contact the Office of International Affairs (OIA), Criminal Division, U.S. Department of Justice, promptly. In addition, as soon as such an arrest appears likely, you are to notify the substantive division at FBIHQ, with copy to the Office of Liaison and International Affairs, so that FBIHQ may notify OIA.

EFFECTIVE: 10/25/89

2-12.2 Request for Arrest and Extradition

FBI employees have no authority to request foreign officials to arrest and extradite fugitives who are wanted for violations of the laws of the United States. Requests for the arrest and extradition of such fugitives must be forwarded to the Attorney General by the USA in whose district the prosecution is pending. Departmental regulations require the USAs to furnish the Attorney General with certain information and certified papers for use in effecting the arrest and extradition of foreign fugitives.

EFFECTIVE: 10/25/89

2-12.3 Information Furnished the USA

FBI employees should be prepared to furnish certain information to the USA in order for USA to institute the formal steps necessary to extradite a fugitive from a foreign country. Information which the USA may require includes:

(1) Evidence that an arrest warrant, if one is outstanding, cannot be executed in the United States because of the flight of the accused to a known locality in a foreign country;

(2) Evidence for presentation to the surrendering government sufficient to make out a strong case against the accused, such a case as would justify the committal of the accused under the laws of the United States;

(3) Full name of the accused, together with any assumed names;

(4) Physical description of the accused;

(5) Place and address in the foreign country where the accused can be found;

(6) Date of indictment, if an indictment has been filed;

(7) Description of the offense or offenses charged;

(8) Date of the commission of the offense and the place where committed.

EFFECTIVE: 10/25/89

2-12.4 Investigations to Locate Fugitives

FBI employees who are conducting investigations as to the whereabouts of fugitives in foreign countries have no authority to employ attorneys or other persons to represent the United States and interested officials and attorneys of a foreign country should be informed to this effect.

EFFECTIVE: 01/31/78

2-12.5 Deportation Proceedings

In deportation proceedings FBI employees should consult the USA in whose district the prosecution is pending and the USA into whose jurisdiction the subject would be deported before making official allegations in the foreign country alleging that the fugitive is an alien to that country, a citizen of the United States, and a person who should be deported. Employees also should consult the nearest American consul stationed in the foreign country and keep him advised of developments in any deportation proceedings.

EFFECTIVE: 01/31/78

2-12.6 Evidence of Fugitive's Citizenship

In all cases in which the apprehension of a fugitive is desired in a foreign country, FBI employees should collect and forward to the appropriate USA evidence of the citizenship of the person whose arrest is desired. Naturalization papers and birth or baptismal certificates duly notarized or certified by the proper authorities constitute evidence of citizenship.

EFFECTIVE: 01/31/78

SECTION 3. ADMISSIBILITY OF EVIDENCE IN CRIMINAL CASES

3-1 INTRODUCTION

(1) The Federal Rules of Evidence (FED.R.EVID.), a uniform code of evidence approved by the Supreme Court and enacted into law by Congress, with amendments, govern proceedings in the Federal courts and before U.S. Magistrates in criminal and civil cases. There are 62 Rules set forth under 11 main Articles. State rules of evidence have no application at Federal criminal trials.

(2) Except for a general rule on privileges which applies to all stages of a case, the Rules do not apply to such proceedings as the issuance of arrest warrants, search warrants, or criminal summonses; preliminary examinations; grand jury proceedings; or bail, sentencing, probation, and extradition proceedings.

(3) The Rules do not incorporate principles of the Fourth, Fifth, and Sixth Amendments to the Constitution, and the judicial interpretation thereof, affecting the admissibility of evidence obtained by Special Agents through means such as search and seizure, interrogation of persons in custody, and eyewitness identification procedures.

EFFECTIVE: 08/16/82

3-2 NECESSITY FOR RULES OF EVIDENCE

In our adversary trial system, the issues in a case are decided on facts presented to the jury. When a defendant is charged with a crime, the facts in issue are (1) the elements of the statute as alleged in the indictment and denied by his/her plea of not guilty, and (2) the facts which he/she may allege in defense denied by the prosecution. All matters of law are decided by the judge, e.g., whether an item of evidence is admissible, and all matters of fact are decided by the jury, e.g., what weight and credibility is to be given to the evidence. The judge also decides facts upon which the admissibility of evidence may depend e.g., whether a witness whose former testimony is offered in evidence is "unavailable" under the former-testimony exception to the hearsay rule. The judge is not limited by the rules of evidence in passing upon such preliminary questions. Every element necessary to constitute the crime charged against the defendant must be proved beyond

a reasonable doubt.

EFFECTIVE: 08/16/82

3-3 RELEVANCY

(1) The fundamental principle of the law of evidence is that of relevancy. "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

(2) All relevant evidence is admissible except as otherwise provided by: (a) the Constitution, e.g., the search and seizure exclusionary rule based on the Fourth Amendment; (b) Act of Congress, e.g., Title 47, USC, Section 605 dealing with interception of wire or radio communications; (c) other rules prescribed by the Supreme Court, e.g., the "Mallory Rule" excluding statements elicited during detention in violation of Rule 5(a) of the Federal Rules of Criminal Procedure (FED.R.CRIM.P.); and (d) the FED.R.EVID.

(3) The test to be applied in determining the relevancy of an item of evidence is its connection by reason of logic, experience, or science with the facts to be proved in the case. Evidence showing the defendant's motive, preparation, opportunity to commit a particular crime, or his/her threats to the victim of the crime, or attempts to destroy incriminating evidence is relevant. A fact not immediately relevant to the facts in issue may become so, e.g., a prior inconsistent statement affecting the credibility of a witness.

(4) The principle of relevancy emphasizes the need during investigation of a clear understanding of the elements of the crime involved. Agents should develop all evidence which can reasonably be obtained to prove such elements. This is necessary since the FBI has the responsibility of furnishing the USA or the Department of Justice all evidence bearing on any contemplated prosecution. The defense that may be interposed by the defendant is generally not known in advance.

(5) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(6) Evidence of a person's character or a trait of |his/her| character is not admissible for the purpose of proving that |he/she| acted in conformity therewith on a particular occasion, except:

(a) Evidence of a pertinent trait of |his/her| character offered by an accused, or by the prosecution to rebut the same.

(b) Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor.

(c) Evidence of the character of a witness for truthfulness or untruthfulness to attack or support |his/her| credibility.

(7) Evidence of other crimes is not admissible to prove the character of a person in order to show that |he/she| acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(8) In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct. In cases in which character or a trait of character of a person is an essential element of a charge or defense, proof may also be made of specific instances of |his/her| conduct.

(9) Evidence of the habit of a person or the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

EFFECTIVE: 08/16/82

3-4 GENERAL TYPES OF EVIDENCE

Evidence may be classified in several ways; e.g., according to its form, or according to the way it tends to prove a fact.

(1) According to its form, evidence is testimonial, documentary, or real. Testimonial evidence, the most common type, consists of the oral assertions of witnesses. Documentary evidence consists of the words, figures, or other symbols conveying information set down on a writing, recording, or photograph. Real evidence consists of tangible things involved in a case, such as physical objects or substances.

(2) According to the way it tends to prove a fact, evidence is either direct or circumstantial. It is direct when it immediately establishes the very fact to be proved. It is circumstantial when it establishes other facts so relevant to the fact to be proved that they support an inference of its existence. Thus, if a defendant is charged with murder on a Government reservation and a witness testifies that he/she saw the defendant stab the victim, the evidence is direct. If a witness testifies that he/she saw the defendant running from the scene of the stabbing, or that he/she had seen the defendant purchase a knife of the kind used in the killing the day before the crime, the evidence is circumstantial. In an ITSMV case, the testimony of the owner of an automobile that he/she saw the defendant steal his/her car is direct evidence as it establishes the theft of the car which is an element of the statute. If a used car dealer testifies that the defendant tried to sell this car to him/her at a low price, the evidence is circumstantial.

(3) Direct and circumstantial evidence are equally admissible. Circumstantial evidence may present problems of relevancy where direct evidence does not, but circumstantial evidence is not inferior to direct evidence and may be more persuasive than it.

EFFECTIVE: 08/16/82

3-5 JUDICIAL NOTICE

(1) Judicial notice is the process by which a court accepts a relevant fact as true without evidence thereof. A judicially noticed fact must be a fact which is not subject to reasonable dispute in that it is either (a) generally known within the territorial jurisdiction of the trial court or (b) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. An example of judicially noticed fact would be: the time of sunset on a certain date as determined by the records of the U.S. Department of Commerce National Weather Service. In a criminal case, the court instructs the jury that it may, but is not required to, accept as conclusive any facts judicially noticed.

(2) In investigations in which it appears pertinent to establish facts as part of the case which may fall within this rule, Agents should not assume that such facts need not be proven. Where facts may fall within this rule, consideration should be given to discussing with the USA the necessity for investigation. As to the taking of judicial notice of matters of foreign law, see Rule 26.1 of the|FED.R.CRIM.P.|

EFFECTIVE: 08/16/82

3-6 PRESUMPTIONS

(1) A presumption is a standardized inference which permits, but does not require, the jury to accept the existence of a presumed fact, e.g., once a conspiracy is shown to exist, it is presumed to continue until an affirmative act of termination. A presumption is not evidence but a way of dealing with evidence. It acts to shift the burden of producing evidence to the contrary to the party against whom it operates. Congress has created various presumptions by statute to lessen the burden of proof upon the prosecution. For example, the Selective Service Act provides that it is unlawful to possess a draft card not lawfully issued to the holder with intent to use it for the purpose of false identification. It further provides that the possession of such a card is deemed sufficient evidence to establish such an intent unless the defendant explains his possession to the satisfaction of the jury. Because of its relationship to the burden of proof, the impact of a presumption is potentially great. Generally, a statute creating a presumption is constitutional if there is a natural and rational evidentiary relation, in accordance with the experience of mankind, between the fact proved and the one presumed.

EFFECTIVE: 08/16/82

3-7 WITNESSES

EFFECTIVE: 06/15/81

3-7.1 Competency

(1) In General - A witness is said to be competent when|he/she|is qualified to testify under the law. The Rules contain a broad general provision that every person is competent to be a witness except as otherwise provided in the code. The only persons so specifically designated as not being competent are (a) the judge presiding at the trial and (b) a member of the trial jury. By reason of this broad general provision, the specific grounds of immaturity, mental incapacity, religious belief, and conviction of crime on which persons were disqualified as witnesses at common law are abolished. The common law incompetency of the parties in a case, their spouses, and other persons having an interest in the outcome of the trial are likewise abolished.

(2) Requirement of Personal Knowledge - A witness may not testify unless evidence is introduced sufficient to support a finding that|he/she|has personal, i.e., firsthand knowledge of the matter. Although a lay witness must have had an opportunity to observe, and must have actually observed a matter, a witness testifying as an expert is allowed to express opinions on facts made known to|him/her|at or before a hearing of which|he/she|does not have personal knowledge. The cross-examination of a witness is limited to the subject matter of|his/her|direct examination and matters affecting|his/her| credibility. Leading questions are not to be used on the direct examination of a witness except to develop|his/her|testimony but ordinarily are permitted on cross-examination.

(3) |The common law rule that one spouse is disqualified from testifying against the other has been abolished. Today, a husband or wife may testify for or against his or her spouse, so long as the testifying party chooses to so testify. The abolition of this "adverse spousal testimony" privilege leaves undisturbed the right of a husband or wife to prevent the testimonial disclosure of confidential communications made in the privacy of the marital relationship (the

husband-wife privilege). See Section 3-8.3, infra.

(4) Handwriting - The admitted or proved handwriting of any person is admissible, for purposes of comparison, to determine genuineness of other handwriting attributed to such person by statute 28 U.S.C. 1731.

EFFECTIVE: 06/15/81

3-7.2 Impeachment of Witnesses

(1) The credibility of a witness may be attacked by any party, including the party calling him/her. Thus, the traditional rule against impeaching one's own witness is abandoned under the Rules.

(2) The credibility of a witness may be attacked or supported by evidence in the form of reputation or opinion, but subject to limitations. The evidence may refer only to character for truthfulness or untruthfulness, and evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation, evidence or otherwise.

(3) Specific instances of the conduct of a witness for the purpose of attacking or supporting his/her credibility, other than conviction of crime, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness concerning his/her character for truthfulness or untruthfulness, or concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

(4) The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of his/her privilege against self-incrimination when examined with respect to matters which relate only to credibility.

(5) For the purpose of attacking the credibility of a witness, evidence that he/she has been convicted of a crime is admissible, within limitations, if elicited from him/her or established by public record during cross-examination, but only if the crime was punishable as a felony and the court determines that the probative value of admitting the evidence outweighs its prejudicial effect to the defendant, or if the crime involved dishonesty or false statement

regardless of the punishment.

EFFECTIVE: 06/15/81

3-7.2.1 Duty to Disclose Potential Impeachment Material Regarding Government Employee/Witnesses

(1) FBI Agents and other investigative personnel are obligated to inform prosecutors with whom they work of potential impeachment information prior to providing a sworn statement or testimony in any criminal case.

(2) The failure of the prosecution to disclose evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. BRADY v. MARYLAND, 373 U.S. 83 (1963). Impeachment evidence, which is any evidence that may impact on the credibility or reliability of a witness, can also be BRADY material. GIGLIO v. UNITED STATES, 405 U.S. 83 (1972). Moreover, the failure of the defendant to request favorable evidence does not leave the government free of obligation. UNITED STATES v. AGURS, 427 U.S. 97 (1976). Regardless of the request, favorable evidence is material, and constitutional error results from its suppression by the government, "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." UNITED STATES v. BAGLEY, 473 U.S. 667 (1985). Additionally, if the failure to disclose the evidence "undermines confidence" in the verdict, it must be disclosed. KYLES v. WHITLEY, 115 S.Ct. 1555, 1556 (1995). The prosecutor has a duty to learn of any favorable evidence known to others acting on the government's behalf, including the police. Id. at 1567.

(3) When a federal prosecutor identifies an agency employee as a potential witness or affiant in a specific criminal case or investigation the employee must disclose potential impeachment material known to them. This duty includes those instances when there is no specific request from the prosecutor.

(4) Generally, the term "potential impeachment material" includes, but is not limited to, the following:

(a) specific instances of conduct, or misconduct, that may be used to question a witness's credibility or character for truthfulness; (b) evidence in the form of opinion as to reputation

about a witness's character for truthfulness; (c) prior inconsistent statements; and (d) information that may be used to suggest that a witness is biased.

(5) Because the duty to learn of potential impeachment material lies with the prosecution, a prosecutor may also request that the employee-witness' agency review the employee's personnel files for potential impeachment information. When an individual prosecutor determines that it is necessary to request potential impeachment information from the employee-witness' agency, the prosecutor should notify the designated requesting official, who in turn is authorized to request potential impeachment information from the employee-witness' agency official, the CDC.

(a) Each U.S. Attorney's Office is required to designate a requesting official to serve as point of contact to receive potential impeachment information from agencies. Also the requesting official is required to inform the agency official (CDC) of relevant case law and court practices and rulings that govern the definition and disclosure of impeachment information in that district.

(b) The agency official within the FBI is the CDC for the division in which the investigation or case is pending. In certain instances outlined below, the Investigative Law Unit (ILU) of the Office of the General Counsel (OGC) will be responsible for conducting the review of some personnel files in lieu of the CDC. However, the CDC will still be responsible for disclosing the information located by OGC to the requesting official/prosecutor.

(6) FBI Plan for Review and Disclosure

(a) All requests from a requesting official/prosecutor for potential impeachment information should be in writing, and should be directed to the CDC. Upon receiving a request from the requesting official/prosecutor, the CDC should ensure that all relevant personnel (67 classification) and/or administrative files (263 classification and 66 classification) for the employee-witness are identified and reviewed to determine whether the files contain any potential impeachment information.

(b) All FBI employee-witness' personnel and related administrative files maintained in the field division where the employee-witness is located should be reviewed. If the CDC is aware of additional related files at FBIHQ or elsewhere, not maintained by the field division, but which could contain potential impeachment

information, the CDC should ensure that those files are also reviewed.

(c) When the employee-witness is located in a division other than where the investigation or case is pending, the CDC should request that the CDC in that division conduct a review of the employee-witness personnel files.

(d) FBIHQ review of some employee-witness personnel files will be required where the employee was previously assigned to FBIHQ. The field division personnel files in that instance may only begin at the time the employee was assigned to that division; therefore, the bulk of that employee's personnel file may be maintained at FBIHQ. Thus, where the employee-witness is located at FBIHQ or has previously been assigned to FBIHQ, the CDC should request that the employee-witness' personnel files be reviewed by FBIHQ. The ILU, OGC, will be responsible for conducting FBIHQ reviews.

(7) When the CDC makes a request for FBIHQ to conduct a review of an employee-witness' personnel file, or requests a review by a CDC in another division, the following information should be included in the written request:

(a) The full case name and/or docket number;

(b) The name, address, telephone and facsimile number of the requesting official;

(c) The official Bureau name and Social Security Account Number for each employee whose file is to be reviewed;

(d) The results (summary or documents with appropriate redactions) of the file review conducted by the CDC, if any;

(e) Any additional or specific requests provided by the requesting official concerning the review;

(f) Copies of any relevant court rules or orders governing the request; and

(g) Any additional facts or circumstances that might be relevant to the requested review.

(8) After the review has been conducted, the CDC should

notify the requesting official, in writing, that the review has been conducted and should advise the requesting official of the following:

(a) Substantiated allegations - any finding of misconduct that reflects upon the truthfulness or possible bias of the employee, including a finding of lack of candor during an administrative inquiry;

(b) Criminal charges - any past or pending criminal charge brought against the employee;

(c) Pending investigations or allegations - any credible allegation of misconduct that reflects upon the truthfulness or possible bias of the employee that is the subject of a pending investigation; and

(d) Unsubstantiated allegations - allegations that are not credible, and allegations that have resulted in exoneration.

Allegations of misconduct that are not credible, cannot be proved, or result in the exoneration of an employee-witness are rarely considered to be impeaching material. However, the duty to learn of potential impeachment material lies with the prosecutor, and the prosecutor's ultimate burden is to ensure that all BRADY/GIGLIO material has been provided to the defendant. Therefore, the policy requires that such allegations that reflect upon the truthfulness or bias of the employee, to the extent maintained by the FBI, be provided to the prosecutor under the following circumstances:

1. When it is required by a court decision in the district where the investigation or case is being pursued;

2. When, on or after the effective date of this policy:

a. the allegation was made by a federal prosecutor, magistrate judge, or judge; or

b. the allegation received publicity;

3. When the requesting official and the agency official agree that such disclosure is appropriate, based upon exceptional circumstances involving the nature of the case or the role of the agency witness; or

4. When disclosure is otherwise deemed

appropriate by the agency.

NOTE: The CDC is required to advise the prosecuting office, to the extent determined, whether any of the aforementioned allegations were found to be unsubstantiated, not credible, or resulted in the employee's exoneration. When there is uncertainty as to whether information is of potential impeachment value, the CDC should consult with the OGC. However, in general, such uncertainty should be resolved in favor of disclosure to the requesting official.

(9) A copy of any written allegation relating to truthfulness or possible bias that is made against an FBI employee by a federal prosecutor or judge, or that receives publicity, should be retained in order to comply with this policy. If there is no written allegation or information, the CDC should make a notation of the information that comes to his/her attention in the appropriate personnel or administrative file.

(10) In order to ensure that special care is taken to protect the confidentiality of unsubstantiated allegations and the privacy interests and reputations of agency employee-witnesses, the CDC should request that all information and documentation that was not disclosed to the defense be expeditiously returned to the CDC. Prosecuting offices, however, are permitted to keep motions, responses, legal memoranda, court orders, and internal office memoranda or correspondence, in the relevant criminal case file.

(11) In order to ensure that all disciplinary and related information is reviewed, each CDC should develop and implement a plan whereby the CDC is notified in a timely manner of new or pending disciplinary matters concerning employee-witnesses. The CDC in the division where the investigation or case is pending is also responsible for ascertaining and notifying the requesting official of any additional information that becomes available until a prosecution is concluded.

(12) Supervisory personnel should familiarize themselves with any potential impeachment material in an employee's personnel file and consider that information when making investigative assignments that may result in that employee becoming an affiant or testifying in court.

(13) When information or documentation is provided to a prosecutor, the prosecutor should share that information only on a need-to-know basis with co-counsel or other appropriate supervisory personnel within the prosecutor's office. Before the information or

documentation is shared or provided to either a court or defense counsel, the prosecuting attorney should be requested to promptly advise the CDC who provided the information of the prosecutor's intent to disclose the information. Additionally, the CDC or other agency officials communicating with the Assistant United States Attorney should make the employee aware of the decision to disclose information from his or her personnel file.

(14) Before disclosing an allegation that has not resulted in (a) a FINDING of misconduct reflecting upon the truthfulness or possible bias of the employee, or (b) a criminal charge against the employee, the prosecutor should be requested to seek an EX PARTE, IN CAMERA review and decision by the court regarding whether such information must be disclosed to defense counsel. Whenever such information is released to the defense, the prosecuting attorney should, unless clearly inappropriate, seek a protective order from the court limiting the use and further dissemination of the information and requiring the return of government documents reflecting the information.

(15) |Deleted|

(16) |Deleted|

EFFECTIVE: 02/21/97

3-7.3 Refreshing Memory of Witnesses

(1) Generally, the memory of a witness may be refreshed before trial or while he/she is on the stand at trial. If a witness uses a writing to refresh his/her memory for the purpose of testifying either while testifying or before testifying, if the court in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony, the court examines the writing in camera, excises any portions not so related, and orders delivery of the remainder to the party entitled thereto. If the prosecution elects not to comply, the court strikes the testimony or declares a mistrial. Thus, the production of writings used by a witness while testifying is required; but it is discretionary with the court as to whether writings used by a witness to

refresh his/her memory before trial will be produced.

(2) This rule is expressly made subject to Rule 17(h), ||FED.R.CRIM.P.,|and Rule 26.2,|FED.R.CRIM.P.,|and items falling within its purview are producible only as provided by its terms. Rule 26.2, ||FED.R.CRIM.P.,|applies to statements relevant to the testimony of all witnesses in criminal cases and does not require that the statement be consulted for purposes of refreshment before or while testifying; whereas this evidentiary rule is not limited to statements relevant to witness testimony, applies to all cases, and requires that the writing be consulted for purposes of refreshment while or before testifying.

EFFECTIVE: 08/16/82

3-7.4 Prior Statements of Witnesses

(1) Generally, if a witness testifies to material facts at a trial and has previously made a statement concerning such facts before trial, he/she may be examined concerning them. The prior statement is admissible to impeach his/her credibility when it is inconsistent with his/her testimony, or to support his/her credibility, if attacked, when the statement is consistent with his/her testimony. An attack upon the credibility of a witness by proof that he/she has previously made statements inconsistent with his/her present testimony is the most frequently employed method of attack.

(2) In examining a witness concerning a prior statement made by him/her, whether written or not, the statement need not be shown nor its contents disclosed to him/her at that time, but on request the same is shown or disclosed to opposing counsel.

(3) Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny it and the opposite party is afforded an opportunity to interrogate him/her thereon, or the interests of justice otherwise require; in other words, an impeaching statement must first be shown to the witness before it can be proved by extrinsic evidence.

EFFECTIVE: 08/16/82

3-7.5 Court Witnesses and Exclusion of Witnesses

(1) The court may call witnesses and interrogate them, and all parties may cross-examine them.

(2) At the request of a party the court orders witnesses excluded so that they cannot hear the testimony of other witnesses. The Rules, however, do not authorize exclusion of a party who is a natural person, or a person whose presence is shown by a party to be essential to the presentation of |his/her| case, or an officer or employee of a party which is not a natural person designated as its representative by its attorney. It has been held that an officer who has been in charge of an investigation may be allowed to remain in court despite the fact that |he/she| will be a witness.

EFFECTIVE: 08/21/87

3-8 PRIVILEGES

EFFECTIVE: 08/21/87

3-8.1 In General

(1) Under the general rule on privileges, the privilege of a witness is governed by the principles of the common law as they may be interpreted by Federal courts in the light of reason and experience, except as otherwise required by the Constitution, Act of Congress, or Supreme Court rules.

(2) At common law certain persons by virtue of their relationship with a defendant cannot testify to confidential communications, either oral or written, obtained as a result of this relationship. The courts recognize the necessity for a free exchange of information between such persons and protect the relationship through adherence to the privilege rule. Privilege under this rule means that a witness cannot be forced to disclose any communication based on the confidential relationship. A privilege ordinarily can be waived by the person holding it. The following types of witnesses should be considered with respect to this rule.

EFFECTIVE: 08/21/87

3-8.2 Attorney and Client

Communications either oral or written between an attorney and client in the course of their professional relationship are considered privileged, the privilege belonging to the client. The privilege attaches only to communications needed to obtain legal services. The rule is designed to secure the client's freedom of mind in committing|his/her|affairs to the attorney's knowledge. The client is entitled to have the attorney honor the privilege even though the relationship has ceased. Communications between an attorney and client about a crime or fraud to be committed in the future are not privileged. The privilege under this rule may be waived by the client alone although the lawyer can claim the privilege on behalf of|his/her|client. A client's identity or occupation will not ordinarily qualify as confidential information, but the privilege has been held to protect a client's address from disclosure.

EFFECTIVE: 08/21/87

3-8.3 Husband and Wife

(1) Confidential communications, oral or written, between husband and wife are considered privileged and cannot be disclosed through the testimony of either spouse in the absence of a waiver. For example, a wife cannot be permitted to testify as to her husband's perjury confessed to her by the husband in the confidence of their marital relationship. All communications in private between spouses are presumed to be confidential. Either spouse is precluded from disclosing such communications, the basis for the privilege being the protection of marital confidence regarded as essential to this relationship. The one possible exception to the rule is communications between husband and wife relating to offenses against her, a wife being competent to testify against her husband in such cases. The privilege generally extends only to confidential communications, i.e., it does not extend to acts which would not have been performed but for the marital relationship.

(2) The legal relationship of husband and wife must exist at the time of the communication and, thus, a communication made before marriage, or after the marriage has terminated, is not privileged. The privilege of communications occurring during the marriage is not affected

by the death or divorce of either spouse. Communications by either spouse in the presence of third persons not intended to be confidential are not considered privileged.

EFFECTIVE: 08/21/87

3-8.4 Informants

The identity of an informant is privileged. The Government holds the privilege and, generally, is not required to disclose his/her identity. The privilege is founded upon the public interest in effective law enforcement. Citizens are to be encouraged to inform the Government of crime. The privilege, however, is not absolute and the public interest is balanced against the defendant's right to prepare his/her defense and to a fair trial. For example, disclosure may be required where the informant was a participant in the crime charged, or where the defendant's participation was the result of entrapment by the informant. In situations where the court requires disclosure and Government withholds, the court will dismiss the case. The privilege may arise not only at trial but at a proceeding to determine probable cause, e.g., in arrest and search situations. Where probable cause is established by evidence apart from the informant's information, the court may or may not require disclosure.

EFFECTIVE: 08/21/87

3-8.5 FBI Files and Records

The files and records of the FBI and official information in the possession of employees are considered privileged under Departmental Order 919-80, dated 12/18/80, which prohibits the production of such records, or the disclosure of information therefrom, or other official information in possession of employees under subpoena duces tecum, order, or otherwise without approval of an appropriate Department official or the Attorney General. This regulation is based on statutory authority contained in Title 5, USC, Section 301. (D. O. 919-80 set forth in MIOG, Part II, Section 6.)

EFFECTIVE: 08/21/87

3-8.6 Other Privileges

Most state courts by statute recognize a privilege as to communications between physician and patient, with exceptions, and also as to communications between a member of the clergy and penitent. These privileges did not exist at common law and have not been created by Federal statute. However, Federal courts have recognized a privilege for a confession-like statement to a member of the clergy without the assistance of any statute. Several states, by statute, grant a privilege to journalists to withhold their sources of information and also to accountants, but these privileges have not been recognized by Federal statute. The First Amendment to the Constitution does not accord a newsperson a privilege against appearing before a grand jury and answering questions as to either the identity of his/her news source or information he/she received in confidence.

EFFECTIVE: 08/21/87

3-9 OPINIONS AND EXPERT TESTIMONY

(1) If a person is testifying as a lay witness and not as an expert witness, his/her testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on his/her perception and (b) helpful to a clear understanding of his/her testimony or the determination of a fact in issue. Thus, an ordinary witness may express an opinion provided it is based upon his/her firsthand knowledge and is helpful in resolving issues. The law prefers testimony to concrete rather than abstract facts, and a detailed account to a broad assertion. Examples of opinions which are generally allowed are: That a person appeared nervous, intoxicated, weak, or sick; as to what a person appeared to be doing; as to a condition, e.g., that a floor was slippery; handwriting; the speed of a moving vehicle; and the value of a person's own property.

(2) If scientific, technical or other specialized knowledge will assist the jury to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.

(3) The facts or data upon which an expert bases his/her opinion or inference may be those perceived by or made known to him/her at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the

subject, the facts or data need not be admissible in evidence.

(4) An expert witness may testify in terms of opinion or inference and give his/her reasons therefor without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

(5) The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed by the court and may request the parties to submit nominations. An expert witness is not appointed by the court unless he/she consents to act. He/She is subject to cross-examination by each party, including the party calling him/her as a witness.

EFFECTIVE: 08/21/87

3-10 HEARSAY

EFFECTIVE: 08/16/82

3-10.1 In General

(1) Hearsay is simply defined as evidence based on something a witness has heard someone else say rather than on what|he/she|has |himself/herself|seen or experienced. Thus, if a witness testifies that |he/she|heard another person say "The defendant shot the victim," or if|he/she| produces a letter so stating sent to|him/her|by that other person, such evidence is hearsay. Technically, hearsay is defined as a statement, other than one made by the declarant while testifying at a trial or hearing, offered in evidence to prove the truth of the matter asserted. A "statement" is defined as an oral or written assertion, or | nonverbal conduct of a person if it is intended by|him/her|as an assertion. A "declarant" is defined as a person who makes a "statement." A declarant who makes an out-of-court statement is a witness and, thus, must have had firsthand knowledge.

(2) The testimony of a witness is evaluated in terms | of|his/her| perception, memory, narration, and sincerity. Ideally, a witness is required to testify orally to the relevant facts of | which|he/she|has personal knowledge, under oath, confronting the defendant, in the presence of the jury with|his/her|demeanor under its

scrutiny, and subject to cross-examination by the adversary party. The general principle, therefore, is that hearsay evidence is not admissible. In this regard the Rules provide that hearsay is not admissible except as provided by the|FED.R.EVID.|or by other rules prescribed by the Supreme Court pursuant to statutory authority, e.g., Rule 4(a) of the|FED.R.CRIM.P.|on affidavits to show grounds for issuing warrants, or by Act of Congress.

(3) Despite the desirability of giving testimony under ideal conditions, the law does not demand that they be attained in all situations. Thus, while it excludes hearsay generally as it is admittedly not equal in quality to testimony of the declarant on the stand, rather than lose it completely it allows hearsay in under certain circumstances believed to give it some particular assurance of credibility diminishing the risk of untrustworthiness and in the interests of justice.

(4) The Rules provide for two distinct classes of exceptions to the hearsay rule.

(a) The first class deals with situations where the availability of the declarant is regarded as immaterial - the hearsay statements in the 23 individual exceptions within this class being deemed to possess circumstantial guarantees of trustworthiness sufficient to justify nonproduction of the declarant in person even though|he/she|may be available.

(b) The second class, which consists of 4 specific exceptions deals with situations where the unavailability of the declarant is made a condition to the admission of the hearsay statement. Unavailability includes situations in which the declarant is unable to be present or to testify because of death, physical or mental illness; when|he/she|persists in refusing to testify despite a court order to do so; when|he/she|is exempted on the ground of privilege; when|he/she| testifies to a lack of memory; or when |he/she|is absent and the proponent of|his/her|statement is unable to procure|his/her|attendance by process or other reasonable means, or in the case of statements under belief of impending death, statements against interest, and statements of personal or family history|he/she|is unable to procure|his/her| attendance or testimony, e.g., through deposition, by such means. A declarant is not unavailable as a witness if|his/her|exemption, refusal, claim of lack of memory, inability or absence is due to the procurement or wrongdoing of the proponent of|his/her|statement for the purpose of preventing the witness from attending or testifying.

EFFECTIVE: 08/16/82

3-10.2 Hearsay Exceptions - Availability of Declarant Immaterial

EFFECTIVE: 08/16/82

3-10.2.1 Present Sense Impression

A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

EFFECTIVE: 08/16/82

3-10.2.2 Excited Utterance

A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

EFFECTIVE: 08/16/82

3-10.2.3 Then Existing Mental, Emotional, or Physical Condition

A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed.

EFFECTIVE: 03/08/79

3-10.2.4 Recorded Recollection

A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

EFFECTIVE: 03/08/79

3-10.2.5 Records of Regularly Conducted Activity

A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit. (28 U.S.C. 1732) Absence of entry in such records is admissible to prove the nonoccurrence or nonexistence of such matters.

EFFECTIVE: 03/08/79

3-10.2.6 Financial Records of a Customer

Customers' records in possession of a financial institution (broadly defined) may be obtained by the FBI only in accordance with the provisions of the Right to Financial Privacy Act of 1978 or through the issuance of a Federal Grand Jury subpoena. (See MIOG, Part II, 23-6)

EFFECTIVE: 03/08/79

||3-10.2.7| Public Records and Reports

Records, reports, statements, or data compilations, in any form, of public offices or agencies, Federal or non-Federal, setting forth (a) the activities of the office or agency, or (b) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, or (c) in civil actions and proceedings and against the Government in criminal cases, factual findings, i.e., nonevaluative and nonopinion reports, resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness. Records of vital statistics in a public office are admissible. The absence of a public record is also admissible.

EFFECTIVE: 03/08/79

||3-10.2.8| Judgment of Previous Conviction

Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused.

EFFECTIVE: 03/08/79

||3-10.2.9| Reputation as to Character

| Reputation of a person's character among |his/her| associates or in the community.

EFFECTIVE: 03/08/79

|3-10.2.10| Miscellaneous

Records of religious organizations; marriage, baptismal, and similar certificates; family records; records of documents affecting an interest in property; ancient documents; market reports; learned treatises; reputation concerning personal or family history; and others, are likewise specifically made admissible under this class of exceptions.

EFFECTIVE: 03/08/79

3-10.3 Hearsay Exceptions - Declarant Unavailable

EFFECTIVE: 03/08/79

3-10.3.1 Former Testimony

Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

EFFECTIVE: 03/08/79

3-10.3.2 Statement Under Belief of Impending Death

In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that|his/her|death was imminent, concerning the cause or circumstances of what|declarant|believed to be|his/her| impending death.

EFFECTIVE: 03/08/79

3-10.3.3 Statement Against Interest

A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject|declarant|to civil or criminal liability, or to render invalid a claim by|declarant|against another, that a reasonable|person| in|that|position would not have made the statement unless|they|believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

EFFECTIVE: 03/08/79

3-10.3.4 Statement of Personal or Family History

(1) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or

(2) A statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

EFFECTIVE: 03/08/79

3-10.4 Statements Which Are Not Hearsay

Prior statements by a witness and admissions by a party-opponent are not considered to be hearsay under the Rules although they literally fall within the definition of hearsay.

EFFECTIVE: 08/21/87

3-10.4.1 Prior Statement by Witness

(1) A statement is not hearsay if the declarant testifies at a trial or hearing and is subject to cross-examination concerning the statement and the prior statement is inconsistent with|his/her|testimony and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition. If the declarant admits that|he/she|made the prior statement and that it was true,|he/she|adopts the statement. If|he/she|denies having made the statement, or admits having made it but denies its truth, the prior statement is admissible as substantive evidence.

(2) Thus, in keeping with the modern view of the hearsay rule, when a witness testifies to material facts and the opponent can prove that the witness has previously made statements under oath inconsistent with|his/her|present testimony, the previous statements are admissible as substantive evidence.

(3) Also, a statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is consistent with|his/her| testimony and is offered to rebut an express or implied charge against|him/her|of recent fabrication or improper influence or motive. Prior consistent statements traditionally have been admissible to rebut such a charge, but under this rule are substantive evidence.

EFFECTIVE: 08/21/87

3-10.4.2 Admission by Party-Opponent

(1) Generally, an admission is a statement by a party of the existence of a fact relevant to the case but inconsistent with the position the party takes at the time of trial. The Rules provide, in part, that a statement is not hearsay if the statement is offered against a party and is (a)|his/her|own statement, the classic example of an admission, or (b) a statement of which|he/she|manifested|his/her|adoption or belief in its truth, or (c) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy, or|(d) a statement by a person authorized by the party to make a statement concerning the subject, or (e) a statement by the party's agent or servant concerning a matter within the scope of his/her agency or employment, made during the existence of the relationship.|

(2) No guarantee of trustworthiness is required in the case

of an admission by a party because|his/her|responsibility is considered sufficient to justify its reception in evidence against|him/her.| Admissions by a party-opponent include confessions, i.e., a confession is a species of admission. In a criminal case, a confession constitutes a direct acknowledgment by the defendant of|his/her|guilt of the crime charged against|him/her,|whereas an admission is an acknowledgment by the defendant of certain facts which tend, together with other facts, to establish|his/her|guilt. As a narrative of the defendant's personal conduct a confession stands somewhat apart from an admission, calls for separate treatment, and special rules are applicable to it. Generally, a confession is admissible in evidence if it is satisfactorily shown that the defendant, in keeping with the traditional doctrine, made it voluntarily without inducements; and, if in keeping with the constitutional guarantees, the confession was not obtained in violation of the defendant's rights to remain silent and to have the assistance of counsel.

(3) If a statement is made by another person in the presence and hearing of a party containing assertions of fact which if untrue, the party would under all the circumstances naturally be expected to deny,|his/her| failure to speak has traditionally been receivable against|him/her|as an admission. These "tacit admissions" are received with caution, however, when they occur in the course of criminal investigation. The courts have surrounded them with various restrictions and safeguards, and the constitutional Miranda Rule serves to circumscribe them.

(4) As a matter of substantive law, the acts and declarations of one conspirator occurring while the conspiracy is in progress and in its furtherance are provable against another conspirator as acts for which the latter is criminally responsible. The declarations of one conspirator may also be proved against another conspirator as representative admissions to prove the truth of the matter asserted. The existence of the conspiracy must be proved independently to justify the admission of the declarations. Admissions made after the termination of the conspiracy are excluded.

EFFECTIVE: 08/21/87

3-10.5 Hearsay Within Hearsay

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules. Thus, in multiple hearsay situations, where the objections attaching to simple hearsay are even more involved, each of the out-of-court statements must satisfy the requirements of some exception to the hearsay rule.

EFFECTIVE: 08/21/87

3-10.6 Attacking and Supporting Credibility of Declarant

When a hearsay statement, or a statement of a coconspirator of a party, has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible if the declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with |his/her| hearsay statement, is not subject to any requirement that |he/she| may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine |him/her| on the statement as if under cross-examination. Thus, the credibility of a hearsay declarant may be attacked and supported as though |he/she| had in fact testified. The credibility of a co-conspirator may also be attacked or supported as in the case of a hearsay declarant even though the statement of a coconspirator of a party is not hearsay under the Rules.

EFFECTIVE: 08/21/87

3-11 CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

(1) The evidentiary doctrine governing the admissibility of the contents or terms of a written document was formerly called the "best evidence rule." Aimed at preventing inaccuracies and fraud by requiring the production of the original document itself, the best evidence rule was essentially related to writings. Modern techniques of recording, however, have expanded methods of storing data, e.g., by computers, photographic systems, and other developments. The instant rule applies to these expanded methods of recording facts as well as to traditional writings.

(2) Under the Rules an "original" of a writing or recording is the writing or recording itself, any counterpart intended to have the same effect, a photograph or its negative or print, or a computer printout. Thus, a carbon copy of a sales ticket or any print from the negative of a photograph is deemed to be an "original" for the purposes of this rule. A "duplicate" is a counterpart produced by techniques which accurately reproduce the original, e.g., produced by the same impression as the original or from the same matrix. In large measure, a duplicate is given the status of an original, e.g., a bank microfilm record of checks cleared.

(3) The general rule is that in order to prove the contents of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided by the Rules or by Act of Congress. When a witness merely identifies a photograph or motion picture as a correct representation of events which he saw, however, this rule does not apply since it does not constitute an effort to prove the contents of the picture but is solely to use the picture to illustrate the witness' testimony. On the other hand, this rule does apply to an automatic photograph of a bank robbery as the photograph is used to prove its contents and has independent probative value.

(4) A duplicate is admissible to the same extent as an original unless a question is raised as to the authenticity of the original or it would be unfair in the circumstances to admit it.

(5) The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if all originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or no original can be obtained by judicial process; or at a time when an original was under the control of the party against whom offered, he was put on notice that the contents would be a subject of proof and he does not produce the original; or the writing, recording, or photograph is not closely related to a controlling issue. Under the foregoing circumstances, secondary evidence of the contents, with no degrees, is admissible.

(6) Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by his written admission without accounting for the nonproduction of the original. The contents of public records, if otherwise admissible, may be proved by certified copies or testified to be correct by a witness who has compared it with the original. The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or

calculation, but the originals or duplicates shall be available for examination by other parties and the court may order that they be produced in court.

(7) The identity and address of the person in possession of admissible writings, recordings, or photographs who can properly produce and identify them should always be ascertained and included in an investigative report. It should likewise be shown exactly what writings are to be produced voluntarily or under subpoena duces tecum.

EFFECTIVE: 08/21/87

3-12 IDENTIFICATION OR AUTHENTICATION OF REAL AND DOCUMENTARY EVIDENCE

(1) Real evidence, often called physical or demonstrative evidence, consists as noted of tangible things. Its variety is legion. It may constitute direct evidence, e.g., the jewelry stolen in a robbery; or circumstantial evidence, e.g., the latent fingerprint of the defendant lifted from the doorknob of the burglarized room. It may have played an active role in the crime, e.g., the fatal weapon in a murder case; or it may be employed for illustrative purposes, e.g., the photograph, chart, or model used to clarify trial testimony. Documentary evidence consists of words and figures set down on a writing, recording, or photograph, such as a letter, report, book of account, memorandum, or bank deposit slip. A document may be private or public in character.

(2) Before items of real and documentary evidence can be admitted in evidence, they must be identified or authenticated in some manner. They do not prove themselves. They must be shown to be what they are purported to be. For example, an article of clothing found at the scene of a crime cannot constitute relevant evidence against the defendant unless his ownership or previous possession of it is shown. A document purporting to be from the defendant relied upon to establish an admission by him, has no probative value unless it is shown that he authored it. This condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. Compliance with the requirements of identification or authentication, however, does not assure the admission of an item of real or documentary evidence into evidence since other rules of evidence may bar its admissibility.

(3) The requisite identification or authentication of real and documentary evidence may consist, for example, of the testimony of

a witness that he was present at the time and place when narcotics were taken from the defendant and, accounting for their custody through the period until trial including laboratory analysis, that the narcotics in court are those taken from the defendant. It may be the testimony of a witness who was present at the signing of a document in issue. It may consist of nonexpert opinion as to the genuineness of handwriting based on familiarity with the handwriting not acquired for purposes of the trial, or comparison by expert witnesses. A voice may be identified by opinion based upon hearing it at any time under circumstances connecting it with the alleged speaker.

(4) Prima facie authentication is accorded to certain documents and, accordingly, extrinsic evidence of authenticity as a condition precedent to admissibility is not required. Self-authenticating documents include domestic public documents, under seal or not under seal, foreign public documents, certified copies of public records, official publications, e.g., statutes and court reports, newspapers and periodicals, and writings acknowledged before a notary public. This presumptive authentication does not preclude evidentiary challenge to the genuineness of such documents. Although a newspaper may be received in evidence as authentic, the question of authority and responsibility for items therein contained remains open.

(5) To insure that items of real evidence will be admissible, it is essential that they be properly identified by the Agent when they are found, e.g., at a crime scene; that he make notes describing the evidence at that time and the way it was marked; that it is packaged carefully and the container properly identified; and that a chain of custody and a record thereof is maintained from the time of discovery to the time of the trial. This complete and rigorously adhered-to system of identification and custody negates the possibility of substitution, alteration, and tampering of real evidence and insures its admission at trial.

EFFECTIVE: 01/31/78

3-13 CONSTITUTIONAL SAFEGUARDS

(1) Constitutional safeguards, such as the protection against unlawful searches and seizures secured by the Fourth Amendment, the protection against self-incrimination secured by the Fifth Amendment, and the protection against denial of the right to the assistance of counsel at a critical stage in the prosecution secured by the Sixth Amendment must be borne in mind at all times during the course of investigation to ensure that evidence is obtained legally. Any evidence obtained in violation of constitutional rights is inadmissible.

(2) Agents are expected to be familiar with the FED.R.EVID., the basic doctrines of which should be considered in all investigations, whether criminal or civil. Likewise, these Rules must be considered in preparation of both investigative and prosecutive summary reports.

(3) All reasonable precautions must be taken to ensure that evidence obtained by Agents is admissible.

EFFECTIVE: 08/16/82

SECTION 4. JUVENILES AND JUVENILE DELINQUENCY ACT

4-1 GENERAL STATEMENT

EFFECTIVE: 02/22/88

4-1.1 Purpose of Act

The Juvenile Justice and Delinquency Prevention Act of 1974, Public Law 93-415, Title 18, USC, Sections 5031-5042 (hereinafter Act), and its pertinent legislative history, recognize that juvenile delinquency is primarily a concern of the states. The Act places virtually all juvenile cases in state courts and establishes limited, definable circumstances for the exercise of Federal jurisdiction. The discussion below outlines the procedures which govern the handling of juveniles in the Federal courts.

EFFECTIVE: 02/22/88

4-2 SPECIFIC PROVISIONS OF THE ACT

EFFECTIVE: 02/22/88

4-2.1 Definitions

(1) Juvenile - A person who has not attained his/her 18th birthday. For purpose of proceedings and disposition, a juvenile is a person who has not attained his/her 21st birthday. (See LHBSA, 3-16.1.)

(2) Juvenile Delinquency - The violation of a federal law by a person prior to his/her 18th birthday which would have been a "crime" if committed by an adult or a violation by such person of Title 18, USC, Section 922(x) (juvenile's possession, sale, delivery, or transfer of handgun and/or handgun ammunition).

(3) Federal Juvenile Judge - United States District Judge

(U.S.D.J.)

(4) Federal Juvenile Court - United States District Court (U.S.D.C.). The Act allows the court to be convened at any time or place within the judicial district and permits proceedings in the judge's chambers.

EFFECTIVE: 10/01/97

4-2.2 Arrest Procedure

The standard pre-arrest procedures applicable to adults (discussion with USA, filing of complaint, issuance of warrant) also govern arrests of juveniles. After arrest, however, the Act imposes several additional responsibilities on the arresting Agents.

EFFECTIVE: 02/22/88

4-2.2.1 Advice of Rights

The arresting Agents should immediately advise the arrested juvenile of his/her "legal rights" in language comprehensible to the juvenile. The rights found on the standard Miranda form, FD-395, appear to meet this requirement. However, inasmuch as no interview will be conducted (see 4-2.2.5 below), it will not be necessary to obtain a waiver signature from the juvenile at this time.

EFFECTIVE: 02/22/88

4-2.2.2 Notification of USA and Juvenile's Parents

|(1)| The Act requires the arresting Agent to immediately notify the USA and the juvenile's parents, guardian, or custodian of such custody. The parents, guardian, or custodian must also be notified of the juvenile's rights and the nature of the alleged offense.

|(2)| Because of the affirmative duties these provisions place on an arresting Agent, it can be anticipated that defendants will challenge the Bureau's compliance with the Act. Thus, it is necessary

that separate FD-302s be prepared to clearly demonstrate that (a) the juvenile was advised of |his/her| rights, (b) the USA was notified, (c) the parent(s), guardian, or custodian was notified, and (d) the juvenile was taken before a magistrate (see discussion in |4-2.2.6| below).

EFFECTIVE: 08/21/87

4-2.2.3 Fingerprinting and Photographing

The Act forbids fingerprinting and photographing a juvenile unless |he/she| is to be prosecuted as an adult, or the trial judge consents. |Fingerprinting and photographing of a juvenile shall be done whenever a juvenile has been found guilty of committing an act which if committed by an adult would be a felony that is a crime of violence or a violation of Title 21, USC, Section 841 (manufacturing, distributing, dispensing of controlled substances or possession with intent to do same), section 952(a) (importation of controlled substances), section 955 (possession of controlled substances on board vessels arriving in or departing from United States) or section 959 (manufacture or distribution of controlled substances for purposes of unlawful importation).| Because usually it will not be known at the time of arrest whether the arrestee will be prosecuted as an adult or handled as a juvenile offender, Agents are not to fingerprint or photograph a juvenile without consent of the judge.

EFFECTIVE: 08/21/87

4-2.2.4 Press Releases

The Act also prohibits making public either the name or picture of the juvenile. A press release is permissible concerning the arrest of a juvenile if carefully worded to contain no identifying information.

EFFECTIVE: 08/21/87

4-2.2.5 Interviews of Juveniles

A juvenile is not to be interrogated for a confession or admission of |his/her| own guilt, or even an exculpatory statement between the time of |his/her| arrest for a Federal offense and |his/her| initial appearance before the magistrate who advises |him/her| of |his/her| rights. Information volunteered by the arrested juvenile concerning |his/her| own guilt will be recorded in the Agent's notes for use in subsequent proceedings, and clarifying questions may be asked as necessary to make certain what the juvenile intends to say. The volunteered statement may be reduced to writing if such action does not involve any delay in the juvenile's appearance before the magistrate. The juvenile may, however, be questioned concerning the guilt of someone else if such questioning does not cause any delay in bringing |him/her| before the magistrate. These notes apply only from and after an arrest of a juvenile, as defined by Federal law for a Federal offense. They do not apply when the juvenile is still a suspect for a Federal offense under arrest by state or local officers on a state or local charge. The latter type situations do not come within the terms of the Act.

EFFECTIVE: 08/21/87

4-2.2.6 Initial Appearance Before Magistrate |(See MIOG, Part II, 4-2.2.2; LHBSA, 3-16.2 (3).)|

Bureau Agents must take the arrested juvenile before a magistrate forthwith. The magistrate must release the juvenile to his/her parents or guardian (or other responsible party) unless |the| magistrate determines that detention is necessary to secure the juvenile's timely appearance before the court, or to ensure the juvenile's safety or that of others. This determination can be made only after a hearing at which the juvenile is represented by counsel.

EFFECTIVE: 10/01/97

4-2.3 Detention

(1) The Act requires detention in certain types of facilities whenever possible. It also contains an absolute bar to detention in facilities where regular contact with adults results. Consequently, local juvenile facilities must be utilized whenever available. Local jail facilities approved by the Bureau of Prisons may be utilized when the more appropriate local juvenile facilities are not available, but only if the juvenile will have no regular contact with adults and insofar as possible, with adjudicated delinquents. If such a facility is not available locally, the juvenile must be released or transported to such a facility.

(2) Each office will ascertain through the United States Marshal the locations of those detention facilities within the field office territory which meet the criteria of this section and make such information available to all Agents assigned to the field office on a current basis. When suitable detention facilities are more conveniently located within the territory of an adjoining field office, such facilities should be used whenever possible.

EFFECTIVE: 02/22/88

4-2.4 Prosecution

(1) Certification - Once a juvenile has been taken into federal custody, or arrested by local authorities for an act which also constitutes a federal crime, a decision must be reached on the question of whether to prosecute the juvenile in state or federal court. As previously noted in paragraph 4-1.1, supra, the Act has the effect of placing most juvenile cases in state court. Thus, in order to pursue the case federally, the USA must file papers in U.S. District Court certifying that his/her investigation and research have determined that (a) the case is one of exclusive federal jurisdiction, or (b) the state has concurrent jurisdiction but the local prosecutor refuses to prosecute, or (c) the state does not have programs and services adequate for the needs of the juvenile, or (d) the offense charged is a crime of violence that is a felony or is a violation of Title 18, USC, Section 922(x) or 924(b), (g), or (h) (firearms offenses); Title 21, USC, Section 841, 952(a), 953, 955, 959, 960(b)(1), (b)(2), or (b)(3) (controlled substance offenses); and that there is a substantial federal interest in the case or offense. Federal jurisdiction always lies if the case involves an offense committed within the special maritime and territorial jurisdiction of

the United States and the maximum authorized term of imprisonment does not exceed 6 months. |Without the existence of one of these grounds, a court of the United States cannot proceed against a juvenile and the juvenile must|be surrendered to the appropriate state authorities.

(a) With regard to (1) (c), it is the responsibility of the Chief Probation Officer to conduct a study of the state juvenile facilities in his/her district to determine whether there are programs and services adequate for the needs of juveniles.

(b) The certification procedure is to be begun after the arrest process has been completed. If the juvenile is arrested in a distant district, he/she may be removed to the district of prosecution pursuant to Rule 40, FED.R.CRIM.P., before certification inasmuch as the USA in the district of prosecution is the only party who can determine whether one of the factors in (1) above exists which can invoke federal jurisdiction.

(2) |Prosecution/Motion|to Transfer to Adult Court - After proper certification has been made and the case has been accepted in federal court, the decision must be made whether to handle the defendant as a juvenile or transfer the matter to adult court. The Act shows a strong preference for proceeding as a juvenile. A juvenile action is commenced by the USA filing an information in the appropriate district court, in chambers, or otherwise.

(a) A transfer to adult court can be initiated by either (1) a written request of the juvenile, upon advice of counsel, or (2) the USA filing a motion to transfer (Motion to Proceed Against the Juvenile as an Adult). A motion to transfer may be|filed: (1) where the offender was 15 years or older when the alleged act was committed if (a) the act would be a felony that is a crime of violence if it had been committed by an adult or if (b) the act is an offense under Title 18, USC, Section 922(x), 924(b), (g), or (h), or Title 21, USC, Section 841, 952(a), 955, or 959; or (2) where the offender was 13 years or older when the alleged act was committed if (a) the crime of violence is an offense under Title 18, USC, Section 113(a)(1) (assault with intent to commit murder), (a)(2) (assault with intent to commit any felony), or (a)(3) (assault with a dangerous weapon with the intent to do bodily harm), 1111 (murder), or 1113 (attempt to commit murder or manslaughter) or if (b) the crime is an offense under Title 18, USC, Section 2111 (robbery), 2113 (bank robbery), 2241(a) (aggravated sexual abuse), or 2241(c) (sexual act with a minor under 12 years or an attempt to do so), and is committed while the juvenile offender is in possession of a firearm. In addition, the court must find, after a hearing, that such a transfer

would be in the interest of justice. Transfer to adult status is mandatory when a juvenile of 16 years or older, who has a prior conviction or adjudication of an act which if committed by an adult would be one of the above-described offenses, allegedly commits a similar offense or an offense which would be a felony if committed by an adult and that involves the use, attempted use, or threatened use of physical force, or is an offense under Title 18, USC, Section 32 (destruction of aircraft or aircraft facilities), 81 (arson), 844(d), (e), (f), (h), or (i) (offenses involving explosives), or 2275 (firing or tampering with vessels).

(b) To assure uniformity in those cases in which adult prosecution is desired, the USA must obtain authority from the Department of Justice before filing a motion to transfer to adult court. The juvenile will be afforded a hearing on this motion at which he/she has the right to be assisted by counsel. The judge must make findings of fact on the juvenile's age, background, nature of the offense, extent of juvenile's intellectual development, etc., before ruling on the motion to transfer. In addition, the judge must consider the extent to which the juvenile played a leadership role in an organization or influenced others to take part in criminal activity involving the use or distribution of controlled substances or firearms. Statements made by the juvenile in connection with a transfer hearing shall not be admissible at a subsequent criminal prosecution in adult court.

(3) Trial - If the juvenile is not proceeded against as an adult, the USA shall proceed by information for the alleged act of juvenile delinquency. The Act provides that the delinquency trial must take place within 30 days from the date the juvenile was placed in custody or the information shall be dismissed with prejudice, e.g., unless the delay was caused or consented to by the juvenile or his/her attorney, or would be in the interest of justice in the particular case. This provision is inapplicable if the juvenile is not detained (in custody). The juvenile trial can take place at any place within the district and will be tried by the judge (delinquency matters are not tried by a jury) in chambers or otherwise.

(4) Prosecution/Disposition - If the juvenile is adjudicated delinquent by the judge, a separate dispositional hearing must be held within 20 days after the adjudication. At this hearing the judge may (a) suspend the adjudication of delinquency; (b) place the juvenile on probation; (c) commit him/her to the custody of the Attorney General; or (d) enter an order of restitution. The maximum term of probation or commitment shall not extend beyond the juvenile's 21st birthday or the maximum term which could have been imposed on an

adult, whichever is sooner, unless the juvenile is between 18 and 21 years old at the time of disposition, in which case the maximum shall not exceed the lesser of three years or the maximum term which could have been imposed on an adult convicted of the same offense. The term of commitment for a juvenile, who if convicted as an adult would be convicted of a Class A, B, or C felony, shall not exceed five years.

EFFECTIVE: 10/01/97

4-2.5 Use of Juvenile Records

After the USA has filed an information initiating juvenile delinquency proceedings against a Bureau subject, any information or records in possession of the Bureau shall not be disclosed, directly or indirectly, unless authorized by the Act. This limitation applies to records obtained or prepared in the discharge of an official duty by an employee of the court or the FBI. Exceptions to this rule are set forth below:

(1) Inquiries from the judge, USA, or defense counsel;

(2) Inquiries from another court of law;

(3) Inquiries from an agency preparing a presentence report for another court;

(4) Inquiries from law enforcement agencies where the request for information is related to the investigation of a crime or a position within that agency;

(5) Inquiries, in writing, from the director of a treatment agency or the director of a facility to which the juvenile has been committed by the court;

(6) Inquiries from an agency considering the person for a position immediately and directly affecting the national security; and

(7) Inquiries from any victim of such juvenile delinquency, or if the victim is deceased from the immediate family of such victim, related to the final disposition of such juvenile by the court.

(8) Whenever a juvenile has on two separate occasions

been found guilty of committing an act, which if committed by an adult would be a felony crime of violence or an offense under Title 21, USC, Section 841, 952(a), 955 or 959, or whenever a juvenile has been found guilty of committing a single act after his/her 13th birthday, which if committed by an adult would be an offense under Title 18, USC, Section 113(a)(1), (a)(2), or (a)(3), 1111 or 1113, or, while the juvenile is in possession of a firearm, an offense under Title 18, USC, Section 2111, 2113, 2241(a) or 2241(c), the court shall transmit to the Criminal Justice Information Services Division the information concerning the adjudications, including name, offenses, sentences, court, dates of adjudication and notice that the proceedings were juvenile delinquency adjudications.

The limitations on disclosure apply to any juvenile records in possession of the Bureau, including arrest data, such as fingerprints and photographs. However, the records of a juvenile transferred for adult prosecution, or submitted to the FBI under the circumstances described in subparagraph (8) above, may be disseminated in the manner applicable to adult offenders.

EFFECTIVE: 10/01/97

SECTION 5. THE SPEEDY TRIAL ACT

5-1 GENERAL PROVISIONS

(1) The Speedy Trial Act, Title 18, USC, Sections 3161-3174, governs the time periods under which the government must file formal charges and be prepared to try an accused.

(2) The Act requires that an information or indictment be filed within 30 days from the date on which a person is arrested or served with a criminal summons. If the charge is a felony and no grand jury has been in session during the 30-day period, the time may be extended an additional 30 days.

(3) Upon a not guilty plea, the Speedy Trial Act requires the trial to commence no sooner than 30 days nor later than 70 days from the date of the public filing of the information or indictment or the defendant's first court appearance in the district where the charges are pending, whichever is later. The 70-day period may be extended by periods of excludable delay specified in the statute.

EFFECTIVE: 02/14/97

5-1.1 Sanctions in the Act

The failure to file an information or indictment against an arrested individual within the required period shall result in dismissal of the charge, possibly with prejudice. Failure to bring a defendant to trial within the specified time period will permit a defendant to move to have the indictment or information dismissed. Again, the judge may dismiss with prejudice.

EFFECTIVE: 08/21/87

5-2 EFFECT ON INVESTIGATIVE OPERATIONS

EFFECTIVE: 08/21/87

5-2.1 Arrest by State Authorities

(1) The arrest of a potential Federal defendant by state or local authorities on state charges does not activate the Act. However, if the state arrest is at the behest of Federal authorities it is likely to be viewed as an attempt to subvert the Act and the time limits would date from the time of the state arrest.

(2) If state authorities make a good faith arrest on state charges and later turn the defendant over to Federal authorities, the statute will begin to run when the state authorities turn the defendant over to Federal custody.

EFFECTIVE: 08/21/87

||5-2.2| Issuance of Search Warrant for the Person

In investigating nonviolent offenses in which suspects can be expected to have evidence on their person (e.g., - gambling matters), consideration should be given to seizing the evidence under the authority of a search warrant rather than incident to the suspect's arrest. The issuance and execution of a search warrant for the person of a suspect does not activate the Act.

EFFECTIVE: 08/21/87

5-3 COMPLIANCE WITH THE ACT

EFFECTIVE: 08/21/87

5-3.1 Inform U.S. Attorney When Arrest Made

Agents should ensure that the U.S. Attorney is informed promptly of all Bureau arrests. This is to avoid the situation in which a Bureau fugitive or defendant is arrested on or near the last day in which a grand jury is in session. Because the Act requires prompt indictment after arrest, failure to advise the U.S. Attorney about the arrest might result in an inability to present the case to the grand jury within the specified time limits.

EFFECTIVE: 08/21/87

5-3.2 Timely Preparation of Reports

Agents should ensure that reports are complete and promptly submitted to the U.S. Attorney. All significant developments in an investigative matter, such as the unavailability of an essential witness, should be brought to the U.S. Attorney's attention without delay.

EFFECTIVE: 08/21/87

5-3.3 Filing of Complaints

Agents should seek the authority of the U.S. Attorney prior to filing a complaint. Premature arrests of Bureau subjects might unnecessarily invoke the Speedy Trial Act.

EFFECTIVE: 08/21/87

SECTION 6. COURT APPEARANCE AND TESTIMONY OF AGENTS

6-1 DEPARTMENTAL ORDER, REGULATIONS, AND LEGISLATION

EFFECTIVE: 07/27/81

6-1.1 Production or Disclosure in Federal and State Procedures

Source: Attorney General Order No. 919-80, 45 Fed. Reg. 83210, as codified in Chapter I, Subpart B, Section 16.21 et seq., Title 28, Code of Federal Regulations. This order prescribes procedures with respect to the production or disclosure of material or information in response to subpoenas or demands of courts or other authorities, except Congress, in state and Federal proceedings.

EFFECTIVE: 07/27/81

6-1.2 Chapter I, Part 16, Title 28, Code of Federal Regulations

"Section 16.21 Purpose and Scope.

"(a) This subpart sets forth procedures to be followed with respect to the production or disclosure of any material contained in the files of the Department, any information relating to material contained in the files of the Department, or any information acquired by any person while such person was an employee of the Department as a part of the performance of that person's official duties or because of that person's official status:

"(1) in all federal and state proceedings in which the United States is a party; and

"(2) in all federal and state proceedings in which the United States is not a party, including any proceedings in which the Department is representing a government employee solely in that employee's individual capacity, when a subpoena, order, or other demand (hereinafter collectively referred to as a 'demand') of a court or other authority is issued for such material or information.

"(b) For purposes of this subpart, the term 'employee of the Department' includes all officers, and employees of the United States appointed by, or subject to the supervision, jurisdiction, or control of the Attorney General of the United States, including U.S. attorneys, U.S. marshals, U.S. trustees and members of the staffs of those officials.

"(c) Nothing in this subpart is intended to impede the appropriate disclosure, in the absence of a demand, of information by Department law enforcement agencies to federal, state, local and foreign law enforcement, prosecutive, or regulatory agencies.

"(d) This subpart is intended only to provide guidance for the internal operations of the Department of Justice, and is not intended to, and does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States.

"Section 16.22 General prohibition of production or disclosure in federal and state proceedings in which the United States is not a party.

"(a) In any federal or state case or matter in which the United States is not a party, no employee or former employee of the Department of Justice shall, in response to a demand, produce any material contained in the files of the Department, or disclose any information relating to or based upon material contained in the files of the Department, or disclose any information or produce any material acquired as part of the performance of that person's official duties or because of that person's official status without prior approval of the proper Department official in accordance with Sections 16.24 and 16.25 of this chapter.

"(b) Whenever a demand is made upon an employee or former employee as described in subsection (a) of this section, the employee shall immediately notify the United States Attorney for the district where the issuing authority is located. The responsible United States attorney shall follow procedures set forth in Section 16.24 of this chapter.

"(c) If oral testimony is sought by a demand in any case or matter in which the United States is not a party, an affidavit, or, if that is not feasible, a statement by the party seeking the testimony or by his attorney, setting forth a summary of the testimony sought and its relevance to the proceeding, must be furnished to the responsible United States attorney. Any authorization for testimony

by a present or former employee of the Department shall be limited to the scope of the demand as summarized in such statement.

"(d) When information other than oral testimony is sought by a demand, the responsible United States attorney shall request a summary of the information sought and its relevance to the proceeding.

"Section 16.23 General disclosure authority in federal and state proceedings in which the United States is a party.

"(a) Every attorney in the Department of Justice in charge of any case or matter in which the United States is a party is authorized, after consultation with the 'originating component' as defined in Section 16.24(a) of this chapter, to reveal and furnish to any person, including an actual or prospective witness, a grand jury, counsel, or a court, either during or preparatory to a proceeding, such testimony, and relevant unclassified material, documents, or information secured by any attorney, or investigator of the Department of Justice, as such attorney shall deem necessary or desirable to the discharge of the attorney's official duties, provided, such an attorney shall consider, with respect to any disclosure, the factors set forth in Section 16.26(a) of this chapter, and further provided, an attorney shall not reveal or furnish any material, documents, testimony or information when, in the attorney's judgment, any of the factors specified in Section 16.26(b) exists, without the express prior approval by the Assistant Attorney General in charge of the division responsible for the case or proceeding, the Director of the Executive Office for United States Trustees (hereinafter referred to as 'the EOUST'), or such persons' designees.

"(b) An attorney may seek higher level review at any stage of a proceeding, including prior to the issuance of a court order, when the attorney determines that a factor specified in Section 16.26(b) exists or foresees that higher level approval for will be required before disclosure of the information or testimony in question. Upon referral of a matter under this subsection, the responsible Assistant Attorney General, the Director of EOUST, or their designees shall follow procedures set forth in Section 16.24 of this chapter.

"(c) If oral testimony is sought by a demand in a case or matter in which the United States is a party, an affidavit, or, if that is not feasible, a statement by the party seeking the testimony or by the party's attorney setting forth a summary of the testimony sought must be furnished to the Department attorney handling the case or matter.

"Section 16.24 Procedures in the event of a demand where disclosure is not otherwise authorized.

"(a) Whenever a matter is referred under Section 16.22 of this chapter to a United States Attorney or, under Section 16.23 of this chapter, to an Assistant Attorney General, the Director of the EOUST, or their designees (hereinafter collectively referred to as the 'responsible official'), the responsible official shall immediately advise the official in charge of the bureau, division, office, or agency of the Department that was responsible for the collection, assembly, or other preparation of the material demanded or that, at the time the person whose testimony was demanded acquired the information in question, employed such person (hereinafter collectively referred to as the 'originating component'), or that official's designee. In any instance in which the responsible official is also the official in charge of the originating component the responsible official may perform all functions and make all determinations that this regulation vests in the originating component.

"(b) The responsible official, subject to the terms of paragraph (c) of this section, may authorize the appearance and testimony of a present or former Department employee, or the production of material from Department files if:

"(1) there is no objection after inquiry of the originating component;

"(2) the demanded disclosure, in the judgment of the responsible official, is appropriate under the factors specified in Section 16.26(a) of this chapter; and

"(3) none of the factors specified in Section 16.26(b) of this chapter exists with respect to the demanded disclosure.

"(c) It is Department policy that the responsible official shall, following any necessary consultation with the originating component, authorize testimony by a present or former employee of the Department or the production of material from Department files without further authorization from Department officials whenever possible, provided that, when information is collected, assembled, or prepared in connection with litigation or an investigation supervised by a division of the Department or by the EOUST, the Assistant Attorney General in charge of such a division or

the Director of the EOUST may require that the originating component obtain the division or the EOUST's approval before authorizing a responsible official to disclose such information. Prior to authorizing such testimony or production, however, the responsible official shall, through negotiation and, if necessary, appropriate motions, seek to limit the demand to information, the disclosure of which would not be inconsistent with the considerations specified in Section 16.26 of this chapter.

"(d)(1) In a case in which the United States is not a party, if the responsible U.S. attorney and the originating component disagree with respect to the appropriateness of demanded testimony or of a particular disclosure, or if they agree that such testimony or such a disclosure should not be made, they shall determine if the demand involves information that was collected, assembled, or prepared in connection with litigation or an investigation supervised by a division of this Department or the EOUST. If so, the U.S. attorney shall notify the Director of the EOUST or the Assistant Attorney General in charge of the division responsible for such litigation or investigation, who may:

"(A) authorize personally or through a Deputy Assistant Attorney General, the demanded testimony or other disclosure of the information if such testimony or other disclosure, in the Assistant or Deputy Assistant Attorney General's judgment or in the judgment of the Director of the EOUST, is consistent with the factors specified in Section 16.26(a) of this chapter, and none of the factors specified in Section 16.26(b) of this chapter exists with respect to the demanded disclosure;

"(B) authorize, personally or by a designee, the responsible official, through negotiations and, if necessary, appropriate motions, to seek to limit the demand to matters, the disclosure of which, through testimony or documents, would not be inconsistent with the considerations, specified in Section 16.26 of this chapter, and otherwise to take all appropriate steps to limit the scope or obtain the withdrawal of a demand; or

"(C) if, after all appropriate steps have been taken to limit the scope or obtain the withdrawal of a demand, the Director of the EOUST or the Assistant or Deputy Assistant Attorney General does not authorize the demanded testimony or other disclosure, refer the matter, personally or through a Deputy Assistant Attorney General, for final resolution to the Deputy or Associate Attorney General, as indicated in Section 16.25 of this chapter.

"(2) If the demand for testimony or other disclosure in such case does not involve information that was collected, assembled, or prepared in connection with litigation or an investigation supervised by a division of this Department, the originating component shall decide whether disclosure is appropriate, except that, when especially significant issues are raised, the responsible official may refer the matter to the Deputy or Associate Attorney General, as indicated in Section 16.25 of this chapter. If the originating component determines that disclosure would not be appropriate and the responsible official does not refer the matter for higher level review, the responsible official shall take all appropriate steps to limit the scope or obtain the withdrawal of a demand.

"(e) In a case in which the United States is a party, the Assistant Attorney General or the Director of the EOUST responsible for the case or matter, or such persons' designees, are authorized, after consultation with the originating component, to exercise the authorities specified in Section 16.24(d) (1)(A)-(C) of this chapter, provided that, if a demand involves information that was collected, assembled, or prepared originally in connection with litigation or an investigation supervised by another unit of the Department, the responsible official shall notify the other division or the EOUST concerning the demand and the anticipated response. If two litigating units of the Department are unable to resolve a disagreement concerning disclosure, the Assistant Attorneys General in charge of the two divisions in disagreement, or the Director of the EOUST and the appropriate Assistant Attorney General, may refer the matter to the Deputy or Associate Attorney General, as indicated in Section 16.25(b) of this chapter.

"(f) In any case or matter in which the responsible official and the originating component agree that it would not be appropriate to authorize testimony or otherwise to disclose the information demanded, even if a court were so to require, no Department attorney responding to the demand should make any representation that implies that the Department would, in fact, comply with the demand if directed to do so by a court. After taking all appropriate steps in such cases to limit the scope or obtain the withdrawal of a demand, the responsible official shall refer the matter to the Deputy or Associate Attorney General, as indicated in Section 16.25 of this chapter.

"(g) In any case or matter in which the Attorney General is personally involved in the claim of privilege, the responsible official may consult with the Attorney General and proceed in accord

with the Attorney General's instructions without subsequent review by the Deputy or Associate Attorney General.

"Section 16.25 Final action by the Deputy or Associate Attorney General.

"(a) Unless otherwise indicated, all matters to be referred under Section 16.24 by an Assistant Attorney General, the Director of the EOUST, or such person's designees to the Deputy or Associate Attorney General shall be referred (1) to the Deputy Attorney General, if the matter is referred personally by or through the designee of an Assistant Attorney General who is within the general supervision of the Deputy Attorney General, or (2) to the Associate Attorney General, in all other cases.

"(b) All other matters to be referred under Section 16.24 to the Deputy or Associate Attorney General shall be referred (1) to the Deputy Attorney General, if the originating component is within the supervision of the Deputy Attorney General or is an independent agency that, for administrative purposes, is within the Department of Justice, or (2) to the Associate Attorney General, if the originating component is within the supervision of the Associate Attorney General.

"(c) Upon referral, the Deputy or Associate Attorney General shall make the final decision and give notice thereof to the responsible official and such other persons as circumstances may warrant.

"Section 16.26 Considerations in determining whether production or disclosure should be made pursuant to a demand.

"(a) In deciding whether to make disclosures pursuant to a demand, Department officials and attorneys should consider:

"(1) Whether such disclosure is appropriate under the rules of procedure governing the case or matter in which the demand arose, and

"(2) Whether disclosure is appropriate under the relevant substantive law concerning privilege.

"(b) Among the demands in response to which disclosure will not be made by any Department official are those demands with respect to which any of the following factors exist:

"(1) Disclosure would violate a statute, such as the

income tax laws, 26 U.S.C. 6103 and 7213, or a rule of procedure, such as the grand jury secrecy rule, F.R.Cr.P., Rule 6(e),

"(2) Disclosure would violate a specific regulation;

"(3) Disclosure would reveal classified information, unless appropriately declassified by the originating agency,

"(4) Disclosure would reveal a confidential source or informant, unless the investigative agency and the source or informant have no objection,

"(5) Disclosure would reveal investigatory records compiled for law enforcement purposes, and would interfere with enforcement proceedings or disclose investigative techniques and procedures the effectiveness of which would thereby be impaired,

"(6) Disclosure would improperly reveal trade secrets without the owner's consent.

"(c) In all cases not involving considerations specified in subsections (b)(1)-(6) of this section, the Deputy or Associate Attorney General will authorize disclosure unless, in that person's judgment, after considering subsection (a) of this section, disclosure is unwarranted. The Deputy or Associate Attorney General will not approve disclosure if the circumstances specified in subsection (b)(1)-(3) of this section exist. The Deputy or Associate Attorney General will not approve disclosure if any of the conditions in subsections (b)(4)-(6) of this section exist, unless the Deputy or Associate Attorney General determines that the administration of justice requires disclosure. In this regard, if disclosure is necessary to pursue a civil or criminal prosecution or affirmative relief, such as an injunction, consideration shall be given to:

"(1) the seriousness of the violation or crime involved,

"(2) the past history or criminal record of the violator or accused,

"(3) the importance of the relief sought,

"(4) the importance of the legal issues presented,

"(5) other matters brought to the attention of the Deputy or Associate Attorney General.

"(d) Assistant Attorneys General, United States attorneys, the Director of the EOUST, United States trustees, and their designees, are authorized to issue instructions to attorneys and to adopt supervisory practices, consistent with this subpart, in order to help foster consistent application of the foregoing standards and the requirements of this subpart.

"Section 16.27 Procedure in the event a Department decision concerning a demand is not made prior to the time a response to the demand is required.

"If response to a demand is required before the instructions from the appropriate Department official are received, the responsible official or other Department attorney designated for the purpose shall appear and furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been or is being, as the case may be, referred for the prompt consideration of the appropriate Department official and shall respectfully request the court or authority to stay the demand pending receipt of the requested instructions.

"Section 16.28 Procedure in the event of an adverse ruling.

"If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with Section 16.27 of this chapter pending receipt of instructions, or if the court or other authority rules that the demand must be complied with irrespective of instructions rendered in accordance with Sections 16.24 and 16.25 of this chapter not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall, if so directed by the responsible Department official, respectfully decline to comply with the demand. See United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951).

"Section 16.29 Delegation by Assistant Attorneys General.

"With respect to any function that this subpart permits the designee of an Assistant Attorney General to perform, the Assistant Attorneys General are authorized to delegate their authority, in any case or matter or any category of cases or matters, to subordinate division officials or U.S. attorneys, as appropriate."

It should be noted that the above regulations do not apply to requests for information under either the Freedom of Information or Privacy Acts.

EFFECTIVE: 07/27/81

6-1.3 Exception To Chapter I, Part 16, Title 28, Code of Federal Regulations

(1) Whenever a demand is made upon an employee or former employee of the Department for the production of material, or the disclosure of information pertaining to investigations supervised and/or reviewed by the Civil Rights Division, the employee shall immediately notify the USA for the district from which the demand has been issued. The U.S. Attorney shall immediately contact the Deputy Assistant Attorney General of the Civil Rights Division who shall refer the matter to the appropriate Section Chief for review of the information whose disclosure is sought. If the Section Chief approves a demand for the production of material or disclosure of information, he or she shall so notify the USA and such other persons as circumstances may warrant.

(2) If the Section Chief does not authorize disclosure he or she shall notify the Assistant Attorney General of the Civil Rights Division or a designated Deputy Assistant Attorney General, who may:

(a) Authorize personally the demanded testimony or other disclosure of the information if such testimony or other disclosure, in the Assistant or Deputy Assistant Attorney General's judgment is consistent with the factors specified in 28 C.F.R. Section 16.26(a) of this part and none of the factors specified in 28 C.F.R. Section 16.26(b) exists with respect to the demanded disclosure; or

(b) Authorize negotiations and, if necessary, appropriate motions, to seek to limit the demand to matters, the disclosure of which would not be inconsistent with the considerations specified in 28 C.F.R. Section 16.26, and otherwise to take all appropriate steps to limit the scope or obtain the withdrawal of a demand; or

(c) If, after all appropriate steps have been taken to limit the scope or obtain the withdrawal of a demand, the Assistant or Deputy Assistant Attorney General does not authorize the demanded

testimony or other disclosure, refer the matter, for final resolution to the Deputy or Associate Attorney General, as indicated in 28 C.F.R. Section 16.25.

EFFECTIVE: 07/27/81

6-1.3.1 Instructions For Handling Demands In Civil Rights Cases

Upon receipt of a demand for production of material, or disclosure of information pertaining to a civil rights investigation, immediately notify the USA for the district in which the demand arose. Notify FBIHQ, Criminal Investigative Division, Attention: Civil Rights Unit, by an appropriate communication of receipt of the demand, the results of your contact with the USA and all pertinent factors you believe appropriate for consideration in reaching a resolution to the demand. A copy of the demand, if possible, should be forwarded with your initial communication. This information will be furnished to the Civil Rights Division (CRD), DOJ, for their final determination which generally will be communicated directly to the USA. You will be notified by FBIHQ of the action taken by the CRD. In all instances, keep FBIHQ appropriately advised of all developments concerning each such demand.

EFFECTIVE: 01/09/84

6-1.4 Jencks Act, Rule 26.2, Federal Rules of Criminal Procedure (FED.R.CRIM.P.)

The Jencks Act, originally enacted in 1957 and contained in Title 18, USC, Section 3500, provides for the production of statements of Government witnesses. The statute was broadened in 1980 and 1983, moved to FED.R.CRIM.P., and now provides that after any witness other than the defendant testifies on direct examination at a pretrial suppression hearing or in a Federal criminal trial, the court, upon motion of a party who did not call the witness, shall order the attorney for the Government or the defendant and his/her attorney, as the case may be, to produce, for the examination and use of the moving party any statement of the witness that is in their possession and that relates to the subject matter concerning which the witness has testified.

EFFECTIVE: 01/09/84

6-1.4.1 Matter Deemed Irrelevant

The statute affords the Government an opportunity to object to the production of an entire statement if portions do not relate to the testimony of the witness. The court may excise such parts before delivery of the statement to the defendant.

EFFECTIVE: 01/09/84

6-1.4.2 Noncompliance by the Government

If the United States elects not to comply with a production order, the court may strike from the record the testimony of the witness, or may in its discretion declare a mistrial.

EFFECTIVE: 08/16/82

6-1.4.3 Definition of Statement

The term "statement" as used in Rule 26.2, FED.R.CRIM.P., is defined as follows:

(1) A written statement made by the witness and signed or otherwise adopted by him/her;

(2) A stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by the witness and recorded contemporaneously with the making of an oral statement;

(3) A statement, however taken or recorded, or a transcription thereof, if any, made by the witness to a grand jury.

EFFECTIVE: 08/16/82

6-1.4.4 Review by FBI

Before trial, it is the responsibility of the Agent most familiar with the case to review carefully all statements and reports which are to be delivered to the USA and which may be the subject of a motion under Rule 26.2, FED.R.CRIM.P. If any document contains material which is privileged or confidential, or which might disclose the identity of confidential informants or confidential investigative techniques, this fact should be clearly expressed to the USA in writing.

EFFECTIVE: 08/16/82

6-1.4.5 National Security Cases

Documents having a national security aspect will be reviewed by FBIHQ. The field office will be advised as to what may be delivered to the USA.

EFFECTIVE: 08/16/82

6-1.4.6 Prompt Delivery to the USA

All statements and reports should be delivered to the USA in sufficient time for him/her to review such materials before trial. Any FBI employee directed by the court to deliver these documents should advise that they are in the possession of the USA.

EFFECTIVE: 08/16/82

6-1.4.7 Advice to FBIHQ - Problem Cases

Should it appear that the position taken by the judge, USA, or other person with respect to any phase of the production of documents is of present or potential concern to the Bureau, FBIHQ should be advised under the caption of the case as quickly as the urgency of the matter requires. Such problems include: (1) failure to properly use and safeguard the documents and return them to the FBI when no longer needed for court purposes; (2) any tendency by the USA to produce unnecessary material or failure to advise the court of

those parts of the documents which should be excised before surrender to the defense; (3) any fact indicating that a defendant who has received statements of prosecution witnesses before they testify has injured or threatened a witness or otherwise attempted to obstruct justice by making the witness unavailable or by making witness change his/her testimony.

EFFECTIVE: 08/21/87

6-1.4.8 Government Agent as Witness

Reports of Government Agents appearing as witnesses in Federal criminal trials, which contain summaries of information given to them by other persons, constitute prior statements made by a witness. To the extent that the reports relate to the Agent-witness' direct testimony, they are producible under Rule 26.2, FED.R.CRIM.P. Thus, where the Agent testifies concerning admissions or other statements made to Agent by a defendant, that part of Agent's report which reflects interview with the defendant, including Agent's own impressions is producible. However, if the same report also reflects statements made by persons other than the defendant, the part dealing with these latter matters should be deleted prior to production, since these are matters about which the Agent will not have testified because of the hearsay rule. This same procedure should be followed if the Agent, who testifies as a witness, is not the Agent who wrote the report, but the report is based upon Agent's notes as well as the notes of the Agent who prepared it and checks it for accuracy before it is submitted. In such cases, the report will be in effect the joint statement of both Agents.

EFFECTIVE: 08/21/87

6-1.4.9 Investigative Notes

Generally an oral statement by a witness is recorded contemporaneously on Form FD-302, and this form will be producible under Rule 26.2, FED.R.CRIM.P., once the witness has testified. In some jurisdictions, the Government may also be required to produce the investigative notes of the Agent who interviewed the witness and prepared the FD-302. Accordingly, Agents are required to retain all interview notes in the 1-A portion of the investigative file. (See also, Legal Handbook for Special Agents, Section 7-13.)

EFFECTIVE: 08/21/87

6-2 CRIMINAL TRIALS IN BUREAU CASES WHERE BUREAU FILES ARE SUBPOENAED

EFFECTIVE: 08/21/87

6-2.1 Statements of All Witnesses, Such as FD-302s

(1) These statements are controlled by the USA. (See Paragraph 6-1.4, supra.) Before trial, review all documents of this type pertinent to case and deliver to USA before the trial, except for those having national security aspect. Documents of the latter type will be reviewed at FBIHQ and the field will be advised what may be furnished. In other cases review shall be by SAC, ASAC, or Agent most familiar with the case.

(2) If any document contains material which is privileged or confidential, or which might disclose identity of confidential informant or confidential investigative technique, make that fact known clearly to USA in writing.

(3) Any Bureau witness or employee directed by the court to deliver these documents should courteously advise that they are in the possession of the USA.

(4) Should it appear that the position taken by the judge, USA, or other person with respect to any phase of the production of documents is of present or potential concern to the Bureau, FBIHQ should be advised under the caption of the case as quickly as the urgency of the matter requires. Such problems include: (a) failure to properly use and safeguard the documents and return them to the FBI when no longer needed for court purposes; (b) any tendency by the USA to produce unnecessary material or failure to advise the court of those parts of documents which should be excised before surrender to the defense; (c) any fact indicating that a defendant who has received statements of prosecution witnesses before they testify has injured or threatened a witness or otherwise attempted to obstruct justice by making the witness unavailable or by making witness change his/her testimony.

EFFECTIVE: 07/14/88

6-2.2 Other Bureau Files, Manuals, Recordings, Etc.

(1) Upon receipt of a demand for other Bureau documents the employee on whom the demand is made will bring it immediately to the attention of the Principal Legal Advisor (PLA), or if absent, to a Legal Advisor for handling. The USA in the district where the demand was issued shall be immediately notified of receipt of the demand.

(2) The PLA is authorized to exercise the responsibilities of the originating component as defined in Paragraph 6-1.2, supra. (See 28 CFR 16.24.) If the PLA concurs with the USA that disclosure of the document(s) subject to the demand should be made and none of the factors cited in Paragraph 6-1.2, supra, (see 28 CFR 16.26 (b)) or other relevant considerations are present, i.e. the Privacy Act, see Paragraph 6-4, infra, no communication with FBIHQ is necessary. Record the response to the demand, together with all documents relating thereto under the 197 classification.

(3) If the PLA disagrees with the USA as to the appropriateness of disclosure, or if both agree that disclosure should not be made, refer the matter to FBIHQ, Office of the General Counsel, by appropriate communication consistent with the exigencies of the circumstances for resolution with the Department of Justice (DOJ). Your communication should set forth in detail the nature of the demand and your objections thereto. Request the USA to appear with the employee on whom the demand is made. If the court declines to defer a ruling until instructions are received from the DOJ, the employee on whom the demand is made shall respectfully decline to produce as set forth in Paragraph 6-1.2, supra. (See 28 CFR Sections 16.27 and 16.28.)

EFFECTIVE: 09/09/94

6-3 AGENT OR EMPLOYEE TESTIMONY GENERALLY: FEDERAL PROSECUTIONS

EFFECTIVE: 07/14/88

6-3.1 Subpoena or Request to Testify

On receipt of request from USA or issuance of subpoena for appearance of an Agent from another field office in any Federal case, SAC of office of appearance should direct communication to office of assignment of Agent setting forth all available details. SAC of office to whom Agent is assigned should be satisfied that presence of Agent is necessary and should record SAC's views by notation on incoming communication, or if request is oral, by memorandum to the file. The above also applies to non-Agent employees. (See MAOP, Part II, 2-3.3.1, regarding indexing requirements.)

EFFECTIVE: 07/14/88

6-3.2 Advice to USA

Agents must advise the appropriate USA handling important cases in which statute of limitations will run shortly, or cases of great public interest, of fact that subpoena has been issued and that Agent must comply.

EFFECTIVE: 05/25/90

6-3.3 While Waiting to Testify

If Agent or employee has arrived in field office of testimony but his/her presence is not immediately necessary as a witness, SAC should assign work to him/her provided there is no interference with appearance as witness or departure after testimony.

EFFECTIVE: 05/25/90

6-3.4 Cooperation of USA

USAs should advise SAC of impending subpoena. Secure USA's cooperation in such matters.

EFFECTIVE: 05/25/90

6-3.5 Agent at Counsel Table

If SAC is satisfied that such action is justified, SAC is authorized to approve request by USA that Agent sit at counsel table during trial. If the request involves an Agent assigned to a field office other than that in which trial occurs, SAC in whose territory trial is being held and who approves request must ensure that SAC to whom Agent is assigned is appropriately advised.

EFFECTIVE: 05/25/90

6-3.6 Delay of Trial

Office of prosecution is responsible for notification when trial is being delayed. Communication advising of delay in trial must specifically state whether Bureau personnel are prospective witnesses. If FBI witness is assigned to FBIHQ, direct communication to appropriate FBIHQ division and state name and title, if known, of witness. Include all information so that action at FBIHQ can be taken without file check or search for previous communications. If witness needed at later date, so state and show date needed, if known. Every communication to Bureau showing a delay in trial of a Bureau case must state the specific reason for the delay.

EFFECTIVE: 05/25/90

6-3.7 Manner of Testifying

|Agent, or other employee testifying,|must describe official status|with the Federal Bureau of Investigation, such as Special Agent.| Give all testimony clearly, modestly, and without bias, prejudice, emotion, exaggeration, or misrepresentation. Speak distinctly so that the court, jury, counsel, and spectators may hear. Avoid testimony not relevant to prosecution. To prevent prejudice to the rights of the|accused during the trial,|Agents|or other employees testifying in the case|should avoid unnecessary contact or conversation with jurors or|witnesses and should be aware of the possible existence of an order issued by the court prohibiting communications among witnesses during the course of the trial. Such orders, often referred to as sequestration orders, are within the province of a judge, federal or state; and FBI employees must comply with the provisions of such orders in cases in which they are testifying.|

EFFECTIVE: 09/11/97

6-3.8 Requests for Documents While Testifying

If documents are those covered by 6-1.4, supra, and are in the hands of USA, courteously advise court that USA has possession. If directed to produce any other Bureau file, report, or official document, refer to and follow instructions set forth in Paragraph 6-2.2, supra.

EFFECTIVE: 05/25/90

| 6-3.9 Testimony of FBI Laboratory Division Employees

(1) Mark communication concerning witness appearance of these employees for the attention of the|appropriate sections of the Laboratory Division.|

(2) Under certain circumstances where the expert findings are negative and where funds are available under state, local and Federal criminal codes, the defense may be required to bear the | expense for travel and expert witness fees of Laboratory Division

employees. You should immediately forward any such requests to the appropriate sections of the Laboratory Division.

EFFECTIVE: 09/24/93

6-4 CIVIL TRIALS IN BUREAU CASES

Refer to and follow instructions set forth in Paragraph 6-2.2, supra. The Privacy Act, 5 USC 552a, generally prohibits disclosure of information from FBI records systems about an individual, retrievable by the individual's name or other identifier, to a third party or another agency without the written consent of the individual. 5 USC 552a(b) identifies eleven exceptions to the above nondisclosure rule. The Act contains both civil and criminal penalties for violation thereof. Disclosure to those demands originating with local, state or other Federal law enforcement authorities may be made pursuant to Section 552a(b)(3) of the Act, the "routine use" exception, or they may fall within the Section 552a(b)(7) exception for unconsented disclosure. However, certain demands, primarily those involving civil litigation to which the United States is not a party, will raise Privacy Act considerations where the demand seeks information concerning an individual other than on whose behalf the demand was issued. Although Section 552a(b)(11) of the Act provides for disclosure "pursuant to the order of a court of competent jurisdiction," limited case law and departmental policy state that a subpoena does not meet the requirements of subsection (b)(11) since it is not signed by a judge and is always subject to being quashed or modified by a court. In such circumstances, the Privacy Act considerations will be brought to the attention of the USA with a request that a court order for disclosure be required prior to compliance. If the USA does not concur with this requirement, promptly notify FBIHQ, Office of the General Counsel, for resolution.

EFFECTIVE: 09/09/94

6-5 STATE AND MILITARY CRIMINAL TRIALS

EFFECTIVE: 08/16/82

6-5.1 Statements of All Witnesses, Such as FD-302s

(1) Department policy concerning requests for production of FD-302s and FBI Laboratory reports in state courts is that such requests will be honored where (a) the document is one which we would be required to produce under Rule 26.2, FED.R.CRIM.P., or otherwise if the case were in Federal Court; (b) the document is of a type producible under the law of that state, and (c) no overriding policy consideration, such as national security, opposes granting the request.

(2) Requests of this type may be anticipated where both the Bureau and state or military officers have investigated the same act.

(3) In each case, state and military, the PLA is to advise the USA and handle pursuant to Paragraph 6-2.2, supra. In the event a demand calls for the appearance of the Director, without making provision for an authorized representative as a substitute, developments should be monitored closely and reported as they occur. It is of extreme importance to quash such subpoenas or to arrange for a substitute whenever possible.

EFFECTIVE: 08/16/82

6-5.2 Other Bureau Files, Manuals, Recordings, Etc.

Handle as directed under Paragraph 6-2.2, supra.

EFFECTIVE: 08/16/82

6-5.3 Agent or Employee Testimony Generally: State, Local, Military Prosecutions

On receipt of a subpoena, demand, or request for testimony, the employee upon whom the demand is made will promptly notify the PLA, or if absent, a Legal Advisor, of the demand. The USA will be immediately notified of receipt of the demand. If the PLA and the USA agree that disclosure may be made, i.e., none of the factors cited in Paragraph 6-1.2, supra, (see 28 CFR 16.26(b)) or other relevant considerations are present, no communication with FBIHQ is necessary. Record the nature of the testimony furnished by memorandum, together with all documents relating thereto, in the substantive case file from which the demand arose. If the PLA disagrees with the USA as to the appropriateness of disclosure, or if both agree that disclosure should not be made, refer the demand to FBIHQ by appropriate communication consistent with the exigencies of the circumstances for resolution with the Department. Your communication to FBIHQ should set forth in detail the nature of the demand and your objections thereto. Request the USA to appear with the employee on whom the demand is made. If the Court or other authority declines to defer a ruling until instructions are received from the Department, the employee on whom the demand is made shall respectfully decline to testify as set forth in Paragraph 6-2.2, supra.

EFFECTIVE: 08/16/82

6-6 STATE CIVIL TRIALS

Handle requests for both documents and testimony as directed in Paragraphs 6-2.2, 6-4 and 6-5.3, supra.

EFFECTIVE: 08/16/82

6-7 ADMINISTRATIVE HEARINGS AT WHICH DEPARTMENT OF JUSTICE IS NOT REPRESENTED BY U.S. ATTORNEY OR OTHER ATTORNEY

EFFECTIVE: 08/16/82

6-7.1 Statements of All Witnesses, Such as FD-302s

Rule 26.2, FED.R.CRIM.P., requires, in part, that statements of witnesses for the prosecution, made to the Government before trial, be made available to the defense for cross-examination after the witness has testified in a criminal case. The Department of Justice has advised, however, that the same practice will be followed in administrative hearings. Except for unusual cases, which should be brought immediately to the attention of FBIHQ, Office of the General Counsel, field offices will take no action until there is an actual demand for the statement of a witness to be used in an administrative hearing. On such demand, take the following action:

(1) Advise requesting agency that question of making these documents available must be resolved with the USA. Advise USA promptly.

(2) Obtain from requesting agency a detailed statement, in nature of witness sheet, showing anticipated testimony of witness on whom FD-302 is requested.

(3) Find in field office files the FD-302 which represents the first recording of witness' report to FBI.

(4) Advise USA of testimony anticipated and of that information contained in the FD-302, if any, which you believe should be excised as irrelevant or privileged.

EFFECTIVE: 09/09/94

6-7.2 Other Documents of Any Kind

Handle pursuant to Paragraph 6-2.2 supra.

EFFECTIVE: 07/27/81

6-7.3 Testimony of FBI Personnel

Follow same procedure as in Paragraph 6-5.3, supra.

EFFECTIVE: 07/27/81

6-8 ADMINISTRATIVE HEARINGS AT WHICH DEPARTMENT OF JUSTICE IS REPRESENTED BY U.S. ATTORNEY OR OTHER ATTORNEY

EFFECTIVE: 07/27/81

6-8.1 Statements of All Witnesses, Such as FD-302s

|Handle pursuant to Paragraph 6-2.2, supra.|

EFFECTIVE: 07/27/81

6-8.2 Other Documents of Any Kind

|Handle pursuant to Paragraph 6-2.2, supra.|

EFFECTIVE: 07/27/81

6-8.3 Testimony of FBI Personnel

|Handle pursuant to Paragraph 6-5.3, supra.|

EFFECTIVE: 07/27/81

6-9 HABEAS CORPUS PROCEEDINGS IN FBI CASES

EFFECTIVE: 07/27/81

6-9.1 |Deleted|

EFFECTIVE: 07/27/81

6-9.2 Responsibility of SAC

It is the responsibility of each SAC to insure immediate notification of his office regarding the filing of habeas corpus proceedings in cases investigated by the FBI. Where such proceedings are filed, FBIHQ must be immediately advised of all pertinent facts and developments. Copies of petitions for writs of habeas corpus and other pleadings and briefs in such proceedings must be immediately obtained and forwarded to FBIHQ. It is the responsibility of each SAC to take appropriate action to insure the complete refutation of all false allegations of mistreatment, misconduct, or otherwise on the part of Agents which may be raised in such proceedings. The official court records in each instance must clearly show a thorough and complete refutation of such false allegations.

EFFECTIVE: 07/27/81

6-9.3 Refutation of False Allegations

Whenever, during the course of a trial in either Federal or state courts, derogatory statements or false allegations of misconduct, brutality, or other illegal treatment are made against Agents of the FBI, immediate steps are to be taken by the Agents present through the U.S. Attorney or state prosecutor to ensure a complete refutation on the official court record of such false statements or allegations. Agents in attendance at such trials should immediately advise the SAC of the field office where the case is being tried of the facts concerning such derogatory statements and false allegations. It is the responsibility of the SAC to determine and ensure that all false statements and allegations are adequately refuted on the official court records and to promptly advise FBIHQ of all pertinent facts and circumstances.

EFFECTIVE: 05/26/89

6-10 OTHER TRIALS AND HEARINGS

If testimony or documents are subpoenaed or requested for any trial or hearing of a type different from those listed above, such as a Federal trial for a criminal offense within the jurisdiction of another agency, advise USA promptly and adapt from instructions above the procedures appropriate to the case. If in doubt, consult Office of the General Counsel, FBIHQ.

EFFECTIVE: 09/09/94

6-11 OTHER REQUESTS - MISCELLANEOUS

When a request for information from Bureau files is received through a medium other than a court order or a subpoena, the person or organization requesting information from FBI files should be informed that Bureau files are confidential and information contained therein can be disclosed only pursuant to regulations of the Attorney General. The provisions of Attorney General Order No. 919-80 do not prohibit the dissemination of information gathered by the FBI to other concerned law enforcement, prosecutive, or regulatory agencies. (See Paragraph 6-1.2, supra.)

EFFECTIVE: 05/26/89

6-12 SUBPOENAS DIRECTED TO FBIHQ

(1) Under ordinary circumstances, subpoenas directed to FBIHQ, including those addressed to the Director by name or title and those addressed to other FBIHQ personnel, will be delivered by Deputy U.S. Marshal to the Washington Metropolitan Field Office (WMFO). Where subpoenas are accepted, immediately notify the interested division and Office of the General Counsel at FBIHQ so appropriate action may be taken. Where the Director is sued in his individual capacity in a civil action, and such civil action alleges matters arising out of his official conduct as Director of the FBI, the General Counsel - Office of the General Counsel has been authorized by appointment to accept service on behalf of the Director.

(2) If a subpoena is delivered to FBIHQ rather than WMFO, subpoena is accepted by Office of the General Counsel.

(3) Subpoenas from Congressional Committees are accepted by WMFO if served there, or by|Office of the General Counsel|if served at FBIHQ. In either event, the division having jurisdiction of subject matter takes immediate action to secure facts and refers the matter with any necessary recommendations to the Attorney General or Deputy Attorney General.

(4) No supervisor shall accept a subpoena calling for appearance of a field office employee in a court proceeding. Should a Deputy U.S. Marshal attempt to leave a subpoena for such an employee, advise him/her of the office to which the employee is presently assigned.

EFFECTIVE: 09/09/94

6-13 OTHER CONTACTS WITH JUDICIAL OFFICIALS REGARDING PENDING CASES

Occasionally the FBI will obtain information regarding a case in litigation which should be brought to the attention of the court in which the case is pending. Examples include allegations regarding jury tampering, perjury and coercion of a witness. When this is required, care should be taken that it be accomplished in a way which avoids any appearance that the FBI is attempting to improperly influence the administration of justice. If at all possible, a Government attorney should convey the information to the court. If the case is in Federal court, the appropriate attorney would normally be from the local USA's office. If the case is pending in state court, then a local prosecutor should probably be utilized to convey the information, but the action should still be coordinated with the USA's office. In no event should FBI employees have contact with court personnel regarding a pending case unless a Government attorney is present. If for any reason it is believed that the above instructions cannot or should not be complied with, FBIHQ should be contacted for guidance.

EFFECTIVE: 05/26/89

6-14 BRIEFING MATERIAL PREPARED FOR PRESENTATION OUTSIDE THE FBI

Briefing material prepared for presentation outside the FBI or testimony by Bureau officials should include the name and initials of the senior Bureau official approving the material and the date it was prepared. Additionally, divisions responsible for the preparation of the material are required to maintain records reflecting the source of the information used in the preparation of the briefing material and the names of the individuals who drafted the material.

EFFECTIVE: 05/26/89

SECTION 7. INTERVIEWS

7-1 USE OF CREDENTIALS FOR IDENTIFICATION (See Legal Handbook for Special Agents, 7-17.)

Credentials shall be exhibited to all persons interviewed by Special Agents so there will be no doubt concerning the organization with which they are connected.

EFFECTIVE: 01/30/97

7-2 THOROUGHNESS, PRECAUTIONS, TELEPHONIC AND USE OF INTERPRETERS

EFFECTIVE: 01/08/79

7-2.1 Thoroughness and Precautions During Interviews (See LHBSA, 7-2.1.)

(1) When interviewing subjects and suspects, consideration should be given to including questions as to the knowledge on the part of the interviewee of previous crimes of a type similar to the one currently being investigated. The objective is to develop information concerning other unsolved violations.

(2) In the interrogation of subjects and suspects of Bureau investigations, all Agents should be most meticulous not to DISCLOSE DIRECTLY OR INDIRECTLY CONFIDENTIAL INFORMANTS OR CONFIDENTIAL SOURCES OF INFORMATION. Questions or references to papers and files may enable an intelligent subject to fix the source of our information.

(3) During an interview with a witness, suspect, or subject, Agents should under no circumstances state or imply that public sentiment or hostility exists toward such person. If, during an interview with a witness, suspect, or subject, questions are raised

by such persons, or if anything transpires which gives reasonable grounds to believe that subsequently such questions or incident may be used by someone in an effort to place an Agent or the Bureau in an unfavorable light, an electronic communication regarding such questions or incident should be immediately prepared for the SAC. The SAC is responsible for promptly advising FBIHQ and the USA of such questions or incident and FBIHQ must be promptly informed of all developments.

(4) Agents are not acting as practicing attorneys and under no circumstances should legal advice be given or an attempt made to answer legal questions. Agents who are attorneys should not deliberately make known their legal training. If an Agent who is an attorney is questioned regarding his/her legal training, Agent should state that he/she is an attorney but that he/she is not in a position to give legal advice or answer legal questions. Agents should not interview subjects, subsequent to the initial interview, to determine what plea subject will make on arraignment. If a USA should make such a request, USA should be informed of FBIHQ instructions.

EFFECTIVE: 12/20/96

7-2.2 Telephone Interviews

Interviews and investigations by telephone are highly undesirable. However, in those few instances in which a substantial saving of time would be effected and the necessary information can be fully obtained, the use of the telephone may be justified. The SAC must personally approve the use of the telephone to conduct interviews and investigations in every instance.

EFFECTIVE: 01/08/79

7-2.3 Use of Interpreters

When subjects cannot converse in English adequately, make arrangements to have interpreter present. Use Bureau personnel if available in same or adjacent office. Otherwise, qualified interpreters from other U.S. intelligence or enforcement agencies may be used. If none of foregoing available, consider use of sponsor or close relative of subject for exploratory interview, leaving way open for reinterview with qualified interpreter if all questions cannot be resolved. If qualified interpreter is necessary and is not available, request FBIHQ assistance.

EFFECTIVE: 01/08/79

7-3 REQUIRING FBIHQ AUTHORITY

FBIHQ authority to interview is required before interviews are conducted in the following instances:

(1) The individual to be interviewed is prominent and/or controversial and suspected of a crime and/or the investigation may receive extensive media coverage.

(2) The individual is an employee of the news media who is suspected of a crime arising out of the coverage of a news story or while engaged in the performance of his/her duties as an employee of the news media. Attorney General authority is also needed. (See MAOP, Part II, 5-7, for further information.)

(3) Refer to FCIM, Part I, 0-2.5 for FCI investigations.

(4) In other matters, the need for FBIHQ authority is set forth in the guidelines dealing with a particular type of case.

(5) Whenever a question arises as to whether or not FBIHQ authority must be obtained prior to an interview, it should be resolved in favor of contacting FBIHQ.

EFFECTIVE: 01/08/79

7-4 ONE VS TWO AGENT INTERVIEW OF SECURITY SUBJECT

Safety, security, sensitivity and good judgment are considerations in evaluating necessity for two Agents to conduct interview of any subject in all types of security investigations. SACs have responsibility and option of deciding when two Agents should be present during any interview of this nature. Safety of Specials Agents should be first priority in any evaluation in this regard.

EFFECTIVE: 01/08/79

7-5 EVALUATION OF AN INTERVIEW

An interview cannot be considered thorough unless the account thereof shows the basis for allegations or other pertinent information furnished by the source during the interview. Only with the benefit of these important details can the information be fully and properly evaluated. Statements or allegations may not be accepted without inquiring of the source as to how source acquired such information, or as to the basis for beliefs or opinions he/she might express. If his/her information is based on hearsay, an effort must be made to identify the original source and to interview that source if feasible to do so. In this regard, consideration must be given to protection of the identity of confidential Bureau informants or sources when necessary. When details as to the basis for allegations made or the identity of original sources if disseminated outside the FBI would tend to reveal the identity of an individual whose identity should be protected, that fact should be called to attention and those details furnished by cover page(s). For example, A furnishes the New York Office pertinent information, orally or in writing, which A said he/she received from B. The body of New York's report must clearly show that A cannot personally attest to the accuracy of the information, but that he/she received it from another individual; however, B should not be named in the body of a report unless the New York Office knows there is no objection to the disclosure of B's name. Whether B is identified by name or not, the body of the report must contain any available description of B to permit an evaluation of the information being reported. These requirements are applicable to interviews of all types, including established FBI sources or informants, subjects, suspects, and witnesses, and to all types of Bureau investigations. Written statements by informants are not to be considered an exception. The basis for statements attributed to established sources and confidential informants need not be set out in investigative reports provided informants' statements or

channelizing|electronic communications|specifically show the information is based on personal knowledge of the informant. If it is not of informant's personal knowledge, the investigative report must show the basis for informant's statements. Any deviation from these requirements should be called to FBIHQ's attention and fully justified. Failure to comply without sufficient justification will be considered a substantive error for which administrative action will be considered.

EFFECTIVE: 12/20/96

7-6 INTERVIEWING COMPLAINANTS AND SUBJECTS OF CRIMINAL INVESTIGATIONS

EFFECTIVE: 10/23/86

7-6.1 Interviews of Complainants

(1) Complainants who have transmitted information to FBIHQ by letter and who have been advised that they would be interviewed in the field must be interviewed promptly and appropriate advice submitted to FBIHQ. Delay in handling the interview must be reported to FBIHQ.

(2) Complainants who have communicated with field offices must be interviewed promptly when they have been advised that an Agent would interview them.

EFFECTIVE: 10/23/86

7-6.2 Subjects of Criminal Investigations

|(1)| In interviews with subjects and suspects, consideration is to be given to the solution of crimes other than the one which is presently being investigated.

|(2)| In such interviews, the disclosure of the identity of confidential informants and confidential sources of information must be avoided.

|(3)| In interviewing subjects of criminal investigations where the possibility exists the subject may have evaded payment of income taxes or there is an apparent irregularity relating to the payment of income taxes, consideration should be given to inquiring of the subject as to whether|he/she|filed an income tax return for the pertinent period and where it was filed. Such an inquiry should not be made where there is a possibility that it will prejudice our case. If any information of interest to the Internal Revenue Service, Treasury Department, is obtained as a result of such an inquiry, it should be promptly referred to the local office of the Internal Revenue Service, and to FBIHQ in a form suitable for dissemination.

EFFECTIVE: 10/23/86

7-7 DEVELOPMENT OF DEROGATORY INFORMATION DURING INTERVIEWS

Derogatory data developed through interviews of witnesses and other sources must be completely approved or disproved and accurately and factually established as applicable to the person under investigation. The danger of relying upon information obtained from one source is obvious and vigorous steps must be taken to further develop such cases through evidence obtained through other sources and from various investigative techniques. Beware of being misled by circumstantial evidence and guard against incomplete interviews or overeager witnesses who deviate from telling what they actually know to what they erroneously feel the FBI is desirous of obtaining.

EFFECTIVE: 02/20/90

7-8 IDENTIFICATION OF SUSPECTS

Identification of suspects by witnesses interviewed should be in crystal-clear, unmistakable language, showing exact basis for such identification, and corroboration should be developed for same wherever possible. Make certain that when suspects are identified in a lineup the identification is from independent knowledge and recollection of the facts by the witnesses, and not from the witnesses' mere association with the suspect with a photograph of the suspect previously exhibited to the witnesses. There is no "margin of error" allowed the FBI for mistaken identifications. Obtain a signed statement whenever it is possible in those instances in which a witness, who would or could subsequently testify, makes a positive identification of a subject from a photograph or by personal observation. |Investigators may wish to utilize Form FD-747, Photo Spread Folder, to display the photographs.| If witness refuses to|provide a signed|statement, so indicate in the report.

EFFECTIVE: 02/20/90

7-9 INTERVIEWS INVOLVING OR RELATING TO COMPLAINTS

EFFECTIVE: 02/20/90

7-9.1 Complaints Received at the Field Office

Complaints must be handled by the SAC, ASAC, or supervisory staff in all offices which do not have an authorized complaint desk. If the information in the complaint will result in publicity or if FBIHQ may be interested, FBIHQ should be advised promptly.

EFFECTIVE: 02/20/90

7-9.2 Complaints in Person or by Telephone

(1) The employee receiving the complaint must complete Form FD-71 immediately. However, the preparation of the complaint form is not necessary in those instances in which, immediately upon receipt of the complaint, an electronic communication (EC) is sent out the same day to another field office or FBIHQ setting forth the essential facts of the complaint. FD-71 is a letter-size preinserted carbon white form or an FD-71 macro made up so that the name and aliases of the subject, address, character, name of the complainant, address, phone number, personal or telephonic, date and time, subject's description, facts, and name of employee receiving the complaint can be entered and the results of the indices check can be shown.

(2) The index must be checked immediately regarding names of complainant (unless complainant is a known or established source) and subject. The SAC must indicate action to be taken. Proper consideration must be given to all persons who contact field offices either telephonically or personally whether as complainants or visitors. Such contacts must be handled courteously and promptly and there must not be any improper, indifferent, or arrogant treatment of such contacts.

EFFECTIVE: 06/12/97

7-9.3 Complaints By Letter

(1) Concerning a matter not within the jurisdiction of the FBI but within the jurisdiction of some other Federal investigating agency, acknowledge the letter of the complainant to the proper agency. (Form FD-342 may be used to transmit anonymous letters.) If complaint concerns a matter handled by Department of Labor under Labor-Management Reporting and Disclosure Act 1959, advise complainant in acknowledgement that the matter has been referred to the USA for appropriate action. Immediately upon referral to USA include information in an LHM and forward to FBIHQ.

(2) Incoming communications must be acknowledged promptly, except where SAC deems otherwise.

EFFECTIVE: 01/31/78

7-9.4 Complaints Critical of the FBI or Its Employees

(1) Complaints received critical of employees or the FBI must be thoroughly investigated and promptly reported to FBIHQ.

(2) Upon receipt of a critical complaint about the FBI from a public official which necessitates an inquiry to ascertain the facts prior to acknowledging the communication, the SAC, or in his absence whoever is acting for him, must promptly call the public official, acknowledge receipt of the communication, state that a prompt inquiry is being initiated to ascertain the facts, and that as soon as all the facts are secured the SAC will be in touch with the complainant. If there is any question in the mind of the SAC, or whoever is acting for him, as to the propriety of this, immediately communicate with the appropriate official of FBIHQ so that the matter can be resolved.

EFFECTIVE: 01/31/78

7-9.5 Legal Requirements of the Privacy Act of 1974 (Title 5, USC, Section 552a)

When conducting an interview for any purpose, the interviewing Agent must always bear in mind the provisions of the Privacy Act, i.e., information collected must be: (1) relevant and necessary to accomplish a purpose of the Bureau; (2) authorized to be accomplished by statute or Executive Order of the President (or by the Constitution).

Additionally, the information collected must be accurate, relevant, timely, and complete; and, if describing how an individual exercises a right guaranteed by the First Amendment to the Constitution, the collection and maintenance of the information must be pertinent to and within the scope of an authorized law enforcement activity.

For a more detailed explanation of these provisions, refer to Section 190-5 of this Manual.

SECTION 8. DESCRIPTIONS OF PERSONS

8-1 POLICY FOR DESCRIPTION OF PERSONS

|(1)| The best available descriptions of all subjects, suspects and all victims shall be included in the first reports written after the descriptions are obtained, and supplemented later. When a subject, suspect or victim is interviewed, a complete description must be obtained and recorded. No word or phrase is to be used in descriptions in any report or communication which can be regarded as objectionable or offensive by any race, creed, or religious sect. The following or similar phrases should not be used: "Jewish Accent," "Polish Jew," "Irish Catholic," "English Methodist," etc.

|(2)| There are three possible ways in which Agents may obtain physical descriptions:

|(a)| From the records of other agencies.

|(b)| From personal observation and/or interview of the person. Where possible, a description should always be obtained.

|(c)| From other individuals who know or have seen the person. Considerable assistance can be given to individuals in obtaining descriptions from them by one thoroughly familiar with all the items to be considered in compiling a physical description.

EFFECTIVE: 05/28/85

8-1.1 Specific Descriptive Items

EFFECTIVE: 05/28/85

8-1.1.1 Names and Aliases

(1) The person should be asked|his/her|full name, first, middle and last, and requested to spell each name completely.

(2) The person should be asked if|he/she|has ever been known under any other name.

(3) Initials are not generally considered as aliases unless the circumstances of a particular case so indicate.

(4) All nicknames should be obtained and included.

EFFECTIVE: 05/28/85

8-1.1.2 Sex

The sex of the person described should always be designated as certain names carry both a feminine and masculine connotation.

EFFECTIVE: 05/28/85

8-1.1.3 Race

EFFECTIVE: 05/28/85

8-1.1.4 Age

(1) The date and place of birth should be obtained.

(2) If not obtained from the person described, it may be obtained from state records, baptismal records, family Bibles, etc.

EFFECTIVE: 05/28/85

8-1.1.5 Residences

(1) The present address of the person should be obtained.

(2) Obtain former residences and approximate dates in connection therewith.

(3) If no present address indicated, the residence most regularly frequented; e.g., father's address.

EFFECTIVE: 05/28/85

8-1.1.6 Height

The most accurate method of obtaining height is from actual measurement. However, in many instances this method is not possible. In this case an approximate height of person will suffice.

EFFECTIVE: 01/31/78

8-1.1.7 Weight

(1) If available, the person should be weighed and appropriate consideration should be given to allow for clothing. In the absence of being able to weigh the person, an approximate weight should be included in the description.

EFFECTIVE: 01/31/78

8-1.1.8 Build

Extra large, large, medium, slender, stocky, short, heavy, obese, etc.

EFFECTIVE: 01/31/78

8-1.1.9 Hair

(1) Color: Black, brown (dark, medium, light, chestnut), red (auburn, carrot top), sandy, blond, grey (iron grey, mixed grey, silver), white.

(2) Texture: Fine, coarse, kinky, curly, wavy, straight.

(3) Quantity: Thick, thin, bald (describe type of).

(4) Style: Parted on left, right or middle, pompadour, unkept, Afro, etc.

(5) Hairline: Pointed, straight, rounded.

EFFECTIVE: 01/31/78

8-1.1.10 Forehead

(1) Slope (profile view): Receding, medium, vertical, prominent or bulging.

(2) Height: Low, medium, high.

(3) Width: Narrow, medium, wide.

(4) Peculiarities: Wrinkles (horizontal, vertical, or combined).

EFFECTIVE: 01/31/78

8-1.1.11 Eyes

(1) Color: Blue, grey, hazel, green, brown, maroon, black.

(2) Size: Small, large.

(3) Peculiarities: Protruding, sunken, shortsighted, squinted, blinking, cross-eyed, wide set, close set, long lashes, cataract, watery, bloodshot, whites discolored, scars on whites of eyes, wears glasses, or contact lenses.

(4) Eyebrows: Color differs from hair, heavy, arched, united, oblique upward, oblique downward.

EFFECTIVE: 01/31/78

8-1.1.12 Nose

(1) Line (profile): Straight, concave, hooked, Roman, sinuous.

(2) Base: Horizontal, upward, downward.

(3) Projection: Small, medium, large.

(4) Length: Short, medium, long.

(5) Bridge curve: Flat, medium, recessed or deep.

(6) Width of bridge: Wide, medium, narrow.

(7) Width of base: Wide, medium, narrow.

(8) Peculiarities: Crushed, twisted, dilated nostrils, pointed, bulbous.

EFFECTIVE: 01/31/78

8-1.1.13 Mouth

(1) Size: Wide, medium, narrow.

(2) Shape: Habitually open, corners elevated or depressed, tightly closed.

(3) Lips: Long upper, short upper, thin, thick, upper prominent, lower prominent or pendent, pouting.

EFFECTIVE: 01/31/78

8-1.1.14 Chin

(1) Profile view: Projecting or prominent, receding, vertical, pointed, long, short, double chin, flabby throat.

(2) Front view: Wide, square, round, dimple, cleft, bulbous.

EFFECTIVE: 01/31/78

8-1.1.15 Teeth

Protruding upper or lower, irregular, gold visible, some missing, stained, decayed, false, buck.

EFFECTIVE: 01/31/78

8-1.1.16 Ears

(1) Size: Large, medium, small.

(2) Shape: Rectangular, oval, round, triangular.

(3) Position on head: Low or high.

(4) Slope (profile): Vertical, receding.

(5) Slope (full-faced): Protruding, medium close set.

(6) Upper rim: Large, small, medium, flat.

(7) Lower rim: Large, small, medium, flat.

(8) Lobe: Long, medium, short, wide, pointed, rounded, descending, no lobes or squared.

EFFECTIVE: 01/31/78

8-1.1.17 Neck

Short, long, thin, thick, prominent Adam's apple, goiter, prominent jaws.

EFFECTIVE: 01/31/78

8-1.1.18 Head

(1) Shape: Area above ears large, area above ears small, back of head bulges, back of head flat, top of head flat, top of head pointed, small for body, large for body.

(2) Angle: Holds head to the right or to the left, forward or backward.

EFFECTIVE: 01/31/78

8-1.1.19 Face

(1) Complexion: Pale, fair, medium, dark, light brown, medium brown, dark brown, sallow, ruddy, pock-marked, pimpled, freckled, weather-beaten, swarthy, tanned.

(2) Shape: Round, square, oval, long, broad, heart-shaped, prominent cheek bones, sunken cheeks, flabby, drawn, bony.

(3) Expression: Meditative, dull, nervous, stern, scheming, smiling, suffering, frightened, sad, distorted, innocent, vivacious.

EFFECTIVE: 01/31/78

8-1.1.20 Voice

(1) Quantity: Soft, low, loud, harsh.

(2) Quality: Refined, vulgar, foreign accent, lisping, stuttering, stammering, throaty, husky, southern accent, effeminate.

(3) Rate of speech: Rapid, slow, precise.

EFFECTIVE: 01/31/78

8-1.1.21 Legs and Hands

Short, medium, long, skinny, fat, straight, knock-kneed, bowlegged, right or left handed, amputee, etc.

EFFECTIVE: 01/31/78

8-1.1.22 Gait

Trudging, energetic, swaying, light, graceful, calm and leisurely, long steps, short steps, stiff, pigeon-toed, waddles, slew-footed, clubfooted.

EFFECTIVE: 01/31/78

8-1.1.23 Education

Illiterate, noticeably poor English, noticeably good English, grammar school, high school, business school, night school, college, apparently well-educated.

EFFECTIVE: 01/31/78

8-1.1.24 Scars

(1) Scars, particularly on the face and hands, should be fully described as to location, shape, size, and color.

(2) Moles, warts, cysts, blackheads, tattoos.

EFFECTIVE: 01/31/78

8-1.1.25 Peculiarities

(1) Peculiarities of any type are most important in the description of persons.

(2) Peculiarities, such as mannerisms, habits, impressions, regardless of how seemingly unimportant should be included.

(3) The following should be considered under peculiarities: senile, invalid, paralytic, feeble-minded, deaf, dumb, totally blind, deformities, amputations.

EFFECTIVE: 01/31/78

8-1.1.26 Occupation

The specific occupation should be stated in all instances.

EFFECTIVE: 01/31/78

8-1.1.27 Marital Status

(1) The status of a person should be stated as married, single, divorced, separated, widow, widower, or common-law.

(2) If married, the full and complete name of the wife, including the maiden name, should be set forth when known.

(3) Information as to the date and place of the marriage, including the name of the minister who performed the ceremony, should

be included if possible.

(4) If divorced, the time, place, and the grounds should be obtained.

EFFECTIVE: 01/31/78

8-1.1.28 Close Relatives

(1) The names and addresses of close relatives should be obtained when possible. Close relatives are parents, spouse, brothers and sisters, and adult offspring. Special instances, such as more distant relatives who occupy same residence as applicant, will require broadening of this definition.

(2) Where pertinent, list close friends and associates.

EFFECTIVE: 01/31/78

8-1.1.29 Nationality

(1) The nationality or extraction of the individual being described may sometimes be very important.

(2) The country of birth should be obtained.

EFFECTIVE: 01/31/78

8-1.1.30 Fingerprint Classification

This should be set forth whenever known.

EFFECTIVE: 01/31/78

8-1.1.31 FBI or Police Number

These numbers should be set forth whenever they are available.

EFFECTIVE: 01/31/78

8-1.1.32 Social Security Number

This number should be included when available. (See MIOG, I, 190-8.1(2).

EFFECTIVE: 01/31/78

8-1.1.33 Other Identifying Numbers

Alien registration number, military service number, driver's license number, etc., should be set forth when known.

EFFECTIVE: 01/31/78

8-1.1.34 Identification Record Showing Source

The source for descriptive data will be furnished, if necessary, for clarification, such as former address which only sets forth street and city or state. The source which furnished the fingerprint, for example, Police Department, Albany, N.Y., will be identified and, if additional clarification is necessary, that agency can be contacted.

EFFECTIVE: 01/31/78

OPCA-20 (12-3-96)

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FEDERAL BUREAU OF INVESTIGATION
FOIPA
DELETED PAGE INFORMATION SHEET

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

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

Section 552		Section 552a
☐ (b)(1)	☐ (b)(7)(A)	☐ (d)(5)
☑ (b)(2)	☐ (b)(7)(B)	☐ (j)(2)
☐ (b)(3)	☐ (b)(7)(C)	☐ (k)(1)
_____	☐ (b)(7)(D)	☐ (k)(2)
_____	☑ (b)(7)(E)	☐ (k)(3)
_____	☐ (b)(7)(F)	☐ (k)(4)
☐ (b)(4)	☐ (b)(8)	☐ (k)(5)
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FBI/DOJ

SECTION 10. RECORDS AVAILABLE AND INVESTIGATIVE TECHNIQUES

10-1 INTRODUCTION

(1) The following information is being provided as a reference for investigative personnel seeking additional data and/or the location of individuals who are the subjects of FBI investigations. This information is presented in two parts, Records Available and Investigative Techniques.

(a) Records Available are those documents which may assist in either compiling a necessary profile (either of a group, an individual or a business enterprise), or will assist in locating subjects, suspects, witnesses or victims.

(b) An Investigative Technique is a method by which an activity is conducted (Title III) or information placed (stop notice) which may aid in the identification or location of a subject or in the gathering of evidence.

(2) The use of any of these records or investigative techniques must be in accord with legal and ethical investigative procedures. In many cases, the obtaining of records or use of an investigative technique must be authorized by the SAC, Department of Justice, Attorney General or court order. If any doubt exists as to what the correct procedure is, the appropriate supervisory personnel must be consulted. It should be additionally noted that the information contained in this section is not all-inclusive regarding records or investigative techniques available.

(3) As the various items appear, there will be either a reference to another section in this manual or to another manual, an explanation of what the technique is or simply a listing of the record. Additional record information is available in Part II, Section 19 of this manual titled, "Location of Other Government, Industrial, and Organizational Records."

EFFECTIVE: 01/21/86

10-2 RECORDS AVAILABLE

[redacted]

Biographic Directories

[redacted]

City Directory
Closed and Pending Files
Court System

[redacted]

Department of Veterans Affairs

[redacted]

Field Office Special Services List

[redacted]

b2, b7E

Government Agencies

[redacted]

Identification Records (FD-9)

[redacted]

Interstate Identification Index

[redacted]

Maps
Marriage Records
Merchant Marine
Military Departments
Motor Vehicle Department

[redacted]

National Auto Theft Bureau
Newspaper Library

[redacted]

PD Checks

[redacted]

Probation and Parole Offices
Public Libraries

[redacted]

Schools and Colleges
Social Security Records
Sources of Information Index
Street Guide
Surveillances
[redacted]
Telephone Directory
[redacted] b2, b7E
Unemployment Agencies, Federal and State
[redacted]
Voter Records

EFFECTIVE: 05/25/90

10-3 INVESTIGATIVE TECHNIQUES (See MIOG, Part II, 21-23 (25).)

Artist Conceptions	see MIOG, Part II, 13-24
Crime Scene Searches	see MIOG, Part II, 13-6.4
Check Circulars	see MIOG, Part II, 21-25
Circular Letters	see MIOG, Part II, 21-24
Computer Assistance or Automatic Data Processing	see MIOG, Part II, 10-4
Interstate Identification Index (III)	see MIOG, Part II, 10-5
Consensual Monitoring	see MIOG, Part II, 10-10
Electronic Surveillance (ELSUR)	see MIOG, Part II, 10-9
Evidence -	
Racketeering Records Analysis	see MIOG, Part II, 13-20
Collection, Identification and Preservation of Physical Evidence	see MIOG, Part II, 13-6.4.7

Collection of Evidence in Rape Cases	see MIOG, Part II, 13-8.2.5
Fluorescent Powders and Other Marking Materials	see MIOG, Part II, 13-15.2
Plastic Cast Impression of Stamped Numbers in Metal	see MIOG, Part II, 13-13.3.1
Restoration of Obliterated Markings	see MIOG, Part II, 13-14.2

(10)

Shoe/Tire Tread Cast and Lifts	see MIOG, Part II, 13-19
Hypnosis	see MIOG, Part II, 10-12
Identification Orders	see MIOG, Part II, 21-25
Informants	see MIOG, Part I, 137
Investigative Information Services Data Bases For Use In Investigations	see MIOG, Part II, 10-17
Mail Covers	see MIOG, Part II, 10-6
National Crime Information Center	see MAOP, Part II, 7
Pen Registers	see MIOG, Part II, 10-10.7
Photographic Examinations	see MIOG, Part II, 13-7.6
Photographic Surveillances	see MIOG, Part II, 13-7.5
Polygraph Examinations	see MIOG, Part II, 13-22
Stop Notices	see MIOG, Part II, 10-7
Surveillance Techniques	see MIOG, Part II, 9
Telephone Toll Records	see MIOG, Part II, 10-8
Title III Coverage	see MIOG, Part II, 10-9.10
Undercover Activities	

Criminal Matters	see MIOG, Part II, 10-11
Wanted Flyers	see MIOG, Part II, 21-25
Wanted or Flash Notices on Fingerprint Cards	see MIOG, Part II, 14-15.5

EFFECTIVE: 07/25/97

10-4 COMPUTER ASSISTANCE OR AUTOMATIC DATA PROCESSING (See MIOG, Part II, 10-3.)

The Investigative Automation Support Section of the Information Resources Division assists the field in investigative matters: (1) involving computer or data processing personnel; (2) where there are voluminous records that require sequencing, comparison or calculations; (3) requiring assistance in the wording of subpoenas for computer records; or search warrants for searching of computer installations, etc. More detailed information regarding computer services available to you is set forth in Part II, 16-10, of this manual.

EFFECTIVE: 06/01/94

10-5 INTERSTATE IDENTIFICATION INDEX (III) (See MIOG, Part II, 10-3; MAOP, Part II, 7-4.1.)

(1) The III allows on-line accessibility of criminal arrest records through the use of your NCIC computer terminal. The III maintains index records which contain personal descriptive data of the subject of the criminal history record. The location of the data base(s) which stores the criminal history record is also part of the Index. Records available through the III include: subjects arrested with dates of birth 1956 or later and all individuals arrested for the first time on or after 7/1/74, regardless of their dates of birth and selected older records converted to the automated system for certain fugitives and repeat offenders.

(2) Detailed instructions for conducting name searches

and record retrievals are set forth in Part 10 of the NCIC OPERATING MANUAL. The state control terminal officer within your state can respond to any questions or problems you might have concerning the operation of your NCIC computer terminal.

(3) All field offices are encouraged to use III in their daily operations.

(4) If no record is located through the III File, check with the FBI Criminal Justice Information Services Division since it maintains over 10 million additional records not available through III.

EFFECTIVE: 05/13/96

10-6 MAIL COVERS

EFFECTIVE: 03/09/81

10-6.1 United States Postal Service (USPS) Regulations

(1) USPS regulations governing mail covers are codified in Title 39, Code of Federal Regulations (CFR), Section 233.2 and designate the Chief Postal Inspector to administer all matters governing mail cover requests by law enforcement agencies. Except for national security mail covers, the Chief Postal Inspector may delegate any or all such authority to the Regional Chief Postal Inspectors. In addition, all Postal Inspectors in Charge and their designees are authorized to order mail covers within their districts in fugitive and criminal matters.

(2) USPS regulations state that a mail cover may be requested to locate a fugitive, to obtain information regarding the commission or attempted commission of a crime, or to protect the national security.

(3) For mail cover purposes, a "mail cover" is defined by USPS as the process by which a record is made of any data appearing on the outside cover of any class of mail matter, (the FBI may not request a check of the contents of any class of mail); a "crime" is defined as the commission or attempted commission of an act punishable

by imprisonment for a term exceeding one year; a "fugitive" is any person who has fled from the United States or any state, territory, the District of Columbia, or possession of the United States, to avoid prosecution for a crime or to avoid giving testimony in a criminal proceeding.

(4) No mail covers shall include matter mailed between the mail cover subject and subject's known attorney-at-law. However, the mere fact that a subject has retained an attorney will not defeat a mail cover. A mail cover may be used but mail between the subject and subject's attorney shall not be included. Mailed matters between the subject and subject's attorney are protected.

(5) Excepting fugitive cases, no mail cover shall remain in force when the subject has been indicted for any cause. If the subject is under investigation for further criminal violations, a new mail cover order must be requested consistent with USPS regulations. A mail cover on an indicted subject who is not a fugitive is still possible under certain conditions. Although not available for crimes for which the subject has been indicted, a mail cover may be used as an investigative tool to investigate the subject's other crimes. As to fugitives, a mail cover is available for the offense for which indicted and other crimes.

(6) Excepting mail covers ordered upon subjects engaged, or suspected to be engaged, in any activity against the national security, or activity violative of any postal law, no mail cover order shall remain in force for more than 30 days. At the expiration of such period or prior thereto, the requesting authority may be granted additional 30-day periods under the same conditions and procedures applicable to the original request. No mail cover shall remain in force longer than 120 days unless personally approved for further extension by the Chief Postal Inspector. |In all requests for mail covers to extend beyond 120 days, the requesting authority must specify the reasonable grounds that exist which demonstrate the mail cover is necessary for one of the stated purposes.|

(7) No officer or employee of the USPS other than the Chief Postal Inspector, Postal Inspectors in Charge or their designees are authorized to order mail covers. Under no circumstances shall a postmaster or postal employee furnish information, as defined in paragraph (3), to any person except as authorized by the Chief Postal Inspector, Postal Inspector in Charge or their designees.

EFFECTIVE: 03/09/81

10-6.2 Policy

(1) |SAC|approval must be obtained before a mail cover request is submitted to the USPS. |SACs are authorized to request mail covers, with the exception of those involving National Security cases, from the USPS. See policy in Part II, 10-6.3.2 concerning mail covers involving National Security cases.|

(2) In criminal matters, requests for mail covers should be submitted when it can be shown that use of the technique would be logical, resourceful, appropriate, and when the use of the technique is in conformance with all regulatory requirements and guidelines including the Attorney General's Guidelines on General Crimes, Racketeering Enterprises, and Domestic Security/Terrorism Investigations. When requesting authorization to utilize a mail cover, consideration should be given to whether the information sought can be obtained in a timely and effective manner by less intrusive means. Further, in recognition that use of a mail cover raises possible First Amendment concerns, care should be taken to ensure use of the mail cover will be confined to the immediate needs of the investigation, particularly when considering a mail cover to be placed on an individual who is not the subject of a criminal investigation.

(3) The SAC should review and approve all requests for mail covers and should review and approve all requests for continuation of existing mail covers.

(4) The SAC should conduct frequent checks as to the productivity of mail covers after being placed into effect.

(5) Cases are not to be closed until the mail cover has expired or has been withdrawn. |SAC must|be notified if request for mail|cover is not approved by the USPS,|which notification shall include a statement of the reasons given by the postal authorities for not approving the|mail cover|request.

(6) Information obtained as a result of a mail cover in fugitive or criminal cases should be reported in the cover pages.

(7) Requests for mail covers should not be submitted in preliminary criminal inquiry investigations. ("The Attorney General's Guidelines on General Crimes, Racketeering Enterprises, and Domestic

Security/Terrorism Investigations," effective 3/21/83.)

(8) A mail cover index is to be maintained by the|Administrative Officer/Office Services Manager.| 3- by 5-inch cards, FD-57, may be filed alphabetically or by street address and should reflect the following:

(a) Name and address of person whose mail is covered

(b) Fugitive or criminal case

(c) File number of case

(d) Date when placed

(e) Identity of Agent handling

(f) City

(g) Duration of mail cover

(9) After the mail cover has been discontinued, the mail cover index card is to be destroyed.

EFFECTIVE: 05/09/95

| 10-6.3 Requesting Approval

EFFECTIVE: 05/09/95

10-6.3.1 Fugitive or Criminal Cases

(1) In recommending a mail cover in a FUGITIVE OR CRIMINAL CASE, submit a memo to the SAC advising that a mail cover is being requested from the district Postal Inspector in Charge covering the area where the mail cover is to be placed.

(2) This memo must also include the following information:

(a) Brief background of the case.

(b) A statement setting forth the reasons that the use of a mail cover is logical, resourceful and appropriate.

(c) Identity and complete mailing address of the person whose mail is to be covered.

(d) Location of the district Postal Inspector in Charge to be utilized.

(e) The federal statute and maximum possible penalty involved.

(f) Whether the person whose mail is to be covered is under indictment in connection with the matter under investigation.

(g) Whether the person whose mail is to be covered is known to have retained an attorney and, if so, the attorney's name.

(h) In fugitive cases, whether the fugitive is under indictment in connection with the matter under investigation.

(i) In fugitive cases, whether the fugitive is known to have obtained an attorney and, if so, the attorney's name.

(3) Your request to the appropriate district Postal Inspector in Charge must be written or confirmed in writing.

(4) In fugitive and criminal cases, mail covers may be placed initially for 30 days' duration and may be extended on request to the district Postal Inspector in Charge for additional 30-day periods up to a total of 120 days. If an extension of the mail cover beyond this 120-day period is desired, submit the request for an extension to the appropriate USPS authority. Any request for extension beyond 120 days must clearly set forth any specific

reasonable grounds that exist which demonstrate the mail cover is NECESSARY.

(5) SAC approval is required when requesting that confidential arrangements be made to initiate a particular mail cover. The period of days of the mail cover must be specified, but a particular date should not be.

(6) When emergency authority is needed to establish a mail cover, USPS regulations state that the appropriate Postal Inspector in Charge, or that Inspector's designee may act upon an oral request, to be confirmed by the requesting authority in writing within two business days. However, the USPS will release no information until an appropriate written order is received.

EFFECTIVE: 05/09/95

10-6.3.2 National Security Cases

(1) As noted above, USPS regulations state that a mail cover may be requested to protect the national security. For mail cover purposes, "to protect the national security," is defined by USPS as protecting the United States from any of the following actual or potential threats to its security by a foreign power or its agents: (i) an attack or other grave hostile act; (ii) sabotage, or international terrorism; or, (iii) clandestine intelligence activities.

(2) All mail covers in national security cases must be approved personally by the Director of the FBI or, in Director's absence, by the Acting Director on Director's behalf. If the individual on whom the mail cover is to be placed is a United States person, Attorney General approval is also required.

(3) All correspondence concerning national security mail covers should be transmitted "BY LIAISON" and addressed as follows:

Chief Postal Inspector
U.S. Postal Service
475 L'Enfant Plaza, Southwest
Washington, D.C. 20260

Attention: Legal Liaison Branch

(4) The name and address of the individual or establishment on which the mail cover is to be placed must be unclassified. A statement such as "For the purpose of placing the mail cover, the above-captioned individual's name and address are considered unclassified," will suffice.

(5) In these national security cases, when the field is recommending to FBIHQ that a mail cover be requested, complete information concerning the name and address of each individual or organization to be covered, including ZIP code, should be supplied. Set forth information similar to that outlined above for criminal cases, including any information concerning known attorneys of record and any information as to whether or not the subject is under indictment. Requests for approval of national security mail covers will require more detailed explanations and must stipulate and specify the reasonable grounds that exist which demonstrate the mail cover is necessary to protect the United States from an actual or potential threat to its national security.

(6) If the request for a mail cover in a national security case is approved by FBIHQ, arrangements for implementing the mail cover will be handled by FBIHQ.

EFFECTIVE: 02/16/89

10-7 STOP NOTICES

EFFECTIVE: 06/10/88

10-7.1 Definition

A stop notice is a request to be advised if an individual or property comes to the attention of any organization or a member thereof.

EFFECTIVE: 06/10/88

10-7.2 Placement of Stops

The form utilized for placement of stops is an FD-56, a 3- by 5-inch card. This should record the date a request is made of a particular law enforcement agency, [redacted] etc. b2,b7E This form should not be prepared if information has previously been furnished NCIC unless a reason exists otherwise. If so, it should be indicated on FD-56. The office placing the stop should prepare the FD-56 and route to the office of origin (OO) by letter or as an enclosure to another communication setting forth the results of investigation. This communication should include the name of the Agent placing the stop and with whom the stop was placed.

EFFECTIVE: 06/10/88

10-7.3 Indexing Stops

|(1) The requesting and placing offices are required to record in their automated indices each name and/or item of property which is documented in a stop notice while the stop notice is in force (subject or reference record). The miscellaneous part of the index record should contain the same information as included on the FD-56.|

|(2)| The Office of Origin|(OO) will file the FD-56 in the manual general index|except when FBIHQ is OO. |If FBIHQ is OO, the office placing the stop will maintain the FD-56 in its manual general index.| The FD-56 will be filed|with|the|manual general index before the letter group "A" led by a separator marked "STOP NOTICES" and sequenced|in proper numerical order|(Classification, Case, Serial).| If the stops were placed by a written communication, only one card is needed even though more than one item was listed. When stops have been placed with FBIHQ or by another field office, no cards|(FD-56s)|are necessary.

EFFECTIVE: 06/10/88

10-7.4 Removal of Stops

(1) It is the direct responsibility of the OO to remove all stops on individuals or property when a determination has been made that they are no longer needed. Stop cards are to be reviewed quarterly to remove obsolete cards and to discontinue unnecessary stops.

(2) Mechanics of removing stops - Office of origin will forward, via routing slip, FD-56 to office which placed stop advising stop should be removed. Notation will be made on appropriate serial in file indicating name of employee and date stop removed after which FD-56 will be destroyed. Office of origin should be advised of removal of a stop by the office which placed the stop.

EFFECTIVE: 06/10/88

10-7.5 Types of Stops

EFFECTIVE: 06/10/88

10-7.5.1 [redacted]

Stop notices are placed by letter to [redacted]

b2, b7E

EFFECTIVE: 06/10/88

10-7.5.2 Immigration and Naturalization Service (INS)

These stops (INS Lookout Notices) are placed by use of the FD-315 form. The original FD-315 must be signed by the approving field supervisor and sent directly to INS as indicated on the form. INS will not place stops on U.S. citizens since it has no statutory authority over U.S. citizens.

(1) INS stops are of necessity never classified. The stop names and identifiers are available on lists or electronically in

areas open to travelers.

(2) INS regulations state that other Federal agencies may request the posting of lookouts. These requests for stops must meet the INS criteria for posting unless there are outstanding warrants of arrest, [redacted] b7E per INS FBI investigative activity does not usually meet INS criteria for posting lookouts.

(3) The INS Stop System consists of three parts: (a) The INS "National Automated Immigration Lookout System" (NAILS), an automated telecommunications network records system; (b) The "INS Lookout Book" printed with one-line lookout records, updated and distributed once every calendar month; and (c) A 90-day temporary emergency lookout system posted electronically by INS Central Office, or by local FBI Border Offices.

(4) [redacted] b7E per INS INS stops will be posted until the subject's ninetieth birthday.

(5) Instructions for Completing FD-315 - Instructions are printed on the reverse of the FD-315 form. One subject should appear on a single form with additional names or aliases listed alphabetically on that form. Do not use spelling variations. Only actual names used by subject or those names for which subject is known to have identification should be submitted. One birthday only should be used. If the subject is considered armed and dangerous, suicidal or having physical or mental problems, the caution block should be checked (x'd) and this information should be explained under "Miscellaneous."

The FD-315 lists [redacted]

(a) [redacted] b7E per INS

(b) [redacted]

(c) [redacted]

(6) Emergency INS Border Stops - A teletype can be forwarded to INS Headquarters requesting an emergency INS stop. In addition, border FBI offices may place stops with INS at a local level along the Canadian and the Mexican borders. In order to handle such stops these offices must be provided with: identity; description; photograph, if available; approximate time subject expected and mode of travel. Emergency stops should be placed selectively when all of the above items are not available. In addition, when it becomes apparent these stops will extend beyond 90 days, an FD-315 should be sent to INS, Washington, D.C.

(7) Cancellation and Amending of INS Stops - It is incumbent upon the requesting office to place and cancel stops. The FD-315 should also be used to amend or provide additional pertinent information developed on subject. In all cases the FD-315 should be used and the proper action is to be indicated. Stops are cancelled automatically by INS at the end of the period indicated. Note: the maximum time an INS stop can be in effect by submission of an FD-315 is five (5) years. If no cancellation date is shown on the FD-315, INS will place the stop for a maximum of one (1) year. The requesting office should be on the alert to renew these stops if required.

EFFECTIVE: 05/25/90

[redacted]

[redacted]

EFFECTIVE: 04/08/96

10-8 STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS

Title 18, USC, Section 2703, sets forth the procedural requirements that the Government must meet in order to obtain access to electronic communications in storage and related transactional records, including telephone toll records.

EFFECTIVE: 01/22/90

10-8.1 Contents of Electronic Communications in Electronic Storage

The statute draws a distinction between contents of electronic communications that have been in storage for 180 days or less, and those that have been stored for a longer period of time. This distinction is based on the belief that while the contents of a message in storage should be protected by Fourth Amendment standards, as are the contents of a regularly mailed letter, to the extent that the record is kept beyond six months, it is closer to a business record maintained by a third party for its own benefit and, therefore, deserving of a lesser standard of protection. A distinction is also made for contents of electronic communication in a remote computing service.

(1) 180 days or less - A governmental entity may require the disclosure by a provider of electronic communication service of the contents of an electronic communication that is in electronic storage in an electronic communications system for 180 days or less, only pursuant to a warrant issued under the Federal Rules of Criminal Procedure or equivalent state warrant (Title 18, USC, Section 2703(a)).

(2) More than 180 days - For contents of an electronic communication that has been stored for more than 180 days, a governmental entity may use any of three alternative means of access, depending on the notice given to the subscriber, or customer. The government may, without providing any notice to the subscriber, obtain a state or federal search warrant based upon probable cause (Title 18, USC, Section 2703(b)(1)(A)). If the government chooses to give notice to the subscriber, it may obtain access to the records by using either a grand jury, administrative, or trial subpoena authorized by a federal or state statute (Title 18, USC, Section 2703(b)(1)(B)(i)), or a new statutory court order based upon specific and articulable facts showing that there are reasonable grounds to believe that the contents of stored electronic communications are "relevant and material to an ongoing criminal investigation" (Title 18, USC, Section 2703(b)(1)(B)(ii) and (d)). This court order, like a court order for a pen register or trap and trace, may be obtained from a "court of competent jurisdiction" which includes "a district court of the United States (including a magistrate of such a court) or a United States Court of Appeals." The required notice may be delayed pursuant to Title 18, USC, Section 2705.

(3) Contents of electronic communications in a remote computing service - Access to the contents of electronic

communications is governed by Title 18, USC, Section 2703(b) and the means of access available are the same as those mentioned above for communications stored for more than 180 days. However, it is unclear whether communications stored in a remote computing service for less than 180 days are governed by Title 18, USC, Section 2703(a), that is, that such communications can be obtained ONLY by a federal or state search warrant based upon probable cause. The Department of Justice has urged United States Attorneys to argue that government access to the contents of an electronic communication held by a remote computing service does not require a search warrant during the first 180 days. Questions relating to this area should be directed to the Investigative Law Unit, FBIHQ.

EFFECTIVE: 10/23/95

10-8.2 Access to Transactional Information

(1) Telephone Records (See MIOG, Part II, 21-23(9).)

(a) Criminal and Civil Matters - Access to telephone billing records and other transactional records (not including the contents of communications) is governed by Title 18, USC, Section 2703. Specifically, the disclosure of a record or other information pertaining to a subscriber to a governmental entity is permitted only when the governmental entity:

1. obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent state warrant;

2. obtains a court order for such disclosure under Title 18, USC, Section 2703(d); or

3. has the consent of the subscriber or customer to such disclosure.

In addition to these methods, an administrative subpoena authorized by a federal or state statute, or a federal or state grand jury, or trial subpoena may be used to obtain basic subscriber information such as: "the name, address, telephone toll billing records, telephone number or other subscriber number or identity, and length of service of a subscriber to or customer of such service and the types of services the subscriber or customer utilize(s)." Title 18, USC, Section

| 2703(c)(1)(C).|

The Department of Justice has, however, advised that it is a misuse of the grand jury to utilize the grand jury as an investigative aid in the search for a fugitive in whose testimony the grand jury has no interest. Therefore, grand jury subpoenas for witnesses or records, | including telephone|billing|records, should not be requested in federal fugitive investigations. (See Part II, Section 2-9.8, of this manual for limited situations in which courts have recognized that grand jury efforts to locate a fugitive are proper.) Where the | telephone|billing|records being sought are those of a member of the news media, approval of the Attorney General is required. (See MAOP, Part II, Section 5-7.1 entitled "Investigations Involving Members of the Media.")

(b) National Security Cases - See Foreign | Counterintelligence Manual,|Introduction,|Section|1.|

(c) Notification to Telephone Subscriber

Criminal and Civil Matters - Many electronic communication service providers of long distance telephone service will automatically notify a subscriber that his/her records have been released to law enforcement unless the SAC certifies that such notification would prejudice an investigation. The certification period is 90 days, after which many electronic communication service providers will automatically notify the subscriber of the release within five days unless there is a recertification. Each recertification extends the nondisclosure period for an additional 90 days. At the conclusion of the final recertification period, the subscriber will, within five days, be notified of the record release. Each SAC must ensure appropriate administrative devices are in effect to provide for the initial certification where required and recertification prior to the termination of the preceding 90-day period where a continuing need for nondisclosure exists.

| (2) |On-line Computer Network Records

| (a) Records of on-line electronic communications and electronic mail (e-mail) transmissions, when they reveal more than basic subscriber records (see Title 18, USC, Section 2703(1)(c)(C) e.g., the named addressee, the topic of or the forum connected with the communication, etc.), are no longer available to law enforcement agencies pursuant to subpoena. Such information may be obtained only through the use of a court order under Title 18, USC, Section 2703(d), a warrant, or the consent of the subscriber or customer (Title 18,

USC, Section 2703(c)).

(b) To obtain a 2703(d) court order, the application must state "specific and articulable facts showing that there are reasonable grounds to believe that the contents of, transactional records of, or other information sought regarding stored electronic communications are "relevant and material to an ongoing criminal investigation."

(3) Video Tape Rental or Sales Records

The Video Privacy Protection Act of 1988 amended Chapter 121 of Title 18 "Stored Wire and Electronic Communications and Transactional Records Access" by adding a new section (redesignation of section 2710) governing the disclosure of video tape rental or sales records. It makes the unauthorized disclosure of records by any person engaged in the rental, sale, or delivery of prerecorded video cassette tapes or similar audiovisual materials unlawful and provides an exclusionary rule to prohibit personally identifiable information otherwise obtained from being admissible as evidence in any court proceeding.

(a) The new section defines personally identifiable information as "information which identifies a person as having requested or obtained specific video material or services . . . ." The disclosure of this information to law enforcement is permitted only when the law enforcement agency:

1. Has the written consent of the customer; or

2. obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State Warrant;

3. a grand jury subpoena;

4. a court order (a court order shall issue only upon prior notice to the consumer/customer).

(b) The disclosure of merely the name, address, and telephone number of customers of a video tape service provider, when the information being sought does not identify the customer as having requested or obtained specific video materials or services, may be made to law enforcement without compulsory process or the prior opportunity to prohibit such disclosure by the customer.

This type of information was specifically not included in the

definition of "personally identifiable information" (that type of information protected by the Video Privacy Protection Act of 1988) to allow law enforcement to obtain information about individuals during routine investigations such as neighborhood investigations.

(c) No separate disclosure procedure was provided for National Security cases.

EFFECTIVE: 10/23/95

10-9 ELECTRONIC SURVEILLANCE (ELSUR) PROCEDURES AND REQUIREMENTS

(1) Electronic surveillance is one of the most effective and valuable investigative techniques utilized in both criminal and national security investigative matters. To protect the use of this technique, the administrative and management controls contained in this section will receive the same meticulous oversight as does the informant program. Unless otherwise noted, it will be the responsibility of the case Agent and his/her supervisor to ensure compliance with these instructions. It should be clearly understood that the use of electronic surveillance requires (a) administrative or judicial authorization prior to its use, and (b) contact with the field office ELSUR support employee to coordinate all necessary recordkeeping, and (c) consultation with the Technical Advisor (TA) or a designated Technically Trained Agent (TTA) to determine feasibility, applicable technique, and the appropriate equipment.

(2) The procedures and requirements for ELSUR recordkeeping, control of evidentiary-type materials, and approval for use with regard to national security investigations are addressed in the Foreign Counterintelligence Manual.

EFFECTIVE: 04/24/89

10-9.1 Definitions

(1) Electronic Surveillance - The aural or other acquisition of the contents of any wire, electronic or oral communication through the use of any electronic, mechanical or other device (Title 18, USC, Section 2510 et seq.).

(2) ELSUR Indices - An alphanumerical index card system maintained at FBIHQ and each appropriate FBI field office containing the names of all individuals or entities, all locations and all facilities for which electronic surveillance has been sought by the FBI in a court order. It also identifies those individuals who have been participants in a conversation monitored or overheard during the course of an FBI electronic surveillance; and those who own, lease, license, or otherwise hold a possessory interest in property subjected to an electronic surveillance conducted by the FBI.

(3) ELSUR Cards - 3-x-5-inch cards which comprise the ELSUR indices.

(4) Principal Cards - 3-x-5-inch cards maintained in the ELSUR indices containing the true name or best-known name of all named interceptees identified in any application filed in support of court authorized Title III electronic surveillance. (See 10-9.12(1).)

(5) Proprietary Interest Cards - 3-x-5-inch cards maintained in the ELSUR indices identifying the entity(s) and individual(s) who own, lease, license, or otherwise hold a possessory interest in locations subjected to electronic surveillance authorized under Title III.

(6) Overhear Cards - 3-x-5-inch cards maintained in the ELSUR indices containing the true name or best-known name of individuals (including non-U.S. persons, Special Agents, assets, informants, cooperating witnesses, etc.) who have been reasonably identified by a first name or initial and a last name as having participated in conversations intercepted during the conducting of an electronic surveillance. (See 10-9.10 and 10-10 for further details.)

(7) Blue ELSUR Index Cards - 3-x-5-inch cards, blue in color, used for preparing Principal, Proprietary Interest and Overhear cards in Title III matters. All ELSUR cards relating to Title III are blue in color.

(8) White ELSUR Index Cards - 3-x-5-inch cards, white in color, used for preparing Overhear cards in consensual monitoring

matters.

(9) Source - With regard to ELSUR matters, the word "source" refers to the technique (microphone, telephone, body recorders, etc.) employed to conduct the electronic surveillance. In Title III matters, the "source" is the control number assigned; and in consensual monitoring matters, the "source" will be the control number assigned or the word "consensual."

(10) Title III Electronic Surveillance - The aural or other acquisition of the contents of any wire, electronic or oral communication pursuant to a court order obtained under the provisions of the Omnibus Crime Control and Safe Streets Act of 1968 (Title 18, USC, Section 2510 et seq.) for offenses set forth in Title 18, USC, Section 2516.

(11) Consensual Monitoring - The interception by an electronic device of any wire or oral communication wherein one of the parties to the conversation has given prior consent to such monitoring and/or recording.

EFFECTIVE: 04/24/89

10-9.2 Instructions for Maintaining ELSUR Indices

(1) The FBI has an obligation to totally retrieve the authority, contents and resulting use of material acquired regarding all persons targeted, monitored, or who otherwise hold a possessory interest in property subjected to electronic surveillance by this Bureau. In order to fulfill this obligation, it is the responsibility of each field office to comply with these instructions so that any electronic surveillance can be recalled from the files of the FBI.

(2) Indexing procedures in ELSUR matters will be the same as those set forth in the "Index Guide" which is available in each field office through the File Assistant/ELSUR support employee. All offices utilizing electronic surveillances will maintain one ELSUR index and prepare two copies of the appropriate-type ELSUR card, one for forwarding to FBIHQ and one for inclusion in the field office ELSUR indices. Each card filed in the field office ELSUR indices will be date-stamped to reflect the month, day and year the card was filed. Cards prepared in the name of an individual will be filed in alphabetical order according to the last name. Names of businesses, organizations, etc., will also be filed in alphabetical order.

Proprietary Interest cards cross-referencing telephone and vehicle identification numbers will be filed in a separate section within the ELSUR indices in numerical order according to the last three digits of the number. Should the last three digits be identical with any already in file, proceed to the next digit to the left. Addresses will be filed according to the name of the street; numbered streets will be spelled out, and in both cases will be filed in alphabetical order in a separate section within the ELSUR indices. In the event an address contains two street names, an appropriate card will be made for filing by each street name.

(3) The ELSUR indices will be maintained in a securely locked cabinet and will operate exclusively under the supervision of the field office ELSUR coordinator or the support employee designated to assist the coordinator. Access to the ELSUR index must be restricted to an absolute need-to-know basis.

(4) In the event any ELSUR index card within the ELSUR indices in any given field division is classified according to existing Executive order instructions to protect information involving national security, the ELSUR index of that field division must be classified at the level of the highest classification of any material contained therein. Any information retrieved as a result of a search of the ELSUR index must be reviewed for proper classification prior to internal FBI dissemination and/or subsequent release.

(5) The assistant ELSUR coordinator will conduct an annual review of the ELSUR indices to locate and correct misfiled cards, duplications, and subsequent overhears. Particular attention will be given to Proprietary Interest cards and Principal cards to ensure each item is complete where necessary. As this review is completed, an index card will be inserted at the front of each drawer within the index and will show the date the review was completed and the initials of the employee who conducted the review.

EFFECTIVE: 02/16/89

10-9.3 Requests for ELSUR Checks

(1) Upon submitting a request to FBIHQ for an electronic surveillance indices check, it is necessary to indicate in each request the reason why the information is being sought, such as whether the sought after ELSUR information will be used for preparation of a Title III affidavit, for an investigative lead, or for other purposes.

(2) Field office personnel handling ELSUR checks should also note that per U.S. Attorney's Manual, Title 9, Section 9-7.000, all requests for search of electronic surveillance records under a defense claim pursuant to Title 18, USC, Section 3504, or Federal Rules of Criminal Procedure, Rule 16, or for other trial-related reasons, must be directed by the Government trial attorney to the Department of Justice, Criminal Division, Attention: |Legal Support Unit, Office of Enforcement Operations,| Telephone Number FTS [redacted] b2 All assertions on behalf of the United States must be made by the Attorney General or Attorney General's designee. In the event a Government trial attorney requests an ELSUR check, the attorney should be advised of the instructions referred to above in the U.S. Attorney's Manual.

EFFECTIVE: 04/18/85

10-9.4 ELSUR Searching Procedures

(1) In connection with White House inquiries, requests under the Freedom of Information/Privacy Acts (FOIPA), discovery motions, U.S. District Court orders, and other lawful motions emanating from the courts, the Department of Justice directs inquiries to FBIHQ regarding possible electronic surveillance coverage of witnesses, defendants, or attorneys involved in Federal court proceedings. In order to accurately respond to such requests, field offices receiving instructions from FBIHQ to conduct a search of the ELSUR index and general office indices should search the name as shown, as well as aliases, variations in spelling, combinations and contractions, the extent of which is determined by the searching employee. All combinations searched must be shown on the incoming communication or an attached search slip so that the extent of the index search is readily apparent.

(2) An individual who has been party to a conversation intercepted by electronic surveillance may frame a request under the

FOIPA to include a search of the ELSUR indices. Such would require close coordination between FBIHQ and the field division which may have submitted ELSUR indices cards identifiable with the requester.

(3) This process of coordination will generally be initiated by an FOIPA Section airtel to the appropriate field division when the FOIPA request is received for processing. This airtel will request review of field office ELSUR records to determine if the individual monitored is identical to the requester and if there are additional instances of monitoring. FBIHQ ELSUR Index may not have previously alerted the FOIPA Section that the individual was monitored in a consensual or Title III electronic surveillance investigation.

(4) Where the overhear is recent in date, it is possible that the consensual electronic surveillance in question relates to a pending investigation or a covert operation not yet disclosed. The pending character of this investigative matter would not be evident from the FBIHQ ELSUR Index records. This pending status governs FOIPA Section processing of the ELSUR request and the FOIPA Section must be made aware of the status to ensure that the fact of an overhear will not be prematurely disclosed to the requester.

(5) Therefore, in responding to an FOIPA Section airtel relating to consensual monitoring ELSURs, the field division should always advise if the ELSUR coverage in question is still pending or a covert operation not yet disclosed.

(6) The ELSUR index should also be searched for any telephone numbers and addresses provided in the departmental request. All indicated files resulting from the search should be thoroughly reviewed for information relative to electronic surveillance.

EFFECTIVE: 04/18/85

10-9.5 Transmitting ELSUR Material to FBIHQ

(1) ELSUR index cards will be submitted, utilizing Form FD-664. This is a preprinted form directed to the ELSUR Index at FBIHQ. FD-664 requires the submitting field office to fill in blanks on the FD-664 reflecting the exact number of index cards submitted, the exact field office case title and file number and the technique utilized for the ELSUR. An inventory is required on the FD-664 indicating the identity of the ELSUR index cards submitted; therefore, list the name(s), entity(s), address(s), telephone number(s), and

vehicle identification number(s) indexed on the top line of each card enclosed. Lengthy submissions may be reflected by addenda to the form. Further, the FD-664 may be utilized for noncriminal matters. If utilized for noncriminal matters, the proper classification should be affixed to the form. The original and one copy of the FD-664, as well as accompanying enclosures, will be inserted in a plain brown envelope, sealed and clearly marked:

Director, FBI
ELSUR Index
FBIHQ

and submitted to reach the Bureau within the time frame allotted.

(2) Unless instructed to the contrary, responses to ELSUR surveys and related correspondence will be transmitted to the Bureau by airtel to: Director, FBI, Attention: ELSUR Index. This airtel should be entitled "ELSUR." The original and one copy of the transmittal airtel as well as accompanying enclosures will be inserted in a plain brown envelope sealed and clearly marked: Director, FBI, ELSUR Index, FBIHQ. This airtel will be submitted to reach the Bureau within the time frame allotted the specific type of material being forwarded and within Bureau deadline.

(3) When a court-ordered surveillance is authorized, installed, extended, or when a noncriminal matter installation is made or approved, an FD-664 should be submitted to FBIHQ. This does not preclude submission of a teletype or other expeditious communication to the appropriate substantive investigative section in criminal or noncriminal matters pertaining to emergency authorizations of both court-ordered or noncourt-ordered matters. All communications should be classified according to material contained within the communication. All communications should contain the field office case title and complete file number. Any communications concerning expeditious authorization and/or installation should contain also the name(s) of target(s), address(s) telephone number(s), source number of the installation or consensual monitoring number and dates of authorization, installation, extension and expected termination.

EFFECTIVE: 06/18/87

10-9.6 Retention of ELSUR Files and Related Records

On January 10, 1980, Judge Harold H. Greene, U.S. District Court, District of Columbia, issued a preliminary injunction to suspend all records destruction programs. Since that time, this order has been modified somewhat; however, these modifications did not include ELSUR materials. Until otherwise advised by FBIHQ, all originals and copies of original tapes, logs, transcripts, records, files and communications reflecting any ELSUR information relating to Title III matters, criminal intelligence matters and consensual monitoring matters will be retained.

EFFECTIVE: 06/18/87

10-9.7 |Marking|File Cover "ELSUR"

To ensure certain files are retained beyond the established file destruction period, |a check mark will be placed on the ELSUR line or "ELSUR" will be stamped on the case file covers of those files containing the "results" or the "products" of electronic surveillance|on every current, every preceding, every subsequent and every Sub volume to the file even though the product of the electronic surveillance may have been taken from another file or furnished by another office.

EFFECTIVE: 12/10/93

10-9.8 Preservation of Original Tape Recordings (See MIOG, Part II, 10-9.8.1(1), 10-10.5.1(2)(c); LHBSA, 7-14; FCIM, Introduction, 1-2.6.3(10).)

All original criminal ELSUR-taped recordings will be placed in an FD-504 (Chain of Custody - Original Tape Recording Envelope), sealed and retained in a modified steel wardrobe-type cabinet, security-approved container, or metal file cabinet equipped with a bar-lock device, hasp or other security-approved lock unless, under Title III, the authorizing judge has directed to the contrary. These cabinets are to be housed in a limited or restricted access location to ensure against unauthorized access in order to overcome any claim that the ELSUR tape was altered or distorted while in the

possession of the FBI and to assure the chain of custody. (See 10-9.6 for current rules regarding the retention of taped recordings. In matters involving national security refer to the Foreign Counterintelligence Manual for instructions regarding the handling of national security taped recordings.)

EFFECTIVE: 12/21/94

10-9.8.1 FD-504 (Chain of Custody - Original Tape Recording Envelope) |(See Legal Handbook for Special Agents, 7-14.)|

(1) ALL original tape recordings (including closed circuit television recordings) maintained as a part of a permanent record of the FBI, as well as those sealed by the U.S. District Judge, | should be placed in an FD-504 envelope, |maintained as evidence, |and stored as instructed above in Section 10-9.8 of this manual.

(2) The procedures for filling out the FD-504 are as follows:

(a) File Number - Enter the substantive case file number to which the tape recording relates and include the | 1B| (Evidence) |number.

(b) Tape Number - Enter the sequential number given the tape recording enclosed.

(c) Agent Supervising Interception - Enter the name of the Agent (or other Bureau employee) who removes the tape from the recording device after the recording is made; or who first receives custody of the original tape after the recording is made and the tape is being surrendered for retention.

(d) Title III Court-Order or FISA Court-Order Control Number: Mark appropriate space to indicate if the ELSUR is authorized under Title III or under the Foreign Intelligence Surveillance Act (FISA) of 1978, and enter the control/symbol number assigned.

(e) Consensual ELSURs - Mark appropriate box to indicate Consensual Monitoring (CM) telephone or nontelephone and any CM number assigned.

(f) In instances wherein the original tape recording enclosed in an FD-504 envelope is not a court-ordered or consensual ELSUR, mark the appropriate box to identify the origin of the tape enclosed, (i.e., Volunteered Tape-Not FBI ELSUR; Interview; other).

(g) Interception: Date and Place - Enter date and place (city/town and state) where intercept occurred.

(h) Tape Removed From Equipment - Enter date and time the tape was removed from the recording device.

(i) Identity of Persons Intercepted, If Known - Enter "See Log" for all court-ordered ELSURs (those authorized under Title III and under the FISA of 1978). For warrantless ELSURs (Consensual Monitoring) enter the true name or best known name of ALL individuals (including the consenting party) identified as having been overheard.

CHAIN OF CUSTODY

(j) Accepted Custody - Signature of the first person accepting custody of the recording (Agent supervising the intercept and/or any others taking custody of the contents of the FD-504).

(k) Released Custody - The released custody column should show the signature of the last person accepting custody and then releasing custody to the next person. The last name exhibited as accepting custody would normally be the individual that places the evidence in the tape storage facility and thus releases custody, by signature, to the tape storage facility for permanent storage. (See Title III Section of the ELSUR Working Guide, page 44).

(3) In sealing the FD-504 envelope, the flap should be moistened, then sealed. The date the envelope is sealed and the initials of the employee sealing the envelope should be affixed on the flap at the point where the end of the flap meets the envelope. Yellow transparent preprinted "evidence tape" should then be placed atop the seam of the flap and overlapping to the other side of each edge of the envelope, as shown in the Title III Section of the ELSUR Working Guide, pages 44 and 45.

(4) In those situations involving interoffice travel and ELSUR usage, i.e., body recorder, ensure original recordings are entered into chain of custody as evidence within 10 days of the receipt of the recording, as required in the Manual of Administrative Operations and Procedures, Part II, Section 2-4.4.4. All original

tapes are to remain in the field office where first entered as evidence. If tapes are entered into the recordkeeping system of the host office (the office wherein the tape was made), the recordings will remain in the custody of the host office. ELSUR indexing will be done by the office where the tape recordings are entered as evidence, and, if appropriate, host office copies of the recordings will be made and forwarded to other concerned field offices by the custodial offices.

(5) If, during the conduct of an ELSUR, the recording device fails to operate or malfunctions and the tape is found to be blank or contains only portions of the conversation, the tape is to be retained in an FD-504 envelope as described herein.

EFFECTIVE: 10/16/96

10-9.9 Recordkeeping Procedures for ELSUR Information Generated Through Joint FBI Operations

(1) In joint FBI operations with other Federal, state and local law enforcement agencies wherein electronic surveillance is conducted through a Title III installation, the agency which prepares the affidavit, application and order seeking the authority will assume all responsibility for ELSUR indexing and recordkeeping. The fact that the investigation is a joint operation will be stated in the affidavit and application for the court order and will specify which agency is lending support to the other.

(2) Accordingly, if an outside law enforcement agency prepares the affidavit, application, and order in a Title III criminal matter in which the FBI is lending investigative support, that agency is responsible for the proper maintenance of all transcripts and tapes resulting from the Title III installation. In such case, that agency is also responsible for the preparation of electronic surveillance index cards and none would be prepared for inclusion in the FBI electronic surveillance indices.

(3) With regard to consensual monitoring, the agency that obtains authorization for consensual monitoring will assume all responsibility for the necessary ELSUR indexing and recordkeeping. See 10-10.2 or 10-10.3.

EFFECTIVE: 10/18/88

10-9.10 Electronic Surveillance - Title III Criminal Matters
(See MIOG, Part I, 9-7.2; Part II, 10-3, 10-9.1(6) & 10-10.9.1 (4)(b).)

An FD-669, Checklist-Title III (Criminal Matters) form, is to be executed, serialized and retained in a separate sublettered file to the case file. One form is to be prepared for each application filed in each investigation. Every item contained thereon is to be initialed as completed and, where appropriate, will show the serial number of the communication prepared that ensures the requirement has been met.

(1) Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (Title 18, USC, Sections 2510-2521) provides a legislative basis with carefully constructed controls, requirements, and limitations for the judicial authorization of electronic surveillance techniques in certain major violations, including, but not limited to:

(a) Organized crime activities such as certain gambling offenses, racketeering, extortionate credit transactions and use of interstate commerce facilities in the commission of murder for hire;

(b) Murder, kidnapping, robbery or extortion prosecutable under Title 18, U.S. Code;

(c) Presidential assassination, kidnapping, or assault;

(d) Obstruction of justice;

(e) Interference with interstate commerce by violence or threats of violence;

(f) Interstate transportation of stolen property, theft from interstate shipment, and interstate travel to incite a riot;

(g) Espionage, sabotage, treason and the illegal acquisition or disclosure of atomic energy information; (See (2).)

(h) Sexual exploitation of children;

(i) Interstate transportation or receipt of stolen vehicles;

(j) Hostage taking;

(k) Mail fraud;

(l) Fugitive from justice from an offense described in Title 18, USC, Section 2516(1);

(m) Certain firearms violations;

(n) Obscenity;

(o) See Title 18, USC, Section 2516, for a complete listing of applicable violations.

(2) With respect to the types of investigations listed in item (g) above, which might be the act of an agent of a foreign power, consideration should be given to obtaining electronic surveillance according to the provisions of the Foreign Intelligence Surveillance Act of 1978 (FISA) (Title 50, USC, Section 1801 ET SEQ.). It is generally accepted that the provisions of FISA afford greater security to the government's case, as there are detailed security precautions incorporated into the entire process. While obtaining electronic surveillance pursuant to FISA may be more difficult than a Title III surveillance in those instances where foreign powers may be involved, it should be the preferred method. If electronic surveillance pursuant to FISA is determined to be the preferred method in a particular investigation, concurrence of the USA is not required, as this function will be coordinated by FBIHQ with the appropriate Department of Justice office. (See National Foreign Intelligence Program Manual, Appendix 4-1.2, for procedures in obtaining a FISA court order.)

(3) Title III Applications - Approval Levels

(a) The initial phase in the stringent administrative approval process of Title III applications commences at the field level with the review and approval of the Title III affidavit by field office supervisory personnel, the Chief Division Counsel (CDC) and the concurrence of the respective USA or Strike Force Attorney. Review by the CDC must be documented by completing the "CDC Title III Log/Checklist" for submission along with the

affidavit to FBIHQ. The CDC in each field office is completely familiar with the statutory and procedural requirements for electronic surveillance, and must be consulted whenever a Title III is being considered.

(b) FBIHQ's responsibilities towards requests for court-ordered electronic surveillances are that of case supervision and executive approval. With regard to executive approval, the management level at which requests for Title III electronic surveillances can be approved is dependent upon the circumstances surrounding the request. FBIHQ has recognized seven specific situations that have been characterized as "sensitive issues." The following five (5) sensitive issues or circumstances require the approval of a Deputy Assistant Director or higher from the Criminal Investigative Division (CID) or National Security Division (NSD) as appropriate:

1. applications requesting Title III interceptions based upon "relaxed specificity" (i.e., applications in which the requirement to specify those facilities from which, or the place where, the communication is to be intercepted has been eliminated--so called "roving" interceptions) under provisions of Title 18, USC, Section 2518(11) (a) and (b);

2. situations involving significant privilege issues or First Amendment concerns (e.g., attorney-client privilege or other privileged conversations, or interception of news media representatives);

3. situations involving significant privacy concerns (e.g., interceptions of conversations in a bedroom or bathroom, etc.);

4. applications concerning Domestic Terrorism, International Terrorism, or Espionage cases;

5. in any other situation deemed appropriate by either the Assistant Director, CID, or Assistant Director, NSD.

The following TWO (2) instances require the approval of the Director or the Acting Director when conducting sensitive Title III applications:

1. "emergency" Title III interceptions (i.e., interceptions conducted prior to judicial approval under provisions found in Title 18, USC, Section 2518(7));

2. the anticipated interception of conversations of members of Congress, federal judges, high-level federal officials; and high-level state executives and members of a state judiciary or legislature.

ALL requests for electronic surveillance which involve one of the above "sensitive issues" must be reviewed by the Office of the General Counsel (OGC) prior to approval.

NONSENSITIVE Title III applications for electronic surveillance of wire and oral communications and of electronic communications NOT involving digital display paging devices may be approved at the appropriate FBIHQ Section Chief level in the CID.

Title III applications for authorization to intercept electronic communications over a digital display pager do NOT require FBIHQ review and approval, but may proceed with SAC approval. (See MIOG, Part II, 10-10.11.1(2)(b).)

In any instance where there are legal questions/concerns that cannot be resolved through discussions with reviewing officials at the Department of Justice, CID supervisors and/or executives will forward applications involving such issues to OGC for their review, advice and recommendations.

(c) Thereafter, with the approval of the Attorney General, or Attorney General's designee, the USA or the Strike Force Attorney shall apply to a federal judge of a competent jurisdiction for a court order authorizing the interception of communications relating to the specified offenses listed in Title III (Title 18, USC, Section 2516). Judicial control, however, does not cease with the signing of a court order authorizing the interception of communications but continues into the operational phase of the electronic surveillance--installation, monitoring, transcribing and handling of tapes. In addition, a cover electronic communication is to be sent to FBIHQ with a copy of each periodic report prepared for the prosecuting attorney and filed with the court. This report is to be submitted to FBIHQ the same day or next workday after the periodic report is filed with the court.

(d) An EXTENSION order may be sought to continue monitoring beyond the initial 30-day period without a lapse in time. When a break in coverage has occurred, a RENEWAL order may be sought to continue monitoring the same interceptees or facilities identified in the original authorization. The affidavit and application in

support of an extension or renewal must comply with the same requirements as an original Title III application, including approval of the Attorney General or designee.

Except as explained below, extensions and renewals which occur within 30 days of the original Title III order do NOT require review by FBIHQ. After a lapse of more than 30 days, DOJ requires review by FBIHQ and a memorandum requesting renewed electronic surveillance. There may be situations when particularly unusual circumstances dictate that the FBI adopt an already existing Title III from another federal law enforcement agency. Such a procedure will be approved on a case-by-case basis, and only in exceptional circumstances. Moreover, before the FBI begins or adopts the administration of a Title III pursuant to a court order, the field must obtain FBIHQ approval. Therefore, extensions and renewals within 30 days do NOT require FBIHQ approval ONLY if the Title III in question has already been approved by FBIHQ. In order to ensure compliance with the statutory and procedural requirements, it is imperative that Chief Division Counsel be consulted whenever electronic surveillance is contemplated.

(4) It is essential that the requirements set forth in Title 18, USC, Section 2518, be followed meticulously in the preparation of a Title III application. In addition, it is essential that the following points be covered:

(a) That the probable cause is current;

(b) That definite grounds have been established for certifying that normal investigative procedures have been tried and failed or demonstrating why these procedures appear to be unlikely to succeed or would be too dangerous if tried (the courts have made clear that the use of "boilerplate" statements in this respect are unacceptable);

(c) An attempt has been made to identify the subscriber to the telephone on which coverage is sought, if the name is not that of one of the principals;

(d) That minimization will be assured, especially when the coverage involves a public telephone booth, a restaurant table, or the like;

(e) That the premises to be covered are described fully, including a diagram, if possible, in requests for microphone installations (although no surreptitious entries are to be conducted

for the purpose of obtaining such data), (see 10-9.10(6) below);

(f) That upon consideration of preparing an affidavit for coverage under Title III, the field office forward an electronic communication to FBIHQ, under case caption, setting forth by separate subheading the SYNOPSIS OF OVERALL INVESTIGATION, PRIORITY OF THE INVESTIGATION WITHIN THE DIVISION, ANTICIPATED MANPOWER REQUIREMENTS AND WHAT OUTSIDE SUPPORT, IF ANY, WILL BE NEEDED, a SYNOPSIS OF PROBABLE CAUSE JUSTIFYING TITLE III APPLICATION, the PROSECUTIVE OPINION of the U.S. Attorney, and CHARACTERIZATION OF THE INTERCEPTEES;

(g) That a request for an ELSUR search of all office records be submitted, in writing, to the office ELSUR File Assistant (EFA) within 45 days prior to the submission of the affidavit to FBIHQ. The request should identify the substantive case title, to include the violation and field office file number. It should state the request is being submitted in anticipation of Title III ELSUR coverage and list the following: (1) person(s), (2) facility(s), (3) place(s) and, if appropriate, (4) vehicle identification number(s), etc., under consideration in order to identify prior applications. The EFA will conduct a search of the ELSUR Automated Records System (EARS) database requesting "all office records." Only the Principal, Proprietary Interest, and Intercept records contained in the EARS database, which relate to unclassified criminal matters, should be printed in their entirety, attached to the search request, and furnished the requestor. No information relating to court-ordered ELSURs conducted pursuant to the Foreign Intelligence Surveillance Act or information relating to consensual monitorings conducted pursuant to Attorney General Guidelines for FBI Foreign Intelligence Collections and Foreign Counterintelligence Investigations should be printed or provided to the requestor. It is the responsibility of the requestor in the office seeking a new court order to follow up the results of the search. Contact must be made with those offices identified as having filed previous applications to the court to obtain facts required for inclusion in the affidavit being prepared.

(h) Where extension orders are sought naming NEW person(s) (principals/targets), facility(s) or place(s), an ELSUR search must be conducted on the newly added principals/targets, prior to submission of the extension affidavit to the DOJ. Where extension orders are sought naming the same principals/targets, facilities, or places specified in the initial affidavit submitted to FBIHQ, a "recheck" of the EARS will be conducted for the purpose of updating the search. The "recheck" will be conducted for all extensions sought 90 days following the filing of the initial application.

(i) Requests for ELSUR searches which relate to Title 21, USC violations, must be searched through the Drug Enforcement Administration (DEA), Washington, D.C. This will be accomplished by the FBIHQ ELSUR index for all search requests which relate to 245 violations. The need for an ELSUR search of the DEA records for any other violation must be specifically requested through the office EFA at the time the ELSUR search request is submitted. All pre-Title III ELSUR searches conducted will be transmitted to FBIHQ ELSUR index automatically via the EARS. Headquarters will forward the request to the DEA, Washington, D.C., and provide a response to the requesting office. Appropriate documentation confirming the conduct of all pre-Title III searches must be serialized and filed in the substantive case file or the corresponding ELSUR subfile to the case file. Documentation may be in the form of an electronic communication, teletype, or search slip. Requests for a search of the ELSUR index received from any outside agency or department are to be referred to the ELSUR subunit at FBIHQ.

(5) See Title 18, USC, Section 2518 for a complete listing of the statutory requirements (procedure for interception of Title III);

(6) Where it is necessary, prior to issuance of a court order, to survey property or premises to determine the feasibility of installation of wire or oral communication intercepting devices, or other electronic surveillance devices such as beepers and closed circuit television cameras, the survey shall not exceed lawful activity, i.e., no entry or other intrusion into an area where a reasonable expectation of privacy exists may be made absent consent of the proper party. (See (4)(e) above.)

(7) In matters involving the use of Closed Circuit Television (CCTV) in conjunction with a Title III electronic surveillance, refer also to Part II, Section 10-10.1 & 10-10.9 of this manual.

(8) Roving Interceptions. One of the most significant additions to Title 18, USC, Section 2518 brought about by the Electronic Communications Privacy Act of 1986 concerns the specificity required in the description of the place where, or the telephone over which, electronic surveillance is to be conducted. The original law required that the application for, and the order authorizing, an electronic surveillance request indicate the "particular" facility or place in which the interception was to occur. The new law contains an exception to the particularity requirement and, in effect, allows an

interception order to target a specific person rather than the specific telephone or premises that person might use. The amendments establish two similar rules to govern the interception of "oral communications" and "wire or electronic communications" where the target facility need not be identified with specificity before the interception order is obtained (Title 18, USC, Section 2518(11)).

(a) With respect to "oral communications," the application must contain a full and complete statement as to why the ordinary specification requirements are not practical. The application must also identify the person committing the offense and whose communications are to be intercepted. The judge must then make a specific finding that the ordinary specification rules are not practical under the circumstances (Title 18, USC, Section 2518(11)(a)). Examples of situations where ordinary specification rules would not be practical include cases in which suspects meet in parking lots or fields or move from hotel room to hotel room in an attempt to avoid electronic surveillance. In such cases, the order would allow law enforcement officers to follow the targeted individual and engage in the interception once the conversation occurs (Title 18, USC, Section 2518(12)).

(b) The provision concerning "wire or electronic communications" is similar to that governing oral communications. The application must specifically identify the person committing the offense whose communications are to be intercepted. The application must also show, however, that the person committing the offense has demonstrated a purpose to thwart interception by changing facilities. In these cases, the court must specifically find that such purpose has been evidenced by the suspect. An example of a situation that would meet this test would be the subject who moves from phone booth to phone booth numerous times to avoid interception (Title 18, USC, Section 2518(11)(b)). b2 b7E

(c) With respect to both oral and wire or electronic communications, the approval of the Attorney General, Deputy Attorney General, Associate Attorney General, Assistant Attorney General or an Acting Assistant Attorney General is required before a relaxed specificity order is sought. Approval by a Deputy Assistant Attorney General in the Criminal Division, which is authorized for all other interceptions, is not sufficient for this type of application.

(d) The government cannot begin the interception until the facilities from which, or the place where, the communication is to be intercepted is determined by the agency implementing the order (Title 18, USC, Section 2518(12)). Congress also intended that

the actual interception not commence until the targeted individual begins, or evidences an intention to begin, a conversation. It was not intended that the relaxed specificity order be used to tap a series of telephones, intercept all conversations over those phones, and then minimize the conversations recorded as a result. This provision puts the burden on the investigatory agency to determine when and where the interception is to commence. There is no requirement of notification to the court once the premises or specific phone is identified prior to making the interception; however, a specific place or phone must be identified. Limiting interceptions to specific places once they are determined should satisfy the specificity requirement of the Fourth Amendment.

(e) Obviously, this provision will be a valuable tool in criminal investigations as sophisticated suspects have been quite effective in avoiding electronic surveillance by frequently changing their meeting places and telephones. However, the Fourth Amendment implications involved in this procedure should not be ignored. This is an extraordinary provision and it is the intention of the Department of Justice that it be used sparingly and only in clearly appropriate cases. This provision is not a substitute for investigative footwork; it is not intended that the ordinary showing of probable cause with respect to a specific telephone or location be dispensed with on the theory that the subject is a criminal who engages in criminal conversations wherever he/she goes.

(f) A further consideration, especially in wire or electronic interceptions, is the practical problems faced by the telephone company or other provider of electronic communication services in effecting the interception, complete with leased lines to the government listening post, on extremely short notice. Care has to be exercised to work with the telecommunication companies and to provide them with as much information and notice as possible as far in advance as possible. Telephone companies in particular have expressed great concern about their ability to comply with such orders, which may require action on their part that will strain their ability to assist law enforcement officials in these cases. Congress, at the request of the telephone companies, included a provision in the Act allowing the companies to move the court that has issued a reduced specificity order for the interception of wire or electronic communications to modify or quash the order if the interception cannot be performed in a timely or reasonable manner (Title 18, USC, Section 2518(12)). The key for all concerned is to approach this procedure with care and foresight and to be aware of the practical and legal problems that may arise.

(9) It is also necessary that the post-execution sealing requirements of Title 18, USC, Section 2518(8)(a) be met. Failure to adhere to this requirement could result in suppression of relevant interceptions in the absence of a satisfactory explanation for any delay in sealing. Agents should therefore be prepared to submit the original recordings of all interceptions to the issuing judicial official for sealing immediately at the conclusion of the period of continuously ordered electronic surveillance. In this context, if there is no break in time between the expiration of the original order and any subsequent extensions, Agents may wait until the expiration of the final extension before fulfilling this requirement.

If any delay in making this delivery is anticipated, the Agent supervising the electronic surveillance should document the causes for this delay, i.e., duplication equipment failure, unforeseen manpower allocation priorities, and notify the supervising Assistant United States Attorney or Strike Force Attorney of the anticipated delay. If the supervising Agent anticipates this delay to be any greater than five days from the expiration date of the continuous electronic surveillance, he/she should, through the supervising attorney, within that five-day period obtain an extension of time in which to fulfill the sealing requirements from the appropriate judicial official.

The timely review of Title III electronic surveillance (ELSUR) tapes, CCTV recordings and consensual recordings is crucial to the overall success of a criminal investigation. This review should take place as soon as possible. This is especially true in "crisis" situations, generally defined as "life or death" matters. In those situations, Title III tapes, CCTV recordings and consensual recordings must be reviewed as quickly as possible from the time of the intercept. Pertinent conversations in "crisis" situations must be brought to the attention of supervisory personnel immediately. In all other situations defined as "noncrisis" matters, the tapes should be reviewed promptly, as deemed necessary based upon the exigencies of the investigation. To ensure adherence to this policy, it is incumbent upon the supervisory personnel to establish and follow a systematic policy providing for the appropriate review (articulated above) of all tapes.

(10) Title 18, USC, Section 2518 (5) provides for a 30-day time limitation on Title III interceptions of wire, oral and electronic communications. The 30-day time limitation shall commence at the time and date that the Title III monitoring equipment is activated, regardless of when an actual communication is first intercepted. If the monitoring equipment is not activated within ten days of the signing of the Title III court order, however, the 30-day

time limitation begins with the eleventh 24-hour period after the order is signed.

EFFECTIVE: 02/28/97

10-9.11 Emergency Provisions, Title III Criminal Matters

(1) In regard to the interception of wire communications or oral communications in which a reasonable expectation of privacy exists, or electronic communications, the Department will generally recognize no exception to their requirement that a warrant first be obtained. However, if an emergency situation exists wherein time does not permit following the warrant process and such electronic surveillance is believed crucial, the Attorney General, Deputy Attorney General, or the Associate Attorney General, under the authority of Title III (Title 18, USC, Section 2518 (7)), can authorize electronic surveillance prior to obtaining a court order. This means, of course, that no SAC or FBIHQ official has the authority on his/her own to authorize interception of wire, oral, or electronic communications, even under emergency circumstances where a human life is in jeopardy. Title 18, USC, Section 2518 (7), which contains the specific requirements for emergency authorization, provides as follows:

"Notwithstanding any other provision of this chapter, any investigative or law enforcement officer, specially designated by the Attorney General, the Deputy Attorney General, the Associate Attorney General or by the principal prosecuting attorney of any State or subdivision thereof acting pursuant to a statute of that State, who reasonably determines that--

"(a) an emergency situation exists that involves--

"(i) immediate danger of death or serious physical injury to any person,

"(ii) conspiratorial activities threatening the national security interest, or

"(iii) conspiratorial activities characteristic of organized crime, that requires a wire, oral, or electronic communication to be intercepted before an order authorizing such interception can, with due diligence, be obtained, and

"(b) there are grounds upon which an order could be entered under this chapter to authorize such interception, may intercept such wire, oral, or electronic communication if an application for an order approving the interception is made in accordance with this section within forty-eight hours after the interception has occurred, or begins to occur. In the absence of an order, such interception shall immediately terminate when the communication sought is obtained or when the application for the order is denied, whichever is earlier. In the event such application for approval is denied, or in any other case where the interception is terminated without an order having been issued, the contents of any wire, oral, or electronic communication intercepted shall be treated as having been obtained in violation of this chapter, and an inventory shall be served as provided for in subsection (d) of this section on the person named in the application."

(2) During normal working hours a field office seeking emergency Title III authorization should advise the appropriate unit of the Criminal Investigative Division (CID), FBIHQ, telephonically of such request, and contemporaneously facsimile a concise written statement of the facts, circumstances and probable cause supporting the request for interception as well as emergency authority. During weekend, holiday, or nighttime hours, requesting field offices should direct emergency Title III telephonic and facsimile communications to the CID duty supervisor who will advise the appropriate CID substantive Unit or Section Chief of the request. The substantive unit will be the point of contact for the field requesting the emergency Title III request and will maintain a log, during normal working hours, pertaining to the progress of the authorization process. During off hours, weekends, and holidays the Emergency Title III request log will be maintained by the CID duty supervisor in the Strategic Information and Operations Center (SIOC).

(3) The grounds upon which an order may be entered (in emergency situations) are limited to violations of those crimes enumerated in Title 18, USC, Section 2516, and to an emergency situation existing that involves immediate danger of death or serious physical injury to any person, conspiratorial activities threatening the national security interest, or conspiratorial activities characteristic of organized crime.

(4) The phrase "conspiratorial activities . . . characteristic of organized crime" is not defined in either the statute or the legislative history. Therefore, what activity meets this definition must be considered on a case-by-case basis. It is

noted that DOJ has in the past demonstrated a willingness to consider authorizing emergency electronic surveillance on the basis that participants were members of an organized crime group in the traditional sense that the term has been applied. It would seem that, at a minimum, there would have to be evidence of two subjects (exclusive of informants and undercover operatives) conspiring to commit some violation enumerated in Title 18, USC, Section 2516.

(5) With regard to the phrase "conspiratorial activities threatening the national security interest," both the statute and the legislative history are devoid of any definition. Requests from the field for emergency Title III authority may in some cases be examined at FBIHQ to determine any possible applicability that the above statutory language may have to the activity in question. In some cases a determination may be made that the application for electronic surveillance can more appropriately be made under the emergency provisions of the Foreign Intelligence Surveillance Act (Title 50, USC, Section 1805 (e)).

(6) Since Section 2518(7) requires that a written application for electronic surveillance be received by the court from which authorization is being sought within 48 hours after the interception has occurred or begins to occur, preparation of the affidavit should commence contemporaneously with the telephone/facsimile request to FBIHQ. The affidavit should be transmitted by facsimile to FBIHQ as expeditiously as possible to allow for necessary processing by FBIHQ and DOJ, and submission to the appropriate court within the statutory time limit. Field offices may provide assistance to local USAs' offices without facsimile facilities by transmitting the application and proposed order over field office facilities to FBIHQ. These documents will be handcarried along with the affidavit to the DOJ. In accordance with DOJ policy, written application will be made to a court for an order approving the interception, whether or not the interceptions obtained are determined to be fruitful from an evidentiary standpoint. In the event that the need for electronic surveillance evaporates following authorization but prior to the installation and activation of the technical equipment, the submission of an affidavit is not necessary. In such cases it will be sufficient to submit an LHM briefly setting forth the fact that a request for emergency electronic surveillance was made, the basis for such request, and the reason why such surveillance became unnecessary.

(7) It should be emphasized that the above-described procedures under which emergency Title III authorization can be obtained do not in any way eliminate the need to comply with the

requirements of a nonemergency Title III application since one may intercept communications under oral emergency authority only ". . . IF AN APPLICATION FOR AN ORDER APPROVING THE INTERCEPTION IS MADE IN ACCORDANCE WITH THIS SECTION WITHIN FORTY-EIGHT HOURS AFTER THE INTERCEPTION OCCURRED, OR BEGINS TO OCCUR . . ." (Emphasis added). The net effect of the emergency authorization process is that, following receipt of emergency authority, the entire nonemergency process must be undertaken, but within a much shorter period of time (48 hours).

(8) With regard to oral communication (microphone interceptions as opposed to wire interceptions), it is important to note that Title III authority is, by definition (see Title 18, USC, Section 2510 (2)), required when such oral communications are uttered by a person who exhibits a justifiable expectation of privacy. In the absence of such justifiable expectation (e.g., a forcibly occupied building, the residence of a stranger or of a hostage, and similar situations), no Title III court order is necessary for interception of the communications. Prior approval for such interceptions must be obtained in the same manner required for the approval of consensual monitoring of nontelephonic oral communications. Nontelephonic consensual monitoring in criminal matters may be approved by the SAC, except when one or more of the seven sensitive circumstances listed in MIOG, Part II, 10-10.3 (1) is present. Requests for authority to conduct consensual monitoring when the seven sensitive circumstances are present can be approved by the SAC when an emergency situation exists, and must be submitted to FBIHQ for Department of Justice approval in routine situations. (See MIOG, Part II, 10-10.3|(9).)| A field office desiring to institute microphone surveillance in hostage or other emergency situations where the existence of a justifiable expectation of privacy is in doubt should telephone the request to CID, FBIHQ. (Where possible, such request should recite the opinion and recommendations of the field office Chief Division Counsel.) CID will furnish all known facts and recommendations to Office of the General Counsel (OGC), which will make the final determination regarding the presence or absence of a justifiable expectation of privacy. If OGC determines that there is no justifiable expectation of privacy in the particular situation, CID will orally authorize use of the microphone surveillance. The field office must follow with a teletype reciting the oral authorization given and the facts upon which the authorization was based. The subsequent confirming letter from CID to the DOJ should specifically include the AUSA's opinion, and should state the opinion of OGC with respect to the absence of a justifiable expectation of privacy and the basis for that conclusion. If OGC determines that a justifiable expectation of privacy does exist, Title III authority is, of course, necessary for the microphone

surveillance.

(9) With regard to microphone surveillance, it is noted that some electronic tracking devices (commonly referred to as "ETDs," "beepers," or homing devices) [redacted] have incidental microphone capabilities. Although the primary use of such devices may be for their homing capability, the incidental microphone capability of the devices may require that Title III court authorization be obtained prior to their use. SAC may authorize the use of such devices in criminal investigations. (See MIOG, Part II, 10-10.8.)

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(10) Relative to the authority to make emergency entries to install microphones absent a court order. In a situation where there is determined to be a justifiable expectation of privacy, or installation would involve trespass, emergency Title III authority must first be obtained under Title 18, USC, Section 2518 (7). The U.S. Supreme Court held that the power of the courts to authorize covert entries ancillary to their responsibility to review and approve electronic surveillance applications is implicit in the Title III statute. OGC believes that authority for the investigative or law enforcement officer specially designated by the Attorney General (normally the Director) to approve entries to install microphones can logically be derived from the emergency provisions of the statute (Section 2518 (7)), and that this derivation of authority is consistent with the Court rationale. Since FBI policy requires the inclusion of a specific request for surreptitious entry authority in routine Title III affidavits when such entry is necessary, this request, along with the underlying basis, should, of course, appear in the affidavits submitted (within the 48-hour time frame) following emergency Title III authorizations.

EFFECTIVE: 02/28/97

10-9.11.1 Form 2 Report

(1) The Form 2 report, to be submitted by a field office upon completion of Title III ELSUR activity, is a form designed by the Administrative Office of the United States Courts (AOC), and is utilized by the Department of Justice (DOJ) and the AOC to obtain certain specific information relating to the administration of Title III physical activity, (i.e., actual monitoring, physical surveillance, etc., in direct support of the ELSUR) and the results obtained therefrom. Usually in April of each calendar year, the AOC publishes a booklet reporting all Title III activity for the previous calendar year. This report is required by Title 18, USC, Section 2519, of the Omnibus Crime Control and Safe Streets Act of 1968.

(2) FBIHQ, upon notification of the filing of an application for a Title III court order, will, on a case-by-case basis, forward by airtel under the substantive case caption of the field office involved, a prenumbered, precarboned Form 1 and Form 2 packet as provided to the FBI by the AOC. The Form 1 report consists of ply 1 and ply 2 of the packet. The Form 2 report consists of ply 3 and ply 4 of the packet.

(3) Form 2 reports and related correspondence are to be typewritten.

(4) On or before the 30th day following the denial of a Title III court order or the expiration of the authorized period of the order, including all extensions, the designated Special Agent will assist the prosecuting attorney in completing plies 1 and 2 (Form 1 portion of the packet) and items 1 through 6 of plies 3 and 4, (Form 2 portion of the packet) identical on both the Form 1 and Form 2. The Form 1 portion should remain with the prosecuting attorney. The prosecuting attorney shall then be responsible for providing the issuing judge the ply 1 and ply 2 (Form 1) for review, approval, and signature so that the court may forward the Form 1 to the AOC.

(5) Items 6 through 11 of plies 3 and 4 of the Form 2 report are to be completed by the designated Special Agent and not by the prosecuting attorney. Ply 3 of the Form 2 report is to be submitted to FBIHQ 60 calendar days following the termination of a court-authorized Title III. This rule will apply strictly to all Title IIIs, whether denied or granted, routine or emergency, except those authorized during the last 60-day period of the calendar year. Any Title III authorized during the last 60 days of the calendar year or terminating on or before December 31 are to be submitted to FBIHQ no later than five working days following termination of the Title

III. This submission is to be made regardless of whether or not resource costs (Item 9B) of the installation, basically supplies and other items, are available at the time of submission. The ply 4 portion of the Form 2 is to be submitted appropriately to the prosecuting attorney.

(6) Any Title III expiring before midnight of December 31 should be reported to FBIHQ, telephonically, on the next working day following the termination of Title III activity. Thereafter, the Form 2 should be submitted to FBIHQ within five working days.

(7) In a joint or task force type investigation involving another agency, the agency which is responsible for recordkeeping procedures, as outlined in the MIOG, Part II, Section 10-9.9, shall be responsible for the preparation and submission of the Form 2 (plies 3 and 4 of the packet) in accordance with that agency's established procedures. It will be the responsibility of the designated Special Agent to maintain effective liaison with the responsible agency in order that all necessary statistics, costs, and results are compiled and reported on one Form 2 to be submitted by the responsible agency, if other than the FBI.

EFFECTIVE: 06/18/87

10-9.11.2 Completion of Form 2 Report

The following is a listing of each Section and Subsection set forth on the Form 2 report with an explanation of the information to be entered for each Section/Subsection.

(1) "COURT AUTHORIZING OR DENYING THE INTERCEPT"

The Form 2 shows the above caption as Item 1 and all ply copies of the Forms 1 and 2. The docket number is generally preprinted and is utilized to track the form itself. To properly complete item number one, the full name of the judge signing or denying the Title III court order should be shown, along with the identity of the court to include the exact street address and not a post office box number.

(2) "SOURCE OF APPLICATION"

(a) Subsection 2A "Official Making Application." This section should be used to show the full name of the official

making the original application to the court, generally an Assistant United States Attorney. The title of the official making the original application should be shown with his or her telephone number and area code. The county and the agency name should be shown with the exact mailing address, not, Federal Building, with the name of a city and state.

(b) Subsection 2B "Prosecution Official Authorizing Application." The appropriate name to be shown is a DOJ official in Washington, D.C., not a United States Attorney or an Assistant. The word "same" may be shown only if a DOJ official was also the official making the original application, as shown in Subsection 2A.

(3) "OFFENSES (LIST MOST SERIOUS OFFENSE FIRST)"

Enter the offense(s) specified in the Title III order or application for an extension of the order (predicate offenses, i.e., ITSP, TFIS, etc., cited in application). List, in capital letters, and underline the most serious offense first, (only one offense should be underlined). The following controls should be used to determine the most serious offense:

(a) When two or more offenses are specified in the application, the offense with the highest maximum statutory sentence is to be classified as the most serious.

(b) When two of the offenses have the same maximum sentence, a crime against a person is to take priority over a crime against property.

When listing the offenses, a general description such as gambling, narcotics, racketeering, etc., will suffice. DO NOT cite the offense by title and section of the U.S. Code.

(4) "DURATION OF INTERCEPT"

Enter the number of days requested and the date of the application. Use the appropriate box to show whether the application was denied or granted and show the date of the order or denial of the order. If the application was granted with changes, changes should be listed in the column captioned "Granted With These Changes." That is to say, if the judge, the official making the application or the prosecuting attorney authorizing the application differs from those named in Item 1 and 2 above, the new individual should be named and identified by title in this section. Also, if emergency authorization was granted, it should be shown in this section along with the date

granted i.e., "Emergency Authority 9/1/86." Do not list source numbers or techniques authorized. If insufficient space exists in this section to show all changes, submit on plain bond paper with number of section and title, as an attachment to ply 3 of the Form 2.

(5) "TYPE OF INTERCEPT"

Check the appropriate block(s) and note the specific device if not telephone or microphone.

(6) "PLACE"

Check the appropriate block(s). Be specific as to the business type and other type location, if any.

NOTE: When this portion of the form has been completed, the Form 1 portion (plies 1 and 2) is to remain with the prosecuting attorney who shall then be responsible for providing the form to the issuing judge for review, approval and signature in order for the court to forward the Form 1 to the AOC. The authorizing judge is required to file the Form 1 report with the AOC within 30 days of the expiration of the order, including all extensions.

(7) "INSTALLATION"

Check the appropriate block; only one block should be checked.

(8) "DESCRIPTION OF INTERCEPTS"

Subsections 8A through 8F to be utilized to show:

(a) that date on which the last ELSUR installation was terminated;

(b) the specific number of days the installation was in actual use;

(c) the average frequency of intercepts per day, (rounded off to the nearest number). Divide the "Number of Communications Intercepted," (8E), by the "Number of Days in Actual Use," (8B), i.e., 131 intercepts divided by 29 days equals 4.51 or 5 intercepts per day.

(d) the number of identifiable individuals whose communications were intercepted, (count each person only one time even

if intercepted more often);

(e) the estimated number of communications intercepted, and

(f) the estimated number of incriminating communications intercepted.

(9) "COST"

(a) Subsection 9A "Nature and Quantity of Personnel Used to Install and Monitor." This section should be utilized to show the exact number of Special Agents (SAs) assigned to physically monitor, log, perform other administrative functions or work in any other capacity, specifically regarding the Title III itself. Also, the specific number of support (clerical) personnel utilized for tape transcription, duplication or other administrative support should be shown in this subsection. SA time should be shown in total number of work days, i.e., "65 Special Agents days." Use the same formulation for support personnel. If a joint operation, other agencies' (either state, local or Federal) personnel time should be shown by number of work days and broken down as above. If three Deputy Sheriffs were utilized for five days, show "15 Deputy Sheriff days." The expended personnel time of other Federal agencies should be listed in the same manner. Do not co-mingle state, local, or Federal time. "Personnel Cost" segment should be left blank. Cost figures will be computed at FBIHQ. Therefore, it is necessary that accurate and specific information be furnished to FBIHQ via this form.

(b) Subsection 9B "Nature of Other Resources (Cost of Installation, Supplies, etc.)." Requires specific cost figures which pertain to the Title III itself. For instance, leased line figures, if available at the time of reporting; equipment or tools necessary for the specific installation(s) and any other supplies, not to include tapes, unless purchased with case funds specifically for this case. This resource cost is to be shown in the block to the right of item 9B marked "Resource Cost." The "Total Cost" figure is to be left blank.

(10) "RESULTS"

This subsection should be executed when results have been obtained. Do not place the words "not applicable" or "N/A" in this subsection. This subsection should be utilized in much the same manner as an FD-515 (Accomplishment Report Form).

Items 10A through 10D are to be utilized to show:

(a) "Number of Persons Arrested" (or otherwise taken into Federal custody, i.e., pre- or post-indictment summons) & "Arrest Offenses." Enter the total number of persons arrested. Count each person only once regardless of the number of offenses charged. List all offenses charged in the arrests. Again, a general description such as gambling, narcotics, racketeering, etc., will suffice. (Do not enter individual's name and do not use U.S. Code citations.)

(b) "Number of Motions to Suppress." Enter the number of motions to suppress (quash evidence) which were granted, denied and are still pending.

(c) "Number of Persons Convicted" & "Conviction Offenses." Enter the total number of persons convicted as a result of the interception and the offenses, by general description, for which the convictions were obtained. Persons who pled guilty would be counted in this category. Again, count each convicted person only once. (Report upon conviction. Not necessary to await sentencing.)

(d) "Number of Trials Completed." Enter the number of trials resulting from this Title III installation which have been completed. Do not count as a trial any instance where a plea was taken during the trial. Also, do not count any grand jury information such as dismissal of indictment.

(11) "COMMENTS AND ASSESSMENT"

This subsection should be utilized mainly to show if two or more Title III installations are related. This may be shown by inserting the words "related to document number _____." All Form 2s are prenumbered, and the docket number for the related Form 2 should be shown. The remaining sections of item number 11 should be left blank. The prosecutor's signature and date of report are to be left blank. (These blocks are executed by the Attorney General or Attorney General's designee in Washington, D.C., at the time of the Annual Report.)

Retain one copy of the completed Form 2 (ply 3) in a field office control file and one copy in the 1A Section of the substantive case file for supplemental submissions and recordkeeping purposes.

EFFECTIVE: 06/18/87

10-9.11.3 Submissions of Form 2 Report to FBIHQ

(1) Appropriate administrative controls are to be utilized by field offices to ensure accurate and timely submission of the Form 2. The Special Agent to whom the case is assigned and his/her supervisor are administratively responsible for the Form 2 report. SACs are "responsible" for the accuracy of the content of all Form 2 reports and their timely submission.

(2) The report is to be forwarded by airtel in a plain brown envelope, sealed and clearly marked:

Director, FBI
ELSUR Index
FBIHQ

The airtel will include the following information:

(a) Complete case title and name of Special Agent executing Form 2.

(b) List of principals named in the initial application for the specific Title III. Should principals be added in an extension application, these names are to be listed and identified with the specific extension order, i.e., "1st extension," "2nd extension," etc.

(c) The annual salary of any non-FBI personnel listed in Item 9, Subsection 9A, used to install and/or monitor the Title III.

(d) Should a case be deemed sensitive to the point that any information disseminated outside the FBI or DOJ would compromise the investigation or witnesses, etc., a detailed statement must be made in the airtel relative to the reason why the Form 2 report should not be sent to DOJ for dissemination to the AOC for publication.

(e) The names required in Item "(b)" above are to be listed, in the format as described, on a white 3 X 5 inch card captioned "Principals," followed by the docket number (corresponding to the docket number on the Form 2), and the names of the individuals

named as principals in the initial application and each extension thereof. This 3 X 5 inch card is to accompany the airtel and Form 2 report submitted to FBIHQ.

EFFECTIVE: 06/18/87

10-9.11.4 Supplemental Form 2 Reports

(1) Supplemental reports pertaining to statistical information called for in Item 10, caption "RESULTS" are included in each calendar year Title III report made by the AOC. The results called for in the supplemental report pertain to Title III ELSUR activity conducted during prior calendar years. Therefore, supplemental reports are to be submitted to FBIHQ as indicated in 10-9.11.3, above and subsequent to the submission of the original Form 2. The supplemental reports are to be submitted to FBIHQ by no later than close of business November 15 of each individual calendar year. Field offices will be reminded of this required submission by annual airtel to all SACs.

(2) If no supplemental information has been developed, that is to say, no further statistical information exists for the case or is forthcoming pertaining to the Title III, field offices are to submit an airtel to FBIHQ setting forth the fact that no supplemental information will be submitted and giving reason, i.e., case closed, trial set for following year, etc.

(3) The November 15 deadline will be extended only in the event statistical information is to be routinely reported by Form 2 within the same calendar year the original Form 2 is submitted. This information could include arrests, convictions (not necessarily to include sentencing), number of trials completed or major seizures prior to the end of the calendar year. Further, if no additional statistics are expected to be reported, the field office should so state in the submitting airtel.

(4) The additional information to be reported should be added to the copies of the previously submitted ply 3 of the Form 2 retained in the 1A section of the substantive case file and the field office designated control file. The form should then be duplicated and forwarded to FBIHQ. A copy of supplemental Form 2 should be retained in the 1A section of the substantive case file and the field office designated control file.

(5) For further guidance regarding the execution of a Form 2, refer to the "ELSUR WORKING GUIDE," Title III Section, pages 68 and 68.01.

(6) Special Agents preparing Form 2 reports should note the Form 2s are to be prepared and submitted by Special Agents, not Assistant United States Attorneys or other DOJ officials, notwithstanding instructions appearing at the bottom of ply 3 of the Form 2.

EFFECTIVE: 06/18/87

10-9.12 ELSUR Indexing in Title III Criminal Matters

The ELSUR support employee in each field division will index or supervise the indexing and review of all ELSUR cards in Title III matters prior to their submission to FBIHQ. This is to ensure all cards are complete, accurate and in a format specified herein. (For indexing procedures, refer to the "Index Guide" available at each field office through the File Assistant/ELSUR support employee.) In Title III matters, all ELSUR cards will be typewritten. Two original cards will be prepared, one to be forwarded to FBIHQ for inclusion in the FBIHQ ELSUR Index and one to be maintained in the field office ELSUR index. If the information appearing on an ELSUR card is classifiable, the card must be classified in accordance with standard classifying procedures. For indexing purposes, microphone surveillance (MISUR) being utilized in conjunction with either a closed circuit television (CCTV) surveillance or an electronic tracking device will be treated as a microphone surveillance.

(1) Principal Cards - 3-x-5-inch cards maintained in the ELSUR indices containing the true name or best-known name of targets of Title III electronic surveillances. The term "principal" means any individual specifically named in the application furnished the court as being expected to be monitored during the course of the electronic surveillance. Included on the Principal card is the term "Principal Title III"; the control number assigned the source, the Bureau file number, if known; and the field office file number. In Title III matters, Principal cards are prepared on blue index cards and are to be submitted to FBIHQ within ten working days of the date the application is filed with the court regardless of whether or not authorization is granted and whether or not an installation is made or activated. In the event that a new individual(s) is named in an application for an extension or amendment of a court order, ensure

Principal cards are submitted on the new individual(s).

Example of Principal Card

Principal Title III (Blue 3-x-5-inch index card)

a. SMITH, JOHN
b. PRINCIPAL TITLE III
c. AL NDNY-1
d. 182-111
e. AL 182-1

(2) Proprietary Interest Cards - 3-x-5-inch cards maintained in the ELSUR Index identifying the entity(s) and individual(s) who own, lease, license, or otherwise hold a possessory interest in locations subjected to electronic surveillance. These cards also identify the locations, telephone numbers, vehicle identification number, etc., targeted in the Title III application. Proprietary Interest cards further include the control number assigned the source; the date the surveillance was instituted; space for the date it will be discontinued; Bureau file number if known; and field office file number. Proprietary Interest cards should be prepared in a manner so as to be retrievable by the name of the proprietor(s), the location, and each facility specified in the application. Accordingly, to accomplish this cross-referencing, an appropriate number of these cards should be prepared, interchanging the top three entries in conformity with proper cross-indexing and filing procedures. In Title III matters Proprietary Interest cards are prepared on blue index cards. Where electronic surveillance devices are being installed on a motor vehicle, the vehicle identification number (and not the license number) will appear as item "c." All Proprietary Interest cards are to be submitted to FBIHQ within ten working days of the date the application is filed with the court, regardless of whether or not authorization is granted by the judge and whether or not an installation is made or activated. In the event that a new location or facility is identified in an application for an extension or amendment of a court order, ensure Proprietary Interest cards are submitted reflecting this new or modified information within

ten working days of the date the application is filed with the court.

(a) Examples of Proprietary Interest Cards for Telephone Surveillance (TESUR) Coverage in Title III Criminal Matters

1. Proprietary Interest card for filing by name(s).

a. SMITH, JOHN
b. 202-324-3300
c. 901 Elm Avenue, Room 300
Albany, New York
Holiday Inn
d. AL NDNY-1
e. Instituted: 11-1-82
f. Discontinued: (to be filled in later)
g. 182-000
h. AL 182-12

2. Proprietary Interest card for filing by telephone number.

b. 202-324-3300
a. SMITH, JOHN
c. 901 Elm Avenue, Room 300
Albany, New York
Holiday Inn
d. AL NDNY-1
e. Instituted: 11-1-82
f. Discontinued: (to be filled in later)
g. 182-1000
h. AL 182-12

3. Proprietary Interest card for filing by address.

c. 901 Elm Avenue, Room 300
Albany, New York
Holiday Inn
a. SMITH, JOHN

b. 202-324-3300
d. AL NDNY-1
e. Instituted: 11-1-82
f. Discontinued: (to be filled in later)
g. 182-1000
h. AL 182-12

4. Proprietary Interest card for filing by facility.

c. Holiday Inn
901 Elm Avenue, Room 300
Albany, New York
a. SMITH, JOHN
b. 202-324-3300
d. AL NDNY-1
e. Instituted: 11-1-82
f. Discontinued: (to be filled in later)
g. 182-1000
h. AL 182-12

(b) Examples of Proprietary Interest Cards for TESUR Coverage in Title III Criminal Matters Wherein More Than One Person Owns, Leases, Licenses, or Otherwise Holds a Possessory Interest in the Property Subjected to the Surveillance

1. Proprietary Interest card for filing by name(s).

a. SMITH, JOHN
JONES, SARA
b. 202-324-3300
c. 901 Elm Avenue
Albany, New York
ABC Trucking Co.
d. AL NDNY-1
e. Instituted: 11-1-82
f. Discontinued: (to be filled in later)
g. 182-1000
h. AL 182-12

2. The above card will be filed under the name of SMITH, JOHN and another should be prepared for filing under the name of JONES, SARA.

a. JONES, SARA
SMITH, JOHN
b. 202-324-3300
c. 901 Elm Avenue
Albany, New York
ABC Trucking Co.
d. AL NDNY-1
e. Instituted: 11-1-82
f. Discontinued: (to be filled in later)
g. 182-1000
h. AL 182-12

3. Proprietary Interest card for filing by telephone number.

b. 202-324-3300
a. SMITH, JOHN
JONES, SARA
c. 901 Elm Avenue
Albany, New York
ABC Trucking Co.
d. AL NDNY-1
e. Instituted: 11-1-82
f. Discontinued: (to be filled in later)
g. 182-1000
h. 182-12

4. Proprietary Interest card for filing by address.

c. 901 Elm Avenue
Albany, New York
ABC Trucking Co.

a. SMITH, JOHN
JONES, SARA
b. 202-324-3300
d. AL NDNY-1
e. Instituted: 11-1-82
f. Discontinued: (to be filled in later)
g. 182-1000
h. AL 182-12

5. Proprietary Interest card for filing by facility.

c. ABC Trucking Co.
901 Elm Avenue
Albany, New York
a. SMITH, JOHN
JONES, SARA
b. 202-324-3300
d. AL NDNY-1
e. Instituted: 11-1-82
f. Discontinued: (to be filled in later)
g. 182-1000
h. AL 182-12

(c) Example of Proprietary Interest Card for MISUR Coverage in Title III Criminal Matters

1. Proprietary Interest card for filing by name.

a. SMITH, JOHN
b. MISUR
c. 901 Elm Avenue, Room 300
Albany, New York
Holiday Inn
d. AL NDNY-2
e. Instituted: 11-1-82
f. Discontinued: (to be filled in later)
g. 182-1000
h. AL 182-12

2. Proprietary Interest card for filing by the address

c. 901 Elm Avenue, Room 300
Albany, New York
Holiday Inn
a. SMITH, JOHN
b. MISUR
d. AL NDNY-2
e. Instituted: 11-1-82
f. Discontinued: (to be filled in later)
g. 182-1000
h. AL 182-12

3. Proprietary Interest Card for filing by facility.

c. Holiday Inn
901 Elm Avenue, Room 300
Albany, New York
a. SMITH, JOHN
b. MISUR
d. AL NDNY-2
e. Instituted: 11-1-82
f. Discontinued: (to be filled in later)
g. 182-1000
h. AL 182-12

(d) Example of Proprietary Interest Card for MISUR Coverage Involving a Vehicle in Title III Criminal Matters

1. Proprietary Interest card for filing by name.

a. SMITH, JOHN
b. MISUR
c. VIN 1A2345RA789
d. AL NDNY-3
e. Instituted: 11-1-82
f. Discontinued: (to be filled in later)
g. 182-1000
h. AL 182-12

2. Proprietary Interest card for filing by the vehicle identification number.

c. VIN 1A2345RA789
a. SMITH, JOHN
b. MISUR
d. AL NDNY-3
e. Instituted: 11-1-82
f. Discontinued: (to be filled in later)
g. 182-1000
h. AL 182-12

No card for filing under the address is required in matters involving a motor vehicle.

(e) Example of Proprietary Interest Cards for CCTV Coverage in Connection With MISUR Coverage

1. Proprietary Interest card for filing by name.

a. SMITH, JOHN
b. MISUR
c. 901 Elm Avenue, Room 300
Albany, New York
Holiday Inn
d. AL NDNY-3
e. Instituted: 11-1-82
f. Discontinued: (to be filled in later)
g. 182-1000
h. AL 182-12

2. Proprietary Interest card for filing by the address.

c. 901 Elm Avenue, Room 300
Albany, New York
Holiday Inn
a. SMITH, JOHN
b. MISUR
d. AL NDNY-3

e. Instituted: 11-1-82
f. Discontinued: (to be filled in later)
g. 182-1000
h. 182-12

3. Proprietary Interest card for filing by the facility.

c. Holiday Inn
901 East Avenue, Room 300
Albany, New York
a. SMITH, JOHN
b. MISUR
d. AL NDNY-3
e. Instituted: 11-1-82
f. Discontinued: (to be filled in later)
g. 182-1000
h. 182-12

In most situations when Proprietary Interest cards are prepared, item "f" will not be known. In some situations, items "d" and "e" may not be known. When this information is determined, it should be furnished to FBIHQ, by airtel, or an amended card(s) should be prepared.

(3) Overhear Cards - 3-x-5-inch cards maintained in the ELSUR indices containing the true name or best-known name of all individuals (including non-U.S. persons, Special Agents, assets, informants, cooperating witnesses, etc.) who have participated in conversations intercepted during the conduct of a Title III electronic surveillance. Only one Overhear card is required per source for any individual overheard, regardless of the number of times his/her voice is overheard. If the individual is overheard on more than one source, a separate Overhear card should be submitted to FBIHQ for each source the first time an individual is overheard. As the ELSUR indices maintained at FBIHQ will only contain one Overhear card the first time an individual is overheard on a specific source, it will be the responsibility of the field office to maintain records of all subsequent overhears of that individual over the same source. Accordingly, the field office should enter the date of each subsequent overhear on the card maintained on that individual in the field office ELSUR indices. Overhear cards are only submitted if the identity of the individual overheard is known or a full name is given. In the event that a partial name, code name, nickname or alias overheard

during an electronic surveillance is positively identified with a specific individual through investigation or further monitoring, an Overhear card is then submitted to FBIHQ. The overhear date will be the earliest date the individual was monitored over that source and all subsequent overhears determined to be identical to that individual should be recorded on the field office ELSUR card. In addition to the name of the individual overheard, Overhear cards contain the date on which the conversation took place; the symbol number assigned to the source; Bureau file number, if known; and the field office file number. In Title III matters, Overhear cards are prepared on blue index cards and submitted to FBIHQ within a reasonable period of time, not to exceed 30 calendar days following the first instance an individual is identified as having been overheard over each different ELSUR installation. All Overhear cards will be submitted to FBIHQ, in accordance with instructions for the submission of ELSUR cards.

Example of Overhear Card in Title III Matters

Overhear Title III, TESUR or MISUR coverage.

a. SMITH, JOHN
b. 12-7-81
c. AL NDNY-1
d. 182-111
e. AL 182-1

Any additional information a field office deems necessary for inclusion on any type ELSUR card being forwarded to FBIHQ should be labeled on the card and explained in a brief statement in the FD-664. As an example, an auxiliary office submitting Overhear cards to FBIHQ as the result of an ELSUR conducted at the request of another field office may wish to reflect on the Overhear card the file number of the office of origin. An Overhear card prepared in this manner would appear as follows:

a. SMITH, JOHN
b. 12-7-81
c. AL NDNY-1
d. 182-11
e. AL 182-11
f. OO: BS 182-12

It would not be necessary for the auxiliary office to prepare copies of the Overhear cards for inclusion in the ELSUR index of the office of origin; to forward a copy of the FD-664 to the office of origin for information purposes is sufficient.

EFFECTIVE: 06/06/86

10-9.13 Marking of Recordings for Identification

See Part II, 16-8.2.3 of this manual.

EFFECTIVE: 09/22/87

10-9.14 Loan of Electronic Surveillance Equipment to State and Local Law Enforcement Agencies

See Part II, |16-7.3.4| of this manual.

EFFECTIVE: 09/22/87

10-9.15 Submission of Recordings

For instructions regarding the forwarding of tapes to FBIHQ see Part II, 16-8.2.4 and 16-8.2.8 of this manual, and MAOP, Part II, |2-4.4.11.|

EFFECTIVE: 10/16/96

10-9.16 Transcription of Recordings

(1) FD-652, Transcription Request/Approval Sheet, should accompany each request for transcription of any tape. |Include on the FD-652, under "Summary," information describing where the discussion/meeting took place, what the subject of the conversation was, and any other details that would be helpful to the typist in accurately transcribing tape recordings.| It is mandatory that the SAC grant approval for all full-text transcriptions and indicate this approval by initialing the appropriate block on FD-652. The final disposition of this form is being left to the discretion of each individual office. They may be disposed of in the same manner as the FD-77 (Dictation Slip). (See MAOP, Part II, Section 10-18.1(4), for use of FD-77.)

(2) For additional instructions regarding the preparation of transcripts of recordings, see Correspondence Guide - Field, Section 2-11.6.

EFFECTIVE: 04/19/91

10-10 CONSENSUAL MONITORING - CRIMINAL MATTERS

EFFECTIVE: 04/19/91

10-10.1 Use of Consensual Monitoring in Criminal Matters

(1) Consensual monitoring is the interception by an electronic device of any wire or oral communication wherein one of the parties to the communication has given prior consent to such monitoring and/or recording.

(2) Title 18, USC, Section 2511 (2)(C), requires consent from one of the parties to the communication to bring the interception within an exception to the general warrant requirement. To document conformance to the requirements of the statute, FBI policy requires that a consent form be obtained from the consenting party. (See |MIOG, Part II, 10-10.3|(7).)|

(3) No exception should be made to executing and properly witnessing the consent form in the situation wherein an informant, cooperative witness (CW), a Special Agent or any other law enforcement

officer is the consenting party. Additionally, the consent form constitutes an accurate, reliable official record that may be utilized in a court in the event the issue of consent is raised or the administrative procedure needs to be documented to assure the court compliance with Title 18, USC, Section 2511 (2)(C). (See MIOG, Part II, 10-10.3(7).)

(4) Separate control files -- One for telephonic consensual monitoring and another for nontelephonic consensual monitoring (body recorders and/or transmitting devices) should be established in each field office. Documents relative to the authorization and utilization of these techniques should be retained in the appropriate control file. These control files will be for the purpose of the SAC's administrative control and for use during the inspection.

(5) In matters involving the use of Closed Circuit Television (CCTV) in conjunction with the consensual monitoring technique, refer also to Part II, 10-9.10(7) and 10-10.9 of this manual.

EFFECTIVE: 02/28/97

10-10.2 Monitoring Telephone Conversations in Criminal Matters (See MIOG, Part I, 89-2.11(7), 91-11.3.2(2), 192-14(2); Part II, 10-9.9(3), 16-7.4.1.)

An FD-670, Checklist - Consensual Monitoring - Telephone (Criminal Matters) form, lists all recordkeeping and operational requirements specified in the MIOG, MAOP, and the "ELSUR Working Guide." This form is available for optional use as a reference and training aid to ensure adherence to all existing Bureau requirements.

(1) SACs may authorize monitoring of telephone conversations in criminal matters for the duration of the investigation. Each authorization should be documented on Form FD-759 (Notification of SAC Authority Granted for Use of CONSENSUAL Monitoring Equipment), and may be granted under the conditions that:

(a) Agents should obtain written consent (for all ELSURs not approved by an appropriate court), as documented by an executed Form FD-472 (Telephone Device Consent), whenever possible; however, oral consent will be acceptable in those instances where the

consenting party declines to give written consent. When oral consent is obtained, at least two Law Enforcement Officers (one of whom should be an Agent of the FBI) should be present to witness this consent. The fact that the consenting party has declined to give written consent should be recorded on the FD-472. This form should then be executed in all respects with the exception of the consenting party's signature. Once the consent form has been obtained, it will not be necessary to obtain a separate consent form for each instance wherein conversations are to be monitored and/or recorded. It is sufficient if the consent form is signed for each investigation so long as the office has obtained telephonic consensual monitoring authority and the subject matter for which the authority was granted; the consenting party or parties to the interception; and/or the judicial district do not change. This consent form shall remain valid until such time as the consenting party expresses the desire, either orally or in writing, to a Special Agent of the FBI to rescind the consent;

(b) Prior to its initial use, the USA, AUSA, or Strike Force Attorney for the particular investigation in which the monitoring will be utilized should provide an opinion that no entrapment is foreseen and concur with the monitoring and/or recording of the conversation as an investigative technique. This initial concurrence should be confirmed in writing. Whenever a change in parties or circumstances occur, subsequent opinions should be obtained and confirmed in writing. (See MIOG, Part II, 10-10.3 (12).)

(c) Consensual monitoring conducted outside the division in which authorization is obtained requires coordination with and concurrence from the SAC of each division where the monitoring will occur. Such concurrence must be documented in writing by the office of origin if not documented by the lead office in the EC forwarding the recordings to the requesting office.

(d) A separate control file for telephone monitoring should be established in each field office and appropriate documents relative to the authorization and utilization of this procedure should be retained. This control file will be for the purpose of the SAC's administrative control and for review during inspection.

(e) The FD-759 is to be typewritten, completed in its entirety and forwarded as indicated on the copy count of the form within ten working days of the date authority is granted as indicated in Item 5 of the form. In those investigations wherein both telephonic and nontelephonic consensual monitoring authority is granted, SAC approval may be documented on one FD-759. This may be done only when both techniques are being used in the same

investigative case and all facts required on the FD-759 are the same for both techniques. Any variations in the facts contained on the FD-759 will require two separate FD-759s, such as more than one consenting party or the duration for which the authority is granted for each technique differs, etc. Telephonic consensual monitoring authority is case specific and is not transferrable to any other investigation except when the case file under which the authority was granted is consolidated or reclassified. FD-759s documenting only telephonic consensual monitoring authority need not be forwarded to FBIHQ. (See MIOG, Part II, 10-10.3 (1).)

(2) In cases of extreme sensitivity, SACs should continue to obtain FBIHQ authority for consensual monitoring of telephone conversations. Title III of the Omnibus Crime Control and Safe Streets Act of 1968 specifically exempts consensual monitoring (both telephonic and body recording equipment) from the provisions of the statute.

(3) In certain situations, it may be more effective and efficient to utilize three-way or conference calling in conjunction with approved telephonic consensual monitoring. Once consent forms have been signed and authorization received, three-way or conference calling may be used to make more efficient use of an Agent's time and/or to alleviate the necessity for face-to-face contact with the consenting party, thereby avoiding the compromise of a covert investigation. However, the use of conference calling is not appropriate in all cases. In some instances, it may be desirable for the Agent to be with the consenting party at the time the call is placed in order that the Agent may utilize notes or gestures to provide information and guidance to the consenting party during the course of the call.

EFFECTIVE: 09/17/97

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OPCA-20 (12-3-96)

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FEDERAL BUREAU OF INVESTIGATION
FOIPA
DELETED PAGE INFORMATION SHEET

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

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Section 552		Section 552a
☐ (b)(1)	☐ (b)(7)(A)	☐ (d)(5)
☐ (b)(2)	☐ (b)(7)(B)	☐ (j)(2)
☐ (b)(3)	☐ (b)(7)(C)	☐ (k)(1)
_____	☐ (b)(7)(D)	☐ (k)(2)
_____	☐ (b)(7)(E)	☐ (k)(3)
_____	☐ (b)(7)(F)	☐ (k)(4)
☐ (b)(4)	☐ (b)(8)	☐ (k)(5)
☐ (b)(5)	☐ (b)(9)	☐ (k)(6)
☐ (b)(6)		☐ (k)(7)

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FBI/DOJ

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EFFECTIVE: 05/10/96

10-10.3 Monitoring Nontelephone Communications In Criminal Matters (See MIOG, Part I, 7-14.6(14), 9-7.2(5), 91-11.3.3, 192-15; Part II, 10-9.9(3), 10-10.9.3(1), 16-7.4.1; & Legal Handbook for Special Agents, 8-3.3.3(1).)

An FD-671, Checklist - Consensual Monitoring - Nontelephone (Criminal Matters) form, lists all recordkeeping and operational requirements specified in the MIOG, MAOP, and the "ELSUR Working Guide." This form is available for optional use as a reference and training aid to ensure adherence to all existing Bureau requirements.

(1) Nontelephonic Consensual Monitoring (NTCM) in criminal matters may be approved by the SAC, except when one or more of the seven sensitive circumstances is present. Requests for authority to conduct consensual monitoring when any of the seven sensitive circumstances are present will be submitted to FBIHQ for Department of Justice approval in ROUTINE situations, and can be approved by the SAC when an emergency situation exists. EMERGENCY situations are those wherein the monitoring is expected to take place within 48 hours. Emergency authority cannot exceed 30 days and requests for extension will be submitted to FBIHQ for Department of Justice approval. (See (3), (9) and (10).)

SAC approval for routine nonsensitive NTCM usage or for emergency NTCM usage involving sensitive circumstances is to be documented on Form FD-759 (Notification of SAC Authority Granted for Use of CONSENSUAL Monitoring Equipment). The FD-759 is to be typewritten, completed in its entirety and forwarded to the appropriate FBIHQ entities within ten working days of the date authority is granted as indicated in Item 5 of the form. (See MIOG, Part II, 10-10.2 (1) (e).) NTCM authority is case specific and is not transferrable to any other investigation except when the case file under which the authority was granted is consolidated or reclassified.

SAC authority to approve NTCM usage in all but the seven sensitive circumstances may not be redelegated; however, an acting SAC may authorize Agents to conduct routine consensual monitoring, if specifically and individually designated by the SAC to act in his/her stead when the SAC is absent. (See MIOG, Part II, 10-9.11 (8).) The seven sensitive circumstances are as follows:

(a) The interception relates to an investigation of a Member of Congress, a federal judge, a member of the Executive Branch at Executive Level IV or above, or a person who has served in such capacity within the previous two years;

(b) The interception relates to an investigation of any public official and the offense investigated is one involving bribery, conflict of interest, or extortion relating to the performance of his or her official duties. (Public official is defined as an official of any public entity of government including special districts as well as all federal, state, county, and municipal governmental units.);

(c) The interception relates to an investigation of

a federal law enforcement official;

(d) The consenting or nonconsenting person is a member of the diplomatic corps of a foreign country;

(e) The consenting or nonconsenting person is or has been a member of the Witness Security Program and that fact is known to the agency involved or its officers;

(f) The consenting or nonconsenting person is in the custody of the Bureau of Prisons or the United States Marshals Service; in cases where the individual is in the custody of the Bureau of Prisons or the United States Marshals Service, the field office teletype requesting authorization for use of consensual monitoring devices on a prisoner, or a request for a furlough or extraordinary transfer of a prisoner, must contain the following information in addition to that information set out in 10-10.3 (9):

1. The location of the prisoner;

2. Identifying data concerning the prisoner (FBI number, inmate identification number, social security number, etc.);

3. The necessity for using the prisoner in the investigation;

4. The name(s) of the target(s) of the investigation;

5. Nature of the activity requested (wear consensual monitoring device, furlough, extraordinary transfer);

6. Security measures to be taken to ensure the prisoner's safety if necessary;

7. Length of time the prisoner will be needed in the activity;

8. Whether the prisoner will be needed as a witness;

9. Whether a prison redesignation (relocation) will be necessary upon completion of the activity;

10. Whether the prisoner will remain in the

custody of the FBI or whether he/she will be unguarded except for security purposes.

The authority of the SAC to approve consensual monitoring when an emergency situation exists does NOT alter the requirement for prior DOJ authorization to use a prisoner who is in the custody of the Bureau of Prisons (BOP), or the United States Marshals Service (USMS). Accordingly, field offices are required to continue coordinating the use of a prisoner, who is the subject of consenting or nonconsenting monitoring, through FBIHQ as set forth in MIOG, Part II, 10-10.3 and 27-16.5.

(g) The Attorney General, Deputy Attorney General, Associate Attorney General, Assistant Attorney General for the Criminal Division, or the United States Attorney in a district where an investigation is being conducted has requested the investigating agency to obtain prior written consent for making a consensual interception in a specific investigation.

The presence of one or more of the above seven circumstances requires Office of Enforcement Operations, DOJ approval. Additionally, all requests requiring DOJ approval shall be reviewed and approved by the Chief Division Counsel (CDC) prior to submission of the communication to FBIHQ with the name of the CDC stated in the requesting communication.

(2) The Guidelines also mandate the FBI's obtaining prior authorization from the United States Attorney, Assistant United States Attorney, Strike Force Attorney or any other previously designated DOJ attorney for the particular investigation in which the monitoring will be utilized.

(3) The Director has delegated authority to the SAC to approve NTCM of verbal communications except when the circumstances listed in MIOG, Part II, 10-10.3 (1) above, are present. SACs may authorize NTCM usage for the duration of nonsensitive investigations so long as the circumstances under which the authority was granted (i.e., the subject matter, the consenting party or parties to the interception, and the judicial district wherein monitoring will take place) do not substantially change--the authorization will remain valid. Where such changes are noted, consideration should be given by the SAC to determine whether or not the NTCM authority should continue or new authority obtained. Where new authority is obtained, a new FD-759 must be completed.

(4) Consensual monitoring conducted outside the division

in which authorization was obtained requires coordination with and concurrence from the SAC of each division where the monitoring will occur. |Such concurrence must be documented in writing by the office of origin if not documented by the lead office in the EC forwarding the recordings to the requesting office.|

(5) Agents should obtain written consent, documented by an executed FD-473 (Nontelephone Device Consent) form, whenever possible. However, oral consent will be acceptable in those instances where the consenting party declines to give written consent. When oral consent is obtained, at least two Law Enforcement Officers (one of whom should be an Agent of the FBI) should be present to witness this consent. The fact that the consenting party has declined to give written consent should be recorded on the FD-473. This form should then be executed in all respects, with the exception of the consenting party's signature.

(6) Once the consent form has been obtained, it will not be necessary to obtain a separate consent form for each instance wherein communications are to be monitored and/or recorded. It is sufficient if the consent form is signed for each investigation so long as the office is continuing to operate under the same authority and the subjects (target(s) and consenting party) do not change. This consent form shall remain valid until such time as the consenting party expresses the desire, either orally or in writing, to a Special Agent of the FBI to rescind the consent.

(7) No exception should be made to executing and properly witnessing the consent form in the situation wherein an informant, cooperative witness (CW), a Special Agent or any other law enforcement officer is the consenting party. (See MIOG, Part II, 10-10.1 (2) and (3).) The consent form constitutes an accurate, reliable, official record that may be utilized in a court in the event the issue of consent is raised or the administrative procedure needs to be documented to assure the court compliance with Title 18, USC, Section 2511 (2) (c). As in any case involving consensual monitoring, it is essential that the consenting party be present at all times when the monitoring equipment is activated.

(8) SAC or DOJ authority is required in joint operations with nonfederal law enforcement agencies in which FBI nontelephone monitoring equipment will be used. (See MIOG, Part II, 16-7.3.4(2).)

(9) In requesting Department of Justice (DOJ) authority for use of nontelephonic consensual monitoring equipment in routine situations when any of the seven sensitive circumstances listed in

MIOG, Part II, 10-10.3 (1) exists, it will be necessary to use the following format in the field communication. Only in the Administrative Data portion of this communication should the consenting party be identified (if protection is sought) by symbol number or name. This communication may be furnished directly to the Department: (See MIOG, Part II, 10-9.11(8) & 10-10.3(1)(f), above.)

PURPOSE: Authority is requested to utilize an electronic device to monitor and/or record private communications between _____ and _____ (if appropriate, insert "and others as yet unknown") in connection with a _____ (character) matter.

DETAILS: Begin with a sentence which states that this request requires DOJ approval and identify which of the seven sets of circumstances require such approval. Provide a statement that the Chief Division Counsel, identified by name, has reviewed and approved the communication for legal sufficiency. Describe background of case--reasons why the device is needed and when and where it is needed. Identify the person who is to wear the device or indicate if fixed device is to be used (body recorder, transmitter, Closed Circuit Television (CCTV), other) and where it will be installed (automobile, office, home of consenting party, etc.) and indicate it will only be used when consenting party is present. If a CW or an informant is the person whose identity should be protected, or if an Undercover Agent (UCA) is the consenting party, identify the person as "source." Show, under Administrative Data, the symbol number of the CW or informant, identity of UCA, or name of person whose identity is to be protected. Show, under Administrative Data, the type of device to be used and specifically state that consenting party is willing to testify in court and will execute the FD-473, or will give oral consent which will be witnessed by two law enforcement officers, one of whom should be an Agent of the FBI.

U.S. ATTORNEY'S OPINION: Identify USA, AUSA, or Strike Force Attorney with whom case discussed. Specifically set out USA's opinion regarding entrapment and specifically state USA approves the use of device.

ADMINISTRATIVE DATA: All administrative data should be shown in this section. Here only should the person who is to wear the device be identified (if protection is sought) by name or symbol number or indicate if fixed device.

(10) Where an emergency situation exists involving a sensitive circumstance, prior DOJ authorization is not required. Under such circumstances, the SAC may approve the request; however,

subsequent DOJ notification is required within five work days and will be handled by FBIHQ upon receipt of the Form FD-759. Emergency authority cannot exceed 30 days and requests for extension will be submitted to FBIHQ for Department of Justice approval. (See (1).)

(11) All offices should ENSURE appropriate administrative controls are established to ensure FBIHQ is advised of the results of the usage of consensual monitoring equipment within 30 days of the expiration of each SAC and/or DOJ authorization. If it is anticipated that an extension of DOJ authority will be needed, ensure that the requesting teletype is received at FBIHQ at least seven days prior to the expiration of authority. Within 30 days of the expiration of each SAC or DOJ authorization and each extension thereof, an FD-621 (NTCM Usage Report), shall be prepared under the substantive case caption including the character of the case, completed in its entirety and forwarded to FBIHQ in an envelope sealed and labeled "Director, FBI, ELSUR Index, FBIHQ."

(12) The initial opinion of the USA, AUSA, or Strike Force Attorney regarding entrapment and concurrence in the use of the technique should be confirmed in writing. Whenever a change in parties or circumstances occurs subsequent opinions should be obtained and confirmed in writing. (See MIOG, Part II, 10-10.2(1)(b).)

EFFECTIVE: 09/17/97

10-10.4 Deleted

EFFECTIVE: 12/16/88

10-10.5 ELSUR Indexing in Consensual Monitoring Matters

The ELSUR support employee in each field division will index, or supervise the indexing of, and review all ELSUR cards in consensual monitoring matters, prior to their submission to FBIHQ. This is to ensure that all cards are complete, accurate and in a format specified herein. (For indexing procedures refer to the "Index Guide" available at each field office through the File Assistant/ELSUR support employee.) In consensual monitoring matters all ELSUR overhear cards will be typewritten. Two original cards will be prepared; one to be forwarded to FBIHQ for inclusion in the FBIHQ

ELSUR Index, and one to be maintained in the field office ELSUR index. If the information appearing on an ELSUR card is classifiable, the card must be classified in accordance with standard classifying procedures.

(1) Overhear Cards - 3-x-5 cards maintained in the ELSUR indices containing the true name or best-known name of all individuals (including non-U.S. persons, Special Agents, assets, informants, cooperating witnesses, etc.) who have participated in conversations intercepted during the conduct of a consensual monitoring matter. Only one Overhear card is required per source for any individual overheard, regardless of the number of times his/her voice is overheard. If the individual is overheard on more than one source, a separate Overhear card should be submitted to FBIHQ for each source the first time an individual is overheard. As the ELSUR indices maintained at FBIHQ will only contain one Overhear card the first time an individual is overheard on a specific source, it will be the responsibility of the field office to maintain records of all subsequent overhears of that individual over the same source. Accordingly, the field office should enter the date of subsequent overhears on the card maintained on the individual in the field office ELSUR indices. Overhear cards are only submitted if the identity of the individual overheard is known or a full name is given. In the event that a partial name, code name, nickname or alias overheard during an electronic surveillance is positively identified with a specific individual through investigation or further monitoring, an Overhear card is then submitted to FBIHQ. The overhear date will be the earliest date the individual was monitored over that source, and all subsequent overhears determined to be identical to that individual should be recorded on the field office ELSUR card. In addition to the name of the individual overheard, Overhear cards contain the date on which the conversation took place; the control number assigned to the source or the word "Consensual"; the technique ("telephone" or "nontelephone" spelled out); Bureau file number, if known; and the field office file number. In consensual monitoring matters, Overhear cards are prepared on white index cards. All Overhear cards will be submitted to FBIHQ, in accordance with instructions for the submission of ELSUR cards, within a reasonable period of time, not to exceed 30 calendar days following the first instance an individual is identified as having been overheard over each different ELSUR installation.

Examples of Overhear Card in Consensual Monitoring Matters

(a) Overhear Consensual Monitoring - Telephone

a. SMITH, JOHN
b. 12-7-82
c. AL CM# 10 (Telephone) or Consensual (Telephone)
d. 182-111
e. AL 182-1

(b) Overhear Consensual Monitoring - Nontelephone

a. SMITH, JOHN
b. 12-7-82
c. AL CM# 11 (Nontelephone) or Consensual Nontelephone)
d. 182-111
e. AL 182-1

(2) Any additional information a field office deems necessary for inclusion on any type ELSUR card being forwarded to FBIHQ should be labeled on the card and explained in a brief statement in the FD-664. As an example, an auxiliary office submitting Overhear cards to FBIHQ as the result of an ELSUR conducted at the request of another field office may wish to reflect on the Overhear card the file number of the office of origin. An Overhear card prepared in this manner would appear as follows:

a. SMITH, JOHN
b. 12-7-82
c. AL CM # 12 (Nontelephone) or Consensual (Nontelephone)
d. 182-111
e. AL 182-11
f. OO: BS 182-12

It would not be necessary for the auxiliary office to prepare copies of the Overhear cards for inclusion in the ELSUR index of the office of origin; to forward a copy of the FD-664 to the office of origin for information purposes is sufficient.

EFFECTIVE: 12/16/88

10-10.5.1 Administration of ELSUR Records Regarding Informants and Assets

(1) Title 18, USC, Section 3504, allows a claim to be made for disclosure of ELSUR information "...in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, or other authority of the United States...." Discovery motions may be made by a defendant in the proceedings, or on behalf of witnesses, and attorneys providing representation. However, in a motion for disclosure of ELSUR information involving a source who participated in consensual monitoring, a response by the government does not necessarily disclose the identity of the source (consenting party) and/or the confidential nature of the relationship that individual had with the FBI except in situations where a determination is made by the appropriate authority that source disclosure is relevant to the proceedings.

Every effort will be made by FBIHQ through liaison with the Department of Justice to prevent disclosure.

(2) To prevent unwarranted disclosures, the following procedures are to be used when a source is party to a consensual monitoring:

(a) Communications to FBIHQ requesting consensual monitoring authorization are to identify informants or assets by symbol number or other appropriate terminology.

(b) In the execution of the required consent form (FD-472, FD-473), the true name of the consenting party is to be used. When the consenting party is a source, the original of the executed form is to be retained in the |evidence| section of the source's main file.

(c) On the FD-504 (Chain of Custody-Original Tape Recording) envelope, the true name of the source is to be set forth in the space provided for the entry, "Identity of Persons Intercepted." The completed FD-504 is to be maintained in a limited or restricted access location in full compliance with the instructions set forth in Part II, Section 10-9.8, of this manual.

(d) Neither the true name nor the informant symbol

number is to be set forth on the FD-192 (Control of General/Drug/Valuable Evidence) form.

(e) FD-302s, transcripts, etc., pertaining to consensual monitorings are to be prepared and maintained in compliance with the instructions set forth in Part I, Section 137-10 of this manual; Section 2-11.6 through 2-11.6.4 of the Correspondence Guide-Field or in the Introduction, Section 1, of the Foreign Counterintelligence Manual. Because of the nature of consensual monitoring, particularly when a limited number of conversants are involved, strict adherence to these guidelines is essential to protect the identity of the source.

(f) Overhear cards are to be prepared for all reasonably identified participants to a consensually monitored conversation, including the consenting party. For sources, both the FBIHQ and the field office cards are to be prepared for the true name(s) of the individual(s) monitored. Except for required classification markings, as applicable, no additional notations are to be set forth on the cards submitted to FBIHQ to indicate the monitored person is a source or to indicate that there is any unique sensitivity to the consensual monitoring conducted. Such caveats may, however, be placed on the field office ELSUR cards, but must be documented to a specific serial which reflects the need for and duration of special handling.

(g) The airtel to FBIHQ (FD-664) enclosing ELSUR cards for sources is to be prepared and submitted as outlined in Section 10-9.5 above. The names being indexed by each card enclosed will be listed on the FBIHQ copies of the airtel exactly as they appear on the ELSUR cards. Except for required classification markings, as applicable, no additional notations are to be placed on this airtel (FD-664) to indicate the enclosed overhear cards relate to a source. The copy of this communication to be placed in the field office substantive file is to be redacted so as to reflect the symbol number of the source rather than the true name.

(h) ELSUR material is not to be indexed to nor submitted from an informant or asset file. ELSUR indexing is to be done reflecting the field office substantive case file.

(i) For additional instructions regarding informant or asset matters, see also Part I, Section 137, of this manual, or Part 1, Section 5, of the National Foreign Intelligence Program Manual.

EFFECTIVE: 10/16/96

10-10.6 Use of Consensual Monitoring in National Security Matters

Refer to Foreign Counterintelligence Manual, Appendix 1, Section IV.F.

EFFECTIVE: 12/05/85

10-10.7 Pen Registers (Dialed Number Recorder) (See MIOG, Part II, |10-3, 10-10.11.3|& 16-7.4.6.)

(1) The Electronic Communications Privacy Act of 1986 (Act), as amended, regulates the use of dialed number recorders and the pen register technique (Title 18, USC, Sections 3121-3127). The Act codifies existing Department of Justice (DOJ) policy of obtaining a court order to authorize the installation and use of a pen register and sets forth the procedure for seeking such an order. It is not necessary to obtain a court order when the telephone user consents to the installation of the pen register device.

(2) |Law enforcement agencies are required under Title 18, USC, Section 3121(c) to install and use technology that is "reasonably available" in order to limit the information obtained from a pen register to "the dialing and signalling information utilized in call processing" (only the numbers dialed to reach the called number, not additional numerical messages or codes). Such pen register technology is not now available. When technology is developed, the Engineering Section, Information Resources Division, will acquire and distribute same.

(a) Cell Site Simulators: This provision does not affect DOJ/FBI policy on the use of digital analyzers and cell site simulators. No court order is required to use these devices to acquire cell site data (cellular telephone ESN or MIN, or other facility-identifying information) when obtained without involving the telecommunication carrier or other intermediary. However, a pen register or trap and trace order is needed if these devices are used to obtain numbers dialed to or from a cellular telephone (i.e., call processing information).

Under Section 3121(c), a pen register order for a cellular telephone is limited to acquiring call processing information. Additional non-content information, such as cellular telephone ESN or MIN, cell site sector information, or other location type information may be considered "a record or other information pertaining to a subscriber" and obtained from a telecommunications carrier pursuant to a court order under Title 18, USC, Section 2703(d), or pursuant to a warrant or consent of the subscriber or customer.

(3) Supervisory personnel are to ensure that the use of the pen register is not substituted for other logical investigations. Prior to requesting that an attorney for the government apply for a pen register order under the Act, the case Agent should submit a memorandum or other appropriate communication, initialed by the supervisor, to the case file and to the pen register control file setting forth the reasons for pen register use and documenting the basis for the statements to be made in the application. If the United States Attorney or Strike Force Chief requires a written request specifying the factual basis for the assertions in the application, copies of the letter may be designated to the above-indicated files in lieu of a separate memorandum. The above instructions apply to all instances wherein a pen register is to be used, whether alone or in conjunction with the interception of wire or electronic communications under the provisions of the Act. A Division Counsel should be consulted if there is any question as to the sufficiency of facts stated or whether the existing facts are stated in a manner which would clearly warrant the assertions made in the application for the order. A copy of each order obtained must be filed in the pen register control file.

(4) Prior to the actual filing of an application for a pen register order, the case Agent is to ensure the availability of equipment within his/her field office. If the equipment is not available from the existing office inventory, then the TA or TTA should be requested to make appropriate contact with the Operational Support Unit, Information Resources Division, to secure equipment. All requests for pen register equipment must be confirmed in writing.

(5) The Act requires the Attorney General to make an annual report to Congress on the number of pen register orders applied for by law enforcement agencies of the Department. DOJ has advised the FBI by memorandum of this requirement and has requested quarterly reports on pen register usage. Court-ordered pen register usage must be reported to FBIHQ within five workdays of the expiration date of any original or renewal order. To satisfy DOJ data requirements and standardize and simplify field reporting, the form airtel captioned

"Pen Register/Trap and Trace Usage" (FD-712) must be used. If an order is obtained, but no actual coverage of any lines is effected, then no submission is required. These reporting requirements do not apply to pen register usage effected under the provisions of the Foreign Intelligence Surveillance Act.

|(6)|It should be noted that the same telephone line which carries the electronic impulses signaling the number which has been dialed also carries voice transmissions. Therefore, supervisory personnel must ensure that all FBI and non-FBI personnel operating pen register equipment solely under a pen register order be informed of the above and warned that audio monitoring equipment must never be utilized in connection with pen register coverage of telephone lines.

EFFECTIVE: 10/23/95

||10-10.7.1 Emergency Provisions

If an emergency situation exists wherein time does not permit the obtaining of a court order for a pen register, any Deputy Assistant Attorney General or higher Department of Justice official may authorize the installation and use of a pen register prior to obtaining a court order. However, the specific provisions of Title 18, USC, Section 3125, must be satisfied. These provisions state:

(1) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer, specially designated by the Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General, or by the principal prosecuting attorney of any state or subdivision thereof acting pursuant to a statute of that state, who reasonably determines that -

(a) an emergency situation exists that involves -

1. immediate danger of death or serious bodily injury to any person; or

2. conspiratorial activities characteristic of organized crime,

that requires the installation and use of a pen register or a trap and

trace device before an order authorizing such installation and use can, with due diligence, be obtained, and

(b) there are grounds upon which an order could be entered under this chapter to authorize such installation and use may have installed and use a pen register or trap and trace device if, within 48 hours after the installation has occurred, or begins to occur, an order approving the installation or use is issued in accordance with Section 3123 of this title.

(2) In the absence of an authorizing order, such use shall immediately terminate when the information sought is obtained, when the application for the order is denied or when 48 hours have lapsed since the installation of the pen register or trap and trace device, whichever is earlier.

(3) The knowing installation or use by any investigative or law enforcement officer of a pen register or trap and trace device pursuant to (1) above without application for the authorizing order within 48 hours of the installation shall constitute a violation of this chapter.

In essence, the "emergency" pen register provision mirrors the "emergency Title III" provision found in Title 18, USC, Section 2518(7). However, there are several differences. First, the number of statutorily designated DOJ officials who may approve emergency use of pen register devices in Federal investigations is broadened to include "any Assistant Attorney General, any Acting Assistant Attorney General, or any Deputy Assistant Attorney General." Second, unlike Section 2518(7), the emergency pen register statute does not include emergency situations involving "conspiratorial activities threatening the national security interest." In those rare situations where an "emergency" pen register would be required for use in situations threatening the national security, consideration should be given: (a) to utilizing the emergency provisions of the Foreign Intelligence Surveillance Act of 1978 (FISA), which regulates pen register devices as well as electronic surveillance interceptions in national security investigations, which include criminal espionage cases; or (b) to emphasizing that the situation, although threatening the national security, either involves an immediate danger of death or serious physical injury to any person or that the situation concerns conspiratorial activities characteristic of organized crime (e.g., a terrorist group's plan to bomb a building). Of course, if investigative or law enforcement officers are dealing with the telephone subscriber or customer (user), the customer's consent, as is indicated in Section 3121(b)(3), is sufficient, and a court order need

not be obtained.

EFFECTIVE: 01/22/90

10-10.8 Electronic Tracking Devices (See MIOG, Part I, 7-14.6(15), 9-7.1(2); II, 10-9.11(9), 10-10.11.1.)

Electronic tracking devices, [redacted] are called beepers. The two devices must be distinguished from each other. This section addresses electronic tracking devices. [redacted] Generally speaking, tracking devices are specifically excluded from Title III requirements because of the manner in which they function and the limited privacy implications related to their use (Title 18, USC, Section 2510(12)(D)). However, in those circumstances where a court order is required, Title 18, USC, Section 3117 provides for extrajurisdictional effect. That is, a court order issued by a judge or magistrate may authorize the use of the device within the jurisdiction of the court and outside that jurisdiction if the device is installed in that jurisdiction. The Department of Justice has interpreted this section to mean that such use is valid outside of the court's jurisdiction both inside and outside the jurisdiction of the United States.

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(1) On Vehicles

(a) A search warrant is not required to install an electronic tracking device on the exterior of a motor vehicle in a public place, and the device may be used to monitor the vehicle's travel over public roads. A person traveling in an automobile on public highways has no reasonable expectation of privacy in his/her movements from one place to another. Since no search or seizure is involved in the use of this technique, no quantum of proof is necessary to justify its use. Likewise, a search warrant is not needed to continue to monitor the device after the vehicle enters a private area, so long as the auto may be visually observed from adjoining premises. If the vehicle enters a private garage or hidden private compound, a search warrant should be obtained if monitoring is to continue.

(b) The same general rule has usually been applied to the use of tracking devices on aircraft.

(2) Other Personal Property

(a) Electronic tracking devices often are placed in various types of personal property and then used to monitor the location of the suspect and the property.

(b) Placement of an electronic tracking device inside personal property lawfully accessible to the Government is not a search under the Fourth Amendment. Likewise, monitoring the device while the property is in a public place, or open to visual observation, even though it is on private property, is not a search. However, monitoring the device once it has been taken into private premises not open to visual observation is a Fourth Amendment search which, in the absence of an emergency, requires a search warrant. It is not generally possible at the time of installation of an electronic tracking device to anticipate the route and the destination of the property into which it has been placed; and there exists a risk in any case that monitoring the device while it is located inside private premises will become necessary. Therefore, a search warrant should be acquired prior to the installation and monitoring of the device, unless an emergency exists which renders such acquisition impracticable. The application for the warrant should set forth (1) a description of the object into which the device is to be placed, (2) the circumstances justifying its use, and (3) the length of time for which the surveillance is requested. Because of the variety of situations in which electronic tracking devices may be employed and the need to maintain proper controls over their use, SAC authorization, with documented concurrence of the PLA and the AUSA, is required before such a device is utilized.

EFFECTIVE: 02/27/95

10-10.9 Closed Circuit Television (CCTV) (Video Only) - Criminal Matters (See MIOG, Part I, 9-7.2; II, 10-9.10(7), 10-10.1 (5).)

(1) Department of Justice (DOJ) regulations require that PRIOR AUTHORIZATION be obtained for all CCTV surveillances for law enforcement purposes. The level of such authorization will vary with the circumstances under which this technique will be employed.

(2) Authorization for the use of CCTV does not automatically convey authorization for the use of any other technique

(e.g., audio monitoring), either by itself or in conjunction with the use of this technique. The use of such additional techniques must be specifically requested at the proper level of authorization; must meet all requirements as set forth in this manual regarding the use of that technique; and must be specifically authorized prior to its use.

(3) A separate control file for CCTV matters should be established in each field office and appropriate documents relative to instructional material, authorization, and utilization of this technique should be retained. This control file will be for the purpose of the SAC's administrative control and for review during inspection.

EFFECTIVE: 05/08/95

10-10.9.1 CCTV Authorization - Criminal Matters (See MIOG, Part I, 9-7.2.)

It should be noted the use of HAND-HELD VIDEO RECORDERS is NOT to be confused with CCTV surveillance wherein the camera is placed in a remote location and generally concealed from view.

(1) For CCTV surveillance of events transpiring in public places, or places to which the public has general unrestricted access, and where the camera can be placed in a public area, or in an area to which the surveillance Agents have nontrespassory, lawful access, delegated FBI officials may independently authorize CCTV surveillance without the need to notify the DOJ either before or after the surveillance.

(2) All CCTV monitoring requires the approval of the SAC, following mandatory legal review and concurrence of the Chief Division Counsel (CDC). The SAC may authorize the use of CCTV for the duration of the investigation under the following circumstances:

(a) the CCTV camera is located in a public area or in a location under the exclusive possession and control of the FBI AND the area to be viewed is an exterior public area or an interior common area absent a reasonable expectation of privacy. Some examples are: (1) the CCTV camera is in a public area AND the area to be viewed is a public street or an exterior door; and (2) the CCTV camera is [redacted] AND the area to be viewed is a public hallway in a building or the

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lobby of an apartment building, motel, bank or the like. The CDC should be consulted in all cases involving the nonconsensual monitoring of interior common areas to determine whether any circumstances exist which create an expectation of privacy.

(b) the CCTV camera is located on private premises, but no trespassory entry is required to install the equipment because consent to install has been obtained from a person with a possessory interest in the premises AND the area to be viewed is an exterior public area or an interior common area lacking an expectation of privacy; and

(c) in situations where there is nontrespassory or consensual placement of the CCTV camera and the area to be viewed is the interior of private premises or other areas where a reasonable expectation of privacy otherwise exists AND consent has been obtained from a participant in the activity to be viewed.

In cases which present sensitive or unusual circumstances the concurrence of the United States Attorney's Office (USAO) should also be obtained. (The opinion of the USAO, if required, shall be confirmed or obtained in writing.)

Before conducting CCTV surveillance outside of the division from which authorization is obtained, Agents must coordinate with and obtain concurrence from the SAC of each division where monitoring will occur. Such concurrence must be documented in writing by the office of origin if not documented by the lead office in the EC forwarding the recordings to the requesting office.

SAC authority to approve CCTV surveillance may not be redelegated. In the SAC's absence, however, individuals designated as "Acting SAC" may exercise the SAC's authority to approve CCTV surveillance under the above circumstances.

(3) Documentation of the above details, brief background concerning the investigation, and the authorization of the SAC must be set forth in the field office ELSUR Administrative Subfile to the substantive case file, with a copy designated for the field office CCTV control file. Form FD-677 (Documentation of SAC Authority for Closed Circuit Television (CCTV) Usage-Video Only) will be used for this purpose. In those cases involving sensitive or unusual questions or circumstances, the substantive desk at FBIHQ is to be notified.

(4) Video Surveillance where there is a Reasonable Expectation of Privacy. A court order is required for the use of CCTV

in ALL situations where a reasonable expectation of privacy exists either in the place where the camera is to be installed, or in the place to be viewed, and appropriate consent has not been obtained. If judicial authorization is required only for the installation of the camera (e.g., because the surveillance is of a public area or place where the public has unrestricted access, or because consent has been obtained from a participant in the activity to be viewed), prior DOJ approval is not required.

In ALL situations where there is a reasonable expectation of privacy in the area to be viewed and no consent has been granted, a court order and prior DOJ approval is required. CDC review and SAC approval of the CCTV affidavit and the concurrence of the respective AUSA or DOJ prosecutor is required prior to requesting DOJ approval. The application and order should be based on an affidavit that establishes probable cause to believe that evidence of a federal crime will be obtained through the surveillance, and should include:

(a) a particularized description of the premises to be surveilled;

(b) the names of the persons expected to be viewed, if known;

(c) a statement of the steps to be taken to ensure that the surveillance will be minimized to effectuate only the purposes for which the order is to be issued;

(d) a showing that normal investigative procedures have been tried and found wanting, or are too dangerous to employ; and

(e) a statement of the duration of the order, which shall not be longer than is necessary to achieve the objective of the authorization, nor in any event longer than 30 days.

1. When CCTV is to be used IN CONJUNCTION WITH Title III aural surveillance, the affidavit supporting the aural surveillance may, if appropriate, also be used to support the video surveillance order. In such cases, DOJ policy requires a separate application and order prepared by the appropriate United States Attorney for the video surveillance, in addition to the usual application and order for aural surveillance.

2. See Part II, Section 10-9.10 of this manual for guidelines regarding Title III electronic surveillance.

(5) Documentation of Consent

(a) In those situations (i.e., nonpublic areas where a reasonable expectation of privacy exists) requiring the consent of an individual to view and/or video record, by use of CCTV equipment, any activity the consenting party may have, Agents should obtain written consent. This consent should be documented by executing FD-473a (Closed Circuit Television Consent) form whenever possible. However, oral consent will be acceptable in those instances where the consenting party declines to give written consent. When oral consent is obtained, at least two law enforcement officers (one of whom should be an Agent of the FBI) should be present to witness this consent, and the fact that the consenting party has declined to give written consent should be recorded on the FD-473a. This form should then be executed in all respects with the exception of the consenting party's signature.

(b) Form FD-473a should be executed and properly witnessed in all situations requiring consent for use of CCTV equipment, even when the consenting party is an informant, cooperative witness, Special Agent, or any other law enforcement officer. As in any case involving consensual monitoring, it is mandatory that the consenting party be present within the area to be viewed at all times when the CCTV equipment is activated.

(c) Consent should be obtained from both the participant in the activity being viewed and from the person or entity having possessory interest in the location where the equipment is to be placed or mounted, if the two individuals are not the same. Because of a wide variety of circumstances concerning installation of CCTV equipment, the CDC should be consulted in situations where any questions or any unusual circumstances arise.

(6) A substantial modification in either the location where the CCTV camera is to be placed or in the area to be subjected to CCTV surveillance, or a change in the primary subject(s) of the investigation, the anticipated target(s) of the CCTV surveillance, or the consenting party(s) will require separate authorization.

(7) All offices should ensure appropriate administrative controls are established.

EFFECTIVE: 09/17/97

10-10.9.2 CCTV - ELSUR Records - Criminal Matters

The use of nonaural CCTV (video only) in conjunction with a criminal investigation as outlined above does not constitute an "intercept" as defined in Title 18, USC, Section 2510, and, therefore, is technically not an electronic surveillance. As such:

(1) Absent other types of coverage, ELSUR cards relating to nonaural CCTV coverage are not to be prepared;

(2) Absent other types of coverage, a check mark should not be placed on the ELSUR line on case file covers and the file cover shall not be stamped "ELSUR."

(This situation does not apply to national security matters, as terminology defined by the Foreign Intelligence Surveillance Act of 1978 is different from that defined in Title III.)

EFFECTIVE: 12/10/93

10-10.9.3 CCTV (Audio and Video) - ELSUR Indexing - Criminal Matters

(1) CCTV to be used with the consent of a participant in conjunction with audio monitoring equipment may be handled in the same manner and in the same communication as a request for the consensual monitoring of nontelephone communications. See Part II, 10-10.3 of this manual entitled "Monitoring Nontelephone Communications in Criminal Matters," for procedures attendant to nontelephonic consensual monitoring usage.)

(2) For ELSUR indexing purposes, a microphone surveillance (MISUR) being used in conjunction with a CCTV surveillance will be treated as a MISUR.

(3) See Part II, 10-9.12, of this manual for ELSUR indexing requirements, procedures, and specific examples of principal, proprietary interest, and intercept records in Title III matters. In consensual monitoring matters, refer to Part II, 10-10.5, of this manual for indexing requirements, procedures, and specific

examples of intercept records.

EFFECTIVE: 05/08/95

10-10.9.4 CCTV - Preservation of the Original Tape Recording

As with all original tape recordings, original CCTV recordings will be properly identified; duplicated, if necessary; placed in an FD-504 (Chain of Custody - Original Tape Recording) envelope; exhibited in the file; and otherwise maintained in accordance with standard instructions dealing with the handling of original tape recordings and the preservation of evidence.

EFFECTIVE: 09/22/87

10-10.10 Tape Recorders

(1) Heavy-duty plant-type recorders and portable single carrying case-type recorders, are usually utilized in court-authorized technical surveillance under Title III or the Foreign Intelligence Surveillance Act. (See Part II, 16-7.3.4, of this manual relative to loan of this equipment to other law enforcement agencies.) Smaller handheld cassette tape recorders and concealable tape recorders are usually used for consensual monitoring. In either case the necessary authorization outlined in this manual must be obtained prior to their use for these purposes.

(2) Use of tape recorders for the purpose of overt recording of the statements of witnesses, suspects, and subjects is permissible on a limited, highly selective basis only when authorized by the SAC. To ensure the voluntariness of a statement electronically recorded, the following conditions are to be adhered to:

(a) the recording equipment must be in plain view of the interviewee;

(b) consent of the interviewee to the recording must be obtained and clearly indicated on the tape;

(c) the questioning must be carefully prepared so that the tone of voice and wording of the questions do not intimidate

or coerce; and

(d) recording tapes must not be edited or altered, and the originals must be sealed (in an FD-504, Chain of Custody - Original Tape Recording Envelope) and stored in such a manner as to ensure the chain of custody.

EFFECTIVE: 09/22/87

10-10.11 Radio Monitoring

EFFECTIVE: 09/22/87

10-10.11.1 [redacted]

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FEDERAL BUREAU OF INVESTIGATION
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1 Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

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Section 552		Section 552a
☐ (b)(1)	☐ (b)(7)(A)	☐ (d)(5)
☑ (b)(2)	☐ (b)(7)(B)	☐ (j)(2)
☐ (b)(3)	☐ (b)(7)(C)	☐ (k)(1)
_____	☐ (b)(7)(D)	☐ (k)(2)
_____	☑ (b)(7)(E)	☐ (k)(3)
_____	☐ (b)(7)(F)	☐ (k)(4)
☐ (b)(4)	☐ (b)(8)	☐ (k)(5)
☐ (b)(5)	☐ (b)(9)	☐ (k)(6)
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ELSUR indexing is required.

EFFECTIVE: 02/14/97

10-10.11.2 Cordless Telephones and Other Types of Radio Monitoring |(See MIOG, Part I, 139-1.1.)|

(1) Effective 10/25/94, with the passage of the Communications Assistance for Law Enforcement Act (CALEA), all cordless telephone conversations, including the radio portion of those conversations, are now accorded privacy protection under Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (Title III), Title 18, USC, Section 2510 ET SEQ. Prior to this legislation, the radio portion of many cordless telephone conversations could be monitored without a Title III or FISA court order. As a result of this amendment to Title III legislation, the monitoring of any cordless telephone conversation is subject to the same legal requirements as the monitoring of cellular telephones and traditional land line telephones. In the absence of consent, all such monitoring requires a Title III or FISA court order. |For information regarding the investigation and use of unauthorized interceptions, see MIOG, Part I, Section 139 "INTERCEPTION OF COMMUNICATIONS" concerning violations of Title 18, USC, Section 2511.|

(2) Certain other radio communications, such as those that are broadcast so as to be readily accessible to the public (AM and FM radio station broadcasts, unencrypted ship-to-shore communications, public safety communications, citizen band amateur and general mobile radio services, and the like) remain unaffected by the CALEA; as before, the interception of such communications does not require a Title III order. See Title 18, USC, Section 2511 (2) (g).

(3) Any additional questions regarding whether a particular device or radio communication is covered by Title III should be directed to the Investigative Law Unit, Office of the

General Counsel, FBIHQ.

EFFECTIVE: 06/03/96

10-10.11.3 Cellular Telephones

Both the wire and radio portions of a cellular telephone conversation are specifically covered by Title III and a Title III court order must be obtained to intercept cellular communications. Noncontent information, such as cellular telephone ESN or MIN, cell site sector information, or other location type information may be considered "a record or other information pertaining to a subscriber" and, therefore, obtained from a telecommunications carrier pursuant to a court order under Title 18, USC, Section 2703(d), or pursuant to a warrant or consent of the subscriber or customer.

(1) Cell Site Simulators: No court order is required to use digital analyzers or cell site simulators (known as "triggerfish") to acquire cell site data (cellular telephone ESN or MIN, or other facility-identifying information) when obtained without involving the telecommunication carrier or other intermediary. However, a pen register or trap and trace order is needed if these devices are used to obtain numbers dialed to or from a cellular telephone (i.e., call processing information). (See MIOG, Part II, 10-10.7 "Pen Registers".)

(2) Access Device Fraud: The use of cellular telephones that are altered, or "cloned," to allow a fraudulent theft of service is now an illegal use of an access device under Title 18, USC, Section 1029(a), "Fraud and related activity in connection with access devices." This section specifically prohibits the use of an altered telecommunications instrument, or a scanning receiver, hardware or software, for purposes of obtaining unauthorized access to telecommunications services and defrauding the carrier. Section 1029 is a Title III predicate offense under Title 18, USC, Section 2516(c). Therefore, it allows the use of a Title III to obtain evidence of access device fraud.

EFFECTIVE: 10/23/95

10-10.12 Approval for the Use of Technical Equipment

Technical equipment shipped to field offices does not constitute authority for its use. In criminal matters, SAC, FBIHQ, or Department of Justice authorization is required prior to the use of certain types of electronic surveillance equipment. For the specific authorization required, in criminal matters refer to the appropriate section of this manual relating to the type of equipment being considered for use. In national security matters refer to the Foreign Counterintelligence Manual.

EFFECTIVE: 10/18/88

10-10.13 Technical Collection of Evidence - Safeguarding Techniques and Procedures

(1) Electronic Surveillance techniques must not be compromised by disclosure in correspondence and during judicial proceedings.

(2) Information regarding technical operations, equipment and techniques must not be divulged during testimony, in FD-302s, in Title III affidavits, or in other correspondence directed outside the FBI during the course of an investigation.

(3) This policy should be brought to the attention of all USAs and Strike Force Attorneys and other interested parties so that prosecutions can be planned without the necessity that the Government's case requires this type of disclosure.

(4) Details concerning the safeguarding of techniques and procedures and the testimony of TTAs can be found in Part II, Section 6 of this manual.

EFFECTIVE: 10/18/88

10-10.14 Review by Technical Advisor (TA)

All correspondence concerning technical matters is to be reviewed by the TA or, in his/her absence, a Technically Trained Agent (TTA) prior to being approved by the SAC or other official acting for SAC. The purpose of this requirement is to ensure that requests for technical matters are cleared through the individual in the office having the most current knowledge of equipment availability, equipment capability, technical procedures, and technical policies. The specific duties of the TTA are set forth in Part II, Section 16-7.2.6 of this manual.

EFFECTIVE: 10/18/88

10-10.15 Training for TTAs

(1) The TA will set minimum training requirements for all TTAs in TA's office and ensure that these minimum requirements are met. The minimum requirements will be different from office to office, but will be designed to provide all TTAs with experience in the provision of all aspects of electronic surveillance support.

(2) The SAC must ensure that a program for achieving minimum requirements is established and complied with consistently. The SAC must ensure that all communications, instructions, and SAC memoranda pertaining to technical work and technical equipment must be read and initialed by all active TTAs.

(a) The SAC will provide sufficient time for the TA to implement a program of instruction and training for active TTAs, investigative personnel, and supervisors.

(b) Additional information regarding Technical Training and the Technical Investigative Program can be found in Part II, Section 16-7 of this manual.

EFFECTIVE: 10/18/88

10-10.16 [redacted]

(1) [redacted]

(2) [redacted]

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(4) Expert witnesses are available from the Technical Services Division, FBIHQ, for tape analysis and court testimony regarding authenticity relating to editing and other associated matters. These normally become points of question at pretrial hearings. It is a well-established fact that tape recordings and other technically collected evidence are admissible in court. On the basis of current case law, the Government can introduce tapes solely on the testimony of the Agent(s) who monitors and records the intercept (assuming the Agent can identify the voice(s) and testify to the authenticity of the tape). [redacted]

Normally, the Agent who signs the application for a court-ordered intercept will be called as a witness at a suppression hearing. [redacted]

(5) If, in an unusual circumstance, the Government's case mandates a disclosure of FBI technical operations, equipment or technique, the problem should be first brought to the attention of the Principal Legal Advisor who will determine the disclosure and the reasons. Alternatives to disclosure will be sought and if no

resolution is possible which would protect FBI technical concerns, then notification should be made to FBIHQ, Engineering Section, Technical Services Division, so a final decision can be made in conjunction with the appropriate FBIHQ investigative divisions.

(6) Further details as to [redacted] b2 b7E

EFFECTIVE: 01/22/90

10-10.17 Trap/Trace Procedures (See MIOG, Part I, 9-7(7), 91-11.3.2(1), & 192-14(1).)

(1) American Telephone and Telegraph (AT&T), other long line carriers and local operating telephone companies have the capability to identify a telephone number that is calling another specific telephone number through the use of trap and trace devices and procedures. This technique is an internal telephone company operation that can be successfully effected in certain limited circumstances.

(2) The Electronic Communications Privacy Act of 1986 (Act), as amended, regulates the use of this technique (Title 18, USC, Sections 3121-3127). The Act codifies existing Department of Justice (DOJ) policy of obtaining a court order to authorize the installation of a trap/trace device and sets forth the procedure for seeking such an order. It is not necessary to obtain a court order when the telephone user consents to the installation of a trap/trace device.

(3) DOJ and the FBI have reached agreements with AT&T and local telephone companies to follow certain guidelines in applying for and effecting the trap/trace technique. Investigative personnel requiring the use of this sensitive investigative technique should contact the field office Technical Advisor (TA) or a Technically Trained Agent (TTA) for information. Local trap/trace activity will be coordinated by the TTAs in the field office. (See Part II, 16-7.2.6(18) of this manual.)

(4) Supervisory personnel are to ensure that the use of a trap and trace is not substituted for other logical investigative measures. The case Agent should submit a memorandum or other appropriate communication, initialed by the supervisor, to the case file and to the trap and trace control file setting forth the reasons

for use of the technique and documenting the factual basis for certification to the court that the information likely to be obtained is relevant to an ongoing investigation, or in cases where the legal justification is based upon consent, documenting the consent of the user to the installation. If the United States Attorney or Strike Force Chief requires a written request specifying the factual basis for certification, copies of the letter may be designated to the above-indicated files in lieu of a separate memorandum.

The Chief Division Counsel should be consulted if there is any question as to the sufficiency of facts stated or whether the existing facts are stated in a manner which would justify the certification made in the application for the order. A copy of each order obtained must be filed in the trap and trace control file.

|(5)| The Act also requires the Attorney General to make an annual report to Congress on the number of trap/trace orders applied for by law enforcement agencies of the Department. DOJ has advised the FBI by memorandum of this requirement and has requested quarterly reports on court-ordered trap/trace usage.

|(6)| The use of court-ordered trap/trace techniques must be reported by airtel to FBIHQ, Attention: Operational Support Unit, Information Resources Division, within five workdays after the expiration date of each original or renewal order. To satisfy DOJ data requirements, and standardize and simplify field reporting, the form airtel captioned "Pen Register/Trap and Trace Usage" FD-712 must be used.

|(7)| These reporting requirements do not apply to trap/trace usage effected under the provisions of the Foreign Intelligence Surveillance Act.

|(8)| American Telephone and Telegraph (AT&T) and other carriers bill the FBI for costs associated with the installation of trap and trace devices and/or the utilization of trap and trace procedures. The cost of this technique varies considerably. The actual cost depends on the number of telephone company offices involved.

(a) Payment of these expenses follows the same guidelines as other areas of confidential expenditures, with SAC having authority to approve up to $20,000 per case each fiscal year. Any requests over $20,000 should be directed to FBIHQ, Attention: Operational Support Section, Criminal Investigative Division.

(b) Upon receipt of the monthly invoice/statement from AT&T, or other telecommunications carrier, FBIHQ conducts a preliminary review of all services that were provided and completed since the last billing period.

(c) Once the preliminary review is completed, a copy of the approved invoice/statement is forwarded with blank Form 6-153 to the appropriate field division which requested the service.

(d) Form 6-153 should be completed by the field division and returned to FBIHQ, Attention: Operational Support Section, Criminal Investigative Division.

EFFECTIVE: 02/14/97

10-10.17.1 Emergency Provisions

If an emergency situation exists wherein time does not permit the obtaining of a court order for a trap and trace, any Deputy Assistant Attorney General or higher DOJ official may authorize the installation and use of trap and trace procedures prior to obtaining a court order. However, the specific provisions of Title 18, USC, Section 3125, must be satisfied. These provisions state:

(1) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer, specially designated by the Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General, or by the principal prosecuting attorney of any state or subdivision thereof acting pursuant to a statute of that state, who reasonably determines that -

(a) an emergency situation exists that involves-

1. immediate danger of death or serious bodily injury to any person; or

2. conspiratorial activities characteristic of organized crime, that requires the installation and use of a pen register or a trap and trace device before an order authorizing such installation and use can, with due diligence, be obtained, and

(b) there are grounds upon which an order could be entered under this chapter to authorize such installation and use may have installed and use a pen register or trap and trace device if, within 48 hours after the installation has occurred, or begins to occur, an order approving the installation or use is issued in accordance with Section 3123 of this title.

(2) In the absence of an authorizing order, such use shall immediately terminate when the information sought is obtained, when the application for the order is denied or when 48 hours have lapsed since the installation of the pen register or trap and trace device, whichever is earlier.

(3) The knowing installation or use by any investigative or law enforcement officer of a pen register or trap and trace device pursuant to (1) above without application for the authorizing order within 48 hours of the installation shall constitute a violation of this chapter.

In essence, the "emergency" trap and trace provision mirrors the "emergency Title III" provision found in Title 18, USC, Section 2518(7). However, there are several differences. First, the number of statutorily designated DOJ officials who may approve emergency use of trap and trace devices in Federal investigations is broadened to include "any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General." Second, unlike Section 2518(7), the emergency trap and trace statute does not include emergency situations involving "conspiratorial activities threatening the national security interest." In those rare situations where an "emergency" trap and trace would be required for use in situations threatening the national security, consideration should be given: (a) to utilizing the emergency provisions of the Foreign Intelligence Surveillance Act of 1978 (FISA), which regulates pen register/trap and trace devices as well as electronic surveillance interceptions in national security investigations, which include criminal espionage cases; or (b) to emphasizing that the situation, although threatening the national security, either involves an immediate danger of death or serious physical injury to any person or that the situation concerns conspiratorial activities characteristic of organized crime (e.g., a terrorist group's plan to bomb a building). Of course, if investigative or law enforcement officers are dealing with the telephone subscriber or customer (user), the customer's consent, as is indicated in Section 3121(b)(3), is sufficient, and a court order need not be obtained. Use Form FD-472 to document consent.

EFFECTIVE: 03/23/92

10-11 FBI UNDERCOVER ACTIVITIES - CRIMINAL MATTERS (SEE MIOG, PART II, 10-14.1.5.)

(NOTE: FBI UNDERCOVER ACTIVITIES - FCI MATTERS, SEE FCI MANUAL.)

The undercover technique is one of the most effective and successful investigative tools the Federal Bureau of Investigation has to investigate crime. As such, it should be protected and used wisely. The conduct of undercover operations (UCOs) is governed by the Attorney General's Guidelines (AGG) on FBI Undercover Operations which were initially approved in 1980 and revised 11/13/92. The FIELD GUIDE FOR UNDERCOVER AND SENSITIVE OPERATIONS which sets forth FBI policies and procedures concerning the conduct of UCOs has been disseminated to the field. The field office undercover coordinator (UCC) and the Undercover and Sensitive Operations Unit (USOU), Criminal Investigative Division, FBI Headquarters, should be consulted regarding specific questions relating to UCOs.

EFFECTIVE: 12/07/93

10-11.1 Deleted

EFFECTIVE: 10/18/93

10-11.2 Deleted

EFFECTIVE: 10/18/93

| 10-11.3 |Deleted|

EFFECTIVE: 10/18/93

| 10-11.4 |Deleted|

EFFECTIVE: 10/18/93

| 10-11.5 |Deleted|

EFFECTIVE: 10/18/93

| 10-11.6 |Deleted|

EFFECTIVE: 08/28/91

10-11.7 |Deleted|

EFFECTIVE: 08/28/91

| 10-11.8 |Moved and Renumbered as 10-16|

EFFECTIVE: 08/28/91

10-11.9 |Deleted|

EFFECTIVE: 08/28/91

10-12 USE OF HYPNOSIS AS AN INVESTIGATIVE AID

EFFECTIVE: 02/16/89

10-12.1 Approval to Utilize (See MIOG, Part II, 10-3.)

Hypnosis is legally permissible when used as an investigative aid for lead purposes in Bureau cases where witnesses or victims are willing to undergo such an interview. The use of hypnosis should be confined to selective Bureau cases. Upon finding a willing witness or victim, Bureau authority must be obtained from the appropriate Assistant Director|(AD) responsible for either the Criminal Investigative Division (CID) or the National Security Division (NSD), who may delegate this authority to their Section Chief designee.| The Critical Incident Response Group's (CIRG's) Investigative Support Unit (ISU) functions as a technical resource to the field and must receive copies of all communications pertaining to the use of hypnosis. Set forth in your request for authorization the name of the hypnosis expert you intend to use and a brief summary of|the|expert's qualifications. You should consider using a psychiatrist, psychologist, physician, or dentist who is qualified as a hypnotist. Those with forensic training are preferred. If there are no qualified or reliable hypnotists available, the ISU should be contacted to obtain the name of a qualified hypnotist nearest your field division. Upon receipt of Bureau authority, the matter must be thoroughly discussed with the USA or Strike Force Attorney in Charge. Include the fact that the case Agent or the SAC's designee will attend the hypnotic session, and advise whether that person is likely to participate in the hypnotic session. |The use of hypnosis on a witness must have the concurrence of the Assistant United States Attorney (AUSA) in that district, as well as the approval of the AD, CID or NSD, as appropriate, or their substantive Section Chief designee.| You are cautioned that under no circumstances will Bureau personnel

participate in hypnotic interviews in non-Bureau cases.

EFFECTIVE: 03/21/96

10-12.2 Hypnotic Session

(1) It is recommended that written permission to conduct a hypnotic interview be obtained prior to the interview. This permission should include permission of the witness or victim to have the entire hypnosis session audio or video taped or both.

(2) It is important that you either audio or video tape the entire session and any subsequent hypnotic sessions. Video tape, however, is the preferred method of recording these sessions.

(3) When considering the use of hypnosis, one important aspect is the proper prehypnotic explanation of this technique to the witness or victim. Hypnosis is not a product of the power or magic of the hypnotist. The witness or victim is not likely to reveal his or her innermost secrets or lose control of his or her mind. Further, hypnosis itself is not likely to produce any physical or psychological damage to the person hypnotized.

(4) You must also bear in mind that the use of the information obtained through hypnosis cannot be assumed to be necessarily accurate. Careful investigation is needed to verify the accuracy of information obtained during these sessions.

EFFECTIVE: 02/16/89

10-12.3 Role of Case Agent in Hypnotic Session

The case Agent will act as liaison with the hypnotist and will attend the hypnotic session. If the case Agent cannot attend, an SAC-approved designee will handle the duties of the case Agent. It must be clearly understood that the hypnotist is charged with the responsibilities of conducting and supervising the hypnotic session, and must remain physically present throughout the proceedings. With the PRIOR CONCURRENCE AND GUIDANCE of the hypnotist, the case Agent may question the witness or victim under

hypnosis, but will not conduct the hypnotic induction or terminate the hypnotic state. The request for authorization to utilize hypnosis will include the name of the case Agent or designee who is acting as liaison.

The number of persons actually present at the hypnotic session should be held to a minimum.

EFFECTIVE: 07/17/95

10-12.4 Hypnosis Evaluation

In order to evaluate the efficacy of this technique, a detailed summary describing the results of the hypnotic interview must be forwarded to the Bureau with a copy to the Critical Incident Response Group's (CIRG's) Investigative Support Unit (ISU). This summary should specifically include the following items:

(1) The identification of any significant investigative information obtained through the utilization of this technique.

(2) Total number of hypnosis sessions to include the length of each session.

(3) The hypnotic technique utilized to include the manner of recording the interview.

(4) The identity of the case Agent or SAC designee and the hypnotist.

(5) Disposition of the case.

EFFECTIVE: 07/17/95

10-13 VISUAL INVESTIGATIVE ANALYSIS (VIA)

The Visual Investigative Analysis Unit's primary objective is to assist the investigator by graphic analyses of all information and physical evidence (toll records, pen register records, financial records, etc.) related to significant and complex investigations. The VIA Unit utilizes an information management data base to achieve this objective. The data base allows for data retrieval by chronology and/or subject matter. The analytical models derived from this data base include VIA Networking, Link Analysis and Matrix Analysis.

(1) VIA Networking is a case management technique which assists in the planning, coordinating, controlling and analyses of complex investigations. It displays chronological relationships among known and alleged activities related to a crime and the dependent relationship of investigation to those activities. Link Analysis graphically displays individual and organizational relationships among all entities identified during the investigation. It demonstrates these relationships by utilizing various types of lines to illustrate the strength of the relationships, and geometric figures to differentiate persons, places, assets, organizations and other aspects of the investigation. Matrix Analysis, a complementary technique, summarizes factors related to a series of crimes to identify similarities. The analytical models reconstruct the crime and related investigation, and demonstrate the complicity of suspects/subjects. They are supported by written reports that contain observations of the analyst, based on the analysis of available information. The results of the VIA process provide investigative and prosecutive personnel with a basis for developing future investigative and prosecutive strategy.

(2) Should a field office desire Investigative Support Information System (ISIS) support and anticipate using VIA, the VIA assistance should be requested at the same time as the ISIS support. This will allow ISIS and VIA personnel to structure the ISIS data base to make it compatible with the VIA application.

(3) Since the primary objective of VIA is to assist the investigation, requests for VIA assistance should be sent to the VIA Unit, Criminal Investigative Division, as early as possible during the investigation and should include a synopsis of the investigation.

EFFECTIVE: 11/20/90

10-14 ADVANCE FUNDING FOR INVESTIGATIVE PURPOSES (See MAOP, Part II, 6-11, 6-12, & 6-12.3(3).)

(1) Appropriated funds are available directly from FBIHQ for investigative purposes in situations where the expenditure is of a confidential nature. An advance of funds may be requested to fund confidential case expenditures which cannot be readily supported from the field office draft system. Such expenses include the purchase of evidence such as drugs, payments to cooperating witnesses, and other large nonrecurring items. Advance of funds shall be used to fund all Group I Undercover Operations. NOTE: Group I Undercover Operation advances MAY NOT be used to fund drug purchases or cooperating witness/criminal informant expenses. Field offices may also request an advance of funds for Foreign Counterintelligence Undercover Operations, Special Operations Groups, Off Premise Sites, Special Surveillance Groups, and Show and Buy-Bust requirements.

(2) Once an advance of funds has been received from FBIHQ to fund an investigation, SAC authority to spend funds from the draft system is rescinded. The draft system may no longer be used until all advances have been liquidated or returned and appropriate authority to use the draft system has been obtained.

EFFECTIVE: 12/07/93

10-14.1 Types of Advance Funding Authority

Funds may be requested for the following investigative purposes:

EFFECTIVE: 11/23/87

10-14.1.1 Case Authority

(1) The SAC has authorization to spend up to $20,000 per fiscal year for confidential expenditures incurred in connection with any single investigative matter, including Group II Undercover Operations (see paragraph (3) below). SAC authority in the amount of $20,000 is automatically renewed for each case at the beginning of each succeeding fiscal year, unless advised to the contrary by FBIHQ. If expenditures are projected to exceed SAC authority of $20,000 during the fiscal year, a request for additional authority must be sent to the appropriate substantive program manager at FBIHQ to request ADDITIONAL AUTHORITY for the amount of expenditures that are anticipated for the remainder of the fiscal year. Each request must include:

(a) That additional case authority is requested for a specific amount.

(b) Detailed justification to support the request.

(c) Total amount spent to date during the investigation, regardless of the source of funds.

(d) Statement as to the availability of funds in the field office budget. If the balance of available budgeted funds is insufficient to support planned expenditures, the authority request must include a request to reallocate funds from another budget category or a request to supplement the total field office budget.

(e) Adequacy of the draft system to fund request.

(f) A deadline by which FBIHQ must respond.

(g) Wire transfer instructions if expeditious handling is required. Wire transfers less than $25,000 must be justified.

(2) If additional authority is approved, the date upon which the additional authority was granted MUST be noted on each advance or expense request in excess of $20,000.

(3) The SAC may approve nonsensitive undercover operations (Group IIs) with maximum cumulative funding of $40,000 for operational expenses. The SAC may not, however, authorize spending of

more than $20,000 in such matters. As explained above, if expenditures are projected to exceed $20,000 during a fiscal year, a request for additional authority must be made of the substantive program manager at FBIHQ, in conformance with procedures set forth in paragraph (1) above.

EFFECTIVE: 12/07/93

10-14.1.2 Informant Payment Authority (See MIOG, Part II, 10-14.1.3, & MAOP, Part II, 6-11.).

An advance of funds may be requested to pay informants for information provided. Payment is based on the value of the information and is approved on a payment-by-payment basis. The SAC is authorized to approve cumulative payments up to $20,000. Additional payments or individual payments in excess of $20,000 must be approved at FBIHQ. Requests for authority to make a payment or requests for an advance of funds to make a payment should be directed to FBIHQ and should contain the following:

(1) Justification for the payment

(2) Adequacy of the draft system to fund the payment

(3) Justification of the "emergency" if a wire transfer has been requested.

EFFECTIVE: 12/07/93

10-14.1.3 FCI/Terrorist Informant Authority

An advance of funds may be requested for regular monthly payments to FCI/Terrorist informants for information being provided. Authority for such payments can only be granted by FBIHQ. Requests for authority and advances of funds should be set out as described for Informant Payment Authority in 10-14.1.2 above.

EFFECTIVE: 12/07/93

10-14.1.4 Bribe of Public Officials Authority

Advances may be made for bribe payments. Authority to attempt bribes of public officials should be obtained pursuant to policy defined in Part I, 58-6.6(1) and 194-5.6(1) of this manual. Requests for advances of funds should be made to the substantive desk at FBIHQ, and should contain the following information:

(1) Adequacy of the draft system to provide the bribe money

(2) Justification of the "emergency" if a wire transfer is requested.

EFFECTIVE: 12/07/93

10-14.1.5 Undercover Funding Authority (See NFIPM, Part 1, 7-1.11.)

Request for advance funding for FCI, Group I and Group II Undercover Operations should be made to the substantive desk at FBIHQ. Short-term FCI and Group II Undercover Operations may be funded from the draft system. Larger FCI and Group II cases may use advanced funds if the draft system is insufficient to fund the operation. All Group I Undercover Operations are funded from FBIHQ advances. Authority to conduct undercover operations is discussed in Part II, 10-11, of this manual, "FBI UNDERCOVER ACTIVITIES - CRIMINAL MATTERS." Authority to conduct undercover operations in FCI matters is discussed in the NATIONAL FOREIGN INTELLIGENCE PROGRAM MANUAL (NFIPM).

EFFECTIVE: 02/14/97

10-14.1.6 Show and Buy-Bust Money Funding Authority

(1) Show and Buy-Bust money is available on a case-by-case basis to provide financial credibility for an asset/informant, cooperating witness or Undercover Agent or to consummate a proposed illegal transaction in support of a specific investigative case. Use of these funds does NOT constitute an EXPENDITURE of appropriated funds. Such funds are NEVER to be allowed to become evidence or to leave the care, custody or control of the FBI. They are to be returned to FBIHQ when no longer needed by the case for which their use was originally authorized so that they may be subsequently reissued.

(2) Show funds cannot be deposited into a bank or other financial institution without an exemption from the Attorney General. Upon receipt of an exemption, the funds are to be placed in a federally insured financial institution, unless otherwise authorized, to provide credibility to an operation.

(3) The funds may be used in a display of cash to reinforce the role of an Undercover Agent or to consummate a proposed illegal transaction as part of an arrest (Buy-Bust) scenario.

(4) The SAC may approve the use of up to [redacted] for Show purposes or for use in a Buy-Bust situation. The use of more than [redacted] must be approved in advance by FBIHQ. b2,b7E

(5) Requests for Show or Buy-Bust funds must specify:

(a) Justification for the use of the funds and the need for Attorney General exemptions for the use of bank account(s),

(b) That the United States Attorney will not require the funds to be retained as evidence,

(c) That the funds will not be allowed to leave the care, custody or control of the FBI, and

(d) Precautions to be taken to ensure the safety of involved personnel and the security of funds to be used.

(6) Show and Buy-Bust funding requests in amounts of [redacted] or less should be sent directly to the attention of the Confidential Services Unit, Accounting Section, Finance Division, (copy to the FBIHQ substantive desk for information) with the personal approval of the SAC or, in SAC's absence, the ASAC. b2 b7E

(7) All Buy-Bust funding requests and requests for Show money in amounts of more than [redacted] should be directed to the substantive desk at FBIHQ.

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EFFECTIVE: 12/07/93

10-14.1.7 Deleted

EFFECTIVE: 05/25/90

10-14.2 Delivery of Advance

Funds can be made available to the field by Department of the Treasury check or, in the case of an emergency, by wire transfer. All advances of appropriated funds are made to specific cases and cannot be commingled with advances for other cases. All requests must be submitted under the investigative case caption with a complete field office file number. The funds may not be deposited in any bank without an exemption from the Attorney General.

(1) Department of the Treasury Check - Once a request for an advance is approved by the substantive desk it takes three working days for the Accounting Section to obtain a check from the Department of the Treasury. The check, which is payable to the SAC, is then forwarded to the field by airtel. Requests should be made far enough in advance to anticipate time for the approval process, acquisition of the check, and delivery by the U.S. Postal Service.

(2) Wire Transfer - An approved request for an advance by wire transfer received by the Accounting Section by [redacted] will usually be delivered in the field by [redacted] Requests for wire transfers should contain the following information:

b2, b7E

(a) Name and address of receiving bank (must be a Federal Reserve System Member Bank)

(b) Name and title of bank contact

(c) Official Bureau name of the Special Agent who will pick up the funds. (See MIOG, Part I, 58-6.6(1) &

| 194-5.6(1).) |

EFFECTIVE: 12/07/93

10-14.3 Accountability/Vouchering Requirements

When an office requests an advance of funds from FBIHQ the SAC assumes the responsibility for providing adequate resources to safeguard the advance and to account for it in a timely fashion. The field is to verify the outstanding balances of all advances except Show Money as of the last day of each month. The certification will take the form of a Confidential Travel Voucher (SF-1012) and is due at FBIHQ by the tenth day of the following month. A Confidential Travel Voucher is required for each calendar month an advance is outstanding even if no expenditures were made during a given month, because the "no amount" voucher serves to certify the cash balance outstanding at the end of each month.

(1) Physical Responsibility - Funds are advanced to a specific office for use in a specific case. They are tracked by field office file number. The funds advanced for one case or office cannot be utilized by another case or office. The SAC is personally responsible for all advances sent to SAC's division. The advance will remain SAC's responsibility until the funds are returned to FBIHQ or the expenditures of the funds are reported to FBIHQ on a Confidential Travel Voucher with a Blue Slip (FD-37) supported by paid receipts or Agent certifications for each and every expenditure.

(2) Confidential Travel Voucher - All expenditures from advances of appropriated funds are to be vouchered promptly on a Confidential Travel Voucher (SF-1012). Vouchering procedures are described in the CONFIDENTIAL FUNDING GUIDE; however, the following general rules apply:

(a) Expenditures must be vouchered promptly and no less frequently than monthly.

(b) A voucher must be submitted for each calendar month that the advance remains outstanding.

(c) The voucher should represent that calendar month's expenditures.

(d) The amount reported on line 8 (d) "Balance Outstanding" on the SF-1012 must represent the cash on hand on the last day of the calendar month being reported.

(e) For the purpose of certifying the balance of cash on hand, a voucher must be submitted even for months in which no expenditures were made.

(f) Vouchers are due at FBIHQ by the tenth day of the month following the month being reported.

(g) The Confidential Travel Voucher is supported by a Blue Slip (FD-37) and both must be signed by the SAME approving official, either the SAC or ASAC.

(h) The voucher must be supported by original paid invoices (receipts) or signed certifications for each and every expenditure included in the voucher and listed on the itemization of expenditures.

(i) An Itemization of Expenditures (FD-736) and a Voucher Reconciliation (FD-735) must be attached to the voucher.

(3) Return of Funds to FBIHQ - Advances no longer needed for the case for which they were advanced should be sent back to FBIHQ as soon as possible. They can be returned by check or wire transfer.

(a) Return by Check - Outstanding balances of less than $25,000 are to be returned by cashier's check payable to the FBI. The check should be attached to the final voucher listing expenditures for the month in which the outstanding funds are being returned. The returned funds should be described (e.g., "return of direct advance," "return of show money," "submission of interest income," "refund of deposit," etc.) in the Voucher Reconciliation (FD-735) attached to the voucher. Costs incurred in purchasing cashier's checks or money orders must be vouchered as expenditures, not deducted from the amount to be remitted.

(b) Return by Wire Transfer - Outstanding balances of $25,000 or more should be returned to FBIHQ by wire transfer.

1. The funds should be wired from a Federal Reserve System Member Bank through the Treasury Financial Communication System (TFCS) to:

Department of the Treasury - Federal Reserve Bank,

New York City, Treasury Department Code [redacted] b2
for credit to [redacted]

2. The bank should also be instructed to include in the third party information section of the TFCS funds transfer message format, a description of the return in the following format:

Field office abbreviation and field office file number, name of the remitting Agent and the statement, "Return of outstanding balance of advanced funds." (e.g., "BS 183G-1224, SA John Smith, Return of outstanding balance of advanced funds.")

NOTE: DO NOT include classified file numbers in the TFCS transfer message format.

|(4)|On the same day the funds are wired, a teletype must be sent to FBIHQ,|Accounting|Section, Attention: Confidential |Services Unit,|confirming the wire transfer and describing the type of funds being returned, i.e., return of a direct advance, show money, interest income, or evidence.

|(5)|The final voucher, listing expenditures for the month in which the outstanding funds are being returned, must be submitted to the Confidential|Services Unit, Accounting|Section. The returned funds should also be described (e.g., return of advanced funds, show money, etc.) on the Voucher Reconciliation (FD-735) attached to the voucher.

EFFECTIVE: 12/07/93

10-14.4 Field Office Centralized Control System for Advance of Funds

As with all advances to field offices, advances for investigative purposes must be reported to and included in the field office centralized control system for advance of funds. This requires that one copy of the Bureau communication confirming an advance of funds be placed in a 66F- control file captioned "Advance of Funds Control File." In addition, a ledger page must be created for each advance received. The ledger will record the amount received, vouchers submitted against the advance, any funds returned, the date of cash counts, and internal audits. Instructions as to the operation

of the centralized control system can be found in the MAOP, Part II, 6-12, "Advance of Funds - Centralized Control System."

EFFECTIVE: 12/07/93

10-15 TRACING OF FIREARMS

Firearms that are recovered during and subsequent to FBI investigations and/or other documentary evidence of firearms, both foreign and domestically manufactured, should be traced through the appropriate district office of the Bureau of Alcohol, Tobacco and Firearms (ATF), when possible and consistent with FBI interests. Furnish the type of firearm, including the manufacturer, model, caliber or gauge, barrel length, overall length, serial number, and name and address of interested U.S. Attorney (USA). If certification is needed for court proceedings, this will be furnished directly to the interested USA by ATF, per Part I, Section 4, if this manual, entitled "Firearms Acts."

EFFECTIVE: 08/28/91

10-16 [redacted]

[redacted]

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b7E

[redacted]

EFFECTIVE: 08/28/91

10-17 FBI INVESTIGATIVE INFORMATION SERVICES DATA BASES FOR USE IN INVESTIGATIONS

(1) The FBI has hundreds of investigative information data base services available to its personnel through the Butte Information Technology Center and the Savannah Information Technology Center (ITC). These investigative information support services are useful in all FBI investigations, especially in locating witnesses and fugitives, identifying personal and corporate asset records, and generating lead information. There are Technical Information Specialists (TIS) on site in both centers, 24 hours a day, seven days a week.

(2) The information available is automated and may vary by state according to how it is collected, stored and retrieved. Requests for services from the ITCs may be submitted telephonically or on the Forms FD-809 or FD-809A. The method of request (phone, fax, or mail) and the assigned precedence dictate the priority of the request. The average response time for routing requests is within two days; for priority requests is within 24 hours; and for immediate requests is within two hours. Immediate requests made by telephone are handled at once and the results returned by telephone within minutes. The TIS analysts provide all the information retrieved to the Agent along with a brief synopsis of that information. Attached to each response returned by the ITCs is a reply form (FD-810) for quality assurance and accomplishments. Please ensure that this reply form is returned to the ITCs.

(3) All field offices have access to and should utilize the "Telephone Application" (on the FBINET), a central repository for telephone subscriber data. The data in the "Telephone Application" should be checked prior to setting leads for telephone-related records.

(4) Field offices should check the ITCs and the FBINET before setting leads to other offices.

(5) The following is a sample of the types of information of data bases currently available through the ITCs:

(a) On-line automated "criss-cross," directory-type information access for information on names of individuals or businesses, telephone numbers and subscriber information, and addresses for a subject or the neighbors of a subject.

(b) CREDIT RECORD HEADER INFORMATION - Credit Record Header information provides SKIP/TRACE, ADDRESS UPDATE, Social Security Account Number (SSAN) information, and other personal or business locator information based on name, social security number, or address information.

(c) ASSET INFORMATION - Information concerning

[redacted] b2 b7E

and news service libraries. Professional licensing information from some states, and deceased SSAN information is also available. Asset information is not available in an automated format for every county in every state.

(d) INFORMATION TO VERIFY SOCIAL SECURITY NUMBERS - Provides information regarding SSANs. A given SSAN can be checked to see if it falls with the range of active account numbers, approximately when it was issued, and from what state.

Information from the Social Security Administration on SSANs that have been reported as deceased, including the name that the SSAN was issued to, the address where the last death benefit was mailed, and the month and year of death.

(e) [redacted] b7D

[redacted] b7D This is a very expensive service and should be used prudently so that we may extend the resource to all divisions.

|(f)| NATIONAL INSURANCE CRIME BUREAU (NICB) - Provides information based on vehicle, fire, property, and casualty insurance claims. Also, information is available on the date and place that a vehicle was manufactured and where the vehicle was first shipped, based on the vehicle identification number. This information is a prerequisite to determine federal jurisdiction for certain offenses such as carjacking. Such information can be obtained in an affidavit form or if necessary, an expert witness from NICB can provide testimony at trial.

|(g)| NCIC/NLETS/CCH - This is the same service available in all field offices and should still be searched routinely in the field office; however, for offline searches, fugitive investigations, and when specifically requested, the ITCs will have the capability to access this information.

|(h)| TECS II - Treasury Enforcement Communications System II provides information collected by U.S. Customs Agents, Treasury Agents, and Immigration and Naturalization Service Agents in the course of their investigations. This information can be searched by name and by various identification numbers. Border crossings into the United States may also be searched by individual's name and by vehicle license number or aircraft registration number.

|(i)| [redacted]

|(j)| SENTRY - Bureau of Prisons on-line information system. Sentry has information on all inmates incarcerated in federal institutions since 1981. Available information includes admissions, transfers, housing, and work histories.

|(k)| FEDERAL TRADE COMMISSION - TELEMARKETING FRAUD DATABASE - Provides information on complaints received from the National Association of Attorneys General, Telemarketing Fraud Database. This information allows the aggregation and consolidation of complaints nationwide.

EFFECTIVE: 03/13/97

SECTION 11. TECHNIQUES AND MECHANICS OF ARREST

11-1 ARREST TECHNIQUES

EFFECTIVE: 05/10/82

11-1.1 General

(1) It is the responsibility of all SACs to plan arrests carefully and thoroughly. Each arresting operation should be in hands of an experienced Agent on those occasions when there is justifiable reason for SAC not personally participating in arrest.

(2) A person who is being placed under arrest may do one of several things: submit peacefully; attempt to flee; attempt to injure or kill arresting person; commit suicide; effect a rescue by confederates. Arresting party should consist of enough ||Agents/officers,|whenever possible, to cope properly with those or other situations which might arise.

(3) Person arrested should be aware of intention of | arresting Agent to deprive|him/her|of|his/her|liberty by legal authority. It is the duty and responsibility of arresting Agent to | identify|himself/herself|in a clear, audible voice as a Special Agent of the FBI.

(4) Agents in making arrests are expected to be firm, to take proper precautions for their own safety, and to meet force with sufficient force to subdue any opposition.

(5) No definitive policy can be promulgated on firearms use in arrest situations., Good training and experience in arrest situations must be relied on to provide the proper response when confronted with deadly force situations. There are many situations in which Agent personnel may draw their weapons when making an apprehension and without being confronted with existing deadly force. This is a judgment question, which must be evaluated in terms of the individual or individuals to be apprehended, and the circumstances under which the apprehension is being made.

EFFECTIVE: 05/10/82

11-1.2 Initial Approach

(1) The first conversation with a person under arrest is extremely important and will enable such person to judge the ability of the Agent at the time of the arrest. A person under arrest should be made to understand that Agents will demand prompt and absolute obedience. Unnecessary conversation should be avoided. It is the responsibility of the arresting Agent to inform a person under arrest of the charges against him/her. The language used in explaining the charge and offense should not be in greater detail than the language appearing in the body of the warrant. Prisoners have been known to use many ruses in an effort to destroy evidence or to effect an escape following their arrest. Prisoners should not be granted personal privileges immediately following arrest and immediate requests for water, cigarettes, and permission to go to the lavatory before being searched should be denied. If, due to the circumstances, prisoners are to be transported long distances, common sense and good judgment should dictate the personal privileges granted.

(2) In making arrests on the street, the approach should always be made from the side or rear when possible. The person to be arrested should be arrested away from intersections and crowds when possible.

Experienced criminals realize that if it is possible for them to break away from an officer and run into a crowd they may effect an escape successfully. Arresting Agents, when appropriate, should wear their badges in such a manner as to display immediately their authority if challenged either by a police officer or a citizen.

(3) When a person is arrested, he/she should not be permitted to move about, unless authorized by arresting Agents. If it is necessary to obtain clothing for a person under arrest, Agents should inquire as to the location of the clothing so that it may be obtained by an Agent. Such clothing should be carefully searched prior to delivery to the prisoner.

EFFECTIVE: 05/26/89

11-1.3 Search of the Person

EFFECTIVE: 05/26/89

11-1.3.1 Preliminary Search

(1) At the time a person is arrested by Agents or voluntarily comes to an office and information is developed from him/her resulting in his/her arrest, such person must be adequately searched for concealed weapons which could be used for committing suicide or attacking another person. The search should be made, as much as reasonably possible, in a way that will not frustrate such person's cooperation with the Agents. It should be remembered, however, that safety is the primary factor and it takes precedence when the subject is not cooperative. Continuous suitable observation and guarding of such persons, dependent upon the circumstances, should be followed.

(2) Sound judgment should be exercised in compliance with (1) above. It may be inadvisable to make a preliminary search of a prominent citizen at the time of his/her arrest in the presence of his/her employees, customers, or friends unless such person is known to be potentially dangerous. Even under these circumstances, however, |before| transporting such an individual to the nearest U.S. Magistrate, he/she |must still be adequately searched for concealed weapons and Agents may consider the privacy of a nearby office or other available area for this purpose. Under no circumstances should an arrested person ever be transported in a Bureau vehicle without being searched for weapons.|

(3) The SAC, or in |SAC's| absence, the ASAC, shall be immediately notified of the presence in an office of any person under arrest or of the presence of any suspect for whom arrest is contemplated.

(4) Information on the law on search and seizure is contained in the Bureau document, "Search of the Person." |(See also Legal Handbook for Special Agents, Section 5, captioned "Search and Seizure.")|

(5) During the search of an arrested person, caution should be exercised by Agents coming into immediate contact with such individuals. Firearms should be handled in such a manner that will prevent the person under arrest from forcibly gaining possession of

them.

(6) When an Agent and a cooperating law enforcement officer find it necessary to provide a preliminary search of a person, the Agent should be the searcher.

EFFECTIVE: 05/26/89

11-1.3.2 Final Search and Collection of Evidence

(1) A preliminary search, even though believed to be thorough, cannot be relied upon as being adequate. Where possible, a more thorough final search of an arrested person should be conducted as soon as possible. Under existing Bureau instructions, the final search will usually be conducted in a place of local detention. Wherever possible, Agents should assist local authorities making the final search to ensure thoroughness and the securing of any additional evidence the subject may have on|his/her|person. In conducting a final search of an arrested person, possibilities of attempting self-destruction, escape, or concealment of additional weapons and evidence should be considered. To search a person thoroughly, |his/her|clothing should be removed and each article of wearing apparel carefully examined, as well as all portions of|his/her|nude body. Criminals are known to carry two or more concealed weapons and the finding of one firearm or weapon through a preliminary search may not indicate that the person is disarmed.

(2) While searching for weapons, particular attention should be given pencils and fountain pens which may prove to be tear gas weapons. Care should be exercised in handling this type of weapon which is considered dangerous.

(3) Fugitives very often conceal money on their persons in an effort to smuggle it into prisons or penitentiaries for the purpose of using it as bribes. They are oftentimes very ingenious in this respect and unless a careful search is conducted the money may be overlooked. Money has been concealed in belts; belt buckles; fountain pens; other lining of clothing; in the tongues, heels, and under the innersoles of shoes; in bandages; in artificial limbs; in the bottom of metal containers and matchboxes; in the prisoner's mouth; in the crotch; in pocket flaps; in shoulder padding; in concealed pockets; in outer and inner hat bands; sewed in suspenders; in necktie knots; in cap visors; in waistbands; and fastened to the sole of|his/her|feet or under the armpits with adhesive tape. Hacksaw

blades have been concealed in shoe soles, coat lapels, and sewed in the back of a vest.

(4) Any article having thickness should be inspected with suspicion and every square inch of a prisoner's clothing and body should be carefully examined.

(5) Such articles as notebooks, newspaper clippings, and keys may be the source of valuable leads. The prisoner should be required to account for all notations and addresses in notebooks or on other articles and should be questioned as to the use of each key.

(6) Evidence and weapons should be displayed to another Agent immediately upon removing them from a prisoner so that both Agents can testify as to their source. |Care should be exercised in the handling of large sums of money and, when feasible, should be counted in the presence of the arrested person and one other Agent.|

(7) Firearms should not be carelessly unloaded, but the cartridges should be marked and sufficient notations made to enable an Agent to testify as to the exact condition of the gun at the time of its removal.

(8) Serial numbers of firearms obtained in connection with Bureau cases should be searched through the National Crime Information Center (NCIC). Whenever possible, any vehicles, property, currency, securities, traveler's checks, or money orders in possession of an individual arrested in Bureau cases should be searched through NCIC unless the source of the vehicles, property, etc., is known.

(9) Two or more Agents shall conduct the search and a complete descriptive and itemized list in duplicate shall be made of all articles removed from|his/her|person. Erasures or corrections shall be initialed by the prisoner.

EFFECTIVE: 05/26/89

11-1.4 Transportation of Arrested Persons

(1) Transportation of persons under arrest is primarily the responsibility of the U.S. Marshal's office. It will usually be necessary for Agents to transport persons arrested from the place of arrest to the place of local detention. In certain instances, it may be necessary for the arresting Agents to take an arrested person before the nearest U.S. Magistrate. Particularly this is true where the arrest is made in a city or metropolitan area wherein there is located a U.S. Magistrate. When more than one subject is transported in an automobile, it is desirable to place the subjects in the rear seat of the car. With one subject and two or more Agents, one Agent should ride in the rear seat with the subject. This Agent should be seated directly behind the driver. With only one Agent present and one subject, extreme caution should be taken to ensure the subject is securely handcuffed and closely supervised when placed in the vehicle. The use of the subject's or Agent's belt to secure the handcuffs to the person in front or rear and the use of the seat belt are additional methods of controlling the subject. If any delay is anticipated with regard to transportation of the arrested person or |his/her| timely appearance before a U.S. Magistrate, it is the responsibility of the arresting Agents to communicate immediately with the SAC for instructions.

(2) When an arrest is made at a considerable distance from a U.S. Magistrate, the U.S. Marshal's office may be unable promptly to transport such arrested person. Each SAC should have a clear understanding with the U.S. Marshal's offices within the office territory concerning the procedure to be followed in such instances and this procedure should be made known to all Agents assigned to the field office.

(3) Care should be taken in all cases in which confessions and signed statements are obtained to avoid any delay in hearings before U.S. Magistrates which would bring the case within the purview of the McNabb and Mallory decisions.

EFFECTIVE: 05/26/89

11-1.5 Handcuffing

|Agents are fully responsible for the welfare and condition of a person once he/she is placed under arrest, and it is required that all arrested persons be handcuffed with hands behind the back, back to back, and double locked. If circumstances necessitate handcuffing with the hands to the front, then the hands must be back to back, and the cuffs must be belted down and double locked. Agents are reminded that handcuffs and other restraining devices are only temporary controls and Agents must maintain a close guard over subjects at all times until they are released to another authority.|

EFFECTIVE: 05/26/89

11-2 PROCEDURES FOR ARREST

EFFECTIVE: 05/26/89

11-2.1 Arrests and Searches

EFFECTIVE: 05/26/89

11-2.1.1 Types of Arrest Warrants

There are two forms of warrants for the arrest of Federal law violators.

(1) Magistrate's warrant - issued by the USMAGISs|based upon a complaint.|

(2) Bench warrant - issued by the clerk of the U.S. district courts|following the return of an indictment or the filing of an information|on an order of the district judge.

EFFECTIVE: 05/26/89

11-2.1.2 Authority to Serve Arrest Warrants

(1) While U.S. Marshals are authorized to execute all lawful writs, process, or orders issued under the authority of the U.S. Courts, including criminal warrants, Rules 4(a)(1) and 9(c)(1) of the Federal Rules of Criminal Procedure state arrest warrants also may be executed by some other officer authorized by law. FBI Agents are so authorized.

(2) FBI Agents are authorized and should serve all arrest warrants issued in cases over which the FBI has investigative jurisdiction. While every effort should be made to use only FBI Agents in apprehending subjects for whom an arrest warrant has been issued, based on the exigency of the situation the Special Agent in Charge (SAC) may authorize joint arrests with state and local authorities, U.S. Marshals, or other Federal law enforcement agencies (See Part II, Section 21-28 of this manual). Special concern should be given to the utilization, or at least the alerting, of local authorities in instances where it may logically be anticipated that resistance could be forthcoming from the subject(s) or member of the community. Although the time of notification to local authorities concerning arrests made within their jurisdiction by FBI Agents is being left to the discretion of the SACs, concern must be given to the sensitivity of our associates in local law enforcement to know what is transpiring in their jurisdictions and we must respect their responsibility to the people of their communities.

(3) In executing an arrest warrant, which is accomplished with the apprehension/arrest of the subject, the Agent need not have the warrant in his/her possession at the time of arrest. Upon request, however, he/she should show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his/her possession at the time of the arrest, he/she shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. Where time will permit and the successful arrest of subject will in no way be jeopardized, the arresting Agent should have the warrant of arrest in his/her possession in order that the same may be exhibited to the subject upon request.

EFFECTIVE: 05/26/89

11-2.1.3 Summons and Subpoenas

(1) Summonses should not be served by Bureau Agents or Investigative Assistants except upon authority of FBIHQ.

(2) The summons shall be served upon a defendant by delivering a copy to defendant personally, or by leaving it at defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein and by mailing it to the defendant's last known address.

(3) In situations where it would be clearly advantageous to the outcome of the case for Agents and/or Investigative Assistants to serve subpoenas the SACs are authorized to permit Special Agents and/or Investigative Assistants to serve subpoenas. SACs are to follow such matters closely to ensure judicious use is made of this authority.

EFFECTIVE: 05/26/89

11-2.1.4 Arrests Without Warrants

(1) Authority and Notification -

(a) When the facts and exigency of the situation demands, FBI Agents are authorized to make an arrest without a warrant. If time permits, however, every effort should be made to obtain the approval for such arrest from the SAC and USA.

(b) In situations where good judgment would command that FBIHQ be notified of an office's obtaining authorization to arrest an individual without a warrant, such notification must be given. Otherwise, a timely communication to FBIHQ of such arrest will suffice.

(2) Emergency Situations -

(a) Wherever possible prosecution should be authorized and a warrant issued prior to an arrest. In Bureau cases, in emergency situations, an arrest without warrant may be made for any Federal offense committed in the presence of FBI Agents, or for any felony cognizable under the laws of the United States where there are reasonable grounds to believe that the person to be arrested has committed or is committing such felony. Reasonable grounds or

reasonable cause is the same as "probable cause."

(b) Where an arrest has been made without prior authorization of prosecution and without a warrant in emergency situations, the USA or in USA's absence the AUSA must be contacted immediately for authorization of prosecution and arrangements made for the hearing before the nearest USMAGIS without unnecessary delay as provided for under rule 5(a) of the Federal Rules of Criminal Procedure.

(3) Misdemeanors - Arrest without warrant in misdemeanors within the Bureau's investigative jurisdiction may be made only where the offense is actually committed in the presence of the FBI Agents.

(4) Instructions Contrary to Bureau Regulations - Where instructions are received from USA or his assistant for arrest and detention of a Bureau subject in any manner contrary to Bureau rules and regulations, such instructions are not to be complied with in absence of FBIHQ authority. On receipt of such instructions, FBIHQ should be promptly advised.

EFFECTIVE: 05/26/89

11-2.1.5 Forcible Entry

In making an arrest Agents have authority to break outer and inner doors of a dwelling if the entry is made in good faith and with reasonable cause to believe that the person to be arrested is within the premises. But notice must first be given of authority and purpose, with a demand for admission, and a refusal.

EFFECTIVE: 01/31/78

11-2.1.6 Search of the Person (See also Legal Handbook for Special Agents, 5-3.5.)

Officers have an unquestioned right to search the person of one lawfully arrested. Anything found, including all documents and papers, may be taken. "The person" includes a package, bag, or satchel being carried. Searches of body cavities are permissible where (a) the searching Agent has probable cause to believe evidence of a crime is concealed in a body cavity, (b) the search of the cavity is made by trained medical personnel using medically sound procedures, (c) a search warrant or court order is obtained unless consent is given or emergency circumstances exist, and (d) only such force as is necessary and reasonable is used to effect the search.

EFFECTIVE: 06/28/94

11-2.2 Custody of Prisoners

EFFECTIVE: 01/31/78

11-2.2.1 Other Than District of Prosecution

(1) Upon the written request of a Special Agent of the FBI, the marshal is authorized to take custody of a prisoner notwithstanding the fact that the warrant or other court papers are not in his possession and to take the arrested person without unnecessary delay before the nearest available U.S. Magistrate to secure a temporary mittimus pending receipt of the outstanding warrant or other court papers. The written request to the marshal is to be signed by a Special Agent and shall include the name of the person arrested, the Federal charge upon which he is being held, and the district in which the warrant is outstanding. It shall also indicate whether or not directions have been given for the forwarding of the warrant to the arresting marshal.

(2) Form FD-351 may be used to request the marshal to assume custody of a prisoner. Since this form also provides spaces for data concerning details of the process issued, a copy of FD-351 may be sent to the USA and the U.S. Magistrate for information and

necessary action.

(3) If, due to emergency conditions, the marshal is unable to comply with the request of an Agent, the Agent should follow a reasonable course, and if circumstances dictate, handle the necessary transportation or arraignment accordingly.

EFFECTIVE: 01/31/78

11-2.2.2 Property of Prisoner

When a person under arrest is released to the custody of a U.S. Marshal or other law enforcement officer, all property that is to be returned to or accompany such person shall be delivered to the U.S. Marshal or other law enforcement officer in the presence of the person under arrest. An itemized receipt should be obtained. Weapons or property held as possible evidence shall not be released in this manner but shall be disposed of as provided for under existing instructions.

EFFECTIVE: 01/31/78

11-2.2.3 Removal of Prisoner from the Custody of the U.S. Marshal

(1) Removal of prisoner from the U.S. Marshal's custody for interviews when necessary by Agents requires authority of SAC and certification in writing to the U.S. Marshal.

(2) Interviews with prisoners as provided for above should be conducted only when absolutely necessary. Every precaution should be exercised in safeguarding such prisoners interviewed in field offices.

(3) Where prisoners are removed from the custody of the U.S. Marshal under the provisions of this section and transported to some place other than a field office for the purpose of re-enacting the scene of a crime or for the purpose of aiding in the location of a hideout, etc., prior FBIHQ authority is necessary before making a request of the U.S. Marshal's office for the release of the prisoner.

(4) "No agent or employee of the Government or any law enforcement officer shall have the right to remove a prisoner awaiting

trial from the place of detention without an order of the court or permission from the Bureau of Prisons, except that whenever a United States Attorney or an Agent in Charge of a local office of the Federal Bureau of Investigation of the Department of Justice, duly identified, certifies in writing that a prisoner awaiting trial cannot properly or conveniently be interviewed at the place of detention, and that public interest requires a temporary removal therefrom and requests in writing that such prisoner awaiting trial be brought from the place of confinement to the office of the United States Attorney or to the office of the Federal Bureau of Investigation in the same city, such request shall be honored whenever practicable. In such case the prisoner shall be returned to the place of detention within twenty-four hours after his removal therefrom.

"In the case of such absence from the jail, notice thereof on prescribed Form No. D.C. 41d should promptly be sent to the United States Marshal for the judicial district in which the jail is located.

"No sentenced prisoner shall be removed without the approval of the Bureau of Prisons."

(5) There is set forth hereafter form D.C. 41d which should be used as notice to the U.S. Marshal of removal of any Federal prisoner for the purposes mentioned:

REPORT OF TEMPORARY RELEASE OF PRISONER

This is to certify that on_____at _____(Hour) at the request of __ (Name of D.A. or Agent)__ I removed Federal prisoner _____ from _____ at the office of _____ and returned him the same day at _____ in accordance with the provisions of Circular No. 2676-AA.

(U.S. Marshal or Deputy) _____

(Jud. Dist.) _____

EFFECTIVE: 05/10/82

11-2.3 Miscellaneous

EFFECTIVE: 05/10/82

11-2.3.1 Requests of Incarcerated Subjects

In all cases in which a Bureau subject is incarcerated either prior to or after arraignment and plea, if the subject makes known to an Agent during the course of an interview or otherwise ||his/her|desire to be brought before the district court judge or to see a U.S. Marshal, immediate steps should be taken by the Agent to advise the USA or U.S. Marshal of the desires of the subject.

EFFECTIVE: 05/10/82

11-2.3.2 Medical Attention for Bureau Subjects

When any person in Bureau custody complains of sickness or ill health or where such condition is reasonably apparent to Agents present, arrangements should be made to afford such persons medical attention without delay.

EFFECTIVE: 05/10/82

11-2.3.3 Arrest of Foreign Nationals

(1) Within U.S. Territory - In every case in which a foreign national is arrested by the FBI, inform the foreign national that|his/her|consul will be advised of|his/her|arrest unless|he/she| does not wish such notification to be given. If the foreign national does not wish to have|his/her|consul notified, the arresting officer shall also inform|him/her|that if there is a treaty in force between the U.S. and|his/her|country which requires such notification|his/her| consul must be notified regardless of|his/her|wishes and that any necessary notification of|his/her|consul will be made by the USA. In all arrests by the FBI of foreign nationals (including those where the foreign national has stated that|he/she|does not wish|his/her|consul to be notified), the FBI field office shall inform the nearest USA of the arrest and of the arrested person's wishes regarding consular notification.

(2) Outside U.S. Territory - Agents have no jurisdiction in foreign countries. Within limitations border office Agents may, through liaison with cooperative foreign agencies in adjacent countries, arrange for investigations to be conducted. This should be done in a circumspect manner to avoid any allegation of violation of the sovereignty of the foreign country. Agents cannot be present at the scene of arrests by foreign authorities, participate in or be present during searches incidental to such arrests, accompany foreign officials transporting prisoners, or interview such prisoners except at their place of incarceration in the presence of foreign authorities. Where official business requires more than two days in a foreign country, authority must be obtained from FBIHQ.

EFFECTIVE: 05/10/82

11-3 ROADBLOCKS

EFFECTIVE: 05/10/82

11-3.1 General

(1) Several situations may arise which will require that one or more roads be blocked.

(2) Consider utilization of roadblocks in cooperation with local and state law enforcement agencies in cases in which such action appears to be logical.

(3) The SAC should be cognizant of the state and local laws regarding the utilization of roadblocks. Arrangements should be worked out with pertinent local law enforcement agencies for establishment of roadblocks and for transmission to surrounding local and state police.

EFFECTIVE: 05/10/82

11-3.2 Roadblock Methods

There are set forth below several suggestions as to effective means of blocking roads.

(1) To block roads for the purpose of inspecting automobiles. To block persons who may be leaving a particular area most effectively, [redacted] Wooden barricades and stop signs can be utilized in telling the vehicles to travel in one lane. Several cars should be permitted to pass through one direction and then several from the other direction so that the traffic will not be unduly delayed. [redacted]

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(2) [redacted] If the car turns around and attempts to turn back, the Agents in the first car can use their car to block the road.

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(3) In general, the type of barricade used will depend upon the type of highway, the amount of traffic on it, the surrounding terrain, the character of the persons sought, and the time available. [redacted]

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[redacted]

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(4) [redacted]

(5) Whenever a roadblock is established in which any Bureau personnel are physically present and participate, it is fundamental that the Agents be in charge of such operation and they must make sure that the police or any others participating furnish fuel cooperation. Each SAC will be held personally responsible to see that any such roadblock is complete. In planning a roadblock, definite consideration must be given to providing for the safety of the officers participating and innocent citizens who can logically be expected to run into such a roadblock on the public highway.

EFFECTIVE: 05/10/82

11-4 RAIDS

EFFECTIVE: 05/10/82

11-4.1 SAC Responsibility

(1) When a dangerous assignment arises in which the practical application of firearms might be reasonably anticipated, the SAC must personally take charge. SACs must assume leadership in raids or arrests where firearms might be used and in major cases of great importance even though there is no indication that firearms might be employed. Unless emergency conditions prevent prior notification, the SAC or person acting in his absence must be immediately notified when such a situation arises, before action is taken toward apprehension. FBIHQ should be advised by teletype or telephone of the name of the official who will be in charge of the dangerous assignment. If the SAC or ASAC will not be on the spot in charge, sufficient explanation should be outlined which will indicate the reasons for the inability of the above-named official's participation.

(2) If a major case is being investigated involving the hot pursuit of fugitives which requires a concentration of Agents, it is incumbent upon each SAC to arrange for 24-hour coverage in the resident agencies in his territory where the activity is such that it can be expected there will be numerous phone calls and contacts from cooperative citizens and other law enforcement personnel. Where necessary, clerks may be utilized to effect such coverage. No such coverage should be initiated without authority from FBIHQ.

EFFECTIVE: 05/10/82

11-4.2 Elements of a Raid

A raid is an offensive type of operation characterized by the suddenness of its delivery. The purpose of conducting raids is usually to apprehend individuals or search premises. No two raids if planned to best advantage will be conducted exactly the same. However, the following elements will characterize well-planned operations of this type:

(1) Speed.

(2) Surprise.

(3) Simplicity.

(4) Safety of all personnel.

(5) Superiority of manpower and firepower.

EFFECTIVE: 05/10/82

11-4.3 Planning Raids

EFFECTIVE: 05/10/82

11-4.3.1 Raid Commander and Responsibilities

(1) Every raid should be carefully planned in advance to ensure the greatest factor of safety to the residing party and innocent bystanders, and to prevent the escape of the persons sought.

(2) One individual designated as a raid commander should be responsible for planning and conducting of the raid, and it is|his/her|responsibility to see that all members of the raiding party are aware of the parts they are to take in the raid and ||he/she|alone should be charged with the duty of changing plans and issuing orders as the situation may demand.

(3) [redacted]

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(4) [redacted]

(5) [redacted]

EFFECTIVE: 05/10/82

11-4.3.2 Selection and Composition of the Raid Party

[redacted]

(1)

[redacted]

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(2)

[redacted]

EFFECTIVE: 05/10/82

11-4.3.3 Raid Orders

Raid orders are issued by the raid commander who will advise each Agent or officer on the raid of his/her specific duty. He/She will, of course, furnish all of the information available concerning the persons to be apprehended to the members of the raiding party.

EFFECTIVE: 05/10/82

11-4.3.4 Equipment

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EFFECTIVE: 11/26/84

11-4.3.5 Assembly Location

(1) [redacted]

(2) [redacted]

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(3) Since the success of a raid depends upon secrecy and surprise, every effort should be made to avoid having the preraid plans and movement come under the scrutiny of outside persons or organizations not immediately involved or associated with the operation.

EFFECTIVE: 11/26/84

11-4.4 Approach to Raid Site

(1) [redacted]

[redacted]

(2) [redacted]

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EFFECTIVE: 02/20/90

11-4.5 Entering the Place to be Raided

EFFECTIVE: 02/20/90

11-4.5.1 Identification of Raid Party

(1) Raids may begin by a signal from the raid commander to the occupants of the place being raided, advising them of the official identity of the raiding party and requesting their surrender. Sometimes this can be accomplished by a telephone call and in other instances it will be necessary to shout to the occupants of the house from the outside. Many raids of premises, however, are begun by the raid commander, after providing for appropriate outside protection of the premises, approaching the front entrance and demanding entry after making his/her presence and official capacity known.

(2) In any raid the participants should clearly identify themselves as Special Agents of the Federal Bureau of Investigation to all persons in the place being raided and those nearby so that no claim can be made by subjects that they were being hijacked by other gangsters. Identity should be made known verbally by a loud clear statement on the part of the raiding officers that "We are FBI Agents," or "We are Special Agents of the FBI," and by display of badges. Identity of an Agent may not immediately be given under the following circumstances:

(a) [redacted]

(b) [redacted]

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(c) [redacted]

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EFFECTIVE: 02/20/90

11-4.5.2 [redacted]

[redacted]

EFFECTIVE: 02/20/90

11-4.5.3 [redacted]

[redacted]

EFFECTIVE: 05/20/94

11-4.6 The Covering Party

EFFECTIVE: 02/20/90

11-4.6.1 Duties of the Covering Agents

(1) [redacted]

(2) When persons are seen emerging from the house, they should be advised of the raiders' identity and called upon to surrender. If, however, they come out of the house shooting, the covering Agents should immediately return fire.

(3) [redacted]

(4) [redacted]

(5) [redacted]

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EFFECTIVE: 02/20/90

11-4.7 Post Raid Responsibilities

EFFECTIVE: 02/20/90

11-4.7.1 Arrest of Subjects

All persons identified as subjects and subsequently arrested during the course of a raid should be removed from the premises and appropriate security precautions taken to prevent escape or rescue attempts. Subjects are to be properly advised of their rights.

EFFECTIVE: 02/20/90

11-4.7.2 Raid Site Security

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EFFECTIVE: 02/20/90

11-4.7.3 Publicity

All raids should be conducted as discreetly as possible and without resulting in undue publicity. The names of participants in a raid should not be disclosed without prior FBIHQ authority. Should anyone be killed during a raid and inquest by local authorities is necessary, arrangements can usually be made for one or two Agents to testify for the entire raiding party.

EFFECTIVE: 01/22/90

11-4.8 Miscellaneous

While participating in a raid, Agents should be alert to the need for "fire discipline" and exercise caution and good judgment when discharging weapons.

EFFECTIVE: 01/22/90

11-4.9 Photograph of Subjects

Photographs of Bureau subjects should be taken before blank walls with no Bureau equipment, pictures, or other Bureau material showing. The use of identifying numbers or name cards is recommended. The subject's name, description, date photograph taken, office name and case number, and, if known, subject's FBI number should be listed on the reverse side of the photograph. The field office case number must be shown in the "OCA" block on the subject's fingerprint card. Previously, photographs were sent to the Criminal Justice Information Services Division, either separately or attached to the fingerprint card. Photographs are not to be submitted. If a photograph of a Bureau subject is taken, simply check the appropriate block (yes or no) on the back of the fingerprint card indicating whether or not a photograph of the subject is available, and file the photograph in the 1-A section of the field investigative file. Should the Criminal Justice Information Services Division receive a request for the photograph, the requestor will be directed to the appropriate field office. Remember to show the field office investigative file number in the "OCA" block on the fingerprint card as this number will be quoted to agencies desiring the subject's photographs. Juveniles may not be fingerprinted or photographed without the written consent of the court unless the juvenile is prosecuted as an adult. (See Part II, 13-7.1.2 of this manual for further photographing information.)

EFFECTIVE: 04/08/96

11-5 EMERGENCY AND PURSUIT DRIVING

(1) Emergency driving describes the need to move by motor vehicle from one place to another in an expeditious manner in order to respond to exigent circumstances. Pursuit driving refers to the following of a motor vehicle for the purpose of making an apprehension or conducting a surveillance. Both emergency and pursuit driving may require tactics or techniques which increase the risks already inherent in operating a motor vehicle.

(2) FBI vehicles responding to emergency or pursuit

situations will utilize an adequate warning system, such as a siren, flashing light, or other device required by local statutes where use of such equipment will not defeat the FBI's mission. While employing such devices, drivers of Bureau vehicles during an emergency or a pursuit continue to have a duty to drive with due regard for the safety of others.

(3) In the interest of safety, the following factors should be considered prior to initiating maneuvers or speed which could pose a risk of death or serious injury to participants or third parties:

(a) The seriousness of the offense under investigation including whether the suspect has threatened the life or safety of others or poses a risk to the community in the event of escape.

(b) Variables such as the weather, road conditions, performance capabilities of the vehicles involved, and the presence of pedestrians and other traffic.

The above factors should be communicated to the driver's supervisor as soon as it is practical to do so. If, in the judgment of the driver or the supervisor, the potential risks outweigh the benefits to be derived from continued pursuit or emergency response, such pursuit or response should be terminated. The use of a vehicle or roadblock to effectuate a stop can be considered a seizure under the Fourth Amendment and must be conducted in a reasonable manner and in conformity with FBI policy concerning the use of force as set forth in the Legal Handbook for Special Agents, 3-6.4.

EFFECTIVE: 01/22/90

SECTION 12. FIREARMS

12-1 AUTHORIZATION AND RESPONSIBILITY TO CARRY FIREARMS (See MAOP, Part II, 2-1.5 & Legal Attache Manual, 2-18.)

|Special Agents (SAs) of the Federal Bureau of Investigation are authorized|to carry firearms under Title 18, USC, Section 3052.

EFFECTIVE: 04/07/97

12-1.1 SAC Responsibility

SACs are ultimately responsible for the use and maintenance of all firearms and related equipment in their respective divisions. SACs are also responsible for|providing training in firearms to all personnel authorized to carry weapons on official duty.| A Principal Firearms Instructor (PFI) will be assigned by the SAC to manage the|field|firearms|training|program.

EFFECTIVE: 04/07/97

12-1.2 Special Agent (SA) Responsibility (See MAOP, Part I, 1-3.2.)

SAs are directly responsible for|the appropriate use, security|and maintenance of|all|firearms and related equipment under their control.

EFFECTIVE: 04/07/97

12-2 UTILIZATION OF FIREARMS

EFFECTIVE: 05/20/94

12-2.1 Deadly Force - Standards for Decisions (See MIOG, Part II, 30-3.8 (3); MAOP, Part I, 1-4 (4); LHBSA, 3-6.4 & 4-2.5.) (Formerly at 12-2.1.1)

(1) POLICY TEXT:

(a) DEFENSE OF LIFE - Agents may use deadly force only when NECESSARY, that is, when the Agents have probable cause to believe that the subject of such force poses an imminent danger of death or serious physical injury to the Agents or other persons.

(b) FLEEING SUBJECT - Deadly force may be used to prevent the escape of a fleeing subject if there is probable cause to believe:

1. the subject has committed a felony involving the infliction or threatened infliction of serious physical injury or death, and

2. the subject's escape would pose an imminent danger of death or serious physical injury to the Agents or other persons.

(c) VERBAL WARNINGS - IF FEASIBLE, and if to do so would not increase the danger to the Agent or others, a verbal warning to submit to the authority of the Agent shall be given prior to the use of deadly force.

(d) WARNING SHOTS - No warning shots are to be fired by Agents.

(e) VEHICLES - Weapons may not be fired solely to disable moving vehicles. Weapons may be fired at the driver or other occupant of a moving motor vehicle only when the Agents have probable cause to believe that the subject poses an imminent danger of death or serious physical injury to the Agents or others, and the use of

deadly force does not create a danger to the public that outweighs the likely benefits of its use.

(3) DEFINITIONS

(a) Deadly Force: Force that is likely to cause death or serious physical injury.

(b) Necessity: In evaluating the NECESSITY to use deadly force, two factors are relevant: 1) The presence of an IMMINENT DANGER to the Agents or others; and 2) The ABSENCE OF SAFE ALTERNATIVES to the use of deadly force. Deadly force is never permissible under this policy when the sole purpose is to prevent the escape of a suspect.

1. Imminent Danger: "Imminent" does not mean "immediate" or "instantaneous," but that an action is pending. Thus, a subject may pose an imminent danger even if he/she is not at that very moment pointing a weapon at the Agent. For example, imminent danger may exist if Agents have probable cause to believe any of the following:

a. The subject possesses a weapon, or is attempting to gain access to a weapon, under circumstances indicating an intention to use it against the Agents or others; OR,

b. The subject is armed and running to gain the tactical advantage of cover; OR,

c. A subject with the capability of inflicting death or serious physical injury--or otherwise incapacitating Agents--without a deadly weapon, is demonstrating an intention to do so; OR

d. The subject is attempting to escape from the vicinity of a violent confrontation in which he/she inflicted or attempted the infliction of death or serious physical injury.

2. Absence of a safe alternative: Agents are not REQUIRED to use or consider alternatives that increase danger to themselves or to others. If a safe alternative to the use of deadly force is likely to achieve the purpose of averting an imminent danger, deadly force is not necessary. Among the factors affecting the ability of Agents to SAFELY seize a suspect, the following are relevant:

a. RESPONSE TO COMMANDS - Verbal warnings prior to using deadly force are required WHEN FEASIBLE--i.e., when to do so would not significantly increase the danger to Agents or others. While compliance with Agents' commands may make the use of deadly force unnecessary, ignoring such commands may present Agents with no safe option.

b. AVAILABILITY OF COVER - Availability of cover provides a tactical advantage. An armed suspect attempting to gain a position of cover may necessitate the use of deadly force; conversely, an Agent in a position of cover may gain additional time to assess the need to use deadly force without incurring significant additional risks.

c. TIME CONSTRAINTS - The inherent disadvantages posed by the issue of action/reaction, coupled with the lack of a reliable means of causing an instantaneous halt to a threatening action, impose significant constraints on the time-frame in which Agents must assess the nature and imminence of a threat.

(3) APPLICATION OF DEADLY FORCE

(a) When the decision is made to use deadly force, Agents may continue its application until the subject surrenders or no longer poses an imminent danger.

(b) When deadly force is permissible under this policy, attempts to shoot to cause minor injury are unrealistic and can prove dangerous to Agents and others because they are unlikely to achieve the intended purpose of bringing an imminent danger to a timely halt.

(c) Even when deadly force is permissible, Agents should assess whether its use creates a danger to third parties that outweighs the likely benefits of its use.

EFFECTIVE: 04/07/97

12-2.1.1 |Revised and Moved to 12-2.1|

EFFECTIVE: 04/07/97

| 12-2.1.2 |Revised and Moved to 12-2.2|

EFFECTIVE: 04/07/97

| 12-2.1.3 |Revised and Moved to 12-2.3|

EFFECTIVE: 04/07/97

||12-2.2| Carrying of Weapons |(See also MIOG, Part II, 12-6.)
(Formerly 12-2.1.2)|

(1) SAs must be armed|at all times when on official duty with the handgun secured to the Agent's person in an approved holster. Immediate access to the handgun and security are paramount. Briefcases, handbags, etc., are not generally acceptable methods of carrying a firearm. Loss of or damage to a weapon related to nonholster storage or the inability to access a weapon when necessary may result in recommendation for administrative action. [redacted] SAs are authorized to be armed when off-duty.

(2) The SAC or designee is ultimately responsible for assignments where firearms might be used. |The|SAC should be on-scene if possible.

(3) Safety levers should not be engaged on any pistol constructed with a double action first|shot (e.g., Smith & Wesson 459, 659, 3913).| With the exception of single-action pistols|(e.g., Browning Hi-Power),|handguns should not be|holstered|in a cocked mode.

(4) When an SA is moving|with a drawn weapon,|the finger must be off the trigger; double-action weapons should be|decocked; the manual safety should be engaged on single-action weapons. Safety is the paramount consideration. Unless obvious and articulable circumstances dictate otherwise, these safety rules should NOT be violated.|

(5) To preclude unintentional discharges when covering an adversary, double-action weapons should be decocked and|finger off the trigger. Single-action|weapons (including shoulder weapons) should|have the safety engaged and finger off the trigger.|

(6) When SAs are armed, handguns must be fully loaded.

(7) Unless operationally deployed, shoulder weapons should be maintained with|an empty chamber. Prior to entry into areas where potential danger exists, a round should be chambered in all shoulder weapons. The safety should remain engaged until the circumstances require placing the weapon in the "fire" mode.|

|(8)| SAs must be familiar with and currently qualified with all firearms and equipment they carry.

|(9)| When possible, emphasis must be placed on planning arrests to ensure superiority of manpower and firepower to exert maximum pressure on the individual(s) being|sought, thereby reducing the|opportunity|for a subject to|resist or flee.

|(10)| SAs may draw their weapons without being confronted with a deadly force situation. Proper training,|good judgment|and experience in arrest situations must be relied upon to provide the proper response when confronted with|potential|deadly force situations.

|(11)| SAs should avoid|unreasonable|display of weapons in public.

|(12)| Accidental or unintentional discharge of a weapon is extremely dangerous to the public and to FBI personnel. |Avoid unnecessary handling of weapons and never dry fire weapons unless on a range or other safe, suitable area.| ANY unintentional discharge must be reported to FBIHQ using FD-418.

|(13)| Specialized weapons, i.e., M16,|MP5,|gas delivery systems, etc., must only be deployed by SAs trained and currently qualified in their use.

EFFECTIVE: 04/07/97

|12-2.3| Firearms Aboard Aircraft (See MIOG, Part I, 164-15 (4).)
|(Formerly 12-12.1.3)|

(1) Title 49, USC, |Chapter 465, |Section 46505, generally forbids carrying firearms aboard aircraft. |FBI Special Agents |are exempt from this prohibition.

(2) FAA Federal Air Regulation 108.11 (a) (Title 14, CFR, Section 108.11) recognizes the authority of FBI SAs to carry firearms aboard aircraft at all times.

|(3)| The FBI has exclusive jurisdiction over the Aircraft Piracy Statute, Interference with Flight Crew and certain crimes aboard aircraft.

|(4)| FBI SAs |MUST| carry a firearm ON THEIR PERSON aboard any commercial domestic flight when on official business, unless operational considerations dictate otherwise. |Firearms may NOT be carried in a purse, briefcase or carry-on luggage. Under no circumstances should an Agent surrender their weapon to airline personnel.|

(5) |Agents are encouraged, but not required, to carry their firearm when traveling aboard a commercial airline when traveling within the United States for reasons other than official duty. If carried, the firearm MUST remain on the Agent's person.

(6) FBI SAs must complete the appropriate airline forms for traveling while armed and comply with airline and airport procedures.

(7) FBI SAs are prohibited from consuming alcoholic beverages while traveling armed on aircraft or within eight hours of travel.

(8)| SAs must avoid unnecessary display of |firearms while| traveling by aircraft.

|(9) The aforementioned FAA Regulations apply to U.S. flag

carriers operating between points within the United States and its Territories. When official duty involves travel through or to a foreign country, the traveling Agent must determine beforehand the laws of the country being visited or transited regarding firearms, and prior approval to carry a firearm in that country must be obtained.

(10) If operational or travel considerations do not permit the carrying of a firearm, firearms may be placed in checked baggage for retrieval at the destination. Firearms placed in checked baggage must be unloaded and secured in a hard side, locked case. The weapon must be declared to the ticket agent at the time of check-in and the airline "firearm" tag placed INSIDE the locked suitcase.

EFFECTIVE: 04/07/97

12-3 ISSUED WEAPONS

(1) FBI SAs are authorized to carry and utilize only issued or Bureau-approved personally owned weapons (POWs) regardless of on- or off-duty status.

(2) Any firearm, regardless of Bureau-issued or personally owned status is referred to as ASSIGNED PROPERTY.

(3) Firearms can only be carried by those Bureau employees who are (1) authorized to use firearms in connection with their official duties and (2) are currently qualified.

(4) All Bureau handguns should be sighted in for accuracy during firearms sessions [redacted] b2 b7E

(5) Any changes or alterations to any assigned weapon must be authorized by the Firearms Training Unit and must be accomplished by the FBI Gun Vault at Quantico. Exceptions to this requirement must be requested in writing and approved by the Gun Vault.

EFFECTIVE: 04/07/97

12-3.1 Distribution of Firearms

|Each field office should maintain an adequate number of handguns and shoulder-fired weapons available for issue as needed.|

(1) Handguns -

(a) SAs are|issued a handgun and associated holster and ammunition or magazine pouches while attending New Agents Training. This weapon will generally remain assigned to the Agent throughout his/her career. Exceptions may result due to loss or damage of the weapon or replacement of the weapon at the direction of the Firearms Training Unit (FTU).

(b) Handguns are intended for general self-defense and should not be|exclusively|relied upon for|planned|offensive |operations such as the execution of search warrants or arrests where shoulder-fired weapons may be more appropriate.|

(c) |Small-framed handguns (i.e., Smith and Wesson revolver Models 36, 49, 60; Glock 26 and 27 pistols, etc.) are most useful when concealability is important and should not be considered as a primary firearm in most situations.|

(2) Shotguns

|Shotguns should be issued on an extended basis to Agents assigned to investigations/duties where contact with armed subjects is likely (i.e., drugs, Violent Crimes and Major Offenders, resident Agents, [redacted] etc.). Shotguns from the division gun vault may also be issued for short terms on an as-needed basis (i.e., warrant executions).| b2 b7E

(3) Rifles

(a) |Sniper rifles and rifles capable of fully automatic fire are authorized for use only by current firearms instructors, [redacted] who are qualified in the weapon's use. Any exception to this requirement must be requested in writing and approved by the Unit Chief, FTU.| b2 b7E

(b) |Any SA qualified in the use of a rifle may use a

rifle capable of automatic fire if it is equipped with a fire selector lock to prevent fully automatic fire.

(c) The SAC or designee may authorize the removal of the selector locks during emergency situations. This authority may not be delegated. Upon termination of the emergency situation the SAC must ensure the selector locks are properly reattached to the weapons.

(d) Bureau rifles should be sighted in during firearms training sessions to ensure accuracy at operationally appropriate distances.

(4) Submachine Guns

(a) The Bureau is generally equipped with Heckler and Koch (H&K) submachine guns.

(b) Submachine guns may only be used operationally by current firearms instructors, [redacted] currently qualified in their use. The MP5-10/A2 which is capable of a two-shot burst may be utilized by any Agent who is currently qualified on that weapon.

b2
b7E

(c) The Thompson submachine gun may only be used for display and demonstration purposes.

(5) Carbines

(a) The Bureau is equipped with Heckler and Koch (H&K) and Colt carbines.

(b) All SAs are authorized to use the H&K MP5SF and Colt M16 series of carbines, provided they are currently qualified with the weapon. The weapon must be equipped with a fire control selector lock if capable of fully automatic fire.

EFFECTIVE: 04/07/97

12-4 PERSONALLY OWNED WEAPONS

(1) SAs are authorized to carry approved personally owned weapons (POWs) in lieu of a Bureau-issued firearm, provided the SAs are currently qualified with those weapons.

(2) SAs are authorized up to two POW handguns in addition to a Bureau-issued pistol or revolver. Agents may elect to have three POW handguns but the Bureau-issued handgun must be returned to the FBI Academy Gun Vault and the Bureau-issued gun removed from the SA's property record. POW handguns authorized for duty may be any combination of pistols and/or revolvers.

(3) SAs are authorized one POW 12-gauge shotgun with a barrel length between 18 and 20 inches and fixed stock, provided the SA is qualified with that weapon.

(5) The Firearms Training Unit (FTU) and FBI Academy Gun Vault maintain an up-to-date list of firearms approved for official use as well as accessories authorized for these firearms. Additionally, the FTU will provide the list of approved handguns, shotguns and rifles/carbines with approved accessories to the field division PFIs in the Annual Field Firearms Program communication. Agents should consult with the PFI or the FTU BEFORE purchasing a firearm for official use.

(6) Before approval of a POW is granted, the weapon must be inspected by the FBI Academy Gun Vault for functional reliability, accuracy and serviceability.

(7) Approval for POWs will only be granted for currently manufactured models. Once a weapon is discontinued by a manufacturer, that model will no longer be approved. Previously approved weapons in this category will continue to be approved until removed by submission of FD-431. Likewise, once a weapon no longer approved is removed from an Agent's FD-431, that weapon will not be approved for official use by another Agent.

(8) POWs authorized to be carried on official business are to be treated in the same manner as nonexpendable Bureau property.

(9) No POW will be approved for use which requires an application for National Firearms Act (NFA) approval from the Bureau of Alcohol, Tobacco and Firearms (ATF). Those weapons that apply as listed in Title 18, Section 5845 are as follows:

(a) A shotgun having a barrel or barrels of less than 18 inches in length;

(b) A rifle having a barrel or barrels of less than 16 inches in length;

(c) Any weapon mentioned in (a) or (b) above which has an overall length of less than 26 inches;

(d) Any machine gun (fully automatic weapon);

(e) Any silencer or suppressed weapon.

(10) |POWs must have a factory finish from the manufacturer. The Gun Vault will be responsible for blued or parkerized finishes only. If the condition of the finish renders the weapon unserviceable, authority to carry that weapon may be withdrawn. Refinishing other than bluing or parkerizing must be completed by the manufacturer at the Agent's own expense.|

|(11)| Approval Procedure

(a) The field division PFI will manage this program for the office.

(b) An SA seeking weapon approval will submit|an| FD-431 in quadruplicate to PFI with the weapon for|inspection and initial|approval.

(c) |The|PFI (or|a designated|firearms instructor) will verify that the weapon meets the requirements for a POW in terms of condition, serviceability, required features, and being an|approved|model.

(d) |The|PFI (or|a designated|firearms instructor), after signing the FD-431, will submit the forms for SAC approval and transmittal, returning three copies of the FD-431 to|the|FBI Academy Gun Vault WITH THE WEAPON. |The submitted FD-431 MUST contain the PFI's signature and SAC or designee's initials.| One copy of the FD-431 should be maintained as a field office tickler copy. Pistols must be accompanied by four factory|magazines. Rifles|must be submitted with a minimum of two factory magazines.

(e) |The aforementioned approval process may be modified when an Agent purchases an approved firearm directly from a manufacturer who will ship the weapon directly to the FBI Academy Gun

Vault. The FD-431 is completed by the requesting Agent, approved by the PFI and SAC, and three copies forwarded to the FBI Academy Gun Vault. The FD-431 will then be matched with the gun received from the manufacturer.

(f) Weapons must be clean, unloaded, properly packaged, and properly shipped.

(g) The Gun Vault will inspect the firearm for physical condition and test fire the weapon for functional integrity.

(h) If the weapon meets all necessary inspection prerequisites, the firearm will be returned to the submitting PFI with the FD-431 marked "approved." The Bureau will not supply parts needed to make a weapon acceptable for approval.

(i) SAs must fire a qualifying score on the current qualification course for the weapon in question and appropriately record scores BEFORE authority to carry the weapon will be granted by the PFI.

(j) Once the approval procedure is complete, the SA is authorized to carry this POW. The approval copy of FD-431 should be placed in the SA's personnel file.

(k) Any reason for disapproval of a weapon will be explained in full on the FD-431 which will be returned with the weapon to the submitting PFI.

(12) To remove a POW from Bureau-approved status, properly execute Form FD-431 in quadruplicate and forward three copies to Quantico. Upon receipt of the return copy from Quantico, the PFI will delete this weapon from the Agent's firearms training records.

(13) No firearm is authorized for official use unless it is physically inspected and authorized by the Gun Vault (i.e., seized weapons, personal purchases, etc.).

EFFECTIVE: 04/07/97

| 12-4.1 |Revised and Moved to 12-4|

EFFECTIVE: 04/07/97

12-5 MAINTENANCE AND REPAIRS

(1) SAs are personally responsible for security and maintenance of all firearms and other expendable and nonexpendable related equipment assigned to them.

(2) Alterations, repairs, and refinishing of assigned firearms must be conducted by FBI gunsmiths. Exceptions include refinishing by manufacturers or other contractors whose use has been ||requested in writing and|approved by the Firearms Training Unit (FTU) in advance.

(3) After-market parts or options|will not be|approved unless authority is|requested in writing and approved by the FTU Unit Chief. Questions regarding the installation of after-market parts on a Bureau-approved firearm should be resolved PRIOR to purchase of these parts or modifications by contacting the FTU.|

(4) SAs are to bring all Bureau-assigned handguns to the Gun Vault|for preventive maintenance, inspection and repair|each time they attend an in-service or conference at the FBI Academy.

|(5)| Firearms must be unloaded, cleaned, and properly packaged before shipment via Federal Express, or other appropriate means. |When returning a firearm to the FBI Academy Gun Vault for service or turn-in, a cover communication should be included which states the reason the firearm is being returned. Firearms being returned should be addressed: FBI Academy, Room 110, Building DN, Quantico, Virginia 22135. (DO NOT MAIL WEAPONS ADDRESSED "ATTENTION: GUN VAULT.") (See MAOP, Part I, 17-1.7.1; Part II, 2-2.2.2, 6-2.3.9, and 6-10.2.)|

|(6)| When it becomes necessary to render a weapon inoperable during the course of an investigation,|this procedure| must be accomplished|by an FBI gunsmith.|

|(7)| Field offices intending to use seized guns for

demonstrations or teaching purposes must first submit those weapons to the Gun Vault for inspection, approval, and possible modifications to render them safe.

EFFECTIVE: 04/07/97

12-5.1 Care of Firearms

(1) After being used, and periodically during storage, all weapons should be carefully cleaned and lubricated per the manufacturer's recommendations. Care should be taken to prevent excess solvent and oil from entering inacessible areas of the firearm.

(2) Excess oil and solvent must be completely wiped off wood stocks. Do not allow any oil or solvent to come in contact with the lenses of any telescopic sights or night sights.

(3) Due to the fact that handguns are almost continually encased in leather holsters, regular inspection and lubrication should be conducted to prevent rusting.

(4) Questions pertaining to the care, cleaning and maintenance of firearms should be addressed to the PFI or FBI Academy gunsmiths.

EFFECTIVE: 04/07/97

12-5.2 Deleted

EFFECTIVE: 04/07/97

12-6 SECURITY OF WEAPONS (See also MIOG, Part II, 12-2.2.)

(1) Each SA is personally responsible for the security of weapons under his/her control.

(2) SACs must provide secure storage areas for Bureau-assigned firearms in Bureau office space.

(3) When on duty and out of the office, handguns should be kept on the SA's person unless operational considerations or good judgment dictate otherwise.

(4) [redacted] b2,b7E

(5) When SAs remove handguns from their person, it is recommended that the weapon and holster be removed together to prevent unintentional discharge. This recommended action is made to minimize unnecessary unloading/loading of weapons within Bureau office space.

(6) [redacted] b2,b7E

(7) All firearms stored in Bureau office vaults or other approved areas must be unloaded, functional and clean.

(8) All operational shoulder weapons, whenever possible, should be stored muzzle end down to facilitate the natural movement of lubricants toward the barrel end.

(9) All weapons should be stored UNLOADED in the following manner:

(a) Revolvers - cylinder closed, hammer down.

(b) Pistols - magazine removed, slide closed, hammer released and chamber plug inserted if available.

(c) Remington Model 870 shotgun - action closed, trigger snapped, safety on.

(d) Colt Model M16/AR-15 series of rifles or carbines - magazine removed, action closed, trigger snapped, fire selector on "SEMI."

(e) |Winchester/Remington rifles|- action closed, trigger snapped, safety off.

(f) Thompson submachine gun - magazine removed, action closed, fire selector on "SINGLE," safety on "FIRE."

(g) H&K|MP5 (all models)|- magazine removed, action closed, trigger snapped, safety on.

(h) M79 Grenade Launcher - action closed, trigger snapped, safety on.

(i) Federal Gas Gun - action closed.

EFFECTIVE: 04/07/97

12-6.1 Security of Weapons at Residence or Nongovernment Space

(1) SAs are personally responsible for security of all assigned firearms to prevent unauthorized handling or unintentional discharge.

(2) When devices or containers are provided by the Bureau for the storage of weapons away from Bureau space, SAs should make use of this equipment whenever possible.

(3) When unattended, each firearm must be made inoperable by one or more of the following methods:

(a) Remove and separate the source of ammunition.

(b) Install commercially available pistol lock, trigger lock, or cable lock.

(c) Contain in a commercially available lock box or other container which will provide appropriate security.

|(4) Bureau personnel authorized to carry a firearm must use the utmost caution when storing and securing their firearm at home when children are present. In addition to great personal grief, many states have laws providing for severe criminal and civil penalties when anyone is injured or killed as a result of a child

obtaining access to a firearm. Bureau employees are to ensure the security and storage of their firearm(s) complies with pertinent state and local laws.

EFFECTIVE: 04/07/97

12-6.2 Vehicles (See MAOP, Part I, 1-3.2.)

(1) No Bureau-assigned firearm may be left in the passenger compartment of an unattended Bureau vehicle or vehicle authorized for official use unless the vehicle doors are locked and the firearm is secured in a locked vehicle weapons mount or other secure device or container which cannot be readily removed from the vehicle, and circumstances prevent more secure storage.

b2 b7E

(2) [redacted] Even when properly secured, firearms should not be left in unattended vehicles overnight unless required by operational circumstances.

(3) Other nonexpendable Bureau equipment related to Agent safety may be maintained in the passenger compartment of an unattended Bureau vehicle or vehicle authorized for official use for short periods of time only if required by operational necessity or good judgment, and only if properly concealed and with the vehicle doors locked. "Properly concealed" means placed in an appropriate container and/or secreted within the vehicle to prevent observation and identification of the item from the vehicle exterior.

(4) Any nonexpendable Bureau equipment not related to SA safety should be maintained in the locked trunk of an unattended Bureau vehicle or vehicle authorized for official use, but should not be left overnight unless operational circumstances dictate otherwise.

(5) [redacted]

(6) [redacted]

b2 b7E

(7) [redacted]

[redacted] b2 b7E

|(8)| The standards set forth above are MINIMUM standards. Employees are expected to exercise good judgment in providing adequate security to all such equipment and firearms. |Personal inconvenience is not considered an adequate reason for deviation from these minimum standards.|

|(9) Reports of lost/stolen firearms related Bureau property should be submitted to the Firearms Training Unit AND the Adjudication Unit, Office of Professional Responsibility, for replacement and possible administrative action.|

EFFECTIVE: 04/07/97

12-7 AMMUNITION

(1) SAs and other Bureau employees authorized to carry firearms may load their Bureau-assigned weapon(s) only with ammunition provided or approved by the FBI.

|(2)| It is the SAC's responsibility to ensure that the field office maintains an adequate supply of ammunition for training and operational contingencies.

|(3)| Field office ammunition inventories should be rotated to promote serviceability and be inspected a minimum of once each quarter.

(4) |All ammunition should be stored in a secure, and preferably dehumidified, controlled temperature environment.|

(5) |During training, any ammunition authorized for FBI use may be fired. At all other times outside of training sessions, FBI authorized service ammunition must be used.

(6) Ammunition carried on the person should be used during the next firearms training session and replaced with a fresh supply.

(7) 9 mm 124 grain ball "training" ammunition may be used

operationally in the suppressed MP5 SD only. This round is limited to training use only in all other Bureau-issued/approved 9 mm weapons.

(8) The Firearms Training Unit is the procurement point for all ammunition used by Bureau personnel for official purposes.

EFFECTIVE: 04/07/97

12-7.1 Deleted

EFFECTIVE: 04/07/97

12-8 FIREARMS PROCUREMENT

(1) The acquisition of firearms as Bureau property must be (1) approved by the FTU, and (2) administered by the FBI Academy Gun Vault.

(2) All firearms purchased or obtained by a field office as Bureau property must be shipped directly to the FBI Academy Gun Vault for inspection and test firing before use.

(3) Any exceptions to this policy must first be requested in writing and approved by the FTU before procurement.

EFFECTIVE: 04/07/97

12-9 FIREARMS IN RESIDENT AGENCIES

(1) Firearms may be maintained in resident agencies.

(2) All handguns and shoulder fired weapons |should|be stored in|a secure|safe, vault or safe-type cabinet. |Reasonable security precautions such as weapons locked and stored in locked cabinets or closets within alarmed Bureau space may suffice in lieu of storage in a safe.|

|(3)| Field offices are authorized to purchase safes, vaults, or safe-type|cabinets in order to provide secure storage of firearms.|

|(4)| All other|policies cited|herein that govern the use and maintenance of Bureau-assigned firearms|and ammunition|also apply.

|(5)| Any exceptions to this policy must be|requested in writing and approved|by the FTU.

EFFECTIVE: 04/07/97

12-10 FIREARMS TRAINING

(1) |Firearms training requirements are submitted to the field annually by EC to all SACs, captioned, "Field Firearms Training Program."|

|(2)| The objective of the FBI firearms training program is to|provide four MANDATORY qualification sessions annually. Since firearms training is a perishable skill, however, the FTU encourages field offices to provide additional training opportunities.| Field offices whose range availability and ammunition supply will not support|mandated|training should submit a proposed training plan to the Training Division,|FTU,|for approval. This plan should include the number of sessions, courses to be used, and the number of rounds to be fired.

|(3)| The|SAC is ultimately|responsible for all firearms training, weapons and ammunition inventories, and|execution of|the Field Firearms Program.

|(4)| SAs and all other personnel authorized to carry

firearms must meet or exceed the minimum proficiency and safety standards set forth in the Annual Field Firearms Program.

(5) PFIs are responsible for all transition training either from revolver to pistol or pistol to revolver. The PFI must be satisfied that an SA has successfully completed the requirements of transition training and proficiency checklist as specified in training curricula provided by the FTU and is qualified to carry that weapon. The PFI must verify this training by documentation on or attached to the SA's FD-40.

(6) Each PFI should adhere to the format of the calendar year Field Firearms Program provided by the FTU. Any changes must be submitted via written communication and approved in advance by the Unit Chief, FTU.

(7) All firearms training sessions must be supervised by the PFI or a Bureau-certified firearms instructor designated by the PFI.

(8) All SAs are required to attend defensive tactics training conducted in conjunction with each of the firearms qualification sessions.

(9) The Defensive Tactics Training Course will be managed by the Principal Defensive Tactics Instructor in each field division. This program is submitted to each office as part of the annual Field Firearms Training Program.

(10) Field offices must report the following by electronic communication captioned, "Annual Field Firearms Training Report," to the FTU by close of business 12/31:

(a) Dates of training sessions

(b) Ranges utilized

(c) Names of instructors assisting each session. These names should also be listed at the bottom of FD-39 score cards.

(d) Names of Bureau personnel who have missed ANY mandatory training sessions, with the reason for each delinquency specified. ALL delinquencies must be reported.

(e) Names of all Bureau personnel who have failed to shoot qualifying scores with any authorized weapon. Include date last

qualified.

(11) The PFI is to ensure that ranges used for field firearms training are inspected and contain no safety hazards that would endanger FBI personnel or others.

(12) PFIs are to make every effort to ensure that the air quality of indoor ranges used for training complies with the Occupational Safety and Health Administration (OSHA) standards. A certificate of compliance with these standards should be available for review at the range facility. If an indoor range does not comply with OSHA standards, this facility should not be used for training.

(13) The authority in charge of a particular range should be advised of any safety deficiencies noted.

EFFECTIVE: 04/07/97

12-10.1 Firearms Delinquencies

(1) Any employee authorized to carry firearms who does not attend firearms training during a firearms training period is considered delinquent. To ensure compliance with this requirement, the SAC (or AD in the case of FBIHQ) may, at their discretion, require delinquent individuals to surrender their firearms and make any necessary recommendations to the Adjudication Unit, Office of Professional Responsibility (OPR), FBIHQ, for administrative action if appropriate. The individual's authority to carry a firearm is rescinded and the weapon should only be issued for training purposes until the delinquency is corrected. No SA should be permitted to become delinquent for any firearms training period unless documented medical circumstances dictate otherwise AND the SA has been placed on medical mandate by FBIHQ Health Care Programs Unit. The FTU is to be advised of each delinquency in the "Annual Field Firearms Training Report."

(2) Those Agents who were unable to attend firearms training on their regularly scheduled days should be rescheduled at the earliest convenience during the training period. Delinquencies must be corrected as soon as possible.

(3) Whenever authority to carry a weapon is rescinded, a memorandum of explanation should be attached to the SA's FD-40.