

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 46 - 1

SECTION 46. FRAUD AGAINST THE GOVERNMENT, ET AL.; RENEGOTIATION ACT -  
CIVIL SUITS, ET AL.; FALSE CLAIMS - CIVIL SUITS

46-1 FRAUD STATUTES

Purpose - to protect the U.S. Government from any attempt to interfere with its lawful functions by deceit or dishonesty; not only where a pecuniary loss may be involved, but whenever the Government's functions are defeated by misrepresentations. The following are only the most commonly used statutes in prosecuting these crimes.

EFFECTIVE: 10/22/84

46-1.1 Conspiracy to Defraud, Title 18, USC, Section 286

Two or more persons, by agreement obtained, or aided in obtaining, payment from the U.S. Government through the submission of false claims.

EFFECTIVE: 10/22/84

46-1.2 False, Fictitious, or Fraudulent Claims, Title 18, USC,  
Section 287

The elements are (1) to make or present a false claim against the U.S. Government while (2) knowing such claim to be false.

EFFECTIVE: 10/22/84

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 46 - 2

46-1.3 False Statements, Title 18, USC, Section 1001

To knowingly and willfully falsify a material fact; or make a false, fictitious, or fraudulent statement; or make/use false writing or documents in any matter within the jurisdiction of the U.S. Government. A false complaint given to the FBI, or any other Federal law enforcement agency, that initiates a criminal investigation resulting in the expenditure of time and resources, is a matter within the jurisdiction of the U.S. Government and a violation of this statute. A false statement in an application for Federal employment is also a violation of this statute. A false statement in an application for civilian employment violates this statute if the applicant knows or should reasonably foresee that the application will be submitted to a Federal Government agency for a security check. A false statement may be written or oral, sworn or unsworn. This statute does not apply to false statements made under oath before the grand jury or in a judicial proceeding. False statements made in an interview initiated by a Federal law enforcement agency, or by an employee in a noncriminal personnel matter may, in some instances, constitute a violation of Section 1001. See 46-1.8; Policy, (3), (4) and (6).

EFFECTIVE: 10/22/84

46-1.4 Conspiracy to Commit Offense or Defraud the United States,  
Title 18, USC, Section 371

If two or more persons (1) conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and (2) one or more of such persons commit any act to effect the object of the conspiracy, each shall be fined not more than \$10,000 or imprisoned not more than 5 years or both. If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor. (For additional details see Part I, 62-16 of this manual.)

EFFECTIVE: 10/22/84

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 46 - 3

46-1.4.1 Mail Fraud, Title 18, USC, Section 1341

The U.S. Postal Service is specifically charged with the duty of investigating use of the mails in furtherance of a scheme or artifice to defraud. The above notwithstanding, this statute, which carries penalties of a \$1,000 fine and/or 5 years' imprisonment, has been effectively used by the FBI in pursuing Fraud Against the Government (FAG) investigations and should be thoroughly familiar to Agents investigating such matters. The statute citation, key elements, and Bureau policy can be found in Part I, Section 36 of this manual captioned "Mail Fraud."

EFFECTIVE: 10/23/86

46-1.5 Other Fraud Statutes

It is noted that Congress, when approving legislation establishing various federally funded programs, incorporated into that legislation specific criminal statutes which are to be used in prosecuting frauds against such programs or thefts of program funds. When program fraud allegations are received, it will be necessary to determine from the administering agency the identity of specific fraud statutes, if any, which may have been created solely to aid in prosecutions relative to the affected program.

EFFECTIVE: 10/23/86

46-1.5.1 Theft or Bribery Concerning Programs Receiving Federal Funds, Title 18, USC, Section 666

When a state or local government or organization receives \$10,000 or more annually in Federal funds, it is unlawful (1) for an agent or employee to embezzle or misapply \$5,000 or more (2) for an agent or employee to accept a bribe in a matter involving \$5,000 or more or (3) for anyone to offer a bribe to an agent or employee.

EFFECTIVE: 10/23/86

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 46 - 4

46-1.5.2 National Organ Transplant Act (NOTA); Prohibition of Organ Purchases (Title 42, USC, Section 274e)

(1) Section 274e, Prohibition of organ purchases, reads as follows:

"(a) Prohibition

"It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration or use in human transplantation if the transfer affects interstate commerce.

"(b) Penalties

"Any person who violates subsection (a) of this section shall be fined not more than \$50,000 or imprisoned not more than five years, or both.

"(c) Definitions

"For purposes of subsection (a) of this section:

"(1) The term 'human organ' means the human kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, and skin, and any other human organ specified by the Secretary of Health and Human Services by regulation.

"(2) The term 'valuable consideration' does not include the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ or the expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ.

"(3) The term 'interstate commerce' has the meaning prescribed for it by section 321(b) of title 21."

(2) Violations of the above law should be opened in Bureau case classification 209 (Fraud Against the Government (FAG) - Health and Human Services (HHS)), and captioned in communications as "FAG-HHS-NOTA," with the addition of Fraud by Wire, Mail Fraud, or others, as appropriate.

(3) Reporting requirements for FAG cases should be

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 46 - 5

adhered to in conducting these investigations.

EFFECTIVE: 10/23/86

46-1.5.3 Major Fraud Against the United States (Title 18, USC,  
Section 1031) (See also Part I, Section 46-1.13 of this  
manual)

(1) Prohibits anyone from execution or attempted  
execution of a scheme with intent:

"(1) to defraud the United States; or

"(2) obtain money or property from the United States  
by means of false or fraudulent pretenses, representations, or  
promises, in any procurement of property or services as a prime  
contractor with the United States or as a subcontractor or supplier on  
a contract in which there is a prime contract with the United States,  
if the value of the contract, subcontract or any constituent part  
thereof for such property or services is \$1,000,000 or more,  
shall...be fined not more than \$1,000,000 or imprisoned not more than  
ten years, or both."

(2) Subsection B provides for a maximum fine of  
\$5,000,000 if the scheme involves a conscious or reckless risk of  
personal injury.

(3) Subsection F provides a statute of limitations of  
seven years.

EFFECTIVE: 07/31/97

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 46 - 6

46-1.6 Anti-Kickback Act of 1986, Title 41, USC, Sections 51-54

Prohibits any person, as defined in the statute, in all Government contracts from (1) providing or attempting or offering to provide any kickback to employees of a prime contractor, or higher tier subcontractor; or (2) soliciting, accepting, or attempting to accept any kickback for purposes of securing a Government contract or including amount of kickback in contract price charged by a subcontractor to a prime contractor or a higher tier subcontractor or in contract price charged by a prime contractor to the U.S.

EFFECTIVE: 02/20/90

46-1.7 FAG-Federal Lending and Insurance Agencies (FLIA)

Congress has passed legislation establishing a number of federal lending and insurance agencies, some of which are independent agencies, while others operate within the framework of the U.S. Department of Agriculture (USDA) and the Department of Housing and Urban Development (HUD). These agencies engage in direct lending of federal funds, and/or guarantee loans disbursed by private sector (banking/finance industry) sources. Certain agencies offer federal lending insurance. The FBI's PRIMARY investigative jurisdiction regarding violations involving FLIA is limited to the following federal agencies:

- (1) Small Business Administration
- (2) Deleted
- (3) Federal Crop Insurance Corporation - a corporation within USDA.
- (4) Federal Emergency Management Agency - this independent agency was chartered to enhance/coordinate emergency preparedness and response resources of the federal, state and local governments with respect to the full range of emergencies - natural, man-made and nuclear.

EFFECTIVE: 07/31/97

Sensitive  
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 46 - 7

46-1.7.1 Fraud Statutes Pertaining to FLIA

- (1) Title 18, USC, Section 212. Prohibits offer of loan or gratuity to bank examiner.
- (2) Title 18, USC, Section 213. Prohibits acceptance of loan or gratuity by bank examiner.
- (3) Title 18, USC, Section 215. Prohibits receipt of commission or gifts or procuring loans.
- (4) Deleted
- (5) Title 18, USC, Section 217. Prohibits acceptance of consideration for adjustment of farm indebtedness.
- (6) Title 18, USC, Section 657. Prohibits embezzling, abstracting, or misapplying funds, securities, etc., by officers, agents, employees, or receivers of lending, credit, and insurance institutions.
- (7) Title 18, USC, Section 658. Prohibits concealment, removal, disposal, or conversion to personal use of property mortgaged or pledged to farm credit agencies.
- (8) Title 18, USC, Section 1006. Prohibits false entries in Federal credit institution books, reports, and statements.
- (9) Title 18, USC, Section 1011. Prohibits false statements and overvaluing of land in Federal land bank mortgage transactions.
- (10) Title 18, USC, Section 1013. Prohibits making false pretenses or representations in connection with farm loan bonds and credit bank debentures.
- (11) Title 18, USC, Section 1014. Prohibits falsification of loan applications submitted to certain FLIA. (Refer to statute.)
- (12) Title 18, USC, Section 1907. Prohibits disclosure of information by farm credit examiner.
- (13) Title 18, USC, Section 1908. Prohibits disclosure of information by national agricultural credit examiner.
- (14) Title 18, USC, Section 1909. Prohibits performance

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 46 - 8

of services for compensation by examiners.

EFFECTIVE: 02/20/90

46-1.8 Policy

(1) Except to the extent that investigations involve allegations of corruption on the part of U.S. Government employee(s), which require a greater degree of administrative scrutiny and more expeditious reporting, other policy and investigative guidelines appearing in this ("46") section of the manual pertain to all FAG violations.

(2) FAG cases must be given prompt and continuous attention. The level of manpower devoted to, and the priority placed upon completion of these investigations should be governed by the circumstances of each case in relation to the entire case load. There is a heightened necessity to promptly resolve those allegations pending against Federal employees due to the fact that the affected Federal agency may delay, or otherwise coordinate, administrative action contemplated against their (subject) employees, with receipt of the results of the completed criminal investigation.

(3) All FAG allegations which serve as predication for opening an investigation must be discussed with the U.S. Attorney early in the investigation. Should the USA concur in the initiation of an investigation, this PRELIMINARY PROSECUTIVE OPINION should cite the applicable statute(s) which applies to the alleged violation, AND a commitment to pursue prosecution should the allegations be substantiated through investigation. If the initial complaint/allegation is not sufficiently specific to enable the Agent to hold an informative discussion with the USA, conduct appropriate investigation to "round out" the allegation such that an adequately detailed discussion may be held. (It should not be necessary for the USA to request such investigation.) Regardless of whether the USA expresses a willingness to prosecute, or declines prosecution out of hand, the opinion (and all AUSA opinions) should be confirmed in writing. The initial 30-day LHM, or closing LHM in the event of a prosecutive declination, is sufficient for this purpose. (See MIOG, Part I, 46-1.3, & 46-1.12(2).)

(4) With regard to referrals wherein the victim Government agency has conducted significant investigation in efforts to determine whether or not a Federal violation has been committed,



Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 46 - 9

consideration should be given to having the agency investigator present during the preliminary discussions of the case with the USA. Much of the background can then be explained by the agency investigator, thereby minimizing needless duplication of effort.

|(See (6).)|

(5) Pay close attention to SPECIFIC TITLES of Federal, state and local agencies involved (defrauded) in FAG cases, as frequently there exist confusing similarities among such agency or program titles. Failure to properly identify the agency involved may lead to a misunderstanding of the facts. In those instances where a state or local agency which receives PARTIAL FEDERAL FUNDING has been defrauded, a Federal violation MAY have occurred. The COMINGLING of Federal and state (or local) funds should not ordinarily in and of itself be a bar to Federal prosecution. Consideration should be given to advising FBIHQ of those instances wherein comingling of funds is indicated as the reason behind a declination of prosecution. Under appropriate circumstances, FBIHQ will discuss such decisions with the Department of Justice.

(6) Complaints/allegations concerning FLIA and other FAG violations (a) which through legislation or through mutual agreement are not within the FBI's primary investigative jurisdiction or (b) which cannot be afforded adequate investigative attention due to manpower constraints within division and/or the failure of the allegation to "measure up" to prosecutive guidelines of the USA, should be referred to the appropriate local or regional office of the Inspector General for the affected Federal agency. Where no such local or regional office exists, forward the matter to FBIHQ with a request that the matter be referred to the national headquarters of the appropriate agency. (For example, violations relating to Farmers Home Administration matters are investigated by the Office of Inspector General, Department of Agriculture. The FBI does, however, investigate violations which indicate criminal misconduct on the part of USDA employees.) |(See MIOG, Part I, 46-1.3.)|

SPECIAL NOTE: In all instances wherein investigative matters are referred by a field division to another Federal agency BASED UPON MANPOWER CONSTRAINTS, FBIHQ must be advised by LHM; the cover communication should clearly state that pending investigative matters being addressed by the field division are of greater significance than the item of referral. A copy of each such referral should be routed to a special field office file entitled "Fraud Against the Government Matters-Referrals to other Agencies." Ensure proper indexing of such referrals.

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 46 - 10

(7) FBIHQ should be promptly notified, by telephone and/or teletype, of the initiation of MAJOR or OTHERWISE SIGNIFICANT FAG cases which may prompt news media (or other) inquiries to be directed to FBIHQ.

(8) Promptly report significant investigative/prosecutive developments to FBIHQ in a form suitable for dissemination to the appropriate Government agency, as that agency may have deferred administrative or civil action regarding contracts, contract negotiations, loan or loan guarantees, etc., pending the outcome of the criminal investigation.

(9) FAG investigations which fail to disclose evidence that a Federal violation has been committed may be "closed" without consultation with the USA, provided all logical investigation has been completed. Prosecutive declinations should include the underlying reason for same (e.g., "no Federal violation substantiated through investigation," "lack of prosecutive merit due to (explanation)," etc.). The PROSECUTIVE DECLINATION of the USA should be confirmed by means of the closing LHM.

EFFECTIVE: 09/16/94

46-1.9 Investigative Procedure

(1) Determine the identity of the governmental agency and agency program (source of funds) which has been defrauded. Based upon the complaint or allegation, ascertain the specific title and section of Federal law which may have been violated. (The "United States Government Manual" is an invaluable guide to understanding departments, independent establishments and Government corporations of the Executive Branch of the Federal Government, as well as the departments and offices of the Legislative and Judicial Branches. All field divisions are issued a copy of this yearly manual.)

(2) Identify those governmental officials having administrative responsibility for the victim agency and/or program. Ascertain which agency procedures have been misapplied or subverted in furtherance of the alleged FAG violations. Take note of any agency practices or procedures, formal or informal, which may adversely affect the investigation and/or future prosecutive action. Be certain to bring such items to the attention of the prosecuting attorney.

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 46 - 11

Determine in advance the substance of testimony which Government officials will provide if called upon during trial.

(3) Identify the subject(s) and verify the means by which the subject(s) is alleged to have defrauded the Government.

(4) Identify and obtain any false or fraudulent documentary evidence which will prove the existence of a violation.

(5) Gather evidence of willful intent on the part of the subject(s). Be mindful to obtain/ascertain:

(a)

(b)

(c)

b2/b7E

(6) Special Agents of the FBI are empowered to take signed statements, under oath from witnesses and subjects in those investigations where a Government employee is implicated in criminal misconduct or irregularity, and in those investigations of fraud on, or attempts to defraud, the United States Government. Consideration should be given to obtaining such statements in those instances where such a form of evidence will tend to strengthen the findings of an investigation. It is recognized that this is a judgmental decision, requiring the thoughtful consideration of the experienced investigator. Legal/Evidentiary ramifications of such statements may warrant consultation with the division's principal legal advisor or with the prosecuting attorney associated with the investigation. (Statutory authority for placing witnesses and subjects under oath is contained in Title 5, USC, Section 303.)

(7) Complex FAG cases frequently demand that a close working relationship be maintained with the USA's Office in order to assure that the case "develops" at a pace that will facilitate the prosecutor's comprehension of the complexities of the matter and therefore lend to a timely prosecution of the violation(s). Keep alert to avoid unnecessary investigation. Consideration should be given to the utilization of manpower from other Government agencies to review (audit/examine) their in-house records when such a review does not threaten the integrity of the investigation.

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 46 - 12

EFFECTIVE: 03/28/84

46-1.10 Venue

(1) False claim or document - Judicial district where the false document was submitted to or received by the Government.

(2) Oral false statement or the concealment of a material fact(s) - Judicial district where the false statement was uttered or where the concealment occurred.

EFFECTIVE: 02/20/90

46-1.11 Fraud Against the Government - Security Aspect

There are special provisions in this manual, in addition to those contained within this section, with respect to FAG violations which have a "security" aspect. These may be found in other FBI investigations; e.g., Applicant investigations, Security of Government Employee investigations, Domestic Security investigations concerning individuals, and investigations of Atomic Energy Act violations. Appropriate special considerations contained within this manual (as indicated below) should be reviewed prior to the initiation of certain investigations, as follows:

(1) Applicant and Employee Investigations Conducted for Other Government Agencies - General Instructions: See Part II, Section 17, of this manual;

(2) Atomic Energy Act of 1954 - Criminal Violations: See Part I, Section 117, of this manual;

(3) Security of Government Employees: See Part I, Section 140, of this manual.

EFFECTIVE: 02/20/90

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 46 - 13

| 46-1.12 Reporting Requirements | (See MIOG, Part I, 86-5, 206-4.) |

| (1) | Deleted |

(2) Submit a letterhead memorandum (LHM) (original and four copies) within 30 days of receipt of a FAG complaint/allegation. The LHM should be suitable for dissemination to (a) the Department of Justice, (b) the Office of Personnel Management (in those instances where a federal employee is the SUBJECT of the investigation), and (c) the federal agency(s) affected by the allegation/investigation. The initial LHM should, at a minimum, detail the predication for opening the investigation, summarize the investigation conducted in order to "round out" the allegation(s) and reflect the preliminary prosecutive opinion obtained (see 46-1.8(3) above). Be CERTAIN to DATE the receipt of the complaint and ALL other significant events.

(3) The LHM is the main vehicle utilized for conveying notification of the initiation, status and disposition of FBI investigations to affected federal agencies, as well as the Department of Justice. Inclusion of Rule 6(e) (federal grand jury source) material in an LHM will most often preclude dissemination of that communication outside of the Department of Justice. Thus, Rule 6(e) material should be excluded from LHMs, absent a federal court order authorizing access to other interested parties/agencies. The LHM is NOT to serve as a prosecutive or investigative report.

(4) Federal agencies (Offices of Inspector General) have a statutory right to be informed of the existence of investigations affecting their agencies. Requests for withholding dissemination indicated in (2) above must be SUBSTANTIAL and documented in the "Administrative" section of the cover communication.

(5) The decision regarding preparation of a "prosecutive report" is left to the discretion of the SAC/Field Supervisor and should be considered on a case-by-case basis. The complexity of the investigation and needs of the prosecuting attorney may be determining factors in this decision. USAs' requests for prosecutive reports should be honored in all instances. Prosecutive reports are not routinely disseminated outside of the Department of Justice.

(6) Preparation of interim, advisory LHMs MAY be warranted in certain high profile investigations or in those investigations which are being followed closely by the affected federal agency.

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 46 - 14

(7) TITLE CHANGES should be noted in the opening paragraph of LHMs, in order to assist recipients (Offices of Inspector General, etc.) in referencing prior LHMs or correspondence regarding the investigative subject. Other identifiers, agency "titles" or file numbers when known, should be included in LHMs to assist in referencing other agency files.

(8) In those investigations where the USA declines prosecution AND the subject is a federal employee, obtain a specific comment from the USA as to the merits of administrative and/or civil remedies against the federal employee who is the subject of the case in which prosecution is being declined. Ensure the specific comments are confirmed in writing. The comment must be included in the closing LHM. If the USA advises no merit exists, so state. If the USA advised merit does exist, a statement such as "the foregoing declination is made due to the matter not meeting the standards required for federal prosecution by the USA. It should not be construed by your agency, or by other affected agencies, in such a way as to preclude the initiation of such administrative and/or civil remedies as may be appropriate" is suitable.

(9) Deleted

(10) A CLOSING LHM must be prepared for each investigation which has been concluded. This final LHM MUST restate the predication for opening the investigation, summarize investigative findings and detail the disposition of the investigation. Prosecutive action should be DETAILED from indictment, information or complaint, through plea acceptance, trial disposition and/or sentencing, as appropriate. Ensure that a FULL DESCRIPTION of the subject(s) is included in this communication. Again, be certain to DATE all significant events. In 209A matters involving health care providers, one copy of pertinent FD-302s which do not contain grand jury information protected pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure or information that would jeopardize an informant or confidential witness should be sent to FBIHQ for dissemination to the Department of Health and Human Services-Office of the Inspector General (HHS-OIG). The FD-302s should be attached to one copy of the LHM and listed as enclosures for dissemination to HHS-OIG. The FD-302s should be listed by date and name on the cover communication. This could assist the HHS-OIG to recover funds pursuant to the Civil Monetary Penalties Law of 1981. This law can be found at Section 1128A of the Social Security Act or at Title 42, USC, Section 1320-7a. It authorizes the HHS-OIG to impose civil monetary penalties on health care providers who have defrauded HHS. The HHS-OIG will report these recoveries to FBIHQ. FBIHQ will thereafter notify the office of origin, or in accordance

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 46 - 15

with the Manual of Administrative Operations and Procedures, Part II, 3-5.2.7, (2) (b), "Joint Investigation Recoveries," a recovery may be claimed by the appropriate field division. (See MIOG, Part I, 209-2.)

(11) SPECIAL NOTE: Every effort should be made to furnish the victim federal agency with constructive criticism concerning weaknesses within the agency's procedures or internal controls which may predispose the agency to fraudulent practices or limit the agency's ability to uncover fraudulent acts after the fact. Such observations on the part of the investigating Special Agent are valuable, and the inclusion of same within the closing LHM (or a separate LHM, if appropriate) is to be encouraged in all instances.

EFFECTIVE: 04/02/97

46-1.13 Penalties (Maximum)

- (1) Title 18, USC, Section 286 - \$10,000 and/or 10 years
- (2) Title 18, USC, Section 287 - \$10,000 and/or 5 years
- (3) Title 18, USC, Section 371 - \$10,000 and/or 5 years for felony; if misdemeanor, no more than penalty for misdemeanor
- (4) Title 41, USC, Sections 51-54 - A fine in accordance with Title 18, Section 3571 ET SEQ. (a fine of not more than \$250,000) and/or 10 years.
- (5) Title 18, USC, Sections 212 & 213 - \$5,000 and/or 1 year and fined a further sum equal to money loaned or gratuity given
- (6) Title 18, USC, Section 215 - \$5,000 and/or 5 years, if amount involved does not exceed \$100, then \$1,000 and/or 1 year.
- (7) Title 18, USC, Section 217 - \$1,000 and/or 1 year
- (8) Title 18, USC, Sections 657 & 658 - \$5,000 and/or 5 years, if amount involved does not exceed \$100, then \$1,000 and/or 1 year
- (9) Title 18, USC, Section 666 - \$100,000 and/or 10 years
- (10) Title 18, USC, Section 1001 - \$10,000 and/or 5 years

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 46 - 16

(11) Title 18, USC, Section 1006 - \$1,000,000 and/or 20 years

(12) Title 18, USC, Section 1011 - \$5,000 and/or 1 year

(13) Title 18, USC, Section 1013 - \$5,000 and/or 1 year

(14) Title 18, USC, Section 1014 - \$1,000,000 and/or 20 years

(15) Title 18, USC, Sections 1907-1909 - \$5,000 and/or 1 year

(16) Title 42, USC, Section 274e - \$50,000 and/or 5 years

(17) Title 18, USC, Section 1031 - \$1,000,000 and/or ten years (\$5,000,000 if conscious or reckless endangerment)

EFFECTIVE: 02/20/90

46-1.14 Character (See MAOP, Part II, 3-1.1 & 3-1.2; MIOG, Introduction, 2-1.5.3; Part I, 206-6 & 207-2.)

(1) With the exception of 209 cases, Fraud Against the Government - followed by (a) the name of the Federal department or agency concerned and (b) (Identity of the program or activity where fraud occurred).

(2) Unique classification numbers have been assigned to FAG cases pertaining to certain major Government agencies. Instructions for these classifications are the SAME as contained within this section. The "46" classification will be used for all FAG cases involving Government agencies not specifically identified below (NOTE: BE CERTAIN to include the appropriate ALPHA DESIGNATION within the classification "number." Refer to the substantive section of this manual for the distinction between such alpha components of the classification "number.")

17 A&B FAG - Department of Veterans Affairs (VA)

46 A&B FAG - Agency involved

86 A&B FAG - Small Business Administration (SBA)



Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 46 - 17

147 A&B FAG - Department of Housing and Urban  
Development (HUD)

206 A&B FAG - Department of Defense (DOD) - Appropriate  
Branch of Military

206 C&D FAG - Department of Agriculture (USDA)

206 E&F FAG - Department of Commerce (DOC)

206 I&J FAG - Department of Interior (DOI)

207 A&B FAG - Environmental Protection Agency (EPA)

207 C&D FAG - National Aeronautics and Space  
Administration (NASA)

207 E&F FAG - Department of Energy (DOE)

207 G&H FAG - Department of Transportation (DOT)

208 A&B FAG - General Services Administration (GSA)

209 A&B Health Care Fraud

210 A&B FAG - Department of Labor (DOL)

213 A&B FAG - Department of Education (DOED)

EFFECTIVE: 12/23/93

46-2 RENEGOTIATION ACT - CIVIL SUITS

EFFECTIVE: 01/31/78

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 46 - 18

46-2.1 Background

(1) The Bureau conducts investigation in Renegotiation Act (Civil) suits brought under the Renegotiation Act of 1951 - Title 50, USC, App., Section 1211 et seq.

(2) The Renegotiation Act of 1951, in general, provides that Renegotiation Board is to review the total profit derived by a contractor during a year from all of his renegotiable contracts and subcontracts in order to determine whether or not this profit is excessive. The Board is empowered to eliminate those profits, found to be excessive in accordance with certain statutory factors. Thus, renegotiation is determined with respect to all receipts or accruals from renegotiable contracts and subcontracts of a contractor during a year.

(3) The renegotiation process allows an after-the-fact review of the profits on renegotiable contracts and subcontracts relating to the national defense and space contracts and related subcontracts. This is a renegotiation of a contractor's fiscal-year aggregate profits on these contracts; thus, it is completely different from price adjustments or redeterminations with respect to individual contracts.

(4) Petitions for redeterminations of excessive profits determined by the Renegotiation Board are filed with the U. S. Court of Claims. The Court of Claims has exclusive jurisdiction to determine the amount of excessive profits received or accrued by a contractor or subcontractor in these cases. The Court of Claims may determine that the amount of excessive profits is less than, equal to, or greater than the amount determined by the Board.

(5) The proceeding in the Court of Claims is not a proceeding to review the determination of the Renegotiation Board, but is a de novo proceeding. The decision of the Court of Claims is subject to review only by the Supreme Court upon certiorari in the manner provided in the United States Code for the review of other cases in the Court of Claims.

EFFECTIVE: 01/31/78

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 46 - 19

46-2.2 Policy

(1) Investigations are requested by Assistant Attorney General in charge of the Civil Division.

(2) These requests, which contain detailed instructions as to what is desired, usually are accompanied by the renegotiation file and certified copies of all pertinent tax returns and a memorandum entitled, "General Instructions to the Auditor," which are forwarded to assist the Agent in the accounting investigation.

EFFECTIVE: 01/31/78

46-2.3 Investigative Procedure

(1) These investigations are of a civil nature resulting from actions filed by contractors against the U. S. Government in the Court of Claims. These suits pertain to instances where unilateral determination has been made by Government as to the amount of excessive profits realized by the contractor under renegotiation.

(2) In usual cases, all negotiations between plaintiff and Renegotiation Board are based on unverified accounting submissions supplied by plaintiff. It is imperative that a thorough audit be made, and all accounting data be verified or reasons given as to why it could not be verified.

EFFECTIVE: 01/31/78

46-2.3.1 Renegotiable v. Nonrenegotiable Sales

(1) Government is primarily concerned with profits made on plaintiff's renegotiable business. Unless total sales are broken down between renegotiable and nonrenegotiable sales, no determination can be made as to amount of excessive profits earned by plaintiff for year under review. Experience has indicated it is often difficult to classify some portion of plaintiff's sales; therefore, investigating Agent must make some decision in this respect. Various methods of arriving at this decision can be suggested and a few are set out below.

(a) What is opinion of company officials and

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 46 - 20

accountants, including outside auditors who may have prepared plaintiff's renegotiation reports and forms?

(b) Were companies to whom the sales were made renegotiated and, if so, what percentage of renegotiable business was arrived at in these cases?

(c) If it is necessary to obtain this information from other sources, leads should be set forth for appropriate offices. Do purchase orders or other records relating to purchase of materials used in construction of items sold show this material was obtained for defense or space contracts and related subcontracts?

(2) Examination should be made of cost records to determine whether direct and indirect costs are properly attributed to renegotiable and nonrenegotiable sales. Basis for plaintiff's allocation of overhead and other indirect costs should be commented on. If any costs are improperly attributed, adjustments and reasons therefore should be clearly indicated. There is no objection to discussing the determination of these sales and related costs with company officials. Should company's stand as to this determination be unreasonable, Agent should point out his reason for believing the stand unreasonable but should not enter into any controversy with officials or their counsel. Agent should, at all times, be in position to support his contention when appropriate time arrives.

EFFECTIVE: 01/31/78

46-2.3.2 Foreign Contracts

The 1951 act provided Renegotiation Board may specifically enumerate contracts to be exempted from renegotiation. Any sales so exempted should be listed separately.

EFFECTIVE: 01/31/78

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 46 - 21

46-2.3.3 Profit and Loss Statements

(1) The profit and loss statement should be comparative statement separated as to renegotiable and nonrenegotiable business, setting forth in adjoining columns the accounting data obtained from the plaintiff's submission, the defendant's audit and the differences. A breakdown should be shown as to total business, renegotiable business and nonrenegotiable business; for the plaintiff, the defendant, and the differences. All differences from one column to another should be explained. Where difference is appreciable, account where difference occurs should be analyzed to explain this difference. Comments should be made on accounting theories applied by plaintiff in reallocation of items of income and expense. It is only necessary to submit summary schedules. Auxiliary schedules will be contained in Agent's work papers. The report should emphasize discussion of discrepancies.

EFFECTIVE: 10/16/90

46-2.3.4 Prior Years

The memorandum from the Civil Division will request balance sheets and profit and loss statements for certain years prior to the year for which the plaintiff was renegotiated. Usually it is also requested that comparative statements for this prior period be prepared. The prior period serves as a guide in determining what percentage of profit the plaintiff should be allowed in the renegotiable year under review.

EFFECTIVE: 10/16/90

46-2.3.5 Accounting Working Papers

Copies of all accounting working papers and schedules prepared should be made and forwarded to FBIHQ as an enclosure to the accounting report for transmittal to Civil Division. When a closing report is received from Washington|Metropolitan|Field Office original working papers should then be forwarded to FBIHQ by cover LHM for transmittal to Civil Division for completion of their file.

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 46 - 22

EFFECTIVE: 10/16/90

46-2.3.6 Office of Origin

FBIHQ will designate office of origin. The office of origin, upon completion of its investigation, is to submit a letter to FBIHQ with a copy to the Washington|Metropolitan|Field Office requesting that the Washington|Metropolitan|Field Office be designated office of origin and instructing the Washington|Metropolitan|Field Office to follow the|Claims Court|docket until a final decision has been rendered. Included in the letter should be a brief background of the case and the amount involved in the suit. It is not necessary to furnish Washington|Metropolitan|Field|Office|copies of all reports upon being designated origin inasmuch as these reports serve no useful purpose. All cases are to be followed by Washington|Metropolitan|Field Office until a decision is rendered by the court.

EFFECTIVE: 10/16/90

46-2.4 Privacy Act - Requirements

(1) When interviewing anyone in the above classification, in order to solicit information about|himself/herself| or|his/her|own activities, the interviewing Agent must follow the procedures described in MIOG, Part I, 190-5, subparagraphs (2) and (3).

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

EFFECTIVE: 10/16/90

46-2.5 Character - Renegotiation Act - Civil Suits

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 46 - 23

EFFECTIVE: 10/16/90

46-3 FALSE CLAIMS - CIVIL SUITS

EFFECTIVE: 01/31/78

46-3.1 Statutes

Title 31, USC, Section 231; Title 41, USC, Section 119;  
Title 40, USC, Section 489

EFFECTIVE: 01/31/78

46-3.2 Section 231

EFFECTIVE: 01/31/78

46-3.2.1 Elements

(1) Person liable to suit must be civilian.

(2) Claim is present.

(3) Claim involved must be upon or against U. S. Government or any department or officer thereof. (In conspiracies to defraud U. S., there is no requirement that claim, payment, or allowance of which conspiracy seeks to achieve, be upon or against U.S.)

(4) Claim must be false, fraudulent or fictitious. (If claim itself is not fraudulent, enumerated documents used to aid in obtaining payment of claim against U. S. must contain fraudulent or fictitious statement or entry.)

(5) Person liable to suit had knowledge of false, fraudulent or fictitious character of claim or supporting documents.

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 46 - 24

EFFECTIVE: 01/31/78

46-3.2.2 Liability of Persons Making False Claims, Section 231,  
States That

"Any person not in the military or naval forces of the United States, or in the militia called into or actually employed in the service of the United States, who shall make or cause to be made, or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent, or who, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, makes, uses, or causes to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, or who enters into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim, or who, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, who, with intent to defraud the United States or willfully to conceal such money or other property, delivers or causes to be delivered, to any other person having authority to receive the same, any amount of such money or other property less than that for which he received a certificate or took a receipt, and every person authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, who makes or delivers the same to any other person without a full knowledge of the truth of the facts stated therein, and with intent to defraud the United States and every person who knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, sailor, or other person called into or employed in the military or naval service any arms, equipments, ammunition, clothes, military stores, or other public property, such soldier, sailor, officer, or other person not having the lawful right to pledge or sell the same, shall forfeit and pay to the United States the sum of \$2,000, and, in addition, double the amount of damages which the United States may have sustained by reason of the doing or committing such act, together with the costs of suit; and such forfeiture and damages shall be sued for in the same suit."

Sensitive  
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Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 46 - 25

EFFECTIVE: 01/31/78

46-3.3 Section 119

EFFECTIVE: 01/31/78

46-3.3.1 Elements

- (1) Any person is liable to suit.
- (2) Claim is present.
- (3) Claim is presented, or caused to be presented, to any officer agent or employee of any U.S. Government agency.
- (4) Claim is false, fraudulent or fictitious.
- (5) Person or persons, for purpose of benefiting any person in connection with contract procurement, performance, negotiation, cancelation or termination have knowledge of false, fraudulent or fictitious statements or entry; or endeavor to cover up or conceal a material fact; or use or engage in any other fraudulent trick, scheme, or device.

EFFECTIVE: 01/31/78

46-3.3.2 Liability of Persons Making False Claims Under Contract Settlement Act. Section 119 States That

"Every person who makes or causes to be made, or presents or causes to be presented to any officer, agent, or employee of any Government agency any claim, bill, receipt, voucher, statement, account, certificate, affidavit, or deposition, knowing the same to be false, fraudulent, or fictitious or knowing the same to contain or to be based on any false, fraudulent, or fictitious statement or entry, or who shall cover up or conceal any material fact, or who shall use or engage in any other fraudulent trick, scheme, or device, for the purpose of securing or obtaining, or aiding to secure or obtain, for any person any benefit, payment, compensation allowance, loan, advance, or emolument from the United States or any Government agency

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 46 - 26

in connection with the termination, cancelation, settlement, payment, negotiation, renegotiation, performance, procurement, or award of a contract with the United States or with any other person and every person who enters into an agreement, combination, or conspiracy so to do, (1) shall pay to the United States an amount equal to 25 per centum of any amount hereby sought to be wrongfully secured or obtained but not actually received, and (2) shall forfeit and refund any such benefit, payment, compensation, allowance, loan, advance, and emolument received as a result thereof and (3) shall in addition pay to the United States the sum of \$2,000 for each such act, and double the amount of any damage which the United States may have "sustained by reason thereof, together with the costs of suit."

EFFECTIVE: 01/31/78

46-3.4 Section 489

EFFECTIVE: 01/31/78

46-3.4.1 Elements

- (1) Any person is liable to suit.
- (2) Person has participated in fraudulent trick, scheme, or device.
- (3) The fraudulent trick, scheme, or device is for purpose of obtaining some payment, property or other benefit from U.S. Government or any U. S. Government agency in connection with procurement, transfer or disposition of U. S. Government property.

EFFECTIVE: 01/31/78

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 46 - 27

46-3.4.2 Liability under Federal Property and Administrative  
Services Act of 1949. Section 489 States That,

"...Every person who shall use or engage in, or cause to be used or engaged in, or enter into an agreement, combination, or conspiracy to use or engage in or to cause to be used or engaged in, any fraudulent trick, scheme, or device, for the purpose of securing or obtaining, or aiding to secure or obtain, for any person any payment, property, or other benefits from the United States or any Federal agency in connection with the procurement, transfer, or disposition of property under this chapter, chapter 11B of Title 5, chapter 4 of Title 41, and chapter 11 of Title 44--

"(a) shall pay to the United States the sum of \$2,000 for each such act, and double the amount of any damage which the United States may have sustained by reason thereof, together with the cost of suit; or

"(b) shall, if the United States shall so elect, pay to the United States, as liquidated damages, a sum equal to twice the consideration agreed to be given by the United States or any Federal agency to such person or by such person to the United States or any Federal agency, as the case may be; or

"(c) shall, if the United States shall so elect, restore to the United States the money or property thus secured and obtained and the United States shall retain as liquidated damages any property, money or other consideration given to the United States or any Federal agency for such money or property, as the case may be..."

EFFECTIVE: 01/31/78

46-3.5 Suits by Individuals

(1) Statutory provisions (Title 31, USC, Section 232)

(a) Suits may be brought and carried on by any person at his own expense in name of U. S. but cannot be withdrawn or discontinued without written consent of judge and USA.

(b) Copy of complaint must be served upon USA for district in which suit is brought and copy of complaint with written disclosure of evidence and information material to prosecution of suit must be sent to Attorney General, Washington, D. C., via registered

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 46 - 28

mail.

(c) U. S. has 60 days after service within which to enter appearance in suit. Person filing suit may carry it on if U. S. fails to enter suit during that period. If U. S. enters case within the 60-day period, suit will be carried on solely by U. S.

(d) In carrying on suit, U. S. is not bound by action taken by person bringing suit except that, in event U. S. does not carry on suit with due diligence within six months from date of its appearance or within time allowed by court, person bringing suit may carry it on.

(e) Court shall have no jurisdiction to proceed with suit by person if suit was based upon information or evidence in possession of agency, officer, or employee of U. S. at time suit was brought.

(f) Court may award person bringing suit, if suit is carried on by U. S., fair and reasonable compensation not to exceed 10% of proceeds of suit or settlement.

(g) Court may award person bringing suit and prosecuting it to final judgement or settlement a fair and reasonable amount not in excess of one fourth of proceeds of suit or settlement in addition to reasonable expenses incurred and court costs.

EFFECTIVE: 01/31/78

46-3.6 Handling of Complaints

(1) From sources other than FBI to effect that private individual has filed a civil suit

(a) Check field office records to determine whether there is or has been criminal investigation.

(b) Furnish FBIHQ with pertinent facts in court action and results of search of indices.

(c) If no prior investigation has been undertaken, contact individual filing suit and obtain all evidence in his possession regarding alleged fraud. Forward information to FBIHQ and take no further action unless specifically authorized by FBIHQ.

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 46 - 29

(2) Departmental letter transmitted to field office by FBIHQ. Obtain facts with regard to claim and nature of fraud immediately since Department has limited time in which to consider whether U. S. Government will become party to the suit.

EFFECTIVE: 01/31/78

46-3.7 Policy

Case in which criminal investigation has been undertaken or completed. No action should be taken regarding civil phases of case unless one of two following actions occurs:

(1) Receipt of FBIHQ authority based upon written letter from Civil Division of Department usually containing outline of alleged false claim, statute under which proceeding, facts available, and specific information desired.

(2) Receipt of request for investigation from USA based upon instructions from Civil Division. In this instance FBIHQ should be immediately notified upon receipt of request and communication should state that investigation will proceed UACB.

(3) Receipt of request for investigation from USA without instructions from Civil Division. USA has authority on his/her own initiative to handle civil fraud aspect of following:

(a) Claims arising under Dependents Assistance Act of 1950

(b) Claims against veterans arising out of educational provisions of Servicemen's Readjustment Act but excluding educational institutions

(c) Claims against applicants for Department of Veterans Affairs hospitalization, dental care, medical care, and domiciliary care

(d) Claims against applicants for unemployment and self-employment benefits under Servicemen's Readjustment Act

(e) Claims against applicants for Department of Veterans Affairs pension and disability compensation

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 46 - 30

(4) In these instances FBIHQ should be immediately notified upon receipt of request and communication should state that investigation will proceed UACB.

(5) Case in which investigation is requested by Civil Division and it is found that no previous complaint of a criminal nature has been received relating to activity to be investigated in civil action. Investigation should have as purpose the development of both civil and criminal phases. FBIHQ will transmit copies of reports to both Criminal Division and Civil Division of Department.

EFFECTIVE: 10/16/90

46-3.8 Investigative Procedure

(1) Essential data to be obtained

(a) Proof of fraud involved

(b) Aggregate amount of fraud which can be included  
in civil suit

(c) Proof of damages, if any, suffered by U. S.  
Government

(d) Itemization of individual claims involved

(e) Pertinent details regarding contracts and  
contract specifications including type of contract involved

(2) Handling of original statement, exhibits, and evidence. Do not destroy any original investigation of sabotage and fraud against the Government cases, even though statute of limitations has appeared to run under false claims statute, without presenting such matters to FBIHQ for referral to the Civil Division.

(3) Maintain case in pending status to report results of civil suit even though all requested investigation has been conducted.

EFFECTIVE: 10/16/90

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 46 - 31

46-3.9 Statute of Limitations

(1) False Claims statute (Title 31, USC, Section 235) - suit must be commenced within six years after commission of the act.

(2) Contract Settlement Act (Title 41, USC, Section 119) - no limitation

(3) Federal Property and Administrative Services Act of 1949 (Title 40, USC, Section 489) - U. S. Court of Appeals, Sixth Circuit, held 3-22-54, in U. S. v. Witherspoon (211 F. (2nd) 858) that suit must be commenced within five years from date when claim first accrued, pursuant to Title 28, USC, Section 2462. Court ruled that exception exists in regard to any suit pertaining to offenses involving fraud or attempted fraud against U.S. during war, in which case statute of limitations is suspended until three years after termination of hostilities as proclaimed by President or Congress (Title 18, USC, Section 3287).

(4) U. S. Court of Appeals, Fifth Circuit, had previously held in U. S. v. Weaver (207 F. (2nd) 796) that there was no applicable statute of limitations under section 26 (b) of the Surplus Property Act (Title 50, USC, Section 1635 (b) which was repealed and re-enacted as section 209 (b) of the Federal Property and Administrative Services Act of 1949 (Title 40, USC, Section 489).

(5) The Civil Division has advised Bureau that policy of the Department will be to press the issue as to applicability of five-year statute before other circuit courts and to urge soundness of decision in U. S. v. Weaver.

(6) Common law action - no limitation on action by U. S. for actual damages arising out of fraud against it.

EFFECTIVE: 10/16/90

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 46 - 32

46-3.10 Privacy Act - Requirements

(1) When interviewing anyone in the above classification, in order to solicit information about himself/herself or his/her own activities, the interviewing Agent must follow the procedures described in MIOG, Part I, 190-5, subparagraphs (2) and (3).

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

EFFECTIVE: 10/16/90

46-3.11 Character - False Claims - Civil Suits

EFFECTIVE: 10/16/90



Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 47 - 1

SECTION 47. IMPERSONATION AND RELATED STATUTES

47-1 STATUTES

Title 18, USC, Sections 912, 913, 915, and 916.

EFFECTIVE: 05/08/80

47-1.1 Section 912. Officer or Employee of the United States

"Whoever falsely assumes or pretends to be an officer or employee acting under the authority of the United States or any department, agency or officer thereof, and acts as such, or in such pretended character demands or obtains any money, paper, document, or thing of value, shall be fined not more than \$1,000 or imprisoned not more than three years, or both."

EFFECTIVE: 05/08/80

47-1.1.1 Elements

- (1) Pretends to be officer or employee of U.S. Government
- (2) Acts as such, or
- (3) Demands or obtains a thing of value

Either (2) or (3) coupled with (1) satisfies the statute.

EFFECTIVE: 05/08/80

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 47 - 2

47-1.1.2 Policy

(1) So called "no violation" cases where element (1), the false impersonation, is present and the other elements are absent, there is no violation of this Statute. In such cases in which the false impersonation is that of an FBI Agent or a Department of Justice employee the FBI policy is that the impersonator should be appropriately admonished and cautioned to desist if he/she can be located with reasonable effort. In the absence of aggravated circumstances, no more than the basic inquiries to locate the subject should be pursued. If successfully located, a statement that the subject has been so admonished should be set forth in the investigative case file. This should also be done in actual violations in which prosecution is declined. If the false impersonation is that of another Government agency, no effort is made to admonish the impersonator unless he/she is immediately available.

(2) U.S. Government employee violators - Where the impersonator is already an employee of the U.S. Government and the violation is consummated by his/her misrepresenting his/her position, FBIHQ has no objection to the institution of an investigation without specific authority from FBIHQ unless the employee is highly placed. In any event, however, FBIHQ should be immediately advised by letter, airtel, or teletype, as the exigencies of the case may dictate, of the institution of such investigation and the identity of the employee involved.

(3) One file with one office of origin only on each impersonator - Due to the fact that impersonators are often repeat offenders, the FBI policy is to consolidate physically all files at FBIHQ dealing with one impersonator and designate one office as the office of origin having supervisory duties over all his/her current activities. Frequently, when an active impersonator starts across the country using various aliases, a number of offices, having no knowledge of his/her previous activities, open new case files carrying themselves as office of origin. When a field office establishes this impersonator to be identical with the subject of other cases with other offices of origin, FBIHQ should be affirmatively requested to designate the one office of origin and order the necessary file consolidations. It is observed this policy is an exception to the general rule concerning opening files in other violations.

(4) The Department follows these cases and accordingly a copy of the indictment returned or information filed is to be included as enclosure to report.

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 47 - 3

(5) These cases should be presented to the USA at an early date to avoid unnecessary investigation.

EFFECTIVE: 05/08/80

47-1.1.3 Investigative Procedure

(1) Interviews with complainants or victims: Established basic investigative techniques should be used in the interviewing of witnesses and the collection of evidence. However, when an impersonation complaint is received, the first step should be to obtain immediately from the complainant or the person who actually heard the statements of impersonation a detailed and accurate account of what actually happened. It is well in most cases to obtain a brief signed statement from the victim. In addition, it should be immediately established as to whether or not the victim relied solely upon the representations of the impersonator in parting with something of value.

(2) Verification of non-Federal employment: It should be immediately verified that the alleged impersonator is not employed in the capacity he/she has alleged. If it should be determined the impersonator was recently employed by the Federal Government, it should be ascertained exactly when his/her compensation ceased, as it has been held that even though a Federal employee resigns and ceases active duty, he/she is considered a Federal employee until his/her compensation actually ceases.

EFFECTIVE: 05/08/80

47-1.2 Section 913. Impersonator Making Arrest or Search

"Whoever falsely represents himself to be an officer, agent, or employee of the United States, and in such assumed character arrests or detains any person or in any manner searches the person, buildings, or other property of any person, shall be fined not more than \$1,000 or imprisoned not more than three years, or both."

EFFECTIVE: 05/08/80

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 47 - 4

47-1.2.1 Elements

(1) Falsely represent oneself to be an employee of the  
U.S. Government

(2) Do one of 5 things:

- (a) Arrest a person
- (b) Detain a person
- (c) Search a person
- (d) Search a person's property
- (e) Search a person's buildings

EFFECTIVE: 10/16/90

47-1.2.2 Policy

These cases should be presented to the U. S. Attorney at  
an early date to avoid unnecessary investigation.

EFFECTIVE: 10/16/90

47-1.2.3 Investigative Procedure

A detailed and accurate account of what actually happened  
should be obtained immediately from the complainant so that a verbatim  
statement can be executed setting forth the exact words of the  
impersonator.

EFFECTIVE: 10/16/90

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 47 - 5

47-1.3 Section 915. Foreign Diplomats, Consuls, or Officers

"Whoever, with intent to defraud within the United States, falsely assumes or pretends to be a diplomatic, consular or other official of a foreign government duly accredited as such to the United States and acts as such, or in such pretended character, demands or obtains or attempts to obtain any money, paper, document, or other thing of value, shall be fined not more than \$5,000 or imprisoned not more than ten years, or both."

EFFECTIVE: 10/16/90

47-1.3.1 Elements

- (1) Intent to defraud or deceive
- (2) The impersonation of a diplomatic or consular or other official of a foreign government duly accredited as such to the U. S. Government.
- (3) Taking upon oneself to act in the role of the impersonator, demanding a thing of value, or obtaining a thing of value.

EFFECTIVE: 10/16/90

47-1.3.2 Policy

The false personation of any foreign official notified to the State Department will fulfill the requirements necessary to establish a violation of this section. The Department has advised that the Department of State does not consider delegates to the United Nations as being "duly accredited...to the Government of the United States," as officials of a foreign government and consequently the mere impersonation of a delegate of a foreign government to the United Nations would not be a violation of this section. Beyond the foregoing, each case should be presented to the USA for an opinion as to whether the official named is capable of being impersonated.

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 47 - 6

EFFECTIVE: 10/16/90

47-1.3.3 Investigative Procedure

As additional investigative procedure to those previously mentioned under Title 18, USC, Section 912, it is pointed out that to determine the nonforeign employment of an impersonator under this section it is necessary in every instance to request the Washington|Metropolitan|Field Office to obtain the desired evidence from the State Department and the representatives of the foreign government involved.

EFFECTIVE: 10/16/90

47-1.4 Section 916. 4-H Club Members or Agents

"Whoever, falsely and with intent to defraud, holds himself out as or represents or pretends himself to be a member of, associated with, or an agent or representative for the 4-H clubs, an organization established by the Extension Service of the United States Department of Agriculture and the land grant colleges, shall be fined not more than \$300 or imprisoned not more than six months, or both."

EFFECTIVE: 01/31/78

47-1.4.1 Elements

- (1) Intent to defraud or deceive
- (2) Impersonate or represent oneself to be a member of, associated with, or agent or representative for the 4-H Club

EFFECTIVE: 01/31/78

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 47 - 7

47-1.4.2 Policy

These cases should be presented to the U. S. Attorney at an early date to avoid unnecessary investigation.

EFFECTIVE: 01/31/78

47-1.4.3 Investigative Procedure

The procedures set out for Title 18, USC, Section 912, are applicable to this section.

EFFECTIVE: 01/31/78

47-2 VENUE

Impersonation violations are prosecutable only in the Federal judicial district where the offense occurred. Where the impersonation is by telephone the venue is in the district of the hearer.

EFFECTIVE: 01/31/78

47-3 CHARACTER - IMPERSONATION

EFFECTIVE: 01/31/78

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 48 - 1

SECTION 48. POSTAL VIOLATIONS (EXCEPT MAIL FRAUD)

48-1 POSTAL VIOLATIONS (EXCEPT MAIL FRAUD)

Inquiries concerning the postal service and complaints pertaining to the theft of mail or postal matters are forwarded by FBIHQ to the Postmaster General, Washington, D. C. Similar information reported to field offices should be transmitted to the nearest postal inspector in charge whose address can be obtained from any postmaster.

EFFECTIVE: 01/31/78



Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 49 - 1

SECTION 49. BANKRUPTCY FRAUD

49-1 STATUTES (CRIMINAL)

Title 18, USC, Sections 151-155

EFFECTIVE: 08/23/88

49-1.1 Section 151. Definitions

"Term debtor means an individual, partnership, corporation, or municipality concerning which a bankruptcy petition has been filed under Title 11, of the USC (commonly referred to as the Bankruptcy Code). Term bankruptcy relates to any proceeding, arrangement, or plan pursuant to Title 11, including Chapter 7 (liquidation), Chapter 11 (reorganization), Chapter 12 (family farmers), and Chapter 13 (wage earners). Refer to Title 11, USC, Section 101 for additional definitions."

EFFECTIVE: 08/23/88

49-1.2 Section 152. Concealment of Assets, False Oaths and Claims; Bribery

"Whoever knowingly and fraudulently conceals from a custodian, trustee, marshal, or other officer of the court charged with the control or custody of property, or from creditors in any bankruptcy proceeding, any property belonging to the estate of a debtor; or

"Whoever knowingly and fraudulently makes a false oath or account in or in relation to any bankruptcy proceeding; or

"Whoever knowingly and fraudulently makes a false declaration, certificate, verification, or statement under penalty of perjury as permitted under Section 1746, Title 28, or in relation to any case under Title 11; or

"Whoever knowingly and fraudulently presents any false

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 49 - 2

claim for proof against the estate or a debtor, or uses any such claim in any bankruptcy proceeding, personally, or by agent, proxy or attorney, or as agent, proxy, or attorney; or

"Whoever knowingly and fraudulently receives any material amount of property from a debtor after the filing of a bankruptcy proceeding, with intent to defeat the bankruptcy law; or

"Whoever knowingly and fraudulently gives, offers, receives or attempts to obtain any money or property, remuneration, compensation, reward, advantage, or promise thereof, for acting, or forbearing to act in any bankruptcy proceeding; or

"Whoever, either individually or as an agent or officer of any person or corporation, in contemplation of a bankruptcy proceeding by or against him/her or any other person or corporation, or with intent to defeat the bankruptcy law, knowingly and fraudulently transfers or conceals any of his/her property or the property of such other person or corporation; or

"Whoever, after the filing of a bankruptcy proceeding or in contemplation thereof, knowingly and fraudulently conceals, destroys, mutilates, falsifies, or makes a false entry in any recorded information, including books, documents, records, and papers relating to the property or financial affairs of a debtor; or

"Whoever, after the filing of a bankruptcy proceeding, knowingly and fraudulently withholds from a custodian, trustee, marshal, or other officer of the court entitled to its possession, any recorded information including books, documents, records, and papers relating to the property or financial affairs of a debtor,

"Shall be fined not more than \$5,000 or imprisoned not more than five years, or both."

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Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 49 - 3

49-1.2.1 Elements

(1) Concealment of assets (Section 152) -

(a) Estate in bankruptcy existed.

(b) Duly qualified officer of court, charged with control or custody of property of such estate, appointed. (In composition cases, concealment may be from creditors if no officer of court appointed.)

(c) Property of such estate knowingly and fraudulently concealed from officer. (Proof of first two elements contained in official records of clerk of court, U.S. Trustee, and/or Interim Trustee. Third element may be susceptible to direct proof of physical concealment of property, in which event the evidence necessary is that which will establish the property is that of bankrupt estate, that it was not delivered to the officer from whom the concealment is charged, and that it was concealed by individual charged. In other instances, concealment may be established by circumstantial evidence consisting primarily of testimony of qualified accountant, which is designed to show from records that bankrupt should have had, at bankruptcy, certain amount of merchandise or other property, that he/she delivered to officials of the bankruptcy court a lesser amount, and that shortage not satisfactorily explained.)

(2) Concealment or transfer of assets in contemplation of bankruptcy (Section 152) -

(a) Accused is an individual or an officer or agent of person or corporation.

(b) Accused contemplated bankruptcy proceedings would be instituted as to himself/herself or such person or corporation or intended to defeat the operation of the act.

(c) Accused knowingly and fraudulently concealed or transferred any property of debtor.

(3) Destruction of records (Section 152) -

(a) Petition filed or accused contemplated bankruptcy proceeding would be instituted.

(b) Accused knowingly and fraudulently concealed, destroyed, mutilated, falsified, or made a false entry in any recorded

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 49 - 4

information including books, documents, records, and papers relating to the property or financial affairs of a debtor.

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49-1.3 Section 153. Embezzlement by a Trustee or Officer

"Whoever knowingly and fraudulently appropriates to his/her own use, embezzles, spends, or transfers any property or secretes or destroys any document belonging to the estate of a debtor which came into his/her charge as trustee, custodian, marshal, or other officer of the court, shall be fined not more than \$5,000 or imprisoned not more than five years, or both."

EFFECTIVE: 08/23/88

49-1.4 Section 154. Adverse Interest and Conduct of Officers

"Whoever, being a custodian, trustee, marshal, or other officer of the court, knowingly purchases, directly or indirectly, any property of the estate of which he/she is such officer in a bankruptcy proceeding; or

"Whoever, being such officer, knowingly refuses to permit a reasonable opportunity for the inspection of the documents and accounts relating to the affairs of estates in his/her charge by parties in interest when directed by the court to do so -

"Shall be fined not more than \$500, and shall forfeit his/her office, which shall thereupon become vacant."

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Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 49 - 5

49-1.5 Section 155. Fee Agreements in Cases under Title 11 and Receiverships

"Whoever, being a party in interest, whether as a debtor, creditor, receiver, trustee, or representative of any of them, or attorney for any such party in interest, in any receivership or bankruptcy proceeding in any United States court or under its supervision, knowingly and fraudulently enters into any agreement, express or implied, with another such party in interest or attorney for another such party in interest, for the purpose of fixing the fees or any compensation to be paid to any party in interest or to any attorney for any party in interest for services rendered in connection therewith, from the assets of the estate,

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

EFFECTIVE: 08/23/88

49-2 BANKRUPTCY PROCEDURES

(1) Constitutional provisions - Article 1, Section 8, of Constitution gave Congress the exclusive power to establish uniform bankruptcy laws. The National Bankruptcy Act was passed in 1898 and amended in 1938. The Bankruptcy Reform Act of 1978 superseded prior bankruptcy laws and enacted Title 11, USC, as the bankruptcy code. The Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 revised Title 11, USC, Section 101, and expanded the United States Trustees Program (USTP). The Act (a) establishes 52 additional bankruptcy judgeships throughout the United States; (b) expands on a nationwide basis, the USTP, which was established as a pilot project in 1978 to test a new method of bankruptcy administration in 18 Federal judicial districts; (c) provides for funding of the operations of the USTP through fees paid by users of the bankruptcy system; (d) establishes Chapter 12 of the Bankruptcy Code to provide bankruptcy relief for "family farmers"; and (e) authorizes, on a two-year pilot basis, the establishment of an Electronic Case Management Demonstration Project in three Federal judicial districts.

(2) Purpose of Title 11, USC -

Chapter 1 - general provisions, including definitions and basic concepts.

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 49 - 6

Chapter 3 - prescribes the procedure for bankruptcy case administration.

Chapter 5 - general provisions regarding creditors, the debtor, and the estate.

Chapter 7 - procedures for liquidations and distribution of property.

Chapter 11 - procedures for reorganization, whereby the debtor restructures debt without being forced to liquidate the estate and may continue operation of his/her business as a "debtor-in-possession."

Chapter 12 - procedures for bankruptcy relief for "family farmers."

Chapter 13 - procedures for bankruptcy relief for "wage earners," which emphasize problems peculiar to consumer credit for individuals.

(3) Civil provisions of the bankruptcy laws -

(a) United States Bankruptcy Courts are adjuncts of U.S. District Courts. The principal officers are the "United States Bankruptcy Judges," appointed for 14 years by the President to adjudicate matters in his/her bankruptcy district; and "United States Trustees," appointed by the Attorney General to handle day-to-day administration of bankruptcy cases within his/her region. The United States Trustees also have the responsibility for appointing "case trustees" (to be selected from panels of qualified and approved individuals) to assist the United States Trustees in the performance of their responsibilities. The Executive Office for United States Trustees, Department of Justice, Washington, D.C., oversees the administration of the United States Trustee Program.

(b) Attorneys, accountants, appraisers, auctioneers, or other professional persons may be appointed on a showing of necessity to represent or assist the United States Trustee or case trustee.

(c) Proceedings are begun by filing of a petition either by the debtor (voluntary), or by creditors (involuntary). After filing of a voluntary petition, the court automatically issues an order for relief. This means the debtor is under the jurisdiction

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Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 49 - 7

of the court for purposes of adjudication of his/her estate. In involuntary cases, a petition must be filed by three creditors with claims aggregating \$5,000, except that one creditor claiming \$5,000 is sufficient where the total number of creditors is less than 12. If the petition is timely controverted, the court, after trial, shall order relief against the debtor in an involuntary case if:

1. The debtor is generally not paying his/her debts when due, or

2. Within 120 days before the date of the filing of the petition, a custodian (other than a trustee, receiver, or agent appointed by the court to collect for a lien against the debtor's property) was appointed and took possession of less than all of the debtor's property. If the petition is not timely controverted, the court shall order relief against the debtor.

(d) The commencement of a bankruptcy case creates an estate and that estate which is comprised of all the debtor's property, including all legal and equitable interest in property.

(e) Until an order for relief in a bankruptcy case, and except to the extent that the court orders otherwise, any business of the debtor may continue to operate, and the debtor may continue to use, acquire, or dispose of property as if an involuntary case concerning the debtor had not been commenced.

(f) An involuntary case may only be filed under Chapter 7 (liquidation) or Chapter 11 (reorganization) of Title 11 and only by a person (except a farmer), a not-for-profit corporation, or a commercial corporation that may be a debtor under the chapter under which such case is commenced. Involuntary cases are not permitted for municipalities.

(g) The court may, at any time after the filing of an involuntary case under Chapter 7, but before an order for relief is issued, appoint an interim trustee to take possession of the debtor's property, if deemed necessary, to prevent loss to the estate or to preserve the property of the estate. The court may make such an order only upon the request of a party in interest after notice to the debtor and a proper hearing. The debtor may regain possession of such property, before an order for relief by posting a sufficient bond as required by the court.

(h) Involuntary cases may not be filed against foreign banks that are not engaged in business in the United States

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 49 - 8

but that have assets located here, unless a foreign proceeding against the bank is pending under foreign law.

(i) The court may award costs, reasonable attorneys' fees, or damages if an involuntary bankruptcy petition is dismissed other than by consent of all creditors and the debtor. In addition, if a petitioning creditor filed the petition in bad faith, the court may award the debtor any damages proximately caused by the filing of the petition.

(j) Compositions, extensions, reorganization, and adjustment plans - Sections of the Act provide that private persons, farmers, railroads, or any corporation, provided for in Chapter 11 of the Act, municipalities, or other political subdivisions of a state may file a petition or answer at any time during a voluntary or involuntary case saying they desire to effect a composition, an extension of time in which to pay obligations, a plan of reorganization, or a plan of readjustment of their liabilities. Purpose of extension provisions is to permit debtors, in the absence of fraud, to readjust their financial structures, pay off their obligations and eliminate their debts. With some variations, the various sections relating to the above classes of debtors provide jurisdiction and powers of court. The title, powers, and duties of officers are same as if a voluntary petition had been filed and order for relief entered on day when the debtor's petition or answer had been filed. The various sections relating to the above debtors provide that United States Bankruptcy Courts exercise original jurisdiction in proceedings for relief of debtors.

(k) The appointment of a trustee is mandatory for a public company, which is defined as a company that has \$5 million in liabilities, excluding tax and trade obligations, and 1,000 security holders. The appointment of a trustee is discretionary in nonpublic company cases, considering the interests of the estate and its security holders.

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Manual of Investigative Operations and Guidelines  
Part I

PAGE 49 - 9

49-3 DEPARTMENTAL INSTRUCTIONS AND OPINIONS

(1) Search Warrants - Search warrant to search for concealed property in a bankruptcy case may be issued under Title 28, USC, Section 1651, after appointment and qualification of trustee and property seized under such warrant may be introduced in evidence in a criminal proceeding.

(2) Accounting evidence - Accounting testimony only showing a merchandise shortage on basis of the debtor's books and records is sufficient to make a prima facie case under either of the following circumstances:

(a) If books indicate quantities of goods purchased and sold, thereby allowing determination of quantities of goods that should be on hand at time of bankruptcy.

(b) If books indicate cost of merchandise purchased and sold, thereby making it possible to make a deduction as to how much merchandise, measured in cost, should have been on hand at the time of the bankruptcy. (If the books disclose only the amount received from sales, evidence would not be sufficient, on the theory that it is impossible to determine how much merchandise was actually sold; however, if testimony of accountant is properly supported reflecting sales were made on an average of a certain percentage above cost, such evidence would be sufficient because it indicates merchandise not sold below cost and, therefore, there must be a shortage. If accountant testified to merchandise shortage computed after deducting the markup on sales admitted to by debtor or testified to by an employee, such evidence would support a prima facie case of concealment of assets.)

(3) Theft of property of a bankrupt estate - Where property belonging to estate of debtor is stolen from custody of an officer of court, charged with the control or custody of property, and retained by the thief, thief may be prosecuted for concealment, if shown accused had some knowledge of the bankruptcy.

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Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 49 - 10

49-4 IMMUNITY OF DEBTOR'S TESTIMONY

Prior to 1978, the debtor was immune from prosecution concerning the subject of his/her testimony at the first meeting of creditors and at one subsequent specified hearing. This immunity extended to any evidence derived from his/her testimony and could not be used for lead purposes. Current law, however, prescribes that a debtor is allowed to invoke his/her Fifth Amendment right concerning self-incrimination at hearings without resulting in a denial of a discharge. If the debtor, however, waives invocation of this right, he/she is not immune from prosecution concerning the testimony and the testimony may also be used for lead purposes. United States Trustees, who preside over all hearings, are not authorized to grant immunity, and any request for immunity must be initiated by the Attorney General or by the appropriate United States Attorney through the appropriate U.S. District Court.

EFFECTIVE: 08/23/88

49-5 POLICY

(1) When instituting investigations of violations by officers of the Bankruptcy Court, the Economic Crimes Unit (ECU), White-Collar Crimes Section, FBIHQ, should be promptly notified by airtel or more expeditious means if circumstances dictate. The LHM should set forth allegations and fact that USA has been notified (where matter was not referred by USA's Office) and that he/she is aware of need to notify presiding Federal Judge that an investigation of a court official is in progress.

(2) Circulations to creditors or customers - No circular letters to be mailed to debtor's customers or creditors without prior submission to the ECU for authorization.

(3) Investigations relating to solicitation of proxies, etc., during a railroad reorganization or receivership:

(a) Interstate Commerce Commission may investigate to determine whether any person has violated or is about to violate provisions of this subsection and may aid in its enforcement.

(b) Promptly refer to the ECU complaints relating to alleged violations of this provision.

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Manual of Investigative Operations and Guidelines  
Part I

PAGE 49 - 11

(4) Accounting investigations - Responsibility of SAC to assign to accounting phases of bankruptcy cases those Agents who are qualified to handle such assignments.

(5) Investigations at request of USA pertaining to his/her opposing debtor's discharge:

(a) Statute provides USA, when requested by court, shall examine into debtor's conduct and if he/she finds probable cause to do so, oppose discharge if public interest warrants it.

(b) Upon request of USA, Bureau will conduct investigations of this type; however, immediately notify the ECU of any such request giving pertinent circumstances of case.

(6) When initial complaint made by officer of court and USA declines prosecution, case may be closed. Communication indicating declination should contain statement that USA was specifically informed that complaint was made by officer of court.

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49-6

INVESTIGATIVE PROCEDURE

(1) Complaints -

(a) Investigations based on information received from USA, United States Trustees, Bankruptcy Judge, creditors, and attorneys for trustees, and interested parties. Refer to MIOG, Part I, Section 58, for policy regarding allegations of bribery and/or conflict of interest involving court orders.

(b) Maintain contact with all persons in position to have information as to violations.

(c) Responsibility for instituting investigations rests with SAC.

(d) USA must be consulted at beginning of investigation for opinion as to whether facts complained of, if true, constitute prosecutable violation(s).

(2) Initial steps -

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Manual of Investigative Operations and Guidelines  
Part I

PAGE 49 - 12

(a) Obtain from complainant all information relative to alleged violation.

(b) Specific facts indicating exact nature of violation should be sought as it is not desirable to engage in general investigation in nature of a "fishing expedition" on general allegations of fraud.

(c) Bankruptcy records should be examined and necessary preliminary facts obtained to establish jurisdiction.

(d) Preliminary survey should not interfere with prompt investigation of leads requiring immediate attention, such as direct information as to the location of concealed assets.

(3) Planning the investigation -

(a) From preliminary information obtained, it is possible to plan subsequent course of action to be followed.

(b) Determine as soon as possible in concealment case whether facts indicate simple physical concealment by debtor of identified articles or a scheme formulated in anticipation of bankruptcy with or without connivance of others.

(c) Any association of debtor with individuals known to have been connected with other bankruptcies should be given attention.

(d) Determine whether it will be possible to establish violation by direct evidence or whether expert testimony of accountants will be necessary and whether it appears likely evidence can be developed as to other alleged violations; i.e., destruction of records, false claims, mail fraud, fraud by wire, etc.

(e) Where indications of more than one violation present, it is desirable that the investigation be directed toward establishment of those most susceptible to proof.

(4) Types of evidence and source of leads -

(a) Official bankruptcy records are sources of necessary and useful information; should be examined at beginning of investigation; will be found with the Bankruptcy Court clerk, U.S. Trustee, case trustee, or attorney for trustee.

[REDACTED]

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Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 49 - 13

[REDACTED]

Transcripts of testimony of debtor or person designated to testify on behalf of corporate bankrupt to be reviewed.  
Transcripts of other witnesses to be reviewed.

(b) A petition may be filed by trustee for a summary order directing debtor to turn over assets alleged to be in his/her possession or for which he/she has failed to account. Evidence in support of such petition is valuable and should be examined. Should a compliance with turnover order be noted, it would indicate concealment of assets and in such instances a comprehensive investigation should be conducted, particularly to determine source of funds used in complying with turnover order. One of bases for an objection to discharge which may be filed by creditors is that bankrupt has violated one of criminal provisions of the Act. Issue thus raised is one with which Bureau's investigation is concerned and evidence presented at hearing upon the specification may be admissible in a criminal prosecution.

(c) In some instances it is possible to prove existence of unaccounted-for assets by testimony of an accountant who has made examination of bankrupt's books and records. Such unaccounted-for assets are ordinarily figured in merchandise, but may also be computed as to cash, equipment, accounts or notes receivable, as well as presentation of an abnormal shrinkage in assets.

[REDACTED]

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[REDACTED] Books of bankrupt, if complete, will supply all the necessary figures. Where books are not complete, it may be necessary, in order to determine beginning inventory, to resort to financial statements issued by debtor. In addition, data regarding beginning inventory may be obtained by interviewing debtor and his/her employees and examination of work papers of debtor's accountant. To determine purchases of debtor in instances in which records of the debtor not complete, it may be necessary to circularize creditors upon obtaining FBIHQ authority. Copies of pertinent invoices and financial records deemed pertinent may be requested in circular letter.

(d) [REDACTED]

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 49 - 14

[REDACTED]

(e) [REDACTED]

[REDACTED]

b2/b7E

(f) Facts in every bankruptcy investigation are necessarily unique, and it must lie in discretion of Agent conducting the investigation, counselled by SAC, to determine evidence which can and should be developed, and to shape course of inquiry along logical lines.

(g) |Deleted|

(5) Recovery of concealed assets -

(a) Recovery of concealed assets in possession of debtor or associates is of great value in establishing violation.

(b) When concealed assets are discovered, follow procedures pertaining to searches and seizures.

(c) Persons taking inventory of recovered merchandise should properly indicate, on each article if necessary, their identifying mark, or take appropriate notes for assistance in their possible testimony.

(6) Scam bankruptcy or "Bustout"

(a) "Bustout" is the slang term used to describe a scheme employed in establishing or acquiring a business, buying large quantities of merchandise on credit and thereafter disposing of the merchandise without paying the creditors.

(b) Most of these operations are reported by informants and industry sources before a voluntary or involuntary bankruptcy petition is filed. Investigations are to be instituted

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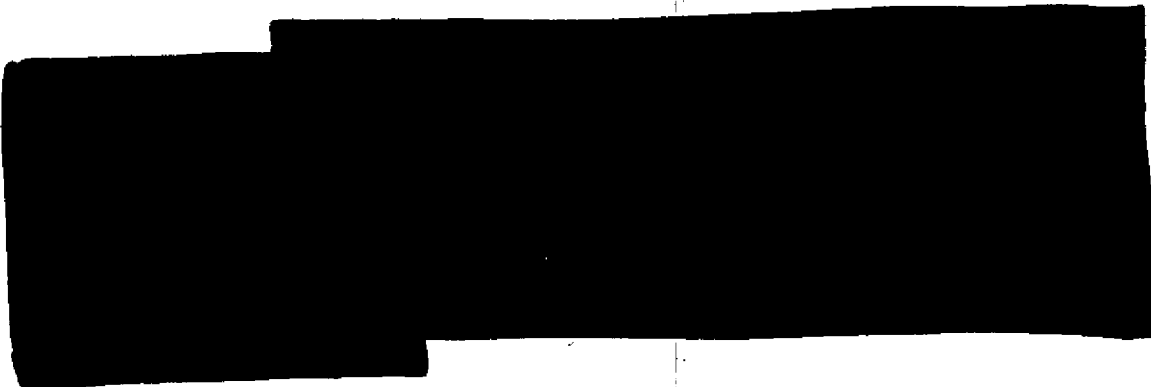
Manual of Investigative Operations and Guidelines  
Part I

PAGE 49 - 15

promptly and discreetly to develop evidence before the operator has terminated his/her scheme and destroyed any records evidence which may exist. Other violations which may be present in a "bustout" include fraud by wire (Title 18, USC, Section 1343), mail fraud (Title 18, USC, Section 1341), and interstate transportation of stolen property (Title 18, USC, Section 2314).

(c) The National Association of Credit Management (NACM) is an organization of over 45,000 representatives of manufacturers, distributors, service companies, and financial institutions which extend credit to the nation's businesses. NACM is committed to prevention and detection of business credit frauds assisting law enforcement agencies in obtaining successful prosecutions of individuals involved in these frauds. The NACM Loss Prevention Department maintains a computerized data base, with information dating to 1963, relating to actual and suspected business credit frauds, including names, aliases, background information, addresses, prior businesses, and modus operandi of individuals involved. This information is available to law enforcement agencies upon request. NACM members additionally alert the Loss Prevention Department as suspicious credit matters come to the members' attention, such as unsolicited or unusual merchandise orders, fraudulent credit references, nonpayment of credit invoices, etc. The NACM Loss Prevention Department is located at 401 Wythe Street, Suite 2A, Alexandria, Virginia 22314, telephone (703) 684-3436.

(7) Use of charts or graphs in court -



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Manual of Investigative Operations and Guidelines  
Part I

PAGE 49 - 16

49-7 REPORTING RULES

(1) Bankruptcy cases must be presented to the USA and cannot be closed administratively.

(2) Upon initiating a bankruptcy investigation (except investigations initiated on receipt of a citizen's complaint alleging a loss of less than \$50,000), submit an airtel to the Economic Crimes Unit (ECU), White-Collar Crimes Section, FBIHQ, with an accompanying LHM setting forth a summary of allegations and, if known, name and physical description of any subject(s) developed.

(3) Two copies of prosecutive report, when required, are to be submitted to ECU, one of which is disseminated by the ECU to the Criminal Division, Department of Justice. A copy of the report should be furnished to the USA.

(4) The ECU must be advised of the final disposition of each case. At the conclusion of the case, an LHM should be submitted containing the ultimate prosecutive disposition.

(5) Where no prosecutive reports are necessary, such as in an immediate declination or when USA declines prior to required submission of a prosecutive report, an LHM containing a synopsis of the case, identity of the subject(s), and prosecutive disposition may be submitted in lieu of a report.

EFFECTIVE: 11/20/90

49-8 STATUTE OF LIMITATIONS

(1) Five years from date of offense except in concealment of assets.

(2) Concealment cases - is continuing offense -  
Limitation begins to run on date discharge granted or denied debtor.  
(Title 18, USC, Section 3284)

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Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 49 - 17

49-9 VENUE

- (1) Lies in district in which offense committed
- (2) In concealment cases - in district in which petition filed or in district in which ancillary proceeding instituted if assets concealed from such ancillary trustee

EFFECTIVE: 11/20/90

49-10 PENALTY - (MAXIMUM)

- (1) Section 152 - \$5,000 or 5 years, or both
- (2) Section 153 - \$5,000 or 5 years, or both
- (3) Section 154 - \$500 and forfeiture of office
- (4) Section 155 - \$5,000 or 1 year, or both

EFFECTIVE: 11/20/90

49-11 CHARACTER - BANKRUPTCY FRAUD

EFFECTIVE: 11/20/90

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 50 - 1

SECTION 50. INVOLUNTARY SERVITUDE AND SLAVERY

50-1 STATUTES

U.S. Constitution, 13th amendment; Title 18, USC, Sections 1581-1588, 241 and 242.

EFFECTIVE: 02/16/89

50-1.1 Constitution of the United States, 13th Amendment

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. Congress shall have power to enforce this article by appropriate legislation.

EFFECTIVE: 02/16/89

50-1.2 Section 1581. Peonage; Obstructing Enforcement

(1) Whoever holds or returns any person to a condition of peonage, or arrests any person with the intent of placing him/her in or returning him/her to a condition of peonage, or

(2) Whoever obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

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Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 50 - 2

50-1.3 Section 1583. Enticement Into Slavery

(1) Whoever kidnaps or carries away any other person, with the intent that such other person be sold into involuntary servitude, or held as a slave; or

(2) Whoever entices, persuades or induces any other person to go on board any vessel or to any other place with the intent that he/she may be made or held as a slave, or sent out of the country to be so made or held; shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

EFFECTIVE: 02/16/89

50-1.4 Section 1584. Sale Into Involuntary Servitude

Whoever knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude, any other person for any term, or brings within the United States any person so held, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

EFFECTIVE: 02/16/89

50-1.5 Section 241. Conspiracy Against Rights

(1) If two or more persons conspire to injure, oppress, threaten, or intimidate any inhabitant of any State, Territory or District in the free exercise or enjoyment of any right or privilege secured to him/her by the Constitution or laws of the United States, or because of his/her having so exercised the same; or

(2) If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his/her free exercise or enjoyment of any right or privilege so secured;

(3) They shall be fined not more than \$10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 50 - 3

(4) In the event a victim is not a U.S. citizen, then a possible violation of Title 18, USC, Section 371, Conspiracy, is to be considered. Policy and procedure relating to this statute is contained in Part I, Section 62-16 through 62-16.8 of this manual.

EFFECTIVE: 02/16/89

50-1.6 Section 242. Deprivation of Rights Under Color of Law

Whoever, under color of any law, statute, ordinance regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his/her color, or race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and if bodily injury results, fined and/or imprisoned not more than 10 years. If death results, shall be subject to imprisonment for any term of years or for life.

EFFECTIVE: 02/16/89

50-1.7 Other Applicable Statutes - Slave Trade

- (1) Title 18, USC, Section 1582. Vessels for slave trade
- (2) Title 18, USC, Section 1585. Seizure, detention, transportation or sale of slaves
- (3) Title 18, USC, Section 1586. Service on vessels in slave trade
- (4) Title 18, USC, Section 1587. Possession of slaves aboard vessel
- (5) Title 18, USC, Section 1588. Transportation of slaves from United States

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 50 - 4

EFFECTIVE: 02/16/89

50-2 ELEMENTS

EFFECTIVE: 02/19/85

50-2.1 Section 1581

- (1) A person must hold or return any other person; or
- (2) A person must arrest any other person with intent to  
| place|him/her|in or return|him/her|
- (3) To compulsory service not provided by law
- (4) Because of a debt, either real or pretended
- (5) Against the victim's will

EFFECTIVE: 02/19/85

50-2.2 Section 1583

- (1) A person must kidnap or carry away any other person
- (2) With intent that the other person will be sold into  
compulsory service, or held as a slave; or
- (3) A person must induce any other person to board a  
vessel or to go to any place
- (4) With intent that the other person will be made or  
held as a slave, or sent out of the country to be so made or held
- (5) Against the victim's will

EFFECTIVE: 02/19/85

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 50 - 5

50-2.3 Section 1584

(1) A person must knowingly and willfully hold in compulsory service or sell into compulsory service any other person against that person's will; or

(2) A person must knowingly and willfully bring into the United States any other person held in compulsory service.

EFFECTIVE: 02/16/89

50-2.4 Section 241

(1) Two or more persons must conspire

(2) To deprive any inhabitant of any State, Territory or District of rights secured to citizen by the Constitution (specifically in this violation - the right to be free from slavery and involuntary servitude)

EFFECTIVE: 02/16/89

50-2.5 Section 242

(1) A person must act under color of law

(2) To deprive any inhabitant of rights secured to inhabitant by the Constitution (specifically in this violation - the right to be free from slavery and involuntary servitude)

EFFECTIVE: 02/16/89

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 50 - 6

50-3 POLICY

In Departmental Circular #3591, dated 12/12/41, addressed to all USAs, the Department noted that in numerous alleged peonage violations, prosecution had been declined by the USAs because of the absence of the element of debt. The Department pointed out that, while case law under Title 18, USC, Section 444 (now Title 18, USC, Section 1581), holds that debt is the "basal element of peonage," Sections 443, 51, and 52 (now Sections 1583, 241, and 242 respectively) disregard entirely the element of debt. The USAs were advised of the Department's desire to emphasize and depend upon the issue of involuntary servitude and slavery in lieu of peonage (debt plus involuntary service).

This Department circular also advised as follows:

"In the matter of control by one over the person of another, the circumstances under which each person is placed must be determined, i.e., the subservience of the will of one to the other. Open force, threats or intimidation need not be used to cause a person to go involuntarily from one place to another to work and to remain a such work; nor does evidence of kind treatment show an absence of involuntary servitude."

EFFECTIVE: 02/16/89

50-4 INVESTIGATIVE PROCEDURE (See MIOG, Part I, 50-4.2 (2).)

For purpose of this classification, a complaint is any allegation made or information received from any source not known to be unreliable, which includes legitimate public press or other legitimate news media, indicating a possible violation exists.

(1) Upon receipt of a complaint, a request for investigation by the USA or a request for investigation by the U.S. Department of Justice, the field division must promptly submit Form FD-610 (within five (5) workdays of receipt of complaint). All items on the form are to be completed on the initial submission or later by supplemental submission. This action is to be taken prior to the close of each case in all Civil Rights matters. Along these lines, the field division should make an effort to provide the maximum amount of information on the initial submission. Do not delay submission of FD-610 if all data is not immediately available. Submit a supplemental form when additional information necessary to complete

Sensitive  
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Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 50 - 7

the form is secured. In those instances where FBIHQ is advised by telephone or teletype of a new case, the FD-610 should be submitted at the earliest possible moment. Specific instructions regarding the completion of the FD-610 are set forth in Part I, 282-8.1 of this manual. If death has occurred, advise FBIHQ immediately and conduct no investigation. If preliminary investigation conducted, closing report must be submitted to FBIHQ with a copy to the USA within 21 workdays of receipt of complaint. (See MAOP, Part II, 2-5.2.4.)

(2) Investigations under these statutes are to be given immediate, preferred, and continuous attention in order that they may be promptly and meticulously completed in an impartial manner. These cases are to be handled by experienced Agents. Controversy, criticism, or unusual publicity arising in connection with these cases is to be immediately reported to FBIHQ.

(3) Department has authorized USA to request up to and including preliminary investigations of routine violations of these statutes. Advise FBIHQ by wire of any such requests and conduct investigation desired. If request is illogical or unwarranted or other circumstances exist indicating investigation is not desirable, furnish details of request to FBIHQ by wire and conduct no investigation UACB. Full investigation should not be conducted unless approved by FBIHQ. If a field office strongly disagrees with the requirements of the DOJ investigative request(s) and taskings, the field office should contact the DOJ attorney generating the investigative request and attempt to resolve any issues. If the field office cannot resolve the matter with DOJ, contact the CRU.

(4) No complaints are to be filed and no arrests are to be made in cases of this type without FBIHQ authority.

(5) The services of local law enforcement officers must not be used without FBIHQ authority.

(6) The Agents should be alert to the possibility that the victim and other witnesses might suffer abuse or mistreatment as a result of their furnishing information. Any such situation should be immediately brought to the attention of FBIHQ and the USA.

(7) When exhibits are obtained, sufficient copies are to be made so that two may be furnished to FBIHQ, one to the USA, and one kept in the field office file.

(8) Contact the USA for USA's views as to the merits and as to whether further investigation appears desirable.



Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 50 - 8

(9) All investigative activity is to be completed and reported within 21 work days of receipt of the complaint. Any delays in meeting this reporting requirement should be reported to FBIHQ, Civil Rights Unit, by FD-205.

(10) Signed statements should be obtained from the original complainant and other persons who furnish pertinent information, as well as from the victim(s) and subject(s) whenever possible.

(11) Interview victims and witnesses out of the presence of and without knowledge of the subject, if possible.

(12) In all interviews, efforts should be made to develop information showing the nature of the alleged compulsory service and whether the victim is held against victim's will. All facts relative to alleged physical mistreatment of the victim should also be obtained.

(13) Efforts should be made to corroborate the victim's statements through interviews with others who may have been in a position to observe the relationship between the victim and victim's employer. Among those who should be considered for interview are other employees of the subject, neighbors and their employees, tradesmen, and others who may have had occasion to contact the subject.

(14) If the allegations involve the arrest of the victim for the purpose of returning victim to victim's employer, the exact nature of the charges and the full details of all local action should be ascertained.

(15) Detailed information as to how the victim(s) and witnesses, as well as the subject(s) can be located at a future date, if required, should be obtained.

EFFECTIVE: 08/10/94

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 50 - 9

50-4.1 Investigations Involving Migrant Labor Camps

The Civil Rights Division (CRD) by memorandum on 2/4/80, amended by CRD memorandum on 11/2/81, requested the following procedures for conducting ISS investigations involving migrant labor camps:

"This memorandum sets forth the procedures that should be followed in instituting and conducting preliminary investigations of complaints of involuntary servitude or peonage which involve the operation of migrant labor camps. These procedures need not be followed in situations not involving migrant labor camps.

"The preliminary investigation set out in this memorandum should be conducted:

"(1) When the Federal Bureau of Investigation receives direct complaints, or otherwise receives information regarding an incident which indicates a possible violation of Title 18, United States Code, Sections 1581(a) or 1584, involving migrant laborers.

"(2) When the Civil Rights Division, or a United States Attorney, requests a preliminary investigation of a possible violation of these statutes involving migrant laborers.

"Upon receipt of such complaint or request, please conduct the following preliminary investigation:

"1. Interview the complainant and all other non-worker witnesses identified by the complainant.

"2. Interview all alleged victims who have left the labor camp. Interview of these victims should determine the method of recruitment, the method of payment, whether the worker is indebted to the crewleader, how such indebtedness was incurred, force used or threatened to be used against laborers, and the identities and descriptions of all foremen, cooks, bookkeepers, and truckdrivers. In addition, determine the name or descriptions of other workers who may wish to leave the camp. Determine how the alleged victims made their way from the camp. Photograph any visible injuries to the alleged victims. Photographs should be taken, even if no injuries are claimed to assist in locating victims in the future. Obtain from the alleged victims any physical evidence, such as pay receipts, pay envelopes, etc., which relate to their employment.

"3. The labor camp should be promptly visited to conduct

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 50 - 10

appropriate investigation regarding any other alleged victims. This will include identifying any persons who want to leave the camp. Possible victims should be advised that U.S. laws provide no person should be forced to work against his will even if he owes money to someone at the camp. Necessary arrangements should be made with local authorities and social agencies for transportation and other assistance needed by those persons desirous of leaving the camp. Agents should insure that any workers are permitted to leave and that reasonable assistance is rendered to them in this regard.

"4. If any workers identified as possible victims do not indicate a desire to leave on their own or to be transported from the camp, they should be privately interviewed to determine if they fear reprisal from anyone for leaving.

"5. Take all persons desiring to leave the camp to an appropriate place for interview and conduct full interviews as in #2 above.

"6. In view of the difficulty in securing Grand Jury attendance of migrant workers after interview, the alleged victims and witnesses should be told that it is important for them to provide some address through which they can be contacted. In effort to keep track of alleged victims, they should be encouraged to contact state or local employment services and migrant assistance programs so that they can be reemployed. Each potential witness should be advised of the importance of informing the FBI frequently of his or her location. Photographs should be taken to assist in locating victims and witnesses in the future.

"7. Determine whether any complaints have been made to local police or sheriff's offices or local Wage and Hour Division representatives of the U.S Department of Labor concerning the subject or workers under the subject's control. If so, obtain copies of all relevant documents.

"8. Interview the crewleader and the foremen, cooks, bookkeepers, and truckdrivers working for him. (These interviews should be conducted after interviews specified in #5 above.) These individuals should specifically be questioned concerning specific incidents mentioned by the alleged victims. In addition, they should be questioned concerning methods of recruitment, methods of bookkeeping, methods of payment, methods of charging the workers for room, board, work materials (e.g., gloves, alcohol, tobacco and the like), and the indebtedness of each particular worker to the crewleader. Determine whether the crewleader and each regular

Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 50 - 11

employee thereof has the registration certificate required to be kept by the Farm Labor Contractor's Registration Act. (7 U.S.C. Section 2045)

"9. Copy of your reports should be sent to the U.S. Attorney as well as the CRD. In matters which may have prosecutive merit the appropriate U.S. Attorney should be orally apprised of the facts developed, and a detailed teletype summary should be sent to FBIHQ for relay to the CRD, prior to preparing the written report, since prompt resort to grand jury processes may be necessary to secure attendance of witnesses."

EFFECTIVE: 02/19/85

50-4.2 INVESTIGATIONS INVOLVING WHITE SLAVE TRAFFIC ACT (WSTA),  
SEXUAL EXPLOITATION OF CHILDREN AND INTERSTATE  
TRANSPORTATION IN AID OF RACKETEERING (ITAR)-PROSTITUTION

(1) FBI policy and procedure involving WSTA, Sexual Exploitation of Children and ITAR-Prostitution are set forth in Part I, Sections 31, 145, and 166 of this manual;

(2) Agents should be alert when conducting Sections 31, 145, and 166 investigations to facts which indicate that victims may have been held or sold into conditions of involuntary servitude or slavery by subjects through use of force, threat of force, or coercion. If such information is developed, a separate investigation is to be conducted pursuant to 50-4(1) through (15). If circumstances exist which would dictate that a separate 50 case not be opened, advise FBIHQ so that the matter can be discussed with the CRD, DOJ.

(3) In addition to these investigative steps, Agents are to photograph any visible injuries to the alleged adult victim(s), (minor children should not be photographed as such action could cause additional trauma if they have been the victims of sexual abuse where photographs were taken);

(4) Obtain any medical records pertinent to victim's(s') injuries and interview appropriate medical personnel;

(5) If possible, secure from the alleged victim(s) any physical evidence such as pay records, photographs, etc., which may relate to conditions of their being held and forced to perform work or services against their will.

Sensitive  
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 50 - 12

EFFECTIVE: 02/19/85

50-5 VENUE

The venue of Involuntary Servitude and Slavery cases is in the judicial district where the offense occurred. In Conspiracy cases, it is in any judicial district in which the parties conspired or where an overt act in furtherance of the conspiracy was committed.

EFFECTIVE: 02/19/85

50-6 MEMORANDUM OF UNDERSTANDING

- (1) "MEMORANDUM OF UNDERSTANDING BETWEEN FEDERAL BUREAU OF INVESTIGATION AND THE DEPARTMENT OF LABOR' EMPLOYMENT STANDARDS ADMINISTRATION WAGE AND HOUR DIVISION REGARDING VIOLATIONS OF FEDERAL STATUTES RELATING TO INVOLUNTARY SERVITUDE AND SLAVERY"

"The purpose of this memorandum is to develop a close working relationship between the Federal Bureau of Investigation (FBI) and the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division (WHD) with respect to the enforcement of Federal laws which involve Involuntary Servitude and Slavery (ISS).

"POLICY

"It shall be the policy of both the FBI and the WHD to exchange information relative to violations disclosed or alleged during the course of their investigative activity. The Federal statutes primarily involved in this agreement are Involuntary Servitude and Slavery (FBI), the Farm Labor Contractor Registration Act (WHD), and the Fair Labor Standards Act (WHD).

"PROCEDURE

"FBI

When the FBI receives information during the course of investigative activity indicating a possible violation of the Farm Labor Contractor

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 50 - 13

Registration Act or the Fair Labor Standards Act, the WHD Office covering the area in which the alleged violation occurred will be notified in a timely fashion. This initial contact will be followed with a written summary of the allegation(s) set forth in an FBI letterhead memorandum. This memorandum will be furnished to the WHD Office which was provided the initial information by the FBI. A copy of the memorandum will be forwarded to FBI Headquarters for transmittal to the WHD National Office, ATTENTION: Office of the Administrator.

"WHD

When the WHD receives information, during the course of investigative activity, indicating a possible violation of the Involuntary Servitude and Slavery Statutes, the FBI Office covering the area in which the alleged violation occurred will be notified in a timely fashion. This initial contact will be followed with a written summary of the allegation(s) set forth in a WHD memorandum. This memorandum will be furnished to the Special Agent in Charge of the FBI Field Office which was provided the initial information by the WHD. A copy of the memorandum will be forwarded to the Regional WHD Office and thereafter to the WHD National Office for transmittal to FBI Headquarters, ATTENTION: Civil Rights Unit, Criminal Investigative Division.

"INTER-AGENCY FEEDBACK

The Civil Rights Unit, FBI Headquarters, and the Office of the Administrator, WHD National Office will maintain liaison concerning matters of mutual interest relating to policy matters as set forth in this memorandum. A portion of this liaison will involve the dissemination of information concerning the final action(s) taken in each case developed and investigated under the terms of this memorandum.

12-8-82  
DATE

/s/ William H. Webster  
WILLIAM H. WEBSTER  
Director  
Federal Bureau of Investigation

12-27-82  
DATE

/s/ Robert B. Collyer  
ROBERT B. COLLYER  
Deputy Under Secretary for  
Employment Standards  
U.S. Department of Labor"

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 50 - 14

(2) "MEMORANDUM OF UNDERSTANDING BETWEEN FEDERAL BUREAU  
OF INVESTIGATION AND IMMIGRATION AND NATURALIZATION  
SERVICE REGARDING VIOLATIONS OF FEDERAL STATUTES  
RELATING TO INVOLUNTARY SERVITUDE AND SLAVERY

"The purpose of this memorandum is to develop a closer working relationship between the Federal Bureau of Investigation (FBI) and the Immigration and Naturalization Service (INS) with respect to the enforcement of Federal laws which relate primarily to Involuntary Servitude and Slavery (ISS).

"POLICY

"It shall be the policy of both the FBI and the INS to exchange information relative to violations of Federal law disclosed or alleged during the course of their investigative activity. The Federal statutes primarily involved in this agreement are Involuntary Servitude and Slavery (FBI), and Alien Smuggling (INS).

"PROCEDURE

"FBI

When the FBI receives information during the course of investigative activity indicating a possible violation of Alien Smuggling laws, the INS Office covering the area in which the alleged violation occurred will be notified in a timely fashion. This initial contact will be followed with a written summary of the allegation(s) set forth in an FBI letterhead memorandum. This memorandum will be furnished to the INS office which was provided the initial information by the FBI. A copy of the memorandum will be forwarded to FBI Headquarters for transmittal to the INS Headquarters; ATTENTION: Anti-Smuggling.

"INS

When the INS receives information, during the course of investigative activity, indicating a possible violation of the ISS statutes, the FBI Office covering the area in which the alleged violation occurred will be notified in a timely fashion. This initial contact will be followed with a written summary of the allegation(s) set forth in an INS memorandum. This memorandum will be furnished to the Special Agent in Charge of the FBI Field Office which was provided the initial information by the INS. A copy of the memorandum will be forwarded to the Regional INS Office and thereafter to the INS National Headquarters for transmittal to FBI Headquarters; ATTENTION: Civil

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 50 - 15

Rights Unit, Criminal Investigative Division.

"INTER-AGENCY FEEDBACK

The Civil Rights Unit, FBI Headquarters, and the Anti-Smuggling Unit, INS National Headquarters will maintain liaison concerning matters of mutual interest relating to policy matters as set forth in this memorandum. A portion of this liaison will involve the dissemination of the final prosecutive action taken in each case developed and investigated under the terms of this memorandum.

12-8-82  
DATE

/s/ William H. Webster  
WILLIAM H. WEBSTER  
Director  
Federal Bureau of Investigation

12-15-82  
DATE

/s/ Alan C. Nelson  
ALAN C. NELSON  
Commissioner  
Immigration and Naturalization Service"

EFFECTIVE: 02/19/85

50-7 CHARACTER - INVOLUNTARY SERVITUDE AND SLAVERY

EFFECTIVE: 02/19/85

Sensitive  
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Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 51 - 1

SECTION 51. JURY PANEL INVESTIGATIONS

51-1 POLICY

Jury panel investigations are conducted by a field office only after FBIHQ authorization.

(1) FBIHQ will authorize investigation only upon receiving specific written request from appropriate Assistant Attorney General.

(2) USAs are required to submit their requests for jury panel investigations directly to the appropriate Assistant Attorney General (regardless of time element involved) and to make any follow-up requests or inquiries by the same procedure.

(3) In preparing the report, the names of the prospective jurors should be listed in alphabetical order and the information as to each such person set forth on a separate page or pages.

EFFECTIVE: 01/31/78

51-2 INVESTIGATIVE PROCEDURES

When a jury panel investigation is authorized, specific instructions as to the nature of the investigation are forwarded to the field office by FBIHQ. Ordinarily, these investigations are restricted to ascertaining arrest records of the individuals and checking their names through the field office indices. Credit checks are not to be made due to restrictions placed on dissemination of credit information by the Fair Credit Reporting Act. No inquiries should be made concerning a person's religious or political beliefs, or his membership in, or affiliation with, labor unions or other organizations. No neighborhood inquiries should be made and no surveillances of any type should be conducted.

EFFECTIVE: 01/31/78

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 51 - 2

51-3 CHARACTER - JURY PANEL INVESTIGATION

EFFECTIVE: 01/31/78

Sensitive  
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Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 52 - 1

SECTION 52. GOVERNMENT PROPERTY - THEFT, ROBBERY, EMBEZZLEMENT, ILLEGAL POSSESSION, ET AL.; GOVERNMENT PROPERTY - DESTRUCTION OF, ET AL.; INTERFERENCE WITH GOVERNMENT COMMUNICATIONS SYSTEM

52-1 STATUTES

Title 18, USC, Sections 641, 1024, 1660, 2112, and 2114.

EFFECTIVE: 08/28/91

52-1.1 Section 641. Public Money, Property or Records

EFFECTIVE: 08/28/91

52-1.2 Elements

(1) Theft

(a) That the property belonged to the U. S. or any department or agency thereof

(b) That it was taken and carried away by the subject

(c) That the subject took and carried away the property with the intention of converting it to his/her own use or the use of another

(2) Embezzlement

(a) That the property was U. S. Government property

(b) The official status of the subject

(c) That the property came into subject's possession lawfully, together with the manner in which he/she received it, including information as to whether it was received by virtue of his/her official status or otherwise

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 52 - 2

(d) That such property was fraudulently converted or appropriated to the use of the subject

EFFECTIVE: 08/28/91

52-1.3 Policy (Section 641)

(1) In handling complaints involving minor thefts of Government property where there are no known aggravating or unusual circumstances, immediately present facts to USA for a prosecutive opinion. If USA will not consider Federal prosecution, conduct no investigation, advise complainant, and confirm conversations to USA and complainant in writing. Where appropriate, refer matter to law enforcement agency having jurisdiction over violation and also furnish this information to USA and complainant.

(2) For administrative reporting requirements and procedures governing the loss and/or theft of Government property from FBI space, refer to MAOP, Part II, Section 6-7.5.

(3) Investigations Regarding Criminal Allegations  
Against Public Officials

(a) It is recognized that during the course of an investigation within this classification information is sometimes developed alleging that a Federal, state or local official is in violation of Federal law. If the focus of the investigation continues to be this substantive classification and/or Federal crimes committed by a person who merely happens to be a Federal, state or local official, "Corruption-Related Matter," should be added to the character of the case, and it will continue to be managed under the Violent Crimes and Major Offenders Program. If, however, the focus of the investigation shifts to the abuse of his/her position of trust by the Federal, state or local official in violation of Federal criminal law, a new "Corruption of Federal Public Officials" (58) or "Corruption of State and Local Public Officials" (194) matter should be opened within the White Collar Crimes Program.

(b) |Deleted|

(c) |Deleted|

(d) |Deleted|

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 52 - 3

(e) |Deleted|

EFFECTIVE: 09/16/94

52-1.4      Section 1024. Purchase or Receipt of Military, Naval, or  
Veteran's Facilities Property

EFFECTIVE: 08/28/91

52-1.5      Elements

(1) That the property was furnished by the U. S. to any  
soldier or other person enumerated in this section.

(2) That the subject purchased or received such property  
in pledge

(3) That the subject had knowledge or reason to believe  
that:

(a) The property had been furnished by the U. S.  
under a clothing allowance to a soldier or other person enumerated in  
this section, or

(b) That the property had been taken from the  
possession of the U.S. Pursuant to Title 18, USC, Section 21, the  
element of guilty knowledge may also be established by proof that the  
defendant believed that the property had been taken from the  
possession of the U.S., after or as a result of an official  
representation as to the nature of the property (see MIOG, Part II,  
1-1.12).|

EFFECTIVE: 10/23/95

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 52 - 4

52-1.6 Section 1660. Receipt of Pirate Property

"Whoever, without lawful authority, receives or takes into custody any vessel, goods or other property, feloniously taken by any robber or pirate against the laws of the United States, knowing the same to have been feloniously taken, shall be imprisoned not more than ten years."

EFFECTIVE: 08/28/91

52-1.7 Section 2112. Robbery (Personal Property of United States)

EFFECTIVE: 08/28/91

52-1.8 Elements

- (1) Personal property of Government
- (2) In the lawful custody of some person
- (3) Taken by the subject from the person or presence of such person

EFFECTIVE: 08/28/91

52-1.9 Section 2114. Robbery (Mail, Money or Other Property of United States)

EFFECTIVE: 11/20/90

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 52 - 5

52-1.10 Elements

(1) That property of the U. S. was lawfully in the custody of some person

(2) That the subject either:

(a) Robbed such person of this property, or

(b) Assaulted such person with intent to rob him/her of this property

EFFECTIVE: 11/20/90

52-1.11 Penalties

(1) Section 641. Property over \$100 in value, maximum of \$10,000 or ten years, or both

Property \$100 or less in value, maximum of \$1,000 or one year, or both.

(2) Section 1024. Maximum of \$500 or imprisoned not more than two years, or both.

(3) Section 1660. Maximum of not more than ten years.

(4) Section 2112. Maximum of not more than 15 years.

(5) Section 2114. (U. S. Mail) - first offense, maximum of ten years. If wounds, or puts life in jeopardy, or for second offense, maximum of 25 years.

EFFECTIVE: 11/20/90

52-1.12 Venue

Venue in all theft or robbery of Government property cases are ordinarily in the district where the crime was perpetrated.

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 52 - 6

EFFECTIVE: 11/20/90

52-1.13 Investigative Procedure

To show that the property in question is that of the United States, or was manufactured under contract for the armed forces

[REDACTED] In cases involving robbery and

embezzlement [REDACTED]

b2/b7E

If the property meets the criteria for NCIC, it should be searched and/or entered into NCIC. The quantity and value of the property should be learned.

EFFECTIVE: 11/20/90

52-1.14 Miscellaneous

For food stamp thefts that are considered under the Theft of Government Property violation, see Interstate Transportation of Stolen Property, Section 87-4.7.1, of this manual.

EFFECTIVE: 09/13/93

52-1.15 Theft of Government Property Outside the United States

The FBI exercises primary investigative jurisdiction over all violations of Section 641 occurring outside the United States. Violations participated in by American nationals who are outside of the jurisdiction of military authorities must either be disposed of by local authorities in the country in which the offense occurred or by the FBI. Since the foreign power may have little or no interest in thefts of U.S. property, the majority of these violations would be handled by the FBI and prosecuted in U.S. District Court. Thefts by



Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 52 - 7

military personnel abroad is usually prosecuted by military authorities unless the military offender is returned to the jurisdiction of the U.S. District Court and investigation can economically be handled by the FBI.

EFFECTIVE: 11/20/90

52-1.16 Tracing of Firearms Stamped "U.S. Property"

FBI Agents are frequently furnished information concerning private individuals who are alleged to have in their possession firearms stamped "U.S. Property." No active investigation or circularization of military establishments is warranted in these instances in the absence of additional facts. In such cases, a description of the weapon should be searched through NCIC, and if no record is located a letter should be prepared for the local offices of the Air Force, Army, and Navy intelligence setting out the information which has been obtained.

EFFECTIVE: 11/20/90

52-1.17 Character

The character of such cases depends on the exact nature of the offense; that is, whether it related to a theft, embezzlement, robbery, illegal possession, or destruction of Government property. For example, in a theft case the character could be Theft of Government Property and in a robbery, Robbery of Government Property, etc.

EFFECTIVE: 11/20/90

52-2 STATUTES

Title 18, USC, Sections 1361, 1855, 1856, 2071.

EFFECTIVE: 01/31/78

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 52 - 8

52-2.1 Section 1361. Government Property or Contracts

EFFECTIVE: 01/31/78

52-2.2 Elements

- (1) That the property was U. S. property
- (2) That the subject without lawful right injured or damaged such property
- (3) That such injury or depredation was willfully committed

EFFECTIVE: 01/31/78

52-2.3 Section 1855. Timber Set Afire

EFFECTIVE: 01/31/78

52-2.4 Elements

- (1) That timber, underbrush, grass, or other inflammable material upon the public domain was set on fire
- (2) That the subject willfully and without authority set the fire

EFFECTIVE: 01/31/78

52-2.5 Section 1856. Fires Left Unattended and Unextinguished

EFFECTIVE: 01/31/78

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 52 - 9

52-2.6 Elements

- (1) Set a fire upon the public domain near any inflammable material and leave without extinguishing it
- (2) Permits it to spread beyond his control
- (3) Allows it to burn unattended

EFFECTIVE: 01/31/78

52-2.7 Section 2071. Concealment, Removal, or Mutilation  
Generally

EFFECTIVE: 01/31/78

52-2.8 Elements

- (1) That the record, book, paper or document was on file or deposit with
  - (a) Any court of the U. S., or
  - (b) In any public office, or
  - (c) With any judicial or public officer of the U. S.
- (2) That it was concealed, removed, mutilated, obliterated or destroyed by the subject
- (3) That such concealment, removal, etc., was willfully done without lawful right

EFFECTIVE: 01/31/78

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 52 - 10

52-2.9 Penalties

(1) Section 1361. Damage to property over \$100 in value, maximum of \$10,000 or ten years, or both.

Property \$100 or less in value, maximum of \$1,000 or one year, or both.

(2) Section 1855. Maximum of \$5,000 or imprisoned not more than five years, or both

(3) Section 1856. Maximum of \$500 or imprisoned not more than six months, or both.

(4) Section 2071. Maximum of \$2,000 or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding office under the United States.

EFFECTIVE: 01/31/78

52-2.10 Policy

In general, the FBI will investigate forest fires in the more aggravated cases or those cases which are incendiary in origin, or where numerous fires have occurred that are malicious in nature, upon the condition that the complaint is immediately reported to the FBI. It is not desired that investigation be conducted in cases inconsequential in scope but that activities be confined to the larger, more aggravated types.

EFFECTIVE: 01/31/78

52-2.11 Character - Destruction of Government Property

EFFECTIVE: 01/31/78

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 52 - 11

52-3 STATUTE

Title 18, USC, Section 1362

EFFECTIVE: 01/31/78

52-3.1 Section 1362. Interference With Government Communications

"Whoever willfully or maliciously injures or destroys any of the works, property, or material of any radio, telegraph, telephone or cable, line, station, or system, or other means of communication, operated or controlled by the United States, or used or intended to be used for military or civil defense functions of the United States, whether constructed or in process of construction, or willfully or maliciously interferes in any way with the working or use of any such line, or system, or willfully or maliciously obstructs, hinders, or delays the transmission of any communications over any such line, or system, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both."

EFFECTIVE: 01/31/78

52-3.2 Miscellaneous

"In the case of any works, property, or material, not operated or controlled by the United States, this section shall not apply to any lawful strike activity, or other lawful concerted activities for the purposes of collective bargaining or other mutual aid and protection which do not injure or destroy any line or system used or intended to be used for the military or civil defense functions of the United States."

EFFECTIVE: 01/31/78

52-3.3 Character - Interference With Government Communications  
System

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 52 - 12

EFFECTIVE: 01/31/78

Sensitive  
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 54 - 1

SECTION 54. CUSTOMS LAWS AND SMUGGLING

54-1 CUSTOMS LAWS AND SMUGGLING

The U. S. Customs Service administers the powers and duties vested in the Secretary of the Treasury pertaining to the importation and entry of merchandise into and the exportation of merchandise from the U. S., and the regulation of certain marine activities. The principal function of the U. S. Customs Service is the assessment and collection of import duties and, incident to this, the prevention of smuggling. Complaints received on such matters by field offices should be referred to the nearest district office of the U. S. Customs Service. Those received at FBIHQ are referred to the Commissioner of Customs, Washington, D. C.

EFFECTIVE: 01/31/78

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 55 - 1

SECTION 55. COUNTERFEITING

55-1 COUNTERFEITING

The U. S. Secret Service, which is part of the Treasury Department, is empowered to suppress the counterfeiting of U. S. coins, notes, and other obligations and securities of the Government. Violations of this nature which are reported to FBIHQ are referred to the Director, U. S. Secret Service, Department of the Treasury, Washington, D. C. Information of a similar nature received by field offices should be reported to the nearest office of the U. S. Secret Service.

EFFECTIVE: 01/31/78

Sensitive  
PRINTED: 02/18/98



Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 56 - 1

SECTION 56. ELECTION LAWS

56-1 BACKGROUND

Primary responsibility for conducting elections in general rests with the states. Federal laws selectively seek to protect significant Federal interests and ensure that the dictates of the Constitution are not willfully abridged. Investigative jurisdiction concerning Federal election law violations is shared between the FBI and Federal Election Commission (FEC). The 1971 Federal Election Campaign Act (FECA) with subsequent amendments of 1974, 1976, and 1979, has transferred to the FEC numerous matters that were the primary investigative responsibility of the FBI. These include statutes dealing with reporting and campaign finance violations including contributions to, and expenditures of, Federal political candidates. The FEC has the power to initiate civil injunctive proceedings against violators of statutes for which it has primary investigative jurisdiction. Should the FEC determine there is probable cause to believe that a knowing and willful violation of the FECA has been committed, it may refer the matter to the Department of Justice (DOJ) for criminal prosecution. Only in the circumstances of aggravating factors, or in the presence of knowing and willful misconduct as set forth below, does the DOJ address possible criminal prosecution administrative enforcement remedies of the FEC.

EFFECTIVE: 01/18/91

56-2 DEFINITIONS

The following general definitions are applicable to Federal election laws to initially determine if criminal jurisdiction may exist. More specific or qualifying definitions within a given statute may override these definitions.

EFFECTIVE: 01/18/91

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 56 - 2

56-2.1 Election

Any ballot procedure in which candidates for elective office are voted upon which includes a general, special, primary or run off contest.

EFFECTIVE: 01/18/91

56-2.2 Candidate

An individual who seeks nomination or election to office. Supportive actions by individuals to meet this definition include taking the action necessary under the law of a state to qualify for nomination for election and/or the receipt or expenditure to bring about this desired result.

EFFECTIVE: 01/18/91

56-2.3 Contribution or Expenditure

The receipt or disbursement of anything of value for the purpose of influencing an election.

EFFECTIVE: 01/18/91

56-3 SUMMARY OF CRIMINAL STATUTES FOR WHICH THE FBI HAS PRIMARY INVESTIGATIVE JURISDICTION

EFFECTIVE: 01/18/91

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 56 - 3

56-3.1 Title 18, USC, Section 241 - Conspiracy Against Rights of  
Citizens

(1) Makes it unlawful for two or more persons to conspire to injure, oppress, threaten or intimidate any inhabitant of any State, Territory or District in the exercise of a right or privilege secured to him/her by the Constitution or laws of the United States. Election law violations under the statute are felonies punishable by fines up to \$10,000 and/or imprisonment up to ten years, or for any term of years or for life, if death results. This statute must affect a Federal election in some manner; however, if racial discrimination exists, refer to civil rights.

(2) Possible violations cover conspiracies by election officials to stuff ballot boxes, conspiracies to prevent the official count of ballots in primary elections, conspiracies to illegally register voters and/or cast absentee ballots in their names, and conspiracies to injure, oppress, threaten or intimidate a voter in the exercise of his or her right to vote.

EFFECTIVE: 01/18/91

56-3.2 Title 18, USC, Section 242 - Deprivation of Rights Under  
Color of Law

Makes it unlawful for anyone acting under color of law, statute, ordinance, regulation or custom to willfully deprive a person of any rights, privileges or immunities secured or protected by the Constitution or laws of the United States. Prosecutions under Section 242 need not demonstrate the existence of a conspiracy; however, the defendants must have acted illegally under color of law. Election law violations under the statute are misdemeanors punishable by fines up to \$1,000 and/or imprisonment up to one year, or for any term of years or for life, if death results. This is the substantive statute of Title 18, USC, Section 241.

EFFECTIVE: 01/08/82

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 56 - 4

56-3.3 Title 18, USC, Section 245 - Federally Protected Activities

Prohibits interference by violence or threat of violence with exercising the right to vote or run for office or otherwise in any election, Federal, state or local. If racially motivated, handle as civil rights matter under the 44 classification.

EFFECTIVE: 01/08/82

56-3.4 Title 18, USC, Section 592 - Troops at Polls

Makes it unlawful to place troops or armed men at the polls in a general or special election except when necessary "to repel armed enemies of the United States." This statute is not applicable to primaries. It has been interpreted by the Department to prohibit Agents of the FBI from conducting investigations inside the polls on election day. It is a felony statute and violations are punishable by a fine up to \$5,000 and/or up to five years in prison.

EFFECTIVE: 01/08/82

56-3.5 Title 18, USC, Section 593 - Interference by Armed Forces

Makes it unlawful for members of the armed forces to interfere with election processes. The statute is a felony statute and violations are punishable by a fine of up to \$5,000 and/or up to five years in prison.

EFFECTIVE: 01/08/82

56-3.6 Title 18, USC, Section 594 - Intimidation of Voters

Prohibits the intimidation or coercion of voters for the purpose of interfering with the right to vote for a candidate for Federal office. The statute is not applicable to primaries. It is a misdemeanor statute and violations are punishable by a fine of up to \$1,000 and/or up to one year in prison.

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 56 - 5

EFFECTIVE: 01/08/82

56-3.7 Title 18, USC, Section 595 - Interference by  
Administrative Employees of Federal, State, or Territorial  
Government

Prohibits any public officer or employee within the Federal, state, or local Government in connection with an activity financed wholly or partially by the United States from using his or her official authority to interfere with or affect the nomination or election of a candidate for Federal office. This statute is aimed at the misuse of official authority and does not prohibit normal campaign activities by Federal, state or local employees that are consistent with the Hatch Act restrictions on political activities. The statute expressly exempts employees of any educational institution or agency. It is a misdemeanor statute, and violations are punishable by fines of up to \$1,000 and/or up to one year in prison.

EFFECTIVE: 01/08/82

56-3.8 Title 18, USC, Section 596 - Polling Armed Forces

Prohibits any person from polling any member of the armed forces with reference to his or her choice of, or vote for, political candidates. "Polling" is defined to include questioning which implies that an answer is compulsory. It is a misdemeanor statute and violations are punishable by fines of up to \$1,000 and/or up to one year in prison.

EFFECTIVE: 01/08/82

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 56 - 6

56-3.9 Title 18, USC, Section 597 - Expenditures to Influence Voting

Prohibits making or offering to make an expenditure to any person to vote or withhold his or her vote, or to vote for or against any candidate for Federal office, and soliciting, accepting or receiving any such payment. It applies to vote buys directed at all stages of the nomination and election process. The vehicle used to buy the vote may be anything of value. Violations are misdemeanors punishable by fines of up to \$1,000 and/or imprisonment up to one year, except as to willful violations which are felonies punishable by fines up to \$10,000 and imprisonment up to two years. Under this statute, it must be shown that the Federal election was impacted. See Title 42, USC, Section 1973 i(c) below concerning vote buying for state or local candidates.

EFFECTIVE: 01/08/82

56-3.10 Title 18, USC, Section 598 - Coercion by Means of Relief Appropriations

Prohibits the use of funds appropriated by Congress for relief or public-work projects to interfere with, restrain or coerce any person in the exercise of his or her right to vote at any election. Violations are misdemeanors punishable by fines up to \$1,000 and/or imprisonment for up to one year.

EFFECTIVE: 01/08/82

56-3.11 Title 18, USC, Section 599 - Promise of Appointment by Candidate

Prohibits a candidate for Federal office from promising appointments to any public or private position or employment in return for support of his or her candidacy. It is a misdemeanor statute, and violations are punishable by fines of up to \$1,000 and/or imprisonment for up to one year except that willful violations are felonies punishable by fines of up to \$10,000 and imprisonment for up to two years. This statute has potential utility in situations where one candidate attempts to secure the withdrawal of an opponent by offering him or her a private job.

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 56 - 7

EFFECTIVE: 01/08/82

56-3.12 Title 18, USC, Section 600 - Promise of Employment or  
Other Benefit for Political Activity

(1) Section 600 makes it unlawful for anyone to promise any employment or benefit derived from an Act of Congress as consideration, favor, or reward for past or future political activity, or for support or opposition to any candidate or any party in any election. Violations are misdemeanors punishable by fines up to \$10,000 and/or imprisonment up to one year. (See also Title 18, USC, Section 599 and Title 18, USC, Section 595.)

(2) Section 600 applies to the interjection of political considerations into the award of any Federal benefit or employment. It applies to federally funded jobs, grants or benefits as well as to Federal jobs. It reaches situations where Federal benefits are held out to induce future political activity, as well as those instances where Federal benefits are used as patronage rewards for past political fidelity.

(3) This statute has been interpreted by the DOJ to not include the interjection of political considerations in the hiring of high level Government personnel who perform "policy" making functions for elected public officials. This statute has also been interpreted by the Department to not intend to criminalize the interjection of political considerations in the termination of public employees who perform "policy making" for elected officials with respect to which a degree of political loyalty is a necessary aspect of competent performance.

EFFECTIVE: 01/08/82

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 56 - 8

56-3.13 Title 18, USC, Section 601 - Deprivation of Employment or  
Other Benefit for Political Contribution

(1) Section 601 makes it unlawful for any person knowingly to cause or attempt to cause any other person to make a contribution on behalf of any candidate or political party by depriving or threatening to deprive employment or benefits made possible by an Act of Congress. The statute applies to candidates and political parties at the Federal, state or local level, and the term "contribution" includes anything of value, including services. It is a misdemeanor statute and violations are punishable by fines up to \$10,000 and/or imprisonment up to one year.

(2) Like Section 600, Section 601 reaches all employment and benefits that are funded by the Congress. The statute is not restricted to Federal jobs, although threats to terminate Federal employment are specifically covered in such situations. Section 601 offenses are lesser included crimes within Title 18, USC, Section 606, where the threatened employee is a Federal civil servant.

EFFECTIVE: 01/08/82

56-3.14 Title 18, USC, Section 602 - Solicitation of Political  
Contributions

This statute prohibits Senators, Representatives, candidates for Congress, officers and employees of the United States, and persons receiving compensation for services from money derived from the U.S. Treasury, from knowingly soliciting any contribution from any other such officer, employee or person. The statute applies to contributions made for the purpose of influencing Federal elections only. Violations are felonies punishable by fines up to \$5,000 and/or by imprisonment for up to three years. The Department has taken a consistent and public position that this statute does not reach voluntary political interaction between Federal employees. However, it does reach any situation where factors are present in a political transaction which indicate that the contribution being solicited was less than voluntary, and that the solicited employee was consciously placed in a position where he or she felt obliged to give.

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Sensitive  
PRINTED: 02/18/98



Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 56 - 9

56-3.15 Title 18, USC, Section 603 - Making Political Contributions

This statute prohibits any Federal officer or employee, or person receiving compensation for services from money derived from the U.S. Treasury from making a contribution for the purpose of influencing a Federal election to any other such officer, employee, or person, or to any Senator or Representative in the Congress, if the person receiving the contribution is his or her "employer or employing authority." The statute covers contributions for Federal elections only and treats contributions to authorized committees as tantamount to contributions to the individual who authorized the committee. It is a felony statute and violations are punishable by fines up to \$5,000 and/or imprisonment up to three years.

EFFECTIVE: 01/08/82

56-3.16 Title 18, USC, Section 604 - Solicitation From Persons on Relief

Prohibits any person from soliciting or receiving contributions for any political purpose from any person known to be entitled to or receiving compensation, employment or other benefits made possible by Act of Congress appropriating funds for relief purposes. It is a misdemeanor statute and violations are punishable by fines of up to \$1,000 and or up to one year's imprisonment.

EFFECTIVE: 01/08/82

56-3.17 Title 18, USC, Section 605 - Disclosure of Names of Persons On Relief

Prohibits the furnishing, disclosure, or receipt for any political purpose, to a candidate, committee, or campaign manager, of any list of persons receiving compensation, employment or benefits made possible by Act of Congress appropriating funds for relief purposes. It is a misdemeanor statute and is punishable by fines up to \$1,000 and/or imprisonment up to one year.

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 56 - 10

EFFECTIVE: 01/08/82

56-3.18 Title 18, USC, Section 606 - Intimidation to Secure  
Political Contributions

Makes it unlawful for a Senator, Representative, Federal officer or employee to discharge, promote, or reduce the rank or compensation of any other Federal officer or employee for making or failing to make any contribution for any political purpose. It is a felony statute and violations are punishable by fines up to \$5,000 and/or imprisonment for up to three years. The Department has taken the position that this statute, like Section 601, does not apply to the termination of policy making political appointees.

EFFECTIVE: 01/08/82

56-3.19 Title 18, USC, Section 607 - Place of Solicitation

Section 607 makes it unlawful for anyone to solicit or receive a political contribution in any room or building where Federal employees are engaged in the conduct of official duties. It also forbids political solicitations on Federal military reservations. Its purpose is to protect the integrity of Federal office space from politicalization, and to protect the Federal work force from being subjected to political demands while they are on duty. Unlike Section 602, the employment status of the solicitor is immaterial.

EFFECTIVE: 01/08/82

56-3.20 Title 42, USC, Section 1973 i(c) - False Information in  
Registering or Voting

This statute makes it unlawful in an election in which a Federal candidate is on the ballot:

(1) to knowingly and willfully give false information as to name, address, or period of residence to a voter registrar for the purpose of establishing one's eligibility to vote;

(2) to conspire with another person to falsely register

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 56 - 11

or illegally vote; or

(3) to pay, offer to pay, or accept payment for registering to vote or voting.

Violations are felonies punishable by a fine up to \$10,000 and/or imprisonment up to five years. It is sufficient under this statute that a Federal candidate was on the ballot at the time the illegal conduct in question took place. It is not necessary to show that the Federal contest was impacted as is the case with Title 18, USC, Sections 241, 242, and 597.

EFFECTIVE: 01/08/82

56-3.21 Title 42, USC, Section 1973 i(e) - Voting More than Once

This statute makes it unlawful to vote more than once in connection with any general, special, or primary election in which a Federal candidate is on the ballot. Violations are felonies punishable by fines up to \$10,000 and/or imprisonment up to five years. It is not necessary to prove under Section 1973 i(e) that the multiple vote in question be proven to have actually affected a Federal contest.

EFFECTIVE: 01/08/82

56-3.22 Title 18, USC, Section 1341 - Mail Fraud

Through the Mail Fraud Statute, Federal jurisdiction may be obtained over any activity which improperly corrupts the electoral process, as long as the mails can be shown to have been used to further this objective. This is most frequently the case in matters involving misuse or tampering with absentee ballots since the casting of absentee ballots normally involves the transmission of materials through the mails. It is not necessary that Federal candidates have been on the ballot during the election at issue in order for Federal jurisdiction to be obtained through this theory. Federal jurisdiction rests on the use of the U.S. mails. Violations of the Mail Fraud Statute are felonies punishable by fines up to \$1,000 and imprisonment for up to five years.

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 56 - 12

EFFECTIVE: 01/08/82

56-4 VIOLATIONS WHICH ARE PRIMARILY INVESTIGATED BY THE FEDERAL ELECTION COMMISSION BUT WHICH MAY BE INVESTIGATED BY THE FBI UPON REQUEST OF THE DOJ

The Federal Election Campaign Act (FECA) and Amendments of 1974, 1976, and 1979, to a large measure superseded FBI investigative jurisdiction in favor of the noncriminal remedies of the FEC. The FECA contains financing and reporting statutes for Federal candidates and political committees. It is Department policy that criminal prosecution of these matters will only be entertained when violations are committed with aggravated intent and which involve substantial amounts of money. The Department maintains liaison with the FEC and determines if FBI should investigate (see 56-11 of this manual).|

EFFECTIVE: 01/08/82

56-4.1 Campaign Financing Statutes

EFFECTIVE: 01/08/82

56-4.1.1 Title 2, USC, Section 441a - Limitations on Contributions and Expenditures

(1) This statute contains two separate sets of contribution limits. Contributions from individuals may not exceed:

(a) \$1,000 to a candidate per election,

(b) \$20,000 to a national party committee per year,

or

(c) \$5,000 to any other political committee per year  
(Section 441a(a) (1)).

(2) Contributions from "multicandidate political committees" (i.e., those registered six months with FEC that have received contributions from over 50 persons and that support at least five candidates) may not exceed:

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 56 - 13

(a) \$5,000 to a candidate per election,

(b) \$15,000 to a national party committee per year,

or

(c) \$5,000 to any other political committee per year

(Section 441a(a) (2)).

In addition, individuals are also subject to an over-all annual aggregate contribution limitation of \$25,000 (Section 441a(a) (3)).

(3) The above contribution limits do not apply to the transfer of funds between national, state, and local party committees. The limits also do not apply to transfers between affiliated political committees (i.e., those operated by the same person, corporation or union); however, all affiliated committees share a single contribution limit with respect to contributions they make to candidates and other committees (Section 441a(a) (5)). A separate provision permits the Republican and the Democratic Senatorial Campaign Committee, as well as the national party committees, to contribute up to a combined maximum of \$17,500 to any candidate for the Senate during the year in which he or she is standing for election (Section 441a(h)).

(4) Section 441a(b) imposes limits on expenditures by presidential candidates who have elected to receive Federal funds for their primary or general election campaigns. Under Section 441a(d), the national party committees are permitted to spend certain amounts on behalf of the general election campaigns of candidates affiliated with their parties who are running for the office of President, or for Congress.

(5) Violations of the statute must have been committed in a "knowing and willful" manner in order to be criminally prosecutable under Title 2, USC, Section 437g(d). Accordingly, most of the cases prosecuted under this statute involve grossly excessive transactions that are effected either surreptitiously (e.g., through cash or conduits) or in the furtherance of some felonious objective such as a bribe.

EFFECTIVE: 01/08/82

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 56 - 14

56-4.1.2 Title 2, USC, Section 441b - Contributions or Expenditures  
by National Banks, Corporations, or Labor Organizations

(1) This statute prohibits a national bank or federally chartered corporation from making a contribution or expenditure in connection with any election to Federal, state or local office. It also prohibits any corporation or any labor organization from making a contribution or expenditure in connection with any Federal election. Finally, Section 441b makes it unlawful for any officer of a national bank, corporation, or labor organization to consent to a prohibited contribution or expenditure and for any candidate, political committee, or other person knowingly to accept such a contribution. Section 441b does not apply to or restrict the personal political activity of corporate or union officers that is financed exclusively from personal sources.

(2) The core of this complex statute is its ban on the use of corporate treasury funds and monies required as a condition for membership in labor organizations to engage in "active electioneering" in Federal campaigns. It does not apply to the use of such funds to finance communications on any subject between labor unions and their membership or between corporations and their stockholders. Nor does it apply to nonpartisan expenditures or to costs of publishing statements of editorial opinion in legitimate corporate or union-owned newspapers. This statute does not forbid corporations or unions from using their treasury money to establish and operate affiliated Political Action Committees (PACs), provided the activities of the PACs are confined to soliciting voluntary political donations from corporate stockholders or union members and their respective families, and provided further that the funds thus raised were maintained in separate accounts.

(3) In view of the fact that criminal violations of the FECA must have been committed with "willful" intent (Title 2, USC, Section 437g(d)), the FBI's involvement in the investigation of this type of matter is generally confined to instances where the corporate or union funds are taken directly out of the corporate or union treasury and laundered on their way to politicians.

(4) Although Section 441b reaches contributions and expenditures by national banks to local election contests, it does not apply to funds expended in connection with referenda or ballot propositions.

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 56 - 15

EFFECTIVE: 01/08/82

56-4.1.3 Title 2, USC, Section 441c - Contribution by Government Contractors

(1) This statute prohibits any person who has or is negotiating for a contract to furnish material, equipment or supplies to the U.S. Government, from making, or promising to make a political contribution. This statute has been construed by the Department of Justice and by the FEC to reach only donations that are made or promised for the purpose of influencing the nomination or election of candidates for Federal office. The statute applies to all types of businesses: sole proprietorships, partnerships, as well as corporations. It reaches gifts that are made from the "business" or "partnership" assets of such firms. However, with respect to unincorporated businesses, the FEC has ruled that this statute does not prohibit donations that are made from the personal assets of the firm's constituent owners. Officers and stockholders of incorporated Government contractors are not covered by Section 441c since the Government contract in such instances is with the corporate entity and not its constituent officers.

(2) Section 441c applies only to business entities that have or are negotiating for a contractual relationship with an agency of the United States. Thus, the statute does not reach those who have contracts with non-Federal agencies to perform work under a Federal program or grant. Nor does this statute reach businessmen and professionals who provide services to third party beneficiaries under Federal programs that necessitate the signing of agreements with the Federal Government such as physicians performing services for patients under the medicare program.

(3) The same exemptions that apply to Section 441b also apply to Section 441c. Thus, Government contractors may make certain types of nonpartisan expenditures, may establish and administer PACs, and may communicate with their stockholders concerning political subjects.

(4) As with Section 441b, the role of the Justice Department in enforcing this statute is confined to instances of "willful" avoidance of the statutory dictates. See Title 2, USC, Section 437g(d). Other less aggravated violations are handled administratively by the FEC.

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 56 - 16

EFFECTIVE: 01/08/82

56-4.1.4 Title 2, USC, Section 441d - Publication and Distribution  
of Statements and Solicitations

(1) Section 441d requires that any political communication which is made in writing or through a broadcasting station which

(a) expressly advocates the election or defeat of a clearly identified candidate or

(b) solicits contributions, state who paid for and authorized the communication.

In addition, if the communication is not authorized by any candidate, the communication must specifically state that it is not so authorized.

(2) Note that this section does not prohibit all anonymous campaign materials but only anonymous literature or advertisements which solicit contributions or expressly advocate a candidate's election or defeat. This statute is applicable only to Federal elections.

EFFECTIVE: 01/08/82

56-4.1.5 Title 2, USC, Section 441e - Contributions by Foreign  
Nationals

This statute prohibits any foreign national from making directly or through any other person, any contribution in connection with any Federal, state, or local election. It also prohibits any person from knowingly soliciting or accepting such a contribution. The term "foreign national" is defined as a foreign principal within the meaning of the Foreign Agents Registration Act (Title 22, USC, Section 611), or an individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence.



Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 56 - 17

EFFECTIVE: 01/08/82

56-4.1.6 Title 2, USC, Section 441f - Contributions in the Name of Another Prohibited

(1) This statute makes it unlawful for any person to make a contribution in the name of another person, or for any person knowingly to permit his/her name to be used to make such a contribution. This statute also prohibits any person from knowingly accepting a contribution made by one person in the name of another person.

(2) Violations of Section 441f can arise from a defendant giving funds to a middleman for the purpose of having the middleman complete the contribution to a Federal candidate. Violations may also occur where the defendant reimburses someone who has already given to a candidate, thus converting the original donor's contribution to his/her own. Under such circumstances, the motive is usually preservation of anonymity since the donation will be reported publicly as having been made by the middleman rather than by the true source. The use of middlemen is also frequently a means by which a single donor may give more than the contribution limits in Title 2, USC, Section 441a allow.

(3) Violations of Section 441f sometimes take the form of a "slush fund" generated through fictitious bonuses to corporate or union executives to enable them to make contributions to politicians which their corporate or union employers would be prohibited from making by Title 2, USC, Section 441b.

(4) Although the donor and the middleman are equally liable under Section 441f, the customary approach to this type of case is to use the conduits as witnesses to convict the person who supplied the funds. This approach recognizes the principal purpose of the FECA as a law designed to assure public disclosure of large campaign donations, and to prevent certain types of donations which Congress has deemed potentially damaging to the public good. It also is in keeping with the fact that most Section 441f violations are merely means to other illegal ends.

EFFECTIVE: 01/08/82

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 56 - 18

56-4.1.7 Title 2, USC, Section 441g - Limitations on Contribution of Currency

(1) This statute makes it unlawful for any person to make contributions of currency of the United States or of any foreign country to any candidate for Federal office which exceed \$100. The limitation is cumulative and applies to the candidate's entire campaign for nomination and election.

(2) This limitation on currency giving differs from the contribution limitations in Section 441a.

EFFECTIVE: 01/08/82

56-4.1.8 Title 2, USC, Section 441h - Fraudulent Misrepresentations of Campaign Authority

(1) This statute prohibits any Federal candidate, or any agent of a Federal candidate from fraudulently misrepresenting himself/herself as having authority to speak or act on behalf of any other candidate or party. It also makes it unlawful for anyone willfully and knowingly to participate in, or conspire to participate in, any plan to misrepresent someone as acting for another candidate or party.

(2) The statute is directed toward "dirty tricks" activities such as the infiltration of an opponent's campaign organization for the purpose of damaging the opponent's campaign. Unlike most of the provisions of the FECA, Section 441h is not subject to any monetary threshold before criminal jurisdiction attaches.

EFFECTIVE: 01/08/82

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 56 - 19

56-4.1.9 Title 2, USC, Section 441i - Acceptance of Excessive Honorariums

(1) This statute imposes limitations on the amount of honoraria which may be accepted by elected or appointed officers and employees of the Federal Government. Such individuals may accept honoraria which do not exceed:

- (a) \$2,000 per appearance, speech, or article, or
- (b) an aggregate of \$25,000 per calendar year.

The statute excludes from the limits amounts accepted for travel and subsistence expenses for the individual and his/her spouse or an aide, as well as amounts paid for agent's fees or commissions.

(2) The FEC has defined "honorarium" to mean a payment of money or anything of value received by an officer or employee of the Federal Government if it is accepted as consideration for an appearance, speech or article.

(3) Although the honorarium statute is part of the FECA, Congress has specifically exempted honoraria from the definition "contribution." Thus, an incumbent Congressman or Congresswoman running for reelection may accept both a \$2,000 "honorarium" and a \$1,000 "contribution" from the same person without violating the contribution limits in Section 441a.

EFFECTIVE: 01/08/82

56-4.1.10 Title 2, USC, Section 439a - Use of Surplus Campaign Funds

(1) This statute establishes principles governing the permissible use of surplus campaign funds donated to Federal candidates and the political committees supporting them.

(2) As a general rule, such surplus funds may be used to defray the expenses of the candidate in connection with the discharge of his/her duties as an elected public official. They may be contributed to charities entitled to tax exempt status under Title 26, USC, Section 501(c); they may be transferred to political committees directly affiliated with the national, state or local apparatus of a political party; or they may be used for "any other lawful purpose." Transfers of surplus campaign funds to political committees affiliated

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 56 - 20

with political parties are also exempted from the contribution limitations contained in Title 2, USC, Section 441a, which would normally apply to transfers between political committees.

(3) The 1979 amendments to the FECA provided that as a general rule the personal use of surplus funds is prohibited. This is considered a violation of the FECA, and as such is subject to the enforcement machinery which governs the rest of the Act. An exception to this general rule exists with respect to personal conversions by Congressmen or Congresswomen who were members of the 96th Congress on January 8, 1980, when the 1979 FECA became law. The amended version of Section 439a allows such incumbents to use surplus funds for personal purposes.

EFFECTIVE: 01/08/82

56-4.2 FECA Reporting Statutes

(1) Title 2, USC, Sections 431-434, and Title 2, USC, Sections 438-439 set forth reporting of campaign organizational requirements that are imposed by the FECA. The statutes also set forth the organization and powers of the FEC, definitions applicable to the FECA, organization and registration of political committees and various reporting and disclosure statements which must be reported to the FEC. Violations of the recordkeeping, reporting and campaign organization provisions of the FECA that are committed in a knowing and willful manner and involve more than \$2,000 may be subject to criminal prosecution. The Department, however, rarely intervenes in offenses of this type and customarily defers them to the FEC for noncriminal disposition. Further information concerning the above statutes is found in the Department publication entitled, Federal Prosecution of Election Offenses, furnished to all field divisions.

FEC records filed by Federal candidates regarding campaign contributions and expenditures are available to the FBI without regard to subpoena and may have utility in certain Federal corruption investigations. They may be obtained via a specific lead to the Washington|Metropolitan|Field Office.

(2) A rare exception to the policy outlined in (1) above exists where information originally furnished in the form of a reporting violation also reflects evidence that a violation of another criminal statute for which the FBI has investigative jurisdiction is involved.

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 56 - 21

EFFECTIVE: 10/16/90

56-5 PENALTY FOR FECA VIOLATIONS

Title 2, USC, Section 437g(d) provides as follows:

(1) Any person who knowingly and willfully commits a violation of any provision of this Act which involves the making, receiving, or reporting of any contribution or expenditure aggregating \$2,000 or more during a calendar year shall be fined or imprisoned for not more than one year, or both. The amount of this fine shall not exceed the greater of \$25,000 or 300 percent of any contribution or expenditure involved in such violation.

(2) In the case of a knowing and willful violation of Section 441(b) (3), the penalties set forth in this subsection shall apply to a violation involving an amount aggregating \$250 or more during a calendar year. Such violation of Section 441b(b) (3) may incorporate a violation of Section 441c(b), 441f, or 441g of this title.

(3) In the case of a knowing and willful violation of Section 441h of this title, the penalties set forth in this subsection shall apply without regard to whether the making, receiving, or reporting of a contribution or expenditure of \$1,000 or more is involved.

EFFECTIVE: 10/16/90

56-6 EFFECT ON STATE LAW

Title 2, USC, Section 453, provides that the FECA controls and supersedes inconsistent state laws where the subject of campaign finance matters with respect to Federal campaigns is concerned. Accordingly, for all practical purposes campaign finance matters involving candidates for Federal office are exclusively matters of Federal jurisdiction and concern.

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 56 - 22

EFFECTIVE: 10/16/90

56-7 STATUTE OF LIMITATIONS

The statute of limitations for FECA offenses is three years. The statute of limitations for statutes over which the FBI has exclusive jurisdiction is five years.

EFFECTIVE: 10/16/90

56-8 POLICY

(1) Prosecution of election law matters generally rests with U.S. Attorneys (USA). The Election Crimes Branch (ECB), Public Integrity, Criminal Division, DOJ, requires that all complaints, informations, and indictments charging election offenses must be cleared through ECB. The use of subpoenas to secure election records and the use of grand jury in these matters also requires approval of the ECB. The obtaining of the above clearances is the responsibility of the USA and may be obtained telephonically in emergency situations. The ECB is also responsible for establishing overall prosecutive policy in this rapidly developing area of law and assuring a nationwide standard of prosecution.

The ECB, DOJ, is staffed with attorneys knowledgeable in the sometimes complex prosecutorial issues involved in this sensitive area. Frequently, the ECB assists USAs in prosecutive strategy in these matters. On occasion, due to workload, recusal or complexity considerations, a departmental attorney may be assigned to handle the matter in lieu of USA. In these instances, the investigative and prosecutive functions between the DOJ attorney and the FBI will be the same as has been established with USAs.

(2) USAs are authorized to request the FBI to conduct preliminary investigations in election law matters for which the FBI has sole investigative jurisdiction. See 56-9 of this manual for scope of preliminary investigation. Under all circumstances, full investigations must be approved by the DOJ by way of communication through FBIHQ (see 56-10 of this manual).

(3) The quality of enforcement jurisdiction over campaign financing offenses requires a close and continuing relationship

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 56 - 23

between the DOJ and FEC. The official flow of information between the DOJ and the FEC is governed by a formal Memorandum of Understanding. The DOJ is responsible for maintaining this liaison with FEC on a case-by-case basis. All complaints alleging violations of the campaign finance or reporting provisions of the FECA which are received by the FBI should be brought immediately to the attention of the DOJ by way of FBIHQ (see 56-11 of this manual) and no further action taken. USAs are not authorized to request preliminary investigations in FECA matters. The DOJ has advised USAs that they should not refer these matters directly to the FEC or otherwise attempt to deal themselves with the FEC enforcement staff. In the event that an ongoing investigation into non-FECA offenses produces evidence indicating that FECA crimes may be involved in the pattern of conduct, the pertinent facts must be brought promptly to the attention of FBIHQ.

(4) The policy of the FBI in election fraud matters is to refrain from intervening in an ongoing elective contest in such a way that the investigation is allowed to become a campaign issue. This frequently requires that overt investigation of a matter occur at the conclusion of the election at issue.

(5) The greatest amount of care and discretion must be exercised in these cases due to their potential political sensitivity. They are to receive the close personal attention of the SAC and must be completed at the earliest possible date. Any unusual problems encountered should be submitted immediately to FBIHQ. The investigations are to be handled by experienced and mature Agents. The services of Agents best qualified by experience and training are to be utilized. All deadlines set by the Bureau must be met. The investigations are to be conducted in a strictly fair and impartial manner and no statements indicating prejudice are to be made. Two Agents should be present at all interviews of subjects and potential subjects. Other interviews should also be conducted by two Agents whenever circumstances indicate this should be done.

(6) Agents are not to be assigned to "police" elections or act as observers at the polls. Agents will not enter the polls or conduct any investigation inside any public facility in which the polls are located. The Department has been advised that in order to fulfill its mandate they may be instances where it would be most efficient and/or necessary for the FBI to perform related investigations in the vicinity of the open polls. Such requests, however, should be immediately brought to the attention of FBIHQ and will be approved only on the instruction of the DOJ. Once approved, it must be realized that the potential for misunderstanding of the

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 56 - 24

purpose of the FBI's inquiry(s) require that every effort be made to limit the investigation to only what is absolutely necessary to meet the objective(s).

EFFECTIVE: 01/08/82

56-9 INVESTIGATIONS (See 56-8 (2).)

EFFECTIVE: 01/08/82

56-9.1 Handling of Complaints

(1) Upon receipt of a complaint, interview the complainant and obtain full circumstances of the alleged violation, including nature of the election, local, state or Federal, names of candidates, possible subjects or suspects and/or witnesses, types of physical evidence which may exist and other immediately available details.

(2) Present facts known to USA for opinion as to whether a preliminary investigation should be conducted if allegation sufficiently credible.

EFFECTIVE: 01/08/82

56-9.2 Preliminary Investigation

Preliminary investigations may be requested by the USA or by the DOJ through FBIHQ. They should entail some or all of the following and should be described in the first sentence of communications as "This is a preliminary investigation."

(1) Interview of complainants, victims, and immediately available witnesses

(2) Interview of subjects (only if specifically requested by the Department)

(3) Obtaining of any physical evidence, including documents, ballots and other pertinent evidence



Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 56 - 25

(4) Taking of photographs, if appropriate, to the nature of the alleged violation

(5) Any other logical investigation to round out the facts of the complaint.

(6) Among other things, it should be determined what Federal and/or local candidates or political issues would be affected by the alleged irregularities. If alleged irregularities involve handling, marking or counting of ballots, determine whether each voter executes single ballots or ballots containing multiple candidates covering state and local, as well as Federal candidates and issues.

(7) Take signed statements, if possible, from complainants, victims, witnesses, and subjects.

(8) Upon referral to the Department of the results of a preliminary investigation, the Department may later request additional specific investigation. In such instances, the request will be forwarded to the field by FBIHQ with appropriate instructions and the subsequent communication should contain a statement in the first paragraph of the details to the effect, "This is a continued preliminary investigation."

(9) DOJ policy concerning the prosecution of election fraud offenses for which the FBI has exclusive investigative jurisdiction is to give selective consideration based on how the fact situation impacts Federal interests. The following general categories, in descending order of priority, are set forth to serve as a guide as to the extent of preliminary investigation that should be conducted.

(a) Category #1 - This category includes all election fraud matters that reflect a pattern of conduct which has as its object to affect the outcome of Federal contests for Congressmen or Congresswomen, Senators, or President. Federal law preempt state laws in all such instances. Thus when a case falls in this category, Federal intervention is virtually mandatory.

(b) Category #2 - This category includes all patterns of electoral abuse which occur in the setting of a Federal election which can be shown to have impacted adversely upon the outcome of a Federal contest, but which were directed at improperly affecting the outcome of state or local contests.

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 56 - 26

(c) Category #3 - This category includes all patterns of electoral abuse which occur in the setting of a Federal election, but where the fraud in question cannot be shown to have impacted adversely upon a Federal contest.

(d) Category #4 - This category includes all the remaining situations in which a pattern of electoral abuse occurs during an election where Federal candidates were not on the ballot.

(10) Other factors bearing on DOJ prosecutive policy:

(a) The extent that the geographic area involved has suffered voting abuses in the past.

(b) The extent that the pattern of election abuse may be related to a pattern of local corruption or other activity.

(c) The ability and willingness of state election enforcement agencies to deal with the problem.

EFFECTIVE: 01/08/82

56-10 ADMINISTRATIVE AND REPORTING PROCEDURE FOR MATTERS UNDER  
EXCLUSIVE FBI INVESTIGATIVE JURISDICTION

Advise FBIHQ via LHM (original and three copies) when credible complaint results in USA opinion that a preliminary investigation is not warranted. Submit in closed status. LHM will be disseminated by FBIHQ to DOJ for review. Include succinct summary of facts and reason for USA opinion. Form FD-365 may be used to transmit LHM to FBIHQ. One copy of LHM should be furnished to USA.

EFFECTIVE: 01/08/82

56-10.1 Where Preliminary Investigation Requested by USA

Advise FBIHQ via LHM (original and three copies) within ten days when preliminary investigation initiated as requested by USA. Include succinct summary of facts and AUSA opinion as to statute(s) believed violated.

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 56 - 27

EFFECTIVE: 01/08/82

56-10.2 Upon Completion of Preliminary Investigation

(1) Advise FBIHQ via LHM (original and three copies) of facts obtained and opinion of USA as to whether full investigation should be conducted. If none requested, submit in closed status. One copy of LHM should be furnished to USA. USAs may not decline prosecution in these matters. LHM will be disseminated by FBIHQ to DOJ for review.

(2) Should USA request full investigation, submit LHM in pending status with request of FBIHQ to refer to DOJ for approval. A recommendation for a full investigation should be supported by a commitment to prosecute by the USA if allegations are supported by facts developed. No further investigation should be conducted pending response from FBIHQ. In urgent situations, this request should be submitted by teletype with follow-up LHM.

EFFECTIVE: 01/08/82

56-10.3 Upon Completion of Full Investigation

Submit closing LHM to FBIHQ (original and three copies) for dissemination to DOJ following resolution of matter. Include additional summary of facts developed and results of prosecution or other disposition.

EFFECTIVE: 01/08/82

56-11 ADMINISTRATIVE AND REPORTING PROCEDURE FOR MATTERS  
RELATING TO FECA OFFENSES

Advise FBIHQ by LHM (original and three copies) or by teletype if significant allegation received. Conduct no further investigation until advised by FBIHQ. USAs cannot authorize preliminary investigation in FECA matters. The DOJ will determine if matter to be referred to FEC or FBI for investigation.

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 56 - 28

EFFECTIVE: 01/08/82

|| 56-12 CHARACTER - ELECTION LAWS |

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Sensitive  
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 58 - 1

SECTION 58. |CORRUPTION OF FEDERAL PUBLIC OFFICIALS|

58-1

BACKGROUND

(1) The FBI defines a public corruption case as any criminal investigation opened under any classification, wherein it is alleged that a public official has abused his/her position of trust within a governmental entity in violation of a Federal criminal law. A public official is defined as an individual elected or appointed to a position of trust in a governmental entity or political subdivision thereof. FBI corruption cases can involve officials ranging from local government regulatory inspectors to officials at the highest levels of the Federal Government.

(2) There are a number of criminal statutes which may be applicable to corruption cases. Although there is some overlap, there generally are specific Federal criminal laws applicable to corruption of Federal, as opposed to state and local, officials.

(3) This manual section deals with Federal public corruption matters. MIOG, Part I, Section 194 should also be consulted as it applies to corruption of state and local public officials.

EFFECTIVE: 09/16/94

58-2

SCOPE

(1) The purpose of the 58 classification is to incorporate, within one classification, corruption matters involving Federal public officials where the focus of the investigation is on the Federal public officials' abuse of office, regardless of the Federal statute alleged to have been violated. However, allegations against a Federal official which intertwine with contracts or programs being administered by a Federal executive branch, department or agency may be classified under an appropriate Fraud Against the Government classification. Likewise, allegations against a Federal official which intertwine with drugs and/or organized crime (OC) activity may be classified under an appropriate OC/Drug Program classification. The important factor is the PRIMARY FOCUS of the investigation. This

Sensitive  
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 58 - 2

determination is to be made by the field office.

(2) The 58 classification extends as well to the offer or solicitation of bribes to or from a juror or witness in any Federal proceeding and others who are not identified as a Federal public official.

(3) The following criteria should be utilized in the classification of a corruption matter as a Corruption of Federal Public Officials matter (58) within the White-Collar Crime Program.

(a) The public official involved is an individual elected or appointed to a position of trust in a Federal governmental entity or an employee or person acting on behalf of a Federal governmental entity.

(b) The corrupt activity of the Federal official requires the use of his/her official position and is in violation of Federal law.

(c) The focus of the investigation is on the abuse of the position of trust by the Federal public official in violation of Federal law, as opposed to Federal crimes being committed by a person who happens to be a Federal public official.

(d) When considering the opening of an investigation of a Federal public official, it is extremely important to determine, immediately upon receipt of such allegations, whether or not the Federal public official is considered a person covered under the Independent Counsel provisions of the Ethics in Government Act (MIOG, Part I, Section 211-4). Questions concerning coverage should be immediately brought to the attention of the Public Corruption Unit (PCU), FBIHQ, for resolution before proceeding further.

EFFECTIVE: 09/16/94

Sensitive  
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 58 - 3

58-3 FEDERAL STATUTES FREQUENTLY APPLIED TO FEDERAL PUBLIC  
CORRUPTION INVESTIGATIONS

A variety of Federal criminal statutes can be applied in Federal public corruption investigations. The following is meant only to highlight the elements of the most frequently used statutes. The opinion of the respective USA's office should be sought for further clarification of judicial interpretations and the distinctions among the various Federal judicial circuits. It is also important to note that the following overview of the statutes is limited to their use in the public corruption context.

EFFECTIVE: 09/16/94

58-3.1 Bribery of Public Officials and Witnesses (Title 18, USC,  
Section 201) (See MIOG, Part I, 49-6(1).)

(1) The major statute utilized in prosecuting corruption of federal officials is the federal bribery statute. Federal public officials, including members of Congress and other officers, employees, or persons acting for or on behalf of the United States or its agencies; departments or branches in any official function may be charged under the federal bribery statute. This statute prohibits a PUBLIC OFFICIAL, directly or indirectly, from corruptly soliciting, seeking, accepting, receiving, or agreeing to receive anything of value, either personally or for another person or entity, for himself/herself in return for being influenced in the performance of an OFFICIAL ACT by him/her, being influenced to do or omit to do any act in violation of his/her official duty. It further prohibits any individual, directly or indirectly, from giving, offering or promising anything of value to a public official, with intent to influence any official act, influence such public official to get involved in any fraud in the United States, or to induce such public official to do or omit to do any act in violation of his/her official duty.

(2) The term, "public official," for the purposes of this section, is defined as a person who is a "Member of Congress, Delegate, or Resident Commissioner, either before or after such official has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency, or branch of government thereof, including the District of Columbia, in

Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 58 - 4

any official function, under or by authority of any such department, agency, or branch of government, or a juror." It further includes any person who has been nominated or appointed to be a public official, or who has been officially informed that they will be nominated or appointed.

(3) The term, "official act," means "any decision or action on any question, matter, cause, suit, proceeding or controversy which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit."

(4) The federal bribery statute has, as an element of the violation, an intent provision. That is to say that there must be a QUID PRO QUO in which the bribery is paid and received in exchange for influence with respect to an official act. Unlike other public corruption statutes, this exchange must be proven. The gratuity subsections of the bribery statute, Title 18, USC, Section 201(c), provide alternative means of addressing corruption by Federal officials when a QUID PRO QUO cannot be shown.

(5) The penalty for violating Section 201 is a fine not more than three times the monetary equivalent of the thing of value, or imprisonment for not more than 15 years, or both, and discretionary disqualification from public office.

EFFECTIVE: 07/31/97

| 58-3.2 | Deleted |

EFFECTIVE: 09/16/94



Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 58 - 5

58-3.3 Interstate and Foreign Travel or Transportation in Aid of  
Racketeering Enterprise Act (ITAR) (Title 18, USC, Section  
1952) (See MIOG, Part I, 194-3.3.)

(1) ITAR, often referred to as the Travel Act, makes it a  
Federal offense to travel interstate or use interstate facilities,  
with the intent to:

(a) distribute the proceeds of any  
| unlawful activity; or |

(b) commit a violent crime in furtherance of any  
| unlawful activity; or |

(c) | otherwise promote, manage, establish, carry on, |  
or facilitate any unlawful activity

(2) "Unlawful activity" is defined as including the acts  
of extortion and bribery.

(3) A public official violates ITAR when he/she travels  
interstate or uses interstate facilities, i.e., transportation  
carriers, mail couriers, United States mails, and telephones, in  
furtherance of the bribery scheme. This act is particularly useful in  
lieu of, or as an alternative, to Hobbs Act when there is no proof of  
the effect a victim's loss had on interstate commerce or where there  
are no series of predicate offenses as required under the Racketeer  
Influenced and Corrupt Organization Statute.

(4) The penalty for violating Section 1952 is a fine or  
imprisonment for not more than five years, or both.

EFFECTIVE: 09/16/94

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 58 - 6

58-3.4 Mail Fraud (Title 18, USC, Sections 1341 and 1346) (See MIOG, Part I, 36-1 & 194-3.4.)

(1) A public official who uses the United States mails in furtherance of schemes to defraud a governmental entity or others has violated the Mail Fraud Statute. Examples of these schemes include officials who rig the awarding of contracts to benefit themselves. Such schemes have almost always required mailings. It is not necessary that the official mailed something himself/herself or directly received the item in the mail. It is sufficient that he/she knowingly caused the mails to be used or reasonably should have known that the mails would be used in furtherance of the scheme.

(2) The Mail Fraud Statute has been used in a most effective manner in public corruption prosecutions under the theory that a fraudulent scheme which extended to an official's acts, deprived the citizens of the full and faithful services of the public official. This theory was, however, limited considerably in a Supreme Court decision, *McNally v. United States*, which held that the intent of the statute did not extend to this intangible right of citizens to honest Government. For Acts prior to November 18, 1988, it must be shown that the citizens were defrauded of actual money or property. The Omnibus Anti-Drug Abuse Act of 1988 amended the Mail Fraud Statute by adding Section 1346, which "for the purposes of this chapter the term scheme or artifice to defraud includes a scheme or artifice to deprive another of the intangible right to honest services." Therefore, the "intangible rights" theory may still be used to prosecute officials for acts occurring after November 18, 1988.

(3) The penalty for violating Sections 1341 or 1346 is a fine or imprisonment for not more than five years, or both.

EFFECTIVE: 09/16/94

Sensitive  
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 58 - 7

58-3.5 Wire Fraud (Title 18, USC, Section 1343) (See MIOG,  
Part I, 194-3.5.)

(1) A public official who transmits or causes to be transmitted by means of wire, telephone, radio, or television, any writings, sounds, signals, pictures, or signs, in interstate commerce, for the purpose of defrauding a governmental entity or others, has violated the Wire Fraud Statute.

(2) The penalty for violating Section 1343 is a fine or imprisonment for not more than five years, or both.

(3) Similar to the Mail Fraud Statute, an example of the use of the Wire Fraud Statute in corruption matters would be to prosecute a public official who has used the telephone or computer systems in interstate commerce in furtherance of a kickback scheme involving governmental contracts.

EFFECTIVE: 09/16/94

58-3.6 Racketeer Influenced and Corrupt Organizations (RICO)  
(Title 18, USC, Sections 1961-1963) (See MIOG, Part I,  
194-3.6.)

(1) RICO, traditionally a powerful weapon against organized crime, has also been used most effectively in public corruption investigations, especially systemic corruption found in a governmental entity.

(2) As it relates to public corruption, RICO makes it a Federal offense for any person to engage in a pattern of racketeering activity that has a specified relationship to an enterprise (i.e., investing proceeds, acquiring or maintaining interest in or conduct the affairs of) that affects interstate commerce.

(3) In the context of public corruption investigations, a pattern of racketeering activity may be two or more state or Federal crimes, to include traditional corruption-related offense such as bribery, extortion, mail fraud, wire fraud, obstruction of Federal criminal investigations, tampering with Federal witnesses, victims or informants, and violating currency transaction reporting requirements.

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 58 - 8

(4) An enterprise includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact, although not a legal entity. Enterprises in previous prosecutions have included police departments, law firms, court systems, and even less formal associations of individuals joined in some corrupt scheme.

(5) Section 1962(d) makes it a crime to conspire to commit the substantive RICO offenses.

(6) The penalty for violating Section 1962 is a fine or imprisonment for not more than 20 years (or life if the predicate violation carries a life sentence), or both, as well as significant criminal and civil forfeiture provisions.

EFFECTIVE: 09/16/94

58-4 | CONFLICT OF INTEREST (Title 18, USC, Sections 202, 203, 205 - 211)

EFFECTIVE: 01/22/90

58-4.1 Section 203. Compensation to Members of Congress, Officers, and Others in Matters Affecting the Government

(1) Solicitation or receipt of compensation by a Government employee, the elements are:

(a) Employed by the United States

(b) Rendered service or agreed to for or on behalf of the United States

(c) In a matter in which the United States has direct or substantial interest

(d) Solicited or received compensation, or agreed to

(2) Give or offer compensation to Government employee, the elements are:

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 58 - 11

58-4.6 Section 209. Salary of Government Officials and Employees  
Payable Only by United States

(1) Receipt from private sources of any salary, contribution to or supplementation of salary as compensation for services as a Government employee, as well as payment, contribution to, or supplementation of a Government salary.

(2) The penalty for violating Section 209 is a fine or imprisonment for not more than one year, or both.

EFFECTIVE: 09/16/94

58-4.7 Section 210. Offer to Procure Appointive Public Office

(1) Offer or payment to procure appointive Government office.

(2) The penalty for violating Section 210 is a fine or imprisonment for not more than one year, or both.

EFFECTIVE: 09/16/94

58-4.8 Section 211. Acceptance or Solicitation to Obtain  
Appointive Public Office

(1) Solicitation or acceptance of payment to procure appointive Government office.

(2) The penalty for violating Section 211 is a fine or imprisonment for not more than one year, or both.

EFFECTIVE: 09/16/94

58-4.9 Section 202. Definitions (See Title 18, USC, Section 202)

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 58 - 10

EFFECTIVE: 01/22/90

58-4.4      Section 207. Disqualification of Former Officers and  
Employees in Matters Connected with Former Duties or  
Official Responsibilities; Disqualification of Partners

(1) Former Government employees are prohibited for all time from handling matters before the Government in which they participated personally and substantially as United States employees.

(2) Partners of former Government employees are subject to the same limitations as employees under (1) above.

(3) Government employees who do not participate directly in a Government matter, but who had it under their official responsibility, cannot become involved in such matter for a private interest for two years after their responsibility has ended.

(4) The penalty for violating Section 207 is a fine or imprisonment for not more than two years, or both, except subsection dealing with partners for which the penalty is a fine or imprisonment for not more than one year, or both.

EFFECTIVE: 09/16/94

58-4.5      Section 208. Acts Affecting a Personal Financial Interest

(1) Government employees personally and substantially transacting official business with companies with which they, members of their families, business associates, or prospective employers have a pecuniary interest.

(2) The penalty for violating Section 208 is a fine or imprisonment for not more than two years, or both.

EFFECTIVE: 09/16/94

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 58 - 9

- (a) Whoever gives or offers compensation
  - (b) To a Government employee
  - (c) For services rendered or to be rendered
  - (d) In a matter in which the United States has a direct or substantial interest
- (3) Partners of Government employees are also restricted under this statute in line with provisions of Section 207, which follows.
- (4) The penalty for violating Section 203 is a fine or imprisonment for not more than two years, or both, and the employee shall be incapable of holding any office of honor, trust, or profit under the United States.

EFFECTIVE: 09/16/94

58-4.2 Section 205. Activities of Officers and Employees in Claims Against and Other Matters Affecting the Government

(1) Government employees and their partners prosecuting claims against the United States.

(2) The penalty for violating Section 205 is a fine or imprisonment for not more than two years, or both.

EFFECTIVE: 09/16/94

58-4.3 Section 206. Exemption of Retired Officers of the Uniformed Services

Exemption of Retired Officers of the Uniformed Services from provisions of Sections 203 and 205.

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 58 - 12

EFFECTIVE: 01/22/90

58-5 PREDICATION - See Section 194-4

(1) Predication may be defined as those facts and circumstances that would provide a reasonable basis to suspect that a public official has engaged in or is engaged in conduct which is a violation of Federal criminal laws. Rumor or innuendo that often circulates throughout a community about public officials is not, in itself, sufficient to initiate an investigation. Also, official misconduct, in itself, may not be a violation of Federal law. Specific and articulable facts or circumstances from a credible source indicating a possible violation of Federal law are necessary. Unlike reasonable suspicion, there are varying degrees of predication. Different types of investigative techniques require varying levels of predication. The amount of predication required is determined by the intrusiveness and sensitivity of the investigative technique being contemplated.

(2) Predication fluctuates throughout an investigation, going up and down dependent on the level of credible information present at any point in time. Information developed during an investigation which decreases the level of predication requires that the investigation be discontinued or that the type of investigative techniques being utilized be scaled back in terms of intrusiveness and sensitivity. Therefore, predication must be CONTINUALLY evaluated for each subject of the investigation. Before initiating an investigation or before initiating a new investigative technique within an ongoing investigation, it is extremely important that the facts and circumstances be thoroughly evaluated to the fullest extent possible to ascertain the accuracy of the information and to determine whether the amount of information currently on hand supports the type of investigation to be conducted in terms of predication. This corroboration must always be accomplished in a manner that not only avoids compromise of the investigation, but also averts premature public disclosure of the allegation(s) which would likely cause harm to the public official's reputation. When corroborating the information, careful consideration should be given to a number of factors, to include:

(a) The CREDIBILITY OF THE SOURCE - It is important to ascertain the specificity and basis of the source's knowledge of the allegation. It should be determined whether the information is based on personal observations and conversations, or was learned from



Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 58 - 13

another source. Even an anonymous source may be deemed credible when the information provided is in such detail that only an individual with personal knowledge could have provided it.

(b) The RELIABILITY OF THE SOURCE - The track record of the source for dependability and truthfulness is most important. In those cases where no track record exists, there are other indicators of reliability which may be considered, such as admissions against interests by the source, the risks of making false statements to an Agent and/or the source's professional or personal standing in the community.

(c) The MOTIVATION OF THE SOURCE - Careful scrutiny must be given to the possible factors which could motivate the source to furnish the allegation. Interviewing Agents should be alert for the source who is a political enemy of the official or may in some way benefit from publicity about an investigation of the official. In some cases, the source may believe that he/she has been harmed in some way by the actions of the official. In addition, there are many individuals who, while properly motivated to report official corruption, misunderstand the operation of Government or an official's action. Their complaint may be based on some misperception of what is otherwise legitimate official conduct.

(3) Every effort should be made to test the available information in some discreet manner to demonstrate the likelihood of its accuracy. [REDACTED] may be used to support the allegation in question. The information should be examined to determine if there exists some legitimate explanation for the alleged misconduct. Public officials enjoy considerable discretion in their positions and have many competing interests to serve in making their decisions. Some very appropriate reason may be offered later for the official action.

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(4) By properly evaluating and verifying the information, the potential for error and unnecessary injury is minimized, and the public's confidence in the FBI's conduct in corruption investigations will not be jeopardized. Each field office should be CONSISTENT in the level of predication required to initiate investigations and utilize various investigative techniques. EACH PUBLIC OFFICIAL DESERVES CONSIDERATION AS TO PREDICATION, NO MATTER WHAT POLITICAL PARTY, RACE OR RELIGIOUS AFFILIATION TO WHICH THAT PUBLIC OFFICIAL BELONGS. In more difficult circumstances, FBIHQ should be consulted to ensure consistency in the decision making process on a national

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 58 - 14

| basis. |

EFFECTIVE: 09/16/94

| 58-6 | POLICY AND INVESTIGATIVE PROCEDURES |

EFFECTIVE: 01/22/90

| 58-6.1 | General

(1) Public corruption investigations are viewed as among the most sensitive investigative matters that the FBI handles. These investigations demand a circumspect and prudent approach since much is at stake for any public official who becomes the focus of a corruption investigation. The livelihood of public officials is based on his/her reputation and character. As there is usually intense media attention surrounding these investigations, the reputation of the official may be adversely and irreparably affected. Media attention and accusations of unfair targeting often accompany these investigations resulting in additional pressure on the investigating Agent(s) and field office management. Occasionally, political influences attempt to affect the investigation and/or its outcome. It is for these reasons that executive management must play an active role in the investigation by providing the attention, commitment and patience necessary to accomplish the desired tasks. It is also for these reasons that FBIHQ also maintains close oversight over public corruption investigations.

(2) The decision to investigate a public corruption matter must be personally approved by the SAC, or in his/her absence, the Assistant Special Agent in Charge (ASAC), after a consideration of the predication, i.e., facts or circumstances which reasonably indicate a Federal violation for which the FBI has jurisdiction may have occurred, is occurring, or will occur. Consideration should also be given to the presence of reasonable investigative avenues and whether or not it can be reasonably expected that a resolution may be achieved. The PCU, FBIHQ reviews the facts contained in letterhead memoranda (LHMs) submitted at the opening of each case to ensure consistency of predication on a national basis. The complexity of

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 58 - 15

these matters will cause some difficult decisions concerning initiating investigations. In those cases, it is recommended that the PCU be consulted for advice.

(3) High-impact public corruption cases include matters involving present or former high-ranking or prominent officials or cases highlighted by the national news media. High-ranking officials include Federal elected officials, Federal judges, Presidential appointees, departmental attorneys, U.S. Attorneys (USA), ASSISTANT USAs (AUSA), and all persons covered by the Independent Counsel provisions of the Independent Counsel Reauthorization Act of 1994.

(a) FBIHQ authority is required whenever a high-ranking official, listed above, is to be interviewed in connection with ANY investigative matter.

(4) All 58 matters are to be afforded immediate and continuous attention.

(5) It is absolutely essential to prove that the action or decision to be influenced is within the scope of the Federal employee's authority and powers. Such scope is not necessarily confined to statutory authority, but embraces duties performed by the employee as established by usage and customs of his/her agency.

(6) In solicitation of bribe(s) by a Government employee, if the action or decision he/she claims the ability to influence is clearly outside the scope of his/her powers, violation of Title 18, USC, Section 872 (Extortion), may be present.

EFFECTIVE: 09/16/94

58-6.2 Preliminary Inquiry | Versus Full Investigations (See MIOG,  
Part I, 194-5.2.) |

(1) | All investigations, whether preliminary or full, should be designed to RESOLVE the allegations regarding each subject in a TIMELY manner. Full investigations provide for the full range of investigative techniques and should be initiated when the combined predicate information raises a reasonable suspicion that corruption has occurred and reasonable investigative avenues are available. Frequently, however, the FBI receives or develops information not

Sensitive  
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 58 - 16

deemed sufficient to predicate the opening of a full investigation, but warranting further inquiry on a limited basis to determine the credibility of the allegation. This limited inquiry usually consists of interviews, source contacts, and/or record reviews. Under these circumstances, the SAC may authorize the opening of a preliminary inquiry.

(2) In an effort to minimize potential damage to individuals' reputation and character, preliminary inquiries shall be completed within 90 days after the initiation of the inquiry, with extensions for each succeeding 30-day period on an "unless advised to the contrary by the Bureau" (UACB) basis. Requests for extensions should be furnished by teletype to FBIHQ no later than five working days prior to the expiration of the 90-day and/or subsequent 30-day period. This teletype should include the reason the preliminary inquiry could not be completed in the designated time frame and the need for the extension. A preliminary inquiry should be promptly converted to a full investigation or closed as soon as appropriate justification is achieved for either action.

(3) The investigative techniques employed during any investigation, absent exigent circumstances, must avoid to the extent possible, adverse consequences to an individual's privacy and/or damage to reputation. As preliminary inquiries do not require the same level of predication as full investigations, [REDACTED]

[REDACTED] are not authorized, nor are [REDACTED]

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EFFECTIVE: 09/16/94

58-6.3 Initial Contact with the Prosecutor - See MIOG, Part I, 194-5.3.

(1) Upon the decision to open a preliminary inquiry or full investigation, the responsible USA/AUSA must be contacted as soon as practical and an opinion obtained as to Federal jurisdiction and commitment to prosecute if facts developed substantiate the allegation. This does not imply that the responsible attorney authorizes or directs the investigation. If exceptional circumstances logically preclude contact with the above prosecutors, FBIHQ should be advised, at which time an opinion will be obtained from an appropriate

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 58 - 17

official of the Public Integrity Section (PIS), Department of Justice (DOJ).

(2) The predicated facts presented to the prosecutor by the FBI should be of sufficient clarity to suggest possible theories of prosecution involving SPECIFIC STATUTES. Although specific details of the alleged corruption may be unclear, the prosecutor should set up guideposts as to what kind of factual situation would be prosecutable. As the investigation develops additional facts, the prosecutor should refine the opinion in an ongoing process until the indictment stage. A refined early opinion allows the FBI to develop an investigative plan directed toward proving identified elements of specific Federal criminal statutes. A thorough initial discussion with the prosecutor can eliminate wasted investigation, reinterviews of witnesses and extraneous record reviews.

(3) During contacts with the prosecutor, an Agent must be aware that the prosecutor is often primarily concerned with the legal and prosecutive aspects of the investigation. As a result, discussions with AUSA's normally progress towards discussing legal issues and often ignore the equally important issues of predication, intrusiveness and third-party liability issues. AGENTS SHOULD ENSURE THAT THESE ISSUES ARE THOROUGHLY DISCUSSED WITH THE AUSA PRIOR TO CONDUCTING AN INVESTIGATION OR UTILIZING A PARTICULAR INVESTIGATIVE TECHNIQUE.

(4) Although USAs are necessarily political appointees, the quality of individuals appointed as USA makes it extremely rare for a person's political affiliation to interject itself in a public corruption investigation. However, it is always wise to avoid any APPEARANCE of political partisanship or conflict of interest, and therefore, dependent on the circumstances, it may be advisable for the USA to recuse himself/herself and/or his/her office from a particular investigation. Most often, recusals are initiated by the USA. Some situations call for recusal of the USA without the USA being advised of any facts regarding the case. If a field office believes that there should be a recusal and the USA is unwilling to recuse himself/herself, or if the matter cannot be openly discussed with the USA to initiate recusal, the PCU should be contacted so that DOJ can be consulted. In these instances, the PIS, DOJ will assume prosecutive responsibility for the investigation.

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

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

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

- ☐ Information pertained only to a third party with no reference to the subject of your request or the subject of your request is listed in the title only.
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MUG Pg 1 Sec 58 p18-19

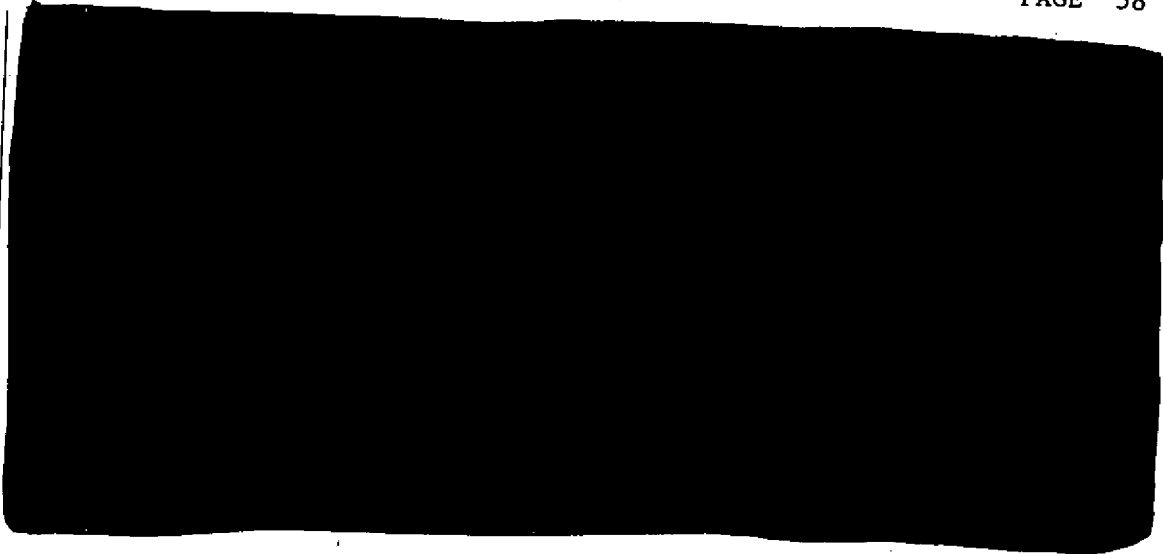
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Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 58 - 20



b2/b7E

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EFFECTIVE: 09/16/94

58-6.5 Arrest of Public Officials

Only under unusual circumstances should arrest warrants be requested from the USA or Strike Force Attorney in lieu of summonses following indictment or issuance of an information regarding corruption of public officials. Such an unusual situation would exist when information has been received that the subject contemplates fleeing to avoid legal process. While it is recognized that the final decision to issue a warrant or summons is the responsibility of the court and the USA's Office, FBI policy, in this regard, should be made known to the USA's Office.

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 58 - 21

EFFECTIVE: 01/22/90

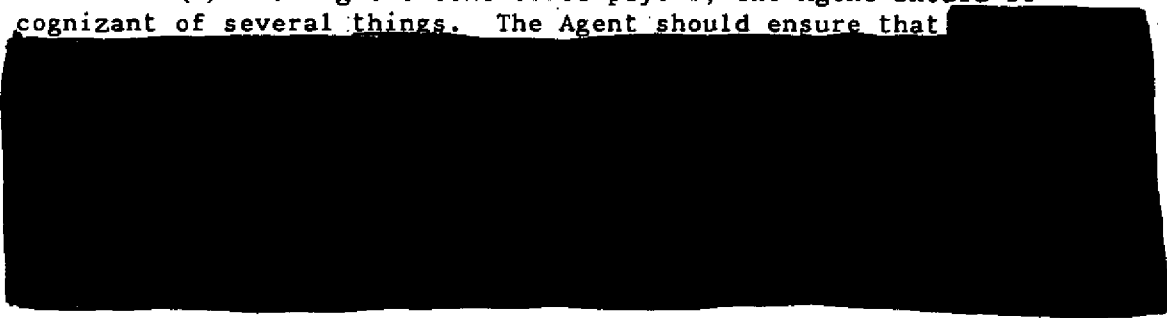
58-6.6 Bribe Payments (See MIOG, Part I, 194-5.6; Part II, 10-14.1.4.)

(1) Clearly, the controlled payoff of a public official offers far more compelling evidence for the jury than the historical testimony of witnesses of past events. In the latter situation, the jury must rely on the recollection of observations of others. The controlled payoff through an audio and/or video recording places the juror right at the scene, and as it has been said before, "tapes don't lie." Agents should always be alert for the possibility of making controlled bribe payments.

(2) Bribe payments to all public officials must be authorized in advance by an appropriate FBI official, either SAC or FBIHQ. The level of authority required depends on the amount of the payoff and the level of official being bribed. Bribes to officials of a managerial or executive-level or higher require FBIHQ approval. FBIHQ authority is also required for bribe payments to an official in less than a managerial/executive level, if the amount of the bribe exceeds \$20,000 (\$10,000 per recipient). These approval levels apply as well to UCOs. Approval of a Group I UCO does not automatically include bribe payment authority.

(3) FBIHQ authority to pay a bribe requires a teletype setting forth the circumstances, particularly the details of the official's solicitation or demand, the anticipated scenario, the identity of the public official, the amount of the payoff, and an AUSA's prosecutive opinion that the controlled payoff will provide evidence of a Federal violation and he/she is committed to prosecution.

(4) During the controlled payoff, the Agent should be cognizant of several things. The Agent should ensure that



b2/b7E



Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 58 - 22

b2/b7E

(5) FBIHQ generally will not approve payments to a middleman in the absence of recorded conversations with the public official indicating that the public official is aware that money is being paid and what the money is being paid for and a commitment by a prosecutor to prosecute the middleman. Payment authorization for middlemen is based on the level of the public official the middleman allegedly represents. If payments are authorized to a middleman, appropriate measures should be made to follow the money to the public official.

EFFECTIVE: 09/16/94

58-6.7 Closing Investigations

(1) The ultimate goal of an investigation is to RESOLVE the allegations. This is particularly true in investigations that have become known to the public and/or the media. The investigation of a public official itself will do harm (deserving or not) to the official's reputation if the matter does not reach resolution. Therefore, prior to closing a public corruption investigation a thorough review must be conducted to ensure that all investigative avenues have been pursued. Upon closing a public corruption investigation without resolution, a field office must document why the matter cannot be resolved. An example of the importance of this is that frequently, public officials who have been subjects of FBI criminal investigations, are considered for Presidential appointments. During the consideration process, the White House requests FBI records checks which results in a review of the substantive criminal investigative file(s) concerning the official being considered. If the case has been closed and the investigation and/or file is incomplete as to how the matter was resolved or why it could not be resolved, the decision as to the appointment could be most difficult and may result in either a deserving candidate not being appointed to a job or an undeserving candidate being appointed.

(2) Although it is advisable to seek prior concurrence of the prosecutor, PRELIMINARY INQUIRIES may be closed administratively with the personal approval of the SAC (ASAC in SAC's absence) when

Sensitive  
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 58 - 23

allegations are determined to be false or baseless, or when the matter obviously has no prosecutive merit. Full investigations may be closed upon completion of prosecutive action or upon declination by the prosecutor. Upon the closing of all cases, preliminary inquiry or full investigation, there must be written confirmation of the closing with the prosecutor within 30 days following closing. This may be accomplished by furnishing the prosecutor a copy of the closing LHM that is being forwarded to FBIHQ or by separate letter.

EFFECTIVE: 09/16/94

58-7 INVESTIGATIONS

EFFECTIVE: 01/22/90

58-7.1 Bribery Matters

(1) Ascertain the identities of the complainant and the parties to the bribe, the purpose of the bribe (when possible), and the preliminary opinion of the USA regarding: (1) the existence of a Federal violation, (2) jurisdiction, (3) entrapment, and (4) commitment of prosecution if the allegation is substantiated.

(2) Bribes, by their very nature, are secretive crimes. Often payoffs are made in cash and are known only to the parties involved. For this reason, circumstantial evidence is particularly important.

[REDACTED] to corroborate the allegation(s).

(3) Particular care should be exercised in planning

[REDACTED] Expert handling of this vital phase of an investigation is often the key to successful prosecution.

(4) Since complaints of prospective payoffs generally indicate the existence of a promise or a solicitation of a bribe, a

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Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 58 - 24

crime may have been committed within the definition of the statutes. Discuss with the USA the desirability of obtaining an arrest warrant, summons, or oral authorization to arrest, prior to making the payoff.

(5) In those cases where a Government employee is the subject of the investigation, obtain documentary evidence detailing the official status of the employee and the scope of that employee's duties. This should include those duties formally assigned to the employee and those duties customarily executed by the employee, even though there is no formal assignment of same.

(6) Ascertain the specific action to be taken by the Federal official or employee as a result of the bribe.

(7) In investigating complaints made by Federal Government employees, be alert for indications that the Federal Government employee may have solicited the bribe payment, but reported the matter when the employee later believed the acceptance or solicitation of a bribe became known to others.

(8) Consult FBIHQ if the SAC believes circumstances make it inadvisable to discuss the complaint or any investigative developments with the USA.

(9) If a suggestion or hint of a bribe is made to a Special Agent, the Agent should immediately inform the SAC. The SAC will consult with the USA in planning the future course of action against the subject.

[REDACTED]

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EFFECTIVE: 01/22/90

58-7.2 Conflict of Interest Matters

(1) Since many alleged violations may be technical in nature, consult the USA promptly upon receipt of a complaint to ascertain whether the USA will consider prosecution if the allegations are verified through investigation, and for legal guidance the USA may have to offer which may be of assistance in planning the investigation.

(2) The investigation must establish that the subject was

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 58 - 25

a Government employee at the time of the activity alleged to be within the scope of Conflict of Interest sanctions.

(3) Diligent efforts must be made to cover any impending payoffs and to establish the nature and extent of any prior compensation received by the Government employee, whether direct or indirect.

(4) The sanctions against "Special Government Employees" are less restrictive than those against regular employees; therefore, the specific employment status of the Special Government Employee must be verified at the outset of the investigation.

EFFECTIVE: 01/22/90

58-7.3 Bribes to or From Jurors, Witnesses or Non-Federal Officials

(1) FBIHQ authorization is required to conduct investigations based upon requests by USAs or Federal judges concerning complaints arising from trials of matters in which the FBI does not have primary jurisdiction, or in which the underlying investigation was conducted by another Government agency. FBIHQ authorization is also required prior to initiation of investigation into allegations of the bribery of jurors in pending trials.

(2) Advise the USA immediately upon receipt of complaints regarding violations connected with trials in progress or about to begin. Obtain the USA's assurance that the presiding judge has been informed and concurs with the initiation of an investigation prior to undertaking same. Interviews with witnesses and jurors in such pending cases should be conducted only upon the direction of the USA with the authorization of the presiding judge. (See also Section 72, "Obstruction of Justice," in this manual.) Every effort should be made to avoid incidents which might permit claims of prejudice or provide grounds for a mistrial.

EFFECTIVE: 01/22/90

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 58 - 26

58-8 REPORTING REQUIREMENTS

Due to the sensitive nature of these investigations, FBIHQ will provide close oversight to all public corruption matters, particularly as to predication, potential third-party liability and "look bad" issues. Steps are taken by FBIHQ to ensure that the level of predication necessary to initiate an investigation is uniform throughout the field. Also, as public corruption is a highly specialized investigative field with numerous issues, the PCU at FBIHQ is often able to suggest investigative techniques which have proven to be successful and identify and offer solutions to various complicated potential third-party liability and "look bad" issues. In order to facilitate oversight necessary to accomplish these tasks, certain reporting and administrative procedures have been established.

EFFECTIVE: 09/16/94

58-8.1 High Profile Investigations

(1) The opening of investigations (preliminary or full) of significant interest, i.e., those matters which would logically be expected to generate significant media attention and/or public interest on a national scale, require an immediate teletype submitted to FBIHQ the day of opening in addition to required LHMs. This teletype should contain a synopsis of the same information to be contained in the opening LHM. Significant developments in cases involving high-level public officials must be communicated to FBIHQ by telephone or teletype. In these cases, expect periodic requests from FBIHQ for interim status teletypes/LHMs.

(2) Any significant development in any public corruption case which could receive national attention or cause high-level (i.e., congressional or high-level executive branch) inquiry of FBIHQ should be reported immediately to FBIHQ by the most expeditious and appropriate means.

EFFECTIVE: 09/16/94

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 58 - 27

58-8.2 | Cover Airtel/LHM

In ALL public corruption cases, an airtel (original only) and LHM (original and one copy) must be sent to FBIHQ within 30 calendar days of the opening of the case. The LHM is disseminated to the appropriate DOJ section, usually PIS or the Office of Professional Responsibility, or both. Sensitive information, statutorily prohibited material, or source identities should not be disclosed in the LHM. The field office should identify all sources referred to in the LHM by name or symbol number, as appropriate, in the administrative section of the cover airtel. The LHM should note whether the matter is opened as a full investigation or preliminary inquiry and should include the facts predicated the case, the initial investigative steps contemplated and the USA's opinion that the allegation(s) indicate that a violation of Federal law may have occurred and if proven, the USA is committed to prosecuting the matter. A copy of the LHM should be provided to the USA's Office.

EFFECTIVE: 09/16/94

58-8.3 | Case Conversion to Full Investigation

An airtel and LHM should also be submitted to FBIHQ at the time a public corruption case is converted from a preliminary inquiry to a full investigation, with justification for the conversion. It is possible that preliminary inquiries opened on multiple subjects may result in sufficient evidence being developed to convert the investigation to a full investigation on some, but not all, of the subjects originally named in the title of the case. If any subject is being eliminated as a subject of the case at the time of the conversion to a full investigation, that subject must be fully identified in the LHM converting the case to a full investigation, with complete justification for eliminating that individual as a subject of the case. A copy of that LHM must be sent to the appropriate AUSA.

EFFECTIVE: 09/16/94

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 58 - 28

58-8.4 Closings

(1) All full investigations in known subject public corruption matters where no prosecutive action has resulted require closings based on a prosecutive opinion. The prosecutive opinion should address each individual who had been named as a subject of the investigation at any time.

(2) A closing airtel (original only) and LHM (original and one copy) must be prepared for each investigation which has been concluded. This final LHM must restate the predication for opening the investigation, summarize investigative findings, detail the disposition of the investigation AS TO EACH SUBJECT, and provide the opinion of the AUSA. The LHM should also state why a matter cannot be resolved if no resolution can be reached. Any prosecutive action should be detailed from indictment, information or complaint, through plea acceptance, trial disposition, and/or sentencing, as appropriate. Ensure that descriptive data which will positively identify the subject(s) for indexing purposes is included in the cover airtel of the closing LHM. THE DISPOSITION OF ALL ALLEGATIONS OF CRIMINALITY MADE AGAINST ALL SUBJECTS IN A CASE, TO INCLUDE CODE NAME CASES, MUST BE ADDRESSED AND REPORTED IN THE CLOSING LHM.

(3) Administrative closings should show the steps taken to address the allegations and explain why further investigation is not warranted and/or possible.

EFFECTIVE: 09/16/94

58-8.5 Prosecutive Reports

The decision regarding preparation of a prosecutive report is left to the discretion of the SAC/field supervisor and should be considered on a case-by-case basis. The complexity of the investigation and needs of the prosecuting attorney may be determining factors in this decision. Prosecutive reports are not to be routinely disseminated outside the DOJ.

Sensitive  
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines  
Part I.

PAGE 58 - 29

EFFECTIVE: 09/16/94

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| 58-8.7 | Deleted |

EFFECTIVE: 09/16/94

| 58-9 | FIELD OFFICE REQUESTS FOR FINANCIAL DISCLOSURE STATEMENTS  
OF FEDERAL PUBLIC OFFICIALS

All field offices should direct all requests for financial disclosure statements which are filed by Federal public officials under the Ethics in Government Act of 1978 to FBIHQ, Attention: White-Collar Crimes Section, for handling. Included among these public officials are United States Members of Congress, members of the Federal judiciary, and high-ranking officials of the executive branch. The request should include a concise summary of the facts of the investigation and justification for the financial disclosure statement.

EFFECTIVE: 01/22/90



Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 58 - 30

58-10 CHARACTER - CORRUPTION OF FEDERAL PUBLIC OFFICIALS (CFPO)

- 58A CFPO - Executive Branch
- 58B CFPO - Judicial Branch
- 58C CFPO - Legislative Branch
- 58D CFPO - Federal Bribery - other

EFFECTIVE: 10/18/95

58-11 VENUE

Lies in judicial district where specific offense occurs.

EFFECTIVE: 01/22/90

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 60 - 1

SECTION 60. ANTITRUST

60-1 STATUTES

Title 15, USC, Sections 1-7, Sections 12-27 and Sections  
13 a-c

EFFECTIVE: 01/31/78

60-1.1 Sections 1-7

Sherman Antitrust Act of July 2, 1890 (1-7, Title 15),  
basic statute under which investigations conducted. Certain sections  
read as follows:

(1) Section 1

(a) Trusts, etc., in restraint of trade illegal;  
exception of resale price agreements; penalty

"Every contract, combination in the form of  
trust or otherwise, or conspiracy, in restraint of trade or commerce  
among the several States, or with foreign nations, is declared to be  
illegal: Provided, that nothing contained in Sections 1 to 7 of this  
title shall render illegal, contracts or agreements prescribing  
minimum prices for the resale of a commodity which bears, or the label  
or container of which bears, the trademark, brand or name of the  
producer or distributor of such commodity and which is in free and  
open competition with commodities of the same general class produced  
or distributed by others, when contracts or agreements of that  
description are lawful as applied to intrastate transactions, under  
any statute, law, or public policy now or hereafter in effect in any  
State, Territory, or the District of Columbia in which such resale is  
to be made, or to which the commodity is to be transported for such  
resale, and the making of such contracts or agreements shall not be an  
unfair method of competition under Section 45 of this title: Provided  
further, that the preceding provision shall not make lawful any  
contract or agreement, provided for the establishment or maintenance  
of minimum resale prices on any commodity herein involved, between  
manufacturers, or between producers, or between wholesalers, or  
between brokers, or between factors, or between retailers, or between

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 60 - 2

persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage in any combination or conspiracy declared by Sections 1 to 7 of this title to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punishable by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court." (As amended 8-17-37 by Miller-Tydings amendment)

(2) Section 2

(a) Monopolizing trade a felony; penalty

"Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court."

(3) Section 3

(a) Trusts in Territories or District of Columbia illegal; combination a felony

"Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory or Territories and any State or States or the District of Columbia and any State or States or foreign nations, is declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court."

(4) Section 4

(a) Jurisdiction of courts; duty of district attorneys; procedure

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 60 - 3

"The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of section 1-7 of this title; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition and the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises."

EFFECTIVE: 01/31/78

60-1.2 Other Provisions

There are a number of other laws which are supplementary to Sherman Act and under which Bureau may be called upon to conduct investigations. These include:

(1) Clayton Act of 1914 (Sections 12-27, Title 15)

(a) Section 13 prohibits arbitrary price discrimination as between different purchasers of like commodities, where effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce. This prohibition does not prevent price differentials which make only due allowance for differences in cost of manufacture, sale, or delivery resulting from differing methods or quantities in which such commodities are sold or delivered. Further, the act does not prohibit price differentials caused by changes in market conditions or in the marketability of goods, such as the actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales or sales caused by discontinuance of business.

(b) Clayton Act (Section 13) also prohibits payment or acceptance of commission, brokerage or other compensation or furnishing of services or facilities upon terms not accorded to all purchasers on proportionally equal terms.

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 60 - 4

(c) Section 14 declares unlawful sales or lease agreements which contain conditions prohibiting buyer or lessee from using or dealing in goods, machinery or other commodities of competitors of lessor or seller where effect of such agreement may be substantially to lessen competition or tend to create a monopoly.

(d) Section 15 provides that any person injured in his business or property by violation of antitrust laws may sue therefore in any district court of United States in district in which defendant resides or is found or has an agent, and shall recover threefold the damages sustained, plus cost of suit, including reasonable attorney's fees. The Government may recover actual damages and cost of suit.

(e) With respect to suits by injured parties to recover treble damages, mentioned above, Section 16 provides that a final judgment or decree rendered in any criminal or civil prosecution brought by Government under antitrust laws to the effect that defendant has violated said laws shall be prima facie evidence against such defendant in any suit brought by any other party as to all matters established by such defendant's conviction in Government's case. This does not apply to consent judgments or decrees entered before any testimony has been taken or to judgments or decrees in actions brought by Government to recover damages.

(f) Section 17 states, "The labor of a human being is not a commodity or article of commerce." This section provides that nothing contained in antitrust laws shall be construed to forbid existence and operation of nonprofit labor, agricultural, or horticultural organizations instituted for purposes of mutual help, or to forbid their members from lawfully carrying out legitimate objects of such organizations.

(g) Section 18, known as the "Anti-Merger" section of Clayton Act, prohibits acquisition by one corporation of any part of the stock or assets of another corporation where in any line of commerce in any section of the country, effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly. This section does not prohibit purchase of stock solely for investment, nor does it prevent formation or ownership of subsidiary corporations.

(h) Section 22 provides that any proceeding under antitrust laws against a corporation may be brought not only in district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business. Section 24 provides that

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 60 - 5

directors, officers or agents of a corporation may be found guilty as individuals for illegal acts of corporation if those acts were authorized, ordered or done by such individuals.

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

This act prohibits sales contracts which allow to purchaser any discount, rebate, allowance, or advertising service charge not available to competitors of purchaser. Also prohibits sales in any part of U.S. at prices lower than those charged elsewhere, or sales at unreasonably low prices, for purpose of destroying competition or eliminating a competitor.

(3) Miscellaneous

Section 32, Title 15, provides that no person shall be prosecuted for any transaction, matter or thing concerning which he may testify or produce evidence in any proceeding under Sections 1-11 of this title, but that he may be prosecuted for perjury committed in so testifying. Section 33 states that this immunity extends only to a natural person who, in obedience to a subpoena, gives testimony or produces evidence, documentary or otherwise, under oath.

Department may request investigation under other statutes not mentioned above. In such cases, refer to appropriate code section.

EFFECTIVE: 01/31/78

60-1.3 Elements

(1) To prove violation of Section 1, Title 15, it must be shown that:

(a) A contract, combination, agreement or conspiracy has been formulated which has for its purpose

(b) The restraint of trade or commerce among the several states or with foreign nations

Note that this section outlaws per se any illegal agreement which seeks to set up a restraint of trade.

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 60 - 6

(2) Section 2, Title 15, deals with monopolies in interstate or foreign commerce. Three possible violations exist:

- (a) The actual monopolization, or
- (b) The attempt to monopolize, or
- (c) A conspiracy to monopolize

Each of the above elements may be considered a separate and distinct offense.

(3) Section 3, Title 15, is aimed against agreements and combinations in restraint of trade or commerce in any Territory of the United States or in the District of Columbia or between any Territory or the District of Columbia and any state or foreign nation. The section thus adds another jurisdictional element to the statute.

(4) Penalty for violating any of the above three sections is a maximum fine of \$1,000,000 if a corporation, or, if any other person, \$100,000, or imprisonment not exceeding three years or both.

EFFECTIVE: 01/31/78

60-2 POLICY

- (1) Departmental authority

Investigations conducted only at request of Assistant Attorney General (AAG) in charge of Antitrust Division of Department. Upon receipt of request for investigation from Antitrust Division, FBIHQ forwards to interested field offices, copies of Antitrust Division letter outlining general scope of investigation desired. Request from Antitrust Division to serve a civil investigative demand will be considered by FBIHQ and interested field office will be instructed to serve demand if considered desirable under existing circumstances.

- (2) Request from Antitrust Division representative in the field

(a) Since investigations must be authorized by AAG in charge of Antitrust Division, no requests for investigation received from antitrust representatives in the field (or from USAs)

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 60 - 7

can be afforded attention unless investigation has been authorized by the AAG and by FBIHQ. In requesting investigation Department may indicate that case will be handled by a regional office of Antitrust Division (or by USA.) Thereafter, supplementary requests may be received from regional antitrust attorneys (or from USA.) Such requests must be in writing, and two copies of same are to be furnished to FBIHQ. Pursuant to Department's request, FBIHQ furnishes one copy to AAG, Antitrust Division. If in an emergency, regional antitrust attorney (or USA) requests investigation in a matter not previously authorized by AAG and FBIHQ, matter may be handled by telephone or teletype.

(b) Agents are to serve civil investigative demands as requested by the Antitrust Division only with the approval of FBIHQ. Requests received from regional offices of Antitrust Division or from USA for Agents to serve demands are to be in writing. Two copies of requests are to be furnished expeditiously, as warranted by existing circumstances, to FBIHQ with SAC's recommendation with respect to serving same. Sufficient time is to be allowed FBIHQ to reply if demand will be served unless advised to the contrary by FBIHQ. FBIHQ will consider approving an Agent to serve a demand only when the demand is directly associated with a request for Agents to examine and analyze records furnished in response thereto.

(3) Requests from USAs for investigation of new case

If USA requests investigation of new alleged antitrust violation, not previously authorized by AAG and FBIHQ, his attention should be invited to departmental policy which requires prior authorization by the AAG before institution of a new antitrust case.

(4) Receipt of complaints

Upon receipt of complaint in field, thoroughly interview complainant and obtain from him information suggested under "Investigative Procedure." Conduct no investigation and submit closing report. One copy of each report is forwarded by FBIHQ to Antitrust Division.

(5) Advise officials of companies interviewed and those requested to furnish or give access to files, books, and records that Bureau investigation is being made at the request of the AAG in charge of the Antitrust Division, referring to him by name.

(6) Involved and complicated antitrust investigations should be assigned only to Agents with considerable experience in



Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 60 - 8

conducting this type of investigation. In assigning Agents to assist in these investigations, every effort should be made to afford experience to additional personnel.

(7) Federal Trade Commission jurisdiction FTC has basic responsibility for enforcement of Clayton and Robinson-Patman Acts. Criminal prosecution handled by Antitrust Division of Department. If it appears FTC has investigated matter being handled by Bureau, Antitrust Division must be advised and duplication of effort avoided.

EFFECTIVE: 01/31/78

60-3 INVESTIGATIVE PROCEDURE

(1) Handling of original complaints

Where complaint originates in a Bureau field office, complainant should be thoroughly interviewed and the following will illustrate type of information which should be elicited from him:

(a) Details concerning character and course of business in particular industry affected and a statement as to manner in which the alleged violation has been accomplished. Usually, the complainant is a very satisfactory source of information, in that being, presumably, an injured party, he is anxious to assist in the investigation in every respect. Ascertain his exact position in line of commerce; i.e., whether a retailer, wholesaler, etc.

(b) Names and addresses of all prospective defendants and such detailed information as may be available concerning their places in the industry, their parts in alleged violations, and effect their activities have had on the entire industry.

(c) Names and addresses of all others engaged in the industry who are not alleged to have had a part in the conspiracy. In this group an effort should be made to distinguish between those who may have been injured by activities of prospective defendants and those not so injured. Usually those injured in their business by activities of prospective defendants will cooperate fully with the Government in investigation and prosecution.

(d) Specific manner in which alleged violation effected by prospective defendants.

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 60 - 9

(e) Whether prospective defendants are members of a trade association, and information as to membership practices and activities of such association.

(f) Any other lines of inquiry to secure all information in complainant's possession bearing upon alleged violation.

(2) Exhibits

(a) Exhibits located during investigation, either original documents or copies thereof, should be properly identified by Agent to permit his testimony as to location of same. Identifying data, including date and Agent's initials, should be placed on document so as not to invalidate it. If photographs or photostats made, finished print should be identified. If exhibits are numerous, a separate listing or "Exhibit Control Sheet" may be made to identify them. Prepare copies of such list for field, FBIHQ, Antitrust Division, and USA's files.

(b) Forward as enclosures to report (properly described on FD-204), exhibits, exhibit control sheets, and original signed statements to FBIHQ for transmittal to Department or to appropriate Bureau field office for transmittal to regional antitrust office (or USA) handling case.

Exhibits are to include all written material furnished by or obtained from persons interviewed, such as notes and written responses to questions.

(c) Copies of exhibits need not be made for FBIHQ or field office file unless advisable in view of contemplated future investigation.

(3) Civil investigative demands and designation of deputy custodians

Provision of the Antitrust Civil Process Act, Public Law 87-664, 9-19-62, (Title 15, USC, Section 1311-1314), authorize the Attorney General and the AAG, Antitrust Division, to compel any corporation, association, partnership, or other legal entity, not a natural person, under investigation to produce documentary evidence relevant to a civil antitrust investigation, prior to institution of civil or criminal proceedings, by issuance and service of a written civil investigative demand. The legislation permits use of

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 60 - 10

information and documents so obtained in criminal antitrust prosecution. Demands may be served by Agents but do not require persons served or other officials or employees of the companies served to respond to questioning by Agents. Agent may also be designated by the AAG, Antitrust Division, to serve as deputy custodians of documents so obtained.

(a) In serving civil investigative demands approved by FBIHQ, original and one copy are to be furnished individual served. Original is to be executed by company and forwarded by company to custodian named therein. Copy is to be retained by company. Individual served may be advised that any questions relative to demand may be directed to custodian named therein. Immediately following service of demand, Agent serving same shall establish proof of service by executing a signed certification, properly notarized, which will identify by number the demand served, name of the individual and company, and date and place where served. Submit original of certification immediately to named custodian and retain copy in field office case file. Advise FBIHQ promptly of service.

(b) To facilitate Bureau examination and analysis of records obtained by a demand, an Agent who will participate in the examination and analysis may be selected by SAC to be designated by AAG, Antitrust Division as deputy custodian of records obtained by service of demand. FBIHQ is to be promptly advised of identity of Agent designated so Antitrust Division can be advised.

(c) Agents are not to make material produced in response to civil investigative demand available to any individual other than a duly authorized officer, member, or employee of Department of Justice without consent of custodian who must obtain consent of person who produced the material.

EFFECTIVE: 01/31/78

Sensitive

Manual of Investigative Operations and Guidelines  
Part I

PAGE 60 - 11

60-4 VENUE

Action against a corporation may be brought not only in district whereof it is an inhabitant but also in any district wherein it may be found or transacts business; and all process in such cases may be served in district of which it is an inhabitant, or wherever it may be found. Majority of antitrust cases prosecuted as conspiracies and usual rules as to venue in conspiracy cases apply as to both corporate and individual defendants.

EFFECTIVE: 01/31/78

60-5 PRIVACY ACT - REQUIREMENTS

When interviewing anyone in the above classification, except during the criminal phases of the investigation, in order to solicit information about himself or his own activities, the interviewing Agent must follow the procedures described in MIOG: Part I, 190-5, subparagraphs (2) and (3).

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

EFFECTIVE: 01/31/78

60-6 CHARACTER - ANTITRUST

EFFECTIVE: 01/31/78