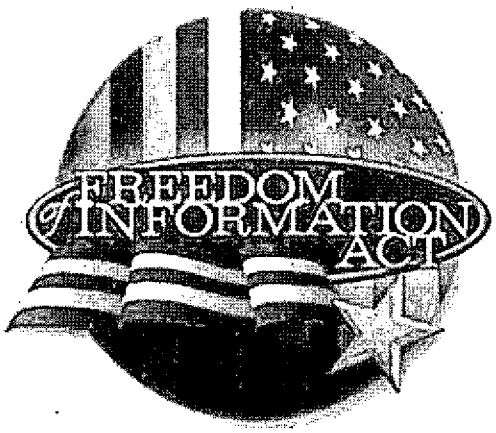
FREEDOM OF INFORMATION AND PRIVACY ACTS

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 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)
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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.

EFFECTIVE: 01/31/78

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

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