


Memorandum



Subject	Date
<u>Extension of Bluesheets --</u> <u>United States Attorneys' Manual</u>	MAY 20 1987

To All Manual Holders

From  Laurence S. McWhorter
Acting Director
Executive Office for
U.S. Attorneys

In accordance with Deputy Attorney General Burn's memorandum dated April 21, 1987, to Heads of Litigating Divisions and Justice Management Division, referencing United States Attorneys' Manual, USAM 1-1.550 is amended to provide that bluesheets will not expire after five months. They will maintain their full force and effect until the Manual revision project is completed, at which time they will be part of the revised Manual. Therefore, please be advised the following bluesheets have been extended until further notice.

<u>Bluesheet</u>	<u>Date</u>	<u>Bluesheet</u>	<u>Date</u>
1-11.350	5/6/86	9-38.211	4/23/87
9-1.177	12/31/85	9-100.280	11/10/86
9-2.132	12/31/85	9-103.132; .140	6/30/86
9-2.136	6/4/86 and 12/24/86	9-105.000	11/10/86
9-2.151	12/31/85	9-110.800	7/7/86
9-2.160	7/18/85	9-111.800	1/15/87
9-7.2000	4/6/87	9-131.030	5/13/86
9-7.5000	4/6/87	9-131.040; .180	10/6/86
9-11.220 C.8	4/14/86	9-131.110	5/13/86
9-11.368(A)	2/4/86	10-2.186	9/27/85
9-20.215	2/11/86	10-2.315	11/17/86
		10-2.534	3/20/86
		10-2.650	1/7/87
		10-8.120	1/31/86

Your attention to this matter is appreciated.

1984-1986

UNITED STATES ATTORNEYS' MANUAL TRANSMITTAL

AFFECTING TITLE: 1
TRANSMITTAL NUMBER: 1-B-3
DATE OF TRANSMITTAL: April 15, 1986
DATE OF TEXT: April 1, 1986
EFFECTIVE DATE OF TEXT: May 8, 1986

To: Appropriate Administrative Personnel
Offices of U.S. Attorneys, Offices, Boards and Divisions
Department of Justice

for distribution to Manual Holders of Title 1

From: U.S. Attorneys' Manual Staff
Executive Office for U.S. Attorneys

INSTRUCTIONS TO ADMINISTRATIVE PERSONNEL

Please record receipt of this material on Form C-1, and distribute per Form B.

HIGHLIGHTS

The enclosed transmittal consists of a new chapter to Title 1.

USAM 1-16.000 GUIDELINES ON DEPARTMENT POLICY REGARDING SPECIAL MASTERS

These guidelines are established by the Office of the Attorney General and are promulgated in order to provide central direction to the Department attorneys in cases involving special masters. The Department's policy is stated on the use of masters, the criteria by which master appointments are to be assessed, procedures which attorneys for the United States are to follow, and general guidelines on allocation of cost. Here, for the first time, the Department of Justice adopts a policy concerning the costs of special masters in light of the doctrine of sovereign immunity.

INSTRUCTIONS TO MANUAL HOLDERS

Insert this highlights page in front of Title 1.

REMOVE:

Summary TOC, Title 1

INSERT:

Summary TOC, Title 1
Ch. 16, pp. i, 1-9
A new guidecard will follow.

Record: This transmittal on Form AAA-1

UNITED STATES ATTORNEYS' MANUAL TRANSMITTAL

AFFECTING TITLE: 1
TRANSMITTAL NUMBER: 1-B-4
DATE OF TRANSMITTAL: November 20, 1986
DATE OF TEXT: October 31, 1986
EFFECTIVE DATE OF TEXT: October 31, 1986

To: Appropriate Administrative Personnel
Offices of U.S. Attorneys, Offices, Boards and Divisions
Department of Justice

for distribution to Manual Holders of Title 1

From: U.S. Attorneys' Manual Staff
Executive Office for U.S. Attorneys

INSTRUCTIONS TO ADMINISTRATIVE PERSONNEL

Please record receipt of this material on Form C-1, and distribute per Form B.

HIGHLIGHTS

The enclosed transmittal consists of revisions to the following chapters of Title 1.

USAM 1-1.000 INTRODUCTION: This section has been revised to include changes in USAM 1-1.700 G., to include an updated list of publications available from the Criminal Division.

USAM 1-2.000 KEY PERSONNEL: This section revises USAM 1-2.240 to include a new Advisory Committee Listing; USAM 1-2.252 to include additional AGAC Subcommittees; USAM 1-2.260 to include additional teletype routing indicators; and USAM 1-2.261 to include a new U.S. Attorneys' listing.

USAM 1-4.000 STANDARDS OF CONDUCT: Section, USAM 1-4.300, POLITICAL ACTIVITY OF FEDERAL EMPLOYEES (THE HATCH ACT) is new.

USAM 1-6.000 CIVIL AND CRIMINAL LIABILITY OF DEPARTMENT OF JUSTICE ATTORNEYS: Sections USAM 1-6.211 Procedure for Obtaining Department Representation, USAM 1-6.310 Prosecutorial Absolute Immunity, USAM 1-6.320 Qualified Immunity for Constitutional Tort, and USAM 1-6.331 Decisions of the United States Courts of Appeals Apply Barr v. Matteo contain new material.

USAM 1-10.000 RELATIONS WITH THE PRIVATE BAR AND JUDICIARY: Section
USAM 1-10.140 Judicial Immunity, has been revised in full.

USAM 1-13.000 ORDERS OF THE ATTORNEY GENERAL: This Section has been revised to include an updated list of Attorney General Orders.

INSTRUCTIONS TO MANUAL HOLDERS

Insert this highlights page in front of Title 1.

REMOVE:

Ch. 1, pp. i, 1-15
Ch. 2, pp. i, 1-4
Ch. 4, pp. i, 25-28
Ch. 6, pp. i, 1-14
Ch. 10, pp. i, 1-12
Ch. 13. pp. 3-4

INSERT:

Ch. 1, pp. i, 1-15
Ch. 2, pp. i, 1-4, USA Listing
Ch. 4, pp. i, 25-28
Ch. 6, pp. i, 1-14
Ch. 10, pp. i, 1-11
Ch. 13, pp. 3-4

Record: This transmittal on Form AAA-1

USAM (superseded)

UNITED STATES ATTORNEYS' MANUAL TRANSMITTAL

AFFECTING TITLE: 1
TRANSMITTAL NUMBER: 1-B-5
DATE OF TRANSMITTAL: June 23, 1986
DATE OF TEXT: December 31, 1985
EFFECTIVE DATE OF TEXT: August 6, 1986

To: Appropriate Administrative Personnel
Offices of U.S. Attorneys, Offices, Boards and Divisions
Department of Justice

for distribution to Manual Holders of Title 1

From: U.S. Attorneys' Manual Staff
Executive Office for U.S. Attorneys

INSTRUCTIONS TO ADMINISTRATIVE PERSONNEL

Please record receipt of this material on Form C-1, and distribute per Form B.

HIGHLIGHTS

The enclosed transmittal consists of grammatical and format changes to Chapter 5 of Title 1, OBTAINING, DISCLOSING AND WITHHOLDING INFORMATION: RELATIONS WITH THE NEWS MEDIA.

New material has been added to the following sections: 1-5.130, 1-5.140, 1-5.141, 1-5.143, 1-5.161, 1-5.162, 1-5.230, 1-5.240, 1-5.250, 1-5.260, 1-5.501, 1-5.530, and 1-5.700.

INSTRUCTIONS TO MANUAL HOLDERS

Insert this highlights page in front of Title 1.

REMOVE:

Ch. 5, pp. i-iii, 1-56

INSERT:

Ch. 5, pp. i-iii, 1-54

Record: This transmittal on Form AAA-1

UNITED STATES ATTORNEYS' MANUAL TRANSMITTAL

AFFECTING TITLE: 1
TRANSMITTAL NUMBER: 1-B-6
DATE OF TRANSMITTAL: July 1, 1986
DATE OF TEXT: December 31, 1985
EFFECTIVE DATE OF TEXT: August 31, 1986

To: Appropriate Administrative Personnel
Offices of U.S. Attorneys, Offices, Boards and Divisions
Department of Justice

for distribution to Manual Holders of Title 1

From: U.S. Attorneys' Manual Staff
Executive Office for U.S. Attorneys

INSTRUCTIONS TO ADMINISTRATIVE PERSONNEL

Please record receipt of this material on Form C-1, and distribute per Form B.

HIGHLIGHTS

The enclosed transmittal consists of revisions to Chapter 3 of Title 1, DOJ ORGANIZATIONS AND FUNCTIONS.

INSTRUCTIONS TO MANUAL HOLDERS

Insert this highlights page in front of Title 1.

Remove:

Ch. 3, pp. i-ii, 5-70

Insert:

Ch. 3, pp. i-ii, 5-70

Record this activity on Form AAA-1.

UNITED STATES ATTORNEYS' MANUAL TRANSMITTAL

AFFECTING TITLE: 1
TRANSMITTAL NUMBER: 1-B-7
DATE OF TRANSMITTAL: September 26, 1986
DATE OF TEXT: August 4, 1986
EFFECTIVE DATE OF TEXT: January 8, 1987

To: Appropriate Administrative Personnel
Offices of U.S. Attorneys, Offices, Boards and Divisions
Department of Justice

for distribution to Manual Holders of Title 1

From: U.S. Attorneys' Manual Staff
Executive Office for U.S. Attorneys

INSTRUCTIONS TO ADMINISTRATIVE PERSONNEL

Please record receipt of this material on Form C-1, and distribute per Form B.

HIGHLIGHTS

The enclosed transmittal consists of revisions to Section USAM 1-15.240, Procedures Where Material Sought are in Possession of a Person Who Holds Them in Relation to Some Form of Public Communications.

INSTRUCTIONS TO MANUAL HOLDERS

Insert this highlights page in front of Title 1.

REMOVE:

Ch. 15, pp. 3-4

INSERT:

Ch. 15, pp. 3-4

Record: This transmittal on Form AAA-1

UNITED STATES ATTORNEYS' MANUAL
TITLE 1--GENERAL

FORM FOR RECORDING INSERTION
OF MANUAL TRANSMITTALS
TITLE 1--GENERAL

NUMBER	CHAPTER(S)	DATE OF TEXT	INSERTED BY	DATE
A-20				
A-21				
A-22	1-6.000	5/22/84		
A-23				
A-24				
A-25				
A-26				
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A-33				
A-34				
A-35				

Request Manual Transmittals from your Administrative Officer
For use of Manual holders
FORM AAA-1

UNITED STATES ATTORNEYS' MANUAL
TITLE 1--GENERAL

FORM FOR RECORDING INSERTION
OF MANUAL TRANSMITTALS
TITLE 1--GENERAL

NUMBER	CHAPTER(S)	DATE OF TEXT	INSERTED BY	DATE
B-1	1-12.000	7/1/85	JG	2/11/86
B-2	1-11.000	7/1/85	JG	3/11/86
B-3	1-11.350	5/23/86	JG	5/23/86
B-4	1-B-4	10/31/86	JG	2/6/87
B-5	1-5	12/3/85	JG	11/26/86
B-6	1-B-3	4/11/86	JG	2/7/87
B-7	1-B-7	8/4/86	JG	6/30/87
B-8	1-B-6	12/31/85	JG	6/30/87
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B-19				
B-20				

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UNITED STATES ATTORNEYS' MANUAL
TITLE 1 - GENERAL

FORM FOR RECORDING INSERTION
OF MANUAL TRANSMITTALS
FOR TITLE 1--GENERAL

Number	Date of Text	By	Inserted	Date
1				
2		A 11	2/10/84	
3		A 12	2/17/84	
4		A 13	3/9/84	
5		A 14	3/23/84	
6	1-14-77	A 15	3/26/84	
7		A 16	3/2/84	
8	1-1-78	A 17	3/26/84	
9	5-8-79	A 18	3/23/84	
10	8-2-79	A 19	3/23/84	
11	10-9-79	A 20	3/23/84	
12	11-16-79	A 21	3/23/84	
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For use of Manual holders
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A10 4-26-83

A2 6-23-80
A3 8-3-81
A5 10-27-81

A6 12-15-81
A7 2-9-82
A8 4-27-82

JULY 4, 1976

UNITED STATES ATTORNEYS' MANUAL
TITLE 1 - GENERAL

FORM FOR RECORDING INSERTION
OF MANUAL TRANSMITTALS
FOR TITLE 1--GENERAL

Number	Date of Text	By	Inserted	Date
1				
2		A 11	2/10/84	
3		A 12	2/17/84	
4		A 13	3/9/84	
5		A 14	3/23/84	
6	1-14-77	A 15	3/26/84	
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9	5-8-79	A 18	3/23/84	
10	8-2-79	A 19	3/23/84	
11	10-9-79	A 20	3/23/84	
12	11-16-79	A 21	3/23/84	
13	1-15-80			
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Request Manual Transmittals from your Administrative Officer.

For use of Manual holders
Form A-1

A2 6-23-80
A3 8-3-81
A5 10-27-81

A6 12-15-81
A7 2-9-82
A8 4-27-82

A10 4-26-83
JULY 4, 1976

UNITED STATES ATTORNEYS' MANUAL
TITLE 1 - GENERAL

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1				
2		A 11	2/10/84	
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5		A 14	3/23/84	
6	1-14-77	A 15	3/26/84	
7		A 16	3/2/84	
8	1-1-78	A 17	3/26/84	
9	5-8-79	A 18	3/23/84	
10	8-2-79	A 19	3/23/84	
11	10-9-79	A 20	3/23/84	
12	11-16-79	A 21	3/23/84	
13	1-15-80			
14	A1 4/20/84			
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Form A-1

A2 6-23-80
A3 8-3-81
A5 10-27-81

A6 12-15-81
A7 2-9-82
A8 4-27-82

A10 4-26-83
JULY 4, 1976

For Use of Administrative Officer

District: _____

Copy No.: _____

UNITED STATES ATTORNEYS' MANUAL

GENERAL

This Manual is issued by, and remains
the property of, the United States Department of Justice

1976

UNITED STATES ATTORNEYS' MANUAL
TITLE 1--GENERAL

SUMMARY TABLE OF CONTENTS

- 1-1.000 INTRODUCTION
- 1-2.000 KEY PERSONNEL
- 1-3.000 DOJ ORGANIZATION AND FUNCTIONS
- 1-4.000 STANDARDS OF CONDUCT IN GENERAL
- 1-5.000 OBTAINING, DISCLOSING AND WITHHOLDING INFORMATION: RELATIONS
WITH THE NEWS MEDIA
- 1-6.000 CIVIL AND CRIMINAL LIABILITY OF DOJ ATTORNEYS
- 1-7.000 DOJ ATTORNEYS AS WITNESSES
- 1-8.000 RELATIONS WITH CONGRESS
- 1-9.000 OTHER GOVERNMENT AGENCIES
- 1-10.000 RELATIONS WITH THE PRIVATE BAR AND JUDICIARY
- 1-11.000 "IMMUNITY"-COMPELLED TESTIMONY
- 1-12.000 PRE-TRIAL DIVERSION PROGRAM
- 1-13.000 ORDERS OF THE ATTORNEY GENERAL
- 1-14.000 AUTHORITY TO CONDUCT GRAND JURY PROCEEDINGS
- 1-15.000 DOCUMENTARY MATERIAL HELD BY THIRD PARTIES
- 1-16.000 GUIDELINES ON DEPARTMENT POLICY REGARDING SPECIAL MASTERS
- INDEX TO TITLE 1
- INDEX TO UNITED STATES ATTORNEYS' MANUAL

APRIL 1, 1986



USAM (superseded)



USAM (superseded)

UNITED STATES ATTORNEYS' MANUAL
TITLE 1--GENERAL

DETAILED
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UNITED STATES ATTORNEYS' MANUAL
TITLE 1--GENERAL

1-1.000 INTRODUCTION

1-1.100 PURPOSE OF THE MANUAL

This United States Attorneys' Manual is a text prepared to aid U.S. Attorneys and their Assistants in the performance of their important public responsibilities. It is designed to be the single repository of all materials and general policies and procedures relevant to the work of the U.S. Attorneys' Offices and to their relations within the Department of Justice with the legal divisions, investigative agencies, other bureaus and divisions, and the Justice Management Division (see Administrative Directives System for purely administrative guidance). The contents of this Manual are, accordingly, a necessary and invaluable guide to U.S. Attorneys, their Assistants, and attorneys of the legal divisions in carrying out their duties and exercising their discretion, under the direction of the Attorney General, in representing the United States.

This Manual provides only internal Department of Justice guidance. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. Nor are any limitations hereby placed on otherwise lawful litigative prerogatives of the Department of Justice.

A number of goals were pursued in the development of the United States Attorneys' Manual:

A. Fairness: Each case is different and must always be treated on its facts. General guidelines, however, help assure evenhandedness, consistency, and equal treatment by different U.S. Attorneys' Offices in similar cases.

B. Consistency: Where a generally consistent government position is appropriate, a comprehensive vehicle for dissemination of materials serves as an aid in maintaining this consistent position in the courts.

C. Efficiency: Recurring questions can easily and quickly be disposed of by statements of general policy, thus avoiding the loss of time in dealing with problems on an ad hoc basis, or in attempting to ascertain policies. Frequently encountered questions of law can also be anticipated and answered utilizing the Department's collective experience.

D. Communication: The Manual serves as a single repository where statements of general policy can be collected and organized as they are

UNITED STATES ATTORNEYS' MANUAL
TITLE 1--GENERAL

issued. Statements are incorporated into the appropriate section of the Manual for ready reference.

E. Changes in Materials: The consolidation of materials in a single general manual helps to promote changes in policy that have become obsolete over time, and spotlights present general policies that are in need of scrutiny and change.

To be effective, this Manual must be kept current. Thus, it has been designed to allow for continuous revision. See USAM 1-1.500, for revision and maintenance procedures. Your comments and criticism are solicited and may be forwarded to the Director, Office of Legal Services, Executive Office for U.S. Attorneys.

1-1.200 AUTHORITY OF MANUAL; RELIANCE THEREON

This Manual was prepared under the general supervision of the Attorney General and under the direction of the Deputy Attorney General, by the Executive Office for U.S. Attorneys, the Department's legal divisions, the U.S. Attorneys as represented by the Attorney General's Advisory Committee, and the Justice Management Division. See A.G. Order 665-76. The Executive Office for U.S. Attorneys coordinates the periodic revision of the Manual in consultation with the Attorney General, Deputy Attorney General and Associate Attorney General.

This Manual is intended to be comprehensive. When the materials in this Manual conflict with earlier Department statements, save for the Attorney General's pronouncements, the Manual will control. Should there arise a situation in which a Department policy statement predating the Manual relates to a subject not addressed by the Manual, the prior statement controls, but this situation should be brought to the attention of the U.S. Attorneys' Manual Staff, Executive Office for U.S. Attorneys.

For the relationship between this Manual and Department communications issued after its publication, see USAM 1-1.550.

1-1.300 ORGANIZATION OF MANUAL

The Manual is divided into eleven (11) distinct titles housed in a multi-binder looseleaf set. Each title has both a name and number to identify it. Each title contains a table of contents and an index. A general index covering the entire Manual is maintained by the Manual Staff. In addition, the Manual is available on the Justice Retrieval Inquiry System (JURIS).

UNITED STATES ATTORNEYS' MANUAL
TITLE 1--GENERAL

1-1.310 List of Titles

<u>Name</u>	<u>Number</u>
General	Title 1
Appeals	Title 2
Justice Management Division	Title 3
Civil Division	Title 4
Land & Natural Resources Division	Title 5
Tax Division	Title 6
Antitrust Division	Title 7
Civil Rights Division	Title 8
Criminal Division	Title 9
EOUSA	Title 10
Debt Collection	Title 11

1-1.320 Paragraph Numbering System

The Manual employs a paragraph numbering system to facilitate the citation (see USAM 1-1.600), retrieval, and revision of its contents.

A brief explanation of the numbering principles follows: Using "1-2.345" as an example:

The number located in the position of "1" is the Title.

The number located in the position of "2" is the chapter within the Title.

The number located in the position of "3" is the topic within the chapter.

The number located in the position of "4" is the subtopic within the topic.

The number located in the position of "5" is the paragraph number.

UNITED STATES ATTORNEYS' MANUAL
TITLE 1--GENERAL

1-1.400 DISTRIBUTION AND DISCLOSURE

The Manual is United States Government property. It is issued to be used in conjunction with official duties and must be returned to the appropriate administrative officer prior to leaving Department employ.

All materials contained in the U.S. Attorneys' Manual, unless specifically designed to the contrary, are subject to the provisions of Title 5, U.S.C., Sec. 552(a)(2). Accordingly, this Manual must be made available for public inspection and copying pursuant to 28 C.F.R. 16.2. Copy costs should be assessed pursuant to 28 C.F.R. 16.10. Requests for a copy of a complete title or other large portions of the U.S. Attorneys' Manual should be referred to the Executive Office for U.S. Attorneys, Attn: U.S. Attorneys' Manual Staff, for processing.

Proper distribution in the offices of the U.S. Attorneys is as follows: all U.S. Attorneys; their office library, branch office libraries and division chiefs receive full sets. All Assistants receive Titles 4 through 9 only as required for efficient job performance as determined by the U.S. Attorney. Title 11 is available to all collections personnel. Title 10 is distributed to U.S. Attorneys' Offices on a limited basis because it contains administrative guidelines for U.S. Attorneys' Offices.

Proper distribution in the legal divisions is: the Assistant Attorneys General, their deputies, section chiefs, division and section libraries--each receive full sets. Other titles, particularly for division attorneys, are provided as required for efficient job performance as determined by the concerned Assistant Attorney General.

Proper distribution to offices, boards and bureaus is: the head of the unit, his/her principal assistants and library each--receive a full set. Other sets and individual titles must be specially requested.

The Manual is published by the Executive Office for U.S. Attorneys and is distributed in bulk to the administrative officer of each U.S. Attorney's Office, legal division or other unit. These persons receive all binders and all inserts, making the local distribution following "Office Distribution of U.S. Attorneys' Manual," Form B.

The requisition of additional full or partial sets or binders, or missing items, should proceed through each office's administrative

UNITED STATES ATTORNEYS' MANUAL
TITLE 1--GENERAL

officer. Said person will, with the approval of the head of such unit, forward a written request to: U.S. Attorneys' Manual Staff, Office of Legal Services, Executive Office for U.S. Attorneys.

1-1.500 REVISION AND MAINTENANCE

This Manual is intended to function as do the commercial looseleaf services. Therefore, at regular intervals, documents styled "Manual Transmittal" (composed of additional or replacement Manual pages for each title) are mailed to the administrative person responsible for in-office distribution. See USAM 1-1.400.

That person acknowledges receipt of Manual Transmittals and/or binders by filling out a "Form for Recording Receipt of Manual Transmittals and Binders," Form C, before distributing the materials to the holders of Manual titles per Form B.

Each holder of a copy of the Manual or any title thereof is responsible for inserting the materials received and filling out a "Form for Recording Insertion of Manual Transmittals," Form A. One of these forms will be available for each title.

Certain directives from the Department are distributed separately from Manual Transmittals, and designated as "bluesheets." See USAM 1-1.550.

1-1.550 Communications From the Department

Every communication from the Department to all U.S. Attorneys (except the most urgent) shall, prior to dissemination, have noted on its face by its originator, the portions of the Manual, if any, affected, and be sent to the Executive Office for U.S. Attorneys for review and comment. Once all the affected portions of the Manual have been identified and the contents categorized as being policy or administrative the communication will:

A. Be printed by the Executive Office for U.S. Attorneys on light blue paper, if the contents are policy (except for communications from the Attorney General, Deputy Attorney General, and Associate Attorney General which are fully effective upon issuance), and sent in sufficient quantity to the administrative officers for all holders of the Manual or any part thereof;

UNITED STATES ATTORNEYS' MANUAL
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B. Be printed by the Executive Office for U.S. Attorneys on white paper, if the contents are administrative and the information can be incorporated into the permanent text within a reasonable period of time (and sent in sufficient quantity to the administrative officers for all holders of the Manual or any part thereof);

C. Be inserted, upon receipt by holders of the Manual, adjacent to the affected portions of the Manual;

D. After review and comment by the Attorney General's Advisory Committee of U.S. Attorneys, the material previously published as a bluesheet will be submitted to the Deputy Attorney General for approval to publish, and if so approved, be incorporated into the text of this Manual by its originator, via the next periodic Manual update. Review and comment of administrative communications by the Attorney General's Advisory Committee of U.S. Attorneys is not required, but may be made.

The communications receiving the treatment outlined above shall, pending step (D)--incorporation of the communication into the Manual--be considered authoritative and part of the Manual. To insure their timely incorporation, all such communications will have a lifespan of 5 months, after which they will no longer be in effect unless incorporated into the text of the Manual or reissued.

All U.S. Attorneys are urged to promptly forward their comments concerning Manual communications to the Attorney General's Advisory Committee of U.S. Attorneys in order to expedite the review and comment procedure.

1-1.600 HOW TO CITE THIS MANUAL

See USAM 1-1.320, paragraph numbering system of the Manual.

A. Information appearing in this Manual at paragraph 3-3.101 would be cited as:

USAM 3-3.101 (1/85)

B. If citing a particular page:

USAM 3-3.101 at 15 (1/85)

Pages are numbered consecutively within a chapter (not within individual paragraph numbers). Occasionally pages are lettered to facilitate their

UNITED STATES ATTORNEYS' MANUAL
TITLE 1--GENERAL

insertion between two numbered pages without requiring a reprinting of all subsequent pages in the chapter. Thus, the "15" in the above citation refers to the 15th page of the third chapter of Title 3. The date refers to the date of the most recent insert.

C. If citing a particular Bluesheet:

Bluesheet affecting (subject), USAM 0-0.000 (title, chapter, etc.) (month/year).

1-1.700 DEPARTMENT PUBLICATIONS

The various components of the Department of Justice publish each year hundreds of pamphlets, newsletters, bulletins, reports, periodicals, guidelines and texts for use by Department personnel and the public. As there is no one comprehensive listing of all such publications, inquiries should be addressed to the library of the particular office, board, division or bureau responsible for the publication, if known, or to the Department's main library.

The following is a representative listing of component publications longer than a memorandum.

A. Published by Executive Office for U.S. Attorneys:

1. U.S. Attorneys' Manual (see USAM 1-1.400);
2. U.S. Attorneys' Bulletin (monthly; for copies, check with administrative officer who may then write U.S. Attorneys' Bulletin Staff, Office of Legal Services, Executive Office for U.S. Attorneys);
3. For Your Information (monthly newsletter published by the Office of Administration and Review);
4. LECC Network News (bimonthly newsletter published by LECC Staff);
5. U.S. Attorneys' Offices Statistical Report (annual, contact Office of Management Information Systems and Support (OMISS)); and
6. Register, Department of Justice and Courts of the United States (1983; for copies, call Executive Office for U.S. Attorneys).

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B. Antitrust Division:

1. Antitrust Bulletin;
2. Antitrust Division Manual;
3. Antitrust Grand Jury Manual (for copies, check, in order, your Administrative Officer, Executive Office for U.S. Attorneys, Legal Procedures Unit of Antitrust Division (FTS 633-2481));
4. Digest of Business Reviews; and
5. Business Review Procedure (issued under 28 C.F.R. §50.6).

C. Bureau of Justice Statistics:

1. Bureau of Justice Statistics Publications, FY 1971--Current (annually).

D. Bureau of Prisons/Federal Prison Industries:

1. Directives Index of Current Federal Prison System Program Statements (quarterly, lists all Federal Prison System program statements and manuals).

E. Civil Division:

1. Civil Division Practice Manual (1975 with supplements; for copies, check, in order, your administrative officer, Executive Office for U.S. Attorneys, Civil Division's Administrative Officer, FTS 724-7207); and
2. Civil Division Monographs.

F. Civil Rights Division:

1. Handbook for Drafting Jury Instructions for Use in Criminal Civil Rights cases (for copies, call FTS 633-4067);
2. Handbook for the Investigation and Trial of Title II Cases; and
3. Civil Rights Forum (quarterly).

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G. Criminal Division

1. A Federal Prosecutor's Guide to Bond and Sentencing Issues (1984);
2. An Overview--The Dangerous Special Offender, Title 18, United States Code, Section 3575 et seq., (1984);
3. Annual Report to Congress on the Activities and Operations of the Public Integrity Section (issued annually);
4. Briefing Paper on America's War Against Illicit Drugs (prepared in conjunction with the FBI and DEA) (1984) (Supplement to October 1984 issue of the Narcotics Newsletter, Vol. VI, No. 9);
5. Bulletin on Economic Crime Enforcement (1979; issued bimonthly);
6. Criminal Forfeitures Under the RICO and Continuing Criminal Enterprise Statute (1980);
7. Criminal Prosecution Under the Continuing Criminal Enterprise Statute-Section 848 of Title 21, United States Code (1982);
8. Electronic Surveillance: The Interception of Communications Pursuant to Title 18, United States Code, Section 2510 et seq., the Requirements of the Statute and the Issues Which Arise in Connection with the Introduction of this Evidence in a Federal Criminal Prosecution (updated in 1981);
9. Federal Grand Jury Practice Manual (2 volumes) (1983);
10. Federal Laws Related to Drug Abuse (1981);
11. Federal Prosecutions of Corrupt Public Officials (issued annually);
12. Federal Prosecution of Election Offenses (1984);
13. Foreign Agents Registration Act of 1938, as amended, and the Rules and Regulations Prescribed by the Attorney General (pamphlet reprint);
14. Forfeitures Pursuant to 21 U.S.C. §881 (about 1980);

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15. Forfeitures Volume I: Introduction to Civil Statutes (1984);
16. Forfeitures, Supplement to Volume I (1984);
17. Guides for Drafting Indictments (1973); 4 volumes, out of print, partially superseded by Title 9 of the United States Attorneys' Manual;
18. Handbook for Federal Obscenity prosecutions (1972), out of print, partially superseded by Title 9 of the United States Attorneys' Manual;
19. Information Booklet for U.S. Citizens Incarcerated in Bolivian Prisons Regarding the Operation of the Treaty between Bolivia and the U.S. on the Execution of Penal Sentences (1978);
20. Information Booklet for U.S. Citizens Incarcerated in Canadian Prisons Regarding the Operation of the Treaty Between Canada and the U.S. on the Execution of Penal Sentences (1978);
21. Information Booklet for U.S. Citizens Incarcerated in Mexican Prisons Regarding the Operation of the Treaty Between Mexico and the U.S. on the Execution of Penal Sentences (1977);
22. Information Booklet for U.S. Citizens Incarcerated in Peruvian Prisons Regarding the Operation of the Treaty Between Peru and the U.S. on the Execution of Penal Sentences (1981);
23. Investigation and Prosecution of Illegal Money Laundering (1983);
24. Manual on the Law of Search & Seizure (1972), out of print, partially superseded by Title 9 of the United States Attorneys' Manual;
25. Multinational White Collar Crime (about 1976), out of print;
26. Narcotic Addict Rehabilitation Act (NARA) Handbook, out of print;
27. Narcotics Newsletter (1979; issued monthly);
28. Narcotics Prosecutions and the Bank Secrecy Act (about 1980);

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29. National Priorities for the Investigation and Prosecution of White Collar Crime (1980);

30. Procedure for Requesting International Extradition (1984) (to be superseded by USAM 9-15.000 et seq., in 1985);

31. Registration of Certain Organizations Under the Act of October 17, 1940 (Public Law 772, 80th Congress) and the Rules and Regulations Prescribed by the Attorney General (pamphlet reprint);

32. Registration of Certain Persons Under the Act of August 1, 1956 (Public Law 893, 84th Congress, 2d Session) and the Rules and Regulations Prescribed by the Attorney General (pamphlet reprint);

33. Report of the Attorney General to the Congress of the United States on the Administration of the Foreign Agents Registration Act of 1938, as amended, for the Calendar Year (issued annually); and

34. The Federal Criminal Laws for the Protection of the Major Candidates for President and Vice President of the United States (1984).

The following publications of the Criminal Division have been totally superseded by Title 9 of the United States Attorneys' Manual:

1. Collections Manual (1975);
2. Comprehensive Drug Abuse Prevention Manual;
3. Handbook on Protection of Government Property (1969);
4. Labor Racketeering Manual (1971);
5. Manual for the Conduct of Electronic Surveillance Under Title III of Public Law 90-351;
6. Manual for the Prosecution of Perjury (1975); and
7. Practical Handbook of Grand Jury Procedure (1968).

H. Drug Enforcement Administration:

1. DEA Fact Sheets;

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2. Drug Enforcement (quarterly);
3. Drugs of Abuse (pamphlet);
4. Terms and Symptoms: Charts of Controlled Substances;
5. Registrants Facts (biweekly newsletter);
6. Narcotics Intelligence Estimate (published by National Narcotics Intelligence Committee of Office of Intelligence, DEA); and
7. Katie's Coloring Book about Drugs.

I. Federal Bureau of Investigation:

1. The FBI issues an extensive Publications List which sets out current FBI publications by subject matter. A copy of this list may be obtained by calling FTS 324-5343;
2. Crime in the United States: Uniform Crime Reports (annual);
and
3. The FBI Law Enforcement Bulletin (monthly).

J. Immigration & Naturalization Service:

1. INS issues numerous pamphlets but relies for the main part upon its current laws, Title 8, Code of Federal Regulations, Operations Instructions and Interpretations. Inquiries should be directed to: INS Policy Directives Staff, FTS 633-3291;
2. Commissioner's Communique (semi-monthly);
3. INS Reporter (quarterly); and
4. INS Statistical Yearbook (annually).

K. INTERPOL--United States National Central Bureau:

1. INTERPOL--USNCB Annual Report;
2. INTERPOL--USNCB Brochure;
3. INTERPOL--USNCB History and Functions Statement; and
4. INTERPOL--USNCB Investigations Manual.

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L. Justice Management Division:

1. Report 1-21, U.S. Attorneys' Offices Statistical Report (by fiscal year, available from JMD);
2. DOJ Telephone Directory (available from JMD quarterly);
3. DOJ/OBD Administrative Directives (available from JMD);
4. Juniper Justice Uniform Personnel Systems Report (available from JMD);
5. Publications Directive, Department of Justice Order No. 251 1975 (available from JMD); and
6. Justice Publications and Printing Guide, 1977 (available from JMD).

M. Land & Natural Resources Division:

1. Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970; copies distributed with Title 5 of the U.S. Attorneys' Manual);
2. Uniform Appraisal Standards for Federal Land Acquisitions (1973; copies distributed with Title 5 of the U.S. Attorneys' Manual); and
3. A Procedural Guide for the Acquisitions of Real Property Governmental Agencies (1972; copies distributed with Title 5 of the U.S. Attorneys' Manual).

N. National Institute of Justice:

1. Publications of the National Institute of Justice: A Comprehensive Bibliography (updated as necessary).

O. Office of Juvenile Justice and Delinquency Prevention:

1. OJJDP and NIJJDP Inventory of Publications (monthly, lists all documents available through the Juvenile Justice Clearinghouse of the National Criminal Reference Service).

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P. Office of Legal Counsel:

1. Official Opinions of the Attorney General of the United States (published in pamphlet form); and
2. Opinions of the Office of Legal Counsel (three volumes, 1977-1979; intend to publish annually).

Q. Office of Legal Policy:

1. FOIA Update (quarterly, for copies contact the Office of Information and Privacy, FTS 724-7402); and
2. FOIA Case List (annual; for copies, U.S. Attorneys should contact the Office of Legal Services, Executive Office for U.S. Attorneys; others should contact the Office of Information and Privacy, FTS 724-7402).

R. Tax Division:

1. Manual for Collection of Tax Judgments (July 1982);
2. Guidelines for Awards Under Section 7430 of the Internal Revenue Code (June 1983);
3. Manual for Criminal Tax Trials (1981, out of print, copies available for approximately \$35 from FOIA Unit, FTS 724-7418);
4. U.S. Attorneys' Guide (1973; for copies contact FTS 724-7418); and
5. Trial of Tax Refund Suits.

S. United States Marshals Service:

1. Pentacle (bimonthly, for copies contact Office of Public Affairs, FTS 285-1131); and
2. United States Marshals' Manual.

T. United States Parole Commission:

1. United States Parole Commission Research Reports (series);
and
2. United States Parole Commission Rules and Procedures Manual.

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U. Miscellaneous:

1. Annual Report of the Attorney General (calendar year, copies available from the Office of Public Affairs, FTS 633-2007);
2. Attorney General's Memorandum on FOIA 1974 Amendments (1975, superseded, out of print); and
3. Principles of Federal Prosecution (July 1980; available from Government Printing Office, No. 027-000-01000-8, at a cost of \$3.50).

USAM (superseded)

USAM (superseded)

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1-2.000 KEY PERSONNEL

Phone numbers and addresses for Washington, D.C. based personnel and selected personnel based elsewhere may be found in:

- A. U.S. Department of Justice Telephone Directory;
- B. Titles 3 through 9 of this Manual; and
- C. Register, Department of Justice and the Courts of the United States.

We provide below information relating to the U.S. Attorneys and the Attorney General's Advisory Committee of U.S. Attorneys.

Information relating to Assistant U.S. Attorneys is available either by contacting the involved U.S. Attorney's Office or the Executive Office for U.S. Attorneys.

Generally, the text of the Manual will refer the reader to the personnel best able to assist on any particular matter.

1-2.100 UNITED STATES ATTORNEYS

Phone numbers and addresses for U.S. Attorneys may be found in the U.S. Department of Justice Telephone Directory (published semi-annually) or in the current "Address List--U.S. Attorneys," published periodically by the Executive Office for U.S. Attorneys, see USAM 1-2.261, infra. Additional copies of the Address List may be obtained by contacting the Chief, Communications Center, Executive Office for U.S. Attorneys.

1-2.200 ATTORNEY GENERAL'S ADVISORY COMMITTEE OF U.S. ATTORNEYS

1-2.210 Authority

The Attorney General's Advisory Committee of U.S. Attorneys was established by Attorney General Order No. 640-76 (Feb. 20, 1976). See 28 C.F.R. §0.10.

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1-2.220 Membership

The Attorney General shall designate fifteen U.S. Attorneys to serve as members. The members serve at the pleasure of the Attorney General and for a normal term of three years.

1-2.230 Officers

The Committee shall select from its membership a Chairperson, Vice-Chairperson, and Secretary to serve for a term of one year. Such officers may serve for no more than two consecutive years.

1-2.240 Committee Members

The present composition of the Attorney General's Advisory Committee of U.S. Attorneys and its officers is as follows:

Robert G. Ulrich, Chairman - Western District of Missouri
Joe B. Brown, Vice Chairman - Middle District of Tennessee
John D. Tinder, Vice Chairman - Southern District of Indiana
Daniel A. Bent - District of Hawaii
James W. Diehm - District of Virgin Islands
Frank W. Donaldson - Northern District of Alabama
Helen M. Eversberg - Western District of Texas
Rudolph W. Giuliani - Southern District of New York
Frederick J. Hess - Southern District of Illinois
J. Alan Johnson - Western District of Pennsylvania
John E. Lamp - Eastern District of Washington
Kenneth W. McAllister - Middle District of North Carolina
John Volz - Eastern District of Louisiana
Brent D. Ward - District of Utah
Rodney S. Webb - District of North Dakota
Joseph E. diGenova - District of Columbia, ex officio

1-2.250 Subcommittees

1-2.251 Standing Subcommittees

A. Investigative Agencies

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- B. Legislation and Court Rules
- C. Delegates to Executive Working Groups for Federal/State Relations Standing Committee
- D. Law Enforcement Coordinating Committee (Federal/State Relations Committee)
- E. Immigration

1-2.252 Temporary Subcommittees

- A. Tax
- B. Debt Collection
- C. Correctional Institutions
- D. Office Management
- E. Indian Affairs
- F. Representative to Criminal Division Sentencing Working Group
- G. Budget
- H. Continuing Legal Education
- I. Drug Abuse Awareness and Prevention

1-2.260 Communications

<u>Teletype Routing Indicators</u>	<u>Mnemonic Code</u>
Attorney General's Advisory Committee of U.S. Attorneys	AAGAC
Investigative Agencies	ASINA
Legislation and Court Rules	ASLCR
Delegates to Executive Working Group for Federal/State Relations	ASDFS

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Law Enforcement Coordinating Committee	ASLEC
Tax	ASTAX
Debt Collections	ASDTC
Office Management	ASOFM
Immigration	ASIMM
Indian Affairs	ASIAL
Budget	ABSUB
Drug Abuse and Awareness	ADAAP
Continuing Legal Education	ASLED

If you desire to communicate with the Attorney General's Advisory Committee, use only the one routing indicator, AAGAC, and simply address your message to "Attorney General's Advisory Committee of U.S. Attorneys. No further address or routing indicator will be required for your communication to reach all fifteen members of the Advisory Committee and the Executive Office for U.S. Attorneys.

Should you desire to communicate with members of a subcommittee, simply use the appropriate routing indicator and address your message to the subcommittee, or address your communication directly to the appropriate chairperson.

1-2.261 U.S. Attorneys' Listing

U. S. ATTORNEYS' ADDRESS LIST
EXECUTIVE OFFICE STAFF COPY

DISTRICT	U.S. ATTORNEY	MAILING ADDRESS	SHIPPING ADDRESS	TELEPHONE
ALABAMA - N 01	Frank W. Donaldson (Frank) AO: Leroy Arceneaux	*200 Federal Building 1800 Fifth Avenue North Birmingham, Alabama 35203	200 Federal Building 1800 Fifth Avenue Birmingham, Alabama 35203	229-1785 205-731-1785(c) Fax: 229-1483
ALABAMA - M 02	John C. Bell (John) AO: Judy Hallford	*Post Office Box 197 Montgomery, Alabama 36101	306 U.S.P.O. & Cthse Bldg. 15 Lee Street Montgomery, Alabama 36104	534-7280 205-832-7280(c) Fax: 534-7560
ALABAMA - S 03	J. B. Sessions, III (Jeff) AO: Linda Nelson	*Post Office Drawer E Mobile, Alabama 36601	Room 305, U.S. Courthouse 113 St. Joseph Street Mobile, Alabama 36602	537-2845 205-690-2845(c) Fax: 537-4277
ALASKA 06	Michael R. Spaan (Mike) AO: Ruth Carimichael	*Rm. C-252 Fed.Bldg & U.S. Cthse 701 C St., Mail Box 9 Anchorage, Alaska 99513	Rm. C-252 Fed Bldg. & U.S. Cthse 701 C St., Mail Box 9 Anchorage, Alaska 99513	8-907-271-5071 Fax: 8-907-271-3224
ALASKA 06		+Rm. 310 New Fed Bldg & U.S. Cthse 101 12th Ave., Box 2 Fairbanks, Alaska 99701	Rm. 310 New Fed Bldg & U.S. Cthse 101 12th Ave., Box 2 Fairbanks, Alaska 99701	8-907-456-0245

* = Headquarters office
 + = Staffed branch office
 +* = Branch office, but either the USA or AO are located here.
 +# or *# = "Staffed," but not officially (i.e., not a permanent duty station for any employee of this district).

1/Mark Shipment:
 "INSIDE DELIVERY"

2/Phone numbers are
 FTS unless indicated
 commercial (c)

DISTRICT	U.S. ATTORNEY	MAILING ADDRESS	SHIPPING ADDRESS	TELEPHONE
ARIZONA 08	Stephen M. Mc Namee (Steve) AO: Ron Rodgers	*4000 U.S. Courthouse 230 North First Avenue Phoenix, Arizona 85025	4000 U.S. Courthouse 230 North First Avenue Phoenix, Arizona 85025	261-3011 602-261-3011(c) Fax: 261-3905
ARIZONA 08		+United Bank Plaza Box 73, 120 W. Broadway Tucson, Arizona 85701	United Bank Plaza/Suite 310 120 W. Broadway - Acapulco Bldg. Tucson, Arizona 85701	762-6511 602-792-6511(c) Fax: 762-6203
ARKANSAS - E 09	George W. Proctor (George) AO: Jackie Johns	*Post Office Box 1229 Little Rock, Arkansas 72203	327 P.O. & Courthouse Bldg. 600 West Capitol Little Rock, Arkansas 72203	740-5342 501-378-5342(c) Fax: 740-5705
ARKANSAS - W 10	J. Michael Fitzhugh (Mike) AO: Jan Scott	*Post Office Box 1524 Fort Smith, Arkansas 72901	6th & Rogers U.S. Post Office & Cthse Bldg. Fort Smith, Arkansas 72901	501-783-5125(c) Fax: 501-785-2442
CALIFORNIA - N 11	Joseph P. Russoniello (Joe) AO: Ethel Rocco	*450 Golden Gate Avenue San Francisco, California 94102	Room 16201 Federal Building 450 Golden Gate Avenue San Francisco, California 94102	556-1126 415-556-1126(c) Fax: 556-7619
CALIFORNIA - N 97		+U.S. Attorney's Office 280 South First Street, Room 371 San Jose, California 95113	U.S. Attorney's Office 280 South First Street, Room 371 San Jose, California 95113	466-7221 408-291-7221(c)
CALIFORNIA - E 97	Peter A. Nowinski (CA) (Pete) AO: Donald Veatch	*3305 Federal Building 650 Capitol Mall Sacramento, California 95814	3305 Federal Building 650 Capitol Mall Sacramento, California 95814	460-2700 916-551-2700(c) Fax: 460-2736
CALIFORNIA - E 97		+4311 Federal Building 1130 O Street Fresno, California 93721	4311 Federal Building 1130 O Street Fresno, California 93721	467-5172 209-487-5172(c) Fax: 467-5632

DISTRICT	U.S. ATTORNEY	MAILING ADDRESS	SHIPPING ADDRESS	TELEPHONE
CALIFORNIA - C				
12	Robert C. Honner (Rob) AO: John McEvoy	*312 North Spring Street Los Angeles, California 90012	Room 1306 312 North Spring Street Los Angeles, California 90012	798-2434 213-894-2434(c) Fax: 798-0141/2
CALIFORNIA - S				
98	Peter K. Nunez (Pete) AO: Morris Egre	*940 Front Street Room 5-N-19, U. S. Courthouse San Diego, California 92189	940 Front Street Room 5-N-19, U. S. Courthouse San Diego, California 92189	895-5610 619-293-5610(c) Fax: 895-5551
COLORADO				
13	Robert N. Miller (Bob) AO: Bill Wooden	*1961 Stout Street, Suite 1200 Fed. Office Bldg., Drawer 3615 Denver, Colorado 80294	1200 Fed. Office Bldg. 1961 Stout Street Denver, Colorado 80294	564-2081 303-844-2081(c) Fax: 564-2308
CONNECTICUT				
14	Stanley A. Twardy, Jr. (Stan) AO: Rosemary Towle	*Post Office Box 1824 New Haven, Connecticut 06508	United States Courthouse 141 Church Street New Haven, Connecticut 06510	645-2108 203-773-2108(c)
CONNECTICUT				
14		+Federal Building, Room 250 450 Main Street Hartford, Connecticut 06103	Federal Building, Room 250 450 Main Street Hartford, Connecticut 06103	244-2570 203-722-2570(c)
CONNECTICUT				
14		+Room 309, Fed. Bldg. & Cthse. 915 Lafayette Boulevard Bridgeport, Connecticut 06603	Room 309, Fed. Bldg. & Cthse. 915 Lafayette Boulevard Bridgeport, Connecticut 06603	643-4596 203-579-5596(c)
DELAWARE				
15	William C. Carpenter, Jr. (Bill) AO: Karen Conaway	*J. Caleb Boggs Federal Bldg. 844 King Street, Rm. 5110 Wilmington, Delaware 19801	J. Caleb Boggs Federal Bldg. 844 King Street, Rm. 5110 Wilmington, Delaware 19801	487-6277 302-573-6277(c) Fax: 487-6220

DISTRICT	U.S. ATTORNEY	MAILING ADDRESS	SHIPPING ADDRESS	TELEPHONE
DIST. OF COLUMBIA				
16	Joseph E. diGenova (Joe) AO: Joan Fegan 272-9355	*Judiciary Center Building 555 4th Street, N.W. Washington, D.C. 20001	Judiciary Center Building 555 4th Street, N.W. Washington, D. C. 20001	272-9000 202-272-9000(c) Fax: 786-4018
DIST. OF COLUMBIA				
16		+Chief, Superior Court Division 500 Indiana Avenue, 6th Floor Washington, D.C. 20001	Chief, Superior Court Division 500 Indiana Avenue, 6th Floor Washington, D. C. 20001	724-6000 202-724-6000(c)
FLORIDA - N				
17	W. Thomas Dillard (Tom)	*227 N. Bronough Street Suite 4014 Tallahassee, Florida 32301	227 N. Bronough Street Suite 4014 Tallahassee, Florida 32301	965-7360 904-681-7360(c) Fax: 965-7358
FLORIDA - N				
17	AO: Linda Larsen	+100 N. Palafox Street, Rm. 307 Pensacola, Florida 32501	100 N. Palafox Street, Rm. 307 Pensacola, Florida 32501	946-5271 904-434-3251(c) Fax: 432-7763
FLORIDA - M				
18	Robert W. Merkle (Bob) AO: Frank Hall	*Robert Timberlake Bldg., Rm. 410 500 Zack Street Tampa, Florida 33602	Robert Timberlake Bldg., Rm. 410 500 Zack Street Tampa, Florida 33602	826-2941 813-228-2941(c) Fax: 826-2389
FLORIDA - M				
18		+Post Office Box 600 Jacksonville, Florida 32201	409 Post Office Building 311 West Monroe Street Jacksonville, Florida 32201	946-2682 904-791-2682(c) Fax: 946-2620
FLORIDA - M				
18		+501 Federal Building 80 N. Hughey Avenue Orlando, Florida 32801	501 Federal Building 80 N. Hughey Avenue Orlando, Florida 32801	820-6341 305-420-6341(c) Fax: 820-6349
FLORIDA - S				
04	Leon B. Kellner (Leon) AO: Ted Rentz	*155 South Miami Avenue Miami, Florida 33130	155 South Miami Avenue Miami, Florida 33130	350-4471 305-350-4471(c) 350-5406 aft. 5pm Fax: 350-5429

DISTRICT	U.S. ATTORNEY	MAILING ADDRESS	SHIPPING ADDRESS	TELEPHONE
FLORIDA - S		+Room 202-B 299 E. Broward Blvd. Fort Lauderdale, Florida 33301	Room 202-B 299 W. Broward Blvd. Fort Lauderdale, Florida 33301	820-7254 305-527-7254(c) Fax: 820-7336
04				
FLORIDA - S		+701 Clematis Street West Palm Beach, Florida 33401	701 Clematis Street West Palm Beach, Florida 33401	305-655-1029 Fax: 305-655-4760
04				
GEORGIA - N	Robert L. Barr, Jr. (Bob)	*Richard Russell Bldg., Rm. 1800 75 Spring Street, S.W. Atlanta, Georgia 30335	Richard Russell Bldg., Rm. 1800 75 Spring Street, S.W. Atlanta, Georgia 30335	242-6954 404-331-6954(c) Fax: 242-2803
19	AO: Carolyn Gravitt			
GEORGIA - M	Joe D. Whitley (Joe)	*Post Office Box U Macon, Georgia 31202	Old P.O. Bldg - Rm 303 Mulberry & 3rd Streets Macon, Georgia 31202	238-0454 912-752-3511(c) Fax: 238-3403
20	AO: Carolyn Gilbert			
GEORGIA - S	AO: Betty Woods *All Mail	*Post Office Box 8999 Savannah, Georgia 31412	U.S. Courthouse, Room 237 125 Bull Street Savannah, Georgia 31412	248-4422 912-232-3145(c) Fax: 248-4388
21				
GEORGIA - S	Hinton R. Pierce (Hinton)	+Post Office Box 2017 Augusta, Georgia 30903	U.S. Courthouse, Room 331 8th & Telfair Street Augusta, Georgia 30903	251-2013 404-724-0517(c)
21	*All Mail to Savannah			
GUAM	K. William O'Connor (Bill)	Suite 502-A, PDN Bldg. *238 O'Hara Street, Suite 502-A Agana, Guam 96910	Pacific Nes Building 238 O'Hara Street, Suite 502-A Agana, Guam 96910	9-011-671-472-7332 9-011-671-472-7283 Fax: 671-472-7334
93	AO: Elizabeth Caron			
HAWAII	Daniel A. Bent (Dan)	*Rm. C-242, PJKK Federal Bldg. Box 50183, 300 Ala Moana Blvd. Honolulu, Hawaii 96850	Rm. C-242 PJKK Federal Bldg. 808-546-7170(c)	+808-551-2843 +808-541-2843(c) Fax: 808-546-8350
22	AO: Bob Jensen			

DISTRICT	U.S. ATTORNEY	MAILING ADDRESS	SHIPPING ADDRESS	TELEPHONE
IDAHO	Maurice O. Ellsworth (Maurie)	*Rm. 328 Federal Building Box 037, 550 W. Fort Street Boise, Idaho 83724	Rm. 328 Federal Building Box 037, 550 W. Fort Street Boise, Idaho 83724	554-1211 208-334-1211(c) Fax: 554-9375
23	AO: Marge Santos			
ILLINOIS - N	Anton R. Valukas (Tony)	*Everett McKinley Dirksen Bldg. Rm. 1500 S, 219 S. Dearborn St. Chicago, Illinois 60604	Everett McKinley Dirksen Bldg Rm. 1500 S, 219 S. Dearborn St. Chicago, Illinois 60604	353-6742 312-353-5300(c) Fax: 353-2067
24	AO: Jerry Stasiek			
ILLINOIS - N		*#211 South Court Street Rockford, Illinois 61101	211 South Court Street Rockford, Illinois 61101	363-4277 815-987-4277
ILLINOIS - S	Frederick J. Hess (Rick)	*Room 330 750 Missouri Avenue East St. Louis, Illinois 62201	Room 330 750 Missouri Avenue East St. Louis, Illinois 62201	277-9361 618-482-9361(c) Ext.361
25	AO: June Bogard			
ILLINOIS - C	J. William Roberts (Bill)	*Post Office Box 375 Springfield, Illinois 62705	Rm. 312, USPO & Federal Bldg. 600 East Monroe Street Springfield, Illinois 62705	955-4450 217-492-4450(c) Fax: 955-4512
26	AO: Carol Shipman			
ILLINOIS - C		271 Federal Building 100 NE Monroe Street Peoria, Illinois 61602	USPO & Federal Building Rm. 271, 100 NE Monroe Street Peoria, Illinois 61602	360-7050 309-671-7050(c) Fax: 360-7259
26				
ILLINOIS - C		+Rm 202 201 N. Vermillion Danville, Illinois 61823	Rm. 202 201 N. Vermillion Danville, Illinois 61823	958-5555 217-446-8546(c) Fax: 217-446-9238
26				
INDIANA - N	James G. Richmond (Jim)	*4th Floor, Federal Building 507 State Street Hammond, Indiana 46320	4th Floor, Federal Building 507 State Street Hammond, Indiana 46320	370-5215 219-937-5215(c) Fax: 370-5237
27				

DISTRICT	U.S. ATTORNEY	MAILING ADDRESS	SHIPPING ADDRESS	TELEPHONE
INDIANA - N 27	AO: Pat Krider	+*220 Federal Building 1300 South Harrison Street Fort Wayne, Indiana 46802	220 Federal Building 1300 South Harrison Street Fort Wayne, Indiana 46802 Attn: Admin. Officer	333-9121 219-422-2595(c) Fax: 333-9142
INDIANA - N 27		+302 Federal Building 204 South Main Street South Bend, Indiana 46601	302 Federal Building 204 South Main Street South Bend, Indiana 46601	333-8287 219-236-8287(c) Fax: 333-8155
INDIANA - S 28	John D. Tinder (John) AO:	*274 U. S. Courthouse 46 East Ohio Street Indianapolis, Indiana 46204	274 U. S. Courthouse 46 East Ohio Street Indianapolis, Indiana 46204	331-6333 317-269-6333(c) Fax: 331-6125
IOWA - N 29	Charles W. Larson (CA) (Chuck) AO: Joyce Jacobson	*Post Office Box 4710 Cedar Rapids, Iowa 52407	Rm. 226, Federal Building 101 1st Street SE Cedar Rapids, Iowa 52401	863-2503 319-399-2502(c) Fax: 863-2213
IOWA - N 29		+Post Office Box 1138 Sioux City, Iowa 51102	Room 327, U.S.P.O. & Cthse. Sioux City, Iowa 51102	862-3227 712-233-3227(c)
IOWA - S 30	Christopher D. Hagen (CA) (Chris) AO: Nancy Osborn	*115 U. S. Courthouse E 1st & Walnut Streets Des Moines, Iowa 50309	*115 U. S. Courthouse E 1st & Walnut Streets Des Moines, Iowa 50309	862-6257 515-284-6257(c) Fax: 862-6288
KANSAS 31	AO: Betty Borne	*444 Quincy Street Topeka, Kansas 66683	385 Federal Building 444 Quincy Street Topeka, Kansas 66683	752-2850 913-295-2850(c) Fax: 752-2853

DISTRICT	U.S. ATTORNEY	MAILING ADDRESS	SHIPPING ADDRESS	TELEPHONE
KANSAS 31	Benjamin L. Burgess Jr. (Ben)	+306 U.S. Courthouse 401 North Market Street Wichita, Kansas 67202	306 U.S. Courthouse 401 North Market Street Wichita, Kansas 67202	752-6481 316-269-6481(c) Fax: 752-6484
KANSAS 31		+412 Federal Building 812 North Seventh Street Kansas City, Kansas 66101	412 Federal Building 812 North Seventh Street Kansas City, Kansas 66101	757-3730 913-236-3730(c) Fax: 757-2941
KENTUCKY - E 32	Louis G. DeFalaise (Louis) AO: Katy Fisher	*Post Office Box 1490 Lexington, Kentucky 40591	Fourth Floor Federal Building Limestone & Barr Streets Lexington, Kentucky 40507	355-2661 606-233-2661(c) Fax: 355-2658
		+Post Office Box 72 Covington, Kentucky 41012	305 Federal Building 7th & Scott Streets	778-3184 606-292-3184(c)
KENTUCKY - W 33	Joseph M. Whittle (Joe) AO: Gary Padgett	*Rm. 211, USPO & Courthouse 601 West Broadway Louisville, Kentucky 40202	Rm. 211, USPO & Courthouse 601 West Broadway Louisville, Kentucky 40202	352-5911 502-582-5911(c) Fax: 352-5097
LOUISIANA - E 34	John Volz (John) AO: Florence Onstad	*Hale Boggs Federal Building 500 Camp Street New Orleans, Louisiana 70130	Hale Boggs Federal Building 500 Camp Street New Orleans, Louisiana 70130	682-2921 504-589-2921(c) Fax: 682-3594
LOUISIANA - M 95	P. Raymond Lamonica (CA) (Ray) AO: Joyce Cox	*352 Florida Street Baton Rouge, Louisiana 70801	352 Florida Street Baton Rouge, Louisiana 70801	687-0443 504-389-0443(c) Fax: 687-0561

DISTRICT	U.S. ATTORNEY	MAILING ADDRESS	SHIPPING ADDRESS	TELEPHONE
LOUISIANA - W				
35	Joseph S. Cage, Jr. (Joe) AO: Norma Merritt	*Rm. 3B12 Federal Building Shreveport, Louisiana 71101	Rm. 3B12, Federal Building 500 Fannin Street Shreveport, Louisiana 71101	493-5277 318-226-5277(c) Fax: 493-5292
LOUISIANA - W				
35		Rm. 305 Fed. Bldg. & US Courthouse 705 Jefferson Street Lafayette, Louisiana 70501	Rm. 305 Fed. Bldg. & USC 705 Jefferson Street Lafayette, Louisiana 70501	687-6680 318-264-6618(c) Fax: 687-6680
MAINE				
36	Richard S. Cohen (Dick) AO: Jean Todd	*P.O. Box 1588 Portland, Maine 04104	Room 107, Federal Ctse 156 Federal Street Portland, Maine 04101	833-3257 207-780-3257(c) Fax: 833-3304
MAINE				
36		+Post Office Box 1196 Bangor, Maine 04401	Room 321, Federal Bldg. 202 Harlow Street Bangor, Maine 04401	833-7344 207-945-0374(c)
MARYLAND				
37	Breckinridge L. Willcox (Breck) AO: Stephanie DePasqua	*8th Floor, U.S. Courthouse 101 W. Lombard Street Baltimore, Maryland 21201	8th Floor, U. S. Courthouse 101 W. Lombard Street Baltimore, Maryland 21201	922-4822 301-539-2940(c) Fax: 922-3124
MASSACHUSETTS				
38	Robert S. Mueller, III (CA) (Bob) AO: James Pellegrino	*1107 John W. McCormack Fed. Bldg. USPO & Courthouse Boston, Massachusetts 02109	1107 John W. McCormack Fed. Bldg. USPO & Courthouse Boston, Massachusetts 02109	223-9384 617-223-9384(c) Fax: 223-9481
MASSACHUSETTS				
38		+1550 Main Street Room 533, U. S. Courthouse Springfield, Massachusetts 01103	+1550 Main Street Room 533, U. S. Courthouse Springfield, Massachusetts 01103	836-9235 413-785-0235(c)

DISTRICT	U.S. ATTORNEY	MAILING ADDRESS	SHIPPING ADDRESS	TELEPHONE
MICHIGAN - E 39	Roy C. Hayes (Joe) AO: Dorothy Mulcahy	*817 Federal Building 231 W. Lafayette Detroit, Michigan 48226	817 Federal Building 231 West Lafayette Detroit, Michigan 48226	226-3350 313-237-0400(c) Fax: 226-2311
MICHIGAN - E 39		+P.O. Box 26, 204 Federal Bldg. 1000 Washington Street Bay City, Michigan 48707	P.O. Box 26, 204 Federal Bldg. 1000 Washington Street Bay City, Michigan 48707	517-895-5712(c)
MICHIGAN - E 39		+113 Federal Building 600 Church Street Flint, Michigan 48502	113 Federal Building 600 Church Street Flint, Michigan 48502	378-5263 313-234-8679(c)
MICHIGAN - W 40	John A. Smietanka (John) AO: James Hunter	*399 Federal Building Grand Rapids, Michigan 49503	399 Federal Building Grand Rapids, Michigan 49503	372-2404 616-456-2404(c) Fax: 372-2408
MINNESOTA 41	Jerome G. Arnold (Jerry) AO: Al Durand	*234 U.S. Courthouse 110 South 4th Street Minneapolis, Minnesota 55401	234 U. S. Courthouse 110 South 4th Street Minneapolis, Minnesota 55401	781-7430 612-332-8961(c) Fax: 787-5381
MINNESOTA 41		+#678 U.S. Courthouse 316 N. Robert Street St. Paul, Minnesota 55101	678 U. S. Courthouse 316 N. Robert Street St. Paul, Minnesota 55101	725-7171 612-725-7171(c)

DISTRICT	U.S. ATTORNEY	MAILING ADDRESS	SHIPPING ADDRESS	TELEPHONE
MISSISSIPPI - N 42	Robert Q. Whitwell (Bob) AO: Joan Allen	*Post Office Drawer 886 Oxford, Mississippi 38655	Room 255 Federal Building 911 West Jackson Avenue Oxford, Mississippi 38655	490-4926 601-234-3351(c) Fax: 490-4926
MISSISSIPPI - S 43	George L. Phillips (George) AO: Pam Shanks	*Post Office Box 2091 Jackson, Mississippi 39205	Room 324, U.S.P.O. & Ctse Capitol & West Streets Jackson, Mississippi 39205	490-4480 601-965-4480(c) Fax: 490-4409
MISSISSIPPI - S 43		+Room 302, USPO & Courthouse Biloxi, Mississippi 39533	Room 302, USPO & Courthouse Biloxi, Mississippi 39533	499-5466 601-432-5521(c)
MISSOURI - E 44	Thomas E. Dittmeier (Tom) AO: Karen Schulte	*Room 414, US Court & Custom House 1114 Market Street St. Louis, Missouri 63101	Room 414, US Court & Custom House 1114 Market Street St. Louis, Missouri 63101	279-4200 314-425-4200(c) Fax: 279-4309
MISSOURI - W 45	Robert G. Ulrich (Bob) AO: Rita Wehmeyer	*549 U.S. Courthouse 811 Grand Avenue Kansas City, Missouri 64106	549 U. S. Courthouse 811 Grand Avenue Kansas City, Missouri 64106	758-3122 816-374-3122(c) Fax: 758-5186
MISSOURI - W 45		+227 U.S. Courthouse 870 Boonville Street Springfield, Missouri 65801	227 U. S. Courthouse 870 Boonville Street Springfield, Missouri 65801	754-2702 417-831-4406(c)
MONTANA 46	Byron H. Dunbar (Pete)	*Post Office Box 1478 Billings, Montana 59103	5043 Federal Building 26th Street & 3rd Avenue, N Billings, Montana 59103	585-6101 406-657-6101(c) Fax: 585-6989

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MONTANA 46	AO: Samie Keith	+*167 Federal Building 400 N. Main Butte, Montana 59701	167 Federal Building 400 N. Main Butte, Montana 59701	585-2341 406-723-6561(c)
MONTANA 46		+P.O. Box 3446, Rm. 212 Fed. Bldg. 215 1st Avenue, North Great Falls, Montana 59401	Rm. 212 Federal Building 215 1st Avenue, North Great Falls, Montana 59401	406-761-7715(c)
NEBRASKA 47	Ronald D. Lanners (Ron) AO: Marilyn Brown	*Post Office Box 1228, DTS Omaha, Nebraska 68101	Room 8000, U.S.P.O. & Ctnse. 215 N. 17th Street Omaha, Nebraska 68101	864-4774 402-221-4774(c) Fax: 864-4757
NEBRASKA 47		+530 Federal Building 100 Centennial Mall North Lincoln, Nebraska 68508	530 Federal Building 100 Centennial Mall North Lincoln, Nebraska 68508	541-5241 402-471-5241(c)
NEVADA 48	William A. Maddox (Bill) AO: Beverly Dabney	*Box 16030 Las Vegas, Nevada 89101	Phoenix Building, Seventh Floor 330 South Third Street Las Vegas, Nevada 89101	598-6336 702-388-6336(c) Fax: 598-6803
NEVADA 48		+300 Booth Street, Room 2-032 Reno, Nevada 89509	300 Booth Street, Room 2-032 Reno, Nevada 89509	470-5439 702-784-5439(c)
NEW HAMPSHIRE 49	Richard V. Wiebusch (Dick) AO: Brenda Hayes	55 Pleasant Street, Rm 439 P.O. Box 480 James Cleveland Federal Bldg. & Crth Concord, New Hampshire 03301	55 Pleasant Street Fourth Floor Federal Bldg., Room 411 Concord, New Hampshire 03301	834-4552 603-225-1552(c) Fax: 834-4470

DISTRICT	U.S. ATTORNEY	MAILING ADDRESS	SHIPPING ADDRESS	TELEPHONE
NEW JERSEY 50	Thomas W. Greelish (CA) (Tom) AO: Pete Montante	*Federal Building 970 Broad Street, Room 502 Newark, New Jersey 07102	Federal Building 970 Broad Street Newark, New Jersey 07102	341-2289 (USA) 341-2155 (REC) 201-645-2155(c) Fax: 341-3988
NEW JERSEY 50		+402 East State Street, Rm. 265 Trenton, New Jersey 08608	402 East State St., Room 265 Trenton, New Jersey 08608	483-2190 609-989-2190(c)
NEW JERSEY 50		+Post Office Building 401 Market Street, Fifth Floor Camden, New Jersey 08101	Post Office Building 401 Market Street, Fifth Floor Camden, New Jersey 08101	488-5026 609-757-5026(c)
NEW MEXICO 51	William L. Lutz (Bill) AO: Becky Black	*Post Office Box 607 Albuquerque, New Mexico 87103	U.S. Cthse, Room 12020 500 Gold Avenue, SW Albuquerque, New Mexico 87103	474-3341 505-766-3341(c) Fax: 474-8517
NEW YORK - N 52	Frederick J. Scullin Jr. (Fred) AO: David Bent	*369 Federal Building 100 South Clinton Street Syracuse, New York 13260	Rm. 369 U.S. Cthse. & Fed. Bldg. 100 S. Clinton Street Syracuse, New York 13260	950-5165 315-423-5165(c) Fax: 950-5399
NEW YORK - N 52		+U.S. Courthouse & P.O. 2nd Floor, 445 Broadway Albany, New York 12207	Room 411, Federal Building Albany, New York 12207	562-5522 518-472-5522(c)
		319 Federal Building Binghamton, New York 13901	319 Federal Building Binghamton, New York 13901	882-2887 607-772-2888
NEW YORK - S 54	Rudolph W. Giuliani (Rudy) AO: Patrick Reynolds	*One St. Andrews Plaza New York, New York 10007	One St. Andrews Plaza New York, New York 10007	662-0055 212-791-0055(c) Fax: 662-9178
		+101 East Post Road White Plains, New York 10601	+101 East Post Road White Plains, New York 10601	662-8577

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NEW YORK - E 53	Andrew J. Maloney (Andy) AO: James Ward, Jr.	*U.S. Courthouse 225 Cadman Plaza East Brooklyn, New York 11201	U. S. Courthouse 225 Cadman Plaza East Brooklyn, New York 11201	656-7106 718-330-7106(c) Fax: 656-2137
NEW YORK - W 55	Roger P. Williams (CA) (Roger) AO: Nena Myers	*502 U.S. Courthouse Court & Franklin Streets Buffalo, New York 14202	502 U. S. Courthouse Court & Franklin Streets Buffalo, New York 14202	437-4811 716-846-4811(c) Fax: 437-4717
NEW YORK - W 55		+233 U.S. Courthouse 100 State Street Rochester, New York 14614	233 U. S. Courthouse 100 State Street Rochester, New York 14614	963-6760 716-263-6760(c) Fax: 963-6226
NORTH CAROLINA - E 56	Samuel T. Currin (Sam) AO: Don Hinkle	*Post Office Box 26897 Raleigh, North Carolina 27611	874 Federal Building 310 New Bern Avenue Raleigh, NC 27611	672-4530 919-856-4530(c) Fax: 672-4487
NORTH CAROLINA - M 57	Kenneth W. McAllister (Ken) AO: Ann Finn	*Post Office Box 1858 Greensboro, North Carolina 27402	326 Federal Bldg. & P.O.Bldg. 324 West Market Street Greensboro, NC 27402	699-5351 919-333-5351(c)
NORTH CAROLINA - W 58	Charles R. Brewer (Charles) AO: Barbara Randall	*Post Office Box 132 Asheville, North Carolina 28802	Rm. 306, U.S. PO & Cthse. Post and Otis Streets Asheville, NC 28802	672-0661 704-259-0661(c) Fax: 672-0670
NORTH CAROLINA - W 58		+Room 248, Charles R. Jonas Bldg. Charlotte, North Carolina 28202	Room 248, Charles R. Jonas Bldg. Charlotte, NC 28202	672-6222 704-371-6222(c) Fax: 672-6629

DISTRICT	U.S. ATTORNEY	MAILING ADDRESS	SHIPPING ADDRESS	TELEPHONE
NORTH DAKOTA 59	Rodney S. Webb (Rodney) AO: Valerie Kertscher	*Post Office Box 2505 Fargo, North Dakota 58108	219 Federal Building 655 1st Avenue, North Fargo, ND 58108	783-5671 701-237-5771(c) Ext.5671 Fax: 783-5232
NORTH DAKOTA 59		+Post Office Box 699 Bismarck, North Dakota 58502	452 Federal Bldg. & Post Office 3rd & Roser Avenue Bismarck, ND 58501	783-4396 701-255-4011(c) Ext.4396
OHIO - N 60	Patrick M. McLaughlin (Patrick) AO: Mary Ellen Kilbane	*Suite 500 1404 East Ninth Street Cleveland, Ohio 44114	Suite 500 1404 East Ninth Street Cleveland, Ohio 44114	293-3900 216-363-3900(c) Fax: 942-2806
OHIO - N 60		+307 U. S. Courthouse 1716 Spielbusch Avenue Toledo, Ohio 43624	307 U. S. Courthouse 1716 Spielbusch Avenue Toledo, Ohio 43624	979-6376 419-259-6376(c)
OHIO - N 60		+U.S. Courthouse & Fed. Off. Bldg. W. Market & S. Main Streets Akron, Ohio 44308	U.S. Courthouse & Fed. Off. Bldg. W. Market & S. Main Streets Akron, Ohio 44308	292-5716 216-292-5716(c)
OHIO - S 61	D. Michael Crites (CA) (Mike) AO:	*220 USPO & Courthouse 5th & Walnut Streets Cincinnati, Ohio 45202	220 USPO & Courthouse 5th & Walnut Streets Cincinnati, Ohio 45202	684-3711 513-684-3711(c) Fax: 684-6385
OHIO - S 61		+*200 U. S. Courthouse 85 Marconi Boulevard Columbus, Ohio 43215	200 U. S. Courthouse 85 Marconi Boulevard Columbus, Ohio 43215	943-5715 614-469-5715(c) Fax: 943-5715
OHIO - S 61		+Post Office Box 280 Mid City Station Dayton, Ohio 45402	802 Fed. Bldg. & U.S. Courthouse 200 West Second Street Dayton, Ohio 45402	774-2910 513-225-2910(c)

DISTRICT	U.S. ATTORNEY	MAILING ADDRESS	SHIPPING ADDRESS	TELEPHONE
OKLAHOMA - N 62	Layn R. Phillips (Layn) AO: Wanda Reeves	*3600 U. S. Courthouse 333 West Fourth Street Tulsa, Oklahoma 74103	3600 U. S. Courthouse 333 West Fourth Street Tulsa, Oklahoma 74103	745-7463 918-581-7463(c) Fax: 745-7769 918-581-7769(c)
OKLAHOMA - E 63	Roger Hilfiger (Roger) AO: Eileen Bishop	*333 Fedl Cthse & Office Bldg. Fifth & Okmulgee Muskogee, Oklahoma 74401	333 Federal Cthse & Office Bldg. Fifth & Okmulgee Muskogee, Oklahoma 74401	736-2543 918-687-2543(c) Fax: 736-2572
OKLAHOMA - W 64	William S. Price (Bill) AO: Joel Newman	*Rm. 4434 U. S. Courthouse & Fed. Off. Bldg. Oklahoma City, Oklahoma 73102	Rm. 4434 U. S. Courthouse & Fed. Off. Bldg. Oklahoma City, Oklahoma 73102	736-5281 405-231-5281(c)
OREGON 65	Charles H. Turner (Charlie) AO: Pat Davis	*312 U. S. Courthouse 620 SW Main Street Portland, Oregon 97205	312 U. S. Courthouse 620 SW Main Street Portland, Oregon 97205	423-2101 503-221-2101(c) Fax: 423-5821
OREGON 65		+Room 438, Federal Courthouse 211 E. 7th Avenue Eugene, Oregon 97401	Room 438, Federal Courthouse 211 E. 7th Avenue Eugene, Oregon 97401	425-6771 503-687-6771(c)
PENNSYLVANIA - E 66	Edward S.G. Dennis, Jr. (Ed) AO: June Rosato	*3310 U. S. Cthse., 601 Market St. Independence Mall West Philadelphia, Pennsylvania 19106	3310 U. S. Cthse., 601 Market St. Independence Mall West Philadelphia, Pennsylvania 19106	597-2556 215-597-2556(c) Fax: 597-8773

DISTRICT	U.S. ATTORNEY	MAILING ADDRESS	SHIPPING ADDRESS	TELEPHONE
PENNSYLVANIA - M				
67	James J. West (CA) (Jim) AO: Sandra Comstock	*Post Office Box 309 Scranton, Pennsylvania 18501	Suite 309, Federal Building Washington & Linden Streets Scranton, Pennsylvania 18501	717-348-2800(c) Fax: 717-348-2816
PENNSYLVANIA - M				
67		Post Office Box 11754 Harrisburg, Pennsylvania 17108	Suite 1146, Federal Building Third & Walnut Streets Harrisburg, Pennsylvania 17108	590-4482 717-782-4482(c)
PENNSYLVANIA - M				
67		+Room 307 Federal Building Lewisburg, Pennsylvania 17837	Room 307 Federal Building Lewisburg, Pennsylvania 17837	590-3873 717-524-4415(c)
PENNSYLVANIA - W				
68	J. Alan Johnson (Jerry) AO: Carol A. Brickley	*633 USPO & Courthouse 7th Avenue & Grant Street Pittsburgh, Pennsylvania 15219	633 USPO & Courthouse 7th Avenue & Grant Street Pittsburgh, Pennsylvania 15219	722-3500 412-644-3500(c) Fax: 722-4549
PENNSYLVANIA - W				
68		+Rm. 137, Fed. Bldg. & Cthse. 6th & State Streets Erie, Pennsylvania 16501	Rm. 137, Fed. Bldg. & Cthse. 6th & State Streets Erie, Pennsylvania 16501	721-2330 814-452-2906
PUERTO RICO				
69	Daniel F. Lopez-Romo (Danny) AO: Ivette Negrón	*Rm. 101, Federal Office Bldg. Carlos E. Chardon Avenue Hato Rey, Puerto Rico 00918	Rm. 101, Federal Office Bldg. Carlos E. Chardon Avenue Hato Rey, Puerto Rico 00918	809-753-4656(c) Fax: (GSAs) 809-753-4346
PUERTO RICO				
69		Criminal Division/Hato Rey Criminal Division/San Juan Old Post Office Building Old San Juan, Puerto Rico 00902	Criminal Division/Hato Rey Criminal Division/San Juan Old Post Office Building Old San Juan, Puerto Rico 00902	FTS 809-753-4323 FTS 809-753-4448

DISTRICT	U.S. ATTORNEY	MAILING ADDRESS	SHIPPING ADDRESS	TELEPHONE
RHODE ISLAND	Lincoln C. Almond (Linc)	*Post Office Box 1401 Providence, Rhode Island 02901	223 Fed. Bldg. & Courthouse Kennedy Plaza Providence, Rhode Island 02903	838-5477 401-528-5477(c) Fax: 838-5474
70	AO: Rebecca Giordano			
SOUTH CAROLINA	Vinton DeVane Lide (Dee)	*Post Office Box 2266 Columbia, South Carolina 29202	Federal Building 1100 Laurel Street Columbia, South Carolina 29201	677-5483 803-765-5483(c) Fax: 677-3955
71	AO: Jane Bennett			
SOUTH CAROLINA		The Summerall Center +19 Hagood Avenue, 10th Floor Charleston, South Carolina 29403	The Summerall Center 19 Hagood Avenue, 10th Floor Charleston, South Carolina 29403	677-4381 803-724-4381(c)
71				
SOUTH CAROLINA		+Post Office Box 10067 Greenville, South Carolina 29603	Rm. 318, Federal Building 300 East Washington Street Greenville, South Carolina 29601	803-232-5646(c)
71				
SOUTH DAKOTA	Philip N. Hogen (Phil)	*P.O. Box 1073 Sioux Falls, South Dakota 57101	135 Fed. Bldg. & US Courthouse 400 S. Phillips Avenue Sioux Falls, South Dakota 57102	782-4395 605-336-2980(c) Fax: 782-4402
73	AO: Kathleen Gehan			
SOUTH DAKOTA		+Post Office Box 2893 Rapid City, South Dakota 57701	317 Fed. Bldg. & U.S. Cthse. 515 9th Street Rapid City, South Dakota 57701	605-342-7822(c)
73				
SOUTH DAKOTA		+425 Federal Building 225 South Pierre Street Pierre, South Dakota 57501	425 Fed. Bldg. & U.S. Cthse. 225 South Pierre Street Pierre, South Dakota 57501	605-224-5402(c)
73				
SOUTH DAKOTA		+#336 Post Office & Courthouse 102 S.E. Fourth Avenue Aberdeen, South Dakota 57401	+#336 Post Office & Courthouse 102 S.E. Fourth Avenue Aberdeen, South Dakota 57401	782-7264 605-225-0250(c) EXT. 264
73				

DISTRICT	U.S. ATTORNEY	MAILING ADDRESS	SHIPPING ADDRESS	TELEPHONE
TENNESSEE - E 74	John W. Gill, Jr. (John) AO: Rodney Shropshire	*Post Office Box 872 Knoxville, Tennessee 37901	509 Main Street Knoxville, Tennessee 37901	854-4561 615-673-4561 Fax: 854-5116
TENNESSEE - E 74		+359 USPO & Courthouse Chattanooga, Tennessee 37402	359 USPO & Courthouse Chattanooga, Tennessee 37402	852-8211 615-266-0121(c)
TENNESSEE - E 74		+Rm. 318, Federal Building 101 W. Summer Street Greenville, Tennessee 37743	Rm. 318, Federal Building 101 W. Summer Street Greenville, Tennessee 37743	854-0318 615-639-6759(c)
TENNESSEE - M 75	Joe B. Brown (Joe) AO: Kathie Williams	*Room 879, U.S. Courthouse 801 Broadway Nashville, Tennessee 37203	Room 879, U.S. Courthouse 801 Broadway Nashville, Tennessee 37203	852-5151 615-736-5151(c) Fax: 852-5323
TENNESSEE - W 76	W. Hickman Ewing, Jr. (Hick) AO: Eula Woodall	*1026 Federal Office Building 167 North Main Street Memphis, Tennessee 38103	1026 Federal Office Building 167 North Main Street Memphis, Tennessee 38103	222-4231 901-521-4231(c)
TEXAS - N 77	Marvin Collins (Marvin) AO: Don Leaf	*310 U. S. Courthouse 10th & Lamar Streets Fort Worth, Texas 76102	310 U. S. Courthouse 10th & Lamar Streets Fort Worth, Texas 76102	334-3291 817-334-3291(c) Fax: 334-3094
TEXAS - N 77		+U.S. Federal Bldg. & Cthse. Rm. 16G28, 1100 Commerce St. Dallas, Texas 75242	U. S. Federal Bldg. & Cthse. Room 16G28, 1100 Commerce St. Dallas, Texas 75242	729-0951 214-767-0951(c) Fax: 729-8764
TEXAS - N 77		+U. S. Federal Bldg. & Cthse. Rm. C-201, 1205 Texas Avenue Lubbock, Texas 79401	U. S. Federal Bldg. & Cthse. Rm. C-201, 1205 Texas Avenue Lubbock, Texas 79401	738-7351 806-743-7351(c) Fax: 806-743-7394(c)
TEXAS - N 77		+P.O. Box 13236 Amarillo, Texas 79101-1559	U. S. Federal Bldg. & Cthse. Rm. 308, 205 E Fifth Street Amarillo, Texas 79101	735-1356 806-376-2356(c) Fax: 736-1399

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TEXAS - S 79	Henry K. Oncken (Henry) AO: Jolanda Wood	*Post Office Box 61129 Houston, Texas 77208	Courthouse & Federal Building 515 Rusk Avenue Houston, Texas 77002	526-4600 713-229-2600(c) Fax: 526-4743
TEXAS - S 79		+Post Office Box 886 Laredo, Texas 78040	Federal Building Matamoros Street Laredo, Texas 78040	529-6238 512-723-6523(c) Fax: 529-6266
TEXAS - S 79		+Post Office Box 1671 Brownsville, Texas 78521	Post Office Building Rm. 120, 1001 E. Elizabeth St. Brownsville, Texas 78521	529-2554 512-548-2544(c) Fax: 529-2549
TEXAS - S 79		+400 Mann Street Suite 505 Corpus Christi, Texas 78401	400 Mann Street Suite 505 Corpus Christi, Texas 78401	529-3140 512-884-3454(c) Fax: 529-3200
TEXAS - E 78	Robert J. Wortham (Bob) AO: Sandra Bridges	*700 North Street, Suite 102 Beaumont, Texas 77701	700 North Street, Suite 102 Beaumont, Texas 77701	527-2538 713-839-2538(c) Fax: 527-2550
TEXAS - E 78		110 N. College, Suite 600 Interfirst Plaza Tower Tyler, Texas 75702	110 N. College, Suite 600 Interfirst Plaza Tower Tyler, Texas 75702	214-597-8146(c)
TEXAS - E 78		P.O. Box 1539 Sherman, Texas 75090	Federal Building 101 E. Pecan, Room 317 Sherman, Texas 75090	214/868-9454 214/893-1911
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TEXAS - W 80		+Suite 1000, American Plaza Bldg. 300 West Fifth Street Austin, Texas 78701	Suite 1000, American Plaza Bldg. 300 West Fifth Street Austin, Texas 78701	770-5858 512-482-5858(c)
TEXAS - W 80		+U.S. Courthouse 200 E. Wall Street Midland, Texas 79701	U.S. Courthouse 200 E. Wall Street Midland, Texas 79701	738-1237 915-684-4120(c)
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VERMONT 82	*Mail to Burlington	+*Post Office Box 10 Federal Building Rutland, Vermont 05701	151 West Street Federal Building Rutland, Vermont 05701	832-3231 802-773-0231(c)
VIRGIN ISLANDS 94	James W. Diehm (Jim) *Mail to St. Thomas	+*Post Office Box 3239 Hamilton House, Christiansted St. Croix, Virgin Islands 00820	56 King Street, 2nd Floor Christiansted St. Croix, Virgin Islands 00820	8-809-773-3920 809-773-3920(c)
VIRGIN ISLANDS 94	AO: Grace Sebastien *All Mail	*Post Office Box 1440 St. Thomas, VI. Islands 00801-1440	Fed. Bldg. & USCH, Rm. 260 Veterans Drive, Charlotte Amalie St. Thomas, VI 00801-1440	8-809-774-5757 809-774-5757

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VIRGINIA - W 84	John Perry Alderman (John Perry) AO: Cheryl Conner	*Post Office Box 1709 Roanoke, Virginia 24008	Room 456, Poff Federal Building 210 Franklin Road, SW Roanoke, Virginia 24011	937-6250 703-982-6250(c) Fax: 937-4614
VIRGINIA - W		+Post Office Box 1098 Abingdon, Virginia 24210	USPO & Federal Building Room 234, Main Street Abingdon, Virginia 24210	703-628-4161
WASHINGTON - E 85	John E. Lamp (John) AO: Fran Waddell	*Post Office Box 1494 Spokane, Washington 99210	851 U. S. Courthouse West 920 Riverside Spokane, Washington 99201	439-3811 509-456-3811(c) Fax: 439-3706
WASHINGTON - E 85		+Room 770 Chinook Tower East 402 Yakima Avenue Yakima, Washington 98907	Room 770 Chinook Tower East 402 Yakima Avenue Yakima, Washington 98907	446-5836 509-575-5836(c)

//w//

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WASHINGTON - W 86		+Room 303 Federal Building Tacoma, Washington 98402	11th & A Streets 324 Federal Building Tacoma, Washington 98402	390-6316 206-593-6316(c)
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WEST VIRGINIA - N 87		+P.O. Box 750 Clarksburg, West Virginia 26302	Room 319 - P.O. Building 500 W. Pike Street Clarksburg, West Virginia 26302	304-623-5390(c)
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91	AO: Karen Lesco			
N. MARIANA ISLANDS				
05	K. William O'Connor (Bill) AO: Elizabeth Caron	*#c/o U. S. Attorney's Office Suite 502-A, PDN Bldg. 238 O'Hara Street Agana, Guam 96910	c/o U. S. Attorney's Office Suite 502-A, PDN Bldg. 238 O'Hara Street Agana, Guam 96910	9-011-671-472-7332(c) 9-011-671-472-7283(c) Fax: 671-472-7334(c)

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Nancy L. Smith, Exec. Asst.	"	"	"	John Shaffer, Budget Staff	272-6935	"	"
Laurence S. McWhorter Deputy Dir.	633-2123	EOUSA	786-3938	Maria Fulginiti, Foreign Travel	"	"	"
Theresa Bertucci, Admin Officer	633-1020	"	"	Frank Mallgrave, Facilities	272-6924	"	"
Grace Mastalli, LECC Staff	633-3276	"	"	Helen Brooks, Support Services	272-6947	"	"
Frances Cuffie, EEO Officer	272-6952	APHBG	272-5961	Jerry Smagala, Evaluation Staff	272-6930	"	"
				Stella Kourakos, Evaluation St.	722-6486	AWPEN	722-4549
<u>Legal Education</u>				Ron Vincoli, Personnel Staff	272-6918	APHBG	272-5961
Tom Schrup, Acting Director, AGAI	633-4104	EOUSA	786-3938	Mary Fox, Policy & Oversight	272-6955	"	"
Susan Moss, Legal Education Inst.	673-6372	EOUSC	673-3907	Melinda Morgan, Emp. Relations	272-6899	"	"
				Gail Williamson, Classification	272-6894	"	"
<u>Legal Services</u>				Annette Perkins, Employ. Sect.	272-6919	"	"
Jason Green, Director	633-4024	EOUSA	786-3938	Linda Schwartz, Compet. Staffing	272-6912	"	"
Margie Smith, FOIA	633-4994	"	"	Glen Stafford, Atty/Excepted	272-6912	"	"
USA4, Judith Beeman	673-6348	EOUSC	673-3907	Robert Meissner, Security	272-6912	"	"
USAB, Judith Campbell	"	"	"	Carla Mundy, Personnel Serv.	272-5818	"	"
<u>OMISS</u>				<u>OMISS Continued</u>			
Brick Brewer, Director	673-6379	EOUSC	673-3907	Eileen Menton, Management Serv.	673-6379	EOUSC	673-3907
Tim Murphy, Collections Staff	673-6212	"	"	Mike Snyder, PROMIS Impl.	"	"	"
Jack Rugh, Information Systems	"	"	"	Linda Bartn, USACTS Impl.	673-6333	"	"
Carol Sloan, WP Appl/USACTS	673-6333	"	"	Barbara Sonneman, WP Management	673-6379	"	"
Jim Hopson, Caseload Collections	673-6212	"	"				

USAM (superseded)

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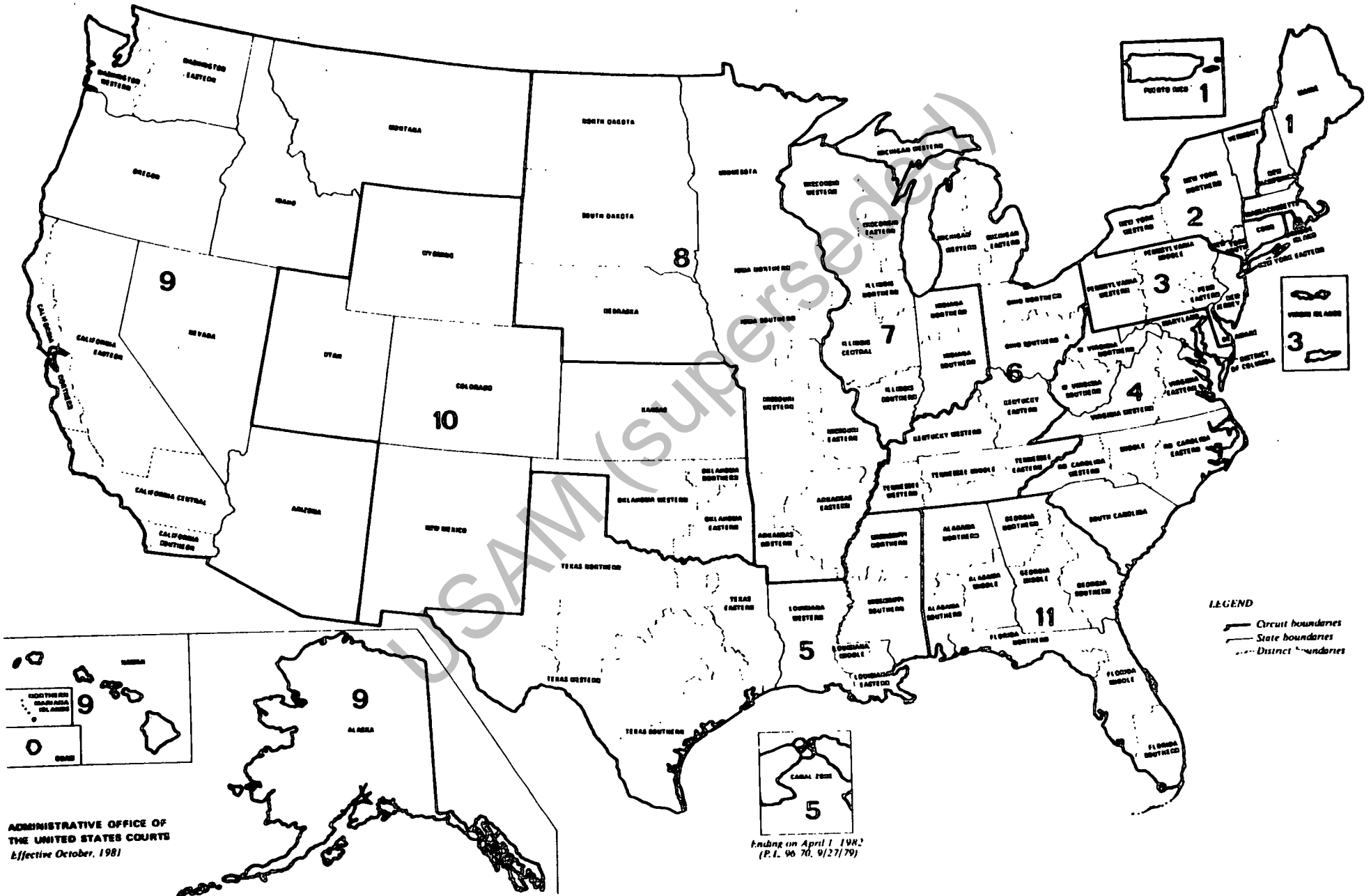
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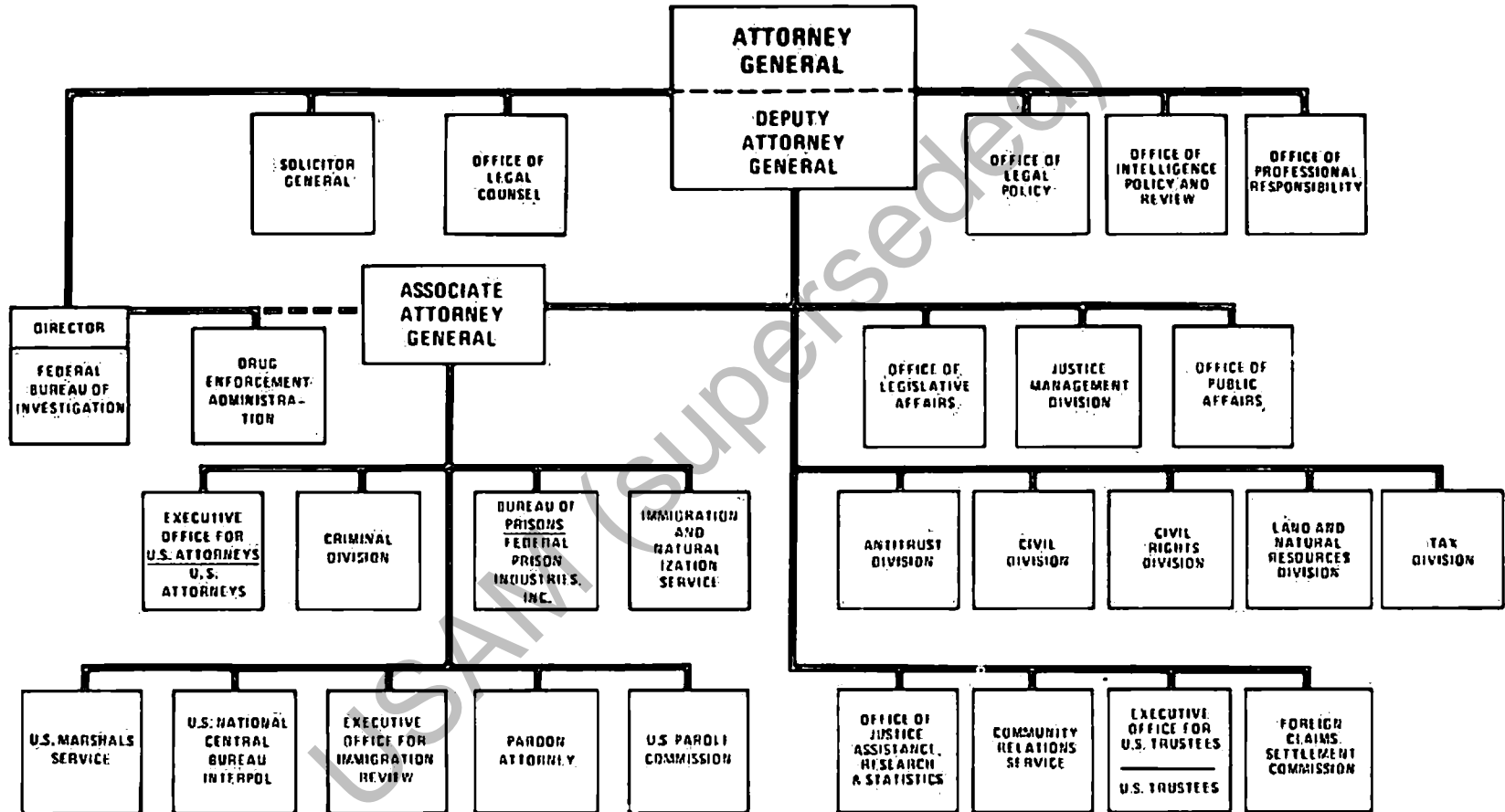
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1-3.000 DOJ ORGANIZATION AND FUNCTIONS

1-3.100 OFFICES

1-3.101 Office of the Attorney General

The Attorney General serves as head of the Department of Justice (28 U.S.C. §503) and as chief law enforcement officer of the federal government (Marshall v. Gibson's Products, Inc. of Plano, 584 F.2d 668 (5th Cir. 1978)). In this capacity, the Attorney General supervises the administration of the law enforcement operations of the Department of Justice which, in addition to the litigating divisions, include the U.S. Attorneys, the Executive Office for U.S. Attorneys, U.S. Marshals Service, Federal Bureau of Investigation, Drug Enforcement Administration, Bureau of Prisons, Parole Commission and the Pardon Attorney.

The Attorney General, in the role of the nation's chief attorney, represents the United States in legal matters generally; furnishes legal advice and opinions to the President, Cabinet and heads of executive departments and agencies; and appears in person to represent the government in the Supreme Court or in any other court deemed appropriate. As a member of the Cabinet, the Attorney General plays an important role in formulating and implementing national policy.

The Attorney General also has the primary responsibility for administering the immigration laws of this country. In that regard, he/she is vested with jurisdiction over the Immigration and Naturalization Service and the Board of Immigration Appeals. Through the Office of Justice, Assistance, Research and Statistics, the Attorney General oversees a number of bureaus which gather statistics, conduct research, and provide grants designed to improve the criminal justice system.

While particularly important matters of all types involving U.S. Attorneys may be acted upon by the Attorney General, some, by statute, regulation or practice, require his/her approval. These include authorization for interception of wire or oral communications (18 U.S.C. §2516); authorization to issue subpoenas to interrogate, indict or arrest members of the news media (28 C.F.R. §50.10); and authorization to try a federal case where there has already been a state prosecution for substantially the same acts (United States v. Welch, 572 F.2d 1359, (9th Cir.), cert. denied, 995 S.Ct. 133, 439 U.S. 842, 58 L.Ed. 2d 140 (1973)).

The Attorney General appoints U.S. Attorneys to the Attorney General's Advisory Committee of U.S. Attorneys, whose service on the Committee shall not normally exceed three years. See USAM 1-3.520 for further details of the Committee.

1-3.102 Office of the Deputy Attorney General

The Deputy Attorney General is authorized to exercise all the power and authority of the Attorney General unless any such power and authority is required by law to be exercised by the Attorney General personally or has been specifically delegated exclusively to another Department official. The Deputy Attorney General assists in the overall supervision and management of the Department and in the formulation and implementation of major Departmental policies and programs. 28 C.F.R. §0.15.

Responsibilities of the Deputy Attorney General also include the coordination of liaison with White House Staff and the Executive Office of the President, and the Department's reaction to civil disturbances and terrorism. See 18 U.S.C. §§504, 508 and 28 C.F.R. §0.15.

The Deputy Attorney General takes final action in matters pertaining to the employment, separation and general administration of personnel in the Senior Executive Service and in the General Schedule grades GS-16 through 18 (or equivalent) and of attorneys in the Department. The Deputy Attorney General also takes final action in the appointment of special attorneys, special assistants to the Attorney General (28 U.S.C. §515(b)), Assistant U.S. Trustees and standing Trustees.

The Attorney General's recruitment program for Honor Law Graduates and judicial law clerks is administered by the Deputy Attorney General's staff. In addition, the Deputy Attorney General's staff is responsible for the maintenance of the Executive correspondence system in the Department and provision of administrative services to the Executive Office.

1-3.103 Office of the Associate Attorney General

The Associate Attorney General advises and assists the Attorney General and the Deputy Attorney General in formulating and implementing policies and programs of the Department pertaining to criminal matters and coordinates the program activities of, and has directional authority over the head of the Criminal Division, the Executive Office for U.S. Attorneys, the offices of each of the 93 U.S. Attorneys, the Bureau of Prisons, the Federal Prison Industries, Inc., the Pardon Attorney, the U.S. Marshals Service, and the U.S. National Central Bureau (INTERPOL). The Administrator of the Drug Enforcement Administration also reports to the Associate Attorney General through the Director, Federal Bureau of Investigation. The U.S. Parole Commission is under the supervision of the Associate Attorney General for administrative purposes.

1-3.104 Office of the Solicitor General

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The primary function of the office is to represent the federal government before the Supreme Court. 28 C.F.R. §0.20. This work includes:

- A. The review and revision of:
 1. Briefs on the merits in cases in which the government is a party or in which it participates as amicus curiae (either on its own motion or at the request of the Court);
 2. Petitions for certiorari;
 3. Jurisdictional statements;
 4. Briefs in opposition;
 5. Motions to affirm;
- B. Preparation of miscellaneous papers filed in the Supreme Court such as:
 1. Applications for and oppositions to stays;
 2. Oppositions to bail, etc.;
- C. The arguing of cases in the Supreme Court; and
- D. The determination whether to seek Supreme Court review in cases that the government has lost in the lower courts.

Except for a few situations in which administrative agencies have statutory authority to take certain of their own cases to the Supreme Court, neither the United States nor its agencies may file a petition for certiorari or take a direct appeal to the Supreme Court unless the Solicitor General authorizes it. 28 U.S.C. §§516, 518(a); 28 C.F.R. §0.20(a). Although the Solicitor General reviews every case handled by the Department that the Department has lost in the appellate courts to decide whether to seek Supreme Court review, he/she reviews such cases handled by independent regulatory agencies only if requested to file a petition for certiorari.

Another major function of the office is determining, in all cases where the United States loses in the trial courts, whether the government should appeal to the intermediate appellate courts. 28 C.F.R. §0.20(b). The office also must approve requests for the courts of appeals for mandamus, prohibition and other extraordinary writs. Ibid. In cases handled by independent regulatory agencies rather than by the Department, however, the Solicitor General has no control over their appeal to intermediate appellate courts.

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In addition, the Solicitor General may, in consultation with each agency or official concerned, authorize intervention by the government in cases involving the constitutionality of acts of Congress; and assists the Attorney General, the Deputy Attorney General, and the Associate Attorney General in the development of broad Department program policy. 28 C.F.R. §§0.20(d), 0.21.

Policies and procedures are set forth more fully in Title 2 of the Manual.

1-3.105 Office of Legal Counsel

The Assistant Attorney General in charge of the Office of Legal Counsel is responsible for:

A. Preparing the formal opinions of the Attorney General, rendering informal opinions and legal advice to the various governmental agencies, and assisting the Attorney General in the performance of his/her functions as legal adviser to the President and as a member of the Cabinet;

B. Preparing or making necessary revisions of Executive Orders and proclamations and advising the President with respect to their form and legality; performing the same functions with respect to regulations and similar matters that require the approval of the President or the Attorney General;

C. Rendering opinions to the Attorney General and to the heads of the various organizational units of the Department on questions of law arising in the administration of the Department;

D. Approving proposed orders of the Attorney General, and orders which require the approval of the Attorney General, as to form and legality and as to consistency and conformity with existing orders and memorandums;

E. Resolving legal disputes between departments in the Executive Branch;

F. Coordinating the work of the Department in connection with United States participation in the United Nations and related international organizations;

G. Advising the Attorney General, when requested, in connection with his/her review of decisions of the Board of Immigration Appeals and other organizational units of the Department;

H. Consulting with the Director of the Office of Government Ethics regarding the development of policies, rules and regulations relating to

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A. Preparing the formal opinions of the Attorney General, rendering informal opinions and legal advice to the various governmental agencies, and assisting the Attorney General in the performance of his/her functions as legal adviser to the President and as a member of the Cabinet;

B. Preparing or making necessary revisions of Executive Orders and proclamations and advising the President with respect to their form and legality; performing the same functions with respect to regulations and similar matters that require the approval of the President or the Attorney General;

C. Rendering opinions to the Attorney General and to the heads of the various organizational units of the Department on questions of law arising in the administration of the Department;

D. Approving proposed orders of the Attorney General, and orders which require the approval of the Attorney General, as to form and legality and as to consistency and conformity with existing orders and memorandums;

E. Resolving legal disputes between departments in the Executive Branch;

F. Coordinating the work of the Department in connection with United States participation in the United Nations and related international organizations;

G. Advising the Attorney General, when requested, in connection with his/her review of decisions of the Board of Immigration Appeals and other organizational units of the Department;

H. Consulting with the Director of the Office of Government Ethics regarding the development of policies, rules and regulations relating to ethics and conflicts of interest and approving certain blind trusts; and

I. Performing special assignments from the Attorney General, Deputy Attorney General or Associate Attorney General. See 28 C.F.R. §0.25; Exec. Order No. 12146.

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1-3.106 Executive Office for U.S. Attorneys

The Director of the Executive Office for U.S. Attorneys provides general executive assistance and supervision to the offices of the U.S. Attorneys, including:

A. Evaluating the performance of the offices of the U.S. Attorneys, making appropriate reports and inspections, and taking corrective action where indicated;

B. Coordinating and directing the relationships of the offices of the U.S. Attorneys with other organizational units of the Department;

C. Publishing and maintaining a United State Attorneys' Manual and a United States Attorneys' Bulletin for the internal guidance of the U.S. Attorneys' Offices and those other organizational units of the Department concerned with litigation;

D. Supervising the operation of the Office of Legal Education, the Attorney General's Advocacy Institute and the Legal Education Institute, which shall develop, conduct and authorize the training of all federal legal personnel; and

E. Providing the Attorney General's Advisory Committee of U.S. Attorneys with such staff assistance and funds as are reasonably necessary to carry out the Committee's responsibilities. See 28 C.F.R. §0.22.

1-3.107 Office of Legislative Affairs

A. Origin: The Office of Legislative Affairs was established in the Department on February 2, 1973, by Attorney General Order No. 504-73 to be the coordinating center for all Department activity relating to legislation and Congress. This responsibility had formerly been exercised by the Office of the Deputy Attorney General under the direct supervision of an Associate Attorney General.

On January 24, 1984, by Attorney General Order No. 1054-84, the Department expanded the office's responsibility to include intergovernmental affairs.

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B. Missions: The missions of the Office of Legislative Affairs are to:

1. Develop and articulate, after consultation with involved components of the Department, the Department's official policies with respect to legislation initiated inside the Department, by other parts of the Executive Branch, or by members of Congress.

2. Explain and advocate those policies with maximum effectiveness within the Executive Branch and Congress.

3. Maintain liaison between the Department and Congress.

4. Maintain liaison with state and local officials and their representative organizations.

C. Legislative Program: For each Congress, the office contacts each component of the Department in the fall before the beginning of a Congress and requests recommendations and comments concerning legislative initiatives which should be undertaken. These inputs can take the form of specific legislative drafts with accompanying backup material or simply a description of the particular problem which needs a legislative solution. U.S. Attorneys are in excellent positions to make meaningful and helpful recommendations and their participation in the legislative program is encouraged.

D. Congressional Appearances: The office coordinates the various appearances of Departmental witnesses before committees of the Congress. Often because of special knowledge or experience it will be desirable for a U.S. Attorney to be the Departmental witness on a particular subject. Such arrangements should be made through OLA. If any U.S. Attorney is contacted directly by a congressional committee concerning testimony, OLA should be immediately consulted. The office can be helpful, not only in dealing with the Congress, but also in obtaining coordination and clearance of formally prepared testimony. See 28 C.F.R. §0.27.

1-3.108 Office of the Pardon Attorney

The Pardon Attorney, under the direction of the Attorney General or a designee (presently the Associate Attorney General), receives and reviews all petitions for Executive clemency (which includes pardon after

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completion of sentence, commutation of sentence, remission of fine and reprove), initiates the necessary investigations and prepares the Department's recommendation to the President.

The authority of the Pardon Attorney in clemency proceedings stems from Article II, Section 2, clause 1 of the Constitution (the pardon clause), Executive Order dated June 16, 1893, (transferring clemency functions to the Justice Department), the "Rules Governing Petitions for Executive Clemency" (codified in 28 C.F.R. §1.1 et seq.) and 28 C.F.R. §§0.35 and 0.36 (relating to the authority of the Pardon Attorney).

The Pardon Attorney, by memorandum, routinely requests the U.S. Attorney to provide his/her views and recommendations on those clemency cases which, upon initial review, appear to have some merit. In such cases, the Pardon Attorney also routinely requests the U.S. Attorney to solicit the views and recommendations of the sentencing judge or to ask the judge to transmit his/her comments directly to the Pardon Attorney. Clemency procedures provide that if no report is received from the U.S. Attorney and judge within 60 days, it will be assumed that they do not wish to comment. (Department Memo No. 592 of August 16, 1968.) However, reports should be submitted as promptly as possible; and, if an unusual delay is anticipated, the Pardon Attorney should be advised when the report may be expected. When a report is signed by an Assistant U.S. Attorney, that individual should clearly indicate whether the views expressed are his/her own or those of the U.S. Attorney. The U.S. Attorney may submit his/her comments on a clemency case in advance of and/or without a specific request from the Pardon Attorney.

In cases involving pardon after completion of sentence, the Pardon Attorney will attach to the memorandum to the U.S. Attorney copies of the pardon petition and FBI investigative reports. These reports should be returned to the Pardon Attorney. In cases involving other forms of Executive clemency, copies of the clemency petition and such related papers as may be useful (e.g., presentence report, prison progress report and recommendation of the Director, Federal Prison System) will be attached to the Pardon Attorney's memorandum.

With respect to commutation of sentence, appropriate grounds for considering clemency include disparity of sentence, terminal illness and meritorious service on the part of the petitioner. Pardons after completion of sentence usually are granted on the basis of the demonstrated good conduct of the petitioner for a significant period of time after release

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from confinement and completion of sentence. All relevant factors, including the petitioner's prior and subsequent arrest record, financial responsibility, employment record and reputation in the community, are carefully reviewed to determine whether the petitioner has become and is likely to continue to be a responsible, productive and law-abiding person. The recentness and seriousness of the offense for which petitioner seeks clemency also are considered. When a petitioner seeks remission of fine, the ability to pay and the efforts made in good faith to discharge the obligation are important considerations. Applicants for remission of fine also should demonstrate satisfactory postconviction conduct.

The U.S. Attorney can contribute significantly to the clemency process by providing information and insights which may not be reflected in FBI, prison and other reports; e.g., the extent of petitioner's wrongdoing, the circumstances connected therewith, the amount of money involved or losses sustained, organized crime connections and personal knowledge or a petitioner's reputation in the community. In all clemency cases, the guilt of the petitioner is assumed, and the question of guilt or innocence is not relitigated in clemency proceedings. Consequently, the U.S. Attorney should not recommend against clemency simply on the ground that the petitioner was guilty. It is appropriate, however, for the U.S. Attorney to address a petitioner's claim of innocence or miscarriage of justice.

The President has nothing to do with the granting of parole. However, commutations may be granted upon conditions similar to parole. The President may commute a sentence to time served or may reduce a sentence only for the purpose of advancing an inmates's parole eligibility or to achieve his/her release after the service of a specified period of time.

On January 21, 1977, the President by Proclamation 4483 granted pardon to persons who committed nonviolent violations of the Selective Service Act between August 4, 1964 and March 28, 1973 and who were not Selective Service employees. Although a person who comes within the described class was immediately pardoned by the proclamation, the Pardon Attorney issues certificates of pardon to those within the class who were actually convicted of a draft violation and who make written application to the Department on official forms. When these applications are received by the Pardon Attorney, they are forwarded to the U.S. Attorney for the district in which the applicant was convicted to verify the facts of the case. The verification should be returned to the Pardon Attorney promptly.

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1-3.109 Office of Public Affairs

The Office of Public Affairs (OPA) is the principal point of contact for the Department of Justice with the public and the press. Its mission is two-fold: (1) to inform the public about Department of Justice policy and official actions taken and (2) to provide similar information internally to Department personnel.

The office is headed by a director who is a member of the Attorney General's staff. He/she advises the Attorney General and other Department officials on the public affairs aspects of policy formulation and execution. The Director supervises the public affairs effort of all Department organizations. There are public affairs offices in the various agencies and bureaus of the Department, including the Federal Bureau of Investigation, Drug Enforcement Administration, Immigration and Naturalization Service, U.S. Marshals Service, Bureau of Prisons, and the Office of Justice Programs.

The Office of Public Affairs disseminates information about the Department of Justice through the news media and by personal contact with the public. It serves reporters by responding to queries, issuing press releases and statements, arranging interviews, and conducting press conferences and mailings.

The office works to make certain that the Department provides to the news media information that is current, complete, and accurate. At the same time, it must also ensure that all laws, regulations, and policies are followed so that material is not made public that might jeopardize investigations and prosecutions, violate rights of defendants, or potential defendants, or compromise national security interests.

The office provides assistance to members of the general public by receiving visiting groups, scheduling speakers upon request and responding to telephone and mail requests. The office participates in the drafting, editing and review of Attorney General speeches and testimony as well as those of other top officials.

OPA reviews policy content of all publications for release outside the Department. It writes all news releases for headquarters and edits those for the component agencies.

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1-3.110 Community Relations Service

The Community Relations Service (CRS), established within the Department of Commerce by Title X of Civil Rights Act of 1964 (42 U.S.C. §2000g), was transferred to the Department of Justice by Reorganization Plan No. 1 of 1966. (See Note, 42 U.S.C. §2000g). The activities of CRS are conducted and supervised by a Director, under the general supervision of the Attorney General and the direction of the Deputy Attorney General (28 C.F.R. §0.30).

CRS is decentralized, with most of its operations conducted by personnel in its 10 regional offices, each of which is headed by a Regional Director. The function of CRS is to "provide assistance to communities and persons therein in resolving disputes, disagreements, or difficulties relating to discriminatory practices based on race, color, or national origin." The basic technique used by CRS are those of conciliation and mediation, the latter being a structured negotiation process similar to labor mediation. CRS may enter a dispute by request of an interested official or party or upon its own motion. Its jurisdiction to enter is based upon the existence of a dispute involving an alleged discriminatory practice, and does not require independent federal "case or controversy" jurisdiction.

The services of CRS are frequently utilized by federal courts as an alternative to resolution of disputes by litigation. Title II of the Civil Rights Act of 1964 (42 U.S.C. §2000a-3(d)) provides specific authority and procedures for the utilization of CRS' services in public accommodation suits, and its mediation services have been utilized a number of times by district courts. U.S. Attorneys' Offices may wish to consider referral to CRS of disputes concerning alleged racial or ethnic discrimination which, for whatever reasons, are not appropriate for litigation.

CRS operates under a statutory requirement of confidentiality, and U.S. Attorneys' Offices are required from time to time to defend this confidentiality from litigants seeking testimony or documents from CRS.

CRS also has responsibility for the care, processing, and resettlement of Cuban/Haitian entrants under 8 U.S.C. §1522. This responsibility is carried out through a granting procedure in connection with the Public Health Service that funds private providers of resettlement and mental health services to certain categories of Cuban and Haitian entrants.

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1-3.111 Office of Intelligence Policy and Review

The Office of Intelligence Policy and Review is headed by a Counsel for Intelligence Policy, appointed by the Attorney General.

The office advises and assists the Attorney General in carrying out his/her responsibilities under Executive Order No. 12333, 46 Red. Reg. 59,941 (1981), entitled "United States Intelligence Activities." Staff attorneys participate in development, implementation, and review of U.S. intelligence policies, including procedures for the conduct of intelligence and counterintelligence activities. In addition, the office prepares certifications and applications for electronic surveillance under the Foreign Intelligence Surveillance Act, 50 U.S.C. §§1801 et seq., and represents the United States before the United States Foreign Intelligence Surveillance Court. It processes requests for Attorney General authority to use FISA material in adjudicatory proceedings and assists in responding to challenges to the legality of FISA surveillances. See 28 C.F.R. §§0.33a-c (1982).

1-3.112 Office of Professional Responsibility

The Office of Professional Responsibility (OPR) oversees investigations of allegations of misconduct by Department employees. The head of this office is the Counsel on Professional Responsibility, who serves as a special reviewing officer and advisor to the Attorney General, the Deputy Attorney General, and the Associate Attorney General.

The Counsel and his/her staff receive and review information or allegations concerning conduct by a Justice Department employee that may violate the law, Department orders or regulations, or applicable standards of conduct. The office is charged also with receiving and reviewing allegations of mismanagement, gross waste of funds, abuse of authority, conduct by Department employees which poses a substantial and specific danger to public health and safety, and acts of reprisal against "whistleblowers."

The Counsel is authorized to conduct an inquiry into these allegations. Those cases in which there appears to be a violation of law may be handled by OPR or referred to another agency that has jurisdiction to investigate such allegations. Other matters not directly handled by OPR are referred to the head of the agency to which the employee is assigned or to the agency's internal inspection unit.

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The Counsel of Professional Responsibility makes recommendations to the Attorney General, the Deputy Attorney General, and the Associate Attorney General on what further specific action should be undertaken on any matter involving a violation of law, regulation, order or standard. Such action may include direct supervision of an investigation when considered appropriate.

The Counsel submits to the Attorney General an annual report reviewing and evaluating the Department's various internal inspection units. The Counsel makes recommendations to the Attorney General on the need for changes in policies or procedures that become evident during the course of the internal inquiries reviewed or initiated by the office.

1-3.113 Office of Legal Policy

The Office of Legal Policy (OLP) serves as the central point for the Department-wide coordination and review of policy initiatives of special concern to the Attorney General and the Administration. OLP has responsibility for supporting the Attorney General in his/her role as permanent chairman of the Federal Legal Council, for advising the Attorney General on the selection of candidates for the federal judiciary, and for administering the Federal Justice Research Program. In addition, OLP provides staff support for matters coming before the Cabinet and the National Security Council; represents the Department on interdepartmental committees and working groups; and gives policy guidance on a wide variety of issues, including, for example, regulatory reform and criminal justice programs.

The Office of Information and Privacy (OIP) is a subunit of the Office of Legal Policy and is responsible for encouraging Executive Branch compliance with the Freedom of Information Act (5 U.S.C. §552) and the Privacy Act (5 U.S.C. §552a) and for handling appeals from denials by any Departmental unit of access to information under those Acts. OIP also provides staff support to the Department Review Committee (28 C.F.R. §17.148).

1-3.114 Executive Office for United States Trustees/United States Trustee Program

The Bankruptcy Code, Title 11 of the United States Code, enacted into law as the Bankruptcy Reform Act of 1978 (92 Stat. §2549; 11 U.S.C. §202), established the U.S. Trustee program as a pilot effort in 10 geographic

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areas, encompassing 18 federal judicial districts. The mission of the U.S. Trustees is to supervise the administration of bankruptcy cases, leaving traditional judicial functions as the sole concern of bankruptcy judges.

The U.S. Trustee is assigned functions in three of the four types of bankruptcy proceedings defined under the Code. These are (1) proceedings under Chapter 7 in which the assets of the debtor are liquidated; (2) reorganization proceedings under Chapter 11 which provides a mechanism for rehabilitation of the business debtor; and (3) adjustment of debts of an individual with regular income under Chapter 13, pursuant to which an individual can discharge debts by arranging for payments over a period of time, usually three years. The U.S. Trustee has no role in proceedings under Chapter 9, which relates to the adjustment of debts of a municipality.

The responsibilities of the U.S. Trustees include appointing and supervising the performance of private trustees in individual cases; appointing and encouraging active participation by creditors' committees in Chapter 11 reorganization cases; monitoring the operations of debtors in possession in Chapter 11 cases to ensure that operating expenses, including taxes, are being paid on a current basis; appearing before the court to move for dismissal or conversion of cases, or the appointment of a trustee or an examiner, as appropriate; generally serving as watchdogs of the bankruptcy system to prevent abuses and, by referring criminal violations of federal bankruptcy laws to the U.S. Attorneys, enforcing those laws.

The Attorney General is charged with the appointment, supervision, and coordination of the U.S. Trustees and Assistant U.S. Trustees. Day-to-day policy and legal direction, coordination, and control are provided by the Director of the Executive Office for U.S. Trustees. The Executive Office also provides administrative and management support to the individual Trustee offices and is responsible for the design and sponsorship of a comprehensive evaluation of the pilot program. The results of this evaluation will be utilized by Congress in determining whether to terminate the Trustee program on September 30, 1986, as provided in the Bankruptcy Amendments and Federal Judgeship Act of 1984 (Pub. L. No. 98-353; 98 Stat. 333), or expand it to all federal judicial districts.

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1-3.115 International Criminal Police Organization-United States National Central Bureau (INTERPOL-USNCB)

The INTERPOL-USNCB addresses the problem of international criminal activity and the movement of international criminals and individuals who are members of organized groups, such as terrorists, who have committed criminal acts, across international borders affecting law enforcement capabilities within the United States and in the 136 other member countries of INTERPOL.

A. Authority of the INTERPOL-USNCB:

The INTERPOL-United States National Central Bureau (INTERPOL-USNCB) facilitates international law enforcement cooperation as the United States representative to the International Criminal Police Organization (INTERPOL or I.C.P.O.), on behalf of the Attorney General, who pursuant to 22 U.S.C. §263a, maintains the United States membership in INTERPOL, which is an intergovernmental organization of 136 member countries, headquartered in St. Cloud, France.

B. The functions of the INTERPOL-USNCB, pursuant to 28 C.F.R. §0.34, are:

1. To transmit information of a criminal justice, humanitarian, other law enforcement related nature between National Central Bureaus of INTERPOL member countries, and law enforcement agencies within the United States and abroad, and respond to requests by law enforcement agencies and other legitimate requests by appropriate organizations, institutions and individuals, when in agreement with the INTERPOL Constitution;

2. To coordinate and integrate information for investigations of an international nature and identify those involving patterns and trends of criminal activities;

3. To conduct analyses of patterns of international criminal activities when specific patterns are observed;

4. To establish, and furnish the Secretary to, a policy advisory group consisting of designees of the Departments of Justice and Treasury, and of the heads of the participating law enforcement agencies, which will review and develop INTERPOL programs and policies; and

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5. To represent the INTERPOL-USNCB at other criminal law enforcement and international law enforcement activities, conferences and symposia.

C. Other limitations and authorities followed by INTERPOL-USNCB:

INTERPOL functions within the limits of the existing laws in each of the member countries and the INTERPOL Constitution, and in accord with the United Nations "Universal Declaration of Human Rights." A Headquarters Agreement between the INTERPOL General Secretariat and the French Government provides for a Supervisory Board of five international judges and experts to review any complaints concerning data contained within the organization's archives. The annual meetings of the INTERPOL General Assembly of all member countries also have approved written guidelines for handling of information by the General Secretariat and by the member countries' National Central Bureaus.

D. U.S. Federal Law Enforcement Agencies represented in INTERPOL-USNCB:

The INTERPOL-USNCB operates through well-established cooperative efforts with federal agencies, primarily within the Departments of Justice, and the Treasury, the U.S. Postal Service, and the U.S. Department of Agriculture. Pursuant to an interagency agreement between the Departments of Justice and Treasury, the INTERPOL-USNCB is an integral part of the Department of Justice, acting in conjunction with the Department of the Treasury, which provides the Secretary of the Treasury as the alternate U.S. representative to INTERPOL.

The INTERPOL-USNCB is staffed by members of law enforcement agencies in the federal sector. From the Department of Justice, the INTERPOL-USNCB has a core of permanent and temporary employees, as well as detailed staff members representing the Drug Enforcement Administration, the U.S. Marshals Service, the Immigration and Naturalization Service, the Federal Bureau of Investigation, and the Criminal Division.

From the Department of the Treasury, there are representatives of the U.S. Secret Service, the Internal Revenue Service, the U.S. Customs Service, the Bureau of Alcohol, Tobacco and Firearms, the Comptroller of the Currency, and the Federal Law Enforcement Training Center.

The U.S. Postal Service provides representatives of the U.S. Postal Inspection Service, and the U.S. Department of Agriculture provides representatives of the Office of the Inspector General.

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E. What types of assistance can be given by the INTERPOL-USNCB and Special Investigative Unit within the INTERPOL-USNCB:

1. Types of Criminal Cases Handled by INTERPOL-USNCB:

The INTERPOL-USNCB handles requests for investigations including serious and sophisticated crimes of murder, violent crimes, firearms and explosive violations, theft, large-scale narcotics violations, large-scale fraud and counterfeiting, immigration violations, and the location and apprehension of international fugitives, involving arrests and extraditions to the countries where the crimes were committed.

The requests for INTERPOL assistance also cover criminal record history information and identification checks; license checks; tracing weapons; identifying and tracing international stolen and forged artworks; completing investigations of an international nature concerning lost and stolen travelers checks and credit cards; tracing license plates and registrations on vehicles believed to be stolen or used in the commission of a crime; locating and interviewing witnesses in the U.S. and abroad; circulation of INTERPOL International Wanted Notices on fugitives to all U.S. border points; and humanitarian matters, including missing persons cases.

The INTERPOL-USNCB maintains a computerized data base of all investigative cases in the INTERPOL Case Tracking System (ICTS). The organization also maintains computerized records of all INTERPOL International Wanted Notices on wanted persons and fugitives in the INTERPOL-USNCB portion of the data base of the Treasury Enforcement Communications System (TECS), which is operated by the U.S. Department of the Treasury.

In fiscal year 1984, the INTERPOL-USNCB handled a total of over 31,585 cases presented, including 12,141 new and re-activated cases and matters, and over 19,444 cases pending from fiscal year 1983.

2. Provisional Arrests and International Extradition Requests Through INTERPOL-USNCB:

INTERPOL "International Wanted Notices" or Red Notices are issued by the Secretariat General at the request of an INTERPOL member country and are distributed to all other member countries. The Red Notices describe wanted persons and invariably ask that the subject be

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arrested, with a view to extradition, in certain countries depending upon extradition treaties.

INTERPOL Blue Notices are issued by the Secretariat General at the request of a member country to have someone's identity verified, obtain particulars about a person's criminal record, or locate someone who is missing or wanted for violation of ordinary criminal law and whose extradition may be requested.

INTERPOL Green Notices are issued by the Secretariat General at a member country's request to give law enforcement agencies in member countries information about persons who have committed or are likely to commit crimes affecting several countries (International Traveling Criminals).

a. INTERPOL Red Notices describe wanted persons and contain specific requests for provisional arrest with a view to extradition from some or all INTERPOL members, depending on the existing treaties and the severity of the crime. In the United States, national law prohibits the arrest of the subject of a Red Notice issued by another INTERPOL member country, based upon the notice alone. If the subject of a Red Notice is found within the United States, the Criminal Division, will make a determination if a valid extradition treaty exists between the United States and the requesting country for the specified crime or crimes. If the subject can be extradited, and after a diplomatic request for provisional arrest is received from the requesting country, the facts are communicated to the U.S. Attorney's Office with jurisdiction which will file a complaint and obtain an arrest warrant requesting extradition. Since June 1980, in certain major criminal cases, the INTERPOL-USNCB, in coordination with appropriate officials from the Criminal Division, has initiated issuance of Red Notices which provide for the provisional arrest of the subject, and which are posted to all INTERPOL member countries and all U.S. border points of entry. Subsequent extradition requests are processed through the diplomatic channels of the Department of State, in coordination with the Criminal Division and the INTERPOL-USNCB.

b. The Red Notice, as well as the Blue and Green Notice, may serve as the basis for exclusion of the subject from entry into the United States. INTERPOL Wanted Notices on wanted

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persons and fugitives are circulated to all U.S. border points, through the U.S. Department of Treasury's Treasury Enforcement Communications System (TECS).

c. The INTERPOL communications channel is a direct police-to-police link and, therefore, it is faster than diplomatic channels. The international law enforcement community will arrest a subject in a foreign country, based upon the receipt, through INTERPOL channels, of information that a provisional arrest warrant and/or extradition request has been initiated through diplomatic channels.

Financial Fraud Unit: Within the Investigations Section, the Financial Fraud Unit is responsible for coordinating and integrating information for fraud investigations of an international nature, and for investigative cases of violators of federal, state, local and foreign laws, traditionally considered as white-collar crimes, such as money laundering and off-shore banking. The Financial Fraud Unit is comprised of senior investigative agents representing the federal law enforcement agencies with primary jurisdiction and investigative responsibility for economic and financial crimes, *i.e.*, the Internal Revenue Service; the U.S. Secret Service; U.S. Postal Inspection Service; U.S. Customs Service, the Office of the Inspector General of the U.S. Department of Agriculture, and the Federal Bureau of Investigation.

Anti-Terrorist Unit: The Anti-Terrorist Unit, which was initially established in 1983 has assumed increased importance. This program continues to evaluate information on terrorist activities to determine if such information can assist other federal agencies which participate in the INTERPOL program. In addition, two resolutions addressing the issue of international terrorism were successfully passed by the INTERPOL General Assembly which met in Luxembourg in September 1984. These resolutions categorize international terrorist activity both domestically and internationally. Within the United States, adoption of the resolutions culminated a two year cooperative effort by the Department of Justice and Treasury, the FBI, the Secret Service, and the INTERPOL-USNCB. This Unit is staffed by senior investigative agents from those federal agencies with a direct interest or expertise in anti-terrorism activities; *i.e.*, the U.S. Secret Service, U.S. Customs Service, the Bureau of Alcohol, Tobacco and Firearms, and the Federal Bureau of Investigation.

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Alien/Fugitive Enforcement Unit: An Alien/Fugitive Enforcement Unit, established at the INTERPOL-USNCB in 1980, has been successful in developing an effective alien/fugitive tracking program. This unit is presently directed by an Assistant Chief who is detailed to the INTERPOL-USNCB from the Immigration and Naturalization Service. Since that time, the INTERPOL-USNCB has become involved in 962 separate cases pertaining to fugitives from the United States. It must be emphasized that this figure reflects only those fugitive cases which are referred to the INTERPOL-USNCB by other federal, state and local law enforcement authorities. Furthermore, with the Criminal Division as a participating agency, direct support is provided to the Alien/Fugitive Enforcement Unit to facilitate extradition requests.

Eligibility to use services of INTERPOL-USNCB: All United States federal, state and local law enforcement agencies, including investigation and prosecution authorities, are eligible to make requests for assistance from the INTERPOL-USNCB. However, specific guidelines have been established by the INTERPOL-USNCB before responding to requests for investigative information, so as to avoid any inappropriate release of information which may be in conflict with various federal laws. Use of the facilities of the INTERPOL-USNCB by approximately 20,000 state and local law enforcement agencies is essentially the only medium, in the absence of federal jurisdiction over the case, that state and local police have for securing the assistance of a foreign police force. Efforts to increase awareness among the state and local law enforcement communities of the service available through the INTERPOL-USNCB are an on-going activity of this organization.

F. How to Make a Request for Law Enforcement Assistance or Information From INTERPOL-USNCB:

1. Before the INTERPOL-USNCB may respond to a request for law enforcement assistance, all requests must include the type of offense and certain other information to reflect that it is a specific criminal investigation, including the type of criminal investigation or other law enforcement purpose, and the relationship of the subject to the investigation.

A Quality Control Unit was established at the INTERPOL-USNCB in 1982 and specific criteria were developed regarding the handling of

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investigative matters. Prior to opening a case, all incoming documents are reviewed by the Quality Control analyst for compliance with INTERPOL-USNCB and INTERPOL regulations as well as Department of Justice regulations and U.S. federal laws. All requests for information must meet the following criteria before responding:

a. The request must come from a legitimate domestic law enforcement agent or an INTERPOL member country;

b. All requests must be to or from an INTERPOL member country, or a federal, state or local law enforcement agency;

c. It must be an international investigation;

d. The crime, if it had occurred within the United States, must be considered a violation of U.S. federal or state law, as well as a crime in the country involved;

e. The request does not violate the accepted interpretation of article 3 of the INTERPOL Constitution which prohibits involvement in matters of religious, military, political or racial nature;

f. There must be a link between the crime and the subject of the investigation. The person or property must be suspected of specific criminal involvement; and

g. The reason for the request must be clearly stated, indicating the type of investigation, and the fullest possible identifying details of the subject. If this information is not stated, the requestor is contacted for additional information, including the type of offenses, dates, charges, arrests, convictions, etc.

2. Other information necessary for INTERPOL-USNCB to process requests:

Requests for law enforcement information from the INTERPOL-USNCB must be made in writing. Although the INTERPOL-USNCB may accept an initial request by telephone in urgent cases only, the information cannot be released until the INTERPOL-USNCB has received a written copy of the request.

To facilitate the handling of an investigative request for information, the following information regarding an individual subject

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should be supplied whenever available: the subject's full name, including first, middle and last; the subject's date of birth; the subject's place of birth; the subject's parents' names; the subject's nationality, and passport number; the subject's previous address in the foreign country concerned; the subject's photographs and fingerprints; other personal identifiers, including both personal identifier numbers and physical characteristics and markings.

3. How to communicate requests to the INTERPOL-USNCB:

Requests for investigative assistance may be directed to the INTERPOL-USNCB by means of the following nine communications and telecommunications channels:

- a. Letter: Chief
INTERPOL-USNCB
Shoreham Building, Room 800
U.S. Department of Justice
Washington, D.C. 20530
- b. Telephone: (202) 272-8383
- c. FTS: 272-8383
(Federal Telecommunications System)
- d. TWX: 710 822-1907
- e. NLETS: DCINTEROO
- f. Facsimile: (202) 272-8147
- g. Police Photo Fax: (202) 272-8148
- h. JUST: JASUP
(Department of Justice
Administrative System)
- i. TECS: TINT or TINX
(Treasury Enforcement
Communications System)

Although requests can be accepted over the telephone in urgent cases only, the requested information cannot be released until the INTERPOL-USNCB has received a written copy of the request.

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For more detail, see individual Titles.

1-3.200 DIVISIONS

1-3.201 Antitrust Division

The following-described matters are assigned to, and handled or coordinated by, the Assistant Attorney General in charge of the Antitrust Division:

A. General enforcement, by criminal and civil proceedings, of the federal antitrust laws and other laws relating to the protection of competition and the prohibition of restraints of trade and monopolization, including conduct of monopolization, of surveys of possible violations of antitrust laws, of grand jury proceedings, designation of attorneys to present evidence to grand juries, issuance and enforcement of civil investigative demands, civil actions to obtain orders and injunctions, civil actions to recover forfeitures or damages for injuries sustained by the United States as a result of antitrust law violations, proceedings to enforce compliance with final judgments in antitrust suits, and negotiation of consent judgments in civil actions; criminal actions to impose penalties including actions for the imposition of penalties for conspiring to violate antitrust laws; participation as amicus curiae in private antitrust litigation; and prosecution or defense of appeals in antitrust proceedings.

B. Intervention of participation before administrative agencies functioning wholly or partly under regulatory statutes in administrative proceedings which require an accommodation between the purposes of the antitrust laws and the purposes of such statutes, including such agencies as the Federal Trade Commission, Federal Reserve Board, Interstate Commerce Commission, Department of Transportation, Federal Communications Commission, Federal Maritime Commission, Federal Power Commission, Federal Deposit Insurance Corporation, Federal Home Loan Bank Board and Securities Exchange Commission, except proceedings referred to any agency by a federal court as an incident to litigation being conducted under the supervision of another division in this Department.

C. Developing procedures to implement, receiving information, maintaining records for, and preparing reports by the Attorney General to the

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President as required by Executive Order No. 10936 of April 15, 1961, relating to identical bids submitted to federal and state departments and agencies.

D. As the delegate of the Attorney General, furnishing reports and summaries thereof respecting the competitive factors involved in proposed mergers or consolidations of insured bonds required by the Federal Deposit Insurance Act, as amended (12 U.S.C. §1828(c)), furnishing reports respecting the competitive factors involved in proposed acquisitions under the Savings and Loan Holding Company Amendments of 1967 (12 U.S.C. §1730a(e)), furnishing advice regarding the proposed disposition of surplus government property required by the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. §488), furnishing reports regarding deep-water port licenses under the Deep Ports Act of 1974 (33 U.S.C. §1506), furnishing advice and reports regarding federal coal leases under the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. §184(2)(1)), furnishing advice on oil and gas leasing under the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. §§1334(a), 1334(f)(3), 1337), furnishing reports and recommendations regarding the issuance of licenses for exploration or permits for commercial recovery of deep seabed hard minerals pursuant to the Deep Seabed Hard Mineral Resources Act (30 U.S.C. §1413 (d)), furnishing advice or reports regarding contracts or operating agreements concerning exploration, development or production of petroleum reserves under Naval Petroleum Reserves Production Act of 1976 (10 U.S.C. §7430(g)(1)), and furnishing advice regarding nuclear licenses under the Atomic Energy Act of 1954 (42 U.S.C. §2135), and furnishing advice regarding the disposition of federally owned property under the Surplus Property Act of 1944, (50 U.S.C. App. §1622).

E. Preparing the approval or disapproval of the Attorney General whenever such action is required by statute from the standpoint of the antitrust laws as a prerequisite to the development of Defense Production Act voluntary programs or agreements and small business production or raw material pools, the national defense program, and atomic energy matters.

F. Assembling information and preparing reports required or requested by the Congress or the Attorney General as to the effect upon the maintenance and preservation of competition under the free enterprise system of various federal laws or programs, including the Defense Production Act, the Small Business Act, the Federal Coal Leasing Amendments Act, the Naval Petroleum Reserves Production Act, and the Joint Resolution of July 28,

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1955, giving consent to the Interstate Compact to Conserve Oil and Gas, and the Balance of Payments Act.

G. Preparing for transmittal to the President, Congress, or other departments or agencies views or advice as to the propriety or effect of any action, program or practice upon the maintenance and preservation of competition under the free enterprise system.

H. Representing the Attorney General on interdepartmental or inter-agency committees concerned with the maintenance and preservation of competition generally and in various sections of the economy and the operation of the free enterprise system and, when authorized, participating in conferences and committees with foreign governments and treaty organizations concerned with competition and restrictive business practices in international trade.

I. Collecting fines, penalties, judgments, and forfeitures arising in antitrust cases.

J. Implementing the National Cooperative Research Act of 1984, Pub. L. No. 98-462, (October 11, 1984) and in conjunction with the Federal Trade Commission, the Export Trading Company Act of 1982 (15 U.S.C. §§4001 et seq.).

1-3.202 Civil Division

Pursuant to 28 C.F.R. §0.45 and subject to the general supervision of the Attorney General, and under the direction of the Deputy Attorney General, the following matters are assigned to, and shall be conducted, or supervised by, the Assistant Attorney General in charge of the Civil Division.

A. Admiralty and Shipping: Civil and admiralty litigation in any court by or against the United States, its officers and agents, which involves ships or shipping (except suits to enjoin final orders of the Federal Maritime Commission under the Shipping Act of 1916 and under the Intercoastal Shipping Act assigned to the Antitrust Division by 28 C.F.R. §§0.40 and 0.41), defense of regulatory orders of the Maritime Administration affecting navigable waters or shipping thereon (except as assigned to the Land and Natural Resources Division by 28 C.F.R. §0.65(a)), workman's compensation, and litigation and waiver of claims under reciprocal-aid maritime agreements with foreign governments. See 28 C.F.R. §0.45(a).

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B. Alien Property Cases and Related Matters: All civil litigation with respect to the Trading with the Enemy Act (50 U.S.C. App. §1 et seq.) Title II of the International Claims Settlement Act (22 U.S.C. §§1621-1643(h)), the foreign funds control program and the foreign assets control program. The Assistant Attorney General of the Civil Division as Director of the Office of Alien Property (28 C.F.R. §0.47(a)) is authorized to exercise or perform all of the rights, privileges, powers, duties and functions delegated or vested in the Attorney General under the Trading with the Enemy Act, Title II of the International Claims Settlement Act of 1949, the Act of September 28, 1950 (50 U.S.C. App. §40), the Philippine Property Act of 1946 (22 U.S.C. §§1381-1386) and the Executive Orders promulgated pursuant to such Acts, including but not limited to vesting, supervising, controlling, administering, liquidating, selling, paying debt claims out of, returning, and setting of intercustodial disputes relating to property subject to one or more of such Acts. See 28 C.F.R. §0.47.

C. Claims Court and Court of Appeals for the Federal Circuit Cases: Defense of all suits against the United States in the Claims Court and the United States Court of Appeals (except cases assigned to the Land and Natural Resources Division by 38 C.F.R. §0.65 or the Tax Division by 28 C.F.R. §.70), including Congressional reference cases pursuant to 28 U.S.C. §2509. See 28 C.F.R. §0.45(b).

D. Consumer Litigation: All civil and criminal litigation and grand jury proceedings arising under the Federal Food, Drug and Cosmetic Act (21 U.S.C. §301 et seq.), the Federal Hazardous Substances Act (15 U.S.C. §1261 et seq.) the Fair Packaging and Labeling Act (15 U.S.C. §1451 et seq.), the Automobile Information Disclosure Act (15 U.S.C. §1231 et seq.), the odometer requirements section and the fuel economy labeling section of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. §1981 et seq.), the Federal Cigarette Labeling and Advertising Act (15 U.S.C. §133 et seq.), the Poison Prevention Packaging Act of 1970 (15 U.S.C. §147 et seq.), the Federal Caustic Poison Act (15 U.S.C. §401 note), the Consumer Credit Protection Act (15 U.S.C. §§1611, 1681q and 1681r), the Wool Products Labeling Act of 1939 (15 U.S.C. §68), the Fur Products Labeling Act (15 U.S.C. §69), the Textile Fiber Products Identification Act (15 U.S.C. §70 et seq.), the Consumer Product Safety Act (15 U.S.C. §2051 et seq.), the Flammable Fabrics Act (15 U.S.C. §1191 et seq.), the Refrigerator Safety Device Act (15 U.S.C. §1211 et seq.), Title I of the

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Warranty--Federal Trade Commission Improvement Act (15 U.S.C. §2301 et seq.), the Federal Trade Commission Act (15 U.S.C. §41 et seq.), and Section 11(1) of the Clayton Act (15 U.S.C. §21(1)) relating to violations of orders issued by the Federal Trade Commission. Upon appropriate certification by the Federal Trade Commission, the institution of criminal proceedings, under the Federal Trade Commission Act (15 U.S.C. §56(b)), the determination whether the Attorney General will commence, defend or intervene in civil proceedings under the Federal Trade Commission Act (15 U.S.C. §56(a)), and the determination under the Consumer Product Safety Act (15 U.S.C. §2076(b)(7)), whether the Attorney General will initiate, prosecute, defend or appeal an action relating to the Consumer Product Safety Commission.

E. Customs Cases: All litigation incident to the reappraisal and classification of imported goods, including the defense of all suits in the Court of International Trade and the handling of customs appeals in the U.S. Court of Appeals for the Federal Circuit. See 28 C.F.R. §0.45(c).

F. Foreign Litigation and Related Matters: All legal proceedings in foreign tribunals by or against the United States, its agencies and instrumentalities, all civil suits in foreign tribunals against diplomatic and consular agents of the United States and civilian or military personnel stationed abroad for acts which they have performed in the course of their government service, legal representation of officials of the Department of Justice and other law enforcement officers of the United States who are charged with criminal violations of foreign law as a result of acts which they performed in the course of their service, assertion of sovereign immunity in suits against foreign states in American domestic courts in instances where the Department of State has recognized such immunity; assistance in executing international judicial assistance requests from foreign tribunals under the Hague Service Convention of 1965, TIAS 6638, and the Hague Evidence Convention of 1969, TIAS 7444; and providing counsel and advice to Departmental personnel with regard to judicial assistance requests issued by our courts and addressed to foreign tribunals. See 28 C.F.R. §§0.46 and 0.49.

G. Fraud Cases: Civil claims arising from fraud on the government (other than antitrust, land or tax frauds), including claims under the False Claims Act, the Surplus Property Act, the Contract Disputes Act, and claims involving bribery, conflict of interest or for common law fraud. See 28 C.F.R. §0.45(d).

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H. General Claims: All claims and suits for money on behalf of the government not otherwise specially assigned within the Department including the foreclosure of liens, the assertion of claims in bankruptcy, insolvency, corporate reorganization, arrangement and probate and administration proceedings; handling matters arising out of devises and bequests and inter vivos gifts to the United States (except determinations as to the validity of title to any lands involved and litigation pertaining to such determinations within the jurisdiction of the Land and Natural Resources Division); reparation actions against common carriers; assertion of veterans; reemployment rights in private industry and their claims for related benefits guaranteed by 38 U.S.C. §§3021-3026; defense of suits against the government involving veterans' insurance programs; and the defense of foreclosure, quiet title and partition actions in which the government or a government officer or agency is named as a defendant because of the government's non-tax liens on the property involved. See 28 C.F.R. §§0.45(e) and (h).

I. Federal Programs: All litigation by and against the United States, its agencies and officers in all courts which are not otherwise assigned. This litigation included affirmative suits to enforce governmental policies, statutes or regulations, and the defense of suits challenging actions, policies or proceedings of federal officers and agencies. The litigation includes, but is not limited to, injunctive and declaratory judgment suits to prevent or mandate certain governmental actions, suits brought pursuant to the Administrative Procedure Act on procedural or substantive grounds, challenges to statutes as allegedly unconstitutional and suits to obtain alleged rights or enforce certain government obligations.

J. Immigration Litigation: All civil litigation arising under the immigration and nationality laws (except forfeitures and proceedings against Nazi war criminals within the jurisdiction of the Criminal Division under 28 C.F.R. §0.55(f)) and the passport and visa laws and investigations and other appropriate inquiries pursuant to all the powers and authority of the Attorney General to enforce the immigration and naturalization of aliens except as they relate to the individuals identified in 8 U.S.C. §§1182(s)(33) and 1251(a)(19) within the jurisdiction of the Criminal Division under 28 C.F.R. §0.55(f).

K. Patent and Allied Cases and Other Patent Matters: Patent, copyright and trademark litigation in the courts and before the Patent Office, including patent and copyright infringement suits in the Court of

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Claims (28 U.S.C. §1498), suits for compensation under the Patent Secrecy Act where an invention has been ordered to be kept secret in the interest of national defense (35 U.S.C. §183), suits for compensation for unauthorized practice of a patented invention in the furnishing of assistance under the Foreign Assistance Act (22 U.S.C. §2356), suits for compensation for the unauthorized communication of restricted data by the Atomic Energy Commission to other nations (42 U.S.C. §2223), interference proceedings (35 U.S.C. §§135, 141, 142, 146), defense of the Register of Copyrights in his/her administrative acts, suits for specific performance to acquire title to patents, and civil patent-fraud cases. See 28 C.F.R. §0.45(f).

L. Tort Cases and Matters: Defense of tort suits against the United States arising under the Federal Tort Claims Act is the Swine Flu Program of 1979, Pub. L. No. 94-380 Section 1631 of the Department of Defense Authorization Act of 1985, pertaining to activities of contractors carrying out the Atomic Weapons Testing Program, Pub. L. No. 98-525, and special Acts of Congress; defense of tort suits against government cost-plus contractors and federal employees and members of the service whose official conduct is involved (except actions against government contractors, employees and members of the service which are assigned to the Land and Natural Resources Division by 28 C.F.R. §0.65(a)); prosecution of tort claims for damage to government property and actions for the recovery of medical expenses under 42 U.S.C. §§2651-2653 and 28 C.F.R. §§43.1-43.4; and, subject to the provisions of 28 C.F.R. §0.160, the adjustment, determination, compromise and settlement of all tort claims asserted against the Department of Justice under 28 U.S.C. §2672 (except those assigned to other officials by 28 C.F.R. §0.172(a)) and the approval or disapproval of compromise proposals in connection with administrative claims asserted against other federal agencies and which are referred pursuant to 28 C.F.R. §§14.6 and 14.7. See 28 C.F.R. §§0.45(g), 0.172, 14.6-14.7, 15.1-15.3 and 43.1-43.4.

The Assistant Attorney General of the Civil Division has been delegated the ultimate and overall responsibility for proper conduct of litigation involving these cases, claims, and matters, although the majority of them may be handled by U.S. Attorneys.

Policies and procedures are set forth more fully in Title 4 of this Manual.

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1-3.203 Civil Rights Division

The Civil Rights Division supports, coordinates and supervises the enforcement of those federal statutes which secure and protect the civil rights of persons within the jurisdiction of the United States. Such statutes include those relating to conspiracy against rights of citizens; deprivation of rights under color of law; voting discrimination; equal access to public accommodations and public facilities; desegregation of public education; equal employment opportunity; fair housing; nondiscrimination in revenue sharing programs; and deprivation of constitutional rights of American Indians, and persons committed to penal, mental, and juvenile institutions and schools for the retarded. The enforcement of these laws includes both civil actions and criminal prosecutions.

The Civil Rights Division also confers with individual and groups who call upon the Department in connection with civil rights matters, advising such individuals and initiating appropriate action where necessary. The Division coordinates within the Department of Justice all matters affecting civil rights and counsels and assists other federal agencies as well as state and local agencies in matters pertaining to civil rights. It conducts research in civil rights matters and makes recommendations to the Attorney General concerning proposed policies and legislation in the field.

Policies and procedures are set forth more fully in Title 8 of the Manual.

1-3.204 Criminal Division

Subject to the general supervision of the Attorney General and under the direction of the Associate Attorney General, the Assistant Attorney General of the Criminal Division is assigned the responsibility of conducting, handling, or supervising the following:

A. Prosecutions for federal crimes not otherwise specifically assigned. See 28 C.F.R. §0.55(a).

B. Cases involving criminal frauds against the United States except cases assigned to the Antitrust Division (28 C.F.R. §0.40(a)) involving conspiracy to defraud the federal government by violation of the antitrust

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laws, and tax fraud cases assigned to the Tax Division (28 C.F.R. §§0.70, 0.71 and 0.55(b)).

C. All criminal and civil litigation under the Controlled Substances Act, 84 Stat. 1242, and the Controlled Substances Import and Export Act, 84 Stat. 1285 (Titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970). See 28 C.F.R. §0.55(c).

D. Forfeiture or civil penalty actions (including petitions for remission or mitigation of forfeitures and civil penalties, offers in compromise and related proceedings) under the Federal Aviation Act of 1958, the Contraband Transportation Act, the Copyrights Act, the customs laws (except those assigned to the Civil Division which involve Sections 592, 704(i)(2), or 734(i)(2) of the Tariff Act of 1930), the Export Control Act of 1949, the Federal Alcohol Administration Act, the Federal Seed Act, the Gold Reserve Act of 1934, the Hours of Service Act, the Animal Welfare Act, the Immigration and Nationality Act (except civil penalty actions and petitions and offers related thereto), the neutrality laws, laws relating to cigarettes, liquor, narcotics and dangerous drugs, other controlled substances, gambling, war materials, pre-Columbian artifacts, coinage, and firearms, locomotive inspection (45 U.S.C. §§22, 23, 28-33), the Organized Crime Control Act of 1970, prison-made goods (18 U.S.C. §§1761-1762), the Safety Appliance Act, standard barrels (15 U.S.C. §§231-242), the Sugar Act of 1948, and the Twenty-Eight Hour Law. See 28 C.F.R. §0.55(d).

E. Subject to the provisions of 28 C.F.R. §§0.172, consideration, acceptance, or rejection of offers in compromise of criminal and tax liability under the laws relating to liquor, narcotics and dangerous drugs, gambling, and firearms, in cases in which the criminal liability remains unresolved. See 28 C.F.R. §0.55(e).

F. All criminal litigation and related investigations and inquiries pursuant to all the power and authority of the Attorney General to enforce the Immigration and Nationality Act and all other laws relating to the immigration and naturalization of aliens; all advice to the Attorney General with respect to the exercise of his/her parole authority under 8 U.S.C. §1182(d)(5) concerning aliens who are excludable under 8 U.S.C. §§1182(a)(23), (28), (29), or (33); and all civil litigation with respect to the individuals identified in 8 U.S.C. §§1182(a)(33), 1141(a)(19). See 29 C.F.R. §0.55(f).

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G. Coordination of enforcement activities directed against organized crime and racketeering. See 28 C.F.R. §0.55(g).

H. Enforcement of the Act of January 2, 1951, 64 Stat. 1134, as amended by the Gambling Devices Act of 1962, 76 Stat. 1075, 15 U.S.C. §§1171 et seq., including registration thereunder. See also 28 C.F.R. §§3.20 and 0.55(h).

I. All civil proceedings seeking exclusively equitable relief against Criminal Division activities including criminal investigations, prosecutions, and other criminal justice activities (including without limitation, applications for writs of habeas corpus not challenging exclusion, deportation or detention under the immigration laws and coram nobis), except that any such proceeding may be conducted, handled, or supervised by another division by agreement between the head of such division and the Assistant Attorney General in charge of the Criminal Division. See 28 C.F.R. §0.55(i).

J. International extradition proceedings. See 28 C.F.R. §0.55(j).

K. Relation of military to civil authority with respect to criminal matters affecting both. See 28 C.F.R. §0.55(k).

L. All criminal matters arising under the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 519). See 28 C.F.R. §0.55(l).

M. Enforcement of the following described provisions of the United States Code:

1. Sections 591 through 593 and Sections 595 through 612 of Title 18, United States Code, relating to elections and political activities;

2. Sections 241, 242, and 594 of Title 18, and Sections 1973i and 1973j of Title 42, United States Code, insofar as they relate to voting and election matters not involving discrimination or intimidation on grounds of race or color, and Section 245 (b)(1) of Title 18, United States Code, insofar as it relates to matters not involving discrimination or intimidation on grounds of race, color, religion, or national origin;

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3. Section 245(b)(3) of Title 18, United States Code, pertaining to forcible interference with persons engaged in business during a riot or civil disorder; and

4. Sections 241 through 256 of Title 2, United States Code (Federal Corrupt Practices Act). See 28 C.F.R. §0.55(m).

N. Civil actions arising under 39 U.S.C. §§3010, 3011 (Postal Reorganization Act). See 28 C.F.R. §0.55(n).

O. Resolving questions that arise as to federal prisoners held in custody by federal officers or in federal prisons, commitments of mentally defective defendants and juvenile delinquents, validity and construction of sentences, probation, and parole. See 29 C.F.R. §0.55(o).

P. Supervision of matters arising under the Escape and Rescue Act (18 U.S.C. §§751, 752), the Fugitive Felon Act (18 U.S.C. §§1072, 1073), and the Obstruction of Justice Statute (18 U.S.C. §1503). See 28 C.F.R. §0.55(p).

Q. Supervision of matters arising under the Bail Reform Act of 1966 (28 U.S.C. §§3041-3143, 3146-3152, 3568). See 28 C.F.R. §0.55(q).

R. Supervision of matters arising under the Narcotic Addict Rehabilitation Act of 1966 (18 U.S.C. §§4251-4255; 28 U.S.C. §§2901-2906; 42 U.S.C. §§3411-3426, 3441, 3442). See 28 C.F.R. §0.55(r).

S. Civil proceedings in which the United States is the plaintiff filed under the Organized Crime Control Act of 1970, 18 U.S.C. §§1963-1968. See 28 C.F.R. §0.55(s).

T. Enforcement of all criminal laws relating to subversive activities and kindred offenses directed against the internal security of the United States, including the laws relating to treason, sabotage, espionage, and sedition; enforcement of the Foreign Assets Control Regulations issued under the Trading With the Enemy Act (31 C.F.R. §500.101 *et seq.*); criminal prosecutions under the Atomic Energy Act of 1954, the Smith Act, the neutrality laws, the Arms Export Control Act, the Federal Aviation Act of 1958 (49 U.S.C. §1523) relating to offenses involving the security control of air traffic, and 18 U.S.C. §799; and criminal prosecutions for offenses, such as perjury and false statements, arising out of offenses relating to national security. See 28 C.F.R. §0.61(a).

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U. Administration and enforcement of the Foreign Agents Registration Act of 1938, as amended; the act of August 1, 1956, 70 Stat. 899 (50 U.S.C. §§851-857), including the determination in writing that the registration of any person coming within the purview of the act would not be in the interest of national security; and the Voorhis Act. See 28 C.F.R. §0.61(b).

V. Administration and enforcement of the Internal Security Act of 1950, as amended. See 28 C.F.R. §0.61(c).

W. Civil proceedings seeking exclusively equitable relief against laws, investigations, or administrative actions designed to protect the national security (including without limitation personnel security programs and the foreign assets control program). See 28 C.F.R. §0.61(d).

X. Interpretation of Executive Order No. 10450 of April 27, 1953, as amended, and advising other departments and agencies in connection with the administration of organizations as required by the order; the interpretation of Executive Order No. 10501 of November 5, 1953, as amended, and of regulations issued thereunder in accordance with Section 11 of that order; and the interpretation of Executive Order No. 10865 of February 20, 1960. See 28 C.F.R. §0.61(e).

Y. Libels and civil penalty actions (including petitions for remission or mitigation of civil penalties and forfeitures, offers in compromise and related proceedings) arising out of violations of the Trading with the Enemy Act, the neutrality statutes and the Arms Export Control Act. See 28 C.F.R. §0.61(e).

Z. Enforcement and administration of the provisions of 2 U.S.C. §441e relating to contributions by foreign nationals. See 28 C.F.R. §0.61(g).

AA. Enforcement and administration of the provisions of 18 U.S.C. §219, relating to officers and employees of the United States acting as agents of foreign principals. See 28 C.F.R. §0.61(h)

BB. Criminal matters arising under the Military Selective Service Act of 1967. See 28 C.F.R. §0.661(i).

Further, the Assistant Attorney General in charge of the Criminal Division is authorized:

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A. To determine administratively whether the federal government has exclusive or concurrent jurisdiction over offenses committed under lands acquired by the United States, and to consider problems arising therefrom. See 28 C.F.R. §0.56.

B. To exercise the power and authority vested in the Attorney General by Sections 5032 and 5036 of Title 18, United States Code, relating to criminal proceedings against juveniles. Further, the Criminal Division supervises the implementation of the Juvenile Justice and Delinquency Prevention Act (18 U.S.C. §5031 et seq.). See 28 C.F.R. §0.57.

C. To exercise or perform any of the functions or duties conferred upon the Attorney General by the Act to Compensate Law Enforcement Officers Not Employed by the United States Killed or Injured While Apprehending Persons Suspected of Committing Federal Crimes (5 U.S.C. §§8191, 8192, 8193). See 28 C.F.R. §0.58.

D. To exercise or perform the functions or duties conferred upon the Attorney General by Section 3331 of Title 18, United States Code, to certify that in his/her judgment a special grand jury is necessary in any judicial district of the United States because of criminal activity within such district. See 28 C.F.R. §0.59(a).

E. To exercise or perform the functions or duties conferred upon the Attorney General by Section 3503 of Title 18, United States Code, to certify that the legal proceeding, in which a motion to take testimony by deposition is made, is against a person who is believed to have participated in an organized criminal activity, where the subject matter of the case or proceeding in which the motion sought is within the cognizance of the Criminal Division pursuant to 28 C.F.R. §0.55, or is not within the cognizance of the Civil Rights Division. See 28 C.F.R. §0.59(b).

F. To exercise the power and authority vested in the Attorney General by Section 7 of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. §403h), with respect to entry of certain aliens into the United States for permanent residence. See 28 C.F.R. §0.63.

G. To exercise or perform the functions or duties conferred upon the Attorney General by Section 3503 of Title 18, United States Code, to certify that the legal proceeding, in which a motion to take testimony by deposition is made, is against a person who is believed to have participated in an organized criminal activity, where the subject matter of

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the case or proceeding in which the motion is sought is within the cognizance of the Criminal Division pursuant to 28 C.F.R. §0.61. See 28 C.F.R. §0.64.

H. To exercise all of the power and authority vested in the Attorney General under Section 4102 of Title 18, United States Code, which has not been delegated to the Director of the Bureau of Prisons under 28 C.F.R. §0.96b, including specifically the authority to find the transfer of offenders to or from a foreign country under a treaty as referred to in Pub. L. No. 95-44 appropriate or inappropriate. See 28 C.F.R. §0.64-2.

Further, the Assistant Attorney General in charge of the Criminal Division shall:

A. Be a member and serve as Chairman of the committee which represents the Department of Justice in the development and implementation of plans for exchanging visits between the Iron Curtain countries and the United States and provide Department of Justice representation on the Interdepartmental Committee on Internal Security. See 28 C.F.R. §§0.62(a) and (b).

B. Have the authority and perform the functions of the "Central Authority" or "Competent Authority" (or like designation) under treaties between the United States of America and other countries on mutual assistance in criminal matters which designate the Attorney General or the Department of Justice as such authority. See 28 C.F.R. §0.64-1.

Policies and procedures are set forth more fully in Title 9 of the Manual.

1-3.205 Land and Natural Resources Division

The Assistant Attorney General in charge of the Land and Natural Resources Division is responsible for the conduct of law suits, both in federal and state courts, relating not only to the assertion and protection of interests in specific real property and natural resources owned or sought to be acquired by the federal government (or held by the federal government in trust for Indian tribes and individuals) but relating also to the protection of the American environment generally.

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More specifically, the Division is responsible for civil and criminal actions to abate water, air and noise pollution; to protect against hazardous waste; to enforce wildlife laws; and to protect navigable waters of the United States, including adjacent wetlands. The Division also defends the United States against legal challenges to the federal programs in the areas just mentioned.

The Division's work also encompasses civil actions for the acquisition of property; to remove clouds and to quiet title; to recover possession of property; to recover damages for trespasses; to determine boundaries; to cancel patents; to establish rights in minerals, in oil reserves, and in other natural resources, including those of the Outer Continental Shelf; to establish water rights and protect water resources; defend actions for compensation for the claimed taking by the United States of real property or any interest therein; to defend actions alleging either unfair dealings with Indian tribes or inadequate compensation for lands and interests acquired from Indian tribes by the United States through treaties or otherwise; and to defend actions seeking to establish an interest in real property adverse to the United States.

In addition, the Division represents Indians and Indian tribes in certain matters (other than civil rights cases) not relating to trust property; it defends officers of the United States with respect to their actions relating to federal lands and resources, and handles injunction and mandamus proceedings and litigation arising from contracts wherever those matters affect the rights of the United States in the use or title of its real property. Except as delegated to the other departments and agencies, the division passes upon the title to all real property and interests in real property acquired by the United States by direct purchase.

The Division defends suits against government officers arising out of the National Environmental Policy Act and represents the Administrator of the Environmental Protection Agency in suits involving judicial review of the Administrator's actions. With respect to any matter assigned to the Land and Natural Resources Division in which the Environmental Protection Agency is a party, the Assistant Attorney General of the Division, or his/her designee, may exercise the functions and responsibilities undertaken by the Attorney General in the Memorandum of Understanding between the Department of Justice and the Environmental Protection Agency. See 28 C.F.R. §0.66.

The Assistant Attorney General and his/her designees are also authorized to exercise the powers and authority vested in the Attorney

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General by Section 23(b) of the Airport and Airway Development Act of 1970 (28 C.F.R. §0.67); under the provisions of Sections 3 of the Act of August 7, 1974, 61 Stat. 914, 30 U.S.C. §352, respecting the leasing of minerals on lands under the jurisdiction of the Department of Justice (28 C.F.R. §0.69); and by the Act of June 4, 1934, 48 Stat. 836, with respect to approving the making or acceptance of conveyances by the Secretary of the Interior on behalf of the United States (28 C.F.R. §0.69a), and by the Uranium Mill Tailings Radiation Control Act of 1978, 92 Stat. 3033, with respect to studies and reports on the identity and legal responsibility of persons who owned, operated or controlled specified inactive uranium milling or processing sites.

Policies and procedures are set forth more fully in Title 5 of the Manual.

1-3.206 Tax Division

The Assistant Attorney General of the Tax Division has jurisdiction over the prosecution of criminal proceedings arising under the internal revenue laws, with the exception of proceedings pertaining to misconduct of Internal Revenue Service personnel, to taxes on liquor, narcotics, firearms, coin-operated gambling and amusement machines, and to wagering, forcible rescue of seized property (26 U.S.C. §7212(b), corrupt or forcible interference with an officer or employee acting under the internal revenue laws (26 U.S.C. §7212(a)), unauthorized disclosure of information (26 U.S.C. §7213) and counterfeiting, mutilation, removal or reuse of stamps (26 U.S.C. §7208). See 28 C.F.R. §0.70(b).

The Tax Division is responsible for prosecution and defense in all courts, other than the Tax Court, of civil suits, and the handling of other matters, arising under the internal revenue laws, and litigation resulting from the taxing provisions of other federal statutes except for those matters assigned to the Criminal Division. The Division has authority over the enforcement of tax liens and mandamus, injunctions, and other special actions or general matters arising in connection with internal revenue matters. The Assistant Attorney General of the Tax Division has jurisdiction over actions arising under Section 2410 of the United States Code whenever the United States is named as a party to an action as the result of the existence of a federal tax lien, including the defense of other actions arising under Section 2410, if any, involving the same property whenever a tax-lien action is pending under that section. See 28 C.F.R. §0.70(c).

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The Assistant Attorney General of the Tax Division is authorized to handle matters involving the immunity of the federal government from state or local taxation (except actions to set aside ad valorem taxes, assessments, special assessments, and tax sales of federal real property, and matters involving payments in lieu of taxes), as well as state or local taxation involving contractors performing contracts for or on behalf of the United States. See 28 C.F.R. §0.71.

The Division supervises or conducts appellate litigation in civil and criminal tax cases, including appeals from decisions of the United States Tax Court.

Policies and procedures are set forth more fully in Title 6 of this Manual.

1-3.207 Justice Management Division

The Justice Management Division (JMD) is the principal organizational unit responsible for management and administrative support in the Department of Justice. Under the direction of the Assistant Attorney General for Administration (AAG/A), JMD provides Department-wide policy guidance for a variety of management, administration, and organizational matters. It also provides direct administrative services to the Department's offices, boards, and divisions and, to a limited extent, its bureaus.

The following is a general description of the organizational missions and functional responsibilities assigned to the AAG/A.

A. JMD Mission: The mission of JMD is:

1. To be the Attorney General's principal management and administrative resource in support of the Department's goals and operations;
2. To establish administrative policies, programs, and procedures for the Department in order to ensure that its mission is achieved in an effective and efficient manner;
3. To provide for the review of the Department activities to ensure compliance with federal laws and regulations and Department directives and policies; and

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4. To provide management, financial, and administrative assistance, including the operation of central administrative facilities and services, to the offices, boards, and divisions.

As is evident in its mission, JMD is more than a centralized provider of direct administrative services for the components of the Department; it also plays a significant advisory role in shaping Departmental policies, programs, and procedures, and in ensuring that Departmental activities comply with applicable statutes, regulations, circulars, and orders. In addition, through its liaison role, JMD represents the offices of the Attorney General, the Deputy Attorney General, and the Associate Attorney General on organizational, management, and administrative matters with the other principal organizational units of the Department and with other federal agencies, including such central management agencies as the Office of Management and Budget, and Office of Personnel Management, the General Services Administration, and the General Accounting Office, as well as other executive, judicial, and legislative agencies within the federal government. Consequently, the organizational roles of JMD and its relationship with other units of the Department are both widespread and multifaceted.

B. Functional responsibilities: In addition to the multiplicity of its purpose and intradepartmental activities, JMD is a functionally diverse organization. The Division's functional responsibilities vary in nature, scope, and complexity within the realm of management assistance and administration. The recent trend toward increased specialization within JMD, particularly in the information processing arena, has contributed to this functional diversity.

The functional responsibilities assigned to the AAG/A are enumerated in Title 28 of the Code of Federal Regulations, Subpart O. These specific functional responsibilities include:

1. Equal employment opportunity;
2. Security;
3. Legal review (administration and management);
4. Audit;

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5. Budget;
6. Financial and resource management;
7. Program evaluation/management assistance;
8. Personnel management/training;
9. Mail/messenger management;
10. Real/personal property management;
11. Other general administrative services (e.g., motor vehicles and parking management);
12. Procurement/contracting;
13. Systems policy;
14. Systems design and development;
15. Printing and publications;
16. Graphics and audiovisual;
17. Systems operations/telecommunications; and
18. Information access, research, and reference.

As illustrated above, these basic policy and operations responsibilities transcend a variety of functional areas.

C. JMD staff missions: Because JMD is functionally diverse, for the most part, its organizational design rests upon a functional axis. Within the division, 11 staffs with specialized functions and related areas of responsibility are grouped into one of three offices, each directed by a Deputy Assistant Attorney General. The Budget, Finance, and Evaluation Staffs constitute the Office of the Controller; the Personnel, Administrative Services, and Procurement and Contracts staffs constitute the Office of Information Technology. Because of the nature of their responsibilities, the four remaining staffs--the Audit, Security, and Equal Employment

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Opportunity staffs and the Office of the Administrative Counsel--report directly to the Deputy Assistant Attorney General for Administration.

The individual missions of the 15 JMD staffs are listed below:

1. The mission of the Equal Employment Opportunity Staff is to perform, execute, and administer staff functions for the Attorney General and for the AAG/A--the Department's Director of Equal Employment Opportunity--that will fulfill the responsibilities of these officials for equal employment opportunity within the Department as prescribed by statute, regulation, executive order, and internal policy to ensure Department-wide compliance and operational effectiveness.

2. The mission of the Security Staff is to develop, implement as required, and monitor Department-wide policies and programs affecting the security of Department employees and resources, emergency preparedness, and occupational safety and health matters.

3. The mission of the Office of Administrative Counsel is to execute legal staff functions for and on behalf of the AAG/A in fulfillment of his/her responsibilities to ensure the legal sufficiency of the Department's management and administrative programs, to include the provision of legal advice and guidance to the operational staffs of the AAG/A.

4. The mission of the Audit Staff is to formulate, implement, and review Department-wide audit policies, or standards, and procedures; to plan, direct, and conduct independent audits on the Department's internal activities and functions; and to conduct or coordinate the audits of parties performing under contract, grants, or other agreements with the Department.

5. The mission of the Budget Staff is to develop and monitor all policies pertaining to Department-wide budget formulation, budget review, budget execution, and resource management.

6. The mission of the Finance Staff is to ensure that all Department components meet the financial and accounting requirements of statutes and regulations, including the assurance that all systems are approved by the General Accounting Office. It provides direct accounting support to the offices, boards, and divisions and for the Department's centralized financial systems.

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7. The mission of the Evaluation Staff is to provide Department leadership with the capacity to review Department programs; evaluate their effectiveness, efficiency, and/or impact; and identify and recommend appropriate program or management improvements.

8. The mission of the Personnel Staff is to develop and implement Department-wide personnel policies and programs which meet legal, regulatory, and public policy requirements and to provide operating personnel support services to the offices, boards, and divisions (except for the Executive Office for U.S. Attorneys).

9. The mission of the Administrative Service Staff is to develop, administer, and evaluate Department-wide policy and programs for real property management, personal property management, mail management, consumer affairs, and advisory committee management. The staff provides direct administrative support services to the offices, boards, and divisions of the Department in the above program areas.

10. The mission of the Procurement and Contracts Staff is to provide Departmental procurement policy, procedural guidance, and technical assistance that is consistent with the law and Federal Procurement Regulations and compatible with the mission needs of the program offices and bureaus of the Department; and to support the offices, boards, and divisions through timely acquisition of quality goods and services.

11. The mission of the Systems Policy Staff is to develop, coordinate, administer, and evaluate Department-wide policy and programs for automated information systems; technical research and development activities; and public use reports and interagency reporting clearance activities; and to ensure that such activities are compatible with corresponding directives issued by the central management agencies and other government-wide regulatory/statutory authorities.

12. The mission of the Information Systems Staff is to develop, implement, and monitor Department-wide policies and programs for office automation, systems development activities, visual communications, data base maintenance, and publications and printing; and to provide efficient management controls and support services in these program areas for the Department.

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13. The mission of the Litigation Systems Staff is to analyze, design, and provide computerized services/systems in support of the litigation mission of the Department and other agencies of the federal government, as appropriate, and to provide coordination and liaison activities between the legal community and technical components to ensure the effectiveness and responsiveness of these services/systems in maximizing attorney resource utilization.

14. The mission of the Computer Technology and Telecommunications Staff is to provide common-user automatic data processing and telecommunications facilities and services to support Departmental activities; and to establish and maintain policy regarding the use of voice and data telecommunications.

15. The mission of the Library Staff is to identify, collect, organize, and disseminate information to the offices, boards, and divisions and to establish Department-wide management policy for files maintenance and records disposition.

1-3.300 BUREAUS

1-3.301 Bureau of Prisons

A. The Bureau of Prisons has responsibility for the management of federal penal and correctional institutions. The Director of the Bureau of Prisons directs all of its activities, and reports directly to the Associate Attorney General and is under the general supervision of the Attorney General (18 U.S.C. §4041, 28 C.F.R. §§0.95-0.99). He/she has the authority to promulgate rules governing the control and management of federal penal and correctional institutions and for providing for the classification, government, discipline, treatment, care, rehabilitation and reformation of inmates confined therein (A.G. Order No. 675-76, 41 Fed. Reg. 56802, (December 30, 1976).

Pursuant to 18 U.S.C. §§4002, 4082, the Director of the Bureau of Prisons may contract with state and local authorities for the imprisonment of persons held under authority of any enactment of Congress. (On the other hand, under 18 U.S.C. §5003, the Attorney General may contract with state or territory authorities for the holding of convicted state offenders in federal institutions).

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The Bureau of Prisons places a large number of inmates serving sentence in a wide variety of non-federal contract facilities under Sections 4002 and 4082. There are inmates serving short sentences in local jails, inmates serving the last few months of the confinement portion of their sentence in community treatment centers, adults (primarily those who need protection from other inmates) serving long portions of their sentences in state prisons and juveniles committed under the Juvenile Justice and Delinquency Prevention Act in state juvenile correctional institutions and private and local facilities.

In order to maintain uniform standards, so far as possible, for the control and treatment of federal prisoners in non-federal institutions, a statement of requirements is included in each federal contract. Payments under the contract are subject to these provisions. The provisions cover all areas of programs and services: personnel, medical, food service, admission, release, employment and counseling services, inmate correspondence and visiting, photographing and publicity, access to legal materials, and access to counsel. Details of the contract and its attachments can be obtained from the Bureau of Prisons' Community Programs Manager for the area or from the Bureau's regional offices.

Another specialized area of concern of the Bureau of Prisons is the administration of Chapter 313, Title 18 U.S.C., Section 4241-4247, which details procedures for competency and sanity examinations, procedures for hospitalization and treatment of those individuals found to be either incompetent to stand trial or not guilty only by reason of insanity, and court commitment and discharge procedures for those inmates who are determined to be in need of psychiatric hospitalization. Since the requirements of these provisions stretch the Bureau of Prisons' mental health resources to their limits, incompetency (Section 4241) and insanity (Section 4242) studies should, wherever possible, be done in the community by local psychologists/psychiatrists, with commitments to the custody of the Attorney General being reserved for those individuals who cannot safely be examined in the community.

Questions about federal sentences, their interpretation, computation, and implementation, may be addressed to Bureau of Prisons administrative officers or attorneys. These questions would include the place to be designated for service of the federal sentence, and the programs and other attributes available at each federal facility.

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Community Programs Managers, who are assigned to limited geographical areas, should be known to each U.S. Attorney's Office, since they would serve as the first line of contact for any questions or problems which may arise under the Bureau of Prisons' areas of concern.

The Bureau of Prisons is now divided into five regions, for administrative and management purposes. These five offices are Philadelphia, Pennsylvania; Atlanta, Georgia; Kansas City, Missouri; Dallas, Texas; and Burlingame, California. Information about Bureau of Prisons' policies and operations may be obtained from the appropriate regional office. Each regional office has a staff attorney, who should be the contact for questions concerning Bureau of Prisons' legal matters. These Regional Counsel have responsibility for such things as release of prisoner records, tort claims, and complaints about prison conditions.

B. The Director of the Bureau of Prisons also serves as Ex Officio Commissioner of Federal Prison Industries, Inc. This corporation, under the policy guidance of a Presidentially-appointed board of directors, conducts industrial operations in federal penal and correctional institutions. See 18 U.S.C. §4121 et seq., Ch. 307; 28 C.F.R. §0.98.

1-3.302 Drug Enforcement Administration

The primary responsibility of the Drug Enforcement Administration (DEA) is the enforcement of the laws and statutes relating to narcotic drugs, marihuana, depressants, stimulants, and the hallucinogenic drugs. Its objectives are to reach all levels of source of supply and to interdict illegal drugs before they reach the user. DEA was established July 1, 1973, by Presidential Reorganization Plan No. 2. It resulted from the merger of the Bureau of Narcotics and Dangerous Drugs, the Office for Drug Abuse Law Enforcement, the Office of National Narcotics Intelligence, those elements of the Bureau of Customs which had drug investigative responsibilities, and those functions of the Office of Science and Technology which were related to drug enforcement. DEA was established to more effectively control narcotics and dangerous drugs abuse through enforcement and prevention. In carrying out its mission, DEA cooperates with other federal agencies, foreign as well as state and local governments, private industry, and non-governmental organizations.

DEA conducts domestic and international investigations of major drug traffickers, concentrating its efforts at the major sources of illicit

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supply or diversion and the systems set up to obtain and distribute illegal drugs. It places particular emphasis on the immobilization of clandestine manufacturers, international traffickers, and origins of diversion from legitimate channels. In addition, DEA works cooperatively with other agencies, as well as independently, to institute national drug abuse prevention programs.

DEA also requires the legal distribution of narcotics and dangerous drugs. This includes the appropriate scheduling of controlled substances, and establishing import, export and manufacturing quotas for these drugs. Drug manufacturers, distributors, practitioners and other persons responsible for handling dispensing, or prescribing narcotics and dangerous drugs must be registered by DEA and are subject to periodic inspections by DEA compliance investigators who check for recordkeeping and security safeguards of controlled substances. Such supervision of legitimate trade insures an adequate supply of drugs for medicinal purposes and research, and at the same time it is instrumental in preventing diversion of drugs into illicit channels. These regulations are found in 21 C.F.R. §1300 et seq.

DEA has an Office of Intelligence staffed by criminal investigators and intelligence analysts. Each DEA Field Division in the United States and in principal source countries has assigned to it an Intelligence Unit and all information concerning illicit narcotics and dangerous drugs trafficking organizations and individuals is furnished to these units and the Office of Intelligence where it is collated, analyzed, and disseminated as strategic and tactical intelligence to DEA, U.S. Customs Service, U.S. Border Patrol, INS and other U.S., state and local enforcement agencies.

DEA's Office of Training conducts intensive training in drug law enforcement for officers from agencies throughout the United States and the world. Eight-week schools are conducted at the DEA Training Center in which police officers receive training similar to that which DEA Special Agents receive. In addition, they are introduced to management concepts in the four-week Advanced Institute for Drug Enforcement which will enable officers to develop and supervise drug investigative units and organize drug prevention programs in their respective communities. Additionally, specialized two-week schools conducted in the field offer 80 hours of instruction to state, county and city officers in the basic techniques of drug investigations.

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The Office of Training conducts intensive, practical training programs in foreign countries designed to satisfy the needs of the recipient nations and assist DEA's international enforcement mission. The programs, ranging from two or three days to three weeks, are presented in the native language of the participants and are reinforced with practical exercises which utilize the most sophisticated enforcement techniques and equipment.

Special seminars and briefings are conducted for forensic chemists, other federal agencies, civil groups, foreign dignitaries and other visitors at the Institute and at various locations in the United States.

DEA also conducts, in cooperation with other elements of the Department of Justice, training programs for U.S. Attorneys' staffs and state and local prosecutors, which are designed to improve the quality of investigative and prosecutive efforts throughout the country. DEA and the FBI offer a two-week asset removal training program which is available to Assistant U.S. Attorneys.

To accumulate up-to-date information regarding the drugs under its jurisdiction, DEA encourages controlled scientific research in the field of drug abuse. To this end, research is conducted by both DEA scientists and by independent laboratories operating under contract to DEA. DEA's research is directed toward information gathering which will aid those within the criminal justice system to better cope with the drug abuse problem and its related aspects. Research encompasses clinical, social, psychological, and biological research. DEA, as part of its scientific staff, employs physicians, pharmacologists, psychologists, chemists, statisticians, pharmacists, and professional educators.

Another research and scientific responsibility of DEA is to determine whether or not a drug should be controlled because of its abuse potential. Procedures for classification were established under the Controlled Substances Act of 1970. The procedure employs the resources and cooperation of the Department of Health and Human Services.

The DEA maintains on-going cooperative investigative task forces with state and local agencies and regularly responds to requests for investigative assistance from state and local authorities. DEA, through its six testing laboratories, provides analyses of drug evidence and also supplies related expert testimony.

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DEA agents also actively assist state and local officials through the DEA Task Forces and the Metropolitan Enforcement Group (MEG) system. These action groups are designed to take the illicit drugs off the street. MEGS are designed to effect metropolitan area cooperation among the various local jurisdictions located within that area.

1-3.303 Federal Bureau of Investigation

The Federal Bureau of Investigation (FBI), was established in 1908. The Director of the FBI is appointed by the President, subject to Senate confirmation, and reports directly to, and is under the supervision of, the Attorney General. The appointment cannot exceed ten years.

A. Organization at FBI Headquarters: In addition to the Director, there are three Executive Assistant Directors who head Law Enforcement Services, Investigations, and Administration. They oversee ten divisions and one office, each headed by an Assistant Director, which are as follows:

1. Identification Division
2. Training Division
3. Administrative Services Division
4. Records Management Division
5. Intelligence Division
6. Criminal Investigative Division
7. Laboratory Division
8. Technical Services Division
9. Legal Counsel Division
10. Inspection Division
11. Office of Congressional and Public Affairs

Investigations are supervised at FBI Headquarters in Washington, D.C., for the specific purpose of effecting investigative coordination, giving direction to the investigative activities in the field service, and disseminating reports to government agencies having an appropriate official interest.

B. Organization in the Field: There are 59 field divisions of the FBI located throughout the United States including field offices at San Juan, Puerto Rico; Anchorage, Alaska; and Honolulu, Hawaii. These offices are established at locations depending upon the volume of work and the

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requirements for supervision. The field divisions supervise the work of approximately 420 satellite offices, called resident agencies, which usually have from one to twelve employees.

In charge of each of the field divisions is a Special Agent with the title of "Special Agent in Charge," except the New York Division which is under the direction of an "Assistant Director in Charge." They are responsible for all FBI operations in the field division in which their office is located. There is also an Assistant Special Agent in Charge of each field office. The New York City Division has four Special Agents in Charge, and the larger field divisions have more than one Assistant Special Agent in Charge. Various supervisors assist in the handling of the administrative and investigative duties within each field division.

The FBI also maintains 13 overseas offices, commonly referred to as Legal Attaches or Legats. Legal personnel are assigned abroad as FBI liaison representatives to the police, security, and intelligence services of the country or countries covered by the respective Legat.

Legats were established to promote cooperation with foreign authorities and as a means for the exchange of information on matters of mutual interest. By virtue of FBI policy and host-country statutes and agreements, Legats are almost exclusively liaison officers and are not operational unless prior concurrence is obtained from FBI Headquarters, the respective U.S. Ambassador, and the host government. FBI Headquarters controls the Legat offices, and all requests for the services of these offices must be directed through the former.

C. Investigative Jurisdiction of the FBI: The FBI is charged with investigating violations of the laws of the United States and collecting evidence in cases in which the United States is or may be a party in interest, except in cases in which such responsibility is by statute or otherwise specifically assigned to another investigative agency. Thus, the FBI does not initiate, although it may participate in, investigation of internal revenue matters, counterfeiting and forgery of government obligations, alcohol tax, or other revenue violations, immigration and naturalization matters, or other matters not within the jurisdiction of the Department. Such matters are the primary responsibility of other federal investigative and enforcement agencies. In January, 1982, the Attorney General granted concurrent jurisdiction with the Drug Enforcement Administration (DEA) over narcotics offenses and made the DEA responsible to the FBI Director.

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In case of doubt as to whether the FBI has investigative jurisdiction over a particular matter, the U.S. Attorneys or their Assistants should confer with the responsible official of the local office of the FBI, or with the Criminal Division of the Department.

D. Partial List of Matters Investigated by the FBI: Among the federal crimes investigated by the FBI are the following:

1. General Crimes:

Antiracketeering
Antitrust
Assassination, Kidnapping, or Assaulting the President,
Vice-President, Presidential Staff Member, or Vice-
Presidential Staff Member
Assassination, Kidnapping, or Assaulting a Member of Congress
Assassination, Kidnapping, or Assaulting an Executive Department
Head or Director, CIA
Assassination, Kidnapping, or Assaulting a Supreme Court Justice
Assaulting or Killing a Federal Officer
Bank Burglary
Bank Larceny
Bank Robbery
Bombing Matters
Bond Default
Bribery
Civil Rights
Congressional Assassination Statute
Conspiracy (in matters under FBI jurisdiction)
Conspiracy to Impede or Injure an Officer
Contempt of Court
Copyright Matters
Crime Aboard Aircraft
Crimes on Government Reservations
Crimes on Indian Reservations
Crimes Within the Maritime Jurisdiction
Destruction of Aircraft or Motor Vehicles Used in Interstate or
Foreign Commerce
Domestic Security
Election Laws
Employee Retirement Income Security Act
Escaped Federal Prisoners, Escape and Rescue

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Espionage
Ethics in Government Act of 1978
Extortion
Extortionate Credit Transactions
Falsely Claiming Citizenship
False Entries in Records of Interstate Carriers
Federal Aviation Act
Federal Housing Administration Matters
Federal Regulation of Lobbying Act
Federal Tort Claims Act
Federal Train Wreck Statute
Fraud Against the Government
Fraud by Wire
Fraudulent Practices Concerning Certain Military and Naval
Documents and Seals of Department or Agencies of the United
States
Government Property - Theft, Robbery, Embezzlement, Illegal
Possession, and Destruction
Harboring
Hobbs Act
Illegal Gambling Business
Illegal Manufacture, Use, Possession, or Sale of Emblems and
Insignia
Illegal Use of Government Transportation Requests
Illegal Wearing of the Uniform and Related Statutes
Impersonation
Interference with Discrimination in Housing, Civil Rights Act of
1964, and federally protected activities
Internal Security Investigations
Interstate Gambling Activities
Interstate Obscene or Harassing Telephone Calls
Interstate Transportation in Aid of Racketeering
Interstate Transportation of Gambling Devices
Interstate Transportation of Lottery Tickets
Interstate Transportation of Obscene Matter
Interstate Transportation of Prison-made Goods
Interstate Transportation of Stolen Cattle
Interstate Transportation of Stolen Motor Vehicle or Aircraft
Interstate Transportation of Stolen Property
Interstate Transmission of Wagering Information
Interstate Transportation of Wagering Paraphernalia
Involuntary Servitude and Slavery

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Irregularities in Federal Penal Institutions
Kickback Racket Act
Kidnapping
Labor Management Relations Act, 1974
Migratory Bird Act
Narcotics Violations
National Bankruptcy Act
Obstruction of Justice
Perjury
Protection of Foreign Officials
Racketeer Influenced and Corrupt Organizations
Railway Labor Act
Sabotage
Security Matters
Selective Service Matters
Sexual Exploitation of Children
Sports Bribery
Subversive Activities
Theft from Interstate Shipment
Unlawful Flight to Avoid Prosecution, Custody, Confinement, and
Giving Testimony
Veterans Administration Matters
White Slave Traffic Act

2. Accounting Matters and Civil Cases:

Admiralty Matters
Alien Property Custodian Matters
Ascertaining Financial Ability to Pay Claims, Fines, and
Judgments
Civil Rights Act of 1964, public accommodations, public
education, public facilities, employment (involving only
governmental agencies, state, county, municipal, and in the
private sector only where the employee is under contract to
the United States), discrimination in housing
Contract Settlement Act
Federal Reserve Act
Federal Tort Claims Act
Mail Frauds (accounting phases)
National Bankruptcy Act
Real Estate Settlement Procedures Act of 1974
False Claims (civil)

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3. Applicant Investigations:

Application for Executive Clemency (Only those cases where originally convicted of an offense within jurisdiction of FBI)

Application for pardon after completion of sentence
Departmental applicants
FBI applicants

The FBI conducts investigations under Executive Order No. 10450, effective May 28, 1953, which prescribes procedures for the administration of the federal employees security program covering all civilian employees and applicants in the Executive Branch of the government. The FBI also conducts applicant-type investigations for certain government agencies as authorized under Presidential Executive Orders, Departmental Orders, and statutes enacted by Congress.

E. Some Basic FBI Policies: The FBI is a career service; its employees are selected without regard to political affiliation and political considerations.

The FBI is a fact-finding and reporting agency only. The results of FBI investigations are furnished without recommendation or conclusion to the U.S. Attorney's Office or the Department for the determination of appropriate action. The decision for action to be taken is the sole responsibility of the U.S. Attorneys or the Department, and Special Agents are not authorized to express an opinion as to such matters. This policy which prohibits the FBI from expressing an opinion, conclusion, or recommendation extends to investigations of applicants for governmental positions.

F. Cooperative Services of the FBI: The cooperative services of the FBI, such as fingerprint identification and scientific laboratory examinations, are available to local, county, state, and federal law enforcement agencies. The FBI also provides, without cost, technical and scientific assistance, including expert testimony in federal or local courts, for all duly constituted law enforcement agencies, other organizational units of the Department of Justice, and other federal agencies, which may desire to avail themselves of the service. As provided for in procedures agreed upon between the Secretary of State and the Attorney General, the services of

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the FBI laboratory may also be made available to foreign law enforcement agencies and courts.

G. Fingerprint Identification: The FBI maintains an Identification Division which is a national clearinghouse of information based on fingerprints of arrested persons. The fingerprint cards on file in this Division are not only the fingerprints of arrested persons, but also are prints submitted by the Office of Personnel Management, military services, and others.

When the fingerprints of an arrested person are received from a law enforcement agency, they are searched through the criminal files and the contributing agency is advised of any previous arrest record in these fingerprint files. If there is no previous record, the contributing agency likewise is advised of this fact. Whenever arrests are made in cases investigated by the FBI the arrest record is included in the reports of the special agents. The Identification Division of the Bureau also makes identifications of latent fingerprints, receives and records wanted notices and renders many other services wherein fingerprint identification is vital such as in disasters.

When a U.S. Attorney's Office requires the expert testimony of a fingerprint examiner, the request should be made for the actual day on which it is anticipated the testimony is required. Likewise, the Identification Division should be promptly notified of any change in the examiner's court appearance to insure that his/her services may be fully utilized. Similarly, when a U.S. Attorney's Office requires identification records for trial, such requests should be made to the Identification Division at the earliest possible date to insure their availability.

H. Services of FBI Laboratory: Examples of the types of examinations the Laboratory is equipped to make are as follows:

biochemical, biological, chemical, cryptanalytic, document, electronic and radio engineering, explosives and their residues, extortionate credit records, fibers, firearms identification and ammunition, gambling records and paraphernalia, glass, gunpowder, handwriting and hand printing, hairs, mathematics, metallurgical, mineralogical, neutron activation, number restoration, pharmacological, photographic, printing, shoe prints, serological, tire treads, toolmarks, and toxicological. Also the laboratory can analyze paint, plastics, and other commercial products.

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Evidence should be sent directly to the FBI Laboratory in Washington, D.C., for examination. Ask the local office of the FBI for assistance in the proper method of packing and transmitting evidence, and obtain the services of FBI laboratory experts when expert testimony is needed in connection with the prosecution of a case in which the United States is a party in interest. A request to the Department for authority to obtain the services of such experts from other sources should not be submitted.

When expert testimony is desired for a trial, the court appearance of the FBI laboratory examiner should be requested for the actual date on which the anticipated testimony will be needed rather than for the date on which the trial is to begin. It is realized that the exact date on which the examiner's testimony will be desired cannot always be determined. However, if it can be expected that such testimony will not be needed on the first day of the trial but rather on some subsequent day of the trial, the Laboratory should be so advised in order that every effort may be made to insure that the examiner's absence from FBI Headquarters is held to a minimum. Requests for testimony are handled by the FBI laboratory in the order in which they are received. Therefore, to insure the presence of an expert at a trial, his/her appearance should be requested as far in advance as possible.

I. Training: The FBI trains its own personnel at the FBI Academy, Quantico, Virginia. In addition, the FBI operates the FBI National Academy, inaugurated in 1935, to train selected local police officers as executive and command personnel. Annually, 1,000 local police officers attend the National Academy for advanced training in law enforcement topics. The FBI Academy also holds special police schools, seminars, and symposia covering a broad spectrum of timely matters for police officers and other members of the criminal justice community. Additionally, instruction in forensic science is provided to state and local investigative and crime laboratory personnel at the FBI Academy's Forensic Science Research and Training Center.

Another facet of FBI training is conducted at the local level. Each year FBI field police instructors conduct many classes on law enforcement topics for state, county, and local police officers in their own departments.

J. National Crime Information Center (NCIC): The FBI manages and operates the National Crime Information Center (NCIC) system. NCIC is a nationwide computerized information system which serves all levels of the

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criminal justice community--federal, state, and local. Its purpose is to improve the administration of criminal justice through the more efficient exchange of documented criminal justice information.

Participants in the NCIC system are linked to the FBI's computer at Washington, D.C., through a nationwide telecommunications network which allows them to enter and access records in a matter of seconds. The NCIC data base contains records on wanted persons, stolen property (vehicles, license plates, guns, securities, boats, and other serially numbered articles), and missing persons who meet certain criteria. NCIC also contains criminal history records on persons arrested and fingerprinted for serious or significant offenses.

K. Uniform Crime Reporting: Law enforcement agencies throughout the United States at city, county, and state levels submit to the FBI information on crime within their jurisdiction. From this information, the FBI annually publishes a book entitled "Crime in the United States--Uniform Crime Reports," which contains a nationwide view of crime, including the extent of crimes known to the police, crime trend tables, arrest statistics, and other related crime data. Copies of this annual publication are furnished regularly by mail to U.S. Attorneys by the FBI.

In addition to the annual publication, the FBI publishes preliminary releases concerning crime and crime trends on a quarterly basis. Also, the FBI publishes on a periodic basis information concerning the number of law enforcement officers killed, assaults on federal officers, and nationwide bombing information.

L. FBI Reports: In those criminal matters where decisions as to prosecution are made by the U.S. Attorney, the reports of investigations are submitted directly to the U.S. Attorney's Office by the local field office of the FBI. These reports are confidential. They are not to be furnished to persons outside the Department except pursuant to court order as authorized or as required by statute, regulations and Supplement No. 4 (Revised), Departmental Order No. 3464 dated January 13, 1953. The procedures for the production and/or disclosure of FBI material and/or information in response to demands for the same are set forth in Attorney General Order 501-73 dated January 18, 1973 (28 C.F.R. §16.21 et seq.).

When copies of reports are disseminated to the U.S. Attorney, copies of the same reports are generally sent to the appropriate division in the Department in Washington, D.C.

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Under Departmental instructions, there is to be set forth in the reports submitted by FBI agents the specific reason of the U.S. Attorney or the Assistant U.S. Attorney as to why prosecution is declined. These reasons are set forth for the Department's information and copies of the reports containing such decisions and opinions of the U.S. Attorney and his/her staff are furnished to the office of the U.S. Attorney, as well as to the Department.

The following abbreviations are used in FBI reports:

AD - Assistant Director
ADIC - Assistant Director in Charge
AGO - Adjutant General's Office
AKA - Also Known As
CID - Criminal Investigation Detachment (Army)
DBA - Doing Business As
DEA - Drug Enforcement Administration
DOB - Date of Birth
EAD - Executive Assistant Director
FNU - First Name Unknown
FOIPA - Freedom of Information and Privacy Acts
FUG - Fugitive
INS - Immigration and Naturalization Service
LDB - Local Draft Board
LNU - Last Name Unknown
MSN - Marine Serial Number
NCIC - National Crime Information Center
NISO - Naval Investigative Service Office
(field installations)
NMI - No Middle Initial
NMN - No Middle Name
NSN - Navy Serial Number
OSIAF - Office of Special Investigation (Air Force)
POB - Place of Birth
RUC - Referred upon completion to office of origin
SE - Special Employee (FBI)
SA - Special Agent (FBI)
SAA - Special Agent Accountant (FBI)
SAC - Special Agent in Charge (FBI)
ASAC - Assistant Special Agent in Charge (FBI)
SO - Sheriff's Office

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SPOL - State Police
SS - Selective Service
SSAN - Social Security Account Number
UNSUBS - Unknown Subjects
UCR - Uniform Crime Reporting (or Report)
USA - U.S. Attorney
AUSA - Assistant U.S. Attorney
USDC - U.S. District Court

1-3.304 Immigration and Naturalization Service

The Commissioner of the Immigration and Naturalization Service administers and enforces the Immigration and Nationality Act (8 U.S.C. §1103) and all other laws relating to immigration (including admission, exclusion and deportation), naturalization and nationality, subject to the limitations of Section 103 of the Immigration and Nationality Act. See 28 C.F.R. §0.105(a).

The Commissioner exercises and performs any of the authority, functions, or duties conferred or imposed upon the Attorney General by any of the above-mentioned laws, including the authority to issue regulations. See 28 C.F.R. §0.105(b).

The Immigration and Naturalization Service investigates alleged violations of the immigration and nationality laws, and makes recommendations for prosecutions when deemed advisable. See 28 C.F.R. §0.105 (d).

The Service patrols the borders of the United States to prevent the entry of aliens into the United States in violation of law. See 28 C.F.R. §0.105(d).

The Immigration and Naturalization Service supervises naturalization work in the specific courts designated by Section 310 of the Immigration and Nationality Act to have jurisdiction in such matters, including the requiring of accountings from the clerks of such courts for naturalization fees collected, investigation through field officers of the qualifications of citizenship applicants, and representation of the government in all court hearings. See 28 C.F.R. §0.105(e).

Other major functions of the Service include: providing citizenship textbooks and other services for the preparation of candidates for natural-

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ization to public schools; registering and fingerprinting aliens in the United States; preparing reports on private bills pertaining to immigration matters; and directing members of the Service assigned to accompany commercial aircraft to perform the functions of a U.S.C. deputy marshal as a peace officer. See 28 C.F.R. §0.105 (f) et seq.

1-3.305 Office of Justice Programs

The Office of Justice Programs (OJP) was created by the Justice Assistance Act of 1984, Pub. L. No. 98-47, Tit. II, Chapter VI, Div. I, to provide centralized management and coordination of the National Institute of Justice, the Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention, and the Bureau of Justice Assistance. OJP also administers the Victims of Crime Act of 1984, Pub. L. No. 98-473, Tit. II, Chap. XIV, through the OJP Office for Victims of Crime. OJP is headed by an Assistant Attorney General.

A. The National Institute of Justice (NIJ) was established to provide for and encourage research and demonstration efforts for the purpose of improving federal, state, and local criminal justice systems and related aspects of the civil justice system, preventing and reducing crime, insuring citizen access to appropriate dispute-resolution forums, improving efforts to detect, investigate, prosecute, and otherwise combat and prevent white-collar crime and public corruption, and identifying programs of proven effectiveness or proven success or which offer a high probability of improving the functioning of the criminal justice system.

The NIJ is headed by a Director with final authority over all grants, cooperative agreements, and contracts awarded by NIJ. The Director reports to the Attorney General through the Assistant Attorney General for Justice Programs.

B. The Bureau of Justice Statistics (BJS) was established to provide for and encourage the collection and analysis of statistical information concerning crime, juvenile delinquency, and the operation of the criminal justice system and related aspects of the civil justice system and to support the development of information and statistical systems at the federal, state, and local levels to improve their efforts to measure and understand these areas.

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BJS is headed by a Director with final authority for all grants, cooperative agreements, and contracts awarded by BJS. The Director reports to the Attorney General through the Assistant Attorney General for Justice Programs.

C. The Office of Juvenile Justice and Delinquency Prevention (OJJDP) was created by the Juvenile Justice and Delinquency Prevention Act of 1974 (Act), 42 U.S.C. §5601 et seq., as amended (Pub. L. No. 93-415, as amended by Pub. L. No. 94-503, Pub. L. No. 15, Pub. L. No. 96-509 and Pub. L. No. 98-473, Tit. II, Chap. VI, Div. II) to provide financial and technical assistance, training, research, and standards in the area of juvenile justice and delinquency prevention at the federal, state and local levels. The Administration reports to the Assistant Attorney General for Justice Programs.

The OJJDP is headed by an Administrator who implements overall policy and develops objectives and priorities for all federal juvenile delinquency programs and activities relating to prevention, diversion, training, treatment, rehabilitation, evaluation, research, and improvement of the juvenile justice system in the United States.

The Act authorized the creation of the Coordinating Council on Juvenile Justice and Delinquency Prevention as an independent organization in the executive branch of the federal government to coordinate all federal juvenile delinquency programs.

Funds are available from the OJJDP in two basic forms, Formula Grants and Special Emphasis Prevention and Treatment Programs. Formula Grants are awarded to states and units of general local government or combinations thereof to assist them in planning, establishing, operating, coordinating and evaluating projects directly through grants and contracts with public and private agencies for the development of more effective education, training, research, prevention, diversion, treatment, and rehabilitation programs in the area of juvenile delinquency and programs to improve the juvenile justice system.

Special Emphasis funds are available to public and private agencies, organizations, institutions, or individuals to develop and maintain community-based alternatives, develop and implement effective means of diverting juveniles from the traditional juvenile justice system, advocacy programs, model programs to strengthen and maintain the special emphasis prevention and treatment programs for juveniles who commit serious crimes,

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and a national law-related education program, and to enhance and encourage the development of a series of additional service programs designed toward keeping students in school, youth employment, state legislative reform, learning disabilities, statewide financial incentive programs, and programs to coordinate system components.

The National Institute for Juvenile Justice and Delinquency Prevention coordinates its activities with those of NIJ, providing a coordinating center for the collection, preparation, and dissemination of useful data regarding the prevention, treatment and control of juvenile delinquency, and to perform, training, research, evaluation and demonstration programs.

The 1984 Amendments established a new Title XV Program, the Missing Children's Assistance Act. Under this Title, programs are authorized to carry out programs and projects designed to meet the problem of missing children, including runaways, abducted children, and children who are the victim of parental kidnapping. The Act authorizes the establishment of a national resource center and clearinghouse (The National Center for Missing and Exploited Children) the establishment of a national toll-free telephone line (1-800-845-5678) for information reporting and assistance, and for the conducting of incidence studies. A nine-member advisory board on missing children advises the Attorney General and the Administration on missing children program priorities and assists in the formulation of an annual plan to be submitted to the President and the Congress.

D. The Bureau of Justice Assistance was established by the Justice Assistance Act, Pub. L. No. 98-473, Tit. II., Chap. VI, to provide financial assistance to state and local governments for the purpose of improving the criminal justice system. The Bureau awards block grants to the states, which may be spent in 18 specific program areas, as well as discretionary grants. The Bureau also administers the Public Safety Officers' Benefits Act, Pub. L. No. 94-430, as amended by Pub. L. No. 98-473, Tit. II, Chap. VI, 42 U.S.C. §3796 *et seq.*, the Prison Industry Enhancement Act Program, and the Surplus Federal Property Amendments program authorizing the transfer of surplus federal property to the states and local units of government for correctional purposes. Pub. L. No. 98-47, Tit. II, Chap. VII, 40 U.S.C. §§484(o) and (p). The Bureau is headed by a Director who reports to the Attorney General through the Assistant Attorney General for Justice Programs.

For additional information, contact the Office of Congressional and Public Affairs, OJP, at (202) 724-7694.

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1-3.306 U.S. Marshals Service

The Director of the U.S. Marshals Service (Service) directs and supervises all activities of the Service, including the following:

A. The execution of federal arrest, parole violation, custodial and extradition warrants as directed; investigative responsibility for all federal escapes; investigative responsibility for federal bond default statutes except cases involving FBI defendants not yet adjudicated;

B. The service of all civil and criminal process emanating from the federal judicial system including the execution of lawful writs and court orders;

C. The provision for the health, safety, and welfare of government witnesses and their dependants;

D. The administration and implementation of courtroom security requirements for the federal judiciary;

E. The protection of federal jurists, court officers, and other threatened persons in the interests of justice where criminal intimidation impedes the functioning of the federal judicial process;

F. The provision of assistance in the protection of federal property and buildings;

G. The direction and supervision of a training school for U.S. Marshals Service personnel;

H. The disbursement of appropriated funds, including the Department of Justice Assets Forfeiture Fund, to satisfy government obligations incurred in the administration of justice;

I. The maintenance and custody and control of money and property seized pursuant to 18 U.S.C. §1955(d), and all other money and property seized for forfeiture, except where the seizure was made by the United States Customs Service, when seized property is turned over to the U.S. Marshals Service;

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J. The receipt, processing and transportation of prisoners held in the custody of a marshal or transported by the U.S. Marshals Service under cooperative or intergovernmental agreements;

K. The suspension of custody of federal prisoners from the time of their arrest by a marshal or their remand to a marshal by the court, until the prisoner is committed by order of the court to the custody of the Attorney General for the service of sentence, otherwise, released from custody by the court, or returned to the custody of the U.S. Parole Commission or the Bureau of Prisons. See 28 C.F.R. §0.111(a)-(k).

L. The analysis of threats to federal judges, other officers of the court, court facilities, prisoners in Marshals' custody, and U.S. Marshals Service personnel;

M. Contracting with the proper authorities of any state, territory or political subdivision thereof, for the imprisonment, subsistence and care of federal prisoners under the custody of the U.S. Marshals including contracting for such physical improvements as may be required.

Several areas of marshals' responsibilities set forth above relate directly to U.S. Attorneys:

A. Evidence: Many cases, both criminal and civil, involve large or substantial amounts of material held for evidence. It is the general policy of the U.S. Marshals Service not to accept other federal agencies' seized property which is to be used as evidence. However, in those situations where these items are turned over to the U.S. Marshals Service, they must be properly marked as evidence and accompanied by a memorandum.

B. Key Witness Protection: Under Department of Justice Order No. 2110-42, dated July 19, 1983, procedures are established for protecting witnesses to organized crime and other serious offenses in appropriate circumstances. Requests for protection are made by an Assistant U.S. Attorney through the U.S. Attorney to the Director of Enforcement Operations, Criminal Division, who will forward approved requests to the U.S. Marshals Service.

A person being considered for protection under the program must not be given representations or promises that cannot be met in accordance with established guidelines. For this reason, it is essential that immediate

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contact be made with the U.S. Marshals Office when protection is being considered for a witness so that a witness security specialist may be present at any interviews in which details of protection are being considered. See USAM 9-21.000 et seq.

C. Writs of Habeas Corpus: When preparing a case for trial, it is often necessary to issue a writ of habeas corpus for a defendant or a witness who is in federal or state custody. The Assistant U.S. Attorney preparing the case for trial must give sufficient time for the Marshal to execute these writs. Fourteen days is normally considered to be sufficient time. If there is not sufficient time before trial to move the required prisoner through usual channels, it is costly to the marshal to move a single prisoner for a long distance by air. The prisoner can be moved substantially less expensively and more securely if adequate notice is given than if such notice is not given.

D. Criminal Subpoenas: After trial date has been set and while the Assistant U.S. Attorney is completing the case for trial, the marshal, in most cases, will serve subpoenas on all prospective witnesses. As much time as possible should be given in the event there is difficulty locating those persons subpoenaed. The Assistant U.S. Attorney should ensure that the cases agents have updated addresses of witnesses to be subpoenaed. In many cases, a matter does not come to trial for a year or more after the investigation; if these matters are not updated, countless time is lost and a key witness may not be located in time for trial.

E. Sequestered Juries: If the Assistant U.S. Attorney expects to move for sequestration of a jury or has knowledge that opposing counsel intends to do so, he/she should make this fact known to the Marshal's Office as soon as possible so that all necessary arrangements for lodging and meals may be made in advance.

F. Court Security: The Marshal has the responsibility for security in federal courtrooms and immediate surrounding areas. If a threat to a federal prosecutor, judge, juror, or other court related individual becomes known it should be immediately reported to the U.S. Marshal's Office so that a threat assessment and possible subsequent protective services can be implemented when appropriate. If a controversial, high risk or publicized trial is scheduled, the fact should be made known to the Marshal's Office so that the security problem may be assessed and proper security arrangements made for safely conducting the trial.

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G. Asset Seizure and Forfeitures: Marshals Service responsibilities in the management of seized and forfeited property have expanded under the National Asset Seizure and Forfeiture (NASAF) Program. The Program emphasizes pre-seizure planning to minimize post-seizure management problems. It is especially important that NASAF personnel be consulted prior to major seizures of real property and businesses, and where the execution of a warrant in rem will be simultaneous with the seizure.

Non-evidentiary seized cash, subject to forfeiture, is to be held by the U.S. Marshal in a deposit fund account administered by the Marshals Service.

Forfeited cash, after all appeals processes are completed, will be transferred to the Department of Justice Assets Forfeiture Fund. In addition, the proceeds from the sale of any other forfeited asset (except where the U.S. Customs Service seized the property) will be deposited to the Justice Assets Forfeiture Fund.

The Assets Forfeiture Fund will be available to pay all expenses of seizure and forfeiture, as well as certain other expenses described in 28 U.S.C. §524 (c).

1-3.400 BOARDS

1-3.401 Executive Office for Immigration Review

The Attorney General is charged with the administration and enforcement of the Immigration and Nationality Act of 1952, and all other laws relating to the immigration and naturalization of aliens. The Attorney General has delegated certain aspects of that power and authority for the administration and interpretation of the immigration laws to the Executive Office for Immigration Review. The Executive Office for Immigration Review is completely independent of the Immigration and Naturalization Service, the body charged with the enforcement of the immigration laws. It includes the Board of Immigration Appeals and the Office of the Chief Immigration Judge and operates under the supervision of the Associate Attorney General. It is headed by a Director who is responsible for the immediate supervision of the Board of Immigration Appeals and the Office of the Chief Immigration Judge.

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The Board of Immigration Appeals is a quasi-judicial body composed of a Chairman, four members, and a Chief Attorney Examiner (who is also an alternate Board Member). It sits in Falls Church, Virginia, and hears oral argument only in that location. The Board is authorized a staff of attorney-advisors who assist the Board in the preparation of decisions.

The Board has been given nationwide jurisdiction to hear appeals from decisions entered by District Directors of the Immigration and Naturalization Service, and by immigration judges. In addition, the Board, with the approval of the Attorney General, is responsible for suspension or barring from practice before the Service and the Board any representatives and attorneys when the public interest so requires.

Decisions of the Board are binding on all Service officers and immigration judges unless modified or overruled by the Attorney General, and are subject to judicial review in the federal courts. The majority of appeals reaching the Board involve orders of deportation and applications for relief from deportation. Other cases before the Board include the exclusion of aliens applying for admission to the United States, petitions to classify the status of alien relatives for the issuance of preference immigrant visas, fines imposed upon carriers for the violation of the immigration laws, and motions for reopening and reconsideration of decisions previously rendered.

Upon the filing of an appeal by either party or certification of a case by the immigration judge or District Director, the record of proceedings is forwarded to the Board. Following a review of the record and research into questions of law raised by the parties, the attorney-advisor drafts a proposed order for consideration of the Board Members. He or she frequently confers with individual Board Members concerning the proposed order. Attorney-advisors also assist in various administrative and support functions. In addition to developing expertise in the field of immigration law, the attorney-advisor is often called upon to analyze questions of constitutional law, state, federal, and foreign civil and criminal law and to resolve questions relating to conflicts of law.

The Office of the Chief Immigration Judge is responsible for the general supervision and direction of the immigration judges in the performance of their duties. It establishes operational policies for the offices of the immigration judges and evaluates the performance of those offices. The Office of the Chief Immigration Judge includes a headquarters staff of

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management and legal personnel structured as Counsel to the Chief Immigration Judge, a Planning and Analysis Unit, and a Central Docketing Unit.

The immigration judges preside at formal, quasi-judicial deportation and exclusion proceedings. They act independently in the decision-making capacity and their decisions are administratively final unless appealed or certified to the Board of Immigration Appeals. In exclusion proceedings, an immigration judge determines whether an individual arriving from a foreign country should be allowed to enter the United States or should be excluded and deported. Each judge has jurisdiction to consider various forms of relief available in exclusion proceedings, including applications for asylum and relief under Section 243(h) of the Act. In deportation proceedings, the immigration judge determines whether an individual who has already entered the United States is deportable from this country. In such proceedings the judge also adjudicates applications for the various forms of relief available under this country's immigration laws. These include applications for adjustment of status, suspension of deportation, voluntary departure, relief under Section 212(c) of the Act, and applications for asylum and withholding deportation.

1-3.402 U.S. Parole Commission

The U.S. Parole Commission (Commission) is an independent agency in the Department of Justice. The Department is responsible for providing administrative support for the Commission. The authority for the functions of the U.S. Parole Commission is found in Chapter 311, 18 U.S.C. §§4201-4218; Ch. 402, 18 U.S.C. §§5505-5026; and 29 U.S.C. §§504 and 1111. The Chairman of the nine-member Commission is responsible for assigning other members of the Commission to serve as Vice Chairman, members of the National Appeals Board, and Regional Commissioners. However, the concurrence of the Attorney General is required for those assignments.

The functions entrusted to the Commission by these statutes, and described in 28 C.F.R. §§0.124 through 0.127 and 2.1 through 2.63, include the following: exclusive authority to grant, modify, or revoke paroles of all U.S. prisoners; to issue warrants for violations of parole or mandatory release, to re-parole or re-release mandatory releasees; to determine the date on which a prisoner shall be released on parole in any case in which the committing court specifies that such date shall be determined by the Commission; and to promulgate rules and regulations for the supervision, discharge from supervision, or recommitment of paroled prisoners. The

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Commission's responsibility for the supervision of federal parolees and persons released upon expiration of their sentences by operation of law under the good time statutes (so-called mandatory releasees) is exercised through the Federal Probation Officers under the provisions of 18 U.S.C. §§3655 and 4203(b). The setting and modification of terms and conditions governing the prisoner's release on supervision is also the responsibility of the Commission.

The Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. §504) and Section 411 of the Employees Retirement Income Security Act of 1974 (29 U.S.C. §1111), as amended by the Comprehensive Crime Control Act of 1984 Pub. L. No. 98-473), authorize the Commission to determine whether persons convicted of certain offenses specified in each act and, therefore, barred for a three through thirteen-year period from serving in certain capacities with labor unions, management associations, or employee benefit plans, may be exempted from the bar to so serve within the period specified in each case.

1-3.403 Foreign Claims Settlement Commission

The Foreign Claims Settlement Commission has jurisdiction to determine claims of United States nationals against foreign governments for losses and injuries sustained by them, pursuant to programs which may be authorized under specific legislation. Available funds have their sources in international settlements, or liquidations of foreign assets in this country by the Departments of Justice or Treasury, and from public funds when provided by the Congress. See 28 C.F.R. §0.128.

1-3.500 U.S. ATTORNEYS AND THEIR ASSISTANTS

1-3.510 U.S. Attorneys

The Office of the U.S. Attorney was created by the Judiciary Act of 1789 which provided for the appointment "in each district of a meet person learned in the law to act as attorney for the United States. . . whose duty it shall be to prosecute in each district all delinquents for crimes and offenses, cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned. . ." 1 Stat. 92. Initially, U.S. Attorneys were not supervised by the Attorney General (1 Op. Att'y Gen. 608) but Congress, in the Act of August 2, 1861, (Ch. 37,

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12 Stat. 185) charged the Attorney General with the "general superintendence and direction duties . . ." While the precise nature of the superintendence and direction was not defined, the Department of Justice Act of June 22, 1870 (Ch. 150, §16 Stat. 164) and the Act of June 30, 1906 (Ch. 3935, 34 Stat. 816) clearly established the power of the Attorney General to supervise criminal and civil proceedings in any district. See 22 Op. Att'y Gen. 491; 23 Op. Att'y Gen. 507. Today, as in 1789, the U.S. Attorney retains, among other responsibilities, the duty to "prosecute for all offenses against the United States." See 28 U.S.C. §547(1). This duty is to be discharged under the supervision of the Attorney General. See 28 U.S.C. §519.

U.S. Attorneys are appointed by the President with the advice and consent of the Senate for a four-year term. See 28 U.S.C. §541. Upon expiration of this term, the U.S. Attorney continues to perform the duties of the office until a successor is confirmed. They are subject to removal at the will of the President. See Parsons v. United States, 167 U.S. 314 (1897).

All U.S. Attorneys must reside in the district of their appointment except that in the District of Columbia and the Southern and Eastern Districts of New York, they may reside within 20 miles of their district. These provisions do not apply to a U.S. Attorney appointed for the Northern Mariana Islands who at the same time is serving in the same capacity in another district. See 28 U.S.C. §545.

1-3.511 Authority

Although the Attorney General has supervision over all litigation to which the United States or any agency thereof is a party, and has direction of all U.S. Attorneys, and their Assistants, in the discharge of their respective duties (28 U.S.C. §§514, 515, 519), each U.S. Attorney, within his/her district, has the responsibility and authority to: (a) prosecute for all offenses against the United States; (b) prosecute or defend, for the government, all civil actions, suits, or proceedings in which the United States is concerned; (c) appear on behalf of the defendants in all civil actions, suits or proceedings pending in the district against collectors, or other officers of the revenue or customs for any act done by them or for the recovery of any money exacted by or paid to such officers, and by them paid into the Treasury; (d) institute and prosecute proceedings for the collection of fines, penalties, and forfeitures incurred for violation

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of any revenue law unless satisfied upon investigation that justice does not require such proceedings; (e) make such reports as the Attorney General shall direct. See 28 U.S.C. §547.

By virtue of this grant of statutory authority and the practical realities of representing the United States throughout the country, U.S. Attorneys conduct most of the trial work in which the United States is a party. They are the principal federal law enforcement officers in their judicial districts. In the exercise of their prosecutorial discretion, U.S. Attorneys construe and implement the policy of the Department of Justice. Their professional abilities and the need for their impartiality in administering justice directly affect the public's perception of federal law enforcement.

The division of responsibility in the Department of Justice between the offices of U.S. Attorneys and the legal divisions is determined by statutes, Code of Federal Regulations provisions, Attorney General and Deputy Attorney General directives, and actual practice. It is also extensively discussed in the Manual's various titles. For example, the division of responsibilities for handling appeals is detailed in Title 2; the relationship of Strike Forces of the Criminal Division's Organized Crime Section to the U.S. Attorneys' Offices is found in Title 9; the procedures for handling tax cases are in Title 6. All attorneys of the legal divisions and the U.S. Attorneys' Offices should familiarize themselves with the division of responsibilities as explained in this Manual. See USAM 1-3.200.

1-3.512 Litigation Against State Governments, Agencies or Entities

A. In order to enhance productive communications with state governments and to avoid inter-governmental litigation whenever possible, the Attorney General has advised the Assistant Attorneys General for the Anti-trust, Civil, Civil Rights, Criminal, Land and Natural Resources, and Tax Divisions that it shall be Department of Justice policy to give timely notifications to the Governor and Attorney General of a state prior to the filing of a suit or claim against a state government, agency or entity. U.S. Attorneys should observe the same policy for cases delegated to them by those divisions.

The foremost goal in applying this policy to individual cases shall be to provide fair warning to state Governors and Attorneys General and thus

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to afford these leaders the opportunity both to resolve matters prior to litigation and to prepare for inquiries from local officials and the news media if an action is commenced.

B. Specifically, each U.S. Attorney or the Assistant Attorney General in charge of such litigation shall:

1. Prior to the filing of each action or claim against a state government, agency or entity;

a. Advise the Governor and the Attorney General of the affected state of the nature of the contemplated action or claim and terms of the remedy sought; and

b. Notify the Deputy Attorney General and, if appropriate, the Associate Attorney General of compliance with subsection (a).

2. Ensure that such prior notice is given sufficiently in advance of the filing of the suit or claim to:

a. Permit the state government, agency or entity to bring to the Department's attention facts or issues relevant to whether the action or claim should be filed; or

b. Result in settlement of the action or claim in advance of its filing on terms acceptable to the United States.

3. Ensure that each attorney in his or her respective office or division reads, becomes familiar with, and complies with, this directive.

C. Exceptions to the notice requirements of this section are appropriate only when the U.S. Attorney or Assistant Attorney General determines that good cause for such an exception exists and notifies the Deputy Attorney General and, if appropriate, the Associate Attorney General of that determination.

1-3.513 Absence from Office--Acting U.S. Attorney

Each U.S. Attorney is authorized to designate any Assistant U.S. Attorney in his/her office to perform the functions and duties of the U.S.

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Attorney during his/her absence from office, and to sign all necessary documents and papers as Acting U.S. Attorney while performing such functions and duties.

1-3.514 Vacancy in Office--Court Appointment

The District Court for a district in which the office of U.S. Attorney is vacant may appoint a U.S. Attorney to serve until the vacancy is filled. The order of appointment by the court shall be filed with the clerk of the court. See 28 U.S.C. §546.

1-3.515 Recusation

If a conflict of interest exists because a U.S. Attorney has a personal interest in the outcome of the matter or because he/she has or has had a professional relationship with parties or counsel, or for other good cause, he/she should recuse himself/herself. The requirement of recusation does not arise in every instance in which he/she has had a professional relationship with parties or counsel, but only where a conflict of interest exists.

Where there is the appearance of a conflict of interest, the U.S. Attorney should consider recusation.

A U.S. Attorney who recuses should promptly notify the appropriate division and the Office of Legal Services Section of the Executive Office for U.S. Attorneys. In exceptional cases, the recusation of the U.S. Attorney may require the recusation of all members of that office. A U.S. Attorney who recuses should discuss the question of recusation of the members of the office with the appropriate division or the Executive Office for U.S. Attorneys. If appropriate, the division will assume sole responsibility for handling the matter or secure the designation of an attorney as a Special Attorney or Special Assistant to the Attorney General (see USAM 1-3.540, infra,) to assume responsibility for handling the matter. See USAM 1-4.000 et seq., of this Title.

1-3.516 Civil and Criminal Liability

A discussion of the civil and criminal liability of the U.S. Attorney arising from the performance of duties may be found in USAM 1-6.000 et seq., of this Title.

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1-3.520 The Attorney General's Advisory Committee of U.S. Attorneys

The appointment of an Advisory Committee of U.S. Attorneys to the Attorney General was publicly announced on September 20, 1973, by Attorney General Elliot Richardson. By order dated February 13, 1976, Attorney General Edward Levi formally established the Committee and had its existence and responsibilities set forth in 28 C.F.R. §0.10.

The Committee consists of 15 U.S. Attorneys selected by the Attorney General. See USAM 1-2.000 for a listing of present members. They are intended to represent the geographic areas of the nation and both large and small offices. Service on the Committee normally shall not exceed three years.

The Committee is to make recommendations to the Attorney General and Deputy Attorney General concerning any matters which the Committee believes to be in the best interests of justice, including, but not limited to:

- A. Establishing and modifying policies and procedures of the Department of Justice;
- B. Relations between the Department and U.S. Attorneys;
- C. Formulating new programs for improvement of the criminal justice system, including proposals relating to legislation and court rules;
- D. Cooperating with state and local law enforcement officials; and
- E. Promoting greater consistency in the application of legal standards throughout the nation and at the various levels of government.

In carrying out its responsibilities, the Committee has, among other projects, worked on legislation and court rules and testified with members of the Department before congressional committees; explored with investigative agencies improvements in the development and prosecution of white collar, corruption, and organized crime cases; and taken the lead in revision and updating of the United States Attorneys' Manual, a function it will continue to exercise in the future. The most important purpose and responsibility of the Advisory Committee is to provide U.S. Attorneys with a recognized, representative body to engage in a mutual, reciprocal exchange of problems and ideas with the Attorney General, the Deputy Attorney General, the Associate Attorney General, the legal divisions, the

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Management Division, the investigative agencies, and others with whom the U.S. Attorneys must work to carry out their responsibilities.

1-3.530 Assistant U.S. Attorneys

Assistant U.S. Attorneys are appointed by the Attorney General and may be removed by that official. See 28 U.S.C. §542. The Deputy Attorney General exercises the power and authority vested in the Attorney General to take final action in matters pertaining to the employment, separation, and general administration of Assistant U.S. Attorneys. See 28 C.F.R. §0.19.

Assistants must reside in the district of their appointment except in the District of Columbia or the Southern and Eastern Districts of New York. These provisions do not apply to an Assistant U.S. Attorney appointed for the Northern Mariana Islands who at the same time is serving in the same capacity in another district. See U.S.C. §545.

1-3.531 Authority

Assistant U.S. Attorneys are responsible to the U.S. Attorney for the performance of duties assigned by that official.

1-3.532 Recusation

The same circumstances which require that a U.S. Attorney recuse him/herself (see USAM 1-3.515) apply to an Assistant U.S. Attorney. Ordinarily, the fact that an Assistant U.S. Attorney recuses will not require that the U.S. Attorney or the office recuse itself and the case or matter may be reassigned to another Assistant. Specific questions should be directed to the Office of Legal Services of the Executive Office for U.S. Attorneys or the appropriate litigating division.

1-3.540 Special Assistants

28 U.S.C. §543 authorizes the Attorney General to appoint Special Attorneys to assist the U.S. Attorney when the public interest so requires, and to fix their salaries. These Assistants are designated as Special

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Assistants to the U.S. Attorney and are hired for the purpose of assisting in the preparation and presentation of special cases. Their salaries are a matter of agreement between the Department and the individual, and are fixed at an annual, monthly, per diem, or when-actually-employed rate.

Attorneys employed in other departments or agencies of the federal government may be appointed as Special Assistants to U.S. Attorneys, without compensation other than that paid by their own agency, to assist in the trial or presentation of cases when their services and assistance are needed. See USAM 10-2.230 and 9-11.352.

In instances where an entire U.S. Attorney's Office recuses itself, the Attorney General may, pursuant to 28 U.S.C. §515, appoint any officer of the Department of Justice, or any attorney specially appointed under law, to conduct any kind of legal proceeding which U.S. Attorneys are authorized by law to conduct, whether or not such appointee is a resident of the district in which the proceeding is brought. Said appointee specially retained under authority of the Department of Justice is commissioned as a Special Assistant to the Attorney General or a Special Attorney and reports directly to the Attorney General.

USAM (superseded)

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1-4.100 28 C.F.R., PART 45

The standards of conduct listed below are contained in the Code of Federal Regulations, Title 28. They apply to all Department of Justice employees and are reprinted below for your information.

PART 45—STANDARDS OF CONDUCT

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APPENDIX—CODE OF ETHICS FOR GOVERNMENT SERVICE

AUTHORITY. 80 Stat 379; 5 U.S.C. 301. Reorganization Plan No. 2 of 1950, 64 Stat. 1261. 3 CFR 1949-1953 Comp., E.O. 11222; 3 CFR, 1964-1965 Comp.; 3 CFR Part 735, unless otherwise noted

SOURCE. Order No. 350-65, 30 FR 17202, Dec. 31, 1965, unless otherwise noted.

CROSS REFERENCE For Attorney General's "Memorandum Regarding the Conflict of Interest Provisions of Pub L. 87-849", see appendix to this part

§ 45.735-1 Purpose and scope.

(a) In conformity with sections 201 through 209 of Title 18 of the United States Code (as enacted by Pub. L. 87-849) and other statutes of the United States, and in conformity with Executive Order No. 11222 of May 8, 1965, and Title 5, Chapter I, Part 735, of the Code of Federal Regulations, relating to conflicts of interest and ethical standards of behavior, this part prescribes policies, standards and instructions with regard to the conduct and behavior of employees and former employees (as defined in § 45.735-3 (b) and (d) respectively) of the Department of Justice.

(b) This part, among other things, reflects prohibitions and requirements imposed by the criminal and civil laws of the United States. However, the paraphrased restatements of criminal and civil statutes contained in this part are designed for informational purposes only and in no way constitute an interpretation or construction thereof that is binding upon the Department of Justice or the Federal Government. Moreover, this part does not purport to paraphrase or enumerate all restrictions or requirements imposed by statutes, Executive orders, regulations or otherwise upon Federal employees and former Federal employees. The omission of a reference to any such restriction or requirement in no way alters the legal effect of that restriction or requirement and any such restriction or requirement, as the case may be, continues to be applicable to employees and former employees in accordance with its own terms. Furthermore, attorneys employed by the Department should be guided in their conduct by the Code of Professional Responsibility of the American Bar Association. Interpretations and applications of the Code to an attorney's official duties should be obtained pursuant to § 45.735-2(e).

(c) Any violation of any provision of this part shall make the employee involved subject to appropriate disciplinary action which shall be in addition to any penalty which might be prescribed by statute or regulation.

[Order No. 350-65, 30 FR 17202, Dec. 31, 1965, as amended by Order No. 960-81, 46 FR 52357, Oct. 27, 1981]

§ 45.735-2 Basic policy.

Employees shall:

(a) Conduct themselves in a manner that creates and maintains respect for the Department of Justice and the U.S. Government. In all their activities, personal and official, they should always be mindful of the high standards of behavior expected of them;

(b) Employees should discuss with their immediate supervisors any problems concerning ethics or professional conduct that they cannot resolve personally by reference to the standards set forth in this part. Supervisors should ascertain all pertinent information bearing upon any such problem coming to their attention and shall take prompt action to see that problems that cannot be readily resolved are submitted to the Assistant Attorney General or other official in charge of the employees' Office, Board or Division. In the case of personnel employed by the United States Attorneys, problems may be referred to the Director of the Executive Office for United States Attorneys.

[Order No. 350-65, 30 FR 17202, Dec. 31, 1965, as amended by Order No. 960-81, 46 FR 52358, Oct. 27, 1981]

§ 45.735-3 Definitions.

(a) *Division*. "Division" means a principal component of the Department of Justice, including a division, bureau, service, office or board.

(b) *Employee*. "Employee" means an officer or employee of the Department of Justice and includes a special Government employee (as defined in paragraph (c) of this section) in the absence of contrary indication. Presidential appointees shall be deemed employees for the purposes of this part. In situations in which this part requires an employee to report information to, or seek approval for certain activities from, the head of a division, an employee who is the head of a division or who is an appointee of the Attorney General not assigned to a division, shall report to, or seek approval from, the Deputy Attorney General, and the Deputy Attorney General shall report to, or seek approval from, the Attorney General.

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(c) *Special Government employee.* "Special Government employee" means an officer or employee of the Department of Justice who is retained, designated, appointed, or employed to perform, with or without compensation, for not more than 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis.

(d) *Former employee.* "Former employee" means a former Department of Justice employee or former special Government employee, as defined in paragraph (c) of this section.

(e) *Person.* "Person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

[Order No. 350-65, 30 FR 17202, Dec. 31, 1965, as amended by Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 960-81, 46 FR 52358, Oct. 27, 1981]

§ 45.735-4 [Reserved]

§ 45.735-5 Disqualification arising from private financial interests.

(a) No employee shall participate personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest or other particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest, unless authorized to do so in accordance with the following described procedure:

(1) The employee shall inform the head of his division of the nature and circumstances of the matter and of the financial interest involved and shall request a determination as to the propriety of his participation in the matter.

(2) The head of the division, after examining the information submitted,

may relieve the employee from participation in the matter, or he may submit the matter to the Deputy Attorney General with recommendations for appropriate action. In cases so referred to him, the Deputy Attorney General may relieve the employee from participation in the matter or may approve the employee's participation in the matter upon determining in writing that the interest involved is not so substantial as to be likely to affect the integrity of the services which the Government may expect from such employee.

(b) The financial interests described below are hereby exempted from the prohibition of 18 U.S.C. 208(a) as being too remote or too inconsequential to affect the integrity of an employee's services in a matter:

The stock, bond, or policy holdings of an employee in a mutual fund, investment company, bank or insurance company which owns an interest in an entity involved in the matter, provided that in the case of a mutual fund, investment company or bank the fair value of such stock or bond holding does not exceed 1 percent of the value of the reported assets of the mutual fund, investment company, or bank.

(18 U.S.C. 208)

[Order No. 350-65, 30 FR 17202, Dec. 31, 1965, as amended by Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 960-81, 46 FR 52358, Oct. 27, 1981]

§ 45.735-6 Activities and compensation of employees in claims against and other matters affecting the Government.

(a) No employee, otherwise than in the proper discharge of his official duties, shall—

(1) Act as agent or attorney for prosecuting any claim against the United States, or receive any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim;

(2) Act as agent or attorney for anyone before any department, agency, court, court-martial, office, or any civil, military, or naval commission in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest or other particular matter in which

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the United States is a party or has a direct and substantial interest; or

(3) Directly or indirectly receive or agree to receive, or ask, demand, solicit or seek, any compensation for any services rendered or to be rendered either by himself or another, before any department, agency, court, court-martial, officer, or any civil, military, or naval commission, in relation to any matter enumerated and described in paragraph (a)(2) of this section.

(b) A special Government employee shall be subject to paragraph (a) of this section only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or (2) which is pending in the Justice Department: *Provided*, That paragraph (b)(2) of this section shall not apply in the case of a special Government employee who has served in the Justice Department no more than 60 days during the immediately preceding period of 365 consecutive days.

(c) Nothing in this part shall be deemed to prohibit an employee, if it is not otherwise inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any person in a disciplinary, loyalty, or other Federal personnel administration proceeding involving such person.

(d) Nothing in this part shall be deemed to prohibit an employee from acting, with or without compensation, as agent or attorney for his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary, except in those matters in which he has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his official responsibility, as defined in section 202(b) of Title 18 of the United States Code, provided that the head of his division approves.

(e) Nothing in this part shall be deemed to prohibit an employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

(18 U.S.C. 203, 205)

§ 45.735-7 Disqualification of former employees; disqualification of partners of current employees.

(a) No individual who has been an employee shall, after his employment has ceased, knowingly act as agent or attorney for, or otherwise represent, any other person (except the United States) in any formal or informal appearance before, or, with the intent to influence, make any oral or written communication on behalf of any other person (except the United States) (1) to any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, (2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and (3) in which he participated personally and substantially as an employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, while so employed. (18 U.S.C. 207(a))

(b) No individual who has been an employee shall, within two years after his employment has ceased, knowingly act as agent or attorney for, or otherwise represent, any other person (except the United States) in any formal or informal appearance before, or with intent to influence, make any oral or written communication on behalf of any other person (except the United States) (1) to an organization enumerated in paragraph (a)(1) of this section, or any officer or employee thereof, (2) in connection with any matter enumerated and described in paragraph (a)(2) of this section, and

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(3) which was actually pending under his official responsibility as an employee within a period of one year prior to the termination of such responsibility. (18 U.S.C. 207(b)(i))

(c) No individual who has been an employee in an executive level position, in a position with a comparable or greater rate of pay, or in a position that involved significant decisionmaking or supervisory responsibility as designated by the Director of the Office of Government Ethics under 18 U.S.C. 207(d)(1)(C), shall, within two years after his employment in such position has ceased, knowingly represent or aid, counsel, advise, consult, or assist in representing any other person (except the United States) by personal presence at any formal or informal appearance before (1) an organization enumerated in paragraph (a)(1) of this section, or an officer or employee thereof, (2) in connection with any matter enumerated and described in paragraph (a)(2) of this section, and (3) in which he participated personally or substantially as an employee. (18 U.S.C. 207(b)(ii))

(d) No individual (other than one who was a special Government employee with service of less than sixty days in a given calendar year) who has been an employee in an executive level position or a position with a comparable or greater rate of pay, or in a position which involved significant decisionmaking or supervisory responsibility as designated by the Director of the Office of Government Ethics under 18 U.S.C. 207(d)(1)(C), shall, within one year after such employment has ceased, knowingly engage in conduct described in the next sentence. The prohibited knowing conduct is that of acting as attorney or agent for, or otherwise representing, anyone other than the United States in any formal or informal appearance before, or with the intent to influence, making any oral or written communication on behalf of anyone other than the United States (1) to the Department of Justice, or any employee thereof, (2) in connection with any rulemaking or any matter enumerated and described in paragraph (a)(2) of this section, and (3) which is pending before this Department or in which it

has a direct and substantial interest. (18 U.S.C. 207(c); but see 5 CFR 737.13, 737.31 and 737.32)

(e) No partner of an employee shall act as agent or attorney for anyone other than the United States before an organization enumerated in paragraph (a)(1) of this section, or any officer or employee thereof, in connection with any matter enumerated and described in paragraph (a)(2) of this section in which such Government employee is participating or has participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or which is the subject of his official responsibility.

(18 U.S.C. 207(g))

[Order No. 885-80, 45 FR 26326, Apr. 18, 1980]

§ 45.735-7a Disciplinary proceedings under 18 U.S.C. 207(j).

(a) Upon a determination by the Assistant Attorney General in charge of the Criminal Division (Assistant Attorney General), after investigation, that there is reasonable cause to believe that a former officer or employee, including a former special Government employee, of the Department of Justice (former departmental employee) has violated 18 U.S.C. 207 (a), (b) or (c), the Assistant Attorney General shall cause a copy of written charges of the violation(s) to be served upon such individual, either personally or by registered mail. The charges shall be accompanied by a notice to the former departmental employee to show cause within a specified time of not less than 30 days after receipt of the notice why he or she should not be prohibited from engaging in representational activities in relation to matters pending in the Department of Justice, as authorized by 18 U.S.C. 207(j), or subjected to other appropriate disciplinary action under that statute. The notice to show cause shall include:

(1) A statement of allegations, and their basis, sufficiently detailed to enable the former departmental employee to prepare an adequate defense,

(2) Notification of the right to a hearing, and

(3) An explanation of the method by which a hearing may be requested.

(b) If a former departmental employee who submits an answer to the notice to show cause does not request a hearing or if the Assistant Attorney General does not receive an answer within five days after the expiration of the time prescribed by the notice, the Assistant Attorney General shall forward the record, including the report(s) of investigation, to the Attorney General. In the case of a failure to answer, such failure shall constitute a waiver of defense.

(c) Upon receipt of a former departmental employee's request for a hearing, the Assistant Attorney General shall notify him or her of the time and place thereof, giving due regard both to such person's need for an adequate period to prepare a suitable defense and an expeditious resolution of allegations that may be damaging to his or her reputation.

(d) The presiding officer at the hearing and any related proceedings shall be a federal administrative law judge or other federal official with comparable duties. He shall insure that the former departmental employee has, among others, the rights:

(1) To self-representation or representation by counsel,

(2) To introduce and examine witnesses and submit physical evidence,

(3) To confront and cross-examine adverse witnesses,

(4) To present oral argument, and

(5) To a transcript or recording of the proceedings, upon request.

(e) The Assistant Attorney General shall designate one or more officers or employees of the Department of Justice to present the evidence against the former departmental employee and perform other functions incident to the proceedings.

(f) A decision adverse to the former departmental employee must be sustained by substantial evidence that he violated 18 U.S.C. 207 (a), (b) or (c).

(g) The presiding officer shall issue an initial decision based exclusively on the transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, and

shall set forth in the decision findings and conclusions, supported by reasons, on the material issues of fact and law presented on the record.

(h) Within 30 days after issuance of the initial decision, either party may appeal to the Attorney General, who in that event shall issue the final decision based on the record of the proceedings or those portions thereof cited by the parties to limit the issues. If the final decision modifies or reverses the initial decision, the Attorney General shall specify the findings of fact and conclusions of law that vary from those of the presiding officer.

(i) If a former departmental employee fails to appeal from an adverse initial decision within the prescribed period of time, the presiding officer shall forward the record of the proceedings to the Attorney General.

(j) In the case of a former departmental employee who filed an answer to the notice to show cause but did not request a hearing, the Attorney General shall make the final decision on the record submitted to him by the Assistant Attorney General pursuant to subsection (b) of this section.

(k) The Attorney General, in a case where:

(1) The defense has been waived,

(2) The former departmental employee has failed to appeal from an adverse initial decision, or

(3) The Attorney General has issued a final decision that the former departmental employee violated 18 U.S.C. 207 (a), (b) or (c),

may issue an order:

(i) Prohibiting the former departmental employee from making, on behalf of any other person (except the United States), any informal or formal appearance before, or, with the intent to influence, any oral or written communication to, the Department of Justice on a pending matter of business for a period not to exceed five years, or

(ii) Prescribing other appropriate disciplinary action.

(l) An order issued under either paragraph (i) or (ii) of paragraph (k) of this section may be supplemented by a directive to officers and employ-

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ees of the Department of Justice not to engage in conduct in relation to the former departmental employee that would contravene such order.

[Order No. 889-80, 45 FR 31717, May 14, 1980]

§ 45.735-8 Salary of employees payable only by United States.

(a) No employee, other than a special Government employee or an employee serving without compensation, shall receive any salary, or any contribution to or supplement of salary, as compensation for his services as an employee of the Department of Justice, from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality.

(b) Nothing in this part shall be deemed to prohibit an employee from continuing to participate in a bona fide pension, retirement, group life, health, or accident insurance, profit-sharing, stock bonus, or other employee, welfare, or benefit plan maintained by a former employer.

(18 U.S.C. 209)

§ 45.735-9 Private professional practice and outside employment.

(a) No professional employee shall engage in the private practice of his profession, including the practice of law, except as may be authorized by or under paragraph (c) or (e) of this section. Acceptance of a forwarding fee shall be deemed to be within the foregoing prohibition. Teaching will not be considered "professional practice" for purposes of this rule. Employees who wish to undertake teaching engagements should consult § 45.735-12.

(b) Paragraph (a) of this section shall not be applicable to special Government employees.

(c)(1) Employees are encouraged to provide public interest professional services so long as such services do not interfere with their official responsibilities. Such public interest services must be conducted without compensation, and during off-duty hours or while on leave. Leave will be granted for court appearances or other necessary incidents of representation in ac-

cordance with established policy on leave administration (see DOJ Order 1630.1A). Representation of Federal employees in Equal Employment Opportunity (EEO) complaint procedures may be provided in accordance with § 45.735-6(c) of this title and the Department's established EEO policy (see DOJ Order 1713.5) rather than this subsection. No employee may seek, or assist a plaintiff who seeks, an award of attorney's fees for services provided pursuant to this subsection.

(2) Any *pro bono* services provided by an employee must be consistent with Federal law and regulations. In determining whether to provide *pro bono* services in a particular matter, the employee should give particular attention to the requirements of paragraph (f) of this section. Notice of intention to provide *pro bono* services shall be given in writing to the head of the employee's division (or in the case of an Assistant U.S. Attorney to the Executive Office of U.S. Attorneys with the U.S. Attorney's comments appended thereto). Should the division head or Executive Office believe the public interest professional service may not conform to the requirements of this section the disagreement will promptly be referred to the Deputy Attorney General for final resolution.

(3) Public interest services should fall into one of the following categories:

(i) Service to a client who does not have the financial resources to pay for professional services;

(ii) Services to assert or defend individual or public rights which society has a special interest in protecting;

(iii) Services to further the organizational purpose of a charitable, religious, civic, or educational organization; or

(iv) Services designed to improve the administration of justice.

(d) Employees may provide professional services, pursuant to § 45.735-6(d) of this title, to those relatives and personal fiduciaries who are listed in that section.

(e) The Deputy Attorney General may make other specific exceptions to paragraph (a) of this section in unusual circumstances. Application for exceptions must be made in writing stat-

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ing the reasons therefor, and directed to the Deputy Attorney General through the applicant's superior. Action taken by the Deputy Attorney General with respect to any such application shall be made in writing and shall be directed to the applicant.

(f) No employee shall engage in any professional practice under this section or any other outside employment if—

(1) The activity will in any manner interfere with the proper and effective performance of the employee's official duties;

(2) The activity will create or appear to create a conflict of interest;

(3) The activity will reflect adversely upon the Department of Justice;

(4) The employee's position in the Department of Justice will influence or appear to influence the outcome of the matter;

(5) The activity will involve assertions that are contrary to the interests or positions of the United States; or

(6) The activity involves any criminal matter or proceeding whether Federal, State or local, or any other matter or proceeding in which the United States (including the District of Columbia government) is a party or has a direct and substantial interest.

[Order No. 909-80, 45 FR 57125, Aug. 27, 1980, as amended by Order No. 960-81, 46 FR 52358, Oct. 27, 1981]

§ 45.735-10 Improper use of official information.

No employee shall use for financial gain for himself or for another person, or make any other improper use of, whether by direct action on his part or by counsel, recommendation, or suggestion to another person, information which comes to the employee by reason of his status as a Department of Justice employee and which has not become part of the body of public information.

§ 45.735-11 Investments.

No employee shall make investments: (a) In enterprises which it is reasonable to believe will be involved in decisions to be made by him, (b) on the basis of information which comes to him by reason of his status as a Department of Justice employee and

which has not become part of the body of public information or (c) which are reasonably likely to create any conflict in the proper discharge of his official duties.

§ 45.735-12 Speeches, publications and teaching.

(a) No employee shall accept a fee from an outside source on account of a public appearance, speech, lecture, or publication if the public appearance or the preparation of the speech, lecture, or publication was a part of the official duties of the employee.

(b) No employee shall receive compensation or anything of monetary value for any consultation, lecture, teaching, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs or operations of the Department, or which draws substantially on official data or ideas which have not become part of the body of public information.

(c) No employee shall engage, whether with or without compensation, in teaching, lecturing or writing that is dependent on information obtained as a result of his Government employment except when that information has been made available to the general public or when the Deputy Attorney General gives written authorization for the use of nonpublic information on the basis that the use is in the public interest.

(d)(1) The Attorney General, Deputy Attorney General, Associate Attorney General, and the heads of divisions shall not make speeches or otherwise lend their names or support in a prominent fashion to a fundraising drive or a fundraising event or similar event intended for the benefit of any person. No Department of Justice employee or special Government employee shall engage in any of these activities if the invitation was extended primarily because of his official position with the Department or if the fact of his official position with the Department has been or will be used in the promotion of the event to any significant degree.

(2) For purposes of this subsection, an event will be regarded as a fundrais-

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ing event if any portion of the ticket or other cost of admission is designated as a charitable contribution for tax purposes, if one of its purposes is to produce net proceeds for the benefit of any person, or if it is a "kickoff" dinner or similar occasion that is part of a broader fundraising effort.

(3) Nothing in this subsection shall apply to the Combined Federal Campaign or any other authorized fundraising drive directed primarily at Federal employees, or to a fundraising event of an organization which is exempt from taxation under 26 U.S.C. 501(c)(3).

(4) Nothing in this subsection shall apply to a meeting, seminar, or conference sponsored by a professional or other appropriate organization where a tuition or other fee is charged for attendance if such tuition or fee is reasonable under the circumstances.

(e) When an employee is prohibited by this section from accepting compensation for an activity, he is also prohibited from suggesting that the person offering such compensation donate it to a particular charity or other third party.

[Order No. 350-65, 30 FR 17202, Dec. 31, 1965, as amended by Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 760-77, 42 FR 64119, Dec. 22, 1977; Order No. 807-78, 43 FR 52702, Nov. 14, 1978; 44 FR 36028, June 20, 1979; Order No. 887-80, 45 FR 29574, May 5, 1980; Order No. 960-81, 46 FR 52358, Oct. 27, 1981]

§ 45.735-13 [Reserved]

§ 45.735-14 Gifts, entertainment, and favors.

(a) Except as provided in paragraph (c) of this section, an employee other than a special Government employee shall not solicit or accept, for himself or another person, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Department;

(2) Conducts operations or activities that are regulated by the Department;

(3) Is engaged, either as principal or attorney, in proceedings before the Departmental or in court proceedings

in which the United States is an adverse party; or

(4) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

(b) Except as provided in paragraph (c) of this section, a special Government employee shall be subject to the prohibition set forth in paragraph (a)(4) of this section.

(c) Paragraphs (a) and (b) of this section shall not be construed to prohibit:

(1) Solicitation or acceptance of anything of monetary value from a friend, parent, spouse, child or other close relative when the circumstances make it clear that the motivation for the action is a personal or family relationship.

(2) Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting.

(3) Acceptance of loans from banks or other financial institutions on customary terms of finance for proper and usual activities of employees, such as home mortgage loans.

(4) Acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of nominal intrinsic value.

(d) No employee shall accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution (Art. I, sec. 9, cl. 8) and in Pub. L. 89-673, 80 Stat. 952.

(e) No employee shall solicit a contribution from another employee for a gift to an official superior, nor make a donation as a gift to an official superior, nor accept a gift from an employee receiving less pay than himself (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(5 U.S.C. 7351)

[Order No. 350-65, 30 FR 17202, Dec. 31, 1965, as amended by Order No. 383-67, 32 FR 13217, Sept. 19, 1967; Order No. 960-81, 46 FR 52358, Oct. 27, 1981]

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§ 45.735-11a Reimbursement for travel and subsistence; acceptance of awards.

(a) Employees may not accept reimbursement for travel or expenses incident to travel on official business from any source other than the Federal Government. However, employees may accept such reimbursement, from organizations that are exempt from taxation under the Internal Revenue Code, 26 U.S.C. 501(c)(3) for expenses incident to training or the attendance at meetings in accordance with 5 U.S.C. 4111 and 5 CFR 410.702.

(b) Employees may accept reimbursement for travel or expenses incident to travel of a nonofficial nature, so long as the circumstances are such that acceptance of the reimbursement is compatible with other restrictions set forth in this part.

(c) Employees will not be deemed to be on official business when they attend the meetings of a charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organization if they have not been directed by the Department to attend the meeting and if they do not receive Government reimbursement for their travel or other expenses incident to attendance at the meetings.

(d) Employees may accept awards from the organizations described in paragraph (c) of this section, so long as the circumstances are such that acceptance is compatible with other restrictions set forth in this part.

(e) Employees may accept reimbursement for travel or expenses incident to travel from an organization described in paragraph (a) or (c) of this section for the actual expenses of an accompanying spouse in connection with the employee's attendance at the meetings of the organization or acceptance of an award from the organization. The acceptance of spousal expenses under this paragraph shall not depend upon the official or nonofficial nature of the employee's travel, but it must be otherwise compatible with the restrictions set forth in this part. In particular, employees may not accept spousal expenses from an organization that:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Department.

(2) Conducts operations or activities that are regulated by the Department.

(3) Is engaged, either as principal or attorney, in proceedings before the Department or in court proceedings in which the United States is an adverse party.

(4) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duties.

[Order No 960-81, 46 FR 52358, Oct 27, 1981]

§ 45.735-15 Employee indebtedness.

The Department of Justice considers the indebtedness of its employees to be essentially a matter of their own concern. The Department of Justice will not be placed in the position of acting as a collection agency or of determining the validity or amount of contested debts. Nevertheless, failure on the part of an employee without good reason and in a proper and timely manner to honor debts acknowledged by him to be valid or reduced to judgment by a court or to make or to adhere to satisfactory arrangements for the settlement thereof may be the cause for disciplinary action. In this connection each employee is expected to meet his responsibilities for payment of Federal, State, and local taxes.

§ 45.735-16 Misuse of Federal property.

No employees may use Federal property for other than officially approved activities. Each employee is responsible for protecting and conserving Federal property, including equipment and supplies.

§ 45.735-17 Gambling, betting, and lotteries.

No employee shall participate, while on Government property or while on duty for the Government, in the operation of gambling devices, in conducting an organized lottery or pool, in games for money or property, or in selling or purchasing numbers tickets.

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§ 45.735-18 [Reserved]

§ 45.735-19 Partisan political activities.

(a) While certain political activities are prohibited by the criminal statutes of the United States (see 18 U.S.C. Chapter 29), the basic restrictions on political activity of employees are set forth in 5 U.S.C. 7321-7328.

(b) Most employees are subject to both statutory and Civil Service restrictions upon partisan political activities although employees of the Federal Government in some geographical areas may take part in certain local political activities. Employees have the right to vote as they choose and to express opinions on political subjects and candidates. Detailed information may be obtained through administrative and personnel offices.

[Order No. 350-65, 30 FR 17202, Dec. 31, 1965, as amended by Order No. 383-67, 32 FR 13217, Sept. 19, 1967; Order No. 960-81, 46 FR 52358, Oct. 27, 1981]

§ 45.735-21 Miscellaneous statutory provisions.

Each employee should be aware of the following statutory prohibitions against:

(a) Lobbying with appropriated funds (18 U.S.C. 1913).

(b) Disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(c) Employment of a member of a Communist organization (50 U.S.C. 784).

(d) (1) Disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) disclosure of confidential information (18 U.S.C. 1905).

(e) Habitual use of intoxicants to excess (5 U.S.C. 7352).

(f) Misuse of a Government vehicle (31 U.S.C. 638a).

(g) Misuse of the franking privilege (18 U.S.C. 1719).

(h) Use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(i) Fraud or false statements in a Government matter (18 U.S.C. 1001).

(j) Multilating or destroying a public record (18 U.S.C. 2071).

(k) Counterfeiting and forging transportation requests (18 U.S.C. 508).

(l) (1) Embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(m) Unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(n) Acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(o) Engaging in violation of merit system principles (5 U.S.C. 2301).

(p) Engaging in prohibited personnel practices (5 U.S.C. 2302).

[Order No. 350-65, 30 FR 17202, Dec. 31, 1965, as amended by Order No. 383-67, 32 FR 13217, Sept. 19, 1967; Order No. 960-81, 46 FR 52358, Oct. 27, 1981]

§ 45.735-22 Reporting of outside interests by persons other than special Government employees.

(a) Each employee occupying a position designated in paragraph (c) of this section, and who is not required to submit a financial disclosure report under § 45.735-27 of this title, shall submit to the head of his division a statement on a form made available through the appropriate division administrative office, setting forth the following information:

(1) A list of the names of all corporations, companies, firms, or other business enterprises, partnerships, non-profit organizations, and educational or other institutions with or in which he, his spouse, minor child or other member of his immediate household has—

(i) Any connection as an employee, officer, owner, director, member, trustee, partner, adviser or consultant; or

(ii) Any continuing financial interest, through a pension or retirement plan, shared income, or other arrangement as a result of any current or prior employment or business or professional association; or

(iii) Any financial interest through the ownership of stock, stock options, bonds, securities, or other arrangements including trusts, except those fi-

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financial interests described in § 45.735-5(b).

(2) A list of the names of his creditors and the creditors of his spouse, minor child or other member of his immediate household, other than those creditors to whom any such person may be indebted by reason of a mortgage on property which he occupies as a personal residence or to whom such person may be indebted for current and ordinary household and living expenses such as those incurred for household furnishings, an automobile, education, vacations or the like.

(3) A list of his interests and those of his spouse, minor child or other member of his immediate household in real property or rights in lands, other than property which he occupies as a personal residence.

For the purpose of this section "member of his immediate household" means a resident of the employee's household who is related to him by blood.

(b) Each employee designated in paragraph (c) of this section who enters upon duty after the date of this order, and who is not required to submit a financial disclosure report under § 45.735-27 of this title, shall submit such statement not later than 30 days after the date of his entrance on duty or 90 days after the effective date of this order, whichever is later.

(c) Statements of employment and financial interest are required of the following employees:

(1) Office of the Attorney General:

Counsellor
Special Assistants
Special Counsels

(2) Office of the Deputy Attorney General:

Associate Deputy Attorneys General
Executive Assistant

(3) Office of the Associate Attorney General:

Deputy Associate Attorneys General
Special Assistants

(4) Office of the Solicitor General:

Tax Assistant

(5) Office of Legal Counsel:

Deputy Assistant Attorneys General

(6) Office of Legal Policy.

Deputy Assistant Attorneys General

(7) Office of Legislative Affairs

Deputy Assistant Attorneys General
Chief, Legislative and Legal Section

(8) Justice Management Division

Deputy Assistant Attorneys General
Staff Directors
Administrative Counsel

(9) Office of Professional Responsibility:

Counsel on Professional Responsibility
Deputy Counsel
Assistant Counsels

(10) Community Relations Service

Deputy Director
Associate Director
Chief Counsel
Regional Directors

(11) Antitrust Division:

Deputy Assistant Attorney General
Director of Economic Policy Office
Director of Operations
Deputy Director of Operations
Director, Policy Planning Office
Section Chiefs
Field Office Chiefs

(12) Civil Division:

Deputy Assistant Attorney General
Section Chiefs

(13) Civil Rights Division:

Deputy Assistant Attorneys General
Special Assistants
Executive Officer
Section Chiefs
Director(s) of Offices

(14) Criminal Division.

Deputy Assistant Attorneys General
Section Chiefs

(15) Land and Natural Resources Division:

Deputy Assistant Attorneys General
Section Chiefs

(16) Tax Division:

Deputy Assistant Attorneys General
Section Chiefs

(17) Federal Bureau of Investigation:

Assistant Director, Administrative Services
Division

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(18) National Institute of Corrections (Bureau of Prisons):

Director, National Institute of Corrections
Employees classified at GS-13 or above who are in positions involving: (i) Contracting or procurement, or (ii) administering, auditing or monitoring grants and contracts

(19) Drug Enforcement Administration:

Assistant Administrators
Office Directors
Chief Counsel
Chief Inspector
Controller
Laboratory Directors
Regional Directors
Chief, Administrative Services Division
Contract and Procurement Officer
Contract Specialists, GS-13 and above
Chief, Compliance Division
Section Chiefs, Compliance Division
Project Officer, GS-13 and above

(20) Immigration and Naturalization Service:

Associate Commissioner, Management
Assistant Commissioner, Administration
Regional Commissioners
Deputy Regional Commissioners
Associate Deputy Regional Commissioners, Management

(21) Office of Justice Assistance, Research and Statistics:

Assistant Directors
Special Assistants to the Director and the Assistant Directors
General Counsel
Administrator, Law Enforcement Assistance Administration
Administrator, Office of Juvenile Justice and Delinquency Prevention
Director, National Institute of Justice
Director, Bureau of Justice Statistics
All Deputy Administrators of the above offices
Employees classified at GS-13 or above who are in positions involving: (i) Contracting or procurement, or (ii) administering, auditing or monitoring grants and contracts.

(22) United States Marshals Service:

Director
Deputy Director
United States Marshals

(d) Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of June 30 each year. If no changes or additions occur, a negative report is re-

quired. Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflict-of-interest provisions set forth in this part.

(e) If any information required to be included on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in his behalf.

(f) Paragraph (a) of this section does not require an employee to submit any information relating to his connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

(g) The Department shall hold each statement of employment and financial interests in confidence, and each statement shall be maintained in confidential files in the immediate office of the division head. Each division head shall designate which employees are authorized to review and retain the statements and shall limit such designation to those employees who are his immediate assistants. Employees so designated are responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. The Department may not disclose information from a statement except as the Civil Service Commission or the Associate Attorney General may determine for good cause. Upon termination of the employment in the Department of any person subject to this section, statements which he has submitted in ac-

cordance with paragraph (a) of this section shall be disposed of in accordance with established Department procedures applicable to confidential records. In the event an employee subject to this section is transferred within the Department, statements which he has filed pursuant to paragraph (a) of this section shall be transferred to the head of the division to which the employee is reassigned.

(h) The statements of employment and financial interests and supplementary statements required of employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order or regulation. The submission of a statement by an employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order, or regulation.

(i) Any employee who believes that his position has been improperly determined to be subject to the reporting requirements of § 45.735-22 may obtain review of such determination through the grievance procedure set forth in 28 CFR Part 46 [At 36 FR 12096, June 25, 1971, 28 CFR Part 46 was removed].

(28 U.S.C. 509, 510)

[Order No. 350-65, 30 FR 17202, Dec. 31, 1965, as amended by Order No. 383-67, 32 FR 13217, Sept. 19, 1967; Order No. 412-69, 34 FR 5726, Mar. 27, 1969; Order No. 653-76, 41 FR 27317, July 2, 1976; Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 732-77, 42 FR 35970, July 13, 1977; Order No. 899-80, 45 FR 43703, June 30, 1980; Order No. 960-81, 46 FR 52358, Oct. 27, 1981]

§ 45.735-23 Reporting of outside interests by special Government employees.

(a) A special Government employee shall submit to the head of his division a statement of employment and financial interests which reports: (1) All other employment, and (2) those financial interests which the head of his division determines are relevant in the light of the duties he is to perform.

(b) A statement required under this section shall be submitted at the time of employment and shall be kept current throughout the period of employment by the filing of supplementary statements in accordance with the re-

quirements of § 45.735-22(d). Statements shall be on forms made available through division administrative officers.

(c) This section shall not be construed as requiring the submission of information referred to in § 45.735-22(f).

(d) Paragraphs (g) and (h) of § 45.735-22 shall be applicable with respect to statements required by this section.

[Order No. 350-65, 30 FR 17202, Dec. 31, 1965, as amended by Order No. 383-67, 32 FR 13218, Sept. 19, 1967]

§ 45.735-24 Reviewing statements of financial interests.

(a) The head of each division shall review financial statements required of any of his subordinates by §§ 45.735-22 and 45.735-23 to determine whether there exists a conflict, or possibility of conflict, between the interests of a subordinate and the performance of his service for the Government. If the head of the division determines that such a conflict or possibility of conflict exists, he shall consult with the subordinate. If he concludes that remedial action should be taken, he shall refer the statement to the Associate Attorney General, through the Department Counselor, with his recommendation for such action. The Associate Attorney General, after such investigation as he deems necessary, shall direct appropriate remedial action if he deems it necessary.

(b) Remedial action may include, but is not limited to:

- (1) Changes in assigned duties.
- (2) Divestment by the employee of his conflicting interest.
- (3) Disqualification for a particular action.
- (4) Exemption pursuant to § 45.735-5.
- (5) Disciplinary action.

[Order No. 350-65, 30 FR 17202, Dec. 31, 1965, as amended by Order No. 699-77, 42 FR 15315, Mar. 21, 1977]

§ 45.735-25 Supplemental regulations.

The heads of divisions may issue supplemental and implementing regulations not inconsistent with this part.

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§ 45.735-26 Designated Agency Ethics Official.

(a) The Assistant Attorney General for Administration is the "designated agency ethics official (DAEO)" for this Department.

(b) In addition to the duties listed in 5 CFR 738.203, the DAEO shall provide for the regular distribution of conduct regulations to employees, and otherwise assist the Offices, Boards and Divisions in meeting their responsibilities under this part.

(c) The above responsibilities of the DAEO shall not be interpreted to diminish the primary responsibility of each Office, Board or Division to provide for the education and counseling of its own employees on matters of conduct and professional ethics.

[Order No. 960-81, 46 FR 52359, Oct. 27, 1981]

§ 45.735-27 Public financial disclosure requirements.

(a) *Persons required to file.* (1) Except as provided in paragraph (a)(2) of this section, the following persons must file a public financial disclosure report as required by Title II of the Ethics in Government Act of 1978:

(i) Each employee in the Department of Justice whose salary is fixed under Subchapter II of Chapter 53 of Title 5, United States Code (the Executive Schedule);

(ii) Each employee whose position is classified at GS-16 or above of the General Schedule prescribed by 5 U.S.C. 5332 or whose salary is required by law to be established at the minimum rate of basic pay for level GS-16 or above of the General Schedule;

(iii) Each United States Attorney;

(iv) Each Assistant United States Attorney occupying a supervisory position whose optimum pay level is established at the equivalent of the minimum rate of basic pay for GS-16 or above and who is actually compensated at a rate of pay equal to or greater than the minimum rate of basic pay for GS-16.

(v) Each employee appointed pursuant to section 3105 of Title 5, United States Code (Administrative Law Judges);

(vi) Each employee who is in a position which is excepted from the competitive service because it is of a confidential or policy-making character (Schedule C), as set forth in 5 CFR 213.3310¹, and who has a role in advising or making policy determinations with respect to agency programs or policies. Schedule C employees having policy-making roles, such as Special Assistants to the head of a division, must file a report under this provision, but Schedule C employees who do not have a policy role, such as chauffeurs, private secretaries, and stenographers, need not;

(vii) Any other employee (other than an Assistant United States Attorney or an employee compensated under the General Schedule), including a special government employee, paid at a rate equal to or greater than the minimum rate of basic pay established for level GS-16 of the General Schedule; and

(viii) Any person nominated by the President to a position described in paragraphs (a)(1)(i) through (a)(1)(vii) of this section appointment to which requires the advice and consent of the Senate.

(2) An employee identified in paragraph (a)(1) of this section who is retained, designated, appointed or employed to perform services on all or part of 60 or fewer days in a calendar year is not required to file a public financial disclosure report. However, an employee who was initially expected to perform services on 60 or fewer days but who thereafter performs services on more than 60 days in a calendar year must immediately comply with the public disclosure requirements as if he had been covered by those requirements as of the date of his initial retention, designation, appointment, or employment.

(b) *Time of filing.* (1) Each employee described in paragraph (a) of this section must file a report: (i) Within 30 days of assuming his position, unless he has left another position in the Executive Branch covered by the public disclosure requirements; (ii) annually,

¹Section 213.3310 was superseded by a document published at 46 FR 20147, Apr. 3, 1981, revising Part 213 in its entirety.

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on or before May 15, covering the preceding calendar year, and (iii) within 30 days of leaving his position, unless he accepts another position in the Executive Branch covered by the public disclosure requirements.

(2) The reviewing official designated in paragraph (d) of this section may, for good cause, extend the deadline for filing reports identified in paragraph (a)(1) of this section for up to 20 days. The reviewing official may grant an extension of up to 15 additional days if the employee submits in writing reasons which establish good cause for an extension. Any further extension must be approved by the Director of the Office of Government Ethics.

(3) A person nominated to a position appointment to which requires the advice and consent of the Senate must file his report within 5 days of the transmittal of his nomination to the Senate by the President.

(4) The Assistant Attorney General for Administration and an employee in or nominee to a position appointment to which requires the advice and consent of the Senate shall furnish a copy of his report to the Director of the Office of Government Ethics at the time he files the original report with the appropriate reviewing official.

(c) *Approvals by Director of the Office of Government Ethics.* A publicly available waiver permitting the omission of information pertaining to certain gifts under section 202(a)(2) of the Act and the approval of blind trusts under section 202(f)(3)(D) of the Act may only be granted by the Director of the Office of Government Ethics.

(d) *Identification of reviewing officials.* (1) Reports filed by employees described in paragraph (a) of this section shall be filed with and reviewed by the following officials:

(i) The Associate Attorney General shall review reports filed by the Attorney General and any employee in the Office of the Attorney General;

(ii) The Attorney General shall review reports filed by the Deputy Attorney General, Associate Attorney General, Solicitor General, and Director of the Federal Bureau of Investigation,

(iii) Except as provided above, the Deputy Attorney General shall review reports filed by the head of each division under his supervision;

(iv) The Associate Attorney General shall review reports filed by the head of each division not included in paragraph (d)(1)(iii) of this section;

(v) The Director of the Executive Office for United States Attorneys shall review reports filed by United States Attorneys and Assistant United States Attorneys;

(vi) Except as provided above, the head of each division shall review reports filed by employees of that division.

(2) The function of reviewing reports under paragraphs (d)(1)(iii) through (d)(1)(vi) of this section may be delegated to an Associate Deputy Attorney General, Deputy Associate Attorney General, or deputy, associate, or assistant head of a division, as the case may be.

(3) The report filed by a person nominated to a position appointment to which requires the advice and consent of the Senate shall be filed with and reviewed by the official designated in paragraph (d)(1) of this section as having responsibility for reviewing reports filed by the incumbent in the position.

(4) Each reviewing official is responsible for ensuring that reports required to be filed with him are filed in a complete and timely manner.

(e) *Review procedure.* (1) Each reviewing official shall endeavor to review each report filed with him within 15 days of receiving it (and shall review the report within 60 days of receipt) to determine whether, on the basis of information contained in the report, the reporting individual is in compliance with applicable laws and regulations governing conflicts of interest and apparent conflicts of interest.

(2) If the reviewing official believes additional information is required to be submitted, he shall notify the individual and inform him of the date on which the additional information must be submitted.

(3) If, on the basis of information contained in the report, the reviewing official is of the opinion that the re-

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porting individual is in compliance with applicable laws and regulations, he shall sign the report and forward it to the Assistant Attorney for Administration. The reviewing official shall retain a copy of the report.

(4) If, on the basis of information contained in the report, the reviewing official believes that the reporting individual is not in compliance with applicable laws and regulations, he shall notify the individual, state what remedial action he believes is appropriate, and afford the reporting individual a reasonable opportunity to submit an oral or written response.

(5) If, after considering the reporting individual's response, the reviewing official concludes that the reporting individual is not in compliance with applicable laws and regulations and that the reporting individual has not taken adequate measures to come into compliance, the reviewing official shall refer the matter to the Associate Attorney General (or if referral to the Associate Attorney General is inappropriate, to the Deputy Attorney General) with his recommendation regarding remedial action to be taken.

(6) After such investigation as he deems appropriate, the Associate Attorney General shall direct remedial action or refer the matter to the Attorney General, Deputy Attorney General, or Solicitor General for appropriate action, including possible referral to the President if the situation involves an employee in a position appointment to which requires the advice and consent of the Senate.

(7) Remedial action under this subsection may include, but is not limited to:

- (i) Divestiture;
- (ii) Restitution;
- (iii) Establishment of a blind trust;
- (iv) Request for exemption under 18 U.S.C. 208(b); or
- (v) Disqualification, transfer, reassignment, limitation of duties, or discharge.

(8) When satisfactory measures have been taken to resolve any problems identified in the review process, the reviewing official or the official ordering remedial action shall sign the report with such notations and comments as may be appropriate.

(f) *Public availability of report.* (1) The Assistant Attorney General for Administration shall provide for the inspection of a report by, or the furnishing of a copy of a report to, any person upon request within 15 days after the report is filed with the appropriate reviewing official.

(2) If the Assistant Attorney General for Administration has not yet received the report, signed by the reviewing official, which a member of the public has requested to inspect or copy, the Assistant Attorney General for Administration shall request the reviewing official to ensure that the report is immediately made available for inspection or copying.

[Order No. 832-79, 44 FR 29891, May 23, 1979]

APPENDIX—CODE OF ETHICS FOR
GOVERNMENT SERVICE

[H. Con. Res. No. 175, 85th Cong.]

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that the following Code of Ethics should be adhered to by all Government employees, including officeholders:

Any person in Government service should:

1. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.
2. Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.
3. Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.
4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.
5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.
6. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.
7. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.

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8 Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit

9 Expose corruption whenever discovered.

10 Uphold these principles, ever conscious that public office is a public trust. Passed July 11, 1958.

APPENDIX—MEMORANDUM RE THE CONFLICT OF INTEREST PROVISIONS OF PUB. L. 87-849, 76 STAT. 1119, APPROVED OCTOBER 23, 1962

INTRODUCTION

Public Law 87-849, which came into force January 21, 1963, affected seven statutes which applied to officers and employees of the Government and were generally spoken of as the "conflict of interest" laws. These included six sections of the criminal code, 18 U.S.C. 216, 281, 283, 284, 434, and 1914, and a statute containing no penalties, section 190 of the Revised Statutes (5 U.S.C. 99). Pub. L. 87-849 (sometimes referred to hereinafter as "the Act") repealed section 190 and one of the criminal statutes, 18 U.S.C. 216, without replacing them.¹ In addition it repealed and supplanted the other five criminal statutes. It is the purpose of this memorandum to summarize the new law and to describe the principal differences between it and the legislation it has replaced.

The Act accomplished its revisions by enacting new sections 203, 205, 207, 208, and 209 of Title 18 of the United States Code and providing that they supplant the above-

¹Section 190 of the Revised Statutes (5 U.S.C. 99), which was repealed by section 3 of Pub. L. 87-849, applied to a former officer or employee of the Government who had served in a department of the executive branch. It prohibited him, for a period of two years after his employment had ceased, from representing anyone in the prosecution of a claim against the United States which was pending in that or any other executive department during his period of employment. The subject of postemployment activities of former Government officers and employees was also dealt with in another statute which was repealed, 18 U.S.C. 284. Pub. L. 87-849 covers the subject in a single section enacted as the new 18 U.S.C. 207.

18 U.S.C. 216, which was repealed by section 1(c) of Pub. L. 87-849, prohibited the payment to or acceptance by a Member of Congress or officer or employee of the Government of any money or thing of value for giving or procuring a Government contract. Since this offense is within the scope of the newly enacted 18 U.S.C. 201 and 18 U.S.C. 203, relating to bribery and conflicts of interest, respectively, section 216 is no longer necessary.

mentioned sections 281, 283, 284, 434 and 1914 of Title 18 respectively. It will be convenient, therefore, after summarizing the principal provisions of the new sections, to examine each section separately, comparing it with its precursor before passing to the next. First of all, however, it is necessary to describe the background and provisions of the new 18 U.S.C. 202(a), which has no counterpart among the statutes formerly in effect.

SPECIAL GOVERNMENT EMPLOYEES—NEW 18 U.S.C. 202(a)

In the main the prior conflict of interest laws imposed the same restrictions on individuals who serve the Government intermittently or for a short period of time as on those who serve full-time. The consequences of this generalized treatment were pointed out in the following paragraph of the Senate Judiciary Committee report on the bill which became Pub. L. 87-849:²

In considering the application of present law in relation to the Government's utilization of temporary or intermittent consultants and advisers, it must be emphasized that most of the existing conflict-of-interest statutes were enacted in the 19th century—that is, at a time when persons outside the Government rarely served it in this way. The laws were therefore directed at activities of regular Government employees, and their present impact on the occasionally needed experts—those whose main work is performed outside the Government—is unduly severe. This harsh impact constitutes an appreciable deterrent to the Government's obtaining needed part-time services.

The recruiting problem noted by the Committee generated a major part of the impetus for the enactment of Pub. L. 87-849. The Act dealt with the problem by creating a category of Government employees termed "special Government employees" and by excepting persons in this category from certain of the prohibitions imposed on ordinary employees. The new 18 U.S.C. 202(a) defines the term "special Government employee" to include, among others, officers and employees of the departments and agencies who are appointed or employed to serve, with or without compensation, for not more than 130 days during any period of 365 consecutive days either on a full-time or intermittent basis.

²See section 2 of Pub. L. 87-849. 18 U.S.C. 281 and 18 U.S.C. 283 were not completely set aside by section 2 but remain in effect to the extent that they apply to retired officers of the Armed Forces (see "Retired Officers of the Armed Forces," *in/ra*).

³S. Rept. 2213, 87th Cong., 2d sess., p. 6.

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SUMMARY OF THE MAIN CONFLICT OF INTEREST
PROVISIONS OF PUB. L. 87-849

A regular officer or employee of the Government—that is, one appointed or employed to serve more than 130 days in any period of 365 days—is in general subject to the following major prohibitions (the citations are to the new sections of Title 18):

1. He may not, except in the discharge of his official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest. This prohibition applies both to paid and unpaid representation of another (18 U.S.C. 203 and 205).

2. He may not participate in his governmental capacity in any matter in which he, his spouse, minor child, outside business associate or person with whom he is negotiating for employment has a financial interest (18 U.S.C. 208).

3. He may not, after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he participated personally and substantially for the Government (18 U.S.C. 207(a)).

4. He may not, for 1 year after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of his official responsibility* during the last year of his Government service (18 U.S.C. 207(b)). This temporary restraint of course gives way to the permanent restraint described in paragraph 3 if the matter is one in which he participated personally and substantially.

5. He may not receive any salary, or supplementation of his Government salary, from a private source as compensation for his services to the Government (18 U.S.C. 209).

A special Government employee is in general subject only to the following major prohibitions:

1. (a) He may not, except in the discharge of his official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest and in which he has at any time participated personally and substantially for the Government (18 U.S.C. 203 and 205).

*The term "official responsibility" is defined by the new 18 U.S.C. 202(b) to mean "the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action."

(b) He may not, except in the discharge of his official duties, represent anyone else in a matter pending before the agency he serves unless he has served there no more than 60 days during the past 365 (18 U.S.C. 203 and 205). He is bound by this restraint despite the fact that the matter is not one in which he has ever participated personally and substantially.

The restrictions described in subparagraphs (a) and (b) apply to both paid and unpaid representation of another. These restrictions in combination are, of course, less extensive than the one described in the corresponding paragraph 1 in the list set forth above with regard to regular employees.

2. He may not participate in his governmental capacity in any matter in which he, his spouse, minor child, outside business associate or person with whom he is negotiating for employment has a financial interest (18 U.S.C. 208).

3. He may not, after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he participated personally and substantially for the Government (18 U.S.C. 207(a)).

4. He may not, for 1 year after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of his official responsibility during the last year of his Government Service (18 U.S.C. 207(b)). This temporary restraint of course gives way to the permanent restriction described in paragraph 3 if the matter is one in which he participated personally and substantially.

It will be seen that paragraphs 2, 3 and 4 for special Government employees are the same as the corresponding paragraphs for regular employees. Paragraph 5 for the latter, describing the bar against the receipt of salary for Government work from a private source does not apply to special Government employees.

As it appears below, there are a number of exceptions to the prohibitions summarized in the two lists.

COMPARISON OF OLD AND NEW CONFLICT OF INTEREST SECTIONS OF TITLE 18, UNITED STATES CODE

New 18 U.S.C. 203. Subsection (a) of this section in general prohibits a Member of Congress and an officer or employee of the United States in any branch or agency of the Government from soliciting or receiving compensation for services rendered on behalf of another person before a Government department or agency in relation to any particular matter in which the United States is a party or has a direct and substan-

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tial interest. The subsection does not preclude compensation for services rendered on behalf of another in court.

Subsection (a) is essentially a rewrite of the repealed portion of 18 U.S.C. 281. However, subsections (b) and (c) have no counterparts in the previous statutes.

Subsection (b) makes it unlawful for anyone to offer or pay compensation the solicitation or receipt of which is barred by subsection (a).

Subsection (c) narrows the application of subsection (a) in the case of a person serving as a special Government employee to two, and only two, situations. First, subsection (c) bars him from rendering services before the Government on behalf of others, for compensation, in relation to a matter involving a specific party or parties in which he has participated personally and substantially in the course of his Government duties. And second, it bars him from such activities in relation to a matter involving a specific party or parties, even though he has not participated in the matter personally and substantially, if it is pending in his department or agency and he has served therein more than 60 days in the immediately preceding period of a year.

New: 18 U.S.C. 205. This section contains two major prohibitions. The first prevents an officer or employee of the United States in any branch or agency of the Government from acting as agent or attorney for prosecuting any claim against the United States, including a claim in court, whether for compensation or not. It also prevents him from receiving a gratuity, or a share or interest in any such claim, for assistance in the prosecution thereof. This portion of section 205 is similar to the repealed portion of 18 U.S.C. 283, which dealt only with claims against the United States, but it omits a bar contained in the latter—i.e., a bar against rendering uncompensated aid or assistance in the prosecution or support of a claim against the United States.

The second main prohibition of section 205 is concerned with more than claims. It precludes an officer or employee of the Government from acting as agent or attorney for anyone else before a department, agency or court in connection with any particular matter in which the United States is a party or has a direct and substantial interest.

Section 205 provides for the same limited application to a special Government employee as section 203. In short, it precludes him from acting as agent or attorney only (1) in a matter involving a specific party or parties in which he has participated personally and substantially in his governmental capacity, and (2) in a matter involving a specific party or parties which is before his department or agency, if he has served therein more than 60 days in the year past.

Since new sections 203 and 205 extend to activities in the same range of matters, they overlap to a greater extent than did their predecessor sections 281 and 283. The following are the few important differences between sections 203 and 205.

1. Section 203 applies to Members of Congress as well as officers and employees of the Government, section 205 applies only to the latter.

2. Section 203 bars services rendered for compensation solicited or received, but not those rendered without such compensation, section 205 bars both kinds of services.

3. Section 203 bars services rendered before the departments and agencies but not services rendered in court, section 205 bars both.

It will be seen that while section 203 is controlling as to Members of Congress, for all practical purposes section 205 completely overshadows section 203 in respect of officers and employees of the Government.

Section 205 permits a Government officer or employee to represent another person, without compensation, in a disciplinary, loyalty or other personnel matter. Another provision declares that the section does not prevent an officer or employee from giving testimony under oath or making statements required to be made under penalty for perjury or contempt.³

Section 205 also authorizes a limited waiver of its restrictions and those of section 203 for the benefit of an officer or employee, including a special Government employee, who represents his own parents, spouse or child, or person or estate he serves as a fiduciary. The waiver is available to the officer or employee, whether acting for any such person with or without compensation, but only if approved by the official making appointments to his position. And in no event does the waiver extend to his representation of any such person in matters in which he has participated personally and substantially or which, even in the absence of such participation, are the subject of his official responsibility.

Finally, section 205 gives the head of a department or agency the power, notwith-

³These two provisions of section 205 refer to an "officer or employee" and not, as do certain of the other provisions of the Act, to an "officer or employee, including a special Government employee." However, it is plain from the definition in section 202(a) that a special Government employee is embraced within the comprehensive term "officer or employee." There would seem to be little doubt, therefore, that the instance provisions of section 205 apply to special Government employees even in the absence of an explicit reference to them.

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standing any applicable restrictions in its provisions or those of section 203, to allow a special Government employee to represent his regular employer or other outside organization in the performance of work under a Government grant or contract. However, this action is open to the department or agency head only upon his certification, published in the FEDERAL REGISTER, that the national interest requires it.

New 18 U.S.C. 207. Subsections (a) and (b) of this section contain postemployment prohibitions applicable to persons who have ended service as officers or employees of the executive branch, the independent agencies or the District of Columbia.⁶ The prohibitions for persons who have served as special Government employees are the same as for persons who have performed regular duties.

The restraint of subsection (a) is against a former officer or employee's acting as agent or attorney for anyone other than the United States in connection with certain matters, whether pending in the courts or elsewhere. The matters are those involving a specific party or parties in which the United States is one of the parties or has a direct and substantial interest and in which the former officer or employee participated personally and substantially while holding a Government position.

Subsection (b) sets forth a 1-year postemployment prohibition in respect of those matters which were within the area of official responsibility of a former officer or employee at any time during the last year of his service but which do not come within subsection (a) because he did not participate in them personally and substantially. More particularly, the prohibition of subsection (b) prevents his personal appearance in such matters before a court or a department or agency of the Government as agent or attorney for anyone other than the United States.⁷ Where, in the year prior to the end

⁶The prohibitions of the two subsections apply to persons ending service in these areas whether they leave the Government entirely or move to the legislative or judicial branch. As a practical matter, however, the prohibitions would rarely be significant in the latter situation because officers and employees of the legislative and judicial branches are covered by sections 203 and 205.

⁷Neither section 203 nor section 205 prevents a special Government employee, during his period of affiliation with the Government, from representing another person before the Government in a particular matter only because it is within his official responsibility. Therefore the inclusion of a former special Government employee within the 1-year postemployment ban of subsection (b) may subject him to a tempo-

of his service, a former officer or employee has changed areas of responsibility by transferring from one agency to another, the period of his postemployment ineligibility as to matters in a particular area ends 1 year after his responsibility for that area ends. For example, if an individual transfers from a supervisory position in the Internal Revenue Service to a supervisory position in the Post Office Department and leaves that department for private employment 9 months later, he will be free of the restriction of subsection (b) in 3 months insofar as Internal Revenue matters are concerned. He will of course be bound by it for a year in respect of Post Office Department matters.

The proviso following subsections (a) and (b) authorizes an agency head, notwithstanding anything to the contrary in their provisions, to permit a former officer or employee with outstanding scientific qualifications to act as attorney or agent or appear personally before the agency for another in a matter in a scientific field. This authority may be exercised by the agency head upon a "national interest" certification published in the FEDERAL REGISTER.

Subsections (a) and (b) describe the activities they forbid as being in connection with "particular matter[s] involving a specific party or parties" in which the former officer or employee had participated. The quoted language does not include general rulemaking, the formulation of general policy or standards, or other similar matters. Thus, past participation in or official responsibility for a matter of this kind on behalf of the Government does not disqualify a former employee from representing another person in a proceeding which is governed by the rule or other result of such matter.

Subsection (a) bars permanently a greater variety of actions than subsection (b) bars temporarily. The conduct made unlawful by the former is *any action as agent or attorney*, while that made unlawful by the latter is a *personal appearance as agent or attorney*. However, neither subsection precludes postemployment activities which may fairly be characterized as no more than aiding or assisting another.⁸ An individual who has

rary restraint from which he was free prior to the end of his Government service. However, since special Government employees usually do not have "official responsibility," as that term is defined in section 202(b), their inclusion within the 1-year ban will not have a widespread effect.

⁸Subsection (a), as it first appeared in H.R. 8140, the bill which became Pub. L. 87-49, made it unlawful for a former officer or employee to act as agent or attorney for, or

Continued

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left an agency to accept private employment may for example immediately perform technical work in his company's plant in relation to a contract for which he had official responsibility—or for that matter, in relation to one he helped the agency negotiate. On the other hand, he is forbidden for a year, in the first case to appear personally before the agency as the agent or attorney of his company in connection with a dispute over the terms of the contract. And he may at no time appear personally before the agency or otherwise act as agent or attorney for his company in such dispute if he helped negotiate the contract.

Comparing subsection (a) with the antecedent 18 U.S.C. 284 discloses that it follows the latter in limiting disqualification to cases where a former officer or employee actually participated in a matter for the Government. However, subsection (a) covers all matters in which the United States is a party or has a direct and substantial interest and not merely the "claims against the United States" covered by 18 U.S.C. 284. Subsection (a) also goes further than the latter in imposing a lifetime instead of a 2-year bar. Subsection (b) has no parallel in 18 U.S.C. 284 or any other provision of the former conflict of interest statutes.

It will be seen that subsections (a) and (b) in combination are less restrictive in some respects, and more restrictive in others, than the combination of the prior 18 U.S.C. 284 and 5 U.S.C. 99. Thus, former officers or employees who were outside the Government when the Act came into force on January 21, 1963, will in certain situations be enabled to carry on activities before the Government which were previously barred. For example the repeal of 5 U.S.C. 99 permits an attorney who left an executive department for private practice a year before to take certain cases against the Government immediately which would be subject to the bar of 5 U.S.C. 99 for another year. On the other hand, former officers or employees became precluded on and after January 21, 1963, from engaging or continuing to engage in certain activities which were permissible until that date. This result follows from the replacement of the 2-year bar of 18 U.S.C. 284 with the lifetime bar of subsection (a) in comparable situations, from the increase in the variety of matters covered by subsection (a) as compared with 18 U.S.C. 284 and from

aid or assist anyone in a matter in which he had participated. The House Judiciary Committee struck the underlined words, and the bill became law without them. It should be noted also that the repealed provisions of 18 U.S.C. 283 made the distinction between one's acting as agent or attorney for another and his aiding or assisting another.

the introduction of the 1-year bar of subsection (b).

Subsection (c) of section 207 pertains to an individual outside the Government who is in a business or professional partnership with someone serving in the executive branch, an independent agency or the District of Columbia. The subsection prevents such individual from acting as attorney or agent for anyone other than the United States in any matters, including those in court, in which his partner in the Government is participating or has participated or which are the subject of his partner's official responsibility. Although included in a section dealing largely with postemployment activities, this provision is not directed to the postemployment situation.

The paragraph at the end of section 207 also pertains to individuals in a partnership but sets forth no prohibition. This paragraph, which is of importance mainly to lawyers in private practice, rules out the possibility that an individual will be deemed subject to section 203, 205, 207(a) or 207(b) solely because he has a partner who serves or has served in the Government either as a regular or a special Government employee.

New 18 U.S.C. 208 This section forbids certain actions by an officer or employee of the Government in his role as a servant or representative of the Government. Its thrust is therefore to be distinguished from that of sections 203 and 205 which forbid certain actions in his capacity as a representative of persons outside the Government.

Subsection (a) in substance requires an officer or employee of the executive branch, an independent agency or the District of Columbia, including a special Government employee, to refrain from participating as such in any matter in which, to his knowledge, he, his spouse, minor child or partner has a financial interest. He must also remove himself from a matter in which a business or nonprofit organization with which he is connected or is seeking employment has a financial interest.

Subsection (b) permits the agency of an officer or employee to grant him an *ad hoc* exemption from subsection (a) if the outside financial interest in a matter is deemed not substantial enough to have an effect on the integrity of his services. Financial interests of this kind may also be made nondisqualifying by a general regulation published in the **FEDERAL REGISTER**.

Section 208 is similar in purpose to the former 18 U.S.C. 434 but prohibits a greater variety of conduct than the "transaction of business with . . . [a] business entity" to which the prohibition of section 434 was limited. In addition, the provision in section 208 including the interests of a spouse and

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others is new, is in the provisions authorizing exemptions for insignificant interests.

New 18 U.S.C. 209. Subsection (a) prevents an officer or employee of the executive branch, an independent agency or the District of Columbia from receiving, and anyone from paying him, any salary or supplementation of salary from a private source as compensation for his services to the Government. This provision uses much of the language of the former 18 U.S.C. 1914 and does not vary from that statute in substance. The remainder of section 209 is new.

Subsection (b) specifically authorizes an officer or employee covered by subsection (a) to continue his participation in a bona fide pension plan or other employee welfare or benefit plan maintained by a former employer.

Subsection (c) provides that section 209 does not apply to a special Government employee or to anyone serving the Government without compensation, whether or not he is a special Government employee.

Subsection (d) provides that the section does not prohibit the payment or acceptance of contributions, awards or other expenses under the terms of the Government Employees Training Act (72 Stat. 327, 5 U.S.C. 2301-2319).

STATUTORY EXEMPTIONS FROM CONFLICT OF
INTEREST LAWS

Congress has in the past enacted statutes exempting persons in certain positions—usually advisory in nature—from the provisions of some or all of the former conflict of interest laws. Section 2 of the Act grants corresponding exemptions from the new laws with respect to legislative and judicial positions carrying such past exemptions. However, section 2 excludes positions in the executive branch, an independent agency and the District of Columbia from this grant. As a consequence, all statutory exemptions for persons serving in these sectors of the Government ended on January 21, 1963.

RETIRED OFFICERS OF THE ARMED FORCES

Public Law 87-849 enacted a new 18 U.S.C. 206 which provides in general that the new sections 203 and 205, replacing 18 U.S.C. 281 and 283, do not apply to retired officers of the armed forces and other uniformed services. However, 18 U.S.C. 281 and 283 contain special restrictions applicable to retired officers of the armed forces which are left in force by the partial repealer of those statutes set forth in section 2 of the Act.

The former 18 U.S.C. 284, which contained a 2-year disqualification against post-employment activities in connection with claims against the United States, applied by its terms to persons who had served as commissioned officers and whose active service had ceased either by reason of retirement or

complete separation. Its replacement, the broader 18 U.S.C. 207, also applies to persons in those circumstances. Section 207, therefore applies to retired officers of the armed forces and overlaps the continuing provisions of 18 U.S.C. 281 and 283 applicable to such officers although to a different extent than did 18 U.S.C. 284.

VOIDING TRANSACTIONS IN VIOLATION OF THE
CONFLICT OF INTERESTS OR BRIBERY LAWS

Public Law 87-849 enacted a new section, 18 U.S.C. 218, which did not supplant a pre-existing section of the criminal code. However, it was modeled on the last sentence of the former 18 U.S.C. 216 authorizing the President to declare a Government contract void which was entered into in violation of that section. It will be recalled that section 216 was one of the two statutes repealed without replacement.

The new 18 U.S.C. 218 grants the President and under presidential regulations, an agency head the power to void and rescind any transaction or matter in relation to which there has been a "final conviction" for a violation of the conflict of interest or bribery laws. The section also authorizes the Government's recovery, in addition to any penalty prescribed by law or in a contract, of the amount expended or thing transferred on behalf of the Government.

Section 218 specifically provides that the powers its grants are "in addition to any other remedies provided by law." Accordingly, it would not seem to override the decision in *United States v. Mississippi Valley Generating Co.*, 364 U.S. 520 (1961), a case in which there was no "final conviction."

BIBLIOGRAPHY

Set forth below are the citations to the legislative history of Public Law 87-849 and a list of recent material which is pertinent to a study of the Act. The listed 1960 report of the Association of the Bar of the City of New York is particularly valuable. For a comprehensive bibliography of earlier material relating to the conflict of interest laws, see 13 Record of the Association of the Bar of the City of New York 323 (May 1958).

LEGISLATIVE HISTORY OF PUB. L. 87-849 (H.R.
8140, 87TH CONG.)

1. Hearings of June 1 and 2, 1961, before the Antitrust Subcommittee (Subcommittee No. 5) of the House Judiciary Committee, 87th Cong., 1st sess., ser. 3, on *Federal Conflict of Interest Legislation*.
2. H. Rept. 748, 87th Cong., 1st sess.
3. 107 Cong. Rec. 14774.
4. Hearing of June 21, 1962, before the Senate Judiciary Committee, 87th Cong., 2d sess., on *Conflict of Interest*.
5. S. Rept. 2213, 87th Cong., 2d sess.

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6 108 Cong. Rec. 20805 and 21130 (daily ed., October 3 and 4, 1962)

OTHER MATERIAL

1 President's special message to Congress April 27, 1961, and attached draft bill, 107 Cong. Rec. 6835

2 President's Memorandum of February 9, 1962, to the heads of executive departments and agencies entitled *Preventing Conflicts of Interest on the Part of Advisers and Consultants to the Government*, 27 FR 1341

3 42 Op. A.G. No. 6, January 31, 1962

4 Memorandum of December 10, 1956, for the Attorney General from the Office of Legal Counsel re conflict of interest statutes, Hearings before the Antitrust Subcommittee (Subcommittee No. 5) of House Judiciary Committee, 86th Cong., 2d sess., ser. 17, pt. 2 p. 619.

5 Staff report of Antitrust Subcommittee (Subcommittee No. 5) of House Judiciary Committee, 85th Cong., 2d sess., *Federal Conflict of Interest Legislation* (Comm. Print 1958)

6 Report of the Association of the Bar of the City of New York, *Conflict of Interest and Federal Service* (Harvard Univ. Press 1960)

[28 FR 985, Feb. 1, 1963]

1-4.200 NOTIFICATION OF MISCONDUCT BY EMPLOYEES OF THE DEPARTMENT OF JUSTICE

The Office of Professional Responsibility (OPR), which reports directly to the Attorney General, is responsible for investigating allegations of misconduct committed by Department of Justice employees that may violate law, Department orders or regulations, or applicable standards of conduct. Its responsibility also extends to the investigation of allegations of mismanagement, gross waste of funds, abuse of authority, conduct by Department employees which poses a substantial and specific danger to public health and safety, and acts of reprisal against "whistleblowers." In order for OPR to perform its function properly, it must be promptly notified whenever allegations of serious misconduct against any employee of the Department come to the attention of U.S. Attorney personnel.

All such allegations against Department employees, legal and non-legal, must be reported immediately to the Counsel on Professional Responsibility or a member of his/her staff. The report should be in writing. If the matter is of extreme urgency, a telephonic report should be made initially and followed by a written communication. See, also, USAM 1-3.112.

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1-4.300 POLITICAL ACTIVITY OF FEDERAL EMPLOYEES (THE HATCH ACT)

The Hatch Act, 5 U.S.C. §§7324 et seq., restricts the ability of federal employees to participate actively in partisan political management and partisan political campaigns. The Department of Justice has maintained a longstanding policy requiring compliance with the Hatch Act by all of its officers and employees, including those who are exempt from coverage by the statute. See 5 U.S.C. §7324(d).

Generally, the Hatch Act prohibits employees from using their official authority or influence to interfere with or affect the result of a partisan political election and from taking an active part in partisan political management or campaigns. You should be aware that the prohibitions of the Hatch Act are in effect whether an employee is on or off duty, and that they apply to employees on leave, including employees on leave without pay.* The following list of prohibited and permissible activities was developed from the Hatch Act regulations published by the Office of Personnel Management. 5 C.F.R. §§733.111 and 733.122.

Employees should raise questions concerning political activities and the Hatch Act with their Deputy Designated Agency Ethics Officials (see Attorney General Order No. 1045-84 February 7, 1984), who may consult with the Office of the Special Counsel to the Merit Systems Protection Board as necessary and appropriate.

A. Permissible Activities:

Each employee retains the right to,

1. Register and vote in any election;
2. Express his/her opinion as an individual privately and publicly on political subjects and candidates;

* Most municipalities and political subdivisions in the Washington, D.C. vicinity have been exempted from certain of the Hatch Act's restrictions. These are listed in 5 C.F.R. §733.124. Employees who reside in these localities may take an active part in political management or in political campaigns in connection with partisan elections for local offices, so long as the participation is as, on behalf of, or in opposition to an independent candidate. Generally, independent candidates are ones who have not been nominated by a political party.

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3. Display a political picture, sticker, badge, or button in situations that are not connected to his/her official duties;

4. Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization;

5. Be a member of a political party or other political organization and participate in its activities to the extent consistent with the restrictions set forth below;

6. Attend a political convention, rally, fund-raising function, or other political gathering;

7. Sign a political petition as an individual;

8. Make a financial contribution to a political party or organization; (but see 18 U.S.C. §603 dealing with contributions to one's federal employer);

9. Take an active party, as an independent candidate, or in support of an independent candidate, in a partisan election in a locality listed in 5 C.F.R. §733.124 (see footnote on preceding page);

10. Take an active part, as a candidate or in support of a candidate, in a nonpartisan election;

11. Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance or any other question or issue of a similar character;

12. Serve as an election judge or clerk, or in a similar position to perform nonpartisan duties as prescribed by state or local law; and

13. Otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise his/her efficiency or integrity as an employee or the neutrality, efficiency or integrity of his/her agency.

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B. Prohibited Activities:

Employees may not take an active part in the political management of campaigns. Prohibited activities include, but are not limited to the following:

1. Serving as an officer of a political party, a member of a national, state, or local committee of a political party, an officer or member of a committee of a partisan political club, or being a candidate for any of these positions;
2. Organizing or reorganizing a political party, organization or political club;
3. Directly or indirectly soliciting, receiving, collecting, handling, disbursing, or accounting for assessments, contributions, or other funds for a partisan political purpose;
4. Organizing, selling tickets to, promoting, or actively participating in a fund-raising activity of a candidate in a partisan election or of a political party, or political club;
5. Taking an active part in managing the political campaign of a candidate for public office in a partisan election or a candidate for political party office;
6. Becoming a candidate for, or campaigning for, an elective public office in a partisan election;
7. Soliciting votes in support of or in opposition to a candidate for public office in a partisan election or a candidate for political party office;
8. Acting as recorder, watcher, challenger, or similar officer at the polls on behalf of a political party or a candidate in a partisan election;
9. Driving voters to the polls on behalf of a political party or a candidate in a partisan election;
10. Endorsing or opposing a candidate for public office in a partisan election or a candidate for political party office in a political advertisement, a broadcast, campaign literature, or similar material;

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11. Serving as a delegate, alternate, or proxy to a political party convention;

12. Addressing a convention, caucus, rally, or similar gathering of a political party in support of or in opposition to a partisan candidate for public office or political party office; and

13. Initiating or circulating a partisan nominating petition.

See also 5 C.F.R. §733, et seq.

Questions regarding the Hatch Act may be directed to the Executive Office for U.S. Attorneys, Office of Legal Services, or the Office of Personnel Management, Office of Special Counsel.

USAM (superseded)

USAM (superseded)

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1-5.000 OBTAINING, DISCLOSING AND WITHHOLDING INFORMATION: RELATIONS
WITH THE NEWS MEDIA

1-5.100 FREEDOM OF INFORMATION ACT (FOIA)

1-5.110 Introduction and Overview of FOIA

The Freedom of Information Act, codified at 5 U.S.C. §552, was enacted in 1966, with an effective date of July 4, 1967. In revising Section 3 of the Administrative Procedure Act of 1946, as amended, it provided, with certain enumerated exceptions, for disclosure to the public of records, files, and other information of federal departments and agencies (hereinafter "agencies") in the executive branch. The Act was amended in 1974 for the purposes of: more narrowly defining the first and seventh exemptions to the Act; revising the procedural provisions of the Act; imposing new and additional administrative requirements on agencies; and providing penalties and remedies for violations of certain provisions of the Act. These amendments were effective on February 19, 1975.

Since the underlying principle on which the amended Act is premised is disclosure to the public, every agency is obligated to make available to the public information which can be revealed without injury to the public or governmental interest, or the interests of private individuals. Information subject to the Act falls into three classes of information described in subsection (a) of the Act:

A. Agency rules, a description of its organization, and a statement of the general method by which its functions are channeled and determined, all of which must be published in the Federal Register;

B. Final opinions and orders made in the adjudication of cases, and statements of policy and interpretations which have been adopted by the agency but which are not published in the Federal Register, including substantive agency rules of general applicability and statements of general policy final agency opinions made in the adjudication of cases, administrative staff manuals which affect the public and an indexing of information required to be made available to the public;

C. All other records of an agency except those records specifically exempt from disclosure by one or more of the nine exemptions to the Act, set forth in subsection (b) thereof.

As noted above, there are nine specific exemptions to disclosure:

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1. National defense and foreign policy information which is properly classified;
2. Information relating solely to internal personnel rules and practices of the agency;
3. Information which is specifically prohibited by another statute from disclosure;
4. Trade secrets, and commercial or financial information obtained from a person and privileged or confidential;
5. Inter- and intra-agency communications which would not be available by law to a party other than the agency in litigation with the agency, e.g., pre-decisional advice pertaining to the deliberative process or attorney work product prepared in reasonable anticipation of litigation;
6. Personnel, medical, and similar files the disclosures of which would constitute a "clearly unwarranted invasion of personal privacy;"
7. Investigatory records compiled for law enforcement purposes to the extent that one or more of six specified forms of harm would result;
8. Certain bank records; and
9. Oil well data.

For a detailed discussion of the FOIA's exemptions and its most important procedural aspects, see the "Short Guide to the Freedom of Information Act," published in the Freedom of Information Case List, an annual Department of Justice publication.

1-5.120 FOIA Operations Within the Justice Department

The regulations of the Department of Justice for administration of the Act are published at 28 C.F.R. Part 16, Subpart A.

The Department of Justice, through the Office of Information and Privacy (within the Office of Legal Policy), is primarily responsible for the dissemination and implementation of Freedom of Information Act policy on a government-wide basis. Requests for access to records under the FOIA should be directed to the component of the Department which maintains the

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records. OIP also provides guidance within the Department on policy and procedural matters, as well as on related issues arising under the Privacy Act of 1974, 5 U.S.C. §552a. A requester in need of guidance in defining a request or determining the proper component to which the request should be sent, may write to the FOIA/PA Section, Justice Management Division (JMD), U.S. Department of Justice. In addition, JMD is responsible for monitoring compliance by the Department with the Act, making recommendations to improve such compliance, and preparing the Department's annual report.

In administering the Act, it should be remembered that the general presumption of the Act as well as Departmental policy (as expressed in 28 C.F.R. Part 16, Subpart A) is in favor of disclosure of information. Further clarification of Departmental policy is offered in the Attorney General's Memorandum dated May 4, 1981, which is set out below.

May 4, 1981

MEMORANDUM FOR: HEADS OF ALL FEDERAL DEPARTMENTS AND AGENCIES

FROM: William French Smith
Attorney General

SUBJECT: Freedom of Information Act

The letter of the Attorney General of May 5, 1977 regarding the Freedom of Information Act is superseded by this memorandum. The Department's current policy is to defend all suits challenging an agency's decision to deny a request submitted under the FOIA unless it is determined that:

- (a) The agency's denial lacks a substantial legal basis; or
- (b) Defense of the agency's denial presents an unwarranted risk of adverse impact on other agencies' ability to protect important records.

As always, agencies must be guided by the principle that, subject to the specific exemptions provided by Congress, disclosure of agency records is the foremost goal in administering the Act. Accordingly, in responding to individual FOIA requests, agencies are urged to consider the public interests which favor disclosure, to weigh the potential costs of FOIA litigation, and to ensure that nondisclosure will not serve to conceal or otherwise facilitate fraud, waste or other wrongdoing by government employees.

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Agencies should consult with the Department of Justice, Office of Legal Policy and Freedom of Information Committee, before final denial of FOIA request which appears to present significant legal or policy issues. Agencies are further invited to solicit the advice of the Department of Justice on any other appropriate occasion.

The policies and procedures announced in this letter are intended to establish a cooperative relationship between the Department of Justice and other agencies in administering the FOIA.

Since experience in administering the Act has demonstrated various problems, I will be soliciting legislative proposals from your agency in the near future in a collaborative endeavor to reform the FOIA.

1-5.121 Office of Information and Privacy

The Office of Information and Privacy (OIP) was established within the Office of Legal Policy to advise executive branch agencies and organizational units of this Department on questions of policy relating to the interpretation and application of the Freedom of Information Act (FOIA), 5 U.S.C. §552, as amended, and to advise this Department on matters relating to the interpretation and application of the Privacy Act of 1974 (PA), 5 U.S.C. §552a. Further, OIP coordinates the development and implementation of, and compliance with, FOIA policy throughout the Executive Branch and undertakes, arranges, or supports training and informational programs concerning both Acts for Executive Branch agencies and this Department.

Formed through the merger of the former Office of Information Law and Policy and the former Office of Privacy and Information Appeals in March 1982, OIP discharges all functions of those predecessor offices. See 28 C.F.R. §0.23a(a). Any component of the Department seeking pre-litigation advice on a FOIA or PA matter should contact OIP at (FTS) 724-7400. (After litigation begins, such contacts should primarily be with the Civil Division or the U.S. Attorney's Office responsible for defending the suit. See 28 C.F.R. §0.1 through §0.29.) All federal agencies which intend to deny FOIA requests raising novel issues should consult with OIP to the extent practicable. See 28 C.F.R. §0.23a(b).

1-5.130 Procedure for Requests Under FOIA Received by U.S. Attorney's Office

Typically, a request for disclosure will be made by the requester directly to one or more components of the Department. Upon receipt of such a request by a U.S. Attorney's Office, its receipt should be

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immediately acknowledged and the requester informed that his/her correspondence has been forwarded to the FOIA/PA Section, JMD. A copy of your acknowledgement to the requester and the original request letter should then be forwarded to the Executive Office for U.S. Attorneys (the responsible 'component').

Whether routed by the FOIA/PA Section or by a direct request, however, the component becomes responsible for responding directly to the request. The component should make an initial determination within 10 working days after the date of official receipt as to whether or not to comply with the request for disclosure, and should immediately (by the close of the 10th working day) notify the requester of the determination, the reasons therefor, and the requester's right to administratively appeal any adverse determination to the Office of Information and Privacy within 20 days after receipt of this initial determination. Components of the Department of Justice shall comply with the time limits set forth in the FOIA for responding to and processing requests and appeals, unless there exist exceptional circumstances within the meaning of 5 U.S.C. §552(a)(6)(C).

Futhermore, the Department's regulations provide (28 C.F.R. §16.5(b)) that the reply letter denying the request, in whole or in part, must be signed by the head of the responsible component (the Director of the Executive Office for U.S. Attorneys in the case of U.S. Attorneys' Offices), unless otherwise delegated by the head of the component. Such a denial letter must specifically set forth: the exemptions relied upon; how those exemptions were applied in this case; if relevant, a brief statement as to why a discretionary release is not appropriate; a statement of the requester's right to an administrative appeal and judicial review, and the time period for administrative appeal; and the name and title of the person responsible for the denial.

Since the Act permits reasonable search and copy fees to be charged to a requester, 28 C.F.R. §16.10 should be consulted as to the level of fees which can be charged and the manner of informing a requester of this fact, unless it is determined that the information should be furnished without a fee or at a reduced fee, when this is "in the public interest." See 5 U.S.C. §552(a)(4)(A) and 28 C.F.R. §16.10.

Within the Department, administrative appeals are handled, as noted earlier, by the Office of Information and Privacy, which must act on an appeal within 20 working days after the date of receipt of the appeal letter subject to a reasonable extension of time for "unusual circumstances," 5 U.S.C. §552(a)(6)(B). If the appeal is not acted upon within this time frame, or the appeal is ultimately denied, the requester may file a complaint in the United States District Court in the district

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where the requester resides or has his/her principal place of business in which the records are located, or in the District of Columbia. These civil actions are under the supervision of the Federal Programs Branch, Civil Division.

In handling requests under the Act, it may become necessary to inform the requester by letter that the request does not sufficiently describe the information being sought. Moreover, if the information being sought is not in the possession or control of the component but is known or believed to be in the possession or control of another component of the Department of Justice, the requester should be immediately notified that the request is being referred to another component of the Department for a direct reply. See 28 C.F.R. §16.4(f). In the event that the information is known or believed to be in the possession or control of another federal department or agency, the requester should ordinarily be notified that the information being sought is not in the possession or custody of this Department but may be obtained from another agency.

In the event that the information requested is available within the component but cannot be searched, copied, and sent to the requester within 10 working days, the requester should be contacted by telephone or letter, when feasible, and advised of the reason for the delay and an anticipated response date.

For an understanding of other miscellaneous and technical matters pertaining to the handling of requests, the Department's regulations should be consulted. In addition, when necessary, the FOIA Control Officer for the component or components believed to have information or knowledge pertinent to a particular request should be promptly contacted. If a U.S. Attorney's Office is unable to determine from a reading of the request where (if at all) in the Department the request should also be sent, the Office of Legal Services, Executive Office for U.S. Attorneys should be contacted.

1-5.140 Exemptions Pertaining to U.S. Attorneys' Records

In processing FOIA requests, U.S. Attorneys are most likely to use Exemptions 5 and 7 as justifications for withholding records. Prior to discussion of the specific exemptions, it should be noted that there exists an unwritten Departmental policy that the originating component of any intra-Departmental document has the final decision on whether or not it should be disclosed. This means, for example, that the decision to disclose a Federal Bureau of Investigation (FBI) investigative report is to be made by the FBI. It is also important to remember that the Act is a disclosure statute which provides an effective statutory right to access

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to government information. Specifically, it does not permit the withholding of a complete document where only a portion of it comes within a particular exemption. The statute provides:

Any reasonably segregable portion of a record shall be provided . . . after the deletion of the portions which are exempt under the statute. 5 U.S.C. §552(b).

Finally, the Department has taken the position that requests for information from fugitives, or from their representatives, should not be processed. See Doyle v. DOJ, 494 F. Supp. 842, 843 (D.D.C. 1980), aff'd, 668 F. 2d 1365 (D.C. Circuit), cert. denied, 435 U.S. 1002 (1982).

For an extensive discussion of these exemptions, and the case law construing them, see the "Short Guide to the Freedom of Information Act," an annual publication of the Department of Justice, contained in the Department's annual Freedom of Information Case List.

1-5.141 Exemption 5--Interagency Memoranda

Exemption 5 (unchanged by the 1974 Amendments) permits nondisclosure of:

Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency; 5 U.S.C. §552(b)(5).

This exemption was designed to protect the exchange of ideas between government personnel necessary in the frank discussion of policy matter. See H.R. Rep. No. 1497, 89th Cong. at 1966 U.S.C.C.A.N. 2418. The three primary privileges which have been held to be incorporated into Exemption 5 are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege. See NLRB v. Sears, Roebuck & Co., 421 U.S. 132 (1975).

Two fundamental requirements must be met in order for the deliberative process privilege to be invoked. First, the communication must be predecisional, i.e., "antecedent to the adoption of an agency policy. Jordan v. Department of Justice, 591 F.2d 753 (D.C. Cir. 1978). Second, the communication must be deliberative, i.e., "a direct part of the deliberative process in that it makes recommendations or expresses opinions on legal or policy matters." See Vaughn v. Rosen, 523 F.2d 1136 (D.C. Cir. 1975).

Documents which are commonly encompassed by the deliberative process

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privilege include advisory opinions, recommendations and drafts. In contrast, however, are post-decisional documents, which generally contain statements of policy and final opinions which have the force of law.

Post-decisional documents--those which embody statements of policy and final opinions which have the force of law, which implement an established policy of an agency, or which explain actions that an agency has already taken--may not be withheld from disclosure under the pre-decisional privilege of Exemption 5. However, justification for withholding these documents may be found under either of the other two privileges of Exemption 5.

The deliberative process privilege is generally inapplicable to purely factual matters, or to factual portions of otherwise deliberative memoranda. Therefore, unless facts are "inextricably intertwined" with deliberative material, they are subject to disclosure. See Ryan v. Department of Justice, 617 F.2d 781 (D.C. Cir. 1980). This is the primary limitation on the scope of the deliberative process privilege. A second limitation on the privilege is that its protection may be lost if a final decision "chooses expressly to adopt or incorporate [it] by reference." NLRB v. Sears, Roebuck & Co., 421 U.S. 132, at 161.

The second traditional privilege incorporated into Exemption 5 is the attorney work-product privilege, which protects memoranda prepared by a party or its representative in contemplation of litigation. See Rule 26(b)(3) of the Fed. R. of Civ. P. Litigation need never have actually commenced, so long as specific claims have been identified which make litigation probable. Documents prepared by nonattorneys who are supervised by attorneys may qualify for the privilege. See, e.g., Exxon Corp v. FTC, 466 F. Supp. 1088 (D.D.C. 1978), aff'd, 663 F.2d 120 (D.C. Cir. 1980). The termination of litigation does not vitiate the protection for material otherwise properly categorized as attorney work-product. See FTC v. Grolier, Inc., 103 S. Ct. 2203 (1983).

The third traditional privilege incorporated into Exemption 5 concerns "confidential communications between an attorney and his/her client relating to a legal matter for which the client has sought legal advice." See Mead Data Central, Inc. v. Department of the Air Force, 566 F.2d 242 (D.C. Cir. 1977). The availability of this privilege is not limited to the context of litigation, and includes opinions given by an attorney to his/her client based upon facts divulged by the client to the attorney. This privilege is not often asserted due to the burden of showing that the communication was confidential and that the communication was not otherwise disclosed or the privilege waived.

Additionally, the Supreme Court in Federal Open Market Committee v.

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Merrill, 443 U.S. 340, 360 (1979), found that Exemption 5 incorporates a privilege based upon Federal Rule of Civil Procedure 26(c)(7), which provides that "for good cause shown . . . a trade secret or other confidential research, development, or commercial information" is protected from discovery. Other privileges might likewise be applicable under Exemption 5. See FOIA Update, Fall 1984, at 6.

1-5.142 Exemption 7--Investigatory Records

The 1974 Amendments substantially altered Exemption 7, which concerns investigatory material compiled for law enforcement purposes. This amended exemption requires that any withholding be based on one or more of six specified types of harm.

Exemption 7, as amended, allows nondisclosure of:

investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel. 5 U.S.C. §552(b)(7).

The analysis of whether a record is protected by this exemption involves two steps: first, the record must qualify as an "investigatory record compiled for law enforcement purposes," and second, its disclosure must reasonably be expected to cause one of the six enumerated harms of Exemption 7's subparts.

Investigatory records are those records which reflect or result from specifically focused inquiries by an agency under civil or criminal statutes, as well as those statutes authorizing administrative (i.e., regulatory) proceedings. Documents compiled for a proper law enforcement purpose do not lose their "status as investigatory records when the government decides not to prosecute." See Bast v. Department of Justice, 665 F.2d 1251 (D.C. Cir. 1981). The Supreme Court has recently held that

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information initially compiled for law enforcement purposes continues to retain its Exemption 7 protection where it is copied or summarized in a new document prepared for a non-law enforcement purpose. See FBI v. Abramson, 456 U.S. 615 (1982).

Subpart (A) of Exemption 7 authorizes the withholding of investigatory records compiled for law enforcement purposes if their disclosure would interfere with pending or prospective law enforcement proceedings. The exemption may apply where a related proceeding is still pending if disclosure would cause harm to that related proceeding. Cases pending before a circuit court of appeals are not considered pending unless other codefendants are awaiting trial; or the responsive document will be used in other litigation (criminal or civil); or unless there exists a substantial prospect of a court of appeal ordering a retrial. (In such cases, particular care is required to determine what information, if any, remains sensitive after the initial trial.) Furthermore, as a general rule, Exemption (b)(7)(A) is not applicable in matters where the government is being sued (i.e., not investigatory records compiled for law enforcement purposes). However, other exemptions may be applicable.

Subpart (B) of Exemption 7, which is aimed at avoiding prejudicial pre-trial publicity, is rarely asserted and has not been the subject of any significant judicial interpretation.

Subpart (C) of Exemption 7 has frequently been applied to withhold references to persons who were of "investigatory interest" to a criminal law enforcement agency but whose names did not enter the public realm. Identities of state and local law enforcement personnel are routinely withheld, as well as identities of federal law enforcement personnel.

Subpart (D) of Exemption 7 provides two types of protection for confidential source information: 1) information which would lead to the identity of a source and 2) all information provided in confidence by a confidential source when compiled in a criminal or national security investigation. Entities which have been found to qualify as confidential sources are: citizens providing unsolicited allegations of misconduct; citizens who respond to inquiries from law enforcement agencies; state and local law enforcement agencies; commercial or financial institutions; and foreign law enforcement agencies. Other federal agencies, however, cannot be considered confidential sources.

Subpart (E) of Exemption 7 protects investigatory records reflecting special techniques or procedures of investigation--if they are not known to the general public.

Subpart (F) of Exemption 7 protects information in investigatory

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records that would "endanger the life or physical safety of law enforcement personnel." See 5 U.S.C. §552(B)(7)(F). The courts have held FBI special agents, Secret Service agents, DEA special agents, and U.S. Marshals, among others, to be "law enforcement personnel."

1-5.143 Other Pertinent Exemptions

The remaining exemptions which may serve as bases for nondisclosure of U.S. Attorneys' records are principally Exemptions (1), (2), and (3), which apply, respectively, to "classified" records, internal personnel rules and practices, and statutorily exempt materials.

Exemption 1 requires that all decisions regarding declassification or disclosure of classified documents be made by the classifying component or agency. See 28 C.F.R. 16.4(e).

Exemption 2, covering internal personnel rules and practices, has been construed by several district and appellate courts. It has been interpreted to encompass two distinct categories of information: (1) internal matters of relatively trivial nature and (2) more substantial internal matters the disclosure of which would allow circumvention of a statute or agency regulation. An example of records which may be exempt under the first category would be information relating to performance ratings, recognition and awards, leave practices, transfers, travel expenses and allowances. See FBI Agents Ass'n v. F.B.I., 3 GDS 83,058 (D.D.C. 1983). An example of records which might be withheld under the second category would be portions of a BATF surveillance manual. See Crooker v. Bureau of Alcohol, Tobacco & Firearms, 670 F.2d 1051 (D.C. Cir. 1981).

An example of the application of Exemption 3, which permits nondisclosure of materials specifically exempted by statute, would be withholding of information obtained by the Equal Employment Opportunity Commission (EEOC) during an investigation of employment discrimination charges. Section 709(e) of Title VII of the Civil Rights Act of 1964, as amended, expressly prohibits release of such information by the EEOC, and that prohibition would extend to the Justice Department as custodian of the referred records for Title VII purposes. See 44 U.S.C. §3508.

A second example of Exemption 3 is Rule 6(e) of the Federal Rules of Criminal Procedure (Pub. L. No. 95-78, §2(a), 91 Stat. 319, July 30, 1977), which prohibits the disclosure of matters occurring before a federal grand jury.

A final example would be income tax returns, which may not be

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released to third-party requesters (Exemption 3 in conjunction with 26 U.S.C. §6103).

Procedures for responding to FOIA requests are discussed in USAM 10-6.320.

1-5.150 Relation to Civil and Criminal Discovery

Access to records under the FOIA is entirely independent of discovery under the Federal Rules of Civil and Criminal Procedure; an individual is free to use both means of gathering information.

The Act directs agencies to provide to "any person" any record reasonably described (5 U.S.C. §552(a)) and not exempt by the Act (5 U.S.C. §552(b)(1)-(9)). As a general rule, no inquiry is made as to the purpose for which the record is sought.

1-5.160 Sanctions for Violating FOIA

1-5.161 Judicial Proceedings Against an Agency

The Act provides for federal district court jurisdiction in proceedings brought against an agency to enjoin its withholding of records. See 5 U.S.C. §552(a)(4)(B). This used to be subsection (a)(4)(D) of the FOIA, not (c), and it has now been repealed--see Pub. L. No. 98-620, 98 Stat. 3335 (1984).

In addition, the 1974 amendments require the government to answer or otherwise plead within 30 days after service, unless an extension is obtained; this halves the 60-day period normally permitted in federal case. See 5 U.S.C. §552 (a)(4)(C).

In a case brought under FOIA the court determines the matter de novo and may examine the specific agency records in camera to determine whether they should be withheld under any exemption. See 5 U.S.C. §552(a)(4)(B). The burden is on the government to sustain its action. Id. The court may award reasonable attorneys fees and other litigation costs against the government when the complainant substantially prevails. See 5 U.S.C. §552(a)(4)(E).

1-5.162 Action Against Individual Employees

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Sanctions may be taken against individual agency employees who are found to have acted arbitrarily or capriciously in improperly withholding records, but several specific requirements must first be met. The court must first find that the records were improperly withheld and order their production. Additionally, the court must award attorneys fees and other litigation costs against the government. The court must also issue a written finding that the circumstances in the case raise questions as to whether agency personnel acted arbitrarily or capriciously in withholding the records.

After these requirements are met by the court, the Merit Systems Protection Board (MSPB) must promptly initiate a proceeding to determine whether disciplinary action is warranted against the office or employee who is primarily responsible for the withholding. The MSPB, after investigating and considering the evidence, submits its findings and recommendations to the agency concerned which then is required to take the corrective action recommended by the Board. See 5 U.S.C. §552(a)(4)(F). Additionally, there now exists independent jurisdiction for such MSPB investigations under 5 U.S.C. §1206 (e)(1) (1982).

Finally, failure to comply with a court order to produce the records in question may also result in punishment for contempt for the responsible employee. See 5 U.S.C. §552(a)(4)(G).

1-5.170 Departmental Publications

The following documents are Departmental publications relating to FOIA:

AG's Memorandum on the Public Information Section of the APA (1967);

AG's Memorandum on the 1974 Amendments to the FOIA (1975);

Department Regulations, 28 C.F.R. Part 16, Subpart A, "Production or Disclosure Under 5 U.S.C. §552(a);"

28 C.F.R. §50.9, "Defense of Civil Actions under FOIA;"

1984 Freedom of Information Case List including ("Short Guide to the Freedom of Information Act"), published annually by the Department of Justice; and

FOIA Update, published quarterly by the Office of Information and Privacy, Office of Legal Policy.

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1-5.200 PRIVACY ACT

1-5.210 Introduction and Overview of the Privacy Act (PA)

The Privacy Act of 1974, Pub. L. No. 93-579 (December 31, 1974), the principal provision of which (Section 3), is codified at 5 U.S.C. §552a, amended by Pub. L. No. 98-477, 98 Stat. 2209 (1984) was enacted in 1974 with an effective date of September 27, 1975. Although certain provisions of the Act were effective on the date of enactment, Section 3, the section with which this discussion deals unless otherwise noted, was not effective until September 27, 1975. The purposes of the Act are to:

- A. Safeguard an individual's privacy from misuse of federal records;
- B. Grant an individual access to records concerning him/her which are maintained by federal departments and agencies (hereinafter "agencies");
- C. Provide an individual with a limited right to correct inaccuracies in his/her records maintained by agencies;
- D. Provide an individual with a limited right to contest the routine uses and accuracy of these records;
- E. Impose certain administrative/procedural restrictions on agency collection, maintenance, and dissemination of personnel information;
- F. Limit the use by federal, state, and local governmental agencies of the social security number as a personal identifier; and
- G. Establish a two-year Privacy Protection Study Commission to develop recommendations for further legislative-type controls on the recordkeeping practices of federal, state, and local governmental agencies and private organizations.

With two exceptions (discussed below), the scope of the Act is set forth in Section 3(a), the definitional provision of the Act. It defines the term "federal agency" to include executive departments and agencies, independent establishments, government-controlled corporations, and the U.S. Postal Service. (This definition is identical to the definition of federal agency used in the Freedom of Information Act, as amended). An "individual" covered by the Act is a citizen of the United States and an alien lawfully admitted to the United States for permanent residence. A "record" subject to the Act is one maintained by a federal agency about an

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individual, access to which is by name, identifying number, symbol, or other similar identifying particular, including a finger print, voice-print, or photograph. The phrase "system of records" is defined as a grouping of records. Finally, a "routine use," with respect to disclosure of a record, is one which is compatible with the purpose for which it was collected.

The exceptions to Section 2 are found at Section 3(m) and Section 7 of the Act. Section 3(m) states that the Act does apply to a private contractor under contract with a federal agency for the operation on behalf of that agency of a system of records to accomplish an agency function. See 34 Fed. B. J. 330 (1975). Section 7 governs the use by state and local government agencies of the social security number as a personal identifier for their systems of records.

1-5.220 Privacy Act Operations Within the Justice Department

The regulations of the Department of Justice for administration of the Act are published at 28 C.F.R. Part 16, Subpart D. Subpart E of 28 C.F.R. Part 16 sets out the system of records exempt under Section 3(j) or (k) of the Act.

General Departmental supervisory responsibility over the Act is in the Justice Management Division under the direction of that Division's General Counsel. That office, which is designated the FOIA/PA Section, is responsible for receiving and routing to the appropriate office, board, division, or bureau requests to the Department for access and/or correction of records subject to the Act.

As the ensuing discussion makes clear, however, most requests are actually routed to a system manager in a particular component of the Department by the requester. In addition, that section is responsible for: monitoring compliance by the Department with the Act; making recommendations to improve such compliance; preparing the Department's annual report under the Act; and performing certain other administrative/management functions under the Act.

1-5.230 Procedure for Request Under PA

A. Introduction: Typically, a request for access or correction of records will be made by the requester (normally the subject of a record, another agency, or a member of the public) directly to the system manager responsible for the system of records to which access and/or correction is

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being sought. The system manager is the official or officials within the component designated in the system notice as being responsible for the system of records to which access and/or correction is sought.

In reviewing the systems notices maintained by the U.S. Attorneys' Offices, note that certain of these notices designated the administrative officer/assistant for the U.S. Attorney for each district. Certain of the notices designate the Director of the Executive Office for U.S. Attorneys and others designate a specific official in a particular U.S. Attorney's Office. For this reason, before handling a request, the applicable system notice should be consulted to determine who is the system manager. Questions on how to proceed upon receipt of such a request should be directed to the Executive Office for U.S. Attorneys, Office of Legal Services at FTS 633-4024.

In the event that the record requested is not in the custody or possession of the system manager or the component to which the request has been referred, but is known or believed to be in the possession or custody of another system manager or component of the Department, the requester should be notified promptly of this fact. Similarly, if the record is known or believed to be in the possession or custody of another federal agency, the requester should be promptly notified.

The Office of Information and Privacy should be consulted for assistance in determining how to process and handle a request under the Act.

B. General Requirements for Request: An individual requesting access to a record, whether for purposes of correction or review, must request access to a record about him/her by appearing in person or by writing to the component that maintains the record. Such a request must describe the records sought in sufficient detail to enable Department personnel to locate the system of records containing the record with a reasonable amount of effort. See 28 C.F.R. §16.41(b).

The individual must also include in his/her request a statement that he/she will pay any fees charged for actual copies of records furnished up to \$25.00 or a request for waiver of such fees. See 28 C.F.R. §16.41(c).

Any individual who submits a request for access to records must verify his/her identity in accordance with the provisions of 28 C.F.R. §16.41(d). Generally, a Form DOJ-361 is used. See USAM 1-5.231.

Whenever a request is deemed defective in form for failure to comply with the above requirements, the component responsible for responding to the request shall promptly so notify the requester in writing.

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C. Requests for Access: Whether routed by FOIA/PA Section or by a direct request, the system manager must make an initial determination whether to grant access and provide the Executive Office for U.S. Attorneys with his or her recommendation and an inventory of the file so that the Executive Office can respond to the requester. This determination must normally be made within 20 working days after the date of receipt of the request.

If access is granted, the component shall either provide the requester with a copy of the record or make the record available for his/her inspection. See 28 C.F.R. §16.46(a).

If access is to be denied, (e.g., the system of records is an exempt system, the individual or agency is not listed in the systems notice as a routine user, etc.), the requester must be notified within the applicable time limit of the determination, the reasons therefor, and the requester's right to administratively appeal the determination to the Office of Information and Privacy (OIP) within 30 days after receipt thereof. See 28 C.F.R. §16.48 (a).

D. Requests for Correction: A request for correction must be made in writing and must be addressed to the component that maintains the request. It must, in addition to the general requirements set out in B, above, identify the particular record, state the correction sought, and provide justification for the correction.

The following records are not subject to correction or amendment as provided in 28 C.F.R. §16.50:

1. Transcripts of testimony given under oath or written statements made under oath;
2. Transcripts of grand jury proceedings, judicial proceedings, or quasi-judicial proceedings which constitute the official record of such proceedings;
3. Pre-sentence reports; and
4. Records duly exempted from correction pursuant to 5 U.S.C. §552a(j) or 552a(k) by notice published in the Federal Register. See 28 C.F.R. §16.51.

Within 10 working days of receiving a request for correction, a component shall notify the requester whether his/her request will be granted or denied, in whole or in part. If the component grants the

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request for correction in whole or in part, it shall advise the requester of his/her right to obtain a copy of the corrected record upon request. If the request for correction is denied, in whole or in part, the requester must be notified in writing of the denial, the reason(s) therefor, and his/her right to administratively appeal the denial. See 28 C.F.R. §16.50(a).

The requester may appeal the denial to the Attorney General within 30 days of his/her receipt of the notice denying his/her request. An appeal to the Attorney General shall be made in writing and shall set forth the specific item or information sought to be corrected, and include any documentation said to justify the correction. Appeals should be addressed to the Office of Information and Privacy. See 28 C.F.R. §16.50(c).

The Director, Office of Information and Privacy, shall decide all appeals from denials of requests to correct records within 30 working days or receipt of the appeal, unless there is good cause to extend this period. If the denial of a request is affirmed on appeal, the requester shall be so notified in writing and advised of (1) the reason or reasons the denial has been affirmed, (2) the requester's right to file a statement of disagreement as provided in 28 C.F.R. §16.50(e), and (3) the requester's right to obtain judicial review of the denial. See 28 C.F.R. §16.50(d).

E. Judicial Review: In the event that a requester files a civil action against the Department under the Act, the Federal Programs Branch of the Civil Division will be responsible for overseeing the defense of the suit.

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1-5.231 Form for Identity Verification

Agency Facility _____
Control Number _____

PRIVACY ACT STATEMENT: In accordance with 28 CFR Section 16.41, personal data sufficient to identify the individuals submitting requests by mail under the Privacy Act of 1974, 5 U.S.C. Section 552a, is required. The purpose of this solicitation is to ensure that the records of individuals who are the subject of U.S. Department of Justice systems of records are not wrongfully disseminated by the Department. Failure to furnish this information will result in no action being taken on the request by the System Manager. False information on this form may subject the requester to criminal penalties under 18 U.S.C. Section 1001 and/or 5 U.S.C. Section 552a(i)(3).

FULL NAME OF REQUESTER¹ _____

CURRENT ADDRESS _____

DATE OF BIRTH _____

PLACE OF BIRTH _____

EMPLOYEE IDENTIFICATION NUMBER, if applicable _____
(or Social Security Number)² _____

I certify that I am the person named above and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) by a fine of not more than \$5,000.

Signature³ _____

Subscribed and sworn to before me this _____ day of _____, 19____ .

Signature of Notary _____

My Commission Expires _____

(Include Notary
Seal or Stamp
in this Space)

The bottom portion of this form to be completed by requester when he or she requests that information relating to himself or herself be released to another person.

Further, pursuant to 5 U.S.C. 552a(b) I authorize the U.S. Department of Justice or any of its component organizations to release any and all information relating to me to _____, (attorney or other designee).

Signature³ _____

¹Name of individual who is the subject of the record sought.

²Providing your social security number is voluntary. You are asked to provide your social security number only to facilitate the identification of records relating to you. Without your social security number, the Department may be unable to locate any or all records pertaining to you.

³Signature of individual who is the subject of the record sought.

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1-5.240 Section 3 Requirements--A Detailed Discussion

Records in a system of records subject to the Act may not be disclosed by "any means of communication to any person or to another agency," 5 U.S.C. §552a(b), without the prior written request or consent of the individuals to whom the records pertain. However, the Act sets forth 12 exceptions to this general restriction:

A. To officers and employees of the agency maintaining the records who have a need for the records in the performance of their official duties;

B. As required by the Freedom of Information Act (a discretionary disclosure under FOIA does not satisfy this exception, also an actual FOIA request must have been received for the information);

C. For a routine use published in the Federal Register in a notice of the system of records;

D. To the Bureau of the Census in connection with a census or survey;

E. For statistical research or reporting purposes to someone who has provided advance, adequate written assurance to the agency that the records will only be used for these purposes, provided the records are transferred in a form that does not identify the subjects of the records individually;

F. To the National Archives and Records Service (NARS) of the General Services Administration (GSA) if the records have sufficient historical value to warrant continued preservation;

G. To another agency for authorized civil or criminal law enforcement activity, if the head of that agency makes a written request for the records and specifies the particular portions of the records being sought and the law enforcement activity involved;

H. To a person upon a showing of compelling circumstances affecting the health or safety of the individual to whom the records pertain if at the time of such disclosure notification thereof is sent to the last known address of the individual;

I. To the Congress, congressional committees and subcommittees, and joint congressional committees and subcommittees;

J. To the General Accounting Office (GAO);

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K. Pursuant to a court order (including state and local as well as federal courts of competent jurisdiction); and

L. To a consumer reporting agency in accordance with Section 3711(f) of Title 31.

With two important exceptions, Section 3(c) of the Act requires an agency to keep an accurate accounting of the date, nature, and purpose of each disclosure of a record or records to another agency or to any person and the name and address of the person or agency to whom the disclosure was made. The first exception is with respect to disclosure to officers and employees of the agency in the performance of their official duties. See 5 C.F.R. §552a(b)(1). The second exception is for a disclosure required by the FOIA. See 5 U.S.C. §552a(b)(2).

In addition, this provision requires that a copy of the accounting made available to the individual who is the subject of the record disclosed except for disclosure to another agency for authorized civil or criminal law enforcement activity. See 5 U.S.C. §552a(b)(7). Finally, this provision requires that any person or agency to which disclosure of a record has been made must be informed about any subsequent correction or notation of dispute made by the agency as to that record, unless the agency was not required to make an accounting of the earlier disclosure.

Another principal requirement set forth in Section 3 of the Act is the right of an individual (with certain exceptions to be discussed) who is the subject of a record to access and, to a lesser extent, to seek to correct and control the accuracy of the record. Specifically, Subsection (d) of Section 3 requires that the agency permit the individual and upon that individual's request, a person of his/her choosing to gain access to the record to review its contents. In addition, if the individual requests the agency to amend or correct the record, the agency must acknowledge in writing its receipt of the request within 10 working days after the date the request is received and promptly:

A. Correct any portion of the record which the individual believes is not "accurate, relevant, timely, or complete," See 5 U.S.C. §552a(d)(2)(B)(1); or

B. Inform the individual that the agency will not amend or correct the record, the reasons why the agency will not do so, and notify the individual of his/her right to appeal this determination to a designated official within the agency.

Further, this provision requires an agency to establish a procedure to permit an individual to appeal the agency's refusal to amend or correct

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the individual's record. The agency must act on the appeal within 30 working days after receipt of the appeal, subject to a reasonable extension "for good cause shown." See 5 U.S.C. §552a(d)(3). If the reviewing official also refuses to amend or correct the record, the individual must be notified of his/her right to seek judicial review of the agency determination and be permitted to file with the agency a concise statement setting forth his/her reasons for the disagreement with the agency. This concise statement must then be added to the record in dispute. The agency may also add a statement as to its position to the record. However, any subsequent disclosure by the agency from a record which contains information about which a concise statement of disagreement exists must clearly note the dispute and include a copy of the statement of disagreement. The agency is permitted but not required to also include a copy of its statement of reasons for not making the amendment or correction requested.

However, certain systems of record are exempt from this accessing correction requirement. Moreover, Section 3(d)(5) states that:

Nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding. See 5 U.S.C. §552a(d)(5).

Apparently, this quoted provision is not intended to preclude access by an individual to a record which is available under other procedures, such as pre-trial discovery. Rather, its purpose is to require the individual to use existing procedures established for this purpose, e.g., the FOIA or the Federal Rules of Civil Procedure. Similarly, OMB has agencies to utilize the exemptions set forth in 5 U.S.C. §552a(j) and (k) to the extent that these exemptions apply, before utilizing this provision. (See 40 Fed. Reg. 28,960 (July 9, 1975), printed in USAM 1-5.271).

The Act permits an agency to limit or prohibit an individual from being granted access, and/or amending or correcting his/her records, pursuant to Section 3(j) and (k) of the Act. See 5 U.S.C. §552a(j) and (k). Section 3(j) permits an agency to promulgate regulations to prohibit both access and amendment/correction of systems of records:

- A. Maintained by the Central Intelligence Agency (CIA); and
- B. Maintained by a criminal law enforcement activity for such purposes (consult specific language of 5 U.S.C. §552a(j)(2)(A)-(C) as to the scope of the exemption).

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The exemptions in Section 3(k) are not as broad as those in Section 3(j) and must be construed more narrowly. Section 3(k) permits an agency to promulgate regulations to prohibit access and amendment/correction of systems of records to the extent that they contain:

A. Information properly classified for national defense or foreign policy purposes, pursuant to 5 U.S.C. §552(b)(1);

B. Investigatory material compiled for law enforcement purposes other than those listed in Section 3(j)(2)(A)-(C) of the Act, with certain provisions (again it is necessary to read these provisions to gain an understanding as to its scope);

C. Information maintained to protect the President and others, pursuant to 18 U.S.C. §3056.

D. Purely statistical records;

E. Investigatory material compiled for determining suitability for federal civilian or military employment, federal contracts, or access to classified information but only to the extent that disclosure would reveal a confidential source (an express promise of confidentiality is required to satisfy this provision as well as Section 3(k)(2) and (7));

F. Testing or examination material used solely to determine individual qualifications for appointment or promotion in the federal service, if disclosure would compromise the test or the testing process; and

G. Evaluation material used to determine promotion potential in the armed services to the extent that disclosure would reveal a confidential source.

Any agency maintaining systems of records subject to the Act, including a system of records meeting the requirements of Section 3(j) and (k) of the Act, must also satisfy certain other requirements set forth in Section 3. Without elaboration, these additional requirements direct the agency to:

A. Maintain in its records only such information as is relevant and necessary to accomplish a lawful agency function (5 U.S.C. §552a(e)(1));

B. Collect information for its records directly from the individual who is the subject of the record, to the extent practicable (5 U.S.C. §552a(e)(2));

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C. Inform each individual so requested to supply information the authority, purpose, routine uses, and the effects on him/her of not providing the requested information (5 U.S.C. §552a(e)(3)(A)-(D));

D. Publish in the Federal Register a detailed notice of any newly established or revised system of records containing personally identifiable information; in addition, subsection (e)(11) requires that 30-day, notice-and-comment rulemaking be used when a new routine use for an existing system of records is proposed by the agency. (In the case of the systems notices for the U.S. Attorneys' Office, see 40 Fed. Reg. 38, 732 (July 9, 1975), printed in USAM 1-5.271);

E. Maintain all records used by the agency in making any determination about the subject of a record with "such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination" (5 U.S.C. §552a(e)(5));

F. Prior to dissemination of any such record to any person (except for a dissemination required by 5 U.S.C. §552) make reasonable efforts to assure the accuracy, completeness, timeliness, and relevance of the records (5 U.S.C. §552a(e)(6));

G. Maintain no record describing how an individual exercises his/her First Amendment rights unless "expressly authorized by statute or by the individual . . . or unless pertinent to and within the scope of an authorized law enforcement activity" (5 U.S.C. §552a(e)(7));

H. Make reasonable efforts to notify the subject of a record that the record has been made available to another person under compulsory legal process when such process becomes a matter of public record (5 U.S.C. §552a(e)(8));

I. Establish standards of conduct and instruct its employees concerning the design, development, operation, maintenance, and dissemination of its system of records (5 U.S.C. §552a(e)(9));

J. Establish appropriate physical and other safeguards for its systems of records (5 U.S.C. §552a(e)(10));

K. Promulgate agency regulations to implement the Act (5 U.S.C. §552a(f));

L. Establish reasonable fees for making copies of records subject to the Act (5 U.S.C. §552a(f)(5));

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M. Apply the requirements of Section 3 of the Act to a government contractor obligated by contract to operate a system of records for the agency (5 U.S.C. §552a(m));

N. Prohibit the sale or lease of mailing lists of individual names and addresses, except as specifically authorized by law (5 U.S.C. §552a(n));

O. Report in advance to Congress, OMB, 5 U.S.C. §552a(o), and the Privacy Protection Study Commission (Section 5(e)(2)(A) of the Act) any proposal to establish or alter a system of records subject to the Act; and

P. Prepare an annual report on operations under the Act for submission to OMB (5 U.S.C. §552a(p)).

1-5.250 Relation to Civil and Criminal Discovery

The Privacy Act may be a direct bar to discovery under the Federal Rules of Civil and Criminal Procedure. The following three exceptions to the Act's general disclosure prohibition may often be available in civil or criminal discovery:

A. Disclosure to a government agency for a law enforcement purpose, 5 U.S.C. §552a(b)(7);

B. Disclosure pursuant to a court order, 5 U.S.C. §552a(b)(11); and

C. Disclosure pursuant to a routine use as defined in writing by the agency, 5 U.S.C. §552a(b)(3).

An agency may, upon receipt of a written request, disclose a record to another agency or unit of state or local government for a civil or criminal law enforcement activity without permission from the subject. The request must specify the law enforcement purpose for which the record is requested and the particular record requested; blanket requests for all records pertaining to an individual are not permitted. See 5 U.S.C. §552a(b)(7).

Disclosure demanded by an order from a court of competent jurisdiction (5 U.S.C. §552a(b)(11)) or subpoena of an agency (5 U.S.C. §552a(e)(8)) is another exception from the permission requirement which may be employed in responding to discovery in civil and criminal discovery. Note that it is the Department's policy that the mere issuance in discovery proceedings of a subpoena duces tecum which is always subject to the power of the court to quash or limit, does not meet the standard of (b)(11). In order to come

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within the Privacy Act exception permitting disclosure the court must specifically direct that the specific records in question be disclosed. See United States v. Brown, 453 F. Supp. 798 (1978). However, when a record is disclosed under compulsory legal process under this subsection, and the issuance of that court order or subpoena is made public, the agency must make reasonable efforts to notify the subject of the record. See 5 U.S.C. §552a(e)(8). This may be done by notifying the individual by mail at his or her last known address. See 40 Fed. Reg. 28, 965 (July 9, 1975), printed in USAM 1-5.271, infra.

Records may also be disclosed without the prior consent of the individual for a "routine use" if that "routine use" has been specifically described and printed in the Federal Register, 5 U.S.C. 552a(b)(3). There are several routine uses applicable to U.S. Attorney's Office civil and criminal case files which may be of particular aid in discovery. For a specific listing, consult 40 Fed. Reg. 38,784 and 40 Fed. Reg. 38,786 for civil and criminal case files, respectively, printed in USAM 1-5.271, infra.

A written accounting of the disclosure of records under subsections (b)(11) and (b)(7) and "routine uses" (b)(3) must be kept even though permission from the subject is not required. This includes both written and oral disclosures. See 5 U.S.C. §552a(c). Please see suggested accounting forms for disclosure, USAM 1-5.251 and 1-5.271, infra.

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1-5.251 Form for Accounting of Disclosures

Case No. _____

D.J. No. _____

Accounting of Disclosures Subject
to Privacy Act of 1974 (5 U.S.C. 552a(c))

Date, Name and Address of Person or Agency to Whom Made	Nature of Disclosure (information disclosed)	Purpose of Disclosure (reason for disclosure)	Continuing Disclosure	
			Opening Date	Closing Date

USAM (superseded)

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1-5.260 Judicial Remedies and Penalties for Violating PA

The Act specifically provides civil remedies, 5 U.S.C. §552a(g), including damages, and criminal penalties, 5 U.S.C. §552a(i), for violations of the Act.

The civil action provisions are premised on agency violations of the Act or agency regulations promulgated thereunder.

An individual claiming such a violation by the agency may bring the civil action in a federal district court. If the individual substantially prevails, the court may assess reasonable attorney fees and other litigation costs against the agency. In addition, the court may direct the agency to grant the plaintiff access to his/her records, and when appropriate direct the agency to amend or correct its records subject to the Act.

Actual damages may be awarded to the plaintiff for intentional or willful refusal by the agency to comply with the Act.

In the case of "criminal violations" of the Act (Section 3 of the Act, 5 U.S.C. §552a(i) limits these so-called penalties to misdemeanors), an officer or employee of an agency may be fined up to \$5,000 for:

A. Knowingly and willfully disclosing individually identifiable information which is prohibited from such disclosure by the Act or by agency regulations; or

B. Willfully maintaining a system of records without having published a notice in the Federal Register of the existence of that system of records.

In addition, an individual may be fined up to \$5,000 for knowingly and willfully requesting or gaining access to a record about an individual under false pretenses.

While the Act does not establish a time limit for prosecutions for violation of the criminal penalties provision of the Act, it does limit the bringing of a civil action to two years from the date on which the cause of action arose. See 5 U.S.C. §552a(g)(5). However, the time limit for filing a civil action may be tolled for material and willful misrepresentation by the agency of any information which is required to be disclosed, if the misrepresentation is material to the liability of the agency.

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A civil action may be filed in the U.S. District Court in the district where the requester resides or has his/her principal place of business; in which the agency records are located; or in the District of Columbia.

1-5.270 Departmental Publication

Section (a)(2) of the Freedom of Information Act requires each agency to "make available for public inspection and copying" the agency's so-called (a)(2) materials, that is, certain final opinions and orders, certain statements of policy and interpretation, and certain administrative staff manuals and instructions to staff. Pursuant to the (a)(2) requirements, the Department of Justice published an index of such material. See 42 Fed. Reg. 15347. Listed therein for the U.S. Attorneys were the following publications:

- A. The United States Attorneys' Manual;
- B. The United States Attorneys' Bulletin;
- C. Proving Federal Crimes, May 1980 Edition.

Accordingly, requests made to your office to review or copy these publications should be honored. Copies of these publications may be purchased for ten cents per page and the fee should be assessed in all cases involving 30 or more pages. Payment by check or money order, made payable to the U.S. Treasury, should be forwarded to the Executive Office for U.S. Attorneys, Office of Legal Services, with a short note of explanation. If the request is for a large number of pages and would burden your copying capacity, the request may be referred to the Executive Office for U.S. Attorneys, Office of Legal Services, for processing and response to the requester.

1-5.271 Special Edition on Privacy Act of U.S. Attorneys' Bulletin

Vol. 23, No. 231-1/2 (October 20, 1975).

Summary of Contents:

Reprint of OMB Privacy Act Implementation Guidelines, 40 Fed. Reg. 28948-78 (July 9, 1975)

Reprint of Listing of U.S. Attorneys' Systems of Records as Published in Federal Register, 40 Fed. Reg. 38782-95 (August 27, 1975)

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Reprint of Exemptions from Parts of PA for Selected Systems of
Records Maintained by U.S. Attorneys, 40 Fed. Reg. 39411
(August 27, 1975)

Copy of Form Designed For Written Accounting of Specific Disclosures

Copies of "Routine Uses" Applicable to U.S. Attorneys' Offices
Criminal & Civil Case Files

1-5.300 INTERFACE BETWEEN THE PRIVACY AND FREEDOM OF INFORMATION ACTS
[Reserved]

1-5.400 SUBPOENA, QUESTIONING OR ARREST OF REPORTERS

1-5.410 Subpoena of Reporters

By Order No. 916-80, 45 Fed. Reg. 76436 (November 19, 1980), the
Department published the procedures to be followed in seeking any
application for a warrant to search the news media. Portions of these
procedures, which are found at 28 C.F.R. §50.10, are set out below.

Because freedom of the press can be no broader than
the freedom of reporters to investigate and report the
news, the prosecutorial power of the government should
not be used in such a way that it impairs a reporter's
responsibility to cover as broadly as possible
controversial public issues. This policy statement is
thus intended to provide protection for the news media
from forms of compulsory process, whether civil or
criminal, which might impair the news gathering
function. In balancing the concern that the
Department of Justice has for the work of the news
media and the Department's obligation to the fair
administration of justice, the following guidelines
shall be adhered to by all members of the Department
in all cases:

(a) In determining whether to request issuance of
a subpoena to a member of the news media or for
telephone toll records of any member of the news
media, the approach in every case must be to strike
the proper balance between the public's interest in
the free dissemination of ideas and information and

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the public's interest in effective law enforcement and the fair administration of justice.

(b) All reasonable attempts should be made to obtain information from alternative sources before considering issuing a subpoena to a member of the news media, and similarly all reasonable alternative investigative steps should be taken before considering issuing a subpoena for telephone toll records of any member of the news media.

(c) Negotiations with the media shall be pursued in all cases in which a subpoena to a member of the news media is contemplated. These negotiations should attempt to accommodate the interests of the trial or grand jury with the interests of the media. Where the nature of the investigation permits, the government should make clear what its needs are in a particular case as well as its willingness to respond to particular problems of the media.

(d) Negotiations with the affected member of the news media shall be pursued in all cases in which a subpoena for the telephone toll records of any member of the media is contemplated where the responsible Assistant Attorney General determines that such negotiations would not pose a substantial threat to the integrity of the investigation in connection with which the records are sought. Such determination shall be reviewed by the Attorney General when considering a subpoena authorized under subsection (e).

(e) No subpoena may be issued to any member of the news media or for the telephone toll records of any member of the news media without the express authorization of the Attorney General; provided that, if a member of the news media with whom negotiations are conducted under subsection C expressly agrees to provide the material sought, and if that material has already been published or broadcast, the U.S. Attorney or the responsible Assistant Attorney General, after having been personally satisfied that the requirements of this section have been met, may authorize issuance of the subpoena and shall thereafter submit to the Office of Public Affairs a report detailing the

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circumstances surrounding the issuance of the subpoena.

(f) In requesting the Attorney General's authorization for a subpoena to a member of the news media, the following principles will apply:

(1) In criminal cases, there should be reasonable grounds to believe, based on information obtained from non-media sources, that a crime has occurred, and that the information sought is essential to a successful investigation--particularly with reference to directly establishing guilt or innocence. The subpoena should not be used to obtain peripheral, non-essential, or speculative information.

(2) In civil cases there should be reasonable grounds, based on non-media sources, to believe that the information sought is essential to the successful completion of the litigation in a case of substantial importance. The subpoena should not be used to obtain peripheral, non-essential, or speculative information.

(3) The government should have unsuccessfully attempted to obtain the information from alternative non-media sources.

(4) The use of subpoenas to members of the news media should, except under exigent circumstances be limited to the verification of published information and to such surrounding circumstances as relate to the accuracy of the published information.

(5) Even subpoena authorization requests for publicly disclosed information should be treated with care to avoid claims of harassment.

(6) Subpoenas should, wherever possible, be directed at material information regarding a limited subject matter, should cover a reasonably limited period of time, and should avoid requiring production of a large volume of unpublished material. They should give reasonable and timely notice of the demand for documents.

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(g) In requesting the Attorney General's authorization for a subpoena for the telephone toll records of members of the news media, the following principles will apply:

(1) There should be a reasonable ground to believe that a crime has been committed and that the information sought is essential to the successful investigation of that crime. The subpoena should be narrowly drawn as possible; it should be directed at relevant information regarding a limited subject matter and should cover a reasonably limited time period. In addition, prior to seeking the Attorney General's authorization, the government should have pursued all reasonable alternative investigation steps as required by subsection (b).

(2) When there have been negotiations with a member of the news media whose telephone toll records are to be subpoenaed, the member shall be given reasonable and timely notice of the determination of the Attorney General to authorize the subpoena and that the government intends to issue it.

(3) When the telephone toll records of a member of the news media have been subpoenaed without the notice provided for in paragraph 2, of this subsection, notification of the subpoena shall be given the member of the news media as soon thereafter as it is determined that such notification will no longer pose a clear and substantial threat to the integrity of the investigation. In any event, such notification shall occur within 45 days of any return made pursuant to the subpoena, except that the responsible Assistant Attorney General may authorize delay of notification for no more than an additional 45 days.

(4) Any information obtained as a result of a subpoena issued for telephone toll records shall be closely held so as to prevent disclosure of the information to unauthorized persons or for improper purposes.

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1-5.420 Questioning or Arrest of Reporters

With regard to the questioning or arrest of members of the news media, 28 C.F.R. §50.10 provides:

(h) No member of the Department shall subject a member of the news media to questioning as to any offense which he is suspected of having committed in the course of, or arising out of, the coverage or investigation of a news story, or while engaged in the performance of his official duties as a member of the news media without the express authority of the Attorney General; provided, however, that where exigent circumstances preclude prior approval, the requirements of subsection (a) of this section shall be observed.

(i) A member of the Department shall secure the express authority of the Attorney General before a warrant for an arrest is sought, and whenever possible before an arrest not requiring a warrant, of a member of the news media for any offense which he is suspected of having committed in the course of, or arising out of, the coverage or investigation of a news story, or while engaged in the performance of his official duties as a member of the news media.

(j) No member of the Department shall present information to a grand jury seeking a bill of indictment, or file an information, against a member of the news media for any offense which he is suspected of having committed in the course of, or arising out of, the coverage or investigation of a news story, or while engaged in the performance of his official duties as a member of the news media, without the express authority of the Attorney General.

(k) In requesting the Attorney General's authorization to question, to arrest or to seek an arrest warrant for, or to present information to a grand jury seeking a bill of indictment or to file an information against, a member of the news media for an offense which he is suspected of having committed during the course of, or arising out of, the coverage or investigation of a news story, or committed while engaged in the performance of his official duties as a member of

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the news media, a member of the Department shall state all facts necessary for determination of the issues by the Attorney General. A copy of the request shall be sent to the Director of Public Affairs.

(1) When an arrest or questioning of a member of the news media is necessary before prior authorization of the Attorney General can be obtained, notification of the arrest or questioning, the circumstances demonstrating that an exception to the requirement of prior authorization existed, and a statement containing the information that would have been given in requesting prior authorization, shall be communicated immediately to the Attorney General and to the Director of Public Affairs.

(m) In light of the intent of this section to protect freedom of the press, news gathering functions, and news media sources, this policy statement does not apply to demands for purely commercial or financial information unrelated to the news gathering function.

(n) Failure to obtain the prior approval of the Attorney General may constitute grounds for an administrative reprimand or other appropriate disciplinary action. The principles set forth in this section are not intended to create or recognize any legally enforceable right in any person.

1-5.430 Office to be Contacted

Whenever authorization to subpoena, question, or arrest a member of the news media is being sought under 28 C.F.R. §50.10(a)-(k), in a case or matter under the supervision of the Criminal Division, the Legal Support Unit, Office of Enforcement Operations, Criminal Division, should be contacted at FTS 724-6672. In cases or matters under the supervision of other divisions of the Department of Justice, the appropriate division should be contacted.

1-5.500 PRESS INFORMATION

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1-5.501 Public Comments by Department of Justice Employees Regarding
Investigations, Indictments, and Arrests

Public out-of-court comments by employees of the Department of Justice regarding investigations, indictments, arrests, and ongoing litigation, should be minimal, consistent with the Department of Justice responsibility of keeping the public informed.

Because charges that result in an indictment or arrest should be argued and proved in court, and not in a newspaper or broadcast, public comment from the Department on such charges should be limited. Section 50.2 of Title 28 of the Code of Federal Regulations defines the types of information that may be and the types of information that may not be made available to the news media about pending civil and criminal cases by employees of the Department of Justice.

All employees of the Department of Justice should familiarize themselves with the guidelines and instructions contained in Section 50.2 of Title 28, Code of Federal Regulations and adhere to them in both letter and spirit. In reviewing Section 50.2, all employees should note that it devotes considerable attention to the need to avoid prejudicing the rights of defendants of fair trials.

Fairness, accuracy, and sensitivity to the rights of defendants, as well as the public's right to know, must prevail in all dealings with the news media. Favoritism should be shown to no member of the media.

To ensure that overall Departmental policy is consistent and known by all, including U.S. Attorneys and personnel of the Federal Bureau of Investigation and the Drug Enforcement Administration, the following additional policies shall be followed:

A. Unless there are unusual circumstances, news conferences should not be held to announce investigations, indictments, or arrests. Unusual circumstances might involve a publicized fugitive from justice. As 28 C.F.R. §50.2(8) indicates, broader leeway is permitted in the release of information about a defendant who is a fugitive. The possibility of news conferences under such circumstances should be discussed when possible with the Director of the Office of Public Affairs (OPA) through agency or headquarters public information offices (PIOs). If such a news conference is held, extreme care should be taken to avoid statements that brand fugitives as guilty of crimes for which they have not been convicted.

As is also noted in 28 C.F.R. §50.2(9), occasions may arise in which a representative of the Department may feel that release of information beyond the limits of 28 C.F.R. §50.2 is necessary for the fair administra-

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tion of justice and the law enforcement process. In such cases, the representative of the Department should request permission for such release from the Attorney General or the Deputy Attorney General or the Director of Public Affairs through agency or headquarters PIOs.

B. Information about investigations, indictments and arrests should be provided equally to all members of the news media, subject to specific limitations imposed by law or court rule or order. Written news releases relating the essentials of the indictment, complaint, warrant, or pleading may be prepared and distributed, along with copies of those documents when appropriate. U.S. Attorneys, or Assistant U.S. Attorneys with permission of the U.S. Attorney, may answer legitimate questions about indictments or arrests, either in press conferences or in discussions with individual reporters, but answers should not go beyond explanation of what is in the public document or the confines of 28 C.F.R. §50.2.

C. Except for unusual circumstances, radio actualities and TV announcements may be made in connection with indictments or arrests. Any U.S. Attorney may adopt or continue a policy of not making such appearances, but if utilized; great caution and restraint should be exercised in any such broadcast situation. (This policy of allowing the option of reading for broadcast such items is a change from previous Department policy.) It should be emphasized that the policy directive has been approved only on the understanding that it be implemented with restraint. There will still be cases where such appearances might not be appropriate in light of the Department's commitment not to prejudice the rights of defendants. Any questions should be discussed with the Director of Public Affairs through agency or headquarters PIOs.

D. Whenever possible, press releases should be coordinated with interested agencies of the Department and credit and recognition should be given to all appropriate investigative agencies when announcing indictments or arrest. All releases on major cases should be reviewed in advance of use by the Office of Public Affairs.

E. Generally, even the existence of particular criminal investigations should not be acknowledged or commented on.

1. In situations in which the Department undertakes an investigation or inquiry as a result of a referral from another agency or individual, and the agency or individual has publicly said that such a referral has been made to the Department for investigation, the Department may upon inquiry acknowledge the existence of the investigation or inquiry.

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2. Past practice has seen a broad exception to the no-acknowledgement rule develop in which particular antitrust and civil rights investigations have been publicly acknowledged. Such particular investigations of individuals should adhere to the no-acknowledgement rule. In the civil rights context, a limited exception may be in situations where a particular incident that causes a civil rights investigation has itself been publicized and thereby thrust in the public domain, or the matter is one which is under review pursuant to the Department's dual prosecution policy. In the antitrust area, while investigations of individuals or particular companies should be subject to the general no-acknowledgment rule, investigations may be acknowledged of overall industry or market practices.

Other possible exceptions may arise that will have to be decided on a case-by-case basis. On the latter, field offices should consult with the Director of the Office of Public Affairs through agency or headquarters PIOs. The reasons for this policy are obvious. To acknowledge even the existence of an investigation may harm the rights of an individual or prejudice a case. This policy is sometimes difficult for the media to understand. For example, some may question if it is the wise course to respond "no comment" to an inquiry when the subject of the inquiry is not under investigation. But, if the questioner is told the subject of his/her inquiry is not under investigation and then is told "no comment" on another inquiry about another subject who is under investigation, the questioner can soon determine who is under investigation. The fundamental root of this policy is its sensitivity to the rights of individuals, and the belief that the Department of Justice has a particular responsibility to these principles.

F. The policies set out above, which supplements 28 C.F.R. §50.2, do not preclude in any way news conferences or participation in media programs by personnel that concern Department or field office policies, issues, and priorities.

Department of Justice policy is one of openness, fairness, decency, and civility to all. This directive is designed to carry out and enhance that policy.

1-5.510 Press Information and Privacy

Guidelines concerning release to the news media, or to the public, of information relating to criminal and civil proceedings, by Department personnel, are set forth in 28 C.F.R. §50.2. The guidelines regarding criminal actions apply from the start of an investigation to termination of the proceedings by trial or otherwise. Similarly, the standards regarding civil actions apply during investigation or litigation. The release of certain types of information is permitted; release of other types is

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expressly forbidden. As a general rule, the types of information permitted to be released under 28 C.F.R. §50.2 may be considered in the public domain and release is not restricted by the provisions of the Privacy Act of 1974, 5 U.S.C. §552a. There may be unique circumstances, however, when release of some types of information permitted by 28 C.F.R. §50.2 would, because of unusual circumstances, constitute a clearly unwarranted invasion of privacy in a particular case. If the U.S. Attorney determines that release of such information would constitute a clearly unwarranted invasion of personal privacy in the particular case, because of these circumstances, he/she should not release the information without the consent of the subject. It must be emphasized, however, that this is the exception, not the rule. Information authorized to be released under 28 C.F.R. §50.2 should normally be released to the news media or other members of the public upon request.

1-5.520 Review of Speeches, Written Statements or Articles

The Office of Public Affairs reviews all speeches, written statements or articles--except Congressional testimony--by the Attorney General and other officials of the Department. The purpose is to avoid inadvertent departures from Department policy or statements which could reasonably mislead the public as to Department views or intentions. The function is neither proofreading nor censorship, but to assure maximum clarity in statements by those representing the Department, particularly where the subject is controversial.

In any case where a U.S. Attorney writes a speech, statement, or article that deals with Department policy, and there is any likelihood that the views expressed will receive more than local attention, it is suggested that review by the Office of Public Affairs be requested.

1-5.530 Review of Press Releases

While the Office of Public Affairs does not review press releases by U.S. Attorneys that are of only local interest it will do so on request.

It is essential, however, that when the event may be of more than local significance, the Office of Public Affairs be advised by the U.S. Attorney's Office at least 48 hours in advance of the event, which is usually the return of an indictment, or the filing of a criminal information or complaint. Necessary papers, including a draft press release if one has been prepared, should be forwarded to the Office of Public Affairs at least 24 hours in advance. In all cases it is advisable to allow that office to prepare an accurate news release for national

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distribution where that is appropriate. In cases where doubt exists as to whether an event is newsworthy, the U.S. Attorney's Office should consult the Office of Public Affairs by telephone in advance of release.

1-5.540 Press Information Guidelines for Criminal Cases

The guidelines for release of information to the media--by press releases or in any other way--are found in 28 C.F.R. §50.2(b). The criminal guidelines follow:

1. These guidelines shall apply to the release of information to news media from the time a person is the subject of a criminal investigation until any proceeding resulting from such an investigation has been terminated by trial or otherwise.

2. At no time shall personnel of the Department of Justice furnish any statement or information for the purpose of influencing the outcome of a defendant's trial, nor shall personnel of the Department furnish any statement or information, which could reasonably be expected to be disseminated by means of public communication, if such statement or information may reasonably be expected to influence the outcome of a pending or future trial.

3. Personnel of the Department of Justice, subject to specific limitations imposed by law or court rule or order, may make public the following information:

(i) The defendant's name, age, residence, employment, marital status, and similar background information.

(ii) The substance or text of the charge, such as a complaint, indictment or information.

(iii) The identity of the investigating and/or arresting agency and the length or scope of an investigation.

(iv) The circumstances immediately surrounding an arrest, including the time and place of arrest, resistance, pursuit, possession and use of weapons,

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and a description of physical items seized at the time of arrest.

Disclosure should include only incontrovertible, factual matters, and should not include subjective observations. In addition, where background information or information relating to the circumstances of an arrest or investigation would be highly prejudicial or where the release thereof would serve no law enforcement function, such information should not be made public.

4. Personnel of the Department shall not disseminate any information concerning a defendant's prior criminal record.

5. Because of the particular danger of prejudice resulting from statements in the period approaching and during trial, they ought strenuously to be avoided during that period. Any such statement or release shall be made only on the infrequent occasion when circumstances absolutely demand a disclosure of information and shall include only information which is clearly not prejudicial.

6. The release of certain types of information generally tends to create dangers of prejudice without serving a significant law enforcement function. Therefore, personnel of the Department shall refrain making available the following:

(i) Observations about a defendant's character.

(ii) Statements, admissions, confessions, or alibis attributable to a defendant, or the refusal or failure of the accused to make a statement.

(iii) Reference to investigative procedures such as fingerprints, polygraph examinations, ballistic tests, or laboratory tests, or to the refusal by the defendant to submit to such tests or examinations.

(iv) Statements concerning the identity, testimony, or credibility of prospective witnesses.

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(v) Statements concerning evidence or argument in the case, whether or not it is anticipated that such evidence or argument will be used at trial.

(vi) Any opinion as to the accused's guilt, or the possibility of a plea of guilty to the offense charged, or the possibility of a plea to a lesser offense.

7. Personnel of the Department of Justice should take no action to encourage or assist news media in photographing or televising a defendant or accused person being held or transported in federal custody. Departmental representatives should not make available photographs of a defendant unless a law enforcement function is served thereby.

8. This statement of policy is not intended to restrict the release of information concerning a defendant who is a fugitive from justice.

9. Since the purpose of this statement is to set forth generally applicable guidelines, there will, of course, be situations in which it will limit the release of information which would not be prejudicial under the particular circumstances. If a representative of the Department believes that in the interest of the fair administration of justice and the law enforcement process information beyond these guidelines should be released, in a particular case, he shall request the permission of the Attorney General or the Deputy Attorney General to do so.

1-5.545 Publicity Concerning Threats Against Government Officials

Media attention given to certain kinds of criminal activity seems to generate further criminal activity. As applied to threats against government officials, this "contagion hypothesis" appears substantiated by data supplied by the United States Secret Service. The average number of threats investigated by the Service increased 85 percent during the six-month period following attacks by Lynette Fromme and Sara Jane Moore on President Ford. In the six-month period following the March 30, 1981, attempt on the life of President Reagan, the average number of threats against protectees of the Secret Service increased by over 150 percent from a similar period during the year before.

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Of the individuals who come to the Service's attention as creating a possible danger to Service protectees, approximately 75 percent are mentally ill. The Service is particularly concerned that media attention given to cases involving threats against protectees may provoke violent acts from such mentally unstable persons.

The Criminal Division requests that U.S. Attorneys carefully consider the possible adverse effect before releasing information to the public concerning cases and matters involving threats against the President (18 U.S.C. §871) as well as other Secret Service protectees (18 U.S.C. §879). See also USAM 9-65.140.

1-5.550 Press Information Guidelines in Civil Cases

The Guidelines for civil cases in 28 C.F.R. §50.2(c) follow:

Personnel of the Department of Justice associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial and which relates to:

- (1) Evidence regarding the occurrence or transaction involved.
- (2) The character, credibility, or criminal records of a party, witness, or prospective witness.
- (3) The performance or results of any examinations or tests or the refusal or failure of a party to submit to such.
- (4) An opinion as to the merits of the claims or defense of a party, except as required by law or administrative rule.
- (5) Any other material reasonably likely to interfere with a fair trial of the action.

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1-5.560 Discussion of Press Release With Potential Defendants

Press releases should not be discussed with potential defendants, nor should any agreement be made with a potential defendant not to issue a press release. No offer may be made in consent decree negotiations not to issue a press release, nor to include any particular statement or language in a press release.

1-5.570 Discussion of Press Releases With Other Agencies

With the exception of the Internal Revenue Service, no other agency should issue a press release or comment on a case involving the Department of Justice without specific permission from the Office of Public Affairs. In most cases where another agency of government wishes to have a simultaneous release, the Office of Public Affairs will make arrangements to provide them a copy of the release being made by the Department of Justice in Washington. The purpose of this practice is to avoid inadvertent prejudice to other parties in the case.

1-5.580 Press Releases on Criminal Tax Prosecutions

In the interest of securing uniform maximum coverage with respect to criminal tax prosecutions, the Attorney General has approved the issuance by the Internal Revenue Service of appropriate press releases in such cases. The Internal Revenue Service is the agency most vitally concerned with achieving the greatest deterrent effect through news coverage of such prosecutions as an aid to the enforcement of the internal revenue laws. Accordingly, with the full concurrence of the Department of Justice, on December 22, 1970, the Service published a supplement in its manual (Manual Supplement 1(19) G-45) directing how such releases shall be prepared. The press releases must be within the guidelines laid down by the Attorney General (28 C.F.R. §50.2) and must be cleared with the U.S. Attorneys.

Section 3 of the IRS Supplement, which sets forth the procedures to be followed state:

.01 The senior Special Agent assigned to a case will provide the District Public Information Officer with necessary information to be included in a news release upon:

1. The return of an indictment or the filing of an information or complaint charging a criminal tax offense;

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2. The entry of a plea of guilt or nolo contendere;
3. The trial decision; and
4. The ultimate sentence.

.02 The District Public Information Officer is responsible for prompt preparation of draft news releases based on the information received from the responsible Special Agent.

.03 Release will be prepared within the guidelines in the Attorney General's Statement of Policy Concerning the Release of Information . . . Relating to Criminal Proceedings, dated April 16, 1965 (see Attachment 2 to MS CR 1(19) G-24). Releases will be cleared within the district office in accordance with such procedure as the District Director may establish, and submitted to the U.S. Attorney in charge of the case.

.04 Ordinarily the U.S. Attorney will return the draft, with any recommended modifications, to the IRS district office for dissemination to the news media in accordance with established Service procedure.

.05 If, for some extraordinary reason the U.S. Attorney desires to be the office of origin, together with the District Public Information Officers' assistance he will take steps necessary to facilitate distribution of the release to the news media.

The agreement with the Service as embodied in the Manual Supplement specifically exempts the release of information about tax prosecutions in Organized Crime cases. Therefore, release of such information should be made in accordance with existing Department policies and procedures.

1-5.590 General Style of Press Releases

The general style of press releases should be simple, direct and objective. Self-serving or laudatory comments or compliments should be avoided. In case of doubt, U.S. Attorneys should seek advice from the Office of Public Affairs.

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1-5.600 REPORTING SYSTEM FOR U.S. ATTORNEYS

The management officials of the Department of Justice need to be kept aware of major developments in important cases handled in the U.S. Attorneys' Offices. Consistency in litigating posture, overall concerns of the Executive Branch, possible impact on the federal budget of major litigation and the need to coordinate strategy in cases with multi-state impact, all necessitate prompt and complete notification to the Department of Justice headquarters.

1-5.610 Litigation--Pending and New

The following procedures ought to be followed for communicating major developments to the Department of Justice in new or pending important cases.

A. Where the litigation control of a case is at one of the Justice Department litigating divisions, major developments in important cases, as defined below, should be reported to the appropriate contact attorney within that litigating division as soon as possible after it has occurred, or in those cases where the event can be controlled, in time to arrive in Washington at least five working days in advance. Notification should always be in writing, even where verbal communication has already taken place. A copy of all such reports should be sent simultaneously to the Executive Office for U.S. Attorneys.

B. In those cases where litigation direction is from the U.S. Attorney's Office itself, communication of major developments should be with the Executive Office for U.S. Attorneys, as soon as possible, and, in the case where the development can be controlled, at least five working days in advance. Again, a written communication is required, even where verbal notice has been given.

C. In either situation, it is the responsibility of the U.S. Attorney's Office to make sure that the development is reported. Verbal discussion with a litigating division is no substitute for this responsibility. If there is any ambiguity over to whom a report should be made, please report to the Executive Office for U.S. Attorneys.

D. The following are suggested criteria for determining what are major developments in important cases. Please note that this is not an exhaustive list. Also observe that developments can include many steps other than the filing or settling of a case; even procedural motions can be important enough to report in some instances.

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1. Implications cutting across several federal agencies;
2. Large monetary liability at issue;
3. State or local government unit as a party;
4. Involvement of some aspect of foreign relations;
5. High likelihood of coverage in news media, or Congressional interest; and
6. Any serious challenge to Presidential authority.

1-5.620 Reporting on Other Matters

Information falling within the criteria set forth below should be sent by TWX to the Executive Office for U.S. Attorneys for further distribution to the Attorney General, Deputy Attorney General, Associate Attorney General and the appropriate Assistant Attorney General.

It should be noted that access to such reports is strictly controlled and limited to those officials having a need to know.

A. Emergencies--e.g., riots, taking of hostages, hijackings, kidnappings, prison escapes with attendant violence, serious bodily injury to or caused by Department personnel;

B. Allegations of improper conduct by a Department employee, a public official, or a public figure; including criticism by a court of the Department's handling of a litigation matter;

C. Serious conflicts with other governmental agencies or departments;

D. Issues or events that may be of major interest to the press, Congress or the President;

E. Other information so important as to warrant the personal attention of the Attorney General within 24 hours.

1-5.621 Format for Reporting

The following format should be used:

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Line 1: Department of Justice Urgent Report

Line 2: Designation of subject as "civil" or "criminal"

Line 3: Security classification, if any; "sensitive" but unclassified material should be so labeled.

Line 4: Name and location of office originating report.

Line 5: Designated personnel and telephone numbers, for clarification and follow-up, if necessary.

Line 6: Name and telephone number of the attorney, if any, at Main Justice, who is familiar with the matter.

Line 7: To end, brief synopsis of the information.

1-5.700 COORDINATION OF U.S. ATTORNEYS' OFFICES SURVEYS

By Order of the Attorney General (DOJ Order No. 2810.1 dated June 13, 1980), all surveys, questionnaires, or requests for information sought from one or more U.S. Attorneys' Offices by Department of Justice offices, boards, divisions, field offices or bureaus, or by other persons or organizations outside the Department, including the private sector, other U.S. Government offices, Members of Congress or Committees, or the General Accounting Office (see USAM 1-8.300) should be submitted to the Executive Office for U.S. Attorneys for coordination in order to conserve the resources and time of U.S. Attorneys' Offices personnel and to prevent unnecessary duplication of research and survey efforts. The Executive office will review and coordinate all survey requests and will directly request the participation of all or selected U.S. Attorneys in surveys deemed to be appropriate.

U.S. Attorneys should not respond to any surveys or questionnaires not sent from or endorsed by the Executive Office for U.S. Attorneys, but should refer the request to the Executive Office for appropriate consideration.

For assistance, please contact the Director, Office of Legal Services, Executive Office for U.S. Attorneys (FTS 633-4024) to whom all surveys should be referred.

The text of the Order follows:

UNITED STATES ATTORNEYS' MANUAL
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DEPARTMENT
OF JUSTICE

ORDER
[Number:]
[DOJ 2810.1]

Effective Date:
June 13, 1980

Subject: COORDINATION OF UNITED STATES ATTORNEYS'
OFFICES SURVEYS

The Executive Office for United States Attorneys (EOUSA) is hereby designated as the Department of Justice unit which will coordinate all surveys of and questionnaires to United States Attorneys' Offices, and coordinate the scheduling of visits and telephone surveys of United States Attorneys' Offices.

1. PURPOSE: The purpose of this order is to ensure the most efficient responses to surveys by Department of Justice units; to ensure the efficient use of personnel and resources of U.S. Attorneys' Offices in response to surveys; to avoid duplication of research efforts; and to ensure that alternate sources of data are utilized when available.
2. SCOPE: The provisions of this order apply to all offices, boards, divisions, bureaus and field offices.
3. PROCEDURES:
 - a. This Order shall apply when information is sought from more than one U.S. Attorney's Office, by Department of Justice Offices, Boards, Divisions, Field Offices and Bureaus (hereinafter units), or by other organizations such as research groups, government research contractors and grantees, Congressional committees and Congress members, which seek information through Department of Justice units. This Order applies to surveys by individual United States Attorneys.

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- b. Requests for surveys to be conducted should be submitted to the Director, EOUSA, by the head of the requesting Department of Justice unit. Congressional requests for surveys shall continue to be submitted by Congress to the Assistant Attorney General, Office of Legislative Affairs, who shall then submit the request directly to the EOUSA.
- c. Department of Justice units submitting requests for surveys shall propose dates for replies which allow the maximum possible time for coordination, dissemination and the preparation of responses by individual U.S. Attorneys' Offices.
- d. Prior to submitting formal requests to the EOUSA, the requesting units shall make inquiries of the other appropriate DOJ units, other appropriate governmental units, and the EOUSA, as to whether the information needed is available from alternate sources, previous surveys or reports. The EOUSA will make further inquiries for alternate information sources as appropriate.
- e. The request for a survey shall consist of a list of proposed U.S. Attorneys' Offices to participate, and a proposed questionnaire or survey form, detailing the specific information sought and briefly summarizing the background and the litigative, legislative or other purpose for which the information is sought. Whenever possible, questionnaire forms shall be provided for replies by U.S. Attorneys.
- f. The requesting unit and the EOUSA shall cooperate to make any necessary modifications in proposed surveys, in furtherance of the purposes of this Order. The Director, EOUSA, shall give approval of surveys prior to dissemination and shall request the participation of U.S. Attorneys, usually in writing as an attachment accompanying the survey forms. The Director, EOUSA, shall communicate with U.S. Attorneys to request

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participation and coordinate scheduling of visits by Department units conducting surveys.

- g. Printing and distribution of surveys shall be the responsibility of the requesting Department of Justice unit.
- h. The survey shall designate the requesting unit as the recipient of replies, which shall also be responsible for reporting survey results. The Director, EOUSA, shall designate a staff member of the EOUSA to be contacted by U.S. Attorneys for questions regarding surveys.
- i. The requesting units shall fully inform the Director, EOUSA, of the results of surveys and provide copies of all written reports and other derivative products.

(signed) BENJAMIN R. CIVILETTI
Attorney General

June 13, 1980
Date

1-5.800 AUTHORIZATION TO CLOSE JUDICIAL PROCEEDINGS TO MEMBERS OF THE
PRESS AND PUBLIC

Procedures and standards regarding the closure of judicial proceedings to members of the press and public are set forth in 28 C.F.R. §50.9. No motion for such closure or consent to the closure of criminal proceedings may be sought or agreed to by a Department employee without the express authorization of the Deputy Attorney General.

All attorneys seeking authority to move for or consent to the closure of a case should be aware of the requirements of 28 C.F.R. §50.9. There is a strong presumption against closing proceedings and the Department foresees very few cases in which closure would be warranted. Only when a closed proceeding is plainly essential to the interests of justice should a government attorney seek authorization from the Deputy Attorney General to move for or consent to closure of a judicial proceeding.

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1-5.810 Policy With Regard to Open Judicial Proceedings

The text of 28 C.F.R. §50.9, issued pursuant to Attorney General Order No. 914-80, dated October 20, 1980, as amended by Attorney General Order No. 960-81, dated October 27, 1981, is set forth below.

28 C.F.R. §50.9 Policy with regard to open judicial proceedings:

Because of the vital public interest in open judicial proceedings, the government has a general overriding affirmative duty to oppose their closure. There is, moreover, a strong presumption against closing proceedings or portions thereof, and the Department of Justice foresees very few cases in which closure would be warranted. The government should take a position on any motion to close a judicial proceeding, and should ordinarily oppose closure; it should move for or consent to closed proceedings only when closure is plainly essential to the interests of justice. In furtherance of the Department's concern for the right of the public to attend judicial proceedings and the Department's obligation to the fair administration of justice, the following guidelines shall be adhered to by all attorneys for the United States.

(a) These guidelines apply to all federal trials, pre-and post-trial evidentiary hearings, plea proceedings, sentencing proceedings, or portions thereof, except as indicated in paragraph (e) of this section.

(b) A government attorney has a compelling duty to protect the societal interest in open proceedings.

(c) A government attorney shall not move for or consent to closure of a proceeding covered by these guidelines unless:

(1) no reasonable alternative exists for protecting the interests at stake;

(2) closure is clearly likely to prevent the harm sought to be avoided;

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(3) the degree of closure is minimized to the greatest extent possible;

(4) the public is given adequate notice of the proposed closure; and, in addition, the motion for closure is made on the record, except where the disclosure of the details of the motion papers would clearly defeat the reason for closure specified under subparagraph (c)(6) of this section;

(5) transcripts of the closed proceedings will be unsealed as soon as the interests requiring closure no longer obtain; and

(6) failure to close the proceedings will produce.

(i) a substantial likelihood of denial of the right of any person to a fair trial, or

(ii) a substantial likelihood of imminent danger to the safety of parties, witnesses, or other persons, or

(iii) a substantial likelihood that ongoing investigations will be seriously jeopardized.

(d) A government attorney shall not move for or consent to the closure of:

(1) a civil proceeding except with the express authorization of the Deputy Attorney General, based on articulated findings which meet the requirements of paragraph (c) of this section; or

(2) a criminal proceeding except with the express authorization of the Associate Attorney General, based on articulated findings which meet the requirements of paragraph (c) of this section.

(e) These guidelines do not apply to:

(1) the closure of part of a judicial proceeding where necessary to protect national security information or classified documents; or

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(2) in camera inspection, consideration or sealing of documents, including documents provided to the government under a promise of confidentiality, where permitted by statute, rule of evidence or privilege; or

(3) grand jury proceedings or proceedings ancillary thereto; or

(4) conferences traditionally held at the bench or in chambers during the course of an open proceeding.

(f) The principles set forth in this section are intended to provide guidance to attorneys for the government and are not intended to create or recognize any legally enforceable right in any person.

1-5.820 Office to be Contacted

Whenever authorization to close a judicial proceeding is being sought pursuant to 28 C.F.R. §50.9 in a case or matter under the supervision of the Criminal Division, the Legal Support Unit, Office of Enforcement Operations should be contacted at FTS 724-7042. In cases or matters under the supervision of other divisions of the Department of Justice, the appropriate division should be contacted.

USAM (superseded)

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1-6.000 CIVIL AND CRIMINAL LIABILITY OF DEPARTMENT OF JUSTICE ATTORNEYS

1-6.100 STATUTES WHICH DOJ ATTORNEYS MAY VIOLATE IN THE COURSE OF THEIR DUTIES [RESERVED]

1-6.200 REPRESENTATION BY THE DEPARTMENT

1-6.210 Official Capacity and Individual Capacity Suits

Department of Justice attorneys are occasionally sued in both their official and individual capacities. Department representation in actions against individuals sued solely in their official capacities (i.e., actions seeking equitable relief or inartfully pleaded tort actions against the United States) is routinely afforded without the necessity of the named individual making a formal request because such actions are in reality suits against the government. Department of Justice attorneys are occasionally sued in their individual capacities for money damages. Often such suits are commenced by persons accused or convicted of federal crimes, alleging that the attorney was part of a conspiracy to deprive the plaintiff of his/her civil rights. Department guidelines (see 28 C.F.R. §50.15) require that where suit is brought against a government official in that person's individual capacity (i.e., seeking money damages directly against the named person) a written request for representation by the individual official must be made of the Attorney General. (The procedure is outlined below.) Depending on the type of action, an argument for either absolute or qualified immunity, or both, often should be raised at the threshold of the action. (See USAM 1-6.300 infra.)

1-6.211 Procedure for Obtaining Department Representation

When a Department attorney is named individually in a money damages action, the complaint and the summons, along with other relevant information (i.e., method and time of service, etc.), should immediately be forwarded to the Civil Division. If the summons provides for less than 60 days in which to answer or the action was filed in state court and will require removal, the transmission of the complaint should be by Express Mail and should be preceded by a telephone call to the Torts Branch. The United States Attorneys' Manual (USAM 4-13.361) provides authority, even prior to the authorization of representation, to seek 60 days in which to respond to a complaint. If the defendant is the U.S. Attorney, and Department of Justice representation is desired, his/her personal letter

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requesting representation must be sent through the Executive Office for U.S. Attorneys. If the defendant is an Assistant U.S. Attorney, the request should be forwarded to the Torts Branch through the Executive Office with a cover memorandum from the U.S. Attorney recommending representation where appropriate, and certifying that the Assistant was acting within the scope of his/her employment. If the defendant is neither the U.S. Attorney nor an Assistant, the request should be transmitted to the Torts Branch through the Executive Office with a recommendation/scope memorandum from an appropriate supervisor. When a determination is made on the request, the affected individual will be notified by letter. Department representation is not appropriate if "a federal criminal investigation concerning the act or acts for which he seeks representation" is being conducted. See 28 C.F.R. §50.15(a)(6). (For a more detailed analysis, including representation matters handled by other litigating divisions, see the Torts Branch Representation Monograph I.)

1-6.212 Payment of Money Judgments

The authorization of representation does not mean that a money judgment rendered against the defendant will be paid by the United States. There is neither statutory authority for payment by the United States of a judgment entered solely against an individual nor a basis for a defendant to compel indemnification from either the Department or the United States. At present, the only possible remedy available is the introduction of a private bill in Congress. Consideration can also be given to securing a private liability insurance policy.

1-6.300 IMMUNITY ARGUMENTS

The Supreme Court has "consistently [] held that Government officials are entitled to some form of immunity from suits for damages." See Harlow v. Fitzgerald, 457 U.S. 800, 806 (1982). The Court noted that its "decisions have recognized immunity defenses of two kinds." Id. at 807. When a U.S. Attorney or Assistant U.S. Attorney is sued in his/her individual capacity, an argument for either absolute or qualified immunity, or both, should be made at the threshold of the action. Prosecutorial immunity is a particular form of absolute immunity which protects those activities and actions that are intimately involved in the judicial process. Although the principal focus of this section addresses prosecutorial immunity, comment will also be offered concerning the traditional form of absolute immunity for common law torts (see USAM 1-6.330, infra). The Supreme Court's recent decision concerning qualified

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immunity; Harlow v. Fitzgerald, also deserves comment, especially in light of the Court's reaffirmation that, with regard to executive officials, "qualified immunity represents the norm," Id. at 807.

1-6.310 Prosecutorial Absolute Immunity

The applicability of an absolute immunity to prosecutorial functions within the scope of the prosecutor's duties in initiating and pursuing a criminal prosecution and in presenting the government's case was settled by Imbler v. Pachtman, 424 U.S. 409 (1976) (absolute immunity afforded a state prosecutor sued under 42 U.S.C. §1983 for allegedly using false testimony and suppressing material evidence at plaintiff's trial). In formulating the prosecutorial immunity, the Court focused on the similarities in the functions performed by prosecutors and judges under the common law:

The common-law immunity of a prosecutor is based upon the same considerations that underlie the common-law immunities of judges and grand jurors acting within the scope of their duties. These include concern that harassment by unfounded litigation would cause a deflection of the prosecutor's energies from his public duties, and the possibility that this would shade his decisions instead of exercising the independence of judgment required by his public trust.

Id. at 422-23.

As recently noted by the United States Court of Appeals for the District of Columbia Circuit:

The controlling question under this approach is whether the conduct in question is so closely associated with the judicial process that it can be characterized as advocatory.

See Gray v. Bell, 712 F.2d 490, 499 (D.C. Cir. 1983), cert. denied, 52 U.S.L.W. 3687 (Mar. 20, 1984).

The Imbler Court went on to determine that the common law rule of immunity had not been abrogated under 42 U.S.C. §1983, stating that "the affording of only a qualified immunity to the prosecutor also would have an adverse effect upon the functioning of the criminal justice system."

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See Imbler, supra, at 426.

Imbler, however, is limited to the actions of a prosecutor in initiating a prosecution and in presenting the government's case and specifically reserved opinion on the other aspects of a prosecutor's responsibility:

We have no occasion to consider whether like or similar reasons require immunity for those aspects of the prosecutor's responsibility that cast him in the role of an administrator or investigative officer rather than that of advocate. We hold only that in initiating a prosecution and in presenting the State's case, the prosecutor is immune from a civil suit for damages under §1983.

See Imbler, supra, at 430-31 (footnotes omitted).

Department attorneys perform a wide variety of activities, and yet there is no clear consensus on how to properly characterize all the various forms of prosecutorial conduct. Because the courts of appeals are continuing to develop the law regarding these "other actions of a prosecutor," some of the more recent decisions are discussed infra.

In Gray v. Bell, supra, at 500, the United States Court of Appeals for the District of Columbia Circuit undertook to identify and elaborate upon several general considerations "for analyzing prosecutorial conduct that falls neither clearly within nor clearly without the scope of Imbler." The court recommended a two prong approach. The court looked first to whether the prosecutor's conduct "was sufficiently adversarial to evoke strong resentment and thus frequent retaliatory litigation." Id. To fulfill this purpose, the court observed that "[p]erhaps the best measure of this is the phase of the proceedings at which the disputed conduct occurs." Id. (Emphasis in original.) However, the court recognized that "the phase of the proceedings cannot be dispositive" and offered "several important clues that may indicate whether the prosecutor's role at preindictment stages approximates his position after an indictment has been returned." Id.

The first [clue] is the particularity of the proceedings. Prosecutorial conduct in the course of an investigation that has focused on a specific target may cast a shadow of public suspicion and thus evoke vindictive reactions no less intense than could be expected from an indicted defendant. Another clue is

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the context of the conduct in question. Activity in the course of judicial or other formal proceedings is likely to involve advocacy directed against some individual or corporation; in these circumstances, the prosecutor can be expected to take an adversarial posture that may well cause antagonism and hostile counter motives. A final clue, albeit somewhat obscure in definition, may be found in the nature of particular actions or decisions. Thus, certain actions of the prosecutor may be so closely related to traditional quasi-judicial functions as to suggest an effective adversarial posture.

Id. at 500-501 (emphasis in original) (footnotes omitted). Second, the Court looked "to whether there were prosecutorial safeguards to minimize the necessity for civil damage suits." Id. at 501.

Although it would not be possible to compile a list of every type of activity engaged in by Department attorneys, a brief synopsis of courts of appeals' decisions with regard to some of the more common ones may be useful. In Gray, the court utilized its two prong analysis, supra, and applied absolute immunity for a prosecutor's conduct in producing evidence to a grand jury where the case had focused on a particular suspect or crime. See Gray, supra, at 502-504. Compare the approach taken by the Second Circuit in Taylor v. Kavanagh, 640 F.2d 450, 453 (2d Cir. 1981) where the court concluded "that a prosecutor's activities in the plea bargaining context merit the protection of absolute immunity." The court continued:

It is at this stage that the prosecutor evaluates the evidence before him, determines the strength of the Government's case, and considers the societal interest in disposing of the case by a negotiated guilty plea. The effective negotiation of guilty pleas would be severely chilled if a prosecutor were constantly concerned with the possibility of ruinous personal liability for judgments and decisions made at this critical stage of the criminal process.

Id.

In Marrero v. City of Hialeah, 625 F.2d 499, 505 (5th Cir. 1980), absolute immunity was denied a prosecutor for his participation in an allegedly illegal search and seizure:

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[A] prosecutor who assists, directs or otherwise participates with, the police in obtaining evidence prior to an indictment undoubtedly is functioning more in his investigative capacity than in his quasi-judicial capacities.

Id.

Marrero should be compared with Forsyth v. Kleindienst, 599 F.2d 1203, 1215 (3d Cir. 1979), cert. denied. sub nom Mitchell v. Forsyth, 453 U.S. 913, reh'g denied, 453 U.S. 928 (1981), where the court concluded that absolute immunity was available for the gathering of information necessary to make the decision whether to prosecute.

We recognize that the decision of the Attorney General, or a prosecuting attorney, to initiate a prosecution is not made in a vacuum. On occasion, the securing of additional information may be necessary before an informed decision can be made. We hold only that to the extent that the securing of information is necessary to a prosecutor's decision to initiate a criminal prosecution, it is encompassed within the protected, quasi-judicial immunity afforded to the decision itself.

Id. See also Freeman v. Hittle, 708 F.2d 442 (9th Cir. 1983); Atkins v. Lanning, 556 F.2d 485 (10th Cir. 1977).

In Helstoski v. Goldstein, 552 F.2d 564, 566 (3d Cir. 1977), the court denied absolute immunity to a prosecutor where there were "allegations of deliberate leaks by the prosecutor of false information concerning Mr. Helstoski in order to damage his political prospects." Absolute immunity was also denied in Marrero v. City of Hialeah, 625 F.2d at 506, where a prosecutor's allegedly slanderous remarks "were essentially those of an investigating officer informing the press of activities occurring at the scene of a crime."

In Briggs v. Goodwin, 712 F.2d 1444 (D.C. Cir. 1983), cert. denied, 104 S. Ct. 704 (1984), the court relied on Briscoe v. LaHue, ___ U.S. ___, 103 S. Ct. 1108 (1983) (absolute immunity of a police officer who allegedly gave perjured testimony at criminal trial), and applied absolute immunity for a prosecutor's "statements at a hearing on a motion during the grand jury phase of an investigation." Id. at 1448.

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In Windsor v. The Tennessean, 719 F.2d 155 (6th Cir. 1983), cert. denied, 105 S. Ct. 105 (1984), the Court denied absolute immunity to a U.S. Attorney in an action brought by a former Assistant U.S. Attorney:

Since the duty of recommending the hiring or firing of assistant United States attorneys is a classic example of an administrative function, [the U.S. Attorney] is not entitled to absolute immunity in this case.

Id. at 164.

However, the Court found that the U.S. Attorney was entitled to qualified immunity under Harlow, as the law at the time of the act was unclear "that an agreement to defame a federal official in order to effect that person's discharge from federal employment violated section 1985(1)." Id. at 165. The Court concluded that "[s]imilar violations by federal officials or employees will, however, be actionable in the future." Id. The Department views Windsor to be incompatible with the Supreme Court's decision in Bush v. Lucas, 462 U.S. 367 (1983). (For a general discussion of absolute immunity, see the Torts Branch Representation Monograph III.)

1-6.311 Decisions of the United States District Courts and Courts of Appeals

Decisions concerning the distinctions between "quasi-judicial" acts and those of "investigative or administrative functions" can be found in the following cases.

A. D.C. Circuit: Gray v. Bell, 712 F.2d 490, 497-506 (D.C. Cir. 1983), cert. denied, 52 U.S.L.W. 3687 (U.S. Mar. 20, 1984) (provides "some general considerations for analyzing prosecutorial conduct that falls neither clearly within nor clearly without the scope of Imbler"); Briggs v. Goodwin, 712 F.2d 1444, 1448-1449 (D.C. Cir. 1983), cert. denied, 104 S. Ct. 704 (1984) (prosecutor's statement at a hearing absolutely immune); McSurely v. McClellan, 697 F.2d 309, 318-324 (D.C. Cir. 1982) ("preparation of the arrest and search warrants and participation in the search and seizure nonadvocative"); Dellums v. Powell, 660 F.2d 802, 805-807 (D.C. Cir. 1981) ("absolute immunity does not extend to a prosecutor engaged in essentially investigative or administrative functions").

B. 1st Circuit: Siano v. Justices of Massachusetts, 698 F.2d 52, 58 n. 8 (1st Cir.), cert. denied, ___ U.S. ___, 104 S. Ct. 80 (1983) ("[w]e realize that the absolute immunity granted in Imbler extends only to a

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prosecutor's action in initiating a prosecution and presenting the government's case"); Guerro v. Mulhearn, 498 F.2d 1249, 1256 (1st Cir. 1974) (pre-Imbler) ("absolute immunity does not extend to acts essentially unrelated to the judicial process").

C. 2d Circuit: Taylor v. Kavanagh, 640 F.2d 450, 452-453 (2d Cir. 1981)("[t]he task of determining whether a particular activity is better characterized as 'quasi-judicial' and subject to absolute immunity or 'investigative' and subject to only qualified 'good-faith' immunity requires more than the mechanical application of labels").

D. 3d Circuit: Ross v. Meagan, 638 F.2d 646, 648 (3d Cir. 1981) ("the federal courts must apply a functional analysis to determine whether the prosecutors' acts fall within the bounds of 'judicial,' as opposed to 'investigative or administrative,' duties"); Forsyth v. Kleindienst, 599 F.2d 1203, 1213-1216 (3d Cir. 1979), cert. denied sub nom Mitchell v. Forsyth, 453 U.S. 913, reh'g denied, 453 U.S. 928 (1981) ("to the extent that the securing of information is necessary to a prosecutor's decision to initiate a criminal prosecution, it is encompassed within the protected, quasi-judicial immunity"); Helstoski v. Goldstein, 552 F.2d 564, 566 (3d Cir. 1977) ("leaks by the prosecutor of false information *** if it occurred would lie outside of the rationale for absolute immunity").

E. 4th Circuit: Kipps v. Ewell, 538 F.2d 564, 566 (4th Cir. 1976) (pre-Imbler); Weathers v. Ebert, 505 F.2d 514, 517(4th Cir. 1974), cert. denied, 424 U.S. 975 (1976) (pre-Imbler).

F. 5th Circuit: Marrero v. City of Hialeah: 625 F.2d 499, 505-510 (5th Cir. 1980) ("when a prosecutor steps outside the confines of the judicial setting, the checks and safeguards inherent in the judicial process do not accompany him, and thus there is greater need for private actions to curb prosecutorial abuse and to compensate for abuse that does occur").

G. 6th Circuit: Campbell v. Patterson, 724 F.2d 41, 43 (6th Cir. 1983) ("prosecutorial functions not 'intimately associated with the judicial phase' *** obviate the supporting rationale for absolute immunity in favor of qualified good-faith immunity"); Windsor v. The Tennessean, 719 F.2d 155, 163-164 (6th Cir. 1983), ("duty of recommending the hiring or firing of assistant United States attorneys is a classic example of an administrative function"); Walker v. Cahalan, 542 F.2d 681, 684-685 (6th Cir. 1976), cert. denied, 430 U.S. 966 (1977).

H. 7th Circuit: Daniels v. Kieser, 586 F.2d 64, 67-69 (7th Cir. 1978), cert. denied, 441 U.S. 931 (1979), (obtaining arrest warrant for

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material witness during recess of trial is quasi-judicial act); Castle News Co. v. Cahill, 461 F. Supp. 174, 184 (E.D. Wis. 1978).

I. 8th Circuit: Gilbert v. Corcoran, 530 F.2d 820 (8th Cir. 1976) (pre-Imbler); Hughes v. Simmerman, 444 F. Supp. 181, 182 (E.D. Mo. 1978).

J. 9th Circuit: Ybarra v. Reno Thunderbird Mobile Home Village, 723 F.2d 675, 678-680 (9th Cir. 1984) (release of evidence "was an exercise of the prosecutorial function"); Freeman v. Hittle, 708 F.2d 442, 443 (9th Cir. 1983) ("[i]nvestigative functions carried out pursuant to the preparation of a prosecutor's case also enjoy absolute immunity"); Beard v. Udall, 648 F.2d 1264, 1271 (9th Cir. 1981) ("where a prosecutor faces an actual conflict of interest, and files charges he or she knows to be baseless, the prosecutor is acting outside the scope of his or her authority and thus lacks immunity"); see Jacobson v. Rose, 592 F.2d 515, 524 (9th Cir. 1978), cert. denied, 442 U.S. 930 (1979), ("if the prosecutor 'committed acts, or authoritatively directed the commission of acts, which ordinarily are related to police activity as opposed to judicial activity, then the cloak of immunity should not protect them'").

K. 10th Circuit: Atkins v. Lanning, 556 F.2d 485, 488 (10th Cir. 1977) (investigation in preparation of case "does not automatically change the nature of [the prosecutor's] function to resemble that of a police officer").

L. 11th Circuit: Stepanian v. Addis, 699 F.2d 1046, 1048-1049 (11th Cir. 1983) ("a news conference is not absolutely protected by quasi-judicial immunity"); see also Marrero v. City of Hialeah, 625 F.2d 499, 505-510 (5th Cir. 1980).

1-6.320 Qualified Immunity for Constitutional Tort

As noted above in USAM 1-6.310, supra, so long as a Department attorney is performing judicial-type functions, he/she can benefit from absolute immunity. However, where the attorney's actions fall into the investigatory or administrative area, the judicial form of absolute immunity will no longer be available and reliance must be placed on either qualified immunity, to defeat allegations of Constitutional violations, or the absolute immunity from common law tort afforded by Barr v. Matteo, 360 U.S. 564 (1956). The immunity afforded by Barr v. Matteo is discussed at USAM 1-6.330, infra.

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In Butz v. Economou, 438 U.S. 478 (1978), the Supreme Court distinguished judicial functions from executive functions and affirmed the general rule that Executive Branch officials performing non-judicial functions are not protected by absolute immunity but are limited to qualified immunity. In Harlow v. Fitzgerald, supra, the Supreme Court reformulated the test used in Butz for determining an official's entitlement to qualified immunity. Under the Court's new test, qualified immunity is determined by reference to the objective reasonableness of a defendant official's conduct in light of the "clearly established" law at the time he/she acted, rather than by his/her subjective motivations or good faith. Id. at 818.

In choosing this course, the Supreme Court recognized that prior "[d]ecisions of [the] Court [had] established that the 'good faith' defense has both an 'objective' and a 'subjective' aspect," but concluded that "[t]he subjective element of the good-faith defense frequently has proved incompatible with out admonition in Butz that insubstantial claims should not proceed to trial." Id. at 815-16. Further concluding that "it now is clear that substantial costs attend the litigation of the subjective good faith of government officials" and that "[j]udicial inquiry into subjective motivation" is the type of inquiry that can be "peculiarly disruptive of effective government," the Court adjusted the qualified immunity doctrine:

We therefore hold that government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.

Id. at 818.

The Supreme Court explained further:

If the law at that time was not clearly established, an official could not reasonably be expected to anticipate subsequent legal developments, nor could he fairly be said to "know" that the law forbade conduct not previously identified as unlawful.

Id. The Supreme Court also held that "[u]ntil this threshold immunity question is resolved, discovery should not be allowed." Id.

After Harlow, then, a defendant official's conduct must be measured by reference to "clearly established law at the time [the conduct

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occurred].” Zweibon v. Mitchell, 720 F.2d 162, 168 (D.C. Cir. 1983), cert. denied, 105 S. Ct. 244 (1984), rehearing denied, 105 S. Ct. 557 (1984). Both before and after Harlow, courts have noted that the “precise contours of what constitutes ‘clearly established law’ for immunity purposes are difficult to delimit.” Id. at 168-169, quoting Procunier v. Navarette, 434 U.S. 555, 565 (1978). However, several decisions construing the objective criteria of the pre-Harlow qualified immunity doctrine teach that the right must have been “authoritatively declared at the time *** officials acted” to deny them the immunity. See Baker v. McCollan, 443 U.S. 137, 139 (1979); see also Procunier v. Navarette, 434 U.S. at 565 (right must have “not yet been declared”); Wood v. Strickland, 420 U.S. 308, 322, reh'g denied, 421 U.S. 921 (1975) (focusing on “settled, indisputable law” and “basic, unquestioned constitutional rights”). Under Harlow v. Fitzgerald, *supra*, a qualified immunity may be available where the defendant acted reasonably, albeit mistakenly. (For a more detailed discussion of qualified immunity see the applicable Torts Branch monograph.)

1-6.330 Absolute Immunity for Common Law Torts

In Barr v. Matteo, 360 U.S. 564 (1959), the Supreme Court affirmed the necessity for providing government officials with immunity in a suit for common law defamation. The immunity was found applicable where the act “was within the outer perimeter of the [government official's] line of duty.” Id. at 575. The Court concluded that absolute immunity was necessary to shield “responsible governmental officers against the harassment and inevitable hazards of vindictive or ill-founded damage suits brought on account of actions taken in the exercise of their official responsibilities.” Id. at 565. The holding in Barr was expressly accepted in Butz v. Economou, *supra*, at 495 (“[a]ccepting this extension of immunity with respect to state tort claims,...”) and Harlow v. Fitzgerald, *supra*, at 807-808 (“consequences found sufficient . . . to warrant extension to such officials of absolute immunity from suits at common law . . .”).

Language in both Butz and Harlow would suggest that the absolute immunity in Barr may be applicable to all common law torts. However, the Supreme Court has not yet had the opportunity to decide that issue. Therefore, as demonstrated by the decisions listed at USAM 1-6.331, *infra*, extreme care must be taken in reviewing the more precise holdings of the separate courts of appeals. Unless the particular circuit has determined that the Barr immunity is applicable to all common law torts (i.e., Claus v. Gyorkey, 674 F.2d 427 (5th Cir. 1982)), certainty of result can be approached only in defamation cases. In any event, the immunity will be

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applicable only where the act was "within the scope of [the official's] power." See Barr v. Matteo, 360 U.S. at 572. Further, absolute immunity for common law tort has been denied when the acts were either ministerial, involved insufficient discretion or where the discretion asserted was non-governmental in nature. (See also the applicable Torts Branch Representation Monograph III.)

1-6.331 Decisions of the United States Courts of Appeals Applying Barr v. Matteo

Decisions concerning the application of absolute immunity in suits for common law tort can be found in the following cases:

A. D.C. Circuit: McKinney v. Whitfield, 736 F.2d 766 (D.C. Cir. 1984) (no absolute immunity where federal officials held to exceed the outer perimeter of their responsibilities and act beyond their line of duty when they resort to physical force to compel the obedience of their managerial subordinates); Sami v. United States, 617 F.2d 755, 768-773 (D.C. Cir. 1979) (absolute immunity for defamation, false arrest and false imprisonment for official who, as U.S. liaison with Interpol, sent inaccurate message) (care should be taken, for as the court noted: "this is not an ordinary false arrest case"); Expeditions Unlimited Aquatic Enterprises, Inc. v. Smithsonian Institution, 566 F.2d 289, 291 (D.C. Cir. 1977), cert. denied, 438 U.S. 915 (1978), (defamation action) ("if [official] was acting within the ambit of his discretion, he would have absolute immunity"); compare Henderson v. Bluemink, 511 F.2d 399, 401-403 (D.C. Cir. 1974) (immunity denied government doctor in malpractice case) ("the discretion exercised might have been medical rather than governmental").

B. 1st Circuit: Krohn v. United States, 742 F.2d 24, 29 (1st Cir. 1984) (federal officials absolutely immune from common law torts suits); Berferian v. Gibney, 514 F.2d 790, 793 (1st Cir. 1975) (immunity for malicious use of process) ("the immunity afforded a particular official is contingent not upon his rank, but upon the relationship between his actions and the discretion reposed in him by law").

C. 2d Circuit: Sprecher v. Graber, 716 F.2d 968, 975 (2d Cir. 1983) ("immunity from common law tort actions such as defamation . . . , injury to business relations . . . , perjury . . . and subornation of perjury . . ."); compare Birnbaum v. United States, 588 F.2d 319, 332 (2d Cir. 1978) (dicta) (CIA mail opening case) ("as federal agents, the CIA personnel may still have an absolute immunity from state suits") (emphasis omitted).

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D. 3d Circuit: Araujo v. Welch, 742 F.2d 802 (3d Cir. 1984) (army officer entitled to immunity on claims of verbal abuse and intentional infliction of emotional distress but not entitled to immunity on claim of physical abuse in that he was at that point acting beyond the "outer perimeter" of his duty even though he was acting in his discretionary capacity at the time of the incident); Davis v. Knud-Hansen Memorial Hospital, 635 F.2d 179, 186 (3d Cir. 1980) (doctor denied immunity) ("[a]lthough an evaluation entailing professional judgment may be required, that does not transform the performance of a task which is essentially ministerial, no matter how high the skill required in its performance, into one which is discretionary") (citing Jackson v. Kelly, (10th Cir.), infra, and Henderson v. Bluemink, D.C. Cir., supra); compare Helstoski v. Goldstein, 552 F.2d 564 (3rd Cir. 1977) (prosecutorial immunity denied for leaks of false information).

E. 4th Circuit: Wallen v. Domm, 700 F.2d 124, 126 (4th Cir. 1983) (absolute immunity for assault) ("wrongful activity incidental to an otherwise proper exercise of authority must fall within the immunity claim").

F. 5th Circuit: Dretar v. Smith, 752 F.2d 1015 (5th Cir. 1985) (government supervisor entitled to absolute immunity for alleged assault and battery; Araujo and McKinney distinguished); Claus v. Gyorkey, 674 F.2d 427, 431 (5th Cir. 1982) (wrongful termination of employment) ("[a]bsent an allegation of a tort of constitutional magnitude, federal officials are entitled to absolute immunity for ordinary torts committed within the scope of their jobs"); Evans v. Wright, 582 F.2d 20, 21 (5th Cir. 1978) (interference with contract rights) ("for ordinary tort claims . . . the doctrine of official immunity still applies") (emphasis omitted).

G. 6th Circuit: Granger v. Marek, 583 F.2d 781 (6th Cir. 1978) (absolute immunity for interference with business and intentional infliction of emotional distress).

H. 7th Circuit: Oyler v. National Guard Association of United States, 743 F.2d 545, 552 (7th Cir. 1985) (federal supervisors of federal national guard technician working for Illinois Army National Guard entitled to absolute immunity on common-law fraud theory for having allegedly failed to properly discharge technician which allegedly prevented him from receiving disability benefits); C.f., Hampton v. City of Chicago, Cook County, Illinois, 484 F.2d 602, 607 (7th Cir. 1973), cert. denied, 415 U.S. 917 (1974).

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I. 8th Circuit: Johnson v. Busby, 704 F.2d 419, 420 (8th Cir. 1983) (immunity for denial of loan) ("defendants acted within the outer perimeter of their duties[] [and] . . . possess an absolute immunity from damages based on common law torts"); Gross v. Sederstrom, 429 F.2d 96 (8th Cir. 1970).

J. 9th Circuit: Miller v. Delaune, 602 F.2d 198, 200 (9th Cir. 1979) (blackmail, fraud and intimidation) ("a Government official . . . , acting within the outer perimeter of his or her line of duty, is absolutely immune from state or common-law tort liability").

K. 10th Circuit: Strothman v. Gefreh, 739 F.2d 515, 520 (10th Cir. 1984) (federal immunity with respect to defamation claims); Chavez v. Singer, 698 F.2d 420, 421-422 (10th Cir. 1983) (immunity denied supervisor of injured firefighter); Jackson v. Kelly, 557 F.2d 735, 737 (10th Cir. 1977) (immunity denied doctor in malpractice) ("the Court mandates the use of the discretionary function test, and a direct balancing of the policies underlying the immunity doctrine in the context of each fact situation"); see also G.M. Leasing Corp. v. United States, 560 F.2d 1011 (10th Cir. 1977), cert. denied, 435 U.S. 923 (1978).

L. 11th Circuit: John v. Pettibone Corp., 755 F.2d 1484 (11th Cir. 1985) (absent an allegation of a tort of constitutional magnitude, federal officials are entitled to absolute immunity for ordinary torts committed within scope of their jobs); Stephanian v. Addis, 699 F.2d 1046, 1048-49 (11th Cir. 1983) (summary judgment denied prosecutor in action alleging slander) ("[i]f the disputed activities are discretionary and within the outer perimeter of the official's line of duty, the official is immune from suit even though his or her acts were malicious") ("[u]ntil the facts are developed, it can not be determined to what immunity [the defendant] may be entitled"); see also 5th Circuit cases.

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1-7.000 DEPARTMENT OF JUSTICE PERSONNEL AS WITNESSES - 28 C.F.R. §16.21 ET SEQ.

1-7.100 INTRODUCTION

Subpart B of Part 16 of Title 28, Code of Federal Regulations, was amended by Attorney General Order No. 919-80, effective December 4, 1980, published at 45 Fed. Reg. 83,210 (1980). These regulations provide that no present or former employee of the Department of Justice may testify or produce Departmental records in response to subpoenas or demands of courts or other authorities issued in any state or federal proceeding without obtaining prior approval by an appropriate Department official. Information regulated by 28 C.F.R. §16.21 et seq., falls into the following categories:

- A. Any material contained in the files of the Department;
- B. Any information relating to material contained in the files of the Department; or
- C. Any information acquired by an employee of the Department as a part of the performance of that employee's official duties or because of the employee's official status.

The 1980 amendments to the regulations both decentralize the authorization power and establish different procedures to be followed in cases in which the United States is and those cases in which the United States is not a party. Additionally, alternate procedural steps are sometimes involved where the "originating component" is or is not a litigating division of the Department. A denial policy generally applicable to both situation exists.

As will be noted in Section 1-7.410, infra, the regulations are not intended to create new privileges or to supersede existing discovery rules. They simply are intended to provide a procedure whereby the Department will have the opportunity to protect certain types of information from unwarranted and unconsidered disclosure. Specific questions should be referred to the appropriate litigating division of the Department.

1-7.110 Definitions

1-7.111 Employee Defined

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The term "employee" is defined to include "all officers and employees of the United States appointed by, or subject to the supervision, jurisdiction, or control of the Attorney General of the United States, including U.S. Attorneys, U.S. Marshals, U.S. Trustees and members of the staffs of those officials." 28 CFR §16.21(b). A state or local law enforcement officer assigned to a joint task force or other working group is included within this definition to the extent the subpoena or demand relates to his or her work on the task force. However, if authorization is sought for testimony by a federal employee employed by an agency other than the Department of Justice, Department policy requires that such authorization be obtained from the employing agency even if the employee is a member of a joint team such as an Organized Crime Strike Force. Also included in the definition are past Department employees in cases in which the subpoena or demand seeks testimony as to information acquired while the person was employed by the Department.

1-7.112 Originating Component Defined

The term "originating component" means the bureau, division, office, or agency of the Department that was responsible for the collection, assembly, or other preparation of the materials demanded, or that, at the time the person whose testimony was demanded acquired the information in question, employed such person. 28 C.F.R. §16.24(a). See USAM 1-7.230 and 7.340, infra, for examples of the concept of "originating component."

1-7.113 Motion to Quash Defined

The term "motion to quash" includes a motion for a protective order and appropriate objections to testimony.

1-7.120 Inapplicability of 28 C.F.R. §16.21 et seq. in Certain Cases

The regulations are limited in their scope to subpoenas and demands issued for the testimony of Department of Justice employees or records only. The regulations do not apply to subpoenas received by an official of another government agency or to requests for that agency's documents, even if the Department of Justice is representing the agency in the litigation. Employees of another federal agency should be advised to contact the General Counsel's Office of their agency for appropriate instructions if they receive a subpoena.

In those cases in which a Department of Justice employee is required

to testify in a matter unrelated to his/her official duties or to disclose information not contained in the Department's files nor acquired as part of his/her official duties, the regulations do not apply.

Examples:

A. An INS employee is subpoenaed as an adverse witness by a plaintiff who accepted that employee's check for personal purchases which later was returned for insufficient funds--no authorization is required because the information requested is unrelated to the individual's employment.

B. An FBI agent is subpoenaed by an insurance company to testify that he/she saw the plaintiff's vehicle weaving across the road when the agent observed the car during a bank robbery investigation--authorization to testify is required because the information was acquired as part of his/her official duties.

1-7.200 PROCEDURE WHERE UNITED STATES IS NOT A PARTY

1-7.210 Notification on Receipt of Request

Requests for authorization pursuant to the regulations are initiated when an employee of the Department informs the U.S. Attorney for the district in which the issuing authority for the demand is located of receipt of the demand (28 C.F.R. §16.22(b)). All employees are directed to notify the appropriate U.S. Attorney's office immediately upon receipt of the subpoena or other demand. Unless the U.S. Attorney is made aware of the demand, the procedures prescribed in the regulations cannot be put into effect; thus, it is urgent that each U.S. Attorney's office be notified promptly by the employee receiving the demand and that each U.S. Attorney's office establish procedures to receive such notification and to take the appropriate steps under the regulations.

1-7.220 Required Affidavit for Oral Testimony

Section 16.22(c) requires that the party making a demand for oral testimony must provide the U.S. Attorney with an affidavit, or, if that is not feasible, with a statement setting forth a summary of the oral testimony sought by the demand and its relevance to the proceedings. If authorization for oral testimony is subsequently granted, it must be limited to the scope of the demand as summarized in such affidavit or statement. Section

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16.22(d) imposes similar summary and relevancy requirements when information other than oral testimony is sought. However, it should be noted that the authorization granted by the appropriate Department official for demand as summarized, although the recommended practice is to limit such information as well to the demanding party's request, absent some special circumstances.

It should also be noted that a motion to quash based on applicable privileges and rules of evidence on relevancy is often appropriate. In such cases the U.S. Attorney or his/her designated assistant should take that action as soon as practicable. 28 C.F.R. §16.24(c).

In addition, negotiation with the party making the demand is, in many cases, quite appropriate. Often the issues can be narrowed so that authorization is possible or the demand may be withdrawn once the government's relevant concerns and supporting arguments are raised and discussed. Quite often a potentially lengthy litigative battle can be resolved without excess time or cost through negotiations; such negotiations are actively encouraged by the Department. 28 C.F.R. §16.24(c).

It has been held that it is not error for a court to refuse to order a U.S. Attorney to testify when the Department's regulations have been cited as to lack of authorization under circumstances in which the moving party has failed to submit the affidavit or statement summarizing the testimony desired so that the Department could consider the request and determine whether to grant permission for the testimony. United States v. Allen, 55 F.2d 398 (10th Cir. 1977), cert. denied, 434 U.S. 836 (1977).

1-7.230 Consultation With the Originating Component

After the U.S. Attorney has clarified the scope of the demand he/she must notify the official in charge of the bureau, division, office, or agency of the Department that was responsible for the collection, assembly, or other preparation of the material demanded or that at the time the person whose testimony is demanded acquired the information in question employed such person. These units are collectively referred to as the "originating component." 28 C.F.R. §16.24(a).

Examples:

A. In a state bank robbery case, an FBI agent is subpoenaed to testify about his/her investigation. The agent notifies the U.S. Attorney that he/she has been subpoenaed. Prior to making a decision to allow the agent

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to testify, the U.S. Attorney must consult the originating component, which, in this example, is the FBI. (The person to consult is the principal legal advisor in the local Bureau field office.)

B. In a state libel case, a Department of Justice attorney is served with a subpoena by one of the parties and asked to produce his/her entire investigative file concerning the other party, which file was prepared by DEA. In this example, there are the two originating components, first DEA, and second, either the attorney's litigating division within the Department or the U.S. Attorney's office. Both must be consulted. (In DEA the person to consult is the agent in charge of the DEA field office.)

1-7.240 Authorizing Disclosure in General

In cases in which the United States is not a party, the power to authorize the disclosure is initially vested in the U.S. Attorney for the district in which the demand originated. 28 C.F.R. §16.22. As a general policy, the Department favors cooperation in state and federal cases in which the testimony of one of its employees is sought or in which information obtained by the Department is sought. Authorization in one form or another is usually granted if it is appropriate under the rules of procedure governing the case or matter in which the demand arose, and if it is appropriate under the relevant substantive law concerning privilege. See 28 C.F.R. §16.26(a) and USAM 1-7.420, *infra*. A denial is not usually approved unless one of the factors set forth in 28 C.F.R. §16.26(b) is present. These factors include such things as that the disclosure will cause a violation of a statute or regulation or the revelation of a confidential source, classified information, trade secrets, the existence of a criminal investigation, or investigative techniques. See USAM 1-7.430, *infra*.

1-7.250 Procedure if the U.S. Attorney and the Originating Component Both Desire Disclosure

In cases in which the United States is not a party, the U.S. Attorney for the district in which the issuing authority for the demand is located may authorize disclosure if the originating component does not object and if disclosure is both appropriate under the rules of procedure and the law of privilege. 28 C.F.R. §16.26(a), and will not involve any of the provisions of 28 C.F.R. §16.26(b) on factors that justify a denial. 28 C.F.R. §16.24(b).

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Example:

In a cocaine possession case set for trial in a state court, a Deputy U.S. Marshal is subpoenaed on behalf of the defense. The Marshals Service does not object to the Deputy Marshal's appearance. There are no factors set forth in Section 16.26(b) that are applicable and the release appears to be appropriate under Section 16.26(a). Since there is no objection from the originating component, the U.S. Attorney may authorize the Deputy's testimony without any further inquiries or approval from the Department.

1-7.260 Procedure if the U.S. Attorney and the Originating Component Either Disagree on Disclosure or Agree That No Disclosure Should be Made

1-7.261 Where Information was Collected in Connection With a Matter Supervised by a Litigating Division

If the U.S. Attorney and the originating component either disagree about the appropriateness of the disclosure or they agree that no disclosure should be made, they should then determine if the demand involves information that was collected, assembled, or prepared in connection with litigation or an investigation that is supervised by a division of the Department. If so, the U.S. Attorney must notify the Assistant Attorney General in charge of the division responsible for such litigation or investigation who may:

- A. Authorize disclosure;
- B. Request the filing by the U.S. Attorney of a motion to quash the demand, if that has not already been done; or
- C. Upon denial of a motion to quash, or where such motion is inappropriate, refer the matter to the Deputy Attorney General or the Associate Attorney General for final resolution. 28 C.F.R. §16.24(d)(1).

Example:

In a state bank robbery case, the FBI and the U.S. Attorney's office disagree with respect to the appropriateness of an agent's testimony. Since the demand involves information that was collected, assembled, or prepared in connection with an investigation under the supervision of the Criminal Division of the Department, the U.S. Attorney should notify the Assistant Attorney General in charge of the Criminal Division, who may take one of the

three steps listed above.

It should again be noted that the filing of a motion to quash, if suitable grounds exist, is the obvious step to take at the start of the process. The U.S. Attorney is always authorized to take this step and is expected to do so and argue the motion vigorously whenever it is appropriate to file such a motion.

1-7.262 Where Information Was Collected in Connection With a Matter Not Supervised by a Litigating Division

If the demand does not involve information collected in connection with an investigation or litigation under the supervision of a division of the Department, and there is a disagreement between the U.S. Attorney and the originating component on disclosure, the originating component has the authority to decide whether the disclosure is appropriate, except that, when an especially significant issue is raised, the U.S. Attorney may refer the matter to the Deputy Attorney General for higher level review. 28 C.F.R. §16.24(d)(2)). The term "especially significant issue" is not defined in the regulations. It would seem that the raising by either side of a factor set forth in 28 C.F.R. §16.26(b) would qualify as an "especially significant issue." In addition, as a matter of comity, each of the two parties should give due deference to the views of the other in determining whether to seek higher level review.

Example:

In a bank robbery case an FBI agent is subpoenaed to testify about FBI personnel policy. Since this demand does not involve information that was collected, assembled, or prepared in connection with either litigation or an investigation supervised by a division of the Department, in the event of a disagreement, the Director of the FBI may authorize disclosure. If, however, the Director does not wish to reveal the personnel policy of the Bureau, because of a factor set forth in Section 16.26 and the U.S. Attorney disagrees and wishes to authorize testimony, this becomes an "especially significant issue" which, after filing a motion to quash the subpoena and having it acted on adversely, the U.S. Attorney may refer to the Deputy Attorney General for a denial.

1-7.270 Denial Policy - United States Not a Party

See USAM 1-7.400 infra, for a full discussion. Note here that denials

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may be authorized only by the Deputy Attorney General or the Associate Attorney General, depending upon which official supervises the component referring the demand.

1-7.300 PROCEDURE WHERE UNITED STATES IS A PARTY

1-7.310 Notification on Receipt of Request

In cases in which the United States is a party, any employee of the Department receiving a subpoena is to immediately notify the attorney for the Department of Justice in charge of the case or matter. Occasionally information indicating the identity of such attorney will appear in the subpoena or demand that is served on the employee. In other cases, that information can be obtained by contacting the U.S. Attorney's office for the district in which the demand arises or by contacting the appropriate division of the Department. It is essential that the specific attorney in charge of the case or matter be located and notified as soon as possible, as it is this attorney who is responsible for taking the appropriate actions under the regulations and who has the power to authorize testimony of the production of records in cases in which he/she deems such procedure to be appropriate.

1-7.320 Required Affidavit for Oral Testimony

In all cases in which a Department of Justice employee informs the appropriate Departmental trial attorney that he/she has been served with a demand for oral testimony, that attorney must clarify the demand by getting an affidavit or, if that is not feasible, a statement setting forth a summary of the testimony or other information sought from the party making the demand. 28 C.F.R. §16.23(c). Note that unlike the situation in which the United States is not a party, in cases in which the United States is a party and the demand is for information other than oral testimony, no request may be required of the demanding party for a summary of the information sought or its relevance to the proceeding. The statements in USAM 1-7.220 on the use of appropriate motions to quash and the efficacy of negotiations to narrow a demand in cases in which the United States is not a party, are generally applicable as well to cases in which the United States is a party, bearing in mind the special considerations that are necessary in dealing directly with a litigative adversary. 28 C.F.R. §16.24(c). See also the discussion of United States v. Allen, supra, in USAM 1-7.220.

1-7.330 Consultation With the Originating Component

After the attorney in charge of the case or matter has clarified the scope of a demand for oral testimony, or in the case of a demand for non-oral testimony upon receipt of the notice of the demand, the attorney for the government must notify the official in charge of the originating component and consult with that component on the question of complying with the demand. 28 C.F.R. §16.24(a). Consultation in this context requires obtaining the views of the originating component, especially in the presence or absence of the factors set forth in 28 C.F.R. §16.26.

1-7.340 Authorizing Disclosure in General

28 C.F.R. §16.23 provides that every attorney in the Department of Justice in charge of any case or matter in which the United States is a party is authorized, after consultation with the originating component, to disclose relevant unclassified material deemed necessary or desirable to the discharge of that attorney's official duties, provided the disclosure is appropriate under the rules of procedure and the law of privilege (Section 16.26(a)), and further provided that disclosure would not violate statutes or regulations, or reveal confidential sources, classified information, trade secrets, ongoing investigations, or investigatory techniques (Section 16.26(b)).

Examples:

A. In a mail fraud case, the U.S. Attorney's secretary is subpoenaed by the defense to testify concerning a relevant issue and an appropriate affidavit or statement is submitted. After first consulting with the U.S. Attorney's office (the originating component), the Department of Justice attorney in charge of the case (DOJ or AUSA) may authorize the employee to testify if the factors set forth in Section 16.26 are satisfied.

B. The government desires to call an FBI agent in the same mail fraud case to testify for the government about his observations of the defendant. The policy of the Department is to require neither consultation with the originating component nor authorization for the Departmental employee to testify in such a case.

C. The Postal Inspector who investigated the same mail fraud case is subpoenaed by the defense. In this example the regulations do not apply,

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since they prescribe procedures for Justice Department employees only. The attorney handling the case should notify the local Postal Inspector's Office and determine if regulations of the Postal Service apply and what their provisions are. The regulations, however, would apply if the defense subpoenaed the FBI agent's supervisor.

When, in the attorney's judgment, any of the factors set forth in Section 16.26(b) exist which preclude testimony or disclosure, no testimony or disclosure may be made without the express prior approval of the Assistant Attorney General in charge of the division responsible for supervising the case or matter or such person's designee. 28 C.F.R. §16.23(a). An attorney in charge of a case or matter in which the United States is a party may also, at any time, request that the supervisory Assistant Attorney General review his/her decision on complying with a demand. 28 C.F.R. §16.23(b).

1-7.350 Procedure if the Department Attorney in Charge of a Case and the Originating Component Both Agree on Disclosure

If, after consultation, the originating component does not object to disclosure and the attorney in charge of the case or matter determines that disclosure is appropriate under 28 C.F.R. §16.26(a) and not barred by any factor set forth in 28 C.F.R. §16.26(b), the attorney is empowered to authorize the disclosure without seeking any further approval. 28 C.F.R. §16.24(b).

1-7.360 Procedure if the Department Attorney in Charge of a Case and the Originating Component Either Disagree on Disclosure or Agree that the Demand Should be Denied

There are three possible situations that can arise after consultation when there is disagreement on release or agreement on the appropriateness of a denial.

A. If the attorney in charge of the case believes that denial is appropriate because of the factors set forth in 28 C.F.R. §16.26, but the originating component believes that disclosure is appropriate, the regulations provide for higher level review. This requires that the attorney in charge of the case refer the demand to the Assistant Attorney General in charge of the division responsible for the case or matter being litigated. 28 C.F.R. §16.23(a). The options open to that division on referral will be discussed later in this section.

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B. If the attorney for the government believes that disclosure is appropriate under the factors set forth in 28 C.F.R. §16.26, but, after consultation, the originating component takes the position that disclosure should not take place, a sensitive decision has to be made by the attorney in charge of the case. Clearly, under the regulations. 28 C.F.R. §16.23, he/she can authorize disclosure despite the views of the originating component and without higher level review. He/she can also refer the matter for higher level review and decision by the division that supervises the case or matter in litigation. 28 C.F.R. §16.23(b). The decision will depend on many factors, a number of which may well be unique to the individual case. As a rule of thumb, attorneys ought to give some deference to the views of the originating component, especially if that component's decision is based on its belief that a factor set forth in 28 C.F.R. §16.26(b) is present. The attorney is also encouraged to seek guidance in such cases from his/her immediate supervisor. There are no hard and fast rules, and the attorney, as noted, does retain ultimate authority under the regulations to authorize disclosure despite the originating component's objections. It should also be noted that pursuant to 28 C.F.R. §16.26(d), the Assistant Attorney General in charge of each division is free to issue any instructions or to adopt any supervisory practices consistent with regulations that would help foster consistent application of the standards promulgated and the other requirements of the regulations. In the context of this type of disagreement, care should be taken before overruling an originating component that the division in question has not issued a contrary instruction in its supervisory capacity.

C. If both the attorney in charge of the case or matter and the component agree that a denial is appropriate, the matter is to be referred to the Assistant Attorney General in charge of the division that supervises the case or matter in litigation. 28 C.F.R. §16.23(a).

Once a demand has been referred for higher level review, the Assistant Attorney General in charge of the division may then take the same actions as can be taken in cases in which the United States is not a party, i.e.:

- A. Authorize disclosure based on the factors in 28 C.F.R. §16.26;
- B. Authorize the attorney in charge of the case to file a motion to quash the demand if that has not already been done; or
- C. Upon denial of a motion to quash, or where such motion is inappropriate, refer the matter to the Deputy Attorney General or Associate Attorney General for final resolution. 28 C.F.R. §16.24(e).

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1-7.370 Procedure if on a Referral the Material Demanded Arose in a Case Supervised by a Division Other Than the Division Receiving the Referral

Once a case or matter is referred for higher level review, a problem can arise if the demanded disclosure involves information originally collected, assembled, or prepared in connection with litigation or an investigation supervised by a unit of the Department other than the one which supervises the case or matter in litigation, and to which the matter has been referred. The division receiving the referral must notify the other division concerning the demand and the anticipated response. If the two litigating units of the Department are unable to resolve a disagreement concerning disclosure, the Assistant Attorneys General in charge of the two divisions in disagreement may refer the matter to either the Deputy Attorney General or the Associate Attorney General for decision, depending upon who supervises the originating component or, in the case of an independent agency that, for administrative purposes, is within the Department, to the Deputy Attorney General. 28 C.F.R. §16.24(e).

Example:

Pursuant to a request from the Civil Rights Division, an FBI agent investigates an incident involving alleged racial discrimination and prepares a report on his/her findings. Five years later that report is subpoenaed by a defendant in an unrelated criminal case. The matter is then referred to the Criminal Division because, after consultation with the FBI, the attorney in charge of the case believes that a denial may be required under 28 C.F.R. §16.26(b). The Assistant Attorney General in charge of the Criminal Division must notify the Assistant Attorney General in charge of the Civil Rights Division of the demand and the anticipated response. If both agree on disclosure, then disclosure results. If both agree on denial or if they disagree on disclosure, the matter is referred to the Deputy Attorney General since that official supervises the originating component (in this example the FBI).

1-7.380 Denial Policy - United States a Party

See USAM 1-7.400, *infra*, for a full discussion. Note here that denials may be authorized only by the Deputy Attorney General or the Associate Attorney General depending upon which official supervises the component referring the demand.

1-7.400 DENIAL POLICY

1-7.410 Denial Policy in General

The regulations neither create new privileges nor supersede discovery obligations that exist under the Federal Rules of Civil Procedure. 28 C.F.R. §16.21(d). They merely serve as a procedural vehicle to allow the Department the opportunity to protect information from unwarranted and unconsidered disclosure. It is only in infrequent situations, after all possible alternatives have been exhausted, that the Deputy Attorney General or Associate Attorney General should be requested to issue a denial. Therefore, pursuant to 28 C.F.R. §16.24(d)(1), it is Departmental policy that all steps must be taken to limit the demand prior to referring the matter to the Deputy Attorney General for his/her decision. These steps include, most importantly, the filing of a motion to quash the demand. In addition, negotiations should also be undertaken with the person making the demand to limit its scope. 28 C.F.R. §16.24(d)(1)(ii). Because each request for denial requires the personal review of the Deputy Attorney General or the Associate Attorney General, it is necessary to limit the number of such requests to those that are truly necessary; therefore, no memorandum requesting a denial should be submitted prior to the filing and denial of a motion to quash unless the filing of such motion is clearly inappropriate under the circumstances. 28 C.F.R. §16.24(d)(1)(iii).

Because the denial of a demand made by a court is an extraordinary act, denial authority is strictly limited, and no Department official below the level of the Deputy Attorney General or the Associate Attorney General may issue a denial under the regulations in any situation. 28 C.F.R. §16.25. Since there are cases in which the Attorney General may be personally involved, the regulations make it clear that his/her decision to authorize or deny disclosure in such cases is final. 28 C.F.R. §16.24(g).

1-7.420 Presence of Factors Set Forth in 28 C.F.R. §16.26(a)

Subsection (a) of Section 16.26 identifies generally the areas of law that Department officials and attorneys should consider in deciding whether to make disclosures. Because the factors relevant to a particular demand vary widely with the nature of the demand, and to avoid any suggestion that, through this procedural regulation, the Department might be seeking to impose legal standards different from the ordinary rules of procedure and the substantive law concerning privilege, the regulation adopts a highly

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general approach in subsection (a), instead of attempting a detailed list of considerations.

The factors to be considered in whether to make a disclosure are twofold, and as noted, general in nature. First, the official making the decision is to consider whether the disclosure in question is appropriate under the rules of procedure governing the case or matter in which the demand arose. Second, he/she is to consider whether disclosure is appropriate under the relevant substantive law concerning privilege. These general factors are, of course, the same factors to be considered in filing the appropriate motions to quash. A failure on either ground--rules of procedure or substantive law of privilege--is one predicate for initiating the process leading to denial. At the initial stages, release cannot be authorized unless the official making the determination is assured, inter alia, that the demanded disclosure is appropriate under these general §16.26(a) factors. 28 C.F.R. §16.24(b)(3).

1-7.430 Presence of Factors Set Forth in 28 C.F.R. §16.26(b)

Subsection (b) of Section 16.26 contains a number of very specific factors that set forth areas where disclosure should not be made. It is the presence or absence of these factors that will trigger whether a disclosure will be authorized at the initial stage (by the U.S. Attorney in a case in which the United States is not a party or by the attorney in charge of the case or matter in a case in which the United States is a party). "If this official (called the "responsible official" in the regulations)" believes that one or more of these factors is present, he cannot authorize disclosure, but is required to seek higher level review and decision.

The factors in §16.26(b) set out those interests that the Department of Justice must be most careful in protecting. To some degree they parallel the exemptions from mandatory disclosure set forth in the Freedom of Information Act (5 U.S.C. §552(b)). The factors are:

A. Disclosure would violate a statute, such as the income tax laws, 26 U.S.C. §§6103 and 7213, or a rule of procedure, such as the grand jury secrecy rule, Federal Rules of Criminal Procedure 6(e);

B. Disclosure would violate a specific regulation;

C. Disclosure would reveal classified information, unless appropriately declassified by the originating agency;

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D. Disclosure would reveal a confidential source or informant, unless the investigative agency and the source or informant have no objection;

E. Disclosure would reveal investigatory records compiled for law enforcement purposes, and would interfere with enforcement proceedings or disclose investigative techniques and procedures, the effectiveness of which would thereby be impaired; and

F. Disclosure would improperly reveal trade secrets without the owner's consent.

This list is not to be considered all inclusive. If some other factor should exist in a special case, or at some time in the future, that would lead to adverse consequences similar to those that can be caused by disclosure of an item on the list, it would warrant similar treatment. Nevertheless, the list is intended to be comprehensive and any other factor that would warrant denial must be such as to create a strong case for its inclusion.

1-7.440 Decision by the Deputy Attorney General or the Associate Attorney General

The authority of the Deputy Attorney General or the Associate Attorney General to order disclosure despite the presence of one or more of these factors is delineated in §16.26(b). If any of the factors set forth in paragraphs 1-3 (violation of law, violation of specific regulation or disclosure of classified information) is present, the regulations state that neither official will authorize a disclosure. If any of the factors set forth in paragraphs 4-6 are present, the regulations state that disclosure will not be authorized unless either official determines that the administration of justice requires disclosure. Remember that under the regulations only these officials can order a denial. Of course, as head of the Department, the Attorney General also possesses the power to order a denial.

If a disclosure is to be ordered, despite the presence of a factor set forth in paragraphs 4-6, as being in the interest of the administration of justice because disclosure is deemed necessary to pursue a civil or criminal prosecution or affirmative relief, such as an injunction, the regulations direct that consideration be given to: (a) the seriousness of the violation or crime involved; (b) the past history or criminal record of the violator or accused; (c) the importance of the relief sought; (d) the importance of the legal issues presented; and (e) any other matters brought to the

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attention of the Deputy Attorney General or the Associate Attorney General.

Finally, in all cases that are referred to the Deputy Attorney General or the Associate Attorney General in which none of the factors set forth in paragraphs 1-6 are present, those officials are to authorize disclosure, unless, in their judgment, after considering the factors set forth in §16.26(a), disclosure is unwarranted. 28 C.F.R. §16.26(c).

1-7.500 PROCEDURES IN RESPONDING TO A DEMAND

1-7.510 Procedure in the Event a Departmental Decision Has Not Been Made at the Time a Response is Required

It is the lack of authorization, rather than the issuance of a denial, that often precludes compliance with a demand at the proceeding. The subpoenaed official who has not received authorization by the date of the appearance must respectfully inform the court that he/she cannot comply. It is essential in cases in which the United States is not a party that the local U.S. Attorney provide representation. In cases in which the United States is a party, such representation by the attorney in charge of the case or matter is presumed.

28 C.F.R. §16.27 contains instructions on the procedures to be followed in this situation. The subpoenaed employee should provide the court with a copy of the applicable regulations and state that the demand has been referred for the prompt consideration of the appropriate Department official. In rare cases these measures may not satisfy the court; the U.S. Attorney should then cite United States ex rel Touhy v. Ragan, 340 U.S. 462 462 (1951) in which the Supreme Court held that an employee may not be held in contempt for failing to produce the demanded information where appropriate authorization had not been given. 28 C.F.R. §16.27, 28.

It should be noted that there are two United States Circuit Court of Appeals cases that recognize the right of an Executive Branch agency to promulgate regulations such as those found in 28 C.F.R. §16.21 et seq., to centralize as a "housekeeping" function the authorizing or denying power in a specific official. These cases also make it clear that the ultimate power to deny may be challenged in court and that the final decision will be bottomed on the rules of privilege. Committee for Nuclear Responsibility, Inc. v. Seaborg, 463 F.2d 788 (D.C. Cir. 1971); NLRB v. Capital Fish Co., 294 F.2d 868 (5th Cir. 1961).

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1-7.520 Procedure in the Case of a Denial

In those cases in which either the Deputy Attorney General or the Associate Attorney General has issued a denial, the Department employee to whom the demand has been made should appear at the proceeding and respectfully decline to comply with the demand, citing the regulations and providing the court with a copy of the written denial determination if time has permitted one to be obtained. Here, too, it is essential that the U.S. Attorney in cases in which the United States is not a party provide representation for the Department employee. In cases in which the United States is a party, such representation by the attorney in charge of the case or matter is presumed. As with the preceding section, it may be necessary to cite the case of United States ex rel Touhy v. Ragan, supra. 28 C.F.R. §16.28).

1-7.530 Responding to a Contempt Citation for Failure to Respond to a Demand

As noted, it is essential that a U.S. Attorney or other Department attorney appear in court with the witness. In the event that the court orders the witness incarcerated for contempt, the Assistant U.S. Attorney should immediately petition for a writ of habeas corpus (28 U.S.C. §2254 if in state custody or 28 U.S.C. §2255 if in federal custody). If the employee is in state custody, an alternative to habeas corpus is removal of the matter to federal court pursuant to 28 U.S.C. §1442. It is expected that contempt citations will be extremely rare. Action by the U.S. Attorney or other Department attorney in such cases is expected to be quick and vigorous.

1-7.600 GENERAL PROVISIONS

1-7.610 Special Drug Enforcement Authorization

The Drug Enforcement Administration receives unique treatment with respect to authorizing testimony under 28 C.F.R. §0.103(a), a section of the regulations unaffected by the 1980 amendment to 28 C.F.R. §16.21 et seq. Under §0.103(a), the Administrator of DEA may authorize the testimony of DEA officials in response to subpoenas issued by the prosecution in federal, state, or local criminal cases involving controlled substances. 28 C.F.R. §0.103(a)(3). In addition, the Administrator may release information

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obtained by DEA and DEA investigative reports to federal, state, and local prosecutors and to state licensing boards engaged in the institution and controlled substances. 28 C.F.R. §0.103(a)(2). Note that this section only authorizes release to the government side of the covered cases. Any other production of information or testimony by DEA officials is covered by 28 C.F.R. §16.21 et seq.

Examples:

A. In a hearing before a state board of pharmacy, a DEA agent is subpoenaed to testify for the state. The Administrator of DEA may authorize this testimony.

B. In the same hearing, the respondent pharmacist issues a subpoena to the agent. In this example, authorization must come from the U.S. Attorney or higher level authority under the regulations, since the demand did not emanate from the prosecution.

C. A small amount of marijuana is found by DEA agents executing a search warrant. Although the U.S. Attorney declines prosecution, the Administrator of the Drug Enforcement Administration may authorize agents to release their entire file to the state prosecutor directly or authorize them to testify in response to a subpoena from the state (but not in response to a subpoena from the defense).

1-7.620 Reimbursement of Travel Expenses

A Department of Justice employee who is summoned to appear and testify, or who is assigned to present testimony or to identify official documents in connection with a judicial or agency proceeding, is entitled to travel expenses if authorized by the Department of Justice to appear. Expenses are paid in accordance with normal government travel provisions, 5 U.S.C. §§5701-5708, unless reimbursed by the court or by the party summoning the witness. 5 U.S.C. §5751. The appropriate amount chargeable for travel expenses is detailed in 28 C.F.R. §21.1.

1-7.630 Official Leave

A Department of Justice employee is entitled to official leave, not chargeable to annual leave, when appearing in his/her official capacity on behalf of the United States or when he/she has been summoned to appear on behalf of another party. 5 U.S.C. §6322. However, no provision is made for

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official leave for an employee who appears voluntarily as a witness for a private party.

1-7.640 Witness Fees

When an employee appears on behalf of the United States, he/she is not entitled to a witness fee. 5 U.S.C. §5537. If the witness appears in an official capacity for a party other than the United States, any witness fee received is deducted from his/her pay. 5 U.S.C. §5515.

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1-8.000 RELATIONS WITH THE CONGRESS

Subject to the general supervision of the Attorney General and the direction of the Deputy Attorney General, liaison between the Department and the Congress is the responsibility of the Assistant Attorney General for the Office of Legislative Affairs (OLA). 28 C.F.R. §0.27.

A. Congressional committee requests for information from Department files, or congressional committee requests for interviews with or testimony by Department employees concerning official matters within the Department, should be reduced to writing, signed by the chairman of the committee, and addressed to the Assistant Attorney General, OLA.

B. Requests from Congressional Committees or individual Members of Congress for interviews; testimony; briefings; visits to U.S. Attorneys' offices; or information concerning official matters within the Department from Department employees, including U.S. Attorneys and their employees should be reduced to writing, signed by the chairman of the committee or individual Member of Congress, and addressed to the Assistant Attorney General, OLA. Invitations for Departmental personnel to give testimony must be received 14 days prior to the date of the hearing in order to be considered. Telephone requests or written requests from congressional staff may not serve in lieu of written requests signed by Members of Congress.

Requests of the aforementioned nature should be acknowledged as follows and forwarded to OLA:

This office is anxious to assist Congress whenever possible. However, pursuant to 28 C.F.R. §0.27, the Assistant Attorney General for the Office of Legislative Affairs is responsible for liaison between the Department of Justice and Congress. Directives established by the Department of Justice and reflected in the United States Attorneys' Manual, Section 1-8.000, et seq., entitled "Relations with Congress," provide that requests made by Congress for the appearance of employees of the Department of Justice must be submitted to the Assistant Attorney General for the Office of Legislative Affairs. Therefore, I am forwarding a copy of your (date) letter to me by teletype to the Office of Legislative Affairs to facilitate a response to your request by that office.

C. The Assistant Attorney General, OLA, shall be kept informed at all times regarding matters affecting any organizational unit of the Department which are submitted for consideration by the Congress or by any committee or individual member thereof.

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D. A proposed amendment to existing law or a proposal for new legislation shall under no circumstances be submitted for consideration by the Congress, or by any committee or individual member thereof, unless it has been approved by the Assistant Attorney General, OLA.

E. Any request calling for action by the Congress, or by any committee or member thereof, shall be addressed the Assistant Attorney General for the OLA, and shall contain full information concerning the legislative objective sought.

F. Requests from Congressional Committees or Members of Congress for statements on pending federal legislation; needs for legislation; legal issues; litigation trends; and non-public discretionary litigation information may be acknowledged. (Copies of correspondence, accompanied by a draft response should be forwarded to OLA for coordination with the Executive Office for U.S. Attorneys and components of the Department.)

G. Routine Congressional correspondence on specific cases or matters to U.S. Attorneys may be responded to by the U.S. Attorney directly with a copy of the correspondence forwarded to OLA. Routine correspondence includes:

1. Employment related information such as openings, inquiries, recommendations, etc.;
2. Public information related to specific cases, i.e., cases, grand jury indictments, court dates;
3. Legal procedure, i.e., processes clearly defined in statutes and/or regulations; and
4. Press releases, reports or other published information.

Any question as to whether a matter is routine or not should be resolved in favor of reporting to OLA.

In addition, OLA is responsible for all congressional correspondence sent to Department officials in Washington. Routine congressional correspondence on specific cases or matters to U.S. Attorneys may be responded to by the U.S. Attorney directly, with a copy of the correspondence forwarded to OLA. Although congressional inquiries on legislative matters may be acknowledged, copies of the correspondence, accompanied by a draft response on the merits, should be sent to the Deputy

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Attorney General and the Office of Legislative Affairs for coordination with other U.S. Attorneys and the divisions of the Department.

See also USAM 1-5.700, Coordination of United States Attorneys' Offices Surveys, for the full text of Department of Justice Order No. 2810.1, signed by the Attorney General. All surveys and questionnaires from Congress members or committees and the General Accounting Office should be sent to the Executive Office for U.S. Attorneys for review and endorsement prior to completion by the U.S. Attorney's office. For assistance, please contact the office of the Assistant Director for Legal Services. (FTS 633-4024).

1-8.100 [RESERVED]

1-8.200 COMMUNICATIONS FROM THE WHITE HOUSE

It is important to establish Department principles and procedures which will ensure to the extent possible that improper considerations will not enter into the Department's legal judgment and that the public know of and have confidence in these procedures. For these purposes further direction and procedural details on the subject are discussed below.

CASES

The Assistant Attorneys General, the U.S. Attorneys and the heads of the investigative agencies in the Department have the primary responsibility to initiate and supervise investigations and cases. These officials must be insulated from influences that should not affect decisions in particular criminal or civil cases. To ensure that this occurs, to continue the independence of the Department of Justice, to prevent even the appearance of conflicts of interest and to provide for the most efficient and effective system of proper communications with outside parties, specific procedures must be provided to regulate communication concerning pending cases. Consequently, the following paragraphs restate and clarify the procedures initially announced in 1978.

A. All inquiries and information concerning pending investigations, matters or cases from either the White House Staff or the Congress should be directed to the Offices of the Attorney General, the Deputy Attorney General or the Associate Attorney General. Additionally, each Assistant Attorney General should report to the Deputy or Associate Attorney General all communications about specific cases by persons other than those involved in the litigation.

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B. All requests for formal legal advice or legal opinions from the White House Staff or the Congress should be directed to the Office of the Attorney General or to the Office of Legal Counsel. The Assistant Attorney General for the Office of Legal Counsel should report directly to the Attorney General any communications that constitute improper attempts to influence the office's legal judgment.

C. Routine written inquiries regarding the status of cases or matters may be processed by correspondence units in the regular manner.

D. These procedures are not intended to interfere with the normal communications between the Department of Justice and its client departments and agencies and any meetings or communications necessary to the proper conduct of the litigation.

When these procedures were announced in 1978, the Attorney General explained that singling out certain persons or groups whose communications should be screened did not suggest that those persons or groups were especially prone to attempts to exercise improper influence. Nor does excluding other persons or groups imply that they never try to exercise improper influence. The policy is simply based on the fact that persons in certain positions of power unintentionally can exert pressure by the very nature of their positions.

POLICY AND LEGISLATION

White House or Congressional inquiries concerning policy decisions or legislation are different from those directed at specific investigations and cases. The positions of the Administration on those kinds of matters often must be coordinated. Additionally, there is less chance for improper influences in this area. Consequently, different considerations for communication result.

E. Each head of an office, board, bureau or division, or the appropriate person or office within an office, board, bureau or division, may communicate directly with the White House Staff or with Congress on legislative proposals, general policy decisions and the like, as is the current practice. However, to ensure coordination in the Department, the Office of Legislative Affairs should be kept apprised of all communications about legislation and the Deputy and Associate Attorneys General should be informed about important or significant policy communications in their respective areas of responsibility.

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These policies have been discussed with officials at the White House to facilitate procedures and to request that the White House centralize its own practices with regard to communication with the Department of Justice. All requests, questions or similar communications, other than the purely routine, should come from either the head of the Domestic Policy Staff or from the Counsel to the President. In the case of intelligence and national security matters, the Assistant to the President for National Security Affairs is the appropriate person to initiate communication.

FUNDING PROGRAMS

The Department of Justice's Funding Program is a third area in which outside communication frequently occurs. In this area, however, it is a proper and an essential part of the solicitation, bid and deliberative process for third parties to communicate directly with the Office of Justice Assistance, Research and Statistics or any other component within the Department that is involved in funding and for the Justice Management Division to communicate directly with the Office of Management and Budget:

F. While QJARS and JMD must retain their discretion and flexibility, it is essential that those offices coordinate their activities with other federal agencies. Consequently, in the case of budgeting and funding matters, the head of the appropriate office should report to the offices of the Attorney General or the Deputy Attorney General any attempts to influence improperly the office's decision-making process as well as any important or significant policy communications.

* * * * *

These procedures do not seek to wall off the Department from legitimate communication. Criticism and advice are welcomed. What these procedures seek to do is to route communications to the proper place so they can be adequately reviewed and considered, free from the appearance of undue influence or other impropriety.

This principle is essential to the Department's proper function because litigation decisions are frequently discretionary. The ultimate criterion is that the decisions are fair. Justice employees are not infallible, but the responsibility for wielding power fairly lies with them. Criticism after the fact is perfectly proper. Criticism before the fact must be channeled so that fairness is not defeated, and justice is served. Fairness must not change from case to case. It must not be influenced by

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partisanship or the privileged social, political or interest group position of either the individuals involved in particular cases or those who may seek to intervene against them or on their behalf.

1-8.300 GENERAL ACCOUNTING OFFICE AUDITS

1-8.310 Authority for Audits

The letter (reproduced at USAM 1-8.360, infra) from the Associate Attorney General to the General Counsel of the General Accounting Office (GAO) describes the basic procedures to be followed in the event of a GAO visit to your office. This chapter provides additional direction.

The Department of Justice must recognize in its relations with GAO that GAO has statutory authority to examine departmental activities. (See, DOJ Order No. 2810.1, June 13, 1980 and USAM 1-5.700). Therefore, we are obliged to cooperate with that agency. At the same time, the functions of the Department serve important public interests and should not be interrupted unduly. In addition, we have a responsibility to prevent the disclosure of various kinds of information that are entrusted to us. As a result, we must balance our obligation to honor GAO authority to conduct audits with our duty to conduct effectively our public business and to maintain necessary confidences.

1-8.320 Procedures During a GAO Visit

Arrangements for GAO visits to U.S. Attorneys' offices should be made between GAO's General Government Division and the Assistant Director for Legal Services of the Executive Office for U.S. Attorneys. Assistant Attorneys General and subordinate officials of the divisions do not have the authority to authorize or arrange for GAO visits to U.S. Attorneys' offices. If you are contacted by GAO, another component of the Department, or anyone else concerning a GAO visit that you have not discussed already with the Executive Office, you should contact the Assistant Director for Legal Services promptly. The Executive Office, working with your office, will develop with GAO an agenda for the visit. Once the visit begins the Executive Office should be consulted if GAO attempts to expand the agenda.

The U.S. Attorney should meet personally with the GAO staff upon their arrival and upon the completion of their work, if at all possible. It is important to recognize the great harm that an inaccurate GAO report can do to your office and the Department. Therefore, you should be aware of what

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they intend to examine, and should go over their results with them to identify erroneous findings or conclusions. GAO staff frequently have limited experience with litigation or the operation of U.S. Attorneys' offices, and it is in their interest, as well as yours, for you to be aware fully of their activities.

In addition to your personal attention, as the letter of agreement shown below indicates, one person should be designated as a liaison to work closely with the GAO team while they are at your office. Also, your entire staff should be made aware of the GAO visit and its purpose, and should be advised to cooperate with GAO personnel, but not to provide them with any unauthorized information or materials.

1-8.330 GAO Access To Closed Case Files

GAO often requests access to case files. The Executive Office will attempt to minimize such requests because of the time and expense involved in retrieving and reviewing case files. Where such files are to be examined by GAO, as the letter of agreement provides, the following materials are to be removed from closed case files:

A. Classified information, unless the Executive Office has confirmed in writing the requisite security clearances of the particular GAO individuals who are to have access to files containing classified information.

B. The names of and other identifying information concerning informants and other confidential sources. This includes information identifying confidential investigative techniques.

C. Information received by the Department in exchange for an expressed pledge of confidentiality.

D. The names of and other identifying information concerning persons who are the subjects of allegations of unlawful conduct, but who have not been charged in connection with that conduct.

E. Information on matters occurring before a grand jury. This covers any information restricted from release by Fed. R. Crim. P. 6(e).

F. Tax information, particularly as governed by 26 U.S.C. §6103, except as authorized by 31 U.S.C. §713.

G. The identities of Assistant U.S. Attorneys, other government

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lawyers, and government agents making recommendations concerning the case.

H. Other documents containing information restricted from release by a particular statute or otherwise lawfully barred from release. Among the statutes that contain such restrictions are:

1. 13 U.S.C. §9 (census information);
2. 18 U.S.C. §1905 (disclosure of confidential information by public officials);
3. 18 U.S.C. §2510 et seq. (intercepted wire or oral communications);
4. 35 U.S.C. §122 (patent information);
5. 42 U.S.C. §1306 (Social Security records);
6. 42 U.S.C. §2000e-8(e) (Equal Employment Opportunity Commission investigation records);
7. 42 U.S.C. §7135(g) (atomic energy information);
8. 44 U.S.C. §2104 (National Archives information);
9. 49 U.S.C. §1504 (Civil Aeronautics Board information);
10. 50 U.S.C. §403(g) (Central Intelligence Agency information).

1-8.340 GAO Access to Open Case Files

Open case files present a much more sensitive situation. They normally are not provided to GAO and should be made available to GAO only after consultation between the U.S. Attorney personally and the Director of the Executive Office and other Departmental officials as appropriate. Open case files should not be made available to GAO until the U.S. Attorney receives express authorization to do so from the Director of the Executive Office or his/her designee. When open files are provided to GAO, all of the materials described above under closed files should be removed. In addition, it is important to remove all internal departmental memoranda and any communications with other agencies of government or any other parties concerning litigation strategy, case settlement, case evaluation, or prosecution recommendations.

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1-8.350 Conclusion of a GAO Visit

At the conclusion of the GAO visit you should conduct an exit interview to review the GAO findings. In addition, you should request to see any interview reports in order to verify their accuracy.

At the conclusion of a GAO visit to your office, if you have any concerns or problems with the way the visit was conducted or the conclusions GAO appears to have drawn, they should be communicated promptly to the Executive Office. An erroneous report can do great harm to you and the Department. The Executive Office can arrange with GAO in Washington to discuss findings or conclusions it believes to be erroneous. In addition, it can discuss with GAO arrangements and procedures for future visits to U.S. Attorneys' Offices to ameliorate in the future any problems U.S. Attorneys may have experienced with their field staff.

1-8.360 Department of Justice/GAO Letter of Agreement

June 1, 1981

Mr. Milton Socolar
Acting Comptroller General
General Accounting Office
Washington, D.C. 20548

Dear Mr. Socolar:

This letter sets forth procedures concerning General Accounting Office (GAO) visits to United States Attorneys' Offices. These procedures were developed by the Department of Justice following discussions and correspondence between the Department and GAO. They are intended to facilitate the fulfillment by GAO of its statutorily authorized audit and review activities, while minimizing the disruption caused by GAO audits to the ongoing operations of U.S. Attorneys' Offices.

All General Accounting Office visits to the United States Attorneys' Offices should be arranged by the General Government Division of GAO and the Executive Office for United States Attorneys of the Department of Justice. GAO should note that officials of the Department's management and litigating

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divisions do not have authority to grant GAO access to materials or personnel in United States Attorneys' Offices. In order to enable the Executive Office to make the arrangements necessary for such visits, the General Government Division should supply the Executive Office with the following information:

1. The sites to be visited.
2. The desired dates for the visits.
3. The overall scope and objectives of the audit.
4. The persons or types of persons sought to be interviewed, and
5. The documents or types of documents sought to be reviewed.

The Executive Office within two weeks will prepare, working with the United States Attorneys' Offices involved, a proposed agenda covering all of the above topics. In addition, in each office to be visited an individual will be designated as the official liaison. In preparing the above-mentioned agenda, the Executive Office will identify any matters requiring special attention. In particular, where GAO desires access to case files, arrangements will be made to make such files available as indicated below. However, closed case files often are stored in Federal Records centers, and after retrieval must be reviewed by the United States Attorney's staff before being made available to GAO personnel. Consequently, GAO is asked to provide at least three weeks notice before files are needed to allow sufficient time for the above described retrieval and review. With respect to open case files, such files generally contain materials of such extreme sensitivity that GAO should not seek access to them unless there is a clear, particularized need. Such access should be requested personally by the Associate Director for Law Enforcement.

Before case files are provided to GAO personnel, it will be necessary to remove from them the following types of information:

1. Classified information, except where GAO has verified with the departmental security office the clearances of the GAO personnel who are to have access and has confirmed with the Executive Office the need to know of each person who is to have such access.
2. The names of and other identifying information concerning informants and other confidential sources.

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3. Information received by the Department in exchange for an expressed pledge of confidentiality.

4. The names of and other identifying information concerning persons who are the subject of allegations of unlawful conduct, but who have not been charged in connection with that conduct.

5. Information on matters occurring before a grand jury covered by Fed. R. Cr. P. 6(e).

6. Tax information, particularly as governed by 26 U.S.C. §6103, except as authorized by 31 U.S.C. §67.

7. In files of open cases, internal departmental memoranda and communications with other agencies of government concerning litigation strategy, case settlement, case evaluation, or prosecution recommendations, subject to the procedure described below designed to provide GAO with needed information while preserving necessary confidentiality.

8. In closed case files, the identities of individuals who prepared case analysis or made litigative recommendations may be masked. Closed case files are files in matters that are no longer under investigation or in litigation and in which appeals on the merits have been completed or any applicable notice of appeal filing deadlines have passed.

9. Other documents containing information specifically restricted from disclosure by statute or otherwise lawfully barred from release.

Before copies may be made of documents originating outside of the United States Attorney's Office or a Department of Justice litigating division, concurrence for such copying must be obtained from the originating agency. The Department of Justice will undertake to obtain such concurrences upon the request of GAO.

In the event GAO considers certain information that has been removed from a file to be either improperly withheld or necessary for the proper performance of the audit, the team leader should discuss the matter with the on-site liaison person. If that discussion does not resolve the issue, the GAO Associate Director for Law Enforcement Activities should contact the Director of the Executive Office.

The Department will attempt to arrange for GAO to receive the substance of the information it seeks without violating legal requirements or other strictures. For example, descriptions of particular documents or a synopsis

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of their contents may provide GAO with sufficient information, while allowing the department to protect sensitive identities or other undisclosable information.

United States Attorney's Office administrative files also will be available to GAO personnel. Where they contain restricted information, such as is described above for case files, such information be similarly removed or masked, subject to the same review and appeal procedures.

The Department requests that GAO teams, before concluding site visits, review interview memoranda with the persons interviewed and the findings of the visit with the United States Attorney or a designee. It is understood that GAO will discuss with the Executive Office their findings and conclusions at the time of the preparation of the initial drafts of their report when specifically requested by the Director of the Executive Office. The foregoing reviews and discussions will permit the identification of erroneous or incomplete information and will enable the Department to provide GAO with additional information in order that reports may be more complete.

In audits identified by the Director of the Executive Office as involving particularly sensitive information or in GAO investigations of great length or complexity, the Department understands that GAO will consult with the Executive Office on an interim basis to review findings and recommendations. Where especially sensitive information is involved, inadvertent revelations or erroneous findings could result in personal danger to individuals involved or serious impairment to federal law enforcement. In lengthy investigations, regular consultations may help GAO to avoid expending significant resources unnecessarily and may facilitate the progress of the audit.

Finally, it is expected that GAO will continue to provide the Department with the final drafts of reports for official comment, except where specifically prohibited by the Congressional requester. Any comments made in response should continue to be made a part of the final reports.

I am hopeful that the foregoing procedures will facilitate proper cooperation between the Department and GAO in the course of GAO audits involving visits to United States Attorneys' Offices.

Sincerely,

/s/

Rudolph W. Giuliani
Associate Attorney General

USAM (superseded)

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1-9.000 OTHER GOVERNMENT AGENCIES

1-9.100 RELATIONSHIPS WITH CLIENT AGENCIES

1-9.110 Liaison of U.S. Attorneys with Client Agencies

Whenever a case involves an agency of the United States as a client of a U.S. Attorney's office it shall be the responsibility of the division or U.S. Attorney to ensure that their client agencies are kept fully informed of case progress, developments and decisions.

The following steps are recommended as a means toward that end:

A. Promptly upon receipt of a complaint against an agency, the division or U.S. Attorney's office, as appropriate, should mail a notification letter to the General Counsel of the agency or to his or her designee. (Where time does not permit, e.g., where a motion for a TRO has been filed, it may be necessary to notify the agency by telephone). At the same time, or as soon thereafter as possible, the agency should be provided with the name(s) and telephone number(s) of the Justice Department attorney(s) to whom the case has been assigned. The agency should be requested, in turn, to provide the Justice Department attorney(s) with the name, direct mailing address, and telephone number of the agency attorney to whom communications with respect to the case should be directed.

B. With respect to affirmative cases, receipt of a referral from a client agency should be acknowledged promptly and names of attorneys exchanged as in Paragraph A.

C. Unless reasons of economy indicate otherwise, copies of all significant documents filed in court in both defensive and affirmative cases should be sent, immediately upon receipt or service, to the client agency. If a client agency specifically requests, copies of all documents filed should be sent. (Service of a summons and complaint on the client agency may normally be assumed, and copies of exhibits forwarded by the client agency need not be reproduced and returned).

D. In non-delegated cases, the U.S. Attorney should also send copies of all documents filed in court to the division responsible for the case.

E. An agency should be notified in advance of any significant hearings, oral arguments, depositions, or other proceedings.

F. Appropriate steps should be taken to consult adequately with agencies in advance regarding positions we intend to urge in court. Under no circumstances should a case be compromised or settled without advance consultation with a client agency, unless the agency has clearly indicated that some other procedure would be acceptable.

1-9.120 Notification to Special Agent in Charge Concerning Illegal or Improper Actions by DEA or Treasury Agents

The Department of the Treasury and the Drug Enforcement Administration have requested that their appropriate Special Agent in Charge (or the equivalent) be notified by the U.S. Attorney's office whenever the actions of one of their agents result in the granting of a motion for suppression of evidence, or are otherwise deemed illegal or improper in a judicial opinion. You should feel free to similarly notify Special Agents in Charge of other investigative agencies and/or the Criminal Division in appropriate situations.

Of course, all allegations of misconduct by Department employees should be brought to the attention of the Office of Professional Responsibility following the guidance set forth in 28 C.F.R. §0.39 et seq.

1-9.130 Case Processing by Teletype with Social Security Administration

There is a teletype receiver at the Social Security Administration's Office of Hearings and Appeals in Arlington, Virginia, which facilitates the processing of Social Security cases. Please include the routing signal address for the Office of Hearings and Appeals and the Office of General Counsel in Baltimore. The routing signal for both addresses is SSAGC. Each teletype on Social Security litigation (Social Security retirement, survivors and disability benefits; supplemental security income and medicare benefits, will include:

- A. Case name;
- B. Plaintiff's Social Security number;
- C. District court where case was filed;
- D. Date the complaint was filed;
- E. Date the United States Attorney was served;
- F. Name and FTS telephone number of the AUSA handling the case;
- G. Date petition in forma pauperis was filed if applicable; if not applicable, N/A.

The essential transmittal must be sent within 3 days upon receipt of

notification of suit to insure a timely answer.

The teletype receives only. It cannot transmit messages. The proper routing signal will be "RR AA SSAGC."

Any questions may be directed to the Office of General Counsel in Baltimore, FTS 934-7543.

1-9.140 Procedure for Obtaining Disclosure of Social Security Administration Information in Criminal Proceedings

On February 12, 1975, an understanding was reached between the Department of Justice and the Social Security Administration (SSA) regarding the release of information from records of the SSA where such information is required to afford a defendant a fair trial in a criminal case pursuant to Brady v. Maryland, 373 U.S. 83 (1963).

A. Whenever the defendant in a criminal proceeding moves on trial for disclosure of information from social security records about someone else, the Department of Justice will attempt to resist such disclosure arguing that such personal information in social security records is confidential by law. In no event will the Department of Justice request such personal information for prosecution purposes.

B. Where the defendant in a criminal case moves in court that information about, or the appearance of, the holder of a given social security number is necessary to his defense, and the court seems inclined to grant the motion, the Department of Justice will attempt to satisfy the court by offering to provide identifying data about the social security number holder such as sex, date of birth and race, without divulging his name or whereabouts. In such a case a designated official of the Department of Justice will contact a designated official of the Office of the General Counsel, HHS, to arrange for the disclosure of such information. The information will be furnished by SSA as expeditiously as possible.

C. If the court considers such information insufficient and orders the appearance of the social security number holder on grounds of due process, a designated official of the Department of Justice will contact a designated official of the Office of the General Counsel, HHS. If the Department of Justice assures SSA that it will not use the appearance of the number holder or any information derived from his appearance, or any information otherwise received from the Social Security Administration, directly or as a lead in any prosecution of the number holder, the Commissioner of Social Security will, under his "ad hoc" authority in Section 401.1 of Regulation No. 1 (20

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C.F.R. §401.1) provide the Department of Justice expeditiously with the information.

D. If in a specific case the Department of Justice is unable to provide assurance that it will not use the information or appearance of the social security number holder for prosecution purposes, the Commissioner will nevertheless review the specific order under his "ad hoc" authority, considering all the circumstances in that case, provide an expeditious reply -- pro or con -- to the Department of Justice, and if necessary, discuss the matter further with the Department of Justice.

E. The proscription against the Department of Justice requests for such information for purposes of prosecution does not apply in the case of violations of the Social Security Act or fraud against the Social Security Administration, as disclosure in these cases is provided for in 42 U.S.C. §1306, 20 C.F.R. §401, et seq.

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1-10.000 RELATIONS WITH THE PRIVATE BAR AND JUDICIARY

1-10.100 REPRESENTATION OF THE JUDICIARY

The Attorney General is sometimes requested by particular judges or other judicial officers, federal courts, or the Administrative Office of the United States Courts to represent members, officers, or clerks of the Judicial Branch. This often occurs when the judge is sued in his/her individual capacity for money damages as a result of his/her judicial acts, but may also involve injunctive and declaratory relief. Because the judiciary is constitutionally separate from the Executive Branch, each request must be individually examined and approved by the Assistant Attorney General for the Civil Division. Once the Department of Justice has determined that representation is appropriate in a given case, the doctrine of absolute judicial immunity will, if appropriate, be invoked by a Motion to Dismiss for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure.

1-10.110 Standards

In order to determine whether Department of Justice representation should be authorized, it must be determined that a judge or judicial officer acted within his/her judicial or official capacity, and that the case is one in which Department of Justice representation is appropriate.

USAM 1-10.111, infra, reprints a letter from then Attorney General Kleindienst describing the situations in which the Department may represent judges. As a general rule, the Department may represent a member of the judiciary where the only relief sought is money damages against the judge personally. It may not represent him/her in a collateral proceeding which is in the nature of an appeal to overturn a decision of the judicial officer rendered in favor of one party or another. The reason for such a determination is that no relief is sought against the judicial officer personally and the party in whose favor the decision is made is the real party in interest in such a situation.

On the other hand, representation may be appropriate in the absence of a claim for money damages where there is a federal interest at stake such as the court's ability to enforce a valid local rule or where an attempt is being made to compel a judicial officer to personally perform an act such as testifying in a state proceeding concerning a matter which involved the performance of official duties.

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Finally, as a matter of ethical caution, consideration should be given to arranging for counsel from a neighboring U.S. Attorney's Office or from the Department in Washington in the case when representation of a judicial officer will entail the exchange of detailed attorney-client confidence, or raise other ethical questions. The Attorney General's Advisory Committee of U.S. Attorneys has passed a resolution recognizing that a U.S. Attorney may seek the assistance of neighboring offices wherever he/she believes a conflict of interest would develop if his/her office represented a local judge. Use of such outside counsel would preclude subsequent questions of disqualification of the judge in other cases handled by the local U.S. Attorney. See 28 U.S.C. §455; United States v. Zagari, 419 F. Supp. 494 (N.D. Cal. 1976). In a November 2, 1981 opinion, available to U.S. Attorneys upon request, the Office of Legal Counsel discusses the ethical issues raised in deciding whether to obtain outside counsel in these circumstances.

1-10.111 Attorney General Memorandum

Office of the Attorney General

January 31, 1973

Mr. Rowland F. Kirks
Director
Administrative Office of the
United States Courts
Washington, D.C. 20544

Dear Mr. Rowland:

As requested in your September 18, 1972, letter, I have canvassed the Department in order to pull together an overall Justice policy which would clarify for you the circumstances under which the Department will assume the burden of representing judicial officers.

As you are acutely aware, a substantial number of cases are filed in the district courts seeking money damages against a judge or other court official. In such a case, Justice regularly provides representation where the acts which are the basis of the suit are within the scope of the defendant officer's authority and where the only relief sought is money damages against the defendant personally. Such representation will continue.

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There are times, however, when representation is requested in collateral proceedings which are in the nature of appeals to overturn a decision of the judicial officer rendered in favor of one party or another, a situation in which the government is not a party to the litigation. Normally, in such actions no monetary relief, or other relief, is sought personally against the judicial officer.

The result of Justice's representing the judicial officer in such a situation amounts to the Department defending the position, of one or the other private litigants and, as such, is as objectionable as it would be for the Department to assume the burden of direct representation of one of the private litigants. In our view, when no personal relief is sought against the judicial officer, such officer is no more in need of a personal defense than he would be if an appeal were taken from any of his appealable rulings. Nor is there any impropriety in counsel for one of the private litigants representing the judicial officer, as if he were defending an appeal from the officer's ruling.

Occasionally (as in Fridolphs v. Hamlin, referred to in the correspondence attached to your letter), a collateral suit against a judicial officer in the nature of an appeal will also seek personal damages against the officer. Such a case requires the exercise of judgment as to whether the appeal aspect of the claim for damages aspect is dominant. In Fridolphs, we declined to furnish representation because, in our view, the money claim was frivolous and merely tacked on in an attempt to obtain a reversal of the officer's ruling. In fact, it was so treated by the court. Therefore, in these instances Justice will continue to evaluate the nature of the claim and make representation decisions on that basis.

Of course, where the government is involved as a litigant, we shall continue to provide representation to judicial officers on appeal type claims where a ruling favorable to the government is sought to be overturned, or personal money damages are sought against the officer, or both.

Coming now to the specific questions raised in your letter, while I probably have set forth our views above as to some of these matters, a specific answer and comment may be of assistance:

1) The Department of Justice cannot furnish representation to a judicial officer if the suit collaterally challenges the action taken by that officer in an original proceeding. Only if the suit is clearly for personal money damages will such representation be undertaken.

2) The Department of Justice cannot furnish representation to a judicial officer in a situation where the Department's interest collides

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with those of the judicial officer, such as in a mandamus proceeding instituted against the judge by the Department.

3) Although I, as Attorney General, have the authority to furnish a special attorney, and may authorize such an appointment in extraordinary circumstances, this cannot be done in cases, as set forth above, where the Department could not, on its own, represent the judicial officer. In cases where the Department can furnish representation, we prefer to utilize our own staff attorneys.

4) The appearance of fairness can be maintained in a situation where a United States Attorney is simultaneously representing a judicial officer in a suit and prosecuting or defending cases before the same client-officer. Although Justice's authority to do so has been challenged, such challenges have not been accepted by the courts.

5) The Department of Justice will file amicus statements in any type of case where it will be helpful to the court to know the government's position or for a relatively impartial statement of what the law is or should be. In Fridolphs, the Department felt that the claim for money was frivolous and that a statement amicus to that effect, with supporting authorities, would be more than adequate to insure that the court would so treat it, as the court did.

6) Whenever the Department furnishes a staff attorney, or appoints a special attorney, to represent a judicial officer, the Department will bear the costs attendant to the representation. The Department cannot bear the costs of private counsel retained by a judicial officer.

The above should clarify the representation issues which you have appropriately raised. I believe that minimal difficulties will be encountered and that, in the vast bulk of the cases brought against judicial officers, Justice will be able to furnish representation.

Sincerely,

/s/ Richard G. Kleindienst
Attorney General

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1-10.120 Procedure

When a summons and complaint naming a federal judicial officer as a defendant are served upon the U.S. Attorney, he/she should first determine, pursuant to the standards hereinafter described, whether the suit conceivably falls into one of the categories for which Department of Justice representation is authorized. If it does, he/she should immediately contact the judge or officer to determine whether Justice Department representation is desired. If the defendant requests Department representation, a memorandum requesting representation should be sent by the U.S. Attorney to the Assistant Attorney General for the Civil Division. The U.S. Attorney should convey all pertinent information available to him/her and, if appropriate, make a recommendation regarding the request.

When the request is received, it will be reviewed by the Civil Division and a copy forwarded to the Administrative Office of the United States Courts. Often the Civil Division will request the Administrative Office to supply a statement of the facts involved in the case and its views on whether Department of Justice representation is appropriate.

It is the responsibility of the Director of the Torts Branch, Civil Division, in charge of representation matters, to determine initially if the acts complained of were done within the defendant officer's official or judicial capacity and if the case is one which falls within their class of cases for which representation is appropriate. If the issue is a close one or it appears that representation should be denied, a memorandum outlining the circumstances of the suit and the Director's recommendation is then sent to the Assistant Attorney General who would then take final action on the request. When the Assistant Attorney General has made a determination on the request the U.S. Attorney, the Administrative Office of the United States Courts, and the judge or judicial officer involved will be notified by the Civil Division.

1-10.130 Payment of Money Judgment

As with all other government officials and employees sued in their individual capacities, Justice Department representation does not mean that a money judgment rendered against the individual will be paid by the United States. At present, there is no statutory authority for the compelling of such payment and the only remedy available is the introduction of a private bill in Congress.

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1-10.140 Judicial Immunity

The doctrine of judicial immunity is firmly established and protects judges from damages suits so long as the challenged conduct is not in clear absence of all jurisdictions. See Stump v. Sparkman, 435 U.S. 349 (1978). Clearly the purpose of the immunity is to allow judges to perform their functions free of intimidation. See Dennis v. Sparks, 449 U.S. 24, 31 (1980).

The Supreme Court recognized the significance of the immunity very early in Bradley v. Fisher, 13 Wall 335 (1872), where the Court stated:

. . .[I]t is a general principle of the highest importance to the proper administration of justice that a judicial officer in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself. Liability to answer to everyone who might feel himself aggrieved by the action of the judge, would be inconsistent with the possession of this freedom, and would destroy that independence without which no judiciary can be either respectable or useful Nor can this exemption of the judges from civil liability be affected by the motives with which their judicial acts are performed. The purity of their motives cannot in this way be the subject of judicial inquiry.

Subsequently in the case of Pierson v. Ray, 386 U.S. 547 (1967), the Supreme Court described the very broad situation in which judicial immunity is appropriate:

Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their jurisdiction, as this Court recognized when it adopted the doctrine in Bradley v. Fisher, 13 Wall. 335 (1872). This immunity applies even when the judge is accused of acting maliciously and corruptly, . . . It is a judge's duty to decide all cases within his jurisdiction that are brought before him, including controversial cases that arouse the most intense feelings in the litigants.

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The immunity is so well established that the Court has refused to assume that Congress intends to abrogate the immunity by general remedial provisions (such as those provided by 42 U.S.C. §1983) in the absence of a clear expression of congressional intent to do so. See Pierson v. Ray, *supra*. The broad application of the immunity is reiterated in Stump v. Sparkman, *supra*, where the Supreme Court stated:

A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the 'clear absence of all jurisdiction'. 435 U.S. at 356-57.

However, judicial immunity does have certain limitations. The immunity would not bar an equitable claim or an award of statutory attorneys' fees. See Pulliam v. Allen, 104 S. Ct. 1970 (1984). Furthermore, in applying the doctrine of judicial immunity, courts have distinguished between acts done in excess of jurisdiction, in which case the immunity attaches, and acts done in complete absence of subject matter jurisdiction, in which case a judge may be deprived of the immunity. See, e.g., Billingsley v. Kyser, 691 F.2d 388 (8th Cir. 1982); O'Neil v. City of Lake Oswego, 642 F.2d 367 (9th Cir. 1981); Gregory v. Thompson, 500 F.2d (9th Cir. 1974). In addition, the circuits are divided as to whether immunity is lost where the judge acts in the clear absence of personal jurisdiction. Compare, Green v. Maraio, 722 F.2d 1013 (2d Cir. 1983), (immunity lost in clear absence of subject matter jurisdiction) with Rankin v. Howard, 633 F.2d 844 (9th Cir. 1980), *cert. denied*, 451 U.S. 939 (1981) (immunity lost in clear absence of personal jurisdiction).

It is also noted that judicial immunity also may have derivative application to court employees. See, e.g., William v. Wood, 612 F.2d 982 (5th Cir. 1980); Dien v. Norton, 411 F.2d 761 (7th Cir. 1969); Green v. Maraio, *supra*. Significantly, some courts have extended the immunity to persons who are not court employees (Ferri v. Ackerman, 444 U.S. 193 (1979) (grand jurors); Brisco v. Lahue, 103 S.Ct. 1108 (1983) (witnesses); Slavin v. Curry, 574 F.2d 1256, 1266 (5th Cir. 1978) (bar association grievance committee members)) for the reason that these individuals perform functions that are an integral part of the judicial process.

The same reasoning has justified an absolute immunity for certain functions of the prosecutor (Imbler v. Pachtman, 424 U.S. 409 (1975)), but the Supreme Court has refused to extend the immunity to public defenders (Towers v. Glover, 104 S.Ct. 2821 (1984)), and court appointed counsel (Ferri v. Ackerman, *supra*) on the ground that they performed functions that traditionally have not been accorded any special immunity at common law.

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1-10.150 Decisions of the United States Court of Appeals

The most recent decisions concerning judicial immunity can be found in the following cases:

D.C. Circuit: Moore v. Burger, 655 F.2d 1265 (D.C. Cir. 1981); Clark v. Taylor, 627 F.2d 284 (D.C. Cir. 1980).

1st Circuit: In re Justices of Supreme Court of Puerto Rico, 695 F.2d 17 (1st Cir. 1982); Sullivan v. Kelleher, 405 F.2d 486 (1st Cir. 1968); Francis v. Crafts, 203 F.2d 809 (1st Cir. 1953).

2d Circuit: Green v. Maraio, 722 F.2d 1013 (2d Cir. 1983); Dacey v. Dorsey, 568 F.2d 275 (2d Cir. 1978), cert. denied, 436 U.S. 906 (1978); Person v. Association of the Bar of the City of New York, 54 F.2d 534 (2d Cir. 1977); Garfield v. Palmieri, 297 F.2d 526 (2d Cir. 1962).

3d Circuit: Princeton Community Phone Book, Inc. v. Bate, 582 F.2d 706 (3d Cir. 1978), cert. denied, 439 U.S. 966 (1979); Turack v. Guido, 464 F.2d 535 (3d Cir. 1972); Robinson v. McCorkle, 462 F.2d 111 (3d Cir. 1972).

4th Circuit: Lewis v. Blackburn, 734 F.2d 1000 (4th Cir. 1984); Wilkins v. Rogers, 581 F.2d 399 (4th Cir. 1978); Mullins v. Oakley, 437 F.2d 1217 (4th Cir. 1971); Steinpreis v. Shook, 377 F.2d 282 (4th Cir. 1967).

5th Circuit: Watts v. Graves, 720 F.2d 1416 (5th Cir. 1983); Ammons v. Baldwin, 705 F.2d 1445 (5th Cir. 1983), cert. denied, 104 S.Ct. 999 (1983); Brewer v. Blackwell, 692 F.2d 387 (5th Cir. 1982); William v. Wood, 612 F.2d 982 (5th Cir. 1980); Grundstrom v. Darnell, 531 F.2d 272 (5th Cir. 1976); Williams v. Seppe, 487 F.2d 913 (5th Cir. 1973); Collins v. Moore, 441 F.2d 550 (5th Cir. 1971); Guerdry v. Ford, 431 F.2d 660 (5th Cir. 1970).

6th Circuit: Campbell v. Patterson, 724 F.2d 41 (6th Cir. 1983), cert. denied, 104 S.Ct. 1613 (1983); International Union v. Greyhound Lines, Inc., 701 F.2d 1181 (6th Cir. 1983); Littleton v. Fisher, 530 F.2d 691 (6th Cir. 1976); Puett v. City of Detroit, 323 F.2d 591 (6th Cir. 1963); Hurlburt v. Graham, 323 F.2d 723 (6th Cir. 1963).

7th Circuit: Reed v. Village of Shorewood, 704 F.2d 943 (7th Cir. 1983); Talley v. Crosson, 663 F.2d 713 (7th Cir. 1981), cert. denied, 103 S.Ct. 1426 (1981); Ashbrook v. Hoffman, 617 F.2d 474 (7th Cir. 1980); Harris v. Harvey, 605 F.2d 330 (7th Cir. 1979), cert. denied, 445 U.S. 938 (1979); Jacobson v. Schaefer, 441 F.2d 127 (7th Cir. 1971); Berg v. Cwiklinski, 416

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F.2d 929 (7th Cir. 1969); Dieu v. Norton, 411 F.2d 761 (7th Cir. 1969); Kalec v. Adamowski, 406 F.2d 536 (7th Cir. 1969).

8th Circuit: Smith v. Bacon, 699 F.2d 434 (8th Cir. 1983); Billingsley v. Kyser, 691 F.2d 388 (8th Cir. 1982); Birch v. Mazander, 678 F.2d 754 (8th Cir. 1982); Keating v. Martin, 638 F.2d 1121 (8th Cir. 1980); McClain v. Brown, 587 F.2d 389 (8th Cir. 1978); Wiggins v. Hess, 531 F.2d 920 (7th Cir. 1976); Barnes v. Dorsey, 480 F.2d 1057 (8th Cir. 1973); Schwartz v. Weinstein, 459 F.2d 882 (8th Cir. 1982).

9th Circuit: O'Neil v. City of Lake Oswego, 642 F.2d 367 (9th Cir. 1981); Rankin v. Howard, 633 F.2d 844 (9th Cir. 1980), cert. denied, 451 U.S. 939 (1980); Johnson v. Reagan, 524 F.2d 1123 (9th Cir. 1975); Gregory v. Thompson, 500 F.2d 59 (9th Cir. 1974); Cadena v. Perasso, 498 F.2d 383 (9th Cir. 1974).

10th Circuit: Wiggins v. New Mexico State Supreme Court Clerk, 664 F.2d 812 (10th Cir. 1981), cert. denied, 459 U.S. 840 (1982); O'Bryan v. Chandler, 496 F.2d 403 (10th Cir. 1974), cert. denied, 419 U.S. 986 (1974), reh'g denied, 420 U.S. 913 (1975); Smith v. Losee, 485 F.2d 334 (10th Cir. 1973), cert. denied, 417 U.S. 908 (1974); Potter v. La Munyon, 389 F.2d 874 (10th Cir. 1968); Gately v. Sutton, 310 F.2d 107 (10th Cir. 1962).

11th Circuit: Dykes v. Hoseman, 743 F.2d 1488 (11th Cir. 1984); Scott v. Dixon, 720 F.2d 1542 (11th Cir. 1983), reh'g denied, 729 F.2d 1468 (1984), cert. denied, 105 S.Ct. 122 (1984); Owens v. Kelley, 681 F.2d 1362 (11th Cir. 1982), reh'g denied, 697 F.2d 1094 (1983).

1-10.200 JUDICIAL DISQUALIFICATION

28 U.S.C. §445 deals with the disqualification of district court judges and it states in part:

Any justice, judge, or magistrate, of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

28 C.F.R. §50.19 (47 Fed. Reg. 22094 (5/21/82)) establishes procedures to be followed by all government attorneys prior to filing a motion to recuse or disqualify a judge. The regulations require the written approval of the Assistant Attorney General of the appropriate division prior to filing of a motion to recuse or disqualify the judge, justice or magistrate in the case. In cases handled by a U.S. Attorney's Office, the views and recommendations of the client agency should be submitted with the request

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for approval. If the case is being handled by a Department of Justice division, the Department attorney should include the views and recommendations of both the client agency and the U.S. Attorney for the district in which the matter is pending when submitting the request for approval.

Approval or denial of such requests will be in writing. Oral authorization will be given, and should only be sought, if the litigation does not allow sufficient time to seek prior written approval. In such cases the attorney in charge of the case is required subsequently to prepare and submit to the Assistant Attorney General a written record fully reflecting that authorization.

1-10.300 DISBARMENT PROCEEDINGS [RESERVED]

1-10.400 BAR ASSOCIATION PROGRAMS

1-10.410 Private Professional Practice

U.S. Attorneys and their Assistants may not engage in any outside employment or the private practice of law, except as provided by 28 C.F.R. §§45.735-9(c)(3), 45.735-6(b) and (d) or by the Deputy Attorney General's specific exception. See 28 C.F.R. §45.735-9(e). Requests for exceptions must be made in writing stating the reasons therefor and should be addressed to the Deputy Attorney General through the applicant's superior. Such requests should be directed to the Executive Office for U.S. Attorneys.

No U.S. Attorney or Assistant should engage in any professional practice or any other outside employment if the activity: (1) interferes with proper and effective performance of official duties; (2) creates or appears to create a conflict of interest; (3) reflects adversely on the Department of Justice; (4) will be influenced or appears to be influenced by the employee's position at the Department of Justice; (5) involves assertions contrary to interests or positions of the United States (or the D.C. government) is a party or has a direct or substantial interest regardless of whether it is a federal, state or local proceeding.

28 C.F.R. §45.735-9 encourages Department of Justice attorneys to participate in pro bono activities without compensation in their off-duty hours or while on leave. Leave will be granted, however, for court appearances or other necessary incidents to representation. Attorney's fees for such services may not be sought. In determining whether to provide pro bono services in a particular matter the attorney should consider the requirements of subsection 9(f) and, in particular, the prohibition against

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engaging in any professional practice that involves a criminal matter. Any attorney wishing to participate in such pro bono work must advise the Executive Office for U.S. Attorneys of his/her intention, identifying the name of the organization with which he/she will be associated and the general nature of the work, for a determination as to whether such activities fall in one of the accepted categories of public interest services. These categories are: (1) service to an indigent client; (2) service to defend an individual or public right in which society has an interest; (3) services to further the purposes of the organizational group; and (4) services to improve the administration of justice.

U.S. Attorneys and their Assistants also should freely consult the Executive Office for U.S. Attorneys on these matters.

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1-11.000 "IMMUNITY" - COMPELLED TESTIMONY

The following are the Attorney General's guidelines, dated January 14, 1977, which fully supersede Criminal Division Memo No. 595 and its supplements.

The guidelines concern the utilization of the principal federal statutes pertaining to compulsion of witnesses to testify or provide other information, despite their assertion of the Fifth Amendment privilege against compulsory self-incrimination (18 U.S.C. §§6001-6003). The heart of the statutory scheme, Section 6002, provides:

Whenever a witness refuses, on the basis of his privilege against self-incrimination to testify or provide other information in a proceeding before or ancillary to . . . a court or grand jury of the United States, . . . and the person presiding over the proceeding communicates to the witness an order issued under this part, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

Although similar provisions are set forth, redundantly, for drug cases in 21 U.S.C. §884, the Department will rely upon the Title 18 provisions for all cases. See USAM 9-2.158.

The statutory provisions represent an accommodation between competing interests: the government's need, on the one hand, to obtain testimony that may be necessary to the public interest, and the witness's right, on the other hand, to withhold his/her testimony by assertion of the Fifth Amendment privilege against compulsory self-incrimination. The power to compel testimony of witnesses has long been held in Anglo-American jurisprudence to be a legitimate imperative of government (see, e.g., Kastigar v. United States, 406 U.S. 441 (1972)), but equally fundamental to our system is the proposition that no person may be compelled to self-incrimination. In enacting these statutes, Congress recognized that some crimes can be proved only by witnesses who are themselves implicated, and that it may be necessary to compel them to testify in order to obtain the

conviction of other participants.

The statutes require a district judge, upon motion by a U.S. Attorney, to order a witness to testify or provide other information, notwithstanding his/her Fifth Amendment privilege. The witness is not "immunized" from prosecution or given any benefit he/she would not otherwise have. The only consequence as far as the witness is concerned is that no testimony or other information compelled under the order, or any information, directly or indirectly derived from such testimony or other information, may be used against him/her in a subsequent criminal prosecution. This leaves the witness in the same position as if he/she had not been compelled to testify. The witness may still be prosecuted for perjury, giving a false statement, or failure to comply with the order, and even for the transaction concerning which he/she testified. See United States v. Henderson, 406 F.Supp. 417 (D. Del. 1975).

In upholding the constitutionality of the statutory provisions, the Supreme Court found that the prohibition concerning the direct or indirect use of the compelled testimony in any criminal prosecution of the witness adequately met the Fifth Amendment proscription against forcing a person to serve as a witness "against himself." Kastigar v. United States, 406 U.S. 441 (1972). See also United States v. Calandra, 414 U.S. 338 (1974); Zicarelli v. New Jersey Investigation Comm's, 406 U.S. 472 (1972). The Court emphasized, however, the absolute nature of the use prohibition and placed a heavy burden on the government to prove in any future prosecution of the witness that its evidence was derived independently of the testimony that the witness provided under compulsion.

The statutes provide the government with an important and effective device for obtaining needed testimony, and they have, under appropriate circumstances, significant advantages over former "transactional immunity" statutes in that they provide no gratuity to a testifying witness, they encourage the giving of more complete testimony by proscribing use of everything the witness relates, and they still permit a prosecution of the witness in the rare case where it can be shown that the supporting evidence clearly was obtained only from independent sources.

While the Department encourages the use of these statutes, their use will be authorized only when it appears that the public interest may best be served thereby. In order to preclude misuse of orders to compel testimony, and to avoid jeopardizing prosecutions of defendants or potential defendants in on-going cases or investigations, these guidelines set forth uniform standards and procedures to be followed prior to filing motions for such orders.

1-11.100 AUTHORIZATION PROCEDURES

A. Summary: An attorney for the government may request authorization from the Assistant Attorney General for the Criminal Division or the Assistant Attorney General for the division with responsibility for the subject matter of the case to apply for an order, pursuant to 18 U.S.C. §6003 and 28 C.F.R. §0.175, compelling a person to testify or provide other information when, in his/her judgment, it may be necessary to the public interest to obtain such testimony or information and the person has refused or is likely to refuse to provide such testimony or information on the basis of the privilege against self-incrimination. The request for authorization shall contain sufficient information to permit the Assistant Attorney General, and the U.S. Attorney for the district in which the motion for the order is to be made, to make an independent judgment regarding the public interest and the likelihood of the refusal to testify.

B. Comment: 18 U.S.C. §6003 makes it clear that a compulsion order should not be sought by the government without the judgment that two conditions exist: first, that the testimony or information sought may be in the public interest, and second, that the person to whom the order will be directed has refused or is likely to refuse to provide the testimony or information on the basis of the privilege against self-incrimination. That judgment must first be made by the attorney for the government initiating the process to obtain the compulsion order, and must thereafter be concurred in by the appropriate Assistant Attorney General and the U.S. Attorney for the district in which the motion for the order is to be made.

Although motions to the court for compulsion orders under 18 U.S.C. §6003 must be made by the U.S. Attorney for the district in which the court is sitting, requests for authorization to apply for such orders may be initiated by any Department of Justice attorney. A request ordinarily should be in writing, using the Departmental form developed for the purpose (see USAM 1-11.901), but under exigent circumstances an oral request and oral justification may be submitted, with the written materials to follow as soon as possible. See USAM 1-11.101.

1-11.101 Procedure Under Exigent Circumstances

It is recognized that, despite efforts to anticipate the invocation by a witness of the privilege against self-incrimination, there will be extraordinary instances necessitating the processing of a request for

authorization to compel testimony more rapidly than the normal processing time of two weeks. Where the time within which the authorization decision must be made is one to three days, attorneys should submit their requests, labelled "Emergency Request," to the Witness Records Unit via the telefax system (FTS 633-1468) located in the Criminal Division. Where the time involved is less than one day, requests may be submitted by telephone to the attorney-in-charge of the Witness Records Unit at 633-5541. The attorney will assure that all available information is brought to the immediate attention of the appropriate Assistant Attorney General, as well as such other Departmental personnel as may be necessary. He/she will also assure the prompt communication of the authorization decision to the requesting attorney. After receiving authorization pursuant to an oral request, the requesting attorney should promptly send to the Witness Records Unit a confirmatory, written request for authorization on the proper form. See USAM 1-11.901.

1-11.110 Requests by Assistant U.S. Attorneys

Requests initiated by Assistant U.S. Attorneys must be approved either by the U.S. Attorney or, in his/her absence, by a senior supervisory Assistant, and should be sent to the Witness Records Unit of the Criminal Division which will forward them to the appropriate Assistant Attorney General.

1-11.120 Requests by Legal Division Attorney; Approval of U.S. Attorney

Requests initiated by attorneys assigned to a litigating division of the Department should be sent to the appropriate Assistant Attorney General, with a copy transmitted to the Witness Records Unit of the Criminal Division. The attorney initiating the request need not obtain the approval of the U.S. Attorney for the district in which the proceeding will be conducted prior to submitting the request. He/she must, however, send an informational copy of the request to the U.S. Attorney (see USAM 1-11.902), and take whatever other steps are necessary to facilitate review of the request by the U.S. Attorney. The U.S. Attorney, as soon as possible after receipt of this informational copy of a request for authorization, should inform the Witness Records Unit of the Criminal Division of any objection he/she may have to the approval of the request. This procedure is advisable since the U.S. Attorney must, under the statute, personally conclude that it is necessary and desirable to seek a compulsion order in his/her district. All division attorneys should allow for sufficient time and consultation as may be necessary for the U.S. Attorney to discharge his/her statutory responsibility.

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1-11.130 Approval by Assistant Attorney General

The Assistant Attorney General in charge of the Criminal Division is authorized to approve requests for authorization in any cases and proceedings before a federal court or grand jury. 28 C.F.R. §0.175. Assistant Attorneys General in charge of the Antitrust, Civil Rights, Land and Natural Resources, and Tax Divisions similarly have been authorized to approve requests with respect to cases and proceedings within the cognizance of their respective divisions, subject to the condition that no such authorization may be given unless the Criminal Division has first indicated that it has no objection to the proposed compulsion order. This condition is designed to minimize the danger of inadvertent interference with current criminal investigations or prosecutions, most of which fall within the jurisdiction of the Criminal Division. The Assistant Attorney General with jurisdiction of the prosecution, however, has the primary responsibility for approving the application. Upon receipt by the Criminal Division of a request for its acquiescence -- or of a direct request for Assistant Attorney General authorization -- the Witness Records Unit will request the Federal Bureau of Investigation, and such other federal law enforcement agencies as may be appropriate, to conduct a search of investigative files concerning the witness and to report thereon to the Criminal Division. Except in the most imperative circumstances, the Criminal Division will defer its approval until the Federal Bureau of Investigation has reported the results of its file search.

If a request for authorization is approved by the Assistant Attorney General, a written authorization will be sent to the attorney initiating the request (see USAM 1-11.903) or, when time is critical, a written authorization will be sent by a facsimile transmitter or by teletype or an oral authorization will be telephoned and confirmed by teletype.

It is expected that in particularly sensitive cases the Assistant Attorney General whose authorization is sought will consult with the Attorney General or Deputy Attorney General in the course of his/her reviewing of the request and its supporting documentation.

1-11.200 THE DECISION TO SEEK AUTHORIZATION

1-11.210 The Public Interest

In determining whether it may be necessary to the public interest to obtain testimony or other information from a person, the attorney for the government should weigh all relevant considerations, including:

A. The importance of the investigation or prosecution to effective enforcement of the criminal laws;

B. The value of the person's testimony or information to the investigation or prosecution;

C. The likelihood of prompt and full compliance with a compulsion order, and the effectiveness of available sanctions if there is no such compliance;

D. The person's relative culpability in connection with the offense or offenses being investigated or prosecuted, and his/her history with respect to criminal activity;

E. The possibility of successfully prosecuting the person prior to compelling him/her to testify or produce information; and

F. The likelihood of adverse collateral consequences to the person if he/she testifies or provides information under a compulsion order.

This section contains guidelines for attorneys for the government, and those whose approval they must secure, in deciding whether it may be necessary to the public interest to compel the giving of testimony or information in a particular case. The considerations listed here are not intended to be all-inclusive or to require a particular decision in a particular case. Rather, they are meant to focus the decision-makers' attention on factors which probably will be controlling in the vast majority of cases. Of course, the significance of the presence or absence of any one or more of these factors in a particular case is a matter to be determined by the decision-maker.

1-11.211 Seriousness of Offense and Importance of Case

Although the Department encourages the use of compulsion orders as a means of obtaining necessary evidence in appropriate cases, it will not routinely or indiscriminately authorize requests to be made for such orders. For this reason, an application for authorization to seek a compulsion order should not be made unless the testimony or information desired concerns the commission of a serious crime or successful prosecution

of the case is otherwise important in achieving effective enforcement of the criminal laws.

1-11.212 Value of the Testimony or Information

Under 18 U.S.C. §6002, testimony or information provided under a compulsion order cannot be used, directly or indirectly, in a prosecution of a person who provides it, except a prosecution for perjury, making a false statement, or failing to comply with the compulsion order. Although the person may still be prosecuted on the basis of independent evidence for any offense about which he/she testifies, in practice, the government's burden of proving the independent nature of its evidence is so great that successful prosecution usually would be extremely difficult. Consequently, under the circumstances of many cases, use of the statute will effectively preclude a future prosecution of the witness for the matters to which his/her testimony relates. Accordingly, since the giving of testimony or information under a compulsion order may foreclose enforcement of the criminal law against a person otherwise subject to prosecution, a compulsion order should not be sought without careful assessment of the probable value to the government of the testimony or information.

It is of primary importance that there be good reason to believe that the testimony or information would, if true, be helpful to the government. If possible, the attorney for the government should obtain an indication of the potential witness's probable testimony from the witness or his attorney. If this is not possible, the government attorney should make an assessment based on other information available, such as the relationship between the witness and the defendant, the witness's role in the offense, and the statements the witness may have made to others about his/her knowledge. The government attorney can then weigh the anticipated testimony in terms of the case at hand. In doing so, the attorney should consider whether the testimony will be credible, whether it will materially assist the investigation or prosecution, and whether substantially the same benefit can be obtained from someone else without resort to the compulsion order. Taking all these factors into account, together with any others that may be relevant, the government attorney can then judge the strength of the case with and without the person's testimony.

1-11.213 Likelihood of Prompt and Complete Compliance

Orders to compel testimony must be predicated upon the conclusion that the testimony sought to be elicited may further the public interest; they

are not to be procured solely to make possible the securing of a perjury or contempt conviction against the witness. However, recourse to the procedure is not to be avoided simply because the witness might lie or disobey the order. Nevertheless, in assessing the value of a person's anticipated testimony, the attorney for the government should consider whether the testimony will be promptly and fully forthcoming if a compulsion order is issued. The witness might refuse to comply with the order, for example, or his/her testimony might be less than candid and forthright. In the first instance, the government attorney would have to consider whether to seek a contempt citation and whether such a course would provide an effective remedy. (A short review of the applicability of civil and criminal contempt sanctions appears in USAM 1-11.340.) In the second instance, it would be hazardous to use the witness at all, even though he/she might recant if subjected to a perjury prosecution. In either event, delay might hinder or thwart the underlying proceeding and the compulsion order would be of little value.

1-11.214 Relative Culpability and Criminal History

In determining whether it may be in the public interest to compel the testimony of a person who has violated the law, it is also important to consider the degree of culpability relative to others who are subjects of the investigation or prosecution, as well as his/her history of criminal involvement. Of course, because of the difficulty of prosecuting a witness for matters relating to his compelled testimony, in the absence of unusual circumstances it would not be in the public interest to compel testimony of a high-ranking member of a criminal enterprise in order to convict a subordinate, nor would it serve the public interest to compel the testimony of a person with a long history of serious criminal involvement in order to obtain the conviction of someone else on less serious charges. In this connection, it is also important to consider whether the person has a background of cooperation with law enforcement officials, either as a witness or an informant, and whether he/she has previously been the subject of a compulsion order or has escaped prosecution by virtue of an agreement not to prosecute--information that may be available by telephone from the Witness Records Unit of the Criminal Division (FTS 633-5541). Finally, consideration should be given to whether the witness is a close family relative of the person against whom the testimony is sought. A close family relative is a spouse, parent, child, grandparent, grandchild or sibling of the witness. Absent specific justification, we will ordinarily avoid compelling the testimony of a witness who is a close family relative of the defendant on trial or of the person upon whose conduct grand jury scrutiny is focusing. Such justification exists, among other circumstances, where

(i) the witness and the relative participated in a common business enterprise and the testimony to be elicited relates to that enterprise or its activities; (ii) the testimony to be elicited relates to illegal conduct in which we have reason to believe that both the witness and the relative were active participants; or (iii) the testimony to be elicited relates to a crime involving overriding prosecutorial concerns.

1-11.215 Conviction Prior to Compulsion

Recognizing that it is preferable as a matter of policy that an offender formally incur liability for his/her criminal conduct, and recognizing the difficulty in prosecuting a witness for matters relating to compelled testimony, the attorney for the government should consider the possibility of securing the witness's conviction before asking the court to compel his/her testimony. In some situations there may be time to prosecute the witness before compelling his/her testimony; in other situations a witness may be willing to enter a plea of guilty to all or some of the charges in lieu of being prosecuted.

In a case in which the attorney for the government is considering the appropriateness of an agreement to terminate a prosecution against a potential witness in return for a guilty plea to fewer than all charges, in addition to weighing the considerations usually involved in deciding to accept a plea, the attorney for the government should also make a careful assessment of any offer of testimonial or other cooperation by the person with whom the agreement is to be made. A difficulty with any agreement involving the testimony of a witness is, of course, that the defense may argue to the jury that because the witness made a "deal" with the government his testimony is inherently suspect.

If the witness can be convicted as a result of prosecution or the entry of a plea of guilty prior to the time his/her testimony is needed, the witness may no longer have a Fifth Amendment privilege with respect to the testimony sought. In such a case it would be unnecessary to resort to the compulsion statutes in order to obtain his/her testimony. If some areas of the testimony sought still would be covered by a Fifth Amendment privilege, however, the compulsion statutes may be employed to obtain the necessary testimony.

It should be noted that conviction prior to compulsion will reduce the likelihood that the defense will seek to suggest to the jury that the compelled testimony is suspect because the witness has been "granted immunity" for his/her criminal acts. As noted below, (see USAM 1-11.350), such arguments should be countered in any case in which a compulsion order has been employed, but a particular strong argument can be made if the

witness already has been convicted for his/her criminal conduct.

1-11.216 Adverse Consequence to Witness

The attorney for the government should consider the possibility of harm to a witness who testifies pursuant to a court order, bearing in mind that retaliation against the witness may take economic as well as physical forms. The attorney for the government should consider making use of the government's Witness Security Program in situations in which there is a real danger that a witness may be harmed as a result of his/her testimony. See Departmental Order OBD 2110.2; USAM 9-21.000 and 9-21.400; Victim and Witness Protection Act of 1982, Pub. L. 97-291, dated October 12, 1982. Also available to deter abuse of witnesses are the obstruction of justice statutes (18 U.S.C. §§1510, 1512, 1513, 1514, and 1515) which prohibit attempts to influence or intimidate witnesses and retaliation against witnesses.

1-11.220 Availability of the Privilege

In determining whether a person has refused or is likely to refuse to testify or provide other information on the basis of his/her privilege against self-incrimination, the attorney for the government shall make an independent judgment regarding the availability of the privilege under the circumstances and shall be prepared to contest the assertion of the privilege if it is believed to be unfounded.

One of the two prerequisites to an application for a compulsion order is a judgment that the subject of the order has refused to testify, or is likely to so refuse, on the basis of the Fifth Amendment privilege against self-incrimination. Requests for authorization should be made only when there is a reasonable expectation that the witness will assert the privilege against self-incrimination, or when he/she has already done so, and when there also is a reasonable expectation that the application of the privilege may be recognized by the court. In this connection, the attorney for the government should not automatically accept at face value an assertion of the privilege. Rather, he/she should make an independent judgment, based on the law and the facts of the particular case, as to whether the privilege is available. If the attorney for the government believes that there is no sound basis for invocation of the privilege under the circumstances, appropriate steps should be taken to have the validity of its assertion determined by the court before seeking a compulsion order. The authority to apply for a compulsion order should be used only when the expectation of its

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necessity proves to be correct.

Requests for authorization should be made only when there is reasonable expectation that the witness will invoke the privilege against self-incrimination; they should not be made merely as a form of "insurance" to cover a remote contingency. See USAM 1-11.101.

1-11.230 Granting Immunity to Compel Testimony on Behalf of Defendant

The provisions of 18 U.S.C. §§6001-6003 are not to be used to compel testimony or production of other information on behalf of a defendant except in extraordinary circumstances where the defendant plainly would be deprived of a fair trial without such testimony or other information.

Arguably, under 18 U.S.C. §§6001-6003, it is possible for the government to apply for an order compelling the testimony of a defense witness. The statute does not limit itself to prosecution of government witnesses, and it is conceivable that an attorney for the government might feel that a particular defense witness's testimony "may be necessary to the public interest." However, there are both legal and practical reasons why the government has not sought to compel the testimony of a reluctant defense witness and why it should not do so.

It is well established that neither the courts nor defense counsel have a legal or constitutional right to use a statute, or to force the government to use such a statute, to compel the testimony of a defense witness. See Earl v. United States, 361 F.2d 531 (D.C. Cir. 1966), cert. denied, 388 U.S. 921 (1967); Morrison v. United States, 365 F.2d 521 (9th Cir. 1967); United States v. Jenkins, 470 F.2d 1061 (9th Cir. 1972), cert. denied, 411 U.S. 920 (1973); Cerda v. United States, 488 F.2d 720 (9th Cir. 1973); United States v. Berrigan, 482 F.2d 171 (3d Cir. 1973); United States v. Ramsey, 503 F.2d 524 (7th Cir. 1974), cert. denied, 420 U.S. 932 (1975); In re Kilgo 484 F.2d 1215 (4th Cir. 1973), United States v. Allstate Mortgage Corporation, 507 F.2d 492 (7th Cir. 1974), cert. denied, 421 U.S. 999 (1975); United States v. Bautista, 509 F.2d 675 (9th Cir. 1975) cert. denied, 421 U.S. 976 (1975); United States v. Alessio, 528 F.2d 1079 (9th Cir. 1976), cert. denied, 426 U.S. 948 (1975), reh'g denied, 429 U.S. 873 (1975); but see United States v. Morrison, 535 F.2d 223 (3d Cir. 1976). The defendant's Sixth Amendment right to compulsory process yields to the witness's Fifth Amendment privilege against self-incrimination (Earl, supra) and to the executive branch's authority to decide whether to prosecute a case (Alessio, supra; United States v. Nixon, 418 U.S. 683 (1974)).

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As a practical matter, a requirement that the government seek to compel the testimony of defense witnesses would place the government in an intolerable situation. It is safe to assume that if the government, at the court's or defense counsel's request, was required to seek a compulsion order to obtain the testimony of a defense witness, it would be inundated with such requests. Certainly, the government could not grant them all since such orders would seriously jeopardize future prosecutions of the witness. Nor could it give reasons for denying such requests without possibly jeopardizing other investigations and prosecutions. Moreover, in many instances the government would not know what a witness's testimony would be; thus the government would have no basis for concluding that compulsion of the testimony might be in the public interest.

Consequently, attorneys for the government should oppose attempts to use the compulsion statutes on behalf of defendants. The concern that the jury might not hear potentially exculpatory testimony because of this policy can usually be met by careful screening of cases; in a situation where the prosecutor realized that a potential defense witness will exercise his/her privilege against self-incrimination, the prosecutor has discretion as to whether to proceed with the case in view of his/her estimate of the truthfulness, materiality, and exculpatory nature of the potential testimony.

The "extraordinary circumstances" exception to the policy against compelling the testimony of defense witness is intended to provide for unusual cases in which the defendant plainly would be denied a fair trial unless he/she had the benefit of compelled testimony. In Earl v. United States, supra, at 534, then Judge Burger observed in a footnote that a due process problem might exist if the government compelled the testimony of a prosecution witness but refused to compel that of a defense witness in the same case. This issue has rarely arisen, but in United States v. Alessio, supra, where it did, the court apparently agreed that the government's refusal to compel the testimony of a defense witness might constitute a denial of due process. In that case, however, the court ruled that the defendant was not deprived of a fair trial by the government's refusal because the preferred defense testimony would only have been cumulative. In view of these authorities, an attorney for the government faced with a defense request for a compulsion order in a case in which the prosecution has used compelled testimony should oppose the request unless the defendant makes a convincing demonstration that the extraordinary circumstances of the case make the testimony sought essential to assure him/her a fair trial.

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1-11.240 Immunity for the Act of Producing Records

The Supreme Court has held that the act of producing records pursuant to a subpoena may have testimonial aspects and an incriminating effect, even if the records themselves are not privileged. Thus, the Court held that the Fifth Amendment privilege against self-incrimination applies to the act of producing the business records of a sole proprietorship. United States v. Doe, _____ U.S. _____, decided February 28, 1984.

The act of production concedes the existence and possession of the records called for by the subpoena as well as the respondent's belief that such records are those described in the subpoena. Such records cannot, therefore, be compelled without granting statutory use immunity under the general immunity statute, 18 U.S.C. §6001 et seq.

The Court makes it clear that the privilege in such cases extends only to the act of production. "Therefore, any grant of use immunity need only protect respondent from the self-incrimination that might accompany the act of producing his business records."

If immunity is sought for the limited purpose of obtaining records pursuant to United States v. Doe, supra, that fact should be clearly stated in the application for immunity. Examination of a witness who is compelled to produce records in such cases should be sufficient to determine whether there has been compliance with the subpoena, but care should be taken to limit inquiries to matters relevant to the act of producing the records since all such testimony, and leads therefrom, will not be usable against the witness. The contents of the records may, of course, be used for any purpose because they are not privileged.

1-11.300 PROCEDURE UPON RECEIPT OF AUTHORIZATION

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1-11.310 Obtaining the Court Order

Upon receipt of authorization from an Assistant Attorney General, the U.S. Attorney for the district in which the order is to be issued may file a written motion pursuant to 18 U.S.C. §6003 to obtain a compulsion order.

Section 6003 of Title 18, United States Code, requires a court to issue a compulsion order upon proper motion of the U.S. Attorney. The sole function of the court is to ascertain that there has been compliance with the statute; the court is not empowered to inquire into the merits of the application. In re Kilgo, 484 F.2d 1215, 1219 (4th Cir. 1973). Accordingly, once Departmental authorization has been obtained, the matter of actually seeking a compulsion order lies in the discretion of the attorney for the government. A motion for a compulsion order should be made in writing (an example of an appropriate Section 6003 motion, which may be modified to conform to local district court practice, appears in USAM 1-11.904; a sample compulsion order appears in USAM 1-11.905 and may be made ex parte. Such a motion may be made prospectively in order to avoid undue disruption of trial or grand jury proceedings at a later date, if the attorney for the government is satisfied that the witness will not testify voluntarily.

Any attempt by defense counsel or counsel for the witness to challenge the validity of a compulsion order should be vigorously opposed. In particular, government attorneys should oppose requests for affidavits concerning the authenticity of signatures on Department authorizations. Compliance with such requests would place an unnecessary burden on the Department in such cases and in other situations requiring approval by a Departmental official who is not present in the district. In any event, neither the compulsion statute nor the pertinent regulations require an Assistant Attorney General's authorization to be in writing.

Should the attorney for the government be confronted with a witness who, having previously testified pursuant to a court order, seeks to assert his/her privilege at a subsequent ancillary proceeding or at a second trial involving the same matter concerning which the witness had earlier testified, the U.S. Attorney may move for an additional compulsion order. The letter of authorization from the Assistant Attorney General will be sufficiently broad to constitute the requisite approval for the additional order, thereby eliminating any delay incident to litigating the availability of the privilege (cf. Ellis v. United States, 416 F.2d 791 (D.C. Cir. 1969)) or requesting additional authorization. Where more than six months have intervened since the date of the letter of authorization, an additional inquiry to the authorizing Assistant Attorney General and to the Witness

Records Unit must be made to determine that during the interim no other matters pertaining to the witness have come to the Department's attention which would make the compulsion order undesirable. Similarly, any substantial change in the information contained in the original request for authorization should be brought to the attention of the Witness Records Unit.

1-11.320 Where Subject of Order is Awaiting Sentencing

In a case in which the person who is the subject of a compulsion order is awaiting sentencing, the attorney for the government should ensure that the substance of his/her compelled testimony not be made known to the sentencing judge.

This guideline is intended to forestall claims by witnesses who testified under compulsion that their sentences were adversely influenced by the substance of their compelled testimony. The safest way to avoid such a claim is to defer taking the compelled testimony until after the witness has been sentenced. If it is not possible or desirable to postpone the sentencing, the attorney for the government should attempt to ensure that the substance of the compelled testimony does not come to the attention of the sentencing judge before the imposition of sentence. This guideline does not apply, of course, if the witness requests that the substance of the compelled testimony be brought to the court's attention prior to sentencing.

1-11.330 Ensuring Integrity of Any Future Prosecution

In a case in which a person is to testify or provide other information pursuant to a compulsion order:

A. If it then appears that the public interest may warrant a future prosecution of the witness, on the basis of independent evidence for his past criminal conduct about which the witness is to be questioned, the attorney for the government shall:

1. before the witness has testified or provided other information, prepare for the case file a signed and dated memorandum summarizing the evidence then known to exist concerning the witness, and designating its sources and date of receipt;

2. ensure that all testimony given, or information provided, by

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the witness be recorded verbatim and that the recording or reporter's notes, together with any transcript thereof, be maintained in a secure location and that access thereto be documented; and

3. maintain a record of the nature, source, and date of receipt of evidence concerning the witness' past criminal conduct that becomes available after he/she has testified or provided other information; or

B. If it appears that the public interest may not warrant a future prosecution of the witness, on the basis of independent evidence, for past criminal conduct about which the witness is to be questioned, the attorney for the government shall:

1. ensure that all testimony, or information provided, by the witness be recorded verbatim; and

2. maintain a record of the nature, source, and date of receipt of evidence concerning the witness's past criminal conduct that becomes available after he/she has testified or provided other information.

These guidelines are intended to ensure the integrity of any future prosecution of a witness who is compelled by court order to testify or provide other information.

The provisions of paragraph A. should be followed when, on the basis of the information available at the time the testimony is to be given or the information is to be provided, it is anticipated that a future prosecution of the witness, for any prior offense about which the witness is to be questioned, may be in the public interest. In the event of future prosecution (except a perjury, false statement, or contempt prosecution based on the compelling of the testimony), the government must be in a position to demonstrate convincingly that its evidence was developed independently of the witness's compelled testimony or of information derived therefrom. The government will also have to show that it has made no "non-evidentiary" use of the testimony or its fruits, such as a decision to focus on the witness as a potential defendant. For these reasons, it is essential that a record be maintained of all untainted evidence against a witness who is compelled to testify, that his/her compelled testimony be maintained in a secure place, and that access to such testimony be documented. Unless these steps are taken, it may prove impossible to establish the purity of the government's case in a future prosecution of the witness.

The provisions of paragraph B. should be followed when, on the basis of the information then available, it does not appear that a future prosecution

would be in the public interest. The precautions are lessened to reflect the lesser likelihood of prosecution, but still help assure that a future prosecution could be initiated on the basis of demonstrably independent evidence.

1-11.340 Refusal of Witness to Comply With Order

The refusal of a witness to testify or to produce other information subsequent to the issuance of an order of compulsion under 18 U.S.C. §6002 is punishable by contempt. But see USAM 1-11.341. The Supreme Court has admonished the district courts to consider first the feasibility of effecting compliance with compulsion orders through the imposition of civil contempt, under 28 U.S.C. §1826. "The judge should resort to criminal sanctions only after he/she determines, for good reason, that the civil remedy would be inappropriate." United States v. Wilson, 421 U.S. 309, 317 n. 9 (1975), quoting Shillitani v. United States, 384 U.S. 364, 371 n. 9 (1966).

1-11.341 Ground for Refusal

Under Gelbard v. United States, 408 U.S. 41 (1972), a witness called before a grand jury may refuse to testify, pursuant to 18 U.S.C. §2515, despite a compulsion order, if the interrogation is based on the illegal electronic interception of the witness's communications.

1-11.342 Civil Contempt

28 U.S.C. §1826, a codification of existing practices, was enacted in 1970 to provide a statutory basis for the application of summary civil contempt powers to recalcitrant witnesses. The purpose of the statute is to secure the testimony or other evidence through the creation of an incentive for compliance, not to punish the witness by imprisonment. When the witness complies with the order, he/she must be released. Thus, confinement is limited to the life of the court proceeding or the term of the grand jury, but in no event may the confinement exceed eighteen months.

Section 1826(a) provides that, upon the refusal of a witness without just cause to testify or provide other information, as ordered, in any proceeding before or ancillary to any court of grand jury of the United States, the court may order the witness confined summarily. However, Section 1826(a) cannot be invoked simply upon the refusal of a witness to

testify before a grand jury; the witness in such a case must be brought before a judge and ordered to testify, and he/she must then refuse to comply with the order.

Section 1826(b) prohibits granting bail during the pendency of an appeal from an order of confinement if the appeal appears to be frivolous or taken for delay. An appeal from a confinement order under this section is to be disposed of "as soon as practicable" but not later than thirty days from the filing date. These provisions lend a certainty to the sanction consistent with the urgent public need to obtain testimony. See United States v. Coplon, 339 F.2d 192 (6th Cir. 1964). Thus, the statute, itself, affords a sound predicate for government opposition to an application for bond pending appeal in such instances.

1-11.343 Criminal Contempt

Where it is appropriate to impose punishment upon a recalcitrant witness, the court may invoke the provisions of 18 U.S.C. §401 and Rule 42 of the Federal Rules of Criminal Procedure. Rule 42(a) provides for summary punishment of the contempt "if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court," while Rule 42(b) requires notice and a hearing for contempts not committed in the presence of the court.

In United States v. Wilson, *supra*, the Supreme Court upheld contempt convictions summarily imposed under Rule 42(a), in a case where two witnesses refused to testify during a bank robbery trial despite having been ordered by the trial court to do so pursuant to 18 U.S.C. §6002. The Supreme Court distinguished the refusal of a witness to testify before a grand jury -- where the proceeding may be interrupted while the witness is afforded notice and a hearing under Rule 42(b) -- from refusal to testify at a trial. In the latter instance, the Court observed, there is a need for swift summary decision: "The face-to-face refusal to comply with the court's order itself constituted an affront to the Court, and when that kind of refusal disrupts and frustrates an ongoing proceeding, as it did here, summary contempt must be available to provide the recalcitrant witness with some incentive to testify." 421 U.S. at 316. "Where time is not of the essence, however, the provisions of Rule 42(b) may be more appropriate to deal with contemptuous conduct." *Id.* at 319. See also Harris v. United States, 382 U.S. 162 (1965).

Criminal contempt is punishable under 18 U.S.C. §401 by fine or imprisonment. Courts may not impose both a fine and imprisonment, nor a fine coupled with probation. Mac Neil v. United States, 236 F.2d 149 (1st Cir. 1956), *cert. denied*, 352 U.S. 912 (1956). While caselaw limits summary

punishment under Rule 42(a) to imprisonment for six months, there is no maximum set for punishing criminal contempt after notice and hearing under Rule 42(b). See, e.g., United States v. Sternmen, 415 F.2d 1165 (6th Cir. 1969), cert. denied, 397 U.S. 907 (1970) (three years imprisonment). Indeed, so that an adjudication of criminal contempt not be deprived of efficacy where the contumacious witness is already serving a sentence for another criminal offense, that sentence may be interrupted to compel the witness to serve an intervening contempt sentence. United States v. Liddy, 510 F.2d 669, 672-673 (D.C. Cir. 1974), cert. denied, 420 U.S. 980 (1975). However, In re Liberatore, 574 F.2d 669 (D.C. Cir. 1978), the court held that a federal court does not have the authority to interrupt a pre-existing state imposed criminal sentence during the period of confinement to compel the witness to serve the contempt sentence.

Bail for a defendant found in criminal contempt of court is controlled by the provisions of Rule 46 of the Federal Rules of Criminal Procedure.

1-11.350 Arguments and Instructions Offered by Defense

In a case in which a person testifies or provides other information pursuant to a compulsion order, the attorney for the government shall oppose any requested defense instructions and defense arguments to the jury that seek to suggest that the witness's testimony or other information is suspect because it was compelled.

A witness who is compelled to testify under 18 U.S.C. §§6001-6003 is not "granted immunity" as would have occurred under the former "transaction immunity" statutes, nor is he/she thereby provided any other inducement to testify. Nevertheless, it is not uncommon to encounter defense requests for jury instructions depicting such a witness as the recipient of a benefit, one whose testimony may have been colored thereby, and therefore one whose testimony should be weighed with special circumspection. Such instructions should be opposed. A witness whose testimony is compelled after asserting a Fifth Amendment privilege is substantially in no different a position than an ordinary reluctant witness who is compelled by legal process to testify without asserting a privilege -- both are testifying under threat of contempt and both have nothing to gain and everything to lose by testifying falsely. There is no reason to treat the testimony of one as more suspect than that of the other, and the standard instruction on the credibility of witnesses in general is ordinarily sufficient for either situation. See, e.g., United States v. Holmes, 453 F.2d 950 (10th Cir. 1972), cert. denied, 406 U.S. 908 (1972), but see, United States v. Leonard, 494 F.2d 955, 961-62 (D.C. Cir. 1974); United States v. Demopoulos, 506 F.2d 1171, 1179-80 (7th Cir. 1974), cert. denied, 420 U.S. 991 (1975).

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There will be situations, of course, in which the testimony of a witness may warrant a special instruction for reasons independent of its being compelled. For example, an instruction on accomplice testimony may be warranted in many such situations. In other situations, however, it may not be. In responding to requests for such instructions, care should be taken to point out that compulsion of an accomplice's testimony is not the situation for which the standard accomplice instructions were originally designed. Although the voluntary testimony of an accomplice who has turned on a former associate may warrant special scrutiny, the rationale for such special scrutiny would usually not apply to the compelled testimony of an accomplice who does not wish to take the witness stand.

In addition to defense arguments in support of cautionary instructions, defense arguments to the jury may often exploit the popular misconception that has been fostered by the term "immunity," as colloquially applied in this context, by suggesting that the testifying witness has "sold out" to the government. As noted previously, this situation can be ameliorated if the witness has been prosecuted, convicted, and sentenced before he/she testifies. In cases in which it is not possible to prosecute the witness prior to eliciting testimony, the attorney for the government should counter any defense attacks on witness's credibility which unfairly suggest that a "deal" has been made between the witness and the government and should point out that the witness was compelled, not induced, to testify.

1-11.360 Follow-Up Report

In a case in which the attorney for the government has been authorized to apply for a compulsion order, the attorney shall, immediately upon conclusion of the proceeding, report in writing to the Witness Records Unit of the Criminal Division whether the compulsion order was obtained and used, the outcome of the use of the order, and the location of any recording, reporter's notes, or transcript of the compelled testimony.

The follow-up report is intended to facilitate identification for Departmental attorneys of persons who have been the subject of a compulsion order, of the result of the use of the order, and of the location of the transcript, recording, or reporter's notes of the testimony. A form of such a report will accompany the letter of authorization sent by the Assistant Attorney General (see USAM 1-11.906); it should be completed and returned to the Witness Records Unit immediately upon the conclusion of the proceeding.

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1-11.600-800 [RESERVED]

1-11.900 FORMS AND DOCUMENTS

In order to assure that compulsion orders are granted promptly upon request, attorneys must exercise care to provide Assistant Attorneys General with necessary information and to follow the procedures established by the Department. The following forms and sample documents are designed to facilitate such efforts.

Please be familiar with the guidelines set forth in this chapter before using the forms provided.

With respect to USAM 1-11.901, Request for Authorization, in addition to the information specifically required, any other information concerning the witness or the proceeding in which the witness is to testify, which might be of assistance in evaluating the request, should be furnished.

USAM (superseded)

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1-11.901 REQUEST FOR AUTHORIZATION

INSTRUCTIONS: Prepare and Submit Original and One Copy. Answer Each Question as Accurately and Completely as Possible.

TO: Witness Records Unit
Criminal Division, Rm. 306 FTB
U.S. Department of Justice
Washington, D.C. 20530
FTS No.-724-7049
TELEFAX No.-724-7903

FROM:

FTS No.-
TELEFAX No.-
TELETYPE CODE-

- (1) Name of Witness:
- (2) District:
- (3) Nature of Proceeding:
 Trial
 Grand Jury
 Other
- (4) Name of Subject(s) or Defendant(s):
- (5) Date of Testimony (two weeks lead time required):
- (6) Proffer of Anticipated Testimony:
 None Obtained Proffer by Witness Debriefing of Witness
 Proffer by Counsel Pursuant to Plea Agreement
- (7) Summary of Case or Proceeding:
- (8) Witness' Background and Role in Case or Matter and Summary of Anticipated Testimony or Information:
- (9) Witness' Family Relationship, if any, to the Subject(s) or Defendant(s):

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10) Assurances or Promises, if any, to Witness in Return for his Testimony:

11) Acts of Witness Considered as a Waiver of Fifth Amendment Privilege:

12) Means Other than Immunity to Obtain this Testimony:

13) Basis Other than Proffer for Summary of Anticipated Testimony:

14) Relative Culpability of Witness Compared to Subject(s) or Defendant(s):

15) Why Immunity is Necessary to the Public Interest: State Facts.

16) Basis for Belief that Witness Will Assert Fifth Amendment Privilege:

17) Likelihood that Witness Will Testify if Immunity is Granted:

18) Prosecution of Witness in this Case or Matter:

Yes No Acquitted Convicted Plea
If not indicted, why not? If convicted, has the witness been sentenced?

19) Witness' Privilege Survives Because:

20) Witness is Presently Incarcerated: Yes No
If yes, give details:

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(21) Pending Federal or Local Charges against Witness:

Yes No If yes, give details:

(22) Federal and State Offenses by Witness that His Testimony Could Disclose:

(23) Opposition, if any, to Granting Immunity by State or Local Prosecuting Officials:

(24) Effect, if any, of Granting Immunity to the Witness Upon Any Other Federal District:

(25) Conviction of Witness Possible on Evidence Other than His Own Testimony?

Yes No If yes, give details:

(26) Violations (Statutes & Descriptions) by Subject(s) or Defendant(s):

(27) Witness Previously Immunized? Yes No If yes, give details:

(28) Witnesses for whom Immunity has been Authorized in this Proceeding:

(29) Date Investigation Began:

(30) Witness Subject to Electronic Surveillance? Yes No If yes, give details:

(31) Birthdate of Witness:

(32) FBI I.D. No.:

(33) Birthplace:

(34) Social Security No.:

(35) Alias:

(36) Address of Witness:

(37) If Requestor is Department Attorney, Has United States Attorney Been Notified? Yes No

Signature of Requestor

Signature of United States Attorney

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1-11.902 Sample Information Memo to U.S. Attorney from Attorney for the Government

TO: United States Attorney

FROM: Attorney for the Government

SUBJECT: Pending request for authorization to compel testimony of: (name of witness(es))

Attached is a copy of a request for authorization to file a motion in the District of _____ for a court order compelling the testimony of, or the production of information by, the person(s) named above, pursuant to 18 U.S.C. §6003. I have submitted the request today to the Assistant Attorney General in charge of the _____ Division.

In the event that the Assistant Attorney General authorizes an application for such a court order pursuant to 18 U.S.C. §6002, you will be asked to make an independent assessment that the order may be necessary to the public interest and to sign the motion for the order.

If you have any objections or reservations concerning this matter, please contact me, the Assistant Attorney General for the _____ Division, or the Witness Records Unit of the Criminal Division within seven days so that your views may be taken into account by the Assistant Attorney General prior to reviewing the request.

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1-11.903 Sample Authorization Letter

Honorable _____

United States Attorney

_____ District of _____

Attention: _____, Assistant United States Attorney

Re: _____
(Citation to grand jury investigation or trial)

Pursuant to the authority vested in me by 18 U.S.C. §6003(b) and 28 C.F.R. §0.175(a) I hereby approve your request for authorization to apply to the United States District Court for the _____ District of _____ for an order pursuant to 18 U.S.C. §§6002-6003 requiring _____
(name of witness(es))

to give testimony or provide other information in the above matter and in any further proceedings resulting therefrom or ancillary thereto.

Sincerely,

Assistant Attorney General

1-11.904 Sample Motion

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF _____

_____ DIVISION

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:
In re Grand Jury Proceeding : No. _____
:
:

M O T I O N

_____, United States Attorney for the
_____ District of _____ hereby moves that this
court issue an order pursuant to the provisions of Title 18, United States
Code, to Section 6001 et seq., compelling _____
to give testimony or provide other information, which he/she refuses to
give or provide on the basis of his/her privilege against self-
incrimination, as to all matters about which he/she may be interrogated
before the grand jury of the United States presently empaneled within this
District, and respectfully alleges as follows:

1. The said _____ [has been] [may be] called to testify
or provide other information before said grand jury;
2. In the judgment of the undersigned, the testimony or other
information from said witness may be necessary to the public interest;
3. In the judgment of the undersigned, said witness [has refused]
[is likely to refuse] to testify or provide other information on the
basis of his/her privilege against self-incrimination.

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4. This application is made with the approval of _____,
_____, Assistant Attorney General in charge of the _____
_____ Division of the Department of Justice, pursuant to the
authority vested in him/her by 18 U.S.C. §6003 and 28 C.F.R. §0.175. A copy
of the letter from said Assistant Attorney General expressing such approval
is attached hereto.

United States Attorney

1-11.905 Sample Order

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF _____
_____ DIVISION

In re Grand Jury Proceeding : No. _____
:
:

O R D E R

On motion of _____, United States Attorney for the _____

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District of _____, filed in this matter on _____,
19__;

And it appearing to the satisfaction of the Court:

1. That _____ [has been called] [may be called] to testify or provide other information before the grand jury of the United States presently empaneled within this District; and

2. That in the judgment of the said United States Attorney, said _____ [has refused] [is likely to refuse] to testify or provide other information on the basis of his/her privilege against self-incrimination; and

3. That in the judgment of the said United States Attorney, the testimony or other information from said _____ may be necessary to the public interest; and

4. That the aforesaid Motion filed herein has been made with the approval of the Assistant Attorney General in charge of the _____ Division of the Department of Justice, pursuant to the authority vested in him/her by 18 U.S.C. §6003 and 28 C.F.R. §0.175.

NOW, THEREFORE, IT IS ORDERED pursuant to 18 U.S.C. §6002 that the said _____ give testimony or provide other information which he/she refuses to give or to provide on the basis of his/her privilege against self-incrimination as to all matters about which he/she may be interrogated before said grand jury.

This order shall become effective only if after the date of this

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order the said _____ refuses to testify or provide other information on the basis of his/her privilege against self-incrimination.

United States District Judge

_____, 19__.

1-11.906 Witness Follow-up Report (18 U.S.C. §§6001-6005; 28 C.F.R. §§0.175-0.178)

(To be completed, signed, and returned as soon as:

- A. compulsion of a witness's testimony has been completed, or
- B. it has been decided not to use the authorization to obtain a compulsion order.)

Name of Witness (last name first) Date of Authorization WRU USE ONLY

WRU #

Proceeding:

District:

Violation (title and section):

- _____

1) Was the authority to seek an order of compulsion used? Yes No
- a) If the authority was not used, what was the reason for not using it?

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- i) witness did not assert his/her privilege
- ii) witness's testimony was found unnecessary
- iii) other (describe) _____

b) If the authority was used:

Date order to compel testimony issued: _____

Title of Proceeding: _____

District: _____ Division: _____

Docket #: _____ D.J. # (if known): _____

2. Did the witness testify pursuant to the order? Yes No

a) If "yes";

Date witness testified: _____

Title of Proceeding: _____

District: _____ Division: _____

Docket #: _____ D.J. # (if known): _____

Location of required verbatim recording (or transcript):

_____ In files relating to the above case.

_____ Other (specify) _____

b) If witness refused to testify, were contempt proceedings
instituted? Yes No

i) if contempt proceedings were instituted, please describe
nature and state of proceedings (Rule 42(a), Rule 42(b) Fed. R.
Crim. P.; 28 U.S.C. §1826):

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ii) if contempt proceedings were not instituted, please explain why.

3) In your opinion, was the testimony obtained under the compulsion order:

_____ essentially truthful, or
_____ significantly untruthful?

a) If, in your opinion, the testimony was essentially truthful, was it:

_____ less valuable than anticipated?
_____ about as valuable as anticipated?
_____ more valuable than anticipated?

b) If, in your opinion, the testimony obtained under the order was significantly untruthful, has:

_____ a perjury prosecution commenced?
_____ a perjury prosecution been completed?

Explain the current status of the perjury prosecution, or the reasons for declining to prosecute:

4) Did witness's testimony contribute to an indictment or conviction?
___ Yes ___ No

In your opinion, was the witness's testimony or evidence

_____ essential for proof of the government's case?
_____ helpful, but not essential, for proof of government's

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case?

_____ unnecessary for proof of the government's case?

5) What was the final disposition of the case or investigation in which the witness was compelled to testify?

6) Please describe any special or unanticipated problems related to the compulsion order (e.g., disclosure of crimes unknown to the government prior to the order), and add any comments which you consider relevant.

SIGNED: _____ DATE: _____

TYPED NAME: _____

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1-12.000 PRE-TRIAL DIVERSION PROGRAM

Pre-trial diversion (PTD) is an alternative to prosecution which seeks to divert certain offenders from traditional criminal justice processing into a program of supervision and services administered by the U.S. Probation Service. In the majority of cases, offenders are diverted at the pre-charge stage. Participants who successfully complete the program will not be charged or, if charged, have the charges against them dismissed; unsuccessful participants are returned for prosecution.

The major objectives of pre-trial diversion are:

A. To prevent future criminal activity among certain offenders against whom prosecutable cases exist by diverting them from traditional processing into community supervision and services.

B. To save prosecutive and judicial resources for concentration on major, serious cases.

C. To provide, where appropriate, a vehicle for restitution to communities and victims of crime.

1-12.010 History

Diversion has been utilized with juveniles in the Department of Justice since 1946 under a program known as the Brooklyn Plan. Conceived in the U.S. Attorney's office in the Eastern District of New York, it was designed as an alternative to proceedings under the Federal Juvenile Delinquency Act. The Plan was used in cases where the violation was minor, the juvenile's background good, and the prospect of rehabilitation favorable. The Juvenile Delinquency Act, which became law on September 7, 1974, places virtually all juvenile cases in the state courts. Use of diversion for juveniles is therefore inappropriate unless the certification requirements of the Act have been met.

In July, 1974, the Deputy Attorney General announced a policy of adult diversion to replace the Brooklyn Plan pursuant to recommendations made by an intra-Departmental task force on pre-trial diversion. All U.S. Attorneys are now authorized to utilize the diversion alternative according to the guidelines set forth below (18 U.S.C. §3152). Inquiries may be addressed to the Witness Records Unit, Criminal Division (FTS) 633-5541.

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1-12.020 Principles of Operation

PTD is an exercise of prosecutorial discretion according to standardized guidelines which attempts to identify offenders most susceptible to rehabilitation and to focus rehabilitation efforts on them very early in the criminal justice process, generally prior to indictment. The exercise of prosecutorial discretion centers on determining which offenders have not adopted a criminal life pattern and should be diverted out of the system. If, at the time the offender is diverted, the offender has already been charged, the charges may be dismissed. If the charges are to be deferred rather than dismissed, the prosecutor should seek an order for a continuance pursuant to the provisions of 18 U.S.C. §3161(h)(2). The court's approval is sought for the continuance and not for approval of the terms and conditions of the pre-trial agreement. If program participation is successful, the offender will not be prosecuted; if unsuccessful, prosecution may be resumed. In order to consider a case for diversion, the prosecutor must ascertain that the case is one that could be successfully prosecuted. In addition, the offender must have the benefit of counsel during negotiations leading to an Agreement (USA-Form 186) under the diversion program. The diversion is finalized by a written contract (Agreement) mutually agreed to by the prosecutor, the offender and his/her counsel. Diversion is one aspect of an overall Department effort to make criminal sanctions more appropriately fit the individual offender and with the purpose of freeing prosecutorial and court resources for serious or priority criminal cases thereby reducing recidivism and danger to the community.

Implicit in the diversion concept is speedy disposition of the diversion arrangement. The procedures outlined below should be completed, except in unusual cases, in less than 30 days. Some offices which make significant use of diversion have assigned PTD coordination duties to a paralegal to insure speedy, effective handling.

1-12.100 ELIGIBILITY CRITERIA

The U.S. Attorney, in his/her discretion, may divert any individual against whom a prosecutable case exists and who is not:

1. Accused of an offense which, under existing Department guidelines, should be diverted to the state for prosecution;
2. A person with two or more prior felony convictions;
3. An addict;

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4. A public official or former public official accused of an offense arising out of an alleged violation of a public trust; or

5. Accused of an offense related to national security or foreign affairs.

Cases which meet the above criteria but are violations of the statutes listed below require prior Division approval.

STATUTES

CRIMINAL DIVISION

Narcotics and Dangerous Drugs Section

21 U.S.C. §§848-849

Organized Crime and Racketeering Section

12 U.S.C. §25a
12 U.S.C. §339
12 U.S.C. §1730c
12 U.S.C. §1829a
15 U.S.C. §§1171-1178
18 U.S.C. §224
18 U.S.C. §§891-894
18 U.S.C. §1301
18 U.S.C. §§1302-1306
18 U.S.C. §1304
18 U.S.C. §1511
18 U.S.C. §§1801-1804
18 U.S.C. §1952
18 U.S.C. §1953
18 U.S.C. §1955
18 U.S.C. §§1961-1968
26 U.S.C. §§4401-4405

Organized Crime and Racketeering Section (Management-Labor Unit)

15 U.S.C. §1281 (where labor matter involved)
18 U.S.C. §664
18 U.S.C. §844(i) (where labor matter involved)
18 U.S.C. §1027
18 U.S.C. §1231
18 U.S.C. §1951

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18 U.S.C. §1954
29 U.S.C. §162
29 U.S.C. §186
29 U.S.C. §§215-216
29 U.S.C. §308
29 U.S.C. §439
29 U.S.C. §463
29 U.S.C. §501(c)
29 U.S.C. §§502-504
29 U.S.C. §522
29 U.S.C. §530
29 U.S.C. §1111
29 U.S.C. §1131
29 U.S.C. §1141
45 U.S.C. §152
45 U.S.C. §§181-182

General Litigation and Legal Advice Section

18 U.S.C. §112
18 U.S.C. §878
18 U.S.C. §970
18 U.S.C. §1116
18 U.S.C. §1201(a)(4)
18 U.S.C. §1201(d)
18 U.S.C. §§1501-1510
18 U.S.C. §§1621-1623
18 U.S.C. §§2511-2512

Fraud Section

2 U.S.C. §§431-453
2 U.S.C. §§261-270
18 U.S.C. §§241-242
18 U.S.C. §§591-612
18 U.S.C. §1913
42 U.S.C. §1973(i)(c)

TAX DIVISION

All statutes

CIVIL RIGHTS DIVISION

All statutes

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1-12.200 PARTICIPATION

A. Divertees are initially selected by the U.S. Attorney based on the above eligibility criteria:

1. At the pre-charge stage; or
2. At any point (prior to trial) at which a PTD agreement is effected.

B. Participation in the program by the offender is voluntary:

1. The divertee must sign a contract agreeing to waive his/her rights to a speedy trial and presentment of his/her case within the statute of limitations;

2. The divertee must have advice of counsel, and if he/she cannot afford counsel, one will be appointed for him/her upon his/her application to the Chief Pretrial Services Officer (or Chief Probation Officer). Appointment of Counsel will be made through the U.S. Magistrate. Inquiries by magistrates should be directed to the Criminal Justice Act Division, Administrative Office of U.S. Courts (202) 633-6051, for expenditure authorizations.

C. All information obtained in the course of making the decision to divert an offender is confidential, except that written statements may be used for impeachment purposes.

1-12.300 SERVICES

A. Upon determining eligibility of an offender for PTD, the U.S. Attorney should refer the case along with the investigative agent's report to either the Chief Pretrial Services Officer or the Chief Probation Officer for a recommendation on the potential suitability of the offender for supervision. The Chief Pretrial Services Officer (or the Chief Probation Officer) may initiate preliminary recommendations to the U.S. Attorney. As part of the background investigation, Pretrial Services will arrange with the United States Marshals office to have the divertee fingerprinted and to have such fingerprints submitted to the FBI on card FD-249. At the same time Pretrial Services should request notification of any prior record on the divertee from the FBI Identification Division Records.

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B. Supervision should be tailored to the offender's needs and may include employment, counseling, education, job training, psychiatric care, etc. Many districts have successfully required restitution or forms of community service as part of the pre-trial program. Innovative approaches are strongly encouraged.

C. The program of supervision which is recommended is outlined in the PTD Agreement, agreed upon by all parties and administered by Pretrial Services.

1-12.400 PTD AGREEMENT

The diversion period begins upon execution of the Agreement. The Agreement (USA-Form 186) outlines the terms and conditions of supervision and is signed by the offender, his/her attorney, the prosecutor, and either the Chief Pretrial Services Officer or the Chief Probation Officer. The offender must acknowledge responsibility for his or her behavior but is not asked to admit guilt. The period of supervision is not to exceed 18 months but may be reduced. In the case of federal employees the PTD Agreement will not require the offender's resignation from federal service but will explicitly state that administrative action by the federal agency will not be precluded and need not be delayed by the prosecutor's disposition of the case through diversion. The PTD Agreement may require that the U.S. Attorney provide a copy of the Agreement to the federal agency by which the divertee is employed.

The Chief Pretrial Services Officer (or the Chief Probation Officer) shall submit an FBI Form 1-12 "Flash Notice" indicating diversion and requesting notification if an arrest occurs.

1-12.500 TERMINATION

A. The U.S. Attorney will formally decline prosecution upon satisfactory completion of program requirements. Notice of satisfactory completion will be provided to the U.S. Attorney by either the Chief Pretrial Services Officer or the Chief Probation Officer. In addition, the Chief Pretrial Services Officer (or the Chief Probation Officer) will file an FBI Disposition Form R-84 so that the record indicates successful completion--charges dropped.

B. Upon breach of conditions of the Agreement by the divertee, the Chief Pretrial Services Officer (or the Chief Probation Officer) will so inform the U.S. Attorney, who, in his/her discretion, may initiate

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prosecution. When prosecution is resumed, the U.S. Attorney must furnish the offender with notice.

C. The decision to terminate an individual for breach of conditions rests exclusively with the U.S. Attorney with advice from either the Chief Pretrial Services Officer or the Chief Probation Officer.

1-12.600 FORMS

1-12.601 PTD Referral Letter to Chief Pretrial Services Officer--(USA-Form 184)

Date:

Dear

Re: Proposed Pre-Trial Diversion of _____

I am recommending pre-trial diversion for the above-mentioned offender who has been reported to have violated Title ____, United States Code, Section ____.

Enclosed find a copy of the investigator's report which should give you the background information to conduct the necessary investigation to determine whether or not the offender is suitable for pre-trial diversion.

Please send me your recommendation as soon as the investigation is complete.

Sincerely yours,

BY: _____
Assistant U.S. Attorney

Enclosure

USA-Form 184

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1-12.602 Letter to Offender--(USA-Form 185)

Re: In the matter of: _____
Complaint No. _____

Dear _____:

The United States Attorney for _____ has information that you have committed an offense against the United States in violation of Title _____, United States Code, Section(s) _____. Description: _____

After reviewing your case, we have made a preliminary determination that you may be an appropriate person to participate in the Department's Pre-trial Diversion Program. Pre-trial diversion means that this office will not presently seek a conviction against you. Instead, if you qualify and are accepted, you will be placed in a pre-trial diversion program under certain specified conditions described in a written agreement between you and the government for a term to be determined by this office but not to exceed eighteen months. If you satisfactorily fulfill the conditions and terms of your program, you will not be prosecuted, or, if you have already been charged, the charges against you will be dismissed. If you violate the conditions of the written agreement you may be removed from the pre-trial diversion program, in which case this office will resume prosecution.

Decision to seek acceptance into this program is one that must ultimately be made by you alone. Nevertheless, it is important that you immediately discuss this matter fully and completely with your attorney inasmuch as your participation in this program will constitute a waiver of certain rights afforded to you by the Constitution. Specifically, you must waive your right to a speedy trial and your right to have an indictment presented to a grand jury within the applicable statute of limitations. If you believe you are unable to afford an attorney, you should apply to the Chief Pretrial Services Officer (or the Chief Probation Officer) to have counsel appointed to represent you.

If you desire to be further considered for the pre-trial diversion program, please let us know at your earliest convenience.

Any information furnished in connection with your application for pre-trial diversion will be confidential and will not be admissible on the issue of guilt in subsequent criminal proceedings.

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In order to ensure that appropriate procedures can be initiated as soon as possible, please respond promptly.

Very truly yours,

United States Attorney

Assistant United States Attorney

USA-Form 185

1-12.603 Agreement--(USA-Form 186)

UNITED STATES OF AMERICA

v.

Name

Street Address

City and State

File No.

Telephone No.

AGREEMENT FOR PRE-TRIAL DIVERSION

It appearing that you are reported to have committed an offense against the United States on or about _____ in violation of Title _____, United States Code, Section(s) _____ in that you did: _____.

Upon accepting responsibility for your behavior and by your signature on this Agreement, it appearing, after an investigation of the offense,

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and your background, that the interest of the United States and your own interest and the interest of justice will be served by the following procedure; therefore

On the authority of the Attorney General of the United States, by _____, United States Attorney for the District of _____, prosecution in this District for this offense shall be deferred for the period of _____ months from this date, provided you abide by the following conditions and the requirements of this Agreement set out below.

Should you violate the conditions of this Agreement, the United States Attorney may revoke or modify any conditions of this pre-trial diversion program or change the period of supervision, which shall in no case exceed eighteen months. The United States Attorney may release you from supervision at any time. The United States Attorney may at any time within the period of your supervision initiate prosecution for this offense should you violate the conditions of this Agreement. In this case he/she will furnish you with notice specifying the conditions of the Agreement which you have violated.

After successfully completing your diversion program and fulfilling all the terms and conditions of the Agreement, no prosecution for the offense set out on page 1 of this Agreement will be instituted in this District, and the charges against you, if any, will be dismissed.

Neither this Agreement nor any other document filed with the United States Attorney as a result of your participation in the Pre-trial Diversion Program will be used against you, except for impeachment purposes, in connection with any prosecution for the above-described offense.

General Conditions of Pre-trial Diversion

(1) You shall not violate any law (federal, state and local). You shall immediately contact your pre-trial diversion supervisor if arrested and/or questioned by any law enforcement officer.

(2) You shall attend school or work regularly at a lawful occupation or otherwise comply with the terms of the special program described below. If you lose your job or are unable to attend school, you shall notify your pre-trial diversion supervisor at once. You shall consult him/her prior to job or school changes.

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(3) You shall report to your supervisor as directed and keep him/her informed of your whereabouts.

(4) You shall follow the program and such special conditions as may be described below.

Special Conditions

Description of special program:

I assert and certify that I am aware of the fact that the Sixth Amendment to the Constitution of the United States provides that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial. I also am aware that Rule 48(b) of the Federal Rules of Criminal Procedure provides that the Court may dismiss an indictment, information, or complaint for unnecessary delay in presenting a charge to the Grand Jury, filing an information or in bringing a defendant to trial. I hereby request the United States Attorney for the District of _____ to defer such prosecution. I agree and consent that any delay from the date of this Agreement to the date of initiation of prosecution, as provided for in the terms expressed herein, shall be deemed to be a necessary delay at my request, and I waive any defense to such prosecution on the ground that such delay operated to deny my rights under Rule 48(b) of the Federal Rules of Criminal Procedure and the Sixth Amendment to the Constitution of the United States to a speedy trial or to bar the prosecution by reason of the running of the statute of limitations for a period of months equal to the period of this agreement.

I hereby state that the above has been read and explained to me. I understand the conditions of my pre-trial diversion program and agree that I will comply with them.

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1-13.000 ORDERS OF THE ATTORNEY GENERAL

This chapter lists all orders of the Attorney General pending their incorporation into Title 28, Code of Federal Regulations (C.F.R.). The cutoff date for publication in 28 C.F.R. is July 1st of each year.

In addition to listing such orders, selected orders of general interest are reprinted as part of this chapter, or a reference is given to another portion of this Manual where the order has been reprinted or otherwise incorporated in the text.

For more information, contact the Office of Legal Counsel.

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Order No.	Date	Federal Register			Subject	Remarks
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1024-83	8/1/83	48	35087	8/3/83	Part 9--Delegation of Authority to FBI and DEA Officials	
1025-83	7/28/83	48	35892	8/8/83	Part 16--Revision of Department of Justice Regulations Implementing the Freedom of Information Act and the Privacy Act of 1974	Proposed rule.
1026-83	8/6/83	48	37376	8/18/83	Part 60--Authorization of Federal Law Enforcement Officers to Request the Issuance of a Search Warrant	Final rule. Effective 8/6/83.
1030-83	9/8/83	48	41181	9/14/83	Part 16--Freedom of Information Act and the Privacy Act of 1974; Revision of Implementation	Extends comment period to 10/3/83 on proposed rule.
1031-83	10/16/83	48	49509	10/26/83	Part 50--Policy with Regard to Open Judicial Proceedings	Final rule. Effective 10/18/83.
1033-83	10/24/83	48	50312	11/1/83	Part 0--Delegation of Authority to Deputize Marshals	Final rule. Effective 10/24/83.
1034-83	10/26/83	48	50713	11/3/83	Parts 0, 3, 8, 9 and 9a--Assignment of Criminal Forfeiture Function to the Assistant Attorney General, Criminal Division, and Assignment of Criminal and Civil Forfeiture Functions to Director, Asset Forfeiture Office, Criminal Division	Final rule. Effective 10/26/83.

Federal Register

Order No.	Date	Vol.	Page	Date	Subject	Remarks
1062-84	7/18/84	49	30298	7/30/84	Part 0--Designation of Official to Implement OMB Circular No. A-76	Final Rule.
1063-84	8/2/84	49	32065	8/10/84	Part 0--Director of Attorney Personnel Management	Final Rule.
1064-84	9/5/84	49	35934	9/13/84	Part 0--Delegation of Authority To Designate Certain Employees of the Department of Agriculture (Tick Inspectors) To Carry and Use Firearms	Final Rule.
1065-84	9/5/84	49	35724	9/11/84	Part 39--Enforcement of Non-discrimination on the Basis of Handicap in Federally Conducted Programs	Final Rule.
1069-84	10/1/84	49	39843	10/11/84	Part 0--Delegation of Authority Under the Airport and Airway Improvement Act of 1982	Final Rule.
1071-84	10/19/84	49	44084	11/2/84	8 C.F.R. Part 292--Requests for Recognition; Accreditation of Representatives Before the INS	Final Rule.

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1074-84	11/1/84	49	44995	11/14/84	Part 15--Defense of Certain Suits Against Federal Employees; Certification and Defense of Certain Suits Against Program Participants Under the National Swine Flu Immunization Program of 1976; and Certification and Decertification of Certain Suits Based Upon Acts or Omissions of Contractors in Carrying Out an Atomic Weapons Testing Program Under a Contract With the United States	Final Rule.
1077-84	11/16/84	49	46371	11/26/84	Part 0--Delegation of Authority Under the National Cooperative Research Act of 1984	Final Rule.

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1-14.000
Grand Jury Proceedings

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1-14.000 AUTHORITY TO CONDUCT GRAND JURY PROCEEDINGS

1-14.100 UNITED STATES ATTORNEYS

Since it is the duty of the U.S. Attorney within each district to "prosecute for all offenses against the United States," the authority to conduct grand jury proceedings exists by virtue of office. 28 U.S.C. §547. The same is true of Assistant U.S. Attorneys. 28 U.S.C. §542.

1-14.200 DEPARTMENT ATTORNEYS

Attorneys who are regularly employed by the Department of Justice are not empowered to conduct grand jury proceedings unless they are specifically directed to do so by the Attorney General or his/her delegate. The applicable statute, 28 U.S.C. §515(a), provides as follows:

The Attorney General or any other officer of the Department of Justice, or any attorney specially appointed by the Attorney General under law, may, when specifically directed by the Attorney General, conduct any kind of legal proceeding, civil or criminal including grand jury proceedings and proceedings before committing magistrates which United States Attorneys are authorized by law to conduct, whether or not he is a resident of the district in which the proceeding is brought.

Section 515(a) was enacted to overcome the decision in United States v. Rosenthal, 121 F.2d 862 (S.D. N.Y. 1903), holding that neither the Attorney General nor his/her subordinates, including retained counsel, had authority to conduct grand jury proceedings. See also USAM 9-11.351.

Regarding Special Assistant U.S. Attorneys, See USAM 1-3.540 11.352; 10-2.230.

1-14.210 Delegation of Authority Under 28 U.S.C. §515(a) With Respect to Department Attorneys

The Attorney General has delegated to each Assistant Attorney General and Deputy Assistant Attorney General authority under 28 U.S.C. §515(a) to direct or to designate Department attorneys to conduct grand jury

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proceedings (Order No. 725-77, May 12, 1977). This delegation does not carry with it the power to appoint attorneys from other agencies or from private practice. See USAM 1-14.300.

1-14.220 Letter of Authority

Each Department attorney designated to conduct grand jury proceedings will be given the following letter of authority by the Assistant Attorney General of his or her division:

Dear _____ :

As an attorney for the government employed full time by the Department of Justice and assigned to the _____ Division, you are hereby authorized and directed to file informations and to conduct in the District of _____ and any other judicial district any kind of legal proceedings, civil or criminal, including grand jury proceedings and proceedings before United States Magistrates, which United States Attorneys are authorized to conduct.

You may file a copy of this letter with the Clerk of the District Court to evidence this authorization.

[signature]

Assistant Attorney General

Division

1-14.300 NON-DEPARTMENT ATTORNEYS

Non-Department attorneys, i.e., attorneys from other government agencies or from private practice, must be appointed to office by Attorney General or his/her delegate and take the appropriate oath of the a Special Assistant to the Attorney General (28 U.S.C. §515(b)) or office as Assistant to the U.S. Attorney (28 U.S.C. §§543, 544). The letter of appointment or commission given non-Department attorneys will authorize such attorneys to conduct grand jury proceedings under the procedures set forth such in USAM 9-11.352.



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1-15.000 DOCUMENTARY MATERIAL HELD BY THIRD PARTIES

Pursuant to Section 201 of Title II of the Privacy Protection Act of 1980 (Pub. L. 96-440, Sec. 201), the Attorney General published "Guidelines on Methods of Obtaining Documentary Materials Held by Third Parties." (See 28 C.F.R. §59). The intent of the regulations is to protect against unnecessary invasions of personal privacy and to recognize the potential for such invasions when the government seeks to obtain documentary materials from third parties not themselves under investigation. The general thrust of these guidelines is that a search warrant should not be used to obtain documentary materials from a non-suspect, except where the use of a subpoena or other less intrusive means would jeopardize the availability or usefulness of the materials sought. When a warrant is sought, different provisions apply depending on whether the person from whom the materials are sought is: (1) a disinterested third party; (2) a disinterested third party who is a physician, lawyer, or clergyman; or (3) a person possessing the materials sought for the purposes of public communication (e.g., a newspaper, book or broadcast). This third provision is regulated directly by statute (42 U.S.C. §2000aa). These regulations and this chapter of the United States Attorneys' Manual are directed largely at the first two provisions.

1-15.100 DEFINITIONS OF TERMS

1-15.110 Documentary Materials - Definition

The term "documentary materials" means any materials on which information is recorded. It includes, but is not limited to, written or printed materials, photographs, films or negatives, audio or video tapes, and materials upon which information is electronically or magnetically recorded. It does not include materials which constitute contraband, the fruits or instrumentalities of a crime, or things otherwise criminally possessed. 28 C.F.R. §59.2(c).

1-15.120 Disinterested Third Party - Definition

The term "disinterested third party" means a person or organization not reasonably believed to be a suspect in the criminal offense for which the materials are sought nor related by blood or marriage to such a suspect. 28 C.F.R. §59.2(b).

1-15.200 PROCEDURES TO BE UTILIZED UNDER GUIDELINES

1-15.210 Procedures Where Materials Sought are in Possession of a Disinterested Third Party

Normally a search warrant should not be used to obtain documentary materials held by disinterested third party. However, a search warrant may be sought if the use of a subpoena or other less intrusive means would substantially jeopardize the availability or usefulness of the materials sought. Except as provided in USAM 1-15.220, the application for such a warrant must be authorized by an attorney for the government. Attorney for the government is defined in the regulations as having the same meaning as that term does in Rule 54(c) of the Federal Rules of Criminal Procedure and includes all U.S. Attorneys and Assistant U.S. Attorneys. In addition, the Department takes the position that the phrase "an authorized assistant of the Attorney General" set forth in Rule 54(c) as part of the definition of the term "attorney for the government" is broad enough to include all Department of Justice attorneys assigned to investigate or prosecute cases and their supervisors.

An exception to the authorization requirement may be made in emergency situations, where the immediacy of the need to seize the materials does not permit an opportunity to secure authorization from the attorney for the government. In such situations the application may be authorized by a supervisory law enforcement officer in the applicant's department or agency. However, the U.S. Attorney or supervising Department of Justice attorney (in a case in which a division of the Department is directly handling the investigation or prosecution) must be notified of the authorization and its justifying basis within 24 hours of the authorization. 28 C.F.R. §59.4(a).

1-15.220 Procedures Where Materials Sought are in Possession of a Disinterested Third Party Physician, Lawyer, or Clergyman and Contain Confidential Information on Patients, Clients, or Parishioners Furnished or Developed for Purposes of Professional Counseling or Treatment

A similar but somewhat different procedure is followed when the disinterested third party is a physician, lawyer, or clergyman and the materials sought or other materials likely to be reviewed during the execution of the search warrant contain confidential information on patients, clients, or parishioners which was furnished or developed for the purposes of professional counseling or treatment. As with other disinterested third parties, a search warrant normally should not be used to obtain such confidential materials. A warrant will be used only if the use of a subpoena, or other less intrusive means of obtaining the materials, such as a request, would substantially jeopardize the availability or usefulness of the materials sought; access to the materials is of substantial importance to the investigation or prosecution for which they are sought; and the application of the warrant has been approved by the appropriate Deputy Assistant Attorney General (DAAG) upon the recommendation

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of the U.S. Attorney or supervising Department of Justice attorney (in a case in which a division of the Department is directly handling the investigation or prosecution). The appropriate DAAG would be a DAAG for the division which supervises the underlying offense being investigated or prosecuted.

If the documentary materials were created or compiled by a physician but, as a matter of practice, the physician's files are maintained at a hospital or clinic, the files, for purposes of these regulations, are to be deemed in the private possession of the physician; therefore, the regulations would apply if the physician is a disinterested third party. Such records would, however, not be deemed in the private possession of the physician if the hospital or clinic itself were a suspect.

Again, an exception to the authorization requirement may be made in emergency situations where there is an immediate need to seize the materials and not enough time to secure Deputy Assistant Attorney General approval. In such situations the application may be authorized by the U.S. Attorney or the supervising Department of Justice attorney. However, the appropriate Deputy Assistant Attorney General must be notified of the authorization and its justifying basis within 72 hours of the authorization. In these cases (physician, lawyer, or clergyman) there is no provision for an emergency authorization by a supervisory law enforcement officer as is the case for other disinterested third parties. 28 C.F.R. §59.4(b)(1) and (2).

See USAM 1-15.700, infra, for a list of contact points in the several divisions to contact for advise and Deputy Assistant Attorney General approval.

1-15.221 Request for Authorization to the Deputy Assistant Attorney General

Where the materials sought are in the possession of a disinterested third party physician, lawyer, or clergyman, application for a warrant must be approved by the appropriate Deputy Assistant Attorney General as described in USAM 1-15.220, supra. The request for authorization from the Deputy Assistant Attorney General should be made in writing whenever possible and is to include a copy of the warrant application as well as a brief description of the facts and circumstances which form the basis for the recommendation of the authorization. In addition, the request must include a statement that it is authorized by the U.S. Attorney or the supervising Department of Justice attorney. If the request for authorization is made orally, or if, in an emergency situation, the application is

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authorized by the U.S. Attorney or the supervising Department of Justice attorney, a written record, as described above, must be sent to the Deputy Assistant Attorney General within seven days. 28 C.F.R. §59.4(b)(3).

1-15.230 Procedures Where Materials Sought are in Possession of a Disinterested Third Party Professional Involved in a Doctor-Like Therapeutic Relationship

There may be additional third-party professionals (e.g., psychologists, psychiatric social workers, or nurses) who possess materials containing private information similar to that held by doctors. The regulations are intended to cover these relationships as well. In such cases, the U.S. Attorney (or supervising Department of Justice attorney) should determine whether a search for such materials would involve review of extremely confidential information furnished or developed for purposes of professional counseling or treatment, and if it would, the provisions described in USAM 1-15.220 for obtaining materials from physicians, lawyers, or clergymen must be followed. At a minimum, the requirements for third party search warrants described in USAM 1-15.210 must be observed in all cases. 28 C.F.R. §59.4(b)(5).

1-15.240 Procedures Where Materials Sought are in Possession of a Person Who Holds Them in Relation to Some Form of Public Communication

Search warrants directed at seizure of any work product materials or other documentary materials possessed by a person reasonably believed to have a purpose to disseminate to the public a newspaper, book broadcast, or other similar form of public communication are governed by Title I of the Privacy Act of 1980 (42 U.S.C. §2000aa et seq.). Such warrants can only be sought under very special circumstances, and the statute must be followed closely. Questions as to such searches should be directed to the Office of Enforcement Operations of the Criminal Division, David Simonson (724-6672).

1-15.300 CONSIDERATIONS BEARING ON CHOICE OF METHODS

The guidelines set forth certain factors which should be considered in determining whether the use of a subpoena or other means less intrusive than a search warrant would substantially jeopardize the availability or usefulness of the materials sought. These factors include:

A. The likelihood of destruction, alteration, concealment, or transfer of the materials sought. In this regard, consideration should be given to whether:

1. a suspect has access to the materials sought;
2. there is a close relationship of friendship, loyalty, or sympathy between the possessor of the materials and a suspect;

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3. the possessor is under the domination or control of the suspect;

4. the possessor has an interest in preventing disclosure of the materials to the government;

5. the possessor's willingness to comply with a subpoena would be likely to subject him/her to intimidation or threats of reprisal;

6. the possessor has previously acted to obstruct a criminal investigation or judicial proceeding or refused to comply with court orders; or

7. the possessor has expressed an intent to destroy, conceal, alter, or transfer the materials.

B. The immediacy of the government's need to obtain the materials. In this regard, consideration should be given to whether:

1. the immediate seizure of the material is necessary to prevent injury to persons or property;

2. prompt seizure is necessary to preserve the evidentiary value of the materials;

3. delay in obtaining the materials would significantly jeopardize an ongoing investigation or prosecution; or

4. a legally enforceable form of process, other than a search warrant, is reasonably available as a means of obtaining the materials.

Note the fact that the disinterested third party may have grounds to challenge a subpoena is not in itself a sufficient basis for the use of a search warrant. 28 C.F.R. §59.4(c).

1-15.400 NON-APPLICABILITY IN CERTAIN SITUATIONS

The guidelines do not apply to certain types of investigatory activities and searches. These include audits; examinations; regulatory, compliance, or administrative inspections; foreign intelligence or counterintelligence activities by a government authority pursuant to otherwise applicable law; border and customs searches; access to documentary materials for which valid consent has been obtained; and access to documentary materials which have been abandoned at a known location or which cannot be obtained by a subpoena because they are in the possession of a person whose identity is not known and cannot be determined with reasonable effort.

The guidelines do not supersede any other statutory, regulatory, or policy limitations on access to or the use or disclosure of particular types of documentary materials. These include, but are not limited to, the provisions of the Right to Financial Privacy Act of 1978 (12 U.S.C. §3401 et seq.); and the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, as amended (42 U.S.C. §4541 et seq.). 28 C.F.R. §59.3.

1-15.500 SANCTIONS

Any federal officer or employee who violates the guidelines set forth in 28 C.F.R. §59 is subject to appropriate disciplinary action by the agency or department by which he/she is employed. 28 C.F.R. §59.6.

1-15.600 CRIMINAL TAX OFFENSES

Where the warrant application involves a search for evidence of a criminal tax offense under the jurisdiction of the Tax Division, the warrant must be specifically approved in advance by that Division pursuant to USAM 6-2.330. 28 C.F.R. §59.4, footnote 1.

1-15.700 CONTACT POINTS FOR ADVICE AND APPROVAL

In all cases involving offenses supervised by the Criminal Division all questions as to these regulations and inquiries as to Deputy Attorney General authorization should be directed to the Office of Enforcement Operations at 633-3684.

For offenses under the jurisdiction of the Tax Division, contact the Chief of the Criminal Section of the Tax Division at 633-2973.

For offenses under the jurisdiction of the Civil Rights Division, contact the Chief of the Criminal Section of the Civil Rights Division at 633-4067.

For offenses under the jurisdiction of any other division, contact the office of the Assistant Attorney General or a Deputy Assistant Attorney General for the appropriate division.

mechanisms shall be reported to the Deputy and Associate Attorneys General and the other litigating divisions by July 13, 1986.

1-16.230 Use of Special Masters at Foreign Depositions, 18 U.S.C. §3507

New 18 U.S.C. §3507 grants specific authority to a court to appoint a special master to attend and preside over foreign depositions, or to act as an advisor on United States law, insofar as the foreign country will allow such an official to do so. Section 3507 further provides that the special master may not decide questions of privilege under foreign law.

1-16.231 Division Approval

Attorneys for the government are required to consult with the Office of International Affairs, Criminal Division, prior to applying to the court for the appointment of a special master in their cases. Such consultation is required in order to avoid an unnecessary or unwise appointment, and to avoid difficulties with foreign authorities who might object to having a special master entering their countries for official purposes.

1-16.240 Statement of Masters' Functions

These guidelines delineate the functions of masters that the Department of Justice believes to be appropriate. It is important that, whenever a master is appointed, his/her role in the case be made explicit at the outset. Accordingly, the United States will always propose a clear statement of the work the master is to do, and, if appropriate, a reference to the functions he/she is not to undertake. Whenever possible, the parties should agree to such a statement and submit their agreement to the judge. When this is not feasible, the government will urge the court to make an explicit statement of function. The United States will press for a mandate for the master consistent with these policies.

It is also important that clear provision be made at the outset for fees and expenses. The parties should agree to, or the court should adopt after comment, an understanding as to the master's billing rate, his/her authority to employ assistants and their rate of compensation, the expenses that will be allowed, and any other funding matter, including the procedures that are to be used to monitor and verify spending. The United States will always resist any expenditures by the master in the absence of such an understanding. Of course, the government will also insist that

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conversant with the subject matter of the case, it is necessary that he/she be thoroughly familiar with any procedural questions he/she is to handle--privilege issues, for instance.

B. Independence. It is also important that the master be unbiased, not only as between the parties, but in his/her relationship with the judge: it is the duty of both the master and the judge to disclose to the parties any personal or business association between them that might impair this independence of judgment. Moreover, the master should exercise his/her independent judgment, and the judge should review the master's decisions on the merits. Accordingly, the United States must examine carefully the likely impartiality of any prospective master who is a close associate of the judge making the appointment.

C. Cost. Economy must also be considered in assessing possible masters. Individuals whose time is expensive, or who operate in institutions the services of which are costly, are to be avoided in favor of similarly qualified and unbiased candidates who will involve less expense.

D. Improper Role. Finally, in analyzing a candidate's desirability, counsel should take into account any indications that he/she would diverge from the appropriate role of the master. Any reason to believe that the master would wish to exercise significant judicial power, or would be disposed to seek to aggrandize the authority of the court, must weigh against the candidate.

Generally, the government will consider first United States Magistrates and semi-active judges, whose qualifications under these criteria will tend to be strong.

1-16.223 Implementation by Divisions

In implementing these guidelines, each litigating division of the Department shall decide whether its work involves masters often enough to warrant a review of possible candidates. It is anticipated that the Civil Division, Civil Rights Division, and Land and Natural Resources Division will probably find such a review appropriate; others may also. These divisions shall develop, by June 13, 1986, specific criteria of acceptability along the lines outlined here and shall, if the Assistant Attorney General finds it appropriate, prepare lists of possible appointees who would probably be acceptable to the Department in cases of various kinds. Division heads shall establish mechanisms to ensure that government litigators in cases that may involve masters have these criteria and lists available at the earliest possible stage. These

exceptional case where a motion for reconsideration would seriously undermine the government's overall position, litigation strategy may dictate that a sua sponte appointment not be challenged at all.

1-16.213 Acquiescence in Appointments

Sound litigation strategy also may dictate that the government acquiesce in the appointment of a master even when the Department's policies would indicate opposition. Counsel may decide that a major concession by another party justifies such acquiescence, or that a clear intention by the judge that a master will be employed should not be resisted. Acquiescence should be the exception and not the rule, however, and should never occur when there is a significant danger that the master would perform essential judicial functions or operate significantly to increase the power of the court relative to that of another branch or level of government.

1-16.220 Selection of the Master

1-16.221 Procedures

Because a special master is an ad hoc officer appointed for a particular case and paid for by the litigants, selection of the individual who is to act as a special master should be as much in the hands of the parties as feasible. Whenever possible, the parties should consult together and agree on a master, or on a list of suggested names. Similarly, the litigants should have an opportunity to comment on any candidate the court is considering, and may request the judge to invite comments on several possible masters. Unless case-specific considerations strongly dictate otherwise, the United States will press for the exercise of these procedural rights. When a judge simultaneously announces his/her decision to appoint a master and the name of the individual who is to serve, the government will usually request that the appointment be reconsidered along with the decision to make it, and will then comment on the prospective master as well as on the advisability of using one.

1-16.222 Criteria for Selection

A. Qualifications. In choosing or commenting on proposed masters, the United States will be guided primarily by considerations of technical competence and impartiality. A master is a hearing officer, not an expert. Therefore, while it is not always vital that a master be closely

1-16.000 GUIDELINES ON DEPARTMENT POLICY REGARDING SPECIAL MASTERS

These guidelines are promulgated in order to give central direction to the government's positions in cases involving special masters. They set out the Department's policy on the use of masters, the criteria by which master appointments are to be assessed, and procedures which attorneys for the United States are to follow. For the first time, the Department of Justice here adopts a policy with respect to the costs of special masters in light of the doctrine of sovereign immunity. The guidelines are to be followed in all cases tried by counsel under the Attorney General's direction, except those in the Supreme Court of the United States and those in state courts under the McCarran Amendment, 43, U.S.C. §666.

1-16.100 GENERAL POLICY ON THE USE OF MASTERS

It is the position of the Justice Department that, as a general matter, the judicial power vested by the Constitution in the courts is to be exercised by judges and their legislatively created subordinates, such as United States Magistrates. This policy accords with Rule 53 of the Federal Rules of Civil Procedure, under which the appointment of special masters and other non-legislative judicial delegates is to be considered the exception rather than the rule. Special masters are an acceptable aid to judicial officers in a narrow range of cases, but they are not a substitute for Article III judges.

The appropriate role for special masters is in situations where the demands on the decisionmaker's time are great but the need for judicial resolution is minimal. Masters can be useful where decisions are (1) routine, (2) large in number, (3) minimally connected to the substantive issues in a case, and (4) not sufficiently difficult or significant to require a constitutional or legislative officer. A principal example is the class of cases involving unusually extensive discovery proceedings, in which a large number of minor decisions must be made concerning questions such as discoverability and privilege. In these situations, the special master is a legitimate and valuable part of the judicial process. Masters can also play a role in the remedial stage of a proceeding, where there is a need for adjudicative decisions by the master.

The fact that masters are not substitutes for judges has several significant consequences:

A. Masters should not be employed simply to alleviate congestion or lighten workloads, if to do so would result in a master performing a

judge's function. The appropriate level of staffing for the federal courts is a decision for Congress, not for individual judges. The fact that a case is large or complex, and thereby represents an above-average burden on scarce judicial resources, will generally mean that the judge should spend more time on the case, not that ad hoc officers should be appointed.

B. The fact that a case presents difficult technical issues should not be considered as weighing in favor of the appointment of a master. Hard factual problems are to be addressed through the normal techniques of trial, including the presentation of expert testimony. If necessary, the trial court can appoint its own expert witnesses. It is a serious error, however, for a master, who is a hearing officer and fact-finder, to be confused with someone who develops and presents evidence. Masters should not be appointed for this purpose, and their use as de facto experts should be resisted when it occurs.

C. Masters are not appropriate when their decisions will have to be reviewed by the judge in substantial detail. Such an arrangement is uneconomic and, more importantly, inadequately serves the right of litigants to have any significant question resolved in the first instance by a constitutional or statutory judicial officer.

D. Masters should not be employed as part of non-judicial alternative dispute resolution methods. The United States favors the use of alternative dispute resolution methods such as minitrials, arbitration and mediation. Insofar as these methods are not part of the judicial process proper, masters, who are ad hoc judicial officers, should not be used as neutral parties in such situations. And insofar as encouraging or facilitating alternative dispute resolution requires the judgment of authority of the court, it is not appropriate for master involvement because the use of masters should be restricted to more ministerial functions.

E. Masters should not be entrusted with issues that are novel, difficult, closely related to the outcome of the case, or significant from the point of view of policy. Such issues demand the attention of life-tenured judges who have gone through the rigorous process of judicial selection, and are insulated in their decisionmaking by the constitutional protections surrounding their office.

F. It is inappropriate for a court to use a master to extend its own power. Masters should not be a tool for bringing under the control of the court matters that otherwise would be resolved elsewhere. This is particularly important when the United States is a party, because in such

cases the enhancement of judicial power will usually be at the expense of a coordinate branch of government.

G. Masters should be employed only in cases where their utility justifies the additional cost. Judges and magistrates are already made available at public expense, as a result of the decision that certain services are to be provided without cost to litigants. The imposition on the parties of additional expenses can be justified only by the prospect of a substantial increase in litigation efficiency; such as imposition merely to save the time of officers that Congress has determined shall be available to all is improper.

1-16.200 PROCEDURES IN MASTER CASES

1-16.210 The Decision on Appointment

1-16.211 Application of Criteria

The Department of Justice favors the use of special masters only in the narrow class of lawsuits discussed above. Accordingly, before proposing to the court that a master be appointed, attorneys for the United States must analyze the case in light of the principles set out here. A master should be suggested only if counsel judge that (1) the case (or order to be implemented) contains enough of the routine, minor issues that are appropriate for master resolution to justify the additional expense and delay, and (2) it appears very unlikely that the master would function in an improper fashion. The same considerations will govern the response of counsel of the government to another party's suggestion that a master be employed.

1-16.212 Sua Sponte Appointments

The Department believes that courts should appoint masters on their own motion only after consultation with the parties. Accordingly, any time a judge raises the possibility that a master be appointed sua sponte, government counsel should request the opportunity to be heard on both the advisability of the appointment and the appropriate role of the master. When a court appoints a master without discussing the possibility beforehand, the United States will generally seek a reconsideration of the decision. This should be done even when we agree with the appointment, in order to encourage the court to make its reasons explicit and, if possible, to adopt the principles enunciated here. In the very

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the master be allowed only such expenses as are necessary to effective operation. Litigating divisions that employ masters frequently, by May 13, 1986, should establish more specific guidelines concerning proper categories and levels of expenditures.

1-16.250 Monitoring

Throughout any litigation involving a special master, government counsel shall pay close attention to the master's conduct of his/her office. Any deviation from the role assigned by the court, or the role endorsed for masters in general under these guidelines, should be reviewed with appropriate officers of the Department and should generally be brought to the attention first of the master and then of the court if that proves necessary. If this deviation persists in the face of objection by the government, serious considerations will be given to a motion to remove the particular master or to revoke the order of reference altogether.

Similarly, financial accountability must be maintained during the case. Counsel generally should raise immediately any doubts concerning the level or types of expenditure being made by the master. Frequently, of course, other parties (on both sides) will have interests similar to the government's, and should be consulted when cost issues arise.

1-16.300 FEES AND EXPENSES OF SPECIAL MASTERS

1-16.310 Payments of Masters' Costs by the United States

The United States are sovereign, and are subject to suit only by their own consent. Courts will assess judgments against the sovereign only on a showing of an explicit and unequivocal waiver of this immunity. The fees and expenses of special masters are a cost of court, paid by parties pursuant to judgments; Congress has not enacted legislation generally waiving sovereign immunity with respect to this category of costs. Accordingly, except in cases where there is a specific statutory waiver that covers the costs of special masters, the United States may not be compelled to pay them.

The government may elect, nevertheless, voluntarily to pay some or all of the costs of a master in a particular case. When the United States proposes a special master, or agrees to one proposed by another party or the court, arrangements will be made for the government to pay its proper share. Counsel may enter into an agreement under which each

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party will pay some portion of the costs approved by the court, or may provide that the losing party or parties will pay all of the master's expenses.

When a master is appointed over the government's objection, or with the government's acquiescence in a situation where these guidelines would normally call for opposition to appointment, the United States will refuse to pay any fees or expenses, and will notify the court of that refusal and the grounds therefore, when:

1. Government counsel believe the master to be unqualified or seriously biased;
2. It appears clear that the master will be performing essential judicial functions with respect to issues closely related to the outcome of the case or sensitive from the point of view of policy;
3. There is strong reason to believe that the use of the master will increase the authority of the court over another branch or level of government in derogation of constitutional principles; or
4. The master's work will clearly have to be reviewed by the judge to such an extent as to render the master largely redundant.

Subject to procedures and policies established by the heads of litigating divisions, the United States may refuse to pay a master's costs for any other reason comparable in importance to those set out here. The decision not to pay for an officer the court has appointed should be approved by the responsible Assistant Attorney General.

Only in the rarest of cases will litigation strategy lead to a payment in a case where these guidelines dictate otherwise. While litigators usually will be disinclined to offend the judge conducting their proceedings, the United States must be willing to rely on the judiciary's ability to put aside unrelated irritations in making substantive decisions. Refusal to pay for a court-appointed master should always be explained carefully, with stress laid on the gravity of the considerations that have led to the decision, and on the imperative nature of Department policy as set forth here.

1-16.320 Internal Procedures for Payment

Once a special master has been appointed, and the government has determined that the appointment is appropriate or that the government will

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acquiesce and pay its share of the fees and expenses of the master, the government attorney will submit an obligation of payment form to the administrative officer for the division or the U.S. Attorney's Office. Until the Justice Management Division prescribes a form for special masters, OBD-47, "Request and Authorization for Fees and Expenses of Witnesses," will be used. The attorney should note on the form that it is being used for a special master. The division administrative officer will forward the OBD-47 to Financial Operations Services, and administrative officers for U.S. Attorneys' Offices, to the U.S. Marshal's Office for that district.

Internal procedures for paying the master will follow the same procedures used for payment to experts and consultants. The master will submit an itemized invoice (OBD-84 and 85, "Pay Voucher for Special Services," may be used for this purpose) to the government attorney who, in turn, will submit the invoice to the administrative officer to be forwarded either to Financial Operations Services or the U.S. Marshal's Office, as prescribed above. Upon the order of the court, partial or advance payment of fees and expenses will be handled through these same procedures.

Fees and expenses of Land Commissioners will not be paid by the Department. Funds for the payment of Land Commissioners are appropriated to the Administrative Office of the U.S. Courts, and the commissioner should look to that office for their fees and expenses.

1-16.400 REVIEW OF THESE GUIDELINES

The principles set out here must be tested and reviewed in light of the Department's ongoing experience with special masters, and in particular its experience under these guidelines. Accordingly, as of this date, each Assistant Attorney General heading a division that uses masters will institute procedures for the analysis of cases involving masters, with special attention to the effect of these guidelines. Counsel in masters cases should report any need for clarification or expanded coverage, and any difficulties with other parties or the courts that appear to result from the application of these policies. The Assistant Attorney General for Legislative and Intergovernmental Affairs will report on any congressional reaction. In order to coordinate review, the Litigation Strategy Working Group will continue to meet periodically to discuss masters issues; Assistant Attorneys General should call any significant court reactions to the guidelines to the Group's attention.

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Ch. 16, p. 9

USAM (superseded)





U.S. Department of Justice

Executive Office for United States Attorneys

Washington, D.C. 20530

May 6, 1986

(Expires October 6, 1986)

TO: Holders of United States Attorneys' Manual Title 1

FROM: United States Attorneys' Manual Staff
Executive Office for United States Attorneys

Stephen S. Trott
Assistant Attorney General
Criminal Division

RE: Policy with Regard to Defense Requests for Jury
Instruction on Immunized Witnesses

NOTE: 1. This is issued pursuant to USAM 1-1.550.
2. Distribute to Holders of Title 1.
3. Replaces USAM 1-11.350.

AFFECTS: USAM 1-11.350

PURPOSE: This bluesheet replaces the guideline concerning
arguments and instructions offered by defense.

The following should replace the material at USAM 1-11.350:

1-11.350 Defense Requests for Jury Instruction on Immunized
Witnesses

A witness who is compelled to testify under 18 U.S.C. §§ 6001-6003 is not thereby provided with an inducement to testify. Nevertheless, it is not uncommon to encounter defense requests for jury instructions depicting such a witness as the recipient of a benefit, whose testimony may be colored by that benefit, and therefore must be weighed with special circumspection. Instructions suggesting that the compulsion of testimony under a use immunity order is a "benefit" to the witness should be resisted. Rather, the court should be urged to give a more balanced instruction, which describes the legal status of the witness whose testimony has been compelled under a use immunity order, and which explains in neutral terms that the testimony of a witness who is testifying in exchange for some benefit should be viewed with special care. The following instruction, taken from United States v. Lea, 618 F.2d 426, 432 n.7 (7th Cir.), cert. denied, 449 U.S. 832 (1980), contains a sufficient reference to the possible benefits of immunity to satisfy courts that have expressed a preference for "immunized

witness" instructions, without containing the misleading suggestion that a use immunity order, by itself, confers some benefit on the witness:

The witnesses . . . testified under a grant of immunity, pursuant to a court order, after a petition by the government was filed requesting such an order. Under the law, none of the testimony during this trial can ever be used against them in any subsequent criminal proceeding. However, if any one of them testified untruthfully under the grant of immunity, he could be prosecuted for perjury or the making of a false statement even though he was testifying under a grant of immunity.

The testimony of a witness who provides evidence against a defendant for immunity from prosecution, or for personal advantage or vindication, must be examined and weighed by the jury with greater care than the testimony of an ordinary witness. The jury must determine whether the witness' testimony has been affected by interest, or by prejudice against the defendant.



lee
U.S. Department of Justice

Executive Office for United States Attorneys

Washington, D.C. 20530

October 12, 1984

TO: Holders of United States Attorneys' Manual Title 1

FROM: United States Attorneys' Manual Staff
Executive Office for United States Attorneys

Stephen S. Trott
Assistant Attorney General
Criminal Division

RE: PTD Agreement

NOTE: 1. This is issued pursuant to USAM 1-1.550.
2. Distribute to Holders of Title 1.
3. Insert at the end of USAM 1-12.300.

AFFECTS: USAM 1-12.400

The following should be substituted for the fourth sentence of the first paragraph of USAM 1-12.400:

The period of supervision is not to exceed 18 months but may be reduced.



Washington, D.C. 20530

October 12, 1984

TO: Holders of United States Attorneys' Manual Title 1

FROM: United States Attorneys' Manual Staff
Executive Office for United States Attorneys

Stephen S. Trott
Assistant Attorney General
Criminal Division

RE: Letter to Offender--(USA Form 185)

NOTE: 1. This is issued pursuant to USAM 1-1.550.
2. Distribute to Holders of Title 1.
3. Insert at the end of USAM 1-12.601.

AFFECTS: USAM 1-12.602

The following should be substituted for the second and third paragraphs of USAM 1-12.602:

1-12.602 Letter to Offender--(USA Form 185)

After reviewing your case, we have made a preliminary determination that you may be an appropriate person to participate in the Department's Pre-trial Diversion Program. Pre-trial diversion means that this office will not presently seek a conviction against you. Instead, if you qualify and are accepted, you will be placed in a pre-trial diversion program under certain specified conditions described in a written agreement between you and the government for a term to be determined by this office but not to exceed 18 months. If you satisfactorily fulfill the conditions and terms of your program, you will not be prosecuted, or, if you have already been charged, the charges against you will be dismissed. If you violate the conditions of the written agreement you may be removed from the pre-trial diversion program, in which case this office will resume prosecution.

Decision to seek acceptance into this program is one that must ultimately be made by you alone. Nevertheless, it is important that you immediately discuss this matter fully and completely with your attorney inasmuch as your participation in this program will constitute a waiver of certain rights afforded to you by the Constitution. Specifically, you must waive your right to a speedy trial and your right to have an indictment presented to a grand jury within the applicable statute of limitations. If you believe you are unable to afford an attorney, you should apply to the Chief Pretrial Services Officer (or the Chief Probation Officer) to have counsel appointed to represent you.

USAM (superseded)

USAM (superseded)

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