

# United States Attorneys' Manual

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## *Volume I*



Title 1, General  
Title 2, Appeals  
Title 3, Executive Office for  
United States Attorneys

1988

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# **Title 1**

# **General**

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U. S. ATTORNEYS MANUAL 1988



UNITED STATES ATTORNEYS' MANUAL

DETAILED  
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Office of the Deputy Attorney General

Washington, D.C. 20530

October 11, 1995

TO: Holders of United States Attorneys' Manual  
Title 9

FROM: Jamie S. Gorelick  
Deputy Attorney General

United States Attorneys' Manual Staff  
Executive Office for United States Attorneys

RE: Policy with regard to seeking a search warrant for the  
premises of an attorney who is a suspect, subject or  
target of a criminal investigation where information  
relating to the representation of clients is likely to  
be present and subject to search.

NOTE: 1. This is issued pursuant to USAM 1-1.550.  
2. Distribute to holders of Title 9.  
3. Insert as new section.

CREATES: 9-2.161(b)

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There are occasions when effective law enforcement may require the issuance of a search warrant for the premises of an attorney who is a subject of an investigation,<sup>1</sup> and who also is or may be engaged in the practice of law on behalf of clients. Because of the potential effects of this type of search on legitimate attorney-client relationships and because of the possibility that, during such a search, the government may encounter material protected by a legitimate claim of privilege, it is important that close control be exercised over this type of

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<sup>1</sup> For purposes of this policy only, "subject" includes an attorney who is a "suspect, subject or target," or an attorney who is related by blood or marriage to a suspect, or who is believed to be in possession of contraband or the fruits or instrumentalities of a crime. This policy also applies to searches of business organizations where such searches involve materials in the possession of individuals serving in the capacity of legal advisor to the organization.

Search warrants for "documentary materials" held by an attorney who is a "disinterested third party" (that is, any attorney who is not a subject) are governed by 28 CFR 59.4 and USAM 9-19.221 et seq. See also 42 U.S.C. Section 2000aa-11(a)(3).

search. Therefore, the following guidelines should be followed with respect to such searches:

### Alternatives to Search Warrants

In order to avoid impinging on valid attorney-client relationships, prosecutors are expected to take the least intrusive approach consistent with vigorous and effective law enforcement when evidence is sought from an attorney actively engaged in the practice of law. Consideration should be given to obtaining information from other sources or through the use of a subpoena,<sup>2</sup> unless such efforts could compromise the criminal investigation or prosecution, or could result in the obstruction or destruction of evidence, or would otherwise be ineffective.

### Authorization by United States Attorney or Assistant Attorney General

No application for such a search warrant may be made to a court without the express approval of the United States Attorney or pertinent Assistant Attorney General. Ordinarily, authorization of an application for such a search warrant is appropriate when there is a strong need for the information or material and less intrusive means have been considered and rejected.

### Prior Consultation

In addition to obtaining approval from the United States Attorney or the pertinent Assistant Attorney General, and before seeking judicial authorization for the search warrant, the federal prosecutor must consult with the Criminal Division.<sup>3</sup> To facilitate the consultation, the prosecutor should submit the attached form containing relevant information about the proposed search along with a draft copy of the proposed search warrant, affidavit in support thereof, and any special instructions to the searching agents regarding search procedures and procedures to be followed to ensure that the prosecution team is not "tainted" by any privileged material inadvertently seized during the search. This information should be submitted to the Criminal Division through the Office of Enforcement Operations. This procedure

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Prior approval must be obtained from the Assistant Attorney General for the Criminal Division to issue a subpoena to an attorney relating to the representation of a client. See USAM 9-2.161(a).

<sup>3</sup> Attorneys are encouraged to consult with the Criminal Division as early as possible regarding a possible search of an attorney's office. Telephone No. (202) 514-5541; Fax No. (202) 514-1468.



does not preclude any United States Attorney or Assistant Attorney General from discussing the matter personally with the Assistant Attorney General of the Criminal Division.

If exigent circumstances prevent such prior consultation, the Criminal Division should be notified of the search as promptly as possible. In all cases, the Criminal Division should be provided as promptly as possible with a copy of the judicially authorized search warrant, search warrant affidavit, and any special instructions to the searching agents.

The Criminal Division is committed to ensuring that consultation regarding attorney search warrant requests will not delay investigations. Timely processing will be assisted if the Criminal Division is provided as much information about the search as early as possible. The Criminal Division should also be informed of any deadlines.

#### Safeguarding Procedures and Contents of the Affidavit

Procedures should be designed to ensure that privileged materials are not improperly viewed, seized or retained during the course of the search. While the procedures to be followed should be tailored to the facts of each case and the requirements and judicial preferences and precedents of each district, in all cases a prosecutor must employ adequate precautions to ensure that the materials are reviewed for privilege claims and that any privileged documents are returned to the attorney from whom they were seized.

#### Conducting the Search

The search warrant should be drawn as specifically as possible, consistent with the requirements of the investigation, to minimize the need to search and review privileged material to which no exception applies.

While every effort should be made to avoid viewing privileged material, the search may require limited review of arguably privileged material to ascertain whether the material is covered by the warrant. Therefore, to protect the attorney-client privilege and to ensure that the investigation is not compromised by exposure to privileged material relating to the investigation or to defense strategy, a "privilege team" should be designated, consisting of agents and lawyers not involved in the underlying investigation.

Written instructions should be distributed to and thoroughly discussed with the privilege team prior to the search. The instructions should set forth procedures designed to minimize the intrusion into privileged material, and should ensure that the privilege team does not disclose any information to the

investigation/prosecution team unless and until so instructed by the attorney in charge of the privilege team. Privilege team lawyers should be available either on or off-site, to advise the agents during the course of the search, but should not participate in the search itself.

The affidavit in support of the search warrant may attach the written instructions or, at a minimum, should generally state the government's intention to employ procedures designed to ensure that attorney-client privileges are not violated.

If it is anticipated that computers will be searched or seized, prosecutors are expected to follow the procedures set forth in Federal Guidelines for Searching and Seizing Computers (July 1994), published by the Criminal Division Office of Professional Training and Development.

#### Review Procedures

The following review procedures should be discussed prior to approval of any warrant, consistent with the practice in your district, the circumstances of the investigation and the volume of materials seized:

- (1) Who will conduct the review, i.e., a privilege team, a judicial officer, or a special master.
- (2) Whether all documents will be submitted to a judicial officer or special master or only those which a privilege team has determined to be arguably privileged or arguably subject to an exception to the privilege.
- (3) Whether copies of all seized materials will be provided to the subject attorney (or a legal representative) in order that: a) disruption of the law firm's operation is minimized; and b) the subject is afforded an opportunity to participate in the process of submitting disputed documents to the court by raising specific claims of privilege. To the extent possible, providing copies of seized records is encouraged, where such disclosure will not impede or obstruct the investigation.
- (4) Whether appropriate arrangements have been made for storage and handling of electronic evidence and procedures developed for searching computer data (i.e., procedures which recognize the universal nature of computer seizure and are designed to avoid review of materials implicating the privilege of innocent clients).

These guidelines are set forth solely for the purpose of internal Department of Justice guidance. They are not intended to, do 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 do they place any limitations on otherwise lawful investigative or litigative prerogatives of the Department of Justice.

U.S. ATTORNEYS MANUAL 1988







1-1.000 INTRODUCTION

## 1-1.100 PURPOSE OF THE MANUAL

The *United States Attorneys' Manual* is a looseleaf text designed as a quick and ready reference for U.S. Attorneys, Assistant U.S. Attorneys, and Department attorneys responsible for the prosecution of violations of federal law. It contains general policies and procedures relevant to the work of the U.S. Attorneys' offices and to their relations with the legal divisions, investigative agencies, and other components within the Department of Justice.

The 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.

## 1-1.200 AUTHORITY OF THE MANUAL

The *United States Attorneys' Manual* was prepared under the general supervision of the Attorney General and under the direction of the Deputy Attorney General, by the United States Attorneys, represented by the Attorney General's Advisory Committee on U.S. Attorneys, the Litigating Divisions, the Executive Office for U.S. Attorneys, 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 contents of this Manual conflicts with earlier Department statements, except for Attorney General's statements, the Manual will control. Should a situation arise in which a Department policy statement predating the Manual relates to a subject not addressed in the Manual, the prior statement controls, but this situation should be brought to the attention of the Executive Office for U.S. Attorneys, Manual Staff, PAT Building, Rm. 6419, 601 D Street, N.W., Washington D.C. 20530.

For the relationship between this Manual and Department communications issued after its publication, see USAM 1-1.510.

## 1-1.300 ORGANIZATION OF THE MANUAL

1-1.310 Titles

The Manual is divided into nine (9) distinct titles:

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October 1, 1988

GENERAL	Title 1
APPEALS	Title 2
EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS	Title 3
CIVIL	Title 4
LAND AND NATURAL RESOURCES	Title 5
TAX	Title 6
ANTITRUST	Title 7
CIVIL RIGHTS	Title 8
CRIMINAL	Title 9

Each title has both a name and number to identify it and includes a table of contents, a prior approval section, a cross-reference table to the U.S. Code, a cross reference table to the Code of Federal Regulations, and an individual index.

A comprehensive prior approval listing, U.S.C. Table, C.F.R. Table and general index are also included.

#### 1-1.320 Volumes

The Manual is published and distributed as a 4 volume set or by individual volume. See USAM 1-1.420. Each volume is described below:

- Vol. I — Titles 1 to 3  
(GENERAL, APPEALS and EOUSA)
- Vol. II — Titles 4 to 8  
(CIVIL, LAND and NATURAL RESOURCES, TAX, ANTITRUST, and CIVIL RIGHTS)
- Vol. III — Title 9  
(CRIMINAL)
- Vol. IV — PRIOR APPROVALS, U.S.C. TABLE and C.F.R. TABLE, GENERAL INDEX

For easy reference, the manual is also available on the Justice Retrieval Inquiry System (JURIS). See USAM 1-18.000 for JURIS Database.

#### 1-1.330 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.

## 1-1.400 DISCLOSURE AND DISTRIBUTION

1-1.410 Disclosure of the Manual

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 designated 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.

The Manual is available for public inspection at all depository libraries, law school libraries, and the Library of Congress.

1-1.420 Distribution of the Manual

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 or Division. See USAM 1-1.320. Proper distribution follows.

## 1-1.421 Department of Justice

A. United States Attorneys' offices:

U.S. Attorneys	One complete set
Library	One complete set
Branch office library	One complete set
Division Chief	One complete set
Assistant U.S. Attorneys	Those volumes as required for efficient job performance.

B. Legal Divisions:

Assistant Attorneys General	One complete set
Library	One complete set

C. Offices, Boards and Bureaus:

Director	One complete set
Library	One complete set

Requests for additional copies of the Manual should be submitted in writing to the Executive Office for U.S. Attorneys, Manual Staff, PAT Building, Rm. 6419, 601 D Street N.W., Washington, D.C. 20530.

A distribution list is also maintained by the Executive Office for U.S. Attorneys. All address changes should be submitted in writing to the above address.

## 1-1.422 Other Federal Agencies

For information on purchasing the manual, federal agencies should call FTS 673-6348 or write to the above address.

## 1-1.423 Public Purchase

The Manual is made available to the public through the Government Printing Office (GPO). Mail orders should be sent to the following address:

Superintendent of Documents  
Subscription Entry  
U.S. GPO  
Washington, D.C. 20402

Telephone orders: (202) 783-3238 (Not an FTS number.)

## 1-1.500 REVISION AND MAINTENANCE

1-1.510 Department Communications

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 of the affected portions of the Manual have been identified and the contents categorized as being policy or administrative, the communication shall be issued, see USAM 1-1.520.

1-1.520 Revision of the Manual

There are two types of revisions to the *United States Attorneys' Manual*—policy changes and administrative changes. All revisions received from a Department component which include new policy must first be issued as a bluesheet and reviewed by the Attorney General's Advisory Committee of U.S. Attorneys before being permanently incorporated into the text of the Manual, see USAM 1-1.521. Revisions received from Department components which are purely administrative do not require review by the Advisory Committee and will be permanently incorporated into the text of the Manual, see USAM 1-1.522.

1-1.521 Policy Changes—Bluesheets

The procedure for issuing bluesheets is as follows:

A. All information received from a Department component and identified as new policy must be issued by the Executive Office as a bluesheet, (printed on light blue paper). This does not apply to communications from the Attorney General, Deputy Attorney General, and Associate Attorney General which are fully effective upon issuance.

B. The Attorney General's Advisory Committee will review each bluesheet before it is permanently incorporated into the text of the Manual. If the Committee objects to a bluesheet, the Committee will first try to resolve the disagreement directly with the Assistant Attorney General for

the issuing division. Unresolved issues will be forwarded to the Associate Attorney General for resolution by the Advisory Committee.

C. To ensure timely incorporation, all bluesheets will have a lifespan of five months, after which they will no longer be in effect unless incorporated into the text of the Manual or reissued.

D. Once a bluesheet has been incorporated into the text of the Manual, it is considered authoritative and part of the Manual.

#### 1-1.522 Administrative Changes—Transmittals

The procedure for issuing administrative changes to the Manual is as follows:

A. All information received from a Department component and identified as administrative will be published by the Executive Office for U.S. Attorneys and issued as a transmittal.

B. Transmittals will be issued semi-annually.

#### 1-1.530 Maintenance of the Manual

The Manual is intended to function as do the commercial looseleaf services. Transmittals, composed of additional or replacement manual pages for each title will be mailed semi-annually to the administrative person responsible for in-office distribution, see USAM 1-1.420. Policy changes (bluesheets) are issued directly upon receipt and should be inserted in front of the affected section, see USAM 1-1.521. Each holder of the Manual is responsible for inserting the materials received.

#### 1-1.600 HOW TO CITE THIS MANUAL

See USAM 1-1.530, paragraph numbering system of the Manual.

A. Information appearing in this Manual at paragraph 1-1.420 would be cited as:

USAM 1-1.420 (10/88)

B. If citing a particular page:

USAM 1-1.420 at 4

Pages are numbered consecutively within a chapter. Occasionally pages are lettered to facilitate their insertion between two numbered pages without requiring a reprinting of all subsequent pages in the chapter. Thus, the '4' in the above citation refers to the 4th page of the first chapter of Title 1. The date refers to the date of the most recent insert.

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1-2.000 DOJ ORGANIZATIONS AND FUNCTIONS

1-2.001 U.S. Judicial Districts and Circuits (see map, *infra*)

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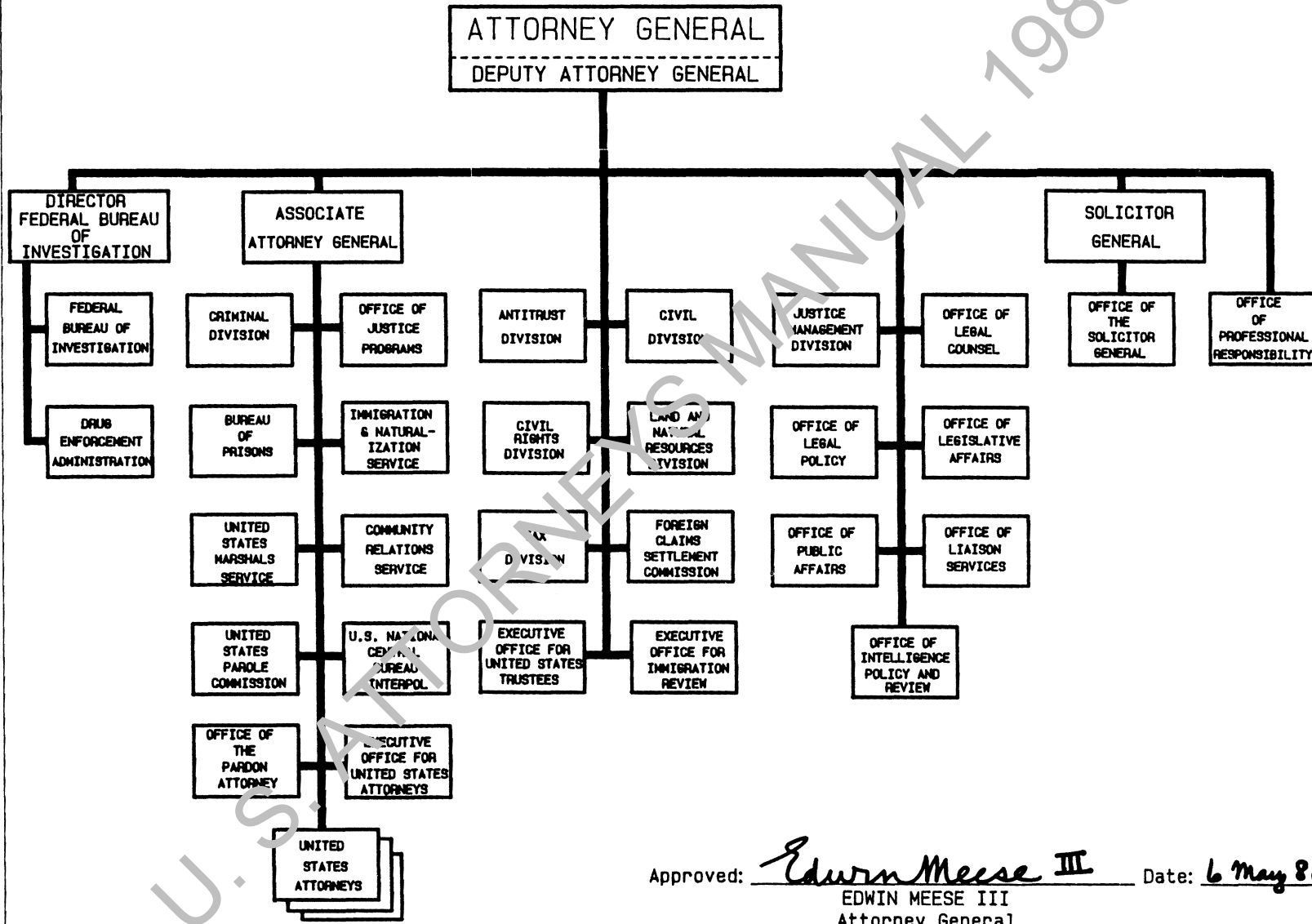


1-2.002 Department of Justice Organization Chart

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# U.S. DEPARTMENT OF JUSTICE

1-2.002



TITLE 1—GENERAL

CHAP. 2

October 1, 1988

Approved: Edwin Meese III Date: 6 May 88  
 EDWIN MEESE III  
 Attorney General

## 1-2.100 OFFICES

## 1-2.101 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 shall:

A. Supervise the administration of the law enforcement operations of the Department of Justice which include the litigating divisions, the U.S. Attorneys, U.S. Marshals Service, Federal Bureau of Investigation, Drug Enforcement Administration, Immigration and Naturalization, Bureau of Prisons, Parole Commission and Pardon Attorney.

B. Represent the United States in legal matters generally;

C. Furnish advice and opinions, formal and informal, on legal matters to the President and the Cabinet and to the heads of the executive departments and agencies of the Government, as provided by law;

D. Appear in person to represent the Government in the Supreme Court of the United States, or in any other court, in which he/she may deem it appropriate; and

E. Designate, pursuant to Executive Orders No. 9788 of October 4, 1946 and No. 10254 of June 15, 1951, officers and agencies of the Department of Justice to act as disbursing officers for the Office of Alien Property.

While particularly important matters involving U.S. Attorneys may be acted upon by the Attorney General, some, by statute, regulation or practice, require his/her approval, see Prior Approval listing in each title of this Manual.

To assist the Attorney General in the performance of his/her duties, the following Committees have been established:

A. The Attorney General's Advisory Committee of U.S. Attorneys which consists of 15 United States Attorneys representing the geographic areas of the Nation, (see 28 C.F.R. § 0.10; USAM 1-3.500).

B. An Incentive Awards Board which consists of the Deputy Attorney General or his/her designee as Chairperson, and four members designated by the Attorney General from among the Assistant Attorneys General, bureau heads or persons of equivalent rank in the Department. See 28 C.F.R. § 0.11.

C. A Young American Medals Committee, which is composed of four members, one of whom shall be the Director of Public Affairs. See 28 C.F.R. § 0.12.

## 1-2.102 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 or authority is required by law to be exercised by the Attorney General personally.

The Deputy Attorney General shall advise and assist the Attorney General in formulating and implementing Department policies and programs and in providing overall supervision and direction to all organizational units of the Department. Subject to the general supervision of the Attorney General, the Deputy Attorney General shall direct the activities of the Associate Attorney General and the following organizational units:

Antitrust Division

Civil Division

Civil Rights Division

Justice Management Division

Land and Natural Resources Division

Tax Division

Office of Legislative Affairs

Office of Legal Counsel

Office of Liaison Services

Office of Legal Policy

Office of Intelligence, Policy and Review

Office of Public Affairs

Executive Office for Immigration Review

Executive Office for United States Trustees and United States Trustee

Foreign Claims Settlement Commission

Except as assigned to the Associate Attorney General, the Deputy Attorney General has the power and authority vested in the Attorney General to take final action in matters pertaining to the following:

A. The employment, separation, and general administration of personnel in the Senior Executive Service and in General Schedule grades GS-16 through GS-18, or the equivalent, and of attorneys and law students regardless of grade or pay in the Department.

B. The appointment of special attorneys and special assistants to the Attorney General (28 U.S.C. § 515(b));

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C. The appointment of Assistant U.S. Trustees and fixing of their compensation.

D. The approval of the appointment by U.S. Trustees of standing trustees and the fixing of their maximum annual compensation and percentage fees as provided in 28 U.S.C. § 586(e).

E. The administration of the Attorney General's recruitment program for honor law graduates and judicial law clerks;

F. The coordination of department liaison with the White House staff and the Executive Office of the President;

G. The overseeing of the Office of Small and Disadvantaged Business Utilization; and,

H. The supervision over all administrative management activities, including the Budget Review Committee and the Senior Executive Resource Board.

#### 1-2.103 Office of the Associate Attorney General

The Associate Attorney General shall advise and assist the Attorney General and the Deputy Attorney General in formulating and implementing Departmental policies and programs pertaining to criminal matters. The Associate Attorney General shall also provide overall supervision and direction for the following organizational units:

Criminal Division

Bureau of Prisons

Office of Justice Programs

Office of the Pardon Attorney

Community Relations Service

Executive Office for United States Attorneys

United States Attorneys

United States Marshals Service

United States National Central Bureau, INTERPOL

U.S. Parole Commission (for administrative purposes)

Immigration and Naturalization Service

In addition the Associate Attorney General shall exercise the power and authority vested in the Attorney General to:

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October 1, 1988

A. Take final action in matters pertaining to the employment, separation, and general administration of attorneys and law students in pay grades GS-15 and below in organizational units subject to his discretion.

B. Authorize the Director of the United States Marshal's Service to deputize persons to perform the functions of a Deputy United States Marshal. See USAM 1-2.306.

C. Appoint Assistant U.S. Attorneys and fix compensation.

Finally, the Associate Attorney General serves as the Attorney General's designee for purposes of determining whether a handicapped person can achieve the purpose of a program without fundamental changes in its nature, and whether an action would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.

#### 1-2.104 Office of the Solicitor General

The primary function of the Office of the Solicitor General is to represent the federal government before the Supreme Court. See 28 C.F.R. § 0.20. As such, this office is responsible for:

A. The review and revision of, 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); petitions for certiorari; jurisdictional statements; briefs in opposition; and, motions to affirm.

B. Preparation of miscellaneous papers filed in the Supreme Court such as, applications for and oppositions to stays; and, 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. See 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, the Solicitor General reviews such cases handled by independent regulatory agencies only if requested to file a petition for certiorari.

Another major function of the office is to determine, in all cases where the United States loses in the trial courts, whether the government should appeal to the intermediate appellate courts. See 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.

Finally, 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 assist the Attorney General, the Deputy Attorney General, and the Associate Attorney General in the development of broad Department program policy. See 28 C.F.R. §§ 0.20(d), 0.21.

Policies and procedures are set forth more fully in title 2, APPEALS, of this Manual.

#### 1-2.105 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;

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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; Executive Order No. 12146.

#### 1-2.106 Executive Office for United States 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. As such, the office is responsible for:

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 the *United States Attorneys' Manual* and the *United States Attorneys' Bulletin* for the internal guidance of the U.S. Attorneys' offices and other organizational units of the Department.

D. Supervising the operations of the Office of Legal Education, the Attorney General's Advocacy Institute and the Legal Education Institute, which develops, conducts and authorizes the training of all federal legal personnel, see USAM 5-6.000.

E. Coordinating and directing the LECC and Victim/Witness Program within each U.S. Attorney's Office, see USAM 1-11.000.

F. 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, and USAM 1-3.500.

G. Providing administrative support to the Organized Crime Drug Enforcement Task Force (OCDETF).

H. Providing financial litigation support to the offices of the U.S. Attorneys.

A complete discussion on the offices within the Executive Office of United States Attorneys is set forth in Title 3 of this Manual. For a discussion of the United States Attorneys, Assistant United States Attor-

neys, Special Assistants, and the Attorney General's Advisory Committee, see USAM 1-2.500 and 1-3.000 of this title.

#### 1-2.107 Office of Legislative Affairs

##### A. Origin:

The Office of Legislative Affairs, (OLA), 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.

##### B. Missions of the Office of Legislative Affairs:

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.

##### 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 or state or local legislative body 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.

Further policies and procedures on relations with the Congress are set forth in USAM 1-8.000.

#### 1-2.108 Office of the Pardon Attorney

The Pardon Attorney, under the direction of the Associate Attorney General, receives and reviews all petitions for Executive clemency (which includes pardon after completion of sentence, commutation of sentence, remission of fine and reprieve); 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 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 of 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 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 inmate'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.

#### 1-2.109 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.

Further policies and procedures on relations with the media are set forth in USAM 1-7.000.

#### 1-2.110 Community Relations Service

The Community Relations Service (CRS), established within the Department of Commerce by Title X of the 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. ('National origin' has been construed to include foreign or American born ethnic groups). The basic techniques 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' office 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 that funds private providers of resettlement and mental health services to certain categories of Cuban and Haitian entrants.

#### 1-2.111 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 *Fed.Reg.* 59,241 (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. § 0.33 a to c (1982).

#### 1-2.112 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.

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.

#### 1-2.113 Office of Legal Policy

The Office of Legal Policy (OLP) is a strategic legal "think tank" that serves as the Attorney General's principal policy development staff. Responding to specific requests by the Attorney General as well as initiating its own proposals, OLP provides the thorough legal analysis necessary to develop and implement the Department of Justice's long-term policy initiatives. Among its other functions in this regard, OLP analyzes the

legal and policy aspects of selected litigation, comments on numerous pieces of proposed federal legislation, assists in the preparation of draft Presidential signing statements, and coordinates with other Department components in a wide variety of other matters. OLP also advises the Attorney General on the selection of candidates from the federal judiciary, supports the Attorney General in his role as permanent chairman of the Federal Legal Council, and administers the Federal Justice Research Program.

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

Another subunit of OLP is the Asylum Policy and Review Unit. This unit advises the Attorney General and Deputy Attorney General on policy issues related to their authority to grant political asylum and reviews individual applications for asylum submitted to the Immigration and Naturalization Service.

#### 1-2.114 Executive Office for United States Trustees/United States Trustee Program

The mission of the U.S. Trustee is to supervise the administration of bankruptcy cases, leaving traditional judicial functions as the sole concern of bankruptcy judges. Section 408 of the Bankruptcy Reform Act of 1978 (92 Stat. 2549, 2686-27), established the U.S. Trustee program as a pilot effort in 10 geographical areas, encompassing 18 federal judicial districts. During the 99th session of Congress, both Houses passed bills that included a nationwide expansion of the program, an increase in the authorized number of bankruptcy judges, and a new chapter 12 for family farmers. The President signed the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, as Public Law No. 99-554; 100 Stat. 388, on October 27, 1986.

The U.S. Trustee is assigned functions in four of the five types of bankruptcy proceedings defined under Title 11 of the U.S. Code (Bankruptcy 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; (3) adjustment of debts of a family farmer with regular annual income under chapter 12. The U.S. Trustee has no role in proceedings under chapter 9, which relates to the adjustment of debts of a municipality; and (4) 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 responsibilities of the U.S. Trustees set forth in 28 U.S.C. § 586 and throughout Title 11, 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. The Executive Office provides policy and legal direction as well as management and administrative support services to the United States Trustees.

1-2.115 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 142 other member countries of INTERPOL.

A. Authority:

The 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 142 member countries, headquartered in St. Cloud, France.

B. Functions pursuant to 28 C.F.R. § 0.34:

1. To transmit information of a criminal justice, humanitarian, or 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 a Management Policy Group, consisting of the designee of the Attorney General, the designee of the Secretary of the Treasury and the Chief, INTERPOL-USNCB, which will review and develop INTERPOL programs and policies. At its discretion, the Management Policy Group may also convene a policy advisory group comprised of the heads of the participating law enforcement agencies to assist in the review and development of INTERPOL programs and policies.

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

C. Other Limitations and Authorities:

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. Federal Law Enforcement Agency Representation:

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 Inspection Service, the U.S. Department of Agriculture and the U.S. Department of State. Pursuant to an inter-agency 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 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 Inspection Service provides a representative of the U.S. Postal Inspection Service, the U.S. Department of Agriculture provides a representative of the Office of the Inspector General, and the State Department provides a representative of the Office of Diplomatic Security.

E. 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 art-works; 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 United States 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 Notices on wanted persons, fugitives and recidivists in the INTERPOL-USNCB portion of the Treasury Enforcement Communications Systems (TECS) data base, which is operated by the U.S. Department of the Treasury.

In fiscal year 1986, the INTERPOL-USNCB handled a total of 43,863 cases presented, which included 14,383 new and re-activated cases and matters and 29,480 cases pending from fiscal year 1985.

F. Provisional Arrests and International Extradition Requests:

INTERPOL Wanted Notices on wanted persons and fugitives are circulated to all United States border points, through the U.S. Department of Treasury's Treasury Enforcement Communications Systems (TECS). Red, Blue, or Green Notices discussed below, may serve as the basis for exclusion of the subject from entry into the United States.

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

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 for 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. These fugitives are also entered into NCIC. Subsequent extradition requests are processed through the diplomatic channels of the Department of State, in coordination with the Criminal Division and the INTERPOL-USNCB.

2. 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.

3. 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).

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.

G. Units Within INTERPOL-USNCB:

1. Criminal Investigative Unit: The Criminal Investigative Unit is headed by an Assistant Chief detailed from the Federal Bureau of Inves-

tigation, and is comprised of investigators from the Bureau of Alcohol, Tobacco, and Firearms, the Drug Enforcement Administration, the Federal Bureau of Investigation, and the Department of Agriculture's Office of the Inspector General. The Unit focuses on international terrorism, drugs, organized crime activities, explosive matters and gun traces.

2. Financial Fraud Unit: The Financial Fraud Unit is headed by an Assistant Chief detailed from the U.S. Customs Services, and is comprised of investigators from the Internal Revenue Service, Postal Inspection Service, the Secret Service, and Customs. The work conducted by this unit includes coordinating investigations concerning counterfeiting, computer fraud, international swindles, bank fraud and concealment of assets, to name but a few.

3. The Alien/Fugitive Enforcement Unit: The Alien/Fugitive Enforcement Unit is headed by an Assistant Chief detailed from the Immigration and Naturalization Service, and is comprised of investigators from the U.S. Marshals Service, the Secret Service, the Department of State, and the Immigration and Naturalization Service. The Unit not only coordinates the identification, location, and return of internationally wanted fugitives, but also strengthens existing measures that permit the exclusion of undesirable aliens at border points before actual entry into the U.S. and utilizes immigration laws which allow deportation of known criminals and fugitives in lieu of the formal extradition process.

4. Drug, Financial, and Terrorism Analytical Unit: The Drug, Financial, and Terrorism Analytical Unit was created in 1986 and provides extensive analytical support to the USNCB through the review of documents and event analysis of USNCB and INTERPOL investigative files and computerized data bases. Examples of the work conducted by this Unit include an analysis of terrorist information provided to the USNCB by other INTERPOL member countries; a report to INTERPOL headquarters of foreign nationals arrested in the United States for drug violations; and special reports to assist USNCB management and participating agency representatives regarding specific topics.

At the 54th General Assembly Meeting in Washington in October 1985, INTERPOL member countries approved the creation of a special unit at the organization's headquarters in France. Known as the International Terrorism Group, this unit serves as the focal point for all information concerning terrorist activity, compiling and analyzing data as available. Headed by an FBI Special Agent detailed to INTERPOL headquarters, the Group has developed a manual outlining the parameters governing the sharing of terrorist-related information among the member countries. In addition, they are organizing symposia on the subject and developing various means to enhance coordination between other international groups and organizations.

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.

#### H. Request for Enforcement Assistance or Information:

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 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:

1. The request must come from a legitimate domestic law enforcement agency or an INTERPOL member country;
2. All requests must be to or from an INTERPOL member country, or a federal, state or local law enforcement agency;
3. It must be an international investigation;
4. The crime, if it had occurred within the United States, must be considered a violation of U.S. federal or state laws, as well as a crime in the country involved;
5. 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;
6. 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

7. 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.

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 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' name; 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.

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

- |                             |  |
|-----------------------------|--|
| a. <u>Letter</u>            | Chief<br>INTERPOL-USNCB<br>U. S. Department of Justice<br>Washington, DC 20530 |
| b. <u>Telephone:</u>        | (202) 272-8383   |
| c. <u>FTS:</u>              | 272-8383<br>(Federal Telecommunications System)                                |
| d. <u>TWX:</u>              | (710) 822-1907   |
| e. <u>NLETS:</u>            | DCINTEROO  |
| f. <u>Facsimile:</u>        | (202) 272-8147   |
| g. <u>Police Photo Fax:</u> | (202) 272-8148   |
| h. <u>JUST:</u>             | JIPOL<br>(Department of Justice Administrative System)                         |
| i. <u>TECS:</u>             | TINT<br>(Treasury Enforcement Communications System)                           |

#### 1-2.116 Office of Liaison Services

The Office of Liaison Services represents the Attorney General and the Department of Justice in dealings with State and foreign governments and with nongovernmental organizations interested in the administration of justice. At the same time, the Office provides those governments and organizations with a central point of communication in the Department. Objectives of the Office include timely disseminating information about Department policies and law enforcement initiatives, the promotion of intergovernmental cooperation on policy matters and law enforcement oper-

ations; advising the Attorney General on matters relating to federalism, international affairs, and the justice professions; strengthening federalism through improved allocation of responsibilities and coordination of activities among Federal and State justice agencies; and developing sound relationships between the Department and legal, judicial, law enforcement, and other communities in the justice field.

Principal points of liaison for the Office include State governors, attorneys general, legislatures, and law enforcement directors; local mayors, prosecutors, public safety directors, sheriffs, and chiefs of police; Federal, State, and local judicial conferences and judicial administrative bodies; foreign justice and police ministers and their departments; foreign judiciaries; the American Bar Association, the National District Attorneys Association, the Federalist Society, and other Federal, State, local, and foreign bar organizations; the International Association of Chiefs of Police and other societies of the law enforcement professions; law schools and other academic institutions with substantive interests in justice fields; nongovernmental organizations interested in the rule of law, the constitutional system, and the administration of justice; Federal regional interagency bodies; and, with respect to matters involving principles of federalism, intergovernmental relationships, or coordination of justice activities, other Federal agencies.

#### 1-2.200 DIVISIONS

##### 1-2.201 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 grand jury proceedings and prosecution of criminal actions for the imposition of fines and incarceration for conspiring to violate the antitrust laws; conduct of civil actions to obtain injunctive relief, divestitures, and damages for injuries sustained by the United States as a result of antitrust violations; issuance and enforcement of civil investigative demands; negotiation of and enforcement of compliance with consent decrees obtained in civil actions; participation as amicus curiae in private antitrust litigation; and prosecution and defense of appeals in antitrust proceedings.

B. Intervention or participation before administrative agencies functioning wholly or partly under regulatory statutes in proceedings that require an accommodation between the purposes of the antitrust laws and those regulatory statutes, including such agencies as the Federal Reserve Board, Interstate Commerce Commission, Interior Department, Department of



Transportation, Federal Communication Commission, Federal Maritime Commission, Federal Energy Regulatory Commission, Federal Deposit Insurance Corporation, Federal Home Loan Bank Board, and Securities and Exchange Commission.

C. As the delegate of the Attorney General, furnishing reports or advice regarding the competitive significance of proposed actions to be taken under a variety of statutes, including the Bank Merger Act (12 U.S.C. § 1828), Savings and Loan Holding Company Act Amendments of 1967 (12 U.S.C. § 1730(a)), Federal Property and Administrative Services Act of 1949 (40 U.S.C. § 488), Deepwater Ports Act of 1974 (33 U.S.C. § 1506), Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. § 184), Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. §§ 1334 and 1337), Deep Seabed Hard Mineral Resources Act (30 U.S.C. § 1413), Naval Petroleum Reserves Production Act of 1976 (10 U.S.C. § 7430), and Atomic Energy Act of 1954 (42 U.S.C. § 2135).

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

E. Assembling information and preparing reports required or requested by Congress or the Attorney General as to the effect of various federal laws or programs on competition or the preservation of the free enterprise system, including the Defense Production Act, Small Business Act, Federal Coal Leasing Amendments Act, Naval Petroleum Reserves Production Act, and the Energy Policy and Conservation Act.

F. Preparing for transmittal to the President, Congress, or other departments or agencies advice as to the propriety or effect of any action, program or practice on competition or the preservation of the free enterprise system.

G. Representing the Attorney General on interdepartmental or inter-agency committees concerned with competitive practices or the preservation of the free enterprise system, including, when authorized, participating in conferences and committees with foreign governments and treaty organizations concerned with restrictions on competition in international trade.

H. Implementing the National Cooperative Research Act of 1984 (15 U.S.C. § 4301) and, in conjunction with the Department of Commerce, the Export Trading Act of 1982 (15 U.S.C. § 4001).

#### 1-2.202 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:

Civil litigation in any court by or against the United States, its officers and agents, which involve maritime torts and contracts within the admiralty jurisdiction of the courts.

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 to 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 to 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 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).

#### 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(g) 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 offices 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 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; 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)); defense of tort suits under the Federal Tort Claims Act alleging actions arising from the contamination of the environment or exposure in the work place to chemicals or substances; 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 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.

1-2.203 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 individuals 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.

#### 1-2.204 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 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 Substance 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 to 33), the Organized Crime Control Act of 1970, prison-made goods (18 U.S.C. §§ 1761 to 1762), the Safety Appliance Act, standard barrels (15 U.S.C. §§ 231 to 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), or (33), and all civil litigation with respect to the individuals indentified in 8 U.S.C. §§ 1182(a)(33), 1141(a)(19). See 29 C.F.R. § 0.55(f).

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 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;

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 to 3143, 3146 to 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 to 4255; 28 U.S.C. §§ 2901 to 2906; 42 U.S.C. §§ 3411 to 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 to 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).

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 Vothhis 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:

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 proceedings, 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 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.

#### 1-2.205 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.

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 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.

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## 1-2.206 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 Title 28 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).

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 the Manual.

## 1-2.207 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

management, administration and organizational matters, and direct administrative services to the Department's offices, boards, divisions (OBDs) and, to a limited extent, its bureaus.

The AAG/A provides advice to senior management officials relating to basic Department policy for budget and financial management, auditing, personnel management and training, equal employment opportunity, automated data processing (ADP), telecommunications, security and all matters pertaining to organization, management and administration. Specifically, the AAG/A and JMD:

A. Act as the Attorney General's principal management and administrative resource in support of Department goals and operations.

B. Establish administrative policies, programs and procedures for the Department to ensure the effective and efficient achievement of the Department's mission.

C. Review Department activities to ensure compliance with Federal laws and regulations and Department directives and policies.

D. Provide management, financial and administrative assistance, including the operation of central administrative facilities and services.

As part of its responsibilities, 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 components of the Department and other Federal agencies, including such central management agencies as the Office of Management and Budget, the Office of Personnel Management, the General Services Administration and the General Accounting Office.

The functions assigned to the AAG/A are enumerated in Title 28 of the Code of Federal Regulations, Subpart O. JMD is functionally organized into 17 staffs, generally each staff has both a policy and a service role for its functions. Within the Division, 11 staffs with specialized functions and related areas of responsibility are grouped under one of three Deputy Assistant Attorneys General as follows:

A. The Comptroller: Budget and Finance Staffs.

B. Deputy Assistant Attorney General for Information Technology: Computer Technology and Telecommunications, Information Systems, Litigation Support, and Systems Policy Staffs.

C. Deputy Assistant Attorney General for Personnel and Administration: Facilities and Property Management, General Services, Personnel, Library and Procurement Services Staff.

D. Deputy Assistant Attorney General for Debt Collection Management.

The remaining six independent staffs are: Audit, Equal Employment Opportunity, Policy and Planning, Security, General Counsel, and the Procurement Executive. The individual staff responsibilities are as follows:

A. The *Audit Staff* formulates, implements and reviews Department-wide audit policies, standards and procedures; plans, directs and conducts independent audits of Department internal activities and functions, and conducts or coordinates the audits of parties performing under contract, grants or other agreements with the Department.

B. The *Budget Staff* develops and monitors all policies pertaining to Department-wide budget formulation, review and execution, and resource management. The staff plans, supervises and reviews the preparation, justification and execution of the Department's budget, including coordination and control of programming and reprogramming of funds and supplemental requests.

C. The *Computer Technology and Telecommunications Staff* provides common-user ADP and telecommunications facilities and services; and establishes and maintains policy regarding the use of voice and data telecommunications. This staff compiles and issues the Department's Telephone Directory.

D. The *Equal Employment Opportunity Staff* ensures compliance with equal employment opportunity statutes and regulations; and plans, administers and directs the Department's Affirmative Action Program.

E. The *Facilities and Property Management Staff* establishes policy and procedures and provides services related to real and personal property management, including building services and maintenance, space assignment and utilization, and property inventories.

F. The *Finance Staff* develops and directs Department-wide financial management policies, programs, procedures and systems including financial accounting, planning, analysis and reporting; ensures that Department components meet financial and accounting requirements; and provides direct accounting support to the OBDs and for the Department's centralized financial systems. This staff handles Department payroll, including allotments, deductions, withholdings, and overtime pay; travel, transportation and relocation expenses; approvals for the use of expert witnesses; and employee locator systems.

G. The *General Counsel* ensures the legal sufficiency of Department management and administrative programs, and provides legal advice and guidance to other JMD Staffs. This staff provides liaison with GAO and Congress on Department programs and activities, audit findings and budget matters. It coordinates the review of financial disclosure statements.

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H. The *General Services Staff* provides administrative services not covered by other JMD components, including motor vehicles, parking, supply management, forms management, the Department's directives system and mail messenger services.

I. The *Information Systems Staff* develops, implements and monitors Department-wide policies and programs for office automation, systems development activities, audiovisual communications, publications and printing, graphics and data base maintenance; and provides support services in these areas.

J. The *Library Staff* identifies, collects, organizes and disseminates information to the OBDs; and establishes Department-wide management policy for files maintenance and records disposition.

K. The *Litigation Support Staff* analyzes, designs and provides computerized services and systems in support of litigative activities; and coordinates activities between the legal community and technical components.

L. The *Personnel Staff* develops and implements Department-wide personnel policy and programs, including training, position classification and pay administration, staffing, employee performance evaluation, employee relations and services, employee recognition and incentives, and employee health benefits. This staff also provides operating personnel support services to all OBDs except the Executive Office for U.S. Attorneys.

M. The *Policy and Planning Staff* develops Department-wide policy for program evaluation, management and productivity improvement, organizational management, privatization, internal controls and use of consultant services. The staff performs Department-wide program reviews and management assistance studies, and makes recommendations to improve management, productivity, program effectiveness and efficiency.

N. The *Procurement Executive* establishes procurement policy for the Department and monitors procurement activities to ensure compliance with relevant regulations.

O. The *Procurement Services Staff* provides procedural guidance to Department components concerning procurement matters and supports the OBDs through the acquisition of goods and services.

P. The *Security Staff* develops, implements and monitors Department-wide policies and programs affecting the security of Department employees and resources, including personnel, physical, document, information and telecommunications security; emergency preparedness and civil defense; and occupational safety and health matters.

Q. The *Systems Policy Staff* develops, coordinates, administers and evaluates Department-wide policy and programs for automated information



systems, technical research and development activities, public use reports and interagency reporting clearance activities. It also ensures such activities are compatible with corresponding directives issued by central management agencies.

#### 1-2.300 BUREAUS

##### 1-2.301 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 to 0.99). The Director 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 Director of the Bureau of Prisons may contract with state or territory authorities for the holding of convicted state offenders in federal institutions).

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 Prison's 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., Sections 4241 to 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 facility.

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 Belmont, California. Information about Bureau of Prisons' policies and operations may be obtained from the appropriate regional office. Each regional office has a Regional Counsel, 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 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.

#### 1-2.302 Drug Enforcement Administration

The primary responsibility of the Drug Enforcement Administration (DEA) is to enforce the controlled substances laws and regulations of the United States of America and to bring to the criminal and civil justice system of the United States or any other appropriate jurisdiction those organizations, and principal members of organizations, involved in the growing,

manufacture, or distribution of controlled substances appearing in or destined for illicit traffic in the United States. DEA also recommends and supports nonenforcement programs aimed at reducing the demand for illicit drugs and reducing the availability of controlled substances in the illicit domestic and international markets.

DEA was established July 1, 1973 by Presidential Reorganization Plan No. 2 and 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 is the lead agency responsible for the development of overall federal drug enforcement strategy, programs, planning and evaluation. DEA's responsibilities include:

- A. Investigating and apprehending major drug traffickers and immobilizing their organizations;
- B. Preparing illicit drug trafficking cases for prosecution;
- C. Providing assistance to foreign countries in developing law enforcement and other programs aimed at reducing the supply of illicit drugs;
- D. Regulating the legitimate manufacture and distribution of controlled substances;
- E. Providing narcotics-related training to federal, state, local and foreign enforcement agencies;
- F. Managing a national narcotics intelligence system in cooperation with federal, state, local and foreign officials to collect, analyze, and disseminate strategic and operational intelligence information;
- G. Seizing and forfeiting assets received from, traceable to, or intended to be used for illicit drug trafficking; and
- H. Coordinating and cooperating with federal, state and local law enforcement officials on mutual drug enforcement efforts and enhancement of such efforts through exploitation of potential interstate and international investigations beyond local or limited federal jurisdictions and resources.

DEA's *Office of Diversion Control* enforces provisions of the Controlled Substances Act which pertain to the manufacture and distribution of controlled substances for medical and research purposes. This office is responsible for the detection and prevention of the diversion of controlled substances from legitimate channels. It conducts periodic inves-

tigations of targeted registrants who are high-level violators. This office also identifies drug shipments in foreign countries that are destined for illegal smuggling operations, monitors all imports and exports of controlled substances, registers all handlers of controlled substances, and conducts preregistration investigations prior to approval of applicants for registration. The Office of Diversion Control also prepares recommendations for the DEA Administrator's decision regarding the establishment of manufacturing quotas for all Schedule I and II substances and the placement of drugs of abuse in the appropriate CSA Schedule.

The DEA's *Office of Intelligence* provides tactical and operational intelligence products and services which identify the structure and members of international and domestic drug trafficking organizations and exploitable areas for enforcement operations. Staffed by both Special Agents and Intelligence Analysts, this office also prepares strategic intelligence assessments, estimates, and probes focusing on trafficking patterns, source country production, and domestic production and consumption trends. Additionally, this office develops intelligence that focuses on the financial aspects of drug investigations such as money laundering techniques, drug-related asset discovery and forfeiture, and macroeconomic impact assessments of the illegal drug trade. DEA's Office of Intelligence provides interagency intelligence support to other federal, state and local law enforcement organizations, assists a variety of state and foreign drug intelligence clearinghouses, participates in the National Narcotic Border Interdiction System (NNBIS) and chairs the National Narcotics Intelligence Consumers Committee (NNICC).

DEA's *Office of Training* develops and provides entry-level, in-service, and advanced training for DEA employees, as well as specialized multilevel training in drug enforcement techniques for state, local, foreign and other federal officials. This office develops and administers executive level, in-service, supervisory and mid-level management, foreign language, and career development training programs for DEA personnel worldwide. DEA also conducts, in cooperation with other elements of the Department of Justice, various programs for U.S. Attorney's staffs and state and local prosecutors. These programs 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. The Office of Training is also responsible for developing and conducting training programs for foreign law enforcement officials in the United States and overseas. DEA's Office of Training also conducts an ongoing review of technological improvements in firearms and protective devices and assesses the suitability of new products for DEA use.

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, and the DEA Administrative Law Judge conducts hearings regarding the placement of controlled substances in appropriate schedules established by the Act.

The DEA's *Office of Chief Counsel* handles all legal issues concerning the criminal enforcement responsibilities of DEA asset seizure and forfeiture, the diversion of controlled substances, the regulation of the legitimate controlled substance industry civil litigation, personnel and EEO matters, and tort and employee claims. This office advises DEA officials with respect to the application of international conventions and protocols relating to narcotics and psychotropic substances and drafts legislation relating to drug law enforcement. Additionally, the Office of Chief Counsel assists state, local and foreign officials in establishing adequate and uniform drug legislation. This office is also responsible for the administrative processing of all assets seized by DEA to be forfeited to the United States Government.

DEA's *Office of Congressional and Public Affairs* serves as the principal advisor to the Administrator and other DEA officials on all matters relating to the United States Congress, the media, and the general public. This office coordinates DEA's involvement in fact-finding and legislative hearings and escorts congressional or staff delegations on narcotic fact-finding missions to source and transit countries throughout the world. It monitors pending legislation that may affect DEA's mission, policies, and personnel practices. In March 1986, the Office of Congressional and Public Affairs was assigned the responsibility for coordinating DEA's efforts in the field of drug abuse prevention and education.

The DEA's *State and Local Task Force Program* unites DEA Special Agents with state and local police officers into cohesive drug enforcement units in selected geographic areas to provide increased drug enforcement, inter-agency investigative cooperation, and continuing intelligence exchange.

The *Organized Crime Drug Enforcement Task Forces (OCDETF)* target and pursue violators who direct, supervise, and finance the illicit drug trade. These task forces utilize the combined resources of the Drug En-

forcement Administration, Federal Bureau of Investigation, Internal Revenue Service, Bureau of Alcohol, Tobacco and Firearms, INS, United States Marshals Service, United States Customs Service, United States Coast Guard, United States Attorneys' offices, and state and local law enforcement agencies.

#### 1-2.303 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 requirements for supervision. The field divisions supervise the work of approximately 393 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 14 overseas offices, commonly referred to as Legal Attachés 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, U.S. State Department, U.S. Department of Justice, and the host government. The office of Liaison and International Affairs at 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.

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 Federal Matters Investigated by the FBI:

##### 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 Fraud and Embezzlement

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

Credit and/or Debt Card and Related Fraud

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

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Escaped Federal Prisoners, Escape and Rescue  
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  
Foreign Agents Registration Act  
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  
Interception of Communications  
Interference with Discrimination in Housing, Civil Rights Act of 1964,  
and federally protected activities  
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  
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

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 Fraud (accounting phases)

National Bankruptcy Act

Real Estate Settlement Procedures Act of 1974

False Claims (civil)

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, as amended, 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 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 the FBI Laboratory:

Examples of the types of examinations the Laboratory is equipped to make are as follows:

Art, artists' conceptions, biochemical, biological, chemical, coins, crime scene diagrams, cryptanalytical, document, drug records analysis, explosives and their residues, extortionate credit records, fibers, fire-arms identification and ammunition, gambling records and paraphernalia, glass, graphics, gunpowder, handwriting and handprinting, hairs, metallurgical, mineralogical, neutron activation analysis, number restoration, paints, pharmacological, photographic, photography enhancements, photogrammetry, plastics, polygraph, printing, rare books, serological, shoe prints, rare stamps, tire treads, trademarks, toxicological, trace evidence, two and three dimensional demonstrative evidence, visual aids, high resolution aerial photography, still and video image processing. Also the Laboratory has the capability of analyzing many commercial products.

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 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.

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### 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, up to 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. The FBI Laboratory conducts specialized Forensic Science Training for Crime Laboratory and police personnel at the Forensic Science Research and Training Center facility at Quantico, Virginia. Applications may be obtained from the local FBI office.

### J. Services of the FBI Technical Services Division:

1. Engineering Section: Services of the FBI Engineering Section which are made available to local, county, state, and foreign law enforcement agencies and courts are generally in the area of expert testimony related to forensic examinations of magnetic tape recordings. Examples of examinations include audio enhancements and tests for tape authenticity and copyrights. Additionally, the Engineering Section provides testimony related to and conducts examinations of electronic devices such as illegal interception of communication devices.

Evidence should be sent directly to the Technical Services Division, in Washington, D.C. Attention: Engineering Section, for examination. Ask the local office of the FBI for assistance in the proper method of packing and transmitting evidence and obtaining the services of FBI experts when testimony is needed in connection with the prosecution of a case in which the United States is a party of 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 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 actual 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 Engineering Section 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 Engineering Section 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.

2. 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 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 semi-annual 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. A special data collection dealing specifically with arson commenced in January, 1987.

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.*).

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  
NSIO — 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  
SPOL — State Police  
SS — Selective Service  
SSAN — Social Security Account Number  
UNSUBS — Unknown Subjects  
UCR — Uniform Crime Reporting (or Report)  
USA — United States Attorney  
AUSA — Assistant United States Attorney  
USDC — United States District Court



## 1-2.304 Immigration and Naturalization Service

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

The INS investigates and prosecutes employers who knowingly hire for a fee aliens who are authorized to work. See 28 C.F.R. 274a *et seq.*

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 INS 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 naturalization 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. Deputy Marshal as a peace officer. See 28 C.F.R. § 0.105(f) *et seq.*

## 1-2.305 Office of Justice Programs

The Office of Justice Programs (OJP) was created by the Justice Assistance Act of 1984, Pub.L. No. 98-47, Title 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, Title 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, controlling drug abuse and drug-related crime, containing the career criminal and violent crime, punishing and managing offenders, improving policing and public safety, enhancing court efficiency and effectiveness, and ensuring fair treatment for the victims of crime, 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.

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 OJJDP is headed by an Administrator who implements overall policy and develops objectives and priorities of 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 Administrator reports to the Attorney General through the Assistant Attorney General for Justice Programs.

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, including the deinstitutionalization of status offenders and the removal of juveniles from adult jails and lockups.

Special emphasis funds are available to public and private agencies, organizations, institutions, or individuals to foster new approaches to delinquency prevention and control. This includes developing, testing, and implementing selected research and demonstration programs in such areas as the chronic juvenile offender, school crime, and the exploitation of children.

The National Institute for Juvenile Justice and Delinquency Prevention coordinates its activities with those of NIJ and BJS, 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 IV Program, the Missing Children's Assistance Act Program. Under this Title OJJDP is authorized to carry out programs and projects designed to meet the problem of missing children, including runaways, abducted children, and children who are the victims 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 conducting incidence studies. A nine-member advisory board on missing children advises the Attorney General and the Administrator 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, Title 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, Title 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 government for correctional purposes. Pub.L. No. 98-47, Title 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.

In 1986, the Anti-Drug Abuse Act, Pub.L. No. 99-570, established within the Bureau a program of grants to state and local governments and public and private nonprofit organizations for drug law enforcement. Funds awarded under Title I, Subtitle K of the Act, the State and Local Law Enforcement Assistance Act of 1986, may be used to support programs that improve the apprehension, prosecution, adjudication, detention, and rehabilitation of drug offenders, for drug eradication projects, and for programs that identify, apprehend, and prosecute major drug offenders and traffickers.

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

#### 1-2.306 U.S. Marshals Service

The Director of the U.S. Marshals 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 the 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 dependents;

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;

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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 of 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, (see G. below).

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) to (k).

L. The analysis of threats to U.S. Attorneys, federal judges, other officers of the court, court facilities, prisoners in Marshal's custody, and U.S. Marshals Service personnel. (see H. below).

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.

N. The deputation of selected officers or employees of the United States or local law enforcement officers in furtherance of federal law enforcement missions, (see I. below).

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 protec-

tion 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 protections 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 contact be made with the U.S. Marshal's 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 case 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, 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 U.S. 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 assess-

ment 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.

G. Asset Seizure and Forfeiture:

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.

1. Seized Cash:

a. All seized cash currently held by U.S. Attorneys as evidence is to be delivered to the United States Marshals Service for deposit into the Seized Asset Deposit Account (15X6874).

b. The deposit of future cases must occur within 60 days after seizure or within 10 days following an indictment, whichever comes first.

c. Exceptions to the requirement to deposit seized cash must be approved by the Assistant Attorney General, Criminal Division.

d. Exceptions will be considered only when the cash would serve as a significant independent tangible evidentiary purpose such as the existence of fingerprints or drug residue.

e. U.S. Attorneys may grant exceptions on the retention of cash for evidentiary purposes when the amount of the seizure is less than \$5,000.00.

2. Forfeited Cash: 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.

H. Procedures Relative to Threats Against U.S. Attorneys and other Officials:

When a threat is made against a U.S. Attorney, Assistant U.S. Attorney, or any other Department of Justice official, or against court officials (or an immediate family member, as a result of the individual's official position), the following policy and procedures relative to protection will be observed:

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1. When a threat is initially received, the U.S. Marshal's Office and the local office of the Federal Bureau of Investigation (FBI) are to be notified immediately. (A threat received by either agency will be reported to the other, based upon a policy of cross-notification.) Security is the responsibility of the Marshals Service; investigation of the violation is the responsibility of the FBI.

2. The appropriate security response will be made by the district marshal to ensure the safety of the individual threatened. Security procedures range from escorting the threatened individual to and from work to providing around-the-clock physical protection for the principal and family members. In extreme cases, the victim(s) of the threat may have to be temporarily relocated. U.S. Marshals have the authority to provide such protection for up to seventy-two hours, after which U.S. Marshals Service Headquarters approval is required for continuance of the detail.

3. In the case of government attorneys, the Executive Office for U.S. Attorneys will be notified of the threat by the U.S. Attorney's Office. The Deputy Attorney General will, in turn, be advised. When another Departmental official is the subject of a threat, the Deputy Attorney General will be advised by the appropriate Office or Division. The Marshals Service will advise the Department of threats against officials of the courts.

4. The Court Security Division, USMS Headquarters, will be advised of the threat by the U.S. Marshal's Office.

5. If the threat is not clearly defined, is complex, or is of a more serious nature, an assessment may be conducted by the USMS Threat Analysis Group (TAD).

6. The determination of the extent of security to be provided will be made by the Marshals Service, based upon all available information, including that developed by the FBI.

7. The FBI shall report by the most expeditious means to the U.S. Marshal any progress in a threat case, including negative findings. A copy of the written findings will be forwarded to the U.S. Marshal when complete.

8. If there is disagreement with a Marshals Service determination that the subject is not in danger and is not in need of personal protection, a memorandum will be prepared by the Service for the Deputy Attorney General, indicating this and transmitting a Threat Assessment Report. A copy of the assessment will also be sent to the Director, FBI, with notification of the Marshals Service's intent not to initiate or continue protective services unless information indicating that there is danger is provided by the FBI or the Deputy Attorney General's



Office. If no such information which would alter the assessment is received or developed from any source, the security detail will be terminated.

I. Procedures for Special Deputation:

The United States Marshals Service, with the approval of the Attorney General, has the authority to deputize selected officers or employees of the United States and state or local law enforcement officers in furtherance of federal law enforcement missions. The following procedures shall be followed:

1. Special deputation shall be authorized only upon a showing of facts that indicate that the federal interest requires such deputation. All deputations expire automatically on June 30 of each year, if not specified sooner. Renewals must be initiated by the requesting agency and must include specific justification.

2. Only federal employees shall be deputized unless circumstances are such that not enough qualified federal employees are available for a given mission and/or a special requirement exists for specific non-federal employees.

3. Federal agencies soliciting special deputations shall be required to evaluate and nominate only those persons who have held positions and have shown expertise in the law enforcement field. Such requests must be made to the Deputy Director, U.S. Marshals Service, by the requesting federal agency. The request must state the specific reason for the deputations, must identify the nominees; and must certify that the nominees have qualified with the use of firearms within the last twelve months.

J. Deputation of Local Law Enforcement Officers:

An amendment to the Controlled Substances Act (21 U.S.C. § 878), authorizes the Attorney General to deputize state and local law enforcement officers specifically for enforcement of Federal Narcotics laws. As a result, the Drug Enforcement Administration and the Federal Bureau of Investigation possess the delegated authority to deputize state and local officers when needed to assist drug enforcement missions.

1. Effective June 30, 1987, requests for deputation of state and local officers to assist federal drug enforcement activities should be directed to the DEA or the FBI. Special deputation for all other (non-drug related) federal law enforcement purposes will remain with the U.S. Marshals Service.

2. Special deputation is no longer required for access to federal grand jury information. As amended, Rule 6(e)(A)(ii), Fed.R.Cr.P., provides that state and local officers can have access to grand jury

material for purposes of assisting in federal law enforcement efforts. Moreover, with judicial approval, disclosure may be made to state officials for the separate purpose of an independent state investigation and state prosecution for violations of state criminal law. See Rule 6(e)(3)(C)(iv), Fed.R.Cr.P.

3. Specially deputized state or local officers are not federal employees for compensation purposes since they are not appointed to a federal civilian position. See *Walton v. United States*, 213 U.S. Cl. 755 (1977). Thus, they are not entitled to Title 5, U.S. Code or FLSA compensation from the United States. They must be compensated, if at all, from their state or local employer. Reimbursements for expenses, including overtime, are solely a matter of intergovernmental agreement.

4. The Federal Employees Compensation Act 5 U.S.C. § 8101, *et seq.*, specifically extends benefits to state and local officers who are injured while engaged in the apprehension of persons committing federal crimes and generally extends benefits to "an individual rendering personal service to the United States." Thus, state officers are covered by the federal worker's compensation statutes. There is no requirement for special deputation. This is the exclusive remedy the state officer has against the United States for injuries, *City of Whittier v. United States Department of Justice*, 598 F.2d 561 (9th Cir. 1979), and the officer must generally first seek state or local worker's compensation. Federal benefits can supplement state benefits.

## 1-2.400 BOARDS

### 1-2.401 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, the Office of the Chief Immigration Judge, and the Office of the Chief Administrative Hearing Officer. It operates under the supervision of the Deputy Attorney General. It is headed by a Director who is responsible for the immediate supervision of the Board of Immigration Appeals, the Office of the Chief Immigration Judge, and the Office of the Chief Administrative Hearing Officer.

The Board of Immigration Appeals is a quasi-judicial body composed of a Chairman, four Board Members, and a Chief Attorney Examiner (who is also an alternate Board Member). It is located 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 certain decisions entered by district directors of the Immigration and Naturalization Service, and by immigration judges. In addition, the Board is responsible for recognition of organizations and accreditation of representatives appearing before the Service, the Board, and the immigration judges.

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 proceeding 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 management and legal personnel structured as Assistant Chief Immigration Judges, 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 their 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. 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, and relief under Section 212(c) of the Act.

The Office of the Chief Administrative Hearing Officer is responsible for the general supervision and management of Administrative Law Judges who preside at hearings which are mandated by the Immigration Reform and Control Act of 1986. Administrative Law Judges hear cases involving sanctions for employers and related entities for knowingly hiring, recruiting, or referring for a fee, or continued employment of certain unauthorized aliens, and for failure to comply with verification requirements. Administrative Law Judges with specialized training in employment discrimination preside at hearings concerning alleged, unfair immigration-related discriminatory employment practices. The hearings are conducted under applicable laws and regulations, as well as the general requirements of the Administrative Procedure Act. Final decisions are reviewable in the federal courts.

#### 1-2.402 U.S. Parole Commission

The U.S. Parole 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 to 4218; Ch. 402, 18 U.S.C. §§ 5005 to 5026. 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. §§ 01.124 through 01.127 and 2.1 through 2.64, 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 Commission's responsibility for the supervision of federal parolees and persons released upon expiration of their sentences by operation of law under 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.

#### 1-2.403 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.

#### 1-2.500 UNITED STATES ATTORNEYS

The United States Attorneys serve as the nation's principal litigators under the direction of the Attorney General. As such, the United States Attorneys conduct most of the trial work in which the United States is a party.

There are 93 U.S. Attorneys stationed throughout the United States, Puerto Rico, Guam and the Northern Marianas. One U.S. Attorney is assigned to each judicial district with the exception of Guam and the Northern Marianas, where a single U.S. Attorney serves in both districts.

A complete discussion of United States Attorneys, Assistant United States Attorneys, Special Assistants, and the Attorney General's Advisory Committee of United States Attorneys, is set forth in Chapter 3 of this title. Title 3, EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS, sets forth the administrative policy and financial litigation policy for the offices of the United States Attorneys.



U. S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Washington, D.C. 20530

June 28, 1993

TO: Holders of United States Attorneys' Manual  
Title 1.

FROM: United States Attorneys' Manual Staff  
Executive Office for United States Attorneys

  
Anthony C. Moscato  
Director

RE: Assistant United States Attorneys

- NOTE: 1. This is issued pursuant to and EXPIRES unless  
reissued or incorporated pursuant to  
USAM 1-1.521.
2. Distribute to holders of Title 1.
3. Insert in front of USAM 1-3.200.

AFFECTS: USAM 1-3.200

PURPOSE: This Bluesheet establishes a policy for  
reemploying, in their former permanent position,  
Assistant United States Attorneys who temporarily  
serve as Court or Attorney General-appointed  
United States Attorneys.

\*\*\* NOTE: USAM 1-3.200 is amended to  
include the following guidance  
(other sections of 1-3.200 remain  
unchanged). \*\*\*

Assistants who are appointed temporarily to fill a vacant  
United States Attorney position pursuant to 28 U.S.C. § 546, and  
who are not candidates for permanent appointment by the President  
as the United States Attorney pursuant to 28 U.S.C. § 541, shall  
be offered, upon termination, reemployment to the last permanent

position held. Reemployment is subject to all conditions of employment currently applicable to Assistant United States Attorneys appointed pursuant to 28 U.S.C. § 542.

U.S. ATTORNEYS MANUAL 1988





U.S. Department of Justice

Executive Office for United States Attorneys

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Office of the Director

Washington, D.C. 20530

May 10, 1996

TO: Holders of United States Attorneys' Manual  
Title 1.

FROM: United States Attorneys' Manual Staff  
Executive Office for United States Attorneys

*Carol DiBattiste*  
Carol DiBattiste  
Director

RE: Residency Requirements for Assistant  
United States Attorneys

NOTE: 1. Distribute to holders of Title 1.  
2. Updates USAM 1-3.230

AFFECTS: USAM 1-3.000

PURPOSE: This Bluesheet updates this section addressing the  
residency requirements of Assistant United States  
Attorneys. Pub. L. 103-322, § 320932, amended  
28 U.S.C. § 545.

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\*\*\* NOTE: This Bluesheet serves to update the  
USAM to bring it into conformity with  
28 U.S.C. § 545.

1-3.200 ASSISTANT UNITED STATES ATTORNEYS

Each Assistant United States Attorney shall reside in the  
district for which he or she is appointed or within 25 miles  
thereof. These provisions do not apply to an Assistant  
United States 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(a).



UNITED STATES ATTORNEYS' MANUAL

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1-3.000 UNITED STATES ATTORNEYS, ASSISTANT UNITED STATES ATTORNEYS, SPECIAL ASSISTANTS, AND THE ATTORNEY GENERAL'S ADVISORY COMMITTEE

1-3.100 UNITED STATES ATTORNEYS

The U.S. Attorney serves as the chief law enforcement officer in each judicial district and is responsible for coordinating multiple agency investigations within that district.

There are currently 93 United States Attorneys stationed throughout the United States, Puerto Rico, Guam and the Northern Marianas. One U.S. Attorney is assigned to each judicial district with the exception of Guam and the Northern Marianas, where a single U.S. Attorney serves in both districts.

1-3.110 History

The Office of the U.S. Attorneys 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, recoverable 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, 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. 39, 35, 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.

1-3.120 Appointment

United States 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. U.S. Attorneys are subject to removal at the will of the President. See Parsons v. United States, 167 U.S. 314 (1897).

1-3.130 Residence

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.

1-3.140 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 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.

1-3.150 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. 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.

1-3.160 Vacancy in Office-Court Appointment

The District Court for a district in which the office of the 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.

1-3.170 Recusals

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 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 Legal Counsel of the Executive Office for U.S. Attorneys at FTS 633-4024. 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 1-3.300) to assume responsibility for handling the matter. See USAM 1-4.000 et seq., of this Title.

### 1-3.171 Procedures in Implementing Recusals

#### A. Policy

Supervision of litigation generally, and criminal investigations in particular, are significant responsibilities vested in the United States Attorneys by the Attorney General. Where a United States Attorney determines that recusal is appropriate, the United States Attorney should take steps to ensure that his or her management, supervisory, and reporting responsibilities for a particular matter are transferred to another appropriate official of the Justice Department.

In making the determination as to whether recusal is appropriate, United States Attorneys are encouraged to consult with the Legal Counsel to the Executive Office for United States Attorneys and appropriate Assistant Attorneys General on the necessity of the recusal and its scope.

Any recusal by a United States Attorney must be complete. A United States Attorney who has recused himself or herself in a particular matter should not only be recused from decision-making responsibility in that matter, but also should not request or be given reports regarding the progress of the matter.

To ensure effectiveness of the recusal, the file should be marked in a distinguishing manner and an entry made within the case management system. Should the case enter a grand jury phase, the judge supervising the grand jury should be notified of the recusal. When the case reaches court, the assigned judge should also be notified.

#### B. Responsibility of the Deputy Attorney General

The Deputy Attorney General shall supervise the official designation of an Acting U.S. Attorney where the United States Attorney determines that recusal is appropriate.

#### C. Interim Supervision

The principal Assistant United States Attorney shall serve as Temporary Acting United States Attorney on the case until the Deputy Attorney General designates an Acting U.S. Attorney for the case.

Should the principal Assistant also be recused, the next ranking supervisor shall serve as Temporary Acting United States Attorney.

#### D. Initial Notification

The Temporary Acting United States Attorney shall promptly notify the Executive Office for United States Attorneys (EOUSA) of the recusal by the U.S. Attorney.

The notification should contain a brief statement identifying the subject(s) of the matter or investigation, the reason(s) for the recusal of the United States Attorney, the effective date of the recusal and a brief description of the nature of the matter, including its potential scope and any significant or sensitive aspects of the case.

Where appropriate, the notification should also contain any recommendation by the Temporary Acting United States Attorney, or opinion of the recusing United States Attorney, regarding recusal of the particular office in its entirety. The Temporary Acting United States Attorney may also indicate whether he/she has a recommendation concerning the appointment of an Acting United States Attorney for the case.

Upon receipt of the designation, EOUSA shall notify the Deputy Attorney General and all appropriate Assistant Attorneys General (AAG), as well as the Associate Attorney General where indicated.

#### E. Designation of an Acting U.S. Attorney

In designating an Acting U.S. Attorney, the Deputy Attorney General should consider whether supervisory responsibility for the matter should remain with the principal Assistant, or whether such supervisory responsibility (or the matter in its entirety) should be transferred to a United States Attorney from another district or to an Assistant Attorney General.

Ordinarily, where both the U.S. Attorney and the principal Assistant are recused from the case, the entire office should be recused and investigative and supervisory responsibility transferred to another U.S. Attorney's Office or Justice Department component. Recusal of the senior management of a United States Attorney's Office, but not the line assistants, should not occur in the absence of compelling reasons, and should in any event be accompanied by a transfer of supervisory functions to either a United States Attorney from another district or an Assistant Attorney General, as approved by the Deputy Attorney General.

If the investigation in question involves a significant feature, such as a prominent target, an international target, or a crime of national notoriety, the transfer of the entire matter to a United States Attorney from another district or an Assistant Attorney General should be given strong consideration. For example, where the United States Attorney is recused in an investigation involving alleged public corruption and a significant public figure or political official appears to be implicated, the Assistant Attorney General for the Criminal Division should be consulted as to whether the Public Integrity Section of the Criminal Division should be brought into the investigation.

## 1097.44 I F. Additional Reporting

1097.46 IC The Acting United States Attorney shall report to EOUSA, and any appropriate Assistant Attorney General, at least biannually on the status of the supervised case, including significant events or actions. Procedures for the filing of Urgent Reports pursuant to USAM Section 1-10.210, should be followed with regard to providing advance notice of such significant events or actions that are likely to be of public record in the case. EOUSA will forward copies of these reports to the Deputy Attorney General, and, where appropriate, to the Associate Attorney General.

## 1097.48 I G. Retroactive Application

1097.5 IC This policy is intended to be applied prospectively. However, as part of the prospective application of the principles underlying the policy, principal Assistant United States Attorneys should survey their office caseload to determine which cases the U.S. Attorney is already recused on. The United States Attorney should then reconfirm his/her recusal. As part of the retroactive review and application, the principal Assistant may prepare a summary report rather than individual reports as outlined above.

## 1097.52 I H. Recusal Standards

1097.54 IC Current standards for recusal are discussed briefly at USAM Section 1-3.170, and set forth in detail at USAM Section 1-4000 et seq. On February 3, 1993, these standards are scheduled to be superseded by new regulations promulgated by the Office of Government Ethics. Standards of Ethical Conduct for Employees of the Executive Branch, 57 Fed.Reg. 35006 (1992) (to be codified at 5 C.F.R. section 2635.101 et seq.) The Department of Justice may issue supplementary regulations, which should be consulted as well.

## 1099 1-3.200 ASSISTANT UNITED STATES ATTORNEYS

1100 Assistant U.S. Attorneys are appointed by the Attorney General and may be removed by that official. See 28 U.S.C. § 542. The Associate 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.

1101 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.

1101.02 IC Assistants who are appointed temporarily to fill a vacant United States Attorney position pursuant to 28 U.S.C. § 546, and who are not candidates for permanent appointment by the President as the United States Attorney pursuant to 28 U.S.C. § 541, shall be offered, upon termination, reemployment to the last permanent position held. Reemployment is subject to all conditions of employment currently applicable to Assistant United States Attorneys appointed pursuant to 28 U.S.C. § 542.

1108 1-3.210 Authority

1104 Assistant U.S. Attorneys are responsible to the U.S. Attorney for the performance of duties assigned by that official.

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March 1, 1994

1-3.220 Recusals

The same circumstances which require that a U.S. Attorney recuse himself/herself (see USAM 1-3.170) 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 Counsel Staff of the Executive Office for U.S. Attorneys at FTS 633-4024 or the appropriate litigating division.

## 1-3.300 SPECIAL ASSISTANTS

Section 543 of Title 28 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 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 or cases when their services and assistance are needed.

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.

## 1-3.400 DIVISION OF RESPONSIBILITY

The division of responsibility in the Department of Justice between the offices of the 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.

## 1-3.500 THE ATTORNEY GENERAL'S ADVISORY COMMITTEE OF U.S. ATTORNEYS

1-3.510 History

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.

**1-3.520 Members**

The Committee consists of 15 U.S. Attorneys selected by the Attorney General. 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. New members are appointed each year to provide for broad representation of U.S. Attorneys nationwide. The Committee selects from its membership a chairperson, a vice-chairperson and a secretary and establishes such subcommittees as it deems necessary to carry out its functions, *see* USAM 1-3.540.

**1-3.530 Functions**

The Advisory Committee has two functions. It gives United States Attorneys a voice in Department policies and advises the Attorney General of the United States.

In advising the Attorney General, the Committee conducts studies and makes recommendations to improve management of U.S. Attorney operations and the relationship between the Department and the federal prosecutors. It also helps formulate new programs for improvement of the criminal justice system and the delivery of legal services at all levels.

In serving the U.S. Attorneys, the Committee coordinates the collective efforts of the U.S. Attorneys with the divisions and agencies of the Department of Justice, and departments and agencies external to the Department of Justice. It also represents the U.S. Attorneys with the Department of Justice, other departments and agencies of the government, and occasionally private organizations.

**1-3.540 Subcommittees and Ad Hoc Subcommittees**

United States Attorneys who are not members of the Attorney General's Advisory Committee may be serve on the following Subcommittees or Working Groups.

**1-3.541 Subcommittees and Working Groups****Subcommittees****Asset Forfeiture****Border Law Enforcement****Civil Issues****Civil Rights****Controlled Substances/Drug Abuse Prevention and Education****Environmental Crimes****Financial Litigation****Indian Affairs**



Intelligence and International Relations

Investigative Agency

Law Enforcement Coordinating Committee/Victim Witness

Juvenile Justice Prevention and Assistance

Office Management and Budget

Organized Crime/Violent Crime

Public Corruption

Sentencing Guidelines/BOP Issues

White Collar Crime

Working Groups:

Criminal Rules/Rule 16

Health Care Fraud

Weed and Seed Working Group

Legislative Working Group

Legal Profession

Bank Fraud

Securities and Commodities Fraud

Executive Review Board (OCDETF)

Executive Working Group (Federal, State and Local Prosecutors)

A current listing of Advisory Committee members and Subcommittee members is available from the Executive Office for U.S. Attorneys at 202-514-4633.

UNITED STATES ATTORNEYS' MANUAL

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October 1, 1988

(1)



Office of the Attorney General  
Washington, D. C. 20530

November 8, 1994

TO: Holders of United States Attorneys' Manual Title 1  
and/or Title 3

FROM: Janet Reno  
Attorney General

RE: Reporting and Handling Allegations of Misconduct by  
Department Employees

NOTE: 1. This is distributed pursuant to USAM 1-1.510.  
2. Distribute to all Holders of Title 1 and Title 3.  
3. Insert in front of affected section.

AFFECTS: USAM 1-4.100, 3-2.735(B)

PURPOSE: This bluesheet clarifies the procedure for reporting  
evidence or allegations of misconduct to the Office of  
Professional Responsibility and the Office of the  
Inspector General, and sets forth the procedures to be  
followed when allegations of professional misconduct by  
Department attorneys are raised in the course of  
judicial proceedings.

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The following section replaces 1-4.100 in your United States  
Attorneys' Manual:

**1-4.100 ALLEGATIONS OF MISCONDUCT BY DEPARTMENT OF JUSTICE  
EMPLOYEES**

**1. Reporting Misconduct Allegations in General**

Department employees shall report to their U.S. Attorney or  
Assistant Attorney General, or other appropriate supervisor, any  
evidence or non-frivolous allegation of misconduct that may be in  
violation of any law, rule, regulation, order, or applicable  
professional standard. The supervisor shall evaluate whether the  
misconduct at issue is serious, and if so shall report the  
evidence or non-frivolous allegation to the appropriate Office of  
Professional Responsibility ("OPR") or to the Office of the  
Inspector General ("OIG"), and to the Executive Office for U.S.  
Attorneys ("EOUSA"), as set forth below.

If the supervisor was involved in the alleged violation, the  
supervisor must bring the evidence or allegation to the attention  
of a higher-ranking official. An employee who wishes to report  
directly to OPR or OIG may do so.

When a supervisor is uncertain whether an allegation should be referred, the supervisor may telephone OPR or OIG to determine what action to take.

Reporting an allegation raises no inference that the allegation is well-founded.

A. Office of Professional Responsibility of the Department of Justice

Evidence and non-frivolous allegations of serious misconduct by Department attorneys that relate to the exercise of their authority to investigate, litigate, or provide legal advice shall be reported to the Office of Professional Responsibility of the Department of Justice ("DOJ OPR").

B. Offices of Professional Responsibility of the Federal Bureau of Investigation and the Drug Enforcement Administration

Evidence and non-frivolous allegations of serious misconduct by FBI or DEA employees shall be reported to the Office of Professional Responsibility of the FBI or DEA. Employees of the FBI or DEA who wish to report an allegation outside of their component may report to the Deputy Attorney General.

C. Office of the Inspector General

Evidence and non-frivolous allegations of waste, fraud, abuse or other misconduct by any Department employee, except as set forth in (A) and (B) above, shall be reported to OIG.

D. Executive Office for U.S. Attorneys

Any evidence or non-frivolous allegation involving an employee of a U.S. Attorney's Office shall also be reported to the Executive Office for U.S. Attorneys.

2. Reporting Allegations in the Course of Judicial Proceedings

A. Judicial Statements Concerning Misconduct

Department attorneys shall report to their supervisors any statement by a judge or magistrate indicating a belief that misconduct by a Department employee has occurred, or taking under submission a claim of misconduct. Supervisors shall report to DOJ OPR immediately any evidence or non-frivolous allegation of serious misconduct.



B. Judicial Findings of Misconduct and Requests for Review

Whenever a judge or magistrate makes a finding of misconduct by a Department employee or requests an inquiry by the Department into possible misconduct, the finding or request shall be reported immediately to the employee's supervisor and to DOJ OPR, regardless of whether the matter is regarded as frivolous or non-serious.

3. Litigation Concerning Misconduct Allegations

A. Supervisory Review of Court Filings

Before any pleading or other document concerning any non-frivolous allegation of serious misconduct is filed, whether in the district court or on appeal, it must be reviewed by a supervisor who is not implicated by the allegation.

B. Recusal Upon Finding of Misconduct

A Department attorney who is found to have engaged in misconduct shall not represent the United States in litigation concerning the misconduct finding unless approval is obtained from the responsible U.S. Attorney or Assistant Attorney General.

C. Consultation with DOJ OPR

The supervisor may consult with DOJ OPR before filing any pleading relating to a misconduct allegation, and must apprise DOJ OPR of any significant developments after a matter has been reported to DOJ OPR pursuant to this section.

4. Office of Professional Responsibility Procedures

A. Preliminary Review

Upon receiving an allegation within its jurisdiction, DOJ OPR shall conduct an immediate preliminary review. DOJ OPR shall open an investigation only if it concludes that further investigation is warranted.

B. Review of Judicial Findings

If a judge makes a finding of misconduct by a Department employee or requests an inquiry by the Department into possible misconduct, DOJ OPR shall conduct an expedited inquiry without awaiting further judicial or appellate proceedings.

C. Notification at Conclusion of Investigation

Upon the completion of an investigation, DOJ OPR shall promptly notify the subject of the allegation, the employee's supervisor, and the complainant of the results.

D. Bad Faith Complaints

If DOJ OPR determines that an allegation made by an attorney was made in bad faith, as a result of gross negligence, or in reckless disregard for the truth, it shall report the complainant's misconduct to the appropriate entity established by the local authorities to handle attorney misconduct.

E. Former Employees

DOJ OPR shall obtain the approval of the Deputy Attorney General before declining to investigate or terminating an investigation on the ground that an employee has left the Department. The decision whether to conduct an investigation under such circumstances will be made on a case-by-case basis.

3-2.735 **EMPLOYEE RESPONSIBILITIES AND CONDUCT** (cross-reference)

B. Misconduct:

Allegations of misconduct are handled in accordance with U.S.A.M. § 1-4.100.





U.S. Department of Justice

Executive Office for United States Attorneys  
Office of the Director

Main Justice Building, Room 1619  
10th & Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

(202) 514-2121

August 14, 1995

TO: Holders of United States Attorneys' Manual Title 1.  
FROM: Executive Office for United States Attorneys

*A. D. Buall*  
Carol DiBattiste  
Director

RE: Department of Justice Employee Participation

NOTE: 1. Distribute to holders of Title 1.  
2. Replaces USAM 1-4.300 through 1-4.350.

AFFECTS: USAM 1-4.300

PURPOSE: This Bluesheet updates this section addressing outside employment or activities. 28 C.F.R. § 45.735 has been superseded by 5 C.F.R. § 2635 and DOJ Order 1735.1. Additional regulations are anticipated in the future pursuant to 5 C.F.R. § 2635.105.

\*\*\* NOTE: This Bluesheet serves to update the USAM to bring it into conformity with DOJ Order 1735.1 and 5 C.F.R. § 2635.

1-4.300 DOJ EMPLOYEE PARTICIPATION

1-4.310 Termination Agreements/Contingency Fees

Upon entering on duty, Department attorneys must, in general, withdraw from all cases they are currently handling in private practice. Interests in pending matters, such as contingency fees, should be addressed as part of the termination of their private practice. Experience indicates that "cashing out" the sometimes speculative nature of these interests has created problems for incoming employees. In negotiating a termination agreement with a former firm or business associates, an employee should be aware that federal criminal law prohibits Federal employees from participating in any matter, in their official capacity, in which they have a financial interest.

18 U.S.C. § 208. Federal law also prohibits Federal employees, other than in the proper discharge of their official duties, from representing anyone before a Federal agency or court in connection with a matter in which the United States is a party or has an interest. 18 U.S.C. § 205. In addition, please be mindful of 18 U.S.C. § 209 which prohibits an employee from receiving a salary from any source other than the United States as compensation for his/her services.

In light of the above statutes, the Department has never permitted incoming employees to retain any interest in matters pending before Federal departments (or agencies) or in which the United States is a party or has an interest. If the litigation does not involve the United States and the immediate "cashing out" will create an undue financial burden on an employee or the law firm, the Department has, on limited occasions, permitted the retention of a contingent interest. If, after exhausting all possible avenues for "cashing out" an interest, an employee is unable to do so, he/she should contact the Executive Office for U.S. Attorneys' Legal Counsel's office regarding the disclosure of contingency fees. The number of interests which an employee may retain must be kept to an absolute minimum and the financial interest must be reduced to a sum certain or a fixed percentage. It should be noted that while these matters are pending, an employee must be disqualified from handling any matter involving the attorney and the law firm(s) handling the referred matter.

#### 1-4.320 Outside Activities

Generally, employees may not engage in outside activities, including employment, that conflict with their official duties. An activity conflicts with an employee's official duties if it would require him to disqualify himself from matters so critical that his ability to perform his official duties would be impaired. 5 C.F.R. § 2635.802. Employees are cautioned that even though an outside activity or employment may not be prohibited under this regulation or by statute, it may violate other principles or standards set forth in 5 C.F.R. § 2635 et seq.

Employees must obtain prior written approval from the Executive Office for U.S. Attorneys' Legal Counsel for:

1. Service as an officer, director, trustee of any organization;
2. The outside practice of a profession, whether compensated or uncompensated;



3. The outside practice of law. If an employee desires to practice law for compensation, he must obtain approval from the Deputy Attorney General through the Executive Office for U.S. Attorneys.

U.S. Attorneys and their Assistants should freely consult the Executive Office for U.S. Attorneys on these matters.

#### 1-4.330 Teaching and Lecturing

Employees who wish to undertake teaching engagements are directed to consult 5 C.F.R. § 2635.807 which details the circumstances upon which compensation may be received and the extent to which an employee's title may be used. Employees should be cautious to avoid any conflict of interest with their position and to ensure that no interference with the performance of their official duties occurs. Assistant U.S. Attorneys must take annual leave or leave without pay for any time required for teaching during normal business hours.

#### 1-4.340 Civic Organizations, Professional Boards and Committees

While certain activities can be easily undertaken without creating problems, membership in national and local bar committees, state and municipal commissions, corporate boards of directors, arbitration panels, and similar organizations, with or without remuneration, could have the potential for creating a conflict of interest or an appearance of a conflict of interest. Employees should contact the Executive Office for U.S. Attorneys' Legal Counsel's office whenever questions arise. U.S. Attorneys' involvement in crime prevention efforts is addressed in the DOJ publication entitled "Legal and Ethical Issues Surrounding United States Attorneys' Involvement in Crime Prevention Efforts" issued October 1984.

#### 1-4.350 Pro Bono Work

Any employee wishing to participate in pro bono work must advise the Executive Office for U.S. Attorneys of his intention, identifying the name of the organization with which he will be associated and the general nature of the work, for a determination as to whether such activity would fall in one of the accepted categories of public interest service.

1-4.000 STANDARDS OF CONDUCT

Under Executive Order 11222, each agency of the federal government is responsible for issuing regulations on the standards of ethical and other conduct for its employees. It is required that these standards be brought to the attention of each employee annually.

For the Department, these standards are contained in 28 C.F.R. Part 15, a copy of which can be found in USAM 1-4.700. These should be consulted by all U.S. Attorneys and their staff.

Every current employee should receive a copy annually, and a copy should be given to each new employee when he/she enters on duty. All employees should review these standards carefully and bring any problems to the attention of their supervisor. Any questions concerning the applicability of the Standards of Conduct should be addressed to the Counsel, Executive Office for U.S. Attorneys.

Copies of the Standards of Conduct can also be obtained through the Department's warehouse.

1-4.100 NOTIFICATION OF MISCONDUCT BY EMPLOYEES OF THE DEPARTMENT OF JUSTICE

Allegations of misconduct are handled in accordance with 28 C.F.R. § 0.39.

It is the responsibility of the U.S. Attorney to:

A. Notify promptly the Counsel, Office of Professional Responsibility, of any allegation made against a Department employee involving any violation of law, Department order or regulation, or applicable standard of conduct, mismanagement, gross waste of funds, abuse of authority, or acts of reprisal against "whistleblowers;"

B. Take no further action on any allegation except to render such assistance as the Counsel, Office of Professional Responsibility may request; and

C. Remind employees in writing at least twice a year of the existence of the Office of Professional Responsibility; of their right to bring allegations of misconduct directly to the attention of the Office of Professional Responsibility; and of their obligation to cooperate fully with any investigation that Office may initiate.

Allegations against employees of the U.S. Attorney's Office should also be reported to the Executive Office for U.S. Attorneys.

1-4.200 FINANCIAL DISCLOSURE REPORT

To comply with the requirements of Title II of the Ethics in Government Act of 1978, each U.S. Attorney, and each Assistant U.S. Attorney occupying

a supervisory position whose pay level is equivalent to a GS-16 or above, must file a Financial Disclosure Report (Standard Form 278, Rev. 1/85) within 30 days after assuming the covered supervisory position, each May 15 for the preceding calendar year, and within 30 days after leaving his or her position for the period between the last annual report and the date employment is terminated. Such reports are subject to disclosure to the public.

A court-appointed interim and acting U.S. Attorney, or an Assistant U.S. Attorney occupying a supervisory position (including an acting U.S. Attorney in the U.S. Attorney's temporary absence) whose pay level is equivalent to a GS-16 or above, 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, a court-appointed interim and acting U.S. Attorney, or an Assistant U.S. Attorney occupying a supervisory position (including an acting U.S. Attorney in the U.S. Attorney's temporary absence) whose pay level is equivalent to a GS-16 or above, who was initially expected to perform services on 60 or fewer days, but who thereafter performs service on more than 60 days in a calendar year must, within 15 days of completing the 60th day of such service, file a financial disclosure report for the period from his or her initial retention, designation, appointment, or employment to the present, each May 15 for the preceding calendar year, and within 30 days of leaving his or her position for the period between the last annual report and the date employment is terminated. See 28 C.F.R. § 45.735-27.

For information about post-government employment restrictions as they apply to a court-appointed U.S. Attorney who was initially expected to perform services for 60 or fewer days, but who thereafter performs services on more than 60 days in a calendar year, see USAM 1-4.600.

#### 1-4.300 DOJ EMPLOYEE PARTICIPATION

##### 1-4.310 Outside Cases

Upon entering on duty Department attorneys must, in general, withdraw from all cases they are currently handling in private practice. 28 C.F.R. § 45.735-9. The Deputy Attorney General, upon written request, may grant an exception to the newly appointed U.S. Attorney for a limited number of cases, not involving the federal government, on which he/she has completed a substantial amount of work before appointment, provided withdrawal from these cases would seriously prejudice his/her clients. These cases should be completed within one year after entry on duty and may not interfere with the discharge of duties. Exceptions are rarely approved. After entry on duty, the Deputy Attorney General's approval is necessary before any cases may be handled. See 28 C.F.R. § 45.735-9. See also 18 U.S.C. § 205.

Assistant U.S. Attorneys must end all work on other matters before entering on duty. Requests for approval of outside employment by Assistant U.S. Attorneys should be addressed to the Deputy Attorney General and forwarded to the Executive Office for processing. The U.S. Attorney's endorsement of the request should appear on the request.

Fees for services rendered prior to appointment as a U.S. Attorney or an Assistant U.S. Attorney, but which are outstanding at the time of appointment, may be received unless the United States has a direct and substantial interest in the matter and it is pending at the time of appointment. A specific dollar amount, or a specific percentage of the settlement or final judgment in matters that are pending, should be determined prior to appointment. A candidate for the position of Assistant U.S. Attorney must notify the Executive Office of the financial arrangements with regard to these fees.

#### 1-4.320 Outside Activities

U.S. Attorneys and Assistant U.S. Attorneys 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 (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.

One exception is that an employee may act as an agent or attorney, with or without compensation, for his/her parents, spouse, child, or any person for whom, or for any estate for which, he/she is serving as a personal fiduciary, except in those matters in which he/she participated personally and substantially as a government employee (28 C.F.R. §§ 45.735-6(d) and 45.735-9(d)). Specific situations should be determined on their own merits and questions in this respect should be brought to the attention of the Executive Office for U.S. Attorneys so that its staff and that of the Deputy Attorney General may review the situation as appropriate.

No U.S. Attorney or Assistant U.S. Attorney should engage in any professional practice or any other outside employment if the activity: (1) interferes with proper and effective performance or 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 (6) involves a criminal matter in which 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

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C.F.R. § 45.735-9(f).) Teaching is not considered the private practice of law under this rule (28 C.F.R. § 45.735-9(a)). See USAM 1-4.330, *infra*.

U.S. Attorneys and their Assistants also should freely consult the Executive Office on these matters.

#### 1-4.330 Teaching and Lecturing

Department of Justice regulations regarding private professional practice and outside employment have been amended (46 *Fed.Reg.* 52358, October 27, 1981). Under the previous regulations, teaching by Assistant U.S. Attorneys was viewed as the private practice of the profession, and required prior authorization of the Associate Attorney General. Teaching is no longer considered "professional practice" requiring prior authorization (28 C.F.R. § 45.735-9(a)). Employees who wish to undertake teaching engagements are directed to consult 28 C.F.R. § 45.735-12 which generally requires prior approval by the Deputy Attorney General only when the use of non-public information is contemplated. Employees should be cautious to avoid any conflict of interest with their position and to insure that no interference with the performance of their official duties occurs. Assistant U.S. Attorneys must take annual leave or leave without pay for any time required for teaching during normal business hours.

#### 1-4.340 Civic Organizations, Professional Boards and Committees

While certain activities can be easily undertaken without creating problems, membership in national and local bar committees, state and municipal commissions, corporate boards of directors, arbitration panels, and similar organizations, with or without remuneration, could have the potential for creating a conflict of interest or an appearance of a conflict of interest, especially if the organization is funded in whole or in part by the federal government. The six criteria cited in USAM 1-4.320 with reference to outside activities also control this situation. You should contact the Executive Office whenever questions arise.

#### 1-4.350 Pro Bono Work

Title 28, Code of Federal Regulations, § 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 for court appearances or other necessary absences incident 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 § 45.735-9(f) and, in particular, the prohibition against engaging in any profession 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.

#### 1-4.400 POLITICAL ACTIVITY (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.<sup>1</sup> 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.

#### 1-4.410 Permissible Activities

Each employee retains the right to,

- A. Register and vote in any election;
- B. Express his/her opinion as an individual privately and publicly on political subjects and candidates;
- C. Display a political picture, sticker, badge, or button in situations that are not connected to his/her official duties;

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<sup>1</sup> 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.

D. Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization;

E. 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;

F. Attend a political convention, rally, fund-raising function, or other political gathering;

G. Sign a political petition as an individual;

H. 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);

I. Take an active part, 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);

J. Take an active part, as a candidate or in support of a candidate, in a nonpartisan election;

K. 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;

L. Serve as an election judge or clerk, or in a similar position to perform nonpartisan duties as prescribed by state or local law; and

M. 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.

#### 1-4.420 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:

A. 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;

B. Organizing or reorganizing a political party, organization or political club;

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C. Directly or indirectly soliciting, receiving, collecting, handling, disbursing, or accounting for assessments, contributions, or other funds for a partisan political purpose;

D. 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;

E. 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;

F. Becoming a candidate for, or campaigning for, an elective public office in a partisan election;

G. 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;

H. Acting as recorder, watcher, challenger, or similar officer at the polls on behalf of a political party or a candidate in a partisan election;

I. Driving voters to the polls on behalf of a political party or a candidate in a partisan election;

J. 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;

K. Serving as a delegate, alternate, or proxy to a political party convention;

L. 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

M. 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, or the Office of Personnel Management, Office of Special Counsel.

#### 1-4.500 GIFTS RECEIVED FROM FOREIGN GOVERNMENTS

Public Law No. 95-105, 5 U.S.C. § 7342, governs the receipt and disposition of gifts and decorations tendered by foreign governments to federal employees, their spouses, or dependents.

Section 515 of Public Law No. 95-105 requires the Department of Justice to submit to the Secretary of State, by January 31 of each year, a listing of



all statements filed by employees during the preceding year concerning gifts valued over \$140, all foreign gifts of travel or expenses for travel taking place entirely outside the United States and valued at more than \$140, where the acceptance of which has not been authorized in accordance with specific instructions from the Department of Justice.

Federal Property Management Regulations (FPMR) Par. 101-49 and Justice Property Management Regulation (JPMR) Part 128-49, prescribe policies and procedures governing utilization, donation, and disposal of gifts and decorations from foreign governments.

In accordance with JPMR § 128-49.201, each U.S. Attorney's Office is required to submit to the Executive Office, Attention: Facilities Management and Support Services Staff, by January 11th each year, a listing of all gifts and decorations, regardless of value, received by employees, their spouses, or dependents from foreign governments during the preceding year.

A separate statement, containing the following information should be submitted by each employee receiving a gift or decoration:

A. For tangible gifts:

1. Name and title of recipient;
2. Gift, date of acceptance, estimated value, and current disposition or location;
3. Identity of foreign donor and government; and
4. Circumstances justifying acceptance.

B. For travel or expenses for travel:

1. Name and title of recipient;
2. Brief description of travel or travel expenses occurring entirely outside the United States;
3. Identity of foreign donor or governments; and
4. Circumstances justifying acceptance.

Negative responses may be communicated by telephone to the Executive Office for U.S. Attorneys, Facilities Management and Support Services Staff

#### 1-4.600 POST-GOVERNMENT EMPLOYMENT RESTRICTIONS

#### 1-4.610 Ethics in Government Act

The Ethics in Government Act of 1978, which amended 18 U.S.C. § 207, and the regulations issued thereunder bar certain acts by former government

employees (including all officers, employees and special government employees, both attorney and non-attorney, of any U.S. Attorney's Office) which may actually make or give the appearance of making, unfair use of prior government employment. Criminal penalties and disciplinary action may be imposed for violations. See 5 C.F.R. § 737 as amended in 45 *Fed.Reg.* 7401, 7402 (Feb. 1, 1980); 45 *Fed.Reg.* 8544, 8556 (Feb. 8, 1980); 52 *Fed.Reg.* 43441-42, 43463-64 (Nov. 12, 1987).

The regulations cited above, dated February 1, 1980, contain numerous examples of permissible and prohibited post-employment activities by various types of former employees. However, the regulations under the Ethics in Government Act do not incorporate or supplant restrictions that may be contained in other laws or professional codes of conduct. (See discussion in USAM 1-4.620, *infra*.)

Requests from present or former employees of U.S. Attorneys' offices for the Department's views on prospective, specific factual situations or legal issues should be sent to the Director, Executive Office for U.S. Attorneys, for a written opinion from the Office of Legal Counsel or the Office of Government Ethics, as appropriate (pursuant to 5 C.F.R. § 738; 46 *Fed.Reg.* 2582 (Jan. 9, 1981)). While some research materials and a bibliography of pertinent cases are set forth below, requests for additional materials not otherwise available may be made to the Executive Office for U.S. Attorneys.

The Office of Government Ethics (OGE) has issued advisory letters regarding the permissible and prohibited post-government employment activities of former government employees in specific factual situations under the Ethics in Government Act of 1978 (Pub.L. No. 95-521, as amended by Pub.L. 96-28) (and the predecessor statute, 18 U.S.C. § 207). Copies of briefs of the advisory letters which were prepared by the Executive Office for U.S. Attorneys may be obtained by contacting the Executive Office.

#### 1-4.611 Summary

The statute and regulations now contain the following four major restrictions, against representing anyone other than the United States which apply to any person who held a government position after June 30, 1979:

A. A permanent restriction on any former government employees (*i.e.*, U.S. Attorney, supervisory Assistant U.S. Attorney, Assistant U.S. Attorney or other employee) acting as a representative in connection with any matter in which the employee *participated personally and substantially* while a government employee (*see* 18 U.S.C. § 207(a));

B. A two-year restriction on any former government employees (*i.e.*, U.S. Attorney, supervisory Assistant U.S. Attorney, Assistant U.S. Attorney or other employee) acting as a representative in connection with any matter for which the employee had *official responsibility*

during his/her final year as a government employee (see 18 U.S.C. § 207(b)(i));

C. A two-year restriction on a former "senior employees" (i.e., U.S. Attorney)<sup>2</sup> acting as a representative or aiding, counseling, advising, consulting or assisting in representing any other person by personal presence in connection with any matter in which the employee *participated personally and substantially* while a government employee (see 18 U.S.C. § 207(b)(ii)), and;

D. A one-year restriction on a former "senior employees" (i.e., U.S. Attorney) communications with the former agency<sup>3</sup> on any matter, *regardless of prior involvement* (see 18 U.S.C. § 207(c)) (i.e., a former U.S. Attorney cannot deal with the office he/she headed).

However, a former Executive Schedule U.S. Attorney (Northern District of Illinois, Central District of California, Southern District of New York, and District of Columbia) is precluded for one year from communicating on any matter or case involving any other U.S. Attorney's Office as well as his/her own former office, all United States Marshals' offices and the six other non-statutory components of the Department designated under 18 U.S.C. § 207(d)(1)(C). Former Executive Schedule U.S. Attorneys may, however, handle cases or matters involving the ten statutory separate agencies or bureaus of the Department under 18 U.S.C. § 207(e).

#### 1-4.612 Limitations on Matters Covered

The first three restrictions (18 U.S.C. §§ 207(a), (b)(i) and (b)(ii)), apply only to matters in which the United States or District of Columbia is a party or has a direct and substantial interest; the fourth restriction (18 U.S.C. § 207(c)), applies only to matters pending before the former senior employee's agency or department, or in which the agency or department has a direct and substantial interest.

<sup>2</sup> All U.S. Attorneys (including the 89 non-Executive Schedule U.S. Attorneys and the four U.S. Attorneys paid Executive Schedule salaries) are "senior employees"; no Assistant nor supervisory Assistant U.S. Attorneys have been designated as "senior employees." Court-appointed U.S. Attorneys become subject to the post-employment restrictions after serving as U.S. Attorneys for 60 days.

<sup>3</sup> For the 89 non-Executive Schedule U.S. Attorneys, the "agency" with which such contacts are prohibited is defined as being the particular U.S. Attorney's Office (and the United States Marshal's Office in that district) and the parent Department of Justice, with the exception of: (a) ten separate statutory agencies or bureaus of the Department, under 18 U.S.C. § 207(e) (see 52 *Fed.Reg.* 13443 (Nov. 12, 1987).); and (b) the other U.S. Attorneys' offices and United States Marshals' offices in the 93 other districts and the seven other non-statutory components of the Department of Justice, designated under 18 U.S.C. § 207(d)(1)(C) (see 52 *Fed.Reg.* 43443 (Nov. 12, 1987).). Thus, the former U.S. Attorney for the District of "A" normally would not be precluded by 18 U.S.C. § 207(c) from handling a matter or case involving the U.S. Attorney's Office or the United States Marshal's Office in the District of "B" or before one of the ten statutory separate agencies or bureaus or the other six non-statutory components of the Department of Justice.

Representation of the United States by any former government employee is, when authorized, of course, exempted from all of the above restrictions.

#### 1-4.613 Restrictions on All Former Government Employees

Subsections (a) and (b)(i) of 18 U.S.C. § 207 do not depart significantly from prior law. Subsection 207(a) retains the permanent prohibition against *all* former Executive branch officers and employees acting as agent of, attorney for, or representing in an appearance, or making oral or written communications with the intent to influence, on behalf of another party not the United States (hereinafter, "appearances before or communications with") the government or in court, in a case or other particular matter in which the United States or the District of Columbia is a party of, has a direct and substantial interest, and in which the former government employee *participated personally and substantially* while a government employee. See 5 C.F.R. § 737.5; 45 Fed.Reg. 7403 (Feb. 1, 1980).

The new subsection 207(b)(i) merely extends from one to two years the period of disqualification of *all* former Executive branch employees from "appearances before or communications with" the government or in court in matters in which the United States or the District of Columbia is a party or has a direct and substantial interest and in which the former government employee did not actually participate while in government, but which were *under his/her official responsibility as an employee within one year prior to the end of such responsibility*. See 5 C.F.R. § 737.7; 45 Fed.Reg. 7411 (Feb. 1, 1980).

The term "official responsibility" as used in 18 U.S.C. § 207(b)(i) is defined in 18 U.S.C. § 202(b); 5 C.F.R. § 737.7(b).

#### 1-4.614 Restrictions on Former Senior Government Employees

The Act also added two new restrictions in 18 U.S.C. §§ 207(b)(ii) and § 207(c) which apply only to certain former senior-level government employees who are defined under 18 U.S.C. § 207(d)(1). That definition includes the U.S. Attorneys in four districts who are statutorily included in the Executive Schedule under 18 U.S.C. § 207(d)(1)(A); and all non-Executive Schedule U.S. Attorneys, who were designated under § 207(d)(1)(C) as "senior employees" by the Director of the Office of Government Ethics (52 Fed.Reg. 43463 (Nov. 12, 1987).) and are therefore covered by the restrictions of both § 207(b)(ii) and 207(c). No Assistant U.S. Attorneys, supervisory Assistant U.S. Attorneys, nor any other employees of U.S. Attorneys' offices were designated as "senior employees." Court-appointed U.S. Attorneys become subject to these post-employment restrictions upon serving as U.S. Attorneys for 60 days, see 18 U.S.C. § 207(c).

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Therefore, all former U.S. Attorneys who left their position after June 30, 1979, as "senior employees" are prohibited under 18 U.S.C. § 207(b)(ii), for two years from *representing, aiding or assisting in representing another person other than the United States by personal presence* before the government or in court in a matter in which the United States or the District of Columbia is a party or has a direct and substantial interest and in which the "senior employee" is personally barred because of his or her *personal and substantial participation* in the matter while in government. See 5 C.F.R. § 737.9; 45 *Fed.Reg.* 7412 (Feb. 1, 1980).

In addition, all former U.S. Attorneys, as "senior employees," are barred by 18 U.S.C. § 207(c) for one year from appearances or communications on behalf of any person other than the United States before the *department or agency* in which he/she was employed, or before any officer or employee thereof, *in any case or particular matter* pending before that department or agency or in which that department or agency has a direct and substantial interest, *regardless of the "senior employee's" prior involvement* with the case or matter while a government employee. See 5 C.F.R. § 737.11; 45 *Fed.Reg.* 7413 (Feb. 1, 1980).

The one-year restrictions under § 207(c) on certain "senior employees" has been limited to less than the entire Department of Justice by two methods provided in the statute. By the discretionary designation of the Director of the OGE, pursuant to § 207(d)(1)(C), administratively created, unrelated component agencies or bureaus within the parent department or agency may be designated, if they have separate and distinct subject matter jurisdiction from the parent department or agency, and the OGE has determined that there exists no potential for use of undue influence or unfair advantage based on past government service. The Director of OGE has designated the following as such separate agencies: all U.S. Attorneys' offices, as well as all U.S. Marshals' offices and six other non-statutory components of the Department of Justice.<sup>4</sup> Therefore, with the exception of former Executive Schedule U.S. Attorneys,<sup>5</sup> former U.S. Attorneys are not automatically prohibited, pursuant to 18 U.S.C. § 207(c), from appearances before or communications with U.S. Attorneys' offices or United States Marshals' offices in districts other than the district in which they served as a "senior employee," nor with the six separate non-statutory components of the Department. All former U.S. Attorneys are still prohibited for one year from making appearances before or communications with the U.S.

<sup>4</sup> Antitrust Division; Civil Rights Division; Land and Natural Resources Division; Tax Division; Civil Division; and, Criminal Division; 5 C.F.R. § 737.13; 45 *Fed.Reg.* 7415-16 (February 1, 1980); 5 C.F.R. § 737.32; 52 *Fed.Reg.* 43443 (Nov. 12, 1987).

<sup>5</sup> Although the Director of the Office of Government Ethics included the four Executive Schedule U.S. Attorneys in the designation of "senior employees" under § 207(d)(1)(C), the Office of Legal Counsel has concluded that the Ethics Act does not authorize such designations for Executive Schedule employees covered under § 207(d)(1)(A). The Department's Office of Legislative Affairs has previously determined that an amendment to the statute would be appropriate in order to eliminate the disparity among U.S. Attorneys. The Executive Office for U.S. Attorneys is urging the Department to submit such an amendment to the Congress.

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Attorney's Office and the United States Marshal's Office in the district which they headed.

All former U.S. Attorneys from all districts may handle matters and cases otherwise prohibited under 18 U.S.C. § 207(c) before the ten statutorily created separate agencies and bureaus of the Department of Justice which the Director of OGE has designated pursuant to 18 U.S.C. § 207(c).<sup>6</sup>

In addition, all former U.S. Attorneys' appearances before and communications with the government, other U.S. Attorneys' offices, other components of the Department of Justice, and in court are still restricted by § 207(a) and (b)(i), which apply to *all* former employees.

#### 1-4.615 Sanctions

The statute provides criminal penalties of up to two years' imprisonment and/or a \$10,000 fine for violations of §§ 207(a)-(c) by former employees. Disciplinary action by a department or agency for violations by former employees may also include up to five years' debarment from appearances before or communications with the Department, pursuant to § 207(j). See 5 C.F.R. § 737.27; 45 *Fed.Reg.* 7418 (Feb. 1, 1980); 28 C.F.R. § 45.735-7a; "'Disciplinary Proceedings Under 18 U.S.C. § 207(j)'" (Order No. 889-80, 45 *Fed.Reg.* 31717 (May 14, 1980)). (In addition, 18 U.S.C. § 207(j) provides penalties of up to one year imprisonment and/or a \$5,000 fine for certain violations by partners of present employees of the Executive Branch.)

A review of the criminal sanctions appears at USAM 9-85.000.

#### 1-4.620 Other Post-Government Employment Restrictions, and Restrictions on Partners of Former Government Attorneys and Employees

In addition to the Ethics in Government Act, the American Bar Association Code of Professional Responsibility (ABA Code), rules of state bar associations and court decisions restrict the conduct of attorneys who are former government employees and their firms and affiliates. There is nothing in 18 U.S.C. § 207 that prevents courts and bar associations from holding former employees of the federal government to standards more demanding than the minimal requirements of the criminal law. 28 C.F.R. § 45.735-7 (1979), which paraphrases the predecessor statute to 18 U.S.C. § 207, makes plain that a former employee is not free to disregard other, more demanding standards of professional conduct.

<sup>6</sup> Bureau of Prisons (including Federal Prison Industries, Inc.); Community Relations Service; Drug Enforcement Administration, Federal Foreign Claims Settlement Commission; Bureau of Investigation; National Institute of Justice; Bureau of Justice Statistics; Immigration and Naturalization Service; Independent Counsel; and the United States Parole Commission. 5 C.F.R. § 737.13(c); 45 *Fed.Reg.* 7415 (Feb. 1, 1980); 5 C.F.R. § 737.31; 52 *Fed.Reg.* 43443 (Nov. 12, 1987).

18 U.S.C. § 207(c) by its terms raises no obstacles for the fellow lawyers of a former U.S. Attorney or Assistant U.S. Attorney in a private law firm. Moreover, the ABA Code does not contain a provision that, like 18 U.S.C. § 207(c), prohibits an appearance in a matter in which the former government lawyer had not participated or for which he/she had no official responsibility. As to these types of matters, therefore, absent a restraint of that kind in a disciplinary rule, there is no disqualification to impute to the partners of the lawyer in regard to such matters.

An attorney is personally disqualified from representing a client on a particular matter in which the attorney had substantial responsibility as a public employee. ABA Code, DR 9-101(B).

The definition of "matter" as used in ABA Formal Opinion No. 342 (Nov. 24, 1975), 62 ABAJ 517, 519 (1976) (copy, *infra*) is usually limited to activities related to litigation between identifiable parties.

The definition of the term "substantial responsibility" which activates Canon 9 of the Code of the Professional Responsibility is not firmly established and depends on the specific facts. See ABA Formal Opinion No. 342 at 519-520. Some circuits hold that DR 9-101(B) permits disqualification of the former government employee only in matters in which he/she had a direct and substantial personal involvement. In others, a more restrictive standard based on state law may be imposed where, in addition to actual knowledge, responsibility exists over the subject matter, whether exercised or not. DR 9-101(B) has been applied even when the attorney had no active or direct participation in a case while a prosecutor, or acted in only an advisory, not supervisory, capacity.

Likewise, the former government attorney's partners, associates, and any other lawyer affiliated with his/her firm are disqualified by imputation from employment on the same particular matter for which the former government employee is personally disqualified. See ABA Code, DR 5-105(D). However, this is not an absolute disqualification. The imputation of the former government attorney's knowledge of privileged information to the entire firm and its affiliates may be rebuttable by an adequate screening mechanism. And, absent an appearance of significant impropriety or taint of the underlying trial or matter, the government may waive the law firm's imputed disqualification, if there are adequate screening procedures by the firm to isolate that attorney from direct and indirect participation in the "matter" and the fees attributable to it. See ABA Formal Opinion No. 342, at 521. However, inasmuch as it is the court's responsibility to ensure that attorneys practicing before it maintain the highest standards of professional conduct, any waiver filed by the government is not binding upon the court.

In order to maximize its ability to recruit able attorneys who may later leave the government for private practice, the Department of Justice has

opposed an automatically imputed disqualification of the personally-disqualified attorney's law firm and has adopted an administrative practice to allow waivers in appropriate screening situations, as discussed in the Department's comments on the ABA Proposed Model Rules (May 23, 1980), and *Armstrong v. McAlpin*, brief of United States as *amicus curiae* on rehearing *en banc* (2d Cir.1980), in which the government endorsed the procedures for screening. A law firm that employs a former Department of Justice attorney and that has instituted screening procedures may request the Department's consent to the firm's representation in matters with which the former government attorney was involved. Procedurally, the firm should make its written request to the head of the appropriate Department office, board or division, identifying the matters involved and detailing the screening measures used to insulate the attorney from involvement in the matters. Department components may then consult the Department's Office of Legal Counsel, which has responsibility for ethical considerations under 28 C.F.R. §§ 0.25(i) and 45.735-26(b). U.S. Attorneys and Assistant U.S. Attorneys should forward their requests to the Executive Office for U.S. Attorneys.

Some of the factors which have been considered in government waiver determinations, and in the courts' acceptance of the adequacy of a firm's screening on motions for disqualification are:

A. Screening measures were utilized by the firm *ab initio*, prior to the government or other party's motion for disqualification;

B. The attorney derives no remuneration from funds obtained by the firm for the representation;

C. The attorney is excluded from participation in the action and has never participated in any fashion whatever in the firm's representation of the client;

D. The attorney has not imparted any information concerning the matter or the adverse party to the firm nor discussed the action with other firm members;

E. No one at the firm is permitted to discuss the matter in the attorney's presence or allow the attorney to view any document related to this litigation; and the attorney has no access to relevant files (which should be locked);

F. There is no indication that the attorney, while employed by the government, formed an intent to prosecute this action as a private attorney, nor that the attorney's official actions, while a government employee, were affected nor his authority misused by contemplation of subsequent employment or action in the matter as a private attorney;



G. The attorney did not facilitate the client's engaging the firm, nor was the attorney hired away from the government by a firm in order to defuse the government's representation in a matter handled by the firm;

H. The screening is "specific and inflexible;" and

I. The presence of the former government employee attorney will not taint the [underlying] trial, nor affect the outcome of the case.

In addition, in deciding whether a proposed screening mechanism is likely to be effective, the government or the court may consider the relative size of the law firm; the proportion of the firm's resources devoted to, and income derived from, the particular litigation; the protracted nature of the litigation; and whether, in multi-district litigation, involving the same law firm and issues, the United States is or may become a direct party or third party in other cases. Although disqualification under DR 9-101(B) and DR 5-105(D) is often used to prevent a former government attorney from switching sides on a matter as well as to prevent the attendant violation of attorney-client confidences and the appearance of impropriety, the imputed disqualification of the law firm may be equally applicable where there is no switching of sides. This applies, for example, when the former government attorney's former agency and present firm would maintain actions adverse to the same party in (two) related matters with which the attorney was involved while in government. (The screening mechanism does not apply, however, to attempts to create a "Chinese wall" within a law firm in order to allow simultaneous representation of two parties with adverse interests.)

Judicial review may be available to the law firm employing the former government attorney in the case of an agency's arbitrary or capricious denial of a waiver. Judicial review may also be available to another party in the case of the agency's arbitrary or capricious determination granting a waiver.

The granting of a motion for disqualification is usually appealable, but the denial of such a motion is not appealable in all circuits.

#### 1-4.630 Briefs of Advisory Letters

The Office of Government Ethics (OGE) has issued advisory letters regarding the permissible and prohibited post-government employment activities of former government employees in specific factual situations under the Ethics in Government Act of 1978 (the Ethics Act), 18 U.S.C. § 207. (For persons whose government employment ended prior to July 1, 1979, the OGE has also interpreted the predecessor statute, 18 U.S.C. § 207.)

Copies of the full texts of the letters may be requested from the Executive Office for U.S. Attorneys, Room 1629, Main Justice, 10th Street and Pennsylvania Ave., N.W., Washington, D.C., 20530 (FTS 633-4024).

Briefs of these and of future advisory letters will be published in the *United States Attorneys' Bulletin*.

The OGE's advisory letters concern the following issues, as applied to the specific factual situations presented by individual former employees of various government agencies:

A. Whether an attorney in a private law firm who is a former "senior employee" (for purposes of 18 U.S.C. § 207(d)(1)(C)) may, during the one-year time ban of § 207(c), represent a private client in court in a civil suit against the attorney's former government Department, involving the interpretation of a Department regulation, but not involving a particular matter involving specific parties which would trigger any prohibitions of § 207(a) or (b). This would be prohibited, because the attorney's representation and arguments to the court would unavoidably involve "oral ... communication" to the Department "with the intent to influence" it (*i.e.*, to persuade the Department to change its position, or in required settlement negotiations). Based on the legislative history of § 207(c), such contact by the former official with his/her former agency is proscribed, not only on the matters pending before the agency, but on matters in which the former agency has a "direct and substantial interest" (*i.e.*, where it is named as a defendant), even though the matter is pending elsewhere (*i.e.*, in court).

B. Under the definition of the term "particular matter" (18 U.S.C. § 207(a)), whether an attorney who is a former government employee (Administrative Law Judge (ALJ) assigned to an agency) may represent claimants at hearing before law judges of the same agency in three situations where:

1. The claimants are new and present new claims. Here there is no general prohibition because "particular matter" applies to specific cases or matters and not a general area of activity;

2. and 3. In hearings over which the former employee presided as an ALJ, the claimant had his original application for benefits denied and, in lieu of an appeal, now files a new application, or the claimant's application was granted, but the agency has since reexamined it and terminated benefits.

In these two situations, the representation is prohibited, because under the Act's implementing regulations, the same particular matter may continue in another form or part, and the agency should consider the extent to which the matters involve the same basic facts, related issues, the same or related parties, time elapsed, the same confidential information and the continuing existence of an important federal interest.

C. What is the effect of the re-employment [as a Special Government Employee] of a former government employee who originally had resigned prior to the effective date of the Ethics Act, July 1, 1979?

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The restrictions of the new Ethics Act apply only to the matters upon which the re-employed person works subsequent to re-employment after July 1, 1979. However, as to the previous period of government employment (pre-July 1, 1979), the former provision of 18 U.S.C. § 207 predating the Ethics Act covers the particular matters in which the former employee was either personally or substantially involved or which were pending under his/her official responsibility.

D. What is the effect of the re-employment of a former government employee as a re-employed annuitant in the same agency but in a different non-''Senior employee'' position, where there are no operational responsibilities regarding the former position, and where the former position was designated as a ''senior employee'' position under § 207(d)(1)(C) effective one day after the employee originally terminated employment with the agency?

Because this particular re-employment in a non-senior employee position is not viewed by OGE as a ''shifting position'' under 5 C.F.R. § 737.25(i), the re-employment will not subject the employee to restrictions on a ''senior employee.''

E. What is the application of the definitions of ''personal and substantial'' participation in a ''particular matter involving a specific party or parties,'' under the former pre-Ethics Act statute, 18 U.S.C. § 207, in the following situation: Whether a former government employee who left the government prior to the effective date of the Ethics Act, and is now an employee of a corporation, is barred from representing the corporation in conjunction with any of the four ''phases'' of a government program [to deliver aircraft to a foreign airforce], where the former employee had worked on only one of the phases of the program in government.

There is no prohibition of representation as to the three other separable phases of the program, because they are separate ''particular matters'' for which the former employee did not have ''official responsibility.'' See 18 U.S.C. § 202(b).

Section 207 covers the one program phase in which the employee had participated ''personally and substantially'' as a government employee. The phase was a covered ''matter'' involving specific parties, even though the work was preparatory and preliminary to an actual contract, similar to an employee's participating in an investigation to determine whether the government should file a formal action, or recommending such formal action be undertaken.

The limitations on the proposed duties of a former government employee as to matters covered under § 207 vary according to the type of representation, and § 207(a) does not prohibit contacts or communications with the government that do not involve potentially adversarial or controversial matters with respect to a particular matter (*i.e.*, a contract).

F. Under the two-pronged standard of 18 U.S.C. §§ 207(a) and (b)(i), defining "*a particular matter involving a specific party or parties*," former government employees who were involved in the development of a matter (*i.e.*, request for proposals for a contract) are not prohibited from representing a specific party before the government on that particular matter, where the party was not identified as a party to the matter in question at the time the employees worked on the matter in the government.

G. Under the definitions of "[personal and] substantial" participation and a "particular matter involving a specific party or parties" in 18 U.S.C. § 207(a), an attorney who, as a former government employee, drafted or amended specific clauses in documents (*i.e.*, contracts) or reviewed the documents for legal sufficiency is barred generally from representing parties in the particular matter (the contract) *in toto*, because such documents cannot be divided into clauses to mitigate the post-employment restrictions of 18 U.S.C. § 207, nor can passing upon the legality of a matter be separated from the substantive merits of the particular matter.

However, as to such documents (contracts) which were amended or reviewed for legal sufficiency subsequent to the termination of the attorney's responsibilities therefore, § 207 does not bar later involvement, because to the extent that the primary substance of the documents (*i.e.*, rates and benefits of contracts) change yearly, they are new "particular matters," despite certain continuing general clauses with which the attorney was involved while in government.

H. What are the limitations of 18 U.S.C. § 207(a) and (b)(i) on a former "senior employee" who, as director of a federal office, had a broad policymaking role (in science, technology, energy, national security, and research and development issues) and official responsibility for certain particular matters (contracts) involving the government office and the new employing organization? Most of the policy activities, being of a general rather than specific nature, result in no post-employment restrictions, because "rulemaking, legislation, the formulation of general policy, standards or objectives, or other action of general application" are not a particular matter involving a specific party or parties. 18 U.S.C. §§ 207(a) and (b)(i). These restrictions would require a discrete and isolatable transaction between identifiable parties, and do not apply to a general area of activity.

However, there is a restriction on particular matters (*i.e.*, contracts) in which the former government director participated personally and substantially, where "personally" means directly, including the participation of a subordinate when actually directed by the former government employee, and where to participate "substantially" means that the director's involvement must have been of significance or form the basis for a reasonable appearance of such significance to the matter and requires more

than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue.

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## 1-4.643 Professional Ethics Opinions

Formal Opinion 342 \*  
(November 24, 1975)

Following the 1974 amendment of D.R. 5-105(D), which extended every disqualification of an individual lawyer in a firm to all affiliated lawyers,<sup>1</sup> the interpretation and application of D.R. 9-101(B) have been increasingly of concern to many government agencies as well as to many former government lawyers now in private practice.<sup>2</sup> D.R. 9-101(B) is based

\* Originally published in 62 American Bar Association Journal at 517 (April, 1976). Reprinted by permission.

<sup>1</sup> As amended at the midyear meeting of the A.B.A. in February, 1974, D.R. 5-105(D) provides: 'If a lawyer is required to decline employment or to withdraw from employment under a disciplinary rule, no partner, or associate, or any other lawyer affiliated with him or his firm, may accept or continue such employment.' Prior to amendment, the rule undertook to disqualify all such affiliated lawyers only when the lawyer in question was 'required to decline employment or to withdraw from employment under DR 5-105....' But see fn. 2, *infra*.

<sup>2</sup> It has long been recognized that the disqualification of one lawyer in an organization generally constituted disqualification of all affiliated lawyers; see, e.g., *American Can Company v. Citrus Feed Company*, 436 F.2d 1125 (5th Cir.1971); *Laskey Bros. of West Virginia v.*

upon former A.B.A. Canon 36, but its standard or test is different. Our task is to interpret D.R. 9-101(B) in light of its history and in consideration of its underlying purposes and policies.

D.R. 9-101(B) reads as follows: "'A lawyer shall not accept private employment in a matter in which he had substantial responsibility while he was a public employee.'" <sup>3</sup>

At the outset, the relationship between D.R. 9-101(B) and the provisions of Canons 4 (confidences and secrets) and 5 (independent professional judgment) should be explored briefly. To some extent, the disciplinary rules of those two canons reinforce the same ethical concepts underlying D.R. 9-101(B).

The disciplinary rules of Canon 4 generally forbid a lawyer to reveal or use a confidence or secret of a client; see D.R. 4-101(B). That rule applies to a government lawyer as well as to private practitioners, for "the disciplinary rules should be uniformly applied to all lawyers, regardless of the nature of their professional activities."<sup>4</sup> A lawyer violates D.R. 4-101(B) only by knowingly revealing a confidence or secret of a client or using a confidence or secret improperly as specified in the rule. Nevertheless, many authorities have held that as a procedural matter a lawyer is disqualified to represent a party in litigation if he formerly represented an adverse party in a matter substantially related to the pending litigation.<sup>5</sup> Even though D.R. 4-101(B) is not breached by the mere act of accepting present employment against a former client involving a matter substantially related to the former employment, the procedural disqualification protects the former client in advance of and against a

*Warner Bros. Pictures*, 224 F.2d 824 (2d Cir.1955); *Silver Chrysler Plymouth v. Chrysler Motors Corporation*, 370 F.Supp. 581 (E.D.N.Y.1973), aff'd 518 F.2d 751 (2d Cir.1975); *W.E. Basset Company v. H.C. Cook Company*, 201 F.Supp. 321 (D.Conn.1962); Formal Opinions 169 (1937), 49 (1931), 33 (1931), and 16 (1929); Informal Opinions 1336 (1975) and 906 (1966); Texas Ethics Commission Opinion 100 (1954); Perkins, *The Federal Conflict-of-Interest Law*, 76 HARV.L.REV. 1113, 1162 (1963); Kaufman, *The Former Government Attorney and the Canons of Professional Ethics*, 70 HARV.L.REV. 657, 660 (1957); Kaplan, *Forbidden Retainers*, 31 N.Y.U.L.REV. 914, 926 (1956); Casence, 69 HARV.L.REV. 1339 (1956). The rule is based upon the close, informal relationship among law partners and associates and upon the incentives, financial and otherwise, for partners to exchange information freely among themselves when the information relates to existing employment. As to the application of D.R. 5-105(D) in situations involving D.R. 9-101(B), see the discussion *infra*.

<sup>3</sup> The companion provision in the former A.B.A. Canons of Professional Ethics was found in Canon 36 and read as follows: "'A lawyer, having once held public office or having been in the public employ, should not after his retirement accept employment in connection with any matter which he has investigated or passed upon while in such office or employ.'"

<sup>4</sup> Preliminary Statement, C.P.R.

<sup>5</sup> See *Emle Industries, Inc. v. Patentex, Inc.*, 478 F.2d 562 (2d Cir.1973); *American Can Company, v. Citrus Feed Company*, 436 F.2d 1125 (5th Cir.1971); *Silver Chrysler Plymouth, Inc. v. Chrysler Motors Corporation*, 370 F.Supp. 581 (E.D.N.Y.1973), aff'd, 518 F.2d 751 (2d Cir.1975); *Humble Oil and Refining Company v. American Oil Company*, 224 F.Supp. 909 (E.D.Mo.1963); *Schmidt v. Pine Lawn Memorial Park*, 198 N.W.2d 496 (S.D.1972); Kaufman, *The Former Government Attorney and the Canons of Professional Ethics*, 70 HARV.L.REV. 657 (1957); Note, 64 YALE L.J. 917 (1955).

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possible future violation of D.R. 4-101(B).<sup>6</sup>

The disciplinary rules of Canon 5 bring into professional regulation, and with some specificity, the ancient maxim that one cannot serve two masters.<sup>7</sup> The disciplinary rules of Canon 5 are concerned largely with the effect of dual representation upon the quality of the professional service rendered to a client. Therefore the rules generally require a lawyer to refuse employment or to withdraw from employment when his exercise of professional judgment on behalf of a client may be affected; see D.R. 5-105; E.C. 5-14; and E.C. 5-15. The rules also forbid a lawyer to switch sides even in situations where the exercise of the lawyer's professional judgment on behalf of a present client will not be affected.<sup>8</sup> To this extent, the disciplinary rules of Canon 5 regulate the employment a lawyer may undertake after concluding or terminating past employment, whether the past employment was as a private or as a public lawyer.

D.R. 9-101(B) appears under the maxim of Canon 2, "A Lawyer Should Avoid Even the Appearance of Professional Impropriety." It is obvious, however, that the "appearance of professional impropriety" is not a standard, test, or element embodied in D.R. 9-101(B).<sup>9</sup> D.R. 9-101(B) is

6 If this device of a procedural disqualification based upon the substantial relationship of the subject matter of the two employments were not used, the remedy would be either, first, an after-the-fact disciplinary action in which the issue is whether a particular confidence or secret was actually revealed or used improperly, or second, a procedural disqualification based upon the fact issue of whether confidences or secrets were actually revealed in the first employment that are so relevant that they are likely to be revealed or used during the second employment. The "substantially related" test is less burdensome to the client first represented and is less destructive of the confidential nature of the attorney-client relationship. See *Emle Industries, Inc. v. Patent*, 478 F.2d 562, 571 (2d Cir.1973), in which it is pointed out that an inquiry, on a procedural motion to disqualify, into actual confidences "would prove destructive of the weighty policy considerations that serve as the pillars of Canon 4 of the code" and that if the procedural disqualification were not used as a prophylactic measure, a lawyer might unconsciously or intentionally use a confidence or "out of an excess of good faith, might bend too far in the opposite direction, refraining from seizing a legitimate opportunity for fear that such a tactic might give rise to an appearance of impropriety." Cf. E.C. 5-14, C.P.R.

7 "No man can serve two masters: for either he will hate the one, and love the other: or else he will hold to the one, and despise the other. Ye cannot serve God and mammon." Matthew 6:24. See also Formal Opinions 33 (1931), 71 (1932), and 83 (1932). The latter quoted Hoffman's Eighth Resolution: "If I have ever had any connection with a cause, I will never permit myself (when that connection is for any reason severed) to be engaged on the side of my former antagonist."

8 The prohibition against switching sides where the exercise of the lawyer's professional judgment on behalf of a client will not be affected is somewhat obscure. The prohibition is found in D.R. 5-105(A) and (B), forbidding the acceptance or retention of employment involving the representation of "differing interests," which is defined as every interest "that will adversely affect either the judgment or the loyalty of a lawyer to a client..." Definitions (1). Generally, see *E.F. Hutton & Company v. Brown*, 305 F.Supp. 371 (S.D.Tex.1969).

9 But cf. *Silver Chrysler Plymouth, Inc. v. Chrysler Motors Corporation*, 518 F.2d 751 (2d Cir.1975); *General Motors Corporation v. City of New York*, 501 F.2d 639 (2d Cir.1974); *Motor Mart, Inc. v. Saab Motors, Inc.*, 359 F.Supp. 156 (S.D.N.Y.1973); *Hilo Metals Company, Ltd. v. Learner Company*, 258 F.Supp. 23 (D.Hawaii 1966); *United States v. Standard Oil Company*, 136 F.Supp. 345 (S.D.N.Y.1955); Kaufman, *The Former Government Attorney and the Canons of Professional Ethics*, 70 HARV.L.REV. 657 (1957). Judge Weinstein made an appropriate comment regarding "appearances of impropriety" in *Silver Chrysler Plymouth, Inc. v. Chrysler Motors Corporation*, 370 F.Supp. 581, 589; "Defendants seem to suggest that the complexities of the factual

located under Canon 9 because the "appearance of professional impropriety" is a policy consideration supporting the existence of the disciplinary rule. The appearance of evil is only one of the underlying considerations, however, and is probably not the most important reason for the creation and existence of the rule itself.

The policy considerations underlying D.R. 9-101(B) have been thought to be the following: the treachery of switching sides;<sup>10</sup> the safeguarding of confidential governmental information from future use against the government;<sup>11</sup> the need to discourage government lawyers from handling particular assignments in such a way as to encourage their own future employment in regard to those particular matters after leaving government service;<sup>12</sup> and the professional benefit derived from avoiding the appearance of evil.<sup>13</sup>

There are, however, weighty policy considerations in support of the view that a special disciplinary rule relating only to former government lawyers should not broadly limit the lawyer's employment after he leaves government service. Some of the underlying considerations favoring a construction of the rule in a manner not to restrict unduly the lawyer's future employment are the following: the ability of government to recruit young professionals and competent lawyers should not be interfered with by imposition of harsh restraints upon future practice nor should too great a

determination to be made by this court should be avoided by a decision couched in notions of possible appearance of impropriety. On the contrary, the importance of the underlying policy considerations call for careful analysis of the matters embraced by previous and present litigations. Vague or indefinite allegations do not suffice.... The danger of damage to public confidence in the legal profession would be great if we were to allow unfounded charges of impropriety to form the sole basis for an unjust disqualification.'

10 See formal Opinion 71 (1932); Kaplan, *Forbidden Retainers*, 31 N.Y.U.L.Rev. 914, 917 (1956); Association of the Bar of the City of New York, *CONFLICT OF INTEREST AND FEDERAL SERVICE* 45 (1960). Thus Canon 5 and D.R. 9-101(B) are based at least in part on the same considerations of ethics.

11 See *Allied Realty of Saint Paul v. Exchange National Bank of Chicago*, 283 F.Supp. 464 (D.Minn.1968), aff'd 408 F.2d 1099 (8th Cir.1969); Kaufman, *The Former Government Attorney and the Canons of Professional Ethics*, 70 HARV.L.REV. 657 (1957). Cf. McKay *An Administrative Code of Ethics: Principles and Implementation*, 47 A.B.A.J. 890 (1961). Thus Canon 4 and D.R. 9-101(B) are based at least in part on the same considerations of ethics. Speaking of former Canon 36, the forerunner of D.R. 9-101(B), Judge Kaufman said: "Canon 36 was designed to supplement the other two [canons regarding conflicts and confidences], not to replace them." *Id.* at 660.

12 "Interviews revealed a substantial body of opinion that government employees who anticipate leaving their agency some day are put under an inevitable pressure to impress favorably private concerns with which they officially deal." Ass'n of the Bar of the City of New York, *CONFLICT OF INTEREST AND FEDERAL SERVICE* 233 (1960). See also *Allied Realty of Saint Paul v. Exchange National Bank of Chicago*, 283 F.Supp. 464 (D.Minn.1968), aff'd 408 F.2d 1099 (8th Cir.1969); *Hilo Metals Company v. Learner Company*, 248 F.Supp. 23 (D.Hawaii 1966); Formal Opinion 37 (1931).

13 See *General Motors Corporation v. City of New York*, 501 F.2d 639 (2d Cir.1974); *Motor Mart v. Saab Motors, Inc.*, 359 F.Supp. 156 (S.D.N.Y.1973); *Hilo Metals Company, Ltd. v. Learner Company*, 258 F.Supp. 23 (D.Hawaii 1966); *United States v. Standard Oil Company*, 136 F.Supp. 345 (S.D.N.Y.1955); Kaufman, *The Former Government Attorney and the Canons of Professional Ethics*, 70 HARV.L.REV. 657 (1957).

sacrifice be demanded of the lawyers willing to enter government service;<sup>14</sup> the rule serves no worthwhile public interest if it becomes a mere tool enabling a litigant to improve his prospects by depriving his opponent of competent counsel;<sup>15</sup> and the rule should not be permitted to interfere needlessly with the right of litigants to obtain competent counsel of their own choosing, particularly in specialized areas requiring special technical training and experience.<sup>16</sup>

D.R. 9-101(B) itself, while presumably drafted in the light of the above policy considerations, does not embody any of them as a test. The issue of fact to be determined in a disciplinary action is whether the lawyer has accepted "private employment" in a "matter" in which he had "substantial responsibility" while he was a "public employee." Interpretation apparently is needed in regard to each of the quoted words or phrases, and each should be interpreted so as to be consistent, insofar as possible, with the underlying policy considerations discussed above.<sup>17</sup>

<sup>14</sup> "It is not sufficiently recognized that post employment restrictions can be overly stringent, hurting the government more than they help it. This is most easily seen in the deterrent effect of such regulation upon the government's recruitment of manpower; no man will accept government appointment—especially temporary government appointment—if he must abandon the use of his professional skills for several years after leaving government service. The adverse effect of such restrictions on the government's efficient use of skills and information is probably even greater. The knowledge of an experienced former official may be made to operate against the government, but it may also contribute to the ends of the government." Ass'n of the Bar of the City of New York, *CONFLICT OF INTEREST AND FEDERAL SERVICE* 224 (1960). It was also said that the "most damaging result of the present system is its deterrent effect on the recruitment and retention of executive and some kinds of consultative talent." *Id.* at 181.

See also *Silver Chrysler Plymouth, Inc. v. Chrysler Motors Corporation*, 370 F.Supp. 581 (E.D.N.Y.1973) ("A concern both for the future of young professionals and for the freedom of choice of the litigants in specialized areas of law requires care not to disqualify needlessly"), *aff'd* 518 F.2d 751 (2d Cir.1975); *United States v. Standard Oil Company*, 136 F.Supp. 345 (S.D.N.Y.1955) ("If service with the government will tend to sterilize an attorney in too large an area of law for too long a time, or will prevent him from engaging in practice of the very specialty for which the government sought his service—and if that sterilization will spread to the firm with which he becomes associated—the sacrifices of entering government service will be too great for most men to make. As for those men willing to make these sacrifices, not only will they and their firms suffer a restricted practice thereafter, but clients will find it difficult to obtain counsel, particularly in those specialties and suits dealing with the government"); Kaufman, *The Former Government Attorney and the Canons of Professional Ethics*, 70 HARV.L.REV. 657 (1957) ("The restrictions placed upon [the government attorney's] future career are so unclear and may be so sterilizing that unless he is completely unwary he will hesitate before accepting government employment"); Casenote, 68 HARV.L.REV. 1084 (1955) (suggesting that a lawyer should not be disqualified in a case involving his specialty unless a hearing, such as an in camera hearing, results in a finding that the information obtained from the client is not available elsewhere by reasonable research); Kaplan, *Forbidden Retainers*, 31 N.Y.U.L.REV. 914 (1956); Casenote, 64 YALE L.J. 917 (1955). ("Furthermore, the attorney's right to develop a special skill free from unwarranted limitations as to employment must be recognized").

<sup>15</sup> Cf. *Emle Industries, Inc. v. Patentex, Inc.*, 478 F.2d 562, 574 (2d Cir.1973).

<sup>16</sup> *Emle Industries, Inc. v. Patentex, Inc.*, 478 F.2d 562, 565 (2d Cir.1973); *Laskey Bros. of West Virginia, Inc. v. Warner Bros. Pictures*, 224 F.2d 824 (2d Cir.1955); *Silver Chrysler Plymouth, Inc. v. Chrysler Motors Corporation*, 370 F.Supp. 581 (E.D.N.Y.1973), *aff'd* 518 F.2d 751 (2d Cir.1975); Note, 64 YALE L.J. 917 (1955).

<sup>17</sup> Perhaps the least helpful of the seven policy considerations mentioned above is that of avoiding the appearance of impropriety. This consideration appears in the heading of Canon 9 and is developed more fully in E.C. 9-2 and 9-3, thereby giving guidance to lawyers when making decisions of conscience in regard to their professional responsibility. Thus, "avoiding the

As used in D.R. 9-101(B), "private employment" refers to employment as a private practitioner. If one underlying consideration is to avoid the situation where government lawyers may be tempted to handle assignments so as to encourage their own future employment in regard to those matters, the danger is that a lawyer may attempt to derive undue financial benefit from fees in connection with subsequent employment, and not that he may change from one salaried government position to another. The balancing consideration supporting our construction is that government agencies should not be unduly hampered in recruiting lawyers presently employed by other government bodies.<sup>18</sup>

Although a precise definition of "matter" as used in the disciplinary rule is difficult to formulate, the term seems to contemplate a discrete and isolatable transaction or set of transactions between identifiable parties.<sup>19</sup> Perhaps the scope of the term "matter" may be indicated by examples. The same lawsuit or litigation is the same matter. The same issue of fact involving the same parties and the same situation or conduct is the same matter.<sup>20</sup> By contrast, work as a government employee in drafting, enforcing, or interpreting government or agency procedures, regulations, or laws, or in briefing abstract principles of law, does not disqualify the lawyer under D.R. 9-101(B) from subsequent private employment involving the same regulations, procedures, or points of law; the same "matter" is not involved because there is lacking the discrete, identi-

appearance of evil" is relevant to our task of interpreting D.R. 9-101(B), even though it is not relevant when a grievance committee or court is determining whether a violation of the standard of D.R. 9-101(B) has in fact occurred. It is fortunate that "avoiding even the appearance of professional impropriety" was not made an element of the disciplinary rule, for it is too vague a phrase to be useful (see *McKay, An Administrative Code of Ethics: Principles and Implementation*, 47 A.B.A.J. 890, 894 (1961)) and lawyers will differ as to what constitutes the appearance of evil (see *Silver Chrysler Plymouth, Inc. v. Chrysler Motors Corporation*, 370 F.Supp. 581 (E.D.N.Y.1973), aff'd 518 F.2d 51 (2d Cir.1975)). For the same reasons, the concept is of limited assistance as an underlying policy consideration. If "appearance of professional impropriety" had been included as an element in the disciplinary rule, it is likely that the determination of whether particular conduct violated the rule would have degenerated from the determination of the fact issues specified by the rule into a determination on an instinctive, *ad hoc* or even *ad hominem* basis; cf. *McKay, supra* at 893.

18 This position is not in conflict with *General Motors Corporation v. City of New York*, 501 F.2d 639 (2d Cir.1974). In that case it appears that the lawyer for the municipality was privately retained, and the appellate court held that this employment constituted "private employment" within the meaning of D.R. 9-101(B).

19 See Manning, *FEDERAL CONFLICT OF INTEREST LAW* 204 (1964).

20 See *Emle Industries, Inc. v. Patentex, Inc.*, 478 F.2d 562 (2d Cir.1973), where an issue of fact regarding Burlington's control of Patentex was an issue of fact in the earlier litigation as well as in the instant litigation. Similarly, in *General Motors Corporation v. City of New York*, 501 F.2d 639 (2d Cir.1974), it appeared that many, if not all, of the issues of fact in the two cases involved the same conduct of General Motors that allegedly resulted in monopolizing trade in the manufacture and sale of city buses, and it was held that the same "matter" was involved within the meaning of D.R. 9-101(B). In that opinion it was said, at 651: "The district court set forth the proper test (60 F.R.D. at 402): In determining whether this case involves the same matter as the 1956 *Bus* case, the most important consideration is not whether the two actions rely for their foundation upon the same section of law, but whether the facts necessary to support the two claims are sufficiently similar."

fiable transactions or conduct involving a particular situation and specific parties.<sup>21</sup>

The element of D.R. 9-101(B) most difficult to interpret in light of the underlying considerations, pro and con, is that of "substantial responsibility." We turn first to the language of the predecessor Canon 36—language found wanting.

Canon 36, former A.B.A. Canons of Professional Ethics, stated that the former government lawyer should not accept employment in connection with a matter "he has investigated or passed upon" while in government employ. But "passed upon" proved to be too broadly encompassing; for example, it was held under Canon 36 that a lawyer could not accept employment in connection with a land title which he had passed upon in a perfunctory manner, the title having been before him for consideration only because title reports were made in his name as assistant chief title examiner or in the name of the chief title examiner.<sup>22</sup> And if disqualifying a lawyer because of a mere "rubber stamp" approval of the work of another was not bad enough, this committee was confronted with the necessity of either disregarding that language of Canon 36 or holding that a lawyer who was a former governor was disqualified from litigation involving any legislation he had passed upon—perhaps by vetoing, signing, or permitting it to become law without signature—as governor.<sup>23</sup> Perhaps an extreme in the

21 "Many a lawyer who has served with the government has an advantage when he enters private practice because he has acquired a working knowledge of the department in which he was employed, has learned the procedures, the governing substantive and statutory law and is to a greater or lesser degree an expert in the field in which he was engaged. Certainly this is perfectly proper and ethical. Were it not so, it would be a distinct deterrent to lawyers ever to accept employment with the government. This is distinguishable, however, from a situation where, in addition, a former government lawyer is employed and is expected to bring with him and into the proceedings a personal knowledge of a particular matter," the latter being thought to be within the proscription of former Canon 36; *Allied Realty of Saint Paul v. Exchange National Bank of Chicago*, 283 F.Supp. 464 (D. Minn.1968), aff'd 408 F.2d 1099 (8th Cir.1969). See also B. Manning, *FEDERAL CONFLICT OF INTEREST LAW 201* (1964).

A contrary interpretation would unduly interfere with the opportunity of a former lawyer to use his expert technical legal skills, and the prospect of such unnecessary limitations on future practice probably would unreasonably hinder the recruiting efforts of various local, state, and federal governmental agencies and bodies.

Our interpretation leaves protection of governmental confidences or information largely to the disciplinary rules of Canon 4, which apply to governmental lawyers as well as privately employed lawyers; see fn. 4, *supra*. This result is consistent with the trend toward "government in the sunshine" and with such statutes as the Freedom of Information Act; cf. *National Labor Relations Board v. Sears, Roebuck & Company*, 421 U.S. 132 (1975), which discusses the application of that act and its exceptions to the work of government lawyers and generally protects information held by government lawyers when the information falls within the classifications of attorney work product or executive privilege.

22 Formal Opinion 37 (1931).

23 The committee concluded that the governor was not disqualified. Formal Opinion 26 (1930). In the opinion it was observed that the literal language of former Canon 36 would prevent governors and legislators from ever again dealing with any subject studied while in office. "They illustrate that the canon was not intended to have the effect that its words too literally construed imply."

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1-4.320	Engaging in any outside employment or the private practice of law by a U.S. Attorney or Assistant U.S. Attorney.	Deputy Attorney General	See 28 C.F.R. § 45.735-9; See USAM 3-2.735(d)(e).
1-4.330	Teaching engagements by U.S. Attorneys and Assistant U.S. Attorneys only when the use of non-public information is contemplated.	Deputy Attorney General	Written request required; 28 C.F.R. § 45.735-12; See 3-2.734(B).
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1-5.300	Issuing written or oral reprimand, suspension, reduction in grade or pay, and furloughs for 30 days or less for an Assistant U.S. Attorney.	Associate Attorney General	Authority to reprimand AUSA has been redelegated to Director, EOUSA See 3-2.751
1-5.400	Filing a motion to recuse or disqualify a judge in any proceeding in which impartiality might reasonably be questioned.	Assistant Attorney General, Appropriate Division	28 U.S.C. § 445; 47 Fed.Reg. 22094 (5/1/82); 28 C.F.R. § 50.19. Written request and approval required. The views and recommendations of client agency must be submitted with the request.
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## Title 1

## PRIOR APPROVALS

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1-13.430; .440	To disclose information in violation of 28 C.F.R. § 16.26(b) which sets out those interests that the Department of Justice must protect.	Deputy Attorney General	28 C.F.R. § 16.26(b).
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3-2.250	To hire non-attorney support personnel GS-15 and below, (except law students.)	Director EOUSA, delegated to Asst. Dir. Personnel	Written Approval Authority may be redelegated.
3-2.300	To detail Schedule C secretaries.	JMD through EOUSA, Personnel Staff EOUSA	Written request including justification.
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3-2.330	To pay travel expenses for pre-employment interviews.	Director, EOUSA	Written request.
3-2.334	To establish a sabbatical program.	Director, EOUSA	
3-2.335 (K)	Relocation expenses for new employees and transferring employees.	Director, EOUSA	Written request and response.
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3-2.732	To access classified information (i.e. security clearance); and to access Sensitive Compartmented Information (SCI). (Reserved section in USAM)	Securities Program Staff, JMD	
3-2.734	For an AUSA to lecture or teach when the use of non-public information is contemplated.	Deputy Attorney General	28 C.F.R. § 45.735-12; See USAM 1-4.330.
3-2.735 (C)	For a U.S. Attorney or AUSA to participate in outside cases, engage in outside employment, or the private practice of law.	Deputy Attorney General	28 C.F.R. §§ 45.735-1(c)(3), 45.735-6 and (d), or 45.735-9(e); See also 18 U.S.C. § 205; USAM 1-4.310.
3-2.751	To issue written or oral reprimand, suspension, reduction in grade or pay, and furloughs for 30 days or	Associate Attorney General	Authority reprimand has been redelegated

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USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
	less.		to the Director, EOUSA.
3-2.752	To remove an Assistant U.S. Attorney.	Associate Attorney General	28 C.F.R. § 0.19(a)(1); Recommendation must be submitted through EOUSA. See USAM 1-3.100.
3-3.220	For a witness to testify in a foreign extradition proceeding who is not a U.S. government employee.	Assistant Attorney General, JMD	
3-3.231	To incur expenses to hire foreign counsel.	Associate Director Admin. Services, EOUSA	
3-3.232	To obtain testimony of foreign national residing abroad.	Office of Int'l Affairs, Crim. Div. or Off. of Foreign Affairs Civil Div.	Written request required.
3-3.520	Authorization to employ expert witness.	Special Authorization Unit, JMD	See USAM 1-14.750.
3-3.580	Administrative expenses in foreclosure proceeding: foreign travel; work study agreements; equipment purchases and rentals; transportation of property; and space acquisition, release and alteration.	EOUSA, Space Mgmt. and Procurement	
3-3.630	Revocation of an existing or nomination of a new certifying officer.	Director, EOUSA	Written request, and response.
3-3.710	Relocation expenses, foreign travel; or actual subsistence in a non-designated high-rate area.	Director, EOUSA	Written request.
3-3.720	Payment of travel expenses for state and local officials in cases when there is no money in the state or local budget to pay for the travel.	Deputy Director EOUSA	
3-3.730	All foreign travel for employees occupying Executive Schedule positions.	Deputy Attorney General	Written request and response.
3-3.740	Requests for first-class travel.	Director, EOUSA	Written request and response.
3-3.800	Request for relocation expenses.	Director, EOUSA	Written request.
3-3.900	Request to hold asset forfeiture trng.	EOUSA	In writing.
3-3.1000	Departure from dist. office conference guidelines.	Director, EOUSA	In writing.
3-4.120	To request paid advertisements (except for legal advertisements) to attract job applicants.	Assistant Attorney General, JMD	Written request and response.
3-4.221	To request printing.	Facilities Mgmt. and Support Services, EOUSA	DOJ-2.
3-4.223	To request printing of official court instruments.	Pub. Mgmt. Unit, JMD and EOUSA	If the need is recurring, a DOJ-2 should be submitted to

USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
3-4.253	To rent copier equipment.	JMD, Office Automation Staff	EOUSA requesting contractor. In emergency SF-44 may be used, after acquiring authorization from FMIS (not to exceed 90 days).
3-4.352	To use forfeited property for official use.	Facilities Mgmt., EOUSA	
3-4.390	To ship goods pertaining to specific litigation, or records to the Federal Archives or Records Center in excess of \$100.	Property Mgmt., Serv., JMD	Form OBD 136T.
3-5.141; .143	To acquire new space, release space, or relocate.	Asst. Director Facilities Mgmt., EOUSA, and GSA	Written request and approval. GSA makes final assignment memo.
3-5.210	Request for parking space.	Facilities Mgmt., EOUSA and GSA	GSA may delegate authority to EOUSA.
3-7.320; .410	To request automated litigating support systems; and word processing equipment.	Associate Director, Information Mgmt.	
3-8.332	Training sponsored or coordinated by the EOUSA including the AGAI and LEI;	Director, Office of Legal Education, EOUSA	Attorney and Non-attorney.
	Training outside of the district or contiguous district;		
	Office sponsored training which is subject to procurement procedures due to the cost of speakers and/or facilities; and		
	Training for which the total cost, including travel is greater than \$1,500.		
3-8.522	To reduce 80 hour supervisory training requirement based on prior skills and knowledge; and proposed Individual first level Supervisory Training Record.	Director, Office of Legal Education	

TITLE 4: CIVIL DIVISION

USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
4-1.321	Compromise or close any delegated case or claim involving amounts up to \$750,000, except as specified in the delegation or in Section 1(c) of Civil Division Directive No. 145-81.	Civil Division	See Section 4(b) Civil Division Directive No. 145-81; 28 C.F.R., Chapter I, Part O, Appendix to Subpart Y. See USAM 4-5.120.
4-1.325	Execute foreign evidence requests from foreign tribunals.	Office of Foreign Litigation, Civil Division	
4-3.120	Close, other than by compromise or by entry of judgment, any claim or case on behalf of the United States where the gross amount involved exceeds \$200,000; or accept and reject any offers in compromise of any such claim or case in which the difference between the gross amount of the original claim and the proposed settlement exceeds \$200,000 or 10% of the original claim, whichever is greater; or settlement of the claim would adversely impact other claims totaling more than \$200,000.	Civil Division	Civil Division Directive No. 145-81; 28 C.F.R., Chapter I, Part O, Appendix to Subpart Y.
4-3.120	Accept or reject any offers in compromise of any claim or case against the United States where the principal amount of the proposed settlement exceeds \$200,000.	Civil Division	
4-3.140	In cases where the authority of the Attorney General has been redelegated to the U.S. Attorney, and the client agency objects to the compromise, dismissal or closing, then the case may not be compromised, dismissed, or closed without the consent of the Civil Division.	Assistant Attorney General, Civil Division	See Section 1(d)(3), Civil Division Directive No. 145-81; 28 C.F.R., Chapter I, Part O, Appendix to Subpart Y.
4-4.430	In assignment of any interest of the government in any money judgment, lien, or chose in action involved in any case or matter within the general jurisdiction of the Civil Division.	Civil Division	
4-5.155	No compromise should be entered into with the mortgagor prior to liquidation of the security property in HUD multi-family foreclosures.	Civil Division	
4-5.200	The undertaking of representation of government employees in <i>Bivens</i> type actions.	Torts Section, Civil Division	
4-6.334	Where a government employee is served with a subpoena <i>duces tecum</i> in litigation and the interested agency wishes to resist production, the U.S. Attorney should never formally resist production by claiming "confidential privilege."	Federal Program Branch, Civil Division	In emergency, USA should contact Federal Program Branch. The Agency employee seeking to resist pro-

Title 4

PRIOR APPROVALS

USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
			duction must have the General Counsel of the agency request authorization from the Civil Div.

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TITLE 5: LAND AND NATURAL RESOURCES DIVISION

USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
5-1.302	Filing complaints, stipulations or agreements for entry or judgment or dismissals in all civil cases where the United States is a plaintiff, other than direct referral cases and specific cases or classes of cases the Assistant Attorney General exempts from this requirement, arising from matters in the litigating sections.	Assistant Attorney General, Land and Natural Resources Division	Written approval required.
5-1.321	Indictment of certain cases involving laws within the jurisdiction of the Lands Division.	AAG Lands, Land and Natural Resources Division	Written approval required. In emergency telephone request is acceptable. See USAM 5-1.302.
5-5.112	Entering into a stipulation concluding the substantive rights of the United States or consent to entry of judgment is required in all nondirect referral matters and in the following direct referral matters: Wildlife import, export, Airborne Hunting Act, Bald and Golden Eagle Protection Act, and Wild Horses and Burros Act.	Land and Natural Resources Division	
5-5.125	Filing a separate action in suits against federal agencies, or federal employees acting in their official capacity, if a basis for a counterclaim exists.	Assistant Attorney General, Land and Natural Resources Division	
5-5.210	Certain claims or cases within the area of responsibility of the Lands Division may not be compromised, closed or dismissed.	Assistant Attorney General or Section Chief, Land and Natural Resources Division	See USAM 5-5.230.
5-5.230	Accept or reject offers in compromise in land and condemnation cases in which the amount of the proposed settlement exceeds \$200,000.	Assistant Attorney General, Land and Natural Resources Division	Land and Natural Resources Directive No. 776; 41 Fed. Reg., 53660.
5-6.112	Initiate an action under Section 10 or Section 13 of the River and Harbors Act. Exceptions: 1) All search warrants except under CERCLA; and, 2) TROs if a public health emergency.	Assistant Attorney General, Land and Natural Resources Division	
5-6.321	Initiate certain cases under the supervision of the Environmental Defense Section; and, initiate civil or criminal enforcement actions involving the dredging or filling or alteration of the navigable waters of the United States or their tributaries.	Assistant Attorney General, Land and Natural Resources Division	33 U.S.C. §§ 1311, 1344. See USAM 5-6.310.
5-7.321	Initiate certain cases under the supervision of the General Litigation Section.	See Above.	Exceptions, see USAM 5-1.310; Land and Nat. Re-

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PRIOR APPROVALS

USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
			sources Dir. No. 7-76; 8-80 and 9-81.
5-7.610	Initiate, settle or compromise any claim or case under the supervision of the General Litigation Section, except direct referral cases.	Attorney General	Written request required. Land and Nat. Resources Dir. No. 7-76; See USAM 5-1.310; 5-7.630.
5-8.620	Settle or dismiss Land and Natural Resources Division cases on appeal.	Assistant Attorney General, Deputy Asst. Attorney General, Land and Natural Resources Div., or appropriate division trial sec., Lands Division	
5-9.321	Initiate, settle or compromise certain cases under the supervision of the Policy, Legislation and Special Litigation Section.	Assistant Attorney General, Land and Natural Resources Division	Written approval required. See USAM 5-5.230.
5-10.310	Initiate actions against foreign vessels and foreign fishermen under the Magnuson Fishery Conservation and Management Act.	Wildlife and Marine Resources Section, Land and Natural Resources Division	See 16 U.S.C. § 1801.
5-10.321	Initiate, settle or compromise certain cases under the supervision of the Wildlife and Marine Resources Section.	Land and Natural Resources Division	Exceptions, See USAM 5-10.310 See also USAM 5-5.230.
5-12.111	Initiate or terminate certain civil cases brought on behalf of the Environmental Protection Agency and other federal client agencies.	Assistant Attorney General, Land and Natural Resources Division	See USAM 5-12.102.
5-12.121	Amend a complaint which has been approved and signed by the Assistant Attorney General.	Chief, Environmental Enforcement Section, Land and Natural Resources Division	
5-14.310	Initiate cases under the supervision of the Indian Resources Section, except cases referred by a direct request from a field officer of an agency regarding: 1) Action to recover possession of property from tenants, trespassers and others and actions to enjoin trespassers on Indian land if the damages do not exceed \$200,000; 2) Actions to collect damages from persons who damage, destroy, or remove any natural resource on Indian land; 3) Actions to enjoin and recover damages from persons who damage, destroy, or remove any natural resource on Indian land; 4) Actions to enjoin and recover damages from persons who damage, destroy, or remove any natural resource on Indian land.	Assistant Attorney General, Land and Natural Resources Division	Title 25 U.S.C. Written approval required. See USAM 5-14.321 Land and Natural Resources Dir. No. 7-76.



USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
	from Indian lands providing such damages do not exceed \$200,000.		
5-15.321	Settlements of land acquisition cases in excess of \$200,000 or when: 1) The compromise of the claim will control or adversely influence the disposition of claims totaling in excess of \$200,000; and, 2) The re-vestment under 40 U.S.C. § 285f of any land or improvements or any interests in land is involved.	Land and Natural Resources Division	
5-15.526	Application for a citation in contempt under Rule 70, F.R.Civ.P. in certain environmental cases.	Land and Natural Resources Division	
5-15.543	Altering pleadings to modify or change the estate being condemned or description of the property.	Land and Natural Resources Division	
5-15.544	The exclusion of property acquired by declaration of taking, or for entering into stipulations for the exclusion of property of high value.	Land and Natural Resources Division	See USAM 5-15.544, Sub-section A.
5-15.551	Waiver of jury trials in cases in the major-tract program.	Land and Natural Resources Division	
5-15.610; .640	Unless the U.S. Attorney is given settlement authority, no case under the jurisdiction of the Land Acquisition Section may be settled or dismissed.	Attorney General or as delegated	Land and Natural Resources Directive No. 3-83; See USAM 5-15.620; .630.
5-15.631; .640	Settlement of land acquisition cases otherwise authorized when: 1) Settlement exceeds \$200,000 or the compromise of the claim will control or adversely influence the disposition of another claim totaling more than \$200,000; and 2) The agencies involved oppose the proposed closing or dismissal of the case or acceptance or rejection of the offer in compromise.	Assistant Attorney General, Land and Natural Resources Division	Land and Natural Resources Directive No. 3-83.
5-15.650	Dismissal of condemnation cases as to any of the land included in the instructions to condemn, or to change the interest or estate to be acquired.	Land and Natural Resources Division	

PRIOR APPROVALS

TITLE 6: TAX DIVISION

USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
6-4.120	Grand Jury investigations limited to tax violations.	Assistant Chief, Criminal Section or higher official, Tax Division	28 C.F.R. § 0.70 IRC § 6103(h); Tax Division Directive No. 53 (3/1/86).
6-4.123	Expansion of Title 26 grand jury investigations to include targets not authorized by the Tax Division.	See above	Written request and written approval required.
6-4.127; .211(1); .213; .218; .242	Prosecutions of Title 26 cases resulting from grand jury investigations; charging mail fraud counts, either independently or as predicate acts to a RICO charge: 1) when the only mailing charged is a tax return or other internal revenue form as document; or 2) when the mailing charged is a mailing used to promote or facilitate a scheme which is essentially only a tax fraud scheme.	See above	Written request and written approval required. See USAM 9-105.110; 9-110.114.
6-4.245	The declination of tax prosecutions.	Assistant Attorney General, Tax Division	Written request and written approval required. See USAM 6-4.245, Subpart A; Tax Directive No. 53 (3/1/86).
6-4.245	Presenting the same Title 26 matter to another grand jury or the same grand jury after a no bill.	Assistant Attorney General, Tax Division	Written request and written approval required. See USAM 6-4.245, Subpart B.
6-4.310	Plea to a lesser charge than Tax Division's designated major count.	Chief, Criminal Sec. or higher official Tax Division	Written request and written approval required.
6-4.320; .330	Taking of a <i>nolo contendere</i> or <i>Alford</i> Plea in criminal tax prosecution.	Assistant Attorney General, Tax Division	Written request and written approval required. See USAM 9-16.010.
6-5.110	Initiate a suit to collect taxes.	Chief, Civil Trial Sec., Tax Division	
6-5.111	Service of a summons and complaint outside of the United States.	Chief, Civil Trial Sec., Tax Division	Written approval required.
6-5.112	Writs of <i>habeas corpus</i> .	Chief, Civil Trial Sec., Tax Division	Written approval required.
6-5.120	Intervention in a civil action to assert a federal tax liability or priority which is the subject of the litigation.	Chief, Civil Trial Sec., Tax Division	
6-5.121	Intervention in a civil action to assert a federal tax liability or priority which is the subject of the litigation.	Chief, Civil Trial Sec., Tax Division	

USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
6-5.323	Removal of an action under 28 U.S.C. § 2410 from a state court to a federal court.	Chief, Civil Trial Sec., Tax Division	
6-6.300; .411; .711	Agreements to compromise, sell property, stipulate for judgment in favor of the taxpayer, or make any other administrative disposition of, any case under the cognizance of the Tax Division except to the extent authority has been delegated to the U.S. Attorneys.	Tax Division	Written approval required.

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TITLE 7: ANTITRUST DIVISION

<u>USAM SECTION</u>	<u>TYPE &amp; SCOPE OF APPROVAL</u>	<u>WHO MUST APPROVE</u>	<u>COMMENTS</u>
7-5.100; .210	Inquiry into possible antitrust violations.	Director of Operations, Antitrust Division	Written request and written approval required.
7-5.310	Grand jury investigation of possible antitrust violations.	Assistant Attorney General, Antitrust Division	Written request and written approval required.
7-5.400; .410	Initiate civil or criminal antitrust case.	Assistant Attorney General, Antitrust Division	Written request and written approval required.
7-5.610; .611; 612	Disposition of criminal actions, including plea agreements and sentencing recommendations.	Assistant Attorney General, Antitrust Division	

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TITLE 8: CIVIL RIGHTS DIVISION

USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
8-2.120	Institution of judicial proceedings in civil rights cases.	Assistant Attorney General, Civil Rights Division	Written approval required. Some Civil Rights statutes require that the complaint be signed by the Attorney General.
8-2.180; .214	Once the U.S. Attorney determines litigation is warranted to civilly enforce the following civil rights statutes. (1) Section 203 of the Voting Rights Act. (2) Title II of the Civil Rights Act of 1964 (Public Accommodations). (3) Title III of the Civil Rights Act of 1964 (Public Facilities). (4) Section 706 of Title VII of the Civil Rights Act of 1964 (Equal Employment Opportunities). (5) Title VIII of the Civil Rights Act of 1968 (Fair Housing Act).	Assistant Attorney General, Civil Rights Division	Once USA determines litigation is warranted, justification and proposed pleadings are required. The Assistant Attorney General, Civil Rights Division shall retain final authority to determine what cases shall be filed, compromised, or settled.
8-2.261	Investigation of complaints of widespread deprivation in conditions of confinement.	Assistant Attorney General, Civil Rights Division	
8-2.278	Use of official observers at elections.	Assistant Attorney General, Civil Rights Division	
8-2.282	Before filing Section 203 suits (minority language), a memorandum justifying suit and a copy of proposed complaint is required.	Assistant Attorney General, Civil Rights Division	
8-3.110	Discontinuance of an investigation of a criminal civil rights violation, in the absence of state or local prosecution.	Criminal Section, Civil Rights Division	
8-3.130	Institution of felony prosecutions under 18 U.S.C. § 242, all prosecutions under 18 U.S.C. §§ 241 and 245, and prosecutions under 18 U.S.C. § 1001 in which the alleged false official statement relates to a civil rights matter.	Assistant Attorney General, Civil Rights Division	Except 18 U.S.C. § 245, which requires written certification by the Attorney General or Deputy Attorney General that the prosecution is in the public interest and is necessary to secure substantial justice.
8-3.195	Disclosure of information pertaining to investigations supervised or reviewed by the Civil Rights Division.	Assistant Attorney General, Civil Rights Division or Deputy	28 C.F.R. § 16.26.

USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
		Assistant Attor- ney General, Civil Rights Di- vision	

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TITLE 9: CRIMINAL

USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
9-2.022	Utilize pre-trial diversion if the offense is one listed in USAM 9-22.100.	Criminal Division	See USAM 9-22.100.
9-2.111	Must report facts to the Attorney General for direction before declining prosecution of a violation under Title 11, Chapter 9, or laws relating to insolvent debtors.	Attorney General	Written request required.
9-2.111	Declinations for prosecution for national security reasons.	Assistant Attorney General, Criminal Division; Deputy Attorney General or Attorney General	Initial consultation with Internal Security Section, Criminal Division.
9-2.111	Decline to prosecute violations of 150 U.S.C.App. 462(a) involving failure to register with the Selective Service System.	General Litigation, Legal Advice Section, Criminal Division	
9-2.112	Prosecution of offenses under U.S.C. § 245, Federally Protected Activities.	Attorney General or Deputy Attorney General	Written approval required.
9-2.132	Prosecution of the following offenses under the supervision of the Internal Security Section.	Assistant Attorney General, Criminal Division or higher authority	28 C.F.R. §§ 0.55; 0.61; 10.1.
	1) 2 U.S.C. § 192, Contempts of Congress Related to National Security		See U.S.C. 18 § 799; See USAM 9-9.550.
	2) 2 U.S.C. § 261 <i>et seq.</i> , Federal Regulation of Lobbying Act		See USAM 9-90.730.
	3) 8 U.S.C. § 1185(b) and 18 U.S.C. §§ 1542-1544, Travel Controls of Citizens		See USAM 9-90.327.
	4) 18 U.S.C. § 219 <i>et seq.</i> , Officers and Employees of the U.S. Acting as Foreign Agents; and Conflicts of Interest		See USAM 9-90.712; .720; 22 U.S.C. §§ 611 to 621.
	5) 18 U.S.C. § 791 <i>et seq.</i> , Espionage; Unauthorized Disclosure of Classified Information		See USAM 9-90.310; 18 U.S.C. § 441(e).
	6) 18 U.S.C. § 952 <i>et seq.</i> , Neutrality Laws		See USAM 9-90.326.
	7) 18 U.S.C. § 1001, False Statements concerning membership in organizations advocating violent overthrow of government		See USAM 9-90.560.
	8) 18 U.S.C. § 1030(a)(1), Computer Espionage	AAG, Criminal Division or Higher Authority	See USAM 9-90.322.
	9) 18 U.S.C. § 1071 <i>et seq.</i> , Harboring		See USAM 9-70.000.

USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
	10) 18 U.S.C. § 1073, Flight to Avoid Prosecution or Giving Testimony		See USAM 9-69.460.
	11) 18 U.S.C. § 1501 <i>et seq.</i> , Obstruction of Justice		See USAM 9-69.000.
	12) 18 U.S.C. § 1542 <i>et seq.</i> , Passport Violations Related to National Security		See USAM 9-90.327; 18 U.S.C. § 1542 <i>et seq.</i> , 8 U.S.C. § 1185(b)
	13) 18 U.S.C. § 2151 <i>et seq.</i> , Sabotage		See USAM 9-90.510; 18 U.S.C. § 1362.
	14) 18 U.S.C. § 2381 <i>et seq.</i> , Treason, Sedition and Subversive Activities		See USAM 9-90.321, 9-90.530; 18 U.S.C. § 1362.
	15) 18 U.S.C. § 2383, Inciting, Assisting or Engaging in Rebellion or Insurrection		See USAM 9-90.520; .600.
	16) 18 U.S.C. § 2385, Smith Act		See USAM 9-90.540.
	17) 18 U.S.C. § 2386, Voorhis Act		See USAM 9-90.740.
	18) 18 U.S.C. § 3150, Jumping Bail		See USAM 9-90.800.
	19) 22 U.S.C. § 611 <i>et seq.</i> , Foreign Agents Registration Act		See USAM 9-90.710; 22 U.S.C. § 621.
	20) 42 U.S.C. § 2273 <i>et seq.</i> , Atomic Energy Act		See USAM 9-90.420.
	21) 50 U.S.C. § 783 <i>et seq.</i> , Communication of Classified Information by Government Officer or Employee		See USAM 9-90.323.
	22) 50 U.S.C. § 751-757, Registration of persons who have knowledge and received training in espionage		See USAM 9-90.750.
	23) 50 U.S.C. § 421, Intelligence Identities Protection Act		See USAM 9-90.324.
	24) 50 U.S.C. § 1701 <i>et seq.</i> , International Emergency Economic Powers Act		See USAM 9-90.640.
	25) 50 U.S.C. § 2401 <i>et seq.</i> , Violations of the Export Administration Act, Arms Export Control Act, Trading with the Enemy Act, and International Economic Powers Act		See USAM 9-90.610.
	26) 50 U.S.C.App. § 5(b), Trading with the Enemy Act		See USAM 9-90.630.
9-2.134	Settlement in asset forfeiture proceedings where the difference between the offer in compromise and the value of the property exceeds \$750,000.	Deputy Attorney General	28 C.F.R. § 0.161; Requests should be processed through the As-



USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
			set Forfeiture Office.
9-2.135	Investigation or prosecution of violations of the Foreign Corrupt Practices Act.	Criminal Division	See USAM 9-47.120; 15 U.S.C. §§ 7(m)(2), (3); 15 U.S.C. § 78dd-1; 15 U.S.C. § 78dd-2.
9-2.136	Initiate a criminal investigation, commence grand jury proceedings, file an information or complaint, or seek the return of an indictment in matters involving overseas terrorism.	Assistant Attorney General, Criminal Division	
9-2.142	Continue and/or initiate a federal prosecution after a state prosecution for the same act against the same defendant, and to initiate a successive federal prosecution based on the same transaction.	Assistant Attorney General, Appropriate Division	Written request required. See USAM 9-63.512.
9-2.143	Proceeding against a juvenile as an adult.	General Litigation and Legal Advice Section, Criminal Division	See USAM 9-2.134; 28 C.F.R. § 0.57.
9-2.145	Dismiss an indictment, information or complaint involving any act of air piracy, contempt of Congress, threat against the President, or failure to register for the Selective Service.	Criminal Division	49 U.S.C. § 1472(i). In exigent situations approval may be obtained verbally.
9-2.147	Agreement or decision involving extradition and deportation to or from foreign countries.	Criminal Division	See USAM 9-16.020; 9-73.510.
9-2.148	Death penalty.	Attorney General	Request is processed through Criminal Division. See USAM 9-2.151; 9-10.000.
9-2.151	Attempting to do any act in Switzerland, even the making of a telephone call to that country, related to any present or possible future criminal prosecution.	Office of Int'l. Affairs, Criminal Division	See USAM 9-13.500.
9-2.151	Issuing any subpoena to obtain records located in a foreign country, and before seeking the enforcement of any such subpoena.	Office of Int'l. Affairs, Criminal Division	See USAM 9-13.500.
9-2.156	Plea bargains or immunity agreements which prejudice civil or tax liability.	Commercial Litigation Branch, Civil Division or Criminal Section, Tax Division	
9-2.157	FBI investigation of prospective petit jurors.	Assistant Attorney General,	

## Title 9

## PRIOR APPROVALS

USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
		Criminal Division	
9-2.158	Participation of non-Department of Justice attorneys in court proceedings.	Director, EOUSA	
9-2.160	Issuance of a grand jury or trial subpoena to an attorney for information relating to the representation of a client.	Assistant Attorney General, Criminal Div.	
9-2.161	1) Interrogate, arrest, subpoena or indict members of the news media; and, 2) delay notification for a subpoena for the telephone toll records of members of the news media for no more than 45 additional days.	1) Attorney General 2) Assistant Attorney General	1) 28 C.F.R. § 50.10; 2) 28 C.F.R. § 50.10(g)(3); 28 C.F.R. § 50.10(g)(3).
9-2.161(a)	Before the issuance of grand jury or trial subpoenas to attorneys for information relating to the representation of clients.	AAG, Criminal Division	
9-2.172	Compromise or close appearance-bond-forfeiture judgments valued over \$5,000.	Criminal Division	
9-2.300	Move for or consent to closure of a judicial proceeding.	Deputy Attorney General	See 28 C.F.R. § 50.9; AG Order No. 914-80 (10/20/80) Amended AG Order No. 960-80 (10/27/81).
9-3.537	After indictment, any reduction of charges in organized crime cases.	Assistant Attorney General, Criminal Div.	28 C.F.R. § 0.55(g).
9-7.000	Video surveillance in non-public places.	Director, Office of Enforcement Operations, Criminal Div.	Written request and written approval required. In emergency, verbal approval.
9-7.110	Application for a court order under 18 U.S.C. § 2518 permitting the interception of an oral or wire communication.	Attorney General or Assistant Attorneys General, Appropriate Division	Written request required. AG Order No. 931-81 and 934-81; See USAM 9-7.910; 9-65.770.
9-7.112	Emergency interceptions under 18 U.S.C. § 2518(7) without a court order.	Attorney General	Written request required.
9-7.302	The monitoring of verbal communications when the investigation is of a federal judge, member of Congress, or a high level executive branch official; any public official that is investigated for bribery, extortion or conflict of interest; a federal law enforcement official, diplomat, a person who is a member of the Witness Security Program, or a person in the custody of the Bureau of Prisons or U.S. Marshals Service.	Assistant Attorney General, Deputy Assistant Attorneys General, or Director Office of Enforcement Operations, Criminal Division	Written request and written approval.

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USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
9-7.333	Application for an extension of an interception.	Attorney General or Assistant Attorneys General, Appropriate Division	Written request required.
9-7.510	Use of intercepted communications under Title III in civil litigation.	Assistant Attorney General, Criminal Division	Written request required.
9-11.120	Resubmission of matter to grand jury after a no bill.	Assistant Attorney General, Criminal Division	See USAM 9-11.120, Subsection A.
9-11.120	Use of grand jury subpoenas to locate a fugitive.	Assistant Attorney General, Criminal Division	Written request required. Proposed grand jury subpoena and records should be submitted to General Litigation and Legal Advice Section, Criminal Division. See USAM 9-11.120, Subsec. B.
9-11.130	Applications to court for an order compelling testimony, immunity, or the production of information by a witness in any proceeding before or ancillary to a court or grand jury of the United States and the authority to approve the issuance by an agency of the United States of an order compelling testimony or the production of information by a witness in a proceeding before the agency.	Assistant Attorney General, Appropriate Division	Written approval required; 28 C.F.R. § 0.175; Subject to the provision that no such authorization may be given unless the Criminal Division has first indicated that it has no objection to the proposed order.
9-11.160	Resubpoena a contumacious witness before successive grand juries and to seek civil contempt sanctions if the witness refuses to testify.	Assistant Attorney General, Criminal Division	
9-11.242	Appoint non-Department of Justice attorneys as special Assistant U.S. Attorneys.	Director, Executive Office for U.S. Attorneys	
9-11.260	Requests for permission to seek a disclosure order for grand jury materials under Rule 6(e)(3)(C)(iv).	Assistant Attorney General, Appropriate Division	Written request and written approval required.
9-13.510	Letters rogatory.	Office of International Affairs, Criminal Division	Written request required.
9-13.525	Before issuing any subpoenas to persons or entities in the United States for records located abroad.	Office of International Affairs, Criminal Division	

## Title 9

## PRIOR APPROVALS

USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
9-13.534	Before a prosecutor can travel to a foreign country.	Office of International Affairs, Criminal Division; Executive Office for U.S. Attorneys	
9-13.540	Any proposed contact with the Department of State, U.S. Embassies or any embassy, ministry, consulate, officer, or agency of a foreign government or any international organization concerning a criminal matter, other than the notification of a foreign counsel in case of an arrest of a foreign national.	Office of International Affairs, Criminal Division	
9-13.620	Before using hypnosis on any witness.	Director, or Associate Director, Office of Enforcement Operations, Criminal Division	Written request and written approval required. In emergency, verbal request may be approved.
9-15.210	To seek a formal request for international extradition based on federal criminal charges.	Office of International Affairs, Criminal Division	Submit the formal request to OIA; forwarding by OIA to the Dept. of State constitutes approval.
9-15.230	Request for a provisional arrest of a fugitive.	Office of International Affairs, Criminal Division	Verbal request from U.S. Attorney to section of Criminal Division supervising prosecution. Written request from Criminal Division section to Office of International Affairs. State request must include certification of willingness to pay all expenses. Written request and written approval required.
9-15.720	Participation by U.S. Attorneys in any extradition matter on behalf of a foreign government.	Office of International Affairs, Criminal Division	
9-15.800	Any action with respect to a foreign fugitive who is or may be a witness for the government that would prevent, impede, or delay extradition or deportation.	Assistant Attorney General, Criminal Division	
9-16.020	A recommendation to consent to a plea of <i>nolo contendere</i> or to accept an <i>Alford</i> plea.	Assistant Attorney General, Criminal Division	See USAM 6-4.320; See also Principles

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USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
		sion	of Federal Prosecution, 9-27.000.
9-16.020	To forego an air piracy prosecution in return for a guilty plea for a lesser offense or to decide to not fully prosecute an act of air piracy.	Criminal Division	See USAM 9-63.134; 9-63.131-49 U.S.C. §§ 1472(i), 1472.
9-16.110	Plea agreements are made concerning defendants who are members of Congress, candidates for Congress or federal judges.	Public Integrity Section, Criminal Division	
9-19.220; .221	Search warrant for confidential material in possession of third parties, such as physician-patient or attorney client files.	Deputy Assistant Attorney General, Appropriate Division	In emergency, USA may approve but must notify Deputy Assistant Attorney General within 72 hours or authorization.
9-19.600; .700	In criminal tax offenses where the warrant application involves search for evidence under the jurisdiction of the Tax Division.	Assistant Attorney General, Tax Division	Written request required. See also USAM 6-4.130.
9-21.121	Utilization of federal prisoners in investigations.	Director, Office of Enforcement Operations, Criminal Division and Bureau of Prisons	Approval can be verbal in exigent circumstances.
9-21.200; .210	Protection of witnesses.	Director, Enforcement Operations, Criminal Division	DOJ Order No. 2110.42 (7/19/83). Immediate contact with the U.S. Marshals Office is essential so that a witness security specialist may be present at any interviews in which details are being considered.
9-21.400	Public disclosure of the identity of a witness in the Witness Security Program.	Director, Office of Enforcement Operations, Criminal Division	
9-21.700	Attorney's request for the appearance of a protected witness in the danger area.	U.S. Marshals Service	Written request required. 10-day prior notification.
9-22.100	Waive eligibility criteria in pre-trial diversion cases.	Assistant Attorney General, Criminal Division	Written approval required. See USAM 9-2.022.
9-23.400	Prosecution of a person who has provided information or given testimony.	Attorney General	Written approval. See also

## Title 9

## PRIOR APPROVALS

USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
	ny pursuant to a compulsion order—except where immunity is approved for the limited purpose of obtaining records pursuant to <i>United States v. Doe</i> , 465 U.S. 605(1984)—for an offense disclosed in, or closely related to, the testimony or information given.		USAM 9-23.000; 28 C.F.R. §§ 0.175, 0.177.
9-27.440	Government Attorneys should not enter into <i>Alford</i> plea agreement without approval.		AAG Criminal Division.
9-27.640	When entering into a non-prosecution agreement in exchange for a person's cooperation when approval is required by a statute or Department policy for a declination of prosecution or dismissal of a charge with regard to which the agreement is to be made; or the person is a high-level federal, state, or local official; an official or agent of a federal investigative or law enforcement agency; or a person who otherwise is, or is likely to become, of major public interest.	Assistant Attorney General with supervisory responsibility over the subject matter, or designee.	
9-27.641	When entering into a non-prosecution agreement including any agreement not to prosecute, which purports to bind any other district(s) or division.	United States Attorney in each affected district(s) and/or the Assistant Attorney General in the Criminal Division.	Written approval required.
9-38.000	Petitions for remissions of forfeiture.	Deputy Attorney General; Assistant Attorney General, Criminal Division; Asset Forfeiture Office Criminal Division	28 C.F.R. §§ 0.160, .161; 28 C.F.R. §§ 9.3, 9.4, AG Order No. 1034-83; See 9-111.000.
9-42.451	No commitment to forego administrative remedies of the Department of Health and Human Services should be made for Medicare-Medicaid fraud cases.	Criminal Division	
9-60.710	Prosecutions involving hostage taking.	Criminal Division	18 U.S.C. § 1203; See USAM 9-2.136.
9-63.221	Indictments alleging a violation of 18 U.S.C. § 32(b).	Assistant Attorney General, Criminal Division	
9-69.250	Perjury before Congress and contempt of Congress.	General Litigation and Legal Advice Section, Criminal Division	18 U.S.C. § 799; See USAM 9-90.550; 9-2.132.
9-75.300	Prosecution for mailing or transporting obscene material in the jur-	National Obscenity Enforcement	

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USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
	isdiction through which the material passes.	Unit, Criminal Division	
9-75.310	Obtaining or filing any indictment or entering into any plea agreement in multi-prosecution cases.	National Obscenity Enforcement Unit, Criminal Division	
9-76.100	1) If the difference between the total amount of the penalties for violations of the civil penalty provisions of the Federal Aviation Act of 1958 and the amount of a proposed settlement exceeds \$750,000; or, 2) If the U.S. Attorney believes that a compromise settlement should be effectuated in a figure less than is acceptable to the Federal Aviation Administration or the Civil Aeronautics Board.	1) Deputy Attorney General; 2) General Litigation and Legal Advice Section, Criminal Division	28 U.S.C. §§ 0.160, 0.161.
9-100.150	Return of an indictment or filing of complaint under the Controlled Substances Analogue Enforcement Act	Assistant Attorney General, Criminal Division	21 U.S.C. §§ 802(32), 813. Requests should be processed through the Narc. and Dang. Drg. Sec.
9-100.280	Indictment or prosecution of criminal charges under the Continuing Criminal Enterprise Statute.	Assistant Attorney General, Criminal Division	21 U.S.C. § 881.
9-100.290	Use the dangerous special drug offender statute, 21 U.S.C. § 849 and to request appropriate review of a dangerous special drug offender sentence.	Narcotics and Dangerous Drug Section, Criminal Division	
9-103.132; .140	Instituting grand jury proceedings, seeking an indictment, or filing an information for any offense under the Controlled Substance Registration Act of 1984.	Narcotics and Dangerous Drugs Section, Criminal Division	18 U.S.C. § 2118.
9-103.132	Where a local prosecutor objects to a federal prosecution.	Assistant Attorney General, Criminal Division	
9-105.000	Violation of 18 U.S.C. § 1956(a)(2), money laundering involving extraterritorial jurisdiction; and, if a defendant is an attorney and proceeds represent attorneys' fees.	Assistant Attorney General, Criminal Division	Written request and written approval required.
9-105.110	The use of specific intent language set forth in 18 U.S.C. § 1956 (a)(1)(A)(ii) in proposed indictment when 1) indictment contains charges for which Tax Division authorization is required and 2) the intent to engage in conduct constituting a violation of 26 U.S.C. § 7201 or 26 U.S.C. § 7206 is the sole or principal purpose of the financial transaction which is the subject of the money laundering count.	AAG, Tax Division	See 6-4.125; 6-4.127.

## Title 9

## PRIOR APPROVALS

USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
9-105.300	Before an indictment charging a violation of 18 U.S.C. §1957 is presented if the potential defendant is an attorney and the criminal denied property is or purports to be attorneys fees paid to the attorney for providing representation to a client in a criminal or civil matter.	Assistant Attorney General, Criminal Division.	See 6-4.211(1).
9-110.101; 210; 320	No RICO civil or criminal prosecutions or civil investigative demands.	Organized Crime and Racketeering Section	Written approval required. 18 U.S.C. §1961 et seq.; 28 C.F.R. §0.55(g).
9-110.414	Prior to filing a motion for a temporary restraining order under 18 U.S.C. §1963(d) in connection with a case involving RICO forfeiture.	Organized Crime and Racketeering Section	See 6-4.211(1).
9-110.801	Criminal prosecutions under Section 1952A if a state or local prosecutor with jurisdiction over the offense objects to federal prosecution, or if the views of the appropriate state or local authorities have not been solicited.	Assistant Attorney General, Criminal Division	
9-110.801	A criminal prosecution under Section 1952B.	Assistant Attorney General, Criminal Division	
9-111.300	Forfeiture of assets which have been transferred to attorneys as fees for legal services.	Assistant Attorney General, Criminal Division	
9-121.330	Closing of criminal fines involving corporations which have forfeited the corporate charter, the right to do business, or any corporate power which has an effect less than complete dissolution.	Criminal Division	Written approval required. See 9-111.000.
9-121.500	Close an appearance bond forfeiture judgment of a foreign national.	Collection Unit, Criminal Division	See 9-111.000.

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UNITED STATES ATTORNEYS' MANUAL

DETAILED  
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(1)

1-7.000 PURPOSE

The purpose of this policy statement is to establish specific guidelines consistent with the provisions of 28 CFR 50.2 governing the release of information relating to criminal and civil cases and matters by all components (FBI, DEA, INS, BOP, USMS, USAO, and DOJ divisions) and personnel of the Department of Justice. These guidelines are: 1) fully consistent with the underlying standards set forth in this statement and with 28 CFR 50.2; 2) in addition to any other general requirements relating to this issue; 3) intended for internal guidance only; and 4) do not create any rights enforceable in law or otherwise in any party.

## 1-7.100 GENERAL PRINCIPLES

1-7.110 Interests Must Be Balanced

These guidelines recognize three principal interests that must be balanced: the right of the public to know; an individual's right to a fair trial; and, the government's ability to effectively enforce the administration of justice.

## 1-7.111 Need for Confidentiality

Careful weight must be given in each case to protecting the rights of victims and litigants as well as the protection of the life and safety of other parties and witnesses. To this end, the Courts and Congress have recognized the need for limited confidentiality in:

- a. On-going operations and investigations;
- b. Grand jury and tax matters;
- c. Certain investigative techniques; and,
- d. Other matters protected by the law.

## 1-7.112 Need for Free Press and Public Trial

Likewise, careful weight must be given in each case to the constitutional requirements of a free press and public trials as well as the right of the people in a constitutional democracy to have access to information about the conduct of law enforcement officers, prosecutors and courts, consistent with the individual rights of the accused. Further, recognition should be given to the needs of public safety, the apprehension of fugitives, and the rights of the public to be informed on matters that can affect enactment or enforcement of public laws or the development or change of public policy.

These principles must be evaluated in each case and must involve a fair degree of discretion and the exercise of sound judgment, as every possibility cannot be predicted and covered by written policy statement.

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## 1-7.200 AUTHORITY FOR MEDIA RELATIONS

1-7.210 General Responsibility

Final responsibility for all matters involving the news media and the Department of Justice is vested in the Director of the Office of Policy and Communications (OPC) who will designate principal points of contact within the Office of Public Affairs, a component of OPC. The Attorney General is to be kept fully informed of appropriate matters at all times.

Responsibility for all matters involving the local media is vested in the U.S. Attorney.

1-7.220 Designation of Media Representative

Each United States Attorney's Office and each field office of the various components of the Department shall designate one or more persons to act as a point of contact on matters pertaining to the media.

In United States Attorneys' offices or field offices where available personnel resources do not permit the assignment of a full time point of contact for the media, these responsibilities should be assigned to a clearly identified individual. (This, of course, could be the United States Attorney or field office head.)

## 1-7.300 COORDINATION WITH THE OFFICE OF POLICY AND COMMUNICATIONS

1-7.310 Department of Justice Components

The public affairs officers at the headquarters level of the Federal Bureau of Investigation, Drug Enforcement Administration, Immigration and Naturalization Service, Bureau of Prisons, United States Marshals Service, Office of Justice Programs, and Community Relations Service are responsible for coordinating their news media effort with the Director of OPC.

1-7320 United States Attorneys

Recognizing that each of the 93 United States Attorneys will exercise independent discretion as to matters affecting their own districts, the United States Attorneys are responsible for coordinating their news media efforts with the Director of OPC in cases that transcend their immediate district or are of national importance.

1-7.330 Procedures to Coordinate with OPC

In order to promote coordination with the OPC, all components of the Department shall take all reasonable steps to insure compliance with the following:

## 1-7.331 International/National/Major Regional News

As far in advance as possible, OPC should be informed about any issue that might attract international, national, or major regional media interest. However, the OPC

should be alerted not to comment or disseminate any information to the media concerning such issues without first consulting with the United States Attorney.

#### 1-7.332 News Conferences

Prior coordination with OPC is required of news conferences of national significance.

#### 1-7.333 Requests from National Media Representatives (TV, Radio, Wire Service, Magazines, Newspapers)

OPC should be informed immediately of all requests from national media organizations, including the television and radio programs (such as the nightly news, Good Morning America, Meet the Press and Sixty Minutes), national wire services, national news magazines and papers (such as the New York Times, U.S.A. Today, and the Wall Street Journal) regarding in-depth stories and matters affecting the Department of Justice, or matters of national significance.

#### 1-7.334 Media Coverage Affecting DOJ

When available, press clippings and radio/television tapes involving matters of significance should be forwarded to OPC.

#### 1-7.335 Comments on Specific Issues (i.e., New Policies, Legislative Proposals, Budget)

OPC should be consulted for guidance prior to commenting on new policies and initiatives, legislative proposals or budgetary issues of the Department. This should not be interpreted to preclude recitation of existing well-established Departmental policies or approved budgets.

#### 1-7.400 COORDINATION WITH THE UNITED STATES ATTORNEYS

##### 1-7.410. Issuance of Press Release by OPC or Headquarters

In instances where OPC or the headquarters of any division, component or agency of the Department issues a new release or conducts a news conference which may affect an office or the United States Attorney, such division, component, or agency will coordinate that effort with the appropriate United States Attorney.

##### 1-7.420 Issuance of Press Release by Field Officers of Any Division

In instances where local field officers of any division or component plan to issue a news release, schedule a news conference or make contact with a member of the media relating to any case or matter which may be prosecuted by the United States Attorney's office, such release, scheduling of a news conference or other media contact shall be approved by the United States Attorney.

## 1-7.500 RELEASE OF INFORMATION IN CRIMINAL AND CIVIL MATTERS

The following policies shall apply to the release of information relating to all criminal and civil matters by components and personnel of the Department of Justice to the news media.

1-7.510 Non-Disclosure of Information

At no time shall any component or personnel of the Department of Justice furnish any statement or information that he or she knows or reasonably should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding.

1-7.520 Disclosable Information

Department personnel, subject to specific limitations imposed by law or court rule or order and consistent with the provisions of these guidelines, may make public the following information in any criminal case in which charges have been brought:

- a. The defendant's name, age, residence, employment, marital status, and similar background information;
- b. The substance of the charge, limited to that contained in the complaint, indictment, information, or other public documents;
- c. The identity of the investigating and/or arresting agency and the length and scope of an investigation;
- d. The circumstances immediately surrounding an arrest, including the time and place of arrest, resistance, pursuit, possession and use of weapons, and a description of physical items seized at the time of arrest. Any such disclosures shall not include subjective observations; and
- e. In the interest of furthering law enforcement goals, the public policy significance of a case may be discussed by the appropriate United States Attorney or Assistant Attorney General.

In civil cases, Department personnel may release similar identification material regarding defendants, the concerned government agency or program, a short statement of the claim, and the government's interest.

1-7.530 Disclosure of Information Concerning Ongoing Investigations

- a. Except as provided in subparagraph (b) of this paragraph, components and personnel of the Department shall not respond to questions about the existence of an ongoing investigation or comment on its nature or progress, including such things as the issuance or serving of a subpoena, prior to the public filing of the document.
- b. In matters that have already received substantial publicity, or about which the community needs to be reassured that the appropriate law enforcement agency is investigating the incident, or where release of information is necessary to protect the public

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interest, safety, or welfare, comments about or confirmation of an ongoing investigation may need to be made. In these unusual circumstances, the involved investigative agency will consult and obtain approval from the United States Attorney or Department Division handling the matter prior to disseminating any information to the media.

#### 1-7.540 Disclosure of Information Concerning Person's Prior Criminal Record

Personnel of the Department shall not disseminate to the media any information concerning a defendant's or subject's prior criminal record either during an investigation or at a trial. However, in certain extraordinary situations such as fugitives or in extradition cases, departmental personnel may confirm the identity of defendants or subject and the offense or offenses. Where a prior conviction is an element of the current charge, such as in the case of a felon in possession of a firearm, departmental personnel may confirm the identity of the defendant and the general nature of the prior charge where such information is part of the public record in the case at issue.

#### 1-7.550 Concerns of Prejudice

Because the release of certain types of information could tend to prejudice an adjudicative proceeding, Department personnel should refrain from making available the following:

- a. Observations about a defendant's character;
- b. Statements, admissions, confessions, or alibis attributable to a defendant, or the refusal or failure of the accused to make a statement;
- c. Reference to investigative procedures, such as fingerprints, polygraph examinations, ballistic tests, or forensic services, including DNA testing, or to the refusal by the defendant to submit to such tests or examinations;
- d. Statements concerning the identity, testimony, or credibility of prospective witnesses;
- e. Statements concerning evidence or argument in the case, whether or not it is anticipated that such evidence or argument will be used at trial;
- f. Any opinion as to the defendant's guilt, or the possibility of a plea of guilty to the offense charged, or the possibility of a plea of a lesser offense.

#### 1-7.600 ASSISTING THE NEWS MEDIA

A. Other than by reason of a Court order, Department personnel shall not prevent the lawful efforts of the news media to photograph, tape, record or televise a sealed crime scene from outside the sealed perimeter.

B. In order to promote the aims of law enforcement, including the deterrence of criminal conduct and the enhancement of public confidence, Department personnel with the prior approval of the appropriate United States Attorney may assist the news media

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in photographing, taping, recording or televising a law enforcement activity. The United States Attorney shall consider whether such assistance would:

1. unreasonably endanger any individual;
2. prejudice the rights of any party or other person; and
3. is not otherwise proscribed by law.

C. A news release should contain a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

D. In cases in which a search warrant or arrest warrant is to be executed, no advance information will be provided to the news media about actions to be taken by law enforcement personnel, nor shall media representatives be solicited or invited to be present. This prohibition will also apply to operations in preparation for the execution of warrants, and to any multi-agency action in which Department personnel participate.

If news media representatives are present, Justice Department personnel may request them to withdraw voluntarily if their presence puts the operation or the safety of individuals in jeopardy. If the news media declines to withdraw, Department personnel should consider cancelling the action if that is a practical alternative.

Exceptions to the above policy may be granted in extraordinary circumstances by the Office of Public Affairs.

#### 1-7.700 FREEDOM OF INFORMATION ACT (FOIA)

Nothing contained herein is intended to control access to Department of Justice records which are publicly available under provisions of the Freedom of Information Act (FOIA).

(28 U.S.C. 509) [Order No. 469-71, 367 F. 21028, No. 3, 1971. Amended by Order No. 602-75, 40 FR 22119, Mar. 20, 1975]



Office of the Deputy Attorney General

Washington, D.C. 20530

April 29, 1996

MEMORANDUM

TO: Holders of the United States Attorneys' Manual  
Title 1

FROM: Office of the Deputy Attorney General

*Jamie S. Gorelick*  
Jamie Gorelick  
Deputy Attorney General

SUBJECT: Media Guidelines

AFFECTS: 1-7.000 Media Relations

PURPOSE: This bluesheet affects USAM 1-7.600 by  
adding a new section concerning the disclosure of  
evidence to the news media.

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The following bluesheet is intended to spell out Justice Department policy with respect to the disclosure of evidence to the news media. It adds Section "E" to USAM 1-7.600, Assisting the News Media.

E. Justice Department employees who obtain what may be evidence in any criminal or civil case or who make or obtain any photographic, sound or similar image thereof, in connection with a search or arrest warrant, may not disclose such material to the news media without the prior specific approval of the United States Attorney or Assistant Attorney General, who shall consider applicable regulations and policy, or upon a court order directing such production.





Office of the Attorney General

Washington, D.C. 20530

January 14, 1993

MEMORANDUM

TO: Holders of United States Attorneys' Manual, Title 1

FROM: Office of the Attorney General  
William P. Barr *WMB*  
Attorney General

RE: Media Guidelines

NOTE: 1. This is issued pursuant to USAM 1-1.550  
2. Distribute to Holders of Title 1  
3. Revised Chapter

AFFECTS: 1-7.000 Media Relations

PURPOSE: Bluesheet 1-7.000 sets forth revised Media Policy for the Department of Justice.

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The following media policy replaces Chapter 7, Media Relations, in Title 1 of the United States Attorneys' Manual dated October 1, 1988.

**MEDIA POLICY****I. PURPOSE**

The purpose of this policy statement is to establish specific guidelines consistent with the provisions of 28 CFR 50.2 governing the release of information relating to criminal and civil cases and matters by all components (FBI, DEA, INS, BOP, USMS, USAO, and DOJ divisions) and personnel of the Department of Justice. These guidelines are: 1) fully consistent with the underlying standards set forth in this statement and with 28 CFR 50.2; 2) in addition to any other general requirements relating to this issue; 3) intended for internal guidance only; and 4) do not create any rights enforceable in law or otherwise in any party.

**II. GENERAL PRINCIPLES****A. Interests Must Be Balanced**

These guidelines recognize three principle interests that must be balanced: the right of the public to know; an individual's right to a fair trial; and, the government's ability to effectively enforce the administration of justice.

**1. Need for Confidentiality**

Careful weight must be given in each case to protecting the rights of victims and litigants as well as the protection of the life and safety of other parties and witnesses. To this end, the Courts and Congress have recognized the need for limited confidentiality in:

- a. On-going operations and investigations;
- b. Grand jury and tax matters;
- c. Certain investigative techniques; and,
- d. Other matters protected by the law.

**2. Need for Free Press and Public Trial**

Likewise, careful weight must be given in each case to the constitutional requirements of a free press and public trials as well as the right of the people in a constitutional democracy to have access to information about the conduct of law enforcement officers, prosecutors and courts, consistent with the individual rights of the accused. Further, recognition should be given to the needs of public safety, the apprehension of fugitives, and the rights of the public to be informed on matters that can affect enactment or enforcement of public laws or the development or change of public policy.



These principles must be evaluated in each case and must involve a fair degree of discretion and the exercise of sound judgment, as every possibility cannot be predicted and covered by written policy statement.

### **III. AUTHORITY FOR MEDIA RELATIONS**

#### **A. General Responsibility**

Final responsibility for all matters involving the news media and the Department of Justice is vested in the Director of the Office of Policy and Communications (OPC) who will designate principal points of contact within the Office of Public Affairs, a component of OPC. The Attorney General is to be kept fully informed of appropriate matters at all times.

Responsibility for all matters involving the local media is vested in the U.S. Attorney.

#### **B. Designation of Media Representative**

Each United States Attorney's Office and each field office of the various components of the Department shall designate one or more persons to act as a point of contact on matters pertaining to the media.

In United States Attorney's offices or field offices where available personnel resources do not permit the assignment of a full time point of contact for the media, these responsibilities should be assigned to a clearly identified individual. (This, of course, could be the United States Attorney or field office head.)

### **IV. COORDINATION WITH THE OFFICE OF POLICY AND COMMUNICATIONS**

#### **A. Department of Justice Components**

The public affairs officers at the headquarters level of the Federal Bureau of Investigation, Drug Enforcement Administration, Immigration and Naturalization Service, Bureau of Prisons, United States Marshals Service, Office of Justice Programs, and Community Relations Service are responsible for coordinating their news media effort with the Director of OPC.

#### **B. United States Attorneys**

Recognizing that each of the 93 United States Attorneys will exercise independent discretion as to matters affecting their own districts, the United States Attorneys are responsible for coordinating their news media efforts with the Director of OPC in cases that transcend their immediate district or are of national importance. (See IV.C, below.)



**C. Procedures to Coordinate with OPC**

In order to promote coordination with the OPC, all components of the Department shall take all reasonable steps to insure compliance with the following:

1. International/National/Major Regional News

As far in advance as possible, OPC should be informed about any issue that might attract international, national or major regional media interest. However, the OPC should be alerted not to comment or disseminate any information to the media concerning such issues without first consulting with the United States Attorney.

2. News Conferences

Prior coordination with OPC is required of news conferences of national significance.

3. Requests from National Media Representatives  
(TV, Radio, Wire Service, Magazines, Newspapers)

OPC should be informed immediately of all requests from national media organizations, including the television and radio programs (such as the nightly news, Good Morning America, Meet the Press and sixty Minutes), national wire services, national news magazines and papers (such as the New York Times, U.S.A. Today, and the Wall Street Journal) regarding in-depth stories and matters affecting the Department of Justice, or matters of national significance.

4. Media Coverage Affecting DOJ

When available, press clippings and radio/television tapes involving matters of significance should be forwarded to OPC.

5. Comments on Specific Issues (i.e., New Policies, Legislative Proposals, Budget)

OPC should be consulted for guidance prior to commenting on new policies and initiatives, legislative proposals or budgetary issues of the Department. This should not be interpreted to preclude recitation of existing well-established Departmental policies or approved budgets.

**V. COORDINATION WITH THE UNITED STATES ATTORNEYS**

A. In instances where OPC or the headquarters of any division, component or agency of the Department issues a new release or conducts a news conference which may affect an office or the United States Attorney, such division, component, or agency will coordinate that effort with the appropriate United States Attorney.

B. In instances where local field officers of any division or component plans to issue a news release, schedule a news conference or make contact with a member of the media relating to any case or matter which may be prosecuted by the United States Attorney's office, such release, scheduling of a news conference or other media contact shall be approved by the United States Attorney.

**VI. RELEASE OF INFORMATION IN CRIMINAL AND CIVIL MATTERS**

The following policies shall apply to the release of information relating to all criminal and civil matters by components and personnel of the Department of Justice to the news media.

**1. Non-Disclosure of Information**

At no time shall any component or personnel of the Department of Justice furnish any statement or information that he or she knows or reasonably should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding.

**2. Disclosable Information**

Department personnel, subject to specific limitations imposed by law or court rule or order and consistent with the provisions of these guidelines, may make public the following information in any criminal case in which charges have been brought

a. The defendant's name, age, residence, employment, marital status, and similar background information;

b. The substance of the charge, limited to that contained in the complaint, indictment, information, or other public documents;

c. The identity of the investigating and/or arresting agency and the length and scope of an investigation;



d. The circumstances immediately surrounding an arrest, including the time and place of arrest, resistance, pursuit, possession and use of weapons, and a description of physical items seized at the time of arrest. Any such disclosures shall not include subjective observations; and

e. In the interest of furthering law enforcement goals, the public policy significance of a case may be discussed by the appropriate United States Attorney or Assistant Attorney General.

In civil cases, Department personnel may release similar identification material regarding defendants, the concerned government agency or program, a short statement of the claim, and the government's interest.

### **3. Disclosure of Information Concerning Ongoing Investigations**

a. Except as provided in subparagraph (b) of this paragraph, components and personnel of the Department shall not respond to questions about the existence of an ongoing investigation or comment on its nature or progress, including such things as the issuance or serving of a subpoena, prior to the public filing of the document.

b. In matters that have already received substantial publicity, or about which the community needs to be reassured that the appropriate law enforcement agency is investigating the incident, or where release of information is necessary to protect the public interest, safety, or welfare, comments about or confirmation of an ongoing investigation may need to be made. In these unusual circumstances, the involved investigative agency will consult and obtain approval from the United States Attorney or Department Division handling the matter prior to disseminating any information to the media.

### **4. Disclosure of Information Concerning Person's Prior Criminal Record**

Personnel of the Department shall not disseminate to the media any information concerning a defendant's or subject's prior criminal record either during an investigation or at a trial. However, in certain extraordinary situations such as fugitives or in extradition cases, departmental personnel may confirm the identity of defendants or subject and the offense or offenses. Where a prior conviction is an element of the current charge, such as in the case of a felon in possession of a firearm, departmental personnel may confirm the identity of the defendant and the general nature of the prior charge where such information is part of the public record in the case at issue.



## 5. Concerns of Prejudice

Because the release of certain types of information could tend to prejudice an adjudicative proceeding, Department personnel should refrain from making available the following:

- a. Observations about a defendant's character;
- b. Statements, admissions, confessions, or alibis attributable to a defendant, or the refusal or failure of the accused to make a statement;
- c. Reference to investigative procedures, such as fingerprints, polygraph examinations, ballistic tests, or forensic services, including DNA testing, or to the refusal by the defendant to submit to such tests or examinations;
- d. Statements concerning the identity, testimony, or credibility of prospective witnesses.
- e. Statements concerning evidence or argument in the case, whether or not it is anticipated that such evidence or argument will be used at trial;
- f. Any opinion as to the defendant's guilt, or the possibility of a plea of guilty to the offense charged, or the possibility of a plea of a lesser offense.

## VII. ASSISTING THE NEWS MEDIA

A. Other than by reason of a Court order, Department personnel shall not prevent the lawful efforts of the news media to photograph, tape, record or televise a sealed crime scene from outside the sealed perimeter.

B. In order to promote the aims of law enforcement, including the deterrence of criminal conduct and the enhancement of public confidence, Department personnel with the prior approval of the appropriate United States Attorney may assist the news media in photographing, taping, recording or televising a law enforcement activity. The United States Attorney shall consider whether such assistance would:

1. unreasonably endanger any individual;
2. prejudice the rights of any party or other person;
3. is not otherwise proscribed by law.

and

C. A news release should contain a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

**VIII. FREEDOM OF INFORMATION ACT (FOIA)**

Nothing contained herein is intended to control access to Department of Justice records which are publicly available under provisions of the Freedom of Information Act (FOIA).

(28 U.S.C. 509) [Order No. 469-71, 367 F.21028, No. 3, 1971, Amended by Order No. 602-75, 40 FR 22119, May 20, 1975)

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1-8.000 CONGRESSIONAL RELATIONS

The Assistant Attorney General, Office of Legislative Affairs (OLA), is responsible for coordination of all significant communications between Congress and the Department subject to the general supervision of the Attorney General and the direction of the Deputy Attorney General. See 28 C.F.R. § 0.27.

1-8.010 Routine Matters Not Requiring Advance Clearance

The Assistant Attorney General, OLA, shall be provided with copies of all written communications with Members of Congress or Committees of Congress even when such communications are routine in nature. Routine matters to which United States Attorneys may respond if copies are furnished to OLA include:

A. Requests for information related to employment, such as current job openings, recommendations for employment, and general personnel procedures;

B. Requests for public information concerning specific cases, *e.g.* the status of cases, copies of grand jury indictments, and trial or hearing dates;

C. Inquiries concerning general legal procedures, *e.g.* processes clearly defined in statutes, rules and regulations (but not to include the provision of legal advice); and

E. Inquiries which can be answered by providing copies of Department news releases, reports or other publications.

All other Congressional inquiries, whether received in writing or by telephone, should be referred to the Assistant Attorney General, OLA. Any questions as to whether the request is routine should be resolved in favor of reference to OLA.

1-8.020 Congressional Requests for Non-Routine Assistance

Any Congressional request for assistance, other than routine inquiries described at USAM 1-8.010 above, must be reduced to writing, signed by the Member of Congress or committee or subcommittee chairman, and addressed to the Assistant Attorney General, OLA.

All Congressional inquiries and requests not falling within the description of USAM 1-8.010 should be referred to OLA as follows:

A. Telephone requests should be answered by asking the Congressional caller to telephone OLA at FTS 633-2141 or 202-633-2141 and

B. Written requests from Congress should be responded to, in the form of an interim letter, as follows:

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This office is pleased to assist Congress whenever possible. Pursuant to 28 C.F.R. § 0.27, however, the Assistant Attorney General, Office of Legislative Affairs, is responsible for liaison between the Department of Justice and Congress. Directives established by the Department and set out at Section 1-8.000 *et seq.* of the *United States Attorneys' Manual* provide that requests by Congress must be submitted to the Office of Legislative Affairs.

Consistent with Department policy, therefore, I am forwarding your letter of (date) to the Office of Legislative Affairs which will be responding to your request shortly.

Examples of non-routine inquiries include requests:

- A. To interview United States Attorneys, Assistant United States Attorneys, or other Department personnel;
- B. To be briefed by Department personnel;
- C. To visit United States Attorneys' offices;
- D. To obtain non-public information concerning Department litigation or other activities; or
- E. To arrange for Department personnel to testify at Congressional hearings.

To the extent that United States Attorneys are in possession of information necessary to respond to such a Congressional inquiry, such data should be forwarded to OLA by telephone or memorandum.

#### 1-8.030 Department Clearance Policy Concerning Legislation

Under no circumstances shall a proposal for new legislation or a proposed amendment to existing law be submitted for consideration by Congress or by any committee or individual Member of Congress or Congressional staff without the prior approval of the Assistant Attorney General, OLA. Similarly, no request calling for other action by the Congress or any committee, individual member or Congressional staff member shall be submitted without advance approval by the Assistant Attorney General, OLA. Views of United States Attorneys concerning the need for legislation or the desirability of legislative proposals under consideration by the Congress should be forwarded to the Assistant Attorney General.

All Congressional requests for statements or opinions concerning pending legislative proposals, the need for legislation and similar inquiries shall be referred to the Assistant Attorney General, OLA.

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#### 1-8.040 Special Procedures for Congressional Hearings

Invitations for Department personnel to testify at Congressional hearings must come from an established committee or subcommittee of the Congress, be reduced to writing and signed by the chairman of such committee or subcommittee, and delivered to the Assistant Attorney General, OLA, at least *fourteen days in advance* of the date of the hearing. Telephone requests or written requests signed by Congressional staff may not serve in lieu of written requests signed by a committee or subcommittee chairman.

The Attorney General reserves the right to determine whether the Department will be represented at any Congressional hearing and, if so, who will appear on behalf of the Department. Department officials approved to represent the Department at Congressional hearings should prepare written testimony and submit it to OLA at least *seven days in advance* of the hearing for clearance within the Department and Administration. OLA can assist in determining appropriate testimony format, style and content.

#### 1-8.050 Congressional Questionnaires and Surveys

Any survey or questionnaire from a Member of Congress or Congressional committee shall be coordinated by the Executive Office for United States Attorneys consistent with the procedures set out at USAM 1-10.300.

#### 1-8.060 Congressional Access to Case Files

As a general rule, Congressional access to case files shall be governed by USAM 1-10.130 (closed case files) and USAM 1-10.140 (open case files). The Assistant Attorney General, OLA, shall be advised of any Congressional request for non-public Department documents.

#### 1-8.070 Communications with Components of the Congress

Department communications with the General Accounting Office are coordinated by the Justice Management Division, FTS 633-3452. Requests or inquiries from other components of the Congress shall be treated on the same basis as requests from Members of Congress or Congressional committees and cleared with the Assistant Attorney General, OLA.

Other components of the Congress include the Office of Technology Assessment, the Congressional Research Service and the various caucuses, study groups and other organizations comprising the Legislative Branch of government.

#### 1-8.080 Cooperation with Office of Legislative Affairs

Because the Office of Legislative Affairs is intended to serve as the clearinghouse for all Department communications with Congress, the As-

sistant Attorney General, OLA, shall be kept informed at all times regarding Congressional interest in any component of the Department.

1-8.090 Department Comments on State Legislation

As a general rule, the Department avoids commenting on state or local legislation. This policy reflects our deference to state sovereignty and a desire to avoid being perceived as attempting to dictate to the states or local governments how to order their internal affairs. U.S. Attorneys in particular may periodically be invited to testify on law enforcement issues before state legislatures. Where it is consistent with DOJ Policy and will be of assistance to the state legislative bodies U.S. Attorneys will be authorized to testify upon approval of the Attorney General through the Office of Legislative Affairs.

Prior to accepting such invitations the United States Attorney will contact the Office of Legislative Affairs and furnish the following information:

- 1) The date, time and legislative body before which the testimony is to be presented;
- 2) A description of subject being considered by the legislative body; and,
- 3) A synopsis of the proposed testimony of the U.S. Attorney or DOJ representative.

As a general rule OLA will respond to the requestor within 48 hours. Where the request raises sensitive subject matter issues regarding DOJ policies or positions so that approval must be obtained from higher levels more time may be required.

As with other legislative appearances, the Attorney General reserves the right to determine whether the Department will appear and, if so, to select the witness who will represent the Department at such formal legislative appearances.

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1-9.000 FREEDOM OF INFORMATION ACT (FOIA) AND PRIVACY ACT (PA)

## 1-9.100 FREEDOM OF INFORMATION ACT (FOIA)

1-9.110 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 purpose 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:

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;

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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. Records or information compiled for law enforcement purposes, but only to the extent that one or more of six specified forms of harm could reasonably be expected to 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 available from the Executive Office for U.S. Attorneys at FTS 272-9826.

#### 1-9.120 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 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.

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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 a 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.

Departmental policy is 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 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*.

#### 1-9.121 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.

Any component of the Department seeking pre-litigation advice on a FOIA or PA matter should contact OIP at (FTS 633-FOIA). 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.

1-9.130 Procedure for Requests Under FOIA Received by the U.S. Attorney's Office

Typically, a request for disclosure will be made by the requester directly to one or more of the U.S. Attorneys' Offices. Upon receipt of such a request by a U.S. Attorney's Office, its receipt should be immediately acknowledged and the requester informed that his/her correspondence has been forwarded to the FOIA/PA Unit of the Executive Office for United States Attorneys (EOUSA). A copy of your acknowledgment to the requester and the original request letter should then be forwarded to the Executive Office for U.S. Attorneys (the responsible "component").

1-9.131 Specific Processing Procedures in Department of Justice

Absent "exceptional circumstances", the FOIA/PA Unit 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 30 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).

Furthermore, the Department's regulations provide (28 C.F.R. § 16.4(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 or his/her designee of the Executive Office for U.S. Attorneys in the case of U.S. Attorneys' Offices). Such a denial letter must specifically set forth: the exemptions relied upon; how those exemptions were applied in this case; a statement of the requester's right to an administrative appeal and judicial review; 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 the 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. See 5 U.S.C. § 552(a)(4)(A)(iii).

Within the Department, administrative appeals are handled, as noted earlier, by the Office of Information and Privacy, which must act on an appeal within 30 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 com-

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plaint in the United States District Court in the district 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 for the responsible component 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.

#### 1-9.140 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) to (9)). As a general rule, no inquiry is made as to the purpose for which the record is sought.

#### 1-9.150 Sanctions for Violating FOIA

#### 1-9.151 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). Previously this was 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 a 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 attorney fees and other litigation costs against the government when the complainant substantially prevails. See 5 U.S.C. § 552(a)(4)(E).

#### 1-9.152 Action Against Individual Employees

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 attorney 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).

#### 1-9.200 PRIVACY ACT (PA)

##### 1-9.210 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 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.

1-9.220 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 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.

1-9.230 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 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. Questions on how to proceed upon receipt of such a request should be directed to the Executive Office for U.S. Attorneys, FOIA/PA Unit (FTS) 272-9826.

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).

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.

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: The system manager must make an initial determination whether to grant access and provide the Executive Office for U.S. Attorneys FOIA/PA Unit with his/her recommendation and an inventory of the file so that the FOIA/PA Unit can respond to the requester. This determination must normally be made within 20 days after the date of the 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:

A. Transcripts of testimony given under oath or written statements made under oath;

B. Transcripts of grand jury proceedings, judicial proceedings, or quasi-judicial proceedings which constitute the official record of such proceedings;

C. Pre-sentence reports; and

D. 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 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).

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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 appeals, unless there is good cause to extend this period. If the denial of a request is affirmed on appeal, the requester shall be 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.

#### 1-9.240 'Routine Uses'—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 twelve 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);

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 2(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(c)(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:

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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)(i); 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 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)).

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

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October 1, 1988



Office of the Attorney General  
Washington, D. C. 20530

July 27, 1995

**TO:** Holders of United States Attorneys' Manual, Title 1

**FROM:** Janet Reno *Janet Reno*  
Attorney General

United States Attorneys' Manual Staff  
Executive Office for United States Attorneys

**RE:** Revisions to United States Attorneys' Reporting  
Requirements

**NOTE:** 1. This is issued pursuant to USAM 1-1.510.  
2. Distribute to all Holders of Title 1.  
3. Insert in front of affected sections.

**AFFECTS:** USAM 1-10.210 through 1-10.231

**PURPOSE:** The attached bluesheet clarifies Urgent Report procedures and transmittal methods. Particular attention should be given to changes in § 1-10.230 regarding when allegations of improper conduct by the Department or a Department employee, public official or public figure must be reported.

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The following sections replace 1-10.210 through 1-10.231 in your United States Attorneys' Manual:

1-10.210 Litigation - Pending and New

The following Urgent Report procedures should be followed for communicating major developments to the Department of Justice in new or pending important cases.

A. Where a Justice Department litigating division has assumed responsibility for a case, the Department of Justice trial attorney shall notify promptly the appropriate supervisor within that division of any major development in an important case. One week advance notice should be provided to the appropriate supervisor whenever a major case development can be anticipated. A supervisor shall immediately report such information to the appropriate Assistant Attorney General. Upon receipt of the Urgent Report, the Assistant Attorney General shall notify the Associate Attorney General, when appropriate,

the Deputy Attorney General and the Attorney General. Urgent Report notification should be made by a memorandum signed by the reporting attorney even where verbal communication has already taken place. Care should be taken to assure that material classified as "confidential" or above, not be transmitted over the EMAIL system but rather be transmitted over a secure STU-III Triad facsimile.

B. In cases where the U.S. Attorney's office controls litigation, communication of major developments should be made to the Executive Office for U.S. Attorneys as soon as possible, and where the development can be controlled, at least one week in advance. Again, communication of an Urgent Report via EMAIL is required even where verbal notice has been given. The Executive Office for U.S. Attorneys shall assume responsibility for further dissemination of the Urgent Report.

C. In cases where the U.S. Attorney's office and a Department of Justice litigating division are jointly involved in litigation, the U.S. Attorney's office should report major developments to the Executive Office for U.S. Attorneys via the EMAIL Urgent Report system. Verbal discussion with a litigating division is no substitute for this responsibility.

D. Suggested criteria for determining what are major developments in important cases are listed below. 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.

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 or national security concerns.

#### **1-10.220 Notice of Interviews of Subjects of Investigations**

It is the policy and practice of the Department of Justice to keep appropriate officials, including the Assistant Attorney General for the Criminal Division or, when appropriate the Assistant Attorney General for the Civil Division, the Associate Attorney General, the Deputy Attorney General and the Attorney

General, advised of sensitive criminal or civil investigations particularly those in which public figures or entities are subjects of the investigation. Urgent Reports must be submitted to advise these Department officials upon the initiation of such sensitive investigations. To assure timely communication of information developed during such investigations, the below-listed procedures should be followed:

A. This notification procedure shall not interrupt, alter or delay the normal conduct and pursuit of any investigation.

B. If in the course of any federal investigation, it is determined that an interview, grand jury appearance or trial appearance is required of any member of Congress, federal judge, high executive branch official or other nationally prominent public figure, the responsible prosecuting or investigating attorney shall provide advance notice to the appropriate official in the Department of Justice before contacting the public figure. Where a Justice Department litigating division has assumed responsibility for the investigation, notice shall be made by a memorandum signed by the reporting attorney. In cases where the U.S. Attorney's office controls the investigation or where the U.S. Attorney's office and a Department of Justice litigating division are jointly involved in the investigation, notice shall be made through an EMAIL Urgent Report. The Executive Office for U.S. Attorneys shall assume responsibility for further dissemination of the Urgent Report. Similar notification should be made in advance of any indictment of such public figures. These procedures do not satisfy other applicable consultative and approval requirements, if any, that may apply.

C. The Urgent Report should be submitted to the Department of Justice as soon as possible, preferably one week before the anticipated event. In the case of an emergency, the information may be communicated orally to the appropriate Assistant Attorney General for further dissemination to the Associate Attorney General, when necessary, the Deputy Attorney General and the Attorney General. Oral notification should be made as much in advance of the event as possible, and should be followed immediately by a memorandum signed by the reporting attorney where a Justice Department litigating division has assumed responsibility for a case or by EMAIL Urgent Report where the U.S. Attorney's office is involved in the case. Emergencies requiring waiver of the advance notification requirement should be rare as most investigative steps are planned well in advance.

D. To preserve investigative integrity and to avert possible unfair publicity, Urgent Reports should be brief and avoid unnecessary investigative detail. All Urgent Reports will be kept on a limited official use basis.

1-10.230 Reporting on Other Matters

Information falling within the criteria set forth below should be sent by EMAIL/FAX (utilizing a secured machine when appropriate), followed by a written memorandum, for further distribution to the Attorney General, Deputy Attorney General, Associate Attorney General and the appropriate Assistant Attorney General. U.S. Attorneys' offices will communicate directly to the Executive Office for U.S. Attorneys. Litigating division staff attorneys will communicate directly to the appropriate supervisor at the Department of Justice. Access to Urgent Reports is strictly controlled and limited to those officials having a need to know.

A. Emergencies - e.g., riots, taking of hostages, hijacking, kidnapping, prison escapes with attendant violence, serious bodily injury to or caused by Department personnel;

B. Allegations of improper conduct by the Department or specific Department employee, a public official, or a public figure; including criticism by a member of Congress, a court, or other senior government official of the Department's handling of a particular matter;

C. Serious conflicts with other government agencies or departments;

D. Issues or events that may be of major interest to the press, Congress or the President; and

E. Other information so important as to warrant the personal attention of the Attorney General within 24 hours.

10.231 Format for Reporting

The below-listed format for Urgent Reports should be used when communicating via EMAIL. Urgent Reports sent by EMAIL should be transmitted in encrypted mode. Section "A" is only appropriate for use by U.S. Attorneys' offices.

A. Name of U.S. Attorney - either the U.S. Attorney or, in the absence of the U.S. Attorney, the individual named to act in his/her place. Provide direct office, home and pager numbers.

B. Name of Assistant U.S. Attorney or Department of Justice litigating attorney - Attorney or supervisor with complete knowledge of facts.

- C. **Classification** - The Department of Justice does not classify material itself but often receives material that is classified. Such classified material which is labeled "CONFIDENTIAL" or above should be transmitted over a secure STU-III Triad facsimile not by EMAIL. Prior to transmitting classified material by STU-III facsimile, U.S. Attorneys' offices should contact Executive Office for U.S. Attorneys to arrange for transmission during working hours on (202) 514-2121. **Department of Justice** litigating attorneys should contact the appropriate Assistant Attorney General during working hours. All contact after working hours should be through the Command Center on (202) 514-5000.
- D. **Main Justice Contact** - List name, title, Division and telephone number of contact at Main Justice familiar with the case. If no contact exist, list "none".
- E. **Synopsis** - One paragraph summary of facts and whether media is aware of the subject matter of report.
- F. **Facts** - Concise recitation of the facts.
- G. **Copies** - Individuals at Main Justice to whom copies should be distributed

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 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,

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October 1, 1990



/s/

Rudolph W. Giuliani  
Associate Attorney General

#### 1-10.200 REPORTING SYSTEM FOR U.S. ATTORNEYS

Management officials of the Department of Justice need to be kept aware of major developments in important cases handled in the U.S. Attorney's 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.

Also, the Attorney General, Deputy Attorney General and Assistant Attorney General of the Criminal Division must be advised of sensitive criminal investigations concerning public figures or entities.

The following sections set forth procedures for communicating major developments to the Department of Justice in 1) new or pending important cases, and 2) procedures to follow in which a public figure or entity is the subject of the investigation.

#### 1-10.210 Litigation—Pending and New

The following procedures should 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

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there is any ambiguity over to whom a report should be made, please report to the Executive Office for U.S. Attorneys.

D. Suggested criteria for determining what are major developments in important cases are listed below. 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.

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.

1-10.220 Notice of Interviews of Subjects of Investigations

It is also the policy and practice of the Department of Justice to keep appropriate officials, including the Assistant Attorney General for the Criminal Division, the Deputy Attorney General and the Attorney General, advised of sensitive criminal investigations particularly those in which public figures or entities are subjects of the investigation. Urgent Reports must be prepared informing these Department officials of the initiation of investigations concerning such public figures and entities. To assure as well that specific information concerning major stages in such investigations is communicated in a timely manner, the following procedures should be followed:

A. This notification procedure shall in no way interrupt, alter or delay the normal conduct and pursuit of any investigation.

B. If in the course of any federal criminal investigation, it is determined that an interview, grand jury appearance or appearance as a witness at trial is required of any member of Congress, federal judge, high executive branch official or other nationally prominent public figure, the responsible prosecuting or investigating attorney shall advise the above-named official through a written Urgent Report before contacting the public figure. A similar notification should be prepared in advance of any indictment of such public figures.

C. In the ordinary course, the Urgent Report should be submitted to the Department of Justice no less than one week before the anticipated event. In the event of an emergency, the information may be communicated to the

Assistant Attorney General for the Criminal Division orally, but the oral notification should be as much in advance of the event as possible, and should be followed immediately by a written memorandum signed by the reporting attorney. It is expected that emergencies requiring a waiver of the one-week notification requirement will be rare, since most such investigative steps are planned well in advance.

D. To preserve the integrity of all investigations and to avoid the possibility of unfair and prejudicial publicity to any person or entity, the Urgent Reports should be brief, without unnecessary investigative detail, and will be kept confidential.

#### 1-10.230 Reporting on Other Matters

Information falling within the criteria set forth below should be sent by TWX/FAX (utilizing a secured machine when appropriate) to the Executive Office for U.S. Attorneys for further distribution to the Attorney General, Deputy 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, hijacking, kidnapping, 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.

#### 1-10.231 Format for Reporting

The following format should be used:

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; and

Line 7: To end, brief synopsis of the information.

#### 1-10.300 UNITED STATES 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* 1-10.200) 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 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 Legal Counsel Staff (FTS 514-4024) to whom all surveys should be referred.

The text of the Order follows:

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. At-

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torneys' 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.
  - 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 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.
  - n. 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

U.S. ATTORNEYS MANUAL 1988





U.S. Department of Justice

Executive Office for United States Attorneys

Washington, D.C. 20530

TO: Holders of United States Attorneys' Manual Title 1

FROM: United States Attorneys' Manual Staff  
Executive Office for United States Attorneys  
*Anthony C. Moscato*  
Anthony C. Moscato  
Acting Director

RE: United States Attorney Compliance with Attorney General Guidelines for Management of the Provision of Victim-Witness Assistance

NOTE: 1. This is issued pursuant to USAM 1-1.510.  
2. Distribute to Holders of Volume I, USAM.  
3. Insert in front of affected section.

AFFECTS: USAM 1-11.000

PURPOSE: This sheet sets forth guidelines on the uniform management of services to victims and witnesses by the United States Attorneys' offices.

The Victim and Witness Protection Act of 1982 (Act of 1982), dated October 12, 1982, P.L. 97-291, was enacted to "...ensure that the Federal Government does all that is possible within limits of available resources to assist victims and witnesses of crime...." The Crime Control Act of 1990, specifically the Victims' Rights and Restitution Act of 1990, created a federal crime victims' Bill of Rights and codifies services that should be available to victims of federal crimes. Title II, the Victims of Child Abuse Act of 1990, includes extensive amendments to the criminal code affecting the treatment of children by the federal criminal justice system. The Act of 1982 required the Attorney General to develop and implement guidelines for the Department consistent with the purposes of this legislation. Compliance with this requirement was accomplished by issuance of the "Attorney General's Guidelines on Victim and Witness Assistance" on July 9, 1983, which were revised and reissued on August 6, 1991. These Guidelines set forth the procedures that officials should follow in responding to the needs of victims and witnesses. In addition to incorporating the provisions of the Act of 1982, and the Crime Control Act of 1990, the Guidelines also incorporate pertinent recommendations of the President's Task Force on Victims of Crime, which were published in December 1982.



Responsibility for implementing the prosecution-related provisions of the Attorney General's Guidelines within the Department resides with the 93 United States Attorneys, with each United States Attorney as the responsible official for cases in his/her district in which charges have been instituted.

Responsibility for technical assistance to United States Attorneys' offices in implementing the Attorney General's Guidelines lies with the LECC/Victim-Witness Staff of the Executive Office for United States Attorneys.

Responsibility for monitoring compliance with the Guidelines and provisions of the Victim and Witness Protection Act of 1982 and the Crime Control Act of 1990 resides with the Director, Office for Victims of Crime (OVC), Office of Justice Programs (OJP). (See especially P.L. 100-690, Title IV, subtitle D (Victim Compensation and Assistance) (November 18, 1988, - 1404(c)(3)(A), as amended.)

Pursuant to the Victim and Witness Protection Act of 1982, section 6, and the Attorney General's Guidelines for Victim and Witness Assistance, each United States Attorney shall:

1 - Designate one or more persons specifically for the purpose of carrying out the provisions of the Guidelines;

2 - Establish written office procedures, guidelines and materials for the provision of victim-witness services;

3 - Inform and educate office personnel about procedures for provision of victim-witness services. This includes keeping personnel informed of any changes/modifications that may occur;

4 - Develop and maintain accurate resource materials which identify available public and private programs for the provisions of counseling, treatment or support services to victims;

5 - Coordinate the provision of victim-witness services between the United States Attorneys' offices and other organizational components of the Department, i.e., investigative agencies within the Department; and with state and local law enforcement officials including tribal police officials in Indian Country and victim assistance and compensation service providers;

6 - Report annually to the Attorney General, by November 1, on the "Best Efforts" they have made in ensuring that victims of crime are accorded the rights set out in the Act.

U.S Attorneys may comply with this requirement by the filing of their annual report on victim and witness assistance with the LECC/Victim-Witness Staff of the Executive Office for United States Attorneys.



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March 1, 1994

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1-11.000 LAW ENFORCEMENT COORDINATING COMMITTEE/VICTIM-WITNESS

## 1-11.100 HISTORY AND OVERVIEW

In the summer of 1981, the Attorney General's Task Force on Violent Crime specifically recommended that each U.S. Attorney establish a Law Enforcement Coordinating Committee (LECC). The Task Force included eight distinguished national criminal justice experts who closely examined federal, state, and local law enforcement needs. The recommendation to establish LECCs came as a direct result of the group's finding that federal, state, and local law enforcement cooperation was crucial, but that cooperation nationwide was uneven, ranging from nonexistent to good.

The Attorney General of the United States quickly responded to the Task Force recommendations and on July 21, 1981, issued an order instructing every U.S. Attorney to establish a Law Enforcement Coordinating Committee in his/her district. All United States Attorneys are also tasked with implementation of the Victim and Witness Protection Act of 1982 and the Victims' Rights and Restitution Act of 1990.

Today, each of the 93 United States Attorneys has a Law Enforcement Coordinating Committee in place, consisting of federal, state, and local agencies involved in district law enforcement. The goal of these committees is to improve cooperation and coordination among law enforcement groups and thereby enhance the effectiveness of the criminal justice system. Districts also have LECC Subcommittees which consist of relevant LECC agency officials working on specialized tasks, such as drug enforcement or white collar crime, see USAM 1-11.211.

In addition to the establishment of subcommittees, the United States Attorneys put together comprehensive district law enforcement plans outlining the crime picture and enforcement strategies in their respective jurisdictions. At present, all United States Attorneys have operational law enforcement plans approved by the Department of Justice. These plans are continually being updated to reflect changing needs and priorities.

The Attorney General is committed to supporting and continually upgrading the LECC/VW program, which has become a permanent cornerstone of joint federal, state, and local law enforcement efforts. In 1984, the Department of Justice requested additional staff to assist United States Attorneys in coordinating LECC/VW activities in the field. An LECC/Victim-Witness coordinator position has now been allocated to each District. The LECC/VW Coordinator positions are vital to assure the continued success of the LECC/VW program, and Coordinators can expect the full support and assistance of the Department of Justice in performing their duties.

## 1-11.200 STRUCTURE

The LECC/VW program is under the overall direction of the Associate Attorney General. U.S. Attorneys from various districts make up the LEC Subcommittee of the Attorney General's Advisory Committee of U.S. Attorneys. This subcommittee also provides input to the Attorney General on LECC/VW matters through the Attorney General's Advisory Committee.

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March 1, 1994

Actual programmatic implementation, providing the primary support for district LECC/Victim-Witness activity, is the responsibility of the LECC/Victim-Witness Staff within the Executive Office for U.S. Attorneys. Professional staff maintain liaison with U.S. Attorneys and district LECC/VW Coordinators, monitor and assist in evaluating LECC/VW activity, publish the /VW-monthly newsletter, *LECC/VW Network News*, and work with numerous national criminal justice organizations on LECC/VW matters. Each LECC/VW Coordinator is assigned a staff member designated to handle matters in his/her district. LECC/VW Coordinators may also find support from the Office for Victims of Crime (OVC) under the Office of Justice Programs (OJP).

Each district's LECC is under the supervision of the U.S. Attorney, who serves as the committee chairperson or co-chairperson. The LECC/VW Coordinators, who also work with the Victim-Witness Program, assist in managing local LECC operations as directed by the U.S. Attorney.

#### 1-11.210 Membership

LECC members represent a broad range of multilevel government law enforcement agencies. In some of the larger districts, the full LECC may consist of several hundred individuals. Federal agency members include the FBI, DEA, IRS, INS, ATF, the U.S. Customs Service, Postal Inspection Service, U.S. Marshals Service, Fish and Wildlife Service, Park Service, federal agency inspectors general, and the military. State agencies generally include state police; state attorneys general and inspectors general; the National Guard; tax, banking, and insurance regulators; conservation officers; and state criminal justice planning agencies. Local government agencies provide members from district or prosecuting attorneys' offices, city and rural police departments, sheriffs' departments, county inspectors, and town constables. Private groups, such as banking and insurance security personnel, may also belong to the committee. Even foreign law enforcement groups, such as the Royal Canadian Mounted Police, can be a part of the LECC in border districts. The U.S. Attorney must ensure that full and fair representation is accorded all state and local law enforcement interests.

#### 1-11.211 Subcommittees

Subcommittees serve as the operational core of most LECC activity. They address specialized areas of district law enforcement needs and are made up of personnel with appropriate interest and expertise. An Assistant U.S. Attorney or other high level federal or nonfederal official may head the subcommittee.

#### 1-11.220 Reporting Requirements

The LECC/Victim-Witness staff should receive the following reports:

- Advance notification of meetings and training seminars;
- Minutes of meetings held (full and subcommittee);
- Follow-up on completed or terminated projects or programs;

- Notification of seized assets which have been equitably shared;
- Press releases of indictments which result from interagency cooperation;
- Media coverage of United States Attorney's Office or LECC program;
- Information for inclusion in *LECC/VW Network News*.

The importance of reporting comes from the information received rather than from the format. Therefore, copies of previously generated documents are adequate. The Staff utilizes these reports to identify successful programs, to share good ideas with other districts, and to learn where problems may be. Each Coordinator should know his/her contact person on EOUSA's LECC/Victim-Witness staff, who can provide the district with help for LECC/Victim-Witness activities.

#### 1-11.230 LECC Network News

The *LECC/Victim-Witness Network News* (NN) is published monthly by the LECC/Victim-Witness Staff within the Executive Office for United States Attorneys. The purpose of NN is to inform LECCs across the nation of significant LECC and Victim-Witness related activity and of events that pertain to the national program. NN is distributed to all United States Attorneys and to numerous other federal, state, and local officials. Offices may photocopy issues as they have need.

#### 1-11.300 GUIDELINES ON VICTIM AND WITNESS ASSISTANCE

##### 1-11.310 Introduction

The Victim and Witness Protection Act of 1982 (Act of 1982), dated October 12, 1982, P.L. 97-291, was enacted to ". . . ensure that the Federal Government does all that is possible within limits of available resources to assist victims and witnesses of crime. . . ." The Crime Control Act of 1990, specifically the Victims' Rights and Restitution Act of 1990, created a federal crime victims' Bill of Rights and codifies services that should be available to victims of federal crimes. Title II, the Victims of Child Abuse Act of 1990, includes extensive amendments to the criminal code affecting the treatment of children by the federal criminal justice system. The Act of 1982 required the Attorney General to develop and implement guidelines for the Department consistent with the purposes of this legislation. Compliance with this requirement was accomplished by issuance of the "Attorney General's Guidelines on Victim and Witness Assistance" of July 9, 1983, which were revised and reissued on August 6, 1991. These Guidelines set forth the procedures that officials should follow in responding to the needs of victims and witnesses. In addition to incorporating the provisions of the Act of 1982, and the Crime Control Act of 1990, the Guidelines also incorporate pertinent recommendations of the President's Task Force on Victims of Crime, which were published in December 1982.

##### 1-11.320 Responsibilities

Responsibility for implementing the prosecution-related provisions of the Attorney General's Guidelines within the Department resides with the 93 United States Attorneys,

with each United States Attorney as the responsible official for cases in his/her district in which charges have been instituted.

Responsibility for technical assistance to United States Attorneys' offices in implementing the Attorney General's Guidelines lies with the LECC/Victim-Witness Staff of the Executive Office for United States Attorneys.

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#### 1-11.330 Procedures

Pursuant to the Victim and Witness Protection Act of 1982, section 6, and the Attorney General's Guidelines for Victim and Witness Assistance, each United States Attorney shall:

1. Designate one or more persons specifically for the purpose of carrying out the provisions of the Guidelines;
2. Establish written office procedures, guidelines and materials for the provision of victim-witness services;
3. Inform and educate office personnel about procedures for provision of victim-witness services. This includes keeping personnel informed of any changes/modifications that may occur;
4. Develop and maintain accurate resource materials which identify available public and private programs for the provisions of counseling, treatment or support services to victims;
5. Coordinate the provision of victim-witness services between the United States Attorneys' offices and other organizational components of the Department, i.e., investigative agencies within the Department; and with state and local law enforcement officials including tribal police officials in Indian Country and victim assistance and compensation service providers;
6. Report annually to the Attorney General, by November 1, on the "Best Efforts" they have made in ensuring that victims of crime are accorded the rights set out in the Act. U.S. Attorneys may comply with this requirement by the filing of their annual report on victim and witness assistance with the LECC/Victim-Witness Staff of the Executive Office for United States Attorneys.

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October 1, 1988

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1-12.000 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.

## 1-12.100 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.

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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 mini-trials, 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 an imposition merely to save

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October 1, 1988



the time of officers that Congress has determined shall be available to all is improper.

#### 1-12.200 PROCEDURES IN MASTER CASES

##### 1-12.210 The Decision on Appointment

##### 1-12.211 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.

##### 1-12.212 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 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.

##### 1-12.213 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.

1-12.220 Selection of the Master

## 1-12.221 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.

## 1-12.222 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 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.

#### 1-12.223 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 mechanisms shall be reported to the Deputy and Associate Attorneys General and the other litigating divisions.

#### 1-12.230 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.

#### 1-12.231 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.

#### 1-12.240 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 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.

#### 1-12.250 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.

#### 1-12.300 FEES AND EXPENSES OF SPECIAL MASTERS

##### 1-12.310 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 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.

#### 1-12.400 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 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.

U.S. ATTORNEYS MANUAL 1988

UNITED STATES ATTORNEYS' MANUAL

DETAILED  
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1-13.000 DEPARTMENT OF JUSTICE PERSONNEL AS WITNESSES—28 C.F.R. § 16.21 ET SEQ.

1-13.100 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 situations exists.

As will be noted in Section 1-13.410, *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.

1-13.110 Definitions

1-13.111 Employee Defined

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.

#### 1-13.112 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. For 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 1-13.230 and 13.340, *infra*, for examples of the concept of "originating component."

#### 1-13.113 Motion to Quash Defined

The term "'motion to quash'" includes a motion for a protective order and appropriate objections to testimony.

#### 1-13.120 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.

1-13.200 PROCEDURE WHERE UNITED STATES IS NOT A PARTY

1-13.210 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.

1-13.220 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 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).

#### 1-13.230 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 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.)

#### 1-13.240 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 1-13.420, *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 1-13.430, *infra*.

1-13.250 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).

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.

1-13.260 Procedure if the U.S. Attorney and the Originating Component Either Disagree on Disclosure or Agree That No Disclosure Should be Made

1-13.261 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.

1-13.262 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.

1-13.270 Denial Policy—United States Not a Party

See USAM 1-13.400 *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.

1-13.300 PROCEDURE WHERE UNITED STATES IS A PARTY

1-13.310 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.

1-13.320 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 1-13.220 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 1-13.220.

1-13.330 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. See 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.

1-13.340 Authorizing Disclosure in General

Section 16.23, 28 C.F.R. 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, 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 testimo-



ny 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).

1-13.350 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).

1-13.360 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. See 28 C.F.R. § 16.23(a). The options open to that division on referral will be discussed later in this section.

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. See 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. See 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).

1-13.370 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).

**1-13.380 Denial Policy—United States a Party**

See USAM 1-13.400, *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.

**1-13.400 DENIAL POLICY****1-13.410 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. See 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).

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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).

1-13.420 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 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 two-fold, 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. See 28 C.F.R. § 16.24(b)(3).

1-13.430 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;

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.

1-13.440 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 to 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 to 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 crimi-

nal 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 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 to 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. See 28 C.F.R. § 16.26(c).

#### 1-13.500 PROCEDURES IN RESPONDING TO A DEMAND

##### 1-13.510 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 (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, 16.28.

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).

1-13.520 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.

1-13.530 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.

## 1-13.600 GENERAL PROVISIONS

1-13.610 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 obtained by DEA and DEA investigative reports to federal, state, and local prosecutors and to state licensing boards engaged in the institution and control of 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:

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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).

#### 1-13.620 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 to 5708, unless reimbursed by the court or by the party summoning the witness. See 5 U.S.C. § 5751. The appropriate amount chargeable for travel expenses is detailed in 28 C.F.R. § 21.1.

#### 1-13.630 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. See 5 U.S.C. § 6322. However, no provision is made for official leave for an employee who appears voluntarily as a witness for a private party.

#### 1-13.640 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. See 5 U.S.C. § 5515.



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1-14.000 WITNESSES

## 1-14.100 REGULAR WITNESSES

1-14.110 General

General assistance on witness matters is available by calling FTS 272-8429 or writing to the Assistant Attorney General for Administration, Attention: Special Authorizations Unit, Procurement Services Staff, Justice Management Division.

The Department is authorized to pay for compensation of witnesses and informants at rates approved by the Attorney General or the Assistant Attorney General for Administration. See 28 U.S.C. § 524. Title V of Pub.L. No. 91-452 authorizes the Attorney General to provide for the security of government witnesses and potential witnesses, and members of their families. A detailed explanation of this program is found in USAM 9-21.000.

1-14.111 Pre-Appearance Interviews

Neither the U.S. Attorney or his/her Assistants are empowered to issue subpoenas directing witnesses to appear at the U.S. Attorney's Office. See *United States v. Thomas*, 320 F.Supp. 127 (D.C.D.C.1970). The usual procedure is for the U.S. Attorney to request that the witness appear at the U.S. Attorney's Office a few days prior to the witness' scheduled appearance in court. Where the witness is willing to be interviewed prior to his/her scheduled appearance in court, the witness may be compensated. If the interview occurs during the time that the witness is under subpoena, compensation is granted pursuant to 28 U.S.C. § 1821. See USAM 1-14.120, *infra*. If the interview occurs prior to the return date of the subpoena, compensation is granted pursuant to 28 U.S.C. § 524. See *United States v. Thomas, supra*. In the latter situation, payment is made on the Form OBD-3, Fact Witness Voucher.

Expenses for travel solely for these interviews, separate from travel to respond to subpoena, are not normally authorized. In exceptional circumstances, however, where such travel is unavailable, a request must be submitted in advance by completing a Request and Authorization for Fees and Expenses of Witnesses, Form OBD-47. See USAM 1-14.750, *infra*. Pre-trial interviews should not exceed 3 days (5 days if a weekend is involved for an out-of-district witness).

1-14.112 Subpoenas

Praecipes for subpoenas for witnesses are not required by Rule 17(a), Fed.R.Cr.P., and Rule 45(a), Fed.R.Civ.P. Praecipes for subpoenas should not be prepared unless local rules or practice makes their use mandatory.

Any praecipis necessary should be prepared by the U.S. Attorney or the Assistant in charge of the case.

To facilitate service of the subpoena, the proper address of each witness should be obtained. If the witness' office and residence addresses are known they should both be given. The U.S. Marshal should be advised as to the race, height, sex, weight, age, and any unusual mark or identification of the witness so that the proper service may be made from the description given.

#### 1-14.120 Fees

Public Law No. 95-535, 92 Stat. 2033 increased the witness allowances provided for in 28 U.S.C. § 1821. The fee provided is \$30.00 per day.

Witnesses in the district courts for the District of Guam and the Virgin Islands shall receive the same fees and allowances provided for witnesses in other district courts of the United States. For payment of fees and expenses of witnesses during a period of lapsed appropriation, see USAM 1-14.123, and USAM 3-3.315.

#### 1-14.121 Allowances

The following miscellaneous rules govern witness fee allowances:

A. Allowances for per diem for travel and attendance require that an overnight stay be involved. These allowances are based upon the allowances payable to government employees.

B. Unusual witness expenses, such as babysitting fees, ambulance service, high seasonal accommodations, etc., which cannot be absorbed from witness allowances, require prior approval from the Special Authorizations Unit. Witnesses contracting for rental cars are not an allowable expense unless prior approval is obtained from the Special Authorizations Unit. If prior approval is not obtained from the Special Authorizations Unit, witnesses may be reimbursed for rental car expenses.

C. No constructive or double mileage fees shall be allowed for any person summoned both as a witness and a juror. See 28 U.S.C. § 1824.

D. When a witness is subpoenaed in more than one case at the same court, only one travel fee and one per diem compensation shall be allowed for attendance. Both shall be allotted to the case first disposed of, after which the per diem attendance fee alone shall be allotted to the other cases in the order in which they are disposed of.

E. The appropriation acts provide that no witness is to be paid more than one attendance fee for any one day. This also applies to witnesses before United States Magistrates.

F. Witnesses who reside where the court sits shall not be paid for days on which court is not in session and no service is rendered.

G. No officer of any court of the United States located in any State, Territory or the District of Columbia shall be entitled to witness fees for attendance before any court or magistrate where he/she is officiating. See 5 U.S.C. § 5537.

H. The Attorney General has ordered that mileage payable to witnesses shall be computed on the basis of highway distances as stated in any general accepted mileage guide which contains a short-line nationwide table of distances and which is designated by the Assistant Attorney General for Administration for such purpose. In areas for which no such mileage guide exists, mileage payable under 28 U.S.C. § 1821 shall be based on the mode of travel used, the mileage of a usually-traveled route, and distances as generally accepted in that locality.

Since August 1, 1956, U.S. Marshals have used the short-line nationwide distance tables and maps in the *Rand-McNally Standard Highway Mileage Guide*. Mileage from residence to the nearest point appearing in the *Guide* will be computed via the direct highway route.

#### 1-14.122 Advances

It is the responsibility of the U.S. Marshal serving a subpoena or summons to determine whether or not the witness requires an advance in order to attend court. Advances no longer have to be requested or authorized by the U.S. Attorney requesting the appearance of the witness.

#### 1-14.123 Payment of Fees and Expenses of Witnesses During a Period of Lapsed Appropriations

The Antideficiency Act, 31 U.S.C. § 665(a) prohibits the government from routinely continuing to make expenditures under the Fees and Expense of Witnesses ('FEW') account or creating obligations in connection with its use of fact or expert witnesses. The Office of Legal Counsel has noted several exceptions:

A. If a witness traveled to and from the courthouse because his/her appearance was directed by a court order issued prior to a lapse in appropriations, an obligation of payment is authorized in an amount sufficient to permit the witness to return home, or for overnight accommodations if travel overnight is impracticable. Payment for meals is also authorized. Disbursement will not be made until the Department's funding has resumed. An exception will be made if it can be shown that, where the witness lacks financial resources necessary to return home, his/her safety would be compromised by not providing a means home. In such a case, a cash disbursement for that purpose is warranted;

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B. Use of a witness and any obligations incurred as a result are authorized where the court denies a motion for a continuance;

C. Other instances which are not covered by the above exceptions but appear significant enough to justify use of the FEW account will be evaluated on a case-by-case basis by JMD and/or the Office of Legal Counsel.

#### 1-14.130 Certificate of Attendance and Payment

Form OBD-3 (Fact Witness Voucher) is a three-part, four copy snap-out form and provides for certification of attendance by the U.S. Attorney for the regular (fact) witness claim for fees and allowances, and for payment of the claim by the appropriate paying office. Payments are made by the U.S. Marshal for the district in which the trial or hearing is held, or by the Accounting Operations Group, Justice Management Division.

#### 1-14.200 WITNESS' EXPENSES INCURRED ON BEHALF OF INDIGENT PERSONS

Generally, expenses incurred on behalf of indigent persons will be handled in the same manner as expenses incurred on behalf of the government. See USAM 1-14.422, *infra*.

Certification of attendance is by a Federal Public Defender, U.S. District Judge, or Clerk of the Court.

For stenographic and notarial charges related to depositions, refer to Depositions, USAM 1-14.800 *infra* and USAM 3-3.210.

Expenses pursuant to a court's order allowing witnesses for an indigent under Rule 17(b) may include those of state or federal guards, etc., in producing prisoners under writs of *habeas corpus ad testificandum*.

#### 1-14.210 Responsible Payor

The enactment of 18 U.S.C. § 3006A resulted in changes of responsibility for payment of certain expenses of litigation for persons allowed to proceed *in forma pauperis*. The chart on the following pages reflects these changes and sets forth the appropriations chargeable for expenses in indigent proceedings:

#### APPENDIX 1. EXPENSE RESPONSIBILITY FOR CRIMINAL PROCEEDINGS IN FORMA PAUPERIS LISTED NUMERICALLY BY CONTROLLING LAW OR RULE

<u>Controlling Law or Rule</u>	<u>Nature of Expense</u>	<u>Agency and Appropriation Chargeable</u>
1. <u>18 U.S.C. Sec. 3006A(e) Adequate Representation of defendants-Services Other than Counsel (Criminal Justice Act of 1964)</u>	A. <u>Expert Witness</u> Witness fees and expenses	Admin. Office of U.S. Courts
	B. <u>Expert Services</u> Expert's fees and expenses	Admin. Office of U.S. Courts

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<u>Controlling Law or Rule</u>	<u>Nature of Expense</u>	<u>Agency and Appropriation Chargeable</u>
2. <u>18 U.S.C. Sec. 3191 Witnesses for Indigent Fugitives</u>	A. <u>Fact Witness</u> Witness fees and expenses	Dept. of Justice Fees and Expenses of Witnesses
	B. <u>Expert Witness</u> Witness fees and expenses	Admin. Office of U.S. Courts
3. <u>18 U.S.C. Sec. 3495 Fees and Expenses of Consuls, Counsel, Interpreters and Witnesses</u> (Criminal cases only—fees are to be established by the Secretary of State.)	A. <u>Fact Witness</u> Witness fees and expenses	Dept. of Justice Fees and Expenses of Witnesses
	B. <u>Expert Witness</u> Witness fees and expenses	Admin. Office of U.S. Courts
4. <u>18 U.S.C. Sec. 3503(c) Deposition to Preserve Testimony</u>  15(c) FRCrP  <u>Depositions-Defendant's Counsel and Payment of Expenses</u>	A. <u>Travel and Subsistence of indigent and his attorney for attendance at deposition</u>  1. Requested by attorney for indigent 2. Requested by Department attorney	Admin. Office of U.S. Courts Dept. of Justice Litigative Expense
	B. <u>Deposition-Fact Witness</u> (If under Rule 7(b) witness could be compelled to appear)  1. Deponent's fees and expenses  2. Stenographic or notarial expenses for taking deposition of subpoenaed deponent	Dept. of Justice Fees and Expenses of Witnesses Dept. of Justice Litigative Expense
	C. <u>Deposition-Expert Witness</u> Deponent's fees and expenses <u>Expert Services</u> Examination to determine mental competency to stand trial	Admin. Office of U.S. Courts Dept. of Justice Fees and Expenses of Witnesses
5. <u>18 U.S.C. Sec. 4241 Mental Incompetency After Arrest and Before Trial</u>	<u>Expert Services</u> Expert's fees and expenses	Dept. of Justice Fees and Expenses of Witnesses
6. <u>18 U.S.C. Sec. 4242 Mental Responsibility at Time of Alleged Offense</u>	<u>Expert Services</u> Expert's fees and expenses  1. Requested by attorney for indigent 2. Requested by Department attorney	Admin. Office of U.S. Courts Dept. of Justice Fees and Expenses of Witnesses
	(NOTE: If the purpose of the examination is two fold; i.e., to determine competency to stand trial and responsibility at time of alleged offense, the costs will be apportioned according to examples (5) and (6).)	
7. <u>28 U.S.C. Sec 753(f) Reporters</u>	<u>Transcripts</u> Fees for Transcripts	Admin. Office of U.S. Courts

<u>Controlling Law or Rule</u>	<u>Nature of Expense</u>	<u>Agency and Appropriation Chargeable</u>
8. 28 U.S.C. Sec. 1825 <u>Payment of Fees</u>	<u>Fact Witnesses</u> Witness fees and expenses	Dept. of Justice Fees and Expense of Witnesses
9. 28 U.S.C. Sec. 1915 <u>Criminal Proceedings IN FORMA PAUPERIS</u>	A. <u>Fact Witnesses</u> See 17(b) FRCrP	
	B. <u>Expert Witnesses</u> See 18 U.S.C. Sec. 3006A(e)	
	C. <u>Taxation of Costs</u> Judgement Taxing Costs	United States; not liable
	D. <u>Collection</u> Non-prepaid expenses in habeas corpus cases	a. If Federal confinement, U.S. Marshal collects if costs imposed on petitioner b. If State confinement, U.S. Marshal collects from unsuccessful party
10. 28 U.S.C. Sec. 2250 <u>Indigent Petitioner Entitled to Documents Without Costs (Habeas Corpus)</u>	<u>Documents</u> Costs of certified copies of documents or parts of records	Admin. Office of U.S. Courts
11. 17(b) FRCrP <u>Subpoena-Defendants Unable to Pay</u>	<u>Fact Witnesses</u> Witness fees and expenses	Dept. of Justice Fees and Expenses Witnesses
12. 706 Fed. Rules of Evidence <u>Expert Appointed to Assist the Court</u>	A. <u>Expert Witnesses</u> (not called to testify by Department attorney) Witness fees and expenses	Admin. Office of U.S. Courts
	B. <u>Expert Services</u> For example: Mental examination to aid the court in sentencing	Admin. Office of U.S. Courts

## 1-14.300 WITNESSES RESIDING OUTSIDE UNITED STATES

See also *Deposition*, USAM 1-14.820, *infra*.

1-14.310 U.S. Citizens and Alien Residents Abroad

## 1-14.311 Subpoena

United States Nationals and Alien Residents, who are in foreign countries and whose status as United States immigrants is unchanged, are subject to subpoena. United States Nationals are citizens of the United States, or persons who, though not citizens, owe permanent allegiance to the United States. Alien Residents are persons who have been lawfully admitted for permanent residence in the United States as United States immigrants in accordance with the immigration laws.



Although 28 U.S.C. § 1783 no longer requires that subpoenas be served by consular officers, the State Department has declared its willingness to continue assisting the Department of Justice whenever possible. A subpoena which specifically provides for service by a consular officer will receive expeditious handling.

There will be instances when service will have to be made by one of the alternative methods prescribed by Rule 4(i), Federal Rules of Criminal Procedure, because the country involved (e.g., Switzerland) does not permit foreigners to serve legal documents of any kind. In such instances, the attorney in charge of the case should consult the Office of International Affairs in the Criminal Division and the Office of Foreign Litigation in the Civil Division.

It is important that all U.S. Attorneys and Department attorneys observe the following procedure to ensure effective service:

A. Secure a court order in accordance with the above instructions and 28 U.S.C. § 1783 at least two weeks prior to trial, if possible.

B. Send the original and one copy of the subpoena and court order to: Office of Special Consular Services, Department of State, Room 4800, Main State, 2201 C St. NW, Washington, D.C. 20520. That office will send your communication by diplomatic pouch to the appropriate United States Consular Mission. In your letter of transmittal, advise the consular officer that the return may be made on the subpoena at the bottom or on a separate paper, and indicate where the return should be forwarded.

C. Send one copy of the court order to the Assistant Attorney General for Administration, Attn: Special Authorization Unit, to serve as a basis for disbursing authorization.

#### 1-14.312 Witnesses' Fees

American citizens are entitled to receive compensation for necessary travel to the United States and attendance expenses. The Consular Mission can make such payments directly from Department of Justice funds when effecting service of the subpoena, provided the Special Authorizations Unit, Justice Management Division, arranges for disbursing authorizations. To guard against possible misuse of large sums of cash and failure of witnesses to appear, it is urged that the cooperation of the court be obtained in drafting court orders to provide for a prepaid round trip ticket for the transportation. See *Sample Court Orders*, USAM 1-14.330, *infra*. The attendance may be paid in cash with rates prescribed by 28 U.S.C. § 1821 for the first day's absence from home. There also may be a cash allowance in an estimated amount for incidental expenses such as transportation to and from terminals.

1-14.320 Foreign Nationals Residing in Foreign Countries

## 1-14.321 Obtaining Attendance

Since foreign nationals residing in the foreign countries are not subject to the subpoena power of United States Courts, their attendance can be obtained only on a voluntary basis. Obtaining testimony from foreign nationals is often a delicate matter, and care must be taken to avoid offending the sovereignty of the foreign country involved.

When the testimony of *employees* of foreign governments is needed, the attorney should submit an appropriate request directly to the Office of International Affairs, Criminal Division, or the Office of Foreign Litigation in the Civil Division, prior to communicating with the witness or the foreign government. The appropriate office will request the Department of State to obtain the approval of the foreign government involved.

## 1-14.322 Fees

The present witness allowances under 28 U.S.C. § 1831 are generally acceptable to foreign nationals. Therefore, payment of the statutory rates, subsistence and *actual cost* of transportation may be made on the basis of the witness attendance certificate, and Form OBD-47 is not necessary. If the witness requires an advance of travel funds from the Embassy or Consulate, the U.S. Attorney should notify the Special Authorizations Unit one week in advance, if possible, so that the consular officer can be authorized to furnish a ticket and, if necessary, the first day's witness allowance. The U.S. Marshal of the trial district will be notified of such authorization, so that payments can be adjusted accordingly.

1-14.330 Sample Court Orders

## 1-14.331 When a Prepaid Ticket is to be Tendered

UNITED STATES DISTRICT COURT  
DISTRICT OF \_\_\_\_\_

\_\_\_\_\_  
UNITED STATES OF AMERICA,

v.

\_\_\_\_\_, Defendant

ORDER

Upon the affidavit of \_\_\_\_\_, Assistant United States Attorney for the \_\_\_\_\_ District of \_\_\_\_\_, sworn to this \_\_\_\_\_ day of \_\_\_\_\_, it is

ORDERED that a subpoena issue, in accordance with the provisions of Section 1783, Title 28, United States Code, as revised, (and Rule 17(e)(2)

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of the Federal Rules of Criminal Procedure), to the United States Consular Officer in \_\_\_\_\_ commanding \_\_\_\_\_ to appear on the \_\_\_\_\_ day of \_\_\_\_\_ before the United States District Court for the \_\_\_\_\_ District of \_\_\_\_\_, Room \_\_\_\_\_, United States Courthouse, \_\_\_\_\_, (and, to produce \_\_\_\_\_ records)<sup>1</sup>, and it is

FURTHER ORDERED that the United States Consular Officer in \_\_\_\_\_ be and he/she hereby is directed to serve said subpoena and a copy of the order upon \_\_\_\_\_ and upon serving said subpoena tender a prepaid ticket for coach air-fare for (\_\_\_) one-way or (\_\_\_) round trip between \_\_\_ and \_\_\_\_\_ and \$40.00<sup>2</sup>, constituting the amount necessary for travel expenses to and from terminals and for one day's attendance.

U.S.D.J.

Dated:

1 Insert if applicable.

2 Suggested amount-1 day at \$30.00, plus \$10.00 for transportation to and from terminals.

1-14.332 When Cash is to be Tendered

UNITED STATES DISTRICT COURT  
DISTRICT OF

\_\_\_\_\_

UNITED STATES OF AMERICA,

v.

\_\_\_\_\_, Defendant.

ORDER

Upon the affidavit of \_\_\_\_\_, Assistant United States Attorney for the District of \_\_\_\_\_, sworn to this \_\_\_\_\_ day of \_\_\_\_\_ it is

ORDERED that a subpoena issue in accordance with the provisions of Section 1783, Title 28, United States Code, as revised, (and Rule 17(E)(2) of the Federal Rules of Criminal Procedure), to the United States Consular Officer in \_\_\_\_\_ commanding \_\_\_\_\_ to appear on the \_\_\_\_\_ day of \_\_\_\_\_ before the United States District Court for the \_\_\_\_\_ District of \_\_\_\_\_, Room \_\_\_\_\_, United States Courthouse, (and to produce \_\_\_\_\_ records)<sup>1</sup>, and it is

FURTHER ORDERED that the United States Consular Officer in \_\_\_\_\_ be and he/she hereby is directed to serve said subpoena and a copy of the order upon \_\_\_\_\_ and upon serving said subpoena tender to \_\_\_\$ \_\_\_ cash for a ticket at the coach air-fare rate available for (\_\_\_) one-way or (\_\_\_) round trip between \_\_\_ and \_\_\_, and \$40.<sup>2</sup>, constituting the amount necessary for traveling expenses to and from terminals and for one day's attendance.

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Affiant has been informed by experienced travel counsel of the (name of travel office) that the actual expense of travel by \_\_\_\_\_ at \_\_\_\_\_ rate between \_\_\_\_\_ and \_\_\_\_\_ is \$\_\_\_\_\_.

U.S.D.J.

Dated:

- 1 Insert if applicable.
- 2 Suggested amount—1 day at \$30, plus \$10 for transportation to and from terminal.

#### 1-14.340 Request for Foreign Counsel

After the necessity for such counsel has been approved by the head of the division or office, the United States embassy or consulate in the country involved should be requested to furnish a list of qualified and suitable counsel. The letter should explain the nature of the suit and the type of special qualifications, if any, which may be required. As a general policy, consular officers do not recommend a particular attorney with respect to private matters. However, in government cases, consular officers will recognize the government's interest and will be prepared to give information. These officials maintain lists of qualified counsel based on their experiences with such counsel. They know which counsel have previously represented the United States and the states they have charged.

Upon receipt of the above list, the various attorneys should be sent a uniform letter explaining in detail the facts and issues involved and requesting that those interested submit a daily fee for preparation of the case, a daily fee for courtroom attendance, and travel and other miscellaneous expenses. See USAM 3-3.231.

#### 1-14.350 Interpreters

The Court Interpreters Act of 1978 requires the Director, Administrative Office of the U.S. Courts (AOUSC) to "establish a program to facilitate the use of interpreters in courts of the United States." The AOUSC will prescribe standards for interpreter qualifications and will certify the qualifications of individuals who may serve as interpreters in bilingual proceedings and in proceedings involving persons whose hearing is impaired. All costs for interpreter services necessary to enable a party to comprehend the proceedings in the courtroom or in chambers, to communicate with counsel in the immediate environs of the courthouse in connection with ongoing judicial proceedings and to communicate with the presiding judicial officer are payable from funds appropriated to the judiciary. Interpreter services required by a criminal defendant to whom the government furnishes representation under the Criminal Justice Act are payable from funds appropriated to support that Act. The U.S. Attorney is generally chargeable only for interpreter services necessary to interpret the

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testimony of government witnesses. Although testimony situations are the most common occasion for the use of interpreters, interpreters may also be engaged for services necessary to determine the course of litigation. They may be paid for, or provided transportation, facilities, equipment or materials as necessary and appropriate to satisfy the U.S. Attorney's requirements.

Interpreters are required to execute a written oath as prescribed by AOUSC. The rate of compensation should be fixed by agreement with the interpreter before the interpreter renders the service required by the U.S. Attorney. Rates of compensation should correspond to rates paid by the court. The AOUSC regulation (Sec. 1.72) currently permits the presiding judicial officer to fix reasonable compensation according to the prevailing rates at the location where the designated interpreter regularly works.

It is the responsibility of the investigative agency to pay the costs to translate and transcribe recordings of foreign language telephone conversations obtained under authority of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 USC § 2510 to 2520.

#### 1-14.400 FEDERAL GOVERNMENT EMPLOYEES AS WITNESSES (NON-MILITARY)

##### 1-14.410 Compliance with Subpoenas Duces Tecum

Whenever such a subpoena is served on a U.S. Attorney or any other Department of Justice officer or employee, he/she should proceed in compliance with Departmental policy regarding property management, disclosure of information, and records management.

In lieu of subpoenas duces tecum involving Armed Forces documents, it is urged that letter requests be forwarded for certification and authentication under the seal of the branch of the service. See Rule 44, Fed.R.Civ.P. and Rule 27, Fed.R.Crim.P. As much notice as possible should be provided prior to the date of trial. In the request, the U.S. Attorney should indicate the purpose or use of the documents to give the service the ability to supply the exact evidence required. In exceptional cases where production of official documents or records by a representative of the Armed Forces is required, the attendance procedure for Armed Forces witnesses should be followed. See USAM 1-14.510-520.

To expedite production of fiscal records, a letter should be directed to the Comptroller General, Attention: Records Management and Service Branch, General Accounting Office, Washington, D.C. 20548. Maximum lead time should be allowed.

##### 1-14.411 DOJ Employees Under Subpoena

See 28 CFR § 16.21 *et seq.*

When a subpoena is served on an officer or an employee of the Department by or on behalf of a private litigant, the Federal Rules of Civil Procedure (Rule 45(c)) require that the employee be tendered one day's witness fee plus mileage. Any other service is not legal service under the Rules.

Frequently, the purpose of the subpoena is served by the submission of documentary evidence or other written instrument to the court, instead of by personal appearance. If the substituted type of compliance is accepted by the litigant, it is the policy of the Department of Justice to consider that the fee and the mileage have been earned. In such cases, the fee and mileage previously received will be forwarded to the Accounting Operations Group, Justice Management Division, for deposit into the appropriate Miscellaneous Receipt Account.

If the officer or employee complies with the subpoena by appearing in court in his/her official capacity, he/she must look to the private litigant for his/her fees and mileage. No charge will be made against annual leave. Any amount received in excess of actual expenses will be forwarded in the same manner as above. See Department of Justice Order 1630.1A (September 20, 1978).

If subpoenaed in his/her private capacity, on behalf of a private party, the Department of Justice employee will look to the litigant for fees and mileage. Such absences are charges to annual leave. All fees and mileage received are retained by the employee.

#### 1-14.412 Serving a Subpoena

U.S. Marshals have been instructed that expenses of travel and subsistence solely for the purpose of serving subpoenas upon government officers, agents or employees should not be incurred. The U.S. Attorney may be called upon by the Marshal to have said subpoenas delivered by mail directly to the officer whose attendance is desired, or in the case of agents or other employees, to the head of the office in which they are employed, in sufficient time to enable them to acknowledge the receipt of the subpoenas specified. Form No. USA-150 may be used in lieu of subpoena at the discretion of the U.S. Attorney. Its use should be limited to investigative personnel who have worked on the case. When used, it should be forwarded in duplicate to the prospective witness.

A. *Special Agents of the FBI and Federal Government agents* generally should not be subpoenaed from distant points unless their testimony is material and there is every reason to believe that there will be no postponement of the trial. Contact your local FBI office when FBI witnesses are needed.

B. Federal government employees *stationed in Washington* but needed for testimony in other districts should be secured in the same manner as Armed Forces witnesses outside the district, *i.e.*, by submission of Form No.

OBD-16. See USAM 1-14.510, *infra*. A subpoena may be mailed directly to the witness at the same time the request is submitted to the Department.

C. Federal government employees *stationed outside Washington* may be secured by the U.S. Attorney through direct communication (preferable) with witness or subpoena. The employing agency should be requested to supply any necessary travel advance.

D. A Form OBD-16 must be submitted for Federal government employees obtained directly by the U.S. Attorney's offices if the Department of Justice is chargeable with the witness travel expenses. The Form OBD-16 is required to verify the agency billing. See USAM 1-14.421.

#### 1-14.420 Fees

Federal government employees shall not be paid witness's fees but the period of such service shall be without loss of salary or compensation and shall not be deducted from any authorized leave of absence with pay. See 5 U.S.C. §§ 5537 and 6322.

#### 1-14.421 Expenses for Travel

Any officer or employee of the United States or any agency thereof, summoned as a witness on behalf of the United States, shall be paid his/her necessary expenses incident to travel in accordance with the provisions of the Standardized Government Travel Regulations.

Expenses for appearing as a witness in any case *involving the activity related to that person's employment*, shall be payable from the appropriation otherwise available for travel expenses of such officer or employee. Proper certification by a certifying officer of the department or agency concerned is required. If the case does not involve the activity of the employing agency, the Department of Justice is chargeable with the travel expenses.

Form OBD-16 must be submitted to the Special Authorizations Unit to verify the agency billing for travel expenses when the witness is obtained directly from the employing agency. A notation must be made on the OBD-16 to state that the government employee was obtained directly and the OBD-16 is for notification purposes only.

The following federal officers or employees who testify on behalf of the United States in cases handled by U.S. Attorneys at times when they are *not* in a duty status, and thus receive no additional compensation for testifying, are entitled to the same fees, mileage, and allowances as regular witnesses under 28 U.S.C. § 1821:

A. Persons employed without compensation, except Selective Service personnel. See Selective Service Law Reporter (after 1972): Military Law Reporter.

B. Temporary or substitute employees. See Comp.Gen. 748.

C. Employees compensated wholly by fees.

D. When-actually-employed persons, *i.e.*, persons not employed on a regular basis.

Payment shall be made to federal employees in the above four categories from the Department of Justice witness's appropriation without regard to the nature of the witness's testimony.

#### 1-14.422 Procedure for Payment

In those cases where expenses are properly payable from the Department of Justice appropriation, payment should be issued to the witness by the employing agency. The employing agency shall then bill the Accounting Operations Group, Justice Management Division.

#### 1-14.500 ARMED FORCES WITNESSES

##### 1-14.510 Military Personnel

A. Within district—If the witness is a member of the Armed Forces and is known to be stationed within the U.S. Attorney's district, the Staff Judge Advocate or legal officer should be contacted to determine the place where the witness may be subpoenaed by the U.S. Marshal. This will avoid conflict with the military justice regulations prohibiting the service of summons or other civil process on military personnel at military establishments.

B. Exception—When Air Force personnel must incur traveling expenses to appear as witnesses, from within or outside the U.S. Attorney's district, the procedure set forth below for obtaining witnesses from outside the district should be followed.

C. Outside of district—To obtain a member of the Armed Forces who is not stationed within the district, Form No. OBD-16 (original only) should be sent *promptly* to the office of the Assistant Attorney General for Administration, Attention: Special Authorizations Unit, with all the necessary data. This does not preclude the issuance of a subpoena at the same time but the U.S. Attorney should be prepared to answer any inquiry from the court regarding service on the witness.

Form OBD-16 should be received in the Department three weeks before the desired appearance if possible. In emergency cases, the U.S. Attorney may call or teletype the Special Authorizations Unit.

D. Certification and Payment—When the witness is discharged, the U.S. Attorney should certify, on the back of the member of the service's travel orders, the date and hour of his/her discharge as a witness. The U.S. Attorney should then return the copy of the orders bearing his/her certifi-



cate to the witness to deliver to his/her commanding officer. In the absence of written orders, a separate statement will be prepared by the U.S. Attorney.

#### 1-14.511 Fees and Travel Expenses

The rules governing the payment of fees and travel expenses are the same for military employees as for nonmilitary employees. See USAM 1-14.420, *supra*.

#### 1-14.520 Civilian Employee of the Armed Forces

If the witness is a civilian employee of the Armed Forces, the U.S. Attorney must first determine the civilian's present office address since records of civilians in the field are not maintained in the headquarters office in Washington. If the civilian is located outside the district of trial, the witness should be obtained in the same manner as military personnel. See USAM 1-14.510, *infra*. If the witness is located within the district of trial, he/she may be subpoenaed.

#### 1-14.600 PRISONERS AS WITNESSES

A federal prisoner serving a sentence may be produced to testify or to be prosecuted in another district only upon a writ of *habeas corpus* in proper form. (Writs *ad testificandum* must not be used to produce federal prisoners for examination by U.S. Attorneys or investigative agencies.)

The marshal serving the writ of *habeas corpus* and the warden or superintendent having custody of the prisoner must be named in the writ. The marshal of the district in which the prisoner is in custody should serve the writ or, if this is impossible, the marshal in the issuing district may serve the writ requiring production of the prisoner. The U.S. Attorney should consult with the marshal for his/her district to insure that the writ will be directed to the proper individuals.

A prisoner (federal, state, or county) in custody awaiting trial may be paid the regular attendance fee if testifying as a witness. See 6 Comp.Gen. 58. Conversely, no attendance fee shall be paid to persons already convicted, whether under state or federal law. See 18 Comp.Gen. 609. Further, no mileage or per diem is allowable for any prisoners.

U.S. Attorneys are directed to arrange for the prisoner's trial or testimony as soon as possible after arrival so that the prisoner may be returned to the institution without undue delay.

#### 1-14.700 EXPERT WITNESSES

##### 1-14.710 General

Whenever the U.S. Attorney expects to use expert testimony of any kind, he/she should make every effort to secure government employees in special-

ized fields from field offices of agencies such as the FBI, Bureau of Standards, Securities and Exchange Commission, Department of Interior, Army Corps of Engineers, Veterans Administration, etc., unless disadvantageous for tactical or strategic considerations. U.S. Attorneys should familiarize themselves with the government facilities available in their localities in order to be prepared when cases arise. There are also instances when certain government agencies in Washington can offer special assistance.

Each U.S. Attorney's Office should establish a panel or list of expert witnesses in the most frequently used categories showing the fees and other allowances each will accept. Additional names of qualified medical experts may be secured from local federal hospitals, many of which have contracts with local doctors for specialized work. Although these contracts would not include service as expert witnesses, many of these doctors may be willing to serve at reasonable fees. The United States Navy District Headquarters Offices maintain lists of Navy Reserve doctors who are now in private practice and who might make suitable witnesses. These lists, which may be of assistance to U.S. Attorneys, can be obtained from the Legal Officer at the Navy District Headquarters. Legal officers at other military posts and the Veterans Administration may also be of assistance. Additional information may be obtained upon request to the Assistant Attorney General for Administration.

Fact witnesses, entitled only to the regular statutory fees, should not be hired as expert witnesses. The following guide is set forth to assist in determining whether a person qualifies as an expert witness.

If the testimony covers more than a mere recitation of facts such as opinions on hypothetical situations, diagnoses, analyses of facts, drawing conclusions, etc., all of which involve technical thought or effort independent of mere facts, the individual qualifies as an expert witness. However, testimony with respect to knowledge acquired on the job, although technical in nature, does not entitle one to an expert's fees if the testimony is purely factual. Type or nature of the testimony is the ultimate test.

#### 1-14.710 Federal Government Employees as Expert Witnesses

When federal government employees are used as expert witnesses in cases involving their own agencies, they usually appear in their official capacities. In such instances no witness fees of any kind are payable. They are allowed only their regular travel expenses as provided in 5 U.S.C. § 5537. When, however, they appear in cases not affecting their own agencies, they are regarded as witnesses on loan or detail. In this capacity they are paid their regular salaries by their own agency. Their agency may be reimbursed by the Department of Justice (depending on prior arrangements with the Special Authorizations Unit). The government employee must be qualified

on the stand and the nature of his/her testimony must be the same as that of any expert witness.

Government doctors and physicians may accept the expert witness fees for services rendered as expert witnesses in separate cases on behalf of the United States without violating the dual compensation statute (31 Comp. Gen. 566), provided such fees are on a per job basis as distinguished from a rate of compensation per day. In these cases they must take leave.

#### 1-14.712 Payment of Expert Witnesses Appointed by the Court Under Federal Rules of Evidence

Federal judges are allowed to appoint expert witnesses to assist the court in the performance of its duty on a particular case or proceeding under Fed.R.Evid. 706. The court may either appoint an expert of its own choosing or one agreed upon by both parties. The expert's deposition may be taken by any party and he/she may be called to testify by the court or any party.

##### A. Criminal Proceedings and Civil Condemnation Proceedings

The compensation of expert witnesses appointed by the court under Fed.R. Evid. 706 is treated as a litigative expense chargeable to the litigating agency of the Government. 58 Comp.Gen. § 259 (1979). In those instances where the Department of Justice is the litigating agency, the expenses of the court-appointed expert witness are payable from the appropriation "Fees and Expenses of Witnesses."

##### B. Civil Proceedings

Fed.R.Evid. 706 provides that in other civil actions, the compensation of court-appointed experts shall be paid by the parties in such proportions and at such times as the court directs. Any compensation charged to the Department of Justice will be paid from the appropriation "Fees and Expenses of Witnesses."

##### C. Authorization and Payment Procedures

When the expert is appointed by the court, the U.S. Attorney should submit to Justice Management Division (JMD) an OBD-47 accompanied by a copy of the court order appointing the expert witness under Fed.R.Evid. 706. Prior approval by JMD is not required in such situations; instead, JMD will accept the court order and automatically authorize use of the expert witness.

##### D. Exclusions Under Fed.R.Evid. 706

The appointment of expert witnesses for an indigent defendant in criminal cases or in civil habeas corpus cases is not provided under Fed.R.Evid. 706. In such instances, the Criminal Justice Act authorizes the court-ap-

pointed defense attorney to hire an expert witness on behalf of an indigent defendant. The expenses of the expert will be paid by the Administrative Office of the U.S. Court from funds appropriated for the implementation of the Criminal Justice Act. See DOJ Order 2110.24A (July 17, 1978).

#### 1-14.720 FBI Services

The FBI laboratory facilities are available for handwriting and type-writing comparisons and other document studies, as well as for studies in chemistry, toxicology, ballistics, hair, fibers, metallurgy, and other related subjects. The FBI is prepared to supply technical assistance and information in the fields of dynamics, electrical engineering, electricity, fluorescence, histology, light, mathematics, mechanical engineering, metallography, mineralogy, and physical chemistry.

To facilitate the assignment of expert witnesses from the FBI laboratory, it is desirable that as much notice as possible be given to the Bureau concerning the date upon which the testimony of the expert witness who has made a laboratory examination will be required.

Evidence should be sent directly to the FBI laboratory in Washington, D.C. for examination. Contact the local office of the FBI for assistance in obtaining FBI expert witnesses and in packing and transmitting evidence properly.

There are no charges for FBI services.

#### 1-14.730 Name-Check

In the interest of internal security and the proper handling of the government's litigation, extreme caution should be exercised in the employment of expert witnesses, consultants, etc. In particular, careful consideration should be given to their professional ability, personal character and integrity, and loyalty to the country. If there is any doubt as to the latter, a name-check should be secured from the FBI.

#### 1-14.740 Negotiations

Actual arrangements for expert witnesses must be made by the U.S. Attorney since he/she alone has the opportunity to explore the local situation. Through judicious negotiation and bargaining with prospective witnesses, the U.S. Attorney exerts a decided influence on the terms of the final arrangement. Approval from the Department must be secured prior to the signing of an agreement. A Form OBD-47 should be submitted. The prospective expert witness should be requested to specify his/her fee prior to submission of the Form OBD-47. After approval, Form OBD-12 (contract) must be submitted to meet the Federal Procurement regulations requirement that all contracts be set forth in writing. Form OBD-12 need not be used,

however, for an expert conducting a psychiatric examination pursuant to a court order which sets forth the name of the psychiatrist and the rate of compensation. Form OBD-12 is to be used as the agreement between the witness and the government concerning fees and allowances. This contract remains in effect until the conclusion of the service unless amended by a supplemental authorization and agreement. See USAM 1-14.760 *infra*. Termination for the convenience of the government, which is a required part of all government contracts, has been made a part of the "Other Conditions" section.

The Assistant Attorney General for Administration establishes the rates to be paid to expert witnesses. All fees for expert witnesses shall be negotiated based on these rates. Expert witnesses are not entitled to receive and must not be paid the regular fact witness fees in addition to their negotiated fees.

A daily or hourly fee for witness preparation for trial is preferable to a fixed fee. The witness should be advised that a day represents eight or more hours of service. Daily fees will be pro-rated when less than eight hours of service is rendered. If incidental expenses, such as charts, chemical analysis, etc., are anticipated, they should be described and estimated.

The fee for *court attendance* may be negotiated on a daily basis when the estimated time of attendance is four or more hours. When it is known in advance that the expert's attendance will be for less than four hours, the fee should be negotiated at less than daily rates.

Separate arrangements should be made between the trial or negotiating attorney and the witness as to specific details of the service to be rendered, extent and type of work, type of report, etc.

Reimbursement for necessary expenses of transportation by the most economical mode of transportation available will be allowed. Coach or less than first-class accommodations should be utilized if available.

The rate negotiated for subsistence, submitted and approved on the request (Form OBD-47) should be inserted into Form OBD-12. In negotiating the rate for subsistence, every effort should be made to keep the rate within that established for government employees in accordance with the Standardized Government Travel Regulations. The witness must be in a travel status in order to be eligible to receive a subsistence allowance.

The rate negotiated for mileage reimbursement, submitted and approved on the request (Form OBD-47) should also be included on Form OBD-12. In negotiating the rate for mileage, every effort should be made to keep the rate within that established for government employees. Actual expenses, when allowed, should be limited to reasonable and personal expenses for the expert only and must be itemized on the travel voucher.

1-14.750 Authorization Procedure: Forms OBD-47 and OBD-12

Approval by the Special Authorizations Unit must be obtained prior to the employment of an expert witness. If an emergency occurs, approval by telephone should be secured and a Form OBD-47 should follow. Form OBD-47, in triplicate, should be submitted to the Department as soon as it is learned that an expert witness will be needed.

Request for authorization (Form OBD-47) shall be submitted by teletype for U.S. Attorneys' offices having access to the Department's teletype network (JUST System—Routing Indicator JACCT) by telefax (Routing Indicator 202-783-3040) or by mail or messenger service for those U.S. Attorneys' offices not having such access.

Prior to approval, the following distribution will be made: Form OBD-47: original and one copy to Special Authorizations Unit, one copy retained as office record. Do not give witness Form OBD-47.

An OBD-12 is not required for an expert conducting a psychiatric examination pursuant to a court order which sets forth the name of the psychiatrist and the rate of compensation. A copy of the court order for the psychiatric examination should be attached to the OBD-47. See USAM 1-14.850. No service should be performed until the approved Form OBD-47 and OBD-12, if required, are received from the Special Authorizations Unit.

For all approved requests (Form OBD-47) which indicate that the expert will hire assistants, or which are for more than \$25,000, the original will be returned directly to the requesting office and a signed copy will be forwarded to the Procurement and Contracts Staff. The Procurement and Contracts Staff will either conduct the negotiation of the agreement, or furnish guidance to the trial (or negotiating) attorney.

1-14.760 Supplemental Requests

Supplemental requests should be submitted on Form OBD-47 when additional preparation will exceed the amount originally authorized by more than \$100.00 or when incidental expenses exceed the original estimate of such expenses by 20 percent or when the duration of court attendance will exceed the time estimated by more than one day. In an emergency, a supplemental request may be made to the Department by telephone, to the Special Authorizations Unit. Such requests shall be confirmed promptly by teletype or Form OBD-47.

1-14.770 Procedure for Payment

The U.S. Attorney should notify payees to submit the following voucher forms:

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A. For compensation—Personal invoice form or Form OBD-84/85.

B. For travel or subsistence allowance for government employee witness Standard Form 1012 (not needed for expert witnesses except government expert witnesses not receiving witness fees). See USAM 1-14.711, *supra*.

The U.S. Attorney should certify on the invoice that the services were received and include the Fiscal Control Number assigned by the Special Authorizations Unit. A copy of OBD-12, if applicable, must be attached to the voucher. See USAM 1-14.750, *supra*, for exception. If vouchers contain charges for Sunday compensation, it must be shown affirmatively that services were actually and necessarily rendered on such days. On travel vouchers the purpose for each trip must be shown.

#### 1-14.800 DEPOSITIONS

##### 1-14.810 General

Depositions should be taken whenever possible in order to reduce expenditures. This rule should be particularly applied when it is necessary to secure testimony of a witness living more than 100 miles from the place of trial.

Depositions should be taken before notarial officers or other officers authorized to administer oaths. See Rule 28, Fed.R.Civ.P. Depositions before United States Magistrates should be taken only when such other officers are not available.

U.S. Attorneys are authorized to incur the necessary expenses of taking depositions. Whenever a salaried reporter takes a deposition, he/she is entitled to compensation for the original transcript and for such number of copies as are ordered at rates to be agreed upon with the U.S. Attorney, but no attendance fee may be paid. It should be noted that the rules applicable to reporting court proceedings (including the rates established by the court) do not necessarily apply to the transcription of depositions, and further, payment for stenographic service should be in accordance with rates prevailing in the locality. See USAM 3-3.210.

##### 1-14.811 Depositions Taken in a Foreign Country

Depositions to be taken in a foreign country must be channeled through the State Department, Office of Special Consular Services, Washington, D.C. If a foreign witness must travel to the place designated for the taking of the deposition, notify the Special Authorizations Unit approximately three weeks in advance. That office can then authorize the consular officer to pay the witness in the same manner as witnesses appearing in federal district courts are paid. Authorization is available to pay for the services of interpreters and stenographers if such services are not available in the embassy or consulate by notifying the Associate Director,

Administrative Services, Executive Office for U.S. Attorneys approximately one week in advance so that office may authorize the consular officer to pay for the services.

If, in connection with depositions to be taken in a foreign country, it is anticipated that witnesses will be examined on the premises of our Diplomatic or Consular Mission, arrangements can be made through the Special Authorizations Unit, granting advance authority to the consular officer to reimburse these witnesses in the same manner as witnesses appearing in federal district courts. Similar authorization can be given to the consular officer to pay for the services of interpreters and stenographers, if such services are not available in the Embassy or in the Consulate. Such requests should be submitted to the Executive Office for U.S. Attorneys as soon as the need is anticipated.

#### 1-14.812 Depositions at the Request of a Foreign Court

The Office of International Affairs, Criminal Division, (FTS 786-3500) or the Office of Foreign Litigation in the Civil Division (FTS 724-7455) should be consulted in the case of depositions to be taken in the United States at the request of a foreign court.

#### 1-14.820 Payment of Travel Expenses of Defendant and Counsel to Attend Depositions Taken at the Instance of the Government

As provided in 18 U.S.C. § 3503(c), whenever a deposition is taken at the instance of the government, the court may direct that the expenses of travel and subsistence for the defendant and his/her attorney for attendance at the deposition be paid by the government. A November 26, 1975, Decision of Administrative Counsel (Justice Management Division), Department of Justice, stated that such costs are rightly the responsibility of the prosecution and should be paid by the division or office within the Department responsible for litigating the particular case.

Thus, in those instances where a U.S. Attorney's Office is the prosecuting office and is directed by the court to pay such costs, the expenses will be considered to be litigative expenses chargeable against the U.S. Attorney's appropriation. Defendant and his/her counsel will be reimbursed for "reasonable expenses", *i.e.*, only those expenses for which a government employee traveling under government travel regulation would be reimbursed.

#### 1-14.830 Witnesses Under the Rules of Discovery

Federal Rule of Civil Procedure 26 and Federal Rule of Criminal Procedure 16 allow either party to a suit to subpoena, with the permission of the court, the other party, certain records of the other party, and expert witnesses of the other party, for examination for the purpose of discovering evidence the other party intends to present.



The expenses incurred under the rules of discovery are litigative expenses, chargeable to the Department's appropriation for litigative expenses. No expenses incurred under the rules of discovery are chargeable to the Fees and Expenses of Witnesses appropriation. See USAM 3-3.211.

1-14.840 Letters Rogatory; Depositions; Service of Summons and Other Court Orders to Witnesses Abroad

U.S. Attorneys' offices desiring to send any of the above legal papers to foreign countries should forward them to the office of Special Consular Services, Department of State, Main State, Room 4811, Washington, D.C. 20520. That office will place your communication in the diplomatic pouch to the country involved. In cases where U.S. Attorneys desire further assistance, the letters rogatory should be forwarded to the Civil Division, Attention: Office of Foreign Litigation for transmittal to the State Department. It is necessary to indicate the method of handling desired for the consular officer or other person performing the services. Certain foreign countries do not permit consular officials to perform these services. In those countries, public officials or local attorneys are required to effect the service or to conduct the examination. Letters rogatory should be addressed "'To the Appropriate Judicial Authority in (name the country).'" As explained in the Advisory Committee's Note concerning the changes in Rule 28(b), Fed.R.Civ.P., there will be instances where letters rogatory will be the least expensive and the preferred method of obtaining testimony from witnesses abroad.

1-14.850 Psychiatric Examinations

1-14.851 Psychiatric Examinations in Tort Cases

Psychiatric examinations in tort cases, to determine the extent of injuries, require the approval of the Assistant Attorney General for which requests for other expert witnesses are submitted, as described in USAM 1-14.700, *supra*. Include all expected expenses for the examination, hospitalization if necessary, and testimony.

These examinations must not take place without written consent of the opposing counsel, or a court order under Fed.R.Civ.P. 35. An examination without written consent or a court order may leave the United States liable for a suit, by the person being examined, for violation of his/her civil rights.

1-14.852 Psychiatric Examinations in Criminal Cases

All psychiatric examinations in criminal cases SHALL TAKE PLACE PURSUANT TO A COURT ORDER. A psychiatric examination which takes place without a court order may leave the United States liable for a suit, by the person being examined, for violation of his/her civil rights.

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1-15.000 LITIGATION AGAINST STATE GOVERNMENTS AND RELATIONSHIPS WITH CLIENT AGENCIES

1-15.100 LITIGATION AGAINST STATE GOVERNMENTS, AGENCIES OR ENTITIES

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 Antitrust, 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 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.

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

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

1. 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

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

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

1. 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

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

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

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

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General and, if appropriate, the Associate Attorney General of that determination.

#### 1-15.200 RELATIONSHIPS WITH CLIENT AGENCIES

##### 1-15.210 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. § 0.59 *et seq.*

##### 1-15.220 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.

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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.

1-15.230 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 prosecutive 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/her 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/her 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, Health and Human Services (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/her 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 1 (20 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

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nevertheless review the specific order under his/her "ad hoc" authority, considering all 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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1-16.000 NONDISCRIMINATION ON THE BASIS OF HANDICAP

## 1-16.100 BACKGROUND

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicap in federally assisted programs and activities, was amended in 1978 to extend its application to programs and activities conducted by Federal Executive agencies, including this Department. This Department is responsible, under Executive Order 12250, for coordinating implementation of section 504 with respect to both federally assisted and federally conducted programs and activities.

The Department's regulation implementing section 504 with respect to its own federally conducted programs and activities is codified at 28 C.F.R. pt. 39. The substantive nondiscrimination obligations of the Department, as set forth in that rule, are identical, for the most part, to those established by the Department's coordination regulation for federally assisted programs, 28 C.F.R. pt. 41, and by agency implementing regulations based on the coordination regulation, e.g., 28 C.F.R. §§ 42.501 to 42.540. Because of this Department's responsibility as lead agency for implementation and enforcement of section 504, it is important that the Department's own programs and activities be a model of compliance.

## 1-16.200 DEFINITION

The regulation prohibits discrimination against qualified individuals with handicaps.<sup>1</sup> An "individual with handicaps" is a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

## 1-16.300 DEPARTMENT RESPONSIBILITIES

The Department is required to take appropriate steps to ensure that qualified individuals with handicaps are able to participate in and benefit from all programs and activities conducted by the Department. Such steps would include the following:

A. Sign Language Interpreters

The Department will provide, at no cost to the deaf person, sign language interpreters for deaf people who are Department employees, parties or witnesses in litigation, aliens involved in proceedings of the Immigration and Naturalization Service, Federal prison inmates, or others involved in activities of the Department. See 28 C.F.R. § 39.160. The Coordination and Review Section of the Civil Rights Division has Technical

<sup>1</sup> The regulation was issued prior to the 1986 amendment to the statute which substituted the term "individual with handicaps" for the term "handicapped individual".



Assistance Guides (TAGS) on topics such as arranging interpreter services. A list of available TAG's and copies of these TAG's will be provided on request.

B. Effective Telephone Communications

The Department will provide effective telephone communications for deaf persons through use of telecommunications devices for deaf persons (TDD's) or other equally effective communications systems. See 28 C.F.R. § 39.160(a)(2). In addition to the TDD numbers listed in the 'Services Section' of the Justice Department telephone directory, the U.S. Marshals Service has a nationwide toll-free TDD number: 1-800-423-0719. If a deaf person wishes to communicate with a Department office by telephone, that office is responsible for arranging to use one of the Department's TDD numbers for that purpose.

C. Program Accessibility

The Department will ensure that its programs and activities are physically accessible to persons with mobility impairments. See 28 C.F.R. §§ 39.149-.151. If a person who uses a wheelchair wishes to meet with personnel from a Department office, and the office is located in a building that is not accessible to persons who use wheelchairs, that office is responsible for arranging to hold the meeting at an alternative accessible site. See 28 C.F.R. § 39.150 for the requirements for ensuring access to programs in existing facilities. When a wheelchair user has frequent contacts with a Department office, for example, as an employee of that office, it may be necessary to structurally alter the building to make it accessible or to move the entire office to a different building that is accessible. Responsibility for ensuring program accessibility lies with the Justice Department component that operates the program, even if the facilities in which the program is conducted are managed by the General Services Administration (GSA).

Further information about the responsibilities of Departmental operating units under Section 504 may be obtained from the Coordination and Review Section of the Civil Rights Division at (FTS) 724-2222 (voice) or (FTS) 724-7678 (TDD).

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1-18.000 DOJ PUBLICATIONS/JURIS DATABASE

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. All numbers are FTS. See USAM 1-18.600 for publications on JURIS.

## 1-18.100 DIVISIONS

1-18.110 Antitrust Division

1. Antitrust Division Manual ..... 633-4639
2. Antitrust Grand Jury Manual ..... 633-2481
3. Digest of Business Reviews ..... 633-2481
4. 1984 Merger Guidelines ..... 633-3543
5. 1985 Vertical Restraints Guidelines ..... 633-2481
6. 1980 Antitrust Guide Concerning Research  
Joint Ventures ..... 633-2481

1-18.120 Civil Division

1. Civil Division Practice Manual ..... 724-7322

1-18.130 Civil Rights Division

1. Handbook for Drafting Jury Instructions for  
Use in Criminal Civil Rights Cases ..... 633-3204
2. Handbook for the Investigation and Trial of  
Title II Cases ..... 633-4734

1-18.140 Criminal Division

## 1-18.141 Appellate Section

1. Brief bank with copies of appellate briefs  
prepared by the Appellate Section ..... 633-3521

## 1-18.142 Fraud Section

1. Bankruptcy Fraud Manual ..... 786-4383
2. HUD/VA Mortgage Fraud Manual ..... 786-4390
3. Injunctions Against Fraud Manual ..... 786-4390
4. Restitution Under the Victim and Witness  
Protection Act Manual ..... 786-4379
5. Economic Crime Enforcement Bulletin ..... 786-4379/  
786-4422
6. Sample indictments charging fraud stat-  
utes, jury instructions, pleadings and sen-  
tencing memos ..... 786-4418/  
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## 1-18.143 General Litigation and Legal Advice Section (GLLA)

1. All pertinent reference materials are in the United States Attorneys' Manual ..... 786-4998

## 1-18.144 Internal Security Section

1. The Classified Information Procedures Act (CIPA) ..... 786-4938
2. The Classified Information Procedures Act: An Introduction to Litigation Involving National Security Information ..... 786-4938
3. Outline of Export Control Laws ..... 786-4922
4. The Foreign Agents Registration Act of 1938 as Amended and the Rules and Regulation Prescribed by the Attorney General ..... 786-4936
5. Reliance on Governmental Authority as Defense to Prosecution ..... 786-4936
6. Registration of Certain Organizations Under the Act of October 17, 1940 (Public Law No. 773, 80th Congress) and the Rules and Regulations Prescribed by the Attorney General ..... 786-4936
7. Registration of Certain Persons Under the Act of August 1, 1956 (Public Law No. 893, 84th Congress, 2d Session) and the Rules and Regulations Prescribed by the Attorney General ..... 786-4936
8. Sample indictments, jury instructions, legal memoranda for many statutes for which Internal Security is responsible ..... 786-4914

## 1-18.145 Narcotic and Dangerous Drug Section (NDDS)

1. Handbook on the Anti-Drug Abuse Act of 1986 (J) ..... 786-4700
2. A Federal Prosecutor's Guide to Bond and Sentencing Issues ..... 786-4699
3. Criminal Prosecution Under the Continuing Criminal Enterprise Statute ..... 786-4700
4. Handbook on the Comprehensive Crime Control Act of 1984 (J) ..... 786-4700
5. Handbook on Conspiracy (by former AUSA Joseph McSorley) ..... 786-4700
6. Federal Grand Jury Practice Manual (2 volumes: case law and pleadings; Volume 1 on JURIS) ..... 786-4699
7. Investigation and Prosecution of Illegal Money Laundering (J) ..... 786-4700
8. Deskbook concerning "Acquisition of Foreign Documents" ..... 786-4700
9. Deskbook concerning "Boat Law" ..... 786-4700
10. Deskbook concerning "Title 13 and Money Laundering Offenses" ..... 786-4700
11. Deskbook concerning "Trials" ..... 786-4700
12. Sample pleadings and related materials pertaining to narcotics cases ..... 786-4700
13. Sample pleadings and related materials pertaining to diversion of controlled substances by doctors and/or pharmacists ..... 786-4700

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## 1-18.146 Organized Crime and Racketeering Section (OCRS)

1. Racketeer Influenced and Corrupt Organizations (RICO): A Manual for Federal Prosecutors ..... 633-1214
2. RICO: Sample indictments, jury instructions, and other pleadings ..... 633-1214
3. RICO: Listing of citations to all significant reported civil and criminal cases ..... 633-1214
4. RICO: Brief summaries of significant recent civil and criminal cases, indexed alphabetically and by legal issues ..... 633-1214
5. An Overview—The Dangerous Special Offender (18 U.S.C. § 3503 *et seq.*) ..... 226-7252
6. Monograph on Interstate Travel in Aid of Racketeering (ITAR) Statute (18 U.S.C. § 1952) ..... 633-1214
7. Sample indictments, jury instructions and other pleadings for labor-related matters ..... 633-3666

## 1-18.147 Public Integrity Section

1. Federal Prosecution of Corrupt Offenses Manual ..... 786-5065
2. Federal Prosecution of Election Offenses Manual ..... 786-5060
3. Sample legal documents on issues involving corruption offenses ..... 786-5084

## 1-18.148 Asset Forfeiture Office (AFO)

1. Asset Forfeiture: Law, Practice and Policy Manual ..... 786-4952

## 1-18.149 Office of Enforcement Operations (OEO)

1. Analysis of Electronic Communications Privacy Act 18 U.S.C. § 2510 *et seq.* (J) ..... 633-2869
2. Sample forms for immunity requests under 18 U.S.C. §§ 6002-6005 ..... 633-5541
3. Sample motions to quash subpoenas on the ground of law enforcement privilege and informant privilege ..... 786-4987
4. Application forms for Witness Protection Program ..... 633-3684
5. Sample forms for requests to subpoena attorneys ..... 633-5541
6. Documents reflecting previous research and policy decisions regarding virtually every aspect of Federal criminal justice system and each step in Federal prosecutions ..... 786-4997
7. Collection of legislative history materials covering virtually every statute assigned to the Criminal Division ..... 786-4997
8. Copies of informal immunities submitted to the Department pursuant to the guidelines on Principles of Federal Prosecutions ..... 633-5541

1-18.150 Office of International Affairs (OIA)

1. Procedure for Requesting International Extradition Manual ..... 786-3505

2.	Sample documents for requesting extradition, for selected countries .....	786-3505
3.	Sample pleadings and briefs for all phrases of extradition hearings and appeal (e.g., complaints for arrests, prehearing memoranda, and certificates of extraditability).....	786-3505
4.	Briefs on selected issues raised by fugitives after being extradited by foreign country (e.g., rule of speciality, legality of foreign extradition, etc.).....	786-3505
5.	Mutual Legal Assistance Treaty—model request for assistance.....	786-3505
6.	Sample letters rogatory for selected countries.....	786-3505
7.	Form certificates under 18 U.S.C. § 3505 (Foreign Records of Regularly Conducted Activity).....	786-3505
8.	Sample pleadings in connection with requests for assistance in obtaining evidence from abroad .....	Crim. 786-3505 Civil 724-7455
9.	Model pleadings in executing requests from other countries for evidence located in the United States .....	786-3505
10.	Prisoner Transfer Booklets for use by U.S. Citizens imprisoned in selected foreign countries (Canada, Mexico, Peru, and Bolivia).....	786-4800
11.	All documentation necessary to effect prisoner transfer .....	786-4800
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1.	Documents on Legislative History.....	633-3202
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1.	Model Sentencing memoranda.....	633-5780
2.	Brief Bank .....	633-5780
3.	Sample document format.....	633-5780
4.	Trial transcripts (e.g., expert witnesses, closing arguments) .....	633-5780
5.	Reference bank—federal cases .....	633-5780
6.	Reference bank—state statutes .....	633-5780
7.	Newsletter .....	633-5780
8.	Sample jury instructions, model statutes, sentencing memos and periodicals on obscenity prosecution.....	633-5780
1-18.160	<u>Land and Natural Resources Division</u>	
1.	Standards for the Preparation of Title Evidence in Land Acquisitions by the United States .....	633-4010
2.	Uniform Appraisal Standards for Federal Land Acquisitions.....	633-4010
3.	A Procedural Guide for the Acquisition of Real Property Governmental Agencies .....	633-4010



1-18.170 Tax Division

- 1. Manual for Collection of Tax Judgments ..... 272-4516
- 2. Guidelines for Awards Under Section 7430 of the Internal Revenue Code..... 272-4516
- 3. Criminal Tax Manual (also on JURIS)..... 633-2932

1-18.180 Justice Management Division

- 1. DOJ Telephone Directory .....Administrative Officer for each district or office. .... 272-6126
- 2. DOJ/OBD Administrative Directives..... 272-6126
- 3. Juniper Justice Uniforms Systems Report..... 272-6429
- 4. Publications Directive, Department of Justice Order No. 251..... 633-3151
- 5. Justice Publications and Printing Guide..... 633-3151

1-18.200 OFFICES

1-18.210 Executive Office for United States Attorneys

- 1. United States Attorneys' Manual..... 633-4024
- 2. United States Attorneys' Bulletin..... 633-4024
- 3. For Your Information..... 722-6486
- 4. LECC Network News..... 633-3276
- 5. United States Attorneys' Office Statistical Report..... 673-6379
- 6. Murphy's Law..... 673-6212
- 7. Orientation Manual for U.S. Attorneys..... 633-1020

1-18.220 INTERPOL—United States National Central Bureau

- 1. INTERPOL—USNCB Annual Report ..... 272-6999
- 2. INTERPOL—USNCB Brochure ..... 272-6999
- 3. INTERPOL—USNCB Drug Program..... 272-6999
- 4. INTERPOL—USNCB History and Functions Statement..... 272-6999
- 5. INTERPOL—USNCB Point of Contact ..... 272-6999
- 6. INTERPOL—USNCB Response to Terrorism..... 272-6999

1-18.230 Office of Legal Counsel

- 1. Official Opinions of the Attorney General of the United States..... 633-2057
- 2. Opinions of the Office of Legal Counsel ..... 633-2057

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- 1. Federal Prison Industries ..... 783-5700

1-18.320 Drug Enforcement Administration

- 1. DEA Fact Sheets..... 633-1254
- 2. Drug Enforcement ..... 633-1254
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Administrative Claim Sum Certain Requirement and the Ad Damnum Limitation (1987)

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Affirmative Claims by the Government Under the Contract Disputes Act (1985)

Affirmative Multi-Family Mortgage Litigation: Foreclosure, Deficiencies, and Interlocutory Relief (Mortgagee-In-Possession and Receivers) (1983)

Asbestos Exposure and Neoplasia

Asbestos Litigation: An Overview of Defenses and Strategies

Asbestos TLVs and the Federal Government's Efforts to Limit Exposure to Asbestos in the Work Place

Aviation-Admiralty Symposium, Admiralty Materials (1981)

Aviation/Admiralty Symposium, Admiralty Materials (1982)

Aviation Litigation: Affirmative Admiralty Claims Handbook (1982)

Aviation Litigation: Aircrash Litigation—The United States as a Defendant in Admiralty (1980)

Aviation Litigation: Ground Collisions (1980)

Aviation Litigation: Maps and Charting (1980)

Aviation Litigation: Weather Related Accidents and Visual Flight Rules (VFR) Qualified Pilots (1980)

Checklist of FICA Defenses (1985)

Choice of Laws Decisions in Federal Courts After Kimbell Foods (1983)

Damages Under the Federal Tort Claims Act Handbook (1986)

Defending Actions Brought Pursuant to the Privacy Act of 1974 (1982)

Defending Class Actions—Considerations in Whether to Oppose Class Certification and Grounds for Defeating or Limiting Certification of a Class (1982)

Defensive Pleading by the Government: Answer, Counterclaim, Cross-claim, and Reply (1982)

Deposition Seminar: Commercial Litigation Branch (1985)

Discretionary Function (Revised: 1987)

Employees of Independent Contractors (1982)

The Exception for Misrepresentation and the Exception for Interference with Contract Rights Under the Federal Tort Claims Act 28 U.S.C. § 2680(h) (1985)

Expertise in the Civil Division: Civil Division Attorneys with Areas of Specialization (1986)

The Feres Doctrine and Servicemen's Immunity from Suit (1987)  
FTCA Exception: Claims Arising in a Foreign Country (1982)  
Handbook on Civil Litigation in Housing Fraud Matters (1979)  
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Navy Department Organization, Responsibilities and Documentation  
The Navy's Efforts to Control and Eliminate Exposure to Dust from Asbestos Insulation Products  
Occupational Disease, Product Liability, and Hazardous Waste: Three Legislative Approaches to the Asbestos Problem  
Office of Consumer Litigation (1985)  
Official Government Privileges: Guidelines and Procedures for their Assertion in Litigation (1980)  
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Seminar: The Debt Collection Act of 1982 and the Federal Claims Collection Standards (1985)

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Smoking and Exposure to Asbestos

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Subcontractor Suits Under the Miller Act, 40 U.S.C. Section 270a to e (1984)

Time Limitations on Civil Actions by the Government—28 U.S.C. §§ 2415 to 2416 (1980)

Torts Branch Representation Monograph III: Immunity of Federal Employees in: Personal Damages Actions (1985)

Torts Branch Representation Monograph I: Representation Practice and Procedure (1984)

Torts Branch Representation Monograph II: Rule 12 Personal and Jurisdictional Defenses (1984)

Torts Branch Representation Monograph IV: Reconstruction Era Civil Rights Acts (Prospective 1987-1988)

Use of the Bankruptcy Laws by Asbestos Manufacturers

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Analysis of the Electronic Communications Privacy Act of 1986 (1986)

Criminal Division Narcotics Newsletter—July 1979 to present

Handbook on the Anti-Drug Abuse Act of 1986 (1986)

Federal Grand Jury Practice—Volume I (1983)

Forfeitures: Volume I: Introduction to Civil Statutes (1984)

Investigation and Prosecution of Illegal Money Laundering: A Guide to the Bank Secrecy Act (1983)

Narcotics and Dangerous Drugs (1987)

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U.S. Supreme Court	178 U.S. (1900)—Slips
Federal Reporter, 2nd Series	216 F.2d (1954)—Slips

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Federal Supplement	254 F.Supp. (1966)—Slips
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Courts of Military Review	1 C.M.R.—50 C.M.R. (1951-1975)
Military Justice Reporter	1 M.J.—Slips (1974—Present)
Atlantic 2d Reporter	370 A.2d (1977)—Present (D.C. Cases only)
Bankruptcy Reporter	1 B.R. (1979)—Slips

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Supreme Court Reporter  
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Federal Reporter (1st & 2nd series)  
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Bankruptcy Judges, U.S. Trustees & Family Farmer Bankruptcy Act of 1986	Enrolled Bill
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Tax Division's Summons Enforcement Decisions	Current to 5/1/84
Tax Division's Criminal Tax Manual (Text)	Latest Version
Tax Division's Criminal Tax Indictment/Information Forms	Latest Versions
Tax Division's Standardized Criminal Tax Jury Instructions	Latest Versions
Tax Division's Criminal Section Newsletter (Selected Portions)	March 1986—Present

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Immigration Reform and Control Act of 1986

Sentencing Reform Sections of the Senate Report of the CCCA of 1984

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Federal Labor Relations Authority Case Decisions	Vols. 1-30 (1/79-11/87)

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- FLRA Admin. Law Judge Decisions Vols. 1-66 (8/81-4/87)  
 Federal Service Impasses Panel Decisions March 30, 1986—April 30, 1987  
 Decisions & Reports on Rulings of the Assistant Sec. of Labor for Labor Management Relations 1 A/SLMR—8 A/SLMR (1/73-12/78)  
 Federal Labor Relations Council Vols. 1-6 (1/70—12/78)  
 Rulings on Requests of the Asst. Sec. of Labor for Labor Management Relations Vol. 1 (2/70-6/75)  
 HUD Administrative Law Decisions Selected Decisions (2/79—Present)  
 Merit Systems Protection Board Decisions  
 Board of Immigration Appeals Decisions Vols. 1 (1940)—18 (1984) & Slips  
 Environmental Protection Agency General Counsel Opinions
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 Code of Federal Regulations 1986 Edition, Titles 42, 45-49  
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 Unified Agenda of Federal Regulations Latest Edition (published semi-annually in April and October)
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 Department of Defense Unpublished International Agreements (6/47-1/84)
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 DOJ Guide to the FOIA FOIA Case List Publication (September 1987 Edition)
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1-19.000 ATTORNEY GENERAL ORDERS

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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# CODE OF FEDERAL REGULATION REFERENCES

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5 C.F.R. § 213.3310	1-4.700	28 C.F.R. § 0.46	1-2.202
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5 C.F.R. § 737.13	1-4.620	28 C.F.R. § 0.65	1-2.202
5 C.F.R. § 737.13	1-4.700	28 C.F.R. § 0.66	1-2.205
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5 C.F.R. § 737.25	1-4.630	28 C.F.R. § 0.68	1-2.205
5 C.F.R. § 737.27	1-4.615	28 C.F.R. § 0.69a	1-2.205
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5 C.F.R. § 737.32	1-4.700	28 C.F.R. §§ 0.95-0.99	1-2.301
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5 C.F.R. § 752.405	1-5.200	28 C.F.R. § 0.128	1-2.403
5 C.F.R. Chapter 1, Part 735	1-4.700	28 C.F.R. § 0.160	1-2.202
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8 C.F.R. § 274a et seq.	1-2.304	28 C.F.R. § 0.172	1-2.204
20 C.F.R. § 401 et seq.	1-15.230	28 C.F.R. §§ 01.124-01.127	1-2.402
20 C.F.R. § 401.1	1-15.230	28 C.F.R. § 1.1 et seq.	1-2.108
28 C.F.R. § .70	1-2.202	28 C.F.R. §§ 2.1-2.64	1-2.402
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28 C.F.R. § 16.51	1-9.230
28 C.F.R. § 17.148	1-2.113
28 C.F.R. § 21.1	1-13.620
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28 C.F.R. §§ 39.149-39.151	1-16.300
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28 C.F.R. Part 41	1-16.100
28 C.F.R. §§ 42.501-42.540	1-16.100
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2 U.S.C. §§ 241-256.....	1-2.204	5 U.S.C. § 8193.....	1-2.204
2 U.S.C. § 441e.....	1-2.204	5 U.S.C. Chapter 53, Sub- chapter II.....	1-4.700 (\$ 45.735-27)
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Title & Section	USAM Section	Title & Section	USAM Section
18 U.S.C. § 207	1-4.613	18 U.S.C. §§ 1761-1762	1-2.204
18 U.S.C. § 207	1-4.614	18 U.S.C. § 1905	1-4.700
18 U.S.C. § 207	1-4.615		(§ 45.735-21)
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18 U.S.C. § 207	1-4.630	18 U.S.C. § 1913	1-4.700
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18 U.S.C. § 209	1-4.700	18 U.S.C. § 3056	1-9.240
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18 U.S.C. § 218	1-4.700	18 U.S.C. § 3505	1-18.150
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18 U.S.C. § 219	1-2.204	18 U.S.C. § 3655	1-2.402
18 U.S.C. § 219	1-4.700	18 U.S.C. § 4002	1-2.301
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18 U.S.C. § 241	1-2.204	18 U.S.C. § 4082	1-2.301
18 U.S.C. § 242	1-2.204	18 U.S.C. § 4102	1-2.204
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18 U.S.C. § 434	1-4.700	18 U.S.C. Chapter 29	1-4.700
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18 U.S.C. §§ 591-593	1-2.204	22 U.S.C. § 263a	1-2.115
18 U.S.C. § 594	1-2.204	22 U.S.C. §§ 1381-1386	1-2.202
18 U.S.C. §§ 525-612	1-2.204	22 U.S.C. §§ 1621-1643	1-2.202
18 U.S.C. § 603	1-4.410	22 U.S.C. § 2356	1-2.202
18 U.S.C. § 641	1-4.700	26 U.S.C. § 501	1-4.700
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18 U.S.C. § 643	1-4.700	26 U.S.C. § 501	1-4.700
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18 U.S.C. § 654	1-4.700	26 U.S.C. § 6103	1-10.130
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18 U.S.C. § 751	1-2.204	26 U.S.C. § 6103	1-13.430
18 U.S.C. § 752	1-2.204	26 U.S.C. § 7208	1-2.206
18 U.S.C. § 798	1-4.700	26 U.S.C. § 7212	1-2.206
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18 U.S.C. § 799	1-2.204	26 U.S.C. § 7213	1-13.430
18 U.S.C. § 871	1-7.410	28 U.S.C. § 0.64	1-2.204
18 U.S.C. § 879	1-7.410	28 U.S.C. § 144	1-5.400
18 U.S.C. § 1001	1-4.700	28 U.S.C. § 445	1-5.400
18 U.S.C. § 1072	1-2.204	28 U.S.C. § 503	1-2.101
18 U.S.C. § 1073	1-2.204	28 U.S.C. § 509	1-4.700
18 U.S.C. § 1114	1-5.400		(§ 45.735-22)
18 U.S.C. § 1503	1-2.204	28 U.S.C. § 510	1-4.700
18 U.S.C. § 1719	1-4.700		

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28 U.S.C. § 514	1-3.140	31 U.S.C. § 665	1-14.123
28 U.S.C. § 515	1-2.102	31 U.S.C. § 713	1-10.130
28 U.S.C. § 515	1-3.140	33 U.S.C. § 1506	1-2.201
28 U.S.C. § 515	1-3.300	35 U.S.C. § 122	1-10.130
28 U.S.C. § 516	1-2.104	35 U.S.C. § 135	1-2.202
28 U.S.C. § 518	1-2.104	35 U.S.C. § 141	1-2.202
28 U.S.C. § 519	1-3.110	35 U.S.C. § 142	1-2.202
28 U.S.C. § 519	1-3.140	35 U.S.C. § 146	1-2.201
28 U.S.C. § 524	1-14.110	35 U.S.C. § 183	1-2.202
28 U.S.C. § 524	1-14.111	39 U.S.C. § 3010	1-2.204
28 U.S.C. § 541	1-3.120	39 U.S.C. § 3011	1-2.204
28 U.S.C. § 542	1-3.200	40 U.S.C. §§ 270a-270e	1-10.611
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28 U.S.C. § 543	1-3.300	40 U.S.C. § 488	1-2.201
28 U.S.C. § 545	1-3.130	42 U.S.C. § 1306	1-10.130
28 U.S.C. § 545	1-3.200	42 U.S.C. § 1306	1-15.230
28 U.S.C. § 546	1-3.160	42 U.S.C. § 1973i	1-2.204
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28 U.S.C. § 547	1-3.140	42 U.S.C. § 2000a-3	1-2.110
28 U.S.C. § 586	1-2.102	42 U.S.C. § 2000e-8	1-10.130
28 U.S.C. § 586	1-2.114	42 U.S.C. § 2000a	1-2.110
28 U.S.C. § 633	1-14.810	42 U.S.C. § 2135	1-2.201
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# 1994 Cumulative Supplement to Title 1 Index— General

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**Cumulates and replaces previous Title 1 Supplements**

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U.S. ATTORNEYS MANUAL 1988

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