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SECTION 75. BONDSMEN AND SURETIES

75-1 STATUTES

Title 18, USC, Section 1506, paragraph 2, provides that whoever acknowledges, or procures to be acknowledged in any court of the U. S., any recognizance, bail or judgment, in the name of any other person not privy or consenting to the same, shall be fined not more than \$5,000 or imprisoned not more than 5 years, or both.

Prosecutions are usually instituted under the perjury statute (T 18, Sections 1631, 1622). Occasionally the conspiracy statute may be used (T 18, Section 371) and USA may consider using Title 18, Sections 494 and 1001.

EFFECTIVE: 01/31/78

75-2 ELEMENTS

See manual section on perjury.

EFFECTIVE: 01/31/78

75-3 POLICY

Bureau investigates fraudulent criminal bail bonds in all classes of violations of the Federal criminal statutes. Fraudulent bail bonds involve material misrepresentations and should not be confused with forfeited bail bonds (not investigated by Bureau) which involve forfeiture of the bond based on failure of principal to comply with terms of contract. Cases involving habitual or professional bondsmen should receive prompt and thorough attention. Bureau does not investigate immigration bonds furnished in regard to control and regulation of admission and deportation of aliens.

EFFECTIVE: 01/31/78

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75-4 INVESTIGATIVE PROCEDURE

(1) Affidavits of justification which are part of a bail bond include information, such as sureties' financial status, and misrepresentations therein are usually the basis for perjury and conspiracy prosecutions.

(2) A false statement, under oath, made by a person justifying as a surety, or a false statement made in testimony taken before a U. S. Magistrate or other committing magistrate (made by a person justifying as surety on a criminal bail bond), is perjury.

(3) Fraudulent bonds

Following are suggested leads which may vary depending on allegation in each case:

(a) Examine court records. After becoming acquainted with the rules of the court, examine case file in office of clerk of court in which bond is filed and obtain:

Names and addresses of sureties,

Name of principal, that is, the defendant,

Principal amount of bond, as well as docket and/or case number assigned to the bond by official taking the same and the clerk of court,

Listing and description of the property claimed by sureties, including legal and generally known description of the property,

Statements made concerning value of such property, whether encumbrances thereon were listed, and whether or not the surety had qualified on other bonds, and, if so, the amount, date and character of the case in connection with which the prior bonds were furnished,

Name and address of official before whom the bond was executed,

The nature of the charge in connection with which the bond was furnished,

Date bond executed.

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(b) Interview court official. He should be questioned regarding taking of the bond to determine whether the sureties were placed under oath, and whether he, the committing magistrate, made any record of such affirmation. Determine whether sureties were questioned and whether they gave any testimony with regard to representations made in the bond. In cases involving "straw bail" the committing magistrate should be questioned concerning evidence produced by the sureties to show ownership of the property listed in the justification of the bond. Sureties are frequently required to produce tax receipts, warranty deeds, and/or other records evidencing ownership of property. Any defect in such evidence noticed by the committing magistrate should be carefully noted and investigated.

(c) Interview principal and intermediary. Interview the principal and the person who made arrangements for obtaining the surety to ascertain the circumstances under which the bonds were executed by the subjects. Ascertain whether the principal was acquainted with the surety prior to execution of the bond; whether the surety solicited the business; or whether the surety was recommended by a third party and, if so, the identity of such person.

(d) Check title to property. Where it is indicated that surety does not have title to property pledged, determine whether surety was the record owner of such property at the time bond was executed. Search records of the registrar of deeds for full details of ownership. Actual consideration, which is sometimes disclosed by internal revenue tax stamps, should be ascertained, if possible.

If no deed to the property listed can be found on record in the office of the registrar of deeds for the county, interview the grantor, whose name usually will be disclosed in the justification of the bond, to determine whether such person deeded the property to the surety and to obtain all details regarding transfer of the property, such as consideration paid, whether the grantor delivered the deed to the surety. Property in question should be visited to secure a description thereof and to note whether property is occupied and in particular whether it is occupied by a person other than the surety. The real owner of the property involved at time the bond was executed should always be interviewed and his testimony obtained.

(e) Check assessed and market value of property. Possible sources are tax records, neighboring property owners, contractors who made recent improvements, local real estate dealers,

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etc.

(f) Check prior liens. The office of the clerk of the recorder of deeds can provide appropriate index record books from which may be obtained a record of mortgages, tax liens, special assessments, labor liens, judgments, etc., outstanding against the property at the time the bond was executed.

(g) Determine if property pledged on other bonds which were still outstanding in state or Federal courts at time bond which is under investigation was executed.

(h) Interview surety. This may determine whether subject has good, unrecorded title to property listed in bond and will obtain his explanation for statements in affidavit.

(i) Check authorization of agent of surety company when bond furnished by surety company. Determine exact status of agent for company at time bond executed.

EFFECTIVE: 01/31/78

75-5 VENUE

In district wherein material false statements are made.

EFFECTIVE: 01/31/78

75-6 CHARACTER - BONDSMEN AND SURETIES

EFFECTIVE: 01/31/78

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SECTION 76. ESCAPED FEDERAL PRISONERS,
ESCAPE AND RESCUE, ET AL.;
PROBATION VIOLATORS, ET AL.;
PAROLE VIOLATORS AND MANDATORY RELEASE
VIOLATORS

76-1 ESCAPED FEDERAL PRISONERS, ESCAPE AND RESCUE

EFFECTIVE: 09/20/89

76-1.1 Background

The Escape and Rescue Statute (ERS), Title 18, USC, Sections 751-757, was enacted on 9/1/48. By MOU, effective 10/1/79, the U.S. Marshals Service (USMS) was given investigative and apprehension responsibility for violations of the ERS. By Department of Justice (DOJ) directive concerning the "Policy on Fugitive Apprehension in FBI and DEA Cases," dated 8/11/88, the USMS was given the responsibility of apprehending Federal escapees regardless of the nature of the Federal offense for which the prisoner was held, but does not specify that the USMS had investigative responsibility as set forth in the 1979 MOU. This matter was clarified by DOJ on 12/11/91. DOJ ruled that the FBI would maintain primary investigative jurisdiction over conspiracy to violate the ERS pertaining to any person(s) who rescues, instigates or assists in the escape or planned escape of a Federal prisoner from custody of an institution or officer. A field office wanting to conduct a fugitive investigation only must secure the specific approval of FBI Headquarters and obtain the concurrence of USMS. This can be effected through the Fugitive/Government Reservation Crimes Unit, Criminal Investigative Division.

EFFECTIVE: 09/07/93

76-1.2 Principal Statutes and Penalties

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EFFECTIVE: 09/20/89

76-1.2.1 Section 751. Prisoners Escaping or Attempting to Escape
From Custody of an Institution or Officer

"(a) Whoever escapes or attempts to escape from the custody of the Attorney General or his authorized representative, or from any institution or facility in which he is confined by direction of the Attorney General, or from any custody under or by virtue of any process issued under the laws of the United States by any court, judge, or magistrate, or from the custody of an officer or employee of the United States pursuant to lawful arrest, shall, if the custody or confinement is by virtue of an arrest on a charge of felony, or conviction of any offense, be fined not more than \$5,000 or imprisoned not more than five years, or both; or if the custody or confinement is for extradition or by virtue of an arrest or charge of or for a misdemeanor, and prior to conviction, be fined not more than \$1,000 or imprisoned not more than one year, or both.

"(b) Whoever escapes or attempts to escape from the custody of the Attorney General or his authorized representative, or from any institution or facility in which he is confined by direction of the Attorney General, or from any custody under or by virtue of any process issued under the laws of the United States by any court, judge, or magistrate, or from the custody of an officer or employee of the United States pursuant to lawful arrest, shall, if the custody or confinement is by virtue of a lawful arrest for a violation of any law of the United States not punishable by death or life imprisonment and committed before such person's eighteenth birthday, and as to whom the Attorney General has not specifically directed the institution of criminal proceedings, or by virtue of a commitment as a juvenile delinquent under section 5034 of this title, be fined not more than \$1,000 or imprisoned not more than one year or both. Nothing herein contained shall be construed to affect the discretionary authority vested in the Attorney General pursuant to section 5032 of this title."

EFFECTIVE: 09/20/89

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76-1.2.2 Section 752. Rescuing, Instigating or Assisting Escape

"(a) Whoever rescues or attempts to rescue or instigates, aids or assists the escape, or attempt to escape, of any person arrested upon a warrant or other process issued under any law of the United States, or committed to the custody of the Attorney General or to any institution or facility by his direction, shall, if the custody or confinement is by virtue of an arrest on a charge of felony, or conviction of any offense, be fined not more than \$5,000 or imprisoned not more than five years, or both; or, if the custody or confinement is for extradition or by virtue of an arrest or charge of or for a misdemeanor, and prior to conviction, be fined not more than \$1,000 or imprisoned not more than one year, or both.

"(b) Whoever rescues or attempts to rescue or instigates, aids, or assists the escape or attempted escape of any person in the custody of the Attorney General or his authorized representative, or of any person arrested upon a warrant or other process issued under any law of the United States or from any institution or facility in which he is confined by direction of the Attorney General, shall, if the custody or confinement is by virtue of a lawful arrest for a violation of any law of the United States not punishable by death or life imprisonment and committed before such person's eighteenth birthday, and as to whom the Attorney General has not specifically directed the institution of criminal proceedings, or by virtue of a commitment as a juvenile delinquent under Section 5034 of this title, be fined not more than \$1,000 or imprisoned not more than one year, or both."

EFFECTIVE: 09/20/89

76-1.2.3 Section 753. Rescue to Prevent Execution

"Whoever, by force, sets at liberty or rescues any person found guilty in any court of the United States of any capital crime, while going to execution or during execution, shall be fined not more than \$25,000 or imprisoned not more than twenty-five years, or both."

EFFECTIVE: 07/28/87

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76-1.2.4 Section 754. Rescue of Body of Executed Offender

"Whoever, by force, rescues or attempts to rescue, from the custody of any marshal or his officers, the dead body of an executed offender, while it is being conveyed to a place of dissection as provided by Section 3567 of this title, or by force rescues or attempts to rescue such body from the place where it has been deposited for dissection in pursuance of said Section 3567, shall be fined not more than \$100 or imprisoned not more than one year, or both."

EFFECTIVE: 07/28/87

76-1.2.5 Section 755. Officer or Other Person Permitting Escape

"Whoever, having in his custody any prisoner by virtue of process issued under the laws of the United States by any court, judge, or commissioner, voluntarily suffers such prisoner to escape, shall be fined not more than \$2,000 or imprisoned not more than two years, or both; or if he negligently suffers such person to escape, he shall be fined not more than \$500 or imprisoned not more than one year, or both."

EFFECTIVE: 07/28/87

76-1.2.6 Section 756. Internee of Belligerent Nation

"Whoever, within the jurisdiction of the United States, aids or entices any person belonging to the armed forces of a belligerent nation or faction who is interned in the United States in accordance with the law of nations, to escape or attempt to escape from the jurisdiction of the United States or from the limits of internment prescribed, shall be fined not more than \$1,000 or imprisoned not more than one year, or both."

EFFECTIVE: 07/28/87

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76-1.2.7 Section 757. Prisoners of War or Enemy Aliens

"Whoever procures the escape of any prisoner of war held by the United States or any of its allies, or the escape of any person apprehended or interned as an enemy alien by the United States or any of its allies, or advises, connives at, aids, or assists in such escape, or aids, relieves, transports, harbors, conceals, shelters, protects, holds correspondence with, gives intelligence to, or otherwise assists any such prisoner of war or enemy alien, after his escape from custody, knowing him to be such prisoner of war or enemy alien, or attempts to commit or conspires to commit any of the above acts, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

"The provisions of this section shall be in addition to and not in substitution for any other provision of law."

EFFECTIVE: 07/28/87

76-1.2.8 Section 1072. Harboring or Concealing an Escaped Prisoner

"Whoever willfully harbors or conceals any prisoner after his escape from the custody of the Attorney General or from a Federal penal or correctional institution, shall be imprisoned not more than three years."

EFFECTIVE: 09/20/89

76-1.2.9 Miscellaneous Statutes

Title 18, USC, Sections 1791 and 1792, which deal with the Bureau's substantive 90 classification, Irregularities in Federal Penal Institutions, should be considered, if appropriate, in connection with violations of the sections enumerated above. (See Part I, Section 90 of this manual.)

EFFECTIVE: 09/20/89

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76-1.2.10 Violations Subsequent to Escape

If subsequent Federal violations occur during or after an escape, the FBI shall investigate these separate violations. In these cases, the FBI and the USMS shall coordinate their investigations in an effort to effect the escapee's apprehension at the earliest date.

EFFECTIVE: 09/20/89

76-1.3 FBI Jurisdiction

EFFECTIVE: 09/20/89

76-1.3.1 General (See MIOG, Part I, 76-1.3.10(5).)

(1) By Department of Justice ruling 12/11/91, primary investigative jurisdiction pertaining to conspiracy to violate the ERS was given to the FBI. Accordingly, the USMS, effective 12/11/91, has investigative and apprehension responsibility only over those subjects who actually escape from the custody of an institution or an officer. Any investigation concerning conspiracy to escape should be initiated under Bureau classification 90, Irregularities in Federal Penal Institutions (IFPI).

(2) If an escaped Federal prisoner (EFP) subject, within the primary jurisdiction of the USMS also becomes an FBI substantive fugitive, of course, the FBI will seek his/her apprehension under the substantive case, but "OO" must advise the U.S. Marshal (USM) in the district holding the warrant of its fugitive involvement and notify the USM's office promptly upon apprehension. This notification will, of course, not change the existing procedure of advising the USM in the district where the subject is located.

(3) Should an EFP within the responsibility of the USMS become a suspect/subject in an FBI substantive case and "OO" desires to actively seek the subject's apprehension under the ongoing substantive matter, this may be done, provided the USMS is notified and the fugitive aspects of the case are an FBI-USMS coordinated effort. Of course, when the fugitive is apprehended or eliminated as a suspect/subject in the substantive case which no longer demands FBI fugitive involvement, the appropriate USM must be notified.

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(4) If any subject of an existing USMS responsibility EFP matter is wanted as a fugitive in an FBI substantive case, the existing "76" case should be consolidated and handled as a dual character substantive case.

(5) If for some reason it should become imperative for an office (OO) to initiate a "76" (EFP) fugitive investigation, involving a non-FBI case, advise FBIHQ on a UACB basis of the facts demanding FBI involvement.

EFFECTIVE: 09/07/93

76-1.3.2 Prosecution

Investigative jurisdiction and responsibility for conspiracy to violate the ERS rests with the FBI effective 12/11/91. In these matters, it is the FBI's responsibility to secure a prosecutive opinion from the USA and prepare reports suitable for prosecutive use.

EFFECTIVE: 09/07/93

76-1.3.3 Obtaining Process

(1) A prisoner who escapes is an automatic fugitive. No process whatsoever is necessary in cases involving escapes after convictions and sentencing.

(2) Inasmuch as removal proceedings may be necessary in those cases involving escapes before conviction and sentencing, a new warrant should be obtained on the original substantive offense if the offense was within the Bureau's primary jurisdiction.

(3) In those cases in which the original offense was not within the Bureau's primary jurisdiction, the USA should be promptly contacted so that a warrant may be obtained under section 751.

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EFFECTIVE: 09/10/79

76-1.3.4 Declination of Prosecution or Dismissal of Process

If the USA declines prosecution of the escapee for EFP or later dismisses the outstanding EFP process while the escapee is in fugitive status, the fugitive investigation should continue. Whether prosecution under the Escape and Rescue Act is anticipated has no bearing on the responsibility to locate Federal escapees since the major objective is to return them to Federal custody to complete their sentence or face the original pending Federal charge.

EFFECTIVE: 09/10/79

76-1.3.5 Escapees from Residential Treatment Centers, Furloughs, and Extended Limits of Confinement

Those prisoners assigned to residential treatment centers, granted furloughs, and/or extension of limits of confinement by the Attorney General, as set out in Title 18, USC, Section 4802, are in escape status within the Escape and Rescue Act when they fail to return to their place of assignment or from furlough as provided by the instructions given them and fall within the USMS's jurisdiction.

EFFECTIVE: 09/10/79

76-1.3.6 INS Escapees

Aliens who escape while in the custody of the U.S. Immigration and Naturalization Service, while being held administratively pending deportation proceedings or on the basis of a warrant of deportation, rather than a substantive Federal offense such as illegal entry or smuggling, are not subject to prosecution under the Escape and Rescue Act and are to be sought for by INS.

EFFECTIVE: 09/10/79

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76-1.3.7 State Prisoners in Federal Custody

(1) Title 18, USC, Section 5003, authorized the Attorney General to contract with officials of a state for the custody of a state prisoner convicted in a state court.

(2) A prisoner committed to the custody of the Attorney General under this section who escapes or attempts to escape violates Title 18, USC, Section 751, and falls within the USMS's jurisdiction.

EFFECTIVE: 09/10/79

76-1.3.8 Military Prisoners

Prisoners convicted and sentenced by a military court-martial are subject to prosecution for EFP and fall within the USMS's jurisdiction if the following conditions exist:

(1) The prisoner was committed to the custody of the Attorney General by the terms of the court-martial sentence. When these conditions exist, the prisoner comes into the constructive custody of the Attorney General at the time sentence is rendered and thereby becomes subject to prosecution for EFP if he/she escapes or attempts to escape.

(2) The prisoner is committed to a place of detention operated by the armed service by the terms of the court-martial but is subsequently transferred to the custody of the Attorney General. When these facts exist the prisoner must actually come into the physical custody of the Attorney General or one of Attorney General's authorized representatives and then escape or attempt to escape before this act can be applied.

EFFECTIVE: 09/10/79

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76-1.3.9 Escapes From Local Custody Where a Federal Detainer has
been Filed or the Subject has been Federally Sentenced
Concurrently or Consecutively to the State Offense

(1) When a subject in state custody has been charged federally with an offense under the FBI's jurisdiction and the Federal detainer has been filed but the Federal warrant has not been executed and the subject escapes from local custody, |subject| is a Bureau fugitive under the substantive Bureau offense and should be located and apprehended on the basis of the original warrant charging |subject| with the Bureau offense.

(2) When a subject has been convicted of a state offense and while in state custody the Federal warrant has been executed and the subject is convicted of a Bureau or non-Bureau Federal offense and sentenced concurrently rather than consecutively to the state offense and escapes from local custody, |subject| is an EFP under the Escape and Rescue Act and should be located and apprehended |by the USMS. |

(3) When a subject in state custody has been charged federally with an offense not under the FBI's jurisdiction and Federal detainer has been filed and the subject escapes from local custody, |subject| is not an EFP or Bureau fugitive. The office covering the place of escape may institute a fugitive investigation under the Fugitive Felon Act if requested by the local authorities.

(4) When a subject has been convicted of a state offense and while in state custody the subject is convicted for a Bureau or non-Bureau Federal offense but has not yet been sentenced federally or has been federally sentenced consecutively rather than concurrently and the subject escapes from local custody, |subject| is not an EFP or Bureau fugitive. The office covering the place of escape may institute a fugitive investigation under the Fugitive Felon Act if requested by the local authorities.

(5) The above examples should be distinguished from the situation in which a subject is arrested by the FBI or another Federal agency and is temporarily lodged in a state facility pending his/her appearance before the U.S. Magistrate. If the subject escapes from this state facility, he/she is an EFP and since he/she escaped prior to conviction, a new warrant should be obtained on the original process if the offense was within the Bureau's primary jurisdiction. In these instances the case should be worked out of the substantive matter and EFP added to the character. The fugitive aspects should be coordinated with the USMS and EFP prosecution, by no means, overlooked. In those cases in which the offense was not within the

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| Bureau's primary jurisdiction, the USMS should handle. |

EFFECTIVE: 09/10/79

76-1.3.10 Escapes From Civil Confinement

(1) The Comprehensive Crime Control Act of 1984 (CCCA of 84) was enacted into law on 10/12/84. This Act was responsible for a significant number of changes in the Federal criminal justice system including escapes from Federal civil confinement in EFP matters.

(2) Chapter X, Part L, of the CCCA of 84, entitled "Escape From Custody Resulting From Civil Commitment," amends the Recalcitrant Witness Statute, Title 28, USC, Section 1826, by adding Subsection (c). Subsection (c) covers an escape by an individual who has been civilly confined for refusing to testify before a Federal court or grand jury pursuant to Section 1826. Subsection (c) also covers the escape by an individual following a verdict of not guilty only by reason of insanity and subsequent confinement pursuant to the civil commitment statute, Title 18, USC, Section 4243, added by Chapter IV of the CCCA of 84, entitled "Insanity Defense Reform Act of 1984." In addition, Subsection (c) also covers attempted escapes by individuals confined in the above situations and individuals who aid or assist in such escapes or attempted escapes. Violators are subject to imprisonment for a maximum of three years and a fine of up to \$10,000.

(3) It should be noted that under prior law, persons who escaped from confinement resulting from a civil contempt order under Section 1826 could not be prosecuted since the Escaped Federal Prisoners Statute, Title 18, USC, Section 751, was limited to escapes from custody or confinement by virtue of an arrest or conviction. Section 1826 (c) was passed to remedy this situation.

(4) Subsection 1826 (c) applies from the moment the verdict of not guilty only by reason of insanity is announced until the subject is released after a subsequent court hearing under Section 4243 (c), or is unconditionally released by Federal authorities, or until a state authority takes custody of him/her. Furthermore, Subsection 1826 (c) does not require that the above-mentioned escapes occur while the individual was held under actual guard or direct physical restraint; therefore, custody may be minimal or constructive.

(5) Investigative jurisdiction between the FBI and the

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USMS over Subsection 1826 (c) escapes and subsequent criminal activity by the subjects is identical to the respective jurisdictions dictated by the Department of Justice ruling pertaining to EFP matters as set forth in 76-1.3.1.

EFFECTIVE: 09/07/93

76-1.4 Notification Concerning Escapes and Apprehensions

EFFECTIVE: 09/20/89

76-1.4.1 Bureau of Prisons

The Bureau of Prisons (BOP) facilities should notify the nearest FBI office and USMS office and furnish the details of each escape. The FBI should be notified of escape conspiracy information which becomes known to the BOP.

EFFECTIVE: 09/07/93

76-1.4.2 Bureau Office

(1) In liaison contacts ensure that all escapes involving conspiracy or another FBI violation are promptly reported to the appropriate FBI office so that substantive investigation and FBI-USMS coordinated fugitive inquiry can be initiated.

(2) FBIHQ should be promptly notified by teletype in those instances involving a major mass escape or the escape of a criminal having considerable notoriety of interest to the FBI.

(3) Upon the location of apprehension of the EFP, the USM of the district where located or apprehended should be immediately notified and requested to take custody.

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EFFECTIVE: 09/07/93

76-1.5 Investigative Procedures

(1) Investigation should be given preferred and expeditious attention as soon as the escape is reported in order to promptly apprehend the escapee before he/she is able to leave the general area where the escape was effected.

(2) A definite, prearranged counterescape plan should be formulated concerning roadblocks, terrain search, notification to local police agencies and other investigative steps which, if logical and appropriate, can be immediately utilized.

(3) The prison official reporting the escape should be interviewed regarding the complete details of the escape. This information should be recorded on an FD-302 as possible testimony in the event the escapee is later prosecuted for EFP.

(4) An Agent should promptly examine the subject's prison records to obtain any additional information of lead value.

(5) The office of origin should promptly request the office covering the territory in which the escapee was convicted to review appropriate records and set out the necessary leads in an effort to apprehend the subject.

(6) When reports concerning missing prisoners are received, close liaison must be maintained so that if it proves to be an escape, investigation can be immediately instituted.

(7) Upon the escapee's location or apprehension he/she should be interviewed in detail regarding his/her escape to ensure successful prosecution.

EFFECTIVE: 09/20/89

76-1.6 Office of Origin

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EFFECTIVE: 07/11/85

76-1.6.1 General Rule

(1) The office of origin shall be that office covering the place of the escape, attempted escape, or other offense.

(2) Once an escaped Federal prisoner has been apprehended the office of origin must promptly notify the correctional institution from which the subject escaped.

EFFECTIVE: 07/11/85

76-1.6.2 Exception Case

When a prisoner is released on furlough from a facility in one territory to voluntarily report for permanent transfer to a facility in another territory and prisoner fails to report as required (escapes), the Department has held that venue for EFP prosecution is where the subject was required and failed to report. Therefore, the office covering this location will act as the office of origin in directing the fugitive investigation and will also present the EFP violation for prosecutive opinion. (Only when investigation specifically authorized by FBIHQ.)

EFFECTIVE: 07/11/85

76-1.7 Venue

Prosecution shall be in the district in which the escape, attempted escape, or other offense was committed.

EFFECTIVE: 11/08/78

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76-1.8 Reporting Procedures (See MIOG, Part I, 25-10, 76-2.9, 76-3.13, 88-12, 115-7 & Part II, 21-29.)

(1) No communication need be submitted to FBIHQ at the outset of a routine nonfugitive investigation handled under the Escape and Rescue Statute; however, should good judgment dictate that FBIHQ and/or the Bureau of Prisons Headquarters be advised of such inquiry, a teletype or airtel, together with LHM (if dissemination desired), should be submitted to FBIHQ.

(2) If the subject of an escaped Federal prisoner or Escape and Rescue matter is placed in a fugitive status, two copies of an FD-65 should be promptly forwarded to FBIHQ, and one copy submitted directly to the Savannah Information Technology Center (SITC), by the office of origin. Upon the fugitive's apprehension or location, the locating office must promptly notify FBIHQ by teletype (at least ROUTINE in precedence), followed by Form FD-515 entry into the Integrated Statistical Reporting and Analysis Application (ISRAA). The office of origin must ensure that all auxiliary offices are notified by teletype to discontinue.

(3) One copy of a Prosecutive Report should be submitted to FBIHQ upon the authorization of prosecution by the USA, or when a specific request for such report is made by the USA or FBIHQ.

(4) In reporting the results of prosecutive action following the submission of a Prosecutive Report, while Form R-84 (if applicable) is to be forwarded to FBIHQ, a separate letter (airtel with LHM if dissemination desired) should also be submitted detailing the final disposition of each subject. The required letter should note that Form FD-515 has been entered into the ISRAA.

EFFECTIVE: 10/11/94

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||76-1.9| Character

(1) Escaped Federal Prisoner, applies to all escapes and attempted escapes under Section 751.

(2) Escape and Rescue, applies to all other cases under Sections 752, 755, 756, and 757.

(3) Escaped Federal Prisoner - Harboring, applies to cases under Section 1072.

(4) Irregularities in Federal Penal Institutions, applies to all violations of Sections 1791 and 1792 which arise from investigations of the sections enumerated above.

EFFECTIVE: 11/08/78

76-2 PROBATION VIOLATORS

EFFECTIVE: 09/20/89

76-2.1 Background

By Department of Justice directive dated 8/11/88, the U.S. Marshals Service (USMS) under Title 18, USC, Sections 3651-3656, was given the responsibility for the apprehension of all Federal probation violators (PBV). With the specific approval of FBIHQ and the concurrence of the USMS, an office may conduct such an inquiry.

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76-2.2 Principal Statute - Section 3651. Suspension of Sentence
and Probation

"Upon entering a judgment of conviction of any offense not punishable by death or life imprisonment, any court having jurisdiction to try offenses against the United States when satisfied that the ends of justice and the best interest of the public as well as the defendant will be served thereby, may suspend the imposition or execution of sentence and place the defendant on probation for such period and upon such terms and conditions as the court deems best.

"Upon entering a judgment of conviction of any offense not punishable by death or life imprisonment, if the maximum punishment provided for such offense is more than six months, any court having jurisdiction to try offenses against the United States, when satisfied that the ends of justice and the best interest of the public as well as the defendant will be served thereby, may impose a sentence in excess of six months and provide that the defendant be confined in a jail-type institution for a period not exceeding six months and that the execution of the remainder of the sentence be suspended and the defendant placed on probation for such period and upon such terms and conditions as the court deems best.

"Probation may be granted whether the offense is punishable by fine or imprisonment or both. If an offense is punishable by both fine and imprisonment, the court may impose a fine and place the defendant on probation as to imprisonment. Probation may be limited to one or more counts or indictments, but, in the absence of express limitations, shall extend to the entire sentence and judgment.

"The court may revoke or modify any condition of probation or may change the period of probation. The period of probation, together with any extension thereof, shall not exceed five years.

"While on probation and among the conditions thereof, the defendant may be required to pay a fine in one or several sums; and may be required to make restitution or reparation to aggrieved parties for actual damages or loss caused by the offense for which conviction was had; and may be required to provide for the support of any persons, for whose support he is legally responsible.

"The defendant's liability for any fine or other punishment imposed as to which probation is granted, shall be fully discharged by the fulfillment of the terms and conditions of probation."

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EFFECTIVE: 09/20/89

76-2.3 Definition

For Bureau purposes, a probation violator fugitive is a subject for whom a probation violator (bench) warrant was issued by a U.S. District Court and whose location is unknown at the time the warrant is issued.

EFFECTIVE: 09/20/89

76-2.4 Requests for Assistance

(1) Investigation should not be initiated by an office. If assistance is requested, any such requests should, after 8/11/88, be referred to the USMS. Specific FBIHQ approval must be obtained and USMS concurrence and very unusual circumstances must exist for FBI involvement without a substantive violation.

(2) If, after 8/11/88, a new PBV subject, within the primary jurisdiction of the USMS also becomes an FBI substantive fugitive, of course, we will seek his/her apprehension under the substantive case, but "OO" must advise the USM in the district holding the warrant of its fugitive involvement and notify USM's office promptly upon apprehension. This notification will, of course, not change the existing procedure of advising the USM in the district where the subject is located.

(3) Should, after 8/11/88, a PBV within the responsibility of the USMS become a suspect in an FBI substantive case and "OO" desires to actively seek the subject's apprehension under the ongoing substantive matter, this may be done provided the USMS is notified and the fugitive aspects of the case are an FBI-USMS coordinated effort. Of course, when the fugitive is apprehended or eliminated as a suspect in the substantive case which no longer demands FBI fugitive involvement, the appropriate USM must be notified.

(4) If any subject of an existing USMS responsibility PBV matter is wanted as a fugitive in an FBI substantive case, the existing "76" case should be consolidated and handled as a dual character substantive case.

(5) If for some reason it should become imperative for an "OO"

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to initiate a "76" (PBV) fugitive investigation, involving a non-FBI case, advise FBIHQ on a UACB basis of the facts demanding FBI involvement.

EFFECTIVE: 09/20/89

76-2.5 Preliminary Investigation

In addition to the usual fugitive investigation, the following sources should be contacted at the outset of the investigation to obtain information of lead value.

(1) The U.S. Probation Officer to whom the subject was placed under supervision.

(2) The USM to whom the warrant was forwarded.

EFFECTIVE: 09/20/89

76-2.6 Apprehension or Location

(1) When a probation violator is apprehended violator should be turned over to the nearest USM. If located in custody, the USM should be advised of violator's location.

(2) In addition, the nearest U.S. Probation Officer should be notified of the subject's apprehension or location.

EFFECTIVE: 09/20/89

76-2.7 Prosecution

Probation violation is a nonprosecutable offense. When apprehended, the court may revoke the probation and require the subject to serve the original sentence imposed, or any lesser sentence, and if imposition of sentence was suspended, may impose any sentence which might originally have been imposed.

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EFFECTIVE: 09/20/89

76-2.8 Office of Origin

The office of origin shall be that office in whose territory the probation violator warrant was issued for the subject.

EFFECTIVE: 09/10/79

76-2.9 Reporting Procedures (See MIOG, Part I, 25-10, 76-1.8, 76-3.13, 88-12, 115-7 & Part II, 21-29.)

(1) Upon initiating a probation violator investigation, two copies of an FD-65 must be promptly forwarded to FBIHQ, and one copy submitted directly to the Savannah Information Technology Center (SITC), by the office of origin. Upon the fugitive's apprehension or location, the locating office must promptly notify FBIHQ by teletype (at least ROUTINE in precedence), followed by Form FD-515 entry into the Integrated Statistical Reporting and Analysis Application (ISRAA). The office of origin must ensure that all auxiliary offices are notified by teletype to discontinue.

(2) As a general rule, Prosecutive Reports are not required in probation violator cases and, therefore, are not to be submitted to FBIHQ unless a specific request is made for same.

EFFECTIVE: 10/11/94

76-2.10 Character

Probation Violator (PBV). (The original substantive offense should not be included in the character.)

EFFECTIVE: 09/10/79

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76-3 PAROLE VIOLATORS AND MANDATORY RELEASE VIOLATORS

EFFECTIVE: 09/20/89

76-3.1 Background

By Department of Justice directive dated 8/11/88, the U.S. Marshals Service (USMS) was given the responsibility for apprehending all parole violators (PV), Title 18, USC, Sections 4202-4207, and 5037, and mandatory release violators (MRV), Title 18, USC, Sections 4161-4166, when referred for assistance by the U.S. Parole Commission (USPC). With the specific approval of FBIHQ and the concurrence of the USMS and USPC, an office may conduct such an inquiry.

EFFECTIVE: 09/20/89

76-3.2 Principal Statutes

EFFECTIVE: 09/20/89

76-3.2.1 Section 4202. Adult Prisoners Eligible for Parole

"A Federal prisoner, other than a juvenile delinquent or a committed youth offender, wherever confined and serving a definite term or terms of over one hundred and eighty days, whose record shows that he has observed the rules of the institution in which he is confined, may be released on parole after serving one-third of such term or terms or after serving fifteen years of a life sentence or of a sentence of over forty-five years."

EFFECTIVE: 09/20/89

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76-3.2.2 Section 5017. Release of Youth Offenders

"(a) The Division may at any time after reasonable notice to the Director release conditionally under supervision a committed youth offender. When, in the judgment of the Director, a committed youth offender should be released conditionally under supervision he shall so report and recommend to the Division.

"(b) The Division may discharge a committed youth offender unconditionally at the expiration of one year from the date of conditional release.

"(c) A youth offender committed under Section 5010 (b) of this chapter shall be released conditionally under supervision on or before the expiration of four years from the date of his conviction and shall be discharged unconditionally on or before six years from the date of his conviction.

"(d) A youth offender committed under Section 5010 (c) of this chapter shall be released conditionally under supervision not later than two years before the expiration of the term imposed by the court. He may be discharged unconditionally at the expiration of not less than one year from the date of his conditional release. He shall be discharged unconditionally on or before the expiration of the maximum sentence imposed, computed uninterruptedly from the date of conviction."

EFFECTIVE: 09/20/89

76-3.2.3 Section 5037. Parole of Juvenile Delinquents

A juvenile delinquent who has been committed and who, by his/her conduct, has given sufficient evidence that he/she has reformed, may be released on parole at any time under such conditions and regulations as the USPC deems proper if it shall appear to the satisfaction of such Commission that there is reasonable probability that the juvenile will remain at liberty without violating the law.

EFFECTIVE: 09/20/89

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76-3.2.4 Section 4164. Mandatory Released Prisoner Treated as
Parolee

A prisoner having served his/her term or terms less good time deductions shall, upon release, be deemed as if released on parole until the expiration of the maximum term or terms for which he/she was sentenced less one hundred and eighty days.

EFFECTIVE: 09/10/79

76-3.3 Definition

A parole or mandatory release violator fugitive is a subject for whom a parole or mandatory release violator warrant has been issued by the USPC. No other process is necessary and these warrants are valid anywhere in the United States or its territories.

EFFECTIVE: 09/10/79

76-3.4 Distinction Between Parole and Mandatory Release

EFFECTIVE: 09/10/79

76-3.4.1 Parole

Parole of adult prisoners, youth offenders, and juvenile delinquents is within the discretion of the USPC as provided in Sections 4202, 5017, and 5037 respectively.

EFFECTIVE: 09/10/79

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76-3.4.2 Mandatory Release

(1) Mandatory release is not within the discretion of the USPC. If not paroled, prisoners have a legal right to be mandatorily released either conditionally or unconditionally, when they have served their sentence with "good time" and "industrial good time" deducted, provided their conduct has been satisfactory.

(2) The amount of "good time" and "industrial good time" a prisoner may acquire is statutory and dependent upon the length of his/her sentence.

(3) Section 4161 provides the rate of five days "good time" per month for prisoners sentenced from six months to one year, six days per month on sentences of one to three years, and so on up to the maximum allowance of ten days per month if the sentence is ten years or more.

(4) Section 4162 provides for up to three additional days per month of "industrial good time" for actual employment while incarcerated the first year and up to, but not to exceed, five days per month for any succeeding year of incarceration.

(5) If the "good time" and "industrial good time" earned is more than 180 days, he/she is conditionally released for this period of "good time" and "industrial good time" earned less 180 days.

(6) A conditional release places the individual under the supervision of a U.S. Probation Officer. If he/she violates the conditions while under supervision, a mandatory release violator's warrant can be issued for his/her arrest.

(7) If the "good time" and "industrial good time" earned is 180 days or less, the prisoner is unconditionally released after he/she has served his/her sentence less "good time" and "industrial good time" earned.

(8) An unconditional release does not place the individual under the supervision of the USPC, therefore, a mandatory release violator's warrant cannot be subsequently issued.

EFFECTIVE: 09/20/89

76-3.5 Deleted

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EFFECTIVE: 09/20/89

76-3.6 Requests for Assistance

(1) All parole violator and mandatory release violator warrants are issued by the regional offices of the USPC. Any request for FBI assistance received from the U.S. Probation Officer should be referred to the USMS after 8/11/88. Specific FBIHQ approval, USMS and USPC concurrence, and very unusual circumstances must exist for FBI involvement without a substantive violation.

(2) If, after 8/11/88, a new PV or MRV subject within the primary jurisdiction of the USMS also becomes an FBI substantive fugitive, of course, we will seek his/her apprehension under the substantive case, but "OO" must advise the USM in the district holding the warrant of its fugitive involvement and notify USM's office promptly upon apprehension. This notification will, of course, not change the existing procedure of advising the USM in the district where the subject is located.

(3) Should, after 8/11/88, a PV or MRV within the responsibility of the USMS become a suspect in an FBI substantive case and "OO" desires to actively seek the subject's apprehension under the ongoing substantive matter, this may be done provided the USMS is notified and the fugitive aspects of the case are an FBI-USMS coordinated effort. Of course, when the fugitive is apprehended or eliminated as a suspect in the substantive case which no longer demands FBI fugitive involvement, the appropriate USM must be notified.

(4) If any subject of an existing USMS responsibility PV or MRV matter is wanted as a fugitive in an FBI substantive case, the existing "76" (PV or MRV) case should be consolidated and handled as a dual character substantive case.

(5) If for some reason it should become imperative for an "OO" to initiate a "76" (PV or MRV) fugitive investigation involving a non-FBI case, advise FBIHQ on a UACB basis of the facts demanding FBI involvement.

EFFECTIVE: 09/20/89

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76-3.7 U.S. Parole Commission Structure

(1) Through the Parole Commission and Reorganization Act of 5-14-74, the U.S. Board of Parole became known as the U.S. Parole Commission.

(2) |Deleted|

(3) Starting in May, 1974, its headquarters in Washington, D.C., was abolished and they instituted a policy of decentralization and region- alization through the creation of five regions with headquarter regional offices established as follows:

Philadelphia
Atlanta
Dallas
Kansas City
San Francisco

Northeast
Southeast
South Central
North Central
Western

(4) |Deleted|

EFFECTIVE: 09/10/79

76-3.8 Preliminary Investigation

In addition to the usual fugitive investigation the following sources should be contacted at the outset of the investigation to obtain information of lead value.

(1) The U.S. Probation Officer to whom the subject was paroled or released for supervision.

(2) The USM to whom the warrant was forwarded by the USPC.

EFFECTIVE: 09/10/79

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76-3.9 Apprehension or Location

(1) When a parole or mandatory release violator is apprehended he/she should be turned over to the nearest USM. If located in custody, the USM should be advised of violator's location.

(2) In addition, the nearest U.S. Probation Officer should be notified of the subject's apprehension or location.

EFFECTIVE: 08/21/87

76-3.10 Prosecution

Parole and mandatory release violations are nonprosecutable offenses. When apprehended, the USPC may modify the terms and conditions of the parole or revoke the parole and require the prisoner to serve all or any part of the remainder of the original sentence.

EFFECTIVE: 08/21/87

76-3.11 Youth Offender Subjects

(1) Though the Federal Youth Corrections Act (FYCA) was repealed by the Comprehensive Crime Control Act of 1984, Public Law 98-473, effective 10/12/84, individuals under the age of 22 being sentenced before that date upon a guilty plea or conviction were eligible for special sentencing conditions under the FYCA.

(2) Prior to 8-1-77, an individual sentenced under the FYCA, who was released prior to his/her sentence termination date and subsequently declared a parole or mandatory release violator, could only be sought as a fugitive until his/her sentence termination date.

(3) If the subject avoided apprehension until subject's sentence termination date, the warrant was withdrawn by the USPC and the fugitive investigation was discontinued.

(4) This policy was based on the USPC regulation that a youth offender's sentence continues to run from the date of sentencing and the issuance of a parole or mandatory release violator's warrant does not toll the sentence termination date.

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(5) As of 8-1-77, a new regulation of the USPC now provides that the issuance of a parole or mandatory release violator's warrant tolls the sentence termination date of the youth offender if he/she is charged with absconding from supervision or is in escape status.

(6) Based on this regulation, the fugitive investigation for a youth offender should not be discontinued upon his/her sentence termination date if he/she has been charged with absconding from supervision or is in escape status.

(7) For those youth offenders who are declared parole or mandatory release violators and not so charged or in escape status, the warrant will be withdrawn by the USPC upon his/her sentence termination date and the Bureau's fugitive investigation will be discontinued at that time.

EFFECTIVE: 08/21/87

76-3.12 Narcotic Addict Rehabilitation Act (NARA)

The identical USPC regulations, investigative procedures, and Bureau policy that apply to youth offenders, handled under the FYCA, as set forth in Section 76-3.11, also apply to narcotic addicts, handled under NARA, who are committed under Section 4253, for an indeterminate period of time not to exceed ten years, and are conditionally released under supervision under Section 4254.

EFFECTIVE: 09/10/79

76-3.13 Reporting Procedures (See MIOG, Part I, 25-10, 76-1.8, 76-2.9, 88-12, 115-7 & Part II, 21-29.)

(1) Upon initiating a parole or mandatory release violator investigation referred to the field, no initial FD-65 or other communication need be submitted to FBIHQ. Upon the fugitive's apprehension or location, the locating office must promptly notify FBIHQ by teletype (at least ROUTINE in precedence), followed by Form FD-515 entry into the Integrated Statistical Reporting and Analysis Application (ISRAA). The office of origin must ensure that all auxiliary offices are notified by teletype to discontinue.

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(2) As a general rule, Prosecutive Reports are not required in parole and mandatory release violator cases and, therefore, are not to be submitted to FBIHQ unless a specific request is made for same.

EFFECTIVE: 11/01/93

76-3.14 Character

Parole Violator (PV) or Mandatory Release Violator (MRV). (The original offense for which the subject was sentenced should not be carried in the character.)

EFFECTIVE: 09/10/79

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SECTION 77. BACKGROUND INVESTIGATION - PRESIDENTIAL APPOINTMENT
WITH SENATE CONFIRMATION; - U.S. COURTS; - DEPARTMENT
OF JUSTICE; - U.S. ATTORNEY'S OFFICE STAFF;
- U.S. ATTORNEY'S OFFICE;
- DEPARTMENT OF JUSTICE - REIMBURSABLE;
BACKGROUND REINVESTIGATION - DEPARTMENT OF JUSTICE

77-1 GENERAL INSTRUCTIONS

These instructions supplement those outlined in Part II,
Section 17 of this manual and pertain to the following
subclassifications and positions:

EFFECTIVE: 07/02/93

77-1.1 77A: Background Investigation - Presidential Appointment
with Senate Confirmation - Nonreimbursable (See MAOP,
Part II, 3-1.1, 3-1.2 and 10-23; MIOG, Part I, 77-3, Part
II, 17-2; Correspondence Guide-Field, 1-17.)

- (1) Supreme Court Justice
- (2) U.S. Court of Appeals Judge
- (3) U.S. District Court Judge
- (4) Court of International Trade Judge
- (5) U.S. Claims Court Judge
- (6) Court of Military Appeals Judge
- (7) Court of Veteran Appeals Judge
- (8) Attorney General of the U.S.
- (9) Director, FBI
- (10) Administrator/Deputy Administrator, DEA

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- (11) Deputy Attorney General
- (12) Assistant Attorney General
- (13) U.S. Marshal
- (14) U.S. Attorney
- (15) Department of Justice Executive
- (16) Unspecified Position

| (17) Other |

EFFECTIVE: 12/01/93

77-1.2 77B: Background Investigation - U.S. Courts - 15 Year
| Scope (or since the candidate's 18th birthday, whichever
is less) - | Reimbursable (See MAOP, Part II, 3-1.1, 3-1.2
and 10-23; MIOG, Part I, 77-3, Part II, 17-2, 17-2.1;
Correspondence Guide-Field, 1-17.)

- | (1) | U.S. Magistrate Judge |
- | (2) | U.S. Bankruptcy Court Judge
- | (3) U.S. Bankruptcy Trustee
- | (4) U.S. Bankruptcy Administrator
- | (5) U.S. Circuit Court Executive
- | (6) U.S. District Court Executive |

The above investigations are conducted for the
Administrative Office of the U.S. Courts.

EFFECTIVE: 12/20/96

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77-1.3 77C: Background Investigation - U.S. Courts - 10 Year Scope (or since the candidate's 18th birthday, whichever is less) - Reimbursable (See MAOP, Part II, 3-1.1, 3-1.2 and 10-23; MIOG, Part I, 77-3, Part II, 17-2, 17-2.1; Correspondence Guide-Field, 1-17.)

(1) U.S. Probation Officer

(2) U.S. Pretrial Services Officer

(3) U.S. Public Defender

(4) Independent Counsel Staff (does NOT include the position of Independent Counsel)

(5) Other

EFFECTIVE: 12/20/96

77-1.4 Deleted

EFFECTIVE: 12/20/96

77-1.5 77E: Background Investigation - Department of Justice - Nonreimbursable (See MAOP, Part II, 3-1.1, 3-1.2 and 10-23; MIOG, Part I, 77-3, Part II, 17-2; Correspondence Guide-Field, 1-17.)

(1) Foreign Intelligence Surveillance Court (FISC) Judge
(See MIOG, Part II, 23-9.5)

(2) Schedule C (Political Appointment)

(3) Departmental Attorney

(4) Departmental Staff

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- (5) Honor Recruit Attorney
- (6) Paralegal Assistant/Specialist
- (7) Executive Office Staff

EFFECTIVE: 12/01/93

77-1.6 | 77F: | Background Investigation - U.S. Attorney's
Office | (Staff) - Reimbursable | (See MAOP, Part II, 3-1.1,
3-1.2 and 10-23; MIOG, Part I, 77-3, 77-4.3, Part II,
17-2, 17-2.1; | Correspondence Guide-Field, 1-17.)

| U.S. Attorney's Office Staff (Field) |

EFFECTIVE: 12/01/93

| 77-1.7 | Deleted |

EFFECTIVE: 01/03/97

77-1.8 | 77H: | Background Investigation - U.S. Attorney's Office
(Attorney) | - Reimbursable (See MAOP, Part II,
3-1.1, 3-1.2 and 10-23; MIOG, Part I, 77-3, | 77-4.3, | Part
II, | 17-2, 17-2.1; | Correspondence Guide-Field, 1-17.)

- (1) | Assistant U.S. Attorney |
- (2) | Special Attorney |
- (3) | Cross Designated Attorney |

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EFFECTIVE: 12/01/93

77-1.9 | 77I: | Background | Investigation | - Department of
Justice - Reimbursable (See MAOP, Part II, 3-1.1,
3-1.2 and 10-23; MIOG, Part II, 17-2, 17-2.1; |
Correspondence Guide-Field, 1-17.)

- | (1) | U.S. Trustee |
- | (2) | Assistant U.S. Trustee |
- | (3) | Chapter 13 Trustee |
- | (4) | Administrative Law/Immigration Judge |
- | (5) | Other |

EFFECTIVE: 12/01/93

77-1.10 | 77J: | Background Reinvestigation - Department of
Justice - | 10 | Year - Reimbursable (See MAOP, Part II,
3-1.1, 3-1.2 and 10-23; MIOG, Part I, 77-3, 77-4.11, Part
II, 17-2, | 17-2.1, | 17-6.8; Correspondence Guide-Field,
1-17.)

- | (1) DOJ | Executive |
- | (2) DOJ | Attorney |
- | (3) Field | Attorney |
- | (4) DOJ Staff
- | (5) Field Staff

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EFFECTIVE: 12/01/93

77-1.11 77K: Background Reinvestigation - Department of
Justice - 7 Year - Reimbursable (See MAOP, Part II, 3-1.1,
3-1.2 and 10-23; MIOG, Part I, 77-3, 77-4.11, Part II,
17-2, 17-2.1, 17-6.8; Correspondence Guide-Field, 1-17.)

- (1) DOJ Executive
- (2) DOJ Attorney
- (3) Field Attorney
- (4) DOJ Staff
- (5) Field Staff

EFFECTIVE: 12/01/93

77-1.12 77L: Background Reinvestigation - Department of Justice -
5 Year - Reimbursable (See MAOP, Part II, 3-1.1, 3-1.2 and
10-23; MIOG, Part I, 77-3, 77-4.11, Part II,
17-2, 17-2.1, 17-6.8; Correspondence Guide-Field, 1-17.)

- (1) DOJ Executive
- (2) DOJ Attorney
- (3) Field Attorney
- (4) DOJ Staff
- (5) Field Staff

EFFECTIVE: 12/01/93

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77-1.13 77M: Background Reinvestigation - Department of Justice -
3 Year - Reimbursable (See MAOP, Part II, 3-1.1, 3-1.2 and
10-23; MIOG, Part I, 77-3, 77-4.11, Part II, 17-2, 17-2.1,
17-6.8; Correspondence Guide-Field, 1-17.)

- (1) DOJ Executive
- (2) DOJ Attorney
- (3) Field Attorney
- (4) DOJ Staff
- (5) Field Staff

EFFECTIVE: 12/01/93

77-2 INITIATION OF INVESTIGATION

(1) Completed SF-86 (Questionnaire for Sensitive Positions) forms are received from the referral agencies in most cases. These forms are reviewed by FBIHQ personnel for conformance and completeness. Obvious deficiencies are identified and appropriate leads set forth to resolve inconsistent and/or incomplete information, in addition to routine investigative leads. The initial investigative leads are set by FBIHQ, using the SF-86 as a guide. Any additional leads discovered by the field during investigation should be set out expeditiously (see Part II, Section 17-3.7 of this manual). Individuals conducting investigations should be familiar with Part II, Sections 17 and 23-6 of this manual and Part II, Section 10-13.3 of the Manual of Administrative Operations and Procedures.

(a) For most Presidential appointments (77A cases), the completed SF-86 is not received from the referral agency. The SF-86, Supplement to SF-86, Supplemental Instructions for Completing SF-86, and two copies of the U.S. Department of Justice Tax Check Waiver are sent directly to the candidate from FBIHQ. It is the responsibility of the field to gather these forms during the initial candidate interview and expeditiously forward the original documents, along with fingerprint cards and a copy of the candidate interview (on FD-302), to FBIHQ so appropriate leads may be set forth. In order to ensure prompt handling of the candidate's forms, the initial interview

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of the candidate should be conducted within five (5) working days after receipt of instructions from FBIHQ.

(b) Further, the field is responsible for setting out leads regarding information disclosed by the candidate during his/her initial interview which does not appear on the SF-86.

(2) Investigations in these categories are usually ordered by teletype or airtel and must be given preferential and expeditious attention.

EFFECTIVE: 07/02/93

77-3 SCOPES OF INVESTIGATION (See MIOG, Part I, 77-1.1 through 77-1.13.)

Investigations in these categories should include all investigation required in Part II, Section 17 of this manual, unless otherwise noted. The type of BI will be set out in the opening communication by subclassification. The scopes of investigation for 77 subclassifications are as follows:

(1) 77A - Covers the candidate's adult life, since age 18.

(2) 77B - Covers the past 15 years of the candidate's life or since age 18, whichever is less, but in no case less than two (2) years.

(3) 77C - Covers the past 10 years of the candidate's life or since age 18, whichever is less, but in no case less than two (2) years.

(4) Deleted

(5) 77E - Covers the past 10 years of the candidate's life or to age 18, whichever is less, but in no case less than two (2) years.

(6) 77F - Covers the past 10 years of the candidate's life or to age 18, whichever is less, but in no case less than two (2) years.

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(7) Deleted

(8) 77H - Covers the past 10 years of the candidate's life, or to age 18, whichever is less.

(9) 77I - Covers the past 10 years of the candidate's life, or to age 18, whichever is less.

(10) 77J - Covers the past 10 years of the employee's life.

(11) 77K - Covers the past seven (7) years of the employee's life.

(12) 77L - Covers the past five (5) years of the employee's life.

(13) 77M - Covers the past three (3) years of the employee's life.

EFFECTIVE: 01/03/97

77-3.1 Revised and renumbered as 77-4.3

EFFECTIVE: 07/02/93

77-3.2 Revised and renumbered as 77-4.4

EFFECTIVE: 07/02/93

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| 77-3.3 | Revised and renumbered as 77-4.5 |

EFFECTIVE: 07/02/93

| 77-3.4 | Revised and renumbered as 77-4.2 |

EFFECTIVE: 07/02/93

| 77-4 | ADDITIONAL INVESTIGATIVE GUIDELINES

| In addition to investigation required in Part II, Section
17 of this manual, the following investigation must be conducted:

EFFECTIVE: 07/02/93

| 77-4.1 | Issues/Derogatory Information Developed

| During any BI, regardless of the scope of investigation
and/or the questions, issues or derogatory information developed
should be fully investigated and brought to a logical conclusion.
This includes a candidate's admission of illegal or unusual activity
prior to the scope of the BI. |

EFFECTIVE: 07/02/93

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||77-4.2| Qualifications

| In all cases concerning Federal judgeships (including U.S. Bankruptcy and U.S. Magistrate Judges), other Presidential appointments and attorney positions, ascertain the overall qualifications of the candidates, as well as character, loyalty, reputation, etc. Specific comments from each person interviewed should be set forth in the report. In cases concerning U.S. Bankruptcy Judge and U.S. Trustee positions, also obtain comments concerning the candidate's experience in bankruptcy matters.

EFFECTIVE: 07/02/93

77-4.3 Prescreening Reports | (See MIOG, Part I, 77-1.6 & 77-1.8, Part II, 17-2, 17-2.1.) |

Candidates under consideration for field positions in the U.S. Attorneys' Offices (77Fs and 77Hs) undergo a prescreening process in most cases. Contact should be made with the U.S. Attorney's Office where the candidate will serve in order to review the prescreening report and interview the Administrative Officer to obtain any information of interest to our investigation.

EFFECTIVE: 12/01/93

||77-4.4| Bar Membership/Certified Public Accountant (CPA) Status

| If the candidate is an attorney or CPA, determine if he/she is licensed to practice in every state where the candidate has lived or worked since completing his/her professional education. Check grievance committee records in any state where the candidate is or has been licensed. It is not necessary to verify membership in voluntary associations such as the American Bar Association. When verifying that the candidate is licensed to practice, the following statement must appear: "The above-named agency is the licensing agency for attorneys (or CPAs) in the State (or Commonwealth) of (state name)."

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EFFECTIVE: 07/02/93

77-4.5 Judicial and Other Positions Requiring Senate
Confirmation (See MIOG, Part I, 77-4.6 and 77-4.9.)

Captioned positions require a more in-depth investigation which must encompass the following in addition to investigative instructions set out in Part II, Section 17 of this manual:

| (1) | Verify the candidate's ownership of all real estate, and check deed(s) for any covenants regarding race, religion, etc.

| (2) | Check records of county clerk (or equivalent) to determine if any personal, tax or mechanical liens exist. If so, fully explain. Do not contact Internal Revenue Service for any details regarding federal tax liens, as this is done by the referral agencies.

| (3) | When applicable, determine the candidate's professional reputation, legal ability, types of cases handled, trial experience, courtroom demeanor, reputation for fairness, temperament, bias or prejudice against any group, and ability to weigh conflicting testimony and make factual determinations through:

(a) Interviews of six (6) attorneys who are acquainted with the candidate, to include three (3) attorneys with whom the candidate associates and three (3) who have opposed, or have appeared before, the candidate in court;

(b) Interviews of three (3) federal, state and local judges familiar with the candidate; and

(c) Interviews of the chief federal judge and the U.S. Attorney in the district where the candidate will serve, if appointed.

| (4) | Interview the candidate's personal physician regarding the candidate's health (Senate confirmation cases only).

| (5) | Identify all organizations to which the candidate belongs or has belonged, including private and social clubs. Obtain information from an official about the membership policy of the

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organization with regard to race, religion, sex, etc. Ensure the possibility of de facto discrimination is explored. If the organization has/had a discriminatory membership policy, determine whether the candidate participated in changing or attempting to change the policy.

| (6) | Interview local and state chairpersons of both major political parties (Senate confirmation cases only).

| (7) | Interview local religious and labor leaders in the candidate's geographic area, only when instructed to do so by FBIHQ.

| (8) | Interview leaders of prominent minority/civil rights groups such as the NAACP, National Urban League, NOW or others that are active in the candidate's geographic area. Identify the position held by the interviewee within the organization.

| (9) | Interview three (3) local, state and/or federal law enforcement officials in the district where the candidate will serve, if appointed. Agents are encouraged to interview representatives of agencies other than the FBI. (See MAOP, Part I, Section 1-15.3(5).)

| (10) | Review files of appropriate federal regulatory agency if the candidate is or was employed in a regulated business (e.g., banking, brokerage firm, etc.).

| (11) | Review any articles written by, or speeches made by the candidate for indications of bias or prejudice regarding race, color, religion, gender, etc. (Ensure that the text of any articles or speeches that indicate, or could be construed to indicate, bias are enclosed with the report.)

| (12) | In those cases requiring Senate confirmation, Washington Metropolitan Field Office will interview the U.S. Senators from the state where the candidate will serve and will review U.S. Secret Service and, if appropriate, Office of Inspector General (Investigations) and Public Integrity Section, DOJ files. If past/current DOJ employee, also review Office of Professional Responsibility and personnel files as appropriate.

| (13) | Review records of the state judicial review committee/board, if candidate is/was a city or state judge. Also, review county/state election commission files, if the judge was elected to the position.

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EFFECTIVE: 06/04/96

77-4.6 U.S. Attorney/U.S. Marshal Update BIs

(1) An understanding has been established with the Department of Justice (DOJ) concerning the BIs of U.S. Attorneys and U.S. Marshals who are being considered for reappointment to their current positions, and who have been the subjects of previous FBI BIs as outlined in 77-4.5.

(2) The update BIs should be limited to specific areas identified as follows:

(a) Credit and arrest checks concerning the candidate;

(b) U.S. Attorney's Office record checks concerning the candidate;

(c) Interviews of neighbors at employee's present residence and other residences since the previous investigation, last five (5) years only;

(d) Interviews of the chief Federal judge and two (2) other Federal judges, and the clerk of the court in the candidate's district;

(e) Interview of the U.S. Attorney in the candidate's district (U.S. Marshal candidates);

(f) Interviews of the candidate's listed references and associates;

(g) Interviews of at least three (3) officials of Federal agencies;

(h) Interviews of at least three (3) local police chiefs and sheriffs in the candidate's district;

(i) Check of appropriate DOJ records (Office of Professional Responsibility, Office of the Assistant Inspector General for Investigations, Public Integrity Section and Official Personnel

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File);

(j) State bar and grievance checks (U.S. Attorney candidates); and

(k) FBI record checks concerning the candidate, close relatives and cohabitants.

EFFECTIVE: 07/02/93

77-4.7 U.S. Trustee and Other Trustee Positions

These positions also require a more in-depth investigation which must encompass the following in addition to investigative instructions set out in Part II, Section 17 of this manual:

(1) When applicable, determine the candidate's professional reputation, legal ability, types of cases handled, trial experience, courtroom demeanor, reputation for fairness, temperament, bias (against social classes of citizens, members of any group - religious, ethnic or racial), etc., through the following:

(a) Interviews of three (3) creditor representatives (a creditor representative is an individual, usually an attorney, who represents a creditor's interest at a bankruptcy hearing) who have knowledge of the candidate;

(b) Interviews of two (2) bankruptcy judges before whom the candidate has appeared and/or who have knowledge of the candidate;

(c) Interview of the Chief U.S. Bankruptcy Judge of the district in which the candidate would serve, if appointed.

(2) Review files of appropriate federal regulatory agency if the candidate is or was employed in a regulated business (i.e., banking, brokerage firm, etc.).

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77-4.8 Administrative Law/Immigration Judge Positions

The Executive Office for Immigration Review is responsible for the administration and interpretation of the immigration laws. The Administrative Law and Immigration Judges act independently in their decision-making capacity, and their decisions are administratively final unless appealed or certified to the Board of Immigration Appeals. These quasi-judicial positions also require a more in-depth investigation which must encompass the following in addition to investigative instructions set out in Part II, Section 17 of this manual:

(1) When applicable, determine the candidate's professional reputation, legal ability, types of cases handled, trial experience, courtroom demeanor, reputation for fairness, temperament, bias (against social classes of citizens, members of any group - religious, ethnic or racial), etc., through:

(a) Interview of the Chief Administrative Hearing Officer (Administrative Law Judge candidates only);

(b) Interview of the Chief Immigration Judge (Immigration Judge candidates only); and

(c) Interviews of three (3) developed sources (individuals not provided by the candidate) who have, to the extent practical, knowledge of the candidate's professional reputation, etc.

EFFECTIVE: 06/04/96

77-4.9 U.S. Bankruptcy and U.S. Magistrate Judge Positions

U.S. Bankruptcy and U.S. Magistrate Judge positions do not require Senate confirmation; however, they are judicial positions and require a more in-depth investigation. In addition to investigative instructions set out in Part II, Section 17 of this manual, investigation as set out in 77-4.5 of this section should be conducted in these BIs, unless otherwise indicated.

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EFFECTIVE: 07/02/93

77-4.10 FISC and Other Special Tribunal Judge Positions

(1) The scope of the reinvestigation of a Federal judge under consideration for an appointment to a Special Tribunal is limited to specific areas identified as follows:

(a) Credit and arrest checks concerning the candidate;

(b) Interviews of the neighbors at the candidate's present residence and other residences since the previous investigation, last five (5) years only;

(c) Verification of state bar membership and check grievance records;

(d) Interviews of the chief Federal judge and three (3) other Federal judges (district and appellate) in the candidate's district;

(e) Interviews of three (3) attorneys in private practice who have appeared before the candidate or who have knowledge of the candidate;

(f) Interviews of the U.S. Attorney and the U.S. Marshal in the candidate's district;

(g) Interview of the representative of any social club or organization in which the candidate holds membership to determine if the organization has/had a discriminatory membership policy;

(h) Review of appropriate records at the Administrative Office of the U.S. Courts and the Public Integrity Section, DOJ; and

(i) FBI record checks concerning the candidate, close relatives and cohabitants.

(2) This BI is not an appraisal of the candidate's performance as a Federal judge; therefore, comments regarding judicial

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qualifications should not be elicited. This BI should seek to obtain comments concerning the candidate's character, associates, reputation, loyalty, discretion, personal demeanor, illegal drug use, prescription drug/alcohol abuse, financial responsibility, and bias. As procedure dictates in any BI, should unfavorable information be developed during the course of the investigation, additional investigation will be conducted as necessary to resolve any issues developed.

EFFECTIVE: 07/02/93

77-4.11 Background Reinvestigation for DOJ Positions (77J-M) (See MIOG, Part I, 77-1.10 through 77-1.13, Part II, 17-6.8.)

In addition to investigative instructions set out in Part II, Section 17 of this manual, ensure the investigation includes at least three (3) developed sources (individuals not provided by the employee) who have, to the extent practical, social knowledge of candidate. Developed sources may include other associates, co-workers (peers/support employees), etc. Also, review the Official Personnel File and other appropriate files at DOJ, and interview supervisor(s) and co-workers within the scope of the BI.

EFFECTIVE: 12/01/93

77-5 INTERVIEW OF CANDIDATE/EMPLOYEE

Each candidate/employee must be interviewed. During the interview, he/she should be provided with the following information:

(1) The FBI will be conducting a BI to develop information which others will consider in determining suitability for employment, appointment or reappointment.

(2) The FBI does not participate in such decisions and makes no recommendations pertaining thereto.

(3) The FBI is not restricted in the BI only to information solicited by the SF-86 or any other form submitted.

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All items in Part II, Section 17-3.2 and 17-5.6 of this manual must be covered during the interview.

EFFECTIVE: 07/02/93

||77-6| REPORTING RESULTS OF INVESTIGATION

(1) All investigation must be submitted in investigative report format. This is to include unsuccessful attempts to locate individuals for interview and any investigative results previously set out in airtel or teletype. All investigation in these matters is for other Government agencies and can only be forwarded by report. Each interview must contain statements regarding financial responsibility and whether or not the interviewee is aware of any past/present illegal drug use or prescription drug/alcohol abuse by the candidate.

(2) Reports should be organized to follow in general the sequence presented in Part II, Section 17-6 of this manual. All categories of interviews (i.e., neighborhood, employment, education) must be preceded by headings. Additionally, block headings should separate each residence and employment and should include the name of employing firm/residence address, city/state, and dates of employment or residence as indicated by candidate on the SF-86. If a discrepancy is found in dates during the investigation, the field office should underline the dates obtained during the investigation. This will indicate to FBIHQ that the discrepancy is not the result of a typographical error. Lengthy reports (more than 25 pages) should include a table of contents. If an interview would logically fall under several headings (i.e., a reference who is also a neighbor), report the interview fully under one heading and cross-reference under any other appropriate headings.

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||77-7| POLITICAL|AFFILIATION|

(1) Nonessential references to a candidate's affiliation with any political party should be omitted.

(2) Essential references to political affiliation should be included. An essential reference is one which suggests a possible inclination on the part of the candidate to use the position he or she is seeking for personal political benefit or one which would reflect on the candidate's ability to perform his or her duties fairly without regard to political affiliation or influence. Also, previous candidacy for or occupancy of public office or office in a political party, or personal or political association with an occupant of public or party office would be essential.

EFFECTIVE: 07/02/93

|77-8| REQUEST FOR INVESTIGATION OR NAME CHECK FROM FEDERAL JUDGE|(See MAOP, Part II, 9-4.2.2(2).|

Investigations are conducted only at the specific request of referral agencies and can only be initiated by FBIHQ. Any request by a Federal judge for a BI should be respectfully forwarded to FBIHQ for referral to the Administrative Office of the U.S. Courts. At the request of a Federal judge, the names of persons being considered for court positions can be searched through field office indices and pertinent information furnished to the judge. Care should be exercised in order to fully protect any informant, technique or source.

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||77-9| STATUS INQUIRIES

If any outside inquiries are received concerning the status of a BI, no comment should be made concerning the progress or completion of the investigation. The caller should be politely referred to the agency requesting the BI for a determination of the BI status.

EFFECTIVE: 07/02/93

||77-10| PRIVACY ACT (PA) REQUIREMENTS

(1) When interviewing individuals under this classification for information concerning themselves or their activities, the interviewing Agent must follow the procedures described in Part I, 190-5 (2) and (3) of this manual.

(2) When interviewing an individual to elicit information concerning someone else (thereby classifying that individual as a source of information), the interviewing Agent must follow the procedure relating to promises of confidentiality as described in Part I, 190-7 of this manual. When the interviewee requests confidentiality under the PA, the level of confidentiality must be clearly set forth in the document recording the results of the interview. Refer to Part II, Section 17-5.4 of this manual for additional instructions.

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77-11

CHARACTER - BACKGROUND INVESTIGATION - PRESIDENTIAL
APPOINTMENT WITH SENATE CONFIRMATION; - U.S. COURTS; -
DEPARTMENT OF JUSTICE; - U.S. ATTORNEY'S OFFICE STAFF;
- U.S. ATTORNEY'S OFFICE;
- DEPARTMENT OF JUSTICE - REIMBURSABLE; BACKGROUND
REINVESTIGATION - DEPARTMENT OF JUSTICE

EFFECTIVE: 01/03/97

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SECTION 78. ILLEGAL USE OF GOVERNMENT TRANSPORTATION REQUESTS

78-1 STATUTES

The principal Federal statutes under which the illegal use of Government transportation requests may be prosecuted are found in Title 18, USC, Sections 287, 495, 508, 641, 1001 and 1002. Of these sections of the U.S. Code, the only one relating solely to Government transportation requests is Section 508, which is quoted as follows:

EFFECTIVE: 01/31/78

78-1.1 Section 508

"Whoever falsely makes, forges, or counterfeits in whole or in part, any form or request in similitude of the form or request provided by the Government for requesting a common carrier to furnish transportation on account of the United States or any department or agency thereof, or knowingly alters any form or request provided by the Government for requesting a common carrier to furnish transportation on account of the United States or any department or agency thereof; or

"Whoever knowingly passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, any such false, forged, counterfeited, or altered form of request--

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

EFFECTIVE: 01/31/78

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78-2 POLICY

(1) As noted above, Section 508 is the only section relating solely to the counterfeiting or illegal use of Government transportation requests. Sections 287 and 495 relate to false claims generally while Sections 1001 and 1002 relate to false entries or false papers to defraud the U.S. Section 641 is the section dealing generally with the theft or embezzlement of Government property. The illegal use of Government transportation requests might be prosecuted under any of those sections.

(2) In the majority of cases under this violation, USAs have authorized prosecution under the provisions of Title 18, USC, Section 508. This is called to your attention because Section 3056, Title 18, specifically states that the Secretary of the Treasury is authorized to direct and use the U.S. Secret Service to detect, arrest, and deliver into custody any person violating any of the provisions of Section 508.

(3) U.S. Secret Service has exclusive jurisdiction in cases involving a violation of Section 508; accordingly, where information is received indicating a violation of that section, particularly the counterfeiting of Government transportation requests, such information should be submitted by the respective field offices to the nearest representative of the U.S. Secret Service.

EFFECTIVE: 01/31/78

78-3 MISCELLANEOUS

(1) In any case in which Government transportation requests issued to Bureau employees are reported stolen or lost, such investigations should proceed expeditiously.

(2) In the event the investigation is based upon the theory of an Impersonation violation or the Theft of Government Property, it should be conducted in conformity with the suggestions outlined in the pertinent sections of this manual.

EFFECTIVE: 01/31/78

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78-4

CHARACTER - ILLEGAL USE OF GOVERNMENT TRANSPORTATION
REQUESTS

EFFECTIVE: 01/31/78

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SECTION 79. MISSING PERSONS

79-1 | CRIMINAL JUSTICE INFORMATION SERVICES (CJIS) DIVISION
(FORMERLY THE IDENTIFICATION DIVISION) | MISSING PERSON
PROGRAM

EFFECTIVE: 12/02/94

79-1.1 Background Information

(1) From 1933 to 1980, the FBI Identification Division (now CJIS) operated a Missing Person Program. Under that Program, the Division's files were searched and missing person notices established at the request of immediate family members or officials acting in their behalf, e.g., law enforcement authorities, Members of Congress, lawyers, and insurance companies. The Program was discontinued in 1980 because of its greatly diminished utility and value resulting from privacy legislation, and because of the availability of missing person-type services in the National Crime Information Center (NCIC).

(2) On October 12, 1982, the President signed into law the Missing Children Act (MCA) which amends Title 28, USC, Section 534, to require the Attorney General to acquire and exchange information to assist federal, state, and local officials in the identification of unidentified deceased individuals and in the location of missing persons (including an unemancipated person as defined by laws of the state of residence of such person). In order to bring the FBI in compliance with the provisions of the Act, certain policies are explained in detail in Part II, Sections 14 and 16 of this manual.

EFFECTIVE: 12/02/94

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79-1.2 Action to be Taken in Missing Person Matters (See MAOP,
Part II, 7-3.2.)

This matter is considered a noninvestigative matter; therefore, no missing person case should be opened or assigned. If a written or oral request is received, the administrative procedures should be followed, and information on any record entered should be maintained in a 79-0 administrative control file. These procedures are set forth in Part II, 16-16 of this manual. Also, see Part II Section 14, for the Criminal Justice Information Services Division policy regarding the handling of fingerprint cards for missing persons and unidentified deceased persons. (See MIOG, Part II, 14-10.6.)

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SECTION 80. PUBLIC AFFAIRS MATTERS

80-1 PUBLIC AFFAIRS MATTERS

In field offices, the FBI's public affairs matters are handled under this classification and involve contacts by the FBI with the general public, federal and state agencies, the Armed Forces, corporations, the news media and numerous other outside organizations. These contacts generally relate to matters of interest to the FBI, and pertain to nonsubstantive topics. Contacts with the news media may be recorded under this classification. The following is a list of examples of public relations matters:

- Liaison With Armed Forces
- Contact With Law Enforcement Officials
- Laboratory Matters-Public Relations
- Research Material-Public Relations
- Human Interest Items
- Field Office Open House
- Radio Scripts
- Television Scripts
- Law Enforcement Committees
- News Media Relations
- News Media Contacts
- Media Relations Representative
- Fugitive Publicity
- Radio and Television Broadcasts-Fugitive Matters
- Speeches

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Radio and Television Appearances

Press Conferences

Manuscripts for Speaking Engagements

For additional assistance regarding public affairs
| matters, see MAOP, Part II, Section 5 (Press and Publicity).

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SECTION 83. CLAIMS COURT

83-1 BACKGROUND

(1) Court of Claims of United States was authorized by Act of Congress, approved February 24, 1855. It is a court established under the laws of the United States where plaintiffs may present claims for damages caused by United States, its officers, or its agents arising from:

(a) The Constitution, any Act of Congress, or any regulation of an Executive Department.

(b) Any express or implied contract with the United States.

(2) On April 2, 1982, the Federal Courts Improvement Act of 1982 was signed into law. The Act established a new intermediate Federal Appellate Court known as the U.S. Court of Appeals for the Federal Circuit which combined the Court of Claims and the Court of Customs and Patent Appeals into a single appellate court. The Act also created the U.S. Claims Court which inherited the trial jurisdiction of the Court of Claims. The Act became effective on October 1, 1982.

(3) In cases where amount claimed does not exceed \$10,000, United States district courts have concurrent jurisdiction with Claims Court.

EFFECTIVE: 07/12/84

83-1.2 Procedure for Instituting Suit

(1) Suits in Claims Court are instituted by filing a printed petition, verified by affidavit of plaintiff, his/her agent or attorney.

(2) The petition must contain following basic information:

(a) Title of action including full Christian and

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surnames of all plaintiffs

(b) Plain statement of facts, giving date and place, free from argumentative or impertinent matters

(c) Any action taken on the claim by Congress or any department of Government

(d) Any assignment or transfer of claim or any part thereof, and, if so, when and upon what consideration

(e) Plaintiff is justly entitled to recover amount claimed after allowing all just credits and offsets

(f) A clear citation of any Act of Congress, regulation of an Executive Department or Agency, contract, treaty or patent upon which the suit is based

EFFECTIVE: 07/12/84

83-1.3 Hearings

(1) Evidence is presented by plaintiff and defendant at hearings presided over by a judge of the court. The judge rules upon materiality, relevance, or admissibility of evidence offered and form of questions asked.

(2) In cases investigated by Bureau, Agent conducting investigation is oftentimes called as witness for defendant.

(3) Upon conclusion of testimony for both plaintiff and defendant, counsel for each submits to the judge a written request that certain facts be found for his/her client. This request is based on oral testimony and documentary data admitted in evidence at the hearing.

EFFECTIVE: 07/12/84

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||83-1.4| Argument Before the Court

On designated date of trial calendar both parties in suit, through respective counsel, present to the court oral arguments as to merits of their case.

EFFECTIVE: 07/12/84

||83-1.5| Decision of the Court

Court renders decision in printed form which contains:

- (1) Findings of fact
- (2) Discussion of law as to said findings of fact
- (3) Amount of recovery found for plaintiff or basis for dismissal of action

EFFECTIVE: 07/12/84

||83-1.6| Appeal

|Appeals in any cases in Claims Court are taken by petition of either party to the U.S. Court of Appeals for the Federal Circuit. |

EFFECTIVE: 07/12/84

83-2 INVESTIGATIVE PROCEDURE

(1) Requests for investigation of cases pending in Claims Court are received from Assistant Attorney General in charge of Civil Division of Department. General requests include:

(a) Complete investigation of books and records of plaintiff

(b) Auxiliary examination of records of Government departments and agencies

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(2) Specific requests include:

(a) Locating and interviewing certain witnesses

(b) Locating of certain records

(c) Ascertaining of certain basic information with reference to some particular feature of case at issue

(3) Investigation of books and records of plaintiff requires that Agent assigned to investigation study case as reflected by petition of plaintiff and plan a logical and substantial defense to each proposition advanced by plaintiff.

(4) Record of payments made by Government to plaintiff, as reflected by files of General Accounting Office, Washington, D.C., will be secured by Washington|Metropolitan|Field Office upon request of investigating office.

(5) Cases involving alleged extra costs due to delay on part of Government in construction contracts frequently require a determination of following factors: actual period of delay, allocation of overhead to delay period, and variance in labor rates. Progress reports submitted by plaintiff to representative of Government on a construction contract may show date on which construction work began to taper off or actually ceased and actual period of delay can be thereby fixed. Cause of delay and responsibility for it may be fixed by review of correspondence between plaintiff and Government and from information secured in course of interviews with prospective witnesses employed on construction work in question. Allocation of overhead to delay period is usually possible in cases in which contractor has maintained adequate accounting records. In absence of adequate accounting records, Agent must make equitable and practical survey of facts in question and present them in his/her report so basis may be available for their determination. Claims involving alleged variance in labor rates may be verified by reference to rates in force on Government contracts in various localities in which rates have been authorized by U.S. Department of Labor under Title 40, USC, Section 276a. This type case requires careful investigation because terms of contract as to labor conditions are set forth in proposals incidental to advertising for bids for contract in question. Plaintiffs frequently seek to maintain their own construction organization and allege labor available in the locality was not capable of performing required construction work. Records of U.S. Employment Service, if available, may be of material

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assistance in determining adequacy of plaintiff's allegations.

EFFECTIVE: 10/16/90

83-3

REPORTING PROCEDURE

To set forth the results of investigation, particularly in involved and complicated accounting-type cases, in a complete and orderly manner which will materially aid in the defense of the case, the investigation should be carefully planned. The following outline is set forth for guidance in planning investigations of this nature:

(1) Predication - A brief resume of investigative request from Civil Division should be included in the first paragraph of the details of the first report of office of origin.

(2) Scope and extent of investigation - Outline your investigative and audit plans so that you will be able to fully inform the attorney in charge of defense of case as to the ground covered.

(3) History of plaintiff company - Where necessary and pertinent, obtain data pertaining to plaintiff company from commercial credit reporting agencies.

(4) Statement of Government contract - Determine essential pertinent details of contract in question. It is pointed out that plaintiff frequently includes in its petition only such portions of a contract that support its allegations and omits any reference to portions of a contract favorable to defendant. Fully identify contract by number and date.

(5) Claim of plaintiff - Determine essential details of plaintiff's claim, such as: date filed, claim number, allegations contained in claim, and special features of claim.

(6) Facts at issue in case - Determine the main features of both plaintiff's and defendant's case so that Government attorney may be informed of contested facts therein. This could be broken down as follows: plaintiff's position, defendant's position, facts subject to determination by court, and special features.

(7) Facts disclosed by investigation -

(a) Accounting investigation - Ordinarily the

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results of the accounting investigation will be shown in a summary schedule or schedules comparing item by item the results of the audit conducted with plaintiff's claim, setting forth any differences noted and exceptions made. Be prepared to narratively explain these differences in detail for the benefit of the attorney who will be handling the defense.

(b) Facts secured from interview with prospective witnesses

(c) Data secured from other sources

(8) Conclusion - Be prepared to present a brief, concise summary schedule of the audit results, together with a brief summary of any other information developed which is not susceptible of verification by accounting analysis but which may be of value to the Government attorney defending this suit.

EFFECTIVE: 10/16/90

83-3.1 Locating and Interviewing Witnesses

Investigations for purpose of locating and interviewing witnesses are frequently requested by Civil Division of Department. Agent should consider advisability of securing signed statements and/or making complete notes. Agent should secure sufficient background of case in question so he/she may refresh memory of person interviewed who, due to lapse of time and absence of official record, may plead ignorance as to details of transactions inquired of.

EFFECTIVE: 07/12/84

83-4 ACCOUNTING WORKING PAPERS

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

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EFFECTIVE: 10/16/90

83-5 OFFICE OF ORIGIN

FBIHQ will designate office of origin which is to remain origin until case is closed. 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 instructing that Washington|Metropolitan|Field Office follow 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. The office of origin file is to be placed in a "pending inactive" status. Washington|Metropolitan|Field Office, acting as auxiliary office, is to follow all cases on a monthly basis and advise origin and FBIHQ when a decision is rendered by the court.

EFFECTIVE: 10/16/90

83-6 PRIVACY ACT - REQUIREMENTS

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

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

EFFECTIVE: 10/16/90

83-7 CHARACTER - CLAIMS COURT

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EFFECTIVE: 10/16/90

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SECTION 86. FRAUD AGAINST THE GOVERNMENT - SMALL BUSINESS
ADMINISTRATION | (SEE MIOG, PART I, SECTION 46.) |

86-1 BACKGROUND

| The 86 classification was eliminated and reclassified in
Fiscal Year 1996 as 46C (Fraud Against the Government - Small
Business Administration). See MIOG, Part I, Section 46. |

EFFECTIVE: 07/31/97

| 86-2 | DELETED |

EFFECTIVE: 07/31/97

| 86-3 | DELETED |

EFFECTIVE: 07/31/97

| 86-4 | DELETED |

EFFECTIVE: 07/31/97

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| 86-5 | DELETED |

EFFECTIVE: 07/31/97

| 86-6 | DELETED |

EFFECTIVE: 07/31/97

| 86-7 | DELETED |

EFFECTIVE: 07/31/97

| 86-8 | DELETED |

EFFECTIVE: 07/31/97

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SECTION 87. INTERSTATE TRANSPORTATION OF STOLEN PROPERTY

87-1 STATUTES AND JURISDICTION | (See MIOG, Part I, 7-4.15,
192-5(3), 264-2.5.5.) |

Title 18, USC, Sections | 668, | 2311 (in part), 2314, and
2315; | 2318, 3294. |

EFFECTIVE: 11/03/94

87-1.1 | Section 668 - Theft of Major Artwork

"(a) Definitions

" 'museum' means an organized and permanent
institution, the activities of which affect interstate or foreign
commerce, that--

"(A) is situated in the United States;

"(B) is established for an essentially educational or
aesthetic purpose;

"(C) has a professional staff; and

"(D) owns, utilizes, and cares for tangible objects
that are exhibited to the public on a regular schedule.

" 'object of cultural heritage' means an object that
is--

"(A) over 100 years old and worth in excess of
\$5,000; or

"(B) worth at least \$100,000.

"(b) Offenses

"(1) steals or obtains by fraud from the care,
custody, or control of a museum any object of cultural heritage; or

"(2) knowing that an object of cultural heritage has
been stolen or obtained by fraud, if in fact the object was stolen or
obtained from the care, custody, or control of a museum (whether or
not that fact is known to the person), receives, conceals, exhibits,
or disposes of the object, shall be fined under this title, imprisoned
not more than 10 years, or both."

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EFFECTIVE: 11/03/94

87-1.1.1 Definitions

"... 'Money' means the legal tender of the United States or of any foreign country, or any counterfeit thereof;

"'Securities' includes any note, stock certificate, bond, debenture, check, draft, warrant, traveler's check, letter of credit, warehouse receipt, negotiable bill of lading, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate; valid or blank motor vehicle titles; certificate of interest in property, tangible or intangible; instrument or document or writing evidencing ownership of goods, wares, and merchandise, or transferring or assigning any right, title, or interest in or to goods, wares, and merchandise; or, in general, any instrument commonly known as a 'security', or any certificate of interest or participation in, temporary or interim certificate for, receipt for, warrant, or right to subscribe to or purchase any of the foregoing, or any forged, counterfeited, or spurious representation of any of the foregoing;

"'Tax stamp' includes any tax stamp, tax token, tax meter imprint, or any other form of evidence of an obligation running to a State, or evidence of the discharge thereof;

"'Value' means the face, par, or market value, whichever is the greatest, and the aggregate value of all goods, wares, and merchandise, securities, and money referred to in a single indictment shall constitute the value thereof."

The Department has stated that "goods, wares, and merchandise" are sufficiently broad to cover all property not embraced by the words "lands, tenements, and hereditaments." Therefore, this section of the statute covers any and all property of whatever nature, which is subject to larceny.

EFFECTIVE: 08/19/85

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PRINTED: 02/18/98

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||87-1.2| Section 2311

EFFECTIVE: 11/03/94

||87-1.2.1| Definitions |(See MIOG, Part I, 26-1.8.)|

". . . 'Money' means the legal tender of the United States or of any foreign country, or any counterfeit thereof; . . .

"'Securities' includes any note, stock certificate, bond, debenture, check, draft, warrant, traveler's check, letter of credit, warehouse receipt, negotiable bill of lading, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate; valid or blank motor vehicle titles; certificate of interest in property, tangible or intangible; instrument or document or writing evidencing ownership of goods, wares, and merchandise, or transferring or assigning any right, title, or interest in or to goods, wares, and merchandise; or, in general, any instrument commonly known as a 'security', or any certificate of interest or participation in, temporary or interim certificate for, receipt for, warrant, or right to subscribe to or purchase any of the foregoing, or any forged, counterfeited, or spurious representation of any of the foregoing;

"'Tax stamp' includes any tax stamp, tax token, tax meter imprint, or any other form of evidence of an obligation running to a State, or evidence of the discharge thereof;

"'Value' means the face, par, or market value, whichever is the greatest, and the aggregate value of all goods, wares, and merchandise, securities, and money referred to in a single indictment shall constitute the value thereof."

The Department has stated that "goods, wares, and merchandise" are sufficiently broad to cover all property not embraced by the words "lands, tenements, and hereditaments." Therefore, this section of the statute covers any and all property of whatever nature, which is subject to larceny.

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EFFECTIVE: 11/03/94

||87-1.3| Section 2314 - Transportation of Stolen Goods, Securities,
Moneys, Fraudulent State Tax Stamps, or Articles Used in
Counterfeiting |(See MIOG, Part I, 264-2.5.5.)|

"Whoever transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of \$5,000 or more, knowing the same to have been stolen, converted or taken by fraud; or

"Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transports or causes to be transported or induces any person to travel in, or to be transported in interstate commerce in the execution or concealment of a scheme or artifice to defraud that person of money or property having a value of \$5,000 or more; or

"Whoever, with the unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered, or counterfeited; or

"Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any traveler's check bearing a forged countersignature; or

"Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce, any tool, implement, or thing used or fitted to be used in falsely making, forging, altering, or counterfeiting any security, or tax stamps, or any part thereof-

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

"This section shall not apply to any falsely made, forged, altered, counterfeited or spurious representation of an obligation or other security of the United States, or of an obligation, bond, certificate, security, treasury note, bill, promise to pay or bank note issued by any foreign government or by a bank or corporation of

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any foreign country." (Handled by Secret Service as a violation of Title 18, USC, Section 480.)

EFFECTIVE: 11/03/94

| 87-1.3.1 | Moved to 87-1.4.1 |

EFFECTIVE: 07/25/96

|| 87-1.4 | Section 2315 - Sale or Receipt of Stolen Goods,
Securities, Moneys, or Fraudulent State Tax Stamps

"Whoever receives, possesses, conceals, stores, barter, sells, or disposes of any goods, wares, or merchandise, securities, or money of the value of \$5,000 or more, or pledges or accepts as security for a loan any goods, wares, or merchandise, or securities, of the value of \$500 or more, which have crossed a state or United States boundary after being stolen, unlawfully converted, or taken, knowing the same to have been stolen, unlawfully converted, or taken; or

"Whoever receives, possesses, conceals, stores, barter, sells, or disposes of any falsely made, forged, altered, or counterfeited securities or tax stamps, or pledges or accepts as security for a loan any falsely made, forged, altered, or counterfeited securities or tax stamps, which have crossed a state or United States boundary after being stolen, unlawfully converted, or taken, knowing the same to have been so falsely made, forged, altered, or counterfeited; or

"Whoever receives in interstate or foreign commerce, or conceals, stores, barter, sells, or disposes of, any tool, implement, or thing used or intended to be used in falsely making, forging, altering, or counterfeiting any security or tax stamp, or any part thereof, moving as, or which is a part of, or which constitutes interstate or foreign commerce, knowing that the same is fitted to be used, or has been used, in falsely making, forging, altering, or

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counterfeiting any security or tax stamp, or any part thereof --

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

EFFECTIVE: 11/03/94

| 87-1.4.1 | Securities Excluded From Section 2315

"This section shall not apply to any falsely made, forged, altered, counterfeited, or spurious representation of an obligation or other security of the United States or of an obligation, bond, certificate, security, treasury note, bill, promise to pay, or bank note, issued by any foreign government or by a bank or corporation of any foreign country." (Handled by Secret Service as a violation of Title 18, USC, Section 480).

EFFECTIVE: 11/03/94

| 87-1.5 | Section 3294

"No person shall be prosecuted, tried, or punished for a violation of or conspiracy to violate Section 668 unless the indictment is returned or the information is filed within 20 years after the commission of the offense."

EFFECTIVE: 11/03/94

| 87-1.5.1 | Moved to 87-1.7.1 |

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EFFECTIVE: 07/25/96

||87-1.6| Jurisdiction of Other Federal Agencies

The interstate or foreign transportation of falsely made, etc., securities which are obligations of the U. S., foreign governments, or foreign corporations are exempt from the provisions of this statute by an exception in the statute itself. This exception is to avoid a conflict of jurisdiction with the Secret Service, U. S. Treasury Department. U. S. Postal Service money orders, money, and government obligations which are falsely made, etc., are not the subject of a violation of this statute. If information is developed of fraudulent interstate transactions in the sale of securities, the facts should be forwarded to the Securities and Exchange Commission as a possible violation of Title 15, USC, Section 77q.

EFFECTIVE: 11/03/94

||87-1.7| Other Provisions Concerning Sections 2314 and 2315

EFFECTIVE: 11/03/94

||87-1.7.1| Statute Language "Cause to be Transported"

Note: While the language "cause to be transported" does not appear in all paragraphs of Section 2314 and in Section 2315, it is observed that Section 2 of Title 18 covers as principals those persons "causing or procuring."

EFFECTIVE: 11/03/94

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||87-1.8| Section 2318 - Transportation, Sale, or Receipt of
Phonograph Records Bearing Forged or Counterfeit Labels
|(See MIOG, Part I, 87-4.2.1.)|

"Whoever knowingly and with fraudulent intent transports, causes to be transported, receives, sells, or offers for sale in interstate or foreign commerce any phonograph record, disk, wire, tape, film, or other article on which sounds are recorded, to which or upon which is stamped, pasted, or affixed any forged or counterfeited label, knowing the label to have been falsely made, forged, or counterfeited, shall be fined not more than \$1,000 or imprisoned not more than one year, or both."

EFFECTIVE: 11/03/94

||87-1.9| Conspiracy to Violate Sections 2314, 2315, or 2318

Conspiracies to violate Title 18, USC, Sections 2314, 2315, and 2318, must be prosecuted under the general conspiracy section (Title 18, USC, Section 371).

EFFECTIVE: 11/03/94

87-2 ELEMENTS OF PROOF

EFFECTIVE: 01/31/78

87-2.1 Transportation Elements

EFFECTIVE: 01/31/78

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87-2.1.1 Stolen Property Transportation

- (1) Property is stolen, converted, or taken by fraud.
- (2) Such property, valued at \$5,000 or more, is transported in interstate or foreign commerce.
- (3) The transporter must have knowledge such property had been stolen, converted, or taken by fraud. 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 stolen, converted, or taken by fraud, after or as a result of an official representation as to the nature of the property (see MIOG, Part II, 1-1.12).

(4) It is not necessary for the actual thief or embezzler to perform the transportation. It is only necessary that the person transporting the property knew it to be stolen or taken in any of the ways specifically prohibited.

(5) Where several transportations of less than \$5,000 in value are used to establish the jurisdictional limit, the Department has stated sporadic transactions are not to be grouped, but only a series of transactions closely associated or a continuing course of conduct should be considered.

EFFECTIVE: 10/23/95

87-2.1.2 Transporting Persons

- (1) Scheme is to obtain money or property by false or fraudulent pretenses.
- (2) Such property is valued at \$5,000 or more.
- (3) Persons are transported, caused to be transported, or induced to travel in or be transported interstate as a result of false representations.
- (4) The travel is in execution or concealment of the scheme.

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EFFECTIVE: 01/31/78

87-2.1.3 Transporting Counterfeit Securities, Tax Stamps, or Sound
Recording Labels

(1) Falsely made, forged, altered, or counterfeited securities or tax stamps, or traveler's checks with forged countersignature, or forged or counterfeited labels on sound recordings are transported in interstate or foreign commerce.

(2) With unlawful or fraudulent intent

(3) The person transporting such spurious securities, tax stamps, or labels on sound recordings knew the same to have been falsely made, forged, altered, or counterfeited. Pursuant to Title 18, USC, Section 21, the element of guilty knowledge may also be established by proof that the defendant believed that the spurious securities, tax stamps, or labels on sound recordings had been falsely made, forged, altered, or counterfeited, 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

87-2.1.4 Transporting Tools or Paraphernalia Used In Counterfeiting
Securities or Tax Stamps

(1) That any tool, implement, or thing used or fitted to be used in falsely making, forging, altering, or counterfeiting any security, tax stamp, or part thereof is transported in interstate or foreign commerce.

(2) The transporter must have an unlawful or fraudulent intent.

EFFECTIVE: 01/31/78

87-2.2 Receiving Elements

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EFFECTIVE: 07/28/87

87-2.2.1 Receiving Stolen Property

- (1) Property is stolen, unlawfully converted, or taken.
- (2) The property so taken in the amount of \$5,000 or more is transported in interstate or foreign commerce.
- (3) The person receiving, possessing, concealing, storing, bartering, selling, or disposing of the property in the amount of \$5,000 or more, knew it to have been stolen, unlawfully converted, or taken. [Pursuant to Title 18, USC, Section 21, the element of guilty knowledge may also be established by proof that the defendant believed that such property had been stolen, unlawfully converted, or taken, after or as a result of an official representation as to the nature of the property (see MIOG, Part II, 1-1.12).]
- (4) The person receiving, etc., same did so after the property had crossed a state or United States boundary.

EFFECTIVE: 10/23/95

87-2.2.2 Receiving Counterfeit Securities, Tax Stamps, or Sound Recording Labels

- (1) The falsely made, forged, altered, or counterfeited items crossed a state or United States boundary.
- (2) The person receiving, etc., same did so after the items had crossed a state or United States boundary.
- (3) The receiver knew items to be falsely made, etc. [Pursuant to Title 18, USC, Section 21, the element of guilty knowledge may also be established by proof that the defendant believed that such items were falsely made, etc., after or as a result of an official representation as to the nature of the property (see MIOG, Part II, 1-1.12).]

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EFFECTIVE: 10/23/95

87-2.2.3 Receiving Tools or Paraphernalia Used in Counterfeiting
Securities or Tax Stamps

(1) The tools, etc., used or intended to be used in making falsely made, etc., items were moving as, a part of, or constituted interstate or foreign commerce.

(2) The person receiving same did so while they were so moving.

(3) The receiver, etc., knew the tools, etc., were fitted to be used or had been used in falsely making, etc., any security, tax stamp, or any part thereof.

EFFECTIVE: 07/28/87

87-2.3 Pledging Elements

EFFECTIVE: 07/28/87

87-2.3.1 Pledging Stolen Property

(1) Property valued at \$500 or more is stolen, unlawfully converted, or taken.

(2) Such property has crossed a state or United States boundary.

(3) It is pledged or accepted as a security for a loan by one knowing it to have been stolen, unlawfully converted, etc. Pursuant to Title 18, USC, Section 21, the element of guilty knowledge may also be established by proof that the defendant believed that such property had been stolen, unlawfully converted, etc., after or as a result of an official representation as to the nature of the property (see MIOG, Part II, 1-1.12).|

(4) The pledging or acceptance of such property as security for a loan was done after it had crossed a state or United

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States boundary.

EFFECTIVE: 10/23/95

87-2.3.2 Pledging Counterfeited Securities or Tax Stamps

(1) Falsely made, forged, altered, or counterfeited items are transported across a state or United States boundary.

(2) The person pledging or accepting as security for a loan such falsely made, etc., items knew them to be falsely made, etc. Pursuant to Title 18, USC, Section 21, the element of guilty knowledge may also be established by proof that the defendant believed that such items were falsely made, etc., after or as a result of an official representation as to the nature of the property (see MIOG, Part II, 1-1.12).

(3) The pledging or acceptance of such items is done after they have crossed a state or United States boundary.

EFFECTIVE: 10/23/95

87-3 POLICY

EFFECTIVE: 07/28/87

87-3.1 Stolen Property Cases (Includes Property Taken By Fraud or Converted)

EFFECTIVE: 07/28/87

87-3.1.1 Valuation of Stolen Property

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EFFECTIVE: 07/28/87

87-3.1.2 Major Theft Cases

(1) A major theft case is one in which the value of the stolen property exceeds \$50,000.

Transportation of goods, wares, merchandise, securities or money - It is important to determine early in the investigation the value of the property taken. In regard to tangible property, such as clothing, jewelry, automobiles, rare paintings, manufactured articles, etc., the actual value is sought. In the case of articles having no ready market value, such as antiques, the owner's testimony of what he/she paid for the stolen articles, together with an expert appraiser's evaluation, would be very strong evidence of their value. In the case of such items as household goods, their value for jurisdictional purposes is not what they would bring at a secondhand sale but what they are worth to their owner; i.e., original cost less depreciation. In the case of securities, the statute provides the value is the face, par, or market value, whichever is the highest. In the case of merchandise which has not reached the consumer, the courts have held the retail value of such goods is its value for jurisdictional purposes.

(2) When a major theft occurs, immediately institute active investigation

(a) Mere liaison contact with local authorities is not sufficient.

(b) Develop details of the theft, any suspects, and description of stolen property.

(c) Assign sufficient manpower to run out all immediate leads in both office of origin and auxiliary offices expeditiously.

(3) Teletypes in major theft cases

(a) Send to FBIHQ and logical field offices.

(b) Include details of theft, descriptions of stolen property and suspects, results of crime scene search; investigation being taken by your office (and local authorities, if applicable);

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identifying data concerning victim for Bureau indices search, and results of your indices search regarding victim; and leads for auxiliary offices.

(c) Submit initial teletype summary including contemplated investigation as soon as circumstances of theft are ascertained. Within one week after the initial teletype submit a cover airtel with LHM summary to FBIHQ and your surrounding offices including but not limited to, complete description of stolen property and investigation conducted, unless instructed to the contrary by FBIHQ. This LHM summary should be suitable for dissemination and should not include informant information or describe sensitive investigative techniques.

EFFECTIVE: 07/28/87

87-3.1.3 Other Stolen Property Cases (Under \$50,000 in Value)

(1) In any case where circumstances indicate stolen property (valued over \$5,000) may travel interstate or where organized crime figures are involved, prepare appropriate communication to interested offices.

(2) Promptly obtain description of stolen property and its value.

(3) Do not institute investigation unless it is reasonable that stolen property will travel in interstate commerce.

(4) In any case where public interest and publicity may be great, advise FBIHQ expeditiously by teletype of details.

EFFECTIVE: 11/18/83

87-3.2 Fraudulent Check Cases

EFFECTIVE: 11/18/83

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87-3.2.1 Quality Case Concept

(1) [REDACTED]

ba

(2) [REDACTED]

EFFECTIVE: 11/18/83

87-3.2.2 Department of Justice Prosecutive Policy

(1) The Department advises that Section 2314 is not applicable to bad check cases where subject uses true name or an alias by which subject is commonly known.

(2) The Department takes view that local authorities have primary responsibility for prosecuting bad check cases, even when such cases clearly fall within the technical scope of the statute.

(3) Generally, prosecution limited to following circumstances:

(a) The state prevented from successful prosecution because the defendant, evidence, or witnesses are beyond the state's borders.

(b) The subject passed such checks in numerous jurisdictions.

(c) Subject's offenses either do not constitute violations under the applicable state's statutes or are inadequately punishable by such state laws in light of the frequency and scope of the defendant's activities.

(d) The bad check charges are to be brought in conjunction with other Federal charges; e.g., impersonation of a Federal official.

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EFFECTIVE: 03/23/92

87-3.3 Conspiracy to Violate ITSP Statute

The Department has advised conspiracies to violate the ITSP statute are violative of Federal laws even where the theft of property has not actually occurred. When information is received indicating a conspiracy to commit a theft or robbery of \$5,000 or more and transport the proceeds in interstate commerce, immediately discuss facts with USA for determination as to whether investigation should be initiated. In each such instance following discussion with USA, advise FBIHQ of full facts.

EFFECTIVE: 03/23/92

87-3.4 Heavy Equipment Cases

(1) For investigative purposes, heavy equipment will include truck tractors, trailers, off-highway vehicles, construction equipment, and farm equipment. Investigative policies and procedures concerning these thefts will be similar to those pertaining to Interstate Transportation of Stolen Motor Vehicles. (See Part I, Sections 26-2 and 26-4 of this manual.)

(2) One of the significant differences between ITSMV and heavy equipment investigations is that certificates of title are not required for off-highway vehicles, construction equipment, or farm equipment. Ownership can normally be established by means of a trace through the manufacturer.

EFFECTIVE: 03/23/92

87-4 INVESTIGATIVE PROCEDURES

EFFECTIVE: 03/23/92

87-4.1 Stolen Property Cases

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EFFECTIVE: 03/23/92

87-4.1.1 Investigative Steps

(1) Ensure that appropriate crime scene search has been conducted for latent fingerprints and other evidence, and that neighborhood investigation is completed.

(2) |Deleted|

EFFECTIVE: 03/23/92

87-4.1.2 In Major Cases

If a major theft, institute investigation under policy requirements for such cases (see 87-3.1.2). Notify FBIHQ by telephone or teletype of any case in which public interest will be great and press inquiries may be received at FBIHQ.

EFFECTIVE: 03/23/92

87-4.2 Transportation of Falsely Made, Forged, Altered, or Counterfeited Securities, Tax Stamps, or Labels on Sound Recordings

EFFECTIVE: 10/26/87

87-4.2.1 Establish That Security Covered By the Statute

The Agent should first determine if the item in question is covered by the statutes. Section 2311 specifically defines numerous documents as securities. Valid or blank automobile certificates of title, bills of sale, and whiskey warehouse receipts are samples of securities which may be altered, forged, or counterfeited in cases coming to the Bureau's attention.

(For additional information, see Part I, Section 26-1, of this manual.) The Agent should obtain the item transported or as accurate a

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description of same as possible. The Agent must remember that it is not necessary to establish such falsely made, etc., items have been previously stolen or embezzled or that they had any value. Section 2318 dealing with labels on sound recordings applies to all presently known methods of recording sound waves according to the Department of Justice. The Department has also advised that it is immaterial whether the bogus label is attached to a genuine recording.

EFFECTIVE: 10/26/87

87-4.2.2 Odometer Turn-Back Cases

Altered or reset odometers on motor vehicles are made unlawful by Title 15, USC, Sections 1981-1991 (Odometer Requirements), which prior to the passing of Public Law 94-364 (Motor Vehicle Information and Cost Savings Act Amendments of 1976) on July 14, 1976, carried no criminal penalties. The purpose of this statute is to prohibit tampering with odometers on motor vehicles and to establish certain safeguards for the protection of purchasers with respect to the sale of motor vehicles having altered or reset odometers. Title 15, USC, Sections 1981-1991, is directed at an area of crime involving consumer fraud affecting purchasers of previously owned automobiles.

EFFECTIVE: 10/26/87

87-4.2.3 Statutes

Title 15, USC, Sections 1983-1988; Title 18, USC, Sections 2314 and 1343.

EFFECTIVE: 10/26/87

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87-4.2.4 Title 15, USC

(1) Section 1983. Unlawful devices causing odometer to register mileage other than true mileage driven. No person shall advertise for sale, sell, use, or install or cause to be installed, any device which causes an odometer to register any mileage other than the true mileage driven. For purposes of this section, the true mileage driven is that mileage driven by the vehicle as registered by the odometer within the manufacturer's designed tolerance.

(2) Section 1984. Unlawful change of mileage indicated on odometer. No person shall disconnect, reset, or alter, or cause to be disconnected, reset, or altered, the odometer of any motor vehicle with intent to change the number of miles indicated thereon.

(3) Section 1985. Unlawful operation of motor vehicle with knowledge of disconnected or nonfunctional odometer prohibited. No person shall, with intent to defraud, operate a motor vehicle on any street or highway knowing that the odometer of such vehicle is disconnected or nonfunctional.

(4) Section 1986. Conspiracy to violate odometer requirements.

(5) Section 1987. Lawful service, repair, or replacement of odometer; adjustment of mileage and notice of adjustment; failure to adjust mileage or affix notice of adjustment and removal or alteration of notice with fraudulent intent prohibited.

"Nothing in this subchapter shall prevent the service, repair, or replacement of an odometer, provided the mileage indicated thereon remains the same as before the service, repair, or replacement. Where the odometer is incapable of registering the same mileage as before such service, repair, or replacement, the odometer shall be adjusted to read zero and a notice in writing shall be attached to the left door frame of the vehicle by the owner or his agent specifying the mileage prior to repair or replacement of the odometer and the date on which it was repaired or replaced. Any removal or alteration of such notice so affixed shall be unlawful."

EFFECTIVE: 10/26/87

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87-4.2.5 Title 18, USC, Sections 2314 and 1343

(1) Section 2314. Transportation of Stolen Goods, Securities, Moneys, Fraudulent State Tax Stamps, or Articles Used in Counterfeiting.

(2) Section 1343. Fraud by Wire. ITSP and FBW Statutes have been used successfully in widespread odometer turn-back operations. The interstate transportation of falsely made securities is a violation of Title 18, USC, Section 2314, when the certificate of title of an automobile, a security, has the automobile mileage falsely reported on it and the security is transported interstate. Title 18, USC, Section 2314, also prohibits anyone from knowingly transporting in interstate commerce money, in the amount of \$5,000 or more, that has been taken by fraud. The value of certain used cars may exceed \$5,000 and further the combined value of cars with odometer turn-backs sold interstate by an automobile dealer could easily exceed \$5,000 and that such a dealer could be involved in a conspiracy to violate Section 2314. Violations of the FBW and the Mail Fraud Statutes may exist when purchase arrangements for cars with odometer turn-backs are made by interstate wire communications or when a dealer advertises such cars for sale over radio or television, or when the mails are used to transmit certificates of title bearing false information.

EFFECTIVE: 07/18/86

87-4.2.6 Definitions

(1) The term "dealer" means any person who has sold five or more motor vehicles in the past twelve months to purchasers who in good faith purchase such vehicles for purposes other than resale.

(2) The term "distributor" means any person who has sold five or more vehicles in the past twelve months for resale.

EFFECTIVE: 07/18/86

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87-4.2.7 Policy and Investigative Procedure

(1) If it is determined that the case does not involve widespread ring type activity in odometer tampering, then care should be exercised in expending investigative manpower.

(2) Close liaison should be maintained with the USA with regard to these investigations.

(3) Upon receipt of allegation that a certain car dealer or dealers is/are involved in odometer turn-backs certain records may be essential in corroborating the allegation.

(a) The State Motor Vehicle Administration may be very beneficial in advising investigators as to the type of records required by the State that would aid in tracing ownerships and verifying the mileage at the time the vehicle was sold and at the time it was subsequently resold.

(b) Consideration should also be given to subpoenaing sales records maintained by the target used car dealer(s).

(4) Interviews of previous and present owners will aid in verifying the documented mileage regarding a particular vehicle.

EFFECTIVE: 07/23/90

87-4.2.8 Title 15, USC, Section 1990(c)

Title 15, USC, Section 1990(c) sets forth the criminal penalties (misdemeanors) for violations of Title 15, USC, Sections 1981-1991 and reads as follows:

(1) Any person who knowingly and willfully commits any act or causes to be done any act that violates any provision of this subchapter knowingly and willfully omits to do any act or causes to be omitted any act that is required by any such provision shall be fined not more than \$50,000 or imprisoned not more than three years, or both.

(2) Any individual director, officer, or agent of a corporation who knowingly and willfully authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation of any section of this title shall be subject to penalties

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under this section without regard to any penalties to which that corporation may be subject under subsection (a).

EFFECTIVE: 07/23/90

87-4.2.9 Investigative Classification

The investigative classification is 87 and the alpha subdivision will be either "B" or "C," depending upon the total amount of money involved.

EFFECTIVE: 07/23/90

87-4.3 Implements Used in the Manufacture of Falsely Made, etc., Securities or Tax Stamps

The Agent in this violation must be alert to establishing that the transporter knew that the implements had been used or were fitted to be used for this purpose and the transportation was coupled with a fraudulent intent.

EFFECTIVE: 07/28/87

87-4.4 Receiving Violations

(1) Under Section 2314 and part of Section 2315 dealing with tools, etc., used in counterfeiting securities or tax stamps, first establish that the items covered have actually moved from one state or the District of Columbia to another state or foreign jurisdiction or vice versa.

Under Section 2315 (with the exception of that portion relating to tools, etc., used in counterfeiting securities or tax stamps), once stolen or fraudulently obtained property crosses a state line or United States boundary, federal jurisdiction attaches to such property and remains until such property loses its stolen or fraudulently obtained character.

(2) The receiver must be shown to have knowledge that such property has been stolen, unlawfully converted, or taken. It is

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not necessary to show that the receiver had knowledge of the previous interstate or foreign transportation. Also it is necessary to prove that the receiver obtained at least \$5,000 worth of the stolen, etc., property.

(3) With regard to establishing guilty knowledge on the part of the receiver, etc., attention is directed to the Theft From Interstate Shipment section of this manual which discusses the circumstantial evidence to be sought (Part I, Section 15-3.2). To violate the receiving section relating to falsely made, etc., securities or tax stamps, the knowledge to be shown is that the items were falsely made, etc., or that the tools, etc., had been used or were to be used in making falsely made, etc., items. Pursuant to Title 18, USC, Section 21, the element of guilty knowledge may also be established by proof that the defendant believed that such items were stolen, falsely made, etc., after or as a result of an official representation as to the nature of the property (see MIOG, Part II, 1-1.12).

EFFECTIVE: 10/23/95

87-4.5 Pledging Violations

The Agent must prove that the property pledged has an actual value of at least \$500 and the amount it is pledged for is not the basis of jurisdiction. The pledgor and pledgee are both guilty of a violation if the property is valued at \$500 or more and has actually moved interstate if they had knowledge that it had been stolen or embezzled.

EFFECTIVE: 07/28/87

87-4.6 Check Cases

Check cases should be scrutinized with particular care at inception to implement the quality case concept and to reduce the volume of submissions to Laboratory; submissions should be limited to only relevant items in matters with a potential for Federal prosecution.

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EFFECTIVE: 07/28/87

87-4.6.1 Ascertain the Facts Surrounding the Passing of the Check

Ordinarily, the following factors should be considered in this regard:

(1) Specifically determine whether the check was written or endorsed in the presence of the person cashing it. If this is not determined, a subsequent conclusion by the FBI Laboratory that the check was written by a known individual does not prove that the writer negotiated it. In many instances, persons other than the writers of fraudulent checks negotiate them. This is particularly true in ring cases.

(2) Determine the date and hour the check was negotiated. Reliance should not be placed upon the date of the check because many checks are negotiated on other dates. In the elimination of suspects, it may be essential to know the exact time that the check was negotiated.

(3) Any credentials used by the passer purportedly establishing his/her identity should be accurately described.

(4) Ascertain the names of all witnesses who saw or talked to the individual passing the fraudulent check.

(5) Secure the modus operandi used by the check passer, along with the subject of his/her conversation. The method of transportation being used by the passer may prove of value in locating him/her.

EFFECTIVE: 07/28/87

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87-4.6.2 Contact Local Police

After complete information has been obtained from the individual reporting a bad check to the field office, a reasonable inquiry should be made with the check squad of the local police department or some other agency cognizant with bad checks passed in the community to determine if the passer of the check involved may be readily known locally.

EFFECTIVE: 07/28/87

87-4.6.3 Determine If FBI Investigation Warranted

If it is determined that FBI investigation should be undertaken, the original bad check passed should be tactfully obtained. Its return may be promised. If time is of the essence, the FBI Laboratory should be so informed and the return of the check will be expedited. If it is not possible to secure the original check, it will materially assist the FBI Laboratory in its examination if a photographic copy rather than a photostat of the check is forwarded. In photographing the check, a ruler or other measurement is to be included in the photograph so that the exact size of the original document can be ascertained. Both the negative and a positive print of the photograph should be forwarded.

EFFECTIVE: 07/28/87

87-4.6.4 Handling of Check Evidence

The original check or a copy should be forwarded to the FBI Laboratory using Form FD-196 incorporating the following information:

- (1) Complete and accurate descriptions of checks
- (2) The circumstances surrounding the passing of the check, i.e., the modus operandi used, should be set forth briefly.
- (3) As complete a description as possible of the check passer should be included. This is particularly important in assisting the Criminal Justice Information Services Division in eliminating fingerprint cards of persons having the same name as that

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used by the check passer. In all unknown subject multiple check cases, the FBI Laboratory examines the handwriting on fingerprint cards containing names identical with that on the check. This comparison is an automatic procedure which is followed at FBIHQ without a specific request being made by the field office.

(4) Any miscellaneous information which is available should be included on the FD-196. For example, if the signature on the check being transmitted is known to be a simulated forgery, genuine signatures of the individual whose name was forged should be submitted.

(5) A specific request should be made if any examination is desired in addition to search in the National Fraudulent Check File and comparison with signatures on fingerprint cards.

(6) The check itself should be enclosed in a cellophane envelope if a latent fingerprint examination is requested.

(7) Normally the office submitting the first check to the FBI Laboratory is the office of origin. Lacking information to the contrary, the office transmitting the check should consider itself office of origin until advice is received that other checks have preceded its submission to the FBI Laboratory.

(8) The date and city where the check is cashed are to be set forth.

(9) Disposition of specimens is to be set out.

(10) A copy of the FD-196 transmitting the fraudulent check to the FBI Laboratory should be designated for the field office in whose territory the bank upon which the check is drawn is located. That field office should be requested to contact the drawee bank to determine if similar checks have been passed upon that bank. This is done since experience has shown that a check passer will issue a series of checks upon one bank and information concerning those checks can be received more expeditiously from the bank. It follows that the detailed information which is desired on the FD-196 transmitting fraudulent checks to the FBI Laboratory is unnecessary in cases in which the identity of the check passer is known and the check is submitted only for comparison with other checks in the same case.

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EFFECTIVE: 04/08/96

87-4.6.5 Discontinuing Investigation In Check Cases

Assuming that a report is received from the FBI Laboratory which indicates that the check submitted was not the work of a known check passer and the drawee bank advises that no similar checks have been passed on that bank, and in the absence of any other information indicating the contrary, it may be concluded that an isolated bad check is involved and that the case is not one which should be exhaustively investigated under the Bureau's policy as set out above. Should information be received at a later date indicating that the passer of this check is again active in passing additional checks, the case may be reopened.

EFFECTIVE: 01/31/78

87-4.6.6 Action Taken When Forgery or Counterfeit Determined

When FBI Laboratory report indicates check is forged or counterfeit, and/or facts indicate subject is an active violator, the following procedure must be followed:

(1) If the field office covering the drawee bank advises that the check submitted is forged or counterfeited or one of a series of bad checks, a stop should be placed immediately with that bank. The original victims of other checks passed should be ascertained. The office of origin should advise FBIHQ to expedite the Laboratory report inasmuch as this is an indication the subject is an aggravated check passer and the FBI Laboratory may tie his checks into a major case. The facts may or may not be presented to the USA at this time depending upon the urgency of the case. Presentment, generally, is more desirable after the receipt of the Laboratory report.

(2) If the Laboratory report identifies the passer of the check submitted with the subject of another case, pertinent information concerning the previous activities of the check passer will be furnished. The field office submitting the check on the basis of the Laboratory report will be in a position to conduct an intelligent investigation concerning the activities of the check passer in that field office territory and submit the appropriate communication to the office of origin which has correlated the

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investigation of the activities of this check passer prior to that time.

EFFECTIVE: 01/31/78

87-4.6.7 Office of Origin In Check Cases - Designation and Responsibilities

(1) FBIHQ desires that there be only one office of origin in a case involving the passing of bad checks. Ordinarily, the first office submitting a check will remain office of origin and field offices subsequently submitting checks passed by the same subject will be advised in the Laboratory reports as to the original office of origin in an effort to avoid confusion in this regard. Despite the exercise of precaution in this matter, it is apparent when a check passer moves rapidly from one field office territory to another that checks from several localities may be received by the FBI Laboratory at approximately the same time. On many occasions, a case cannot be identified with another pending case until after several communications have been written in various offices. On these occasions, FBIHQ will designate the proper office of origin either on its own volition or upon the receipt of a letter from a field office.

(2) It is necessary for the office of origin to assume responsibility for close supervision of fraudulent check cases. Investigative leads set out for auxiliary offices should be carefully monitored in order that unnecessary investigation may be avoided and valuable investigative leads given immediate attention. It should be borne in mind that if there are two or three processes outstanding for a check passer, the purpose of the remaining investigation is to apprehend him/her rather than collect evidence for additional prosecutions. When a major check passer is apprehended and makes a confession admitting numerous additional violations previously unknown, the undeveloped leads should be set out to fill any necessary gaps in the pending prosecution only. Investigation into the circumstances surrounding the passing of new checks should not be made unless prosecution is authorized in the territory where the checks were passed. After apprehension, the office of origin should make certain it sets out undeveloped leads for all offices where checks have been passed to inform the local police departments of the identity of the check passer in order that the records of such departments may be cleared. This is to be done since these police departments may desire to institute prosecution, as experience has shown that a check passer is seldom prosecuted in more than two or

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three Federal districts regardless of the number of violations involved. The full background of a major check passer should be ascertained when he/she is apprehended. Current photographs and numerous known handwriting specimens should be secured. This action should be taken because experience has revealed a major check passer is a professional and upon his/her release from the penitentiary will probably reenter the field of check passing and be the subject of another investigation.

EFFECTIVE: 04/22/83

87-4.6.8 Presentation to U.S. Attorney's Office

(1) The office of origin should pay particular attention to setting out undeveloped leads for presenting facts to USAs at appropriate times. In this regard, when the sole purpose is to clear the record and additional prosecution is not expected, the facts may be presented in the territory covering the bank on which the checks are drawn rather than in the territory where they were negotiated. This will, in many instances, clear a number of violations with one presentment to the USA. This method has the additional advantage of presenting a large number of individual violations to one USA with more likelihood of prosecution.

(2) It is also pointed out that in addition to causing a check to be transported in interstate commerce by negotiating it the subject may be prosecuted if he/she physically transports a check meeting the requirements of the statute.

(3) It should not be overlooked that Title 18, USC, Section 2314, also prohibits the interstate transportation of paraphernalia used or fitted to be used in falsely making, forging, altering, or counterfeiting any security or tax stamp or part thereof. Agents should be alert to locate any such paraphernalia in check cases. The USA may desire to make the transportation of such paraphernalia a separate count in the indictment.

EFFECTIVE: 04/22/83

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87-4.6.9 Investigation Concerning Printers of Counterfeit Checks
and Securities

Too little effort has been directed toward ascertaining the identities of the printers of counterfeited checks. If it can be proved that a printer knew the checks |he/she| prepared were counterfeit and would be negotiated by the subject, it is possible to prosecute |him/her| as an aider and abettor in the territory in which the subject is prosecuted as a principal. The success of the investigation will depend upon the acceptance of the office of origin of its responsibility to supervise the widespread activities of auxiliary offices and render frequent advice to them because the auxiliary offices are generally unaware of the complete picture of a check case. From a practical standpoint, detailed investigation in the nature of a collection of evidence should be minimized in the later stages of a check case unless prosecution is expected in the territory where the checks are passed.

EFFECTIVE: 04/22/83

| 87-4.6.10 | Deleted |

EFFECTIVE: 04/22/83

87-4.6.11 Traveler's Check Cases

(1) Section 2314 specifically provides that the transportation in interstate commerce of a traveler's check, validly issued for value, and upon which the purchaser's countersignature has been forged, is a violation of that statute.

(2) The Department has held that a prosecutable offense under Title 18, USC, Section 2314, does exist when blank stolen traveler's checks are transported interstate and the "purchaser's signature" blank is filled in without authority and with requisite intent by the thief or by one chargeable with knowledge that the check is stolen or is not bona fide. The traveler's check would be considered as falsely made (Stinson v. U.S., C.A. 5, 1963, 316 F. (2d) 554) within the meaning of the statute in the same sense that one falsely makes and forges when one alters or fills in blanks of a genuine instrument without authority or contrary to authority given.

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EFFECTIVE: 03/23/92

87-4.7 Deleted

EFFECTIVE: 03/23/92

87-4.7.1 Food Stamp Program Cases

The Department, in Memorandum #656 dated 12/11/69 to all U.S. Attorneys captioned "Food Stamp Program," discusses the problem being faced by the Department of Agriculture in the increasing thefts of food stamps. The Department recognizes that Title VII, USC, Section 2023, establishes in the Department of Agriculture the investigative responsibility for the illegal possession of these stamps (no requirement of interstate transportation). The Department adds, "However, in the event interstate transportation involving \$5,000 or more in stamps obtained by theft or fraud is indicated, the assistance of the FBI can be sought under Title 18, USC, Section 2314 (ITSP)." No investigation is to be instituted into thefts of these stamps without prior Bureau authority. If you are requested to institute investigation of the theft of food stamps, you should immediately advise the Bureau, by appropriate communication, of all details. If the stamps are in the possession of the U.S. Government at the time of theft, consider as a Theft of Government Property (TGP) violation.

EFFECTIVE: 03/23/92

| 87-4.8 | Deleted |

EFFECTIVE: 03/23/92

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87-4.8.1 Fraud Investigations Under the ITSP Statute

(1) Used where loss exceeds \$5,000 in any one incident and no interstate wire communication (telephone call, telex message, or telegram) is used in perpetration of the fraud.

(2) Facts concerning cases involving losses of less than \$5,000, and no use of interstate wire communications may be furnished to FBIHQ to increase the data base maintained in Bureau files concerning these criminals and their schemes.

(3) To establish a violation of Section 2314 involving the transportation of \$5,000 or more of the loss, it is necessary to prove that one or more of the subjects actually transported \$5,000 or more in interstate commerce. Efforts should be made to identify the con artists, ascertain their itinerary after the swindle, and conduct whatever investigation possible to locate the money in another state or evidence that it was transported.

(4) A violation may be established of Section 2314 even though no actual loss occurred, if the projected swindle was to amount to \$5,000 or more and the proposed victim was caused to travel interstate either in a build-up to the swindle or to obtain funds. If the swindle amounting to \$5,000 or more actually takes place, and the victim is caused to travel interstate as part of the process, a violation has occurred even though the funds are never carried out of state.

(5) For definitive information concerning Fraud By Wire violations (FBW), see Part I, Section 196 of this manual.

EFFECTIVE: 07/18/86

87-4.8.2 Other Avenues In Fraud Investigations

(1) Particular circumstances in a case may make prosecutions under the Conspiracy and/or Racketeer Influenced and Corrupt Organization (RICO) Statutes feasible, and should not be overlooked.

(2) The Mail Fraud (MF) Statute (Title 18, USC, Section 1341), under the jurisdiction of the U.S. Postal Service, is an excellent tool with which to attack frauds.

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(a) A fraud coming to your attention, and lacking any FBI jurisdiction, should be immediately reported to a U.S. Postal Inspector, and must not be continued under investigation.

(b) The character of Mail Fraud (MF) may be added to the title where it becomes another statute under which the subject(s) may be prosecuted in conjunction with other charges brought that fall within FBI jurisdiction.

(3) Sources of information in these type investigations include offices of state attorneys general, state or local consumer protection offices, U.S. Postal Inspection Service, Securities and Exchange Commission, Better Business Bureau, chambers of commerce, local district attorneys' offices, among others.

EFFECTIVE: 07/18/86

87-4.8.3

(1)

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(2) FBIHQ will search for identification in this file any handwritten, typewritten, or printed specimens obtained during an active confidence scheme investigation and submitted to FBIHQ, Attention: FBI Laboratory, with appropriate request.

EFFECTIVE: 07/23/90

87-4.8.4 Deleted

EFFECTIVE: 07/23/90

87-4.9 Top Thief Target (TTT)

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EFFECTIVE: 07/23/90

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87-4.9.1 Purpose of the TTT

The goal of TTT is to target top thieves, fences, and organized criminal gangs who are involved in stealing and redistributing property valued at tens of millions of dollars. The objective of TTT activity is to identify top thieves, aggressively collect evidence of their violations of Federal statute and stop their activity through prompt arrest and prosecution.

EFFECTIVE: 07/23/90

87-4.9.2

(1)

(2)

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EFFECTIVE: 07/23/90

87-4.9.3 Investigative Procedure

- (1) Based on facts or circumstances which indicate that the target may be engaged in or is about to be engaged in criminal activity or the violation of a Federal law, a new 87G case should be opened and assigned to a Special Agent working investigations within the ITS.
- (2) Identify and obtain background information concerning these targets such as photographs, description, criminal record, modus operandi, hangouts, associates, and travel patterns of burglars, armed robbers, and fences, who engage in activities of a magnitude, that indicates they are major violators or potential violators of Federal law such as the ITSMV, ITSP, or TFIS statutes.
- (3) Assign to [redacted] investigative activity Agent(s) whose experience gives him/her a thorough working knowledge of the psychology of burglars, armed robbers, and fences and who is capable of applying unusual or creative investigative techniques.
- (4) All personnel involved should be fully aware of the provisions of the ITSP - Conspiracy, Hobbs Act and Racketeer Influenced and Corrupt Organizations (RICO) statutes which are potentially applicable to the objectives of this program. Consideration should also be given to the use of Title III coverage within the provisions of the Omnibus Crime Control and Safe Streets Act of 1968.

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EFFECTIVE: 07/23/90

87-5 MISCELLANEOUS

EFFECTIVE: 07/23/90

87-5.1

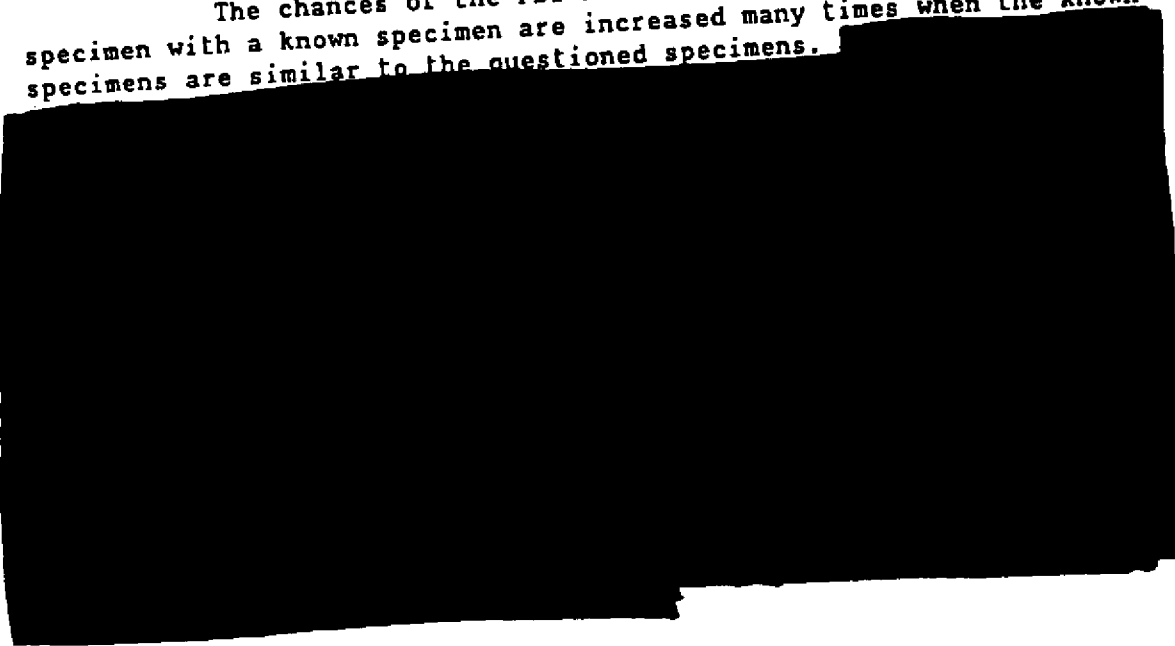


EFFECTIVE: 07/23/90

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87-5.2 Obtaining Known Handwriting Samples

The chances of the FBI Laboratory identifying a questioned specimen with a known specimen are increased many times when the known specimens are similar to the questioned specimens.



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EFFECTIVE: 07/23/90

87-5.2.1 Legal Requirements

(1) Each page of samples taken from a subject should bear subject's own name or initials, written by the subject, as well as the date.

(2) At the conclusion of the sample taking, a statement that the samples were provided voluntarily should be written, in the subject's handwriting, even though dictated by the Agent. It should be dated, and witnessed by the Agent.

(3) If obtained pursuant to a court order, no such statement is necessary. The samples still must be signed by the subject, dated, and witnessed by the Agent.

EFFECTIVE: 07/23/90

87-5.3 Report Writing Rules

EFFECTIVE: 02/16/89

87-5.3.1 Unknown Subject Cases

You should be guided by current Bureau rules concerning preparation of prosecutive reports.

EFFECTIVE: 02/16/89

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87-5.3.2 Other Reporting Requirements

(1) Only one copy of ITSP prosecutive report need be submitted unless dissemination at FBIHQ is desired. If so, that dissemination should be set out in the copy count of the report, with the reason justifying the dissemination stated on the FD-272.

(2) Reports must be prepared when requested by the USA's Office.

(3) A summary airtel should be prepared in any case that generates great public interest or to advise of significant developments in such a case.

(4) In major cases the office of origin should advise logical field offices of details of the theft, suspects' descriptions, description of the stolen property, and request that local law enforcement agencies and informants be contacted. This dissemination should be made in LHM under suitable cover communication, and the LHM must be written so as to allow receiving offices to reproduce it and provide it to such local law enforcement agencies as they determine are appropriate.

(5) In all ITSP cases involving armored carrier/courier losses, an FD-430 must be submitted to FBIHQ, Attention: Violent Crimes Unit, Criminal Investigative Division in duplicate, within 30 working days. The OO shall determine if regional or other field office notification is necessary. (See MIOG, Part I, 15-4(9), 91-12.1, 192-11.1, & 192-11.2; MAOP, Part II, 9-6.)

EFFECTIVE: 11/30/93

87-6 VENUE

Any district in which the offense was begun, continued, or completed (Title 18, USC, Section 3237).

EFFECTIVE: 02/16/89

87-7 PENALTIES

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EFFECTIVE: 02/16/89

87-7.1 Interstate Transportation of Stolen Property (ITSP),
(Title 18, U.S. Code, Section 2314)

A \$10,000 fine, or ten years' imprisonment, or both.

EFFECTIVE: 02/16/89

87-7.2 Receiving Stolen Property, (Title 18, U.S. Code, Section
2315)

A \$10,000 fine, or ten years' imprisonment, or both.

EFFECTIVE: 11/18/83

87-8 CHARACTER - INTERSTATE TRANSPORTATION OF STOLEN PROPERTY
(ITSP)

EFFECTIVE: 11/18/83

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SECTION 88. UNLAWFUL FLIGHT TO AVOID PROSECUTION,
CUSTODY, CONFINEMENT, AND GIVING TESTIMONY

88-1 BACKGROUND

EFFECTIVE: 07/28/87

88-1.1 Section 1073

The original Unlawful Flight Statute, Title 18, USC, Section 408e, was enacted on 5-18-34, and covered only flights to avoid prosecution and giving testimony in the eight specific crimes of murder, kidnaping, burglary, robbery, mayhem, rape, assault with a dangerous weapon, extortion accompanied by threats of violence, and attempts to commit any of the above. On 8-2-46, it was amended to include flights to avoid custody and confinement after conviction for the above offenses. On 9-1-48, the current Unlawful Flight Statute, Title 18, USC, Section 1073, was enacted. This section was amended periodically to include a total of 11 specific felonies. On 10-4-61, the Organized Crime Bill was enacted which amended Title 18, USC, Section 1073, to include all state felonies and in the case of New Jersey, high misdemeanors. On 12-28-80, Congress enacted Public Law 96-611, Section 10(a) of which states in part, "the Congress hereby expressly declares its intent that Section 1073 of Title 18, United States Code, apply to cases involving parental kidnaping and interstate or international flight to avoid prosecution under applicable state felony statutes."

EFFECTIVE: 07/28/87

88-1.2 Section 1074

Title 18, USC, Section 1074, was enacted on 5-6-60, as part of the Civil Rights Act of 1960. This section added the local offenses of damaging, or attempting to damage, by fire or explosive, any building, structure, facility, vehicle, dwelling house, synagogue, church, religious center, or educational institution, public or private, which were not covered under Section 1073 at that time.

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EFFECTIVE: 07/28/87

88-2 STATUTES, PENALTIES, AND PROSECUTION

EFFECTIVE: 07/28/87

88-2.1 Section 1073

"Whoever moves or travels in interstate or foreign commerce with intent either (1) to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which he flees, for a crime, or an attempt to commit a crime, punishable by death or which is a felony under the laws of the place from which the fugitive flees, or which, in the case of New Jersey, is a high misdemeanor under the laws of said state, or (2) to avoid giving testimony in any criminal proceedings in such place in which the commission of an offense punishable by death or which is a felony under the laws of such place, or which in the case of New Jersey, is a high misdemeanor under the laws of said state, is charged, or (3) to avoid service of, or contempt proceedings for alleged disobedience of, lawful process requiring attendance and the giving of testimony or the production of documentary evidence before an agency of a state empowered by the law of such state to conduct investigations of alleged criminal activities, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

"Violations of this section may be prosecuted only in the Federal judicial district in which the original crime was alleged to have been committed, or in which the person was held in custody or confinement, or in which an avoidance of service of process or a contempt referred to in clause (3) of the first paragraph of this section alleged to have been committed, and only upon formal approval in writing by the Attorney General or an Assistant Attorney General of the United States, which function of approving prosecutions may not be delegated."

EFFECTIVE: 07/28/87

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88-2.2 Section 1074

"(a) Whoever moves or travels in interstate or foreign commerce with intent either (1) to avoid prosecution, or custody, or confinement after conviction, under the laws of the place from which he flees, for willfully attempting to or damaging or destroying by fire or explosive any building, structure, facility, vehicle, dwelling house, synagogue, church, religious center or educational institution, public or private, or (2) to avoid giving testimony in any criminal proceeding relating to any such offense shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

"(b) Violations of this section may be prosecuted in the Federal judicial district in which the original crime was alleged to have been committed or in which the person was held in custody or confinement: Provided, however, That this section shall not be construed as indicating an intent on the part of Congress to prevent any State, Territory, Commonwealth, or possession of the United States of any jurisdiction over any offense over which they would have jurisdiction in the absence of such section."

EFFECTIVE: 07/28/87

88-2.3 FBIHQ Approval is Necessary for Investigation Under
Section 1074

Upon receipt of a request for Bureau assistance in locating a fugitive subject or witness under Section 1074 (damaging property), immediately advise FBIHQ of the full details and do not conduct any investigation without prior FBIHQ approval.

EFFECTIVE: 07/28/87

88-3 REQUIREMENTS FOR INVESTIGATION

EFFECTIVE: 07/28/87

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88-3.1 Unlawful Flight to Avoid Prosecution

(1) Local authorities must have a warrant outstanding for the subject's arrest charging him/her with an offense covered in the statute and agree to extradite and prosecute upon the subject's apprehension.

(2) There must be sufficient evidence present to show with reasonable certainty that the subject fled interstate for the purpose of avoiding prosecution.

(3) Prior to the issuance of the Federal process the local prosecuting attorney or police agency should request assistance in writing to the USA.

(4) The USA must authorize the filing of a complaint and Federal arrest process must be outstanding prior to the time that investigation is instituted.

EFFECTIVE: 07/28/87

88-3.2 Unlawful Flight to Avoid Custody or Confinement

(1) Local authorities must have a warrant outstanding for the subject's arrest charging him/her with an offense covered in the statute and agree to extradite and prosecute or reconfine upon the subject's apprehension.

(2) There must be sufficient evidence present to show with reasonable certainty that the subject fled interstate for the purpose of avoiding custody or confinement.

(3) Since time is of the essence, upon issuance of a local warrant and an oral request for assistance by a competent local official, immediately present the facts to the USA for authorization of a Federal warrant. Local authorities should be advised to direct a letter to the USA confirming their oral request for assistance; however, do not delay your presentation to the USA and obtaining Federal process awaiting his/her receipt of the written request.

(4) The USA must authorize the filing of a complaint and Federal arrest process must be outstanding prior to the time that investigation is instituted.

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EFFECTIVE: 07/28/87

88-3.3 Unlawful Flight to Avoid Giving Testimony

(1) A criminal proceeding must have been actually instituted against a subject in the state court charging him/her with an offense covered in the statute.

(2) There must be sufficient evidence present to establish that the fugitive witness fled interstate for the purpose of avoiding giving testimony in this criminal proceeding. The fact that a fugitive witness has fled interstate after having been served with a subpoena in the state criminal proceeding will assist in establishing that the purpose of the flight was to avoid testifying. However, where sufficient independent evidence exists to establish that the fugitive witness fled with the purpose of avoiding testifying, it is not necessary that he/she have previously been served with a subpoena.

(3) Local authorities must have a warrant outstanding for the fugitive witness and be willing to extradite upon apprehension.

(4) Prior to the issuance of the Federal process, the local prosecuting attorney or police agency should request assistance in writing to the USA.

(5) The USA must authorize the filing of a complaint and Federal arrest process must be outstanding prior to the time that investigation is instituted.

EFFECTIVE: 07/28/87

88-3.4 Unlawful Flight - Pre-Federal Warrant Investigation

(1) Where a request is received from local or state authorities under the provisions of the Unlawful Flight Statute for FBI fugitive assistance and such request fails to contain sufficient evidence as to the interstate character of the violation to justify or support the issuance of the Federal complaint and warrant, these authorities should first be requested to supply the evidence of requisite character. In particularly serious cases, the FBI may be requested to conduct an investigation to establish the jurisdictional facts of apparent flight after the commission of the state felony. If an SAC does not concur that a case is serious

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62 enough to warrant initiating an investigation to establish the jurisdictional facts of apparent interstate flight, the USA, if USA still desires a preliminary FBI inquiry, as USA has been instructed, may report the matter at once to the Criminal Division, General Litigation and Legal Advice Section, [REDACTED] so that it can be discussed with FBIHQ.

(2) In those situations where the SAC has fully considered the seriousness of the case and does not concur that a pre-Federal warrant UFAP investigation is warranted and the USA still insists on a preliminary FBI inquiry, conduct no investigation and advise the USA that none will be conducted until it is authorized by FBIHQ. It should be suggested to the USA that USA consult with the Department in these situations. Thereafter, advise the [Fugitive/Government Reservation] Crimes Unit, Criminal Investigative Division, by telephone, followed by teletype, of the facts together with the field division's recommendations.

(3) As a general rule, in the absence of Federal UFAP process, anything more than a phone call or inquiries made of local or state authorities is interpreted by FBIHQ as "pre-Federal warrant investigation." Offices are instructed to decline, in all but the most compelling and serious situations, to conduct pre-Federal warrant investigations aimed at developing sufficient probable cause to support the interstate flight of the subject, as this is the responsibility of local and state authorities requesting FBI fugitive assistance. When a pre-Federal warrant investigation is agreed upon by the SAC and the USA without specific Departmental or FBIHQ involvement, submit, on a UACB basis, an airtel setting forth the full facts demanding the office's involvement. Such instances should rarely occur.

EFFECTIVE: 02/16/89

88-3.4.1 Fugitive Task Force (FTF) - Preliminary Inquiry (PI)

(1) In order to establish a practical and effective working relationship in an FTF environment, a PI may be initiated within the Attorney General Guidelines.

(2) Only those matters referred by and originating within the investigative jurisdiction of FTF nonfederal member agencies should be considered for initiation of a PI.

(3) [Deleted]

(4) Prior to initiating a PI, it is important to document

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those facts which indicate the POSSIBILITY that there has been an unlawful flight to avoid prosecution or confinement.

(5) | Deleted |

(6) | The standard for initiating a Preliminary Inquiry (PI) is less than the REASONABLE INDICATION of criminal activity that is necessary to open a full investigation. A PI is based upon the POSSIBILITY of criminal activity. Therefore, the opening communication must state the existence of a state or local felony warrant and additional information which indicates the POSSIBILITY of interstate flight. The following are examples of circumstances which may be combined to form a factual basis to establish the POSSIBILITY of interstate flight: |

(a) | existence of a driver's license; |

(b) | proximity of a subject's last known residence to another state's border; |

(c) | the fugitive has been at large for an extensive period of time; |

(d) | the termination of public utilities; or |

(e) | the existence of a motor vehicle registration.

The above facts are only examples of the information that, in conjunction with a state or local felony warrant, may provide the predication necessary to initiate a PI, and is not intended to be all inclusive.

All cases that are accepted by an FTF shall be opened as a PI or full investigation. A separate file number must be assigned to each fugitive subject referred by state and local agencies; these matters will not be worked out of a control file. |

(7) PIs should be completed within 90 days of initiation. Requests for succeeding 30-day extensions should be submitted to FBIHQ on a UACB basis at least 14 calendar days prior to the expiration of the PI. The extension request should include the following information:

(a) The basis for initiation of the PI.

(b) A summary of investigation conducted during the

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initial period or previous extension.

(c) Reason for the extension.

(8) In the event that the PI uncovers no evidence that the subject has fled interstate, authority to continue the investigation ceases and the PI should be closed.

(9) When PC of interstate flight is developed, a federal warrant should immediately be obtained prior to conducting any further investigation.

(10) Out-of-state leads should not be set in PIs without sufficient documented justification. Examples of proper out-of-state leads are record checks or the interview of an incarcerated individual. Leads for out-of-state interview at a location where the subject may be located should be inappropriate. Under NO circumstances should "locate-and-apprehend" leads be set absent federal process.

(11) These matters should be entered in FOIMS as PIs and include "Preliminary Inquiry" in the caption as follows:

JOHN DOE;
UFAP-(underlying local charge);
Preliminary Inquiry
OO: (office of origin)

(12) Upon issuance of federal process "Preliminary Inquiry" should be deleted from the title and the FOIMS entry converted to a full investigation record.

EFFECTIVE: 07/16/96

88-4 STATUTE OF LIMITATIONS

EFFECTIVE: 02/08/80

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88-4.1 Unlawful Flight to Avoid Prosecution, Custody, and
Confinement

The statute of limitations is tolled in every case of a violation of the Fugitive Felon Act where the flight is with the intent to avoid prosecution, custody, or confinement, since a person cannot be a fugitive felon without also being a fugitive from justice within the meaning of Title 18, USC, Section 3290.

EFFECTIVE: 02/08/80

88-4.2 Unlawful Flight to Avoid Giving Testimony

This situation does not apply in the case of a person fleeing to avoid giving testimony. Since flight to avoid giving testimony is not made punishable by state law, one does not become a fugitive from justice under Title 18, USC, Section 3290, by simply fleeing to avoid giving testimony. Whether or not a person becomes a fugitive from justice from the Federal offense of fleeing to avoid giving testimony becomes a factual question. If the facts show that subsequent to the flight to avoid giving testimony, the witness does in fact become a fugitive from justice, the statute of limitations is tolled.

EFFECTIVE: 02/08/80

88-5 RETURN OF FUGITIVES TO STATE JURISDICTION

EFFECTIVE: 02/08/80

88-5.1 Federal Prosecution

Although a Federal penalty is provided for a violation of this act, its primary purpose is to aid the states in the return of their fugitives for trial or reconfinement. Therefore, Federal prosecution is not intended and will only occur in rare instances upon the formal approval in writing by the Attorney General or an Assistant Attorney General.

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EFFECTIVE: 02/08/80

88-5.2 Extradition is the State's Responsibility

(1) It is not the purpose of this act to supersede state rendition procedures when interstate rendition can be accomplished without the assistance of the federal government. The federal government cannot assume the obligation of returning, through its removal machinery, all these fugitives despite the fact that such persons technically come within the terms of the Fugitive Felon Act. This should be made clear to the state authorities at the time they request assistance.

(2) As an aid to the wanting state authorities, the apprehending office should interview the fugitive regarding the local offense and verbally determine his/her intention regarding waiving state extradition proceedings. The wanting state authorities should be immediately notified of the fugitive's arrest, place of incarceration, admissions, and intention regarding extradition by the office of origin. The office of origin should specifically point out to them that the fugitive is not bound by his/her verbal intent to waive extradition and can at any time before removal demand and receive an extradition hearing.

(3) Unless there are unusual circumstances present in the particular case, the apprehending office should transfer the custody of the fugitive to appropriate state or local authorities without unnecessary delay, and should request the office of origin to notify the United States Attorney's office to promptly move for the dismissal of the complaint. When this procedure is followed, it is not necessary to take the fugitive before a magistrate judge for an initial appearance pursuant to Fed. R. Crim. P. 5(a). (See MIOG, Part II, 2-7.1 and Legal Handbook for Special Agents, 3-5.) (The Department of Justice Criminal Division has advised FBIHQ that it is not necessary to wait until the UFAP warrant has actually been dismissed before releasing the subject to state or local authorities, but it is important that efficient procedures be implemented and followed to make sure that UFAP warrants are promptly dismissed after notification of an arrest is given.) (See MIOG, Part II, 11-1.4.)

(4) Should the wanting state authorities be unwilling to institute extradition proceedings after a subject's apprehension, the USA should be notified in order for him/her to cause dismissal of the federal process.

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| (5) | It is recognized that there will be instances where the state funds for the extradition of fugitives are exhausted, and possibly other situations will arise where it will be recognized as impossible for the state to effect extradition, but in all instances the state authorities should be given an opportunity to return the fugitive by regular rendition.

| (6) | In those instances where state rendition procedure has been attempted and has failed to secure the return of the fugitive, state authorities may request the USA to institute action under the Fugitive Felon Act. The USA must first obtain the authorization of the Department before attempting said action.

EFFECTIVE: 05/10/96

88-5.3 Dismissal of Federal Process

After the fugitive's apprehension and his/her extradition by the wanting state authorities for prosecution on the state offense or reconfinement, the Federal process should be dismissed and the case closed.

EFFECTIVE: 03/11/83

88-6 UNKNOWN SUBJECT CASES

Do not accept a case for investigation where the subject has not been properly identified by state authorities.

EFFECTIVE: 03/11/83

| 88-7 | PARENT-CHILD ABDUCTION MATTERS

EFFECTIVE: 03/11/83

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88-7.1 Policy

(1) The federal Kidnapping Statute specifically precludes from investigation the kidnapping of a minor child by the parent, except in cases where the abducting parent removes or retains the child outside the United States. Cases involving parental removal or retention of the child outside the United States should be investigated under the Kidnapping character as a violation of Title 18, USC, Section 1204, the International Parental Kidnaping Crime Act of 1993. (See MIOG, Part I, Section 7-4.7.)

(2) Parental abductions which do not involve an extraterritorial removal/retention of a child and are interstate in nature are specifically precluded from investigation under the Kidnapping Statutes. However, fugitive investigations in these matters may be instituted under the Unlawful Flight Statute providing the usual unlawful flight requirements that a local or state felony warrant has been issued, local authorities have requested Bureau assistance and agree to extradite when fugitive is located and probable cause is shown to indicate the fugitive has fled the state to avoid prosecution are met. In this regard, cases where the child was legally removed from the state and the warrant subsequently issued when the fugitive parent failed to return the child should be brought to the attention of the USA's Office at the time authorization to file the federal complaint is sought. This should be done so that the USA's Office will be aware that the case should be closely scrutinized to ensure that the "moves or travels in interstate or foreign commerce" provision of the Unlawful Flight Statute has been met in conjunction with the state statute under which the fugitive parent is charged.

EFFECTIVE: 03/20/95

88-7.2 Fugitive Priorities

Fugitive priorities in UFAP cases involving parent-child abduction will be assigned in accordance with the criteria set forth in Part II, 21-2 of this manual.

EFFECTIVE: 08/19/85

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88-7.3 Deleted

EFFECTIVE: 08/19/85

88-7.4 Disposition of Victim Children Located by the FBI

(1) Local authorities, rather than the FBI, have the responsibility for taking custody of a victim child located in their jurisdiction, and their court system has the authority to ensure that the child is returned to the parent having legal custody.

(2) In order to establish a preplanned formulated procedure for the disposition of victim children located by the FBI in UFAP-Parental Kidnaping cases, each field office should contact logical law enforcement agencies and child welfare departments to determine their policies in taking custody of victim children and their court procedures for returning the victim child to the parent having legal custody.

(3) If the victim child is with the fugitive parent at the time of the arrest, the arresting SAs should take temporary custody of the victim child to ensure his/her welfare and safety. The child, however, should be immediately turned over to the appropriate local law enforcement agency or child welfare department which has the ultimate responsibility for the custody and welfare of the child located in its jurisdiction. The FBI should not return the victim child directly to the parent who was in custody of the child prior to the parental kidnaping, since this is the responsibility of the above agencies and their court system.

(4) If the victim child is not with the fugitive parent at the time of the arrest and is subsequently determined to be at school, with a babysitter, staying with a relative, or other like situations, the arresting SAs should not take temporary custody of said child, since the child's welfare and safety are not in question. In these situations, the FBI should immediately notify the appropriate local law enforcement agency or child welfare department of the child's location in order for said agencies to resolve the issues of taking the victim child into protective custody and ensuring the child's return to the parent having legal custody through appropriate court proceedings.

(5) If the location of the victim child is known prior to the pending arrest of the fugitive parent, the FBI, if possible, should notify the appropriate local law enforcement agency or child welfare department beforehand of the child's location in order that the above issues can be resolved by said agencies and coordinated with the arrest of the fugitive

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parent by the FBI.

(6) In addition to reporting the subject's apprehension to FBIHQ, the office of origin, and known auxiliary offices, the specific disposition of the victim child, if located, should be included in the apprehension teletype. This notification should include the identity, location and telephone number of the local custodial agency and the specific individual handling the matter. The office of origin should ensure that the parent having legal custody of the child at the time of the parental kidnaping is promptly notified in order that proceedings may be instituted by said individual to regain custody of the abducted child.

EFFECTIVE: 08/19/85

88-7.5 Access to Information from the Federal Parent Locator Service (FPLS), UFAP-Parental Kidnaping-Child Abduction Matters

FPLS requires that a certification letter be submitted with each request for information regarding a Parental Kidnaping subject. This letter certifies that:

(1) The request is being made solely to locate an individual in connection with a parental kidnaping or child custody case.

(2) Any information obtained through FPLS will be treated as confidential, will be used solely for the purpose for which it was obtained and will be safeguarded in accordance with the Privacy Act of 1974 (Title 5, USC, Section 552a).

(3) That Federal tax information obtained through the FPLS will not be used or disclosed in violation of Title 26, USC, Section 6103, and Title 26, USC, Section 7213 (a) (1).

(4) That SAC, Baltimore, or SAC's designee, will be the certifying official for the FBI. Field offices desiring to request information from the FPLS should submit an airtel to the Baltimore Field Office with a lead at Rockville, Maryland, to contact the FPLS. The airtel should set forth the following descriptive data in order that a complete search of all records available can be made by FPLS:

(a) Subject's name

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- (b) Known aliases
- (c) Social Security Number (SSAN), if known
- (d) Branch of military service, if applicable
- (e) Retired military and branch, if applicable
- (f) Whether subject receives any veteran's benefits
- (g) Federal employee, if applicable (past, present

or retired)

- (h) Date of birth
- (i) Place of birth
- (j) Subject's father's full name, if known
- (k) Subject's mother's full name, including maiden

name, if known

(5) In cases where the SSAN is known, the results of this search will be provided to the FBI within 14 days. If the SSAN is unknown, hand searches will be conducted by the Social Security Administration, which may take several months to complete. FPLS will furnish the address and employment data on file at the time the search is made.

(6) Searches can also be conducted on the victim's name, provided that the applicable descriptive data, as set out above, is furnished. These searches are helpful if the victim is eligible to receive either social security benefits or veteran's benefits from a deceased parent. In some cases, the victim may be employed on a part-time basis.

(7) All offices are reminded that requests for information from FPLS can be made in UFAP-Parental Kidnaping cases only. Leads to contact FPLS should not be set out in any other types of investigation.

EFFECTIVE: 08/19/85

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88-8

JUVENILE SUBJECTS

(1) A request for assistance to locate a juvenile under the Unlawful Flight Statute, who flees interstate to avoid prosecution, custody, or confinement, should be accepted or refused for investigation based on whether the individual has been handled locally as an adult or as a juvenile on the state offense in question.

(2) If the individual has been treated as an adult and charged with or convicted of the substantive criminal offense in question, investigation should be instituted under the Unlawful Flight Statute.

(3) If the individual has been handled as a juvenile and charged with juvenile delinquency or adjudged a juvenile delinquent, the Unlawful Flight Statute does not apply and investigation should not be instituted since juvenile proceedings are not considered a criminal offense.

EFFECTIVE: 08/19/85

88-9

STATE PAROLE AND PROBATION VIOLATORS

(1) Requests for assistance to locate state parole and probation violators who, after conviction for a crime covered by the Unlawful Flight Statute, are placed on parole or probation for said crime and flee interstate, fall within the provisions of the Unlawful Flight Statute.

(2) Local authorities should be advised to submit a formal order revoking the subject's parole or probation, together with a communication to the USA making a formal request for assistance.

(3) These matters, if orally requested, should be promptly presented to the USA and investigation should not be held in abeyance pending receipt by the USA of the above formal written request.

EFFECTIVE: 08/19/85

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88-10 INDIVIDUALS FREE ON STATE BOND

(1) Requests for assistance to locate individuals who flee interstate after being released on local bond to await court action on a charge covered by the Unlawful Flight Statute fall within the provisions of this act and should be promptly presented to the USA.

(2) If USA declines to authorize a complaint for the issuance of an Unlawful Flight warrant based on the grounds that there has not been an actual forfeiture of bond in the case, promptly furnish the full details to FBIHQ by cover airtel enclosing an original and four copies of an LHM for referral to the Department for a final determination.

EFFECTIVE: 08/19/85

88-11 VERIFYING STATE PROCESS AND INTENT TO EXTRADITE AND PROSECUTE OR RECONFIN

The status of the warrant issued by the state authorities for the subject's arrest and their continued intention to extradite and prosecute or reconfine the subject upon his/her apprehension must be confirmed once a year.

EFFECTIVE: 08/19/85

88-12 REPORTING PROCEDURES (See MIOG, Part I, 25-10, 76-1.8, 76-2.9, 76-3.13, 115-7 & Part II, 21-29.)

(1) Upon initiating an unlawful interstate flight fugitive investigation, two copies of an FD-65 should be promptly forwarded to FBIHQ, and one copy submitted directly to the Savannah Information Technology Center (SITC), by the office of origin. Upon the fugitive's apprehension or location, the locating office must promptly notify FBIHQ by teletype (at least ROUTINE in precedence), followed by Form FD-515 entry into the Integrated Statistical Reporting and Analysis Application (ISRAA). The office of origin must ensure that all auxiliary offices are notified by teletype to discontinue.

(2) As a general rule, Prosecutive Reports are not required in unlawful interstate flight cases and, therefore, are not to be submitted to FBIHQ unless a specific request is made for same.

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EFFECTIVE: 10/11/94

88-13 CHARACTER

(1) Section 1073 - UNLAWFUL FLIGHT TO AVOID PROSECUTION (UFAP), UNLAWFUL FLIGHT TO AVOID CUSTODY (UFAC), UNLAWFUL FLIGHT TO AVOID CONFINEMENT (UFAC) - followed by the local substantive offense; or UNLAWFUL FLIGHT TO AVOID GIVING TESTIMONY (UFAT) - followed by the local substantive crime charged in the criminal proceedings.

(2) Section 1074 - UNLAWFUL FLIGHT TO AVOID PROSECUTION (UFAP), UNLAWFUL FLIGHT TO AVOID CUSTODY (UFAC), UNLAWFUL FLIGHT TO AVOID CONFINEMENT (UFAC), UNLAWFUL FLIGHT TO AVOID GIVING TESTIMONY (UFAT) - followed by DAMAGING PROPERTY.

EFFECTIVE: 08/19/85

||88-14 CHILD SUPPORT RECOVERY ACT OF 1992

EFFECTIVE: 11/29/93

| 88-14.1 Statute
| Title 18, USC, Section 228

EFFECTIVE: 11/29/93

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88-14.2 Background

The Child Support Recovery Act of 1992 (CSRA), Public Law No. 102-521, makes the willful failure to pay a past due support obligation with respect to a child residing in another state a Federal offense. A first violation of the CSRA is punishable by six months' imprisonment and/or fine. Subsequent violations are punishment by two years' imprisonment and/or fine. The FBI has investigatory jurisdiction.

EFFECTIVE: 11/29/93

88-14.3 Elements of the Offense

The United States must prove that the defendant:

- (1) Having the ability to pay,
 - (2) Did willfully fail to pay,
 - (3) A known past due (child) support obligation,
 - (4) Which has remained unpaid for longer than one year
- OR is an amount greater than \$5,000,
- (5) For a child who resides in another state.

Interstate flight is NOT an element of the offense.

EFFECTIVE: 11/29/93

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88-14.4 Definitions

(1) Past due support obligation

The CSRA defines "past due support obligation" as any amount:

(a) determined under a court order or an order of an administrative process pursuant to the law of a state to be due from a person for the support and maintenance of a child or of a child and the parent with whom the child is living; and

(b) that has remained unpaid for a period longer than one year, or is greater than \$5,000.

(2) Willfulness

(a) According to the legislative history, willfulness has the same meaning as it has for the purposes of Federal criminal law. Willfulness is the knowing and intentional violation of a known legal duty.

With respect to ability to pay, the legislative history states:

"The government must establish beyond a reasonable doubt, that at the time payment was due the (defendant) possessed sufficient funds to enable him to meet his obligation or that the lack of sufficient funds on such date was created by (or was the result of) a voluntary and intentional act without justification in view of all the financial circumstances of the (defendant)."

(b) Willfulness cannot be presumed from nonpayment alone. The Government is required to prove that the defendant, as of the date specified as the date of the offense, willfully failed to pay an outstanding amount.

(c) Criminal culpability is not obviated by partial payment of support obligations because the statute defines past due support obligation as "any amount." However, partial payment may be relevant to inability to pay, which would negate willfulness. The circumstances of any case in which partial payment has been made, including the relationship of the amount of partial payment to the total arrearage and ability to pay the arrearage, should be considered before proceeding.

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EFFECTIVE: 11/29/93

88-14.5 Investigative/Prosecutive Procedures/Policy

(1) On 7/13/93, the Attorney General signed national guidelines outlining the procedures to be followed by Department of Justice personnel in the enforcement of the CSRA. These guidelines make the United States Attorney in each judicial district responsible for determining which cases will be selected for investigation and prosecution. Therefore, the FBI will only investigate violations of the CSRA referred by the U.S. Attorneys Offices.

(2) While complaints and referrals for investigation may come from private lawyers, individual complainants, or state and local agencies, as a matter of policy, the U.S. Attorneys Office will generally only accept referrals from state Title IV-D agencies.

(3) Title IV-D of the Social Security Act, 42 USC Section 651 et seq., requires states to establish programs for the enforcement of child support. The agencies operating these programs are known as IV-D agencies. These agencies must pursue child support on behalf of individuals who are receiving public assistance as well as at the request of individuals who are not. In addition, there may be other qualified agencies involved with child support. Ordinarily an individual complainant should be encouraged to work with a IV-D agency or other appropriate agency to pursue other available remedies before action is taken by Federal prosecutors.

(4) Because of the variation among state laws, DOJ policy encourages U.S. Attorneys to coordinate with IV-D officials or their designees and other appropriate officials on local and state levels to establish referral procedures and may wish to establish local committees to develop local guidelines. FBI personnel are authorized to serve on these committees.

EFFECTIVE: 11/29/93

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88-14.6 Referral Package

U.S. Attorneys will require a referral package in every case. Each referral package will include all background information, copies of court records and orders, and ability-to-pay information. As a general rule, cases will be accepted by the U.S. Attorneys Office only if they make clear that all reasonably available remedies have been exhausted. Among such cases, priority should be given to cases where the following is established:

(1) a pattern of flight from state to state to avoid payment or flight after service of process for contempt or contempt hearing; or

(2) a pattern of deception to avoid payment such as changing employment, concealing assets or location, or using false social security numbers; or

(3) failure to make support payments after being held in contempt; or

(4) when the failure to make child support payments has a nexus to other potential Federal charges, such as bankruptcy fraud (i.e., concealing assets), bank fraud (i.e., false statements to a bank), Federal income tax charges (i.e., false statement or tax evasion) or related criminal conduct.

EFFECTIVE: 11/29/93

88-14.7 Notice to Target and Charging

(1) If, after reviewing all pertinent documents, further action is believed to be warranted, the following steps will be taken by the U.S. Attorneys Office prior to filing charges:

(a) Before referring any case involving the CSRA to the FBI, a letter will be sent to the nonpaying parent advising them of the CSRA and that they appear to be in violation of it and requesting payment of the arrearage within a specified period (30 days). If payment is not made, the matter will be referred to the FBI.

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(b) After the FBI completes the investigation and prior to the filing of charges, a second letter will be sent by the U.S. Attorney advising the target that charges will be filed unless satisfactory payment is made within a specified period of time (30 days).

(c) If satisfactory payment is still not forthcoming and no adequate explanation for nonpayment has been advanced, U.S. Attorneys Offices should file charges against the nonpaying parent.

(2) Since the first offense is a misdemeanor, the U.S. Attorneys Office will use summons to obtain the presence of the defendant in court.

(3) As a matter of policy, except in extraordinary cases, pretrial diversion will not be used to resolve these cases, since the impact of the felonious second offense would be avoided by pretrial diversion of the first offense.

(4) To ensure that criminal process is not used to enforce a civil debt, once charges are filed, a case should not be routinely dismissed merely because an offender makes payment.

EFFECTIVE: 11/29/93

88-14.8 Character and Alpha Classification

(1) CSRA matters will be worked as 88E classifications. The CSRA is not a fugitive-related investigation but is a substantive FBI investigation predicated on a violation of Title 18, USC, Section 228, Failure to Pay Legal Child Support Obligations.

(2) These matters should be entered in FOIMS as CSRA MATTERS and include "CSRA MATTERS" in the caption as follows:

JOHN DOE;
CSRA MATTERS;
OO: (Office of Origin)

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SECTION 89.

ASSAULTING, KILLING OR ATTEMPTING TO KILL
A FEDERAL OFFICER; CONGRESSIONAL, CABINET
AND SUPREME COURT ASSASSINATION, KIDNAPING,
AND ASSAULT; CONSPIRACY TO IMPEDE OR INJURE
AN OFFICER; CRIMES AGAINST FAMILY MEMBERS

89-1

BREAKDOWN OF THE 89 CLASSIFICATION (See MIOG, Part I,
267-4(7).)

The 89 classification is made up of four separate and distinct violations which are as follows: (1) Assaulting, Killing or Attempting to Kill a Federal Officer (AFO/KFO); (2) Congressional, Cabinet, and Supreme Court Assassination, Kidnaping, and Assault; (CCSCAKA); (3) Conspiracy to Impede or Injure an Officer (CIO); and (4) Crimes Against Family Members (CAFM). For purposes of clarity and reference, this section will set forth these violations individually in a four-part format.

NOTE: Upon receipt of information sufficient to initiate an investigation under the Assaulting, Killing or Attempting to Kill a Federal Officer classification, and when the violation has occurred on Indian Lands, a new Crime on Indian Reservation (198G classification) case should be promptly opened. See Section 198-1.5 (7) for complete details.

EFFECTIVE: 11/23/94

89-2

ASSAULTING, KILLING OR ATTEMPTING TO KILL A FEDERAL
OFFICER

EFFECTIVE: 02/25/91

89-2.1 Deleted

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EFFECTIVE: 11/23/94

89-2.2 Statutes and Penalties (See MIOG, Part I, 44-1.1(10),
89-3.2(2), 89-3.6(2), 175-2(2).)

Assaulting, Killing or Attempting to Kill a Federal
Officer is covered by seven statutes which are set forth as follows:

(1) Assaulting, Resisting or Impeding Certain Officers or
Employees, Title 18, USC, Section 111.

"(a) In general --
Whoever forcibly assaults, resists, opposes, impedes,
intimidates, or interferes with any person designated in Section 1114
of this Title while engaged in or on account of the performance of his
official duties, or forcibly assaults or intimidates any person who
formerly served as a person designated in Section 1114 on account of
the performance of official duties during such person's term of
service, shall be fined under this title or imprisoned not more than
three years, or both."

"(b) Enhanced penalty -- Whoever, in the commission
of any such acts, described in subsection (a), uses a deadly or
dangerous weapon, shall be fined under this title or imprisoned not
more than ten years, or both."

(2) Protection of Officers and Employees of the United
States, Title 18, USC, Section 1114.

"Whoever kills or attempts to kill any judge of the United
States,

any United States Attorney,
any Assistant United States Attorney, or
any United States marshal or deputy marshal or person
employed to assist such marshal or deputy marshal,
any officer or employee of the Federal Bureau of
Investigation of the Department of Justice,
any officer or employee of the Postal Service,
any officer or employee of the Secret Service, or of the
Drug Enforcement Administration,
any officer or member of the U.S. Capitol Police,
any member of the Coast Guard,
any employee of the Coast Guard assigned to perform

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investigative, inspection or law enforcement functions,
Administration assigned to perform investigative, inspection, or law enforcement functions,
any officer or employee of the Federal Railroad
correctional institution,
any officer or employee of any United States penal or
any officer, employee or agent of the customs, or of the
internal revenue or any person assisting him in the execution of his
duties,
any immigration officer,
any officer or employee of the Department of Agriculture
or of the Department of the Interior designated by the Secretary of
Agriculture or the Secretary of the Interior to enforce any Act of
Congress for the protection, preservation, or restoration of game and
other wild birds and animals,
any employee of the Department of Agriculture designated
by the Secretary of Agriculture to carry out any law or regulation, or
to perform any function in connection with any Federal or State
program or any program of Puerto Rico, Guam, the Virgin Islands, or any
other commonwealth, territory, or possession of the United States, or
the District of Columbia, for the control or eradication or prevention
of the introduction or dissemination of animal diseases,
any officer or employee of the National Park Service,
any civilian official or employee of the Army Corps of
Engineers assigned to perform investigations, inspections, law or
regulatory enforcement functions, or field-level real estate
functions,
any officer or employee of, or assigned to duty in, the
field service of the Bureau of Land Management, or
any officer or employee of the Indian Field Service of the
United States, or
any officer or employee of the National Aeronautics and
Space Administration directed to guard and protect property of the
United States under the administration and control of the National
Aeronautics and Space Administration,
any security officer of the Department of State or the
Foreign Service, or
any officer or employee of the Department of
Education; the Department of Health and Human Services, the Consumer
Product Safety Commission, Interstate Commerce Commission, the
Department of Commerce, or of the Department of Labor, or of the
Department of the Interior, or of the Department of Agriculture
assigned to perform investigative, inspection or law enforcement
functions, or
any officer or employee of the Federal Communications
Commission performing investigative, inspection or law enforcement

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functions, or

any officer or employee of the Department of Veterans Affairs assigned to perform investigative or law enforcement functions, while engaged in the performance of his official duties, or on account of the performance of his official duties, or

any United States probation or pretrial service officer,

or

any United States magistrate, or any officer or employee of any department or agency within the intelligence community (as defined in Section 3.4(F) of Executive Order 12333, December 8, 1981, or successor orders) not already covered under the terms of this section, or

any attorney, liquidator, examiner, claim agent, or other employee of the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Housing Finance Board, the Resolution Trust Corporation, the Board of Governors of the Federal Reserve System, any Federal Reserve bank, or the National Credit Union Administration, or any other officer, agency or employee of the United States designated for coverage under this section in regulations issued by the Attorney General engaged in or on account of the performance of his official duties or

any officer or employee of the United States or any agency thereof designated to collect or compromise a Federal claim in accordance with Sections 3711 and 3716 - 3718 of Title 31 or other statutory authority shall be punished as provided under Sections 1111 and 1112 of this title, except that any such person who is found guilty of attempted murder shall be imprisoned for not more than twenty years."

(3) | THREATS TO ASSAULT, KIDNAP, OR MURDER A UNITED STATES OFFICIAL, A UNITED STATES JUDGE, A FEDERAL LAW ENFORCEMENT OFFICER, OR AN OFFICIAL WHOSE KILLING WOULD BE A CRIME UNDER TITLE 18, USC, SECTION 1114 ARE COVERED IN TITLE 18, USC, SECTION 115 (B).

On 10/12/84, Title 18, USC, was amended by creating Section 115. This statute makes it a Federal offense to impede, intimidate, interfere with, or retaliate against certain Federal officials by assaulting, kidnaping, or murdering, or threatening to assault, kidnap, or murder a member of his/her family. See 89-5 concerning "Crime Against Family Members of Federal Officials (CAFM)." On 11/18/88, Public Law 100-690 amended Title 18, USC, Section 115 by adding a provision which brought the Federal officials themselves within the purview of the statute. This amendment made it a Federal crime to threaten to assault, kidnap, or murder a United States official, a United States judge, a Federal law enforcement officer or an official whose killing would be a crime under Title 18, USC,

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Section 1114.

Excerpts of this statute concerning threats against Federal officials by threatening or injuring a family member, Title 18, USC, Section 1115, are as follows:

"(a) (1) Whoever -

"... (B) threatens to assault, kidnap, or murder a United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under such section (Title 18, USC, Section 1114),

with intent to impede, intimidate, or interfere with such official, judge or law enforcement officer while engaged in the performance of official duties, or with intent to retaliate against such official, judge, or law enforcement officer on account of the performance of official duties shall be punished as provided in subsection (b)."

"... (b) (4) A threat made in violation of this section shall be punished by a fine of not more than \$5,000 or imprisonment for a term of not more than five years, or both, except that imprisonment for a threatened assault shall not exceed three years."

"(c) As used in this section, the term --

"(1) 'Federal law enforcement officer' means any officer, agent, or employee of the United States authorized by law or by a Government agency to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of Federal criminal law;

"(3) 'United States judge' means any judicial officer of the United States, and includes a justice of the Supreme Court and a United States magistrate; and

"(4) 'United States official' means the President, President-elect, Vice President, Vice-President-elect, a Member of Congress, a member of the executive branch who is the head of a department listed in Title 5, USC, Section 101, or the Director of the Central Intelligence Agency."

(4) Conspiracy to murder, Title 18, USC, Section 1117.
"If two or more persons conspire to violate section 1111, 1114, or 1116 of this title, and one or more of such persons do any overt act

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to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life."

(5) Murder, Title 18, USC, Section 1111.

"(a) Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, escape, murder, kidnaping, treason, espionage, sabotage, aggravated sexual abuse or sexual abuse, burglary, or robbery or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree.

"Any other murder is murder in the second degree.

"(b) Within the special maritime and territorial jurisdiction of the United States,

"Whoever is guilty of murder in the first degree, shall suffer death unless the jury qualifies its verdict by adding thereto 'without capital punishment,' in which event he shall be sentenced to imprisonment for life;

"Whoever is guilty of murder in the second degree, shall be imprisoned for any term of years or for life."

It should be noted that when enacted, Section 1111 provided for the death penalty under certain circumstances. However, in a 1972 Supreme Court decision, *Furman v. Georgia*, it was held that the imposition of the death sentence constitutes cruel and unusual punishment unless strict statutory standards are provided for its application. Since Section 1111 is discretionary and does not provide the above standards, its death penalty provisions are invalid.

(6) Manslaughter, Title 18, USC, Section 1112.

"(a) Manslaughter is the unlawful killing of a human being without malice. It is of two kinds:

"Voluntary -- Upon a sudden quarrel or heat of passion.

"Involuntary -- In the commission of an unlawful act not amounting to a felony, or in the commission in an unlawful manner, or without due caution and circumspection, of a lawful act which might

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produce death.

"(b) Within the special maritime and territorial jurisdiction of the United States,

"Whoever is guilty of voluntary manslaughter, shall be imprisoned not more than ten years;

"Whoever is guilty of involuntary manslaughter, shall be fined not more than \$1,000 or imprisoned not more than three years, or both."

(7) Assault or Resistance, Title 18, USC, Section 2231.

"(a) Whoever forcibly assaults, resists, opposes, prevents, impedes, intimidates, or interferes with any person authorized to serve or execute search warrants or to make searches and seizures while engaged in the performance of his duties with regard thereto or on account of the performance of such duties, shall be fined not more than \$5,000 or imprisoned not more than three years, or both; and --

"(b) Whoever, in committing any act in violation of this section, uses any deadly or dangerous weapon, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both."

(8) The kidnaping of a federal officer named in Title 18, USC, Section 1114 or designated by regulations issued by the Attorney General for coverage under Title 18, USC, Section 1114 is a violation of Title 18, USC, Section 1201(a)(5). See MIOG, Part I, Section 7-1.1 for the investigation of kidnaping matters.

(9) Protected Officers and Employees of the United States designated by the U.S. Attorney General on 5/18/94, as set forth in the Federal Register, Vol. 59, No. 95.

Part 64, of Title 28, Code of Federal Regulations (CFR) (AG Order No. 1874-94), as set forth in the Federal Register, Vol. 59, No. 95, dated 5/18/94, designates categories of Federal officers and employees who, in addition to those already designated by statute, will be within the protective coverage of Title 18, USC, Section 1114, which prohibits the killing or attempted killing of such designated officers and employees. The categories of Federal officers and employees covered by Section 1114 are also protected, while they are engaged in or account of the performance of their official duties, from a conspiracy to kill, Title 18, USC, Section 1117; kidnaping,

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Title 18, USC, Section 1201 (a)(5); forcible assault, intimidation, or interference, Title 18, USC, Section 111; and threat of assault, kidnap or murder with intent to impede, intimidate, or retaliate against such officers or employees, Title 18, USC, Section 115 (a)(1)(B). In addition, the immediate family members of such officers and employees are protected against assault, kidnap, murder, attempt to kidnap or murder, and threat to assault, kidnap, or murder with intent to impede, intimidate, or retaliate against such an officer or employee, Title 18, USC, Section 115 (a)(1)(A). The protective coverage has been extended to those Federal officers and employees whose jobs involve inspection, investigative or law enforcement responsibilities, or whose work involves a substantial degree of physical danger from the public that may not be adequately addressed by available state or local law enforcement resources.

Title 28, CFR, Part 64, Section 64.2 states "The following categories of Federal officers and employees are designated for coverage under Title 18, USC, Section 1114:

- Court; "(a) Judges and special trial judges of the U.S. Tax
- Commission; "(b) Commissioners and employees of the U.S. Parole
- the Community Relations Service of the Department of Justice; "(c) Attorneys of the Department of Justice;
- Prisons; "(d) Resettlement specialists and conciliators of
- Attorney's Office; and employees of the U.S. Attorney's Office "(e) Officers and employees of the Bureau of
- assigned to perform debt collection functions; "(f) Criminal investigators employed by the U.S.
- bankruptcy analysts and other officers and employees of the U.S. "(g) U.S. Trustees and Assistant U.S. Trustees;
- Trustee System who have contact with creditors and debtors, perform "(h) Attorneys and employees assigned to perform or
- audit functions, or perform other investigative or enforcement to assist in performing investigative, inspection or audit functions
- functions in administering the bankruptcy laws; of the Officer of the Inspector General of an "establishment" or a
- to assist in performing investigative, inspection or audit functions "designated Federal entity" as those terms are defined by Sections 11
- of the Officer of the Inspector General of an "establishment" or a and 8E, respectively, of the Inspector General Act of 1978, as
- amended, Title 5, USC, app.3, Sections 11 and 8E, and of the Offices of Inspector General of the U.S. Government Printing Office, the Merit
- of Inspector General of the U.S. Government Printing Office, the Merit Systems Protection Board, and the Selective Service System.
- Systems Protection Board, and the Selective Service System. "(i) Employees of the Department of Agriculture at
- the State, District or County level assigned to perform loan making,

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loan servicing or loan collecting functions;

"(j) Officers and employees of the Bureau of Alcohol, Tobacco, and Firearms assigned to perform or to assist in performing investigative, inspection or law enforcement functions;

"(k) Federal air marshals of the Federal Aviation Administration;

"(l) Employees of the Bureau of Census employed in field work conducting censuses and surveys;

"(m) Employees and members of the U.S. Military services and employees of the Department of Defense who:

"1. are military police officers,

"2. have been assigned to guard and protect property of the United States, or persons under the administration and control of a U.S. military service or the Department of Defense, or

"3. have otherwise been assigned to perform investigative, correction or other law enforcement functions;

"(n) The Director, Deputy Director for Supply Reduction, Deputy Director for Demand Reduction, Associate Director for State and Local Affairs, and Chief of Staff of the Office of National Drug Control Policy;

"(o) Officers and employees of the Department of Energy authorized to carry firearms in the performance of investigative, inspection, protective or law enforcement functions;

"(p) Officers and employees of the U.S. Environmental Protection Agency assigned to perform or to assist in performing investigative, inspection or law enforcement functions;

"(q) Biologists and technicians of the U.S. Fish and Wildlife Service who are participating in sea lamprey control operations;

"(r) Uniformed and nonuniformed special police of the General Services Administration; and officers and employees of the General Services Administration assigned to inspect property in the process of its acquisition by or on behalf of the U.S. Government;

"(s) Special Agents of the Security Office of the U.S. Information Agency;

"(t) Employees of the regional, subregional and resident offices of the National Labor Relations Board assigned to perform investigative and hearing functions or to supervise the performance of such functions; and auditors and Security Specialists of the Division of Administration of the National Labor Relations Board;

"(u) Officers and employees of the U.S. Nuclear Regulatory Commission:

"1. assigned to perform or to assist in performing investigative, inspection or law enforcement functions or

"2. engaged in activities related to the review

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of license applications and license amendments;

"(v) Investigators employed by the U.S. Office of Personnel Management;

"(w) Attorneys, accountants, investigators and other employees of the U.S. Securities and Exchange Commission assigned to perform or to assist in performing investigative, inspection, or other law enforcement functions;

"(x) Employees of the Social Security Administration assigned to Administration field offices, hearing offices and field assessment offices;

"(y) Officers and employees of the Tennessee Valley Authority authorized by the Tennessee Valley Authority Board of Directors to carry firearms in the performance of investigative, inspection, protective or law enforcement functions;

"(z) Officers and employees of the Federal Aviation Administration, the Federal Highway Administration, the National Highway Traffic Safety Administration, the Research and Special Programs Administration and the Saint Lawrence Seaway Development Corporation of the U.S. Department of Transportation who are assigned to perform or assist in performing investigative inspection or law enforcement functions;

"(aa) Federal administrative law judges appointed pursuant to Title 5, USC, Section 3105; and

"(bb) Employees of the Office of Workers' Compensation Programs of the Department of Labor who adjudicate and administer claims under the Federal Employees Compensation Act, the Longshore and Harbor Workers' Compensation Act and its extension, or the Black Lung Benefits Act."

EFFECTIVE: 11/23/94

89-2.3 Elements

(1) That the defendant threatened, assaulted, killed or attempted to kill the Federal officer or employee.

(2) That the Federal officer or employee is protected under Title 18, USC, Section 1114.

(3) That when threatened, assaulted, killed, or the attempt to kill occurred while the protected federal officer or employee was engaged in the performance of his/her official duties or the protected federal officer or employee was threatened, assaulted,

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killed or the attempt to kill was on account of the performance of his/her official duties.

(4) Based on a 3/19/45 Supreme Court Decision, UNITED STATES V. FEOLA, it is not necessary to allege and prove under Title 18, USC, Section 111, that the subject knew the victim was a federal officer or employee at the time of the assault. The Supreme Court held that it need only be established that the subject had the specific intent to commit the assault. However, as a matter of investigative and prosecutive policy, such knowledge, if present, should always be obtained. Prior to this Supreme Court decision, the various U.S. Circuit Courts of Appeals were divided as to whether or not the above knowledge on the part of the subject was an essential element.

(5) In regard to the federal Conspiracy Statute, Title 18, USC, Section 371, the above Supreme Court decision also held that it is not necessary to allege and prove that the subjects knew the victim they conspired to assault was a federal officer or employee.

(6) While the above Supreme Court decision dealt only with assaults of federal officers and employees in connection with Title 18, USC, Section 111, the Department of Justice (DOJ) is of the opinion that this decision would also apply to killings of federal officers and employees covered under Title 18, USC, Section 1114, and conspiracies to kill these individuals.

(7) Title 18, USC, Section 111, does not define the term assault. The DOJ has advised that in the absence of this statutory definition, the courts have followed the following common law definition: An attempt with force or violence to do a corporal injury to another consisting of an act which may cause corporal injury, accompanied by circumstances which denote at the time an intention coupled with the present ability of using actual violence against the person. (See MIOG, Part I, 89-3.5(3), 175-4(5).)

(8) The element of force is required under the provisions of Title 18, USC, Section 111, since it states in part, "Whoever forcibly assaults," In many instances the use of force by the subject will be clearly present and will not present a legal issue. It should be noted that mere verbal threats alone do not constitute force; however, a threat of force uttered with the apparent present ability to execute it, such as the subject displaying a weapon or making a threatening gesture which places the victim in fear of bodily harm, legally constitutes force and a violation of the above statute.

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EFFECTIVE: 11/23/94

89-2.4 Method for Determining if a Federal Officer or Employee is Protected Under the Assaulting a Federal Officer (AFO) and Killing a Federal Officer (KFO) Statutes

(1) Upon receipt of a complaint, immediately review Title 18, USC, Section 1114, to determine if the reported victim is specifically listed and, therefore, protected.

(2) If, after the above review, a question exists as to whether or not the reported victim is protected, promptly contact an appropriate Assistant U.S. Attorney (AUSA) for a legal opinion.

(3) If the AUSA cannot resolve the issue, telephonically contact the Violent Crimes/Fugitive Unit, Violent Crimes and Major Offenders Section, Criminal Investigative Division, FBIHQ, for resolution.

EFFECTIVE: 11/23/94

89-2.5 Renaming of Agencies Covered Under Title 18, U.S. Code, Section 1114

(1) Title 18, USC, Section 1114, identifies the agencies, officers, and employees who are covered under the AFO and KFO Statutes.

(2) Occasionally, an agency identified and protected under Section 1114 will undergo an executive reorganization and be renamed. An example is the Bureau of Narcotics and Dangerous Drugs which became the Drug Enforcement Administration.

(3) Based on court interpretations of Title 5, USC, Section 907(a), dealing with executive reorganizations, it has been held that a successor agency is afforded the same degree of protection under Section 1114 as the agency which it replaces. Section 907(a) continues, in effect, those laws existing prior to the reorganization of an agency. Therefore, the FBI should investigate AFO and KFO

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violations involving the successor agency.

EFFECTIVE: 02/16/89

89-2.6 Distinction Between "Engaged In" Versus "On Account Of"
Performance of Official Duties

(1) The distinction between a protected Government officer who is assaulted, killed or an attempt to kill occurs while "engaged in the performance of his/her official duties" and "on account of the performance of his/her official duties" is as follows:

(a) If a Special Agent is assaulted by a bank robbery fugitive while apprehending him/her, the assault occurred while the Agent was "engaged in the performance of his/her official duties."

(b) If, after being released from prison, the bank robbery subject assaults the above Agent, while either on or off duty, because the Agent had previously arrested him/her, the assault occurred "on account of the performance of his/her official duties."

(2) The above latter distinction is an important factor to be considered if a protected Government officer or employee is assaulted, killed or an attempt to kill occurs while either on or off duty. Consideration should be given to the possibility that the victim was attacked because of past performances of official duties. In such situations, an investigation may be instituted to determine if the attack was so motivated, thus making it a violation of either the AFO or KFO Statutes.

EFFECTIVE: 12/19/86

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89-2.7 Comments and Clarification Regarding Threats to Commit an
Assaulting a Federal Officer or Killing a Federal Officer
Violation (See MIOG, Part I, 89-2.10(7), 89-2.15(4).)

(1) Threats to assault or kill a protected federal officer or employee constitute a federal violation under Title 18, USC, Section 115(a)(1)(B). A requisite element in providing these crimes is "intent." These crimes must be committed with intent to impede, intimidate, interfere with, or retaliate against United States officials, United States judges, federal law enforcement officers, or officers whose killing would be a crime under Title 18, USC, Section 1114, while those individuals are engaged in the performance of their official duties, or on account of the performance of their official duties.

(2) It should be noted that if captioned threats do not constitute an actual AFO violation, they must be further analyzed as follows to determine if they constitute some other federal or local violation upon which investigative or referral action should be taken:

(a) If captioned threats are conveyed by the U.S. mail or interstate telephone call, FBI jurisdiction under the Federal Extortion Statute exists. See Part I, Section 9 of this manual entitled "Extortion" for complete details.

(b) If the threats involve two or more subjects, a violation under the federal Conspiracy Statute, Title 18, USC, Section 371, or the Conspiracy to Impede or Injure an Officer Statute, Title 18, USC, Section 372, may exist. See 89-4 for complete details.

(c) Captioned threats, under the proper circumstances, could constitute an Obstruction of Justice violation. See Part I, Section 72 of this manual entitled "Obstruction of Justice" for complete details.

(d) Captioned threats, if made by telephone call within the District of Columbia or in interstate commerce, may constitute a violation of the Interstate Obscene or Harassing Telephone Calls Statute, Title 47, USC, Section 223. See Part I, Section 178 of this manual entitled "Interstate Obscene or Harassing Telephone Calls" for complete details.

(3) If the office of origin (00) is in doubt whether captioned threats constitute a federal violation under the FBI's jurisdiction, the fact situation should be promptly presented to an appropriate AUSA for a legal opinion regarding this issue and whether

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an investigation or a "preliminary inquiry" should be conducted in accordance with the current Attorney General's Guidelines governing such procedures.

(4) In the absence of FBI jurisdiction, if it is determined that a federal violation under the investigative jurisdiction of another federal agency exists, such as blackmail which is handled by Postal Inspectors, the case should be referred to the appropriate agency for investigation.

(5) In the absence of a federal violation, instant threats should be referred to local authorities to determine if they constitute an offense which will be investigated by them.

(6) Any presentation to an AUSA for a legal opinion or referral to another federal agency or local authority should be set forth in the notification communication to FBIHQ. See 89-2.10 for complete details.

(7) The OO must immediately notify the victim and any agency having protective responsibility for the victim. In cases involving threats against members of the Federal Judiciary, the Chief Judge of the Judicial District also should be notified of the threat. Notification should include whether the FBI or another agency is investigating the threat. All notifications should be set forth in the initial teletype to FBIHQ.

(8) A confirmation letter to the victim must be sent within five working days after the FBI is made aware of the threat. A copy of the confirmation letter must be directed to any agency having protective responsibility for the victim and, if appropriate, to the Chief Judge of the Judicial District.

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89-2.8 Threat Assessments

(1) In cases involving AFO or KFO threats received by a victim, the FBI may be requested by the agency responsible for protecting the victim for a "threat assessment" of the threats received.

(2) Based on past experience, the above situation will most likely occur when a Federal judge has received an AFO or KFO threat and the local U.S. Marshals Service (USMS) Office is providing the victims with protection. The USMS Office may request the local FBI Office or FBIHQ, through USMS Headquarters, Washington, D.C., for a "threat assessment" to assist them in determining if the protection detail should be continued.

(3) It must be clearly understood that the FBI does not provide "threat assessments" per se. The FBI will not, under any circumstances, render an opinion as to whether the protection should be continued or terminated.

(4) It is necessary, however, when a field office receives such a legitimate request, that it disseminate all known facts regarding the AFO or KFO threats and the results of any pertinent investigation. This dissemination will enable the agency providing the protection to formulate its own "threat assessment" and opinion whether the protection should be continued or terminated. If the threat was developed through an FBI informant, his/her identity must be protected; however, a statement regarding his/her reliability should be provided. In threats developed from other sources known to the FBI, dissemination should include a statement as to their reliability as far as can be determined.

(5) In order to prevent a misinterpretation of the facts, the above dissemination must be made by letterhead memorandum (LHM). In addition, FBIHQ must be promptly notified of the request and the local dissemination by submission of a cover airtel to FBIHQ enclosing four (4) copies of the disseminated LHM.

(6) Requests or "threat assessments" occasionally originate on a headquarters level. In such instances, FBIHQ will promptly notify the appropriate office and request an LHM setting forth details of the threat and the results of any investigation conducted. The information disseminated to the requesting agency will enable it to formulate its own "threat assessment."

(7) Field offices should deal only with local

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representatives of agencies requesting information in connection with threat assessments. Inquiries from the headquarters of those agencies should be referred to FBIHQ.

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89-2.9 FBI Investigative Jurisdiction

(1) The AFO and KFO statutes (Title 18, USC, Sections 111, 115, 1111, 1112, 1114, 1117 and 2231) do not specifically designate the FBI as the responsible investigative agency. However, the DOJ has historically ruled that the FBI has investigative jurisdiction over all federal criminal statutes when no agency is specifically designated to conduct the investigation.

(2) Following passage of the original AFO and KFO Statutes on May 18, 1934, and in accord with the above DOJ ruling, the FBI has investigated, and continues to investigate, all assaults and killings of and attempts to kill federal officers and employees protected under Title 18, USC, Section 1114, with the following exceptions:

(a) Pursuant to a 10/2/56 agreement, the Department of the Treasury has investigative jurisdiction over assaults and killings of and attempts to kill its personnel. See 89-2.13 for complete details.

(b) Pursuant to a 3/5/75 agreement, the Postal Inspectors have investigative jurisdiction over assaults and killings of and attempts to kill postal employees under certain designated conditions. See 89-2.14 for complete details.

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89-2.10 Notification to FBIHQ in Killing a Federal Officer and
Assaulting a Federal Officer Cases (See MIOG, Part I,
89-2.7(6), 89-2.11(10).)

(1) FBIHQ should be promptly notified of all new KFO cases by telephone and confirmed by immediate teletype. In addition, FBIHQ should be advised of all subsequent major investigative developments by summary teletype. The teletype reporting a subject's apprehension should include a statement as to whether or not the subject admitted the violation.

(2) In all AFO cases, depending on the urgency of the situation, FBIHQ should be promptly notified by telephone or teletype. Telephone notification to FBIHQ must be confirmed by immediate teletype. In addition, FBIHQ should be advised of all subsequent major investigative developments by summary teletype.

(3) In cases involving a threat to commit an AFO or KFO violation, depending on the urgency of this situation, FBIHQ should be notified by telephone, teletype or airtel. Telephone notification to FBIHQ must be promptly confirmed by teletype. If such cases involve FBI personnel, United States Attorneys or Assistant United States Attorneys as potential victims, notification should be made by telephone or teletype. In cases involving members of the Federal Judiciary, including U.S. Magistrates, refer to 89-2.10(4).

(4) During regular working hours, FBIHQ, Criminal Investigative Division, Violent Crimes/Fugitive Unit, must be immediately notified by telephone of all reports of threats to commit an AFO or KFO violation against any member of the Federal Judiciary, including U.S. Magistrates. If report of a threat occurs outside of regular working hours, telephone the FBIHQ Duty Agent. This telephonic notification should be followed by an "Immediate" teletype to FBIHQ. (See (3) & MIOG, Part I, 89-2.15(3).)

(5) In any AFO or KFO investigation, FBIHQ must be advised by airtel of its closing. This airtel should state the basis for closing. The airtel should also indicate the victim, as well as any agency having protective responsibility for the victim and any Chief Federal Judge (if victim was a member of the Federal Judiciary), was notified that the investigation has been closed.

(6) In regard to AFO or KFO cases involving FBI personnel and threatened or actual AFO or KFO cases involving federal judges, USAs and AUSAs, see 89-2.15 for further details.

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(7) In cases involving a threat to commit an AFO or KFO violation, the teletype or airtel notification to FBIHQ must set forth the complete details of the threat and its means of conveyance. See 89-2.7 for further requirements.

EFFECTIVE: 11/23/94

89-2.11 Investigative Procedures

(1) In KFO violations, signed statements, if possible, should be obtained from all eyewitnesses to the offense and other witnesses who provide any positive information concerning the case. Interviews of individuals who were in the immediate vicinity of the offense but claim not to have seen or heard anything should be recorded in an FD-302 in the event they are later contacted by defense counsel for opposing testimony.

(2) In KFO violations, it is essential to establish that the cause of death occurred by reason of the subject's actions. An autopsy must be performed by a physician who will testify as to the cause of death. Copies of the autopsy report, along with the interview of the performing physician, must be included in the prosecutive report.

(3) In AFO and KFO violations, every effort must be made to recover any weapon used for examination purposes. In addition, the weapon should be traced to establish it was in the subject's possession at the time of the offense.

(4) In AFO and KFO violations, evidence of a prior crime committed by the subject, which may have been the basis for the assault such as his/her attempting to avoid apprehension, may be introduced as evidence to establish a motive for having committed the AFO or KFO violation.

(5) In AFO and KFO violations, a thorough past history of the subject should be developed as this information may be used as rebuttal evidence against him/her during his/her trial.

(6) In AFO cases, the victim should be examined by a physician in order to establish and document the extent of injuries. A copy of the medical report, along with the interview of the examining physician, should be included in the prosecutive report.

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(7) If AFO or KFO threats have been received by the victim and investigation has been or will be instituted by the FBI under the policy set forth in 89-2.7. [REDACTED]

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(8) [REDACTED]

(9) [Deleted]

(10) When FBI personnel are victims in actual or threatened AFO or KFO cases, FBIHQ should be notified as set forth in 89-2.10.

(11) AFO and KFO cases involving FBI personnel must receive immediate and aggressive investigation. When the subject is identified, the case should be promptly presented to the USA's Office in an effort to obtain federal process. If prosecution is declined, FBIHQ should be advised by teletype setting forth the complete details. If appropriate, FBIHQ will discuss the case with the DOJ for a final determination. It is noted that an absence of actual physical injury should not bar federal prosecution.

(12) In the event an AFO or KFO matter arises from a substantive investigation, a separate AFO or KFO case will be opened. A copy of the opening communication should be directed to the substantive unit at FBIHQ.

EFFECTIVE: 03/21/95

89-2.12 [Deleted]

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EFFECTIVE: 11/23/94

| 89-2.12.1 | Deleted |

EFFECTIVE: 11/23/94

89-2.13 Department of the Treasury Personnel

(1) For purposes of this section, the Department of the Treasury is comprised of the United States Secret Service (USSS); Internal Revenue Service; United States Customs Service; and the Bureau of Alcohol, Tobacco, and Firearms.

(2) When the AFO and KFO Statutes were initially enacted into law, the FBI investigated those offenses involving Department of the Treasury officers and employees.

(3) Based on a subsequent desire of the Department of the Treasury to investigate such offenses involving its personnel, a jurisdictional agreement was reached between the Department of the Treasury, FBI, and DOJ.

(4) On 10/2/56, the Attorney General (AG) issued a memorandum ruling that assaults and killings of Department of the Treasury personnel were to be investigated by the Department of the Treasury rather than the FBI. This memorandum also stated that if any case develops wherein the absence of an FBI investigation of it is materially interfering with law enforcement, the AG should be advised.

(5) A Department of the Treasury agency may request an FBI field office to investigate an AFO or KFO matter as an exception to the AG's 10/2/56 ruling. The headquarters of the requesting agency should forward such requests to FBIHQ by the most practical, expeditious means so that FBI investigation, if approved, is not delayed. The field office receiving a request of this type should promptly furnish pertinent details to the Violent Crimes Unit, Criminal Investigative Division, FBIHQ, so appropriate Bureau officials may be informed of the incident and the request.

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EFFECTIVE: 02/16/89

89-2.14 U.S. Postal Service (USPS) Employees

(1) Title 18, USC, Sections 111 and 1114, provide protection to officers and employees of the USPS from assaults, killings and attempts to kill.

(2) On 3/5/74, DOJ issued the following policy directive regarding AFO and KFO matters involving USPS employees:

"Unless otherwise directed by the Department, investigation of assaults on and homicides of personnel of the USPS is for the FBI if incidental to another violation under the primary investigative jurisdiction of the FBI or if the attack is by a nonemployee against a Postal Inspector and for the USPS in all other instances."

(3) For purposes of clarification, based on the above, current FBI and USPS jurisdiction is as follows:

(a) The FBI will investigate assaults and killings of and attempts to kill Postal Inspectors by nonpostal employees.

(b) The USPS will investigate assaults and killings of and attempts to kill Postal Inspectors by postal employees.

(c) The USPS will investigate all other assaults, killings of and attempts to kill USPS officers and employees except in cases where the attack is incidental to another violation under the primary investigative jurisdiction of the FBI or if otherwise directed by DOJ.

(4) In applying the above guidelines, the term "employee" includes all individuals employed by the USPS, regardless of title, other than persons who provide services for the USPS on a fee, contract, job, or piecework basis.

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89-2.15 Assaulting, Killing, Attempting to Kill, or Threats Made
 Against Federal Judges, United States Attorneys and
 Assistant United States Attorneys | (See MIOG, Part I,
 89-2.10(6).) |

(1) It should be noted that while Title 18, USC, Section 1114, lists "any judge of the United States" as being protected from assaults, killings and attempts to kill, U.S. Supreme Court Justices are actually protected under the Congressional, Cabinet, and Supreme Court Assassination, Kidnaping, and Assault Statute, Title 18, USC, Section 351. See 89-3 for complete details. As a consequence, assassinations, kidnapings, attempts to kill, and assaults of U.S. Supreme Court Justices are investigated by the FBI under Section 351, and assaults and killings of or attempts to kill all other federal judges are investigated by the FBI under Sections 111 and 1114, respectively.

(2) Although there is no direct case law in point, DOJ has opined that District of Columbia Superior Court Judges and Judges of Territorial Courts of the Virgin Islands fall within the "any judge of the United States" provision of Section 1114. DOJ, therefore, recommends that an AFO or KFO investigation may be instituted by the FBI if these judges are assaulted, killed or an attempt to kill occurs while engaged in or on account of the performance of their official duties. However, DOJ is also of the opinion that if investigation is instituted by the FBI, prosecution in both instances should be handled by local authorities, who would also have jurisdiction under their laws, unless compelling reasons exist for federal prosecution under Title 18, USC, Sections 111 or 1114.

(3) In regard to actual assaults and killings of or attempts to kill captioned individuals within the elements of Title 18, USC, Sections 111 and 1114, a violation is clearly present and an investigation should be immediately instituted. FBIHQ should be promptly notified of any such violations by telephone and/or teletype, and the notification teletype to FBIHQ should set forth the investigation already conducted and specific leads reflecting the investigation to be conducted. (See 89-2.10(4) for procedures concerning members of the Federal Judiciary.) In addition, FBIHQ should also be advised of all subsequent major investigative developments by a summary teletype.

(4) In regard to threats to assault or kill captioned individuals, Title 18, USC, Section 115 (a)(1)(B) makes it a federal crime to threaten to assault, kidnap, or murder United States officials (whose killing would be a crime under Title 18, USC, Section

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1114) and United States judges. A United States judge is defined as "...any judicial officer of the United States, and includes a justice of the Supreme Court and a United States magistrate...." Title 18, USC, Section 1114 lists both U.S. Attorneys and Assistant U.S. Attorneys as protected officers or employees. Therefore, threats against United States judges, U.S. Attorneys, and Assistant U.S. Attorneys are investigated by the FBI under Title 18, USC, Section 115. See 89-2.7 for instructions regarding proper procedures.

(5) Although AFO and KFO violations involving captioned individuals fall within the FBI's investigative jurisdiction, the FBI does not have legal authority to provide physical protection for those individuals to prevent threatened assaults, killings and attempts to kill. The security and physical protection of captioned individuals are the statutory responsibility of the USMS which is vested under Title 28, USC, Section 569.

(6) Based on the above protective responsibilities of the USMS, an agreement between FBIHQ and the USMS Headquarters was established wherein FBIHQ agreed to promptly notify the USMS both locally and on a headquarters level whenever a threat to assault or kill captioned individuals is received by the FBI, or when such individuals are actually assaulted or killed.

(7) When an investigation is instituted involving one of captioned individuals as a victim or potential victim, close liaison should be established locally with the USMS office responsible for his/her physical protection.

(8) Dissemination of pertinent information to USSS on a local and headquarters level must be made by the FBI whenever an individual threatens, assaults, kills or attempts to kill captioned individuals. See 89-2.19 for additional information.

(9) In conjunction with (6) and (8) above, the office receiving instant threats must promptly notify the nearest office of the USSS and the USMS office covering the victim's location. The notification teletype to FBIHQ should specifically set forth the details of the notification made locally by the FBI and the USMS and the USSS.

(10) Based on an agreement between FBIHQ and the DOJ, FBIHQ has agreed to promptly notify the Deputy Assistant Attorney General, Criminal Division, and the Assistant Director for Legal Services, Executive Office for United States Attorneys, DOJ, Washington, D.C., whenever a threat to assault, kill or attempt to

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kill a USA or AUSA is received by the FBI, or when said individuals are actually assaulted or killed. FBIHQ will handle dissemination of information to the above DOJ officials and the USSS and USMS Headquarters.

EFFECTIVE: 11/23/94

89-2.16 Assaulting, Killing, or Attempting to Kill a Federal
Officer Cases Involving U.S. Bureau of Prisons (BOP)
Personnel

(1) Based on a 10/30/52 request by the BOP Headquarters, Washington, D.C., FBIHQ has agreed to disseminate on a headquarters level a copy of FBI reports prepared in AFO and KFO cases involving BOP personnel.

(2) Prior to 6/9/80, the FBI conducted an investigation of all AFO and KFO cases involving BOP personnel.

(3) Based on a February, 1980, Office of Planning and Evaluation field survey of AFO cases in which it was determined that USAs throughout the field were routinely declining prosecution of minor and unaggravated assaults of BOP personnel by inmates in favor of the subject being administratively handled by BOP authorities, the following investigative policy was adopted by the FBI on 6/9/80:

(a) Prior to conducting an investigation of alleged minor and unaggravated assaults of BOP personnel by inmates, a preliminary incident report should be obtained from prison authorities and promptly presented to the USA to determine if Federal prosecution is warranted or if the incident should be handled by administrative procedures available to BOP authorities.

(b) The OO should thereafter promptly, orally advise the local BOP authorities of the USA's opinion regarding prosecution of minor and unaggravated assaults. If prosecution is declined, the above oral dissemination should be confirmed by providing BOP authorities locally with a copy of the letter to the USA confirming his/her declination. BOP authorities may then consider proceeding administratively against the inmate. If an investigation is required or prosecution is authorized by the USA, the above oral notification and subsequent investigation by the FBI at the BOP facility will serve as notice to BOP authorities to refrain from taking administrative

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sanctions against the inmate.

(c) In order for FBIHQ to advise the BOP Headquarters, Washington, D.C., of declination cases in which a prosecutive report is not prepared, the OO should submit to FBIHQ, by cover airtel, three copies of the letter to the USA confirming his/her declination. The cover airtel should set forth a request for FBIHQ to disseminate a copy of the letter to BOP Headquarters, Washington, D.C.

(d) If investigation is instituted and a prosecutive report is prepared, two copies of the report should be submitted to FBIHQ, with one copy designated for BOP Headquarters. Do not disseminate a copy of the prosecutive report locally to the BOP facility involved. The facility should be advised of the final outcome of the investigation by letter or LHM. This communication should merely set forth the prosecutive results and not contain any information which would identify witnesses, sources, or investigative techniques which could be possibly compromised.

EFFECTIVE: 12/19/86

89-2.17 Any Security Officer of the Department of State or the Foreign Service

(1) Title 18, USC, Section 1114, was amended on 8/27/64 to include any security officer of the Department of State or Foreign Service. The intention of this amendment was to extend protection to any of the security officers engaged in protective activities under Title 22, USC, Section 2666.

(2) Section 2666 defines the above security officers as individuals designated by the Secretary of State and authorized to carry firearms for the purpose of protecting heads of foreign states, official representatives of foreign governments, and other distinguished visitors to the United States, the Secretary of State, the Deputy Secretary of State official representatives of the U.S. Government, and members of the immediate families of any such persons, both in the United States and abroad.

EFFECTIVE: 12/19/86

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89-2.18 Nuclear Regulatory Commission (NRC) Inspectors

(1) On 6/30/80, Section 235 of the Atomic Energy Act of 1954 was amended to extend protection to captioned individuals who are assaulted or killed while engaged in the performance of such inspection duties, or on account of the performance of such duties.

(2) Based on an FBI/DOJ management decision, on 8/16/82, Section 117 of this manual entitled "Atomic Energy Act of 1954" was revised to transfer these violations to the 117 classification as an Atomic Energy Act violation.

(3) Investigations involving NRC Inspectors as victims initiated after 8/16/82, are to be handled as set forth in (2) above.

EFFECTIVE: 12/19/86

89-2.19 Dissemination of Information to United States Secret Service in Assaulting a Federal Officer and Killing a Federal Officer Cases

(1) Pursuant to a 2/3/65 agreement between the Bureau and the USSS, the FBI is obligated to disseminate certain types of information developed during AFO and KFO investigations to the USSS, on both a local and headquarters level, to assist the USSS in its statutory protective functions.

(2) The notification teletype to FBIHQ should include the complete fact situation, the identity of the USSS employee notified, the time and date of notification, and the identity of the FBI employee who made the dissemination. FBIHQ will handle dissemination to USSS Headquarters.

(3) In regard to AFO and KFO cases, see Part I, 175-14(2) of this manual entitled "FBI/USSS Agreement Concerning Protective Responsibilities" and Part I, 175-14(3) entitled "USSS Protectees in a Travel Status" for the types of information to be disseminated to the USSS.

EFFECTIVE: 12/19/86

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89-2.20 Department of Justice Prosecutive Policy in Assaulting a
Federal Officer Cases

The USA's Manual states, in essence, that the focus of the DOJ's prosecutive policy is on Federal officers and employees who have law enforcement duties which regularly expose them to the public, and on staff members of Federal correctional institutions. This protection from assaults and other forms of forcible resistance, enables such persons to perform their required functions effectively, and violent acts against them should be prosecuted vigorously. By contrast, offenses against other types of Federal employees should be referred to a local prosecutor unless the offense is particularly aggravated or there are other unusual circumstances present justifying Federal action.

EFFECTIVE: 12/19/86

89-2.21 Character

- (1) Assaulting or Attempting to Kill a Federal Officer
(AFO)
- (2) Killing a Federal Officer (KFO)

EFFECTIVE: 12/19/86

| 89-2.22 Subclassification

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

EFFECTIVE: 10/18/95

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89-2.23 Venue

Venue will be in the judicial district where the assault, killing or attempt to kill occurred. Title 18, USC, Section 3236, provides that the crime of murder is committed at the place where the injury was inflicted, the poison administered, or other means employed, which caused the death of the victim, without regard to the place where the death occurred.

EFFECTIVE: 12/19/86

89-2.24 Office of Origin

In AFO or KFO violations, the OO shall be the office in whose territory the assault, killing or attempt to kill occurred.

EFFECTIVE: 12/19/86

89-2.25 Copies of Prosecutive Reports to FBIHQ

Two copies in both AFO and KFO cases.

EFFECTIVE: 12/19/86

89-3 CONGRESSIONAL, CABINET, AND SUPREME COURT ASSASSINATION,
KIDNAPING, AND ASSAULT (CCSCAKA)

EFFECTIVE: 12/19/86

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89-3.1 Background

(1) Prior to 1/2/71, there were no specific Federal statutes covering the killing, kidnaping, or assaulting of a Member of Congress or a Member-of-Congress-elect, or attempting or conspiring to kill or kidnap such persons. Federal prosecution of the above crimes had to be prosecuted under one of the general Federal criminal statutes, if applicable, or referred to local authorities for prosecution.

(2) On 1/2/71, the Omnibus Crime Control Act of 1970, Public Law 91-644, was enacted into law. Title IV of this Act provided the following protection for Members of Congress, by a new statute, Title 18, USC, Section 351, the Congressional Assassination Statute (CAS), and amended the Authorization for Interception of Wire or Oral Communications Statute, Title 18, USC, Section 2516.

(3) The CAS, Section 351, made it a Federal offense to kill, kidnap, assault, attempt to kill or kidnap, or conspire to kill or kidnap any Member of Congress or Member-of-Congress-elect. The above amendment to Section 2516 added CAS as one of the statutory offenses which could be investigated by use of properly authorized interceptions of wire or oral communications, when such interceptions may provide evidence of these violations.

(4) On 10/6/82, Title 18, USC, Sections 351 and 1751 were amended under Public Law 97-285 to provide penalties for crimes against Cabinet officers, Supreme Court Justices and Presidential staff members, and "for other purposes."

(5) The CAS was amended by the above Public Law to include the assassination, kidnaping, assault, attempts to kill or kidnap, and conspiracies to kill or kidnap the head or his/her second in command of a department in the executive branch of the Government listed under Title 5, USC, Section 101, or an individual nominated to be the head of a department during the pendency of his/her nomination; the Director of Central Intelligence or an individual nominated to be Director during the pendency of his/her nomination; and U.S. Supreme Court Justices, or individuals so nominated during the pendency of their nominations.

(6) Under the 10/6/82 CAS amendment referred to above, the Government need not prove that the subject knew that the victim was an individual protected under this statute, and it also provides for extraterritorial jurisdiction.

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(7) As a result of the 10/6/82 amendment, the CAS was retitled as the Congressional, Cabinet, and Supreme Court Assassination, Kidnaping, and Assault (CCSCAKA) Statute and is the current statute under which the FBI has investigative jurisdiction.

(8) Public Law 97-285 also amended Section 2516 to include CCSCAKA violations as one of the offenses which could be investigated by use of properly authorized interceptions of wire or oral communications, when such interceptions may provide evidence of these violations.

EFFECTIVE: 12/19/86

89-3.2 Statute and Penalties

(1) Set forth below in its entirety is the CCSCAKA Statute, Title 18, USC, Section 351.

"(a) Whoever kills any individual who is a Member of Congress or a Member-of-Congress-elect, a member of the executive branch of the Government who is the head, or a person nominated to be head during the pendency of such nomination, of a department listed in section 101 of title 5 or the second ranking official in such department, the Director (or a person nominated to be Director during the pendency of such nomination) or Deputy Director of Central Intelligence, a major Presidential or Vice Presidential candidate (as defined in section 3056 of this title), or a Justice of the United States, as defined in section 451 of title 28, or a person nominated to be Justice of the United States, during the pendency of such nomination, shall be punished as provided by section 1111 and 1112 of this title.

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

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

"(d) If two or more persons conspire to kill or kidnap any individual designated in subsection (a) of this section and one or more of such persons do any act to effect the object of the

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conspiracy, each shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual.

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

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

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

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

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

(2) Section 351(a) provides for punishment as provided by Sections 1111 and 1112. Title 18, USC, Section 1111, is the Murder Statute, and Title 18, USC, Section 1112, is the Manslaughter Statute. See 89-2.2 for their text, definitions, and penalties.

EFFECTIVE: 06/18/87

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89-3.3 Elements

(1) The elements of the CCSCAKA Statute are summarized as follows:

(a) That the defendant killed or kidnaped an individual designated in Section 351(a).

(b) That the defendant assaulted an individual designated in Section 351(a).

(c) That the defendant attempted to kill or kidnap an individual designated in Section 351(a).

(d) That two or more persons conspired to kill or kidnap an individual designated in Section 351(a) and one or more of the persons did an act to effect the object of the conspiracy.

(2) In regard to (1)(c) above, the following DOJ opinion pertaining to the identical element under the Presidential and Presidential Staff Assassination, Kidnaping, and Assault (PPSAKA) Statute, Title 18, USC, Section 1751 (see Part I, 175-2 of this manual entitled "Statute and Penalties"), should be noted and followed under the CCSCAKA Statute, Title 18, USC, Section 351.

(a) Under the PPSAKA Statute, the DOJ has ruled that when an individual acting alone threatens to kidnap or kill a protected individual and commits a sufficient overt act to carry out the threat, such as purchasing a weapon, such an act constitutes an attempt to kill or kidnap within the meaning of the PPSAKA Statute. See Part I, 175-3 of this manual entitled "Elements" for complete details.

(b) The DOJ has advised FBIHQ that this opinion regarding the PPSAKA Statute also applies to the identical element within the meaning of the CCSCAKA Statute.

(3) In regard to (1)(d) above, the following DOJ opinion pertaining to the identical element under the PPSAKA Statute should be noted and followed under the CCSCAKA Statute.

(a) Under the PPSAKA Statute, the DOJ has ruled that the FBI has the authority to investigate a credible allegation of a conspiracy to kill or kidnap a protected individual even though the allegation does not include any information regarding an overt act in furtherance of the conspiracy.

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(b) The DOJ has advised FBIHQ that this opinion regarding the PPSAKA Statute also applies to the identical element within the meaning of the CCSCAKA Statute.

(4) It should be noted that Section 351(h) does not require that the subject knew the victim was an individual protected under this statute.

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

EFFECTIVE: 12/19/86

89-3.4 Definitions

(1) Member of Congress - One who is a component part of the U.S. Senate or House of Representatives. The DOJ is of the opinion that in addition to U.S. Senators and Representatives, delegates or representatives of special geographical divisions who are extended the privileges of membership, such as the Resident Commissioner from Puerto Rico, are protected under this statute. The DOJ has also advised that in their opinion, the Vice President would be classified as a Member of Congress under this statute; however, prosecutions for any violation involving him/her as a victim should be pursued under Title 18, USC, Section 1751, the PPSAKA Statute, so as to allow use of its more liberal assault and reward provisions.

(2) Member-of-Congress-Elect - One who has been certified by the usual state or local certifying official as having been elected to one of the offices described above. This term does not include a U.S. Senator appointed under the 17th Amendment and while pending entry to office.

(3) Head, Second Ranking Official, or Person Nominated to be Head - Title 5, USC, Section 101, identifies captioned individuals in part by setting forth the 13 executive departments which are referred to under Section 351(a). These Departments are State, Treasury, Defense, Justice, Interior, Agriculture, Commerce, Labor, Health and Human Services, Housing and Urban Development, Transportation, Energy, and Education.

(4) Director of Central Intelligence (DCI) - The DCI is

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the primary advisor to the President and the National Security Council on national foreign intelligence matters. To discharge this and other assigned duties, the Director of the Central Intelligence Agency (CIA) is also the DCI and the head of the Intelligence Community. The Intelligence Community consists of the CIA, the National Security Agency, the Defense Intelligence Agency, certain offices within the Department of Defense, the Bureau of Intelligence and Research of the Department of State, the intelligence elements of the military services, the FBI, and the Departments of Treasury and Energy.

(5) Posse Comitatus - The common law definition is individuals who may be summoned by the sheriff to assist in preserving the public peace or in executing a legal precept that is forcibly opposed. Title 18, USC, Section 1385, which is commonly referred to as the Posse Comitatus Statute, prohibits the use of the military as a posse comitatus or otherwise to execute the laws unless expressly authorized by the Constitution or Act of Congress. Section 351(g) specifically removes this prohibition.

(6) Extraterritorial Jurisdiction - This term describes the legal authority to cause an investigation to be conducted and subsequently prosecute a subject in the United States for a violation of Federal law which was committed by him/her outside the territorial jurisdiction of the United States. Section 351(i) specifically grants extraterritorial jurisdiction for CCSCAKA violations. As a practical matter, these situations will present immense investigative difficulties and may require extradition of the subject to the United States. The DOJ has elected not to furnish investigative and prosecutive guidelines in this area. Each case will be considered individually upon receipt of the facts and the results of a contract with appropriate foreign authorities regarding what action and assistance will be provided to the United States.

EFFECTIVE: 12/19/86

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89-3.5 Comments and Clarification Regarding the Congressional,
Cabinet and Supreme Court Assassination, Kidnaping, and
Assault Statute

(1) This statute covers assassinating, kidnaping, assaulting, attempts to kill or kidnap, and conspiracies to kill or kidnap. It does not include mere threats made by a subject against those individuals protected under Section 351(a) unless the threat is to kill or kidnap and the individual who made the threat commits a sufficient overt act in furtherance of carrying it out. See 89-3.3 and 89-3.6 for further details.

(2) The term "kidnap" as used in this statute, merely means "carrying away" the victim, and interstate transportation is not required. In addition, investigation can be instituted immediately since the "24 hour presumptive rule" utilized in the Federal Kidnaping Statute does not apply under Section 351(b).

(3) Section 351(e) does not define the term assault. See 89-2.3 for the definition of assault under the AFO Statute. This definition is also utilized under the CCSCAKA Statute.

(4) Section 351(e) divides assaults into two categories: those that result in personal injury and all others. The personal injury suffered must occur to individuals enumerated under Section 351(a).

(5) The assault penalties under Section 351(e) make no provision for aggravated assaults in which a deadly or dangerous weapon is utilized. The penalty for assault not resulting in personal injury is a \$5,000 fine and/or not more than one year's confinement. If the assailant uses a deadly or dangerous weapon, however, consideration should be given to prosecution under Section 351(c), attempt to kill, even though the intended victim was not personally injured. The penalty for an attempt to kill under Section 351(c) is any term of years or for life.

(6) The conspiracy provisions of Section 351(d) are limited to two objectives, killing or kidnaping, and do not include the objective of assault. In a conspiracy situation involving an assault objective, prosecution must be had under Title 18, USC, Section 371, with Section 351(e), the assault provision, as the underlying charge.

(7) If Federal investigative or prosecutive jurisdiction is asserted, Section 351(f) suspends local jurisdiction for the same

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offense until Federal action is terminated. However, it does not prevent local authorities from cooperating with the FBI during our investigation. Conflicts of jurisdiction resulting from the commission of an independent local offense, such as assaulting a state official incidental to a CCSCAKA violation, are to be resolved on a case-by-case basis.

(8) The death penalty provisions of Section 351(b) and 351(d) are invalid based on a 1972 Supreme Court decision, *Furman v. Georgia*, which required strict statutory standards for its application.

EFFECTIVE: 12/19/86

89-3.6 Comments and Clarification Regarding Threats Made to
Protected Individuals (See MIOG, Part I, 89-3.8 (4) &
89-3.10 (2).)

(1) As noted in 89-3.5, mere threats made by a subject to a protected individual do not constitute a violation of the CCSCAKA Statute unless the threat is to kill or kidnap and the individual who made said threat commits a sufficient overt act in furtherance of the threat.

(2) It should be noted that if captioned threats do not constitute an attempt to kill or kidnap under the CCSCAKA Statute, they must be further analyzed to determine if they constitute some other federal or local violation upon which investigative or referral action should be taken by the FBI. Most of the individuals protected under the CCSCAKA Statute are also protected (concerning threats) under Title 18, USC, Section 115. See MIOG, Part I, 89-2.2 for complete details. For those individuals protected under the CCSCAKA statute but not covered under Title 18, USC, Section 115, additional analysis of existing statutes may be required:

(a) If the threat, coupled with an overt act, involves a conspiracy to assault rather than to kill or kidnap a protected individual, FBI jurisdiction will be under the federal Conspiracy Statute, Title 18, USC Section 371, with the assault provisions of the CCSCAKA Statute, Section 351(e), as the underlying charge.

(b) If the threat involves a conspiracy without an overt act against a protected individual, FBI jurisdiction will lie

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under the Conspiracy to Impede or Injure an Officer (CIO) Statute, Title 18, USC, Section 372. See 89-4 for complete details.

| (c) | If the threat is conveyed by the U.S. mail or interstate telephone call, FBI jurisdiction will be under the corresponding federal Extortion Statute. See Part I, Section 9 of this manual entitled "Extortion" for complete details.

| (d) | If the threat is made by telephone within the District of Columbia or in interstate commerce and does not meet the criteria of the federal Extortion Statute, Title 18 USC, Section 875, it may constitute a violation of the Interstate Obscene or Harassing Telephone Calls Statute, Title 47, USC, Section 223. See Part I, Section 178 of this manual entitled "Interstate Obscene or Harassing Telephone Calls" for complete details.

| (e) | Title 18, USC, Section 245(b)(1) entitled "Federally Protected Activities" should be considered as a possible basis for a federal violation and FBI jurisdiction. See Part I, Section 44-1.5 of this manual for complete details.

| (3) | If the OO is in doubt whether captioned threats constitute a federal violation under the FBI's jurisdiction, the fact situation should be promptly presented to an appropriate AUSA for a legal opinion regarding this issue and whether an investigation or "preliminary inquiry" should be conducted in accordance with the AG's Guidelines governing such procedures.

| (4) | In the absence of FBI jurisdiction, if it is determined that a federal violation under the investigative jurisdiction of another federal agency exists, the case should be referred to that agency.

| (5) | In the absence of a federal violation, information received regarding threats should be referred to local authorities as they may constitute a local offense.

| (6) | Details regarding presentation of threat matters to an AUSA for a legal opinion, or their referral to another federal agency or local authorities for handling, should be set forth in the notification teletype to FBIHQ.

| (7) | The office developing the information regarding captioned threats must promptly notify the intended victim if he/she is located within its territory or request the appropriate office to make the notification. The intended victim should also be advised of

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what investigative or referral action is being taken. The above dissemination or requested dissemination should be set forth in the notification teletype to FBIHQ.

EFFECTIVE: 11/23/94

89-3.7 Threat Assessments

(1) In cases involving a CCSCAKA threat received by a victim, the FBI may be requested by the agency responsible for protecting the victim for an assessment of it.

(2) See 89-2.8. The instructions set forth also apply to CCSCAKA matters and should be followed accordingly.

EFFECTIVE: 12/19/86

89-3.8 FBI Versus United States Secret Service Jurisdiction

(1) The following distinctions between the CCSCAKA Statute and the PPSAKA Statute regarding FBI and USSS jurisdiction should be noted.

(2) The FBI has investigative jurisdiction over actual violations of both the above statutes.

(3) Individuals protected under the PPSAKA Statute, other than Presidential and Vice Presidential staff members, are also USSS protectees under the Secret Service Powers Statute, Title 18, USC, Section 3056. Threats made against the above USSS protectees not constituting a PPSAKA violation should be referred to and investigated by the USSS under their Threats Against the President and Successors to the Presidency Statute, Title 18, USC, Section 871. See Part I, 175-9 of this manual entitled "FBI Versus United States Secret Service Jurisdiction" for complete details.

(4) Individuals protected under the CCSCAKA Statute are not USSS protectees. Threats made against these individuals which do not constitute a CCSCAKA or other Federal violation under the FBI's jurisdiction should not be referred to the USSS. See 89-3.6 for complete details regarding FBI policy in this area. See 89-3.13 for

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FBI dissemination requirements in this area.

EFFECTIVE: 12/19/86

89-3.9 Congressional Candidates

(1) Although Title 18, USC, Section 351(a), provides protection to Members of Congress and Members-of-Congress-elect, it does not include those individuals who are candidates for Congress. Therefore, the CCSCAKA Statute is not applicable for establishing investigative jurisdiction in assassinations, kidnaping, assaults, or threats concerning Congressional candidates.

(2) It should be noted, however, that the FBI may have investigative jurisdiction over threats and assaults involving Congressional candidates under other federal statutes if the appropriate elements are present. For complete details and instructions, refer to Part I, Section 9 entitled "Extortion"; Part I, Section 44-1.5; and Part I, Section 56 entitled "Election Laws," of this manual.

EFFECTIVE: 11/23/94

89-3.10 Notification to FBIHQ in Congressional, Cabinet, and Supreme Court Assassination, Kidnaping, and Assault Cases

(1) In all threatened or actual CCSCAKA violations, depending on the urgency of the situation, FBIHQ should be promptly notified by telephone. Telephone notification to FBIHQ must be promptly confirmed by teletype. FBIHQ should also be advised of all subsequent major investigative developments by summary teletype. The teletype reporting a subject's apprehension should include a statement as to whether or not the subject admitted the violation.

(2) In cases involving a threat to commit a CCSCAKA violation, the teletype notification to FBIHQ must set forth the complete details of the threat and its means of conveyance. See 89-3.6, 89-3.13, and 89-3.14 for further requirements.

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EFFECTIVE: 12/19/86

89-3.11 Investigative Procedures

(1) The investigative procedures to follow in threatened and actual CCSCAKA violations are similar to those utilized in threatened and actual KFO and AFO violations. Refer to 89-2.11 for details.

(2) In assassination cases under Title 18, USC, Section 351, refer to 89-3.12 as to the assistance that Armed Forces Institute of Pathology will render upon request.

(3) As noted in 89-3.1, Public Law 97-285 amended the Authorization for Interception of Wire or Oral Communications Statute, Title 18, USC, Section 2516, to include CCSCAKA violations as offenses that can be investigated by use of properly authorized interceptions of wire or oral communications.

EFFECTIVE: 12/19/86

89-3.12 Agreement Between the FBI and the Armed Forces Institute of Pathology (AFIP)

On 8/19/76, the AFIP and the FBI entered into the following self-explanatory Memorandum of Agreement in Presidential and Congressional Assassination matters:

"1. PARTIES: The parties to this agreement are the Armed Forces Institute of Pathology (AFIP) and the Federal Bureau of Investigation (FBI).

"2. PURPOSE: This agreement established procedures and assigns responsibilities for providing AFIP medical investigation expertise to the FBI upon request in the event of the traumatic or unexpected death of the President of the United States, the Vice-President, a Member of Congress, or certain other persons designated in 18 USC 1751 and 18 USC 351.

"3. AUTHORITY: The general authority for this interdepartmental support agreement is 31 USC 686; the specific authorities for the support services to be provided are 18 USC 1751(i)

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and 18 USC 351(g).

"4. RESPONSIBILITIES OF THE AFIP:

"(a) To maintain a current contingency plan for providing medical investigative support to the FBI upon request.

"(b) To designate a staff of board-certified forensic pathologists and allied science personnel adequate to fulfill the responsibilities of this agreement.

"(c) To designate a liaison officer to coordinate with the FBI in planning for and activating this agreement.

"(d) To respond to an FBI request for assistance by conducting a complete medical investigation of death (forensic autopsy) in the event of the traumatic or unexpected death of one or more of those persons specified in paragraph 2, above, such investigation to be conducted at the AFIP if at all possible.

"(e) To dispatch designated members of the AFIP staff to the scene of death to obtain information relevant to the medical investigation and to accompany the remains on return to the AFIP.

"(f) To assume custody and control of all medical records and biological substances pertinent to the medical investigation of death.

"(g) To provide the FBI with a final report of the medical investigation of death and with such progress reports as are appropriate pending the final report, with the FBI to be the sole recipient of these reports.

"(h) To advance such funds as are necessary for current operations in the event it becomes necessary to activate this agreement.

"5. RESPONSIBILITIES OF THE FBI:

"(a) To designate a liaison officer to coordinate with the AFIP in planning for and activating this agreement.

"(b) To review on an annual basis the AFIP contingency plan for providing medical investigation support to the FBI.

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"(c) To assert federal investigative jurisdiction under 18 USC, 1751(h) or 18 USC 351(g) in the event it becomes necessary to activate this agreement.

"(d) To officially request the AFIP to conduct a complete medical investigation of death (forensic autopsy) in the event of the traumatic or unexpected death of one or more of those persons named in paragraph 2, above.

"(e) To obtain release of remains to the AFIP from the custody of local authorities for medical investigation pursuant to this agreement by whatever legal means are deemed necessary and expedient.

"(f) To instruct the FBI Special Agent in Charge at the scene of death to assist the AFIP staff with local travel arrangements and to provide access to the scene of death.

"(g) To obtain special mission aircraft when deemed necessary to expedite the medical investigation of death.

"(h) To assign a Special Agent to attend the medical investigation of death to receive and retain custody of physical evidence obtained during the investigation.

"(i) To receive from the AFIP the final report of the medical investigation of death as well as any progress reports provided and to take responsibility for all further dissemination of such reports.

"(j) To reimburse the AFIP for all funds advanced for current operations in the event it becomes necessary to activate this agreement.

"(k) To advise the United States Secret Service of the existence of this agreement and the AFIP contingency plan and to effect whatever coordination is necessary with that agency.

"6. GEOGRAPHIC LIMITATION: The jurisdictional authority of the FBI is limited to the United States, its territories and possessions. This agreement is similarly limited.

"7. TERM: This agreement shall become effective when executed by the representatives of both parties. It shall be reviewed annually and shall remain in effect until revoked by official action

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of either party communicated to the other.

"8. SIGNATURES:

"(a) For the AFIP: ELGIN C. COWART, 8/19/76
CAPTAIN, MEDICAL CORPS,
U.S. NAVY

"(b) For the FBI: The Director
CLARENCE M. KELLEY, 8/10/76
Director"

EFFECTIVE: 12/19/86

89-3.13 Dissemination to United States Secret Service in
Congressional, Cabinet, and Supreme Court Assassination,
Kidnaping, and Assault Cases

(1) Pursuant to the 2/3/65 agreement between the Bureau
and the USSS, the FBI is obligated to disseminate certain types of
information developed during CCSCAKA investigations to the USSS, on
both a local and headquarters level, to assist the USSS in its
statutory protective functions.

(2) Since threatened and actual CCSCAKA violations fall
within the above agreement, dissemination should be made to USSS on
both the local and headquarters level in the following manner:

(a) The office developing the information should
promptly telephonically advise the nearest office of the USSS of the
facts.

(b) The notification teletype to FBIHQ should
include the complete fact situation, the identity of the USSS employee
notified, the time and date of notification, and the identity of the
FBI employee who made the dissemination. FBIHQ will handle
dissemination to USSS Headquarters.

(c) A dissemination copy of the above teletype
should be provided to the local USSS office which will serve as
confirmation of the previous telephonic notification to them. This
method will eliminate preparing an FD-376 and LHM since all pertinent
information and notification details will be a matter of record in the
above teletype.

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EFFECTIVE: 12/19/86

89-3.14 Dissemination to U.S. Capitol Police (USCP) and Others
Involving Members of Congress

(1) Senate Bill S. 1976 entitled, "An Act to Define the Area of the United States Capitol Grounds, to Regulate the Use Thereof, and for Other Purposes" was passed on 12/16/81 and enacted into law on 12/19/81 under Public Law 97-143.

(2) This Act, in essence, expands the protective functions of the USCP regarding Members and officers of Congress and their immediate families and provides for the USCP to be included and protected under the AFO and KFO Statutes. While the USCP's protective functions have been expanded, the FBI's investigative responsibilities in regard to the AFO, KFO, CCSCAKA and Extortion Statutes remain unchanged with the exception of the USCP now being protected under the AFO and KFO Statutes.

(3) Section 9A(a) of this Act provides, in essence, that subject to the direction of the Capitol Police Board (CPB), the USCP is authorized to protect, in any area of the United States, any Member or officer of Congress, as defined in Section 431 of the Act of 10/26/70 (Title 2, USC, Section 60-1(b)), and their immediate families if the CPB determines such protection to be necessary on a case-by-case basis.

(4) Section 9A(c) authorized the USCP, while in the performance of their protective duties under this Act, to make arrests without a warrant for any offense against the United States committed in their presence, or for any Federal felony, if they have reasonable grounds to believe that the person to be arrested has committed or is committing a felony.

(5) Section 9A(d) provides a penalty of not more than a \$300 fine and/or not more than one year's confinement for anyone who knowingly and willfully obstructs, resists, or intervenes with a member of the USCP performing a protective function under this Act.

(6) As stated above, this Act does not affect the FBI's jurisdiction since Section 9A(e) specifically states that nothing contained therein shall be construed to imply that the protective

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authority granted the USCP is intended to supersede any other agency involving the protection of Members and officers of Congress and their immediate families.

(7) Based on the above-expanded USCP protective duties, USCP has requested the Washington|Metropolitan|Field Office| (WMFO)| to promptly advise USCP of any potential or actual CCSCAKA violations or related threats and any potential or actual Federal Extortion Statute violations or related threats involving Members of Congress and/or their immediate families which are reported to the FBI. This information will be utilized by the USCP for intelligence purposes and to provide the above individuals with any approved protection under the above Act.

(8) |WMFO| is currently disseminating such information to the USCP by existing operational liaison. In order to ensure appropriate dissemination to the USCP by |WMFO| in a timely fashion, all offices must report any receipt of such information or the initial results of any investigation by summary teletype to FBIHQ and WMFO within seven calendar days. |FBIHQ| will handle dissemination of appropriate information to USSS Headquarters.

(9) In addition to the above-required notification to the USCP by |WMFO| and USSS Headquarters by FBIHQ, when Members of Congress are involved as victims, the office developing the information should promptly notify the nearest office of the USSS. See 89-3.13 and ensure in the notification teletype to FBIHQ that the office covering the victim's home district is requested to notify his/her local office and appropriate local law enforcement agencies in the area.

EFFECTIVE: 02/16/89

89-3.15 Dissemination to the Thirteen Protected Executive Branch
Departments

(1) Title 18, USC, Section 351(a), extends protection to the head, second ranking official, or the person nominated to be head of the Departments of State, Treasury, Defense, Justice, Interior, Agriculture, Commerce, Labor, Health and Human Services, Housing and Urban Development, Transportation, Energy, and Education.

(2) Whenever a threatened or actual CCSCAKA violation or related threat is reported to the FBI involving the individuals set forth above, the appropriate official within victim's department and

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the nearest office of the USSS must be promptly notified by the FBI.

(3) Notification to the Department of Defense will be made by WMFO which will handle notification to all other departments.

(4) In order to ensure the required notifications are made, offices receiving or developing such information will include WMFO in their notification teletype to FBIHQ.

(5) The above teletype or a subsequent communication must include a complete physical description of any subjects developed, background data, and a photograph, if available.

(6) The notification teletype to FBIHQ must set forth the required dissemination to the nearest office of the USSS by the office developing the information and include the identity of the USSS employee notified, the time and date of notification and the identity of the FBI employee who made the dissemination. FBIHQ will handle dissemination to USSS Headquarters.

(7) A dissemination copy of the above teletype should be provided to the local USSS office which will serve as confirmation of the previous telephonic notification to them. This method will eliminate preparing an FD-376 and LHM since all pertinent information and notification details will be a matter of record in the above teletype.

EFFECTIVE: 02/16/89

89-3.16 Dissemination to Supreme Court Police Involving Supreme Court Justices

(1) Under the authority of Title 28, USC, Section 13(f), the Supreme Court has appointed a Deputy U.S. Marshal who, with the approval of the Chief Justice, has appointed and supervises individuals to serve as Supreme Court Police (SCP).

(2) In essence, the SCP serve as law enforcement officers to police the Supreme Court building, grounds, and adjacent streets; protect the Chief Justice and Associate Justices; and are authorized to bear arms and to make arrests.

(3) Based on the above protective responsibilities, WMFO should promptly advise the SCP of any potential or actual CCSCAKA

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violation or related threats involving Supreme Court Justices which are reported to the FBI. This information will be utilized by the SCP for intelligence purposes and to provide protection for the above individuals as may be required.

(4) In order to ensure appropriate dissemination to the SCP by WMFO in a timely fashion, all offices must report any receipt of such information or the initial results of any investigation by summary teletype to FBIHQ and WMFO within seven calendar days.

(5) The initial teletype or subsequent communication must include a complete physical description of any subject developed, background data, and a photograph, if available.

(6) See 89-3.13 for additional requirements pertaining to local USSS dissemination. FBIHQ will handle dissemination to USSS Headquarters.

EFFECTIVE: 02/16/89

89-3.17 Notification to Central Intelligence Agency

(1) Title 18, USC, Section 351(a), extends protection to the Director, a person nominated to be Director during the pendency of such nomination, and the Deputy Director of Central Intelligence.

(2) The Director of Central Intelligence (DCI) is also the Director of the Central Intelligence Agency (CIA). See 89-3.4(4) for complete details.

(3) Whenever a threatened or actual CCSCAKA violation or related threat is reported to the FBI involving the individuals set forth above, the appropriate office at CIA Headquarters, Langley, Virginia, must be promptly notified by WMFO.

(4) In order to ensure the required notification, offices developing such information should promptly forward it to FBIHQ and WMFO by teletype suitable for dissemination.

(5) The initial teletype or subsequent communication must include a complete physical description of any subject developed, background data, and a photograph, if available.

(6) WMFO, in addition to conducting any required

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investigation, will advise the appropriate office of CIA.

(7) See 89-3.13 for additional requirements pertaining to local USSS dissemination.

EFFECTIVE: 02/16/89

89-3.18 Department of Justice Prosecutive Policy in Congressional, Cabinet, and Supreme Court Assassination, Kidnaping and Assault Cases

(1) The USA's Manual states that supervisory responsibility for captioned violations rests with the Criminal Division, DOJ, and instructs that it be immediately notified telephonically when information is developed indicating an actual violation of the CCSCAKA Statute or when other unusual factors are involved.

(2) The USA's Manual further states that DOJ has retained authority to initiate prosecution under this statute. FBIHQ will notify the Criminal Division immediately of actual violations of this statute and provide copies of investigative reports to DOJ. OO should, similarly, promptly inform the appropriate USA and provide copies of investigative reports. The USAs have been instructed by the DOJ to review such reports so that they will be able to render advice to the Criminal Division regarding local factors and circumstances that may have a bearing on the case.

(3) The DOJ has requested to be advised if a victim requests that an investigation be terminated or investigated solely by a local law enforcement agency.

(4) Based on the above DOJ policy, the field should promptly notify the USA's Office when information is developed indicating an actual violation of the CCSCAKA Statute. The initial teletype to FBIHQ should state that the USA has been notified. If a victim requests that an investigation be terminated or investigated solely by a local law enforcement agency, the appropriate USA's Office and FBIHQ should be promptly notified. Submit details, including fact USA was informed, to FBIHQ by teletype.

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EFFECTIVE: 02/16/89

89-3.19 Character

(1) Since the CCSCAKA Statute protects four broad classes of individuals and covers seven types of crimes committed against them, the possible characters involved are numerous.

(2) Although Section 351(a) further subdivides the above four classes of individuals under elected, nominated, deputy, and second in command, for FBI character and management purposes, the classes of individuals protected will be placed into four groups as follows regardless of their status within the group.

(a) Member of Congress

(b) Executive Department Head and Director, CIA

(c) Supreme Court Justice

(d) Major Presidential or Vice Presidential
Candidate (See Part I, Section 175-8 of this manual.)

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

(a) Assassination

(b) Kidnaping

(c) Assault

(d) Attempt to Assassinate

(e) Attempt to Kidnap

(f) Conspiracy to Assassinate

(g) Conspiracy to Kidnap

(4) In order to readily identify the character, class of protected individual, and type of prohibited crime involved, all characters under Section 351 will be designated as CCSCAKA and be further identified, in parentheses, by class of victim and type of crime involved as set forth in the following examples.

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- (a) CCSCAKA (Member of Congress - Assault)
- (b) CCSCAKA (Supreme Court Justice - Assassination)
- (c) CCSCAKA (Executive Department Head - Conspiracy to Kidnap)
- (d) CCSCAKA (Director, Central Intelligence Agency - Conspiracy to Assassinate)
- (e) CCSCAKA (Major Presidential Candidate - Attempt to Assassinate)

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

EFFECTIVE: 06/18/87

89-3.20 89 Congressional, Cabinet, and Supreme Court
Assassination, Kidnapping, and Assault Subclassifications

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

EFFECTIVE: 10/18/95

89-3.21 Case Title

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

(2) Set forth below is an example of a CCSCAKA case title for reference purposes:

JOHN DOE;
RICHARD JONES, ATTORNEY GENERAL,
DEPARTMENT OF JUSTICE

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WASHINGTON, D.C. - VICTIM
4/25/83
CCSCAKA (EXECUTIVE DEPARTMENT
HEAD - ASSAULT)
OO: WMFO

EFFECTIVE: 10/16/90

89-3.22 Venue

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

EFFECTIVE: 10/16/90

89-3.23 Office of Origin

In CCSCAKA violations, the OO shall be the office in which territory the violation occurred. See 89-3.22 for the definition of the place where a murder occurs and in regard to offenses not committed in any district.

EFFECTIVE: 10/16/90

89-3.24 Copies of Prosecutive Reports to FBIHQ

Three copies to FBIHQ, one copy of which will be disseminated to DOJ.

EFFECTIVE: 10/16/90

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89-4 CONSPIRACY TO IMPEDE OR INJURE AN OFFICER (CIO)

EFFECTIVE: 10/16/90

| 89-4.1 | Deleted |

EFFECTIVE: 11/23/94

89-4.2 Statute and Penalties

Set forth below in its entirety is the CIO Statute, Title 18, USC, Section 372.

"If two or more persons in any State, Territory, Possession, or District conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof, or to induce by like means any officer of the United States to leave the place where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties, each of such persons shall be fined not more than \$5,000 or imprisoned not more than six years, or both."

EFFECTIVE: 12/19/86

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89-4.3 Elements

If two or more persons conspire to prevent by force, intimidation, or threat:

- (1) Any person from accepting or holding any United States office;
- (2) Or from discharging any duties thereof;
- (3) Or induce by like means any United States officer to leave his/her required place of duty;
- (4) Or injure him/her or his/her property on account of the performance of his/her duties or while engaged in said duties;
- (5) Or injure his/her property in order to hinder or impede him/her in the performance of his/her duties.

EFFECTIVE: 12/19/86

89-4.4 Comments and Clarification Regarding the Conspiracy to Impede or Injure an Officer Statute

- (1) Unlike the AFO, KFO and CCSCAKA Statutes, which are restricted to those individuals specifically listed, the CIO Statute provides protection to any officer of the United States.
- (2) An officer of the United States is defined as any permanent, temporary, full- or part-time appointed or elected employee of the Federal Government.
- (3) The CIO Statute deals with conspiracy, therefore, it does not apply to a subject acting alone. See 89-4.7 for further details.
- (4) The conspiracy must be directed toward one of the objectives set forth in the CIO Statute.
- (5) The CIO Statute, unlike the general Conspiracy Statute, Title 18, USC, Section 371, and the conspiracy provisions of the CCSCAKA Statute, Title 18, USC, Section 351(d), does not require an overt act in furtherance of the objective; therefore, an appropriate conspiracy by itself constitutes a prosecutable offense.

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EFFECTIVE: 12/19/86

89-4.5 FBI Investigative Jurisdiction

The CIO Statute, Title 18, USC, Section 372, does not specifically designate the FBI as the responsible investigative agency. However, on 12/14/77, the DOJ advised FBIHQ that the FBI has investigative jurisdiction over the above statute.

EFFECTIVE: 12/19/86

89-4.6 Notification to FBIHQ in Conspiracy to Impede or Injure an Officer Cases

(1) Depending on the urgency of the situation, FBIHQ shall be promptly notified by telephone and/or teletype of all CIO cases. Telephone notification to FBIHQ must be promptly confirmed by teletype. The initial teletype notification to FBIHQ should set forth the complete details of the alleged conspiracy. In addition, FBIHQ should also be advised of all subsequent major investigative developments in these cases by summary teletype. The teletype reporting a subject's apprehension should include a statement as to whether or not the subject admitted the violation.

(2) See 89-4.8 for other requirements necessary in the notification teletype to FBIHQ.

EFFECTIVE: 12/19/86

89-4.7 Investigative Procedures (See MIOG, Part I, 89-4.4 (3).)

(1) Although an overt act in furtherance of the conspiracy is not required under the CIO Statute in order to constitute a prosecutable violation, any such overt act should be documented since it will tend to establish that a conspiracy did, in fact, exist.

(2) Although Section 372 requires a prohibited conspiracy

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involving two or more subjects in order to constitute a violation, if it initially appears that only one subject is involved in the prohibited action against the Government employee, it is permissible for the FBI to institute a preliminary inquiry in order to determine if a conspiracy involving additional subjects is present. If such inquiry fails to develop the required conspiracy, in the absence of any other Federal violation under the FBI's jurisdiction, the matter should be referred to the appropriate law enforcement agency for handling.

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

EFFECTIVE: 01/31/94

89-4.8 Dissemination to United States Secret Service and Other
Agencies in Conspiracy to Impede or Injure an Officer
Cases

(1) Although CIO violations fall within the FBI's investigative jurisdiction, based on a 2/3/65 agreement between the USSS and the FBI concerning USSS's statutory protective responsibilities, the FBI is obligated to disseminate certain types of information if developed during one of our CIO investigations to the USSS, based on the premise that it may assist them in such responsibilities.

(2) In regard to CIO cases, see Part I, 175-14(2) entitled "FBI/USSS Agreement Concerning Protective Responsibilities" and 175-14(3) entitled "USSS Protectees in a Travel Status" for the types of information to be disseminated to the USSS.

(3) Prompt dissemination of information in the above categories to USSS must be made on a local and headquarters level.

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

(5) The notification teletype to FBIHQ must include the

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identity of the USSS employee notified, the time and date of notification, and the identity of the FBI employee who made the dissemination.

(6) A dissemination copy of the above teletype should be provided to the local USSS office which will serve as confirmation of the previous telephone notification to them. This will eliminate preparing an FD-376 and LHM since all pertinent information and notification details will be a matter of record in the teletype.

(7) In addition, notification of the conspiracy should be promptly made to the victim and his/her Government agency where employed. The notification teletype to FBIHQ should specifically set forth that notification to the victim and his/her Government agency has or will be made.

(8) FBIHQ, upon receipt of the notification teletype, will disseminate the appropriate information to the victim's Government agency headquarters and USSS Headquarters, Washington, D.C.

EFFECTIVE: 06/18/87

89-4.9 Character - Conspiracy to Impede or Injure an Officer
 (CIO)

EFFECTIVE: 06/18/87

89-4.10 89 Conspiracy to Impede or Injure an Officer
 Subclassification

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

EFFECTIVE: 10/18/95

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89-4.11 Venue

Venue will be in the judicial district where the violation occurred.

EFFECTIVE: 06/18/87

89-4.12 Office of Origin

In CIO violations, the OO shall be the office in which territory the violation occurred.

EFFECTIVE: 06/18/87

89-4.13 Copies of Prosecutive Reports to FBIHQ

Two.

EFFECTIVE: 06/18/87

89-5 CRIMES AGAINST FAMILY MEMBERS OF FEDERAL OFFICIALS (CAFM)
- INFLUENCING, IMPEDING OR RETALIATING AGAINST A FEDERAL
OFFICIAL BY THREATENING OR INJURING A FAMILY MEMBER (See
MIOG, Part I, 89-2.2(3), 175-1(6), 175-2(3).)

EFFECTIVE: 11/23/94

| 89-5.1 | Deleted |

EFFECTIVE: 11/23/94

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89-5.2 Statute and Penalties

Set forth below in its entirety is the Crimes Against Family Members of Federal Officials Statute, Title 18, USC, Section 115:

"Influencing, impeding, or retaliating against a federal official by threatening or injuring a family member

"(a) (1) Whoever-

"(A) assaults, kidnaps, or murders, or attempts to kidnap or murder, or threatens to assault, kidnap or murder a member of the immediate family of a United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under section 1114 of this title; or

"(B) threatens to assault, kidnap, or murder a United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under such section,

with intent to impede, intimidate, or interfere with such official, judge or law enforcement officer while engaged in the performance of official duties, or with intent to retaliate against such official, judge, or law enforcement officer on account of the performance of official duties, shall be punished as provided in subsection (b).

"(2) Whoever assaults, kidnaps, or murders, or attempts to kidnap or murder a member of the immediate family of any person who formerly served as a person designated in paragraph (1), with intent to retaliate against such person on account of the performance of official duties during the term of such person, shall be punished as provided in subsection (b).

"(b) (1) An assault in violation of this section shall be punished as provided in section 111 of this title.

"(2) A kidnaping or attempted kidnaping in violation of this section shall be punished as provided in section 1201 of this title for the kidnaping or attempted kidnaping of a person described in section 1201(a) (5) of this title.

"(3) A murder or attempted murder in violation of this section shall be punished as provided in sections 1111 and 1113 of this title.

"(4) A threat made in violation of this section shall be

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punished by a fine of not more than \$5,000 or imprisonment for a term of not more than five years, or both, except that imprisonment for a threatened assault shall not exceed three years.

"(c) As used in this section, the term--

"(1) 'Federal law enforcement officer' means any officer, agent, or employee of the United States authorized by law or by a Government agency to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of Federal criminal law;

"(2) 'immediate family member' of an individual means--

"(A) his spouse, parent, brother or sister, child or person to whom he stands in loco parentis; or

"(B) any other person living in his household and related to him by blood or marriage;

"(3) 'United States judge' means any judicial officer of the United States, and includes a justice of the Supreme Court and a United States magistrate; and

"(4) 'United States official' means the President, President-elect, Vice President, Vice President-elect, a Member of Congress, a member-elect of Congress, a member of the executive branch who is the head of a department listed in 5 U.S.C. 101, or the Director of The Central Intelligence Agency."

EFFECTIVE: 11/23/94

89-5.3 Elements

The elements of the CAFM Statute are summarized as follows:

(1) That the defendant assaulted, kidnaped, or murdered an individual designated in Section 115(c).

(2) That the defendant(s) attempted to kidnap or murder an individual designated in Section 115(c).

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(3) That the defendant threatened to assault, kidnap or murder an individual designated in Section 115(c).

The above crimes must be committed with the intent to impede, intimidate, interfere with, or retaliate against federal officials, judges or law enforcement officers while engaged in performance of their official duties or on account of the performance of their official duties.

EFFECTIVE: 11/23/94

89-5.4 Investigative Procedures

(1) The general investigative procedures set out for KFO, AFO, CCSCAKA, CIO and Presidential and Presidential Staff Assassination, Kidnaping and Assault matters should be followed in actual or threatened CAFM violations. See this section and Part I, Section 175, of this manual for details.

(2) Investigations involving Title 18, USC, Section 115 should be handled under the substantive classification for the particular official involved. In the event a CAFM investigation is instituted solely under Section 115, classification 89-F should be utilized.

(3) When appropriate and as previously set forth in Part I, Section 89, of this manual, instructions, policies, investigative procedures, jurisdictional agreements (i.e., FBI and Department of the Treasury), notification to FBIHQ and dissemination requirements apply in fulfilling FBI investigative responsibilities under Title 18, Section 115.

(4) "Agreement of Procedures" adopted by the USSS and the FBI will apply to procedures to be followed in the event that a violation of law occurs involving a person or persons protected by the U.S. Secret Service pursuant to law and which falls within the investigative jurisdiction of the FBI. See Part I, Section 175, of this manual.

EFFECTIVE: 12/19/86

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PRINTED: 02/18/98

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89-5.5 Notification to FBIHQ and Dissemination Responsibilities

(1) FBIHQ should be promptly notified of all new CAFM cases involving a death or serious injury by telephone and confirmed by immediate teletype. In addition, FBIHQ should be advised of all subsequent major investigative developments by summary|teletype.|

(2) In all other CAFM cases, depending on the urgency of the situation, FBIHQ should be promptly notified by telephone or teletype. Telephone notification to FBIHQ must be confirmed by immediate teletype. In addition, FBIHQ should be advised of all subsequent major investigative developments by summary teletype.

(3) In CAFM cases involving a threat, FBIHQ should be notified by telephone, teletype, or airtel depending on the urgency of the situation. Telephone notification to FBIHQ must be promptly confirmed by teletype. If such cases involve the families of officials listed under sections (c)(4) of Section 115, or the families of FBI personnel, Federal judges, USAs or AUSAs as potential victims, notification to FBIHQ should be made by telephone and/or teletype.

(4) See 89-2.19, 89-3.13 and 89-4.8 of this section and Part I, Section 175, of this manual for details of Bureau responsibilities to disseminate certain types of information to USSS to assist in its protective functions.

EFFECTIVE: 06/26/91

89-5.6 Character - Crimes Against Family Members (CAFM)

EFFECTIVE: 06/26/91

| 89-5.7 Classification

For details concerning this topic, refer to Manual of Administrative Operations and Procedures (MAOP), Part II, 3-1.1 entitled "FBI|Classifications|and Subdivided Classifications."

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EFFECTIVE: 10/18/95

89-5.8 Case Title

(1) In addition to the full name of subject(s) and all known aliases, or an unknown subject(s) designation, a CAFM case should include the full name and relationship of the family member to the protected individual(s) designated in Section 115, the name of the protected individual, his/her job title and the initial date of the violation.

(2) EXAMPLE (Actual assault or threat):

JOHN DOE;
MARY E. SMITH, (Daughter) - VICTIM;
JOSEPH A. SMITH, SPECIAL AGENT - FBI - VICTIM;
10/1/86
AFO - CAFM;
OO: CHICAGO

(3) If the victim is a family member of a Member of Congress, Cabinet Officer, Supreme Court Justice, or Director of the CIA, the character should be shown as:

CCSCAKA - CAFM

EFFECTIVE: 06/26/91

||89-5.9 Venue

Venue will be governed by the type of violation, assault, kidnaping, attempted kidnaping, murder, attempted murder, or threat to assault, kidnap or murder, as set forth in Section 115.

EFFECTIVE: 12/19/86

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89-5.10 Office of Origin

Office of Origin will be established in the manner set forth in MAOP, Part II, Section 10-16.2.

EFFECTIVE: 12/19/86

89-5.11 Copies of Prosecutive Reports to FBIHQ

Two.

EFFECTIVE: 12/19/86

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

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

"III. Guidelines

"A. Warning to the Person.

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

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

"a. The Agency may determine the means and manner of

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

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

"(3) Exceptions.

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

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

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

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

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

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

"B. Notification to Law Enforcement Agencies With Protective or

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Custodial Jurisdiction.

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

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

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

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

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

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

"(4) Exceptions.

"a. A Federal Law Enforcement Agency need not attempt to notify another law enforcement agency that has

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investigative jurisdiction concerning a threat:

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

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

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

"IV. Rights of Third Parties.

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

Footnotes:

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

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

EFFECTIVE: 03/14/97

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SECTION 90. IRREGULARITIES IN FEDERAL PENAL INSTITUTIONS

90-1 STATUTES

Title 18, USC, Sections 1791 and 1792.

EFFECTIVE: 07/11/85

90-1.1 Section 1791. Providing or Possessing Contraband in
Prison

"(a) Offense. A person commits an offense if, in violation of a statute, or a regulation, rule, or order issued pursuant thereto--

"(1) he provides, or attempts to provide, to an inmate of a Federal penal or correctional facility--

"(A) a firearm or destructive device;

"(B) Any other weapon or object that may be used as a weapon or as a means of facilitating escape;

"(C) a narcotic drug as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802);

"(D) a controlled substance, other than a narcotic drug, as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802), or an alcoholic beverage;

"(E) United States currency; or

"(F) any other object; or

"(2) being an inmate of a Federal penal or correctional facility, he makes, possesses, procures, or otherwise provides himself with, or attempts to make, possess, procure, or otherwise provide himself with, anything described in paragraph (1).

"(b) Grading. An offense described in this section is punishable by--

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"(1) imprisonment for not more than ten years, a fine of not more than \$25,000, or both, if the object is anything set forth in paragraph (1)(A);

"(2) imprisonment for not more than five years, a fine of not more than \$10,000, or both, if the object is anything set forth in paragraph (1)(B) or (1)(C);

"(3) imprisonment for not more than one year, a fine of not more than \$5,000, or both, if the object is anything set forth in paragraph (1)(D) or (1)(E); and

"(4) imprisonment for not more than six months, a fine of not more than \$1,000, or both, if the object is any other object.

"(c) Definitions. As used in this section, 'firearm' and 'destructive device' have the meaning given those terms, respectively, in 18 U.S.C. 921 (A)(3) and (4)."

EFFECTIVE: 07/11/85

90-1.2 Section 1792. Mutiny and Riot Prohibited

"Whoever instigates, connives, willfully attempts to cause, assists, or conspires to cause any mutiny or riot, at any Federal penal or correctional facility, shall be imprisoned not more than ten years or fined not more than \$25,000, or both."

EFFECTIVE: 07/11/85

90-1.3 Statutory Amendments Based on the Comprehensive Crime Control Act of 1984 (CCCA of 84)

(1) The CCCA of 84 was enacted into law on 10/12/84 and under Chapter XI, Part H, entitled "Possession of Contraband In Prison," amended the Irregularities in Federal Penal Institutions Statutes, Title 18, USC, Sections 1791 and 1792, as follows:

(2) New Subsection 1791 (a)(1) makes it an offense for any person to provide or attempt to provide to a Federal inmate, in

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violation of a prison rule, regulation, or order, one of the above-listed six classifications of objects.

(3) New Subsection 1791 (a) (2) makes it an offense for a Federal inmate to make, possess, procure or otherwise provide himself/herself with any of the objects enumerated in Subsection (a) (1) or attempt to do so.

(4) New Subsection 1791 (b) provides different grades of penalties, ranging from a prison term of six months and a fine of \$1,000, to a prison term of ten years and a fine of \$25,000, corresponding to the danger represented by the different types of contraband involved.

(5) Prior to the passage of the CCCA of 84, both Sections 1791 and 1792 dealt with prison contraband. Under the above Act, the contraband offenses were all consolidated into Section 1791 and were deleted from Section 1792. Furthermore, this Act, under Section 1792, added a fine of up to \$25,000 to the existing maximum penalty of 10 years for prison mutiny or riot.

(6) It should be noted that Part H of this Act was primarily designed to remedy the following two defects in the above two statutes dealing with prison contraband. Under the former language of Section 1791, it was an offense to introduce contraband into, or to move it from place to place within a prison, but possession, in itself, of a prohibited article was not a violation of Federal law. Furthermore, both Sections 1791 and 1792 provided a penalty of up to 10 years' imprisonment without taking into consideration the danger represented by the different types of contraband involved.

(7) In regard to the seizure of contraband by Bureau of Prisons (BOP) personnel, Part H of this Act added Section 4012 to Title 18, U.S. Code, to provide statutory authority for the summary seizure by the BOP of contraband and for its forfeiture to the Government. Prior to the passage of Section 4012, the right of BOP personnel to seize contraband was derived from the general statutory authority of the BOP, pursuant to Title 18, USC, Section 4042, to provide for the protection and discipline of inmates. Federal courts have differed over the authority of BOP, under the above general language, to seize and retain contraband. Section 4012 clarifies the authority of BOP personnel to summarily seize contraband articles and have them forfeited to the Government. The BOP is presently developing administrative procedures for the forfeiture of seized contraband.

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EFFECTIVE: 07/11/85

90-2 MISCELLANEOUS

The Department of Justice ruled on 12/11/91 that the FBI has primary investigative jurisdiction over conspiracy to violate the ERS (Title 18, USC, Sections 751-757). Conspiracy to violate any of these statutes should be investigated under the 90 classification. The provisions of Title 18, USC, Sections 201 and 202, relating to bribery, should also be considered in investigation of acts which may be in violation of the IFPI statutes.

EFFECTIVE: 09/07/93

90-3 POLICY

(1) When a complaint is received alleging a basic or nonserious violation of these sections, the field office will determine whether preliminary investigation is warranted and will coordinate with the local Bureau of Prisons (BOP) facility. Whenever a complaint is received alleging violations which are serious, sensitive, or unusual, or would cause notoriety in the local or national news media, the field office should initiate investigation promptly and expeditiously advise the Criminal Investigative Division (CID), FBIHQ, by telephone, followed by a communication reporting the facts and results of any investigation initiated. Allegations or complaints concerning BOP personnel should be expeditiously submitted to FBIHQ by LHM and cover communication in order to ensure appropriate coordination with BOP headquarters. Institute investigation promptly. Allegations of civil rights violations relating to violence motivated by racial or religious bias or an illegal act under color of law should be investigated according to MIOG, Part I, Section 44 or 282, respectively.

(2) Cases can be presented to the USA without prior FBIHQ authority.

(3) Reports of riots or sit-down strikes which may not initially involve an FBI violation may be received from authorities. Agents should not enter the penitentiary during such occurrences and

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they should in no way interfere with the prison administration in connection with quelling the riot or the sit-down strike. When notified, effective liaison should be set up and FBIHQ informed immediately. At the first opportunity an Agent should enter the institution and immediately ascertain from the warden if any violation within the FBI's jurisdiction has occurred. As incidents, such as riots or sit-down strikes, may result in violations within the FBI's jurisdiction, sufficient manpower should be available to act immediately if a violation is indicated.

(4) Violations of Title 21, USC, Section 844, Controlled Substance Act (CSA) occurring within federal penal institutions will be handled by the FBI under Title 18, USC, Section 1791. Information developed during CSA violations occurring within federal penal institutions that involve subjects outside the institutions should be referred to the Drug Enforcement Administration.

(5) 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

(e) Deleted

(6) RESOLUTION OF HOSTAGE SITUATIONS OR CRIMINAL ACTIONS
WHICH REQUIRE FBI PRESENCE AT BOP FACILITIES

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"MEMORANDUM OF UNDERSTANDING (MOU)
BETWEEN THE FEDERAL BUREAU OF PRISONS (BOP)
AND THE FEDERAL BUREAU OF INVESTIGATION (FBI)
ON HOSTAGE OR CRISIS INCIDENTS AT BUREAU OF PRISONS FACILITIES

"I. PURPOSE: This Memorandum of Understanding (MOU) is to establish interagency operational policy guidelines for Federal Bureau of Prisons (BOP) and Federal Bureau of Investigation (FBI) personnel for the successful resolution of hostage situations or criminal actions which require FBI presence at BOP facilities.

"II. JURISDICTION:

"A. The BOP has primary responsibility for all operations at federal correctional facilities during routine and emergency operations.

"B. The FBI has primary investigative responsibility for all violations of Title 18 (T18), United States Code (USC), Section 13 (Crimes on a Government Reservation) (CGR) including the jurisdiction as defined in Section 7 (Special maritime and territorial jurisdiction of the United States defined).

"C. The FBI also has investigative responsibility for criminal activities at BOP facilities, to include hostage situations or similar incidents, under T18, USC, Sections 1791 and 1792 (Irregularities in Federal Penal Institutions), and T18, USC, Section 1203 (Hostage Taking).

"III. DEFINITIONS:

"As used herein:

"A. 'BOP On-Scene Commander' refers to a BOP field commander whom the BOP Director has designated as in charge of the BOP facility.

"B. 'FBI On-Scene Commander' refers to an FBI SAC or SAC's designee who is in charge of the FBI resources during an operational response by the FBI.

"C. An 'advisory response' is a minimal FBI response during which the FBI deploys FBI crisis management assets to assist/advise the crisis response resources of the BOP. At this level response, the FBI SAC or SAC's designee will deploy as the FBI's on-scene coordinator. The FBI will not deploy an FBI command and control element.

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"D. An operational response is defined as one during which the FBI deploys significant FBI crisis management resources, as necessary, to resolve the crisis. This level response may consist of HRT deployment, and/or multiple FBI field office SWAT teams, and/or crisis negotiation/behavioral specialists and/or technical personnel. An operational response will always be accompanied by an FBI SAC or SAC's designee and an FBI command and control element.

"IV. ADVANCE COORDINATION:

"A. BOP Wardens and FBI SACs will develop a program to exchange information concerning each BOP facility within a field division's territory. This program will include the specifics of how joint operations will be implemented, site surveys, appropriate interagency training and logistical support during a crisis situation.

"B. BOP and FBI crisis response plans will be prepared by executive management personnel at BOP facilities and FBI field divisions to address specific crisis management requirements at each BOP facility. The crisis response plans will reflect the terms of this MOU and be periodically updated.

"V. IMPLEMENTATION: The decision as to whether FBI involvement constitutes an advisory or operational response will be dependent on the circumstances of the incident, the request from the BOP On-Scene Commander and as necessary, additional direction and/or guidance from BOP and FBI Headquarters.

"VI. COMMAND, CONTROL AND COORDINATION:

"A. In the event of an advisory response by the FBI, the BOP On-Scene Commander will retain command and control of all aspects of the crisis response. BOP Headquarters will retain overall command and control of the incident. The BOP On-Scene Commander will also coordinate with the FBI and keep the FBI informed of all developments. The FBI will have a person designated to the BOP command post.

"1. FBI advisors may be part of HRT, field SWAT, crisis negotiators, behavioral specialists, technical personnel or other assets as agreed upon by the FBI SAC or SAC's designee and BOP On-Scene Commander.

"B. In the event of an operational response by the FBI, which will include an FBI On-Scene Commander and a command and control element, the BOP and FBI On-Scene Commanders will work cooperatively toward

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resolution of the crisis. All actions of the FBI On-Scene Commander will be closely coordinated with the BOP On-Scene Commander who retains overall responsibility for the institution operations and the incident.

"1. During an FBI operational response, the FBI and BOP will immediately form a joint command post upon the arrival of FBI crisis response resources.

"2. Once the FBI fully activates an operational response at the scene, the FBI On-Scene Commander will assume responsibility of all crisis management assets (BOP and FBI) in terms of planning for and executing plans for incident resolution. The FBI On-Scene Commander will consult and coordinate with the BOP On-Scene Commander who retains overall responsibility for the institution and the incident.

"3. BOP and FBI Headquarters command centers will establish a direct link throughout the duration of the incident to exchange information and to address issues of mutual concern as they arise. Issues that cannot be resolved at the scene of the incident or at the command center level will be addressed at headquarters level by senior BOP and FBI staff.

"C. The FBI On-Scene Commander, in consultation with the BOP On-Scene Commander, may initiate an emergency assault should there be imminent threats to life or of serious injury to hostages, inmates, or law enforcement personnel. In all other circumstances, no planned tactical resolution will be initiated without prior specific approval from both BOP and FBI Headquarters.

"D. The FBI On-Scene Commander will conduct additional criminal investigation following the resolution of the incident, including crime scene investigation, if appropriate. Debriefings of all officials involved are required and will be accomplished as soon as possible after the resolution of the incident and will be coordinated through the FBI On-Scene Commander. This requirement does not supersede BOP's policy regarding post incident interviews and investigation.

"VII. TERMS OF AGREEMENT: This MOU will take effect immediately upon signature of all parties.

"For the Federal Bureau of Investigation:

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"/s/ _____ 10/25/96
LOUIS J. FREEH Date
Director

"For the Federal Bureau of Prisons:

"/s/ _____ 10/24/96
KATHLEEN M. HAWK Date
Director"

(7) The following MOU was executed for the purpose of establishing local interagency operational procedures and guidelines concerning the conduct of investigations of violations of federal criminal statutes occurring in BOP facilities.

"MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL BUREAU OF
INVESTIGATION AND THE FEDERAL BUREAU OF PRISONS ON VIOLATIONS OF
FEDERAL CRIMINAL STATUTES

"I. PURPOSE: The purpose of this Memorandum of Understanding (MOU) is to establish interagency operational procedures and guidelines for the Federal Bureau of Investigation (FBI) and the Federal Bureau of Prisons (BOP) with regard to violations of federal criminal statutes occurring in BOP facilities, on BOP property or which involve BOP staff. In hostage and/or crisis situations, this MOU is superseded by the separate MOU between the FBI and the BOP. In violations of the Federal Escape and Rescue Statutes, this MOU is superseded by the separate MOU between the FBI, the BOP and the United States Marshals Service.

"II. GOALS: It is mutually agreed that general guidelines and procedures should be established and implemented to ensure an efficient and effective response to criminal incidents which occur in BOP facilities, on BOP property or which involve BOP staff. It is further agreed that BOP facilities and FBI field divisions will coordinate their efforts to develop local procedures, as appropriate, and fully share information and the results of their respective investigations to assist each agency in fulfilling its own mission and responsibilities concerning violations of federal criminal statutes occurring at or involving staff of Federal Bureau of Prisons' institutions. The violations in question include, but are not limited to, homicides or suspected homicides, unexplained or unusual deaths, assaults on federal officers or inmates (serious or involving weapons), significant destruction of government property, trafficking

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in contraband, and other serious offenses.

"III. JURISDICTION:

"(A). The BOP has primary responsibility for all operations of a Federal prison facility during routine and emergency situations, as well as during investigations of criminal matters.

"(B). The FBI shall assume primary investigative responsibility and jurisdiction once it has accepted a criminal matter for investigation. Coordination will be implemented and maintained with the BOP as appropriate.

"IV. IMPLEMENTATION:

"(A). The FBI and the BOP will develop and exchange information regarding the facilities at all BOP sites. The information should be included but is not limited to: prison site surveys, appropriate interagency training, and operational support in times of crisis.

"(B). A local operational plan to address resources, manpower, points of contact, notifications, and other relevant matters, will also be prepared by affected local BOP and FBI field office staff in accordance with the terms of this MOU. This plan will be routinely updated.

"V. RESPONSIBILITIES:

"(A). BUREAU OF PRISONS RESPONSIBILITIES:

"(1). Upon the occurrence of any incident that may involve a criminal act, the BOP will take immediate action to secure and preserve the scene of the incident and to identify any witnesses to the incident.

"(2). Upon the occurrence of any incident involving a criminal act, the BOP will immediately notify the appropriate designated FBI representative of the incident. An apparent suicide will be treated as a possible homicide until determined otherwise by a competent authority, such as the coroner or medical examiner. Any further investigative activity by the BOP shall be closely coordinated with the FBI so as to appropriately support the ongoing criminal investigation, while also pursuing administrative actions as appropriate.

"(3). Upon notification, if the FBI does not initiate a criminal investigation, the BOP will assume primary investigative

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responsibility for conducting and documenting an investigation of the incident for possible disciplinary action.

"(B). FEDERAL BUREAU OF INVESTIGATION RESPONSIBILITIES:

"(1). Upon notification by the BOP of the occurrence of an incident that may involve a criminal act, the appropriate designated FBI representative will determine whether to initiate an FBI criminal investigation of the incident. That determination and notification to the BOP concerning the incident will be made as soon as feasible but not greater than 24 hours after the BOP notification to the FBI. The FBI will conduct an on-site investigation of inmate deaths. An apparent suicide will be treated as a possible homicide until determined otherwise by a competent authority such as the coroner or medical examiner.

"(2). In those instances in which the FBI initiates a criminal investigation, the FBI will assume primary investigative responsibility for conducting and documenting the criminal investigation.

"(3). In those instances in which the FBI initiates a criminal investigation, the FBI will coordinate investigative activity with the BOP as appropriate, in order to minimize the disruption to the operation of the BOP facility.

"(4). In those instances in which the FBI has conducted a criminal investigation, the BOP is to be provided notification regarding the closure of the FBI investigative file.

"VI. PROTOCOL: It is agreed that the contents of this MOU will be provided to both agencies involved in this agreement, as well as the Executive Office of United States Attorneys, in order to fully coordinate notification procedures, points of contact to facilitate liaison, crime-scene management and preservation procedures, and development of criminal investigations.

"VII. STANDARD PROCEDURES:

"(A). NOTIFICATION/INITIAL REFERRAL: Upon the occurrence of any incident involving a criminal act, the BOP will immediately notify the appropriate designated FBI representative of the incident. During the initial contact, local BOP staff shall provide information and receive instructions regarding immediate efforts to secure the crime scene until the FBI responds.

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"(B). RESPONSE: When a criminal case is referred to the FBI for investigation, local FBI staff shall respond as soon as practicable either by telephone or by an on-site visit. Following the initial referral, the FBI shall determine whether to initiate an investigation. That determination shall be made and communicated to the BOP as soon as feasible but not greater than 24 hours after the BOP notification to the FBI.

"(C). INVESTIGATION: In the event the local FBI division initiates an investigation, the FBI will assume primary investigative responsibility and jurisdiction. Coordination will be implemented and maintained with the BOP as appropriate. In cases where the FBI requests investigative assistance from the BOP, the FBI will convey instructions regarding the questioning of suspects, preservation of the crime scene or evidence, and any other pertinent instructions.

"VIII. TERMS OF AGREEMENT: This MOU will take effect immediately upon signature of all parties.

"For the Federal Bureau of Investigation:

"/s/ _____
LOUIS J. FREEH
Director

8/9/96
DATE

"For the Federal Bureau of Prisons:

"/s/ _____
KATHLEEN M. HAWK
Director"

8/23/96
DATE

EFFECTIVE: 04/24/97

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CHARACTER - IRREGULARITIES IN FEDERAL PENAL INSTITUTIONS

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EFFECTIVE: 11/20/90

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